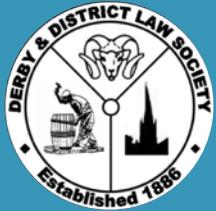


# D&DLS Bulletin

Derby & District Law Society



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

July / August 2021



## Derby City School Debate Competition winners 2021: West Park School

Also in this issue:

SRA Transparency Rules • Memories of an old Solicitor

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# D&DLS Bulletin

Derby & District Law Society

July / August 2021



## Contents

3 - Contents & Editorial	15 - Derby City School Debate 2021
4 - List of Officers	16 - More solicitors raising the topic of legacies with clients
5 - President's Page	20 - What the court expects from a competent Expert Witness
6 - The Derby Legal Walk	22 - Post-Nominals - Do they matter?
7 - Diversity, Equality & Inclusion Sub-Committee	24 - Minimising the impact of the Insurance Market
8 - SRA Transparency Rules	condition on your practice
10 - Obituary: Bruce Anthony	28 - Landmark Planning:
13 - Those were the days...	A Clearer View of Future Plans

## Editorial



**Who would have thought that "Freedom Day" would mean nightclubs opening, not having to wear masks in shops/ inside spaces and the return to what was once regarded as normal life. Surely Freedom Day is the overthrowing of some oppressive Dictator or allied troops marching victorious into an occupied town. Funny how much things have shifted in the last 18 months ?!**

The Derby City School debate competition concluded as it had begun – on MS Teams. A team from West Park School in Spalding were victorious and the write up is on page 15. If anyone has any thoughts/ ideas on similar projects that DDLS could be involved in please let me know. It certainly helps project a positive

image of the profession and I never fail to get solicitors/ members to give up their time to judge the event. Thank you.

To maintain the theme of looking back over our 135 year history there is a contribution on page 13 from a mystery author. Any guesses as to who said author is please e-mail. Likewise any reminiscences for the Bulletin please let me have them.

On page 6 you will see the write up for the Derby Legal Walk – which had been immaculately timed to coincide with the end of all Covid restrictions on 21<sup>st</sup> June – which sadly didn't materialise but a great £1,585 raised to date for this good cause.

Please see page 7 for a chance to be part of the new diversity, equality and inclusion

committee. Another great opportunity to help shape the future of the profession.

A plea for those more athletic amongst you. We have the annual cricket match in August against Nottinghamshire Law Society at Holme Pierrepont CC. Anyone wanting to take part please e-mail me. I will be doing my usual arm twisting/ polite invitations as soon as the date is finalised.

I hope to be on holiday in July – as ever the out of office will not be on for obvious reasons as I work from home – so please bear with me if a response is not immediate.

Take care  
**Julia Saunders**  
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Tina Attenborough

# President's Page



I would like to start by reiterating that I am honoured to be writing this as your President. I have had a busy start to my term, albeit that the majority of the activities have taken place either from my office or my living room!

I accepted an invitation to attend a virtual national Law Society meeting, hosted by Stephanie Boyce (President) and Lubna Shuja (Vice President). Representatives from all over the county attended and, akin to the Eurovision song contest judging, each representative was given one and a half minutes to say what the one most important issue was to their members. The common concerns were the massive increase in the cost of indemnity insurance, recruitment problems particularly in the field of Family and Conveyancing work but, by far the biggest concern was the potential closure of the Solicitors Indemnity Fund. None of us know what is around the corner and when we may need to call on the Fund. The SRA has recently confirmed that the fund will continue for

a further 12 months but we all need to consider what will happen after that.

Our national council representative, Michael Williams is working tirelessly to prevent the closure of the fund and has calculated that only £10 per year added to the annual cost of a Practising Certificate could raise £1.45 million annually to resolve this issue. Michael is seeking views as to whether the profession would agree to this if necessary to keep SIF going. I would be happy to pass any of your comments or views on to Michael (Julie.Skill@elliotmather.co.uk).

The consensus was that the national meeting was a great success and should be repeated twice per year.

I then attended the annual award ceremony, hosted by Northampton Law Society, which was again held remotely. This was an enjoyable evening with some worthy winners. Hopefully, moving forward, such events will be on a face-to-face basis and face masks will be a thing of the past!

The Legal Walk was something we could do

in person and I managed to increase my daily step count even though it wasn't possible to congregate together and have a long overdue catch-up with friends and colleagues as would have been the norm. I understand that so far £1375 has been raised for The Access to Justice Foundation which is a very worthy cause. Well done and thank you to all those that organised the event and took part in it.

Finally, I have just sat on the judging panel for the final of the School Debating Competition. The motion was very topical being the pros and cons of vaccine passports. As usual, the standard was excellent and continues to amaze me. It was an extremely close contest but congratulations go to West Park who won but was followed closely by Littleover.

I intend to continue attending as many events and activities as possible throughout my year in office and look forward to keeping you all updated and hope that I can rely on you all for your ongoing help and support.

