CENTRAL LondonLawyer

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A summer like no other

- Disability inclusion
- Hunger strike for a fair trial
- The future beyond furlough

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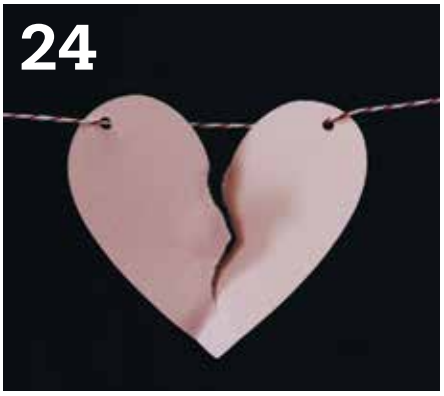

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Paul Sharma

The President's Foreword

AUGUST 2021

Here we are at long last, on the other side of (most) restrictions, and basking in the summer drizzle! Isn't it great to be meeting people again? That is, if you are lucky enough to step out of the house without being pinged.

I hope you are able to enjoy a summer break of some kind, especially if you have young children. It's been such a rubbish 18 months that even loading up the car and sitting on the M5 for a couple of days hoping for Cornwall is a real tonic. If you can manage to maintain a basic level of civility with your family during the journey and dip your toes in the sea without losing any to frostbite, then you my friend have got this!

Get your rest in when you can as this is set to be a busy few months, with workers getting back into the office and furlough ending. Solinda Nyamutumbu's article on page 15 explores the implications for employers of the ending of the scheme on 31 September and gives some very useful facts and timelines.

There is a lot packed into this issue of Central London Lawyer, covering WHLS's involvement in international conferences, the new no-fault divorce law now coming out in April 2022 and many other very current subjects.

In "Disability Inclusion" on page 8, Anna Vroobel talks about having a disability and her experience sharing that information with her employer. She rightly points out that the term 'disclosure' in this situation "has negative connotations and suggests that disability is something that should be concealed". Though she has been well supported at work, Anna knows that many people are fearful of their employer's reaction.

We always want to hear from under-represented groups so if you would like to join the WHLS Equality, Diversity and Inclusion Committee, please get in touch. As Anna says "having disabled people present in leadership positions is an important way of role modelling and championing disability."

Raising another very important topic in "Children in Police Custody" on page 23, Rishi Joshi highlights the fact that many young people are kept in custody at the pre-charge stage. He argues that "It is particularly in these cases where a child's detention should be off the cards", and calls for a change in policy to protect children from being institutionalised. It is so important that issues like these are brought to light, to safeguard the future for young people caught up in the criminal system.

I hope you enjoy reading this edition as much as I did. I find it inspiring to see so much activity, and how our colleagues seeking to work together, to change systems and policies that aren't right, and to look out for people who need help. There is a new energy to our profession and our Society, and the pandemic has shown us what we can achieve under the worst circumstances. We have a lot more to do! ■

Have a great summer.

Paul Sharma
President
Westminster & Holborn Law Society

I.T.'s time to find The Krypton Factor

(or "why you should look for something different when choosing an I.T. support firm")

Paul Ravey
Business Development Manager
Labyrinth Technology

Paul knows a little about I.T., and a lot about customer service!

I won't lie; technology can be ***boring***.

Maybe you are a technophile and *can* tell the difference between the Intel Core i9 and AMD Ryzen 7 processors. But the rest of us just want to point and click and don't care how it works. It's all Klingon to us, and we rely on the best choice of IT support to keep our business IT systems running.

But how are you going to make that choice? **What makes an I.T. support company stand out from the crowd?**

They may be the cheapest, but then again, you're not choosing a supplier of pencils! They may give you lots of freebies, and let's face it, you can always use that mug for a cuppa whilst your laptop isn't working, can't you?

But why not choose a firm that offers something different? A firm that DOESN'T want you to sign up to a long-term contract, and only asks you to commit to a 30-day rolling agreement? If they don't deliver their clients can leave, so they must have the best customer service ever to make you stay with them, yes?

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Paul Sharma President

Paul is the founder and managing partner of Sharma Solicitors. Sharma Solicitors is a boutique employment law practice acting for both claimants and respondents, small and multinational firms. Paul worked as a trade union official before qualifying in a firm that acts exclusively for the large trade unions for their members. Paul went on to head the employment law departments of an outer London commercial firm before doing the same for a large city practice.

Anthony Seymour Treasurer

Anthony is a Solicitor in the Property Department of Pothecary Witham Weld. He acts for Charities, Company and Private Clients and deals with Commercial Property, Landlord and Tenant and Residential Conveyancing. He also specialises in Leasehold Enfranchisement. He has worked at established City Firms and was for many years a Partner in the Property Department of a Central London Law Firm. He is a member of the University of Bristol Alumni Association London Branch Committee and holds a Master's Degree in Law from Kings College, University of London.

Matthew Allan Senior Vice President

Matthew is a litigator at boutique practice Astraea Group and focuses on commercial dispute resolution. He also puts his Canadian roots to work as a member of WHLS's International Committee. Matt is a former Council Member of the Law Society of England & Wales and sat on its Regulatory Affairs Board, alongside positions with the Junior Lawyers Division national executive committee. He enjoys writing and often adds his two cents to legal debates.

Suzanna Eames Junior Vice President

Suzanna is an Associate in Farrer & Co's Family team who works across all areas of private family law, including complex financial remedy cases, pre-nuptial agreements and private law children proceedings. Before joining Farrer & Co, Suzanna trained as a barrister at a specialist family chambers. Suzanna is passionate about access to justice and supporting the junior members of the profession. She has been appointed as the Vice-Chair of the Law Society Junior Lawyers' Division, having previously been the Chair of the WHLS Junior Lawyers' Division. She also organises Farrer & Co's Corporate Social Responsibility.

Nicola Rubbert Junior Vice President

Nicola is a commercial and employment solicitor. Nicola is the Chair of our Education & Training Committee and is Council Member of The Law Society of England & Wales, representing the constituency of City of Westminster. Nicola is Immediate Past Chair of the London Young Lawyers Group, an organisation which ignited her passion for the legal community.

Helen Broadbridge Honorary Secretary

Helen Broadbridge is a member of the Westminster and Holborn Law Society EDI Committee and a tax solicitor. Helen read Russian and French and studied Management at Judge Business School before completing the GDL and LPC. Helen takes a particular interest in organisational behaviour and policy.

Ivan Ho Editor in Chief

Ivan has been a member of the main committee of WHLS since November 2008. He began his training with Hunters in 2004. He is now a property lawyer at Habito.

Carolina Marín Pedreño Immediate Past President

Carolina is a Spanish Abogado, who cross-qualified as a Solicitor in 2006. She specialises in international cases particularly child abduction, registration and enforcement of foreign contact orders, leave to remove, residence, contact and public law cases. Carolina is a Fellow and elected Governor of the European Chapter of the International Academy of Family Lawyers, Counsellor of the Union International des Avocats Human Rights Commission, member of the International Committee of Resolution, elected Executive member for international affairs of the Bar Association of Murcia, Founder and Secretary of the Spanish Association of Collaborative Lawyers and co-chair of the European Family Justice Observatory. Carolina is a Resolution Accredited Specialist in Child Abduction and Children Law – disputes between parents or relatives.

Disability inclusion

Disclosure of Disability
Thanks to Anna Vroobel, associate solicitor at Irwin Mitchell and member of The Law Society Lawyers with Disabilities Division Committee, for permitting us to reproduce this article where she shares her experience of disclosing a disability.

I didn't have any health challenges when I first entered the legal profession as a trainee.

