

D&DLS Bulletin

Derby & District Law Society



www.derbylaw.net

May / June 2021

D&DLS welcomes New President Julie Skill...

*Read her AGM
speech
on page 5.*



...and Vice
President
Manesha Ruparel

Also in this issue:

Can you challenge an expert determination?

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Editorial



I still choose to be optimistic. Life is slowly returning to some sense of normality. We held our first ever virtual AGM on the 5th May. Better than nothing but a strange impersonal kind of event – probably my age but I would much rather meet face to face. Congratulations to Julie Skill, Manesha Ruparel and Oliver Maxwell who take up posts of President, Vice President and Deputy Vice President respectively and massive well done to Martin Salt who steps down as President after an eventful yet sadly not eventful two years in post.

Annual Subs will stay the same for the coming year and by the time you read this I will have sent a reminder about your firms subscriptions. If you would like to chat about what DDLS does for you please give me a call.

The Triathlon took place in April this year – again a virtual event- but a huge success nevertheless. Write up on page 11.

The schools debate competition has started with the children showing their versatility by taking to the online forum like the naturals they are. I am hoping that the Final can be LIVE at Derby University on 30th June 2021.

On page 8 you will see a flyer for the Derby Legal Walk – immaculately timed to coincide with the end of all Covid restrictions on 21st June. Well I have everything crossed! Please encourage your firms to sign up to take part for this good cause.

This year DDLS is 135 years old and the history and anecdotes will continue in the next edition. If anyone has anything to contribute please e-mail it to me.

Take care

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President's AGM Speech – 5th May 2021

When I received a job offer in 1985 to work in the Lord Chancellors department and I admitted to never having heard of it, I genuinely never expected at any time in my career to be asked to be President of Derby and District Law Society. I am extremely proud to have been even considered for the role and am somewhat anxious to ensure that I do justice to the position.

I was fascinated to read the long list of previous Presidents, both of Chesterfield and Derby Law Society and latterly Derby and District Law Society which were set out in last month's bulletin and to have my name added to that list of such esteemed predecessors is an absolute privilege and honour.

I am taking over the role of President at a very unique and somewhat bizarre time. Whilst we all hope that we are now back on the road to something like our previous normal way of life, things may never be completely "normal" again.

I wish to thank Martin Salt for his nomination for this role and for his work over the preceding two year period. I think Martin will go down in the record books as being the only President to have served a two year term and Martin has certainly had numerous obstacles to deal with over his term, including flooding and a worldwide pandemic, but he has coped admirably and I hope that I can do likewise. I am looking forward to the dinner in early November 2021 that Martin will be hosting and I am sure that event will be well supported as we all want the opportunity to go out and hopefully to be able to socialise on a face to face basis. I promise to let Martin have this badge of office back as he didn't have as many opportunities as he would like to have had to wear it.

I would also like to thank Julia for the invaluable help and support that she has given to me already and for her hard work running the Society and generally organising all of us. I am sure I am going to rely on Julia a tremendous amount over the next 12 months.

I would like to congratulate Manisha Ruperal on becoming Vice President and Oliver Maxwell on becoming Deputy Vice President. Again, I have no doubt that I will be able to call upon them for additional support when required.

In terms of my plans for the next 12 months, I can assure you all that I will give my full commitment to the role of President and will do everything I can to promote and develop the Society. I will attend as many events as I can and will do my

best to promote the good work that the local society does. I will try and encourage more chesterfield based lawyers to become more actively involved with the society and remind them that it is Derby *and District* Law Society. I have already accepted an invitation later this month from the Stephanie Boyce to attend a virtual meeting where representatives from local law societies have been asked to put forward what is the most important issue for their local society. I would welcome all of your views so that I can voice your opinions

I hope to be able to continue to work closely with the University of Derby and as a former Fellow of the Institute of Legal Executives now that the University has been approved to deliver training on the Legal Executive course, I would like to offer my support and assistance in promoting the fact that there are a number of alternative ways to access a rewarding career in the law.

Unfortunately, I don't play golf or cricket and don't intend to run a marathon or undertake a mammoth bike ride but I hope that this year will see the return of all regular successful events including the quiz, the school debating competition (which I know Julia is already working on) and the triathlon which I have just been involved in for the first time and which I found very enjoyable and was really impressed by the high standard of the participants.

I am working with a barristers chambers in Leeds and hope that later in the year we can organise an event that provides valuable training but also

enables members to socialise and possibly raise money for good causes as well! I am hoping to that these events and more besides can take place face to face rather than remotely

I work closely with Chesterfield Law Centre and sit on their management committee as a DDLS representative and I see first-hand the amazing work that they do. I would like to adopt access to justice as a theme and use my year to try and assist those who struggle to secure access to justice and where possible raise funds to assist small local projects raise much needed cash to help those trying to promote this aim. As you will see, I like to be busy!!

Finally, thank you to all our members and I hope that I can rely on your continued support throughout the year and I welcome any comments or proposals that any members wish to make.

Thank you once again for the honour of this opportunity.

Julie Skill
President, 2021-22





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Outgoing President's AGM Speech – 5th May 2021



The world seems a very different place from when I became President of the Derby & District Law Society on 1st May 2019. I was looking forward to a busy and successful year

and could not imagine the hardships that we all would struggle with over the coming years. COVID-19 has certainly changed the world, not just the legal industry, forever.

Prior to the COVID-19 Pandemic I was working towards organising events for the January 2020 to April 2020 period which would have included social gatherings, a bowling evening and a visit to St George's Park, the FA's National Training Centre for football and the England team. These ideas were designed to be something outside the norm for our previously hosted events. Additionally, some of them were to be in conjunction with the Derby Society of Chartered Accountants providing a greater scope for networking.

The centrepiece of the D&DLS year, our annual dinner has also been postponed twice from its usual dates in April 2020 and April 2021 and it is hoped that we will finally be able to see you all in November this year for the annual dinner.

It was hoped that going into my second unprecedented year as President we would be able to organise events but continued restrictions have prevented us from moving forward with any plans.

However, there is light at the end of the tunnel.

The University of Derby & D&DLS were able to successfully host the Annual Skills Triathlon (remotely) on 14th April 2021 and we are looking forward to the E4E Debating Competition for Schools which commences on the 12th May 2021.

