

D&DLS Bulletin

Derby & District Law Society



www.derbylaw.net

Sept / Oct 2019

Derby Legal Walk 2019 - rain stopped play... ...and then we raised £900! see p.7



Also in this issue: Andy Cash's *Back to the Future* • Council Member's Report

Gold Patrons of the Society



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Editorial



My house is quiet, clean and tidy and I feel calm as, at last, my children have gone back to school!! With two growing teenage boys (6'3" – when do they stop??) we have spent the Summer being ruled by their teenage hormones and their need for constant healthy snacks (which are the size of a Sunday Roast) and meals at two hourly intervals. It is tiring to say the least and costs a fortune.

Sadly, the cricket match against Nottinghamshire Law Society was cancelled due to the weather. We will just have to hang on to the silver ware for an extra year. Thanks to those who were going to play and David Williams for organising and then (hopefully) of disposing humanely of all the sandwiches!!

There is a save the date for the Quiz on page 15, Sue Woodall and her team are already writing the questions and I am just waiting to hear about the cheese and biscuit situation before e-mailing out the invites – start getting your teams together.

We are running the Derby City Schools debate competition again this year and entry forms will be going out shortly. Anyone wanting to volunteer to Judge please e-mail me. Likewise, I am starting a database of lawyers willing to go into schools to mentor children/ do mock interviews/ careers talks etc. If you are able to give up a little time for this again please let me know.

You will see from the inside cover of the Bulletin that we have a number of thriving sub-committees. The criminal sub-committee notes appear on page 12. I am pleased to say that the Civil Litigation Committee is re-forming. Oliver Maxwell (Nelsons) will be setting up a meeting before Christmas and if you are interested in being involved and going along please contact him on www.oliver.maxwell@nelsonslaw.co.uk

Julia Saunders
admin@derbylaw.net
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Officers and Committee Members for 2019-20

Officers

President*

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

Vice-President*

Julie Skill,
Elliot Mather LLP
Chesterfield
Tel: 01246 231288;
julie.skill@elliottmather.co.uk

Deputy Vice-President*

Manesha Ruparel
Alexander & Co
mr@aandco.co.uk
Tel: (01332) 600005

Honorary Secretary*

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

Honorary Treasurer*

Ben Lawson
Geldards LLP, Derby
Tel: 01332 331631

Immediate Past President*

Ben Lawson
Geldards LLP, Derby
Tel: 01332 331631

(* = Ex-Officio)

Parliamentary Liaison Officer

Julie Skill,
Elliot Mather LLP
Chesterfield
Tel: 01246 231288
julie.skill@elliottmather.co.uk

Public Relations Officer (+)

Vacant

Derby Junior Lawyers

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

Constituency Council Representative, Derbyshire (+)

Michael Williams
Tel: 01298 24185
mwilliams@bemerton.co.uk
(+) attend Committee by invitation

Other Committee Members

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

Andy Cash
Cartwright King, Derby
Tel: 01332 346111
andy.cash@cartwrightking.co.uk

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

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

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

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

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

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

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

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

Solicitors' Benevolent Assoc. area representative

Peter Lord
9 Larkhill,
Swanwick DE55 1DD
Tel: 01773 541753

Administrator / Bulletin Editor

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

Sub-Committees (Secretary in italics)

Criminal Litigation

Simon Stevens
Andy Cash

Quentin Robbins

Andrew Oldroyd
(01332 225225)

Nick Wright
(01332 364751)

Education & Training

Sue Jennings,
& all Sub-Committee Secretaries

Employment and Business Law

Sue Jennings

Family Law

Fiona Apthorpe

Vince Beckworth (Elliot Mather)

Diana Copestake

Joanna Jarvis (Bhatia Best)

Jane Lakin (Derbyshire County Council)

Ben Lawson

Manesha Ruparel
(01332) 600005

Julie Skill

Melanie Bridgen
(01283 2264440)

Claire Dean
(01335 345454)

Liz Doherty-Astle
(01332 592523)

David Guthrie
(01332 293293)

Liz Guyler
(01773 749955)

Nick Herbert
(01332 293293)

Janine Hobday
(01332 226477)

Ruth Jones
(01332346084)
Natalie Yeung
(01332 331631)

Private Client

Claire Rudkin

Martin Salt
saltmartin@hotmail.com

Nikki Spencer
(0115) 932 4101

Christine Hinkley
(01332) 836666

Kim Kirk
(01332) 600005

Tim Dysterre-Clark
(01332) 600005

Kirsten Wood
(01332) 340211

Rachael Francis
(01332) 340211

Julie Cook
(01332) 340211

Dervla McLaughlin
(0115) 932 4101

Sole Practitioners' Group (SPG)

Tina Attenborough

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President's Page



Hello,

We are still in the midst of the summer holidays, although you would not know it from the current weather. The monsoon season unfortunately claimed the annual D&DLS v Nottinghamshire Law Society Cricket match due to be held at Attenborough Cricket Club in Nottingham on the 16th August 2019. Due to the persistent rain a waterlogged pitch prevented any play and it is hoped that the match may be rearranged shortly. If not, it will be up to the current Vice-President (and next year's President) Julie Skill and her chosen team to ensure we defend the trophy which we won last year.

The DYL & D&DLS hosted the Derby Legal Walk on the 22nd July 2019 which started from the University of Derby. As always the event was a success with particular thanks reserved to the DYL President Natasha Hybner and her DYL team. Teams from Alexander & Co, Bradley & Jeffries, Nelsons, Freeths, Timms and Swindell & Pearson were amongst those who tackled the 10km walk around the sights and sounds of Derby and some of its Legal institutions – in surprisingly hot and scorching weather at the time! Well done to all who participated in aid of The Midlands Legal

Support Trust which raises funds and distributes them to organisations that support those who need legal help but cannot afford it.

We have a new Prime Minister in Boris Johnson and it appears that we leave the E.U. on 31st October 2019 whether a deal is in place or not. Although there is the worry about how this will affect the current legal system I was recently in London and a fellow lawyer reminded me that we should be embracing the opportunity as we will be having plenty of work to do over the coming months and years analysing the changes in legislation. Behind every cloud there is a silver lining, as they say...

I have also recently met with Kimberley Shapcott of the Derby Society of Chartered Accountants and together we are looking at organising some fun networking/social events the coming months which are not going to be your usual meet and greets – watch this space.

In the meantime, thank you for your continued support of the Society and enjoy the remainder of the summer.