**Julie Skill**

President, 2021-22

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# The Derby Legal Walk - Monday 21<sup>st</sup> June



The Derby legal Walk took place on Monday 21st June, whereby lots of members of the legal profession joined together to walk for access to Justice. At the time of writing, £1,585.00 has been raised – Derby had been set a target of £1,000.00, so we have reached this and beyond! The walk started at the Derby Law School, and we are grateful to the organisation and social distancing measures, when signing in that were place at the University to keep everyone safe.

The walk aims to walk past as many law firms in the city as possible, and then to finish a walk along the canal towards pride park, before returning to the City. A big thank you to the walkers that took part – Alexander & Co, Freeths LLP, Flint Bishop, Elliot Mather, Cartwright King, Derby University and Derby City Council. Thank you to the High Sheriff for attending the registration, and Mr Justice Jeremy Baker and HHJ Williscroft for joining the walk. In total around 30 walkers raised money for access to justice.



Derby & District Law Society are excited to announce the launch of the



## Diversity, Equality and Inclusion Sub Committee

We welcome members of the society to join us in helping to shape the strategy and roadmap to ensure that we are a more diverse and inclusive Society

For further information please contact Manesha Ruparel at [mr@aandco.co.uk](mailto:mr@aandco.co.uk)

# SRA Transparency Rules



**There is a myth that the SRA Transparency Rules only cover information related to fees and services, or firms providing any of the range of areas of law outlined within the rules. However, all firms are required to comply and we aim to provide an overview covering what these rules entail and what information should be provided to consumers. By and large, these rules relate to information published on a firm's website. However if a firm does not have a website, this information must be readily available upon request in another format.**

Beginning in 2019, the SRA conducted six-monthly website sweeps with over 600 firms' websites being reviewed. If a firm's website is found to not to be compliant, the SRA will check the firm's website again two months later. If at that point they find the firm is still not publishing the required information, the SRA could take enforcement action against the firm.

In large, the SRA Transparency Rules became a mandatory requirement for all firms in December 2018, with the SRA Digital Badge becoming a mandatory requirement later in November 2019. In summary, the rules require firms to display on their website:

- prices and descriptions of a select range of legal services
- a full complaints procedure, including details of how to complain to the Legal Ombudsman and the SRA
- the SRA Digital Badge and the firm's SRA number.

## SRA DIGITAL BADGE AND SRA ID

The SRA Digital Badge is a logo displayed

on the websites of firms regulated by the SRA. The badge is clickable, opening a new webpage to verify that the firm is regulated by the SRA and therefore clients are afforded protections against poor service or loss of a client's money. The badge is not an image file, but a bespoke snippet of software code made available by the SRA to firms who have registered their website through mySRA.

The badge and the firm's SRA ID must be shown in a prominent place on the website. 'A prominent place' is not defined by the SRA, however we interpret this as meaning being placed in the website footer or on the homepage although firms may be able to justify placing it on an 'About Us' page. The badge must be at the minimum size (or larger) set by the SRA of 275px by 163px.

## COMPLAINTS PROCEDURE

Irrespective of the categories of law provided, all firms must publish information about their complaints handling procedure, including details about the criteria for making a complaint to the Legal Ombudsman and the SRA. Stating that the firm's full procedure is 'available upon request', as is still the case with many firms, is not sufficient. The complaints handling procedure must be published in full, including step-by-step guidance with specified timescales regarding how to complain and the contact details of the staff member responsible for complaints handling. The complaints handling procedure must be easy to locate, such as through a link in the website footer.

## SERVICE INFORMATION

The SRA's Transparency Rules require firms

to display prices and service information for all of the following areas:

- Conveyancing (residential) including:
  - freehold sale or purchases
  - leasehold sales or purchases
  - mortgages or re-mortgages
- Probate (uncontested and relating to UK assets) including:
  - obtaining grant of probate
  - assistance with the collection and distribution of assets
- Motoring offences (summary offences at the Magistrates Court dealt with at a single hearing)
- Immigration (excluding asylum)
  - preparation and submission of immigration applications
  - provision of advice and representation at the First-Tier Tribunal (Immigration and Asylum Chamber) in relation to appeals against Home Office visa or immigration decisions
- Employment Tribunals
  - bringing of claims against an employer for unfair or wrongful dismissal
  - employment advice to employers in relation to defending claims before the Employment Tribunal brought by an employee for unfair or wrongful dismissal
- Debt recovery (up to the value of £100,000)
- Licensing applications for business premises

These rules do not apply to publicly funded work.

For each of the areas of law offered, firms must publish:

- information about the services included in the quoted price
- typical key stages of the matter
- typical timescales for each key stage
- details of any services not included in the price, that a client might reasonably expect to be included
- experience and qualifications of staff members carrying out the work in that area of law and their supervisors

## PRICING INFORMATION

For each of the areas of law offered, firms must publish:

- typical cost of the service (ideally likely total cost, however a range of costs or average cost may be justifiable)
- basis of charging (fixed fee, hourly rate).

Where hourly rates are provided, an estimated total amount of hours must also be included

- possible disbursements, including an estimated cost for each

Pricing information must state whether the costs and disbursements attract VAT, and the rate at which VAT will be charged (currently 20%). Where disbursements do not attract VAT, this must be made clear. Pricing information must be easy to locate and understand.

