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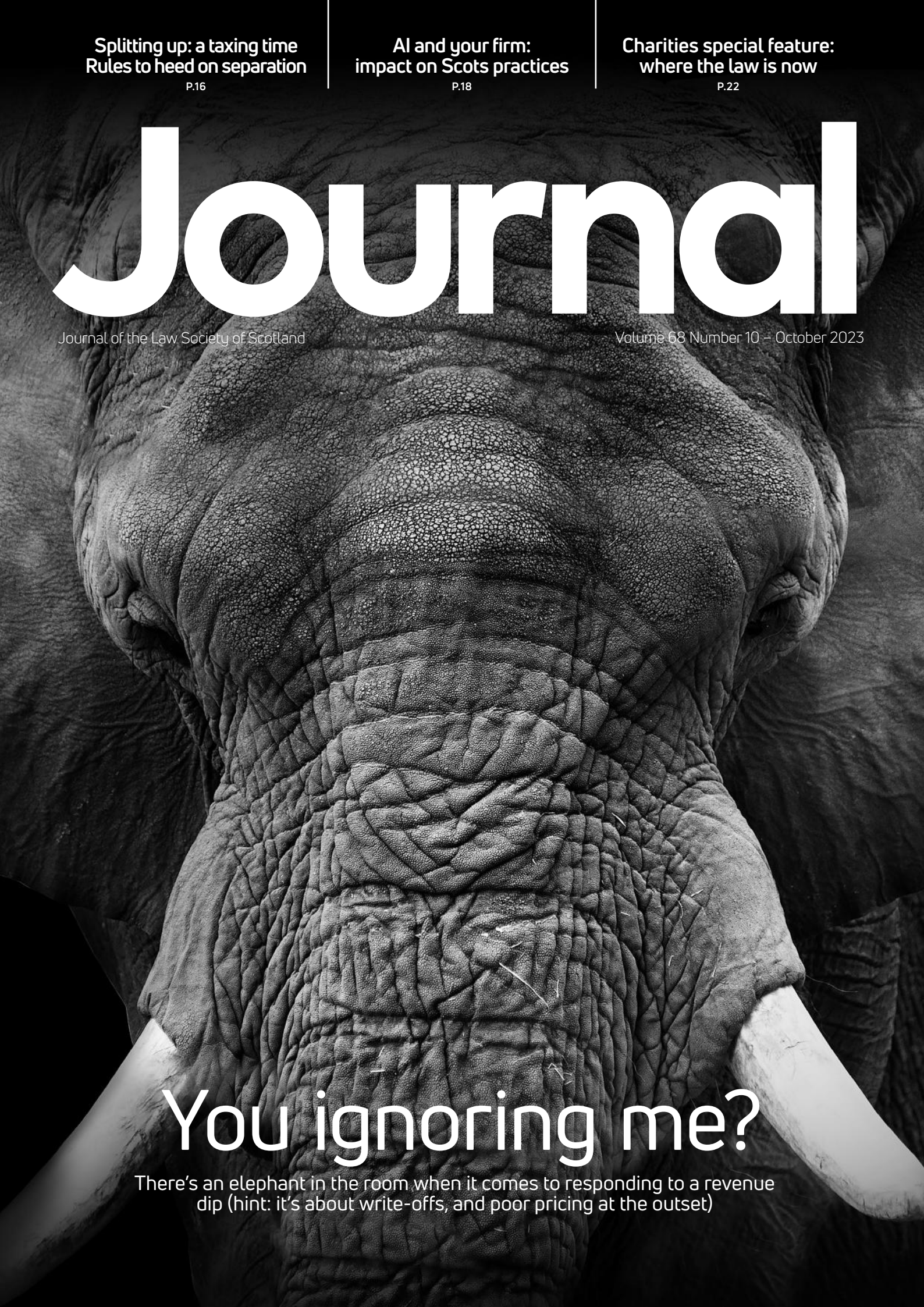
Journal

Journal of the Law Society of Scotland

Volume 68 Number 10 – October 2023



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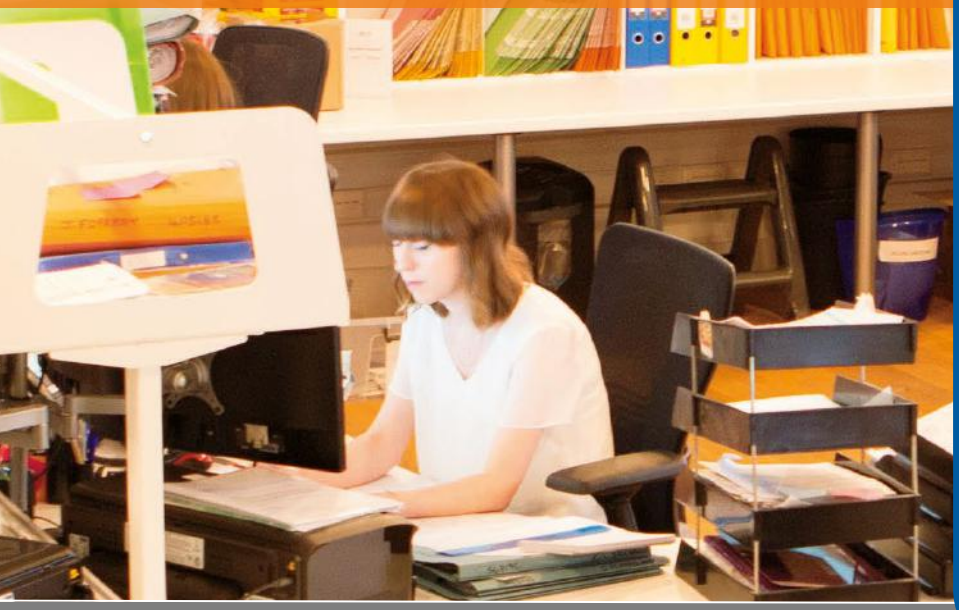

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Editor

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Jury still out

With ministers having announced their intention to reconsider the intervention powers in the Regulation of Legal Services Bill, attention switches back for the time being to the Victims, Witnesses, and Justice Reform Bill, on which oral evidence sessions are now taking place before Holyrood's Criminal Justice Committee.

Despite statements to the contrary in some documents ahead of the bill, ministers are now scrupulously keeping to the line that the reforms to the jury system (12 member juries; abolishing the not proven verdict) are not designed either to increase or decrease the conviction rate for any crime. I suspect that message has not yet fully filtered through to various campaign groups, not to mention certain sections of the public who appear to regard not proven as a get-out for the guilty rather than an expression of reasonable doubt as to guilt. Its days are probably numbered, but if so, it is clearly crucial that the intended balancing safeguards are carefully considered for their likely effect – however imperfect an exercise that will be in our present state of knowledge.

Stepping back from the bill for a moment, it is a proper matter of concern that so few complaints of rape and analogous offences do end up with a guilty verdict. While acknowledging that these often present particular difficulties of proof, it is clear that much more could be done to make the process of reporting an attack and persevering through to trial and conviction less of an ordeal for the complainer, quite apart from the formal rules surrounding the trial. (Always leaving to one side the proposed judge-only courts, likely to remain too much of a red line for the profession to have much prospect of becoming reality.) The bill does contain further measures in recognition of this, but also very important is the human contact experienced by individual complainers going through the system, at each stage.

Delays in cases coming to court can be another factor, and not only for complainers.

In that regard, and of relevance across the criminal law, we should be concerned at the Lord President's statement at the opening of the legal year, that the court authorities no longer expect to return to pre-pandemic levels of trials pending, and a "new reasonable baseline" has to be set. Whatever that may mean in terms of time to trial, it will inevitably mean a continued higher number of remand prisoners, and likely of increased temptation to plead guilty, even if wrongly, in the hope of a sentence resulting in immediate or early release. Both consequences would be very regrettable. Lord Carloway's statement may in part follow a realisation that there simply are no longer enough criminal defence lawyers to achieve a greater throughput of cases; any such constraint would indicate that the Scottish Government's long-term failure to maintain legal aid rates has been a false economy. J

Contributors

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Claire Gregory is a senior solicitor in-house with a Scottish local authority

THE JOURNAL OF THE LAW SOCIETY OF SCOTLAND
VOL.68 NO.10 – OCTOBER 2023

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Job ads – don't insist on an LLB: Page 40

In practice

ONLINE INSIGHT

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

Mental health debt moratorium: can we learn from others?
As the Scottish Parliament considers the proposed mental health moratorium preventing debt recovery action, Andrew Scott and Lucy McCann examine the experience to date with similar provisions in England & Wales.

Holiday pay claims: how far back?
The Supreme Court has upheld a Northern Irish claim for underpaid holiday pay without a cutoff point. The decision is relevant to employment law across the UK, but not to the same extent, as Andrew Maxwell explains.

The Online Safety Bill: what you need to know
The Online Safety Bill has completed its difficult passage, but the Government accepts the need for further work to address continuing concerns over its effects. Michael Horowitz, Ishbel MacPherson and Callum Sinclair consider its potential impact.

EU AI Act: start of regulation or end of innovation?
The EU's Artificial Intelligence Act, the world's first law to regulate AI, which is likely to be adopted soon, will have consequences beyond the EU's borders, giving rise to concerns among innovators, as Lauren McFarlane and Sian Keddie describe.

OPINION

Gillian Mawdsley

Vicarious trauma is becoming recognised as a problem affecting solicitors as it does other professionals, and legal education and training, both pre- and post-qualifying, should take account of this

Solicitors come in all sizes: the product of their education, legal or otherwise, background and culture. What is in common is the requirement for adherence to professional responsibilities and values. These must be upheld when representing the best interests of their client. Responsibility is theirs; that accountability to their client is shared with their employers or organisations.

When graduating in law, few of us really know what to expect. Equipped with our black letter law degrees, and the acquisition of softer skills such as teamwork through the Diploma, the trainee is now "oven ready" (a term used since before Brexit to describe the student with the Diploma). Does that allow them to cope with the harsh realities of practice?

Scanning press headlines today reveals stories of sexual abuse (historical and current), domestic violence, child cruelty, and extreme violence exacerbated by the stress of the cost of living crisis and poverty. Today's solicitor must operate effectively within that ever-changing and challenging environment. Feelings of despondency, inadequacy or darkness may result, affecting sleep and work. These previously unrecognised symptoms may amount to vicarious trauma ("VT"). As legal professionals, being in control, they just get on with the day job of advising clients. No change to behaviour is required – or is it?

The British Medical Association defines VT as "the process of change resulting from empathetic engagement with trauma survivors. Anyone who engages empathetically with survivors of traumatic incidents, torture, and material relating to their trauma, is potentially affected". The police and healthcare as professions earlier recognised the effect of VT on staff. Slowly, perhaps, the legal profession is recognising that VT exists, though resistance is encountered from those who consider that lawyers today are spoon-fed and should "man up".

Support for VT is now seen more widely. In 2018, the Scottish Government established a National Trauma Training Programme with a cost to date of £9.6 million. It supports development, practice, and implementation of trauma-informed practice. The societal need for trauma-informed practice is endorsed in the current Victims, Witnesses, and Justice Reform (Scotland) Bill (part 2). Section 69 defines "trauma-informed practice" as "a means of operating that (a) recognises that a person may have experienced trauma; (b) understands the effects which trauma may have on the person; and (c) involves adapting processes and practices, based on that understanding of the effects of trauma, to seek to avoid, or minimise the risk of, exposing the person to (i) any recurrence of past trauma, or (ii) further trauma".

An excellent definition. However, the "person" focuses on the complainer. It is not bilateral in considering the experience of, and support required for, the solicitor. Enter VT and the legal profession's needs. It is essential to accept that VT training is required.

Who should be required to provide VT training? It is a collective responsibility of all the legal fraternity.

The universities come first. Experience has shown that first year students are not immune from VT. They may struggle with the concepts of criminal law, endorsed in cases such as *R v Brown* [1993] UKHL 19 (sadomasochism). Pro bono work advising clients in a law clinic too may impact, as realisation dawns that clients' problems are not textbook problem questions neatly solved. Students and lawyers experience flashbacks and post-traumatic stress.

Universities with under- or postgraduate curricula have an opportunity to familiarise students with VT, raising awareness of its effects, while signposting support routes.

Legal education does not stop there. The profession requires completion of CPD requirements. Regulators therefore can play a part in requiring that both in qualifying and when maintaining practice requirements, the solicitor continues to have the skills successfully to discharge their responsibilities to their clients. VT training then assists in achieving that trauma-informed practice envisaged by the bill.

Society today is risk-focused, with obligations, personal and professional, to maintain the safety of our legal workplaces. Managing potential liability from VT lies within the scope of that safety provision. Developing a VT risk policy is required, with provision of VT training and demonstrating good management practice with identified supervision and support routes. A one-off course does not provide the final solution. It is about continuing practice, honesty and reality.

The impact of Covid-19 examined the way we worked, but not always negatively. That opportunity allowed a reboot. Apply this to the existence of VT within law spheres and its potential impact on the solicitor.

Whether in person, or with colleagues, firms or institutions, we are responsible for ensuring that the existence and impact of VT on us is understood and support provided. Ensuring that we manage VT successfully can only enhance the reputation and effectiveness of the Scottish legal profession.

Gillian Mawdsley, solicitor, associate lecturer (Open University) and tutor at Edinburgh and Strathclyde Universities

VIEWPOINTS

GPA: time to move on

Rethinking Diploma admissions

In their article "Diploma admissions: a thorny issue" (Journal, July 2023, 41), Kerry Trewern and David Boag carefully set out the difficult balance in dealing with applications to the Diploma in Professional Legal Practice. As they note, demand in recent years far exceeds the available Diploma places. This leads to many disappointed applicants. The appropriateness of the admissions process to the Diploma therefore carries significant consequence.

This process has traditionally – across all Diploma providers – ranked students based on their "GPA" (grade point average) in core LLB subjects. As Trewern and Boag set out, this approach has been considered "fair and consistent" as all students, regardless of where they studied the LLB, undertake the same subjects.

The trouble is this assumption of consistency appears not to be borne out by data. While subjects are effectively the same, approaches to marking and assessment vary. In the most recent round of admissions, the data I have seen (admittedly only relating to students applying to the Diploma at Strathclyde) suggest that while some universities appear to be awarding very high marks in core subjects, others are more conservative. It is not clear to me that a national comparison of GPA is actually apples with apples.

Even if it were, the GPA has other pedagogical flaws. The GPA is a result fixed in time. Once a student has undertaken their core LLB classes, their GPA will forever follow them. An individual could go on to achieve a first class honours, a master's, a PhD, or even secure a traineeship, but all would have little bearing on their Diploma chances if their GPA is low.

The GPA further fails to recognise the difficulties in educational transition that some students face when they start university. For example, in a recent study undertaken at Strathclyde, we identified that students from widening access backgrounds tend to perform less well compared against other students in years one and two. While results even out at honours, the GPA is by then already determined.

Strathclyde has this year piloted a new points-based process to give weight to other factors and not just the GPA. The early signs are this approach gives some students a better chance. We are encouraged by that, but it remains imperfect. For what it's worth, I believe we should consider moving beyond the GPA altogether. A solution could be a national entry exam for the Diploma. Exams are not free from risk, and have their own practical and pedagogical challenges. Yet it may be the benefits would outweigh the difficulties. There would be national consistency and, importantly, there would always be the chance for applicants. An applicant could keep trying, and the door to the profession would not be shut due to results they might have obtained when they were 19.

This is just a suggestion. Regardless, we surely owe it to those studying law, and to ourselves, to find a solution other than sole reliance on the GPA to ensure that everyone has a fair and consistent chance for entry to the profession.

Stuart Kelly, director, Diploma in Professional Legal Practice (University of Strathclyde)

BLOG OF THE MONTH

lawscot.org.uk

For World Mental Health Day on 10 October, LawCare CEO Elizabeth Rimmer writes on psychosocial risks – factors relating to the workplace that can cause psychological harm – and practical steps to mitigate them.

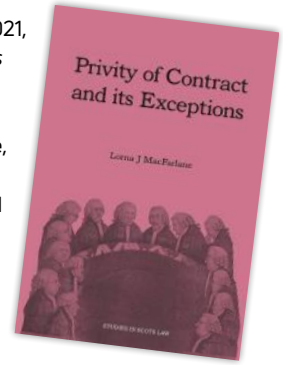
Her conclusion: "Adopting a proactive approach to managing psychosocial risks supports an engaged, productive, and inclusive workplace which enables people to thrive."

In other words, whereas the tendency in legal workplaces is to respond to people once a mental health problem has arisen, the goal should be to prevent their conditions developing in the first place.

BOOK REVIEWS

Privity of Contract and its Exceptions

LORNA J MACFARLANE
PUBLISHER: EDINBURGH LEGAL EDUCATION TRUST
ISBN 978-1999611859; £30

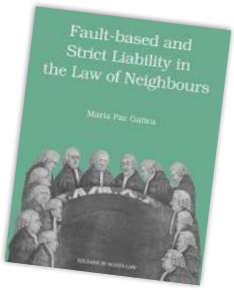


This book, published in 2021, is Volume 11 in the *Studies in Scots Law* published by the Edinburgh Legal Education Trust. As before, I commend them to you.

As is stated in chapter 1 of this scholarly text, this area of law is in a state of confusion. The aim of this book is to bring a degree of clarity and, in particular, some justification for the exceptions to privity. This the author achieves, alongside a detailed review of the authorities and how other legal systems deal with the concept. As someone whose knowledge of privity of contract was somewhat sparse before I read this book, I commend it to you.

Fault-based and Strict Liability in the Law of Neighbours

MARIA PAZ GATICA
PUBLISHER: EDINBURGH LEGAL EDUCATION TRUST
ISBN: 978-1999611897; £30



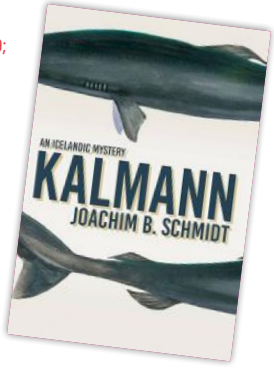
This book, published in 2023, is Volume 13 in the Trust's *Studies in Scots Law*. I could simply state that it is a "must read" for anyone in a neighbour dispute.

The style is very useful for a busy practitioner to find their way around the text. I particularly commend chapter 11 (Conclusions) in this regard. I had always appreciated that there were areas of law about which I knew very little. This book proves that point. It is a masterly piece of work.

Both reviews by Professor Stewart Brymer, Brymer Legal Ltd. For fuller reviews, see bit.ly/3ZQQYAH

Kalmann

JOACHIM B SCHMIDT, TRANS. JAMIE LEE SEARLE
(BITTER LEMON PRESS: £8.99; E-BOOK £7.99)



"Beautifully written, empathetic and thoroughly readable."

This month's leisure selection is at bit.ly/3ZQQYAH

The book review editor is David J Dickson

Call it a day?

When to retire? A long thread on Roll on Friday has various thoughts. A few snippets:

"Retirement is a solution to the wrong problem. That is, being in an exhausting career rut. Get an easier job that still pays and you don't have to retire. Win win."

"I've tried retirement a couple of times and it was only disappointing because it was unplanned and so I had limited resources."

"Finding the happy medium is something that needs a transition and probably some false starts... I'm taking a long term view that being occupied in something I enjoy is as important as maxing the cash."

"Planning to 'tap out' before I hit 50. Life's too short. There are a few other things I'd like to try my hand [at]."

"Spent a number of years only working part time and travelling, so happy to keep working until I'm 70 if the role is interesting."

"This is why the UK is screwed. The major ambition of everyone is to stop working and potter about."

"I find all this planning for retirement at 55 (or similar) baffling... I can't imagine anything duller than being retired for perhaps 40 years."

PROFILE

Patricia Quigley

Patricia Quigley is a retired solicitor and judge, Writer to the Signet, and fellow of the Law Society of Scotland

1 Tell us a bit about your career?

In nearly 50 years I have had many and varied roles, including conveyancing assistant to the late Professor Henry and solicitor with the former Lothian Regional Council. When I had my two daughters, I made a big decision to set up my own firm from home. I enjoyed this for 26 years! I spent 18 years as a part-time immigration and asylum judge: challenging but very rewarding. I also worked for six years as an ordinary member of the Competition Appeal Tribunal, and have served on the Scottish Dental Practice Board and the School Closure Review Panel.

2 As a former mentor, what advice you would give to anyone at the start of their career?

Stay openminded as to what a career in law might be for you. Don't be put off if your first job does not suit you. I would never have thought at the outset that I would be involved in so many interesting but very different areas, and roles. There will be something out there to suit you.

3 Why would you recommend becoming a fellow of the Society?

It is a great way to stay in touch with the profession post-retirement. I was one of the first group of fellows in 2019. It was on my suggestion that the group wrote an open letter in support of legal aid solicitors and access to justice, using our considerable experience to lend weight to their campaign. The letter appeared in the Journal and was even referred to in *The Times*!