Martin Salt,
President, 2019-20

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Derby Junior Lawyers



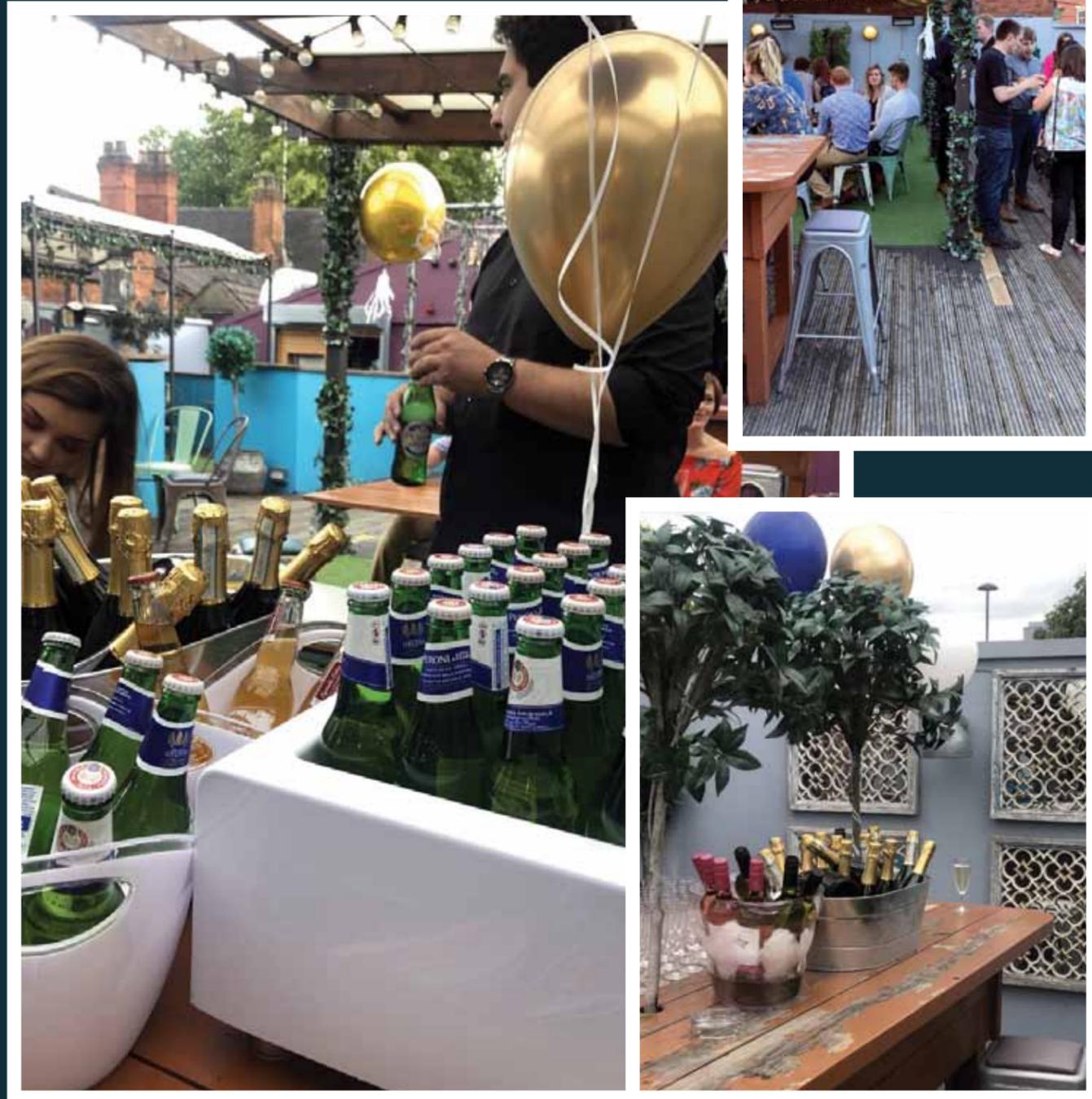
SUMMER SIZZLER:

On Friday 9th August, the Derby Junior Lawyers had their annual Summer Sizzler! There were approximately 45 attendees, which is the best attended DJL event to date!

There were plenty of drinks, burgers and hot dogs, that were enjoyed by all attendees. The venue at **Pitcher and Piano** was a fantastic venue for all junior lawyers to network and enjoy a Friday evening.

Thank you to **Kate Pleasant** and **Misha Wiseman** for organising the event, the DJL would be lost without you.

We are already looking forward to the Summer Sizzler 2020!



DERBY LEGAL WALK:

As the morning of the 10th June approached, the rain was just not stopping! The DJL unfortunately had to make the decision to postpone the event, due to health and safety reasons for the walkers. However, we did not let this dampen our spirits and decided that the drinks at the Orange Tree were to continue to celebrate our efforts for funding. Thank you to the **Orange Tree** for the lovely drinks and venue, and thank you to **Gather and Grace** for the fabulous nibbles!

The Derby Legal Walk reconvened on 22nd July, when the sun was shining. There were approximately 50 attendees, that signed in at the University of Derby, ready to embark on the walk. All attendees did the walk in approximately 2-2.5 hours, and arrived back at the University of Derby to finish. Thank you **Sue Jennings** who organised the foyer for the walk.

We have raised approximately £900.00, between all of the firms which is a fantastic achievement!

The DJL CHRISTMAS PARTY NIGHT is taking place on Saturday 7 December at Jury's Inn, Derby. The event is priced at £40 (£45 for non-members) and includes a 3 course meal, drinks, DJ and photobooth.

If you would like to join us, we require your RSVP and deposit of £15 by 27 September. Please RSVP to derbyjuniorlawyers@outlook.com and we will contact you with details of how to pay your deposit.



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Back To The Future with Andy Cash

Into the 50's with DLS; Protocols, Legal Aid, Civic Pride and Students.



Some extracted nuggets from the early 50's;

28th February 1952

The secretary reported that the loss to the Society caused by the cancellation of the annual dinner due to the death of his Majesty the King amounted to £7 15s 0d

10th December 1952

The secretary read a letter from Mr RSD Cash [my great uncle] in which he stated that he wished to propose to the AGM that members of Derby Law Society should revert to their former custom of wearing gowns and bands when appearing in the Magistrate's courts. After some discussion it was decided that the secretary should inform Mr Cash that the committee were not in favour of this proposal.

11th March 1953

There was an item before the committee from Mr J Garrett drawing the committee's attention to the fact that debates of the Law Student Society were being very badly attended by articulated clerks in Derby and asking all members to take steps to encourage their articulated clerks to support the Society and to attend the debates.

The committee was advised that the Law Students Society recently started holding teas for their members at intervals throughout the winter which were followed by debates and that several firms in Derby had paid for one or more of these teas.

Mr Garrett felt that these teas served a useful purpose and should be encouraged.

