

# D&DLS Bulletin

Derby & District Law Society



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

March / April 2019

## Littleover Community School win the Derby Schools Debate competition

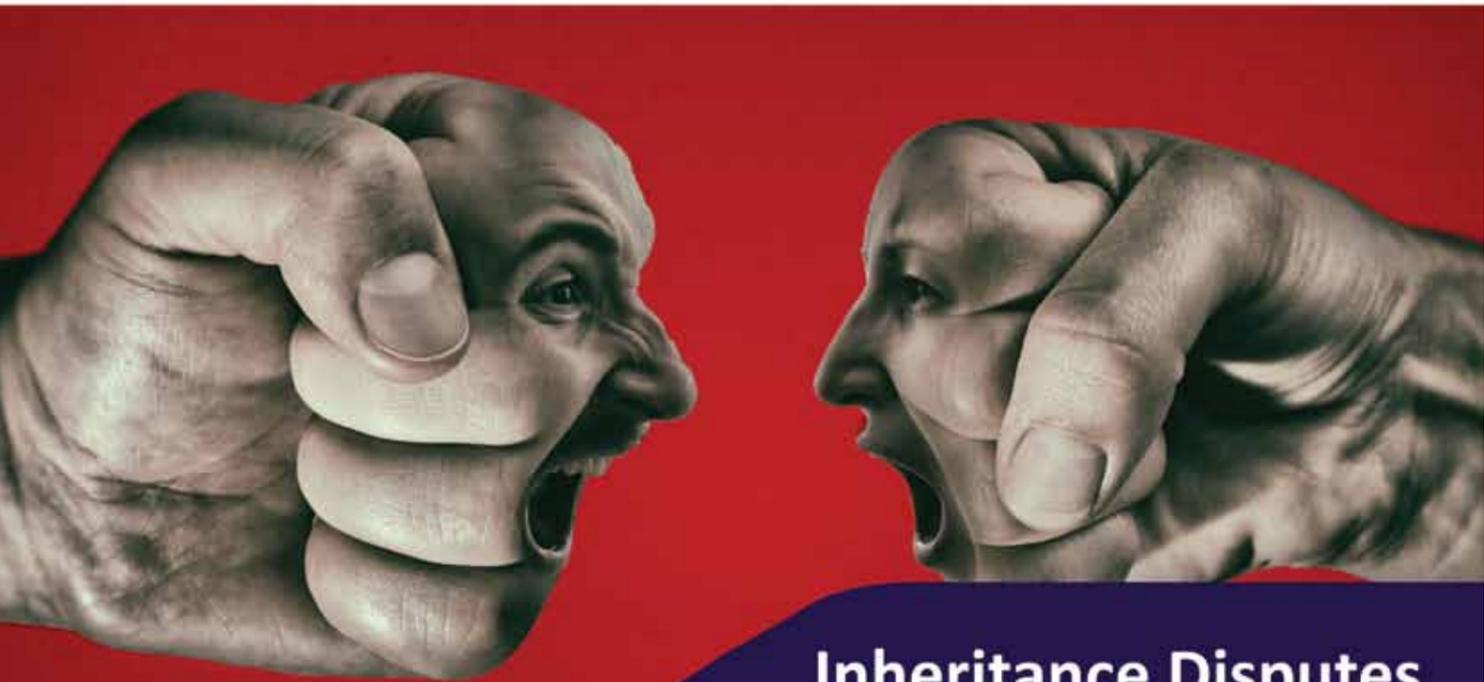


*Report on p.11*

**Also in this issue:** Back to the Future pt.3 • More Words of Wisdom • DJL Events

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## Inheritance Disputes The solution

### A quarter of adults are now prepared to dispute a Will if they disagree with the distribution of an estate!

Modern family structures are making **inheritance claims** increasingly likely. With multiple marriages, more people cohabiting and the involvement of children or stepchildren means the likelihood of someone **feeling hard done** by is high and can **trigger a dispute**.

#### Writing a Will might not be enough!

The reality is that a Will only really describes **WHAT** someone wishes to do with their estate, and doesn't include any of their **deciding factors or circumstances** surrounding the **Will drafting and execution**, or their **mental capacity**, which will be questioned if a claim arises.

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## Contents

3 - Contents & Editorial	16 - Words of Wisdom
4 - List of Officers	18 - Helping you to help your clients
5 - President's Page	19 - What the Inheritance Tax Incentive means to charities
6 - Council Member's Report	20 - Do you need an expert in hot tubs?
10 - Back to the future part 3	22 - AI: Friend or Foe?
11 - Schools Debate Final	24 - Flood searches and climate change
12 - Situations Vacant	26 - The rise of surrogacy and the need for DNA testing
14 - Derby Junior Lawyers	30 - All change [again!] for the SRA Accounts rules

## Editorial



So, it has taken over two years but at last I am able to write that it is a busy time to be the Administrator of DDLS. This Bulletin is packed with offerings from members young and old (it would be impolite to point fingers!!). Thank you for interacting and sending in those words of wisdom, council members report, memories from the old DDLS committee minutes and lots of adverts for events from DJL.

It is a pleasure to be involved with the University for these projects. The close relationship we have is the envy of many and the Vice President of the Berks, Bucks & Oxon Law Society is coming to Derby on the 20th March to watch the Triathlon as they hope to replicate the event in their area.

Nominations are now closed for the DDLS Legal Awards and judging has started. Winners will be announced by the President at the Annual Dinner on 26th April at Pride Park. You have all received e-mail invites but contact me to book places please by 12th April.

You have had e-mails about a free Land Registry course on 25th April, the Annual Dinner and a reception with Christina Blacklaws on the 15th April. Please contact me for details on any of these events. Further dates for your diary are a talk from Pearl Moses who is Head of Compliance and Risk at the Law Society on 30th May 2019 12-2pm, a joint wine tasting event with DJL on the 23rd May and the DDLS cricket match against Notts Law Society which will be held at Attenborough Cricket Ground on Thursday 15th August about 4pm. We actually have a trophy to defend!!

**Julia Saunders**

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The second Derby City Schools Debate Competition finished last week (write up on page 11). Everyone involved thoroughly enjoyed the event and I am proud and pleased to say that members of DDLS/ DJL stepped forward to go into schools to meet the children last Autumn and then judge the debates themselves. Thank you. Anyone wanting to register an interest in judging next year when we will be running the competition again let me know – literally two hours from 4pm on a Wednesday afternoon.