4 Name one of the biggest changes to the profession since you started?

The increase in the number of women. When I started at the University of Glasgow in 1968, there were about 10 or 12 women in a class of over 100. But equality of opportunity for women in senior roles remains to be remedied.

Go to bit.ly/3ZQQYAH for the full interview. Find out more about Fellow membership and how to apply on the Society's website.

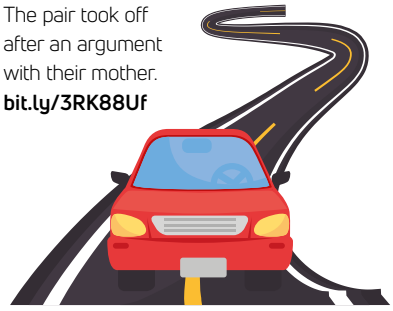
WORLD WIDE WEIRD

1 Art and part?

Police arrested, handcuffed and photographed a Chucky doll (and its owner) after the pair terrorised people with a knife and demanded cash in the Mexican city of Monclova.
bit.ly/3REhhAm

2 Under (r)age

A boy aged 10 and his 11 year old sister drove 200 miles in their mum's car before they were caught by police in Florida. The pair took off after an argument with their mother.
bit.ly/3RK88Uf



3 Bone to pick

A baseball fan has protested the refusal of stadium officials to allow him to take his five-foot emotional support alligator called Wally into a ball game in Philadelphia.
bit.ly/3rBLwNM

TECH OF THE MONTH

Samsung Food

Apple and Google Play, free

If you're looking for inspiration for making the most of mealtimes, you should download Samsung Food. The app has all the ingredients you need to make tasty and healthy dishes for all the family. And it's free.

PRESIDENT

Sheila Webster

A busy month for travel has highlighted the importance of connections – with our members, with the profession internationally, and with our colleagues across the British Isles who share many of our issues

Autumn has now truly arrived, and the presidential diary is instantly busy. September and October are always hectic months for events and engagements. So far they have included the Glasgow Bar Association Dinner, the Society of Advocates in Aberdeen President's Dinner, the Law Society of Ireland Annual Dinner in Dublin, and an event in London to celebrate the 75th anniversary of Army Legal Services. I've thoroughly enjoyed them all, and at every one I've had the opportunity to meet old friends and make new connections. As future events continue to appear in my diary, I look forward to each – all different but every one important.

My travels have taken me to Perth and Aberdeen for our Member Forum events. It has been fantastic to have such great turnouts at each meeting and to see so many of you in person. Aberdeen born and bred as I am, it was particularly gratifying to see an especially high number of you taking time to join our discussions in the city. Members are talking about all sorts of issues, but the difficult subject of recruitment and retention (across practice areas, not just in criminal defence) features regularly, as of course does the continuing crisis for legal aid. In response to questions about Council, I was happy to describe the impact individual Council members can and do have in our discussions and on the Society's work. If you are interested in joining Council, please do get in touch.

Connections

Having submitted our response to the call for evidence on the Regulation of Legal Services (Scotland) Bill in August, we're now planning for the evidence sessions before parliamentary committees later in the year. I've been encouraged by the engagement from all sizes and types of firms at the member meetings. The more we all engage, the stronger our voice. We now know that our senators are opposed to the proposals in relation to directive powers which the Scottish Government seeks, and that our concerns around the independence of the profession are echoed elsewhere. Keep raising your voices!

Which brings me to the importance of our international connections. I'm often asked about my travel, domestic and international. Where have I been; where will I "get to" go? As anyone who travels on business regularly will likely say, it is far from glamorous most of the time, though I am very aware of the privilege it is. But that travel is important. We make connections, we meet those with similar issues to ours, and we exchange ideas and thoughts.

These connections bring tangible outcomes. I have had the honour to represent us all at several events, including an IBA meeting in Helsinki in May, where I had the pleasure to meet Almudena Arpón de Mendívil, President of the IBA and a keynote speaker at our Annual Conference this year. I also met Ken Murphy, chair of the Bar Issues Commission of the IBA. That meeting and our discussions on the Regulation Bill led to the IBA writing to express its concerns about the terms of the bill and the potential impact on the independence of the legal profession in Scotland. Theirs is a strong and important voice. This is not the first time the IBA has spoken up in support of a Law Society of Scotland position.

We are represented in the IBA by Michael Clancy OBE, who is chair of the Constitution & Governance Committee, and it is hard to overstate the regard in which he (and his voice) is held. Strong Scottish voices again.

Shared issues

Our relationship is also naturally strong with our colleagues in England & Wales, Northern Ireland and the Republic of Ireland. Our regular meetings allow exchanges of information about problems which are frequently similar. The Bar in Ireland has recently announced strikes by criminal barristers, arising from concerns about funding. In Northern Ireland, one issue is rural practices and their future. And concerns about funding are of course felt south of the border too. We get much from these connections.

In recent weeks I've had discussions at the Society's offices with a delegation from Singapore on various aspects of our criminal justice system, and was privileged to be part of the Opening of the Legal Year in England & Wales where I was invited to join a panel discussing matters around the importance of the independence of the legal profession. It benefits us all to have our country's voice heard at such events and on these occasions.

I will keep speaking up on behalf of all of us, wherever and whenever I can.

And this month's Presidential Playlist entries:

With or Without You, U2 – it had to be, having been so recently in Dublin.

Somewhere, Runrig – for two reasons, one because keeping track of where I am is increasingly tricky but I'm always somewhere, but also in honour of a favourite and a great musician, Bruce Guthro, former lead singer of Runrig, who sadly died in September. RIP Bruce: your voice will be missed.

Sheila Webster is President of the Law Society of Scotland – President@lawscot.org.uk

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People on the move

ABERDEIN CONSIDINE, Aberdeen and elsewhere, has appointed **Ashleigh Urwin** as a partner in its Residential Property team, based in Edinburgh. She was previously head of Residential Conveyancing at BLACKADDERS in Edinburgh.

ADDLESHAW GODDARD, Edinburgh, Glasgow, Aberdeen and internationally, has appointed **Derek McCombe** and **Iain Sutherland** as partners in the Corporate team, based in Glasgow. Both join from DENTONS.

BALFOUR+MANSON, Edinburgh and Aberdeen, has appointed **Daniel Bain** as a partner in its Commercial Disputes team. He was previously a legal director at SHEPHERD+WEDDERBURN.

BLACKADDERS LLP, Dundee and elsewhere, has appointed **Ian Angus** as an associate in its Rural Land & Business team. Also a part-time farmer, he joins from RAEBURN CHRISTIE CLARK & WALLACE. Blackadders has promoted director **Suzi Low** to partner in the Corporate & Commercial team from 1 October 2023. She will lead the firm's corporate offering in Aberdeen and support the team in Dundee.

TONY BONE LEGAL, Kilmarnock, has closed. **Tony Bone** has been appointed a consultant with DOUGLAS WRIGHT SOLICITORS, Kilmarnock and Saltcoats, which also incorporates, as of 1 June 2023, ALLAN KERR SOLICITORS.

BRODIES LLP, Edinburgh, Glasgow, Aberdeen, Inverness and London, has appointed **Gary Webster** as a partner in its Rural Business practice, based in Inverness. He joins from LEDINGHAM CHALMERS.

CMS CAMERON McKENNA NABARRO OLSWANG, Edinburgh, Glasgow, Aberdeen and globally, has appointed as partners **Barry Edgar**, who joins the Real Estate Transactional practice in Glasgow from DENTONS, and **Fenella Mason**, who joins the Infrastructure, Construction & Energy Disputes practice in Edinburgh from BURNESS PAULL, where she led the Construction & Projects team for 13 years.

DAC BEACHCROFT, Edinburgh, Glasgow and internationally, has appointed solicitor advocate **Alistair Dean** as a partner in its Professional & Commercial Risks team in Scotland. He joins from ANDERSON STRATHERN.

DENTONS, Edinburgh, Glasgow and globally, has announced the appointment as partners in its Scottish offices of **Philip Knight**, who joins the Litigation & Arbitration practice in the Edinburgh office from WOMBLE BOND DICKINSON, where he was head of Litigation in Scotland; and **Steph Innes**, who returns to the TMT practice in the Glasgow office from industrial energy solutions provider AGGREKO, where she was head of Group Legal.

ENERGY LAW UNLIMITED LLP, Glasgow, has moved office to Third Floor, Suite 2, Ink Building, 24 Douglas Street, Glasgow G2 7NQ (t: 0141 221 0276).

ROBERT FERGUSON & SONS, Hamilton, is merging with JOHN JACKSON & DICK, Hamilton, and relocating to John Jackson & Dick's office. Principal **Fiona Bryson** is retiring.

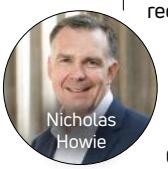
Lindsays: Harriet Waters, Kirsty Preston and Gillian Smillie

GILSON GRAY, Glasgow, Edinburgh, Dundee, Aberdeen and North Berwick, has appointed **Doug Barrie** as an energy and oil and gas consultant, supporting its Energy division and Corporate team. Gilson Gray has appointed **Karen Gatherum** as a new licensing solicitor based in Aberdeen. She joins from LEDINGHAM CHALMERS.

HOLMES MACKILLOP, Glasgow, Giffnock, Bishopbriggs and Johnstone, has promoted **Kathleen Macleod** in the Property team and **Finlay Swan** in the Corporate team to senior solicitor.

IRWIN MITCHELL, Glasgow and UK wide, has appointed Scottish solicitor and the firm's group chief operating officer **Craig Marshall** as group chief executive officer, following the death of **Andrew Tucker**.

LINDSAYS LLP, Edinburgh, Glasgow, Dundee, Perth and Crieff, has appointed **Nicholas Howie** as a partner in its Corporate team, based in Glasgow. **Carla Mitchell** has joined the team as a solicitor. Lindsays has made the following promotions in its Private Client team: to senior associate, **Kirsty Preston**, in the Dundee office; to associate, **Harriet Waters** in the Edinburgh office; and to senior paralegal, **Gillian Smillie** in the Glasgow office.



MORTON FRASER LLP, Edinburgh and Glasgow, and MACROBERTS LLP, Edinburgh and Glasgow, have agreed a merger which, subject to regulatory and other approvals, will take effect from 1 November 2023. **Chris Harte**, currently chief executive officer of Morton Fraser, will become CEO of the newly merged business, MORTON FRASER MACROBERTS LLP. **Neil Kennedy**, managing partner of MacRoberts, will become chief operating officer.

PINSENT MASONS, Edinburgh, Glasgow, Aberdeen and globally, has appointed consumer credit specialist **Caroline Whitten** as legal director. Based in Edinburgh, she joins from SAINSBURY'S BANK and will work alongside recently appointed insurance regulatory and commercial legal director **Chris Riach**, who has

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rejoined Pinsent Masons after several years in-house with ROYAL LONDON.

SHEPHERD AND WEDDERBURN LLP, Edinburgh, Glasgow, Aberdeen and London, has appointed **Sam Clarke** as a partner in the Real Estate Finance group. He joins from ACUITY LAW, where he was head of Real Estate Finance.


Sam Clarke

SPENCER WEST LLP, Edinburgh and internationally, has taken an office in Glasgow at 2 West Regent Street, Glasgow G2 6TS (t: 0141 724 0300). The firm has appointed as partners **David Kaye** (Retail & Franchising), formerly with HARPER MACLEOD, **Andrew Fraser** (Franchising), whose firm ALBANY FRASER is now in association with Spencer West, and **Azeem Arshad**


Neil Kennedy, MacRoberts and Chris Hart, Morton Fraser

(Commercial Real Estate), formerly with BLACKADDERS. They join founding partner in Scotland, **David Morton**.

TLT LLP, Glasgow, Edinburgh and UK wide, has appointed **Keith Anderson** as a partner in the Commercial Dispute Resolution team in its Edinburgh office. He joins from GILSON GRAY.

TWIN DEER LAW, Fort William, has appointed **Rebecca Fraser** as a partner of the firm. She joins from MACPHEE & PARTNERS LLP.

WRIGHT, JOHNSTON & MACKENZIE LLP, Glasgow, Edinburgh, Inverness, Dunblane and Dunfermline, has announced its merger with UK firm IRWIN MITCHELL, subject to regulatory and other approvals. **Fraser Gillies**, managing partner at Wright, Johnston & Mackenzie, will continue to head the firm's operations in Scotland. Irwin Mitchell partners **Bruce Macmillan**, **Craig Marshall** and **Mark Higgins** will join the newly constituted Wright, Johnston & Mackenzie management board.

TC YOUNG, Glasgow and Edinburgh, has appointed **Stefan Docherty** as an associate in the Private Client team (residential conveyancing). He joins from BLACKADDERS.

Law firm margins are being squeezed, and costcutting is back into focus. But wouldn't they be better engaged, Richard Burcher asks, looking at reducing debtor days and write-offs – starting with their approach to pricing?

Feeing: the elephant and the black hole

"The leaves are falling, and so are profits." This recent headline in *The Lawyer* highlighted what to most is now starkly clear – the reporting season has been characterised by a "revenue up, profits down" narrative.

And no-one is picking the next two years to be anything but challenging as the revenue side dips and inflation and a tight labour market continue to grind margins to fine dust. Well, that's perhaps an overstatement, but the gloss is certainly coming off many firms' profit lines.

So, what to do? Everyone knows the pack drill: cut costs, shrink the workforce, and generally batten the hatches. "Redundancies" has made a reappearance in the legal press.

As pricing advisers, my company is sometimes asked, does clever pricing (however defined) only work when things are going well? Well, no – the acid test is, "Does a sophisticated approach to pricing work in fair weather and foul?" If done properly, the answer is yes, otherwise it isn't very "clever". Any idiot can make money when demand exceeds supply.

This isn't a major strategy treatise on how to survive a downturn, but there is an elephant in the room that could usefully be attended to, long before rate increases, redundancies, general costcutting and so forth. That is, recovery or realisation – the delta between the value of time recorded and the time that gets invoiced and turned into cash in the bank. And in large measure that in turn depends on having a coherent approach to pricing from the start.

Write-offs and growing debtor days? They're your fault

Well, that's a great way to alienate the audience before getting to the point. I thought about smoothing it out a bit but, nah, let's call it how we see it.

First, a vignette. While in private legal practice in New Zealand, I agreed to serve on a cost complaints panel convened by the Law Society there, which had a statutory responsibility to deal with fee complaints from the public. This was 1984.

The Society delegated that responsibility to panels of experienced practitioners. After several years, I was asked to chair the panel. In that capacity I either personally adjudicated or signed off over 300 assessments. I upheld the fee in 93% of them. Indeed, in many cases, the fee was less than I would have charged in my own firm or approved on assessment. So if, in most cases, the fees were fair and reasonable on objective criteria, why were there so many complaints? Somewhere into those 300 assessments, the fog started to lift. By the time I gave up the role after 25 years, I was convinced that there were three overarching contributors.

What does this have to do with write-off and debtor days, you might ask? Well, they are all inextricably intertwined and have their genesis in those three factors.

(1) Poor pricing at the outset

How many of us commit to buying anything of any consequence without knowing pretty precisely what the cost will be? Clients crave budgetary certainty, not unreasonably or surprisingly, but we still aren't great at it.

The legal profession has made an art form out of differentiating itself from other service providers by trying to retain a measure of opacity around the cost, because of uncertainty about what the ultimate cost might be.

Having been in practice for 30 years, I have considerable sympathy for the argument, "How can we price something with precision when we don't know with precision what will be required?"

But the fact that it is difficult is no excuse for not even attempting it. This is after all an exercise in expectation management. The better you can manage clients' expectations from the outset, the less grief you will have later.

How do you do that? Not with a band aid, piecemeal approach, that is certain. The only way is a holistic, coherent, and well thought through strategy comprising what we usually refer to as the four pillars of pricing:

1. Pricing governance. The importance of this is seriously underrated. I have blogged separately on it. When pricing discretion is regulated through informed, strategic protocols, law firms are better poised to navigate the complexities of the modern

legal landscape, thereby maximising profitability while preserving the collegial culture that is intrinsic to their operations.

2. Pricing analytics. There is often a fundamental misconception about the data required to drive strategic decisions (factors such as client payment habits, the profitability of different practice areas, and market competitiveness) versus the data required by a partner engaged in tactical pricing (which clients are more responsive to price fluctuations, which ones pay their dues promptly, and which ones are typically more profitable).

3. Pricing execution. The paradox here is that while most lawyers are both confident and competent in dispensing legal and commercial advice and support, frequently the same cannot be said of their ability to have a pricing conversation with the client and fully monetise the value they are delivering.

4. Pricing technology. Technology built by lawyers for lawyers holds the other three components together. Technology on its own fixes nothing, but a holistic approach can deliver spectacular results. There is now very clever, lawyer-friendly software which makes this process much easier and more accurate.

In combination, these four components have the potential to reduce write-offs significantly, and correspondingly increase the firm's bottom line without the faintest hint of rate increases or redundancies.

"The better you can manage a clients' expectations from the outset, the less grief you will have later"

Put simply, we owe it to clients, and to ourselves, to bring a little more sophistication and a little more rigour to the pricing process. Whether we like it or not, we must spend time on pricing. The only decision you can make is whether you spend that time at the beginning of the job, doing your best to come up with a sensible scope and a sensible/realistic price, or at the end, when dealing with the complaint, write-off discussions and internal consequences.

(2) Poor ongoing expectation management

It's great to get a thoughtful proposal out to clients, but it needs continual monitoring. There are so many ways that the anticipated cost can run away with us:

- We set ourselves up to fail from the outset with an unrealistically low price.
- Genuine scope creep.
- A fee earner decides to thrash the file to meet their billable hours targets, or simply lacks any sense of commercial proportionality.
- Too much partner time because we won't delegate enough.

Failing to keep clients informed of anticipated or anticipatable cost increases in a timely manner because we'd rather kick the can down the road and adopt the lily-livered strategy of "having a chat at the end", comes back to bite us something terrible. In our experience, more than 50% of end-of-matter write-offs are attributable to this failing. At that stage, the only option available to the partner to appease the aggrieved client is a financial *mea culpa* by offering a discount/partial write-off.

Appalling client relations, and appalling commercial management.

(3) Wrong collection processes

That brings us to lockup, which comprises two elements:

Unbilled work in progress. I can add nothing to what every partner knows – bill regularly. Why? It is important for law firm cash flow, and it keeps clients informed (see (2) above).

Debtors. That is, clients invoiced for work done, who are very slow to pay. From my experience with the 300-plus fee complaint adjudications, there are only four reasons why a client doesn't pay on time:

1. They didn't get the invoice. Rare, but possible given some clients' finance functions. Easily resolved.

2. They are using you as unsecured, interest-free supplier credit for as long as they can. That is unacceptable and needs to be called out.

3. They genuinely can't pay. A payment arrangement needs to be put in place, monitored, and adhered to.

4. They are unhappy with something – the invoice, your advice, your service or all three. The real reason for non-payment needs to be flushed out and dealt with appropriately.

And here's the kicker – in more than 90% of the adjudications I undertook, the reason for late payment was the fourth one – they were unhappy about something but didn't want to raise it and just sat on the bill until someone brought it to a head, usually many months later.

The solution to all four of these? The firm's credit control department should take control of the process and, with one exception, partners should be kept as far away from the process as possible. Let's unpick that with a few observations.

Richard Burcher is chairman of Validatum® and Virtual Pricing Director®

- Partners dislike pricing generally, and loathe chasing clients for payment. Hats off to counsel, who have maintained a sensible separation of roles. It works.
- Partners invariably refuse to mandate the application of penalty interest for late payment per the Ts & Cs. So, there's interest-free unsecured credit while the firm's overdraft bloats. Why pay the lawyers on time when there are no consequences for not doing so?
- Partners continually make excuses as to why everyone should leave their "good client" alone and the normal terms of trade (which the client signed up to) shouldn't be enforced. Why? Because apparently their precious client will get a bit upset if they are asked to pay on time and might take their business elsewhere.

The only time a partner should be involved, other than at the point of invoice, is if there is a genuine complaint that needs to be addressed, or in mandating enforcement once all other options have failed.

The £5 billion black hole

How big is that elephant I mentioned? Gross revenue in 2022-23 for the UK top 100 was in the region of £34 billion. This is just a back-of-a-napkin exercise, but going by our work with this sector, realisation averages 86%. That means that in round figures the UK top 100 wrote off some *£5 billion in billable time* last financial year.

What makes it worse is, that is all profit that has gone down the gurgler. If the firm has a net profit margin of say 35%, then on a turnover of £50 million, a 1% improvement in realisation will throw an additional £500,000 straight to the bottom line, which is a 3% improvement in profit – without breaking sweat. Yet for many, the focus is still on cutting costs.

Before looking to increase revenue, might it be better to focus on plugging the leak and recovering as much of the billable time we are currently generating as possible?

But credit control is the ambulance at the bottom of the cliff. If the partner has done a good job of the original pricing, *and* continued to engage with the client regularly, transparently and honestly on the subject, there should be little for credit control to do.