If using an online quote generator, in conveyancing for example, this should not require a potential client to enter their contact information to access the quote. The SRA will, however, permit quote generators that require contact information to be entered provided the enquirer is issued with an instant quote via the website after they have input the information required. The generated quote must then cover all the requirements of the rules including setting out VAT, disbursements and timescales etc.

## GENERAL DATA PROTECTION REGULATION & DATA PROTECTION ACT

As you will probably be aware, the General Data Protection Regulation (GDPR) & the Data Protection Act 2018 expect firms to protect personal data on their websites. The penalties for failing to comply with these obligations can be very serious, from financial fines to damage of a business' reputation. To ensure your firm follows GDPR, you must publish the information below on your website. If your firm does not have a website, it must be readily available upon request in another format.

## PRIVACY POLICY

A privacy policy should explain your conditions for processing data, your contractual obligations, consent, what sort of data you collect and when. How you use the data, how you protect the data, how long you keep the data for, who you share personal data with, where is personal data stored, what are the person's legal rights, information about cookies, links

to other websites and information about the regulator (which in this case is the ICO) should all be included. It should also mention the governing Act (Data Protection Act 2018) and the General Data Protection Regulation.

You should also either have a shorter version on the Contact Us form or link to the detailed version because you will be storing personal data on your servers. This must be included near any contact form or enquiry box situated on your website where consumers can input data.

## FREE WEBSITE CHECK

It's easier and cheaper to ensure the rules are met before the SRA arrive at your door. Please contact us by email, admin@dglegal.co.uk, if you would appreciate a free audit of your website.



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## Obituary: Bruce Anthony



Derbyshire working for a variety of practices as well as having his own independent practice as a family lawyer. Bruce was well known and popular as an entertaining storyteller and conversationalist. He was professionally incredibly well thought of.

His interest in things military and antique grew over the years and covered a bewildering number of areas - military buttons, antiques, 18th-century writing boxes to name but a few. He loved restoring these objects and was extremely knowledgeable. His house played host to the star exhibits of his collecting interests. Bruce also loved his garden and his dogs, of which he had a succession. He spent a good deal of time looking after his mother who had moved to Derbyshire at about the same time as Bruce.

We are deeply saddened by the untimely death of Bruce Anthony, a well-regarded and fondly remembered local family practitioner.

Bruce was born and grew up in Surrey, attending King's College School Wimbledon and subsequently Lancaster University where he studied English and Drama. After university he went to Sandhurst and following this elected to become a lawyer, doing his conversion course in Chester and coming to Derbyshire to do his articles.

Bruce spent his whole professional life in

Colleagues who have taken over his cases have been very moved by the kindness which he has shown to his clients. His letters to them are comforting and reassuring and contain a lot of practical advice. For one who never married he had great insight into the ins and out of married life! Many of his former clients are already missing him terribly.

Bruce was in the premier league of local family lawyers. He was involved in the seminal case of Thomas v Thomas which went to the Court of Appeal (which addressed the issue of discretionary trusts in financial remedy proceedings) and which still sets a precedent today. He was able to craft a letter and pleadings like no one else.

He will be missed for his mischievous smile. He was a true gentleman and he did not take himself too seriously. Even if he disagreed with your argument he would always reply politely with a smile on his face. He was always an enjoyable opponent as you could be fairly sure that if you had a morning case you would end up in the pub afterwards for a somewhat boozy lunch !! When remembering Bruce, colleagues invariably use the words "kind", "gentleman", "decent", "generous" and "genuinely nice". We have lost a very able solicitor and to many of us a very good friend.

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## Those were the days... Memories of an old solicitor



**Those were the days...** when many country practices, postwar, included an office of the Registrar for Births, Deaths and Marriages - usually the Senior Partner. Remember, until about (as recently as) 1984 Solicitors were prevented from advertising or "touting" for business beyond a brass plate on the door (the size of which was regulated)! Having a Registrar's Office (ostensibly providing a public/community service) got people in through the door. Until about 1980 Robinsons at Ilkeston was a Registry of Births Deaths and Marriages (a "cradle to the grave service"). The large front office was entirely taken over by the Registrar (Senior Partner Paul Robinson) and weddings were regularly conducted there. The other front office was taken over by "The Woolwich Equitable Building Society" of which the firm was a branch. Again this got "the punters" in, attracted the conveyancing business and the commission provided extra income (for the Senior Partner), it was kept firmly separated from practice income.

**Those were the days...** when in the 1960s and 70s every Petty Sessional Division in the County had courts (both magistrate and civil) in local public buildings, usually in a room set aside otherwise for Council Meetings. Speaking of Ilkeston P S D. there were weekly Magistrates courts in the Town Halls at Ripley, Heanor Long Eaton and Ilkeston (twice weekly). In Ilkeston the County Court was also held in the Council Chamber. Some more rural parts of the County had to resort to other forms of public building in the town (Bakewell had a weekly magistrates court on market day in a local pub, and until shortly before the end of the 1960s there was a magistrates court held, probably once each month, in Repton in an upper room in the Bulls Head). Courts in public houses could only be held outside

licensing hours, so the business was always completed quickly.