It wasn't until I had four years' post-qualification experience (PQE) that I became very unwell over a short period of time and, after multiple hospital attendances, I was diagnosed with an autoimmune condition.

My health deteriorated to the point that I had no option but to tell my firm what was going on. In hindsight, I do wonder whether I would have kept quiet if that choice had been made available to me.

As far as I could see at the time, disability was not looked upon favourably in the legal profession. The focus tended to be on a disabled person's limitations and the accommodations required, rather than the person's talents and ability.

My experience
In my professional capacity, I had not come across any openly disabled legal professionals. The obvious conclusion to draw was that the legal profession was not welcoming to people with health challenges.

Such little, or non-existent, representation made me think carefully before initiating a conversation about my health challenges. However, my colleagues at Irwin Mitchell have been overwhelmingly supportive.

In the beginning, I needed time to come to terms with navigating my 'new normal' so found it helpful to talk about my health on a 'need to know' basis.

I initially only spoke to my line manager and HR, who swiftly arranged for me to have an occupational health assessment. This was invaluable in helping me identify what support I could benefit from, as I didn't know myself.

Practical measures such as a phased return to work, flexibility in my working hours and ad-hoc home working enabled me to get back to full productivity much more quickly than I would have done otherwise.

Ironically, my personal experience of depending on remote working meant that I was uniquely placed to offer guidance and support to colleagues during the pandemic.

More importantly, after my diagnosis, my colleagues accepted that I was still the same person with the same skills, career ambitions and drive that I had previously.

Going through my own experience with disability was life-changing but, if anything, it has shown myself and others just how determined and resourceful I can be.

My health challenges have made me a better solicitor as I have a more nuanced and empathetic understanding of the difficulties my clients face.

At the time of my diagnosis I was genuinely fearful that my health would irreparably stall my career but, with my firm's support and a lot of determination on my part, I've continued to progress and have recently been promoted to a senior position.

Difficulties disclosing
I have been in the privileged position of feeling well supported by my employer but know that sadly my experience isn't universal.

The Legally Disabled? research project found that only 50 to 60% of disabled legal professionals said they disclosed their non-visible impairment when applying for training and jobs.

For many disabled people the decision to share details of their condition is a very difficult one despite the fact that the legal right to request reasonable adjustments is dependent upon sharing this information.

Employers only have a duty to make adjustments if they know or should reasonably be expected to know that someone is disabled.

Despite this, the fear of stigma, ill-treatment or discrimination is very real and many disabled people make the judgment that it is less risky to struggle on without workplace support.

Much of this fear comes down to the lack of representation for disabled people in the legal profession.

Without having those role models, it's understandable that disabled people are apprehensive about being open about their health challenges.

When an organisation is not actively and vocally disability

inclusive, it can be seen as the safer option to conceal what is truly going on.

How and when to disclose, or not
First and foremost, I have strong feelings about the word 'disclosure'. For me, this has negative connotations and suggests that disability is something that should be concealed.

I think we should be moving away from this antiquated phrasing and talking instead about sharing health information.

One of the simplest ways of supporting disabled employees is to ensure that line managers have the knowledge and confidence to talk about disability openly and to understand how it affects people in the workplace.

People with disabilities or health conditions may be reluctant to discuss their situation and to ask for support, so line managers need to be confident in having those sensitive discussions.

It's also important for line managers be aware of the varied challenges which may be faced by disabled colleagues and to know what support can be offered. Organisations should consider investing in specific disability awareness training for managers to assist them in developing the necessary skills.

For the disabled individual, it's important to know that you can always choose whether or not to share details of your disability.

If you chose to share details, you can choose the level of detail to share and to whom. My preference is to share details of my health on a 'need to know' basis first of all. Once a relationship of trust has developed, a person may then feel comfortable in sharing more information as time moves on.

For me personally, the most important reason for sharing details of my health was to have adjustments put in place to enable me to do my role. Without my employer being aware of what was going on, I would not have had the support I needed.

More broadly every law firm is required by the SRA to provide diversity data for their employees. This data is completely anonymous and collated for the purpose of assessing how diverse, fair and inclusive an organisation is.

Diversity data is particularly important in recognising both the existence and the legitimacy of less visible medical conditions.

Hidden disability comes in many different forms, from neurodiversity and mental health issues to physical conditions such as cystic fibrosis or ME. People may be in pain, fatigued or suffer from weakness but their symptoms are not immediately apparent to an onlooker.

An organisation may not be aware that they have any disabled employees but the anonymous data can show a starkly different picture.

Creating environments for better disclosure
Institutional and cultural change has to start at the top of an organisation. Leaders need to be positive and proactive in showing that they welcome and value employees with disabilities, and, importantly, that disabled people have opportunities for career progression.

If those in leadership positions are actively and visibly involved in disability initiatives, it sends a powerful message to the whole organisation.

Equally, having disabled people present in leadership positions is an important way of role modelling and championing disability.

At Irwin Mitchell we have a strong diversity and inclusion ethos. As the IMAble Network Lead, an initiative at Irwin Mitchell to support disabled employees, I bring together colleagues from across the firm with the goal of improving diversity objectives for disability specifically and intersectionality more generally.

I also sit on Irwin Mitchell's diversity and inclusion board to ensure that disability is well represented.

Irwin Mitchell has also been active in bringing more visibility to disability in the workforce. We circulate a quarterly IMAble newsletter with each issue focusing on a different health condition or aspect of disability.

As disability has become more openly discussed, colleagues have chosen to share their own experiences of living and working with a disability. Several of my colleagues have published articles about their experiences or spoken at internal events to promote disability awareness and education.

In terms of practical resources, it's important for any law firm to have clear policies and processes in place for disabled employees to request and obtain reasonable adjustments.

At Irwin Mitchell, for example, we have a straightforward process for obtaining an occupational health assessment as well as an intranet hub providing resources, practical support and signposting for both disabled employees and the wider Irwin Mitchell community.

Regardless of the size of your firm or organisation the Easy Wins document on The Law Society website provides ideas of where to turn for help and what steps you can take now to make your workplace more inclusive. It's worth a read and you might want to start some conversations to get ideas from your team:

Easy wins and action points for disability inclusion
The Law Society ■

This article was originally published on the LDD section of the Law Society website in December 2020 as part of Disability History Month.

Law Society Committees: apply before 16 August 2021
The Law Society are looking to recruit new members for the steering committees of the four diversity and inclusion divisions: Women Lawyers, LGBT+ Lawyers, Lawyers with Disabilities and Ethnic Minority Lawyers. If you are interested please refer to the criteria and application process below here:

Join our diversity and inclusion committees
The Law Society

I very much hope that anyone applying for any of these committees will also be part of the WHLS Equality, Diversity and Inclusion Committee. Anyone interested in joining the WHLS committee is welcome to contact Coral Hill or Kate Brett initially by expressing interest to **cwhlawsoc@gmail.com**. We need your ideas and particularly welcome those currently less-well represented in the profession.

The Catalan Bar Associations presented Prof Sara Chandler with a Human Rights Award on 1 July in Barcelona

TOP: Catalan Bar Associations Awards, with Dean of Barcelona Bar Centre.

RIGHT: Catalan Bars Premi Valors Award Ceremony.

BELOW: Catalan Bars Association, The Justice Minister, Chair of Human Rights Commission, SC, Dean of Barcelona Bar, President of FBE.

BOTTOM RIGHT: Catalan Bar Associations, the award itself.

At the Palermo Conference May 2021

Hunger strike for a fair trial

Westminster & Holborn Law Society has been active on the international front over the last quarter.