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Revolutionising your legal practice

How executry software transforms the lives of lawyers

The lawyers we speak to are continually seeking innovative ways to streamline their workflow, increase efficiency, and enhance client service. One such revolutionary tool that has emerged as a "game-changer" (our client's words, not ours!) is our executry software. This software, which is conveniently built into our case management platform and fully integrates with our legal accounting software, not only simplifies the intricate processes of estate management but also significantly reduces the burden on lawyers. In this article, we will delve into the remarkable benefits of executry case management software, with a focus on our cutting-edge solution. We will also explore how one law firm's real-time experience is transforming their practice.

Efficiency redefined

Our executry case management software is designed to empower you, the solicitor in the management of your clients' estates. Its capabilities extend beyond the ordinary, offering specific tools that automate critical aspects of the executry process, such as the production of inventory, petition and tax forms. Here's a closer look at some of its remarkable features:

1. Effortless HMRC forms population: One of the most time-consuming tasks in executry cases is populating HMRC forms with accurate data. Our software streamlines this process, allowing you to complete these forms in a matter of seconds.

2. Comprehensive asset and liability management: The software provides tools to comprehensively record all the assets and liabilities of an estate, reducing the risk of oversight and errors.

3. Seamless integration: Our executry software seamlessly integrates with our legal accounts solution, ensuring that financial records are up to date and accurate.

4. Automated final account generation: It automates the generation of the final account of charge and discharge or capital, income and distribution, simplifying the final steps of the executry process.

5. Executry calculations: The software includes financial profiles for relevant parties, allowing for automatic calculations and recalculations. These calculations cover a wide range of financial aspects, including asset listing, beneficiary details, liabilities, tax liability, and more.

6. Detailed reports: The software generates detailed reports on assets, liabilities, legacies, income, and expenditures, providing solicitors with valuable insights and clarity.

A real-life example: Denovo's impact on a law firm

Let's take a look at a real-life example of how our executry software transformed the operations of a law firm. The Glasgow Law Practice, a well-established high street law firm specialising in estate planning and executry, decided to trial our new solution.

Before adopting this solution, the firm faced several challenges in handling executry cases. The process was time-consuming, prone to errors, and often required extensive manual data entry. The solicitors spent hours populating HMRC forms and performing complex financial calculations.

Upon implementing our software in September of this year, the firm experienced a remarkable transformation. The time savings were immediately evident. What used to take hours was now completed in minutes. Solicitors found themselves focusing on higher-value tasks, such as providing personalised legal advice to clients and ensuring compliance with ever-evolving legal regulations.

Furthermore, the risk of errors was significantly reduced, thanks to the software's automated calculations and comprehensive reporting. The Glasgow Law Practice were able to provide clients with accurate financial profiles and estate summaries, instilling confidence in their services.

Alison Richmond, Executry Manager from TGLP, said: "I've been looking for software like this for years. We could spend hours, in some cases almost full days opening files. I would spend three or four hours preparing and arranging the necessary documents for HMRC forms and executry accounts. But with Denovo's executry software, it's a game-changer. Now, I simply input the client data onto the CaseLoad system, and it's remarkably fast and effortless! I click a button, the automation function kicks in, and it instantly populates all my executry accounts, providing accurate calculations, from our client data. We're literally gaining hours of time back every day."

Revolutionary tool

Executry software, exemplified by our cutting-edge solution, has emerged as a revolutionary tool that is reshaping the legal landscape. By automating complex processes, reducing manual data entry, and offering powerful financial calculations and reporting, our software empowers lawyers to deliver more efficient and accurate services to their clients. As demonstrated by the real-life example of TGLP, the adoption of such software can be a total game-changer, allowing law firms to elevate their practice, allocate time appropriately, and enhance client satisfaction.

Our Executry Case Management software is not just a tool; it's a catalyst for a more efficient and client-centric legal practice. If you would like to transform how your practice performs, feel free to give us a call on 0141 331 5290, email info@denovobi.com or visit our website denovobi.com.

To find out more about Denovo you can visit denovobi.com

Transform the Executry Process

CaseLoad Executry allows you to efficiently manage your client's estate and automate HMRC forms in seconds.

Track & record the assets and liabilities of an estate, integrating with Legal Accounts.

Automated generation of all your Executry accounts, providing accurate calculations, from your client data.

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Splitting up: a taxing time

Tax considerations may not be uppermost in the minds of separating couples, but can be important matters for advisers to consider, as Laura Brown and Kevin Winters explain

Family breakdowns can be difficult experiences for the parties concerned, and for good reason. The disentanglement of a life shared, sometimes over many years, is not an easy business. The main concerns for separating couples rarely involve taxation but, unfortunately, it still needs to be considered. In light of relatively recent changes in this sphere, it is always sensible to take stock of how the current rules actually operate.

1. Which tax means the most?

There are a number of taxes that warrant consideration in the context of a couple who are separating. Of particular relevance, not least on account of recent changes, is capital gains tax. The CGT treatment of disposals – remembering that "disposal" covers a great deal more than a sale – between married couples/civil partners is fairly well established and should be familiar to most practitioners. When someone transfers an asset (or part of it) to another, and both parties are (i) either married to each other or are civil partners, and (ii) live together, the disposal will not create a chargeable gain – the transaction is deemed to take place at "nil gain/nil loss".

The situation was, until recently, broadly the same for couples who were separating or divorcing; the nil gain/nil loss treatment remained, but only until the end of the tax year in which the divorce/separation took place. This presented a potential issue in circumstances where the termination of a relationship was finalised close to the end of the tax year, creating an urgency to have relevant transfers completed before they would create a tax liability.

The Finance (No 2) Act 2023 has changed the rules somewhat, in that it relaxed the CGT rules on divorce, dissolution and separation. From 6 April 2023, where a couple is in the process of separation or divorcing, the nil gain/nil loss treatment will be extended for a period of time, depending on the stage that the couple are at in ending their relationship:

- for up to three years after the year when the couple stop living together as spouses/civil partners; and
- for an unlimited period where the transfer occurs as part of a formal divorce agreement.

The extension of what is generally regarded as favourable CGT treatment is, on the whole, welcome – it affords couples (and their advisers) more time to organise their affairs appropriately. That said, in difficult separations, sometimes being afforded more time (particularly where there are several assets) can be more of a curse than a blessing. Warring parties may see little reason to agree quickly on relevant values of properties, lengthening an already trying experience for all concerned.

2. Is it all good news on CGT?

On first principles, yes.

One of the main assets that needs to be dealt with in the context of family breakdown is the family home. Most practitioners will be aware of the valuable exemption from CGT that is private residence relief ("PRR"). For CGT purposes, where a couple sell their main home there will generally not be any CGT by virtue of PRR. However, the default position is that PRR is only available to cover actual periods of occupation of the main home. So, if a couple ends their relationship and one party moves into rented accommodation, the period that they are absent from the family home, subject to a few exceptions, could have CGT consequences in that PRR may not be available for that period.

The Finance Act 2023 did change the position somewhat. Where one party has moved out of the family home which is ultimately to be sold, the absent party can, subject to certain conditions, elect for their period of absence to be treated as a period of occupation. This effectively extends the period that PRR can be available to claim on the former main residence.

However, it should be noted that a person can only have one main residence at any one time. Therefore, if the leaving party purchases a new roof over their head but claims PRR on the former main residence, they cannot claim PRR on their new home until the former home has been sold. This, of course, could have adverse CGT consequences when the replacement home is sold, as the allowable PRR may not sufficiently cover the entire gain on sale. There are also property taxes to consider (see question 3).

The Finance Act 2023 went further still in that it introduced a rule (contained in s 225BA, Taxation of Capital Gains Act 1992) that where an individual transfers their interest in the family home to their soon-to-be "ex" in connection with divorce, dissolution or separation in return for a sum on disposal at a later date, that sum will be treated as if it had arisen at the time of the initial transfer. It is worthy of note that this does envisage the ultimate sale of the property to a third party and, presumably, on the open market for market value.

Caution is advised, though. It is worth remembering that PRR can only ever be attributed to one property at a time. If someone moves out of the former family home and buys another, they will need to consider which one should benefit from PRR. PRR is an incredibly valuable relief from CGT and does need to be used carefully to avoid it being wasted. Every situation will need to be treated differently and considered carefully.

3. What about property taxes?

As advisers will appreciate, where one tax is an issue, there will likely be others. This is particularly so in the context of the family home (and interests in land/buildings more generally) where couples part ways. Currently, where there is a transfer between a couple in connection with divorce/dissolution of a civil partnership under a court order, or under relevant family law legislation, there is scope for the transfer to be exempt from land and buildings transaction tax, under sched 1 to the Land and Buildings Transaction Tax (Scotland) Act 2013.

However, the story does not end there. As mentioned previously, for an individual, only one property at any one time can be the main residence (and protected from CGT by PRR). Therefore if the leaving party decides to buy another home to live in while the separation/divorce negotiations continue, the additional dwelling supplement ("ADS") will be applied, as the purchaser already owns a property and the new house purchase will be considered a second home purchase. In Scotland, the rate of ADS is currently 6% of the total purchase price. By comparison, in England & Wales, the purchase of a second home will be subject to a 3% increase on the basic rates of stamp duty land tax. It may be possible to reclaim any ADS payable when the previous main residence is sold, but this depends on the timescales for disposing of the previous main residence.

As was mentioned earlier, tax is rarely first and foremost in the minds of couples who are separating. It is likely to be an unwelcome addition to the bundle of issues that need to be sorted out by couples who have, perhaps understandably, far larger issues to deal with. That said, it is an area that can result in significant liabilities and does merit careful attention to ensure that appropriate planning can be carried out with a view to avoiding unnecessary costs. J

Laura Brown is Director of Personal Tax, and **Kevin Winters** a senior solicitor, with Brodies LLP

Navigating the AI frontier

Artificial intelligence has already had an impact on the Scottish legal system, and will do so to a much greater extent – but poses different challenges to different sectors, Corsino San Miguel believes

Navigating uncertainty in the business environment is something the Scottish legal profession has been dealing with, off and on, for decades. Yet, the emergence of artificial intelligence as a technological marvel is unparalleled. It is not just an incremental change; rather it is transformational, simultaneously reshaping established models and introducing unexpected shifts, altering the core manner in which legal practices will operate, calling for a close assessment and determined action in response. This paper aims to illuminate the intricacies and challenges across the spectrum of the profession.

From data analytics to pursuit of justice

To succeed in the legal field, solicitors need accurate collection of legal data (resources such as case law, statutes, regulations etc), streamlined processing and comprehensive analysis, which collectively serve as the foundation for informed advice and skilled problem-solving. But the immense volume and diversity of legal data cannot be managed by humans alone. AI can play a crucial role in sorting these substantial datasets into valuable and accurate segments of information, critically simplifying legal tasks. Its assimilation of primary materials is the bedrock for leveraging AI's transformational capabilities in research, case management, and content creation.

AI is not new to the legal ecosystem. It has been steadily making its presence felt in recent years, offering a range of tools and solutions that have progressively revolutionised various facets of legal practice and research. Extractive AI technologies (which select and retrieve relevant information from a larger dataset) have been instrumental in facilitating efficient research, when using Westlaw or LexisNexis for example. The integration of AI in e-discovery platforms like Nuix or Luminance has significantly streamlined the process of identifying essential electronic information in litigation, contract management and public inquiries. Legal knowledge management platforms have advanced the organisation of large amounts of proprietary information into easily navigable formats.

However, it has been the unexpected surge of generative AI (AI that can create new data samples similar to a given dataset) that has unleashed a seismic shift, generating fascination and scepticism in equal measure. Spearheading this change are AI legal assistants like CoCounsel, Harvey AI, Lexis+ AI or Westlaw Precision, which leverage natural language processing, machine learning and data analytics into intelligent legal search engines equipped with chatbot interfaces, capable of providing plausible responses to a multitude of legal prompts. Moreover, forthcoming integrations, such as the Thomson Reuters and LexisNexis plugins with Microsoft 365 Copilot, have emerged as game-changers, facilitating seamless and efficient document creation, editing, and a validation process, within the familiar structure of Microsoft Word.

Over the spectrum of services that law firms provide, commoditised offerings, including the handling of deeds or standardised business contracts, stand to benefit directly from AI implementation. The more considerable challenge is the realm of bespoke services which require exhaustive scrutiny of legal texts, statutes, sector-specific regulations, and even deeply technical subjects that defy straightforward quantification. These specialised services demand the expertise of both seasoned and junior lawyers, as well as paralegals. The true value here is dictated less by the cumulative hours spent, but rather the strategic approach towards prospective outcomes. While lawyers should stay in the driver's seat, AI technology has the potential in this area to act as a solid backbone in crafting strategies and ultimately estimating the likelihood of a positive outcome.

AI undoubtedly opens up avenues for improvements in productivity, accuracy and operational efficiencies. The role of both extractive and generative AI goes beyond merely providing a shortcut to the answer: it serves as a potent instrument in enriching the quality of outcomes, fostering a deeper understanding and anticipation of client needs, and thereby enhancing the comprehensiveness and sophistication of the responses generated.

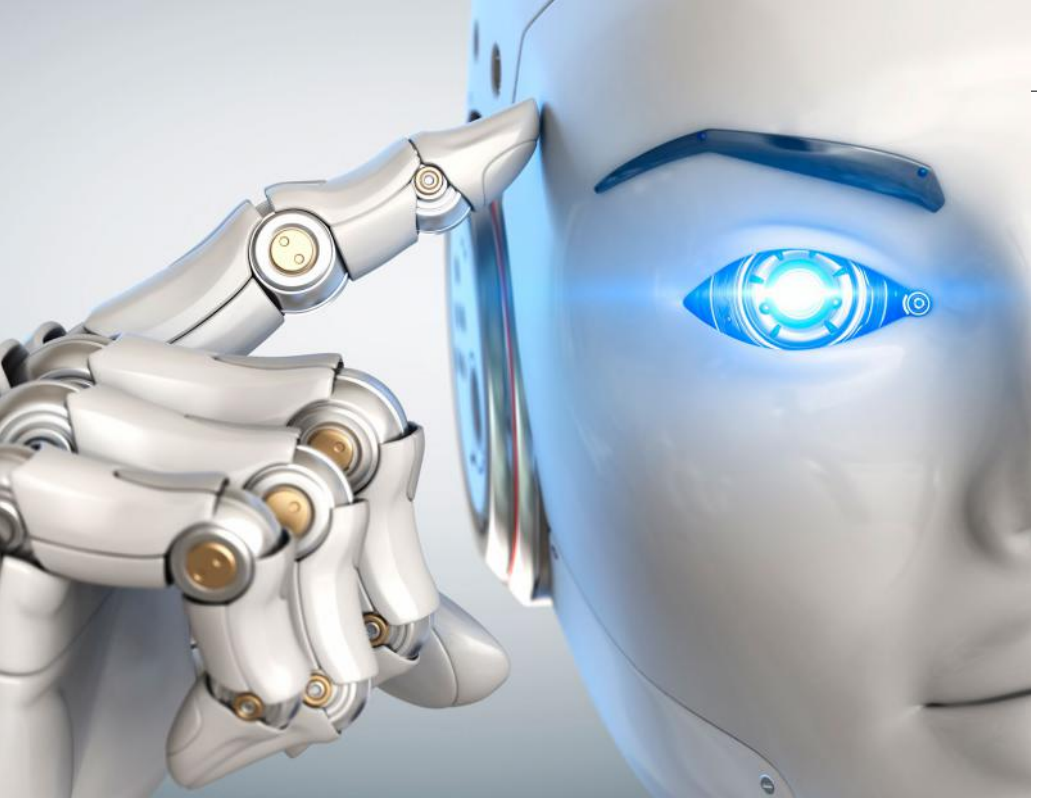
Just as the arrival of computer technologies revolutionised architecture in the 1970s, transitioning from laborious hand drawings to efficient CAD software, the legal sector is on the brink of a similar transition through the integration of AI, promising not only improved productivity and efficiency but also the potential to fundamentally rethink and enhance solutions to complex legal queries and client needs.

This sudden tech emergence has catapulted the legal system into uncharted territory. The immense potential of generative AI stands poised to revolutionise legal practices, promising not only efficiency but perhaps a new paradigm in legal problem-solving. Simultaneously, it casts a spotlight on a series of profound ethical dilemmas – issues surrounding bias, fairness, data privacy, and accountability are brought sharply into focus. Steering through this intricate terrain, a paramount objective emerges: to forge a symbiotic relationship between AI's innovative prowess and the principles of justice and ethical practice – a future where technology serves not as a replacement but an enhancement to human expertise, facilitating a richer, more nuanced approach to the pursuit of justice.

AI and the legal landscape in Scotland

A recent survey by LexisNexis on the future of the legal profession offers a critical insight into the perceptions surrounding the adoption of generative AI. A significant majority of lawyers (87%) are not only aware of these advances but anticipate a substantial impact on the nature of legal practices. In tandem, Goldman Sachs recently projected that 44% of current legal tasks could be automated by AI (the all industries average is 25%). This does not mean that generative AI heralds the demise of the legal profession, more that those who do not use AI may be displaced by those who do.

Transposing these findings onto Scotland's distinctive legal fabric, we need to take into account its particular nuances. The robust and well established infrastructure of the legal profession presents a diversified canvas for the implementation of AI, with the impacts varying considerably based on the size and structures of individual firms.



Sole practitioners and small firms

Small law firms and sole practitioners, who often bill clients either by the hour or based on the particular case, are likely to gravitate towards AI solutions that offer both cost efficiency and effectiveness in streamlining their operations. These firms typically have the ability to adapt quickly and integrate new technologies, including both extractive and generative AI tools, to enhance their capabilities without incurring substantial investment. Tools like legal assistant chatbots present a viable and cost-effective strategy for enhancing operational efficiency. The Microsoft 365 integrations mentioned above could significantly enhance the operational efficiency and competitive edge of these smaller firms.

This integration positions them favourably in a rapidly evolving legal landscape. Such advances can potentially level the playing field, allowing these firms to compete with independent medium-sized firms boasting substantial teams of associates and paralegals. By embracing AI innovation, smaller entities could redefine their competitive edge for both commoditised and non-commoditised offerings, enabling them to offer services akin to those provided by larger firms but with a personal touch.

International and UK-wide firms

The largest firms are not insulated from the disruptive dynamics that are influencing their smaller counterparts. In fact, the corporations they serve, increasingly *expect* them to spearhead the implementation of AI technologies in the interests of innovation and efficiency. Given that their clientele primarily comprise major corporations with in-house legal teams, these firms must re-evaluate their pricing models to ensure they accurately reflect the value of their work product. Failing to do so could incentivise corporate clients to further embrace AI technologies internally, retaining more matters in-house and minimising their reliance on external firms.

In this context, AI emerges as a potent tool, enhancing productivity in three significant ways: first, by expediting large-scale data analysis and document reviews; secondly, by executing non-billable administrative tasks with greater precision; and finally, developing custom tools, such as templates and legal styles. While a few firms have launched a proprietary large language model ("LLM"), most are (at least initially) partnering with global legal intelligence platforms.

These firms stand to bolster their positions through the adoption of AI technology, potentially expanding their competitive edge over mid-sized independent counterparts. Leveraging their substantial resources, they can fully harness AI's capabilities, revolutionising service delivery with unparalleled speed and efficiency. Consequently, AI emerges as a double-edged sword in the Scottish legal system: propelling small firms to a more competitive stance, while potentially giving larger firms a dominating stronghold. This twofold impact is poised to reshape the competitive legal marketplace in Scotland, ushering in fresh dynamics and opportunities.

Independent (medium-sized) firms

In recent years, many leading players in the Scottish legal market have been acquired by international firms seeking a foothold in Scotland. This shift has carved out opportunities for medium-sized independent domestic firms to potentially emerge as market frontrunners. Nonetheless, the arrival of AI technologies threatens to disrupt this competitive landscape, requiring these firms to adapt and innovate to maintain their position.

Unlike their international counterparts, independent Scottish firms cannot leverage economies of scale. They also lack the agility that characterises smaller, more adaptable firms. This puts them in a kind of pinch, caught between the innovative capabilities of both small and large firms. Moreover, their dependence on service contracts with corporate and government legal departments might be jeopardised as these clients begin to adopt AI technologies themselves, potentially reducing the volume of work outsourced. These firms may therefore find themselves facing an uphill battle in a market that favours technological adaptability and efficiency.

Additionally, the development of AI capabilities seems to be primarily geared towards either small/sole practitioners or large international firms. Utilising solutions designed for smaller firms will not suffice for the medium-sized independents, and the absence of substantial economies of scale prevents them from implementing proprietary LLMs or fine-tuning existing intelligent platforms.

A feasible solution might involve further consolidation within the Scottish legal marketplace. Recent mergers between well known firms hint at the potential benefits, primarily in fostering efficiency and productivity gains. However, achieving economies of scale alone is not a silver bullet. Leaders of these firms must escalate AI integration on their agenda, adopting a visionary approach to fully unleash AI's operational and profit potential. This involves a proactive stance in identifying areas ripe for improvement, factoring in their unique client mix and the collective talent within their organisations, rather than succumbing to a passive, wait-and-see approach. To truly thrive, they need to pinpoint and pursue the most promising opportunities that AI affords for their business growth.