Hearings at these "outlying" courts could be idiosyncratic but one common feature was the almost complete absence of anywhere to take instructions with any degree of confidentiality. In Ripley instructions were taken on the back stairs/fire escape and at Ashbourne in the Town Hall in the toilets! The Magistrates Court at Ilkeston was held in the Council Chamber which boasted a large rotating fan in the middle of the ceiling, reminiscent of the latter days of the Raj. On hot summer days when the fan was activated all loose papers in the courtroom, court files, prosecution and defence papers were scattered to the corners of the room. It was a good and standard defence ploy to ask for the fan to be turned on when the defendant was under pressure in cross examination. The court in Long Eaton Town Hall was held in a Council Chamber which had a stage behind the magistrate's bench. This doubled - up as a setting for the local Am. Dram. On one occasion the stage set up for a production of "Trial by Jury". Disconcertingly, placed behind the magistrates was part of the set consisting of a gallows. The rather po-faced magistrates saw nothing "out of the way" in this arrangement!

So, the arrangements for the conduct of business, particularly in the magistrates courts, in those days, was haphazard (if the

Magistrates Clerk was taking an outlying court he would pack all the court files for the day in to the boot of his car and drive to the venue - not much data security). But, on the other side of the coin, there was much more camaraderie than today - at Ilkeston every Thursday, the main magistrates court sitting, the Magistrates Clerk and other court clerks, the prosecutors (then the County Prosecuting Solicitors Dept) and the defence solicitors would all have lunch together in the "Regency Rooms" in the Ilkeston Co-Op

Mr X



Long Eaton Town Hall



Ilkeston, early 1970s

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- Our LLM course combines academic and theoretical knowledge. You will develop your understanding of the interaction between law and policy at an international level, enabling you to contribute to organisations and commercial enterprises operating across the global policy arena
- High quality research is at the heart of the LLM. You will enhance your research, communication and independent study techniques through specialist modules, and then use these to carry out an extensive investigation of a significant topic.



## Derby City School Debate Competition 2021

This is the year that we just had to make the best of it. The debate competition was due to go ahead as usual at the beginning of the year but all schools reverted to online teaching and the competition was postponed to the Summer term.



With a slightly reduced field the competition started after Easter all on MS Teams thanks to the University of Derby and the hitherto unknown tech skills of Senior Lecturer and former criminal practitioner Steve Bravery!

The eight teams from four schools threw themselves into debates such as should monuments to controversial historical figures remain with huge enthusiasm. The competitors showed their resilience by taking to presenting their speeches to a screen with skill and confidence. It is testament to these young adults and their dedicated teachers that they were able to deliver such debates of high quality and without exception they took on board the comments of the judges and improved their public speaking skills as the competition went on. Congratulations to all the pupils and to the staff who supported and encouraged them.

The Final took place on 30<sup>th</sup> June when a team from West Park School narrowly beat a school from Littleover Community School debating whether vaccine passports benefit

society. The final was judged by Steve Bravery, Julie Skill - current President of DDLS and Mike Copestake - former President of DDLS, future High Sheriff of Derby and current Chair of E4E. The judges were impressed at the standard of debating on display saying:

*"There were again some real natural orators and I really take my hat off to those challenging themselves to develop."*

The competition has, once again, been organized by the Derby and District Law Society, E4E and The University of Derby Law School. The project is a great example of organizations working well together and what can be achieved with lots of time but very little financial input.

A massive THANK YOU to all the academic staff at the University of Derby and members of DDLS who helped judge the competition, all at E4E, particularly Helen Guyatt and Arshad Iqbal, for their support throughout and help



in contacting the schools and everyone who gave up their time to make this project such a fantastic success.



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# Record levels of solicitors raise the topic of legacies with clients



The proportion of solicitors and Will-writers mentioning the option of legacy giving with clients has risen to an all-time high, according to new research commissioned by Remember A Charity.

The tracking study, carried out by Future Thinking, monitors solicitors' and professional Will-writers' approach towards legacy giving and attitudes towards working with charities. The study reveals that 68% of solicitors and Will-writers always or sometimes proactively raise the subject of legacy giving with clients, up from 58% in 2012.

Almost one quarter (24%) occasionally raise the topic, while only 7% say they never do, down from more than twice that (16%) in 2012. On average, advisers report that 20% of the Wills they deal with annually contain a charitable bequest, having risen steadily from 16% in 2012. 85% of the legal firms in the study had assisted in administering estates that included a legacy.



**Rob Cope**, Director of Remember A Charity, says: "Over the years, we've seen a marked change in the way that advisers are approaching gifts in Wills with clients. Legacy giving is becoming more common across the client base, and there's much less reticence when it comes to raising the topic of charitable giving."

"Increasingly, advisers now see discussions about gifts in Wills as part and parcel of offering a comprehensive service to clients. In most cases, clients will want to look after friends and family first – and that's something we'd encourage."

"But a simple question asking all Will-writing clients if they'd like to consider leaving a donation too can make a huge difference to the number of people that choose to give in this way, which is why working with advisers is such a key part of our strategy."