In May we held a joint webinar with the Palermo Bar Association. The topic was: The Impact of Brexit and the speakers included three WHLS members: Carolina Marin Pedreno on Family and Children's Law, David Greene on the Future of Legal Services, Nicoletta Bostock on Immigration Law and Sara Chandler who gave one of the introductions. Several of our members attended and during the course of the event it was announced that the Palermo Bar is twinning with Westminster & Holborn Law Society. No one will forget the lawyers and judges in Sicily who have stood firm in the face of threats, violent attacks and assassinations against the controlling hand of the mafia and corruption. The killing of Judges Giovanni Falcone in July 1992 and Rosario Livatino in September 1990 is a lasting stain upon the democratic traditions and the rule of law in Sicily. It is with great respect that the International Committee of Westminster & Holborn Law Society welcomes the Palermo Bar Association with a Memorandum of Understanding between our two organisations. Members of Westminster & Holborn Law Society are welcome to seek assistance from members of the Palermo Bar Association when they need contacts in the jurisdiction. We anticipate visits from members of the Palermo Bar Association, to be reciprocated in turn by our members on visits to Sicily.

On 17 June our President Paul Sharma spoke at the Modern Bar Association conference, organised by the Warsaw Bar Association at a very well attended seminar. Paul spoke on the topic of Equality of Arms for Young Lawyers, and expounded on the need for a fund to assist junior lawyers when they are before the Solicitors Disciplinary Tribunal. He cited the example of Clare Matthews, whose case has recently been in the news. He pointed out that the huge case loads put on junior lawyers can lead to exhaustion and mistakes can be made. Junior lawyers are often unable to afford representation at the tribunal and have to represent themselves.

The first International Fair Trials Day was launched on 14 June 21 with the participation of two Council members of the Law Society, Tony Fisher, past Chair of the Law Society Human Rights Committee, and Sara Chandler, past President of Westminster & Holborn, and past President of the Federation of European Bars They are both members of the steering committee which organised this event, which was established to remember Ebru Timtik who died while on hunger strike. She was a Turkish lawyer who called for fair trials and the right of appeal specifically in her own case against conviction and the sentence of 13 years. Her hunger strike lasted 238 days, and she knew that it would lead to her death.

Diego Garcia Sayan, the UN Special Rapporteur on the Independence of Judges and Lawyers, spoke as keynote speaker. Contributions came from lawyers, academics and journalists, professions which have all been targeted in Turkey. NGO's which investigate and write reports, such as Amnesty International are targeted, producing a chilling effect on the freedom of speech. Civil society groups, especially lawyers, teachers and trades unionists all pay a role in monitoring the protection of rights in Turkey. The Turkish government uses terrorism laws against anyone who the government does not like. European Convention of Human Rights activities which are protected such as the right of assembly and free speech are denied. People cannot foresee that they will be accused of terrorism as these activities are not against the law.

The conference heard from Patrick Henry, CCBE Human Rights Chair who stated that the right to an independent tribunal is denied to lawyers on trial in Turkey. The judges interrupt defence, switches off their microphone, uses impolite form of address, reject request to adjourn proceedings in order to appeal, prevent prisoners from communicating with defence lawyers. Lawyers do not have the right to have time to prepare defence, are denied access to their files, and denied the right to enter the courtroom. Judges refuse lawyers cross examination (for eg to ask whether they were put under pressure from the police), and the right to call defence witnesses is denied. Lawyers are identified with their clients if they are defending a member of an organisation, and then the lawyers are accused of also being a member of proscribed groups. Turkey has a "captured judiciary" with independent judges being dismissed and the government appointing judges.

The inaugural award for the International Free Trials Day was received by the family of Ebru Timtik, and a passionate speech by Dominique Attias, President of the FBE, who described the courage of Ebru Timtik, and her great sacrifice. She weighed only 30 kilos at the time of her death Her coffin was covered in carnations,a flower symbolising the struggle for the rights of women in Turkey. On the 7 September 2020 at 12 noon, all the bar associations of Europe held silence for Ebru Timtik. After her death her fellow hunger striking colleague was released, and recovered in hospital and at home.

Tony Fisher, Law Society of England & Wales Council Member, and Human Rights Committee member, announced that nominations will be open from September to December 2021 for the 2nd International Free Trials Day and award. This year the award is an art work entitled "238 Peace", for the number of days of Ebru Timtik's hunger strike. The conference saw a video of the award which was screened with Kurdish music. The music has been translated into the textile with embroidery and is dedicated: "For all the vulnerable". It is planned that the art work will go on tour starting in the Law Society of England & Wales in Chancery Lane in the Autumn. ■

Professor Sara Chandler QC (Hon)
Past President Westminster & Holborn Law Society

The Law Society needs YOU!


Laura Uberoi

Every year national elections to The Law Society Council are run, with solicitors from across the country stepping forward to represent their peers and be the voice of the profession. The deadline for nominations closed on 23 July this year and voting will open shortly.

Who does this cover?
As a solicitor you are automatically entitled to vote in the election for any constituency in which you work, so you should all be receiving electronic ballot papers to vote for the representatives to represent you on behalf of "Central London".

Last year The Law Society made significant amendments to the constitution and governance of its council, spearheaded by a taskforce including Coral Hill and led by Fraser Whitehead. As part of these reforms, there are no longer Council seats representing the City of Westminster or Holborn, which were our previous constituencies. Instead there are now five Central London seats which cover everyone in the following postcodes:

EC1-4	WC1-2	W1-W2	W6	W8-11
W14	SW1	SW3	SW5-7	SW10
NW1	NW3	NW5	NW8	

Two of these Central London seats are up for election this year, so if you do not receive your ballot paper please do let us or **governance@lawsociety.org.uk** know.

Why should I care about The Law Society council elections?
The Council sets the strategic direction of The Law Society, voicing the priorities and challenging the greatest challenges facing the profession. The Law Society works tirelessly on the issues that impact us all – recovery from the pandemic, mental health and wellbeing, legal aid cuts, adaptations following Brexit, lawtech, the equality, diversity and inclusion and upholding the international reputation of our profession, to name but a few.

If you want to shape the agenda for The Law Society then can stand to be a Council Member, vote for a candidate that you feel best represents your interests and/or lobby your Council Members to voice the issues important to you.

Who are my current council members?
There are just under 100 Council Members that are elected to represent solicitors on the basis of geographical constituencies (such as Central London), practice area (such as child care law) and demographics (such as junior lawyers).

Central London solicitors are currently represented by:

- **Beth Forrester**
- **Fraser Whitehead**
- **Jeffrey Forrest**
- **Nicola Rubbert**
- **Pavel Klimov**

You can find their details here:

The Law Society

https://www.lawsociety.org.uk/en/about-us/our-governance/council-constituencies-and-current-members/

If you have any questions or would like more information about being a Council Member, our work or The Law Society more generally, please do get in touch. ■

Laura Uberoi
Council Member of The Law Society, former President of Westminster & Holborn Law Society and Senior Solicitor at Macfarlanes

Workplace Trends: COVID-19 Employment Tribunal Litigation – Employee told to "shut up and get on with it" wins claim

To say that the Employment Tribunal system currently has a back log of cases would be a chronic understatement. Over a year and a half since the COVID-19 pandemic began and we are starting to see the first COVID related decisions work their way through the overburdened tribunal system.

Throughout the pandemic our employment team have advised our corporate clients on best HR practice, employee engagement, COVID-19 security and risk assessments. This important risk based, and health and safety focused, advisory work continues with gusto after the so-called *"great re-opening"* on Monday 19 July 2021, and it extends to both the workplace and also the home working environment.