15th October 1953

The secretary reported a total of £57 4s 6p was raised by contributions from firms of solicitors for presentation to Judge R A Willis, to mark his retirement and that the Law

Students Society also contributed. A portable typewriter, a Royal Crown Derby coffee set, and a piece of decorative Royal Crown Derby China [and a cuddly toy?] were purchased and presented informally to the judge at his home.

At the same meeting under the heading "Billeting in time of war", the secretary read a letter which had been received from the Women's Voluntary Services seeking volunteers to canvas the town for billeting purposes should an "emergency" arise. It was decided that no action should be taken on the letter.

18 November 1953

The secretary read a letter from Derby Law Student society in which it was stated the society had decided to re-introduce the custom of awarding annual prizes to its members for debating and His Honour Judge Braund, who had taken a keen interest in the society had agreed to devise a system of awarding marks. The students enquired whether the Law Society were willing to give an annual money prize for the purpose, to be spent on legal books or to be subscribed to legal periodicals. On the motion of Mr Richardson seconded by Mr RSD Cash it was resolved that the Society should make an annual payment of three Guineas to the Law Student Society for the purpose.

16th of December 1953

Fees payable to solicitors for defending poor prisoners.

A letter from the Law Society was read reporting that in April 1952 the Law Society and the Bar Council had submitted a joint memorandum to the Home Secretary urging the immediate implementation of section 21 of the Legal Aid and Advice Act 1949 and that in July 1952 a deputation from the Law Society and the Bar Council saw the Home Secretary when he expressed sympathy with their views. A year later in July 1953 the Home Secretary wrote to the effect that in the present financial situation the government still felt that they would not be justified in bringing section 21 into operation as it would involve a considerable expense in the cost of the legal aid scheme. But as a temporary measure he had increased by 50% the fees paid to solicitors and counsel for doing the work and at the same time had provided for payment where a trial at Quarter sessions or Assizes lasted for

more than two full days of a daily fee after the second day, of four Guineas to solicitors and "rather more" to counsel. As these increases are to some extent discretionary provincial societies were requested to inform the Law Society of any instances where they were not paid as a matter of course and the Law Society would continue to press for the bringing into force of section 21 of the Legal Aid and Advice Act at the earliest opportunity.

1st July 1954

It was proposed by Mr Garret and seconded by Mr C S Bowring that the Society should register its disapproval of the proposed move of Derbyshire County Council to Matlock and the secretary should write a letter to the members to this effect. It was also proposed that the Society should be represented at the public inquiry, to object to the proposed move on the grounds of inconvenience and delay to clients. After some discussion the proposals were put to the meeting and carried unanimously.

At the same meeting the President reported that on the invitation of the Mayor of Derby in the secretary had recently attended the Mayor at the council house when the Mayor suggested the society may wish to present to the corporation a silver rose bowl or other piece of civic plate suitably engraved to commemorate the eighth century of the grant of charters to the Borough Derby by Henry 11 in 1154 and Queen Mary in 1554. The mayor had arranged for a selection of suitable pieces of silverware to be sent to the council house on approval by a London firm of jewellers and silversmiths from which the Society could choose. The suggested value of the gift to be in the region of £350. After discussion it was decided that the Society should not make any presentation and that no further action be taken on the matter.

1st December 1954, [it seems matters had moved forward,] the secretary reported that as a result of a circular letter sent to all members practising within the borough of Derby inviting subscriptions for the presentation to the corporation, the sum of £102 5s 6d was raised and a four piece solid silver tea and coffee service purchased and presented to the Mayor by the President on the second 20th of October.

Andy Cash

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Resumé of items of interest to Defence Practitioners from recent meetings of the Derbyshire Criminal Justice Board and the East Midlands Criminal Justice Board

1. Derbyshire Matters

a) The limited use of Mental Health Treatment Orders is a national issue. Pilot projects are taking place in other areas, the nearest to here being Birmingham. Currently there is no funding available in Derbyshire

b) Timing for pre-sentence reports.

National Probation Service have a target stating that they should ensure that 75% of reports at court should be fast delivery reports. That conflicts with the Transforming Summary Justice targets which aim to have all reports provided on the day of court. However, some cases are so complex that it is not possible to deliver a report on the day and cases have to be adjourned. That can be the next day, but court listings are often where the next sentencing slot could be weeks away. The courts are to look at listings policy to see if that can be improved.

c) The National Probation Service have received a mandate to say that they can no longer place sex offenders in bed and breakfast accommodation. If it has to be done in an emergency, permission must be obtained from the government ministerial office. Milestone House, operated by Derby Homes, will no longer accept high-risk offenders. This could lead to an increase in rough sleepers.

d) The Witness Service has funding to provide support for domestic abuse victims in the family courts. I will last two years.

e) Probation Services.

Reorganisation of the Probation Service will include twelve probation regions in England and Wales. Derbyshire will be part of the East Midlands Region together with Leicestershire, Rutland, Nottinghamshire and most of Lincolnshire.

The NPS will have responsibility for all Offender Management services. There will be a competition for "Innovation Partners" to provide unpaid work and accredited programs. This seems to be a work in progress.

f) RUI Cases

As of the 10 July 2019, Derbyshire Constabulary had 2,223 which remain RUI'd. The point was made to the police that defence solicitors are having to spend more and more time trying to find out the state of the case and its outcome, if any. And that the number of cases actually getting to court appears to be decreasing. The police state that all RUI cases over 3 months old now have to be reviewed by an inspector. And that those RUI cases over 6 months old by a superintendent. Further training is being given to sergeants to ensure RUI's have been robustly managed.

Derbyshire Police have accepted the quality of their investigations could be improved and that is being addressed.

g) Attempts are being made to get funding for an additional video link facility at Chesterfield Magistrates Court.

h) Eurofins

There was a recent cyber-attack on Eurofins a Forensic Service Provider. The company has suspended business until such time as assurances can be given to their service users. Derbyshire does not use Eurofins so there is confidence that no cases have been affected. Further checks are to be made to ensure no Derbyshire cases have been subcontracted to Eurofins.

i) Derbyshire Criminal Justice staff are making further checks in postal requisitions to try to establish that the defendants address is correctly known.