Wanted: visionaries

The integration of AI in the Scottish legal ecosystem marks a transformational period, promising enhanced efficiency but also presenting pressing ethical concerns. The market is at an intriguing juncture, with different firms facing distinct prospects and challenges brought about by this technological shift. While small firms and large international firms can both potentially benefit from AI's capabilities, independent firms may find themselves at a crossroads, grappling with challenges that require innovative strategies to survive. Now more than ever, a visionary approach is required to navigate this complex terrain and integrate technology and human expertise to achieve ethical practices. The coming years will witness a dynamic reshaping, steering the profession towards a future that balances tradition with innovation in an ever more digitised era.

Dr Corsino San Miguel PhD, LLB in Scots law and graduate in Spanish law, co-founded and led European Telecom Company before entering academia. He is now a member of the AI Research Group and the Public Sector AI Task Force at the Scottish Government Legal Directorate.

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Is it time to review your charity's investment policy?

As part of the support that we offer our charity clients, we often get asked for input into policy statements. If a charity has investments, it is important that these arrangements are recorded in an Investment Policy Statement. A well-thought-out investment policy is essential to achieving your charity's goals and demonstrating that trustees have fulfilled their duty of care.

Why does a charity need an investment policy?

A written investment policy provides a framework for your charity's investment decisions, helping trustees to manage the charity's resources effectively and demonstrating good governance. It's like a road map for the trustees and your investment manager to follow, setting out the charity's investment objectives and how you would like the portfolio to be managed.

Five areas to be addressed when creating a charity investment policy

1. Objectives and investment powers

You should provide enough background information to the investment manager so that they can easily identify your charity's mission, beneficiaries, structure, type of charity and your financial objectives.

This should include any liquidity requirements and whether the trustees are seeking income only or a "total return" approach, meaning that some of the capital return of the charity can be spent each year.

Any restrictions on the investment powers of the charity (for example, imposed by its constitution or donors) should also be documented explicitly.

2. Time horizon and risk

Your policy needs to set out the time horizon over which your portfolio will be invested, how much risk the trustees are prepared to take and how these risks will be mitigated.

Risk will mean different things to different people, so it's essential trustees and their investment manager have a strong understanding of what each means by risk.

3. Portfolio constraints and restrictions

Your charity's investment policy should specify permitted asset classes, restrictions on investment, base currency and tax considerations.

Many charities also have an ethical investment policy. This might be based on negative screens, such as excluding investments in tobacco, or positive screens, which aim to promote investment in companies that follow the very highest environmental, social or governance standards or along themes that are particularly important to your charity.

4. Strategic asset allocation

Asset allocation is the single biggest factor in determining both risk and reward. It's therefore vital to agree a strategic asset allocation that will allow the charity to reach its long-term financial objectives.

5. Performance and reporting

Trustees must assess the performance of their investments and decide what reporting they require. Reports should be clear, with performance history and costs being transparent, and trustees need to be able to understand them.

How often should a charity review its investment policy?

Your charity's investment policy is a living document and should be reviewed at least annually or when any significant changes occur within the charity to ensure it remains fit for purpose.

Please get in touch if we can help: Keith Burdon, Head of Charities, Scotland & NI
Evelyn Partners Investment Management Services Ltd
keith.burdon@evelyn.com

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The Charities (Regulation and Administration) (Scotland) Act 2023 makes considerable changes to the regulation of charities under Scots law, but a wider review is still being sought. Alan Eccles explains the current position, and what may follow

2023... just the start of charity law reform?

2023 has been a busy year for charity law. Central to that has been the Charities (Regulation and Administration) (Scotland) Act 2023. There will be a process of communicating the changes under the 2023 Act. But for many the Act should not be seen as the end of a process on charity law updates; rather just the start of the journey on Scottish charity law reform.

What does the Act do?

The 2023 Act is not a comprehensive update to Scottish charity law. The core of the Act contains changes driven by the Office of the Scottish Charity Regulator ("OSCR") – changes which seem quite sensible and reasonable to support OSCR's work. There were rounds of consultation by the Scottish Government ahead of the bill being introduced to the Parliament. Now that the Act has been passed, attention will turn to communicating the changes to the sector and the timetable for implementation.

Trustees

Concepts of transparency and accountability were stated to be driving forces behind the consultation leading up to the bill. With that, the Act requires that the "name of each charity trustee" will be part of the (online) Scottish Charity Register. In addition to the public facing register, OSCR is now required to keep a "schedule of all charity trustees". This is internal information for OSCR. This will of course be no small logistical undertaking for OSCR. There is recognition of the data protection issues, and also exemptions from providing information where, for example, safety could be compromised.

The "rolling review" was big news when the Charities and Trustee Investment (Scotland) Act 2005 was passed. The 2005 Act required OSCR to have an ongoing review of charitable status for *existing* charities. That was quite a task for OSCR. The Act removes this duty. It enables OSCR to target regulation and reviews of charitable status.

"There is a more fundamental change to disqualification rules... Those in 'senior management functions' can now be disqualified"

The Act moves on to update the bases for disqualifying charity trustees. This is largely a technical update. There is a more fundamental change to disqualification rules about *who* can be disqualified. To date it has been restricted to charity trustees. The Act changes that. Those in "senior management functions" can now be disqualified.

A "senior management function" is one where either (1) the role relates to the management of the charity and the individual is not responsible to anyone else other than the trustees, or (2) the role involves control over money and the individual is only responsible to (other than the trustees) another person in a senior management function. The former is aimed at chief executive roles while the latter is essentially focused on finance directors.

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On disqualification information, the Act introduces new rules to require OSCR to maintain a record of removed trustees, and in the future, removed senior managers. This is to be kept in a format which can be searched on the basis of an individual's name. It will not be possible to produce a list of all removed persons from this system. It means charities would be able to search the register against a prospective trustee or senior manager.

The Act makes sensible changes to enable OSCR to have extended powers to deal with charities that no longer have a functioning number of trustees. There had been a gap in that where a charity had no trustees, OSCR could not assist. This has been remedied. OSCR will be able to appoint interim charity trustees in such a situation.

Scope of regulation

OSCR at present has the power to tell charities and others not to do certain things. However, it cannot positively direct action *to be taken*. A recently published interim inquiry report (ZesT Football Club) is an example of OSCR's actions having to be framed in the negative. That changes under the Act. That seems a sensible update. OSCR will be able to direct positive (in every sense) actions. There will still be the same protections and process as before around OSCR arriving at such a direction.

"The Act makes sensible changes to enable OSCR to have extended powers to deal with charities that no longer have a functioning number of trustees"

There had been uneasiness for some time that charities with no connection to Scotland could nevertheless be registered in Scotland. If they met the Scottish charity test, OSCR could not refuse to register them.

The Act deals with this by asking the question: "when is it not appropriate for OSCR to regulate the charity?" In this instance it is not appropriate to regulate the charity where that is due to the charity's lack of connection with Scotland. The new rules set out a non-exhaustive list of factors which would point towards a charity having insufficient connection to Scotland to base OSCR registration and regulation. These rules will apply to new applications and existing charities. There is therefore a power to remove such charities already on the Scottish Charity Register.

Accounts

There are statutory updates to certain aspects of accounts requirements. This includes putting trustee reports on a statutory footing. That fits with the view that charity accounting is "not all about the numbers". The narrative of a charity's work is important and is useful for public information. We will also see all charity accounts being made available (unredacted) via the online Scottish Charity Register.

Staying with accounts, OSCR is also given better powers to deal with unresponsive charities. That is, charities who fail to provide accounts. The Act enables OSCR to seek to remove such charities. If OSCR seeks to remove a charity on this basis, there will be

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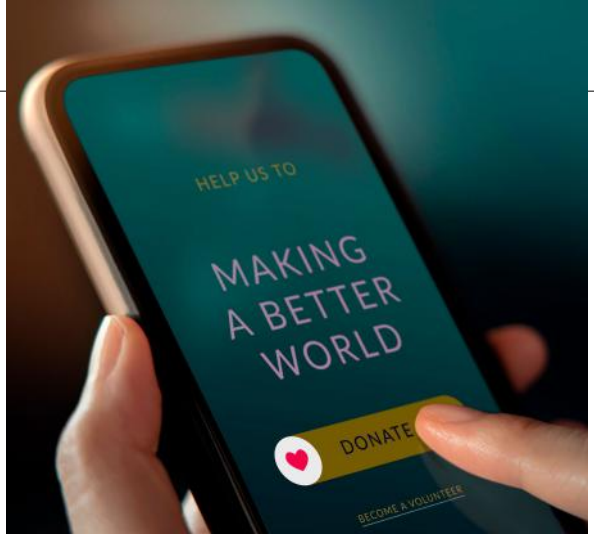
notice given to the charity and publicly available information about that fact.

The annual return is now also brought on to a statutory basis. The fact that it did not have that basis already may come as a surprise to some. Away from the Act, OSCR has been consulting on updates to the annual return questions.

Successor charities

A briefing at Journal, September 2023, 36 summarised an update to the rules on legacies in favour of charities which have, essentially, wound up and transferred their assets to another charity – the issue being that where a charity has changed its structure through, for example, a transfer of assets to a SCIO or a merger with another charity, there is a risk that legacies named in wills for the old charity will be lost.

While narrower in scope, the rules in the Act are inspired by the law in England & Wales on this topic. There will be a "record of charity mergers". It is for the charity to notify OSCR to ensure the change is entered on the system. From that date (or such other date as is specified in regulations), legacies in wills can then find their way from the old charity to the new one. The essence of the update is that "mergers" would seem to need to be registered prior to the death in question. We are pleased to see this development. It was one that was not consulted on originally. It is good that the Scottish Government took up the call to reform this area at the intersection of charity and succession law. The current situation leads to sensible governance updates being shelved by some, or cumbersome "legacy charities" remaining on the Scottish Charity Register.



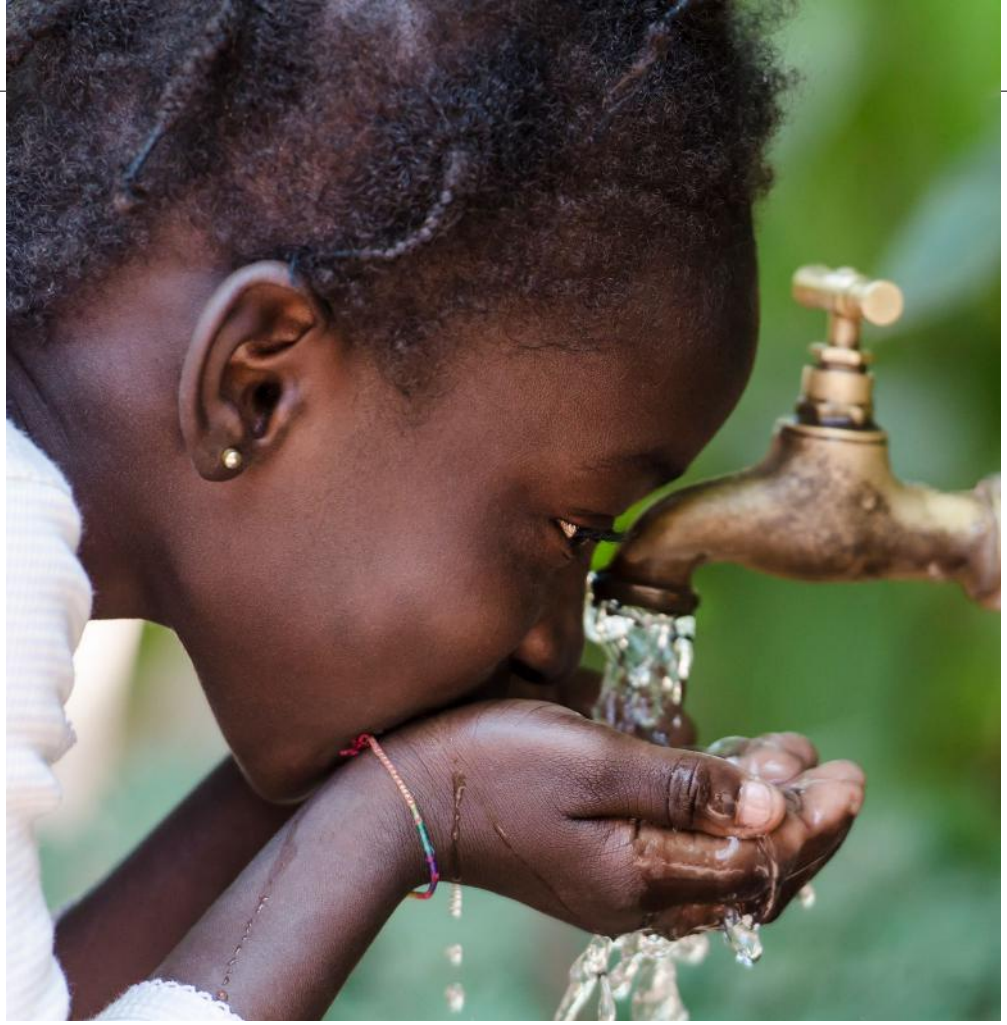
The new rules still allow those making wills to take control of the situation. They can specify in the will what happens. The Act creates some examples of when it is *not* to be taken that the deceased intended the legacy to pass to the new charity. We think these rules provide sufficient clarity and certainty for those making wills.

Names

Among more minor (in the Act's parlance) reforms is a change to the rule that two charities cannot have the same name. This causes some issues for charities changing into a new, more modern legal form (for example, from trust to SCIO). It enables the "old" charity name to be used by the "new" charity. This is a sensible move. The new rules do not take away from rules to protect charity names in less benign situations.

Also on names, there are some changes to the rules on the consents process, to deal with OSCR suggesting a change to the proposed new name. There is also new regulation on "working names": a name a charity uses beyond their formal legal name.

Currently, even with OSCR consent granted, a charity must wait until 42 days have elapsed since they applied to OSCR



for consent. That could be annoying in practice. The 42 day rule is repealed under the Act – a seemingly small but very useful update.

Leaving the register

It has always been notable that a charity can just exit the OSCR charity regulation realm. If a charity requests this, OSCR cannot refuse. But there are provisions to govern the use of the charity's assets after it leaves the Scottish Charity Register. There is, however, a gap: a body that no longer has charitable status has to use the assets for charitable purposes, *but* need no longer use them for the "public benefit". This has been remedied.

"Statutory" charities

For charities set up by Act of Parliament or similar, there were positive developments as the bill progressed. The consultations covered this topic. That offered the prospect of clarity on when such charities (or at least some of them) would avoid the need to promote private legislation to make certain constitutional changes. For many of these charities, it is a historical curiosity that they have a parliamentary underpinning to their constitution. The bill as introduced did not include provisions to update these rules, but provisions were ultimately added to the bill during its parliamentary passage. This is welcome.

A wider review of Scottish charity law?

The 2023 Act covers a relatively narrow range of topics, bringing welcome updates but not a comprehensive review. Throughout the consultation exercises and the progress of the bill through the Parliament, there has been a constant call for a wider review of Scottish charity law. The Scottish Government's Programme for Government stated it would work to "develop the scope for a wider review of charity regulation".

In some quarters that is a call for a review of the notion of what is a "charity" and "charitable". Beyond the parameters of "charity", there are a number of technical points that deserve reflection. While technical, they are rules that, if updated, would make a difference to charities in practice and the furtherance of their purposes. The issues that come under this umbrella include:

- a statutory basis for "notifiable events": informing OSCR of serious issues occurring at a charity;
- a streamlined conversion process to enable unincorporated charities to incorporate – one which avoids the current potential need for cumbersome and expensive transfer procedures, which can be a barrier to better governance structures being adopted;
- a review of who can be a SCIO, and the minimum number of members of a SCIO;
- a reflection on the duties incumbent on members (as opposed to trustees) of a SCIO;
- on trustee duties, understanding what is really meant by acting "in the interests of the charity" (s 66(1) of the 2005 Act);
- taking the opportunity to recast the useful but knotty provisions on the reorganisation of charities and restricted funds (chapter 5 of the 2005 Act);
- revisiting the terms and scope of rules on trustee remuneration.

Governance bijurality

Charity trustees of charities established as trusts should also take note of the Trusts and Succession (Scotland) Bill (the "Trusts Bill").

Charities other than SCIOs will also have to consider other areas of law that affect their governance in addition to charity law. That could be, for example, company law (on which see OSCR's 2023 inquiry report on Pollokshields Development Agency), trust law, or the rather nebulous law applicable to unincorporated associations. Having two areas of law on such constitutional matters could be described as governance bijurality.

The Trusts Bill seeks to be a statement on a wide range of trust law matters. Charity trustees will need to be up to speed on updated rules on decision-making, changing trustees and the power to delegate trustee functions. There are some more niche topics in the Trusts Bill that do tend to affect charitable trusts, such as *ex officio* trustees and the somewhat quaint (and literally Dickensian) rules on the accumulation of income in trusts.

There have been calls to make sure the Trusts Bill fully considers the interaction with charity law. It would be unfortunate if there was a clash of legal areas on what trustees should be doing. Whatever the terms of the Trusts Bill, charity trustees of charitable trusts must (1) consider whether or not being or remaining a trust is appropriate (compared to other legal forms), and (2) ensure they follow charity *and* trusts law in how they manage their governance.

What next?

The 2023 Act requires OSCR to report on what it has done to promote charities' awareness and understanding of what they need to do to comply with the provisions of the 2005 Act. That communication exercise following the 2023 Act will be one of the immediate tasks in charity law. It is hoped that in parallel there is the start of a wider review to keep charity regulation modern and effective.

Alan Eccles is a partner with Bannatyne Kirkwood France & Co, and a member of the Law Society of Scotland's Charity Law Subcommittee

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CPOs: breach application not out of time

This month's criminal court briefing considers proceedings in relation to a community payback order the time for which has expired; and offers a refresher on *Moorov* cases following a recent appeal

Criminal Court

ADRIAN FRASER, SUMMARY SHERIFF AT EDINBURGH

Reference is often made in legal submissions to trite law, on the basis that the law is clear, previously decided and free from doubt. However, even what is thought to be trite law has a habit of rearing its head from time to time.

In this article, I will look at a matter which arose before me recently, breach of a community payback order ("CPO") after the time for completion of the order had expired, and then go on to say something about the *Moorov* doctrine which was recently considered again by the High Court in *GS v HM Advocate* [2023] HCJAC 35.

CPO breaches

CPOs are a sentencing option imposed by sheriffs on a regular basis, most commonly by way of supervision of an offender and/or unpaid work in the community.

However, what happens when the order is breached but nothing is done until after the period of the order has expired? Assistance is given in *Stewart v Dunn* [2015] HCJAC 93.

Sections 227ZC and 227ZD of the Criminal Procedure (Scotland) Act 1995 deal with breaches of CPOs. Section 227C deals with the duties of the "responsible officer", usually referred to as the "supervising officer" responsible for, *inter alia*, compliance matters.

Nowhere in these sections is there to be found a restriction on proceedings for breach of the order being initiated after the period of the order has ended.

In *Stewart*, an unsuccessful appeal by bill of suspension, the appellant was sentenced on 19 January 2015 in relation to a contravention of the Misuse of Drugs Act 1971 by the imposition of a CPO to undertake a number of hours of unpaid work within three months. The appellant did not complete the hours within that period.

On 29 April 2015, the appellant submitted a form explaining that he had "received various custodial sentences/remands" making it impossible for him to complete the work within the period. A three month extension was requested. On 6 May, the sheriff granted an order extending the period for completion by three months. The appellant subsequently received another custodial sentence.

An application was lodged requesting further extension of the CPO. The appellant was brought before the court for the application to be considered. On 24 June the sheriff revoked the CPO and deferred sentence until 26 August 2015.

The appellant brought a bill of suspension of the orders of 6 May and 24 June 2015, arguing that the CPO expired at midnight on 18 April 2015 and that its requirements fell at that point and could not thereafter be varied.

Dealing with the appeal, at para 20, the High Court said: "the nub of the punishment being imposed is the requirement to carry out unpaid work. That is the primary concern. Time limits, while important, are of secondary importance and the default periods provided for... often require, in practice, to yield for pragmatic reasons such as where the offender is in full time employment and, however desirable it may be, it is not realistic to expect him to complete the hours within three or six months".

At paras 22 and 24 the court indicated:

"[22]... As for the timing of any application to extend the time limit, the 1995 Act is silent. It does not, for instance, state that the application must be presented to the court prior to the expiry of the subsisting time limit. That makes sense. There are bound to be cases where the responsible officer cannot conclude, in advance, that the hours of unpaid work will not be completed in time...

"[24] Finally, we observe that nowhere is it provided that failure to complete the required hours of unpaid work within the time limit provided by the court will bring an end to the CPO. We do not find that surprising... it would be surprising if that were the statutory intention."

It would therefore seem that time is not of the essence with regard to the submission of an application to vary or for breach.