International Women's Day was marked by a joint event between DDLS and the University of Derby Law School. Solicitors, law lecturers, young lawyers, law students and two circuit judges attended at the Law School to be interviewed and photographed. Once complete we hope to send the work into the national First Hundred Years project (a project which marks 100 years since women could qualify as lawyers and looks forward to the future of women in law) and also unveil the project at a reception for women in law in our local area.

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*Tina Attenborough*

# President's Page



**And suddenly it is my penultimate article. How quickly this presidential year has gone.**

I was fortunate enough to be invited to the Annual Dinner of Northampton Law Society a few weeks ago. It was a lovely evening which included, as ours will this year, a celebration of the achievements of their members over the past 12 months.

We have now had a late flurry of nominations for the awards that will be handed out at our Annual Dinner on 26 April 2019. Thank you to all those that have taken the time to nominate and good luck to those who have been nominated.

What was made clear to me by our friends from Northampton, is how lucky we are as a Society to have such a positive link with Derby University, with whom we partner on so many events from the Legal Skills Triathlon to celebrating International Women's Day and the School Debating Competition. Through our collaboration with Derby University we are really making a difference locally. A prime example of this was explained to me at the final of this years Debating Competition when the Judges were informed that from one particular school, all those that competed last year received the highest possible grades in the English GCSE speaking exam. Whilst neither the Society nor Derby University can take all the credit for the achievement of those students, the teacher was clear to us that we had together, had a hugely positive impact. I would like to take this opportunity to thank Enterprise for Education for their continued support with this event and to all our members who gave up their time to judge during the past few months.

Whilst I eagerly await the Annual Dinner in April, we have the small matter of a 62-mile cycle around Derbyshire on 29 March 2019 to contend with first. Despite a puncture on my recent ride, the training has gone as well as I could have hoped. As you know, we are taking on the cycle in the hope of raising money for Derbyshire Children's Holiday Centre, so please give generously for this worthy charity. Our Just Giving page is <https://www.justgiving.com/fundraising/ddls-dchc-cycle>. There are so many children who would go without the much-needed break that Derbyshire Children's Holiday Centre provides and without donations, all of the support so many children receive, would simply not be possible.

Once we complete the cycle we will have but four weeks until our Annual Dinner and inaugural Awards. In a break from tradition, we have dispensed with a guest speaker in favour of Dave Byron, a local comedian and former MD of mbibaby with music from the Burgundy's to follow. I hope you will all join us for what I am sure will be a fabulous evening and an opportunity to relax and enjoy the entertainment (and large quantities of wine).

Once again, I wish all those nominated for an award, the very best of luck and I look forward to seeing you all soon.

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

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# Council Member's Report



When I came to write this report, I glanced at what I had written last time, and was struck by the extent to which in many ways nothing has changed since December. We are still in the middle of Brexit, on which we had a session on the eve of the Council meeting. The consequences of a No-Deal scenario would spread into areas which will not have occurred to most people. For example, if there is no deal, resolving disputes about goods bought online would in many cases have to be pursued in a foreign jurisdiction not in the UK. (Amazon, for instance, is based in Luxembourg.)

Reverting to the topic of our dysfunctional criminal justice system, I was given a copy of 'The Secret Barrister' in January. This is an entertaining read, and should be compulsory for anyone

who cares about criminal justice. I don't just say that because the anonymous author draws the same conclusion as I did when last writing to you – people don't care because no-one thinks it will affect them (and those who find it does, find out too late). The examples given of cases going wrong because the under-resourced CPS and/or the police have not dealt with the investigation and assembly of all relevant evidence (and thereafter disclosure) properly make chilling reading, and don't forget that even if it turns out that a case should never have been brought, an innocent defendant may have spent thousands on costs, only to recover a derisory contribution to those costs at the end of the day. I wonder what would happen if a case for negligence was brought against the CPS or the police in situations where there has clearly been such a failing on the part of either to do the job properly.

On a slightly more cheerful

note, the government has taken some notice of the points made by the Law Society in its representations to the review of the Legal Aid Sentencing and Punishment of Offenders Act. Of the Law Society's twenty-five recommendations, eight have been accepted, seven have been partly accepted, and work is continuing on the remaining ten. This is the first time in twenty years that any government has made proposals to improve the system, rather than just make cuts, but there is a very long way to go.

The Law Society is leading attempts to persuade the government to abandon its probate fee increases (which are really a back-door increase in taxation). Lobby your MP if you have the chance, because the vote has not yet come up in Parliament, and these days the Parliamentary arithmetic makes it possible for the government to be defeated.

A new Practice Note on Non-disclosure Agreements has been issued, which I commend to you. There is always the danger that reaction to one or two high-profile cases undermines perfectly normal and proper commercial practice, but hopefully the guidance offered will be helpful and an authority on which to rely if any argument arises.

At the Council meeting I stressed how important it was, in the light of the SRA's latest de-regulation of practitioners, that solicitors were not placed in the position of not knowing whether it was safe to accept an undertaking from another solicitor. I said the SRA needed to be pressed to confirm that this situation could not arise in their proposed new arrangements, and I was assured that this matter would be taken up. Watch this space, but don't hold your breath!