2. Disclosure Management Document

There is a specific document that is available for use in serious cases at the Crown Court including RASSO cases, murders and limited others. The idea is for defence teams to be able to ask CPS/Police to make specific enquiries. E.g. if there is known to be a silver bullet, they can be told where to find it. The use of the form is not mandatory. But it is easy to envisage situations where there is a failure to investigate and/or disclose by the police and the defence will be blamed for non-

use of the form. Equally, situations could arise where the form is sent, the witness becomes aware of it and the witness adapts their evidence to fit what's in the disclosure management document.

a) East Midlands has recently come third out of fourteen in the CPS performance in the Magistrates Court under TSJ. Yipee!

b) Concerns have been expressed by the Crown Court about delays in cases reaching it, when there appears to be no valid reason, e.g. waiting for forensic reports, etc. It is noted that delays mean that, if an offender has kept his nose clean for a lengthy period (a full year is not unknown) lesser sentences follow and witnesses can of course lose interest. The police view is that there are now procedures in place to prevent such delayed cases. And higher standards of investigations and files are now expected by CPS.

c) New attempts are being made to see if there has been any significant change in court workloads due to the "new" bail act provisions. Defence practitioners may well have a view!

d) Agencies are focussing in the Crown Court in particular regarding effective trial dates. Repeatedly adjourned trials can cause witnesses to disengage from the process. Listing officers are aware of difficulties such as the fact the PTPH's are conducted early in the process, often without a defence case statement being served or the defence even having decent levels of disclosure. High numbers of cracked trials mean that over-listing of cases has to take place to maximise the use of court time and there is a consequence, victims and witnesses are often stood down. In some courts, the number of court sitting days are reducing.

I do have statistics for the region, if anybody would like them sending, giving numbers, percentages of guilty pleas in the Magistrates Court, Crown Court, ineffective trial dates, conviction rates, discontinuance rates, etc, etc.



Nick Wright
Criminal Law
Sub-Committee

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PERFECT PORTAL, A LEGAL SOFTWARE BUSINESS FROM SOUTHPORT PROUDLY WENT HOME WITH TWO AWARDS AFTER THE 2019 ECLIPSE PROCLAIM MODERN LAW CONVEYANCING AWARDS IN LIVERPOOL.

Founder and CEO **Yvonne Hiron** has been hand-selected by a panel of expert judges to receive one of the most prestigious awards of the night: **The Outstanding Achievement Award.**

Recognised for her preeminent influence in the legal industry over the last 20 years, Yvonne was described as a true inspiration, passionate about her business, her team and her clients.

"We have used Perfect Portal for a long period of time now. We were with another provider prior to using the guys at Perfect Portal but within 2 minutes of speaking with Yvonne, I immediately knew I should have been with her since I started my business. She truly is a fantastic person and it is great to see how far she is pushing the boundaries with what their product can offer and do. Yvonne is always very helpful, very positive and makes it happen. I am absolutely thrilled she has been recognised in this way." Said **Adam Cheal, Managing Director of Fletcher Longstaff**

Her friends and clients at Shoosmiths were delighted to see her win this award, describing her as a whirlwind of energy and her passion as infectious. Most importantly, for them and their estate agents across the UK love the product, services and support that her business offers them.

A sentiment echoed by **Jeremy Stubbings**, Head of Business Development at **Cunningtons**: *"From day one, she has always championed continuous improvement and sought feedback from us to ensure that the services are perfect for her clients, to meet their expectations and support them in winning new business."*

*Starting the journey in a small town in the North West, Yvonne successfully found and grew Perfect Portal into a global business. During this event, Perfect Portal has also been **Highly Commended** for the **Service Provider of the Year Award**. A great honour for all 14 dedicated members of the team, working in Southport.*

This reward is focusing on the company's ability to deliver high standards of client service, to innovate in the development of new services and implement them into the market, and foremost, its client-orientated philosophy, providing them with real benefits and support.

Feeling very grateful about this recognition, Perfect Portal was also pleased to see 6 of its own clients being rewarded that night.



For more information about the company go to www.perfectportal.co.uk

Council Member's Report

Simon Davis has now taken over as president of the Law Society and I cannot think of a more suitable candidate to be leading the profession at the present time. He has a very clear grasp and comes over most impressively which should help in dealings with government and other bodies. The major issue facing the profession at the present time is what will happen if there is a no deal Brexit because this will undoubtedly be very damaging to legal services in the country generally. This may not be as apparent in Buxton and Burton on Trent as in the City of London but we should not underestimate the reduction in GDP which is anticipated should there be a no deal Brexit or the complications that will arise.

The other major public issue that the Law Society is trying to address is the virtual collapse of the criminal justice system. There have been encouraging signs recently that the media is picking up some of the horror stories and in particular for example the reduction in cases being brought to Court or the reduction in actual arrests. Unless politicians come to believe that there are votes either in favour or against to be had by addressing the issue, nothing is going to change so it is incumbent on everyone to try and hammer home the point to one's friends, anyone else who is prepared to listen and generally. This cannot just be left to the Law Society which is certainly doing its best.

The solicitor's qualifying exam continues to cause great concern in the profession. The idea that someone should be able to qualify as a solicitor with minimal training and having guessed the answer to some multiple choice questions beggars belief. Whilst that may be a slight exaggeration it is only an exaggeration not an inaccuracy. I think everyone has been far too concerned with diversity and equality and lost sight of the fact that excellence is also required. It should be quite difficult to qualify as a solicitor. We do not want a generation of clerks who have very little connection with the law itself. Strenuous efforts are being made by universities and others to try and mitigate the consequences of what is being proposed but we all need to be very vigilant because what should be a profession is in danger of ceasing to be one.

The Mayson review of legal services

continues. The Law Society has recently submitted its further observations. The general view is that now is not the time for change and that attempts to address possible gaps in the system are more likely to create greater problems rather than reduce them. I have said that I think it is important that the Law Society keeps pressing the point that having lower standards e.g. for licenced conveyancers is not in the public interest. There needs to be the same minimum standard for everyone dealing with a particular type of work. If anyone has examples which would illustrate this point I would be very glad to hear from them.

I have been heavily involved in the work of the Council Membership Committee in considering the future makeup of the Law Society Council. This a far from straight forward task because whilst it is true that the makeup of a profession has changed considerably in the last 20 years, it never the less remains the case that it is vital that proper contacts exist between the profession generally and Chancery Lane.

One of the ways this can be done is for council members to be active in attending their local Law Societies and speaking where possible for other members of the profession locally but it is important, because we are all volunteers and receive no remuneration for what we do (expenses are refunded) that people do not have vast distances to travel.

The process is not helped by the fact that not everyone appreciates distances and travel problems outside London. However we continue to battle away and it remains to be seen what happens. I think the majority of council members are very much in line with my way of thinking and it is perfectly possible the whole process will be kicked in to touch because it is trying to be too radical. There is however no doubt that some changes are required. For example over 20% of the profession work in-house and in-house lawyers have very little current representation on council.

Michael Williams
Council Member

SAVE THE DATE
2019 Inter-firm Quiz.
Thursday 14th November
6.30pm for 7pm
Derbyshire
Cricket Ground



CASEWORKER - HOUSING

Starting salary – Dependent upon experience

Salary scale – SCP 19 to 28 (£24,799 to £31,371) Contract – Full Time Permanent

Job share – Suitable for job share
Interview Date – Week beginning 2nd September 2019

A full Job Description, Person Specification and application form is available on our website - www.derbyshirelawcentre.org.uk under the news and events page.