One of the key COVID related tribunal battle grounds was always going to be Health and Safety matters, and the interplay between potential automatic unfair dismissal and also whistleblowing. In this note we highlight an interesting tribunal decision from the Scottish Employment Tribunal which may show the start of a trend that employment tribunals are prepared to take a very firm view on health and safety related issues.

Gibson v Lothian Leisure[1]
The Claimant was Mr Ben Gibson. He was employed as a restaurant chef by Lothian Leisure at the Sun Inn in Dalkeith, Midlothian.

Mr Gibson employment started in February 2019. He was successful and had been promoted. The restaurant had to shut in March 2020 due to the lockdown restrictions and Mr Gibson was put on furlough in the second week of March 2020.

The Claimant's father has a number of medical issues include a brain tumour, Colitis, and Addison's disease, and as such was shielding during the lockdown.

During his employment the Claimant's take home ay was c. £2,000 per month, including tips. He was paid a reduced rate during furlough, and the Tribunal found that he was not paid the correct amount and there was a shortfall of £340 per month. There was also another shortfall in that Mr Gibson found out that the pension deductions which the respondent deducted from his wages were not actually paid into the Claimant's pension.

During furlough, and in the run up to and in the run up to the end of lockdown and the prospective reopening of the restaurant sector the respondent wanted the claimant to undertake some work *("coming in and helping out for a bit")*. At that time, the Claimant had begun to raise concerns with the respondent about the possibility of his father catching Covid-19 from him on his return to work.

The Claimant says that the respondent provided no personal protective equipment (PPE) for staff and that they had no intention of requiring staff to take precautions and create a COVID-19 secure working environment.

The Tribunal Judge describes the Respondent's response as being in a way that "might best be described as very robustly negative". The Claimant gave evidence that he was told to 'shut up and get on with it'. The Claimant believes that the Respondent started to see him as a nuisance despite the previously good relationship.

Termination of employment via text message
Without any discussion – or indeed any process at all – the Claimant's employment was terminated with immediate effect in May 2020, by a director of the Respondent, by text message no less. An extract of that message reads as follows:

"Moving forward I've decided to terminate your employment with ourselves. We are changing the format and running of the business on a day-to-day basis, and at the end of the lockdown process we will be running the business with a smaller team. Thanks for all your efforts in the past and I wish you well for the future."

The Claimant received no notice pay and no pay for accrued untaken annual leave.

Continued on next page

Continued from previous page

Automatic Unfair Dismissal
The burden to show an automatic unfair dismissal is on the claimant and he must show that there was a comparator employee who was not dismissed. The Tribunal Judge explained that the text message dismissing the Claimant suggests that the Respondent will have a smaller team *"at the end of lockdown"*. This wording was considered to be indicative of a dismissal either for redundancy or business reorganization which may amount to some other substantial reason. The Claimant's evidence is that he was a good worker, he had been praised and promoted and had worked successfully up until he began to raise issue around COVID-19 security.

The Tribunal found that that either the Claimant was dismissed because in circumstances of danger which he reasonably believed to be serious and imminent he took steps to protect his father. Or, alternatively, the Claimant was selected for redundancy because in circumstances of danger which he reasonably believed to be serious and imminent he took steps to protect his father.

Compensation
The Claimant was unemployed from 31 May 2020 and was therefore unemployed for 29 weeks. The Claimant was awarded the following sums by Employment Judge Martin Brewer:

- A basic award of £6,562
- Compensation of 29 weeks' pay at £500.00 per week, a total of £14,500.00.
- A payment in lieu of untaken statutory annual leave of £1,200.00.
- An unlawful deduction from wages award [recognising the shortfall in furlough pay] of £720.00 and a breach of contract award of £142.85 for the sums which we deducted for pension contributions, but which were not paid to the Claimant's pension.
- Notice pay – £500 in respect of 1 weeks' notice.

As a cautionary tale to all respondents, it should be noted that Lothian Leisure did not respond to the Claimant's claims and did not appear at the hearing. The Tribunal Judge had sight of a number of documents provided by the Claimant, including various text messages and emails (one of which I refer to above).

The case reiterates the need to take early legal advice when faced with a grievance from an employee, which then escalates into an Employment Tribunal claim. It is also a reminder of the need to consult with staff and to ensure that correct HR procedures, and risk assessments, are in place and are followed. ■

The material contained in this article is provided for general purposes only and does not constitute legal or other professional advice. Appropriate legal advice should be sought for your specific circumstances and before any action is taken.

Miller Rosenfalck LLP

1. *https://assets.publishing.service.gov.uk/media/608003e3d3bf7f013dea68e6/Mr_B_Gibson_v_Lothian_Leisure_-_4105009.2020_-_Final.pdf*

Make great client experiences your differentiator – introducing Clio Grow

What is your firm doing to find – and retain – clients? Client expectations have evolved, and now more than ever before, clients expect a high level of service from their lawyer. If you're not meeting those expectations, you could be missing out on vital opportunities for your firm.

Client experience counts for a lot when it comes to choosing a law firm. With more than 180,000 practising lawyers in the UK today, your competition is stiff, which means that every contact with a potential client counts. How clients interact with lawyers has changed too. In the modern legal landscape, clients are no longer willing to play phone tag with a solicitor or to spend time chasing a firm that's hard to reach.

In an industry so dependent on referrals and reputation management, building better client relationships is the differentiator that will earn you lifelong clients and continue to help your business grow. Adopting the right legal client intake and relationship management software is key to this aim.

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*All figures taken from Clio's *2020 Legal Trends Report.*


Solinda Nyamutumbu

The future beyond furlough

On 20 March 2020, the government introduced the Coronavirus Job Retention Scheme (CJRS) to reduce the economic impact on businesses resulting from the COVID-19 pandemic. Designed with the intention of avoiding redundancies, the scheme has supported many businesses by easing the pressure to continue paying wages in full during the crisis period. The CJRS has been extended four times since the original 30 June 2020 deadline and is now due to end on 30 September 2021. With the lifting of restrictions and as businesses begin to reopen, it seems unlikely that this will be extended further.

How does furlough work and how has it changed?
The CJRS has supported many to continue receiving an income and for employers to hold on to staff during the various lockdowns and uncertainty surrounding COVID-19. The government has been contributing 80% of the wages for those who are unable to work, or whose employers could no longer afford to pay them – up to a monthly limit of £2,500. Employers have not been required to pay out the remaining part of the salary, however they have continued to make pension and National Insurance contributions.

On 1 July 2021, the CJRS grant payment from the government dropped to 70 per cent (up to £2,187.50) with employers being asked to contribute the remaining 10 per cent (up to £312.50). From 1 August 2021 until the end of the scheme (30 September 2021), the government contribution will drop further down to 60% (up to £1,875) with employer contributions rising to 20% (up to £625).

It is hoped that the increase in employer contributions, along with the simultaneous easing of restrictions will encourage employers to take workers back full-time if they can.

What should employers expect as the scheme ends?
The winding down of the furlough scheme signals a return to normality for the labour market. Generally, this will mean employers will need to decide either to bring their employees back, whether on the same terms of employment or new terms or let them go by way of redundancy.

(a) Returning to work
Those affected should be notified of the end of scheme and employers will need to consult with staff as early as possible about the return to work. In addition, company policies and procedures will need to be reviewed to ensure that they are applicable to and support any new ways of working introduced.

A decision to bring employees back will require appropriate consideration of the employer's health and safety obligations. A Covid risk assessment should be carried out and any earlier assessments updated to ensure all relevant factors are considered.

Understandably, many people will still have reservations about returning to work and interacting in the workplace and public transport. Employers should be sympathetic to and try and address the concerns some staff may have in this new 'free world'. For example, if possible, the employer could offer flexible working.

