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Changed world: returning after a long absence
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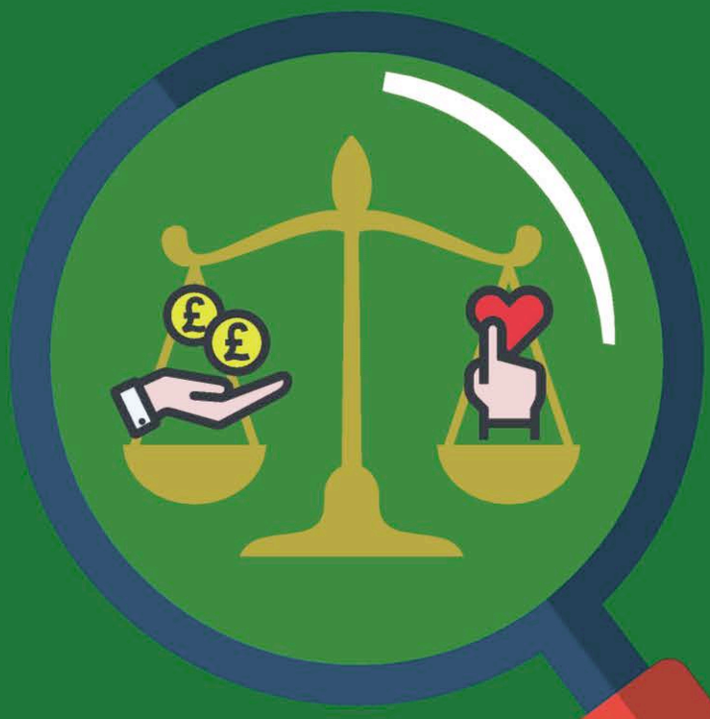
Journal

Journal of the Law Society of Scotland

Volume 67 Number 4 – April 2022



Market imbalance

We report on the legal recruitment market, what candidates are looking for in a job and the difficulties some firms face in finding qualified staff

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Editor

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Wanted!

Trying to manage the numbers training for and entering the legal profession so as to balance supply and demand has always been a thankless task. As well as involving much crystal ball gazing, the interests of the universities in deciding how many LLB students to admit may well conflict with those of the profession regarding the number of solicitors that can be taken on.

The profession itself can also appear conflicted. It is entirely coincidental whether the number of traineeship places on offer bears any relation to the demand for qualified and practising solicitors. Views differ as to how soon a trainee begins to pay their way (with or without the exploitative conditions that, it appears from social media, some regrettably still suffer); but that stage is frequently the main pinch point in the system.

What results, particularly in times of rising demand for legal work like we have now, is that practices have to compete for talented qualified solicitors, and many, most likely at the smaller end of the scale, really struggle to recruit, even when they think they have a decent package to offer.

It has to be admitted that there is no ready solution. Taking a longer term view might involve cultivating your own future lawyers through work experience and then traineeship (of course there is never a guarantee that they will not be tempted elsewhere, though perhaps the earlier you bring them on, the more likely they will retain their loyalty). Or encouraging your paralegals to work towards qualifying and ultimately a more senior role in the business. That does not address the short term problem, unless a business can be reorganised so that unqualified staff take on a greater proportion of the work.

Is there a role for the Society? One solicitor who comments for this month's lead feature, which brings different perspectives to bear on the current situation, believes it could host a platform online through which employers and potential candidates could discuss (presumably anonymously) work situations and potential openings. I leave it to others to comment on the feasibility of such a scheme; suffice it to say that smaller practices are facing a real issue here.

On one point most in the profession are agreed: the present situation only increases the pressures on the legally aided criminal defence sector. With the gap widening almost daily between what can be earned there and elsewhere in the profession, the threat to the justice system is clear and stark. The latest moves to try and jolt the Government into action are by local bars declaring their refusal to act as court-appointed solicitors to those not permitted to defend themselves. Some time soon, something in the system will surely give. Yet still there is a deafening silence from Government.

Contributors

If you would like to contribute to Scotland's most widely read and respected legal publication please email: peter@connectcommunications.co.uk

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Ayla Iridag is an advocate's devil and Vice President of the European Young Bar Association

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THE JOURNAL OF THE LAW SOCIETY OF SCOTLAND
VOL.67 NO.4 – APRIL 2022

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In practice

ONLINE INSIGHT

PUBLISHED ONLY ON **WWW.LAWSCOT.ORG.UK/MEMBERS/JOURNAL/**

Register of Controlled Interests: when will it apply?

Thoughts from the Scottish Property Professional Support Lawyers Group on the new Register of Persons Holding a Controlled Interest in Land: the full length article.

Corporate liability: a leap forward

Pressure is growing for a new corporate offence of failure to prevent economic crime. A barrister author team looks at the likely models for such an offence, and its potential effect, which may be principally in deterrence.

Corporate transparency and register reform

Gary Gray outlines the white paper trailing reforms to the Registrar of Companies' powers, and the information to be provided, to reflect current priorities in national security and anti-corruption, fraud and boosting enterprise.

Prescription: times a-changing at last

A commencement order has finally been made for the Prescription and Limitation (Scotland) Act 2018, with the first changes taking place from 1 June 2022. Adam de Ste Croix explains what these involve.

OPINION

Ruth Croman

The latest commentary predicting the demise of the high street legal partnership fails to recognise that forward thinking, client focused firms are thriving, and know what is needed to continue to thrive

Rob Aberdein's predictions for the demise of the high street firm, in a recent newspaper article, raised a few eyebrows round our partnership table. A bleak future was painted for the traditional partnership, the hallmark of the high street firm – with a blame culture, slow decision-making and protectionism of clients particularly highlighted as problem factors. And yet, as a high street practitioner for all my legal career, I don't share his pessimism.

There will undoubtedly be, as in all business sectors across the country, traditional legal partnerships which operate in broadly the same way as they have for 30 years, with strict hierarchical structures, perception of clients as "belonging" to an individual, and an expectation that being a lawyer, in and of itself, is more than adequate training to run a business. They may well be resistant to change, and indeed slow to recognise changing attitudes and business practices.

Mr Aberdein's article seems to me, however, to castigate businesses (and individual partners) unwilling or unable to move with the times and recognise a changing landscape, rather than highlight anything inherently wrong with the traditional partnership model itself.

His observations appear to assume a poor business culture, with jostling for "ownership" of clients, and individual egos getting in the way of doing what is best. What is best both for a forward thinking legal firm, and its people, is much more than the collective of individuals working there. A poor business culture is far from the preserve of the traditional high street partnership.

He seems to discount completely the value of personal relationships to clients. Undoubtedly clients are more mobile than historically, but is that not a good thing for our businesses? Firms that are not available and approachable will suffer. Businesses that offer truly client-focused service can benefit from the ability and inclination to shop around. The arrogant supposition of "ownership" of a client speaks volumes of a poor culture, focused on what the client can bring to the business rather than what service the business can offer the client.

Technology has massively changed how we all do our jobs, and will continue to do so. The capabilities of AI in legal tech are quite astounding. But an algorithm or slick software is no substitute for talking someone through their options when they have been floored by a separation, or devastated by a close family member's death. Technology will be essential going forward, but the key for practitioners and business leaders will be knowing when the interaction with the client should be personal, and when it should be digital. It needs to complement the personal relationship between solicitor and client and form part of, not the entirety of, the client journey.

Undoubtedly some clients might prefer the "one stop shop" that Mr Aberdein envisions, but not all will. Different legal businesses cater for different clients, and always have done. Our high street firm will never rank on the Dealmaker List, but that doesn't mean it can't operate as a successful and innovative business. The advent of alternative business structures is something, in my view, to be welcomed. I don't agree with the assertion that only with the introduction of non-lawyer business partners will fresh thinking and opportunity be achieved – that flies in the face of my experience of so many innovative and creative young lawyers, whose knowledge and technological abilities stretch far beyond the black letter.

Smaller firms are inherently more agile, and therefore able to adapt quickly to both market challenges and opportunities. Slowed down decision making? *Au contraire* – no need for multiple committees and business plans before opportunities are seized.

The partnership model is not dead, or even dying. Choose carefully who you enter partnership with (and indeed who you work with more broadly), and make sure your values align. Entering into partnership with someone whose sole focus is on what is in it for them, shouldn't lead to shock when you encounter a "siloing" attitude. The litmus test? Make sure you would be happy to refer a friend to them for a piece of work.

Respect a client's right to choose who they instruct, and ask your clients regularly how the firm measures up. Why should choosing a lawyer be any different from choosing to shop in Waitrose or Aldi? Different firms have different offerings, and strengths and variety are key.

Yes, the working landscape has changed. Yes, the attitudes of younger members of the profession have changed and are changing, but all this is just part of the evolution of how we practise law. As with any business, standing still equates to moving backwards. Listen to your clients, listen to your team members, and find a practice (quite possibly through trial and error) that resonates with you. Well run high street practice partnerships, who are happy to adapt and respond, and where client experience is key, are out there, and will still be here in 2032.

Ruth Croman is managing partner of Macnabs

VIEWPOINT

Arrears and errors

More on title delays

J Keith Robertson, in his letter published at Journal, March 2022, 6, asks "What do others think?" From my perspective I agree with every word he writes.

In July 2018 the Keeper said in relation to applications lodged by me in June 2017 that her "top priority was to clear her backlog". She also said that "all applications are being dealt with in date order". No ifs, no buts – "in date order".

However, in her email she also said: "we do have a number of teams dealing with different levels of complexity, which may seem like some applications are being dealt with quicker". Ah – not quite "all applications... in date order".

After regular enquiries I was told on 8 December 2021 that the Keeper was experiencing a backlog, and her staff member also mentioned that the Keeper was "committed to providing an excellent service".

When the land certificates were received on 22 February 2022 there were obvious errors with the plans attached and they had to be returned. In addition the name of the property printed in the title plan was in a neighbour's property. This was over four and a half years after submission. To compound matters, in spite of pointing out the errors and receiving an acknowledgment from the Keeper, I did not receive the correct title sheets until 21 March 2022!

J S Paterson, retired solicitor

SLCC: instigating complaints?

After the SLCC encouraged a former client to complain, the former client engaged in abuse targeting our staff, which no solicitor, no paralegal and no legal receptionist should have to face.

I have lodged a complaint with the SLCC, because there does not appear to be any cognisance of the potential for abuse in the advice it provides to the public. Furthermore, the SLCC has never made it clear that abuse of solicitors and their staff will not be tolerated. In fact, the SLCC position is that "client conduct is irrelevant".

This position is unacceptable and is unlawful. In terms of the Health and Safety at Work Act and under the common law, as employers solicitors have a duty of care to ensure a "safe system of work". We also have an obligation to protect our staff from discrimination, including discrimination from clients or other members of public. The SLCC's current position is untenable, as it is incompatible with health and safety law, the common law and the Equality Act.

I have therefore asked that an apology is issued to my firm for the SLCC's conduct in this case; for an express acknowledgment that abuse from clients is never acceptable; and for the SLCC to acknowledge that client conduct is relevant to complaints, and that it should not force solicitors and their staff to face clients again who have been abusive, or allow complaints handling procedures to be used to abuse, or discriminate.

Daniel Donaldson, principal solicitor, Legal Spark

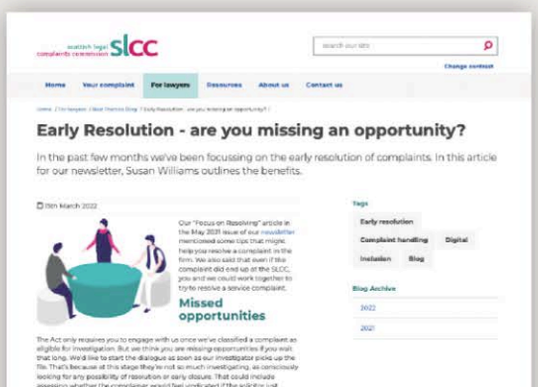
BLOG OF THE MONTH

www.scottishlegalcomplaints.org.uk/

"The Act only requires you to engage with us once we've classified a complaint as eligible for investigation. But we think you are missing opportunities if you wait that long."

SLCC's Susan Williams explains the benefits of dialogue as soon as an investigator picks up a file – at that stage they are "consciously looking for any possibility of resolution or early closure". What is more, only hearing the complainer's side makes it more likely that a complaint will be accepted for investigation. And delay often brings entrenched attitudes.

To find this blog, go to bit.ly/3udg46Q



BOOK REVIEWS

Prescriptive Servitudes

A PETERSEN
PUBLISHER: EDINBURGH LEGAL EDUCATION TRUST
ISBN: 978-1999611811; £30

This is volume 7 in *Studies in Scots Law*, published by the Edinburgh Legal Education Trust. A lightly revised version of the author's 2016 thesis, *The Positive Prescription of Servitudes in Scots Law*, it states the law as at September 2018.

Its three objectives are to examine the historical origins of the establishment of servitudes by positive prescription in Scots law; to consider the nature of the right; and to analyse the nature of the possession required under the Prescription and Limitation (Scotland) Act 1973. The book ably achieves these objectives.

The main subject matter is found in chapters 7-12, which contain an in-depth analysis of the modern law governing the establishment of servitudes by positive prescription. The checklist for claimants and landowners in the appendix is a useful addition.

The book does not chart the position of the Keeper of the Registers of Scotland with regard to prescriptive servitudes but, on balance, it is suggested that that was not required in a book of this nature.

All in all it is a very useful addition to published texts on an important subject.

Professor Stewart Brymer, Brymer Legal Ltd. For a fuller review see bit.ly/3LQLQex

McAllister's Scottish Law of Leases (5th ed)

LORNA RICHARDSON AND CRAIG EVAN ANDERSON
PUBLISHER: BLOOMSBURY PROFESSIONAL
ISBN 978-1526513915; £87(E-BOOK £70.47)

"This latest edition adds to the sources available to practitioners and others, which is a good thing."

Read Stewart Brymer's review at bit.ly/3LQLQex

Taste: My Life Through Food

STANLEY TUCCI
(FIG TREE: £20; E-BOOK £7.99)

"There is great warmth; there is great style. I would love to have Stanley at my dinner table."

This month's leisure selection is at bit.ly/3LQLQex
The book review editor is David J Dickson

Sting of the bench

Any lawyer who has suffered at the hands of a tired and irritable judge may be able to cheer themselves up, courtesy of a German Twitter user.

@gerechtGericht, whose profile translates as "A mediocre tired bee who claims to be a judge. Master of Applied Twitter Science and Practical Joke", appealed – seemingly at his wife's request – for drawings of a "tired judge bee in robe and with coffee cup in hand, grumbling and flying through the air".

More than 40 responses were posted in a thread at the end of March, and even if you don't get the German, you could always try matching them up to those before whom you have to appear...

PROFILE

Chris Barnes

Chris Barnes is a solicitor at Levy & McRae in Glasgow and a member of the LawscotTech advisory board

1 Tell us about your career so far?

I trained with Levy & McRae between 2018 and 2020 and went on to become a junior associate at Clyde & Co. Now I am back at Levy & McRae, working in the litigation team.

2 How did you become involved with the Society?

I wanted to apply what I learned from studying and working in software development as a solicitor. While I was a first year trainee I attended the LawscotTech event in Glasgow and spoke with some of the board members. I applied to and joined the advisory board in 2019.

I am very grateful to the Society for the opportunity to apply my skills and represent my viewpoint as a junior member of our profession.

3 What aspects of the board's work have you found most interesting?

The members are the most interesting part of the advisory board.

The programme brings together people from legal and technological backgrounds in an innovative way to support the adoption of new technologies.

4 What are the biggest challenges for tech development in the legal sector?

The greatest challenge could be compliance with current regulatory and legal standards. While things like artificial intelligence sound futuristic, at the end of the day our industry is built on people. Our current regulatory and legal standards are appraised at the level of competence to be expected of humans. Solicitors are expected to exercise their own independent skill and judgment in advising clients. The introduction of new technologies is going to present new opportunities, but it will need to do so in a way that complies with our obligations towards clients, the courts and each other.

Go to bit.ly/3LQLQex for the full interview www.lawscot.org.uk/lawscottech/

WORLD WIDE WEIRD

1 Pet hate

Residents in Corsham, Wiltshire, are being terrorised by a pair of hooligan chihuahuas that gang up on other pets, behaving so badly that a former police German shepherd is scared of them.

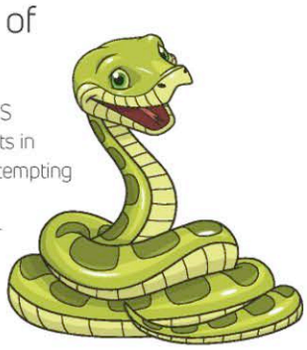
bit.ly/3LFLRTQ

2 Brush with God

A religious painting has been removed from the cathedral in Canosa, Italy, after its priest and the boss of the charity who commissioned the work were found depicted – against their wishes.

bit.ly/3NTQ1JG

3 Scales of justice



A man was caught by US border agents in California attempting to smuggle 52 reptiles – nine snakes and 43 horned lizards – hidden in his clothing, including down the front of his trousers.

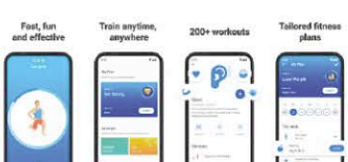
bit.ly/3Jk78kA

TECH OF THE MONTH

Seven

Free: Apple Store and Google Play

If you're trying to keep fit around a busy schedule, this app has workouts designed to provide the maximum benefit in the shortest time possible. You can use it to exercise anytime and anywhere while creating programmes tailored to your needs.



PRESIDENT

Ken Dalling

As important as learning from mistakes is being able to tell what is reliable information and what is not. The Government is promoting such a message; should it not act accordingly in relation to legal aid?

There has been much written about the goods and the ills of mobile communication and social media. As a criminal defence solicitor I have seen phone and text logs work wonders for both the Crown and the defence. I have also lost count of the number of cases resulting from the threats or abuse, violence or the destruction of property (alleged!) which started when one party to an intimate relationship interrogated the mobile phone of the other party. The pattern often involves a phone being snatched, a struggle to access the correct app and a further struggle by the phone's owner to provide an innocent explanation for what is found.

So what was I to think when my wife, who has her own phone which she had been using, recently asked me to give her my phone – and to unlock it? With a clear conscience, of course, I complied. But I was curious. The answer was simple: Wordle. Or rather cheating at Wordle by using a second device after her fifth unsuccessful guess.

For the uninitiated, Wordle is an addictive online sensation which has the user trying to guess a new five letter word every day. You are given clues following failed attempts, not unlike the old game of battleships that some may remember, but only have six attempts before the site laughs at you and points out what should have been obvious. (Though in my opinion "nymph", "caulk" and "knoll" are not the most obvious hits after their respective misses.)

As we move through life, it is good to be informed and to inform ourselves from our hits and our misses. Learning from our mistakes and doing better next time is surely axiomatic. It may even take more than five misses to get a hit. It is important though that we are working from a firm base, that we are well informed and that we identify what is and what is not "fake news".

Reliable source

It is interesting that one of the Scottish Government's current public information campaigns tells us of the need to be careful before believing all that we are told. Just as we need to identify that which is to be ignored, the corollary is surely to recognise and act on that which is reliable.

In a recent meeting with the Lord President, I was able to introduce him to our new CEO Diane McGiffen. After I had observed the benefit of Diane's fresh perspectives from her background at Audit Scotland, Diane spoke eloquently of how her initial impressions of the Law Society of Scotland being central to Scottish civic society had only been reinforced by her early experiences in post.

She had seen at first hand the Society's contributions to the debates on equality and diversity, legal services regulation and criminal justice review, as well as broad engagement on anti-money laundering, a UK Bill of Rights and, further afield, support for Ukraine. Why was it, she wondered, that on the apparently straightforward question of legal aid funding we were not being listened to? And, from my perspective, the Scottish Government has had more than six chances to get that right. How many more will it take? What damage will be done before it does?

Ken Dalling is President of the Law Society of Scotland – President@lawscot.org.uk

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People on the move

ABERDEIN CONSIDINE, Aberdeen and elsewhere has made three appointments to its Lender Services practice group: **Neil Patterson** has joined as a partner in its Banking Litigation team, from ASCENT PERFORMANCE GROUP, **Diane Gundersen** has joined as a senior associate from TLT; and **Curtis Broadhead** joins as a legal executive.

ADDLESHAW GODDARD, Edinburgh, Glasgow, Aberdeen and internationally, has announced that the promotion of corporate lawyer **Laura Falls** to partner based in the Edinburgh office, as part of a 20-strong partner promotion round across the firm effective from 1 May 2022.

ANDERSON STRATHERN, Edinburgh, Glasgow and Haddington, has hired commercial real estate and renewables specialist **Dixcee Fast** from EVERSHEDS SUTHERLAND as a partner.

© Stewart Attwood

BELMONT SOLICITORS has begun practice from 1 West Regent Street, Glasgow G2 1RW (t: 0141 729 8848; e: info@belmontsolicitors.co.uk). Founded by personal injury solicitor **Kirsten Morrison** (managing partner), it has appointed **Lyndsey McLean**, who joins from HORWICH FARRELLY, as a senior associate.

BTO SOLICITORS, Glasgow, Edinburgh and Helensburgh, announce the retirement from practice of **Alastair Hope**, whose Helensburgh practice RAEBURN HOPE merged with BTO in 2019.

BURNESS PAULL, Edinburgh, Glasgow and Aberdeen, has appointed **Euan Fleming** as a partner in the Private Client team based in the Edinburgh office. He joins from GILSON GRAY, where he was partner and head of Private Client.

CLYDE & CO, Edinburgh, Glasgow, Aberdeen and globally, and BLM, Edinburgh and UK wide, are to merge under the name CLYDE & CO from July 2022.

CMS, Edinburgh, Glasgow, Aberdeen and globally, has appointed **Cara McGlynn**, a specialist in IP and technology-related disputes who joins from BRODIES, as an associate based in Edinburgh.

ESSON & ABERDEIN, Aberdeen, Glasgow and Edinburgh, has appointed **Fallon Spencer**, who joins from McVEY & MURRICANE, as director and head of Corporate Property Services.

FERGUSON & WILL, Brechin, has been acquired by THE CHAMBER PRACTICE, Dundee, Aberdeen, Brechin and Cupar. Its Brechin employees, under director **Sandra Teall**, have moved into renovated offices at 15 High Street, Brechin DD9 6ES.