NOTE - we DO NOT accept CV's.

THE ROLE

A position as become available for a specialist housing caseworker with experience in homelessness, defending possession proceedings, and disrepair. Ideally you should have a background in court advocacy and running a caseload under a Legal Aid Agency contract with minimum supervision.

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LOCATION OF POST

You will be based in our Chesterfield office, but will be required to work from our Ripley outreach office 1 to 2 days per week.

Application method: Email (dllc@derbyshirelawcentre.org.uk)

REQUIRED EDUCATION, SKILLS AND QUALIFICATIONS

Recent training in advice work, particularly in social welfare law is essential. Applicants must have substantial experience in housing casework or civil litigation.

A qualified solicitor or Chartered Fellow of Institute of legal executives is desirable, as is the ability to supervise staff/volunteers and the aptitude to achieve area of law supervisor status in housing.

ORGANISATION

Derbyshire Law Centre is a registered not-for-profit legal charity whose aims / mission is to serve disadvantaged people living in Derbyshire. The Law Centre has been in existence since 1989 and has enjoyed support from public and voluntary sectors and communities across the county. Its primary aim is to provide free specialist legal services in areas of social welfare law to individuals and families on low incomes, including debt, housing, employment and immigration.

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Full information pack available through Derbyshire Law Centre website, under news and events section.



POSITION; Private Client Solicitor
HOURS; Full time Monday to Friday 9 am to 5 pm (35 hours)

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SALARY; Market rate – dependent on experience.
Key duties; Working on all aspects of private client files from start to finish, including Wills, preparation and registration of Powers of Attorney, creation and management of Trusts and Charities, as well as Probate work and Deeds of Variation.

The candidate should be able to;

- demonstrate a clear understanding private client practice and procedure
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- have attention to detail
- demonstrate strong organisation and file management skills
- be a team player, and be self-motivated
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To apply, please submit your CV and covering letter to Stephen Parrott through the firms website, or by email to stephenp@killingworthandparrott.co.uk, or by post to 65 Chapel Street Belper Derbyshire DE56 1AR.



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Family Care Solicitor

CV Deadline & Shortlist of Candidates Announced: 16 August 2019

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Reporting to: Supervising Partner

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Should you wish to be considered for this role, please send your CV and covering letter no later than 16 August 2019 to:

Rebecca Truscott, Hopkins Solicitors LLP, Eden Court, Crow Hill Drive, Mansfield, Nottinghamshire NG19 7AE

or by email: rtruscott@hopkins-solicitors.co.uk

Hopkins Solicitors LLP is one of the leading North Nottinghamshire firms of solicitors with 92 employees across five offices, 2 in Mansfield, 1 in Sutton in Ashfield, 1 in Kirkby in Ashfield and 1 in Nottingham.

Due to recent growth, we are now looking to recruit ideally a Children Panel Member to work from our Nottingham, Mansfield and Sutton offices. The role will involve dealing with a range of public and private children cases including child protection issues, and adoption matters as well as your own advocacy.

Skills: Ideally the candidate will be registered with the Law Society on the Family and/or Children Panel and have a passion for public funded Child Care work.

The ideal candidate should be an experienced Solicitor with at least 1-2 years PQE in a Care Department. The successful candidate must have experience in running their own case load and have the desire to help develop and expand the department.

The ideal candidate for this role must have the following:

- a minimum of 1 years' experience of working as a qualified Care Solicitor
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- hardworking
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- About Hopkins

We are a full service law firm and the successful candidate will be able to bring experience and ideas and promote and build the department.

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Legal profession called on to address legacy giving myths this September

This September, 200 charities will come together with 1,300 solicitors and Will-writers to challenge the public's biggest misconceptions about gifts in Wills for Remember A Charity in your Will Week (9-15 September 2019).

In the build-up to the Week, Remember A Charity is calling on legal professionals to become campaign supporters, committing to help clients understand more about legacy giving and the relevant tax breaks. Resources will be provided for campaign supporters, including posters that encourage people to 'pass on something wonderful' by leaving a gift in their Will.

Charitable bequests currently fund two out of three guide dogs, 6 out of 10 RNLI lifeboat rescue launches and almost 1 third of Macmillan's income.



Rob Cope, director of Remember A Charity, says: "Raising more than £3 billion for good causes annually, legacies are a critical source of funding for charitable services across the country."

"Solicitors have such a key role in helping the public understand the full range of options available to them when writing their Will, with research showing that even a simple reference to the opportunity of legacy giving can double the number of bequests made."

He continues: "Here in the UK, we have one of the most flexible will-writing environments in the world with generous tax breaks for legacy giving. Remember A Charity Week is a fantastic opportunity to get the conversation started and build understanding about how it all works."

This year's campaign will address the most prominent myths and barriers that can prevent people from leaving a gift in their Will. This will include addressing concerns that legacies have to be particularly large, that they are complex to arrange and that they might prevent people from passing on their estate to their families.

AWARENESS OF LEGACY GIVING ON THE RISE

Now in its tenth year, Remember A Charity Week shifts its focus from raising awareness to building understanding of legacy giving among the public, with the most recent consumer tracking studies¹ indicating that only 10% of the over 40s are unaware of the opportunity to leave a bequest in their Will.

40% of those surveyed said that they would be happy to donate in this way, up from 35% a decade previously. During that time, charities' annual legacy income has grown from around £1.8bn to £3bn².

Cope adds: "Appetite for legacy giving continues to grow, but there is often a disconnect between the 40% that intend to leave a gift in their Will and the 6% of people that currently do so. There remains far greater potential for raising vital funding for good causes through charitable bequests and the support of the legal profession in reminding clients of the option of including a charity in their Will has never been more important."

To find out more or take part in Remember A Charity Week, visit www.remembercharity.org.uk

¹ Stages of Change Survey 2018, nfpSynergy, & OnePoll Survey, April 2019

² Legacy Trends 2019, Smee & Ford



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Every legacy, large or small, is important to us and a gift in your will help us to continue our vital research.

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Nothing stays the same; is everything changing?



Who was it that said that the only constant in this world is change?

legal aid, and we'll also hear again from His Honour Judge Richard Roberts who will be talking about the new disclosure rules affecting experts and costs budgeting for experts.

Well that certainly seems true at the moment. Political, economic, social and technological factors continue to have a significant impact on society. And what better forum to consider these than this years' annual conference?

We have some great exhibitors as usual and are particularly pleased to welcome Redwood Collections as our lead sponsors for the event. Redwood Collections as their first Supplier Partner which is a new scheme recognising organisations who supply goods and services to the Expert Witness community.