(b) Changing employee terms and conditions
Employers may wish to reduce hours and pay, introduce a more flexible shift pattern, or change certain job roles to adapt to changes. Regardless of any contractual right permitting changes to be made to staff contracts, employers will need to obtain express agreement to such changes.

Several high-profile businesses have in recent weeks sparked the debate on the use of fire-and-rehire tactics implemented to reduce the amount spent on workers. Any decisions to change an employee's terms of employment will need to be managed and implemented correctly.

(c) Making redundancies
Employer's contemplating making redundancies will need to consider the potential damage to the morale of remaining staff, and to the reputation of the business, particularly where employees were told before agreeing to a period of furlough on reduced pay that the measures the employer was taking would help it to manage the business through the coronavirus pandemic and save jobs. In making these decisions, timing will be very important as sufficient notice and consultation periods will need to be weighed.

The employer's duty to consult on ways of avoiding redundancies means that the process must start in good time to allow discussions to take place. For redundancies taking effect on 30 September 2021, employers should be aware of the below fast approaching deadlines:

1. **16 August 2021** – Deadline for starting collective redundancy consultations where 100 or more employees are to be dismissed.
2. **31 August 2021** – Deadline for starting collective consultation where 20 – 99 employees are to be dismissed.

During the next few months employers will have to make many difficult decisions. The hope is that many will be asked to return to work however, if trading conditions fail to improve the number of options available will be quite limited. ■

Solinda Nyamutumbu
Senior Employment Paralegal at Bates Wells

Lord Puttnam

Lord Puttnam – defender of democracy

Philip Henson recently interviewed Lord Puttnam – former Chair of the Select Committee on Democracy and Digital Technologies

As chair of the law reform committee of the City of Westminster and Holborn Law Society, I am constantly reading government consultations, white papers, draft bills and select committee reports.

One that particularly stands is the report of the select committee on democracy and digital technologies, Digital Technology and the Resurrection of Trust (published June 2020). The select committee was chaired by Lord Puttnam.

The report contains a compelling narrative which highlights the need for wider debate. At 153 pages and 77,000 words, it is the same length of an average novel. As Lord Puttnam explains: "It took 77,000 to explain the complexity of the issues, and it is an exercise in complexity".

The select committee was bi-partisan and all of its members – including the four Conservative members – voted in favour of the report. In Lord Puttnam's word, it is "very important to point out that it was unanimous. One of things that may have taken the Government by surprise".

Passion for democracy

Lord Puttnam is a senior politician, chair of the Film Distribution Association (FDA) and one of the most acclaimed British film producers and film makers of all time. Democracy is his passion and he has highlighted the fragility of democracy over many years[1]. He cares deeply about upholding the standards of public office.

Lord Puttnam is admired for being fair minded, famed for his ability to find common ground and to seek compromise. His legacy will be that Ofcom's principal duty is to the citizen, its secondary duty is the consumer via competition.

Select Committee

The Select Committee was appointed by the House of Lords in June 2019 and reappointed in October 2019 and January 2020 "to consider democracy and digital technologies". The report was prepared and delivered to parliament during the global pandemic and (as noted in the foreword) was presented at a time of a pandemic of misinformation and disinformation.

It covers a wide range of subjects from daily activity across social media, how to inform citizens, how to navigate misinformation, the online harms agenda, how Google's algorithms work, free and fair elections and the powers of the Electoral Commission. It's thought-provoking summer holiday read, easy to dive into.

I was interested with the mind-blowing statistics on daily activity across social media platforms globally.

- Facebook has 1.73 billion daily active users
- YouTube has 1 billion hours of videos watched daily
- Google has 3.5 billion daily searches and Twitter has 5 billion daily tweets.

It is against that background that I wanted to talk to Lord Puttman about the critical issues, the result a wide-ranging discussion around democracy.

Philip Henson (PH): The Report makes some interesting points about the electoral system. Is online voting something you would embrace?

Lord Puttman (LP): As a result of the pandemic, we in the Lord's now vote online. It's been extremely successful. I don't think we will ever go back to voting in chamber even when we are back in the chamber.

I don't think we will go back to in chamber queuing [where the Lords go to vote]. The only negative of that is that the queuing system requires ministers to come through. And it's the only time that you can be absolutely certain of being able to buttonhole or get hold of a minister. It has that one great advantage. But I don't think we'll ever go back to non-electronic voting.

The system works perfectly well. It's validated by us with a code every day. I guess you could take that and reapply that to the fact that yes, electronic voting can absolutely work.

PH: On issue of the Electoral Commission, there were some aspects you drew out [in the Report] about what had happened previously, and the lack of funds given to them. Do you think that's deliberate with, you know, just drip feeding them a little?

LP: Absolutely. And I think both major parties are guilty. I do think it's absolutely deliberate. I think we hear it all the time about the whole idea of electoral exceptionalism. It came out [recently] in terms of the Online Harms Bill. The Government will create a kind of thing around the elections, so that MPs cannot be accused of misinformation, that MPs don't fall under the Code.

It will be kind of excused, but I think that we're talking about three weeks prior to the election. You and I can't go after Boris Johnson for the battle bus.

Continued on next page

Continued from previous page

PH: I had not appreciated that parliamentary libraries closed down before an election.

LP: None of us knew that. None of us understood that at the very moment, you need information. It's not available.

PH: I was reflecting upon the Good Law Project, and the pushes for disclosure and information that they are trying to get from the Government, and the case of judicial review specifically. What's your view on accountability and how government is trying to put another layer between things?

LP: You are looking at the there and now where, without doubt, this will invite early judicial review'. Either from the platforms who will treat it as cost of business, looking for clarification or looking for an edge. Or from civil society whereby on behalf of let's say Meg Russell one of the children's organisations, takes them to judicial review.

In that situation who is the defendant? Is it Ofcom or the government? And the answer [from the Minister] was, if the judicial view is about process, it would be Ofcom; if it was about outcome, it will be the government.

The other vexed issue is the issue of personal liability – whether or not the boards of these platforms had personal liability for harms. Now what the Government claims they're doing, what they think legislation will do, is they will reserve powers on personal liability, but they won't be on the face of the bill, they will reserve the powers that in the event, that the companies are not observing the laws, they will have the reserved powers to pose personal liability.

Now, whether that is enough to frighten the board of Google or the board of Facebook, I don't know.

PH: What do you think about the revolving door with Government and these tech platforms?

LP: These guys can buy people. It's a very, very concerning thing. I don't know what [Former Deputy Prime Minister] Clegg gets paid, but you can bet it's seven figures.

PH: What worries you most and keeps you up at night?

LP: I think I've always felt 'democracy' all my life. I've been arguing democracy is fragile. And my argument is it's just like carrying a Ming bowl across a rather glassy floor.

I mean, I looked at Kobe [Bryant the NBA star] versus Trump. You just see how complacent we've been about what we would regard as societal norms.

PH: We were taught in law school about individual responsibility and collective responsibility. There's been a lot of disrespect for the judiciary, and that's something that causes me concern and should concern others. Remember the headline on one of the newspapers – 'the enemies of the people' type rhetoric?

LP: I'll give you a little story. This actually happened. Five years ago I was the Government's trade and cultural envoy to South East Asia. I really enjoyed it. It was a really interesting job that took me to Cambodia. And I got to have a sort of relationship with [prime minister] Hun Sen, who was good to me due to the Killing Fields[2]. The basis of what we were trying to do there was very much based on rule of law.

We were bringing lawyers, very senior retired judges out, talking about the creation of the implementation of the rule of law, the independence of judiciary. We did a lot of work. And that would be the recurring feature of conversation I've had each year. So the last time I go in, was exactly at this moment. And he picks up that newspaper – Literally, says "explain this to me".