**Michael Williams**

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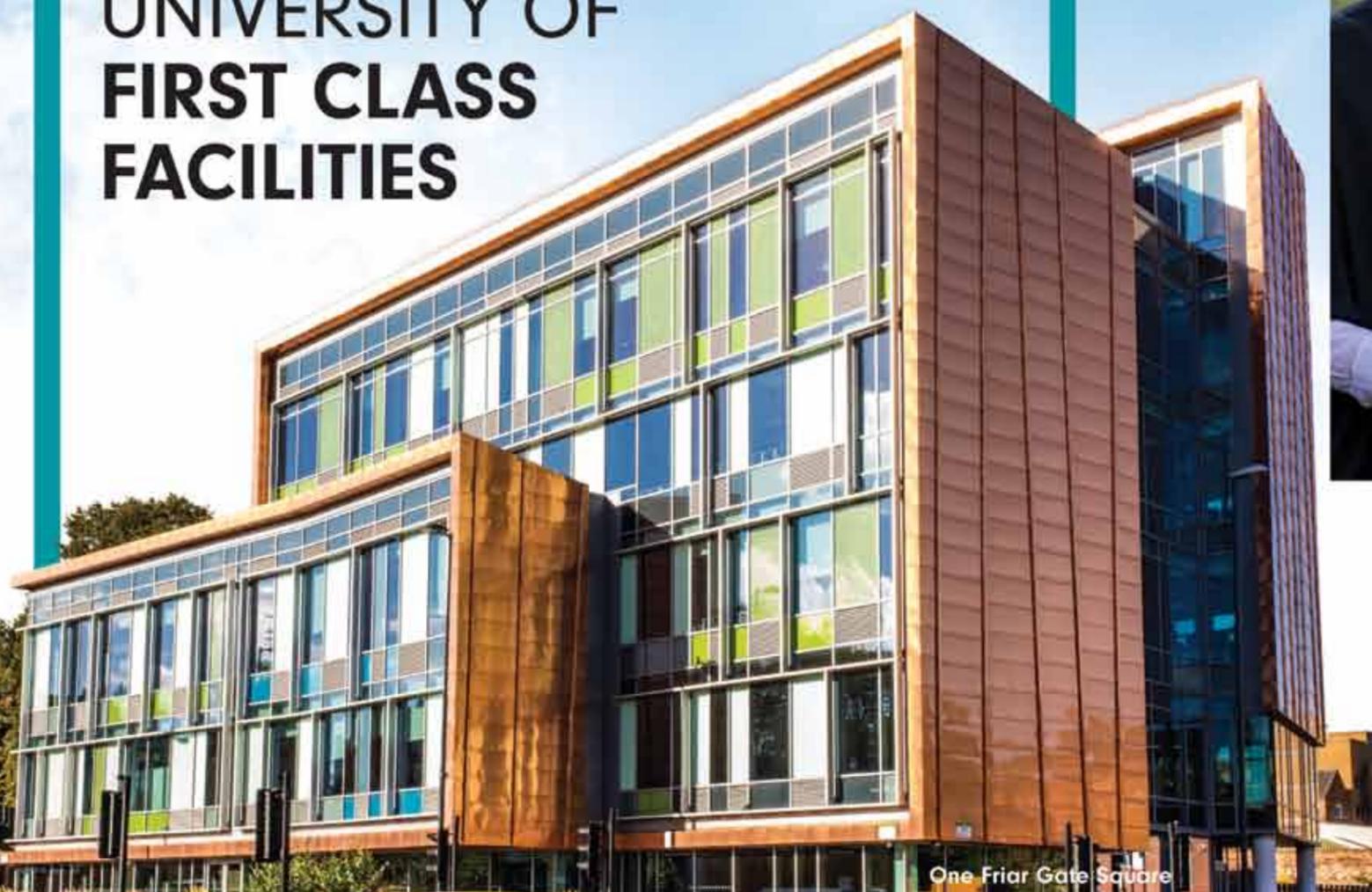
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## Back to the future part 3

### More from the Minute Book – only 71 years ago



The committee met on 6th May 1948. There was a detailed report from the April meeting of the Law Society in London where various matters were considered including panels for interviewing article clerks, free legal advice, undercutting, holding out, minimum scales of charges, and the preparation of contracts of sale by estate agents.

The committee was concerned to note that the Chesterfield representative had not attended meetings lately and that in view of Chesterfield's importance in the county, someone from the town might want to be present at the meetings. A letter was to be written to Mr PB Mather informing him that the committee would be glad to see him at the next meeting.

On 29th of July 1948 the committee once more considered the lack of attendance by the Chesterfield representative. Mr Mather reported that he had been unable to attend meetings for some time because of difficulties in travelling the distance to the meetings in Derby. He offered his apologies and said that if he could obtain the necessary petrol coupons he would attend more regularly. [Still the days of rationing and we were still being asked to allocate food parcels received from Australia!!]

Likewise in 1948 it was resolved that because of catering difficulties, there would be no Annual Dinner.

The committee also considered an item raised by Mr Copestake on the question of publication by newspapers of wills. Examples were given of the upset and inconvenience caused either by incorrect or delayed publication. Mr Copestake thought that the publication of wills by newspapers was undesirable; its only purpose being to satisfy the morbid curiosity of a section of the public. It was agreed that a letter would be written to the Law Society on the subject to obtain their views.

On 14th December 1948 my grandfather Donald AS Cash was elected President for the ensuing year. Throughout this year the committee were dealing on a regular basis with problems relating to the minimum scales of fees for conveyancing and what was often described as unfair competition by firms undercutting the prescribed scales. A sale of a property at £1100 would produce a scale fee of £21 6s 8d.

At the December meeting Mr Timms explained that meetings had been held amongst Burton on Trent solicitors where they had expressed a wish to join one of the neighbouring law societies. It was proposed that Burton on Trent solicitors be invited to join this society.

At the first meeting in 1949 and the secretary was instructed to send the Burton on Trent solicitors forms of membership to join the Society together with undertakings to be completed by them to confirm that they would charge in conformity with the

society's scale in conveyancing matters!

It was also felt, that in due course, it might be appropriate to elect a Burton member to the committee.

There was also some further discussion of the early adoption, following Provincial Area Committees discussion, of a legal aid scheme. Particulars of which were agreed to be carried into Derbyshire. However, Mr Wilson remarked that Belper did not appear to have been allocated a session and after discussion it was very recommended to ask that Derby should give up one of the sessions to Belper.

Has it really only taken 70 years to get from that local care to the TLC of the LAA?

#### Andy Cash

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Winners from Littleover Community School

## Derby Schools Debate Final

This was the second year of the Derby City Schools Debate Competition and the competition has gone from strength to strength. The Final took place on 6th March 2019 and was judged by HHJ Jonathan Bennett, President of the Derby and District Law Society Ben Lawson and Sue Jennings, Head of Law at the University of Derby.

Following hugely entertaining semi-finals the previous week the final took place between the two teams from Littleover Community School. By a margin of just one per cent the team comprising of Polly, Emily, Siding and Lily triumphed

over the team made up of Johann, Talvin, Lena and Elly. Congratulations to both pupils and staff.

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.