We have a great line up for you again this year. Our Chair, Sir Martin Spencer, will be donning his judicial cap and telling us what he believes is the challenge for experts in 2019. Continuing our conference theme, The Rt Hon Lady Justice Nicola Davies and His Honour Judge Richard Roberts will be joining a panel discussion to further explore these issues; including the impact of artificial intelligence on the judicial system, the importance of vetting (in the light of the Andrew Ager case), and what Brexit may mean for expert witnesses.

They offer a complete portfolio of debt collection services ranging from sensitive mediation through to legal and insolvency action and as part of the partnership, will be offering EWI members a discounted commission rate of 10% commission (typically 15%).

We'll hear from Chris Easton who will be discussing the role of the Single Joint Expert and how to make it work for both experts and instructing parties.

You'll also have the chance to meet the Governors as well as network with other experts, instructing parties and senior members of the judicial system at break times and during our evening drinks reception.

We are also pleased to welcome David Marshall (Vice Chair of the Civil Justice Council fixed costs in clinical negligence working group) who will be providing an update on fixed costs, Kenny Shealey (National Legal Aid Training Co-Ordinator and Senior Law Costs Draftsman) who will be explaining how to make sure we are paid when the client has

It has never been more important to have a credible voice for expert witnesses, highlighting the critical role they play in our justice system. So please do come along and join your fellow colleagues for what promised to be an interesting day of discussion and debate.

To find out more and book your place visit: <http://bit.ly/EWIAC2019>

Amanda Stevens,
EWI Annual Conference Chair

Boost for aspiring solicitors who face challenges



Aspiring solicitors have been awarded a coveted scholarship to complete their studies by the Law Society of England and Wales' Diversity Access Scheme (DAS).

"I encourage any aspiring solicitor who is facing particular challenges on their way to qualification to consider applying for a place on the Diversity Access Scheme."

The DAS aims to help improve social mobility and diversity in the legal profession by supporting people who face social, educational, financial or personal obstacles to qualifying as a solicitor.

In addition to financial assistance to undertake their Legal Practice Course, the scheme offers awardees relevant high-quality work experience, a professional mentor and networking opportunities.

To date, the scheme has supported more than 200 aspiring solicitors in pursuing their career ambitions.

DAS awardee **Kabir Joshi**, who has secured a training contract, said: "Being awarded the DAS scholarship is a huge honour for me and has alleviated the enormous financial burden and the associated stress."

Law Society vice president **David Greene** said: "The solicitor profession needs to attract talent from the widest possible range of backgrounds to reflect the society it serves."

"We are delighted to welcome 10 new students onto the Diversity Access Scheme to support them in realising their ambitions."

"I intend to study part-time and work full-time, completing my training contract at Wilson Solicitors LLP. Here I will continue working on immigration and public law with a focus on asylum and human trafficking claims."

"Today, DAS alumni are thriving across the legal sector – in firms, in-house, in local authorities and in the social advice sector. The one thing they have in common is that they have all achieved these careers in the face of real challenges: homelessness, financial instability and disability, to name a few."

"Receiving the scholarship feels like an acknowledgment of the hardships I, and others, with difficult life experiences face. I feel like it is a just reward for our commitment and our resilience. I am immensely proud to be a DAS awardee."

The worst expert witness: and the winner is...



Chris Makin

Apology: Due to a clerical error, last issue's article by Chris Makin was cut short. We are pleased to present the full and unexpurgated version below.

A couple of years ago, I had the doubtful privilege of giving a blatant example of the "expert" who failed in every respect. The case was *Van Oord Ltd & Anr -v- Allseas UK Ltd* [2015] EWHC 3074 (TCC), where

Mr Justice Coulson took pains to explain the twelve – yes, twelve! – respects in which an expert had failed in his duty. They included:

- not even considering or formulating the costs as incurred by the claimant;
- admitting in cross-examination that he did not even agree with his own report (this is amazing!) and
- admitting that the views he had expressed in his report were merely the assertions of his clients, who themselves had resiled from such assertions in their own cross-examination.

So with experts of such low calibre, where is the litigation lawyer to find reliable experts?

Well, it seems that the Crown Prosecution Service needs help in this respect.

In May 2019, Steven Sulley and seven others were accused of fraud in selling voluntary carbon credits (and diamonds) to more than 70 victims, many of them vulnerable pensioners. Those investors lost £3.5million. The crux of the fraud charges was that there was no market in voluntary carbon credits, so the victims had been sold "investments" which could not be realised.

The expert witness for the prosecution was one Andrew Ager, who it emerged had attempted to dissuade the defence expert, Dr Marius Cristion Frunza (who holds a PhD from the Sorbonne) from giving evidence. This is serious, but Mr Ager's other failings included:

1. Having no academic qualifications. When asked about A-levels, he replied that he thought he had sat three subjects, but he couldn't remember whether he had passed any.
2. He said he kept abreast of the carbon credits market, but said he had not read any of the books written by Dr Frunza although they were widely available. He had though once watched a documentary on carbon credits!
3. He admitted that several assertions he had made to Dr Frunza during a meeting of experts were untrue.
4. He asserted – despite it being his clear duty under CPR – that it was not part of his duty to bring facts helpful to the defence to the attention of the court.
5. He had no record of any of the material supplied to him by the police, or of any of his workings.
6. He did admit that he had been supplied with some sensitive material by the police, but it had been damaged by a leak. But not to worry; he asserted that matters were now in order, since he now kept sensitive

material in a locked box on his balcony.

The City of London police, similarly, had no notes of meetings with Mr Ager and no record of the material they had passed to him. This is particularly worrying after the repeated difficulties of the CPR under Angela Saunders of failure to disclose evidence, helpful or not. The watchword of any professional, including prosecuting authorities and their experts, is:

- Record
- Retain
- Reveal any evidence, helpful or not.

This is very basic stuff, and both the police and Mr Ager had fallen far short of the standard required.

So what happened?

At Southwark Crown Court Mr Justice Nicholas Loraine-Smith directed the jury to return not guilty verdicts, and the eight accused walked free. And the CPS said they had removed Andrew Ager from their list of approved experts.

Was this a victimless crime? Of course not; many of the victims had invested their life savings in a scam. Did it end there? Certainly not. It emerges that the same expert, Andrew Ager, had been the prosecution's expert witness in some 20 previous trials, so all of those where convictions had been achieved would now have to be reviewed. And that means that far more than the 70 victims in the current case may find that those who have taken away their savings will not be punished.

The moral is clear, and the CPS failed miserably in following it: **choose your expert with care.** This is an extreme example, but an inadequate expert can destroy the good work of the lawyer. I recognise that the world may not be over-endowed with experts in voluntary carbon credits, and some other esoteric subjects may cause difficulties; but for many subjects experts are readily available, and there can be no excuse for instructing professionals who may be good at their job, but who do not know how to write an expert report, hold a meeting of experts, advise on Part 36 offers, and conduct themselves correctly at court.