For the first time, the tracking study also explored the reasons for and barriers against opening up legacy giving conversations with clients. Advisors that always open up legacy giving conversations with clients said they typically do so because it is part of their standard Will-writing process or because they

want to alert clients to the tax breaks linked to writing a gift into their Will.

Any legacy gift to charity is currently exempt from Inheritance Tax (charged at 40%), and a lower rate of tax (36%) is applicable on estates where 10% or more is donated. The most common barrier for not always mentioning legacy giving is that clients have already made clear their intentions, such as wanting their family and friends to be sole beneficiaries.

Rob adds: "Clearly, there's much further to go before legacy giving becomes a social norm and every adviser feels comfortable and confident about raising the conversation with clients. We'll be working more closely with the legal sector in the coming months to encourage greater consistency in the way that advisers approach gifts in Wills with clients and to provide resources that help them do so."

Remember A Charity is now working with the legal sector to develop a new suite of materials that will help to bring greater consistency and demonstrate best practice for the way that advisors can reference charitable giving with clients.

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# What the court expects of a competent Expert Witness



Lord Hodge, Deputy President of the Supreme Court gave the keynote address at this year's EWI Online Conference.



Lord Hodge

In his first year as the EWI President, Lord Hodge had been encouraged to reflect on his own experience of expert witnesses, both as a judge and advocate. In his address, he explored the critical role of the expert witness in the administration of justice, together with judicial expectation. Lord Hodge also shared his thoughts on the impact of the pandemic on the courts. He said the title of the conference, 'Lawyers and Experts: Facing the Future together', felt particularly apt.

Lord Hodge cited examples from several cases, and in particular referred to the South Australian case of Bonython, when outlining the considerations governing the admissibility of expert evidence. On impartiality, Lord Hodge endorsed Mr Justice Cresswell in the case of the 'Ikarian Reefer'. In the same case Mr Justice Cresswell laid out the judicial expectation of the expert witness, which is now codified in England and Wales in practice direction 35, supplementing CPR part 35.

Building on these foundations Lord Hodge offered his own observation on what the court expects of a competent expert witness. These were:

## Independence and Impartiality.

While this might seem obvious, he felt it was concerning that in a 2019 survey 25% of expert witnesses had felt pressurised to change their report in a way that damaged their impartiality, and 41% indicated that they had come across other expert witnesses they considered to be a 'hired gun'.

## Expert evidence must be 'expert'.

In addition, an expert witness had to undertake the task of 'being an expert',

being aware and competent in their duties to the court,

Continual critical examination of their own work or opinion.

Ownership, or, as expressed by Lord Justice McFarlane in a 2018 speech in one word: 'Clarity'. Both clarity of thought and clarity of expression or presentation of the evidence will assist the judge greatly. Lord Hodge stressed that it was imperative that expert witnesses take full responsibility throughout the process of preparation and presentation for his or her opinion evidence.

Lord Hodge then turned to the expert's cooperation with other actors and the role of professional organisations. Having quoted Judge Claire Evans: "There are plenty not very good experts around. Some soi-disants experts are worse than not very good, they do great harm." He proceeded to give some examples. Lord Hodge praised specialist organisation and institutions such as the EWI for their role in minimising the occurrence of harmful expert witnesses by advocating for high standards in expert evidence. Membership of these bodies could give credibility to an expert witness, as it showed that he or she is taking the role seriously by signing up to a set of standards of behaviour and competence and is maintaining his or her continual professional development.

Lord Hodge pointed out that lawyers and instructing parties also played an important part, not just by ascertaining that an expert did possess the necessary expertise and making them aware of their duty to the court, but by ensuring the expert was made aware of all the facts of the case, including material that did not support the client's case. Returning to the results of the 2019 survey, Lord Hodge said that "Lawyers must do better. They may obtain useful assistance on best practice on consulting experts in guidance issued by the Civil Justice Council." Also, just as expert witnesses must learn to grapple with the intricacies of law and court proceedings, so, too must lawyers improve their scientific and technical literacy to do their job effectively in cases concerning

experts and testimony. The task of policing compliance with an expert's duties falls to the court. The 'judicial primers project' presented a valuable opportunity to assist judges in their task. Importantly, the primers are not intended to replace scientific evidence, but in assisting judges in understanding and assessing evidence. In conclusion: "judges, lawyers and experts have to face the future together".

Lord Hodge reflected on the impact of the COVID-19 pandemic on the courts. He was very much aware that life had not been easy for expert witnesses during the pandemic both in terms of carrying out physical site visits or examinations and in financial impact, be that through postponed trials, or delays in payment. However, not all consequences of the pandemic were bad. The court's operations during the pandemic were, as in the words of the Lord Chief Justice: "the biggest pilot project the justice system has ever seen." It was important to take time to reflect on what had worked well and how this could be harnessed more broadly to improve the overall function of our system of justice.

Some immediate improvements were bound to stay, for example, online filing had been introduced at the Supreme Court and that practice would continue. This would save money and have a positive environmental impact. Modern technology had been adopted on a wide-spread basis. Lord Hodge expected that remote hearings were here to stay, particularly for incidental and case management business. There was scope for more radical changes within the judicial system in the coming years, more widespread access to justice could be provided by the accelerated move to digital services.