FRASER SHEPHERD, Falkirk are pleased to announce the appointment of **Yuliia Waiss** as associate solicitor of the firm. She joins from RGM SOLICITORS, Grangemouth.

GILLESPIE MACANDREW, Edinburgh, Glasgow and Perth, has announced the promotions of **Lois Newton** to partner; **Andrew Leslie**, **Sarah-Jane Macdonald** and **Ross MacRae** to legal director; **Caitlin Keegan** and **Rae Gilchrist** to associate; and **Conner McConnell**, **Ross Matthew** and **Cheryl Hogg** to senior solicitor.

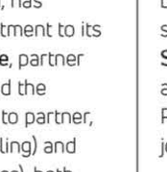
GUNNERCOOKE, Glasgow, has appointed real estate lawyer **Rachel Dunn** as a Partner. She joins from DENTONS.

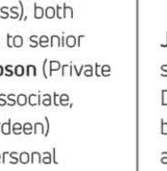
JONES WHYTE, Glasgow, has announced the promotion to partner of **Nick Hay** (Residential Property) and **Ross Anderson** (Trusts).

KW LAW, Livingston and Bathgate, is pleased to announce the promotion of **Gillian Reilly** from associate to partner as from 1 April 2022.

LEDINGHAM CHALMERS, Aberdeen, Inverurie, Inverness, Stirling and Edinburgh, has announced the appointment to its board of **Victoria Leslie**, partner based in Inverness; and the following promotions: to partner, **Sarah Londragan** (Stirling) and **Andrew Stott** (Inverness), both in the Corporate team; to senior associate, **Louise Simpson** (Private Client, Aberdeen); to associate, **Lois Craig** (Rural, Aberdeen) and **Emma McNay** (Personal Injury, Aberdeen); and to senior solicitor, **Rosie Allan** (Family Law, Aberdeen) and **Natalie Coll** (Private Client, Inverness).

LINDSAYS LLP, Edinburgh, Dundee and Glasgow, announces the promotion of **Kirsty Cooper** and **Vhari Selfridge**, in the Residential Property department based in Edinburgh, as partners with effect from 1 April 2022. Kirsty and Vhari are both part of the firm's office at Caledonian Exchange, Edinburgh. In addition, **Dorothy Rankin** retired from the firm with effect from 31 March 2022. Lindsays wishes her a long and healthy retirement.





In other promotions, **Leanne Gordon** and **Tim Macdonald** (Rural), and **Gregor MacEwan** (Dispute Resolution & Litigation) become senior associates; **Emma Conway** (Residential Property), **Lewis Crofts** (Rural), **Adam Gardiner** (Dispute Resolution & Litigation) and **Nimarta Cheema** (Corporate & Technology) become associates; **Ginny Lawson** (Residential Property) becomes a senior paralegal, and **Claire Hurst** (Corporate & Technology) becomes a senior company secretarial assistant.

Sienna Sproson has been appointed an associate in the Private Client team in Dundee, joining from BLACKADDERS.

Jennifer McGrath, previously solicitor with EAST DUNBARTONSHIRE COUNCIL, has been appointed company solicitor at CELTIC FOOTBALL CLUB.

MACLEOD & MACCALLUM, Inverness, are delighted to announce the appointment of **Tomas Simpson** and **Aidan Grant** as associates from 1 April 2022.

MBM COMMERCIAL, Edinburgh and London, has appointed **Stephen Hart** as head of Fintech & Financial Services. He joins MBM from MEDICI LEGAL, a specialist fintech practice he founded.

J & H MITCHELL WS, Pitlochry & Aberfeldy, has appointed **Grant McLennan** as an associate solicitor.

MITCHELLS ROBERTON, Glasgow announce the retirement of their former chairman **Donald Reid** with effect from 31 March 2022. He

Fallon Spencer has joined Esson & Aberdein

will continue with the firm as a consultant for a further year and remains available so far as the demands of retirement permit to consider memorials and requests for advice on conveyancing and property law matters. He is no longer available to appear in court to give expert evidence in professional negligence litigations but otherwise remains willing to be consulted on this topic while his personal experience of practice remains recent.

Jim Cormack has a new role at Pinsent Masons

PACITTI JONES, Glasgow and elsewhere, has acquired the practice of RGM SOLICITORS, Linlithgow and Grangemouth. All existing RGM staff will remain with the business and transfer to Pacitti Jones. **Gosia Chylinska** of Pacitti Jones will relocate to the Linlithgow office to head the practice at both branches; **Lesley-Anne King** will continue to run the estate agency side of the business.

PINSENT MASONS, Edinburgh, Glasgow, Aberdeen and globally, has appointed Edinburgh-based solicitor advocate **Jim Cormack** QC as Global Head of its Litigation, Regulatory & Tax team, which covers 265 staff based in seven UK offices and in Dublin, Dubai, Madrid, Munich, Paris and Singapore.

SHAKESPEARE MARTINEAU, Glasgow and UK-wide, has appointed dual-qualified **Nicky Grant** as a legal director in the Commercial Real Estate team. Joining from DICKSON MINTO, he will be based in Edinburgh.

SHOOSMITHS, Edinburgh, Glasgow and UK-wide, has announced the promotion of **Rachael McCallum** and **Grace Watson**, both based in Edinburgh, among 19 new senior associates across the firm.

THORNTONS, Dundee and elsewhere, and STUART & STUART WS, Edinburgh, have announced their merger from 1 April 2022. Stuart & Stuart's entire team of 31 will transfer to Thorntons. **Chris Anderson** transfers as a consultant to the merged firm; **John MacKenzie**, **Fergus Macmillan**, **Andrew Bertram** and **Emma Horne** are appointed partners; and **Ken Lauder** is appointed a legal director.

TURCAN CONNELL, Edinburgh, Glasgow and London, has announced a total of 19 promotions: to partner, **Richard Douglas-Home**; to legal director, **Simran Panesar-Saggu**; to senior associate, **Vicky Brown**, **Debbie McIlwraith Cameron** and **Elaine Proudfoot**; to associate, **Hannah Duguid**, **Juliet Barker**, **Beth Evans**, **Graham Fisken** and **Matthew Hastings**; and to senior solicitor, **Hilary Busby**, **Moyra Diaz Limaco**, **Lauren McDonach**, **Alexander Middleton**, **Andrew Nicholson**, **Catherine Sloan**, **Callum Townend**, **Jamie McNish** and **David Smith**.

Notifications

APPLICATIONS FOR ADMISSION FEBRUARY/MARCH 2022

ABDEL-RAZIK, Maryam
AIVALIOTIS, Grigorios
ANGUS, Ross David
ARGO, Rebecca Jo
BAHIA, Kiranpreet Kaur
BOLES, Natasha Ann
COOPER, Carli Ann
COUCHLIN, Emily Claire
COUSINS, Laura Marie
DAVIES, Paula Elizabeth
DENLI, Ezgi
DIN, Syma Bibi
DONNELLY, Martin Thomas
FOX, Anna Veronica
FOX, Stacey
GALBRAITH, Nicole Margaret
GAMBALE, Genovino Armando
GILLAN, Baktosch
GILLESPIE, Andrew James
GRANT, Stephen Charles
HALL, Katrina Adelaide
HARRIS, Wendy Elizabeth
HENDERSON, Lucy Ann
HIGGINS, James Myles
IQBAL, Amaal Maia
KEEL, Victoria Sara
KENNEDY, Laila Margaret
KERR, Leonie
KINNINMONT, Jade Ann
KIRK, Sophie Jane
LEE, Carol Ga Yung
McALLISTER, Elizabeth Ross
McBURNIE, Beate Katja
McGUIRE, Carla
McINTOSH, Lauren
McKENNA, Ashley
MACKENZIE, Duncan Thomas
McQUEEN, Ross Craig
MARTIN, Ross John Peter
MAZZUCCO, Michael David
MELLIS, Rory Alexander
MELROSE-NIMMO, Aryan
METCALFE, Claire Elizabeth
MOORE, Bronwyn
MORRIS, Anastasia
ORGILL, Alexander William
PRESTON, Curtis Robert
ROBBINS, John Alexander Daniel
RUSSELL, Hayley
SHAH, Rohini Premal
SHEARER, Jennifer Ethney
STEPHEN, Brooke
TORRANCE, Charlotte Mary Jane
TURNBULL, Hannah Beth
WESTWOOD, Shona
WILKIE-KANE, Daniel Robert
WILSON, Corrine
WILSON, Rose Alice Mary Ruth

ENTRANCE CERTIFICATES ISSUED DURING FEBRUARY/MARCH 2022

AHMED, Faiza Zreen
ANDERSON, Rae Elizabeth
BELL-CAIRNS, Gareth
BRENNAN, Laura Angela
CAMPBELL, Michelle Marie
CHAUDHRY, Ayesha Iqbal
DRUMMIE, Lucy Alexandra
DUTHIE, Siobhan
GILLIES, Christie
GOBA, Gintis
HAMILTON, Rachael Suzanne
HAYWARD, Zoe
JACK, Megan Louise
MACASKILL, Jill Catherine
McCALLUM, Sarah Lucy Glancy
McELROY, Adam
MORRISON, Craig
MULGREW, Sean Gerard
MURRAY, Paige
ROBERTSON, Sean James
ROSS, Elizabeth
SALMON, Kirsty Leanne
SHAFAQ, Faisal
SIMPSON, Emma Patricia
SINCLAIR, Alison Dorothy
SMITH, Lauren Catherine
TAYLOR, Frances Ellen Wilton
THOMSON, Rhona Margaret Ure

Desperately seeking solicitors

Rising salaries; a shortage of job applicants; raised expectations as regards benefits and working conditions. What is the impact of the current scramble for talent in the legal sector? Peter Nicholson reports

These are turbulent times in the legal recruitment market. The pandemic has left many people rethinking their working lives, with hybrid and flexible working now a key consideration. "The Great Resignation" has become a label for the times, as people search for what they want from a job. Competition for talent is intense, especially in London where a salary bidding war has reached into six figures even for junior solicitors – one Magic Circle firm is reportedly offering £125,000 to the newly qualified.

What does it mean for the market in Scotland? What are candidates actually looking for when they apply for positions? And what does it mean for smaller practices trying to fill positions?

Recruiter roundup

Legal recruitment companies agree that from NQ level up there is a shortage of candidates – "an incredible shortage", Neil Campbell of QED Legal affirms. He points to fewer people joining the profession during the pandemic, "and I've read recent articles suggesting swathes of trainee solicitors intend to leave the law after a tough traineeship, often without ever meeting their training partner. The competition is fierce".

"The market remains candidate short at all levels", IDEX's Meena Bahanda agrees; while veteran recruiter Frasia Wright points to particular competition across key areas including "property (all types), construction, corporate and private client" – which must cover the main work of many practices.

James Hitti of G2 Legal adds: "So far 2022 has demonstrated that retention is the new recruitment. Every business we deal with is looking at ways to retain the staff they have: this is adding to the apparent skills shortage."

All support the view that candidates nowadays are looking for many things apart from money. Wright lists quality of work, firm culture and values (covering diversity and inclusion), and training and development, adding: "Many junior lawyers do not want a long-hour work culture, long term. A clear and transparent career path and how salary levels will look medium to long term are important. Hybrid is a big one."

Likewise, Campbell points to flexible working as the main driver now, "and I think this may be problematic in the long run". Candidates still want high salaries, but also "a cast iron guarantee of a work-life balance that law just hasn't known until the pandemic shifted things".

"Being valued", Bahanda sums it up. Besides the foregoing, she names good benefits, for example maternity and paternity leave; career development support (like assistance with accreditation etc); bonus, pension, healthcare; and "reasonable targets!".

"How do your values play out in the day-to-day running of the team?" is the key question Hitti sees candidates asking. "If an interviewer can't answer that effectively, candidate engagement in the recruitment process can falter, and is likely to focus on the team and leaders that can demonstrate a tangible belief in what they do."

Campbell and Wright both mention greater interest in in-house – not only among junior solicitors, according to Campbell: "I speak to a lot more solicitors, across the board, who seem to feel that in-house might be their preferred route. I think the idea of time recorded hours and targeted fee income is daunting to many."

Whether in the private or public sector, Wright believes, what lies behind this is often "the desire to be part of a business and feel valued".

For Bahanda, however, trends are "more about having exposure to good quality work", and the desired working conditions. And Hitti sees a transition away from the goal of partnership, towards "the desire to achieve a sustainable career with flexibility where the individual feels valued regardless of whether this is in practice or in-house".

Money markers

Salaries are also volatile: even in the cities they range for NQs from the mid-30s to the mid-60s (thousands of pounds), with private client and litigation tending to be lower than corporate and commercial. "As a general rule, I expect the average for this year to be closer to the £50k mark than the usual £42k region," Campbell states. Outside the cities, the low to high 30s are more likely.

Hitti notes that NQs in commercial practice can expect a bonus, from 5% to 30% of basic salary (longer hours can also be expected). He adds: "It would be fair to say that, almost without exception, firms that have offered above £55,000 are focusing on out-of-region work, which itself means a very different offering for their teams."

Despite the headline London salaries, they see no greater drain of Scottish talent south than previously. Wright believes that with global firms now having a significant Scottish presence and NQ salaries increasing, "the draw to London or offshore is less than in past years". Campbell considers that with Scottish salaries rising at the fastest he has known, "London may not be the draw it once was – particularly when many are taking work-life balance into account."

Bahanda suggests that "if your goal

"Many junior lawyers do not want a long-hour work culture, long term. A clear and transparent career path and how salary levels will look are important"

is to move to London, it tends to be motivated by working for a US firm which can offer exposure to clients or areas of law which are not available in Scotland".

Firm competition

How do law firms see the situation? Rupa Mooker, director of People & Development at MacRoberts, agrees that it is more difficult than previously to fill vacancies. London is having an effect, "particularly when firms there are also offering remote/hybrid working – it's a no-brainer for candidates to accept a higher salary if they can still do most of their job from Scotland". Scottish firms are competing for the same people, particularly in niche areas; and with some solicitors choosing to leave the profession altogether, there is a smaller pool of candidates.

David Beveridge, managing director of Macdonald Henderson, also sees a definite tightening of the market. At the same time junior lawyers especially are taking "a much more holistic view of what they want from their career", and looking at a firm's culture – flexible working but also the office experience. Is there a social scene; a "last Friday of the month"-type event; a sporting side? More senior lawyers too have found the pandemic providing an opportunity to "press the pause button" and consider whether their career needs a new direction.

It isn't that people don't want to work in the office: they "want a real office experience". It's something Henderson still believes is preferable for the majority of the working week – interactions with colleagues are superior to what can be achieved on a call.

"It's a tough market, but a lot tougher if you're not able to offer something a bit different," he observes. "I don't think being a blue chip corporate firm will be enough in itself – people are asking: 'Will I have a life?'"

He also echoes the view that firms are raising their game in seeking to retain staff: "We have seen some very aggressive counter offers. It does work."

For Mooker, "getting them in the door is one thing, but making sure law firms do enough to retain employees is the real challenge. Prioritising hybrid working and mental health within our firm is very important – we have found that open dialogue ensures any issues are identified as quickly as possible. We have also found that mentorships are beneficial for retaining talent, as is having a strong commitment to diversity, inclusion, and wellbeing."

Beveridge reckons that the increased presence of UK and international firms isn't a "macro issue", as people are leaving as well as joining them: they don't suit everyone.

"We are not toothless," he concludes. Law students are crying out for work experience, and his firm has recruited two trainees who first got to know the practice that way.

Size does matter?

That is taking a longer term approach. For smaller firms needing extra help now, hiring is problematic. A west of Scotland sole practitioner who asked to remain anonymous, told the Journal that they never struggled to recruit until recent months when they began looking for an experienced solicitor. The usual avenues having failed to deliver, the search widened to anyone NQ and above, "and unfortunately it continues. I offer generous salaries matched with experience, a good pension, private health care and a degree of flexible working to all employees. I haven't found this has made much difference. Existing staff appreciate it, so to me it seems more an element of retention than attraction".

For a small firm, dealing with recruitment companies is an issue, as they commonly charge commission based on a proportion (sometimes 25% or more) of the salary offered – and if the candidate leaves again after any more than three months, may only allow an offset of the fee for finding a replacement, rather than any money back. "I expected after making the painful decision to resort to recruiters, that I would find a candidate without much issue," this solicitor said. "But the majority of recruiters I've contacted don't have any solicitors that fit my criteria 'on the books and looking'. Candidates who have been suggested are mostly inappropriate."

They conclude: "My advice to anyone seeking to recruit currently, would be to personally reach out to your network. Posting a job advert and making people aware you are recruiting doesn't appear to be enough in the current climate."

Having similar issues with recruiters is Billy Smith of Clarity Simplicity, who found himself not seeing eye to eye with them over candidate suitability. "It was like asking for a pack of Starburst and being offered a Mars Bar," he comments.

In his view it takes up to six months to assess whether someone is truly a

good fit in the practice, so if recruiters apply a three month cutoff, that is a drawback. He also thinks candidates are sometimes given an inflated view of their abilities, and what they might command in the market – which could be a factor in recently qualified solicitors leaving the profession, when it fails to deliver everything it promised.

Noting the interest round TheSecretTraineeSolicitor Twitter account, Smith would like to see the Law Society of Scotland provide a platform where solicitors and employers can interact informally and anonymously to discuss present experiences and future positions.

Candidate comments

A straw poll with the help of the Scottish Young Lawyers' Association bears out much of the foregoing about what job hunters are looking for. Responses suggest that work-life balance means "realistic hours"; wellbeing includes an open environment and lack of stigma against mental health; mentoring covers feeling valued and indications of future prospects; social consciousness should embrace diversity and inclusion, and adjustment for events such as Ramadan.

Other sought-after features include variety of work, good pay and benefits (disclosed up front: "I don't want to interview for a pay cut"), a good working environment – and "no hate when taking time off".

Most firms appear to be indicating that they are receptive to flexible working, "but it is unclear as to how this is working in practice" – and (unsurprisingly) not in criminal defence.

SYLA President Chiara Pieri comments: "I am not currently looking to move but am contacted a few times a week regarding new construction roles. I would agree with all of our members' comments. Given the current market, while pay and flexibility are high on people's priorities, I think candidates are looking for more. All the top Scottish firms can offer good pay and flexibility, but it is their core values, benefits, opportunities and additional initiatives that would make a firm stand out and perhaps encourage me to consider moving.

"One thing that no one else has mentioned is secondments. I see great benefit in being seconded to clients. Having completed an in-house secondment already, I believe junior lawyers would relish the opportunity to be seconded out to well known clients."

"Having completed an in-house secondment already, I believe junior lawyers would relish the opportunity to be seconded out to well known clients"

The view from Atria One

If anyone is likely to have a good overview of the supply and demand for solicitors, it will be the Law Society of Scotland. Head of Education Rob Marrs says it is difficult to "read the tea leaves of the job market at the junior end of the profession", given the wide fluctuations in trainee numbers during the pandemic, though early signs for the current practice year are that numbers remain strong.

But the pressure for those seeking a traineeship looks set to continue. "Policy changes at government level a few years back mean there are more LLB students than ever," Marrs explains. "Those graduates have fewer options in a tight economy, and retreat to the relative safety of the DPLP. The extension of DPLP validity to five years likely makes it look a safer bet. That means that while traineeship numbers increased in 2021, competition continues to be fierce."

As regards the NQ market, "it seems that almost everyone is recruiting – perhaps because of a glut of work coming from the backlog, or projects that were backed up during COVID. Organisations seem to be struggling to recruit NQs in some sectors, while we hear from other NQs looking for work. It isn't simple".

For larger firms, competition from London is indeed having an impact. "Not everyone can move south, nor does everyone want to sleep in their office (even for those salaries), but the issue of losing talent to London is a consistent one.

"In Scotland we've heard of larger firms paying double-digit pay rises to try and retain staff, as the competition for qualified staff is now incredibly fierce and it is easier to keep people than replace them. The truth of the matter though is that the NQ market is a nuanced place: the firms that see talented staff leave to London may themselves see NQs applying to them from around Scotland. Anecdotally we've also seen people moving in-house at the end of their traineeship more than we used to."