May I be permitted to provide a few hints?

For forensic accountants who have been vetted by ICAEW, go to <https://www.icaew.com/about-icaew/find-a-chartered-accountant/find-an-accredited-forensic-expert>. There are only about 100 of us, out of 140,000 chartered accountants, who have reached this high standard.

For experts in many fields, use the "ExpertSearch" service at The Academy of Experts: <http://www.academyofexperts.org/find-an-expert>. And for some light relief and some interesting war stories, have a look at my website – with videos!

chris@chrismakin.co.uk
www.chrismakin.co.uk

Biog: Chris Makin was one of the first 30 or so chartered accountants to become an Accredited Forensic Accountant and Expert Witness – see www.icaew.com. He is also an accredited civil & commercial mediator and an accredited expert determiner. He has performed about 100 mediations, given expert evidence at least 100 times and worked on a vast range of cases over the last 30 years. For CV, war stories and much more, go to www.chrismakin.co.uk.

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Using DNA testing to aid the transgender community

The increasing societal commitment to the well being of those wishing to express different gender identity and gender expression together with the legal recognition of same, is important for the protection of individuals, their dignity and their health. Recent instances however, concern the ability of transgender people to amend the birth certificate of a child to reflect their own changed gender, which in one 2015 case was rejected by the Registrar and also by the High Court¹. This has obvious implications for DNA testing in terms of checking for Parental Responsibility and in carrying out the work, whereby intimate details may be revealed.

There are two cases (one ongoing) which highlight the need for fresh consideration of how we might integrate transgender rights into legal parlance and process.

In the aforementioned case (the first of its kind) a person male at birth who was undergoing transition to female requested that the Registrar of Births amend her child's birth certificate to reflect her new name. This was refused and resulted in proceedings under Article 8 (respect for private life) and Article 14 (discrimination on the basis of transgender identity²) of the European Convention of Human Rights (ECHR). This was rejected on the basis that the interference with the Article 8 right was justified but not material, since it would only be under rare situations (we expect paternity testing to be one of them) that the transgender female would be required to produce the child's full birth certificate. A changed certificate might record the sensitive information or require disclosure, but of course, it would only need to be revealed to those with an obligation of confidentiality, despite the fact that in this case she had identified herself as transgender on social media.

Furthermore, a birth certificate can only be altered to correct minor errors or when parents marry or enter into a civil partnership following the birth³. The Registrar of Births does not have discretion concerning the categories that are recorded on the birth certificate, which are "child", "father", "mother" and "informant". Indeed, the Registrar successfully argued that point in terms of the legitimate aims of the Births and Deaths Registration Act 1953. There was justified interference with the claimants rights under the ECHR because there was a need for; a) an administratively coherent system for the registration of births and b) a need to respect the rights of others such as those of the partner and child of the transgender person and, of particular relevance, the fundamental right of a child to know the identity of his or her biological father.

In a subsequent case⁴, a person female at birth and living as a male (TT) had a child (YY), biologically theirs, by artificial insemination. At the point at which the child was born, a valid Gender Recognition Certificate was in place, so the biological mother was male. The Registrar has decided that the birth mother must be registered as "mother" on the birth certificate. This is against the wishes of TT who asserts that as a matter of domestic law, he should be regarded as the father or secondarily, in a gender neutral manner as "parent". Failing that and assuming he has to register the birth as "mother", then he considered that this would

be a contravention of Article 8 of the ECHR. If upheld on the other hand, YY will be the first person born in the UK without a mother on their birth certificate, since other transgender males have accepted the "mother" annotation. Those acting for YY have issued an application for TT to be declared YY's father under the Family Law Act 1986, s55A.

We await the final judgement on this case, but in any event the outcome will have profound implications. Society is in the process of normalising its institutions to accept the status of transgender persons but of course in this case must also take into account the separate needs of the child; their Article 8 rights should not be compromised by the decisions of a parent. If the status quo is not upheld, then as a DNA testing company we will inevitably at some point detect a biological female registered as the father, maybe with another registered father or father unknown or a biological male registered as the mother. The biological facts of course, cannot be denied⁵.

In 1953 social motherhood and fatherhood were presumed to reflect biological motherhood and biological fatherhood. The increasing complexity of social relationships since that time have been recognised by the law and provide interesting points regarding the registration of the birth of a child in situations of surrogacy, adoption and assisted reproduction, which may provide precedent and guidance as to how the parentage may be best recorded when one of the parents is transgender. In any event, in all three cases, once the child has attained the age of 18, the respective legislation allows for the child to obtain information on their biological parentage. We will discuss these points in the next article and by then, we will hopefully have the judgement on TT vs YY.



About the author:
Neil Sullivan, BSc, MBA (DIC), LL.M, PhD is General Manager, of Complement Genomics Ltd (trading as dadcheck@gold).

The latter is a company accredited by the Ministry of Justice as a body that may carry out parentage tests directed by the civil courts in England and Wales under section 20 of the Family Law Reform Act 1969⁶.

Please see: <http://www.dadcheckgold.com>.
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SEX AND GENDER - SOME DEFINITIONS

There has been a neo-logistic expansion of terminology concerning sex and gender...here are explanations for a few of them!

The difference between Sex and Gender

"Sex" relates purely to biology and refers to the genetic make up, which is either male (an X and a Y chromosome), female (two X chromosomes) or intersex. Gender on the other hand, is largely a social construct relating to behavioural, social and

psychological characteristics; it may take many forms⁶. Sex and gender may overlap, but should never be confused. Biologically, humans are most often classified as binary, i.e. either male or female.

Transgender⁷

Transgender (often applied to non-binary gender identities) is an umbrella term that describes a diverse group of people whose internal sense of gender is different than that which they were assigned at birth. It refers to a gender identity which does not align with the gender assigned at birth. Gender dysphoria applies when the individual has a sense of dissatisfaction with their gender. To attain transgender status in the law, an individual must be diagnosed with gender dysphoria by a professional and then apply for a gender recognition certificate⁸ under the Gender Recognition Act, 2004. Whilst this piece of legislation allows transgender persons to obtain a new birth certificate for themselves, it expressly precludes the fact of gender reassignment as a means to alter the status of the transgender person as the mother or father of the child and thus ensures the continuity of parental rights and responsibilities⁹.

Intersex

It has long been recognised (since ancient times) and in different cultures that some people are neither male nor female (in whole or in part) or, are a combination of male and female. This is driven by genetic, hormonal or physical features, that is, by their intrinsic biology. For example, some intersex people may have XXY as their chromosome set. Presently in the UK, intersex people may not change their sex classification unless they declare that they are transgender - then they would have to seek a professional diagnosis of gender dysphoria. Equating intersex with transgender is not appropriate.