I am also pleased to confirm that during my

tenure we have been lucky to welcome DG Legal as a new sponsor. DG Legal provide strategic and compliance-based services to law firms in the UK and have provided our members with access to free webinars and materials during the pandemic and will continue to do so during the coming year.

I wish good luck to our new President Julie Skill, our new Vice- President Manesha Ruparel and our new Deputy-Vice President Oliver Maxwell.

Finally, my thanks go to our committee members, our administrator Julia Saunders for her tireless help and assistance but most importantly to all of you, our members, for your support during a difficult last few years. So, my extended time as your President is over. And now my watch is ended. Thank you and take care.

Martin Salt

President 2020-21

Council Member's Report



Michael Williams

A recent memorandum about the impending closure of the Solicitors's Indemnity Fund (SIF) was circulated and I hope was widely read. SIF is controlled by the SRA because indemnity insurance is regarded as a regulatory matter and the Law Society is prohibited from handling regulatory matters.

At present SIF covers claims against closed firms which are made after the 6 year run-off period and the effect of its closure will mean that anyone whose firm has closed will be uninsured against claims made after 6 years. Bearing in mind that Covid has accelerated the closure of a number of firms this is potentially a very serious matter. The Law Society is working hard to try and find a solution but has not yet succeeded. If anyone has any concerns about their position please email SIF@lawsociety.org.uk.

Indemnity premiums are hardening significantly as I am sure you are aware. A particular area of concern is Conveyancing because fees are far too low and many firms survive by employing unqualified staff who can fill in a standard form but not much else, and certainly would not spot a legal issue if there was one.

This a recipe for claims leading to even higher premiums. I raised the point at a recent Council meeting and said the Conveyancing Quality Scheme seemed to a box ticking exercise for the benefit of lenders rather than a means of raising standards. I was told that Covid had prevented the implementation of a proposal for spot checks but these would occur as soon as possible. I do not believe that being able to claim membership of a Quality scheme should be

allowed without stringent tests to demonstrate a decent standard, and should be an avenue to higher fees.

Another area of concern is the growth of unregulated providers. In view of the prevailing winds which blow against anything in favour of Solicitors there is a reluctance to rock the boat on the subject of reserved activities ie those matters that can be done only by a Solicitor. I know it would need primary legislation but I think we are missing a trick here. We cannot practise without indemnity insurance. I don't think anyone should be allowed to provide legal services for gain which involve clients' money (and I include Will writing, Powers of Attorney and similar matters) unless they have compulsory indemnity insurance. That is the only way of protecting the public which is the whole purpose of regulation.

At least a study is being conducted and we need examples of problems caused by inadequate advice or work from unregulated providers to build a case for restricting them in the public interest. So please come forward with examples if you can - don't leave it to someone else. Concrete evidence is what is required.

How many of you bother to read the Gazette? There is a suggestion that the paper copy should be phased out and the whole thing be on-line. Would anyone object? If so speak now.

I hope the above shows how important it is to have a professional body that does its best to represent practitioners. I think the Law Society has done an excellent job in looking after Solicitors during the Pandemic from which I hope we are at last emerging.

Council Member Michael Williams

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Courses



DG Legal are delighted to announce a series of free webinars with Charnwood Accountants and Business Advisors LLP.

Solicitors Accounts Rules

November 2019 Changes & What Your Accountant Is Expecting
Thursday 24 June 2021 at 1pm

Since the new accounts rules came into effect on 25th November 2019, solicitor practices have been querying the practicalities of how to apply them in day to day practice. Additionally, many firms haven't embraced the new rules as they came in shortly before Covid-19 hit.

In this free 50 minute webinar, Paula Wheatley, an Associate Partner of Charnwood Accountants and Business Advisors LLP, will explain the rules, including what assumptions and firm wide policies should be in place to ensure the correct application of the rules and what their audit approach is. She will then conduct a Q&A session for attendees to ask any questions that they may have.

Paula Wheatley has been advising solicitors within Charnwood Accountants and Business Advisors LLP for many years and has a wealth of experience in working closely with firm's cashiers to aid the day to day running of their department.

The webinar will be most appropriate for legal firms Cashiers, Practice Managers, COFAs and Principals/Partners/Directors.

Which Structure Should I Choose When I Set Up A New Firm?

Thursday 22 July 2021 at 1pm

With so many structures available to choose from – sole practitioners, partnerships, LLP's, Limited companies, it's hard to know which one to choose when setting up a new firm. There are various considerations that should be made, including growth, entering and exiting partners and also the tax implications.

In this free 45 minute webinar, Paula Wheatley, an associate partner of Charnwood Accountants and Business Advisors LLP will discuss the options available to you.

Benchmark My Practice & Profit Improvement Strategies

Thursday 12 August 2021 at 1pm

In this free 1 hour webinar, Paula Wheatley, an associate partner of Charnwood Accountants & Business Advisors LLP, will be discussing practical ideas on how to improve the profits being generated by your practice.

As part of this event, Paula will be demonstrating the company's benchmarking tool, which allows you to compare your financial performance to other firms of solicitors. Attendees will be invited to complete this free report in advance of the event and opportunities for discussion will be available on the day.

For further details and to register for this any of these webinars please contact us.

The Benefits & Pitfalls Of Buying / Merging A Solicitor Practice

Thursday 19 August 2021 at 1pm

In this free 1 hour webinar, Chris Hutton, a Partner of Charnwood Accountants and Business Advisors LLP will discuss all of the aspects associated to buying a practice. Whether through a management buy out, purchase of a third party firm or a merger, there are many things to consider including valuation, structure of the deal and tax efficiency.

Chris will also discuss the changing attitudes of legal practices over recent years regarding valuation of their firms when considering succession planning.

Regular Mistakes Made By Firms Identified When We Complete Their Audit

Thursday 23 September 2021 at 1pm

In this free 45 minute webinar, Paula Wheatley, an associate partner of Charnwood Accountants & Business Advisors LLP, will discuss the regular breaches that she identifies when conducting an SRA audit. Many of the breaches identified are consistent across all firms and in many cases can be easily remedied.



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Obituary: His Honour Brian Appleby QC



1968 was an extraordinary year. Martin Luther King was assassinated, students rioted all over the world (especially in Paris), the Prague Spring, Robert Kennedy was assassinated, Nixon won the White House, North Korea seized the USS Pueblo and her crew, the Tet offensive in the Vietnam war, black fist salutes at the Olympics and so much more.