As ever, criminal defence practitioners face a different reality; likewise some high street firms. "Their trainees qualify and then leave to another entity. Many of those NQs would prefer to stay if the finances added up for them. No one can blame them for looking for a role that helps them live a more comfortable life, yet most reading this will feel a level of anguish for the solicitor who has trained them perhaps with the hope of a long-term employee and, maybe, one day business partner. As ever the key here seems to be urgent immediate and significant investment in the legal aid sector. It really is needed."

aqp

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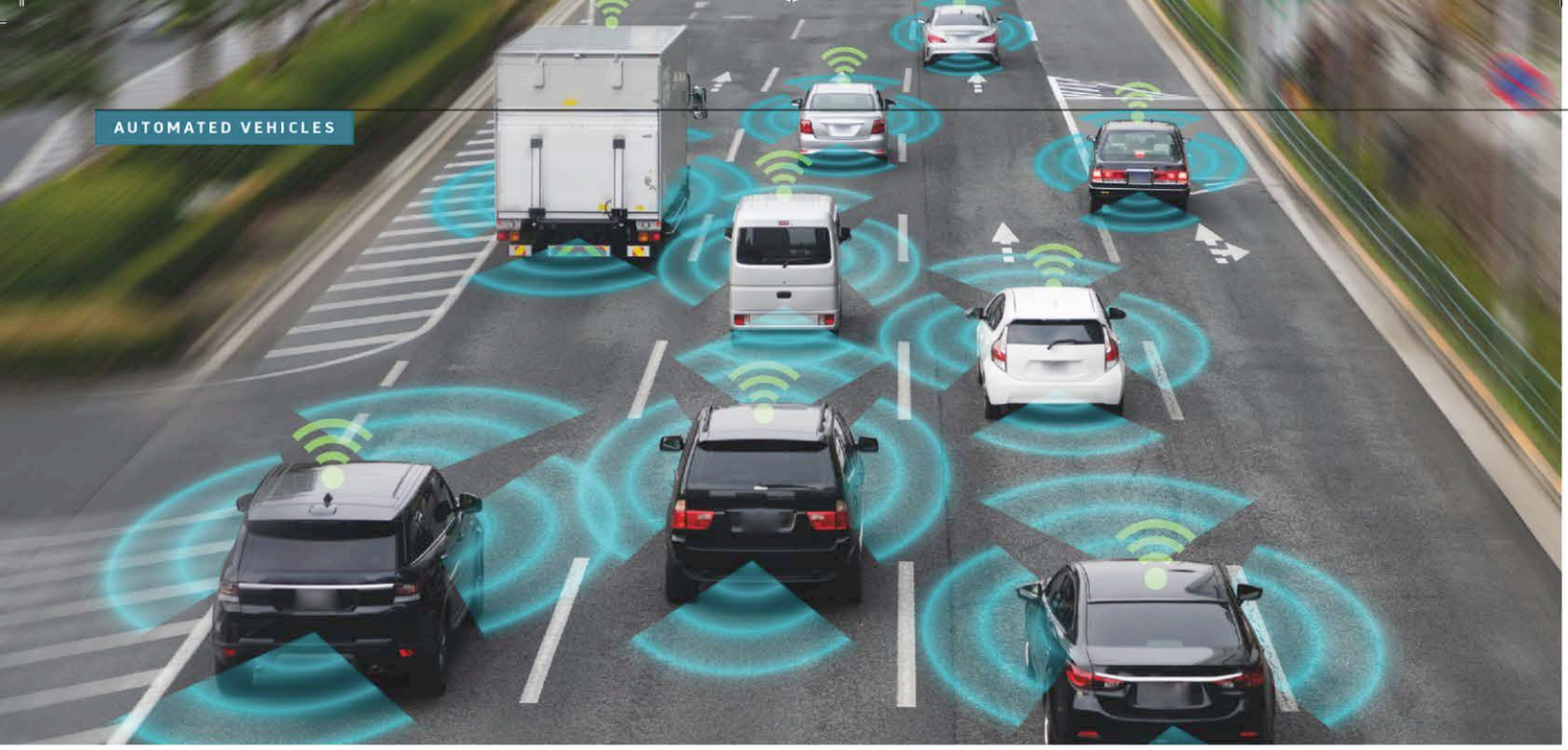


Rules of the driverless road

What legal framework can support the development of automated vehicles while allocating liability appropriately when something goes wrong? In a joint report the Law Commissions have devised a scheme, as Hannah Renneboog and David Bartos describe

In 2018, the Scottish Law Commission and Law Commission of England & Wales set out to recommend new laws which would prepare Great Britain's roads for the safe and effective use of automated vehicles ("AVs"). On 26 January of this year, the Commissions published a joint report. The Commissions' recommendations are made in anticipation of technological developments, and primarily aim for safety, inclusivity and progress. A clear legislative framework could assist the UK to be at the forefront of the AV industry.

The Law Commissions carried out extensive consultation, in the shape of three consultation papers. Given that the recommendations would cover new technologies, the papers sought views on many areas that required consideration – such as coming up with a safety standard for AVs, or dealing with the extensive liability of a "driver" in road traffic legislation.

Building on the responses of many consultees from a variety of sectors, the Commissions put together recommendations for regulating the authorisation and use of AVs in Scotland, England and Wales.

"Self-driving" and safety

Definition of "self-driving"

The Commissions have found that a clear line differentiating "self-driving" and "driver support" features is crucial to ensure safe use of AVs. A clear definition is required so that drivers do not mistakenly rely on driver support features (e.g. cruise control), thinking that the vehicle can drive itself, and cause accidents.

Accordingly, the recommendation is that a vehicle should only be recognised as self-driving for legal purposes if it has been authorised by a regulator to operate in a mode where the user (whether inside or outside the vehicle) is not required to monitor the environment, the vehicle, or the way it drives.

Safety standard

Consultees agreed that AVs should be at the very least safer than a human driver. However, an appropriate safety standard is difficult to evaluate – AVs could avoid the types of accident that are caused by human error, but they might cause accidents that a driver would not.

The need to strike a balance between risks acceptable to the public, and innovation, means that the decision regarding AVs' safety should be a political one for elected representatives. Accordingly, the Law Commissions recommend that the UK Secretary of State for Transport be the one to decide on the safety standard.

The standard should then be applied by a regulator, who will decide whether an AV is safe enough to be authorised to drive itself on public roads. The standard will also be used post-deployment, to monitor in-use safety.

Misleading marketing

Closely tied to the importance of a safety standard and a clear definition of self-driving is the prevention of misleading marketing that falsely advertises a vehicle as self-driving. There is a risk that vehicles with driver support features are advertised as self-driving, leading drivers to believe that they do not need to pay attention to the vehicle's behaviour or control it when in fact they do. The Commissions recommend the creation of new offences to prevent such behaviour.

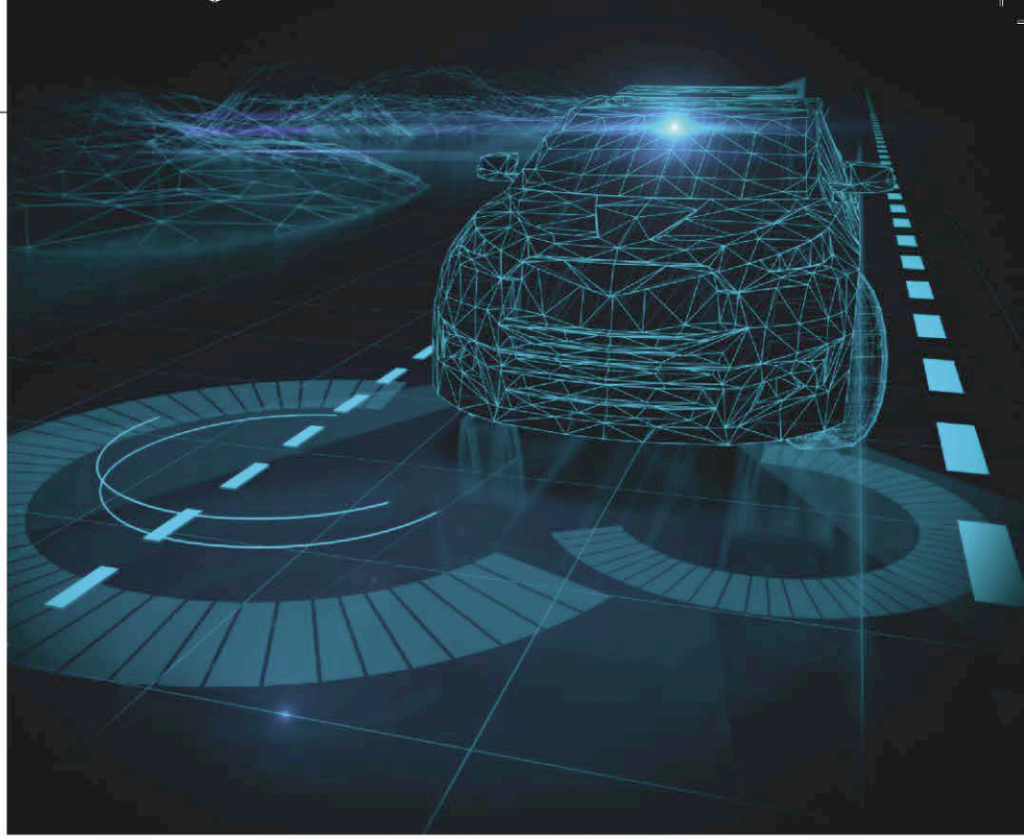
Legal actors

User-in-charge

Many road traffic offences centre around the "driver" and the way the vehicle is being driven, so leaving a vehicle without a driver has the potential to alter liability. Under the recommendations, while the vehicle is driving itself the person in the driving seat would no longer be a driver. Instead they would be a "user-in-charge".

Users-in-charge would have immunity from driving offences relating to the car's speed and steering, as that would be under the control of the automated driving system ("ADS"). However, the user-in-charge could still be liable for offences not arising directly from the driving task, such as failing to ensure that children wear seatbelts or that a load is safely secured.

Users-in-charge would also have the



responsibility to take over driving when the ADS requires them to do so. This could happen through a "transition demand" issued by the vehicle when it senses that it is in an environment where it can no longer drive itself safely. Accordingly, users-in-charge must be fit and qualified to drive, and would face prosecution for using the vehicle under the influence.

No-user-in-charge

Some authorised AVs will be able to drive themselves in certain environments without a user-in-charge. Valet parking, taxi, private hire or bus services are examples. The operation of these no-user-in-charge ("NUIC") vehicles would be overseen in a remote centre by a licensed operator. NUIC operators, similarly to the user-in-charge, would not need to monitor the environment but would simply need to respond to alerts where the vehicle encountered problems it could not deal with.

Responding to alerts is safety-critical, so the Law Commissions recommend that NUIC operators should have systems in place to ensure that their personnel can respond effectively. Ways to achieve this may vary, but would include, for example, appropriate cybersecurity, efficient training, and regular staff breaks.

ASDE

Under the recommendations, AVs would go through an approval and authorisation process to ensure that they can safely drive themselves, and if so to determine whether they require a user-in-charge. The process involves an application by an authorised self-driving entity ("ASDE") to the regulator for authorisation. The ASDE might be a vehicle manufacturer or software developer. If an authorised AV were to drive itself in a manner that would be criminal for a human driver, regulatory sanctions could be imposed on the ASDE in place of the usual criminal prosecution of the driver.

Liability

Criminal or regulatory?

Removing the driver and placing the responsibility for vehicles' behaviour on the ASDE means that criminal sanctions such as those that apply to drivers would no longer be effective under the Commissions' recommendations. It would be inappropriate to prosecute the user-in-charge when they are not controlling the vehicle. Further, simply substituting the criminal liability of a driver with that of the ASDE could stifle innovation. Penalties that are too harsh could encourage cover-up. Thus, the Commissions' view is that the best way to ensure compliance is to promote a no-blame culture that learns from mistakes, and to impose regulatory rather than criminal sanctions. The ASDE or NUIC operator should have a duty of candour, and should face regulatory sanctions for misrepresentation or failure to disclose safety-critical information to the regulator.

The Commissions also found that there should be an individual personally responsible to ensure safety of the vehicle and a transparent culture within the firm. Accordingly they recommend that ASDEs and NUIC operators be required to nominate a responsible person to face criminal liability for misrepresentation or failure to disclose safety-relevant information to the regulator.

In-use safety

The Law Commissions also recommend that after deployment, an AV should be monitored by an in-use regulator. The in-use regulator would ensure that the AV's behaviour is measured against the safety standard, investigate road traffic infractions, and ensure that users are given relevant information about AVs. The regulator could force the ASDE to take remedial action if a vehicle proves unsafe.

Civil liability

The Automated and Electric Vehicles Act 2018 already regulates civil liability for accidents caused by an authorised (listed) vehicle when self-driving. Under the 2018 Act, the insurer must pay compensation for injury or external damage caused by an AV driving itself, and the keeper of an authorised AV must carry insurance containing this obligation. The insurer is exempt from liability where the vehicle was negligently made to drive itself by the user when it was not safe to do so. Once the insurer has settled the claim with the injured party, or has been sued by them, it may claim from any other party liable for the accident. In disputes involving AVs, data collected by the vehicle will be crucial. Investigators will need to know where and when the accident happened in order to determine whether the self-driving features were turned on, and who (or in the case of an ADS, what) was responsible for the accident. Accordingly, ASDEs should be obliged to retain data for a period of 39 months – the three year civil claims limitation period and an additional three months to allow for the evidence to be gathered.

Interim passenger permit

Most passenger services legislation expressly refers to a "driver". In order to allow for AVs' development in provision of public transport, taxi, or hire car services, the Law Commissions recommend an interim passenger permit that would allow trials of AV passenger services. The permit will include requirements for services to be accessible, especially to older and disabled people.

Hannah Renneboog, legal assistant, and **David Bartos,** commissioner, Scottish Law Commission

Potential

The joint report has been laid before the UK Parliament and the Scottish Parliament. The UK Government and – in relation to devolved areas such as passenger services regulation – the Scottish Government will now have to decide whether to accept the recommendations and bring them into effect.

The Commissions' recommendations have the potential to enable the introduction of vehicles which can drive themselves safely. Governed by the right legal framework, AVs could improve the safety of Scottish roads, reduce congestion, increase accessibility and revolutionise passenger services. J

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Cybersecurity – take it from us!

Law firms wondering about the need for security now have a real life lesson to note

One of the most important parts of our job as a software provider who shares responsibility for keeping law firms' data secure, is to explain what we do, what threats are, how attacks work (or have worked), why our recommendations are important, etc. Since most lawyers don't know a whole lot about cybersecurity, tech companies spend a fair amount of time trying to work out the best way to describe this world, using relatable, personal examples and stories.

Unfortunately, in many cases law firms are neglecting this very real threat and choose convenience over security and compliance. That's because using analogies and stories simply doesn't work. Law firms simply need to know about real consequences, and solutions that help mitigate the threats.

Let's face it, there are many lawyers out there for whom a deep, well-crafted explanation of what we're doing to help is unnecessary and a waste of time. For them, us saying "because we said so" is enough.

Others have a very specific need which will require a very specific answer. (Why do I need multi-factor authentication? Why do I have to change my password all the time?) These folk don't need stories either – just an explanation of the consequences to their business if they ignore advice. Last month, they got a real life example...

You had one job!

The ICO handed down a fine of almost £100k to a criminal law firm whose IT compliance was found wanting and it suffered a ransomware attack. Law firms have both a moral and legal obligation to protect clients' personal and sensitive information. At this moment, it's more important than ever for law firms in Scotland, no matter their size, to be vigilant and remain compliant with their obligations. You have one main job – protect your clients' data. This is the one job that must not and cannot be ignored.

Is it a pain in the backside to keep inputting your password? Yes. Will it take time out of your week to remind co-workers to remain vigilant with IT security processes? Yes. Will ignoring this result in receiving a fine, potentially derail all the hard work you've put into your business and put your clients' data at risk? More than likely, yes. Is it worthwhile putting the right technology in place, which if used to its best advantage, will put your firm in the strongest position to manage risk and ensure compliance? A resounding YES!

Let's get your law firm's data secure

Cybersecurity is about protecting systems, and more importantly data, wherever you allow the data to be used for the organisational mission – so you need multiple types of security strategies to protect that data, just as you have different lines of business/work types to deliver your goals.

Here are a few ways Denovo can help:

Cloud server security

Two-factor authentication adds a second layer of security to your server login. Verifying your identity using a **second factor** (like your phone or other mobile device) prevents anyone but you from logging in, even if they find out your password.

Backups

Whether you lose your device or you're the target of a ransomware attack, it's smart to regularly back up your firm data to a secure, encrypted location so you'll still be able to access most of your data. Our Amazon S3 backups ensure we always have an isolated backup of your data.

Anti-virus

Stay protected with Eset Anti-Virus: scanning mailboxes and server applications reduces the chance of downloading malware or trojans.

Mailbox protection

Multifactor authentication (MFA) adds a layer of protection to the sign-in process. When accessing your mailbox, users provide additional identity verification, such as scanning a fingerprint or entering a code received on your smartphone.

Let the experts help

Most lawyers are not data experts, tech experts, or security experts. You practise law. With that in mind, one of the easiest things law firms can do is to put data in the hands of experts. Offsite cloud servers are encrypted, protected, and have teams of people (including experts at Denovo) ensuring their security. In our opinion, they are underutilised in the legal industry.

Most importantly, educate yourself and your team, and start to expect everyone to have sufficient understanding in data/cybersecurity matters. Security in the digital world is a conscious effort for every employee, not just IT, and not just your software provider. Law firm leaders need to hold everyone on their team accountable for cybersecurity, just as they hold everyone accountable for the bottom line, customer service, legal work, and other mission-impacting activities. And if your team don't have the experience they need, intentionally give it to them and reach out to experts like Denovo for help.

If you're ready to secure your business or would just like some advice, visit www.denovobi.com, call us on 0141 331 5290, or if you would prefer to write to us our email is info@denovobi.com.

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Return to work: getting it right

An employee returning to work after a lengthy absence is something for which proper planning is likely to bring longer term benefits and avoid immediate issues arising, with or without hybrid working, as Marianne McJannett advises

To say that the world of work has been subject to change in the past two years would be an understatement. Offices that previously never had to consider remote working had to do so overnight, and two years on, the majority of legal workplaces are operating on a hybrid model.

But what has remained a constant is the fact that employees have "returned" to work after periods of leave throughout these two years. Parental, compassionate and sick leave have all continued regardless of the global pandemic. What has been challenging for employers and employees alike, is managing the return to work when employees are not returning to the traditional place of work that they once were. Here we look at how an employer can support an employee returning to work, to a workplace that is possibly very different from the way it used to be.

During the absence period

A smooth return to work, regardless of the reason for the absence, starts with how the employee is treated during their time off. While on many occasions it will be entirely appropriate not to see or hear from the employee for the majority of the period of absence (for example during maternity leave), at other times it will be important to ensure that lines of communication are open and supportive measures put in place where appropriate.

If there has been a long absence, or the employee has an ongoing health condition, it's a good idea for the employer and employee to meet, to make sure the employee is ready to return to work and talk about any work updates or changes that happened while they were off. This will enable them to feel more connected to the workplace and less anxious about a return to somewhere they haven't been for many months. Furthermore, it's important to take into consideration any recommendations from the employee's doctor or occupational health professional, to ensure that a return is consistent with external advice, including on phased returns, or reasonable adjustments.

If an employee has a disability, by law their employer must make "reasonable adjustments" if needed to help them return to work. Reasonable adjustments could include making changes to the employee's desk or workspace, working hours or duties.

Where an employee has been off for parental leave (maternity, paternity, adoption, shared parental leave for example), their return to work will (hopefully) have been discussed ahead of time. If an employee wishes to return to work before the end of her statutory maternity leave, she must give her employer at least eight weeks' notice of her date of return. Staff may have also had some keeping-in-touch days ("KIT days"), which will have given them the opportunity to be kept up to

Marianne McJannett is an associate with TC Young

date with what has been going on while they have been away. Using KIT days appropriately is a great way of ensuring that a return to work is planned well, with both parties understanding what is expected of them.

It's important to remember that when supporting employees returning to work, particularly from parental leave, their priorities will have shifted and they will need some time to adjust to managing work life alongside family life (I say this having just returned from maternity leave myself!). Supporting your employees with a newborn and young family during working life can reap dividends in years to come. Don't risk losing good talent because your company didn't support them.

Benefits of a supportive return

While it might be easy to dismiss a return to work as being "just another day at work", this is not the case, particularly for the returning staff member. Among the benefits of getting this right is that employers will likely see greater employee engagement and all the positives this brings in terms of reduced staff turnover, reduced recruitment and retraining costs, and increased productivity.

Having a proper return to work plan in place, be it a phased return or other approach, can enable an employee to adjust more easily. An effective return to work process can prevent repeat absences and avoid grievances being raised due to lack of communication, or lack of support for the employee in their role.

Risks of getting it wrong

Failing to plan effectively for an employee's return to work can bring risks to an employer that, as outlined above, could be otherwise avoided. Where an employee feels there has been an unsupportive return to the workplace, and they are being treated differently as a result of their absence, they may feel they have no option but to raise a grievance, or resign from their position.

Flexible working requests

Alongside a return to work often comes a flexible working request. An employee has a statutory right to make a flexible working request if they have at least 26 weeks' service. Their request can relate to hours of work, the times they work and where they work.

Recent research found that Employment Tribunal claims relating to flexible working requests rose 52% from 2019-20 to 2020-21. It was suggested that this was likely to be driven by employees fighting attempts by their employers to have them come back to the office. What we have seen in the past two years is how effectively employees can work from home, and how this can benefit them, the employer and the client. It is anticipated that there will be a further increase in these claims in the coming year.

Hybrid working

The benefit of hybrid working has been huge for employees (and employers), and many employees will see this as an essential when considering where they work. A flexible working request by a returning employee may include a specific request for hybrid working (if this is not already in place), and agreeing to this can ensure a smooth transition back to the workplace.

However, hybrid working can also prove challenging for an employee returning from a period of leave, and employers will want to ensure that someone working at home is not "adrift" when it comes to their work life. Having regular Teams or Zoom calls can assist in the employee feeling part of the team and, in turn, provide for a smooth return to work.

Returns to work can be challenging if they are not managed correctly, but even in the difficult times of the pandemic, this can be a positive and engaging process for staff and employers if careful consideration is given to it.

A ferry bad approach to redundancy

What procedure should P&O Ferries have followed if it had to make people redundant, rather than suddenly dismissing 800 staff by pre-recorded video message? Marianne McJannett explains

In the UK, an employee is dismissed for redundancy if:

- the employer has ceased, or intends to cease, continuing the business, or
- the requirement for employees to perform work of a specific type, or to conduct it at the location in which they are employed, has ceased or diminished, or is expected to do so.

If there's a genuine redundancy, employers must follow correct procedure and make redundancy and notice period payments.

P&O hasn't ceased its business, so is presumably relying on the second ground above. However, it is difficult to square this with the fact that services will still run, but with agency staff to carry these out instead.

So what should have happened? To begin with, P&O should have looked at how many employees it was proposing to make redundant at "any one establishment", with "establishment" likely being each port where crew were based. Employers are required to consult individual employees and give them reasonable warning of impending redundancy.

Although there's no minimum statutory timescale when fewer than 20 employees are made redundant, the consultation must be meaningful and may also be covered by contractual terms or policies. An employee is entitled to be accompanied at all individual consultation meetings by a trade union representative or colleague.

If 20 or more employees at one establishment are to be made redundant, collective consultations with recognised trade unions or elected representatives must take place:

- at least 30 days before the notification of redundancies for dismissals of 20-99 employees;
- at least 45 days before notification for dismissals of 100 or more.

Collective consultations must be completed before dismissal notices are issued. If there are no recognised trade unions or employee representatives, the employer must facilitate an election, by the employees, of representatives for the consultation. The law requires "meaningful" consultation – it's not enough only to inform employees of a decision that has already been made. Failing collective consultation, the maximum extra compensation payable (a "protective award") is 90 days' pay per employee.

The employer would also have to lodge a form with the Government advising of the number of redundancies proposed. That enables the Government to explore whether there is anything it can do to change the situation, or help those being made redundant. Failure to take this step would be a criminal offence, therefore it is assumed that the Government was aware of the 800 P&O dismissals.

If it had followed correct procedure, P&O would be paying those selected for redundancy their statutory, or company redundancy payments, as well as a payment in lieu of notice, on the basis that staff were not given notice. It might also have agreed enhancements with employees and entered into settlement agreements to terminate their employment.