The task of transforming our justice system required the input of all actors in the court system. As concluded earlier: "judges, lawyers and experts have to face the future together". This conference presented an opportunity to enhance the contribution of expert witnesses and those lawyers who work with them in support of that aim.

Simon Berney-Edwards



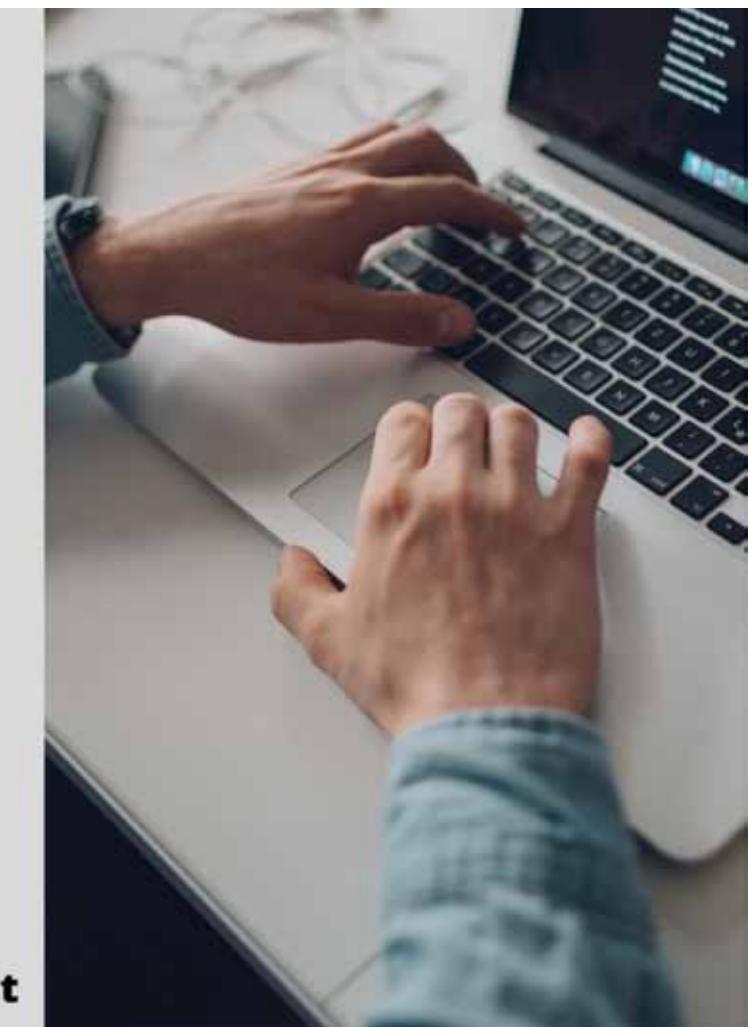
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# Post-Nominals – do they matter?



This is a moral tale about your choice of expert.

A little while ago – see <https://chrismakin.co.uk/when-experts-wreck-your-case/> – I wrote about Andrew Ager, an “expert” appointed by the CPS to give evidence at the trial of some men accused of the sale of voluntary carbon credits. His incompetence, lack of experience and malpractice were quite breathtaking, causing the criminal trial to collapse and the CPS having to revisit several previous trials at which his unsafe expert evidence had helped to achieve convictions. I will not repeat Ager’s failings here, but that article tells a story which is difficult to believe.

More recently, we hear of the failings of Carl Stokes who gave evidence at the Grenfell enquiry. This is another story which is difficult to believe, but please read on.

Carl Stokes is a former firefighter who became a fire safety consultant on retirement, and bid for the work of assessing fire safety at Grenfell Tower for the Kensington and Chelsea Tenant Management Association (KCTMO). He carried out six fire safety inspections between 2009 and 2016; that is, from long before the fire on 14 June 2017 until after installation of the disastrous cladding which Sir Martin Moore Bick, the enquiry chairman, found did not comply with building regulations.

Stokes’s evidence to the enquiry was that he got the job with KCTMO because he appended to his name six post-nominal letters to which he was not entitled or which did not exist. The report I have seen makes reference to some of them, from which one may deduce that his business card must have read something like this:

Carl Stokes fire eng (FPA), IFE assessor/auditor (FSO), NEBOSH, FIA BS5839 system designer, competent engineer BS 5266 (*plus one more, unknown*)  
That’s ugly enough, but some of these were simply reference numbers for courses he had attended, and he was not an IFE (member of the Institution of Fire Engineers). When challenged on that, he replied that anyone could check that he did not have that qualification if they had looked at the list of members at IFA!

This was clearly a person whose competence should have been questioned. And in further evidence it was revealed that he did not carry out proper inspections; in fact he cut and pasted extracts from other reports into his Grenfell reports, with the result, for example, that he commented on the Grenfell balconies. Grenfell did not have balconies.