I wrote to Theresa May, and I resigned, I can't do this job. And so I resigned six months early. I feel it's impossible. It's embarrassing. It's really embarrassing.

PH: We all know whether in the legal world or the creative world, there is a legal route which is expensive, timely or we will just do other things.

LP: Absolutely. I totally agree. I am very, very troubled. Because going back to Cambodia for a second and what I learned, and as President of UNICEF in the 90's, the thing that I learned at UNICEF is that in countries where the rule of law is not embedded you are immediately in trouble.

So even at UNICEF we would put a lot of money into legal training, federating lawyers to build some strength around who they were and the move towards judicial independence. It's something I have been mulling for quite a long time. I did a movie called Defence of the Realm years ago, which touched on a lot of this – independence of journalism and the way that it impacts onto the judicial and they way you've got elements in the UK which are set up to appoint any judicial oversight.

It is very troubling. Equilibrium is always difficult to keep. You have to keep your thumb on the side of judicial independence or it goes. It's not something that stays there due to the natural order of things.

PH: What do you think about Facebook and Trump and suspending him?

LP: On the one hand sort of a relief. On the other hand it does throw up some really interesting important freedom of speech issues. We actually addressed this in the report. We talked about the amplification issue, and what we pointed out was that Facebook has the ability if you had 5,000 followers on a particular post you get a green tick. The algorithmic is able to recognise 5,000 as a number. We are saying that at that number what you are saying has to be validated. I.e. it isn't just being amplified. What we attacked was the amplification – not free speech.

PH: You recommended a code of practice for algorithms for Ofcom as well… Do you think that this is something that Ofcom would ever have?

LP: It's a live issue. What we are arguing is that the Code of Conduct should be different from the company's terms and conditions, and the original drafting of the Online harms Bill was suggesting that it was the implementation by the companies of the terms and conditions. What we are saying is that the terms and conditions will have to reflect the code of conduct and not the other way round.
The more in Parliament that we can amend and improve the code of conduct the companies will be required, at least in the UK, for the terms and conditions, to reflect that.

PH: What do you think about journalism on these platforms. How will the effect the smaller, regional papers?

LP: I think a deal will be struck. The issue there is transparency. Who does it benefit? A piece of research I have been relying

on recently says that "misinformation flourishes when local news is weakest". The lack of local news encourages the impact of misinformation. The local newspaper can be a discipline in the way social media cannot.

People pay lip service to the fact that there is no reporting of local planning decisions, or local courts. Actually its rather more serious than people realise. Its all part of accountability. You are entitled to know if a local criminal got off or was given an unreasonable sentence. ■

1. *https://www.davidputtnam.com/viewNews/n/tedx---fragility-of-democracy-and-how-we-need-to-take-greater-care-of-it/*
2. *The 1984 Biographical file about the Khmer Rouge in Cambodia – produced by David Puttman for this company Goldcrest Films – which won 3 Academy Awards (Oscars) and 8 BAFTA's.*

Limbering up for the London Legal Walk

Optimism is building at London Legal Support Trust (LLST) for the second half of 2021, with the flagship London Legal Walk set to return on Monday 18 October. The charity, which raises funds for frontline free legal advice centres in London and the South-East, has successfully organised over 13 virtual and in-person events so far this year, with more to come.

Thanks to the gradual unlocking of restrictions in May, the charity was able to run its first in-person event for 2021, Walk the Thames. The event saw teams walking (or running!) a half marathon distance from Tower Bridge to Putney, with some going the full marathon distance to Hampton Court! Over 125 walkers and runners from 25 organisations took part and raised a collective total of £15,000.

The momentum continued as more events took place in June and July. The popular London Legal 10xChallenge returned in June, nine 'regional' Legal Walks in the South-East of England, and the fluffiest fundraiser on the calendar, Legal Walkies, took place in two London Parks in July.

The remainder of the year promises to be just as busy with continued enthusiasm from people to get together with peers to support this vital cause. LLST CEO Nezahat Cihan is encouraged by the success of the events so far, *"After such an uncertain start to the year, the support we have received for our events has been phenomenal. We are now planning for our pinnacle event, the London Legal Walk on the 18 October".*

Why We Walk

The mission of the London Legal Walk, which is now in its 17th year, is to raise funds for frontline free legal advice agencies in London and the South East that serve people with a range of problems, from debt to housing, many of which could be resolved with the right legal advice. The effects of the pandemic have made the need for those funds even more necessary as the demand for advice is growing. Sadly, advice is not easily available to those on low, or no income and the advice charities they turn to heavily rely on additional funding from charities such as LLST.

How you can help

Register a team or as an individual for the London Legal Walk – The deadline to register is 8 October. You can sign up via the website **HERE** or email the team at **signups@llst.org.uk**. ■

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Legal Aid: Are you ready for the changes to claim checks for civil submissions?

At the beginning of July, the Legal Aid Agency (LAA) posted an update in its News Section regarding improvements to their checking system for civil claims. It can be found here: https://www.gov.uk/government/news/civil-news-speedier-payments-drive-and-new-guidance-on-rejects.

The LAA will be focusing on providers giving more accurate information to speed up the payment process. They will also be guiding providers more closely and with more specific reasons as to why a claim has been rejected.

The LAA states that the following changes will be included:

- There will be an updated guidance page for billing claims on GOV.UK
- There will be a provider checklist for Client and Cost Management (CCMS) that providers can use to assist them with their submissions.
- There will be a more specific "reject" process which aims to reduce the amount of "further information requests".

The aim is that, with the updated guidance and the provider checklist, in time the number of rejected cases will reduce. Then, because of the more accurate information provided in the first instance, the providers will give all required information correctly first time.

The LAA have stated that it is a two-stage process to get the claim through for payment:

1. Claims that fail stage 1 will be returned for amendment or additional information.
2. Claims passing stage 1 will move to stage 2 for checking. If a claim fails at stage 2, it will be returned.
3. If all checks are passed, the claim will be completed for payment.

The key therefore is to utilise the documentation provided by the LAA to ensure that the specifics of each claim are added correctly. Trying to submit claims as per the old guidance will likely result in rejections which will require amendment and then resubmission.

The LAA have acknowledged that there will likely be an increase in rejections recorded on firms' Provider Activity Report (PAR) as a result of the changes. The reason behind these may be down to providers not following the new guidance and checklists and also because the new process includes "improved reject reasons and requests for further information that were not historically included in the reported reject figure".

The LAA is focusing on the finer details on claims where they can be more specific on their correspondence with providers. Less of a "blanket" approach and more of a "targeted" one. The idea therefore is that providers will begin to see less "further information" requests and "rejects". By following the guidance and checklist and the LAA corresponding very specifically with providers, more claims should be processed faster, the first time.

I recommend providers review this update carefully and determine how it is likely to affect them. Ensure that everyone in the claiming process at the firm is aware of the changes and that all questions are asked and answered before the changes go live.

The LAA has made significant upgrades to their resources recently and their training and support website is excellent. It can be found here: **https://legalaidlearning.justice.gov.uk/**.

It is worth reviewing some CCMS bill submission training before the changes are rolled out and having a conversation with your contract manager to ensure that all resources are at the firm's disposal beforehand.

If the firm is unprepared for changes to CCMS billing, it is inevitable that there will be a significant increase in bill rejections. This will have a knock-on effect where the firm does not get paid quickly and could see a significant reduction in cashflow. This could cause serious problems for those firms that rely on a certain amount from the LAA on their weekly BACS schedules.