Young lawyers from local firms visited the Schools in October to introduce the competition and talk to the children about speaking in public generally. Students from the Law and



The debate in full flow

Business Schools at the University went into the Schools later last Autumn to mentor the children on how to present their arguments and prepare generally. The students impact on the children was noticeable in terms of both presentation and preparation. The students also kindly stood in at the last minute on two of the debates.

The debates have been judged by law lecturers from Derby

University and Derby solicitors and all have been impressed by how enthusiastic the children and staff have been and by the high standard of the debating.

A massive THANK YOU to everyone who gave up their time to make this project such a fantastic success – special thanks to Liz Doherty from the University of Derby who has co-ordinated the students and the University resources.



Runners up from Littleover Community School



Judges left to right Ben Lawson, Sue Jennings, HHJ Jonathan Bennett

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# Derby Junior Lawyers



## The DJL had their January Blue's Quiz on 17th January 2019

There were lots of teams at this event, a huge well done to Swindell and Pearson for winning the Trophy this year. There were lots of hard questions, including a round about the Derby Area... safe to say I don't think this was the best answered round!

Thank you to Derby University for allowing us to have the event at the Law School, and to Dominos for providing lots of Yummy Pizza to keep our brains in gear!

The Derby Junior Lawyers were proud to present the DJL and RICS joint Networking at the Distillery on 21st February. There were around 30 attendees, all from different professions. It was said by all that this was a highly enjoyable event, and in particular the RICS team are wanting to do another event with us in the near future.

A huge thank you to Kate Pleasant, our Events Secretary for sorting such a fabulous event!

## Forthcoming Events

5<sup>TH</sup> May 2019 – DJL Committee Team are running for the Stroke Association – donations welcome.



Misha Wiseman, Kate Pleasant, Eliza Patrascu, Joe Baumber and Lucy Schofield of the Derby Junior Lawyers are going to be taking part in the Stroke Association Resolution run at Markeaton Park on 5 May 2019. They are taking part in the run as it is for a cause very close to them. They are excited to take part and have been training regularly so that they are ready for the big day! They are going to be doing fundraising events and are on their way to reaching their £500 target. If anyone would like to donate to this wonderful cause, please see the JustGiving link, [https://www.justgiving.com/fundraising/derbyjuniorlawyers-resolution-run-2019?utm\\_campaign=pfp-share&utm\\_content=derbyjuniorlawyers-resolution-run-2019&utm\\_medium=fundraisingpage&utm\\_source=Facebook&utm\\_term=45v8abQva](https://www.justgiving.com/fundraising/derbyjuniorlawyers-resolution-run-2019?utm_campaign=pfp-share&utm_content=derbyjuniorlawyers-resolution-run-2019&utm_medium=fundraisingpage&utm_source=Facebook&utm_term=45v8abQva)



23<sup>RD</sup> May 2019 – Cheese and Wine Tasting Event in association with the Derby and District Law Society



26<sup>TH</sup> April 2019 – Derby and District Law Society Ball – Please contact [derbyjuniorlawyers@outlook.com](mailto:derbyjuniorlawyers@outlook.com) if you would like to come along as part of the DJL.



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## Words of wisdom

Some of the benefits of getting one's wellies dirty...



Working for all of my practising career in a market town, there was a fair smattering of farmer clients, and a consequential volume of agricultural land to convey – often by auction.

Prior to preparing the contracts, I would always walk round the land with the sale particulars and make notes of where things like cattle troughs, gates, public footpaths and electricity poles were. In the latter case, one could then make sure one had Wayleave Agreements to hand for the contract pack. Also one could allocate boundary maintenance covenants logically and work out which of two intertwining black lines on an OS plan was the hedge and which was the stream. The client could be questioned on anything unusual.

Once at an auction, a prospective bidder raised his hand and asked why there was a somewhat overgrown gate in a boundary hedge. I was able to tell him straight away my client and his neighbour had agreed to put it there (a) to make it easier to return stock that had broken out, and (b) so the hedge cutting contractor they both used could avoid a five mile road detour each October. Had I not been for my walk, I would have had to ask my client and looked a bit inefficient. Somebody once asked if there was much game on the land; I told him my Labrador had conducted a thorough survey and found a rabbit plus one very indignant cock pheasant who promptly flew noisily off over the boundary!

If instructed by a buyer – usually after the successful bid – I would try and go for a walk before raising requisitions. Once I discovered a track from the road running down one side of the lot to a bramble covered five bar gate in the boundary and said track disappearing up the other side of the valley. The only clue was a "Public Footpath" fingerpost by the roadside gate. There was also a line of electricity poles. No mention of any of this in the contract pack – the optional footpath question on the Local Search had not been ticked, but my Pathfinder OS map showed the route followed the track. I raised two additional requisitions (i) as to whether there were any third party rights of way, and (ii) requested a copy of the wayleave agreement in order to notify what is now WesternPower to make future payments to my client.

The Requisition sheet was returned promptly with all the standard questions answered very well. As to the two additional: "We are taking instructions from our client". Oh dear, someone hadn't done their homework very well. What a good job my client hadn't stood up at the auction and asked the question....

Other points to remember:

- fencing contractors do not seem to carry copy Conveyance or TP1 scale plans in their back pockets, so it is worth checking (or asking your buyer client to check) the physical line of a new looking fence seems to be substantially where the dotted boundary line is on the filed plan.
- On a 1:1250 scale plan, one millimetre on the plan represents about four feet on the ground, so carrying a ruler and calculator plus knowing how long your stride is helps interpret the filed plan better.
- Where practicable, on a private treaty transaction involving splitting off buildings, a site meeting with the other side and their conveyancer present as well as your own client can save a lot of time and avoid questions like "Please mark the position of [.....] on the attached plan" because everyone has seen it.
- A look on Google Earth and Streetview can be useful in addition to as well as instead of a site visit. Sometimes there are views from different eras, so if the only gateway in off the classified highway fronting the land your client is buying was not there on Streetview 2016, does the Local Search show a planning consent for the new vehicular access?

Chris Green

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# Helping you to help your Clients...

## MAKE A DIFFERENCE

When it comes to making a Will, most people quite rightly want their estate to help members of their family and the friends they care about. It's also a time when many choose to make a difference to the lives of other people as well but for those that want to make an impact closer to home, it can be difficult to know where to start.