None of these steps seem to have been taken, therefore it is likely that employees will bring claims for unfair dismissal, as well as a protective award against the company. It is yet to be seen whether P&O tries to rely on statutory exemptions that apply to mariners, but if those don't apply, the potential financial ramifications are huge. Meanwhile, P&O and its legal and PR teams will be dealing with the reputational fallout that their mismanagement of this situation has caused.

Young lawyers flag climate impact

The fine weather that greeted the European Young Bar Association Conference in Glasgow did not deter delegates from highlighting how, as lawyers, we can be more environmentally conscious to help combat climate change, as Ayla Iridag reports

When the skies above Glasgow are blue in March and groups of young people gather for picnics at the park, you hear rumbles that global warming isn't such a bad thing in Scotland. After all, warmer days and long spells of sunshine can't be a bad thing, can they?

Well, lawyers from across Europe disagree. No one complained about the pleasant weather at the European Young Bar Association Conference, which was held at the Royal Faculty of Procurators from 24-26 March. But the delegates were there to discuss what might lie behind it – climate change.

Big footprint

The three-day event, organised by the Scottish Young Lawyers' Association, was focused on "The Law and the Environment". Young lawyers from Europe and North America heard from speakers on environmental crime, the Soil Carbon Code, environmental impact assessments, and were even treated to an address by CCBE President James MacGuill. But perhaps the most memorable session was on "Becoming a more environmentally-conscious lawyer".

The session began with a panel discussion in which Barry Fisher, CEO of Keep Scotland Beautiful, told delegates that we need to understand that climate change is an existential threat to humanity in which we play a part. Craig Allan of the Royal Bank of Scotland, representing Lawyers for Net Zero, reminded delegates that by the time you can see the tsunami, it is already too late and the time to act is now.

Following the panel discussion delegates broke into groups, comprising representatives from different countries, practice areas and organisation sizes, to discuss what can be done to reduce our impact, as lawyers, on the environment. After all, as the panel stated, the carbon footprint of the top 50 law firms in the UK is such that it would require the planting of 2.5 million seedlings to offset it at present levels.

Business practices

At an organisation level it was discussed that two of the main areas on which immediate and rapid change can take place are energy consumption and supply chain management.

With current fuel costs, everyone is keen to keep energy use to a minimum. The groups discussed practices in their own firms which could be reviewed to reduce electricity use in offices. A simple but important consideration was the management of lighting. It would appear that some offices are using lighting timers, which mean lights are on when staff are not in offices, or in areas where staff are working from home. It was suggested that firms could review these timers, or switch to traditional light switches in low traffic areas such as bathrooms, kitchens and printing areas.

The supply chain was an area where it was recognised that initial outlays might increase slightly but where a considerable difference could be made. Of course, we should be moving away from printing at all, but where that is not possible, recycled and recyclable paper should be used. Once shredded, paper should be recycled, and virgin paper should be avoided at all costs. Delegates also discussed the removal of disposable cups and single use plastic water bottles from offices, providing instead, drinking fountains for staff to fill up reusable bottles, and proper mugs which can be washed in the office.

Talking of tea and coffee, we should be aware of the impact of this too, choosing sustainable options and avoiding products which might contain micro-plastics.

Another big factor was travel. In some ways the pandemic has helped change mindsets, open up options and modify habits. We now realise that we don't need to get a flight just to attend a short business meeting; we can attend CPD from our offices rather than driving across the country; and we can email documents rather than print and mail them. This should result in fewer planes in the sky and cars on the road. But where you do have to travel, encourage climate conscious decision making. Take the bus rather than a taxi. Take the train rather than a plane, and car share if driving is an absolute necessity.

"Encourage the consideration of environmental impacts when making decisions on projects, social activities and travel plans. Make it as important as cost, equality and reputation"

Did you know...?

Many firms will already be implementing some of these changes, but our speakers were able to identify areas where you might not realise your impact. Here are five things you maybe didn't know you could do to reduce your carbon footprint:

1. Think about your data. While many people will immediately think working paperless is the answer, few will be aware that data storage brings with it a hefty carbon footprint. Data centres use large amounts of energy for storage and processing. We can reduce our impact

by deleting, instead of archiving, emails which we don't need; auditing files to remove documents which do not need to be retained; and removing duplicate information. This includes the messages in your WhatsApp groups from that proof you ran last year, and the cloud folder for counsel's papers in the case that settled a few weeks ago.

2. Search sensibly. We are all used to using a certain search engine on a daily basis, but each search uses energy and data, which leaves a small carbon footprint. Consider using Ecosia, or similar engines, which plant trees using the income generated by searches. That search to find the spelling of a Latin maxim, to research your opponent or to understand the mechanism of an accident can build up, and over the course of a year you could contribute to the planting of a small forest.

3. Contract consciously. Firms and organisations are now implementing environmental clauses into contracts. Whether you do this in your own supply chain or when drafting contracts for clients, there is a shift to make this the norm. The Chancery Lane Project has launched a Net Zero Toolkit, to allow drafters to align contractual drafting with net zero. There are already over 300 participating organisations, and that number is expected to grow considerably in the coming months.

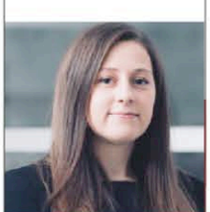
4. Reuse rather than recycle. When you get that email to upgrade your phone contract or invest in the latest tablet computer, think about whether you really need something new. Can you make your phone last another year? Will you really notice the difference in iPad model? Continuing to use what you have will reduce waste, reduce manufacturing costs and will save you some money too. And if you accidentally put your earphones through the washing machine, drop your phone in the sink or leave your tablet on the plane, consider buying refurbished.

5. Praise positive environmental behaviour. This might not have as direct an effect as the others, but is important, particularly for young lawyers. Some delegates were unsure how they could affect the way their firms operated, but anyone can give positive feedback. Many people will feel annoyed when their individual desk bins are removed and they have to use recycling bins at the other end of the office, so make it a positive experience. Encourage the consideration of environmental impacts when making decisions on projects, social activities, and travel plans. In short, make discussion of the environment as important a factor as cost, equality and reputation.

Actions matter

To some, making these changes will feel forced and unnatural. They will see the costs as a hindrance and will find reasons to delay implementing changes. But the panellists explained that this is another test of the resilience and responsiveness of the legal profession. They say that firms that don't adapt won't survive. This is particularly true for firms with commercial and public sector clients, who are already looking at environmental policies when instructing firms. But it's important for recruitment too. More and more younger people are looking at the practices, not just the policies, of firms in the areas of equality and diversity, environmental impact and mental wellbeing when choosing which firms to apply to. Top talent may be dissuaded by poor practice and a disregard for climate change.

But it is important to realise that no one expects you to do it all right away. Just like delegates to the conference, who created their own charters for the environment, make a plan. What can you do this week, and what can you do next time you place an order, renew your lease, plan a work trip? Set achievable goals and reward those who exceed them. And if you want to learn more while earning your CPD hours, attend a workshop on carbon literacy. Whatever you decide to do and whenever you decide to do it, be aware of your impact. People will see through greenwashing, so make your actions louder than your words. Work together with others and unite to protect the planet and those living in it.



Ayla Iridag is a devil at the Faculty of Advocates, Vice President of the European Young Bar Association and Past President of the Scottish Young Lawyers' Association

Law into orbit

With a new legal regime in place and commercial companies pursuing the goal of UK launches into space, will legal firms respond by developing the necessary sector specialisms, Laura Edison asks?

While technology billionaires grab headlines across the Atlantic in the commercial space race industry, attention is turning to the UK, which is on the cusp of a commercial space sector boom itself.

It is an oft-quoted fact that Glasgow produces more satellites than any other location outside California, USA. However satellites are only one part of a space ecosystem, and for the first time in more than 50 years, the UK is poised to create its own space ecosystem for end-to-end payload delivery services, with a focus on the space launch market.

The Black Arrow programme resulted in the UK's first homegrown launch vehicle being launched from Australia in the early 70s, placing the (also British) Prospero satellite into orbit. But despite this success, the then UK Government cancelled its space programme and Black Arrow remains but a jewel in the crown of UK rocket enthusiasts.

"The space sector will impact upon a multitude of legal disciplines and, with many firms beginning to develop their 'space sector' offerings, it will not be long before a space sector division is as common a sector focused practice group as construction or renewables"

Preparing for launch

Fast forward 50 years and the UK Government has announced its National Space Strategy, the Scottish Government has launched the Scotland Space Strategy and, after much consultation, the Space Industry Act 2018 has entered into force through the Space Industry Regulations 2021.

With a shift in the regulatory landscape and renewed interest from both UK and Scottish Governments, the UK is once again nearing the prospect of launch, and this time from UK soil.

Scotland itself is the focus of much of this sector activity, as it is home to five potential spaceports offering vertical or horizontal launch prospects. Skyrora and Orbex represent two privately held companies designing, manufacturing and testing launch vehicles at their respective facilities.

Scotland now has regulation and it now has industry making headway in the space race technology battle – so one must pose the question, is the road ahead a smooth one or are there other challenges awaiting?

Space regulation 2.0

Regulation of space is not new in the UK. The Outer Space Act 1986 and Air Navigation Order have historically governed launch activity of UK

nationals and UK entities, subject to the location of launch, and subject to the proposed altitude.

Since the Space Industry Act and the Space Industry Regulations, however, there is a clear regulatory split, providing three main legal instruments relative to spaceflight activities within the UK, and outside the UK by UK entities or persons.

While the new legislation of 2018 and 2021 offers a starting point to regulate the UK launch industry, with the Civil Aviation Authority (CAA) appointed as regulator, time will tell whether this regulatory approach will suffice in practice. It is likely just the start – as the realities of industry will drive regulatory shifts in future.

For now, industry appreciates a clear process for obtaining spaceflight-related licences, whether that is a launch operator licence, spaceport licence or range operator licence under the new legislation. A great deal of industry effort has been made to build the knowledge of CAA to ready the regulator to analyse applications promptly, to ensure that the regulatory pace advances at the same pace as the technology readiness of UK space operators.

Without that pace match, industry will pause and others may be waiting in the wings to reap the rewards – whether that is other jurisdictions attracting UK launchers due to more efficient regulatory approaches, or non-UK launchers dismissing the UK as a launch market due to lack of pace in driving forward regulatory compliance in line with technical advancements.

American influence

It would be remiss not to discuss the American market and, indeed, the UK Government is well aware of this market. The prospect of cost savings using US rockets was a driving factor in the historic closure of the UK space programme in the 70s and, even as the UK braces itself for its space revolution, the Government has given another nod to the US, having entered into the UK/US Technology Safeguards Agreement.

The TSA facilitates US companies launching their vehicles from UK spaceports, while offering protections to US export-controlled technology, marking both countries' commitments to non-proliferation.

The only difference between 2022 and the 1960s is that UK industry is answering the call and therefore there is not the same extent of reliance on US technology to enable the UK to achieve its dreams of returning to space.

Legal sectors

The space market will impact on a multitude of legal disciplines and, with many firms beginning to develop their "space sector" offerings, it will not be long before a space sector division is as common a sector focused practice group as construction, technology or renewables. Space touches on all core commercial legal disciplines under Scots and UK law. This article does not comment in depth on each, but some headlines for thought include:

Intellectual property

This may relate either to the uniquely patentable systems and subsystems of launch vehicles, or the design rights arising in the builds themselves. Given the international heritage of launch it remains to be seen whether such heritage and associated IP will be reinvented or simply enhanced, and thus typical protections may be limited. That said, the market is developing a number of inventive solutions due to modern manufacturing techniques and methodologies, and we may see a number of space originated technologies becoming protected inventions with applications outwith the sector offering space companies another route to commercialisation outside of traditional launch.

Personal injury

The risk to employees and the public from space related testing and actual launch activities is high (but capable of mitigation), and there is a nod to this from Government with the Spaceflight Activities (Investigations of Spaceflight Accidents) Regulations 2021, made to establish a spaceflight investigatory body for the conduct of accident investigations.

Commercial property

With a number of the proposed Scottish spaceports undergoing the planning processes, sourcing and leasing land in Scotland may be a challenge for operators. Space is an unknown industry in terms of noise, pollution, environmental impact and so on. This is an unknown that many commercial property owners may be willing to tread through, as such property owners will recognise the growing nature of the sector and the ultimate financial opportunity; but most of the Scottish land that is needed will likely be privately owned.

Cassandra Auld, partner at Weightmans LLP, who advised on the lease of Scotland's first rocket engine test facility in Midlothian, commented: "One of the challenges renewables projects had (still have) is that the landlords don't tend to be institutional investors/funds or the like but private landowners. I suspect this might also be a challenge for the space industry if areas like test sites and spaceports grow in numbers and size. The nature of the operation needs open land, and in Scotland open land tends to be owned by private landowners, which can lead to more challenging negotiations as they often have their own vested interests and objectives which can differ from commercial investors or funds who may be more likely just to do a commercial deal based on market opportunity."

Drawing a comparison to an industry such as renewables offers an interesting point. One can look to other industries such as renewables, or construction generally, to gain an understanding of where the UK space legal landscape perhaps should end up.

Standardisation of contracts

Much like the construction industry, as the space sector grows it may develop a need for standardisation across its contractual basis. Launch service agreements are as yet untested in terms of UK launch, indemnities and liabilities etc. As suites of contracts are drafted and tested, in practice and in conversation with insurers, it is likely that a natural "norm" will evolve; but until such time, it will be for individual operators and payload providers to negotiate terms that balance the regulatory compliance aspects with the commercial risk sharing in what can only be regarded as high risk activities, with a need to carefully document allocation of such risk and liability, against a backdrop of indemnities and liabilities which still remain under Government consultation.

Dispute resolution

With contracts comes dispute resolution, again drawing paradigms to other industries that have developed their own alternative dispute resolution proceedings. It may well be that, as the sector grows in size and as risks are played out in practice, it will not be too long before a dedicated dispute resolution process is developed to enable disputes within the sector to be handled by experts, timeously, and in proportion to the risk and value of the project.

More than rocket science

It is clear that the legal landscape surrounding launch activity in the UK is vast, and at the beginnings of its regulatory journey. The regulations have not yet been fully tested and that in itself represents a challenge.

While the UK continues to invest in skills development and equipping the industry with the technical minds it needs to remain a competitive space sector leader, it is clear that the industry is more than just the rocket science behind the components – and one hopes that the regulator, and UK and Scottish Governments, will continue to push forward to allow the UK space sector to stand a chance in the global space race. Industry is ready – is the law?

Laura Edison is general counsel with Skyrora

Police enquiries: a private matter?

The Supreme Court has upheld a privacy-based claim by an individual subject to a criminal investigation but not yet charged. Fergus Whyte considers the scope of the ruling, and its possible effect in Scotland

The UK Supreme Court recently handed down its decision in the important privacy appeal of *Bloomberg v ZXC* [2022] UKSC 5. This is the high point in an interesting trend of media and privacy cases which consider reporting on criminal investigations.

Background to the appeal

The case began in the English High Court with the anonymised claimant, known as ZXC, seeking both interim and permanent injunctions (and damages) against reporting by Bloomberg, a media organisation. ZXC was the chief executive of a regional division of a publicly traded company, X Ltd.

Bloomberg had caught wind of the fact that there were initial criminal investigations into the activities of X Ltd in a country over which ZXC's division had responsibility. This consisted of a letter of request to the foreign country by a UK law enforcement agency (which was not named in the proceedings). No charges had been brought. Bloomberg had published an initial article in autumn 2016 about ZXC being interviewed under caution, but it later acquired a copy of the letter of request and published an article detailing that. This prompted action by the claimant, including seeking the interim injunction (though that was in fact refused).

The High Court, in a final judgment by Nicklin J, considered the substantive question of whether the tort of misuse of private information extended to information about criminal investigations prior to a suspect being charged (*ZXC v Bloomberg LP* [2019] EWHC 970 (QB). The court ultimately found that there was, in general, a reasonable expectation of privacy in police investigations and that it was appropriate to grant a permanent injunction and award damages of £25,000. This was upheld by the Court of Appeal (*ZXC v Bloomberg* [2020] EWCA Civ 611; [2021] QB 28). Bloomberg then appealed to the Supreme Court.

Supreme Court: a "legitimate starting point"

Permission having been given to appeal, the Supreme Court heard the case in November and December 2021. The judgment, delivered in February 2022, was a unanimous one with joint reasons given by Lord Hamblen and Lord Stephens.

As the judgment notes, the question in the appeal involved a tension between article 8 and article 10 rights under the ECHR. Referring to earlier case law, it noted the now well accepted two-stage test for misuse of private information, involving first considering whether there was a reasonable expectation of privacy, and secondly whether that was outweighed by a countervailing interest in freedom of expression (para 47).

In considering the first stage of that test, the Supreme Court noted a variety of different factors set out in previous case law and known as the *Murray* factors (from *Murray v Express Newspapers plc* [2008] EWCA Civ 446; [2009] Ch 481), which could be used to determine whether the claimant had a reasonable expectation of privacy in the fact of the investigations (paras 49-50). The court then considered how the public interest considerations in publication should be assessed in such a context.

There were three issues raised on the appeal (set out at para 63), but the principal focus of the judgment seems to be on the question of whether the High Court and Court of Appeal had been correct to find there was a general expectation of privacy in relation to investigations prior to charge which would function as a general rule or starting point in the consideration of cases of this type.

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In relation to this issue, the Supreme Court was careful to note that a "general rule or legitimate starting point" in relation to the first stage of the test should not function as a presumption or invariable finding that there is a reasonable expectation of privacy (paras 67-68). Each case would need to be assessed on its facts to see whether the expectation could be maintained (para 70).

That being said, such a starting point was an appropriate approach given the serious reputational impact of the disclosure of criminal investigations against a person prior to charge (para 72). As the Supreme Court affirmed, once a person is charged with an offence, there can no longer be a reasonable expectation of privacy (para 77). Such an approach, it added, also accords with both policing guidance and previous case law (paras 90-99).

As a result, and after considering the other issues raised, the Supreme Court upheld the earlier judgments and dismissed Bloomberg's appeal.

Further thoughts

This case follows on from what occurred in *Richard v BBC* [2018] EWHC 1837 (Ch); [2019] Ch 169), in which substantial damages were awarded against the BBC following its reporting of a search by police of Sir Cliff Richard's home. That search occurred prior to any charging decision and, in the end, he was never actually charged. That case never went beyond the High Court, but the Supreme Court's decision in *Bloomberg v ZXC* would seem to validate the approach of the High Court in that case and endorse this overall trend in evaluating privacy when reporting on criminal investigations in their early stages.

While it will always be fact-specific, given the enquiries required at the first and second stages of the test for misuse of private information, the case seems to establish that reporting on criminal

investigations prior to charging will generally run the risk of breaching privacy. This decision has been greeted with some scepticism by the media and there will no doubt be future cases seeking to rely on particular facts or public interest considerations in which this starting point will likely be challenged. Recent discussions about the use and misuse of UK privacy and defamation laws also mean that this is likely to remain a heavily debated area.

There are also likely to be questions about whether this approach would extend to other areas of regulatory action (such as Financial Conduct Authority or Competition & Markets Authority investigations), and to professional disciplinary actions, which will no doubt play out in future.

Scottish parallel?

This was an English case and so the result is not, of course, binding on the Scots courts. The law of privacy is still something of a moving target in Scotland, at least insofar as free-standing civil actions are concerned. The *ZXC v Bloomberg* decision must, however, be seen as a further endorsement of the availability of a civil action for publicity being given to private facts (separate obviously from actions for breach of pre-existing relationships of confidence). Whether this case will be useful in creating a foundation for a clear, equivalent delict in Scots law, or as a support for greater protection of private information through other channels such as *injuria*, remains to be seen.

In terms of Scots law, however, it also raises a further interesting question indigenous to Scots criminal procedure. Charging is seen as the tipping point in *ZXC v Bloomberg* and *Richard*. In the English context, charging decisions in the majority of cases are made by the Crown Prosecution Service ("CPS") on referral from the police. Only after the CPS has made a decision on the case is the suspect formally charged (*Director's Guidance on Charging – Sixth Edition*, Crown Prosecution Service). In Scotland, a police decision to "charge" is in fact a decision that they will refer the case to the Crown Office & Procurator Fiscal Service ("COPFS") for it to decide what further action to take. There are a wide range of options available to COPFS other than instituting proceedings.

So, in England & Wales, charging involves at least an initial cross-check of the police's decision to that stage before someone is charged. Is this involvement of the CPS one of the reasons that the Supreme Court regarded charging as the tipping point for privacy? If so, that involvement leads to some interesting questions for Scots lawyers. Should a suspect in Scotland accordingly have privacy rights even post-charge, up until a decision is made by COPFS as to whether it is correct to prosecute in the particular case?

Thom bar still applies

This month's criminal court roundup largely focuses on an unsuccessful Crown attempt to have reconsidered a full bench decision holding the Lord Advocate barred by an unequivocal renunciation of the right to prosecute

Criminal Court

FRANK CROWE,
SHERIFF AT EDINBURGH

Spring is here!

Amid all the gloom and doom on a number of fronts, I detect the green shoots of recovery from an unlikely location.

Thom and its aftermath

After a series of High Court decisions on a variety of topics like s 275 of the Criminal Procedure (Scotland) Act 1995 and *Moorov*, some of which could best be described charitably as post-modern, it was a joy to wake up one day recently and find that *Thom v HM Advocate* 1976 JC 48 is still good law.

I still remember my tutor fiscal (do they have such things nowadays?), the late Hugh Annan, travelling to Forfar to face a debate in the sheriff court. Indictment proceedings were raised against Thom four months after the local PF, Sandy Ingram had written to his solicitor that, after an earlier appearance on petition on the same charge, he was taking the matter no further and he could uplift his bail from the sheriff clerk – the nominal money bail which was the thing in those days (good riddance).

A plea in bar of trial had been lodged that the prosecutor had disclaimed the process. This was refused by the sheriff and after trial Mr Thom was sentenced to two years for embezzling £1,174 while town clerk at Brechin.

The conviction was appealed, and a full bench of Lord Justice General Emslie, Lord Justice Clerk Wheatley, Lords Cameron, Johnston and Kissen (an eminent, experienced and diverse group) had no difficulty in holding that the statement by the local fiscal constituted an unequivocal and unqualified announcement on behalf of the Lord Advocate that he had decided not to exercise his right of prosecution and was like a motion in court to desert the case *simpliciter*.