The moral is that someone at KCTMO should have checked this man’s qualifications when he was selected. And preaching the obvious, this should also be done by you as instructing solicitors when choosing your experts. Your intended expert’s post-nominal letters should stand scrutiny. As an example, here are mine with their provenance:

- FCA = Fellow, Institute of Chartered Accountants in England & Wales
- FCMI = Fellow, Chartered Management Institute
- FAE = Fellow, The Academy of Experts (one of only about 60 worldwide)
- QDR = Qualified in Dispute Resolution. (In fact, I have this twice: as an accredited mediator at The Academy of Experts and as an accredited expert determiner there, in the first batch of five ever to be awarded this. I could put QDR QDR after my name, or perhaps QDR2, but that would be pretentious!)
- MCIArb = Member, Chartered Institute of Arbitrators (as an accredited mediator)

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You, dear litigation lawyer, will have spent a great deal of time and effort on your cases. When you reach the point of instructing experts, don’t be fooled by a long string of invented qualifications. Relying on the likes of Andrew Ager or Carl Stokes as your expert may not be wise.

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

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

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# Minimising the impact of the Insurance Market condition on your practice

In recent months, much has been reported on the current condition of the professional indemnity insurance market. Unfortunately, experience tells us there will not be a quick resolution to these prevailing market conditions.

Insurance companies are commercial enterprises; just like legal practices, they want to turn a profit or at worst, break even for the transferring of risk. However, several leading insurers are unable to do this in the current climate. Right now, claims activity in the legal profession surpasses the premiums collected, and both the severity and the frequency of claims are also on the rise.

Indeed, not all practices experience claims, and firms that have may be unlikely to repeat them. Either way, the insurance policy has to respond in the event of a claim. Losses experienced will impact insurers' premiums in the relevant practice areas, with this adjustment likely to affect even claim-free practices. Those that experience claims are likely to be impacted more severely, as these could influence the base rates of their practice areas. If the claims burn cost (explained below) is impacted, premiums could be affected.

## Example of claims burning cost calculation

Total value of claims over X years	x 100 = claims burn %
Premium collected over X years	

In light of the above, today's insurance market is a challenging environment for firms. The whole premise of insurance is that the premiums of the many pay for the claims of the few. If this simple metric isn't working, there will naturally need to be a change. In light of the current circumstances, insurers' appetites have been suppressed and PII insurance rates and premiums are typically increasing. Practices can, however, take steps to minimise the impact to them specifically.

Firstly, to protect the short, medium and long-term costs of your insurance, it is imperative to continue to evolve your approach to risk management, taking time at regular intervals to assess the risks associated with your specialisms. Risks evolve, and if you do not dedicate the time to assess exposures and implement appropriate procedures, you will be increasing your chances of claims. Failure to implement an effective risk management plan could have significant consequences; some practices will experience much higher price adjustments due to the market conditions and loss deterioration.

We recommend taking the following steps to protect your practice from tough market conditions:

**1.** Prepare a quality presentation, including detail beyond the minimum required information. Your PII presentation is effectively your shop window to insurers, so we recommend using this opportunity wisely.

Many practices claim to be 'low risk' in their activities, but few articulate why. Providing evidence for the underwriter's file is absolutely critical, and we recommend providing additional information to support the numerical data in your proposal form. Be careful not to overdo this; if the documentation is too wordy, it will defend itself well from ever being read.

Your proposal should highlight the key and salient points, focussing on how you mitigate the risks associated with your specialism, while also pointing out the accomplishments of your practice and its fee earners.

Please remember that your presentation is not the only window a prudent underwriter will look into, they will also check your web presence.

We recommend ensuring that your website accurately reflects what you actually do – this goes for imagery too.

Do also check the law society website does not contradict your presentation in

any way. Look out for the descriptions of your work, your staff and your accreditations – if you identify errors, you can request an edit. Any online reviews or any commentary from open sources will also need to be addressed.

**2.** Selection of the right representative is key. Comprehensive and direct insurer market access are crucial components, so anyone professing to be a specialist broker should be able to demonstrate these to you. You should be provided with a clear understanding (in writing) of the insurers that the representative plans to approach on your behalf. An important consideration in your selection is that, regardless of the size of your practice, a comprehensive market exercise cannot be undertaken without Lockton. This is due to sole distribution rights to various insurers.

You may also wish to check the representative's claims infrastructure. While no practice wishes to experience claims, if this happens you want assurance that your representatives have the experience and expertise to assist you in your hour of need.

**3.** Start early. For those that renew in October, I would suggest that now is the time to start. While preparing your presentation, request your claim summaries to check that these are accurate. If you have experienced claims, a narrative will be expected around what happened, along with measures implemented to prevent a repeat occurrence. Insurers will also expect an explanation around any open notifications, including your view on merit and quantum.

Right now, the market is challenging, but Lockton can still create healthy competition and deliver innovative solutions for your business. To find out how we can assist you, or to request support as to what to include in your presentation, please contact me or another member of the Lockton team.