## KEEP IT LOCAL

An increasing number of people are turning to their local community foundation, Foundation Derbyshire, to help them keep their giving local and find the smaller charities and organisations that so desperately need their help.

## KEEP ON GIVING

Wouldn't it be satisfying for your clients to know that their gift will make a difference not just once but in perpetuity and be there to meet the changing needs of future generations?

Gifts to Foundation Derbyshire are not only used to support local grassroots groups and charities but go on helping over and over again. This is because gifts left to us are invested and the income generated is then used to make grants to support local people year after year.

## BE REMEMBERED

With a legacy gift of £10,000 or more your clients can set up a Named Fund and decide how they wish the proceeds from their fund to be used. For instance, income from their fund could be used to support the area where they live, or a particular cause they care about. Or they could leave it up to our Trustees to use the income to meet the most pressing needs in the community.

Grants can be made in their name and will associate them with their local communities for generations to come.

## BE TAX EFFICIENT

Like all legacies to charity, a gift to Foundation Derbyshire would be tax-free and could reduce the total amount of tax paid on your clients' estate.

## WHO WE ARE AND WHAT WE DO

Foundation Derbyshire is a local independent registered charity, established in 1996 to build a multipurpose endowment fund for the people of Derbyshire.

Our endowment now totals over £7 million and comprises over 60 donor funds, with a

wide variety of charitable purposes, which we manage on behalf of individuals, families, companies, charitable trusts and statutory organisations. To date, we've distributed over £15 million of grant funding across Derbyshire on behalf of our donors.

As a community foundation, one of our great strengths is being able to structure a fund to reflect a donor's particular charitable goals.

We would be delighted to work with you and your Clients to help them support their local communities in a meaningful way that suits their individual interests and circumstances.

If you would like to find out more, please visit our website

[www.foundationderbyshire.org](http://www.foundationderbyshire.org)

If you would like to talk in confidence to our Chief Executive, Rachael Grime, please phone 01773 525861 or email [rachael@foundationderbyshire.org](mailto:rachael@foundationderbyshire.org)



# What the inheritance tax incentive means to charities

REMEMBER US IN YOUR WILL  
Help our work live on...



Rob Cope

**Inheritance Tax affects a small proportion of estates and yet the tax incentive for charitable estates has a huge impact. Why does it matter so much and, in light of the ongoing review of Inheritance Tax, what is being done to protect the current environment for gifts in wills?**

**Rob Cope**, Director of Remember A Charity, says: "It's a common misconception that tax relief is all about financial incentives. No matter how generous a tax break is, it's rarely the sole or even primary reason to leave a charitable legacy. Ultimately, people give because they care and are inspired by the cause. Because they want to leave a positive contribution on the world when they are gone."

## Charities are increasingly reliant on gifts in wills

Here in the UK, the public gives over £3 billion in legacy donations annually. More charitable services are being funded through gifts in wills and the number of supporters is on the rise. In what remains a challenging fundraising environment, this income has never been so important.

Currently, we have one of the most encouraging national fiscal environments to promote legacy giving. Charitable gifts in wills are exempt from IHT (charged at 40%) and any estates that includes donations of 10% of their value (or above) also benefit from a discounted rate of 36% across the remaining value of the estate.

This framework has had a major impact on legacies, but not always in the way that most people might expect. Yes, research shows the tax relief can be a strong incentive for people to give, particularly for those who lie just over the IHT threshold. But the real issue here is that tax relief gives solicitors and financial advisers the added impetus to discuss legacy giving with clients. Because there is a tax benefit, legal advisers and Will-writers have a natural entry point for discussions with clients and this has been an important factor in driving behavioural change.

Cope adds: "Within this environment – one that normalises legacy conversations and conveys the state's support for the concept – gifts in wills are becoming so much more commonplace. The tax incentive is working and that's why it is protected."

## Tax incentives at risk

The ongoing review of IHT by the Office of Tax Simplification (OTS) is an opportunity to create a more fair and simple system for the public, but it also puts the tax incentive for legacy giving in jeopardy. In fact, a recent proposal from one leading thinktank even suggested that IHT should be abolished altogether with little reference to the impact on charities.

While the first OTS report was published shortly before Christmas and focused on how the administrative side could be simplified, it is the next stage that will unveil proposals for how IHT may be structured and what this might mean for the sector. It is impossible to second guess what decisions will be made, but Government has long supported gifts in wills and Remember A Charity is optimistic that future tax policies will continue to encourage and inspire giving.

## Why is the Inheritance Tax break so important for the nation's charities?

Cope says: "The reality is that the tax incentive serves to encourage and normalise charitable behaviour. It brings legacies front of mind, gets conversations about charitable giving started and helps to communicate just how meaningful a charitable bequest can be. It is hugely important that this incentive is maintained. Charities simply cannot afford to lose any legacy giving incentive, least of all IHT relief."

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# Do you need an expert in hot tubs?



Chris Makin

Silly question, I know, but you more alert litigators will recognise that I'm talking about concurrent evidence. Now, you may think "hot-tubbing" means having a couple of experts in a Jacuzzi, or being boiled alive in a missionary pot. Not so; but either way, it's likely to make your experts sweat unless they are very well prepared.

So what's this concurrent evidence all about? It is an arrangement where at trial two (or more) experts are put into the witness box together – if there's room – and where the judge chairs a discussion on their expertise relevant to the matter in hand. Counsel for claimant and for defendant can put questions to either expert, so can the judge, and the experts can even ask questions of each other. Scary, eh?

Well, it can be scary for the uninitiated, but as with so many other considerations, it's a matter of choosing your experts with care – horses for courses. If the subject matter of your

dispute is so obtuse that there are only three or four people in the UK with the expertise to address it, you may be stuck with an impressive boffin who has never been in a courtroom before, and your case will be weakened unless you put much effort into training him in what to expect.

But for most purposes, you would be wise to choose an expert who knows the subject but who also has the training and experience to follow what is in effect a second profession, as an expert. It would be a tragedy, after all the effort you have put into a case, for your expert on the subject, who is not an expert in litigation, to fatally weaken your case by his performance in the witness box.

And this is the case, *a fortiori*, with the hot tub.

Why is it different? There are two differences, which are said to have advantages in costs saving.