Notes

¹JK, R (on the application of) v The Secretary of State for the Home Department & Anor [2015] EWHC 990 (Admin) [20 April 2015]

²Goodwin v United Kingdom [2002] 35 EHRR 18 and PV v Spain [11 April 2011] (Application No 35159/09)

³Births and Deaths Registration Act 1953, sections 29, 14 and 14A

⁴Administrative Court and Family Division in the Matter of TT and YY [2019] EWHC 1823 (Fam)

⁵As Lord Simon noted in the Amphyll Peerage Case [1977] AC 547, page 577:

"Motherhood, although also a legal relationship, is based on a fact, being proved demonstrably by parturition".

⁶<https://genderfluidsupport.tumblr.com/gender>

⁷Trans - Exploring gender identity and gender dysphoria - by Dr Az Hakeem, 2018, Trigger Press ISBN 978-1-911246-49-7

⁸<https://www.gov.uk/apply-gender-recognition-certificate>

⁹<https://www.legislation.gov.uk/ukpga/2004/7/notes/division/4/12>

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Some Drainage and Water reports simply infer answers from the proximity of the pipes nearby, rather than checking the billing and connectivity data that the water company holds. Or they can ignore water company data, such as the information on whether a property is at increased risk of internal flooding. The lack of an answer to this question is often covered by insurance in some reports.

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The conveyancer

If a less than full picture of the property leads to drainage or water issues, a law firm's PI insurance usually covers any remedial work – but it can't cover the time and effort required, nor any damage to reputation. Plus the homeowner may have to carry out costly work in the future.



The home buyer

Whether a dream house, a desperately needed upgrade or a first-time purchase, complex drainage and water problems are a major setback for any homeowner. Even if covered by insurance, there's still the pain of sorting out an issue that could have been identified before – and the buyer may not have gone ahead if they'd known.



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Fridays at Quill

By Julian Bryan, Managing Director, Quill

Nothing slows down on Fridays at Quill – or indeed in many places within the legal profession. We all know that Friday busyness is typified in the conveyancing sector when exchanges take place, dictated by most house buyers' preference to move home at the end of the week.

And in other areas of law, legal cases don't stop, court hearings or trials aren't cancelled, and contracts don't change their completion date just because it's Friday. For anyone operating in law, Friday is as hectic as any other week day.

For Quill, the last day every week has an even greater focus on compliance. Of course, our Interactive legal accounts software warns users of potential breaches at any time with exclamation marks denoting missing e-chit information, confirmation notifications for tasks that cannot be later undone and other system prompts for incorrect entries. However, on Fridays, our Pinpoint outsourced legal accounting service cashiers ensure any compliance issues are highlighted, reported and resolved.

When you consider the plethora of problems that fall into the non-compliance category – from data loss and delayed payment processing to incorrect allocation of client monies into the wrong account and missed deadlines, plus everything in between – and bear in mind the volume of clients we currently service – 8,000 users altogether – you could be forgiven for thinking this an impossible task.

In actual fact, by having robust systems in place and applying a disciplined approach, we're able to address our clients' compliance obligations successfully every Friday, without fail.

As already intimated, for clients using Interactive, there are all manner of easy-to-use features to support fee earners progressing matters, for cashiers to efficiently manage finances according to the stringent demands of the SRA's legal accounts rules and HMRC's Making Tax Digital legislation, and for compliance officers to generate compliance exception reports for rectification or reporting to the relevant regulatory body.

Interactive is subject to an extensive software development roadmap with a strong focus on legal accounting enhancements. We notify clients of these new and improved tools via our monthly e-newsletters and 'What's new' button located in our software's top toolbar. In the past few months alone, we've upgraded functionality for associated ledgers for cases, e-chit/bank integration, MTD input and output screens, batch accounts postings, 'keep' options to avoid data input repetition, authorise and maintain screen additions, and multiple developments to both detail and summary accounts-specific reports.

All of these software improvements are designed to simplify and strengthen your compliance procedures thereby making your Friday tasks that much more manageable.

For clients using Pinpoint, we send a weekly batch of reports showing ledger balances for client and office accounts, unpaid bills and breaches. These reports act as a prompt for clients to tie up

any loose ends by authorising payments and correcting breaches which are still outstanding. Our reports also streamline the process of recording failures and preparing reports on material breaches in the right format for the SRA, CLC or Law Society of Scotland.

These important checks are actioned by our Pinpoint cashiers each Friday. As our cashiers work in teams of six, headed up by a supervisor, it's then our supervisors' role to oversee the accurate production and prompt delivery of these reports, and act as an escalation point for any ensuing queries. We take our responsibilities very seriously because it's all part-and-parcel of providing a regulatory-compliance-guaranteed service.

Aside from these typically Friday reporting jobs, a normal day for our cashiers comprises liaising with clients, completing bank reconciliations, processing day-to-day transactions, gathering information for month end and subsequently completing month end closures as well as posting legal aid submissions and sending VAT returns at quarter end to HMRC via MTD.

By acting in the cashier role on behalf of our clients, the only requirement for Pinpoint users is to log daily e-chits of inbound and outbound monies, and record fee earning activity and disbursements. We do all the rest. By lessening your workload, your Fridays are certain to be stress-free, at least from an accounting and compliance perspective anyway.

Because of our unique provision of both Interactive and Pinpoint in tandem, our portfolio is superior quality in relation to other legal accounts software and cashiers service suppliers. That's because it's a common platform used by our cashiers and there's a plethora of management information intelligence drawn from this one central software platform by our supervisors. And, as noted earlier, we're also constantly researching new ways to improve our products further still. It's these ongoing software enhancements, defined in our aforementioned roadmap, which go a long way to streamlining clients' and Quill's processes.

Late Friday afternoon, to salute another successful week fulfilling our compliance requirements, the beer fridge is opened so everyone can have a quick drink before heading home for the weekend. This is one of the many employment perks at Quill. It's a nice way to mingle with our colleagues in a relaxed atmosphere, celebrate a job well done with some paid-for-by-Quill refreshments, and look forward to two days of rest and recuperation by starting the weekend an hour early. After a typical Friday, it's well deserved.

To discover more about Quill, please visit www.quill.co.uk, email info@quill.co.uk or call 0161 236 2910.



Julian Bryan joined Quill as Managing Director in 2012 and was also the Chair of the Legal Software Suppliers Association from 2016 to 2019. Quill has been a leading provider of legal accounting and case management software, and the UK's largest supplier of outsourced legal cashiers services, to the legal profession for over 40 years.

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