What I remember far more

vividly is that I started pupillage at 24 The Ropewalk in Nottingham and met some extraordinary people. Brian Appleby was one of them. He, as only Brian would or could, had two pupils who started on the same day. They were the two Dicks - Maxwell and Benson - who became the firmest of friends and Brian's greatest fans. They were both immensely successful in their own careers and both would readily acknowledge the debt

they owed to Brian as their pupil master.

My abiding memory is of the delight the two Dicks would take in recounting to the other pupils - me and John Warren - Brian's latest contretemps with other counsel, the outside world or on one occasion a traffic warden. They seemed to me to spend much of their pupillages being driven around by Brian in his gold Bentley. My favourite disaster story was when Brian discovered - to his obvious surprise, fury and embarrassment - that he was on both sides in a civil claim. One pupil had settled the pleadings for the plaintiff and the other had settled them for the defendants. Brian had signed them both!

My first memory of meeting Brian was when he came in to my pupil master Tom Heald's room to announce proudly that Rosa was expecting their second child. His delight was obvious. He was a devoted husband to Rosa and later Linda who both predeceased him and also a devoted father to Jane and Jonathan.

It was after Brian took silk in 1971 that I came to know him

better as he led me on numerous occasions. He was quite simply a brilliant advocate. A master of all the skills whether making speeches, examining witnesses or reading the court atmosphere to best advantage for his client. I have always maintained that he was the best re-examiner I ever met. Normal mortals are best advised never to try it as there lurks disaster. In this regard Brian was not a normal mortal.

I have so many fond memories of being led by him whether he was tugging at heartstrings, using humour to lighten an atmosphere or getting people to laugh at and with him as he beguiled them to his side of the argument.

Later as a Judge Brian could be somewhat whimsical, if not outright difficult, but I always felt his natural role was as an advocate. Being with him in that role was never dull, sometimes nerve-racking, but always a rollercoaster of excitement.

I remember him with affection and immense gratitude for all I learnt from him.

Peter Joyce QC

Annual Legal Skills Triathlon 2021

Every year Derby Law School works in partnership with Derby and District Law Society to host the Annual Legal Skills Triathlon. After a break last year the event returned on the 14th April 2021 on MS Teams.



The Triathlon sees trainee/newly qualified solicitors from local firms partnered up with LL.B students of Derby Law School.

The standard is always very high and the teams work together to compete in an advocacy assessment, an interview of a client and a negotiation. Notwithstanding that the event was a virtual one it was a huge success with the participants adapting well to the new challenge.

Congratulations to everyone who took part and huge thanks to the lecturers and solicitors who judged, organised and administered the event and University of Derby students who stood in as clients on the day.



Triathlon Participants

Dina Singh,
Jessica Baxter Clucas,
Leoni Waghorn,
Max Mitchelmore,
Bethany Smith and Daniel Azizi -
third year students at Derby Law School

Samantha Sargeant -
Cartwright King
Chelsey Wileman -
Astle Paterson
Clare James -
Elliot Mather
Hollie Watkins -
Banner Jones

Triathlon Winners

Best overall Team Winners
Max Mitchelmore
and Samantha Sargeant

Best Team Team Runners up
Dina Singh and Chelsey Wileman

Best Negotiator
Samantha Sargeant

Best Interviewer
Bethany Smith

Best Advocate
Leoni Waghorn

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- High quality research is at the heart of the LLM. You will enhance your research, communication and independent study techniques through specialist modules, and then use these to carry out an extensive investigation of a significant topic.

Words of Wisdom: Some Tales of Rural Practice



“A country solicitor needs to be proficient in many skills.” So said William Heelis to Beatrix Potter when they met ahead of a property auction in the Lake District: or at least he did on the film set of Miss Potter...

Rural practitioners at the turn of the 20th century would indeed have been multi-

skilled, as the population they served would have been very sparse. Firms did not have the large city based departmental practices they do today with a branch office in the small country town – if they’ve not shut it.

When I began my Articles in 1985, as training contracts were called back then, I was given a tiny office next to that of the firm’s Consultant who had been admitted to the Roll in 1933; he well remembered the days of going to the Magistrates’ Court in the morning to defend a petty criminal and apply for a pub licence extension whilst his secretary looked after a property completion. His afternoon appointments may have included clients signing wills and someone seeking a divorce. A true general practitioner, and a wonderful mentor too.

Sometimes however, it could be some completely different skill that was called upon at a client’s time of need – nothing to do with the law. I can think of three occasions where it was most definitely not my legal skills that were appreciated by the client.

On one occasion, I had gone out for an evening walk round a small somewhat overgrown field near Carsington Water that was to be sold by auction a week or two later. I needed to find the water trough in case any bidder asked where it was. When I found it, water was gushing out of it because the ball valve mechanism had broken. I stemmed the flow with a fallen tree branch and some discarded baler twine, and returned the following evening with some tools to replace the inlet mechanism with a new one purchased from the local hardware store. Thankfully the supply was not on a meter. The late owner had insisted Severn Trent provided mains water free of charge in perpetuity because they’d taken the part of the field with a spring in it to build the reservoir.

Another time, I had gone to see new clients who were buying a bit of land at the back of their home to extend their garden; when we walked down to inspect the land, their back lawn was covered in molehills. Fortunately, I happened to have a couple of mole-traps in the car boot; I’d removed them from my in-laws’ paddock the previous weekend, so I offered to set them after the meeting was over. The client watched carefully and took on board the instructions as to how to inspect and reset them. The following morning I took a phonecall to say we had been successful. Later in the week a rather

bemused receptionist somewhat gingerly delivered to my office a Sainsbury’s bag containing two mole-traps, a thankyou card and a bottle of wine! I went on to do a lot of work for those clients.

Finally, I had gone for yet another walk round some land due to be auctioned – this time to check that the neighbouring farmer had removed his livestock so vacant possession could be given. I found him and his son – both tired and frustrated – chasing half a dozen young bullocks round the field. The problem was that the gap in the hedge they were trying to drive them through had been barred for several weeks by an electric fence which the livestock thought was still there. I suggested that we let the beast rest for a while, and then I’d walk round the field with my dog. After two laps with the bullocks following, I left the dog with the farmer and disappeared through the gap; he let her off the lead and she ran to me with the beast following her – straight out of the field. They were so interested in the dog they’d forgotten all about the electric fence. Job done.