Moorov: a refresher

Turning to mutual corroboration, *Moorov v HM Advocate* 1930 JC 68 established the principle of corroboration by evidence of two or more incidents similar in time, place and circumstances, where there is only one source of evidence for each, allowing an inference to be drawn of a single course of criminal conduct persistently pursued. This principle was reiterated by the court in *Ogg v HM Advocate*

1938 JC 152, and *MR v HM Advocate* 2013 JC 212, at para 20.

At para 21 of the opinion of the court in *MR*, a full bench stated: "There is then no rule that what might be perceived as less serious criminal conduct cannot provide corroboration of what is libelled as a more serious crime."

It has further been confirmed that there is no rule in law whereby less serious, non-penetrative criminal conduct cannot provide corroboration of a more serious, penetrative crime: *HMcA v HM Advocate* 2015 JC 27, at para 9.

For the application of mutual corroboration, the *nomen juris* of each criminal act is immaterial. The question is whether there is an underlying unity of conduct: *McMahon v HM Advocate* 1996 SLT 1139 at 1142E-F.

Any course of conduct must be viewed as a whole, rather than in individual compartments: *JGC v HM Advocate* [2017] HCJAC 83; 2017 SCL 1042 at para 12; *HMcA v HM Advocate*, para 11.

There is no maximum interval of time fixed by law beyond which mutual corroboration cannot be applied: *AK v HM Advocate* 2012 JC 74 at para 14. The more similar the conduct is in terms of character, the less important a significant time gap may be: *AS v HM Advocate* 2015 SCCR 62 at para 10; though it may be easier to infer a course of conduct where there are shorter gaps: *JL v HM Advocate* 2016 SCCR 365 at para 30; *Duthie v HM Advocate* [2021] HCJAC 23 at para 28.

It is a question of fact and degree whether the conventional similarities in time, place and circumstances exist so as to allow the inference to be drawn that there was a single course of criminal conduct persistently pursued: *HM Advocate v SM (No 2)* 2019 JC 183 at para 6, following *MR v HM Advocate* at para 20; *Adam v HM Advocate* 2020 JC 141 at para 29; *PGT v HM Advocate* [2020] HCJAC 14.

It is not the case that as a matter of law, in a lengthy time gap case, there require to be special, compelling or extraordinary circumstances before the appropriate inference can be drawn: *Duthie v HM Advocate* at para 28.

A course does not necessarily imply that the offence is committed or attempted every day or even every month. Opportunity or inclination may be intermittent: *Moorov* at 89.

How similar?

In *Reynolds v HM Advocate* 1995 JC 142, the court stated at 146D: "We accept that there was a process of evaluation to be conducted, because there were dissimilarities as well as similarities... Where the case lies in the middle ground... a jury should be properly directed so that they are aware of the test which requires to be applied."

Just because there are dissimilarities does not necessarily mean that mutual corroboration cannot apply: *Livingstone v HM Advocate* [2014] HCJAC 102, at para 17.

In *AL v HM Advocate* [2016] HCJAC 120; 2017 SCL 166, the appeal was against conviction in relation to two charges over a libel of 16 years. The court in refusing the appeal, noted (para 8) that there was much force in the similarities highlighted by the trial judge, adding as a similarity "the consideration that... these offences occurred in the environment of a controlling, dysfunctional, domestic relationship".

It is important to look at the totality of the circumstances in which the offending behaviour took place: *TN v HM Advocate* 2018 SCCR 109, at paras 11-17.

The similarities must relate to the alleged criminal conduct: *Reilly v HM Advocate* [2017] HCJAC 5, at para 35.

GS v HM Advocate: the evidence

In *GS*, the appeal, which was refused, was against conviction of two charges of sexual assault, one relating to the appellant's daughter (S) and the other to her friend (H). The High Court considered in particular the situation where there are similarities and dissimilarities in the incidents.

Charge 1 libelled that between 2004 and 2010 the appellant used lewd, indecent and libidinous practices towards S, and placed his mouth on and licked her vagina, and touched her vagina under clothing.

Charge 3 libelled that between 2014 and 2015, the appellant sexually assaulted H at another address, in that he tried to touch her and repeatedly attempted to kiss her.

Charge 2 libelled an offence of sexual assault of a third complainer, in the same time period and at the same address libelled in charge 3. The jury returned a verdict of not proven on charge 2.

S, H and the third complainer were close friends of about the same age.

S's evidence was that the incident of oral sex happened once, when she was five years old, in her bedroom. The appellant touched her vagina regularly when she was between the ages of six and 11, and on each occasion he was drunk. He would also look at her when she was in the bath, when she was between eight or nine and 12.

H's evidence was that when she was 16 years old, she went to S's party at the address in charge 3, where the appellant then lived.

Everyone at the party, including the appellant, consumed alcohol. When H was in the bathroom, which did not have a lock, the appellant came in and tried to kiss her. She went to the livingroom, where the appellant "tried to do things" to her, tried to kiss her and put his hands on her as she was leaving.

The sheriff correctly directed the jury on mutual corroboration, and stressed that it was a matter for them to decide whether the necessary link in time, character and circumstances had been established and the principle should be applied, but that they had to be cautious about deciding to apply it.

Appeal decision

It was held that there were numerous similarities between the accounts given by S and H, and it was not difficult to discern common features of an underlying pattern running through the appellant's offending. When he was under the influence of alcohol he took advantage of young vulnerable females, who were in his home, in circumstances where he was able to gain access to them by invading their privacy or security.

The evidence of the appellant watching S as she bathed was evidence of additional invasion, and although not part of the libel of charge 1, was led without objection. It was open to the jury to have regard to it.

Although there were dissimilarities between the circumstances in which the complainers were abused, the significance thereof in the context of the whole evidence was a matter for the jury to weigh when considering whether to apply the doctrine of mutual corroboration.

The test was whether on no possible view of the evidence could it be said that the respective accounts of S and H constituted component parts of a single course of criminal conduct systematically pursued.

At paras 22-24 the court said:

"[22] In recent times the court has stressed that it is always a question of fact and degree whether the conventional similarities in time, place and circumstances exist so as to allow the inference to be drawn that there was a single course of criminal conduct persistently pursued (*HM Advocate v SM (No 2)* 2019 JC 183... at [6], following *MR v HM Advocate* 2013 JC 212... at [20]; *Adam v HM Advocate* 2020 JC 141... at [29]). Since the question is one of fact and degree it will in most cases fall to a properly directed jury to determine it.

"[23] It is only where it is impossible to say on the evidence that the individual incidents were component parts of a single course of conduct persistently pursued that there will be an insufficiency of evidence as a matter of law (*ibid*; *Donegan v HM Advocate* 2019 JC 81... at [39], following *Reynolds v HM Advocate* 1995 JC 142). The test of impossibility is obviously a high one. If that test is not capable of being met, the issue becomes one of the weight to be given to the evidence... questions of weight are for the jury, not the judge.

"[24] In many cases it will be possible to identify both similarities and differences... It is for the jury to decide whether in the light of the similarities and the differences the necessary inference of the pursuit of a single course of criminality can justifiably be drawn."

Briefings

Licensing

AUDREY JUNNER, PARTNER, HILL BROWN LICENSING

The implementation of the Alcohol (Minimum Pricing) (Scotland) Act 2012 is due in large measure to a so-called sunset clause. The Act expires on 30 April 2024, six years after it came into effect, unless an order to continue its provisions is laid in the Parliament. That order is subject to the affirmative procedure.

The clause reflects the experimental nature of the controversial MUP policy. It was a key factor in the Scottish Government's success in the Supreme Court following a challenge by the Scotch Whisky Association (joined by other industry interests), which had contested the lawfulness of the measure. In the opinion of Lord Mance, with whom the other Justices concurred, "The system will be experimental, but that is a factor catered for by its provisions for review and 'sunset clause'. It is a significant factor in favour of upholding the proposed minimum pricing régime".

Linked to the sunset clause is an evaluation procedure. Section 5 of the Act provides that, as soon as practicable after the five-year period (which expired on 30 April 2023), the Scottish ministers must lay before the Parliament a report on the operation and effect of the minimum pricing provisions during that period. In preparing the report, ministers were required to consult a wide range of stakeholders, including holders of premises licences, alcohol producers and those having functions in relation to health, the prevention of crime and a number of other areas.

Contested report

The report was released by Public Health Scotland ("PHS") at the end of June, and immediately ignited a hotly-contested debate as to the soundness of its conclusions. It suggested that there had been a 3% reduction in overall alcohol consumption and a 4.1% drop in hospital admissions, while deaths had fallen by 13.4%. However, on the other side of the coin, there had been no impact on A&E attendances or crime, while the latest statistics published by National Records for Scotland have revealed that 1,276 people died from conditions caused by alcohol in 2022 (2% more than the previous year). Perhaps most significantly, the report candidly concluded: "There is limited evidence that MUP was effective in reducing consumption for those people with alcohol dependence" (that is to say, those drinking at harmful levels).

Following a complaint to the UK Statistics Authority ("UKSA") by Dr Sandesh Gulhane, a Glasgow MSP, PHS made "minor updates" to its "Evaluation findings at a glance document" designed to make it clear that "the reductions in alcohol sales, deaths and hospital admissions are *estimates* based on the research that had been done within the evaluation". According to Dr Gulhane, 32 of the studies mentioned in the evaluation did not reference the health outcomes of MUP; seven of the other studies into health outcomes reached negative or inconclusive conclusions; and, he claimed, only a single study said that deaths might have been averted. However, to the satisfaction of the UKSA, the updates simply adjust the way in which the findings are communicated: there have been no changes made to the final report, its findings or the interpretation of the findings.

Time for a rise?

On September 20, the Scottish Government launched a consultation on whether MUP "should be continued as part of the range of policy measures in place to address alcohol related harm, and, in the event of its continuation, the level the minimum unit price should be set going forward". The future of MUP is scarcely in doubt, but a question remains as to the unit price, currently 50p. Adjusted for inflation, the figure would be around 62p. The Scottish Government's favoured price is 65p per unit. By way of illustration, at that level a 70cl bottle of whisky would cost not less than £18.20 (currently £14.00), while the floor price of a 75cl bottle of wine with an ABV of 12.5% would rise from £4.69 to £6.09.

If, as appears, MUP has produced no meaningful effect on the habits of those suffering from alcohol dependence and alcohol-specific deaths continue to rise, it is difficult to escape the conclusion that a key objective of the policy is unlikely to be achieved by raising the unit price. On that view, it may be considered that the Scottish Government should respond robustly to growing calls for much-improved support for those suffering from alcohol addiction, who are unlikely to respond to price increases.

Insolvency

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

Arrestment is, according to Graham Stewart on *Diligence*, "the diligence whereby the debtor in a moveable debt or obligation is prohibited and restrained from making payment of the debt or satisfaction of the obligation". What is secured by the arrestment is the obligation of the debtor to account to their creditor. Most commonly, arrestments are used against bank accounts pursuant to decrees and summary warrants.

This was written almost a century before the Social Security Administration Act 1992 was brought into force. That Act provides that certain social security benefits are "inalienable". As such, an arrestment in the hands of the Government department(s) distributing those benefits is thought incompetent.

Nevertheless, once those benefits are paid into the debtor's bank account, they have long been thought subject to arrestment. Gloag & Henderson, for example, recognising that funds held for alimentary purposes are not usually arrestable, states that once paid into a bank account, social security benefits are arrestable. It cites *North Lanarkshire Council v Crossan* 2007 SLT (Sh Ct) 169 as authority for that proposition.

In its *Report on Diligence and Debtor Protection* (1985), the Scottish Law Commission also took the view that alimentary payments do not retain that character when transferred into a bank account. This largely formed the rationale behind the minimum protected balance and the ability to recall on grounds that an arrestment is "unduly harsh", introduced by the Bankruptcy and Diligence (Scotland) Act 2007. The minimum protected balance now stands at £1,000.

Twist in the tale

This was the understanding of the law prior to the recent sheriff court judgment in *McKenzie v City of Edinburgh Council* [2023] SC EDIN 21.

In that case the council served an arrestment in the hands of McKenzie's bank (which joined the action as an interested party). The account was at credit in a sum greater than the minimum protected balance. The bank therefore ring-fenced the arrested portion of the account. McKenzie applied to the court for recall of the

IN FOCUS

...the point is to change it

Brian Dempsey's monthly survey of legal-related consultations

Work capability assessments

The Department for Work & Pensions is consulting on "updating", for the first time since 2011, the test used to determine benefit entitlement. This is to "reflect greater flexibility and availability of reasonable adjustments in work, particularly home working". See gov.uk/government/consultations/work-capability-assessment-activities-and-descriptors
Respond by 30 October.

Islands plan

As required by the Islands (Scotland) Act 2018, the 2019 National Islands Plan is under review. See consult.gov.scot/agriculture-and-rural-economy/national-islands-plan-review-consultation/
Respond by 7 November.

Audiovisual IP law

The UK Government seeks views on how to implement the Beijing Treaty on Audiovisual Performances. See gov.uk/government/consultations/beijing-treaty-on-audiovisual-performances
Respond by 9 November.

Funerals, burials, water cremation

The Scottish Government has at least four current consultations on aspects of disposal of human remains, regulated by the Burial and Cremation (Scotland) Act 2016. The issues include recommendations by the Infant Cremation Commission, the National Cremation Investigation and the Burial & Cremation Review Group. See consult.gov.scot/burial-cremation/consultation-collection/
Respond by 17 November.

Alcohol minimum pricing

The Scottish Government seeks views on increasing the alcohol minimum unit price (50p). See consult.gov.scot/population-health/review-of-the-minimum-unit-pricing-and-contination/
Respond by 22 November.

Relationship education

The Scottish Government seeks views on draft statutory guidance on the delivery of relationships, sexual health and parenthood education in schools. See consult.gov.scot/learning-directorate/teaching-guidance-for-relationships-sexual-health/
Respond by 23 November.

Foreign influences

The Home Office is consulting on draft guidance on the Foreign Influence Registration Scheme, provided for in part 4 of the National Security Act 2023, designed to provide greater transparency about the influence of foreign powers in UK politics and greater assurance around activities of specified powers. See gov.uk/government/consultations/foreign-influence-registration-scheme-draft-guidance
Respond by 1 December.

Police misconduct

Holyrood's Criminal Justice Committee seeks views at stage 1 on the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill. The bill would impose a statutory code of ethics with a duty of candour, make changes to the handling of police conduct investigations and increase the functions of the Police Investigations and Review Commissioner. See parliament.scot/bills-and-laws/bills/police-ethics-conduct-and-scrutiny-scotland-bill
Respond by 8 December.

arrestment, arguing that the whole of the funds at credit of his account consisted of benefits which would not have been arrestable in the hands of the DWP. Therefore, they should not be arrestable within his bank account. By reference to *Crossan*, the council resisted the application.

However, there was a twist. Unknown to most (including, it appears, the authors of Gloag & Henderson), *Crossan* had been successfully appealed to the sheriff principal in an unpublished judgment.

The sheriff framed the issue by reference to the sheriff principal in *Crossan*: "whether an exemption from diligence which attached to a fund in the hands of a person having a duty to pay that beneficiary remains so attached when the fund is paid into the beneficiary's bank".

The council argued that once funds were transferred into a bank account, they were inmixed with the bank's own funds and what remained was an obligation on the part of the bank to account to their customer for the amount of those funds. The nature of the funds changed by payment into a bank account. Thus, the arrestment was valid and effective.

Additionally, the bank argued that to find that funds paid into a bank account by way of benefits were not arrestable would put a burden on the bank to trace the source of funds paid into the account and to exercise a judgment on what was and was not arrestable. A mistake might open the bank to claims for damages.

Continued protection

The sheriff held that the judgment of the sheriff principal in *Crossan* was persuasive and adopted the reasoning of that judgment. The sheriff conceded that it "may technically be correct" to say it is the obligation to account that is attached by an arrestment and not the money or property, but considered that this is not how an arrestment is ordinarily explained.

Since the funds originated under a statutory provision, their arrestability had to be considered by reference to the statute. The statute states that no "charge" (which includes an arrestment) may be placed over benefits. That protection ought to follow through when those funds were placed in a bank account. Any additional burden placed on the bank as a result, was not a relevant consideration.

One assumes the matter will be appealed (indeed the sheriff invites this at para 46 of his judgment). Given the probable effects on fundamental principles of banking law, particularly the relationship between banker and customer, it is an appeal which should be closely watched.

Tax

ZITA DEMPSEY, ASSOCIATE AND HAYLEY STEVENSON, ASSOCIATE, PINSENT MASONS LLP

At present, the Scottish Government is in a difficult position – with high inflation and a cost-of-living crisis to deal with, it is currently forecast to have a funding gap of approximately £1 billion for the 2024-25 financial year. With many public services already short on funds, the SNP-Green coalition has begun to consider whether the tax powers devolved to Holyrood are enough to help plug that gap.

Wealth tax

One potential solution – proposed by the Scottish Trades Union Congress – would be

the introduction of a wealth tax. In the form proposed by the STUC, the wealth tax would be an annual tax at a rate of 1%, levied on households with a total wealth greater than £1 million.

There are, as yet, no concrete plans for its introduction – First Minister Humza Yousaf (pictured below) was careful to state that a decision had not yet been made, but that "we shouldn't rule these matters out, because we are facing extraordinary pressures".

The obvious difficulty for the Scottish Government is that Holyrood does not have the power to impose a national wealth tax, as this would be beyond the scope of its devolved powers. The approval of the UK Parliament would be needed to impose a new national tax, which is unlikely to be forthcoming under the incumbent Conservative Government. It is possible that a Labour Government could take a different view, but as Shadow Chancellor Rachel Reeves has recently ruled out a UK-wide wealth tax, that is not guaranteed.

There is a potential workaround, which is to have councils across Scotland impose local levies. The councils would then be responsible for working out who and what ought to be taxed, and for the collection and enforcement of the tax. However, the Chartered Institute of Taxation has noted that councils are likely to find this difficult to implement given that they are already under-resourced.

The Finance & Public Administration Committee recently considered the introduction of a wealth tax, noting that the richest households have 217 times the wealth of the poorest. However, while some attendees thought that the introduction of a wealth tax could be a solution for Scotland's budget in the long term, the economists and academics attending noted that it would take a long time to implement and was therefore unlikely to resolve the Government's current predicament. The need for the approval of and cooperation with the UK Parliament was also considered a substantial barrier by some.

Income tax rates

A much simpler solution, which could be implemented in short order, would be to use the devolved powers of the Scottish Government to raise income tax. Given the difficulties faced by low- and middle-income earners in the current financial climate, any increase to the basic rate would likely be unpopular, so the burden of any increases would probably fall on higher earners, as has been the case in previous changes to the Scottish income tax rates.

However, as the higher rate of income tax payable in Scotland is not payable on dividend income, which is subject to the lower UK rate, it is easier for some wealthy individuals to avoid paying it, so the potential increase in tax revenue might be partially reduced by the wealthy taking their pay in dividends.

Additionally, as the First Minister acknowledged, "If the UK Government cuts tax, for example, we will have to be mindful of the divergence that exists... we have to be careful around the behavioural impacts of any divergence." This forces the Scottish Government to walk a tightrope – set the tax rate too low, and it will have difficulty providing the services that are desperately needed by Scotland's less fortunate, but set the tax rate too high, and it risks incentivising the wealthy to relocate to England, reducing the overall tax take.

Council tax

The Scottish Government has also proposed raising council tax for the wealthier bands E to H, in a move expected to raise more than £170 million for local authorities. While it seems fairer that those with more expensive properties should pay more, critics have argued that as council tax is not exactly correlated with taxpayers' ability to pay, approximately 80,000 of Scotland's poorest 30% of households could be subject to the increases.

Ultimately, while the Scottish Government's devolved powers are undoubtedly useful for achieving their stated goal of "building a greener, fairer Scotland", the limited scope of those powers, as well as current financial circumstances and the inherent difficulties of imposing any new, complex tax, mean that the decision on how to use them is a delicate balancing act.

Immigration

ANNA KNOX, SOLICITOR, AND IBRAHIM YOUNIS, TRAINEE SOLICITOR, LATTA LAW

The use of the *Bibby Stockholm* barge to house up to 500 destitute asylum seekers has reignited the debate in relation to the adequacy of accommodation provided to those with outstanding claims. Various legal challenges have been brought against the Home Secretary in an effort to halt the transfer of asylum seekers to the barge. While higher-profile challenges have focused on the use of the barge generally as accommodation, other challenges concern the transfer of asylum seekers with particular vulnerabilities, for example serious mental health concerns or prior experiences of torture or trafficking.

This briefing considers recent judgments in two English cases which provide guidance on the adequacy of accommodation and financial support provided to asylum seekers.

The legislation

Sections 95 and 96 of the Immigration and Asylum Act 1999 mandate the Home Secretary to provide destitute asylum seekers with accommodation and support adequate for their needs. Section 98 provides for temporary support to applicants who appear to be destitute while a decision in relation to their eligibility for s 95 support is pending. Applicants under s 98 are placed in accommodation on a no-choice basis, often requiring to instruct new legal representation after being placed in new localities, leaving behind existing support systems.