The other aspect to consider is that by contributing to the LAA's volume of rejected claims, the firm would be contributing to a backlog that the LAA will inevitably have to clear. Again, this will inevitably delay funds due to the firm and could cause cashflow issues.

My advice would be to review the guidance, get the training, confirm the position and the implementation dates with your contract manager and prepare fully for the changes. This will significantly reduce the number of rejections, ease stress and ensure that cashflow is minimally affected. ■

Alex Simons
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Calling smart law firms:

the tech you DO need, and the one thing you DON'T

What are the top technologies for smart law firms? Legal practice management software? Online file storage? Cloud-based word processors? Scanners? VoIP phones? Time recording? Online payments? E-signatures? Zoom?

Law firms are expected to provide their services at the push of a button. They're investing time and resources in smart technologies, integrating every piece of software or device from the ground up. But with hundreds of options, identifying what technology you need is difficult.

Which begs the question: what tech DO law practices need?

Remote working capabilities

COVID-19 has shown us the value in working remotely with zero obstructions. Those who'd already invested in smart technology prior to lockdown were those who adapted quickest when employees worked from home. And when 97% of employees don't want to return to the office full time, it's important you have the infrastructure available to support new work habits – home, office or combination. This goes beyond supplying stationery, decent laptops or additional hardware. One of the unfortunate side-effects of working from home was a 400% increase in reported cyber crimes during the pandemic's first wave, so a comprehensive cybersecurity strategy protecting your employees and data is crucial. Encrypt your remote devices, install anti-virus software and use a VPN (Virtual Private Network) to secure your network from intruders.

Online payment processes

Chasing fees from clients can be time consuming, but it doesn't have to be. Using an online payment platform makes it simple and smooth for clients to pay their bills first time, every time. Remember, what's better for your client is also better for you, as more on-time payments will improve your cash flow and help you budget more accurately. Options include Legl, GoCardless and Invoiced. Choose one which integrates with your legal practice management software. We've integrated GoCardless (and soon Legl) with Quill. Speaking of Quill…

Legal software

Cloud-based legal accounts, document, practice and case management software like Quill is essential for performing your daily tasks whilst fully complying. The best software gives you the tools to see a case through to completion. With accurate time recording and straightforward document management solutions, you can be more efficient, and clients can see where their money is going, right down to the last penny. The sign of effective software is you barely notice it. It's the silent hero that works away in the background, removing the headache of endless back-office tasks to focus on doing what you do best.

Email and phone systems

From a client's perspective, this is the most important area. Clients want to feel like you're there for them, which requires a robust communication infrastructure. Older landline phones and copper internet connections have a tendency to break, but that's no excuse when there's fibre internet! For your email system, choose something that complements your word processing software or creative suite (ie. Outlook with Office 365, Gmail with Google Workspace). There's more flexibility when it comes to your phone systems, although VoIP phones are probably the most popular as they permit running multiple lines and calls simultaneously over the internet.

And what's the one thing you DON'T need?

Paper

We've cheated here, but the point still stands – paper should be the last thing on your list! Going paperless is basically just a case of storing paperwork according to the same organising system as before, only instead of locking away in filing cabinets, you can store, locate and edit from within one screen. Scan and organise then shred and recycle paper copies once no longer needed. Be consistent – using naming protocols and documenting defined procedures – and diligent with sticking to this process. In the short term, it's quicker and easier to manage critical documents. In the long term, it consumes less storage space, reduces operational costs, complies with data regulations and is more sustainable.

Next steps

All of these technologies are useful, but what's right for you? Start with the essentials: quality legal software. Then add in all the bells and whistles which will take you from a law firm to a smart law firm. ■

Children in Police Custody

A certain television series concerning police officers catching bent coppers will have filled many an evening during the past year. Through their exploits, we saw vulnerable suspects and even children being arrested and interviewed under caution. Representing suspects at the police station is of course a quintessential part of what criminal defence practitioners, with some specialising their practice in representing children. So when children get arrested and brought to the police station, should they be detained and kept in custody?

It goes without saying that a police station custody is no place for a child and depriving a child's custody should be avoided as much as possible. Once a child suspect has been arrested and interviewed by the police, a decision will have to be taken as to whether the police will take no further action, release the child under investigation, bail or charge them.

So what happens if a child has been arrested and charged with an offence? The Concordat on Children in Custody published by the Home Office sets out key principles and practices as to how children should be dealt with at the police station. The starting point of this Concordat is that children who have been charged with a criminal offence should be granted bail whenever possible.

Of course this is not the only guidance that the police should be consider. Article 37(b) of the United Nations Convention on the Right of the Child states:

"[…]The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."

Unfortunately in spite of these supposed safeguards, things do often go wrong and even in cases where a child should be sent home they may have to spend the night in the police station before their first appearance at court.

But what happens to children at the pre-charge stage? At this point, the police will have insufficient evidence to charge but it might be that a young person is detained overnight in custody (rather than being sent home), interviewed in the morning and then either released under investigation or bailed to return back to the police station. It is particularly in these cases where a child's detention should be off the cards. The argument would be that if the position is that children at the post-charge stage should not be detained, then the argument against detention at the pre-charge and interview stage is all the more relevant.

This is one of the areas that could benefit not only from strategic litigation but also through change in policy to make sure that children are not unnecessarily being detained and institutionalised. ■

Rishi Joshi
Solicitor in the Criminal Defence Team
Hodge Jones & Allen

No-fault divorce
– an end to the blame game

It may come as a surprise that divorce law in England and Wales is still based upon fault, and requires one party to 'blame' their failed marriage on their spouse.

The sole ground upon which a divorce can be granted under the *Matrimonial Causes Act* 1973 ("MCA") is that the marriage has broken down irretrievably. To establish this, the party seeking a divorce ("the petitioner") must satisfy the Court of one of the five "facts" under section 2 of the MCA, three of which are fault based. Those five facts are: that the respondent has committed adultery, the respondent's behaviour is such that the petitioner cannot reasonably be expected to live with the respondent, the respondent has deserted the petitioner for a minimum of 2 years, the parties have been separated for at 2 years and the respondent consents to the divorce being granted, or a minimum of 5 years separation where there is no consent from the respondent.

If the Court is not satisfied that one of the above facts has been established on the evidence, it cannot grant the divorce.

The fault based divorce system has long been criticised for its potential to cause unnecessary conflict for separating parties during arguably one of the most difficult periods in their lives. This is not surprising where the legislation requires one spouse to attribute blame to the other (unless of course the parties wait for 2 years to proceed by consent or, worse yet, one party must wait 5 years). This is even more troubling where the parties have children who must be protected from conflict, and parties need to maintain maintaining an amicable co-parenting relationship.

The abolition of fault based divorce has been a long time coming and as a result of decades of campaigning. In September 2018 the Government set out its proposals for reform of the legal requirements for divorce. No-fault divorce is widely supported, including by the Law Society, Resolution, family lawyers and many within general society.

On 25 June 2020, the *Divorce, Dissolution and Separation Act* 2020 ("the Act") received Royal ascent, although is yet to take effect.

The changes under the Act, which are incorporated into the MCA, provide a number of benefits to couples seeking a divorce, the most obvious being removing the requirement for one party to 'blame' the other by virtue of reliance upon one of the fault based facts referred to above. For example, where the fact of adultery is relied upon by the petitioner, there is real potential for increased acrimony between parties. This can be further exacerbated should the petitioner decide to name, and therefore involve, the third party in the divorce proceedings. Rather than assisting parties to dissolve their marriage in the most pragmatic and amicable way, the existing process can see the opposite occur and unnecessarily increase parties' legal fees.