People come to the legal profession from many backgrounds, and bring with them talents and skills that they never think will be needed in the context of their practice. But you never know...

Chris Green

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Lessons From Lockdown



The pandemic has forced most businesses, including law firms, to re-structure their working practices – balancing lockdown restrictions as well as staff and client safety with continuing to provide a seamless service to clients.



Fiona Moffat

With face-to-face contact severely curtailed – especially in periods of lockdown – more emphasis has been placed on telephone communications and particularly overcoming the challenges of connecting callers to individual employees when they are working remotely.

Two Derby law firms are amongst those who have opted to outsource their call handling function to ensure continuity of service.

Long-established Timms Solicitors who have offices in Derby, Burton, Ashby and Swadlincote, and Attenborough Law, specialist Employment Law Solicitors, based on the outskirts of the city, had already engaged Oberoi Business Hub, based in Pride Park, to support their call handling function.

Both have stepped up their relationship with Oberoi over the past year and have seen positive results on several fronts.

Timms Managing Partner **Fiona Moffat**

explained: “As with all businesses, our goal during this challenging year has been to provide a seamless service regardless of whether individuals have been based in the office or working from home.

“Before the pandemic, the Oberoi team provided overflow call handling support. However, over the past year the scope of their support has expanded in line with the increase in inbound calls – making them an even more valued extension of our reception teams.

“Having determined the nature of the client enquiry, they email the relevant person who can then have the necessary information to hand before returning the call.

“The Oberoi call handling team also produces reports which enable us to evaluate the nature of calls – particularly with regards to new business – as well as monitor our own efficiency in responding to client enquiries.”



Tina Attenborough

Attenborough Law in Derby is headed by employment lawyer **Tina Attenborough** who is also chair of the East Midlands’ Sole Practitioners Group.

“I was keen to use a local company to handle calls and started working with the Oberoi team largely as an overflow service but this has expanded over the past year.

“As the pandemic took effect and clients’ employment law requirements grew, they now pretty much answer all my calls to help me better manage my time.

“A particular benefit is time management. It’s incredible how much time can be taken on fielding general calls and new enquiries and the Oberoi service certainly helps me better manage my working day.

“It is also far more cost effective than employing someone in-house and having this seamless support has given me the peace of mind during this stressful year that the incoming calls are being handled professionally and efficiently.”

Oberoi Business Hub founder and managing director **Kavita Oberoi** explained: “Whatever our clients’ requirements, our call handling services are designed to be cost effective and flexible.

“Our highly trained team ensure client communications are handled efficiently and professionally – creating the right first impression on behalf of our customers and relieving the pressure on individuals to be able to concentrate on their workload without interruption.”

For more information, visit <https://www.oberoibusinesshub.co.uk/>



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Landmark Academy: Helping you reach your Learning & Development goals

An important aspect for any legal professional is maintaining their professional development and learning requirements. For property lawyers, conveyancers, legal executives and trainees in property, an online hub is available that provides free access to a wealth of resources.

The **Landmark Academy** was launched in 2020 to provide access to free training and development videos, webinars and articles, to meet professional development targets, set out by the Solicitors Regulation Authority's (SRA).

Allie Parsons, Customer Success Consultant for Landmark Information's Legal team explains how legal professionals can benefit: *"Having spent many years visiting law firms to train teams on environmental issues, it became clear that it wasn't always convenient for those requested to attend – busy days meant they either disrupted their schedule or missed out on updating their knowledge. Add to that the restrictions posed by the pandemic, the Landmark Academy offers a learning solution that suits the way we work today."*



"We have completely refreshed our Landmark Academy to provide greater access to the very latest training materials to support their Continuing Competence needs. We have some fantastic contributors on board who are experts in their field and the content is refreshed on a regular basis. An audit trail of completed learnings can also be produced for annual declarations, which we hope will be of great use."

The Landmark Academy brings together a number of experts from across the industry including Professor Robert Lee, a former Director of the Centre for Legal Education and Research at the University of Birmingham, Real Estate legal specialist Sue Highmore, Stuart Tym national planning and environment Senior Associate at Irwin Mitchell and Environmental Law Director for Landmark Information Simon Boyle, as well as specialists from Landmark's wider team.

Adds Allie: *"Whether you want to read a topical article or get an insight on any of the range of issues that occur during property transactions, it means you can do it when the time is right for you. The majority of the videos last 15-20mins."*

With free online access to easy-to-digest podcasts, videos, webinars and guidance provided by widely-acclaimed experts, the Landmark Academy gives solicitors insights into a range of issues that occur during property transactions – this includes environmental law, flooding, planning, energy & infrastructure, in addition to guidance on selecting the appropriate due-diligence reports that are available.

INTRODUCING ALLIE PARSONS

Allie Parsons is the Customer Success Consultant with Landmark Information Group as part of the Landmark Legal Team. Allie has over 27 years' experience in marketing, consulting and advising various businesses, the last 14 years working with property solicitors and their law firms. Allie's role is focused on engaging with conveyancing and property teams to support them in receiving the most accurate and suitable Landmark environmental searches and solutions. Endorsing the various Law Societies allows Allie and Landmark to connect to members, and take on board conveyancers' opinions.

Allie also has a broad experience in professional training and delivers seminars and training sessions for legal

professionals on a range of property related issues. Do please contact Allie if you'd like more information on the Landmark Academy.

LANDMARK INFORMATION

Landmark Information uses data and technology to help customers in the residential and commercial property industries access data insights to support transactions and reduce risk. It combines complex property and environmental data into sophisticated risk models and solutions to enable customers to make smarter decisions, and build workflow solutions that allow customers to carry out tasks more efficiently and effectively.