By reg 4(2) and (3) of the Asylum Seekers (Reception Conditions) Regulations 2005 (SI 2005/7), in providing accommodation the Home Secretary is duty bound to take into consideration the special needs of a "vulnerable person", defined as a minor, disabled person, elderly person, pregnant woman, lone parent with a minor child, or a person who has been subjected to torture, rape, or other serious forms of psychological, physical or sexual violence.

The *SA* case

In *R (on the application of SA) v Secretary of State for the Home Department* [2023] EWHC 1787 (Admin), the High Court provided guidance as to when hotel accommodation under s 95 is to be deemed "inadequate" and thus unlawful.

The claimant, a heavily pregnant, destitute asylum seeker with three young children, had been placed along with her dependants in single-room hotel accommodation. She challenged the adequacy of the accommodation, as well as the Home Secretary's failure to relocate them to suitable accommodation.

Fordham J summarised the legislation and case law relevant to the assessment of "adequacy", carrying out an assessment in relation to the objective minimum standard of the accommodation and the reasonableness of the Home Secretary's evaluative judgment of adequacy. It was noted that accommodation must provide for a dignified standard of living and that accommodation which may be adequate in the short term may become unsuitable by the passage of time. Further, adequacy must be tested by reference to applicants' individual circumstances.

The claimant's pregnancy, the ages of her children, and the facilities available in the hotel were all significant factors in the court's assessment of the accommodation as inadequate. It was additionally held that the length of time that the family resided there clearly exceeded what could be expected to be tolerable with reference to the claimant's statutorily recognised vulnerability. Further, the claimant had not been informed how long she could expect to remain in hotel accommodation, which contributed to the decline of her mental health.

The court granted a mandatory order compelling the Home Secretary to move the claimant and her children to dispersal accommodation within five days.

The *HA* case

In *HA v Secretary of State for the Home Department* [2023] EWHC 1876 (Admin), Swift J assessed the Home Secretary's practices relating to the provision of financial support with regard to the circumstances of various claimants.

In the case of a claimant who had waited a number of months for their application for support to be determined, the court held that the Home Secretary must decide applications for support under s 95 "promptly", and, in most cases, within 10 days of the applicant's first contact with Migrant Help. Following decisions, the Home Secretary must then immediately take steps towards providing the support granted.

The court went on to consider whether two claimants with young children had received their full entitlement of financial support. It held that the Home Secretary had acted unlawfully by failing to provide the additional support payment mandated by reg 10A of the Asylum Support Regulations 2000 to pregnant women and children under three years old: this additional support had to be provided by way of a cash payment, rather than in kind, for example via food provided in hotel accommodation.

It was further held that a Home Office policy advising that persons should not be provided with accommodation pursuant to s 95 until they had applied for s 98 support was unlawful, as was its refusal to provide financial as opposed to hotel accommodation support to applicants under s 98.

These cases appear to mark the beginning of a more interventionist approach than has previously been taken by the courts in relation to the adequacy of accommodation and support provided to asylum seekers. As the situations of the claimants in the cases analysed are undoubtedly common, immigration law practitioners should remain alive to the possibility of successfully challenging inaction by the Home Office with regard to accommodation and financial support.

Scottish Solicitors' Discipline Tribunal

WWW.SSDT.ORG.UK

Desmond William Donoghue

A complaint was made by the Council of the Law Society of Scotland against Desmond William Donoghue, solicitor, Edinburgh. The Tribunal found the respondent guilty of professional misconduct in relation to various breaches of the Law Society of Scotland Practice Rules 2011.

The Tribunal censured the respondent and directed in terms of s 53(5) of the Solicitors (Scotland) Act 1980 that for an aggregate period of two years, any practising certificate held or issued to him shall be subject to such restriction as will limit him to acting as a qualified assistant to such employer or successive employers as may be approved by the Council. The Tribunal awarded the secondary complainer compensation of £1,988.40.

Following the conclusion of a transaction, the respondent held funds for the secondary complainer. A sum was due to Revenue Scotland for land and buildings transaction tax. The respondent failed to pay Revenue Scotland. He was both the designated cashroom manager and the person who dealt with the transaction. Adherence to proper cashroom procedures would have alerted the respondent to the position. The secondary complainer had to pay a penalty and the LBTT himself and did not receive his money back from the respondent for some months. The respondent failed to properly register title and a standard security. He failed to cooperate with the Society. This impedes the Council in its statutory obligation to investigate complaints. He did not communicate effectively with the secondary complainer, who repeatedly tried to contact him about the problem. The respondent did not adequately and completely conclude the work within a reasonable time or exercise the level of skill appropriate to the matter.

Craig Robert Harvie

A complaint was made by the Council of the Law Society of Scotland against Craig Robert Harvie, Eden Legal Ltd, Perth. The Tribunal found the respondent guilty of professional misconduct in relation to various breaches of the Law Society of Scotland Practice Rules 2011.

The Tribunal censured the respondent and fined him £5,000. The secondary complainers did not claim compensation.

The case concerned the respondent acting for Bill Johnston and Andrew Johnston who were in a partnership. The respondent took instructions from Andrew to significantly reduce Bill's interests in the partnership, drafted a variation of the partnership agreement without taking instructions from Bill, and met with Bill when it was plain he was a vulnerable client without a family member present. The respondent failed to properly consider the vulnerable witness guidance and the effect of the alteration to the partnership agreement, which was to reduce Bill's interest to the benefit of Andrew from whom he took instructions. He did not provide advice in writing when that would have been appropriate in the circumstances. This was in breach of rules B1.2, B1.4.1, B1.7.1, B1.5.1 and B1.9.1, all of the Law Society of Scotland Practice Rules 2011.

Michael Gerard Kilkerr

A complaint was made by the Council of the Law Society of Scotland against Michael Gerard Kilkerr, solicitor, Stranraer. The Tribunal found the respondent guilty of professional misconduct in respect of breach of rules B1.7, B1.9.1 and B2.1.4, all of the Law Society of Scotland Practice Rules 2011.

The Tribunal censured the respondent and fined him £1,500. It awarded compensation of £1,000 to the secondary complainer, JC.

The respondent acted in a conflict of interest situation when he acted for both JC and his partner. He failed to explain in writing to JC the full extent of the loss of rights in his property which would follow on him relinquishing a liferent and signing a disposition. Not every communication has to take place in writing. However, the circumstances of this case were such that the key points ought to have been communicated by letter to JC. He required a detailed letter setting out the consequences of the transfer and the fact he would no longer have a liferent over the property. The conflict of interests between the clients was very clear. Both clients, and particularly JC, needed independent and separate advice about the consequences of the transfer of title and renunciation of the liferent. Proceeding to act for both clients in these circumstances was a serious and reprehensible departure from the standards of competent and reputable solicitors.

Public service: so many paths

A career with the Government Legal Service for Scotland is great for giving you a diversity of work and of opportunities, says this month's interviewee, who now heads the in-house team at Revenue Scotland

In-house

MAIRI GIBSON, HEAD OF LEGAL SERVICES, REVENUE SCOTLAND

Tell us about your career path to date?

I trained at a medium sized firm in Glasgow in the early 1990s, then spent six years at a small firm in Edinburgh, doing civil and criminal litigation.

In 1998, I joined the then Scottish Office. The Solicitors Office was heavily involved in preparation for devolution while also keeping pace with the normal workload.

Following devolution, the Government Legal Service for Scotland ("GLSS") was formed as a community of lawyers in government in Scotland. Its purpose is to provide shared services to its member offices – essentially around staffing, raising awareness of the roles of lawyers in government, and learning and development – in order to develop and retain rounded, experienced lawyers. The GLSS is a brilliant route into interesting and diverse career opportunities, which furthers that purpose.

And this is how it has panned out for me. Over the years, I have worked for the Scottish Government, UK Government, Scottish Parliament and now Revenue Scotland. I have been seconded to, for instance, the Cabinet Office and worked on diverse subject matters, e.g. restricted patients (as a criminal disposal), free personal care, military bases, insolvency, devolution legislation and litigation, and tax.

I am currently head of the Legal team in Revenue Scotland ("RS"). RS was established in 2015 as Scotland's tax authority for the devolved taxes – currently land and buildings transaction tax and Scottish landfill tax. I joined just before the first Covid lockdown in 2020. Like just about everyone else, RS had to pivot overnight to providing services wholly digitally, which threw up dozens of novel legal questions to be answered immediately and then revisited frequently against a constantly moving target. While challenging, it was certainly effective in getting me familiar with RS quickly. I'm really proud to say we did not miss a beat, with no interruption of service.

As a young public body, RS has scope to design how it does things, and that holds equally for the legal team. It requires more from us than being technical lawyers.

Looking back, I have found myself working on issues and in places I would never have expected. For instance I have supported the Scottish Government on legislation at the Scottish Parliament and the UK Government at Westminster. Much of this has been around the legislative plumbing needed to make devolution work.

The aspects I really enjoy are proximity to the issues of the day – and the sense of purpose which that instils – and the challenge of finding a path through a messy problem. Beyond that, the most enjoyable thing has been working with and learning from some very wonderful people.

As head of Legal Services, what are your main responsibilities?

There are two dimensions to my role. One is leading and supporting the Legal team in advising clients on both devolved taxes and corporate matters. The other is as a member of the Senior Leadership Team ("SLT"). It was an early decision in RS to have the head of Legal as a member of SLT. It has been valuable to have a legal voice at the SLT table and before the RS board and its subcommittees. It ensures that legal considerations are to the fore in decision making.

It does make me a decision maker and consumer of legal advice as well as an adviser, which potentially gives rise to a conflict or loss of impartiality. In a small public body – RS has around 90 staff – there is no magic solution, other than to be ever alert to this possibility and lean on my legal colleagues to avoid me pronouncing on the rightness of my own view!

What was your main driver for working with the Scottish Government? Why should young lawyers consider a career in the public sector?

The main driver was that it was a doorway into a huge range of posts, subject matters and types of work; and to be involved in changing law where it is not working as it should. It allows people to work to their strengths in that you can find a post best suited to your interests and aptitudes.

There is a natural cycle to a particular post whereby you start off knowing little of the subject, followed by a steep learning curve, then a comfort zone, possibly followed by itchy feet. A career in the GLSS means I can apply for a move when ready for a new challenge.

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

I believe the future is good for in-house lawyers. Clients appreciate the value in having lawyers who know their business and organisation well. I find clients do not expect you to know everything, but they do look to their in-house lawyers to help plot the path towards the answers. It's efficient and allows lawyers to be involved at the pre-decision making stage.

One of the main challenges for in-house lawyers is that they are generally working in a small team, in a multidisciplinary organisation

where other teams might dominate. It doesn't take much to overwhelm a small team – just a "hot" legal issue and some team absence can do it. For that reason I say having a network is vital, so that you have a trusted voice to turn to, whether in or outwith your organisation.

One of the greatest opportunities is to work with colleagues from other professions and cross fertilise skills. As an in-house lawyer, you really get to see under the bonnet of an organisation.

What does success look like for your team, and how do you measure this?

I look at this in two ways. We track numbers which show trends in litigation, pressure points and staffing, and the Legal team reports into the SLT and the RS board.

But beyond these formal measures, it looks like enthusiasm; colleagues speaking up and challenging others; supporting colleagues by sharing knowledge; having a culture where it's OK to say I could do with some help, or I don't know the answer; where clients come and speak to us early or tentatively and where we are seen as problem solvers. Essentially, we are a team of people who can rely on each other.

Lawyers aren't generally seen as particularly innovative. Would you agree? What have you done in any of your roles that has been innovative or resulted in process improvements?

I don't agree! However I can see why that might be said. For most of my career, the organisation I have worked for has been a legal one, staffed mainly by lawyers. Lawyers as a group tend to have similar strengths – analytical, logical, constructing arguments, researching, drafting. They tend to have similar blind spots or not see what other professions bring. That has changed for me in RS, an organisation which comprises a variety of different professions.

One innovative thing I did was to volunteer the Legal team as a case study on how we do knowledge management ("KM") in RS. I did so because we have a clear need to do KM well in the Legal team. And because our remit is to advise the whole organisation, it was hoped that findings for our team could provide helpful pointers for the rest of RS.

I was nervous, on the basis that our KM system was, let's say, embryonic. However the findings blew away many of my preconceptions. I had started out thinking of knowledge as a library of legislation, case law, previous advice and so on. However, the review urged us to include knowledge of our clients. In practical terms that meant understanding the FAQs, which processes didn't work effectively, or spotting the occasions where an exchange of knowledge at an earlier stage would have resulted in a better outcome. A quote which resonated was: "We always know more than we say, and we always say more than we write down."

The team operates a system of planned check-ins with client teams. Feedback was that clients really valued these interactions because they would hear us expressing doubts or counter arguments. Our reasoning was as valuable as providing the "answer".

When time is tight, it is tempting to cancel the regular check-ins. However the review has effectively given us permission to continue to put resource into this activity.

There's a perception that in-house legal teams want to embrace technology but face barriers to doing so. What is your team's experience of using legal technology? Is AI the future?

I have found a degree of truth in this because there is always an existing IT system and in an in-house environment, legal teams' needs will generally not be the main driver in their design.

On AI, I'm having to learn at pace. I think our route into AI will be via the legal research services we subscribe to and I'm trying to keep pace with product developments. The issue we would need to be satisfied on is security and use of any data the tech ingests from us.

How have attitudes and working practices in the legal profession changed in the law since you started out?

The fundamentals of the job have not changed: it is still about understanding the client's needs and providing risk based solutions. The tech has improved, but in turn drives an "always on" culture, which allows for less thinking time. The profession's demographic has changed and that is a positive.

Covid has been a massive catalyst for change. It freed us from the mindset of, "that's how we always do it". It would be a shame if that freeing up of our thinking was lost.

The job has become very much harder because of the pace of change. When I qualified, I could still rely on the editions of textbooks I had at university being able to provide many of the answers. That couldn't be said now.

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

Do it! And do it early! There is no better role for learning what clients really need from their legal counsel (and it's not a 10 page essay). A good in-house lawyer is one who listens more than they speak.

What is your most unusual/ amusing work experience?

Dyeing my hair pink during lockdown, on the basis that the video function wasn't working. But by Monday it was, so I had to turn up at a board meeting with newly pink hair.

And finally... What's the best advice you've ever been given?

In response to being new to the GLSS and asking my boss what was the best way to learn the job, she said: "Look around, pick out someone you admire, watch what they do then do the same." I picked her!

Questions put by Beth Anderson, head of Member Engagement at the Law Society of Scotland

Ministers plan to amend Regulation Bill

Scottish ministers will table amendments to the Regulation of Legal Services (Scotland) Bill to address concerns expressed, including by the senior judiciary, relating to the role of ministers in regulation.

The Society and many others regard the intervention powers currently in the bill as a serious threat to the independence of the legal profession.

In a brief letter to the committee scrutinising the bill at stage 1, Community Safety Minister Siobhian Brown (pictured) said: "I have considered carefully these concerns and therefore wanted to let the committee know in advance of it taking oral evidence, that it is my intention to bring forward amendments to the bill at stage 2 intended to address the concerns in respect of the role placed on Scottish ministers within the bill."

New course to boost paralegal careers

A new university course for Scottish paralegals has been created to support career development while meeting the complex and varied needs of the legal sector.

The Law Society of Scotland has partnered with Robert Gordon University, Aberdeen to offer an accredited qualification tailored to paralegals, the first of its kind in Scotland.

The two-year flexible online course is open to both current and prospective paralegals in Scotland and internationally, and will welcome its first students in January 2024.

Find out more at www.lawscot.org.uk/members/career-growth/paralegal-practice-certhe/

OPG update
Amending a registered power of attorney

The Office of the Public Guardian has confirmed its proposed policy change regarding amendments to a power of attorney ("PoA") deed.

From 30 October 2023, an administrative update made to a registered PoA will be accepted. This includes anything which does not change the fundamental substance of the deed, for example a change to the name or address of a granter, attorney or substitute attorney.

If a registered PoA needs a significant alteration which either requires a certificate of capacity or the production of a new certificate of registration, a fresh deed should be submitted for registration. Significant alterations would include adding an attorney, substitute attorney, "or perhaps adding powers".

The new policy will apply to deeds signed by a granter on or after 30 October 2023. If an amendment has been submitted for registration and is waiting to be processed, this will be processed under the current (2012) policy.

The Power of Attorney Amendment Policy 2012 will be replaced with the Power of Attorney Administrative Updates Policy 2023.

OPG anticipates that this approach will make the registration process simpler, the operation of the PoA straightforward for the attorney and the deed easier to interpret.

Granter's date of birth

When submitting a PoA for registration, providing the granter's date of birth is essential, as it confirms they are of legal age and assists in identifying them on the public register. For new submissions from 30 October 2023, if the granter's date of birth is not provided in the registration form the PoA will be rejected and returned to the sender.

With a deep breath...

ASK ASH

How do I broach a colleague's halitosis problem?

Dear Ash,

My new colleague is quite charming and a real team player. However, despite this and perhaps due to his busy social life, he has a tendency to neglect his hygiene at times. On a few occasions, he has come into the office somewhat dishevelled, and worst of all with foul smelling breath. I have not said anything but I'm sure that clients are beginning to notice; at a recent meeting, a client did seem to repeatedly turn her face away when my colleague was speaking to her. I'm not sure whether to say something before things get worse

Ash replies:

It seems you have a good rapport with your colleague and you clearly don't want to hurt his feelings by saying something directly about the issue. However, it may be that he is unaware about how bad the problem is.

Halitosis can often go unnoticed by the source, and your colleague may be genuinely unaware of the potential distress he is causing.

However, it is difficult to predict how your colleague would react if he were told directly about the issue; he may feel insulted or indeed hurt. Therefore it is important to tread carefully.

Perhaps the next time he seems to be suffering from bad breath, you consider having a mint handy for yourself and then offer him one too. You could explain that you tend to have a mint or two before client meetings and that you also double check your appearance, as certain senior partners are particularly strict about fresh breath and general appearance in front of clients. This way you could blame management for being picky.

If your colleague doesn't take the hint from this more subtle approach, then you may just need to hold in your own breath next time he is around. Good luck!

PUBLIC POLICY HIGHLIGHTS

The Society's policy committees analyse and respond to proposed changes in the law. Key areas from the last few weeks are highlighted here.

It has been an extremely busy month for the Society's policy committees. First, Company & Insolvency Law Committee member Dr Alisdair MacPherson gave evidence to the Economy & Fair Work Committee on the Bankruptcy and Diligence (Scotland) Bill. A week later, the secretary to the Rural Affairs Committee gave evidence to the Rural Affairs & Islands Committee on the Welfare of Dogs (Scotland) Bill.

Programme for Government

The Society welcomed the focus on the justice sector in the Scottish Government's 2023-24 Programme for Government. The First Minister announced legislative changes aimed at embedding international human rights in Scotland and modernising outdated laws around judicial factors. These add to the bills already before the Parliament, including the Regulation of Legal Services Bill and the Victims, Witnesses, and Justice Reform Bill.

However, the Society was "bitterly disappointed" to see another year where Scotland's legal aid sector will go without the lasting reforms needed to protect access to justice for the most vulnerable.

Find out more on the Society's news web page (5 September)

Unregulated legal services

The Society responded to the Competition & Markets Authority investigation into unregulated legal services, including will writing, online divorce, and prepaid probate services. It expressed concerns that consumers using unregulated legal services may suffer financial loss if the service provider breaches consumer protection legislation. Further, the relevant law differs significantly between Scotland and England & Wales, and unregulated providers are not always well placed to deal with these variances.

The Society suggested that all those providing legal services direct to the consumer must be regulated, to strengthen consumer protections and enhance consumer confidence. It has advocated for many years for such regulation, including in its recent written evidence on the Regulation of Legal Services (Scotland) Bill, the protections in which, the Society considers, do not go far enough.

Find out more on the Society's news web page (15 September)

Trusts and Succession Bill

The Trust & Succession Law Subcommittee issued a briefing to MSPs ahead of the stage 1 debate on the Trusts and Succession (Scotland) Bill, reiterating the detailed comments provided during stage 1 scrutiny of the bill.

The briefing largely welcomed the recommendations in the stage 1 report, including on further work to address wider changes to trust and succession law, and the report's calls for further clarification from the Scottish Government.

In the context of the bill, the Society also responded to a targeted consultation on unlawful killers as executors to victims' estates. It supported clarifying the law in this area in statute, highlighting that a careful balance must be struck between the presumption of innocence and the practical requirements of administering an estate without undue delay. Allowing the sheriff the discretion to refuse appointment where the person has been convicted or is subject to a live prosecution would strike this balance.

Find out more at the Society's page on the bill

Justice Reform Bill

The Criminal Law Committee responded to the Parliament's Criminal Justice Committee's call for views on the Victims, Witnesses, and Justice Reform (Scotland) Bill.