The **first** is that there is a

costs saving because the length of trial is shortened. The court can get to the real issues quickly, instead of them emerging gradually by cross-examination and re-examination of the experts (evidence in chief these days, of course, is little more than the expert confirming that they have written the report in the bundle). Of course, against that must be measured the extra reading time needed for the judge to be *au fait* with the issues. And a judge may not be an expert on the subject matter, and so may not ask questions to the depth expected of an arbitrator, who would have been chosen for their expertise. So it's up to the judge to order concurrent evidence, or not, as he feels would be appropriate.

The **second** is that the process tests the experts' opinions very thoroughly. And there is no doubt a hidden cost saving there, since experts who know they face the rigours of the hot tub are more likely to form their opinions carefully, to

advise those instructing them of the weaknesses of the case at a much earlier stage, and to hold their joint discussions more rigorously. So, with early decisions not to proceed, Part 36 offers, mediation, and other methods of settling cases, one can expect that more cases will be concluded long before the expense of a hearing has to be faced. And such cases will never feature in the statistics. So we can expect that the hot tub will be "flushed out" long before it is used!

I have been in the hot tub, and it worked very well. My opponent was someone I already knew, and we developed an excellent working relationship during our discussion between experts. At the hearing, our concurrent evidence took only a few hours, and we were able to clarify the issues very effectively.

Whilst it is the case that hot tubbing is not yet the norm, I am seeing directions orders where it is to be expected there will be concurrent evidence if the matter proceeds to a full hearing. So I am looking forward to more frequent hot baths.

And I would really appreciate the opportunity to help your client in that missionary pot!

**Biog:** Chris Makin is one of only 100 or so chartered accountants to become an Accredited Forensic Accountant and Expert Witness – [www.icaew.com/forensicaccreditation/register](http://www.icaew.com/forensicaccreditation/register). He is also an accredited civil & commercial mediator and an accredited expert determiner. He has given expert evidence at least 100 times and worked on a vast range of cases over the last 28 years. For CV, war stories and much more, go to [www.chrismakin.co.uk](http://www.chrismakin.co.uk).

Chartered Accountant  
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## Chris Makin

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## AI: Friend or Foe?



Whenever the words 'Artificial Intelligence' are spoken, rooms fall quiet and images of Blade Runner-like scenes are conjured in people's mind. Such dystopian views have been propelled by sci-fi films filling us with fears androids will take over the world and with it, human's place in society. Whether you support self-driving cars or embrace digital assistants, AI is technology that only continues to grow in the modern world.

AI encompasses a plethora of functions, from machine learning to speech recognition and personalisation, fast becoming a feature of most digital services that often passes by unnoticed

by users. As is usually the case when all goes well, we don't notice anything. However, disquiet around new technology isn't a recent advent. Mathematicians were once fraught with concern around how the humble calculator would become a threat to their jobs, however the omnipresent tool is now built into every smartphone and most people wouldn't dream of performing longhand calculations.

Just as the calculator created efficiencies for mathematicians and accountants, AI can free up time from process-based tasks for solicitors. The SRA recently published a paper reviewing innovations in technology within the legal sector. The report found AI will help with task-driven work, creating efficiency and gifting solicitors more time to focus on complex tasks. Increased productivity in administrative areas of the business enables firms to focus on the more human aspects of their firm, affording them more time to build relationships

with their clients and their experience as it's the human element of roles that AI will struggle to replace. While technology takes care of the nitty-gritty, you can provide a personalised service that will build your brand reputation and help your firm to grow.

It's important to consider that we will take stepping stones towards implementing AI. At InfoTrack, our approach has been to take that approach in applying AI, implementing machine learning to our services to identify trends and patterns, ultimately working toward returning searches to our clients faster, leading to greater client satisfaction. Allowing AI to become part of your business strategy in any of its various forms shouldn't be perceived as a threat, but instead embraced to allow roles to grow into more fruitful human-centric functions, giving rise to greater customer satisfaction, not the rise of the robots.

**Adam Bullion**, General Manager of Marketing, InfoTrack



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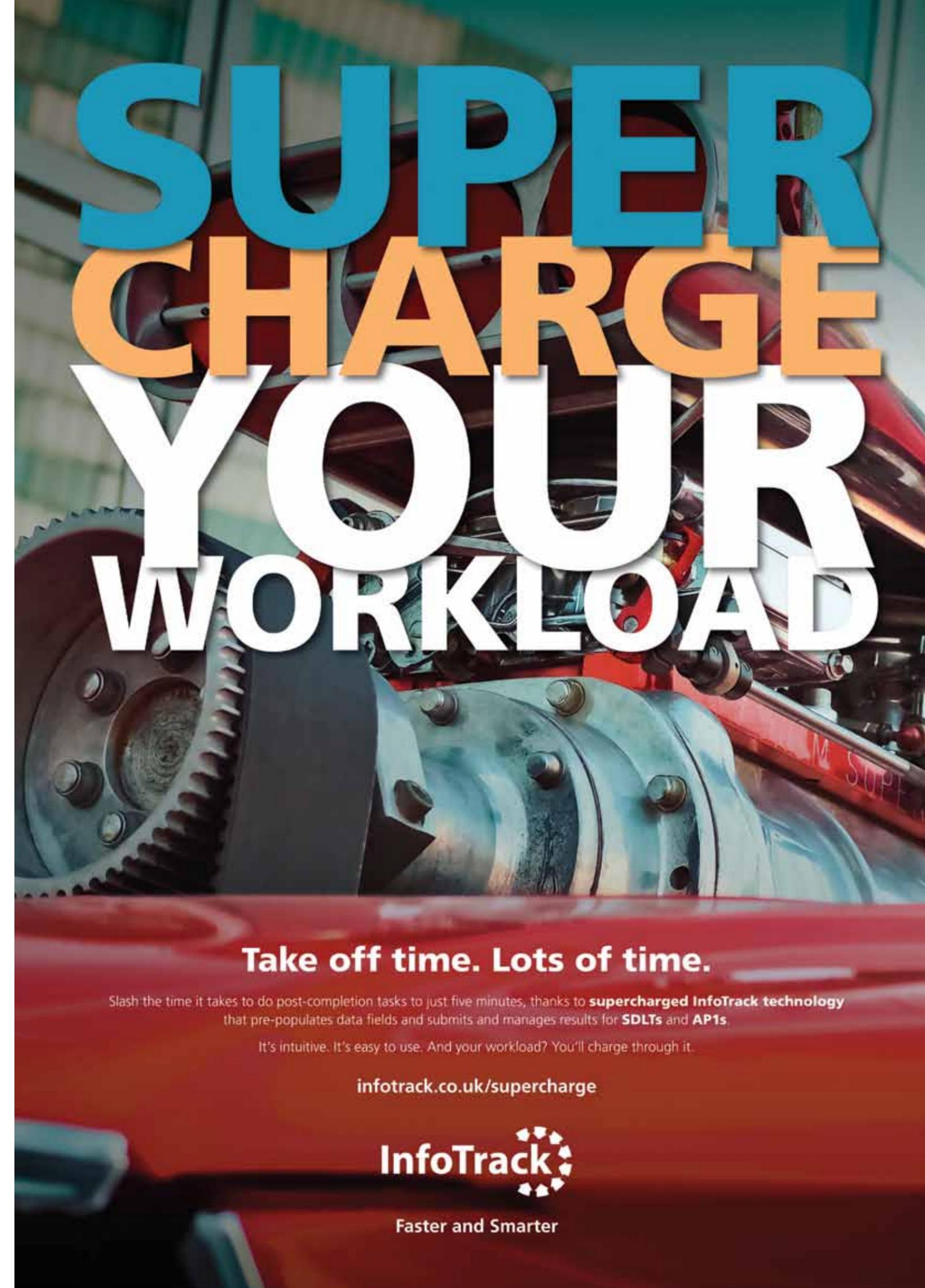
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## Flood searches **more important than ever** due to climate change