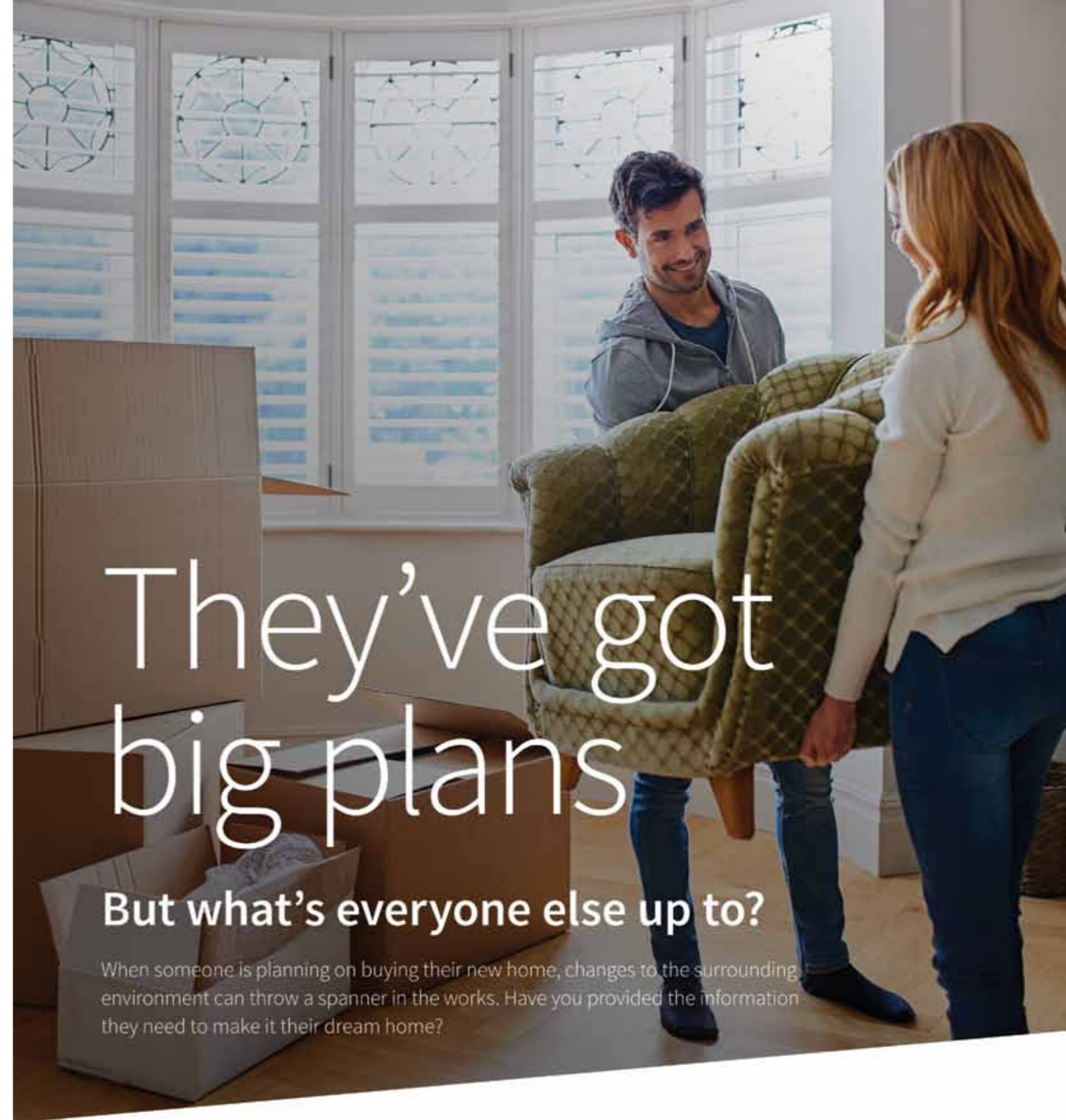
Landmark has long-standing partnerships with customers in the legal conveyancing, mortgage lending and surveying markets, as well as in land acquisition, property development, estate agency and insurance.

The team's dedicated, personal approach supports legal professionals in their due diligence in line with the Law Society and SRA requirements. Reports include a wide range of environmental insights, including contaminated land, flood risk, ground stability through to planning issues.

Concludes Allie: *"Landmark's 25 year longevity in the legal market brings valuable experience and dependability to risk solutions however we are always continuing to innovate so feedback from our report users and Law Society members is invaluable."*

GET IN TOUCH

To register for free access to the Landmark Academy, visit www.landmarkacademyhub.co.uk, or visit the Landmark Academy LinkedIn Group via: <https://www.linkedin.com/groups/13842695/>



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





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An expert’s Top 5 Tips for Counsel dealing with DNA evidence?



Recent updates to the Criminal Procedure Rules and Practice Directions encourage the court to be astute in identifying potential flaws in expert opinion (CrimPD 19A.6). This seems a reasonable suggestion, but may be rather more difficult to implement. What do Counsel need to know in order to determine the admissibility of DNA findings? CrimPD 19A.5 suggests considering a variety of factors in determining the reliability of expert opinion. These are complex issues relating to matters including validity of methods, reliance on inference, degree of accuracy and precision involved in formulating opinions, and indeed, the degree of uncertainty. Counsel are likely to require expert assistance with such considerations. Consultant forensic scientist and chartered forensic practitioner, Sue Carney, provides here, her Top 5 tips to assist Counsel in understanding and challenging DNA expert reports.

1. Check the status of the expert report

DNA findings are frequently presented these days in an abbreviated format: the Streamlined Forensic Report (SFR). The initial, and most basic of these, the SFR1 (aka the MG22b), merely reports a DNA match. No context is provided for the match; usually only an exhibit reference and the name of the matching individual. SFR1s are automatically generated. Indeed, the named ‘author’ of these reports is often the seizer of the exhibit, rather than a DNA expert.

SFR1s are not evidential. Should the prosecution intend to rely on DNA findings then they are advised to request their expert produce a full evaluative statement. In practice, defence are frequently provided only with an SFR1 at the crucial point at which they must decide whether or not to instruct their own DNA expert. Expert intervention is encouraged at this stage and most defence-instructed experts will provide a free quotation and initial guidance.

The SFR2 (or MG22a) is an abbreviated report intended for evidential use. The degree of abbreviation may vary depending on which forensic service provider is the issuer. Whilst some SFR2s include an interpretation of the findings, this is often limited to the most basic ‘source level’ question: From whom has the biological material originated? Frequently, the more complex issues of how and when the material was deposited are not addressed.

2. Understand the statistic

A DNA match is often evaluated numerically. This value can be presented in one of two closely connected formats: the *match probability* or the *likelihood ratio*. For a full DNA profile match, the match probability is estimated to be in the order of one in a billion (where a billion is a thousand million or 10⁹). This is the chance of obtaining the DNA profile if the sample has originated from a person other than and unrelated to the matching person.