In light of that decision, instructions were given to fiscals that while they had discretion in summary proceedings, subject to reporting unusual cases to Crown Office, they could not reduce or abandon petition proceedings without authority of the Lord Advocate. Cases could only be reduced to summary prior to full committal, or within a similar period if the accused was granted bail at first appearance, otherwise a report or precognition had to be submitted.

It was clear that Lords Advocate did not like their discretion fettered in this way by fiscals exercising their discretion in the local public interest. Fiscals' *ad vitam aut culpam* commissions under the Sheriff Courts and Legal Officers (Scotland) Act 1927 were steadily watered down between 1985 and 2014, and *Carltona v Commissioner for Works* [1943] 2 All ER 560, in which the courts permitted civil servants to act as the Secretary of State, was frowned on as born out of wartime, although paradoxically nowadays Crown counsel's instructions at petition stage and sheriff and jury level are taken by officials.

Subsequently, in the so-called Dundee corruption case *HM Advocate v Stewart* 1980 JC 4, a plea in bar of trial was taken in respect of certain charges, as the Lord Advocate had in October 1966 written to local MPs that after investigation "the evidence does not warrant proceedings". The trial judge, Lord Kincraig, following *Thom*, held that the letter was an unequivocal announcement not to prosecute the persons referred to although not named in the letter. The court allowed the accused to lead evidence to flesh out the terms of the letter and adduce the accused's solicitor, who had been informed of the Lord Advocate's decision by the procurator fiscal. Contemporaneous police papers had been destroyed. In the event the Crown dropped the disputed charges rather than face a proof and the case proceeded to trial on the remaining matters.

Post-devolution, the accountability of the Lord Advocate came into sharper focus whereby the Law Officers could be summoned to the Scottish Parliament to speak about their actions. While decision-making in individual cases remained in the discretion of the Lord Advocate, the law officers could face a vote of no confidence in Parliament. Lines became further blurred when the Lord Advocate became a regular member of the Scottish Government and not just summoned to give legal advice on public law issues, as had been the practice prior to devolution.

Still good law

I feel it necessary to set out this context before turning to *HM Advocate v Cooney* [2022] HCJAC 10 (9 February 2022), where the Crown sought to have a bench of seven judges convened to reconsider *Thom*. A letter had been sent to the respondent by the procurator fiscal in December 1992 renouncing the right to prosecute.

The respondent was a former teacher who was indicted in 2020 with a charge of lewd, indecent and libidinous practices towards a pupil between 1977 and 1980. A docket annexed referred to unlawful intercourse with the pupil around the same time.

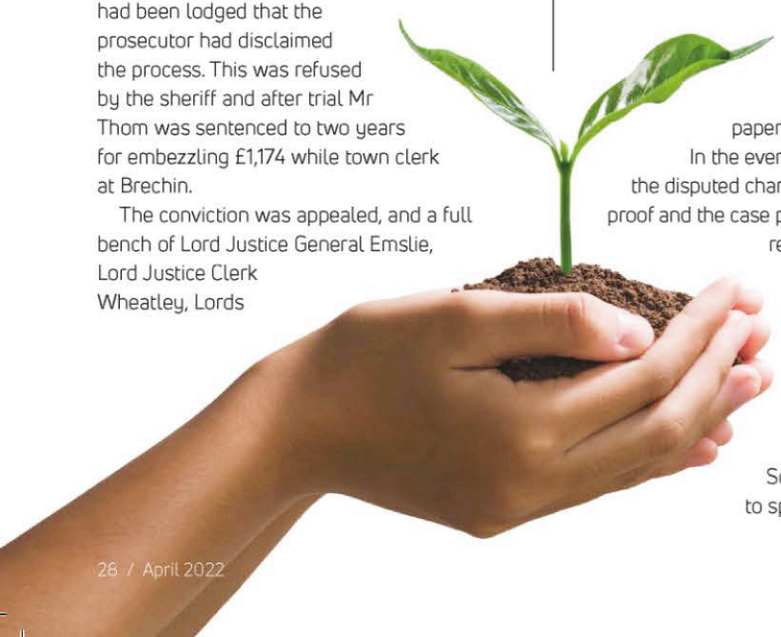
Matters were reactivated in 2016 when the education authority initiated disciplinary proceedings. It sought information from the police, who could find no record of the 1992 case. The respondent was detained in 2017, placed on petition in November 2019 and an indictment was served with a first diet in June 2020. At a debate in November 2021 the sheriff had no difficulty upholding a plea in bar of trial.

The Solicitor General asserted at appeal that the 1992 decision was made in ignorance of evidence that would have been available had there been a reasonably competent and diligent investigation. The court refuted this given the absence of police records, although it was alleged the complainer had not been interviewed in the earlier investigation.

Submissions that *Thom* was not supported by the institutional writers were rejected, citing the powers of the Lord Advocate summarised by Lord President Clyde in what remains of *Hester v McDonald* 1960 SC 370 at 377. While the virtually absolute power of the Lord Advocate disables the court from examining the exercise of discretion, it is able to consider situations where the Lord Advocate has apparently reneged on an earlier decision not to proceed in circumstances which may amount to oppression.

References in the case to changes in the Crown Office regulations show the growth of the "no proceedings meantime" marking, where many cases were apparently held in suspended animation, no doubt in the hope that the accused would get drunk one night in the pub and blurt out the whole story.

The Crown did not want to depart from the general rule in *Thom* "save in extreme circumstances", but this was rejected as unworkable. It would leave an accused having



to establish oppression many years after proceedings had been abandoned, during which time papers might have been destroyed and potential witnesses died.

ECHR arguments were dismissed too, with the court pointing out that the complainer could potentially raise a private prosecution, seek compensation from the authorities or raise a civil action. The public interest in the investigation and suppression of crime has not changed since *Thom*, and modern developments such as the rights of complainers to challenge decisions by the Lord Advocate can only be raised for decisions taken after July 2015.

Most obviously, as the sheriff pointed out at the earlier debate, by 1992 fiscals had been instructed to be cautious, abandoning cases as "no proceedings at this time" or on present information to preserve a position, but significantly this was not done.

As I recall from my days in Crown Office, if you wished to try to advance the law in your favour you could wait for the right case to come along – there were lots to choose from. The present case did not seem an ideal basis to alter what was thought to be a longrunning sore.

The Scottish Parliament was advised last December that it may take four or five years to clear up the COVID case backlog: surely that should be the focus, and the timing of this appeal was unfortunate to say the least.

Electronic bail monitoring

The second bit of good news I bring is that statutory instruments have been laid so that prior to the third anniversary of the Management of Offenders (Scotland) Act 2019, electronic monitoring of accused and offenders will be expanded from 17 May 2022.

This has been a long saga which I have raised previously. Many crocodile tears have been shed by the establishment about the number of accused persons on remand and the time they spend there, partly due to the lack of proper alternatives to enable family life to continue.

An inordinate amount of timewasting has taken place before these changes were finally announced. I hope ears are burning from the feedback from the bail consultation earlier this year. Hopefully stakeholders are now organised to cope with the changes, and two financial years have passed so funds should be in place. Better still, police can be redeployed from curfew bail patrols at domiciles, which often led to families ejecting loved ones as they could not cope with nightly interruptions.

Since these proposals were first considered, technology has moved on, and simple electronic curfew or "stay away" bail conditions could more readily incorporate GPS or real time monitoring – the public have been exposed to this with smartphones and COVID sign-ins at cafés etc. I expect a mass of bail reviews on 17 May, and in due time the law of bail will be refocused to keeping complainers and witnesses safe and keeping families together. This will lead to a less punitive Scotland and bring down our prison numbers, which remain among the highest in Europe.

Child pornography

There are some interesting observations by Lord Doherty in *Webster v HM Advocate* [2022] HCJAC 8 (1 February 2022) at para 20. The appellant, who was aged 24, pled guilty to possessing child pornography and breaching bail by failing to provide a search history of his internet devices to police. The latter charge attracted a sentence of eight months' imprisonment, reduced to six months, but the Civic Government Act charges attracted an extended sentence of 66 months, being 30 months consecutive reduced from 40 months, and a 36 month extension period. There were over 3,700 category A images, involving children of both sexes aged one to 15.

The appellant had experienced a difficult upbringing, had expressed suicidal thoughts and had spent a spell in a mental hospital. He expressed thoughts of wanting to shoot people and see them suffer.

As had been explained in *Wood v HM Advocate* 2017 JC 185, extended sentences are not available for so called "non-contact offences".

The appellant was immature and had health issues. Most non-contact offenders do not progress to contact sexual offences. The extended sentence period was quashed, but the headline sentence of 40 months was upheld due to the other aggravating factors.

Youth of the appellant

In light of the recent sentencing guideline for young people under 25, an example of the High Court approach can be seen in *Stewart v HM Advocate* [2022] HCJAC 9 (1 February 2022).

The appellant was 19 at time of sentence, on a single charge of being concerned in supplying MDMA to a girl aged 15 or 16 who subsequently died. There was information that the appellant had been a supplier of small quantities of drugs to others of his peer group when he was 16 or 17. He was sentenced to 45 months' imprisonment and had served three months prior to the appeal.

He had had a difficult background and was said to be badly affected by the tragedy. The court concluded that the sheriff was influenced by information beyond what was contained in the charge. The appellant now abstained from drugs, had secured employment and had moved away from a negative peer group. The court quashed the sentence and imposed a 12 month, 100 hour community payback order.

Licensing

AUDREY JUNNER,
PARTNER,
MILLER SAMUEL HILL BROWN

April 2022 is National Pet Month. This is a month which celebrates our furry and non-furry friends and raises awareness of responsible pet ownership across the UK.

The process for becoming a pet owner can vary from adoption, to rescue, to purchasing from a breeder. The Animal Welfare (Licensing of Activities Involving Animals) (Scotland) Regulations 2021, which came into force on 1 September 2021, were introduced to regulate activities right across this spectrum and plug holes in what was considered outdated and flawed legislation. The pandemic saw pet ownership increase exponentially. The internet is flooded with adverts for cute animals, prices are soaring, and news sources are sadly just as full of appalling reports of puppy farming scandals. It would appear to be the perfect time for Scotland to catch up with England and introduce a more robust and wideranging system for the protection of animals in these settings.

The new regulations replaced previous legislation dealing with pet sales and dog breeding and introduced new licensing requirements for cat and rabbit breeders, animal welfare establishments (such as animal sanctuaries and rehoming centres) and other pet rehoming activities, subject to operators

meeting the licensing criteria for each activity. For solicitors in private practice the changes may result in more enquiries from those looking for support, particularly as current licences come to an end under transitional provisions. For local authority solicitors the administrative burden will almost certainly increase, as the scope for licensing has been significantly widened.

Licensing requirements

Under the legislation a person must not carry on a licensable activity without the authority of a licence. A licensable activity is defined as selling animals for pets in the course of a business, animal rehoming, operating an animal welfare establishment, or breeding in a 12 month period three or more litters of kittens or puppies, or six or more litters of kits (rabbits). For the first time, cats and rabbits have been brought within the scope of the licensing regime, and the requirement for those breeding dogs to be authorised has been extended to apply to those breeding three litters as opposed to five. Each local authority must also publish a register of licences granted by it, which will be a valuable resource and safeguard for those considering engaging with anyone holding themselves out to be legitimate.

On receipt of an application for a licence the local authority must instruct an inspector to visit the establishment which is the subject of the application and carry out a report, except where the application relates to a licence for rehoming activities: in such a case the inspection is discretionary. On receipt of the report, the local authority must approve the licence if satisfied that certain criteria are met, namely:
(a) the standard conditions which must be attached to every licence are likely to be met: these include, but are not limited to, record keeping, appropriate animal numbers, training, suitability of environments, food and welfare;
(b) any further licence condition which it intends to attach to the licence as it considers necessary for the purposes of securing the welfare of animals, is likely to be met; and
(c) the grant or renewal is appropriate, taking into account any report.

In considering whether the standard licence conditions and any licence conditions which it intends to attach to the licence are likely to be met, a licensing authority must take account of the applicant's conduct, whether the applicant is a fit and proper person to be the operator of that activity, and any other relevant circumstances. The fit and proper person test is a familiar one for licensing practitioners. The introduction of this test makes it clear that conduct is a relevant licensing issue, which under the previous legislation was not the case.

Knowledge base

During the consultation stage of the legislation it was suggested that as part of its assessment of fitness, a local authority should have power to devise and administer a meaningful test for applicants for a licence, similar to that which taxi and private hire licence applicants undertake. This was never brought forward into the regulations, but the proposition that knowledge may form part of a rounded assessment of competence/fitness is still a valid one given the wide discretion afforded to local authorities. Also, while there is no scope for parties to make objections or representations to applications, it might be possible for information to be brought forward and relied on if it is considered relevant in determining fitness.

The additional scrutiny introduced by the regulations should ensure that the wellbeing of our most loyal companions is given a higher priority within a licensing system that has their welfare as the absolute central consideration.

Insolvency

ANDREW FOYLE, SOLICITOR ADVOCATE AND JOINT HEAD OF LITIGATION, SHOOSMITHS IN SCOTLAND

Two important pieces of legislation have recently been proposed and form key planks in our transition out of the pandemic towards a "new normal" for insolvency law.

The Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2022 came into force on 29 March 2022. As the name suggests, the regulations end certain temporary provisions of the Coronavirus (Scotland) Acts. Notably:

- They bring to an end the extended notice periods relating to evictions from residential properties.
- In commercial tenancies, they bring to an end the extension of irritancy notice periods from 14 days to 14 weeks.

In both cases, the provisions expired on 30 March 2022. Consequently, notices served prior to that date will be subject to the longer notice periods.

It is understood that the intention is for the remaining operative provisions of the 2020 Acts to expire on 30 September 2022. However, the regulations in that regard have not been laid as yet. Timescales may depend on the passage of the Coronavirus (Recovery and Reform) (Scotland) Bill.

That bill is closely related to these regulations. It proposes the extension or permanent adoption of a number of measures previously enacted under the Coronavirus Acts of 2020. For the purposes of this briefing, Parts 3 and 4 are of most interest.

The bill is currently at stage 1 of the legislative process. Therefore, it is important to note that what is written here may change before the bill is passed.

Bankruptcy provisions

Part 3 covers (amongst other matters) bankruptcy reforms. Arguably, the most important change it introduces is the increase in the threshold for a creditors' bankruptcy petition from £3,000 to £5,000. During the pandemic this had temporarily been raised to £10,000. It should be noted that the £3,000 limit has been in force since 2008, and so was perhaps due for a refresh. The proposed £5,000 limit largely aligns Scotland with the position in England & Wales.

In addition, the bill proposes to insert a new section into the Bankruptcy (Scotland) Act 2016 dealing with service of documents. Most importantly, it proposes to make permanent the ability to serve documents by electronic transmission, provided it is "effected in a way that the recipient has indicated to the sender that the recipient is willing to receive the document". Electronic service and intimation of documents has been a success story of the pandemic. Certainly, it makes sense for this to become a permanent fixture.

The bill further proposes to make permanent the ability of the trustee to hold creditors' meetings remotely. Given the rise of videoconferencing technology during the pandemic, this does not seem particularly controversial. It is also proposed that the temporary provisions allowing the swearing of oaths and affirmations remotely be retained.

Use of electronic means is indeed a theme of the bill, and ss 24 and 25 propose electronic submission of deeds to Registers of Scotland and electronic signature of documents bound for the Register of Inhibitions. Both sections reflect the measures in place during the pandemic and are considered to have been effective.

Tenancies

Part 4 of the bill covers tenancies. The key point here is the proposal to remove mandatory grounds of eviction and to render all grounds for eviction as discretionary, thus making permanent the changes introduced in the 2020 Acts. The bill also provides for the introduction of a pre-action protocol in relation to actions for recovery of possession of rented properties.

The detail of that protocol will be contained in regulations made by the Scottish ministers, but will cover proceedings under the Private Housing (Tenancies) (Scotland) Act 2016, and the Housing (Scotland) Act 1988. The bill states that the protocol may cover information that should be provided by a landlord to a tenant, the steps to be taken by a landlord pre-litigation and any other matters that the Government considers appropriate.

A possible model is the pre-action requirements under the Conveyancing & Feudal Reform (Scotland) Act 1970. However, it's fair to say that this has not been an unqualified success since it was introduced.

In summary, it appears that the bill retains a number of elements of the temporary coronavirus provisions which have worked well and in particular with regard to the use of electronic and remote solutions within the bankruptcy and legal processes. The final shape of the bill is awaited on its passage through the Parliament, but it is not considered that the elements set out above are likely to be particularly controversial.

Tax

ZITA DEMPSEY, SOLICITOR AND ROSS MACKENZIE, TRAINEE SOLICITOR, PINSENT MASONS LLP

The Chancellor's Spring Fiscal Statement on 23 March once again has been influenced significantly by unforeseen factors. His first Budget had to deal with the uncertainty of COVID-19. Now, with the effects of COVID-19 still being felt across the UK, Rishi Sunak has also had to grapple with the effects of the war in Ukraine and the cost of living crisis in his Spring Statement.

With households bracing to be hit very hard by increasing energy costs, the Chancellor has introduced various measures to support families during this trying time, which many have criticised as not going far enough. He also expanded research and development relief, and hinted at business tax plans focusing on incentivising capital investment, both of which will be welcomed by UK businesses.

National insurance and income tax

Along with an increase in the maximum employment allowance, the Chancellor announced an increase in the national insurance contributions ("NICs") threshold for employees and the self-employed from £9,500 to £12,570, bringing it into line with the income tax personal allowance. This will be introduced in July 2022 and it is expected that almost 30 million people will have more disposable income as a result, and around 70% of taxpayers will pay less in NICs, even after accounting for the new health and social care levy which comes into effect on 6 April 2022. However, the benefit is not as great for higher earners and, despite the increase in the NICs threshold, it is expected that those earning over around £40,000 will end up with an increased NICs liability as a result of the health and social care levy.

The Chancellor also announced that the basic rate of income tax will be cut from 20% to 19% from April 2024. This change applies in England, Wales and Northern Ireland, and to savings income in Scotland.

VAT and energy saving materials

This measure introduces a time-limited zero rate of VAT for the installation of certain energy saving materials ("ESMs") in homes. The zero rate will be available for the installation of ESMs for a period of five years, after which the 5% reduced rate will apply. This can be seen as a small part of the increasing approach towards green investment by the Government.

Research and development

In his Spring Statement, the Chancellor confirmed that expenditure on overseas research and development ("R&D") activities will still qualify for tax relief in certain circumstances, representing a U-turn on

IN FOCUS

...the point is to change it

Brian Dempsey's monthly survey of legal-related consultations

Pension investments

The Department for Work & Pensions is consulting on proposals and draft regulations to improve the accessibility of illiquid assets for defined contribution pension schemes. See www.gov.uk/government/consultations/facilitating-investment-in-illiquid-assets-by-defined-contribution-pension-schemes
Respond by 11 May.

More on tied pubs

The Government seeks views on its proposals for the Scottish Pubs Code for tied pubs. See consult.gov.scot/agriculture-and-rural-economy/scottish-pubs-code/
Respond by 12 May.

Gender recognition

The Parliament's Equalities, Human Rights & Civil Justice Committee is seeking evidence on the liberalising reforms in the Gender Recognition Reform (Scotland) Bill. See www.parliament.scot/about/news/news-listing/holyrood-committee-launches-consultation-on-gender-recognition-reform
Respond by 16 May.

Public participation

Recent years have seen Europe-wide concern over Strategic Lawsuits Against Public Participation (SLAPPs), often framed as actual or threatened defamation actions designed to intimidate or deplete the resources of progressive campaigns. This Ministry of Justice consultation is concerned with the law in England & Wales, though the availability of SLAPPs in that jurisdiction may be considered a problem for groups in Scotland. See www.gov.uk/government/consultations/strategic-lawsuits-against-public-participation-slapps
Respond by 19 May.

Scottish carer's assistance

The replacement of the UK carer's allowance benefit with the new Scottish carer's assistance will be the next devolved welfare benefit. This consultation is to gather views on when and how the transfer should go ahead. See consult.gov.scot/social-security/scottish-carers-assistance/
Respond by 23 May.

Fly-tipping

Tory MSP Murdo Fraser seeks views on his proposed Fly-tipping (Scotland) Bill. The bill would introduce new measures and strengthen existing measures to prevent fly-tipping, including improved data collection and enforcement, and increased penalties. See www.parliament.scot/bills-and-laws/proposals-for-bills/proposed-fly-tipping-scotland-bill
Respond by 23 May.

Mental health law review

The Government seeks views on proposals for change to the law put forward by the Scottish Mental Health & Incapacity Law Review in advance of final publication of its report in the autumn. See consult.gov.scot/mental-health-law-secretariat/scottish-mental-health-law-review/
Respond by 27 May.

... and briefly

As noted last month, the Scottish Law Commission has published a *Discussion Paper on Damages for Personal Injury*, SLC DP No 174 (see www.scotlawcom.gov.uk/files/8716/4555/1018/Discussion_Paper_Damages_for_Personal_Injury.pdf and **respond by 15 June**).

previous plans to completely block tax relief for offshore R&D. There will be an exemption introduced from April 2023 for overseas R&D where there are "material factors such as geography, environment, population or other conditions that are not present in the UK", and those conditions are required for the R&D activity to be undertaken. The Chancellor also confirmed that all cloud computing associated with R&D, including storage, will qualify for relief from April 2023.

This will be a particularly welcome U-turn for the UK life sciences sector, where R&D work done outside the UK can be essential, for example gaining licensing approval for new drugs or clinical trials.

Business tax

Following the difficulties posed by the pandemic, incentivising business investment is a priority for the Government, according to the Government's new tax plan published alongside the Spring Statement. The current capital allowances "super deduction" of up to 130% is available to companies investing in new plant and machinery between 1 April 2021 and 31 March 2023. The Chancellor has acknowledged that something must be done in respect of the tax treatment of capital investment, where the UK is currently "less generous" than the OECD average. However, we will have to wait until the Autumn Budget to see how the Chancellor will incentivise business investment when the "super deduction" ends in 2023.

Fuel duty

Given the increasingly expensive cost of living, the Chancellor's decision to cut fuel duty payable by 5p per litre will be a welcome cut for UK households. This measure is expected to impact up to an estimated 36 million individuals by reducing their motoring costs, subject to how much they drive. The saving could also be significant for businesses that rely heavily on transportation in the running of their organisation.