The response broadly welcomed many provisions which have the potential to impact positively on the public perception of the criminal justice system and the experiences of victims and witnesses, including the proposed Victims and Witnesses Commissioner for Scotland, the principle of trauma-informed practice and special measures in civil cases, and independent legal representation for complainers when s 275 of the Criminal Procedure (Scotland) Act 1995 operates, as well as an automatic right to anonymity for complainers of sexual offences.

It did however highlight significant concerns regarding the provisions relating to the reduced number of jurors, the creation of the Sexual Offences Court, and the single judge pilot for rape and attempted rape cases. It also reiterated the Society's opposition to abolition of the not proven verdict, on the basis that the availability of the verdict provides an important safeguard against wrongful convictions. Should Scotland move to a two verdict system and a 12 person jury, jury unanimity should be required in order to convict.

Find out more at the Society's page on the bill

Visitor Levy Bill

The Tax Law Subcommittee responded to the Local Government, Housing & Planning Committee's call for views on the Visitor Levy (Scotland) Bill.

Currently at stage 1, the bill sets out the framework for local authorities to have a discretionary power to charge a visitor levy on overnight stays in accommodation such as a hotel, hostel, or bed and breakfast. Each authority would be able to decide whether it wanted to introduce a levy, and the level of any charge.

The response noted that the levy should be consistent with the Scottish Government's overall approach to taxation, embedded in the principles of certainty, convenience, efficiency, and proportionality to the ability to pay. It welcomed the consultation requirements prior to a levy scheme being introduced or changed, and stressed the need for wide publicity in advance (both nationally and within the local authority area), to ensure awareness among providers and accommodation users.

There are areas of the bill where greater clarity or guidance would be welcomed – for example on the scope of the definitions of "chargeable transaction" and "overnight accommodation", including examples where relevant.

A number of sections contain powers to introduce subordinate legislation relating to the scope and operation of levy schemes. Given the importance of any provision in relation to exemptions and rebates, there may be merit in including these on the face of the bill.

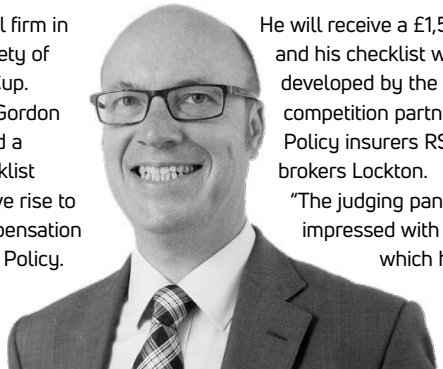
Find out more at the Society's page on the bill

Find out more about the Society's work at www.lawscot.org.uk/research-and-policy/influencing-the-law-and-policy/

Angus solicitor wins Innovation Cup

A solicitor working for a small firm in Angus has won the Law Society of Scotland's 2023 Innovation Cup.

Paul Brown, from W & JS Gordon in Forfar (pictured), developed a conveyancing purchase checklist to identify risks that could give rise to a complaint or claim for compensation through the Society's Master Policy.



He will receive a £1,500 prize and his checklist will be further developed by the Society's competition partners, Master Policy insurers RSA and brokers Lockton.

"The judging panel were impressed with Paul's idea which has the potential to help many legal practitioners and can be implemented relatively quickly", John Mulholland, convener of the Society's Insurance Committee, said.

"Maintaining a strong and robust Master Policy is extremely important for our profession and managing risk is key to sustaining that. We are all looking forward to seeing Paul's idea brought to life."

ROUTES TO QUALIFYING

No LLB? No barrier

Claire Gregory highlights the alternative route to qualification via the Law Society of Scotland's examinations – and the difficulties that can face those choosing this route due to lack of awareness among solicitor employers

The Law Society of Scotland offers an alternative route to qualifying as a solicitor, which involves embarking on a three year pre-PEAT traineeship while studying for the Society examinations. Trainees are required to work under the supervision of a qualified Scottish solicitor and the traineeship should provide the trainee with an opportunity to acquire skills and experience in applying the law in real life situations. At the end of the pre-PEAT traineeship there is still a requirement to complete the Diploma in Professional Legal Practice in either nine months full time or over two years part time, followed by the standard two year traineeship.

My experience

For me, having started an accountancy degree after leaving school (quickly realising it was not for me) then switched to a BA in law, the alternative route to qualification was the better option. Having completed the BA, the thought of going back to university really did not appeal to me. When I set out on my route to qualifying, there were eight Society examinations to complete (now 10). There is however an option to apply for exemptions, which was another attractive feature for me.

From my BA, I was able to produce evidence to show I met the criteria for an exemption in European Community Law, Scots Criminal Law and paper one of Scots Private Law. This route is by no means an easy option; trainees are required to balance working full time while studying for the examinations. The subjects are self-taught and the only learning material available is a syllabus, reading list and past exam papers.

This route requires a lot of hard work and self-discipline. When I began it I had been working as a paralegal for around 18 months. I was keen to continue working full time and continue learning on the job. During my pre-PEAT traineeship I gained valuable experience in litigation, conveyancing and private client work. I learned a lot from two very well established solicitors, the head of Civil Litigation and head of Private Client & Commercial of the firm in which I worked. The support and guidance I received together with the opportunity to acquire skills and gain practical experience, at an early stage, helped shape the lawyer I am today.

Obstacles

There is a lack of awareness of this alternative route to qualification within the profession which can at times present some obstacles to the trainee at the end of the traineeship, as well as the solicitor once qualified. First, the Society's examinations are not an equivalent to an LLB and are simply an alternative route to qualification. It may not always be possible for a trainee to be kept on at the firm when they complete the three year traineeship, and those not ready to embark on the Diploma may find themselves in a situation where they are unemployable due to lack of awareness. Employers reading a CV will not always understand why an applicant, having completed a traineeship, is not yet qualified.

Secondly, solicitors qualifying in this way do not hold an LLB and may not have held any other degree before embarking on this route. One of the main obstacles I have come across is job specifications for solicitor posts which state it is essential for the applicant to hold an LLB as well as a Diploma in Professional Legal Practice. I have also come across instances of employers requesting that candidates "hold a degree from a university of good standing".

In some cases, applicants can easily explain within the application that while they do not hold an LLB, they are a qualified solicitor having sat the Society examinations. However, where recruitment portals are used, these are often set up to filter applications and do not allow the applicant to proceed where they say "no" to meeting essential criteria such as holding a degree or LLB. Employers should therefore be mindful of the wording of job advertisements to ensure that solicitors who qualified via the alternative route are not prevented or excluded from applying for a solicitor post.

An easy solution to this could be a request that applicants either hold a current practising certificate or are at least entitled to hold one. Alternatively, the addition of the words "or Law Society alternative" after "LLB" would resolve this issue.

Final words

A very important difference between these two routes to qualification is that some people may embark on an LLB with no intention of ever becoming a solicitor. An LLB can open up many other successful career opportunities. Those who embark on the alternative route to qualification, however, do so with the sole intention of becoming a solicitor. The opportunity to qualify in this way promotes diversity and makes entry into the profession more accessible to those who are not able to or do not wish to attend university. It also, in my opinion, creates a more well-rounded solicitor, which can pave the way to career acceleration.

Claire Gregory is a senior solicitor in-house with a Scottish local authority

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- ***Thur 22 Feb - Zoom Webinar 5-7pm***
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Just get on with it?

In Menopause Awareness Month, employers should look out for new guidance on creating an inclusive workplace and supporting valued employees

"Everybody gets menopause – just get on with it." This is essentially what the company director of Thistle Marine (Peterhead), Jim Clark, said to his employee, Karen Farquharson when she called in sick to work after experiencing heavy menopausal bleeding. It cost the company just over £37,000 after Mrs Farquharson, who had worked there for 27 years, won her claim for unfair dismissal and harassment in a judgment dated 12 July 2023.

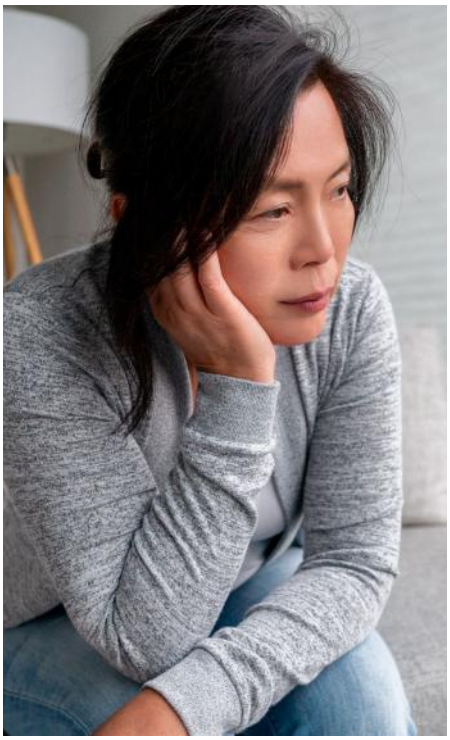
The Aberdeen employment tribunal heard that Clark dismissed her medical problems, which also included anxiety and brain fog, as "aches and pains" and told Farquharson she used the menopause as an "excuse for everything". Judge Hendry, in upholding Farquharson's claims, said Clark "no doubt has many admirable qualities but empathy for others is not among them", concluding that his remarks had violated her dignity.

Discrimination?

In July 2022, the Women & Equalities Committee published its *Menopause and the workplace* report, which identified that women over the age of 50 represent the fastest-growing group in the workforce. Most of these women will go through the menopause during their working lives. The report also said that employers' lack of support for menopausal symptoms is pushing highly skilled and experienced women out of work. This aligns with the CIPD's research carried out in 2019, which found that 59% of women experiencing menopausal symptoms said it had a negative impact on their work.

Responding to the report, earlier this year, the UK Government decided against making menopause a new protected characteristic under the Equality Act 2010. It decided that sex, disability, and age (already protected characteristics) provided protection against discrimination and harassment that someone may be subjected to because of the menopause. In Farquharson's case, for example, the protected characteristic relied on was sex.

On 2 October 2023, Baroness Kishwer Falkner, chair of the Equality & Human Rights Commission ("EHRC") said: "We will soon be launching new guidance for employers, so they have the resources to ensure they are



looking after their staff who are going through the menopause, and we will encourage all employers to use it." The EHRC is supporting a case which will be heard in the Leicester employment tribunal this month. An employee (Ms Rooney) is claiming that she was discriminated against, harassed, and victimised by her employer, Leicester City Council, on the grounds of disability and sex. The case also involves the first Employment Appeal Tribunal decision that menopause symptoms can amount to a disability for the purposes of the Equality Act, setting a legal precedent.

Baroness Falkner further stated: "Menopause symptoms can significantly affect someone's ability to work. Employers have a responsibility to support employees going through the menopause – it is to their benefit to do so, and the benefit of the wider workforce."

Understanding and addressing menopause in the workplace is crucial for several reasons, not least to avoid the potential legal implications as outlined above. Providing support can improve an employee's overall health and wellbeing, meaning they are more likely to remain engaged and productive at work, reducing absenteeism and helping to prevent talent loss. Valuable employees may simply leave organisations that don't acknowledge their needs.

Action plan

Menopause remains a largely unspoken topic, particularly within the workplace. Such silence perpetuates a lack of understanding, support and inclusivity, which ultimately harms both employees and employers. To create an inclusive workplace that addresses menopause, employers can do several things:

1. Provide awareness programmes to educate employees and leaders about menopause, as well as encourage conversations to debunk any misconceptions around it.
2. Offer flexible working or remote work options to accommodate employees experiencing menopausal symptoms, such as fatigue or sleep disturbances.
3. Ensure employees have access to confidential resources and health professionals who can provide guidance and support.
4. Develop clear policies and guidelines addressing menopause-related issues, including how to request accommodations and who to contact for assistance.
5. Consider creating designated quiet spaces where employees can rest and manage their symptoms when needed.
6. Establish channels for employees to discuss their needs and concerns regarding menopause, whether through HR, managers, or support groups.

The EHRC's guidance will likely be of assistance when it is released. In the meantime, employers should note that October is Menopause Awareness Month. This provides an excellent opportunity to start conversations if you haven't already, dispel common myths and misinformation around menopause (it's more than just hot flushes, and can start earlier than the average age of 51!), and to help break the stigma surrounding the menopause – always remembering there is no "one size fits all".

Rupa Mooker is Director of People & Development with MacRoberts

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Graeme McKinstry

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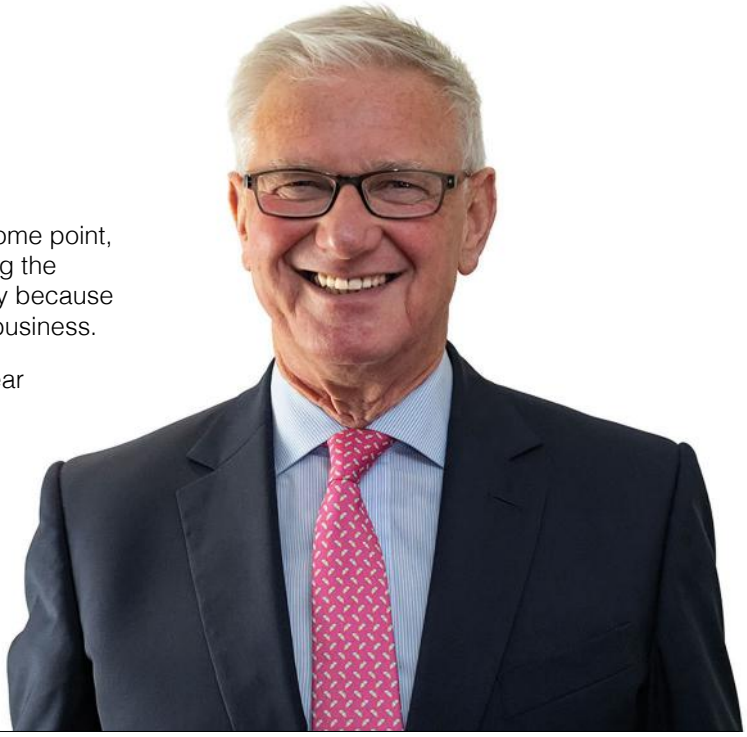

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THE UNLOVED LAWYER

Finding your feet

Life as a new trainee can be very daunting – so go carefully until you think you have the measure of your office, and your colleagues

My last article won attention from a national newspaper and a couple of online Scottish legal blogs, which suggested I urged lawyers "to stay off dating sites" – not exactly accurate! Nor am I representing the views of the Law Society in these articles – I am an individual.

I have spent a good deal of time writing about what not to do, or what to avoid or look out for, in terms of life in the law, and perhaps it is time to focus on some practical hints and tips, particularly for trainees entering the profession who may never have worked in a legal office, or any office at all.

Not much choice

University life is so different from the world of work. Picture the scene: you're at university and you wake up on a dark, cold November morning and look outside to see it's been snowing. The choice is either to stay in bed, be warm and catch up on sleep, or go to the jurisprudence lecture at 9am. The scales are very much tipped in favour of the former. Unfortunately, not turning up because you're hungover or you've chosen to have a duvet day just doesn't cut it in the world of work.

The transition from uni life to legal office life can be very daunting. For example, you will be going from the relatively part time nature of university life (a couple of lectures/tutorials a day with gaps in between) to, usually, full time hours Monday to Friday – plus the unspoken expectation that you will work extra to show your commitment and enthusiasm for your career. You will suddenly find yourself surrounded by colleagues, most of whom you probably wouldn't choose to spend much time with, unlike the friends you actively made at uni and stuck with throughout and beyond your time there.

Office politics, and more

For the benefit of trainees, my hints and tips are:

- There will be office politics. Every office has politics, often exactly as you've seen it on TV and in films! You can't avoid it, although you don't have to get involved. Some of it will be quite exciting and some of it will seem very petty. Drama within the office comes and goes, in waves, in terms of what happens and who is at the centre of it. You won't like everyone and not everyone will like you. Try not to embroil yourself in it – observe it and make your own decisions about who to trust. Also, bring your own mug on your first day!
- Take a notepad and pen (or your mobile) everywhere with you. As a trainee, you will probably have a number of solicitors passing work to you, and you never know when or where another request for work will be made, even if you are just going to the water cooler. If you have seen *The Devil Wears Prada*, you will know the excruciating embarrassment when Andy goes into Miranda's room without her notepad and pen and Miranda rattles off a number of instructions that Andy can't remember as soon as she leaves the room.
- Take it easy at your first office Christmas party. Even if you started your traineeship in January, trust me on this. Your behaviour at your first Christmas party is crucial and it will be remembered. Tempting as it may be to tank all the free alcohol you can, you don't want to be remembered as "that trainee who had to be carried out". I have seen that happen and they were never able to shake off that tag – it came up at every event involving alcohol after that. It's tempting to go all out with the free bar when you've just amassed a lot of debt at uni, but hold back! Use it as an opportunity to see how your colleagues and bosses act, so you can gauge how relaxed or otherwise the office parties can be.
- Please, please, please remember that the paralegals know more than you do, and treat them with as much respect as your boss(es). You will need their help on about a thousand occasions during your traineeship and beyond. They know about the substantive law within their field and they have the added procedural knowledge that you won't have, in terms of registration of documents, completion of forms, drafting knowledge and the sequence of events in various matters. You can often learn more from a paralegal than from your supervising solicitor – you might find that your supervisor hasn't drafted a missive or a court application themselves since they were a trainee, which could have been 30+ years previously!

There is a lot to navigate as a trainee in terms of life in a legal office, which often extends way beyond learning how to put into practice the theory that you learned at university. In short, hold yourself back until you have established the internal workings of the office and formed your own relationships with colleagues. You will be glad you did.

The Unloved Lawyer is a practising solicitor

Notifications

APPLICATIONS FOR ADMISSION 30 AUG-25 SEP 2023

AGER, Benjamin Matthew
AITCHISON, Sophie Anne
ALLISON, Jacqueline Marie
ANDERSON, James Peter Alan
ANDERSON, Jennifer Irene
ANDERSON, Laura Elizabeth
ARMSTRONG, Kathryn Wallace
ATTERBURY, Calum James
BEGUM, Forida
BELL, Laura Alejandra
BENTON, Robyn Clare
BEVERIDGE, Grant Andrew
BINGHAM, Katy Sarah
BORGES MOLLO, Marina
BOYLE, Liam Neil
BOYLE, Rebecca Deborah
BYRNE, Sophie Claire
CALDWELL, Rebecca Irene
CANNING, Robyn Lucy
CAREY, Jonathan Paul
CARMICHAEL, Ellie Jane
CHOUDHARY, Zahra Hanif
CLOSE, Martin Patrick
COLL, Charley Frances
COOK, Alexandra Jane
CULLEN, Samuel
DAHL, Amos Carl Frithiof
DEWAR, Kimberley Michelle
DILLON, Sarah Louise
DOCHERTY, Hannah Helen
DONALD, Katie Elizabeth
FARRELL, Paul Gerard
FISHER, Katherine Yvonne
GALLAGHER, Rebecca Jane
GIBSON, Hope Rebekah Maclean
HARPER, Hannah Catherine
HENDERSON, Paul
HIGGINS, Dylan Dominic Shaw
HOFFMANN, Adrianna Katarzyna
HUGHES, Hannah Caitlin
HUTCHINSON, Lauren Rachel
IKRAM, Sarrah
JENKINS, Georgia Hill
JUDGE, Megan
KEMP, Catriona Louise
KEOHANE, Ross Alexander Angus
LANDMAN, Francois Wouter
LIEDER, Sean
McARTHUR, Kirsty Marion Lena
McAULAY, Mhairi Jane
McBRIDE, James Frazier
McCUSKER, Eve
MACDONALD, Katie
McFARLANE, Lauren Laidlaw
McKELVIE, Murray
MACKIE, Scott
McKINLAY, Ben
MACMILLAN, Francesca Alice
McNALLY, Jeraldine Cyrena
McQUILLAN, Rebecca Susan
MEDFORD, Alisha Mairead
MISACAS, Maria Katerina
MITCHELL, Carla
MORRICE, Karina
MORRISON, Shaun Fraser
MURCHISON, Lydia Netta
MUSTARDE, Heather Margaret
NASAR, Ussamah
NORBASH, Shona Mairi
O'CONNELL, Emer Winifred
O'NEILL, Jack Charles
PARKINSON, Grainne Margaret
PERRIAM, Charles James Alexander
PERRY, Alice May
PIACENTINI, Katie
PLEASS, Matthew Patrick James
POLLOCK, Rachel Lynne
QAZIKHEL, Ayssas
REED, Bethany Blyth
REID-KAY, Sophie Maclean
RENNIE, Jack Alastair
ROBERTS, Katie Anne
ROBERTSON, Holly
ROBERTSON, Olivia Anne
ROSS, Eilidh Lorynn
ROSS, Kate Elizabeth Jan
ROSS, Rebecca Louise Hannelore
ROWAT, Carmen Rose
SAUNDERS, Lauren Faye
SCOTT, Annabel May
SCOTT, Rachel
SCOTT, Rachel Elizabeth
SEATON, Rebecca Catherine Anne
SHAUKAT, Sohail Ali
SMITH, Abbie Spence
SMYTH, Jacob Paul
STEVENSON, Olivia Skye
STEWART, Emma Hazel
STRAIN, Dana
TAYLOR, Lewis Keith
THOMSON, Joanna Claire
TODD, Gillian Taylor
VASISTH, Vibhuti
VOY, Megan
WALKER, Aidan Neil Morrison
WARD, Ross Luke MacBrien
WATT, Gabriella
WHITE, Kyanna
WIDGER, Rhiannon Mary
WILSON, Clara Elisabeth
WISHART, Christie Anne
WOOD, Laura Louise
WRIGHT, Tracey Ann
WROBLEWSKA, Joanna Natalia

ENTRANCE CERTIFICATES ISSUED DURING 31 AUG-26 SEP 2023

AHMED, Maryam
ARSHAD, Irum
BECK, Michael
BEDFORD, Rachel Isabella
BILAL, Zoheb
BROW, Caitlin
BRUCE, Emily
BRUNTON, Lucy Alexandra
CHISHOLM, Jenna
COWEY, Katrine Alison Maitland
DALGLEISH, Adam
DONNELLY, Alexander Shaun
DOWNIE, Michael James
DUNCAN, Kieran Joshua
ESPIE, Robert Samuel
FAQIR, Hassan Tahir
FORSYTH, Jamie Bevis
FOTHERINGHAM, Jessica
GALLAGHER, Erin Marie
GANCHEVA, Maria Tsvetanova
GRAY, Alison Ann
HALDANE, Kyle Steven
HAMILTON, Sarah
HAMPSON, Nicola Jane
HUNTER, Eva Jane
HUNTER, Lara
KELLY, Charlotte Kathryn Alice
KERR, Tallulah Pollaidh
LAMONT, Erin Octavia Caldwell
LAW, Zoe Alice Mary
LOWE, Georgia
McDOUGALL, Kerr Campbell
MACDOUGALL, Lewis Andrew
McGREGOR, Rebecca Anne
McQUILLAN, Pamela Heather
MASKAME, Patzi-George Buchan
MITCHELL, Jack David
MURPHY, Jodie
NAWROT, Megan Jamieson
REDHEAD, Thomas McMillan
ROBB, Madison Iona
SIMPSON, Emily Denice
TAYLOR, Jonathon William James
THOM, Sophie Louise
TOWERS, David Andrew
WADDELL, Marguerite Natasha
WALLACE, Louise
WEBBER, Correy Leigh
WILLIAMSON, Lois Alexandra
WILSON, Adam Peter

ACCREDITED SPECIALISTS

Child law
LAURA McLEAN, Harper Macleod (accredited 18 September 2023).
Re-accredited: LAUREN FOWLER, Frazer Coogans (accredited 17 October 2008).