In other words, if the DNA is not from the matching person and the match is by chance. The equivalent wording in likelihood ratio terms would be to describe the DNA match as a billion times more likely if the DNA were from the matching person rather than another unrelated person.

A billion is an estimation. A full profile match is, in reality, many orders of magnitude rarer. A billion is considered to be a fair and reasonable reflection of the value of a DNA match and has been used as a maximum cut-off value to express this strength of evidence since the previous DNA profiling system was in routine use. A billion continues to be applied to current systems, which are considerably more discriminating than previous models.

Counsel are advised to be cautious when elucidating the relevance of a DNA statistic. The value of a billion cannot be used to consider the number of potentially matching individuals within a population of a certain size. A billion does not relate to a population in this way. Instead, it is a value derived from the comparison of two probabilities. Further, the statistic relates solely to the likelihood of the DNA match *if* the DNA were from a particular person. It does not equate to the probability that the DNA *is* from that person. Such erroneous thinking is termed “the transposed conditional”, or more commonly, “the prosecutor’s fallacy”.

3. Is it a mixture?

Increased sensitivity of DNA profiling in recent years has led to the detection of far more mixtures of DNA. The type and complexity of a DNA mixture will determine whether any statistical evaluation can be applied, although software solutions are now available that statistically resolve complex DNA mixtures of up to 4 or even 5 contributors, that were hitherto unable to be evaluated.

If a mixture of DNA is particularly low-level, it may not be possible to accurately determine the number of contributors, in which case statistical evaluation may be ill-advised.

As the complexity of a DNA mixture, i.e. the number of contributors increases, then so too does the chance that any and every reference DNA profile will share a significant number of common components. In short, as complexity of a mixture increases, potential evidential usefulness decreases.

4. Attribution?

Can DNA detected in a particular circumstance be attributed to a particular body fluid or tissue type? This may depend on both the circumstances of the case and the results of tests, which may be limited by their sensitivity and / or specificity. Some test results might indicate, rather than confirm, the presence of a substance, and any attribution of DNA to that substance must take account of some degree of uncertainty. Indeed, forensic science rarely deals in absolutes.

Generally, if a mixture of DNA is detected in conjunction with a detectable body fluid, then it is not usually possible to attribute the DNA of any particular contributor to the body fluid. There are a few exceptions, such as the presence of a male-

female mixture alongside the detection of semen. If a DNA profile is considered to be low level, nearing the limits of detection, then it may not be possible to attribute it to a body fluid, nor to determine how or when it was deposited. Given the ubiquitous nature of DNA; its expected presence on surfaces with a high degree of human contact, then it is possible that low level DNA detected within the context of a criminal investigation may not relate to, or have been deposited during the incident at all.

5. Transfer issues

Mechanisms of DNA transfer from contact are not yet fully understood. A body of research dating back more than 20 years indicates that DNA transfer from the hands involves multiple factors including the conditions of transfer (duration, force, friction, moisture and the like), the cleanliness of the hands and the activity of the individual prior to transfer. Research suggests that DNA comes to be present on the fingers via a variety of potential mechanisms.

The phenomenon of indirect transfer of DNA, where an individual’s biological material is deposited onto a surface indirectly, via some other surface or object, has been widely reported in the literature. The donor of indirectly transferred DNA has not had any contact with the object. Expert reports may refer to directly and indirectly transferred DNA as if, somehow, they are distinguishable. However, generally, it is not possible to determine from a DNA profile, whether DNA has been deposited directly or indirectly.

The surfaces of any object with an habitual user may be expected to bear a build up of their DNA over time. DNA can also be removed from an object by subsequent use and a change of user will inevitably lead to a gradual replacement of the previous user’s DNA. Conversely, an individual may handle an item without depositing their DNA in sufficient quantity to detect, yet at the same time, may deposit a substantially greater amount of someone else’s DNA.

Given these considerations, a DNA match may not be in question, rather, the circumstances surrounding the incident and any version of events upon which the accused intends to rely become crucial in addressing the issue of how the matching DNA came to be present.

Sue Carney, MPhil, BSc (Hons), MCSFS, ChFP (Biology) has been a forensic scientist for 20 years; 10 years employed by the former Forensic Science Service, and 10 years as an independent consultant forensic scientist and proprietor of Ethos Forensics. Sue is widely instructed by the defence in England and Wales, and on occasion, in international jurisdictions. She deals with matters involving DNA profiling and body fluids findings, including blood pattern interpretation, and has given expert testimony at crown court in many cases.

Sue can be contacted for a no obligation quotation and initial consultation at sue.carney@ethosforensics.com

Can you challenge an expert determination?



Chris Makin

About a year ago, I wrote an article (*"Is an Expert Determination always the final answer?"* - see <https://chrismakin.co.uk/is-an-expert-determination-always-the-final-answer/>) in which I explain how difficult it is for a party to a dispute settled by ED to challenge the expert's decision. Here is an update. I am keen that ED is used for many kinds of dispute, not just those

arising under rent or company sale/purchase agreements. Most of mine, of course, are of the latter type, though I have recently determined disputes over the rent payable to a farmer for wind turbines on his land, or the amount payable in royalties on music downloads. But for the present I will stay with company sale/purchase disputes; as a chartered accountant this is my home territory.

ED has a number of advantages: speed, confidentiality, you can choose an expert with the appropriate qualifications, and so on. But the main advantage is finality; the parties need to know where they stand, and they don't want to be kept waiting months for a court date, and then a series of appeals if one party or the other doesn't like the result.

With ED, the parties appoint an expert to make a decision, so that three people - the two parties and the expert - are bound by contract to make and to accept that decision. This was made clear many years ago in *Campbell -v- Edwards* [1976] 1WLR403 by dear old Lord Denning who said that, in the absence of fraud or collusion, the parties must accept the expert's decision, *even if it is wrong*, because that is what they had contracted to do. So even if the expert had made a mistake, they must accept the decision.