Immigration

MEGAN ANDERSON,
TRAINEE SOLICITOR,
LATTA & CO

The war in Ukraine has led to millions of people fleeing in search of safety. Poland was quick to act and opened its borders almost immediately. Other countries followed suit and eventually the UK also announced schemes, as detailed below.

Ukrainian Family Scheme

The Ukrainian Family Scheme is comparably more generous than other schemes launched by the UK Government, permitting Ukrainian nationals, and their immediate and extended family members residing in Ukraine before 1 January 2022, to join their British family members in the UK. Also eligible are Ukrainian nationals and their family, who have family that are settled in the UK, or family who have refugee status or humanitarian protection, as well as those from the EU who have settled or pre-settled status. The definition of immediate or extended family is outlined on the Government website. The scheme will allow those eligible to remain in the UK for three years, and there is no fee for applying.

Ukrainians coming to the UK under this scheme will be able to work, study and claim benefits. The application process involves completing an online form if the person is outside the UK; they must then upload a copy of their Ukrainian passport and any evidence demonstrating their relationship with the person they are joining in the UK.

It is somewhat more complicated if the Ukrainian national does not have a valid Ukrainian passport. The person will need to attend a visa application centre to enrol their biometrics. This has been causing issues due to appointment availability; walk-ins are not accepted.

Those hoping to travel to the UK under this scheme will need to await a decision on their application before travelling. By 27 March 2022, the total number of visas issued under this scheme was 21,600.

Homes for Ukraine

There were continued calls for the UK Government to do more. We then saw the introduction of "Homes for Ukraine". This scheme allows people in the UK to apply to host a refugee in their home, or in a property that they own. You must be a British citizen, or have more than six months' leave to remain, and also be able to offer accommodation for a minimum of six months. Charities, community groups and businesses can also offer accommodation, although the guidance relating to those organisations is yet to be published. This is because the first phase of the scheme is currently open only to individuals. Those who offer accommodation will be eligible to receive £350 per month from the Government for the first year that they act as a host.

People in the UK can apply to sponsor a person or family that they know, or they can register their interest and then match with a Ukrainian refugee. The guidance for sponsors notes that charities and non-governmental organisations will assist with establishing contact between potential sponsors and those looking to come to the UK. The Scottish Government has outlined that sponsors based in Scotland should indicate

"'Homes for Ukraine' allows people in the UK to apply to host a refugee in their home or a property they own"

on the form that they are being sponsored by an organisation, and select the Scottish Government as that organisation. Sponsors and members of their household, as well as the applicants, will be subject to background checks. Once these checks are complete, the Home Office will issue those coming to the UK with a permit allowing them to travel.

It is stated within the guidance that the sponsor is not expected to cover the living costs of those coming to the UK. The main role of the sponsor is to ensure they can provide accommodation for at least six months. The sponsor should also be willing to assist the guests with integrating into life in the UK. Ukrainians who come to the UK will be eligible to work and claim benefits; however, the sponsor should not expect to receive housing benefit as they are not permitted to charge rent.

In terms of issues relating to mortgages, the Government website states that in some cases sponsors may have to check, and advises sponsors to consider the implications of hosting before applying. Regarding insurance, the Association of British Insurers has advised that, as the guests will not be paying rent, sponsors need not inform their insurance company. Those who rent should request permission from their landlord before registering.

What happens next?

The Government has noted that the next phases of "Homes for Ukraine" will be published in due course. What remains to be seen is the number of people who will be accommodated in the UK under "Homes for Ukraine". Little guidance has been released on what happens once the six months are complete. Integrating into life in a different country requires more than simply allowing access to employment and benefits. Therefore, it is hoped that the UK and Scottish Governments,

as well as local councils, will work together to ensure that those who have been displaced are able to feel at home in the UK.

Scottish Solicitors' Discipline Tribunal

WWW.SSDT.ORG.UK

Mohammed Aamer Anwar

A complaint was made by the Council of the Law Society of Scotland against Mohammed Aamer Anwar, Aamer Anwar & Co, Glasgow.

The complaint raised the issue of communication under two headings: (1) rule B1.9.1, and (2) rule B4.2(e) and (f). The Tribunal concluded that the conduct proved did not amount to a breach of rule B4.2(e) and (f). However, the Tribunal was satisfied that the respondent had failed to communicate effectively with his client in terms of rule B1.9.1. The plain reading of clause 8 of the terms of business was to exclude the client's right to taxation and to make a complaint to the SLCC. That was not what was intended by the respondent.

Thereafter, the Tribunal required to determine whether this breach amounted to professional misconduct. The Tribunal found the respondent to be a credible witness and accepted his explanation. There could therefore be no issues of honesty or integrity (rule B1.2), no issue of failing to give independent advice (rule B1.3), and no issue of the respondent putting his interests before his client's (rule B1.4.2).

The Tribunal was clear that terms of business are significant documents, as they form the contract between solicitor and client and solicitors have an obligation to draft these clearly and accurately. Solicitors should not include clauses in their terms of business that attempt to restrict or remove the client's rights inappropriately. However, the Tribunal accepted that clause 8 was carelessly worded by the respondent and this was an honest mistake on his part. Of significance was the fact that he had not attempted to use this clause to prevent the secondary complainer from complaining to the SLCC, and also his solicitor flagged up to her the right to have the fee reviewed by taxation. As a result, the Tribunal determined that, in the particular circumstances of this case, the respondent's conduct did not meet the *Sharp* test and found him not guilty of professional misconduct.

The conduct fell just short of the test for unsatisfactory professional conduct, and it was therefore not appropriate to remit the complaint to the Council of the Society in terms of s 53ZA of the 1980 Act.

Douglas Lamond

A complaint was made by the Council of the Law Society of Scotland against Douglas Lamond, solicitor, Perth. The Tribunal found the respondent guilty of professional misconduct *in cumulo* in respect of his contraventions of rules B1.9.1 and B1.16 of the Law Society of Scotland Practice Rules 2011.

The Tribunal censured the respondent and fined him £750.

The respondent failed to respond to correspondence or statutory notices received from the Society in respect of its regulatory function and impeded the Council in its statutory obligation to investigate complaints. The Tribunal was satisfied that the respondent's conduct in breaching rules B1.9 and B1.16 represented a serious and reprehensible departure from the standards of competent and reputable solicitors. The respondent's behaviour amounted to a course of conduct of failing to cooperate with his regulator. It is essential in the public interest that solicitors cooperate with the Society exercising its role as a regulatory body. The Society cannot properly exercise its function to protect the public without the cooperation of solicitors. Accordingly, the Tribunal found the respondent guilty of professional misconduct.

Stephen McGuire

A complaint was made by the Council of the Law Society of Scotland against Stephen McGuire, Hennessey, Bowie & Co, Bishopbriggs. The Tribunal found the respondent guilty of professional misconduct *in cumulo* in respect of his breaches of rules B6.2.3, B6.4.1, B6.5.1, B6.7, B6.13 and B6.23 of the Law Society of Scotland Practice Rules 2011.

The Tribunal censured the respondent and fined him £1,000.

The admitted conduct related to a number of significant breaches of the accounts rules, including those in relation to the Money Laundering Regulations 2007. The respondent failed to properly identify clients and failed to rectify breaches. He failed to ensure that the firm had proper systems in place. He failed to train his staff. As designated cashroom manager, he allowed payments to be made to individuals who were not clients, without appropriate identification, due diligence and written authority. He failed to keep accurate records. He did not supervise his partner properly as designated cashroom manager and money laundering reporting officer. He failed to comply with the Money Laundering Regulations. The risk monitoring was insufficient. Although he formulated risk management policies following a 2013 inspection, he did not monitor the firm's compliance with those policies. He did not keep proper records. He was given a number of opportunities to rectify the situation. He knew there was a problem, and created procedures, but failed to implement them.

Designated cashroom managers must retain responsibility for the books and records. Money laundering reporting officers must ensure compliance with anti-money laundering procedures. This includes documenting compliance. It is essential that the public can have confidence that the profession can be trusted to comply with the accounts rules and the money laundering provisions. The Money Laundering Regulations exist to protect society against criminal acts. Documentation of anti-money laundering procedures allows the solicitor to demonstrate compliance with the rules. Problems were drawn to the respondent's attention in 2013. These persisted in 2016. The respondent's conduct in relation to a wide variety of breaches over a significant period of time fell below the standards of conduct to be expected of a competent and reputable solicitor to a serious and reprehensible degree. He was therefore guilty, *in cumulo*, of professional misconduct.

Thomas Cunningham Steel

A complaint was made by the Council of the Law Society of Scotland against Thomas Cunningham Steel, Brunton Miller, Glasgow. The Tribunal found the respondent guilty of professional misconduct in respect that (a) he failed to communicate with the secondary complainer following his receipt on or about 18 October 2018 of the sum due to her, and (b) he delayed unduly in remitting the sum to the secondary complainer.

The Tribunal censured the respondent and ordained him to make payment of £3,992.26 to the secondary complainer.

On 18 October 2018, the respondent received a sum due to the secondary complainer. He did not communicate with her. He did not remit the sum to her until 10 June 2019. He therefore failed to communicate effectively with the secondary complainer (rule B1.9.1). He failed to return money held for a client promptly as soon as there was no longer any reason to retain it (rule 6.11.1). The respondent's conduct represented a serious and reprehensible departure from the standards of competent and reputable solicitors. A competent and reputable solicitor on receipt of the cheque would have created a ledger entry and paid the money to the secondary complainer as soon as possible. The respondent's delay in this case was unconscionable, as was his lack of communication. Other solicitors had reminded him about the problem. The secondary complainer was without her money for eight months. Members of the public entrust their money to solicitors. An eight month delay in forwarding clients' funds when there was no impediment to doing so undermines the public's trust in the profession and is likely to affect the reputation of the profession. The respondent was therefore guilty of professional misconduct.

RCI: what does it involve?

An outline of who is obliged to register in the new Register of Persons Holding a Controlled Interest in Land, in force since 1 April 2022 – something of relevance not only to property lawyers

Property

LAW SOCIETY OF SCOTLAND PROPERTY LAW COMMITTEE

The Register of Persons Holding a Controlled Interest in Land ("RCI") came into force on 1 April 2022, albeit failure to register in the RCI will not constitute a criminal offence until 1 April 2023.

Overview

The RCI will be managed by Registers of Scotland ("RoS"). It is designed to show who has significant influence or control over the owners or tenants (of leases longer than 20 years) of property in Scotland where such information is not publicly available elsewhere. Such owners or tenants are known as "recorded persons"; persons and entities who have significant influence or control over recorded persons are "associates".

There is no cost to record an entry, nor to inspect the RCI. However, from 1 April 2023 it will be a criminal offence to fail to register, punishable by a fine.

Sources

The regulations setting up the RCI, and containing the detailed obligations, are the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Regulations 2021 (and amendments).

In addition:

(i) the Scottish Government has prepared an explanatory document to be read alongside the regulations;

(ii) Registers of Scotland has published guidance on the RCI on its website; and

(iii) the Property Professional Support Lawyers Group have prepared an article, published online with this issue, giving more detail, and examples, about the application of the regulations.

Who will this affect?

Schedule 1 to the regulations sets out five categories of owner/tenant who will be obliged to register as recorded persons and provide details of associates.

These are (i) individuals who are subject to contracts or other arrangements; (ii) partnerships; (iii) trusts; (iv) unincorporated associations; and (v) overseas entities (which will separately need to register in the Register of Overseas Entities, when the relevant provisions of the Economic Crime (Transparency and Enforcement) Act 2022 come into force). All of these categories are subject to exceptions. Owners and tenants of a type listed in sched 2 (which includes UK limited companies and limited liability partnerships among other entities subject to other relevant transparency regimes) are also exempt from being a recorded person. Therefore, UK limited companies would not be included in the RCI as *recorded persons*, but would require to be included as *associates* if they satisfied the criteria.

The detail contained in sched 1 is key to identifying the parties that should be recorded as recorded persons and associates. For example, the following scenarios will frequently arise and could give rise to an obligation to register:

(i) land held by or on behalf of a partnership, where not all the partners are registered as owners in the Land Register of Scotland or Register of Sasines;

(ii) land held by or on behalf of a trust, where not all the trustees are registered as owners in the Land Register or Sasine Register; and

(iii) land held for an unincorporated association where any person who is responsible for the general control and management of its administration is not registered as owner in the Land Register or Sasine Register.

Obligations to register

The RCI comes into force on 1 April 2022, but with a grace period of 12 months during which failure to register will not constitute a criminal offence.

Interests in land that are already "controlled" come under the obligation to register, as well as interests in land that become "controlled" after 1 April 2022. The expectation is that providing for the 12-month period of grace will give sufficient time for such interests to be identified and then registered.

The primary obligation to register is imposed on the recorded person, who must notify the Keeper within 60 days of an associate becoming their associate and, having done so, must notify the associate within seven days of that notification to the Keeper. However, if an associate is not notified by the recorded person, then the associate, if it knows or ought reasonably to know that it is an associate of the recorded person, is obliged to notify the recorded person of that fact. So, both the recorded person and the associate have responsibilities in relation to the appropriate registration in the RCI. Recorded persons and associates also have obligations respectively to verify and confirm the information to be submitted, and to keep the RCI up to date.

Failing to register

The grace period will end on 1 April 2023, and those who have not registered before that date will risk committing a criminal offence with the penalty of a fine.

Security declarations

The legislation recognises that there may be situations where inclusion on the open register of an individual's details may put that individual at risk of violence, abuse, threat of violence or abuse, or intimidation. In such circumstances a "security declaration" may be made and while that remains in force, no information about the individual will be disclosed on the RCI.

Wider awareness

The RCI is a register of persons rather than a property register.

Obligations to register in the RCI can arise without any underlying conveyancing transaction: for example the assumption of a new partner or new trustee could trigger a requirement to register.

Practitioners, and not just conveyancing practitioners, should consider the potential application of the regulations when acting for their clients. In particular, practitioners should be clear whether or not their engagement includes advising on the application of these regulations.

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Looking for a star

As this year's In-house Rising Star Award launches, two previous winners talk about their own careers to date and what winning the Award meant to them

In-house

SARAH MCCONNELL, NHS 24, AND ANGUS NIVEN, BOX MEDIA AGENCY LTD

Tell us about your career to date?

Sarah McConnell (2018 winner): I started my career working in-house with Glasgow City Council. After completing my traineeship, I joined the Corporate & Property Law department where I specialised in freedom of information and data protection. This was a great opportunity to get involved with various projects, particularly as the council was preparing for the implementation of the GDPR, an exciting new area of law at the time! After seven years, I moved to the private sector to work in-house as a data protection officer and solicitor before recently returning to the public sector to work for NHS 24 in data protection.

Angus Niven (2021 winner): I've had quite a varied career to date. I've worked in both small and large firms before joining a property company and then on to a media/education company. This has given me a wide experience of different clients and deals which I've found extremely useful in the varied role of general counsel and company secretary. I always try to pursue development opportunities that interest me, which is why I also worked on the board of Scottish Ice Hockey and during lockdown pursued a management course with LSE.

What did winning the In-house Rising Star Award mean to you?

SM: I was delighted both to be nominated by my colleagues, and then to go on to actually win the In-house Rising Star Award, as it showed recognition for my hard work and contribution towards Glasgow City Council's GDPR preparations. It was an honour to be recognised amongst so many excellent lawyers who were shortlisted and it was great to be able to celebrate with everyone at the awards ceremony.

AN: Winning the Rising Star award was a real validation of the work I had put in to date. Stepping in-house is always a steep learning curve, so it meant a lot to get this sort of formal recognition for the work I had done. Regardless of your experience in private practice, in-house is a big jump into a really different type of role. There are other expectations and pressures placed on you, so it was great to win the award in 2021.

Why do you think it's important to recognise the achievements of those early in their careers?

SM: Recognising the achievements of young solicitors helps to encourage career development and celebrate career milestones. Young solicitors often face a steep learning curve, so awards like the In-house Rising Star Award help to show appreciation for their contribution.

The award is fantastic as it also showcases the variety of opportunities to work in-house for different employers and the wide range of work this can involve.

AN: I think it's important to encourage people at every stage of their careers, and one of the best ways to do that is by formally/publicly recognising achievements. It's a real boost for people who are trying to establish themselves in a new field and attempting to upskill themselves and develop their career.

You've continued (or returned) to work in house – what do you particularly enjoy about your role and working in-house?

SM: While it is a cliché, no two days are the same working in-house. There is a fantastic variety of work, whether a new problem to tackle or an exciting new project to help launch.

I find working in-house affords a satisfying opportunity to get involved in projects from the beginning through to completion. Through this process, you really get to know and build relationships with colleagues from different areas of the business – always learning lots along the way!

AN: Like every in-house lawyer I enjoy variety: not necessarily knowing what type of work may be on the agenda for the coming weeks or months keeps the job interesting. I particularly enjoy getting involved in growing the business: working in-house fully immerses you in the commercial aims and allows you to jump on projects across the business.

What advice would you give students and lawyers who want to start a career in-house? What makes a good in-house lawyer?

SM: I would encourage a student interested in working in-house to look at in-house traineeships. I found my traineeship at Glasgow City Council gave me excellent support from colleagues and exposure to challenging work right from the beginning.

Trainee solicitors working in-house often feel that they are given more responsibility early in their careers compared to their peers in private practice, so if this appeals to you, working in-house could be a good fit.

Likewise, if someone is early in their career and looking to move in-house, I would encourage them to go for it. It is never too early to move in-house, and there are lots of employers that are interested in hiring newly qualified solicitors.

AN: I think the most important thing is to understand the commercial goals of the team and the commercial impact of your decisions and actions. You need to make yourself a key part of the growth of the company and be ready to throw yourself into anything. A good in-house lawyer engages with and provides stability to business units driving the growth, making that growth sustainable and lasting.

What are the key challenges for in-house teams? How does the future look for in-house lawyers?

AN: Communication: you need to be across several teams and the communication of instructions is entirely different from private practice. Making sure you have good working relationships with several teams at different levels, and often across multiple offices, is vital.

Another key challenge, not unique to in-house, is speed versus accuracy. Often, you have internal clients who favour speed and only become concerned with accuracy once there is a problem down the line. You need to work hard to set expectations but also hit deadlines without sacrificing accuracy in drafting, etc.

I think the future is positive for in-house lawyers, whether a generalist in a small company or a specialist within a larger team. In-house legal teams provide great value to their companies and form a vital part of lasting growth. We offer a skillset that allows us to work across all business units, getting involved with everything from funding rounds to data policies to transaction management to HR, and everything in between.

Who is your rising star for 2022?

Nominations are now open for the Law Society of Scotland In-house Rising Star Award 2022.

The In-house Rising Star Award recognises the outstanding achievement of a newly qualified Scottish solicitor or trainee who is working in-house. The winner will be announced at the In-house Annual Conference in June.

Nominees must be Scottish in-house trainees or in-house solicitors with up to five years' post-qualification experience. Nominations will be judged by members of the In-house Lawyers' Committee and key individuals working closely with the in-house lawyer community.

ILC co-conveners, Sheekha Saha and Vlad Valiente, said: "This past year has been another year of challenges for the profession. Many of those just starting out in their careers have been severely impacted by the pandemic but have done an incredible job of rising to the challenges posed by COVID-19 over the past 12 months. The award gives us an opportunity to celebrate the phenomenal talent we have in the in-house legal community and the important contribution of those in the early stages of their careers to their organisations."

Arlene Gibbs, one of the ILC vice conveners and a member of this year's judging panel, added: "Many of our trainees and newly qualified colleagues have had to adapt to working remotely without the usual workplace support networks over the past two years, and I really encourage my in-house colleagues to take time to recognise the hard work of their organisation's legal stars and get their nominations in!"

The closing date for nominations is 18 May 2022. For more information see www.lawscot.org.uk/risingstaraward

In practice


1 March


8 March

New criminal solicitor advocates introduced

Two introduction ceremonies were held in March for solicitor advocates who successfully gained extended criminal rights of audience following the recent course. Those admitted on 1 March were (l-r) David Fisken, Murphy, Robb & Sutherland; Robert Reid, McGovern Reid; Alexandria Kirk, COPFS; Gary Miller, Jim Friel Solicitors; Brian Bell, Bell Brodie; Thomas Allan, Allans; and Desmond Ziolo, Fitzpatrick & Co. On 8 March they were joined by (l-r) Derek Pettigrew, Derek W Pettigrew; Ian McCarthy, Ian C McCarthy Ltd; Lisa McNeill, Addleshaw Goddard; Graeme Cunningham, GMC Criminal Defence; Stephanie Clinkscale, Robert More & Co; Euan Gosney, Thorley Stephenson; Jennifer Cameron, Adams Whyte; and Ronald Hay, COPFS.

SLCC confirms 5% levy cut

The Scottish Legal Complaints Commission has confirmed the budget that it published for consultation in January, with a 5% cut in the general levy for 2022-23, despite representations from the Law Society of Scotland that it should go further in controlling its costs.

The SLCC said that as well as considering the responses, its board took into account data and projections on complaint numbers, projected costs, business performance and efficiency gains and its financial position.

In its consultation response, the Society noted among other points that complaints have risen by 6% in the past 10 years while the SLCC budget has increased by 31%; and that costs per complaint would have increased by more than 20% in the past five years.

Standing with Ukraine

The Society is encouraging members to stand in solidarity with the people of Ukraine in their time of need. A page on its website (news, 6 April 2022) provides links to the Government scheme for sponsoring refugees; a separate route to offer a home specifically to a Ukrainian lawyer; and information for Ukrainian lawyers now based in Scotland.

It also highlights the work of the Ukraine Advice Project, set up by six volunteer immigration lawyers including John Vassiliou of Shepherd and Wedderburn to give pro bono advice to Ukrainian refugees on UK immigration, visas and asylum.

The page also emphasises the importance of complying with Government sanctions on Russia and Belarus: and see p 44 below.

Auditor appointment

Robin Macpherson WS, a former litigation partner in Robson McLean WS and Brodies, has been appointed Auditor of the Court of Session, ASSPIC and Sheriff Appeal Court.

SYLA pilots court experience scheme

A pilot scheme to enable trainee and NQ solicitors to watch more court advocacy, via Webex, has been set up by the Scottish Young Lawyers' Association, with the co-operation of Mhairi Stephen QC, Sheriff Principal of Lothian & Borders. It aims to counter the impact of the switch from in-person hearings on personal and professional development, allowing new lawyers to observe sheriff court and ASSPIC procedural hearings.