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## Anti-money laundering back in the spotlight for conveyancers

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



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

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

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

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

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

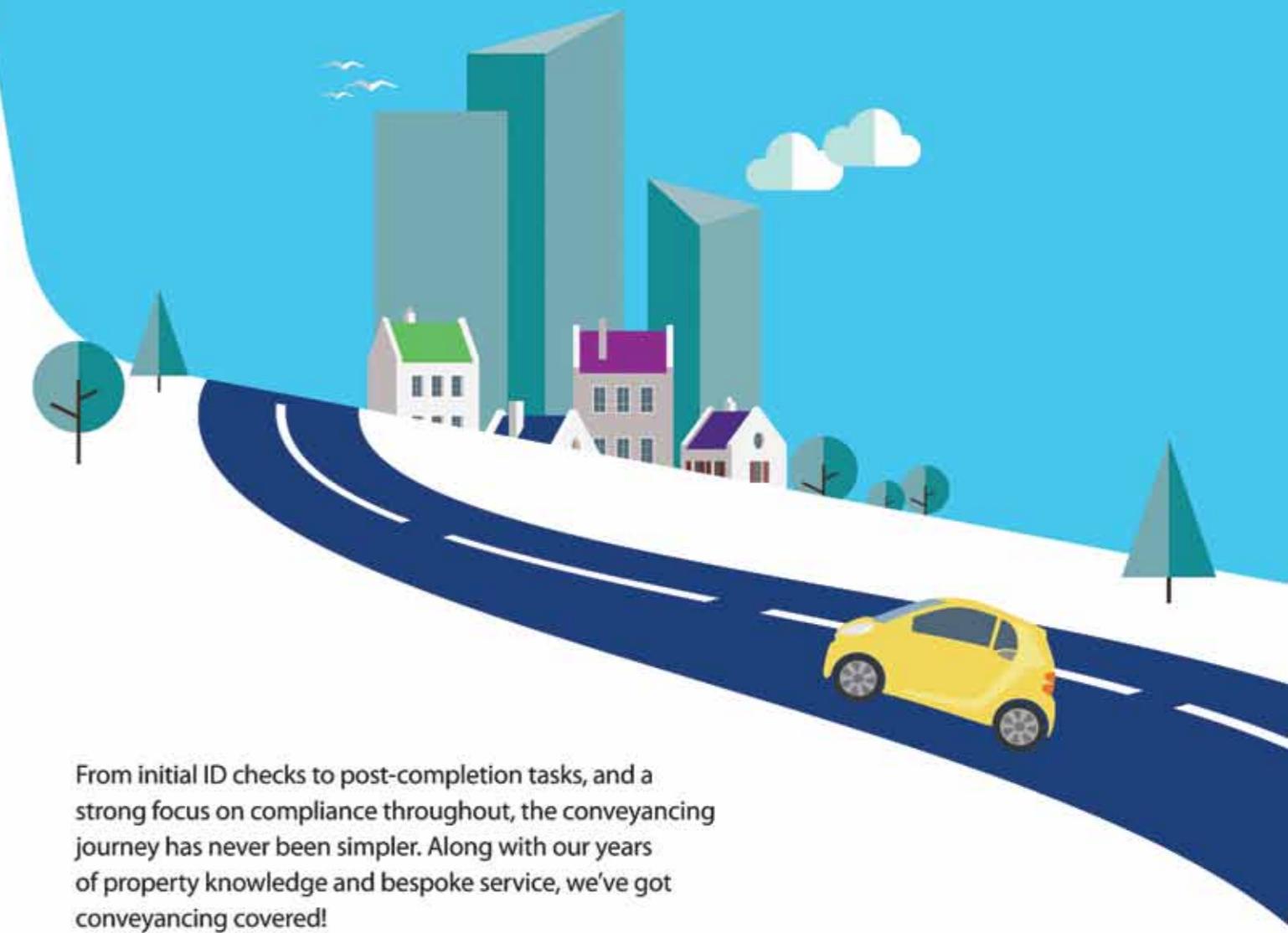
(ii) Legal Sector Affinity Group anti-money laundering guidance for the legal sector <https://www.lawsociety.org.uk/en/topics/anti-money-laundering/anti-money-laundering-guidance>



### How an electronic AML check can help

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

# The road to conveyancing success.



From initial ID checks to post-completion tasks, and a strong focus on compliance throughout, the conveyancing journey has never been simpler. Along with our years of property knowledge and bespoke service, we've got conveyancing covered!

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# Landmark Planning: A Clearer View of Future Plans



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**They've got big plans**

**But what's everyone else up to?**

When someone is planning on buying their new home, changes to the surrounding environment can throw a spanner in the works. Have you provided the information they need to make it their dream home?

**RiskView Residential**, the all-in-one environmental report, now includes large site planning applications as polygons alongside other planning applications and constraints data presenting a more realistic view and understanding. Providing complete environmental due diligence with professional opinion in one report, RiskView is the market leading choice in client care.

Contact your search provider for details or visit  
[www.landmark.co.uk/landmark-legal/riskview-conveyancer](http://www.landmark.co.uk/landmark-legal/riskview-conveyancer)

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

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## A True Story

\* Mabel came to Able Community Care for a Live-in Care Package in 2006 because at the age of 86 years Mabel could no longer live without care support.

In 2021 our live-in carers are still supporting Mabel who continues to live in the bungalow she never wanted to leave.

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For your information pack

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\* Only the name has been changed

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