In these days of digitised property information, conveyancers have a wide choice of search reports at their fingertips when considering how to best identify risk for their client's chosen property. What is surprising, however, is that only about 29%\* of orders placed with Geodesys include a full flood assessment, meaning a large proportion of homebuyers are unaware of potential flood risk. By **Jonny Davey**, Product Manager at Geodesys

With a growing population, increased demand for housing, ageing infrastructure and severe impacts on climate change, flooding is a significant problem which will inevitably threaten more communities across the UK. Ranging in impact from minor inconvenience to major disruption, every year millions of UK homes, businesses and people are affected by floods.

According to the latest information from the Environment Agency, the UK currently has 5.9 million properties at risk of flooding, equating to one in six homes being at risk – an increase of 400,000 properties since 2013. Put into monetary figures, the statistics are even more startling with the effects of flooding and managing flood risk costing the UK approximately £2.2bn a year.

Conveyancers have a vital role in informing their clients about the possibility of flooding to ensure they understand the potential risks and are armed with the right information to take steps to mitigate them ahead of the transaction. Home buyers need to be aware that flooding can happen anywhere, even if a property is not next to the sea or a river. There are many different types which

property purchasers should be made aware of, including surface water flooding, river flooding, drain and sewer flooding, coastal flooding and flash floods. All have potential to wreak havoc on a homebuyer's property and life.

In recent years, floods have made the headlines on several occasions. Statistics from the Met Office revealed December 2015 as the wettest month ever recorded in the UK, with almost double the average rain fall due to temperatures 4.1c higher than normal. Amazingly, although homeowners tend to have both insurance and warning systems in place to protect themselves against fire and burglary, very few take steps to reduce the chances of their property being flooded. This is rather concerning given that the average cost to rectify flood damage stands at £28,000 compared to the average £7,200 to fix fire damage, and £1,000 on resolving damage after a burglary.

When advising clients conveyancers should look for a residential property search that provides a full assessment on the different types of flooding, plus information on insurability. For information on sewer flooding conveyancers should refer to the CON29DW Drainage and Water report, which is also an essential part of the conveyancing process.

Geodesys offers a number of flood searches and the CON29DW, providing conveyancers with sound knowledge of any flood risks to their client, enabling them to make better, informed decisions about their purchase before proceeding further.

To find out more visit: <http://www.geodesys.com>

*\*29% quoted is based on an analysis of Geodesys orders for search reports January 2018 – December 2018*

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# The rise of surrogacy and the need for DNA testing

Surrogacy is now often in the news, fueled by both our celebrity culture and by increasing awareness of the possibilities afforded by a plethora of new technologies in assisted reproduction. In fact, surrogacy is part of 'fertility tourism' where couples or individuals choose to travel to other jurisdictions with a view to accessing services which may be prohibited, not available or too expensive in their native land. Such treatments are reported to number between 20,000 and 25,000 events per annum worldwide. The desire for a child has developed into a significant business sector and with differing international moral/ethical perspectives, the law has evolved quite differently in different cultures, where attitudes towards surrogacy vary from altruism to pure commerciality.

There are several reasons why couple may choose the surrogacy option, including: a) couples who cannot, for whatever reason, have their own children, b) same sex couples desirous of a biological relationship with a child or perhaps more rarely, c) by social choice. In the UK the woman who carries the child and subsequently gives birth to the child is seen as the child's legal mother. If this surrogate is married or in a civil partnership, their spouse could also be a legal parent of the child. In England at least, surrogacy contracts are not capable of legal recognition, which means the arrangements entered into under a compensated (reasonable expenses only) surrogacy are no more than informal agreements that rely on trust for their execution on both sides. For the legal rights of the child to be transferred from the surrogate to the intended parents (who commissioned the surrogate - notwithstanding that at least one of them may have a biological relationship to the child), an application for a parental order<sup>1</sup> will need to be made within six months of the child's birth. In doing so, the applicants are asked if they are "a genetic parent of the child", a fact that can only be established by use of a DNA test which is conducted by an MoJ accredited provider, such as Complement Genomics and dadcheckgold.

In terms of fertility tourism, the current preferred destinations are those where jurisdictions permit 'paid for' gestational surrogacy and the intended parents can gain legal rights over the child. This may either be by gaining direct parental rights or by making use of streamlined adoption procedures. It is the case that DNA testing is often required by the home authorities to prove the parentage of one or both of the donors after overseas surrogacy, by use of either a paternity or maternity DNA test, or both.

The Ukraine, Russia and Georgia have liberal laws regarding commercial surrogacy (including for foreigners) and are the current destinations of choice. Indeed, many UK couples are choosing the Ukraine<sup>2</sup> since:

- The intended parents of the child are considered to be the biological parents from the conception
- The intended parents are specifically named on the birth certificate to the exclusion of the surrogate mother or any donor
- The surrogate mother cannot by law keep the child after birth
- A donor or surrogate mother has no parental rights over the child and no adoption of the child is required
- There are no restrictions on the payments.