To take part, please email mail@syla.co.uk from your work email address. You will be sent a link to sign up.

FROM THE ARCHIVES

50 years ago

From "Premarital 'Stuprum' and Essential Error in Scots Law", April 1972: "Perhaps the most difficult single problem in respect of the error rule is that of the husband who may wish to have his marriage declared null when he discovers that his wife was pregnant to another at the time of the marriage. When it is realised that in a recent estimate it was suggested that three out of five teenage brides are pregnant at the time of their marriage, the problem would appear to be of considerable potential importance."

25 years ago

From "From the President", April 1997: "We suffered a lot of criticism recently when somebody cottoned on to the fact that the Council had created a company called Public Defender Ltd. Ill-informed speculation thought it just a silly prank, a fit of pique because the Government wanted to introduce something akin to a US-style public defender... In fact it was done to serve two purposes... most obvious was to point out that... this new breed of defence agent... was going to be nothing more than a state-employed lawyer providing defence services to those directed to it".

PUBLIC POLICY HIGHLIGHTS

The Society's policy committees analyse and respond to proposed changes in the law. Key areas from recent weeks are highlighted below. For more information see the Society's research and policy web pages.

Not proven verdict etc

The Criminal Law Committee responded to the Scottish Government's not proven verdict and related reforms consultation, stating its opposition to the abolition of the third verdict. Addressing the view that conviction rates in sexual offence cases are too low, it argues that if too few guilty people are being convicted, that is more likely to be due to a lack of evidence than a fault with the system. Manipulating the justice system to increase conviction rates is a very dangerous path and inevitably risks miscarriages of justice.

It welcomes current work to improve understanding that there is not one uniform and authentic reaction to sexual crime, and to develop an appropriate approach in sexual offence cases. This specialist targeted work will be more effective in addressing sensitive issues than removing the not proven verdict, which would impact all cases across the justice system.

The verdict represents an important safeguard in a system where a simple majority can result in life imprisonment. The Society also argues that the immediate focus should be to address the current backlog in the courts rather than attempt a fundamental change when the system is emerging from the systemic shock of the pandemic.

Economic Crime Bill

A number of the Society's committees considered the Economic Crime (Transparency and Enforcement) Bill, which received Royal Assent on 15 March 2022 following an expedited timescale in light of Russia's invasion of Ukraine. While the provisions concerning the establishment of a Register of Overseas Entities had previously been consulted on, the bill also amends existing legislation on unexplained wealth orders and on sanctions.

Briefings by the Society fully support the aims of the bill in increasing transparency, and its provisions to combat money laundering, corruption and terrorism, and deplore the use of legitimate business structures for criminal purposes. Care should be taken, however, to avoid introducing measures which may impose a burden on legitimate businesses and commercial activities, but may not effectively dissuade those intent on criminal behaviour. The briefings highlight a number of practical considerations for the implementation of the Register of Overseas Entities by Companies House, and the potential impacts on land registration in Scotland.

LBTT additional dwelling supplement

The Scottish Government held a consultation on the operation of the additional dwelling supplement ("ADS"), as the first stage of the review announced in the 2021-22 Programme for Government. The Society's Tax Law Committee responded, noting that a number of issues have arisen which would benefit from resolution or clarification and urging a wide and detailed review of the operation of ADS in Scotland. The law in this area is particularly complex, and steps should be taken to simplify both legislation and guidance in order to make it easier for taxpayers and their advisers to assess liability.

In particular, the response supported amending the length of time available to purchase a new main residence following the sale of a previous main residence, and to sell a previous main residence following the purchase of a new main residence, in both cases recommending that these time periods be brought in line with those under equivalent provisions in England & Wales. It also recommends changes in connection with inherited property, divorce or separation, and joint buyers, all with a view to resolving disproportionate impacts of the tax which can arise in certain circumstances.

Continuing and welfare attorneys

The Society responded to the Scottish Government's invitation to comment on the draft third edition of the Code of Practice for Continuing and Welfare Attorneys. The draft proposed introducing separate sections for granters and attorneys, as well as a number of updates to the content of the code.

It welcomed the proposals in order to achieve improvements in practice pending the outcome of the Scottish Mental Health Law Review. It suggested that the information for granters and substantive code of practice should be published as separate documents with appropriate cross-referencing and signposting, and that consideration be given to developing an additional simplified summary of essential points to improve accessibility. The structure of the code should be reviewed prior to publication. Comments also emphasised the need for UN CRPD requirements to be built in throughout the code.

Trust's used IT appeal

Edinburgh-based charity The Turing Trust is appealing for donations of used IT equipment to support its work in schools in need.

Founded in honour of Alan Turing by his family, the trust supports education in the UK and sub-Saharan Africa by reusing computers and improving teacher training using ICT. It also provides valuable training and volunteering opportunities at its Edinburgh workshop, while reducing waste by refurbishing IT equipment.

It welcomes any working IT equipment, including phones, tablets and more, from both households and businesses, and can provide accredited data destruction. Find out more at turingtrust.co.uk/

ACCREDITED PARALEGALS

Civil litigation – debt recovery
ALEXANDRA ARR, Moray Legal Ltd; COURTNEY McINTYRE, BTO Solicitors LLP.

Civil litigation – family Law
VICTORIA FENTON, Morton Fraser LLP.

Employment law
DERMOT COLE, Scottish Engineering.

Remortgage
DEBORAH DORAN, Moray Legal Ltd; HEATHER MEAD, Esson Aberdein.

Residential conveyancing
SUSAN McGOWAN, Raeside Chisholm Solicitors; SUSAN RAMSAY, Esson Aberdein; SHARON STODDARD, Wallace, Quinn & Co.

Wills and executries
RUTH CARDWELL, PRP Legal Ltd.

OBITUARIES

BRIAN GERARD GALLEN, Ayr
On 9 September 2021, Brian Gerard Gallen, formerly sole partner of the firm Brian G Gallen, Kilmarnock and latterly sole partner of Murray Gallen, Kilmarnock.
AGE: 70
ADMITTED: 1974

ROBERT JAMES CAMPBELL ANGUS, Allandale
On 2 February 2022, Robert James Campbell Angus, formerly partner with Bannatyne, Kirkwood, France & Co, Glasgow and latterly employed by the Secretary of State for Scotland, Glasgow
AGE: 86
ADMITTED: 1960

Urquhart among four new FRSEs

Four prominent Scots lawyers are among 80 individuals named in the 2022 intake of Fellows of the Royal Society of Edinburgh. They are Lady Dorrian, Lord Justice Clerk; Lord Woolman, Inner House judge and President of the Scottish Tribunals; Professor Lindsay Farmer of the University of Glasgow School of Law; and Linda Urquhart, former chief executive and then chair of Morton Fraser, and now a non-executive director and charity trustee.

In practice

MONEY LAUNDERING

AML: the new benchmark

In the first of a new series on AML measures, Fraser Sinclair considers the Society's updated sectoral risk assessment and what to take from it

In my time as the Law Society of Scotland's first AML risk manager, I inspected firms of different sizes and exposure to AML risk, and almost always found well-intentioned MLROs who understood the spirit of the regulations and guidance, but were forgivably perplexed by the parameters.

My new partnership with the Society to deliver a Certified Specialist in AML course, and my consultancy work under the AMLify brand, are a part of my commitment to using my own experience and knowledge to help solicitors comply in a way which is risk based and will help them contribute to a national culture that is prohibitive to the would-be money launderer.

This first in a set of quarterly AML articles is a briefing on the Society's new sectoral risk assessment.

Overview

Risk assessments are mandated at various levels by the UK Money Laundering Regulations. Our national risk assessment should inform the sectoral risk assessment, and our sectoral risk assessment informs our "Practice Wide Risk Assessment (PWRA)". In this way, our policy and procedures for AML should necessarily be the end point of a succinct and coherent approach from top to bottom. This makes the Society's new sectoral risk assessment a document for the AML canon.

In the four years between the Society's previous sectoral risk assessment and the newest release, a dedicated AML team was created, the AML certificate annual return was embedded, new LSAG guidance was released, a TCSP thematic was completed, and the Society began a more enhanced approach to AML-focused inspections. That's some serious action from which to draw more acute assessments.

Limited inherent risk	Moderate inherent risk	Substantial inherent risk
• Sham litigation • Notarial services • Cryptocurrency • High client turnover • Non-face to face delivery • Clients using in and out of scope services • Mergers and acquisitions	• Trust or company service provision (TCSP) • Misuse of the client account • PEPs • Familiar clients • Underlying client obscured • Pandemic related risks	• Conveyancing • High risk industries • Volume, nature and value • High risk geography • Combination of services • Risks relating to Chinese individual direct investment activity and high value goods

In fact, the sectoral assessment (above) plays many of the old hits.

Those exasperated by the due diligence involved in offering registered offices to national charities and Scouts branches might be glad to see TCSP specifically rated as moderate risk, and it will be no surprise to most to see conveyancing retain a top spot in the higher risk section.

Remember though, these assessments should not translate directly to "nailed-on" risk assessments of your clients and matters. Risk assessment should *always* be a holistic exercise in consideration of various factors.

It was interesting to note that PEPs have been placed in the "moderate inherent risk" category due, seemingly, only to a limited number of matters of concern being reviewed by the Society. PEPs remain ringfenced in the UK regulations for enhanced due diligence due to their presumed higher inherent risk, and firms must now juggle this with their own regulatory obligation to consider the sectoral assessment's stipulation that PEPs represent a moderate inherent risk.

It was also interesting to see that sham litigation is of limited inherent risk. The Society has recently responded to a UK-wide consultation that bogus litigation "appears so often as a headline grabbing money laundering technique", and that not pulling some litigation within the ambit of the regulations in future "may be a weakness in the UK's AML defences". Further, the assessment that there have not been "examples to date of potentially concerning or suspicious activity in this area of legal practice" should get a second glance – litigation is not in the AML-regulated sector and presumably there has been relatively little review of litigation files at all on inspection. If you don't look for something and then don't find it, to what extent is that the basis for a conclusion?

How to use it

Notwithstanding cavils like these, the sectoral assessment should be read carefully in line with your own PWRA and policies and procedures. The decision to put in a specific section on the dangers of certain funds of Chinese origin should induce those in conveyancing especially to have a further think on the subject (I recommend further reading – this issue is not straightforward).

You cannot implement a risk-based approach without first understanding the risks you face. This makes the Society's sectoral risk assessment a key weapon in the arsenal. My own tip here is to revisit your PWRA, specifically noting each of the factors listed in the sectoral assessment; write about your own exposure to them and, as applicable, any mitigating policy and procedure. You may gain fresh perspective on your own firm's AML regime.

If you feel that you could use support with AML, please see the Society's new Certified Specialist course in AML, or contact fraser.sinclair@Macroberts.com for queries on support, audit, training and consultancy.

Fraser Sinclair is head of AML for MacRoberts LLP and runs the AML consultancy brand AMLify.

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Why your client intake processes matter

Acquiring new clients is the lifeblood of any law firm. Having a strong client intake and client onboarding process is essential in this regard.

What is client intake/client onboarding? Simply put, it's the steps a law firm needs to take to turn prospective clients into paying clients. It's the means of ensuring that those who are interested in your law firm's services, and who you see as a fit for those services, are retaining your firm to perform legal work on their behalf.

Yet despite its importance, few law firms put much energy into improving their client intake and onboarding process. That's a mistake that can be costly for the following reasons.

The benefits of strong intake processes

You wouldn't leave a potential client waiting in your office for three days – but as statistics included in *How to Grow Your Firm with Legal Client Intake*, Clio's brand-new client intake and onboarding guide, show, that's exactly what a majority of firms do when it comes to telephone or online enquiries.

That sort of slow follow-up and poor attention to client care is not just irritating to potential clients – it's likely costing your firm money.

A poorly developed process can result in disorganisation, wasted time and lost revenue as potential clients slip through the cracks. It can slow lawyers and other firm staff down, not to have all the relevant information about a client to hand as needed. In some cases, it could even lead to complaints of professional negligence.

By creating a systematic approach to intake, including calendaring all important dates, collecting and storing your data and files in an organised manner, centralising where emails are stored, and creating prompts for follow-up, you'll drastically minimise the likelihood of incurring an otherwise avoidable negligence complaint.

The benefits go beyond compliance and good practice: a strong client intake process can increase a law firm's efficiency, and ultimately improve the number of new clients a firm takes on. This also means a better return on investment from any marketing efforts, and improved client satisfaction at the same time.

If you'd like to learn more about the benefits of optimising your client intake and onboarding process – and the concrete steps you can take to improve today – Clio's free guide can help.

Get your free copy at clio.com/law-scot-client-guide

RISK MANAGEMENT

Safe passage: navigating the return to the office

Does hybrid working give rise to risk management issues not present with either office based or entirely remote working? Anne Kentish and Graeme Milloy consider some scenarios to guard against

In the worst throes of the COVID-19 pandemic, we could all be forgiven for wishing for a return to the office and a turning back of the clocks to a pre-COVID world.

Now that working from home mandates, and restrictions on travel and social contact, are thankfully in the rear view mirror, many law firms are plotting their route for the road ahead.

For some of us, this means accepting that, for better or worse, our pre-pandemic ways of working are being permanently replaced with hybrid and flexible working models. For others, it means a readjustment back to paper files, battles over space in the office fridge and working from a desk that doesn't double up as a dinner table.

Whichever scenario applies to you, it is prudent to consider the risks created by our return to the office, in whatever form that return may take.

Hybrid hiccups

Hybrid working can be difficult to get right from a risk management perspective. Policies and procedures which are adequate for an entirely office-based or an entirely remotely distributed practice can prove to be the jack of all trades but master of none when transposed onto the hybrid model.

Consider that something as straightforward as a monthly file review may become anything but, in a hybrid workplace. In an entirely paper-based office this could be done in the old school fashion, by retrieving the hard copy file and reading through it. Likewise, in a fully paperless, remote setup it should be easy enough for any fee earner to access the electronic file and quickly review the critical information.

In a hybrid model, however, should there be a combination of paper and electronic files? Will fee earners with a preference for paper be permitted to use hard copies if they want? If so, is there a system in place to ensure that someone reviewing the electronic file is not missing something present in hard copy only, or vice versa? Are hard copy file notes, letters and other items consistently and timeously saved in electronic format so as to be accessible from any location?

A breakdown in any of these basic systems, even if only for a short period or in a small minority of cases, could lead to an interlocutor being overlooked, a deed being misplaced, or a client not being updated about a development, with the consequence that a complaint is made.

A moving target

It is likely that, even at firms which have elected to return fully to the office, individuals may still work remotely on an *ad hoc* basis.

Where there is movement of people there is likely to be movement of confidential information, whether stored in hard copy files or on laptops, tablets and work phones. The thought of losing any one of these items on the commute to and from the office is enough to make most of us break into a cold sweat.

There is no time like the present to test the security of anything which could fall into the possession of a third party. We need to be taking whatever steps are necessary to ensure that the data on any work equipment being moved from office to home are adequately protected in case of loss or theft. Steps as simple as ensuring screens automatically lock if left inactive for a short period cost nothing and can materially mitigate risk.

The potential for loss of equipment and data will be greater in workplaces which have implemented hotdesking, or any hybrid working arrangements intended to phase out the use of desktop computers and landline phones in favour of staff bringing their own laptops and work phones when they attend the office. Ensure that everyone is adequately refreshed on your data protection policies and reminded of the importance of being diligent in this area.

The Law Society of Scotland's website contains useful resources regarding cybersecurity and data protection more generally; this article is not intended to address those topics.

Oversharing

One of the consequences of the perceived success of widespread remote and hybrid working is that some of us are not, in fact, returning to the same office that we decamped from in March 2020. We may also now be sharing our workspaces with third parties.

For many firms, enforced remote working led to the conclusion that a downsizing of physical office space was possible. That has in turn led to an increase in the use of shared commercial spaces, where meeting rooms, desks, kitchens and administrative facilities are shared by more than one business and can be utilised on an "as and when required" basis.

Prior to the pandemic this trend had already gained some traction, principally in the creative and tech industries. As the return to the office takes place, the attractiveness of this model of working may grow. It seems likely that law firms will be among the businesses considering its viability.

It should surprise no one that a client is not likely to want the intimate

details of their sensitive case loudly discussed in a shared workspace for all and sundry to hear. Beyond commercial sensitivity, and basic respect for privacy, discussing confidential information in a shared commercial space, which amounts in practice to a public forum, risks falling foul of your professional obligations.

In terms of those obligations, solicitors do stand apart from other businesses; we should always be asking whether any shared workplace offers solutions to mitigate the risks our profession faces. If not, perhaps this kind of sharing may not actually be caring for our clients.

Postal problems

Various firms have decided to close offices in a move towards streamlining and reducing overheads. This trend is occurring both on the high street, where branch offices can often be closed because those working in them can operate just as well remotely, and in large firms wanting to focus their attention on core office locations.

A corollary of this trend is that administrative functions are often centralised. In management speak, this manifests itself in the creation of hubs handling all administrative work in support of all fee earners, no matter where they are located.

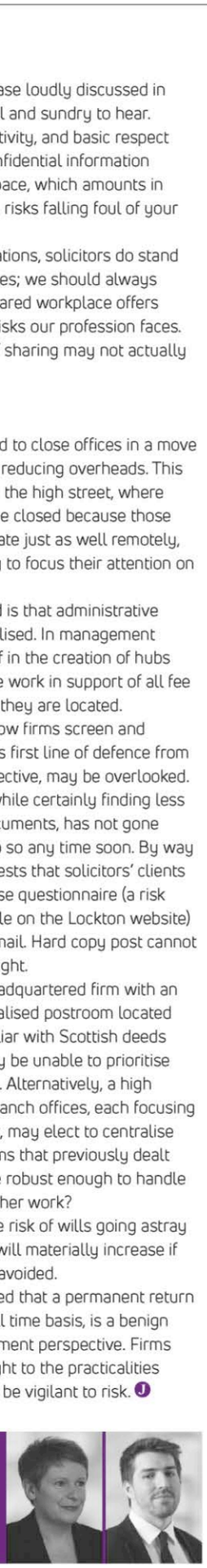
The effects of this on how firms screen and process mail, often a firm's first line of defence from a risk management perspective, may be overlooked. Bear in mind that paper, while certainly finding less favour than electronic documents, has not gone away and is unlikely to do so any time soon. By way of example, Lockton suggests that solicitors' clients send the property purchase questionnaire (a risk management item available on the Lockton website) by post, rather than via email. Hard copy post cannot be treated as an afterthought.

Consider an English headquartered firm with an office in Scotland. A centralised postroom located in England will be unfamiliar with Scottish deeds and court papers, and may be unable to prioritise incoming correspondence. Alternatively, a high street firm with several branch offices, each focusing on different types of work, may elect to centralise administration; will systems that previously dealt mainly with court work be robust enough to handle an increased volume of other work?

It is easy to see that the risk of wills going astray or deeds going unsigned will materially increase if the above pitfalls are not avoided.

It should not be assumed that a permanent return to the office, even on a full time basis, is a benign event from a risk management perspective. Firms need to give careful thought to the practicalities involved in the return and be vigilant to risk.

This article was authored for Lockton by **Anne Kentish**, partner and **Graeme Milloy**, associate of Clyde & Co



ASK ASH

Helicopter overhead

My manager insists on hovering and taking over what I am doing

Dear Ash,

I have a lovely line manager who is very supportive and well meaning. However, she has a habit of interfering in my workload to the point that if I'm finishing off a piece of work she will hover over me, and then start to dictate the actual content of the legal document. It's quite embarrassing in an open office environment and I feel undermined, especially as I'm used to working autonomously and am not a junior member of staff. I have tried to indicate gently to her that I can complete my work without her help, but she seems to insist on helping and this is starting to impact on my confidence levels.

Ash replies:

You seem to effectively have the equivalent to a "helicopter parent", i.e. a parent who "hovers overhead" and oversees every aspect of their child's life. Even with the best of intentions, this is arguably not the most effective way to parent or indeed manage someone.

You have indicated that you are not at junior level, and therefore there is no need for your manager to behave in this way. It comes down to a sense of control, and it is essential that you look to address this behaviour as otherwise you will effectively become like a PA typing up your manager's dictation.

I suggest you arrange an informal catch-up with your manager and confirm that you would like to discuss your future career development and training. At this meeting, you should seek feedback about your work and take the opportunity to highlight that you are keen and able to work autonomously; and that you are happy to confer with your manager should you have any specific concerns about your caseload. Highlight that you know how busy she is and that you do not want to place any undue burden on her as you are capable of dealing with your workload autonomously.

The meeting should also allow your manager the opportunity to highlight any concerns too, and allow you both to agree a way forward. Good luck!

Send your queries to Ash

"Ash" is a solicitor who is willing to answer work-related queries from solicitors and other legal professionals, which can be put to her via the editor: **peter@connectmedia.cc**. Confidence will be respected and any advice published will be anonymised.

Please note that letters to Ash are not received at the Law Society of Scotland. The Society offers a support service for trainees through its Education, Training & Qualifications team. Email **legaleduc@lawscot.org.uk** or phone 0131 226 7411 (select option 3).

IN ASSOCIATION WITH

amiqus

UK sanctions on Russia – what it means for your business

What sanctions involve, what law firms need to know, and how Amiqus can help

Following the recent invasion of Ukraine by Russia, the international community has responded by imposing a large number of sanctions on Russian politicians, individuals and entities along with Belarusian officials and military enterprises.

In this rapidly changing environment, it is important to establish the potential impact of the sanctions relating to Russia on your business and interests by carrying out swift and effective due diligence on any individual, entity, funds, or transaction with a connection to Russia.

Many businesses, particularly small and medium sized organisations, may assume that they **don't deal with oligarchs or the Kremlin, and ask themselves why are the sanctions relevant to them**? But this is the time for all legal and financial organisations to be extra vigilant and ensure that due diligence is carried out in line with the Government's guidelines on all new clients to eliminate any risk of money laundering.

In this article, we provide an overview of what are sanctions, the sanctions imposed by the UK Government on Russia, and how Amiqus can help to ensure compliance.

What are sanctions?

Sanctions are an important tool of governance in the global financial industry and have become crucial in navigating foreign relations, peacekeeping and conflict resolution.

Given their prevalence, there is an obligation on companies in the legal and financial sectors to understand what sanctions are, how they are used and how they impact their own business.