Do what you are instructed to do

Of course, one of the let-outs is if the expert did not carry out the parties' instructions. That was so in *Begum -v- Hossain* [2015] EWCA Civ717, where the expert (not an accountant, I am relieved to say!) was instructed to value the company after inspection both of the official records of the company and of the handwritten records of takings (Two sets of books? Remarkable!). He chose not to look at the handwritten records, putting them in the "too difficult" box. The court found that the expert had been instructed to look at them, he had not done so, he had failed to carry out his instructions, so his decision must be set aside. In essence, there were three parties to the contract (Denning again), one participant had not done what he was contracted to do, so the ED failed.

More recently we have another example of a failure to carry out instructions, and this one rather more subtle than apparent tax fiddling. In *Veba Oil Supply & Trading GmbH -v- Petrograde Inc* [2001] EWCA Civ 1832 the dispute concerned the amount of oil passing along a pipeline. The expert was instructed to use a particular method of measurement, but instead he used a method which was regarded as being more accurate. Despite that, his decision was set aside because he had not carried out his instructions.

What about manifest error?

These days, the Denning policy does not suit everyone. In a company

Chris Makin
Chartered Accountant
Accredited Civil Mediator
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sale/purchase dispute, the drafter of the contract will make every effort to ensure that their clients are not stuck with an irrational decision by the expert which could be expensive. So it is common practice for the dispute resolution clause (DRC) to provide for the appointment of an expert in a case of dispute, and for words such as these to be included:

"The Expert's written decision on the matters referred to him will be final and binding in the absence of manifest error." (my emphasis)

This must be right; no party should be stuck with a commitment to pay more for a company than is clearly due. So the question arises: what is a **manifest** error?

I turn first to *Amey Birmingham Highways Ltd v Birmingham City Council* [2018] EWCA Civ 264, where the court found that a manifest error was "...an error which is obvious or easily demonstrable without extensive investigation."

We have more guidance from the case again of *Veba Oil Supply*, where Simon Brown LJ said, *obiter*, that manifest errors are "...oversights and blunders so obvious and obviously capable of affecting the determination as to admit no difference of opinion." So there must be oversights and blunders which are very obvious, and which can affect the decision; in other words, which can cause a party to pay more than they should.

More recently- very recently, in fact - we see the opposite situation. In *Flowgroup plc -v- Cooperative Energy Ltd* [2021] EWHC 344 (Comm) the court had to deal with the issue of whether the expert had gone outside his jurisdiction. He had not; it was entirely understandable that the parties should wish for an expert accountant to resolve issues of contractual interpretation in an accounting context. And that merely reflects the decision in *Bruce -v- Carpenter* [2006] EWHC 3301 (Ch) where an accountant said she could not make a decision because she was "only" an accountant, and the matter was one of law. On the contrary, the court found: she was appointed expert to make a decision, and make a decision she must.

Conclusion

In ED the parties must accept the expert's finding, unless in the DRC which appoints him he commits a manifest error. And such an error must be a real howler: a blunder or oversight which is very obvious without much investigation.

I conclude with two war stories.

In a multi-million dollar ED I made a decision, and was challenged as having committed a manifest error - the first challenge I had received after scores of EDs. The appeal contained nothing new, and was hopeless. I rejected it, and heard no more. The parties had my decision; they had finality.

On another case I am acting as adviser on an ED which has gone wrong. In assessing the balance sheet in the Completion Accounts

the expert made a large adjustment for a figure which was already in the balance sheet (double counting), and then compounded the blunder by treating this liability as an asset (quadruple accounting?). This was a clear blunder, and it caused the purchaser to pay far too much for the company acquired. The case continues. Watch this space...

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

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

He practises as a mediator, from his home in West Yorkshire and his rooms at 3 Gray's Inn Square, London WC1R 5AH, telephone 020 7430 0333. He has mediated 100+ cases so far, on a huge range of subjects, with a settlement rate to date of 80%. For more see his website with videos:

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One in five people writing wills now include a charity



Rob Cope

The global pandemic is changing the way people approach end-of-life planning and inspiring more people to write charitable gifts into their Will than ever before, but myths around how it works can impede that growth, according to the charity consortium, Remember A Charity.

Growth of gifts in wills

In 2020, many legal firms recorded an uplift in wills, with the Law Society reporting a 'striking shift' – that 7% of UK adults had written a will during the first lockdown. But the crisis prompted another notable shift; heightened awareness of the critical role of charities in our communities, inspiring the public to use their will to give back.

The same Law Society poll found that one in five people writing wills are now including a charity. Industry data reflects this shift too with new figures released by Co-op Legal Services showing that almost a third (32%) of the wills they created in 2020 included a gift to charity. This equates to a 61% increase in the number of people leaving a gift to charity in their will through the Co-op, with cancer charities (42%) and local causes (21%) most widely named as beneficiaries.

Rob Cope, Director of Remember A Charity, says: "The pandemic has had a devastating impact on people across the country, and it's hardly surprising it's inspired us all to reflect on what matters most and what we can do to help.

"Family and friends will usually be our first consideration in a will. But leaving a charitable bequest is also something that many people find incredibly empowering – a statement about who they are and what they believe in – and a way to shape the world they leave behind. It's wonderful to see how much appetite there is for giving in this way."

Role of professional advisers

Solicitors and will-writers play a critical role in inspiring gifts in wills, with the large majority proactively asking relevant clients whether they wish to include a charity in their will, with 68% regularly doing so, up from 58% in 2012¹. Even the simplest

reference to the option of including a gift has been found to double the propensity for giving in this way.

Typically, professional advisers raise the topic during the standard will-writing process or estate planning, alerting clients to the relevant Inheritance Tax breaks. Any legacy gift to charity is currently exempt from Inheritance Tax (charged at 40%), and a lower rate of tax (36%) is applicable on estates where 10% or more is donated.

Cope adds: "The Inheritance Tax framework makes legacy giving all the more appealing, but we're conscious that there are many myths among the public around donating from your will and this can prevent supporters from doing so."

These myths were highlighted in a recent survey of over 170 financial advisers, carried out by the Personal Finance Society. Advisers reported that clients were often unaware they could donate to charity and still pass on the bulk of their estate to their family. Similarly, clients often perceived bequests as being a form of giving for "the rich few" rather than something that everyone can do.

Cope adds: "We're fortunate that, here in the UK, it's easy to include a donation alongside gifts for family and friends. People can choose to donate any sum to any charity – there's no need for it to be a large amount – and any gift really can make a difference.