The written and informed consent of all parties and a notarised

surrogacy agreement is required (and which can be complex), plus there is the presumption that the intended parents are married, so a translated and notarised copy of the marriage certificate is also necessary.

For British parents using a surrogate in the Ukraine it is often more convenient to locally obtain a UK passport for the child once born, although proof of the genetic relationship to one or both of the intended parents is generally necessary. This can be arranged by contacting us using the details below.

The progressive approach of the authorities in the Ukraine, Russian Federation and US has already helped many childless UK couples and the law is highly favourable towards surrogacy in these jurisdictions. For intending parents wishing to go down this route, then appointment of an experienced UK based solicitor and an accredited DNA testing company is essential..

**Nicola Lowes**, LLM  
and **Neil Sullivan**, MBA, LLM, PhD  
www.dadcheckgold.com

To discuss DNA testing for a surrogacy case, please call:  
**0191 543 6334** or e-mail: [sales@dadcheckgold.com](mailto:sales@dadcheckgold.com).

*Complement Genomics Ltd, the provider of the dadcheckgold service, is accredited by the Ministry of Justice as a body that may carry out parentage tests as directed by the civil courts of England and Wales under section 20 of the Family Law Reform Act 1969.*

## TYPES OF SURROGACY

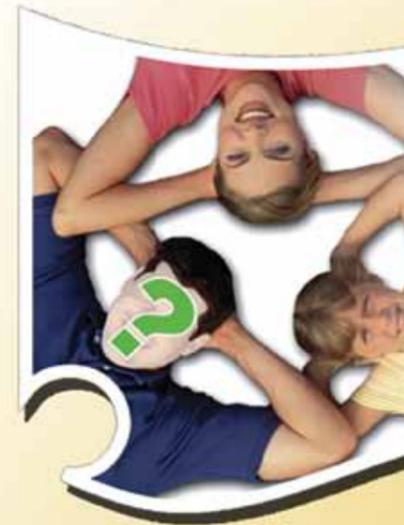
'Traditional' surrogacy involves insertion of sperm into the fallopian tube of the surrogate mother, who by virtue of using her own egg, is the biological mother of the child.

'Gestational' surrogacy, often referred to as in vitro fertilization (IVF), involves implantation into a surrogate of an externally fertilized embryo where the intended parents provide the biological material and of the egg and sperm both, either or neither of which may be from a donor. Importantly, the child and the surrogate mother are biologically independent of one another.

### Notes

<sup>1</sup> Form C51: Application for a Parental Order (Section 54 Human Fertilization and Embryology Act 2008).

<sup>2</sup> Article 123 of the Ukrainian Family Code (as amended 22/12/2006, No 524-V) and Orders 24 and 771 of the Health Ministry of Ukraine.



- Experts in DNA testing for paternity and other biological relationships
- Accredited by the Ministry of Justice for s20 tests\*
- Adherence to court dates
- Sample collection service

Please contact us on  
**0191 543 6334**  
[sales@dadcheckgold.com](mailto:sales@dadcheckgold.com)



\*By virtue of having ISO 17025 accredited UK-based laboratories, we have also been accredited by the Ministry of Justice as a body that may carry out parentage tests directed by the civil courts of England and Wales under section 20 of the Family Law Reform Act, 1969.

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# WHY IS STAMP DUTY LAW SO CONFUSING? and could your clients be due a refund?

*Stamp Duty Land Tax is commonly known as Stamp Duty or SDLT and was introduced in 2003. It was initially a relatively straight forward duty to calculate, administer and collect until Parliament started to make changes to it.*

The first significant change was in December 2014 and a subsequent change came into effect in April 2016 when the 3% surcharge on the purchase of second homes and buy-to-let investments was introduced. These changes have created uncertainty and complexity when calculating the duty due and so overpayments arise. Overpayments can be recovered from HM Revenue & Customs ("HMRC") provided a claim is submitted within the required time frame which is generally 13 months after the purchase date.

### What if one house has an annexe, or detached property in the grounds?

There are complex rules surrounding the purchase of properties that include an annexe, basement flat, or other residential property in the grounds such as a detached holiday cottage, an apartment above a garage or even staff accommodation. Therefore, mistakes with the calculation are made and opportunities to claim statutory reliefs and allowances are overlooked. Take the following example:

Mr & Mrs Davies purchased a 3-bedroom house in June 2017 for £675,000. Attached to the house was a garage; the upper floor of which had been converted into a bedsit. The bedsit was not occupied on the purchase date but was suitable for use as self contained living accommodation. The couple did not own any other residential property and were advised to pay Stamp Duty of £23,750 on their purchase. We subsequently reviewed the purchase for them and confirmed the Stamp Duty charge should have been £13,750. Statutory reliefs and allowances were overlooked, and we were able to help the couple claim a £10,000 refund from HMRC.

We are more than happy to have a conversation with those that fear their clients have overpaid and want our help to assist with claiming a refund on their behalf. If you also have clients that are about to embark on a similar purchase please get in touch so we can ensure you advise your clients to pay the right amount of Stamp Duty. Not too much and not too little.

**Stephen Griffiths, Griffiths Allen Stamp Duty Advisers**  
office@griffithsallen.co.uk



**GRIFFITHS ALLEN**  
Stamp Duty Advisers  
HELPING YOU GET IT RIGHT



## Are you frustrated with HMRC for expecting you to advise on SDLT?

We know the pressure you're under to ensure your clients pay the right amount of tax - not too much and not too little.

It's likely that you're a conveyancer not a specialist tax adviser. We therefore understand that things can get a little hot under the collar when you're trying to figure out how and when Multiple Dwellings Relief interacts with the subsidiary dwellings legislation or if that annoying 3% surcharge also applies. And we won't get you started on those time consuming questions you receive about replacement main residences or the tax consequences of sole proprietor/joint mortgage applications or how your clients will be affected by Land Transaction Tax that now applies in Wales.

If you need help and advice on these or any other stamp duty or land transaction tax matters please get in touch; we will be sure to reply within 48 hours. The majority of our fees are fixed so you and your clients know where they stand.

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