Types of sanctions

1. **Economic sanctions:** Withdrawal of customary trade and financial relations, e.g. blocking access to financial services and capital markets for individuals, companies or whole sectors of a certain country's economy.
2. **Diplomatic sanctions:** Reduction or removal of diplomatic ties, such as embassies or cancelling high-level government meetings.
3. **Sanctions on individuals:** Restrictive and punitive measures, e.g. asset freezes and travel bans, taken against particular individuals and groups who pose a threat to peace and security, including political elites, rebel groups, or terrorist organisations.
4. **United Nations Security Council (UNSC) and Office of Foreign Assets Control (OFAC) sanctions**

Measures taken by the UNSC range from economic and trade sanctions to more targeted actions, including arms embargoes, travel bans, and financial or commodity restrictions. Additionally, the UN applies sanctions to:

- support, maintain or restore international peace and security;
- deter non-constitutional changes;
- hinder terrorism;
- protect human rights;
- promote non-proliferation.

OFAC oversees and enforces economic and trade sanctions based on US foreign policy and national security objectives against targeted:

- foreign countries and regimes;
- terrorists;
- international narcotics traffickers;
- persons or groups engaged in activities related to the proliferation of weapons of mass destruction (WMDs) and other threats to the national security, foreign policy or economy of the US.

Sanctions on Russia by the UK – current situation

On 26 February, the UK, along with the US and EU, announced sanctions on Russia's central bank, which will involve freezing its assets held in sterling, dollars or euros.

They have also excluded Russia's biggest banks from SWIFT, the payment messaging network that enables cross-border transactions.

All Russian companies are restricted from accessing UK capital markets and trading in debt through the UK financial system.

The UK, US and EU have also blocked Russia's largest banks, including Sberbank and VTB, from accessing western capital markets, correspondent banking, and sterling, dollar and euro clearing.

Other measures introduced by the UK include:

- asset freezes on 100 new Russian entities and individuals;
- ban on the export of dual-use goods and technology to Russia;
- limits on the amount Russian nationals can place in UK bank accounts;
- additional sanctions on Belarus, for its role in the invasion of Ukraine.

At the time of writing this article, the UK has designated 66 entities and 197 individuals under its Russia-related sanctions regime.

As a result, many notable UK based international law firms have already severed ties with Kremlin-linked groups and oligarchs. In a statement, the global law firm Linklaters said it was closing its Moscow office and would not "act for individuals or entities that are controlled by, or under the influence of, the Russian state, or connected with the current Russian regime, wherever they are in the world".

What steps and actions you can take

- Ensure that senior management understands your organisation's sanctions obligations.
- Follow it up by putting policies and procedures in place.
- Make sure that your organisation's **politically exposed persons (PEPs)** and **sanctions screening** provide comprehensive coverage to match the nature, size and risk of the business.
- Provide regular training to make sure everyone within the organisation fully understands the requirements and procedures.
- Ensure that everyone knows who to escalate red flags and high risk results to, within the organisation, as and when required.

You can also have a look at our partner, Law Society of Scotland's sanctions FAQs database, which provides guidance to members of the legal profession on what is required of them.

How can Amiqus help?

The global sanctions landscape is fast-paced and more complex than ever before. As such you need a compliance platform that provides you with access to the most up-to-date databases.

With the click of a button you can include our Watchlist check, and instantly screen and continuously monitor global data on politically exposed persons (PEPs) and sanctions lists, as well as adverse media data from 500 million web pages, as part of your compliance and due diligence processes.

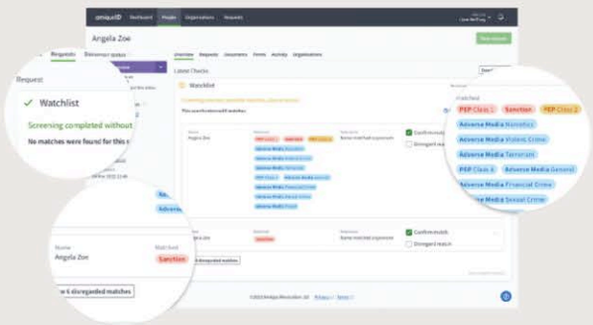
Amiqus PEPs/sanctions data is supplied and verified by ComplyAdvantage, a global leader of real time global sanctions screening. In order to respond to the rapid changes to sanctions regimes, its sanctions screening team is operating 24×7.

As a result, all sanctions updates going live on the ComplyAdvantage database are included in Amiqus PEPs/sanctions results, ensuring that our clients are not violating UK law by not including these in their searches.

The latest UK sanctions were added to our databases within 17 minutes of their announcement.

The following image is an example of the results you would see after completing a watchlist check, which includes:

- politically exposed persons (PEPs);
- sanctions;
- adverse media.



Sanctions

The Amiqus Watchlist check reviews profiles of people and organisations on global and national sanctions lists and thousands of government, regulatory, law enforcement, fitness and probity watchlists.

Possible results are:

- arms embargoes;
- import bans;
- export bans;
- financial sanctions: a financial sanction can consist of various penalties, including the prohibition on transferring funds to certain countries and the freezing of accounts and assets, as we are seeing now due to the **Russia-Ukraine conflict**. There are also specific financial sanctions that may prohibit individuals from providing financial support or services to citizens of a sanctioned country.

To know more about how our powerful watchlist functionality works, watch our short video on YouTube.

As we continue to monitor the situation, please don't hesitate to get in touch with us on support@amiqus.co if you want to know more about the Amiqus watchlist check and how it can help your business in the current climate.

For more information, contact our team at sale@amiqus.co to discuss, PEPs/sanctions checks for your business or any other concerns and needs you may have.

PEOPLE ISSUES

A **burning** issue

We all need to understand burnout and to contribute to reducing its causes, says Rupa Mooker

Burnout. Once rarely discussed, it's now recognised by the World Health Organisation as an occupational phenomenon resulting from chronic workplace stress that has not been successfully managed. Common signs include feeling tired or drained most of the time; feeling helpless, alone or defeated; having a cynical/negative outlook; self-doubt; procrastinating; and feeling overwhelmed.

It's a big workplace problem and one that's greatly affecting our profession, as reported last autumn by the mental health charity, LawCare. Its *Life in the Law* study captured data from more than 1,700 professionals in the UK. The study used recognised academic scales for burnout (disengagement and exhaustion), autonomy (ability to control what, where, how, and with whom, work is done), and psychological safety (ability to speak up with ideas and questions, raise concerns or admit mistakes). It found that legal professionals were at high risk of burnout, with those aged between 26 and 35 displaying the highest scores. In the 12 months before the survey, 69% of participants had experienced mental ill health, but only 56% had talked about it at work. The most common reason for not doing so was the fear of stigma and the resulting career, financial and reputational consequences.

Factors in the scales

I've been in the legal profession for over two decades, and unfortunately these results don't surprise me. Life in law is tough! It's competitive with high expectations, long hours, heavy workloads and tight deadlines. For many of us, working from home when the pandemic hit meant that, more than ever, there was no clear distinction between home life and work, leading to burnout for some. Now, as many workplaces shift to permanent hybrid working models, which bring their own challenges, how do we ensure burnout isn't one of them? Associated with absenteeism, higher staff turnover, lower productivity and commitment at work as well as a negative impact on physical and mental health, it has a huge effect on both individual and employer.

Organisational factors can play a bigger role in preventing burnout than individual level factors. To decrease the likelihood of burnout, the following things must be high on the agenda in any workplace: job autonomy and security, monitoring workloads, clearly communicating expectations, good manager support, staff engagement, creating a strong set of positive values and sense of belonging, and equality and fairness. A failure to address such key aspects leads to the core of many workplace conflicts, impacting negatively on individuals' health and wellbeing. While weekly fitness classes, or staff days out, are excellent ideas, they don't deal adequately with the problems at the heart of matters. Continuous work, investment and leadership on organisational issues is vital so that a positive and supportive culture is created as a preventative measure.

It's also important to note that, despite the added stress and exhaustion, women senior leaders do more to help their employees navigate work-life challenges, than men at the same level. The McKinsey report, *Women in the Workplace 2021*, highlighted that women are the ones stepping up to be the leaders that workplaces most need and value. They spend additional time helping manage workloads and are more likely to focus on emotional support and advancing diversity, equity, and inclusion. Burnout among these senior leaders is common because they're disproportionately doing this additional crucial work in the workplace, often unrecognised and unrewarded, as well as at home.

Things we can all do

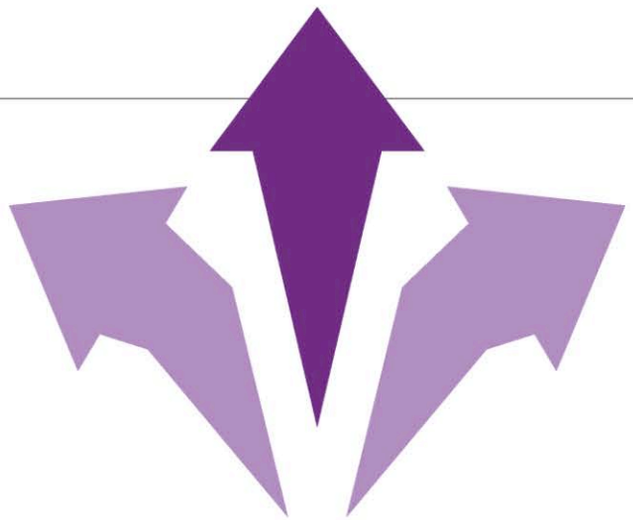
Burnout is not an individual issue that can just be managed with self-care. Our profession is at risk of losing talent unless we become proactive and innovative. Whatever our position or level of seniority, we can all contribute towards reducing the core causes. Say "thank you" or give positive feedback when someone does a good job, making them feel valued. Check in on colleagues more often. Train our managers to spot the signs and look for changes in behaviour that may suggest burnout. Are we familiar with our mental health procedures/employee assistance programme, or do we need to put them in place? Issue clear instructions when distributing work so there's no confusion about who is doing what or when it needs done by. Keep colleagues informed about changes or upcoming projects. Focus on creating environments where individuals feel safe sharing. Have open and real conversations and set clear guidelines and boundaries about excessive working hours.

The Scottish Government has committed to undertaking "meaningful discussions" on providing its employees the "right to disconnect". I'll be following these with great interest as, although they are confined to Government employees for now, the current climate regarding workplace burnout lends itself to extending such discussions to other sectors.

There has been much recent progress in addressing mental health stigma in the legal profession. However, burnt out employees often remain hesitant to speak out even when, quite frankly, they are drowning. I know from experience that little things, if done meaningfully and with the correct intention, have a huge impact on empowering those who might be struggling to speak up. It's important for senior leaders to model a healthy work culture, acting as positive role models.

Our profession's greatest asset is its people. Let's create a culture that puts our people first. J

Rupa Mooker is Director of People & Development with MacRoberts



Discipline cases: a three way balance

David Blair reports on three recent decisions where the Court of Session was asked to review procedural issues arising in cases of professional discipline

The rules of procedure in professional disciplinary cases are designed to ensure a fair balance between the interests of the regulated, the regulators and those who make complaints to regulators. Three recent decisions of the Scottish courts illustrate the importance of ensuring that all parties' interests are appropriately protected.

Steele v Police Scotland [2022] CSIH 10

In this appeal, the Inner House considered the rationality of Police Scotland's decision to invite the petitioner to a disciplinary meeting, as a result of conduct carried out on Twitter. During a fairly heated discussion with other Twitter users, relating to the death in custody of Sheku Bayoh, the petitioner had tweeted a GIF from the comedy film *Napoleon Dynamite*, depicting a man lightly tapping another man before running away.

Police Scotland raised disciplinary proceedings against the petitioner on the basis that the GIF could be interpreted as linking a light altercation to the allegations against the police in relation to the Sheku Bayoh case. The petitioner had sought judicial review of this decision and lost at first instance.

The Second Division refused the appeal. It considered that in order to be successful in challenging the proceedings at such an early stage (i.e. not challenging the *result* of the proceedings but merely the *raising of them*), the petitioner would have to demonstrate that on no objective view would he have a case to answer in terms of misconduct. This high test was not met. In the serious context of the discussions which were taking place, the use of a GIF from a comedy film could be viewed as inappropriate and Police Scotland were entitled to initiate disciplinary proceedings. The decision does not, of course, deal with the appropriateness of whatever disposal those proceedings may ultimately arrive at.

General Medical Council v MM [2022] CSOH 25

This case concerned a petition by the GMC to extend an interim suspension order put in place during the tenure of an investigation into a doctor. The interim suspension had initially been ordered by a Medical Practice Tribunal Service panel for a period of 18 months, and had been subject to a previous 12-month extension by the Court of Session. The GMC now sought a further extension of 12 months to allow it to conclude its investigations, which had been delayed both as a result of the pandemic and a parallel criminal investigation. The petition was opposed by the doctor on a number of grounds.

Lord Brailsford refused the prayer of the petition. In doing so, he considered that the GMC's pleadings had identified and applied a lower test than that required by s 41A(1) of the Medical Act 1983. The GMC had proceeded on the basis that "There may be impairment of the respondent's fitness to practise which may adversely affect the public interest." The court considered that the correct test was in fact: "Whether public confidence in the medical profession is likely to be seriously damaged if the doctor continues to hold unrestricted registration during the relevant period". Lord Brailsford concluded that it was tolerably clear that the test applied by the petitioner was a lower one than that set out in their own guidance on the statute and so refused the petition.

X v The Tribunal [2022] CSOH 15

This judicial review represented a slightly unusual circumstance. It functioned as an appeal against a decision of a "fitness for office" tribunal concerning a sheriff. However, the appeal was not made by the sheriff but by the complainer who had initially reported the allegations against the sheriff. The complainer, X, had alleged that the sheriff had acted inappropriately towards her. During a police investigation into those allegations, officers took statements from two other individuals, C1 and C2, who also alleged that the sheriff had acted inappropriately towards them prior to his appointment to the bench.

The statements of C1 and C2 were provided to the Judicial Office for Scotland's investigating officer. The investigating officer did not speak to C1 and C2 and considered that their complaints fell outside the remit of his investigation, which was addressed to the allegations made by X. However, he acknowledged that they might become relevant to issues of credibility, should the sheriff attempt to put his good character in issue. For reasons that are not entirely clear, the statements were not available to the presenting officer who conducted the hearing.

X sought judicial review of the tribunal's decision on the basis that there had been a breach of natural justice. She argued that the statements of C1 and C2 could have had a material effect on the outcome of the hearing and ought therefore to have been made available to the tribunal. Lord Woolman agreed with X's submissions. He considered that, as a result of the exclusion of the statements (for whatever reason), the tribunal had proceeded without all the available evidence and X had not been given a "fair crack of the whip". The decision of the tribunal was accordingly reduced.

David Blair
is an advocate with Axiom Advocates

PRACTICE POINTS

Tradecraft tips

Ashley Swanson puts together another set of tales from the front line to illustrate what keeping clients happy (or even attempting to) may involve

More ungrateful clients

I think that Robert Burns hit the nail on the head when he posed the plea: "O wad some Power the giftie gie us to see oursels as others see us".

A client telephoned me out of the blue asking for information about her house which had been purchased a few years previously. Immediately after the conversation was over I went down to the basement to retrieve the closed file. I had only been reading it for a few minutes when the client phoned again to say: "You probably don't think that my query is very important." Could I have given her query any higher priority? I wonder how I might have responded any more quickly.

On another occasion a recently bereaved family visited me at the outset of the executry to discuss the estate and to give details of the various assets. A few days later I received a mandate instructing me to deliver the file to another firm of solicitors. The family had gained the mistaken impression that I was not particularly bothered about the matter in hand. If that had indeed been the case the meeting would have lasted 10 minutes and not an hour and 10 minutes, and I would certainly not have telephoned halfway through the meeting to the Department of Work & Pensions to get an immediate answer to a query they had raised.

I think the same sort of thing happens to doctors. The patient is busy telling the doctor what is wrong with them and the doctor is busy typing on the computer. The patient sometimes gets the mistaken impression that the doctor is simply not listening at all.

Adding value – 1

Business clients were being sued for a substantial six-figure amount of money. The matter was quite complicated and it took some effort to extract the information from them to allow us to gain a proper understanding of the nature of the original transaction. The clients decided to concede the case and put us in funds to settle the full amount claimed.

Rather than simply throwing in the towel I pondered as to whether anything could be retrieved from the situation. I only became involved with the case a considerable time after it had started, and I had read the file from cover to cover twice over. I came to the conclusion that if it was a difficult case for me to deal with it was probably a difficult case for the pursuers' solicitor, and he might not exactly be relishing the prospect of fighting the case all the way through the court.

Notwithstanding the clients' decision to concede, I still felt that there was enough in their favour to make the outcome of the case less than completely certain.

I contacted the pursuers' solicitor and negotiated a settlement at a discount to the full amount claimed, and I was able to give the clients a five-figure refund.

Adding value – 2

A client wanted to buy a public house in a seaside village. The selling solicitors, whose office was about 62 miles away from ours, fixed a closing date for offers. We were not entirely convinced that there were any other interested parties, but the selling solicitors probably felt that we would not bother to attend the closing date in person so we would probably never know whether or not anyone else had offered. We did bother. There was nobody else at the closing date. My boss later did a deal on the telephone to buy the public house for £150,250. The offer which I had taken to the closing date and then taken back to the office was for £164,000. Simply transmitting the offer to the selling solicitors, rather than making the round trip, would have unknowingly cost the client £13,750.

Do not hesitate to make an extra effort if you think there is a chance that it might benefit the client. They will not grudge paying a little extra on their fees if they can see how much they have gained.

Adding value – 3

A former employer of mine was a dab hand at negotiating property sales. If he felt that he could get an offer increased he would first of all say to the client: "If I can get another £2,000 on the price, can I charge an extra fee?" The client would invariably say yes to this suggestion. The extra £2,000 was simply being pulled out of thin air and the fee was increased by a modest amount. If this was not charging fees on the basis of "value to the client", I do not know what would be.

Ashley Swanson is a solicitor in Aberdeen. The views expressed are personal. He invites other solicitors to contribute from their experience.

Classifieds

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If anyone holds or has knowledge of a Will for the late **Arthur Fergus Graham Smith** (DOB 07/8/1949), sometime of 9 Tantallon Place, Edinburgh, EH9 1NY and late of 34/2, Spottiswoode Road, Marchmont, Edinburgh, EH9 1BL please contact Jennifer Harris at Thorntons Law (jharris@thorntons-law.co.uk, 01382 346790)

David Gwynne Taylor (deceased)
Would anyone holding or having knowledge of a Will by David Gwynne Taylor (DOD 30/11/2021) latterly residing at 70/6 Marchmont Crescent, Edinburgh please contact Jackie Haston, Neilsons Solicitors, 2A Picardy Place, Edinburgh EH1 3JT, jackiehaston@neilsons.co.uk on 0131 556 5522

Peter O'Neill (Deceased)
Would anyone holding or have knowledge of a Will by Peter O'Neill late of 40 Pentland Crescent, Larkhall, ML9 1UR. Please contact John Jackson & Dick Limited, 48-50 Cadzow Street, Hamilton, ML3 6DT (pmilligan@jacksondicklaw.com)

Margaret Ellen Joyce (deceased)
Would anyone holding or having knowledge of a Will by Margaret Ellen Joyce, late of 52 Abercorn Road, Newton Mearns, Glasgow G77 6NA who died on 3 February 2022 please contact Sean Lynch of McCluskey Browne (seanl@mccluskeybrowne.co.uk) Tel 01563 544545 ext 234

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Belinda Wilson, deceased.
Would any person having any Will or having any knowledge of a Will by the late Belinda Wilson, sometime of 18 St. Andrew Street, North Berwick, East Lothian, EH39 4RU and late of 23 Quarryfoot Green, Bonnyrigg, EH19 2EJ who died on 31st January 2022, please get in touch with Edward Danks, Paris Steele, 35 Westgate, North Berwick, EH39 4AG: edanks@parissteele.com

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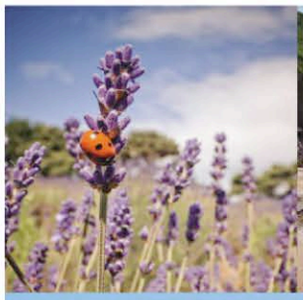

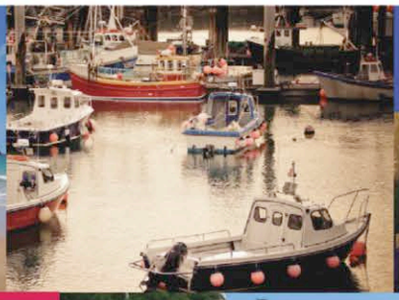

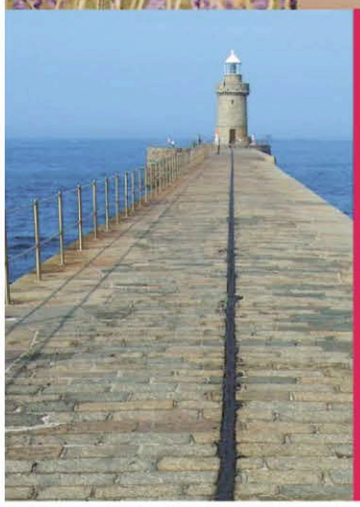

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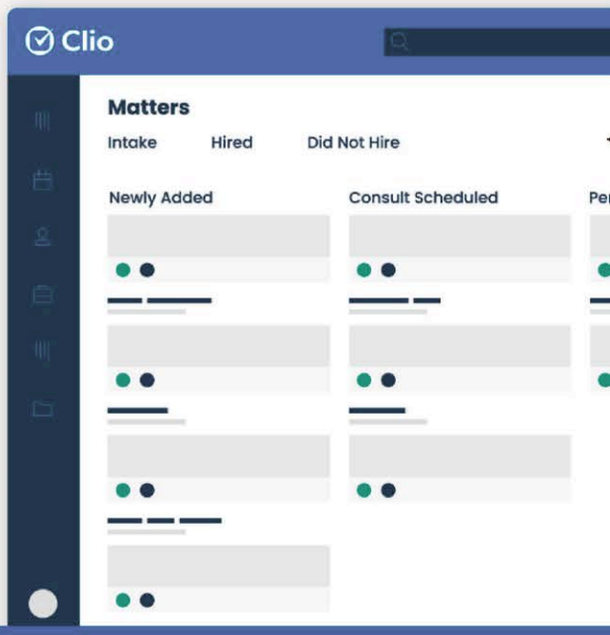

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