Family law
Re-accredited: SHONA TEMPLETON, MTM Family Law (accredited 30 September 2008); VICKY LEWIS, TC Young (accredited 12 July 2018).

Family mediation
AMERDEEP KAUR, Drummond Miller (accredited 12 September 2023); BARBARA BLACK, Taylor & Henderson (accredited 12 September 2023); KIRSTY McGUINNESS, BTO Solicitors (accredited 21 September 2023).

Medical negligence law
Re-accredited: CAITLIN SOUTER, National Health Service Scotland (accredited 8 October 2018).

Medical negligence (defender only)
KATHERINE TRAIL, National Health Service Scotland (accredited 28 August 2023).
Re-accredited: LORNA McCRAE, National Health Service Scotland (accredited 3 October 2003).

Personal injury law
Re-accredited: DOUGLAS COWAN, Keoghs Scotland (accredited 3 September 2008); CAITLIN SOUTER, National Health Service Scotland (accredited 24 September 2013); NICOLA EDGAR, Morton Fraser (accredited 27 September 2018).

Regulation of Professional Conduct Law
MARTIN WALKER, Balfour+Manson (accredited 14 September 2023).

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ACCREDITED PARALEGALS

Civil litigation – reparation law
Danielle Barnes, DWF LLP.

Residential conveyancing
BROGAN OSBORNE, Ennova Ltd; LEONNA ROBERTS, Kilpatrick & Walker.

Wills and executries
NICOLA ANNE KELLY, Blackadders.

RISK MANAGEMENT

Tick tock, stop (or start) the clock

Has recent legislation brought any more certainty as respects the time from which prescription runs? Not yet, it appears, but Anne Kentish has some advice on trying to ensure a claim does not fall foul of the time limits

One area of law that can strike fear into the hearts of litigation lawyers more than any other is prescription, and the short negative prescription in particular.

The Prescription (Scotland) Act 2018 received Royal Assent on 18 December 2018. It came into force on 1 June 2022. Was the passage of time ironic? Who knows. Are we any clearer on the law on prescription and how it operates than we were on 31 May 2022? Again, who knows.

Before the 2018 Act came into force the advice, from a risk management point of view, was always to litigate as soon as possible. If you have a number of possible dates for prescription, go with the earliest, rather than trying to argue the point later when it may be too late.

Has that advice changed since the 2018 Act? No. And that is where the certainty ends.

The other SNP

The short negative prescription extinguishes an obligation on a wrongdoer to pay damages to someone who has incurred a loss as a result of that wrongdoing. Easy. What is complicated about that?

Leaving aside what might be called the saving provisions, for claims arising from contract, property damage in delict and professional negligence in delict causing non-personal injury loss, a five year period applies. If you miss this deadline, the claim prescribes. Again, easy.

Tick tock

So what is all the fuss about? All we are being asked to do is work out when the obligation is extinguished. To do that, we need to start at the beginning. When does prescription start to run? And here we come to the first hurdle.

When a client is looking for a concise answer to the question "Has my claim prescribed?", they will often be disappointed. The answer is usually, "I don't know", or "It depends", or in some cases "I hope not."

There are usually arguments to be had about when the prescriptive period starts to run. There are also arguments to be had about whether certain periods of time should be considered as part of the computation of the period.

Pre-1 June 2022

From the coming into force of the Prescription and Limitation (Scotland) Act 1973 until the Supreme Court's decision in *David T Morrison & Co Ltd v ICL Plastics Ltd* [2014] most lawyers probably thought they had a pretty good understanding of the law of what s 6 of the Act (the extinction of obligations under the five year prescriptive period) was all about, and how it interacted with s 11(3). (There had been consistent Scottish authority allowing pursuers to rely on s 11(3) to assert that the prescriptive period started running when they became aware that the loss was caused by fault on the part of the defender.) Schedule 1, the list of obligations affected by the five year prescriptive period, was also read with knowing nods of understanding.

That changed when the Supreme Court issued its decision in *ICL Plastics*, which held that the prescriptive period started when the pursuer became aware they had suffered a loss. Hot on its heels was the Supreme Court's decision on the same point in *Gordon's Trs v Campbell Riddell Breeze Paterson* 2017 SLT 1287, and before we knew it, it felt like the law of prescription had been turned on its head. All of a sudden, people were talking about s 6(4) (claimant induced into error by defender and into refraining from bringing a claim), when s 11(3) was looking less like the saviour it had been to many.

In the (pre-1 June) 2022 decision of the First Division in *Glasgow City Council v VFS Financial Services*, the Lord President said at para 3: "The focus in the present actions on s 6(4) may have arisen as a consequence of recent clarification of the limits to the use of s 11(3) to extend prescriptive periods because of a lack of awareness of objective facts on the part of the creditor (*WPH Developments v Young & Gault* 2021 SLT 905, following *David T Morrison v ICL Plastics* 2014 SC (UKSC) 222, and *Gordon's Trs v Campbell Riddell Breeze Paterson* 2017 SLT 1287). The limits, which were defined in these cases, are largely removed by the introduction of s 11(3A) of the 1973 Act, and associated amendments, by s 5 of the Prescription (Scotland) Act 2018. These changes are, somewhat surprisingly, not yet in force. The Scottish Law Commission's *Report on Prescription* (SLC No 247), which was published on 3 July 2017, made recommendations on commencement provisions (paras 1.30 *et seq*). The Scottish Government's Consultation on Commencement Regulations closed on 14 October 2020."

Prior to 1 June 2022, knowledge of loss (actual or implied with reference to what could have been found out with reasonable diligence) was the trigger for the clock to start ticking.

Lest anyone thinks that we can forget about what went on before 1 June 2022, nothing could be further from the truth. The most recent decision from the Court of Session is the Outer House in *Tilbury Douglas Construction v Ove Arup & Partners Scotland* [2023] CSOH 53, which followed a preliminary proof restricted to the issue of prescription. *Prima facie*, the obligation to make reparation had been extinguished. The pursuer relied on both s 11(3) and s 6(4). The defender's plea of prescription was repelled and the court found that the pursuer could rely on s 6(4). The case has been appealed. The arguments continue.

On or after 1 June 2022

For relevant obligations prescribing on or after 1 June 2022, to start the clock ticking the claimant must have knowledge (actual or implied) of the following:

1. the loss;
2. that the loss was caused by a person's act or omission; and
3. the identity of that person.

The meaning of loss

So, considering when the clock should start to tick, when the loss occurred is all important. What then is the meaning of "loss"? There has been a lot of case law on the point. Lord Hodge explained in *Gordon's Trustees* that it does not matter whether the claimant "is aware actually or constructively that he or she has suffered a detriment in the sense that something has gone awry... It is sufficient that a [claimant] is aware that he or she has not obtained something which the [claimant] has sought *or that he or she has incurred expenditure*" (emphasis added).

Can we interrupt the clock ticking?

We often see claimants arguing that certain periods of time should not be counted as part of the computation of the five year period.

The prescriptive period can be prevented from running in a number of situations. These can be (but are not limited to): (1) fraud or inducement (on the part of the wrongdoer) which has led to the claimant refraining from litigating; (2) relevant acknowledgment or part performance towards implement of the obligation; or (3) arguably, whether loss was "inevitable".

We now see claimants relying on s 6(4) in a way they never did before.

Can we make time stand still?

No, not really (unlike in England), but we can now extend the period.

Before 1 June 2022, s 13 prevented parties contracting out of prescription. It was a matter of competency and the court could take the point even if the parties did not.

Now, thanks to the 2018 Act, the creditor and debtor in an obligation to which a prescriptive period under s 6 or s 8A applies may agree to extend the prescriptive period in relation to the obligation concerned.

The prescriptive period may be extended by agreement only:

1. after the period has commenced (and before it would, but for the 2018 Act, expire);
2. by a period of no more than one year; and
3. on one occasion in relation to the same obligation.

Easy? Perhaps, but of course you must first have established when the prescriptive period commenced... From a risk management view, then, what are the top tips?

Probably the top tip is to try not to get yourself into a position where prescription is an issue in the first place! However, if you find yourself with a concern as to whether a claim will prescribe, be aware of the following:

- Know which legislation applies to your case: are you still dealing with the original 1973 Act or do the amendments effected by the 2018 Act apply? The transitional provisions between the old and new versions of the 1973 Act are provided for in the Prescription (Scotland) Act 2018 (Commencement, Saving and Transitional Provisions) Regulations 2022. Regulation 3 provides that the amended 1973 Act will have no effect on rights and obligations which were extinguished by 1 June 2022. This means that if a claim has prescribed and cannot be saved by any of the relief mechanisms in the original 1973 Act as at 1 June 2022, the amendments enacted by the 2018 Act cannot assist in rescuing that claim.
- If the claim is in danger of prescribing, can you reach an agreement under the amended s 13 to extend the period of prescription? If so, make sure you record this in detail. Make sure you have agreement on the date prescription started and the date it will finish, taking into account the agreed extension.
- Keep regular diary entries for the end of the prescriptive period. Even if you are negotiating a resolution to the claim, or an extension of the prescriptive period, do not lose sight of the date the claim will prescribe. You should leave yourself enough time to raise an action if you have to.
- Crucially, only service (and calling) of the court action will interrupt prescription. It is not enough to have warranted a writ or signeted a summons.
- Remember that an agreed extension only applies to the parties to the agreement; the extension will not apply to any other creditors or debtors who are not party to the agreement.
- Make sure you have your client's clear instructions to serve court proceedings in good time. If the client does not want to go to the expense of raising an action to prevent the claim prescribing (for example if it is looking likely that an agreement to extend the period will be reached), make sure you advise them in writing that they cannot raise their claim if it has prescribed.
- Lockton has produced a guide to Prescription in Contract and Breach of Duty Cases, and it's worth reviewing the guide when thinking about when the prescriptive period will be considered to have begun.

If you do have a concern, don't leave it too long. If you think you have an issue with prescription, and you are uncertain about the legal position, don't delay in tackling the issue. One thing that is certain is prescription does not get better with time.

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

PRACTICE POINTS

Tradecraft tips

Ashley Swanson's latest collection of practical points, drawn from his years of experience

Ingratitude

A client was buying a house which, when originally built, had a recessed porch. The seller had glazed this in; the problem was that the bathroom window opened out on to the porch and my understanding of building regulations is that a bathroom window always has to open out into fresh air and not into an enclosed space. When the client was informed about this, she did not thank us for raising a matter which might cause problems in the future – she replied: "Oh, don't tell me that I am not getting my house."

If you start casting up technical problems, clients sometimes gain the impression that you are getting between them and their "dream home". On the other hand if you do not spot the problem or do not mention it to the client and it raises its ugly head at some point thereafter, the client's reaction may well be: "If I had known about that at the time I would never have gone ahead with the purchase. This is all your fault."

At all times we have to do our best for our clients, but as we have to answer for everything we do, even 30 years down the line, anything which has the potential to kick back on us has to be pointed out to the client no matter how much anxiety or annoyance it may cause them.

Trust

Kerr Avon, one of the characters in the 1970s TV series *Blake's Seven*, made a memorable remark in one episode: "Trust only becomes dangerous when you have to rely on it." Here in Aberdeen in the recent past a woman has been engaging firms of solicitors to conclude missives for the purchase of properties and then failing to come up with the funds to settle, leading to the transactions going into meltdown with catastrophic consequences for the sellers.

I wonder whether this person was asked right at the outset to produce documentary evidence in the form of bank statements or the like to establish that she actually had the funds in hand to obtemper her commitments under the missives. If you are dealing with a client who is new to the firm, you should not be content with their assurances that they have the funds available: you should ask for definite proof. You are risking reputational damage both on a personal and on a firm level if some ill-disposed person decides to cause mischief by offering for properties that they are incapable of buying.

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

Boredom

This is a story very much against myself. A client was, via a limited company, the tenant of a unit in a shopping mall. The company had racked up £84,000 of unpaid rent, but a deal was done with the landlord whereby the client would start up a new company, take an assignation of the lease and the rent arrears would be written off. What to me was an extraordinary arrangement was mentioned in an email at the back of the file.

Dealing with commercial leases can be very boring indeed and I made the fatal error of allowing my attention to stray. I did not understand the special arrangements which had been made and I did not delete the provision in the assignation deed whereby the new tenant took over all of the liabilities of the original tenant. This resulted in the rent arrears being a liability of the new tenant.

Matters were eventually sorted out and the new tenant was excused from payment, but I had lost face with the client and suffered the acute embarrassment of making a major blunder.

Whether you find the case you are working on interesting or not, you have to give it 100% of your attention, and if your clients have entered into an unconventional agreement with someone, you have to quiz them closely to make sure you understand exactly what has been agreed and what you need to do to accommodate it in the documentation.

Magic spells

The Credit Crunch may have shifted the balance between commercial landlords and their tenants, but for a long number of years here in the North East the balance was very much in favour of the landlords. If you were acting for a tenant and the landlord's solicitors presented you with the draft lease, they appeared to regard it as a magic spell and were petrified that if even the slightest revisal was made to the wording, the magic spell simply would not work. You were then expected to accept that the brickwork on the building simply had to be repointed every 10 years or some other such nonsense.

A separation agreement between a couple for some reason needed to be done again, and on looking over the existing agreement I noticed a number of typing errors. My attempt to correct these was met with a very indignant response from the other solicitor, so I simply prepared the new engrossment with all the errors faithfully reproduced.

Revising legal deeds does not require you to switch off your common sense. The skill comes in knowing what will or will not make a difference in practice and how much flexibility can be allowed without creating problems for the future. One of the rules about negotiation is always to leave something in the deal for the person on the other side, rather than trying to get your own way in all aspects of the situation.

Noblesse oblige

Many years ago my parents were members of a bowling club. At an annual meeting of the members it was disclosed that the title deeds of the club had been lost. Thinking that I was being helpful, in the days before the Sasine Register was searchable online, I set out to track down the missing disposition. All I had by way of clues was the address of the club and the fact that it was started in 1925. I eventually traced the deed and a copy was given to one of the committee members.

I received no thanks for this as the committee was then forced to admit that what had happened was that the title had been taken in name of a limited company which had been allowed to go out of existence, presumably because annual returns had not been filed. The title deeds had not been lost; they had been forfeited. The level of embarrassment was heightened by the fact that one of the committee members was a solicitor. I never found out how the matter was eventually resolved.

If you see an opportunity to use your legal skills to help people resolve some difficulty, at no cost to them, it might be worthwhile first of all to offer your services to see what their reaction is, rather than presenting them with a *fait accompli*, otherwise your good intentions may badly miscarry.

A matter of opinion

Many years ago I was accused of ignoring an arrestment which had been served on my firm by the creditor of the owner of a building which a client was buying. I did not consider that the arrestment was actually effective, but I needed some expert input to help me to fight the case. I obtained an opinion and the academic in question felt that the best that might be done in the circumstances was to negotiate with the other side and perhaps pay them half of what they were claiming.

I ignored this advice and simply extracted those parts of the opinion which supported my position and fired them off at the other side. They eventually abandoned their claim altogether. Recourse had to be made to what I call the "black arts" of the legal profession without saying anything to the other side which was in any way incorrect.

If you have to resort to getting an opinion, do not disclose this to the other side. If the opinion is wholly in your favour then by all means send them a copy. On the other hand, if the opinion is against you then as far as the other side is concerned you never obtained an opinion in the first place and you can keep on arguing the matter as before. If the opinion is not wholly supportive of your stance you can treat it as a buffet meal and pick out the portions that are in your favour, include them in your argument and leave the rest sitting on the table.

A prayer to St Jude

St Jude is the patron saint of hopeless causes. A client was having to sell his house to clear off business borrowings. The bank also had a life policy assigned to it which it wanted to cash in to obtain the surrender value of £12,000. My boss at the time persuaded the bank simply to keep paying the premiums, on the pretext that the client's family were raising funds to buy over the policy. Some time thereafter the bank again raised the question of surrendering the policy, but once again it was persuaded to keep it going.

The boss knew that the client was terminally ill, and when the client died the policy paid out at the full value of £28,000. The bank duly got its £12,000 and the client's widow received the balance of £16,000. If the boss had not crippled the life policy along and the bank had surrendered it while the client was still alive, his widow would have got nothing. The client's accountant thought that his financial position was hopeless but the boss thought otherwise and managed to pull £16,000 back from the edge of the cliff.

The late Nicholas Fairbairn once said that no case was so good that it could not be lost, or so bad that it could not be won. Advocacy is a skill worth learning and developing.

FROM THE ARCHIVES

50 years ago

From "*Children's Panels – Are they really successful?", October 1973*: "The most important aspect of this experiment is the idea of early preventive measures, based on close casework diagnosis of the causes from which the need for compulsory care has arisen... Success has to be defined in terms of the extent of the elimination of the circumstances which cause referrals... Only time will show whether the Children's Panels really have been successful."

25 years ago

From *"Strategy for the future" (report on survey commissioned by the Society), October 1998:* "The most widely perceived trait (just under 60% of respondents) was that solicitors were knowledgeable. Sizable numbers (45%) also saw solicitors as helpful and trustworthy (38%). However, most of us will be dismayed and perhaps disappointed to learn that 40% of respondents also saw us as overpaid or out to make money (32%)."

Classifieds

John Cessford Kerr (Deceased)
Would anyone holding or knowing of a Will for the above, latterly of Burdiehouse Mains Farm and 239 Morningside Road, Edinburgh, EH10 4QU, please contact Leonard Thomson, Sturrock Armstrong and Thomson (ljt@satsolicitors.co.uk)

MARGOT VERONICA QUIGLEY –
Would any person holding or having knowledge of a will by Margot Veronica Quigley, late of Flat G/02, 21 Dixon Road, Glasgow, G42 8AS who died on 14 July 2023 please contact Graeme Thomson, Balfour + Manson, 56-66 Frederick Street, Edinburgh EH2 1LS (graeme.thomson@balfour-manson.co.uk).

Francis Joseph Kerr, deceased
Would any Solicitor or other person holding or having knowledge of a Will by the late Francis Joseph Kerr who resided formerly at 1/1 80 Royston Road, Glasgow, G21 2NT and latterly at Quayside Nursing Home, 250 Halley Street, Glasgow, G13 4DT, and who died on 13 August 2023, please contact Kathleen McArthur at Wright, Johnston & Mackenzie LLP, Solicitors, St. Vincent Plaza, 319 St. Vincent Street, Glasgow G2 5RZ, telephone 0141 248 3434 or email: kmca@wjm.co.uk.

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