"This is where professional advisers are so important; being able to give clients impartial information so that they can ensure they are making the best decision that allows them to remember all the things they care about in their will."

After more than a year of crippling funding shortages to the charity sector (amounting to an estimated income loss of £10 billion²), income from charitable bequests has been all the more crucial in helping charities survive periods of uncertainty. Gifts in wills raise over £3 billion for good causes each year and – despite the delays in probate during 2020 – they have remained the largest source of voluntary income for UK charities throughout the crisis.

Free campaign supporter scheme for legal advisers

Remember A Charity runs a Campaign Supporter scheme for solicitors and Will-writers, including a free listing on the public directory which receives tens of thousands of visits a year. Remember A Charity Week takes place from 6th-12th September 2021, with Campaign Supporters receiving free materials to celebrate the week and help open up conversations with clients about the option of leaving a charitable bequest in their will. Find out more at www.rememberacharity.org.uk.

¹ Future Thinking, 2019

² ProBono Economics 2021



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A CO-CURRICULAR EXTRAVAGANZA

On-site Open Day

SATURDAY 19 JUNE

Reserve your place at [derbygrammar.org/events](https://www.derbygrammar.org/events)



Derby Grammar School

Bringing education to life.

Derby school hosts co-curricular extravaganza



Having just celebrated its 25-year anniversary, Derby Grammar School is using their Open Day to celebrate with 'A Co-curricular Extravaganza'. This comes after a year of changes in 2021, including appointing a new Head to join the School in September.



Mr Paul Logan (left), joins the School with an impressive history of roles at both Uppingham School and Wisbech Grammar. Mr Logan explains, "I feel

privileged to be taking on this role at Derby Grammar School. I am committed to building on the great developments led by Dr Norris, and the strong academic achievement the School stands for.

"The challenge of piloting the School through the changing times ahead is exciting, and I cannot wait to become part of this unique community. I feel the School is in a very strong position, with a talented and committed staff and Governing Board who will build on the already excellent education and pastoral care offered."

To celebrate the School is excited to be opening its doors to welcome visitors for 'A Co-curricular Extravaganza'. During the visit families will be able to tour its beautiful 12 acre site, situated in Littleover.

Commenting on the event, new Head Mr Logan explained, "I'm looking forward to another opportunity to meet prospective families face-to-face and show the School's three principles of Excellence,

Encouragement, Enrichment.

"The small size of Derby Grammar enables staff to get to know each pupil as an individual and support them throughout their time with the School, wherever their talents lie. This process starts from when families first visit the School."

Mr Logan continues, "The school offers individual support so each pupil develops academically and as a person, including subject and careers guidance, as well as support in university application, including Oxbridge."

The School's small size and individual approach means it is celebrating fantastic academic results:

- 39% of A Level grades are A* and A
- 76% of all GCSE grades are 9, 8 or 7

To find out more about a Derby Grammar School education at their Open Day, visit their website to book your place here: <https://www.derbygrammar.org/events/>

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Anti-money laundering back in the spotlight for conveyancers

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



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

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

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

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

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

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



What have the SRA audits identified?

Although emphasising that most law firms take AML very seriously, as a result of the audits, the SRA has identified that there can often be a difference between a firm's AML policies and procedures and what actually happens in practice. Nearly two thirds of firms reviewed needed some form of engagement with the SRA and a further nine were referred to the SRA's AML investigation team.

The SRA team found that half of the files they reviewed had issues such as lack of due diligence – examples included the client being known to the partners, expired documents and client due diligence records not being accessible to appropriate staff.

Additionally half of the firms the SRA dealt with were failing to carry out effective audits. For example, although the MLRO / MLCO can contribute to the audit, it needs to be overseen by an independent party.

A full report on the findings can be found on the SRA website(i). To view the most up-to-date AML guidance compiled by the Legal Sector Affinity Group, please visit the Law Society website(ii). This guidance replaces the Law Society practice note on AML.

How an electronic AML check can help

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

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Quill makes document management easier and better with release of DocsHub



- All-new documents hub delivers a unique integration pack between Quill and Microsoft Outlook, Excel, Word and Windows desktop.
- Accessible using any device anywhere, promoting secure file management, efficient time-recording and team collaboration.
- Quill is the only legal practice management software provider that also offers outsourced legal services including legal cashing, typing, payroll and bookkeeping.



Material is stored securely via the cloud, with teams enjoying convenient access at any time and on any device for improved collaboration.

Docshub is seamlessly integrated with popular software including Microsoft Office to facilitate the simple creation, editing and storage of templates, letters and emails. The automation technology creates an "enter once, populate everywhere" process for all legal documents.

It provides a clear dashboard of caseloads and shortcuts to key and recently used documents and emails, while time spent on documents and correspondence is automatically captured for straightforward record-keeping.

By reducing paper use and storage space, DocsHub makes document management environmentally friendly as well as safe and simple.

"The decision to go paperless is a major step in a practice's journey to going fully digital and in the cloud," said Quill Managing Director **Julian Bryan**. *"What used to take six to 12 months and teams of people to complete can now be done in days, even hours, with Quill's DocsHub."*

The DocsHub service is available to Quill users from Monday (15 February). It will be available for a charge of just £19 per month

per user. Quill is providing comprehensive support for the new service through online training, webinars and other resources.

"Quill is constantly striving to improve processes and workloads for legal professionals, and our new-look DocsHub service will take automation efficiencies to the next level," says Bryan.

"Our goal is to strip back the hassles and tedium of document management and time capture, and free practices up to deliver the best possible client service. With so many of us away from offices and seeking new ways to improve productivity and collaboration, this is the perfect time to introduce DocsHub, and we're looking forward to helping our communities make the very most of it - securely - in the months ahead."

ABOUT QUILL

Quill helps law firms streamline and run law practices better by providing simple and easy-to-use practice management and legal accounts software, as well as outsourced legal cashing, bookkeeping, payroll and typing services.

At the heart of our company values is a total commitment to continual service and software development, and maintaining exceptionally high standards of client support and training, which is why Quill is the first choice for many small-to-medium-sized law firms.

Quill is privately owned, staunchly independent and long established since 1978. In its early days, they were just a handful of entrepreneurs and developers selling programmable calculators. Today, Quill is a 100-strong team centred on offices in Manchester and Liverpool.

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