The requirement to provide evidence of conduct or separation in the divorce petition through the use of one of the five facts will be replaced with the requirement to provide a statement of irretrievable breakdown. Other changes include parties being able to file a joint divorce application, removing the ability by the respondent to oppose or contest the divorce and the modernising the legislation through the use of plain English terminology; for example, divorce petition becomes a divorce application, a decree nisi becomes a conditional order and decree absolute (the final step in the divorce being granted) becomes a final order.

These reforms see England and Wales join the ranks of countless other countries where no fault divorce has been in place for many years, including Australia, Canada, the United States, Malta, South Africa and China. The changes also apply to civil partnerships, with the Act amending section 44 of the *Civil Partnership Act* 2004.

The Act does not change the current two-step process, whereby you must first obtain a decree nisi and then seek a decree absolute. It will not speed up the time it takes to obtain a divorce either. Under the new process, the Court may not make a conditional order until 20 weeks from the date the divorce application was filed, and unless the party (or parties) making the application have confirmed to the court that they wish the application to continue. Once the conditional order is granted, the parties cannot apply for a final order for at least 6 weeks. In exceptional circumstances it may be possible to apply to the Court to shorten or lengthen this timeframe.

It was anticipated no fault divorce would come into force in autumn 2021, but this has now been delayed to 6 April 2022, with the Government citing the need to undertake significant changes to the Family Procedural Rules, relevant Practice Directions, Court forms and the current digital service.

Whilst no doubt frustrating for those wanting to take advantage of the no-fault process the wait continues, although hopefully not for much longer. ■

Kate MacDonald, Legal Assistant in the Family Team, Farrer & Co LLP. Kate is also an Australian qualified lawyer who, prior to joining Farrer & Co practiced exclusively in family law in Sydney for over 7 years.

Can legal services learn from financial services when embracing technology in the new normal?

By Dave Seager, former MD and now Consulting Adviser to SIFA Professional

Obviously, I have always worked in financial services and in the last 13 years specialised in the cross over between legal and financial, so I think I am fairly well qualified to compare and contrast how the 2 sectors operate. I feel this is interesting this year, as solicitors are considering the move back to face to face, while many in the profession and indeed their clients have actually enjoyed the essential move to technology and online interaction during the pandemic.

By now, rightly or wrongly, most of the UK should be able to revert to a pre-March 2020 normality, but the question is will it? In the legal sector, advice of a detailed or delicate nature has always been handled in person, and I think we would all expect this to be the case again. Whilst less sensitive, more process driven legal work, conveyancing for example, may utilise technology far more.

In financial services 4 to 5 years ago there was quite the panic around the expression 'Robo advice' and whether technology might edge out face to face advice. Of course, this has not proved to be the case at all. In fact, financial planners have successfully harnessed technology to deliver more basic or repeat advice, for example, when completing ISAs and investment top ups. This, in turn, allows more time to be dedicated to 'more valuable' clients where in person advice and reassurance is required.

It seems likely that the legal services sector, over this year and next will find a comfort zone between technology, online communication, and face to face, as has been the case with financial services. Certainly, the financial services sector, although it took some firms longer than others, have fully embraced the functionality and benefits that their back office and CRM systems can provide, when utilised properly.

The ability to house and link client details and fact finds, advice given, track previous services purchased is essential, but it is the way it can allow you to personalise the customer experience and journey that is the real benefit and one that I sense solicitor firms are yet to truly embrace. The key advantage that the financial planner has over the solicitor is the financial plan, which assures them of an ongoing relationship with their client(s).

This is not always so obvious for the lawyer, particularly one who is a specialist – you cannot re-engage offering a new divorce one year on after completing a previous one!

However, now that the SRA, under the Firm Code of Conduct, expects processes to be adopted at firm level it is a perfect time to use CRM systems to highlight and refer clients within the practice either at the time or down the line.

Using your 'back office' in a proactive fashion, far from de-personalising the relationship between the firm and the customer, can enhance it. Using technology to remember a customer on their birthday is an easy way to retain ongoing contact and it is this that changes a customer into a client. I noted that my solicitors recently proactively asked me about other services I might require when I was moving to a new house. I made a note on the questionnaire requesting that they contact me about mine and my wife's wills in 3-months, which they did. I have little doubt that my factfind was uploaded onto the CRM and that the reminder was automatically generated. However, the approach to us, consequently, was prompt and personal. What followed was a Zoom meeting and then a face-to-face meeting to sign the finalised wills.

The result quite simply is that having used multiple solicitor firms, a different one for each house move over the years I now consider this firm, to be 'our solicitors'. They took an interest, beyond the initial matter, in a professional way, noted our needs and requests on their CRM, re-contacted us having been prompted by technology, used video to chat face-to-face and concluded the business in a socially distanced yet personal fashion.

In this arena there is much to learn from the professional financial planning firms you work with and I am sure they and you will be glad if you reach out. ■

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Grappling with allegations of domestic abuse

In March 2021, the Court of Appeal handed down judgment in the case of *Re H-N [2021] EWCA Civ 448* in relation to four conjoined appeals relating to orders made in private children law proceedings, all of which involved allegations of domestic abuse. This had been long-awaited, and is of significant importance, especially in parallel with the passing of the Domestic Abuse Act 2021 and the changes to be introduced in family proceedings.

The current state of the *'beleaguered'* Family Court, with significant delays (only exacerbated by the Covid-19 pandemic) has been well reported. In 2019/2020 there were an overwhelming 55,000 private law applications under the Children Act 1989, in which allegations of domestic abuse were made in approximately 40% of those cases. In his *View from the President's Chambers: July 2021*, Sir Andrew McFarlane commented that the capacity of Cafcass was at the *'upper limit'* of what is considered to be *'tenable and safe'*.

Cases with allegations of domestic abuse are complex as they require significant judicial scrutiny and attention – the child's welfare is always paramount but in respect of court proceedings, the allocation of court time and resources is a significant factor. This issue was perfectly summarised at paragraph 57 of Re H-N in respect of the Court's role: *"How to meet the need to evaluate the existence, or otherwise, of a pattern of coercive and/or controlling behaviour without significantly increasing the scale and length of private law proceedings is therefore a most important, and not altogether straight-forward, question."*

Family Procedure Rules 2010: Practice Direction 12J ("PD12J"), sets out what the Family Court is required to do in cases involving allegations of domestic abuse. Whilst it was concluded that PD12J is fit for purpose, it was accepted that there are difficulties in its current interpretation and implementation. In the context of the current state of the Family Court, the Court of Appeal in *Re H-N* gave helpful guidance on how best to deal with cases where there are allegations of domestic abuse:

1. Whether a fact-finding hearing is *'necessary and proportionate'* will depend on the nature of the allegations and the relevance of the decision to the child. There is also the potential for earlier 'enhanced' Cafcass involvement to help determine whether a fact-finding hearing is necessary.

2. The time has come for there to be a 'move away' from Scott Schedules (schedules of allegations relating to specific incidents) as a means of identifying issues to be tried by the Family Court. It was noted that: *"… a pattern of coercive and/or controlling behaviour can be as abusive as or more abusive than any particular factual incident that might be written down and included in a schedule in court proceedings…'*.

3. In every case where domestic abuse is alleged, both parents should be asked to describe in short terms (either in a written statement or orally at a preliminary hearing) the overall experience of being in a relationship with each other.

4. Where one or both parents assert that a pattern of coercive and/or controlling behaviour existed, and where a fact-finding hearing is necessary, that assertion should be the primary issue for determination at the fact-finding hearing.

5. PD12J is focussed upon 'domestic violence and harm' in the context of 'child arrangements and contact orders' – it does not establish a free-standing jurisdiction to determine domestic abuse allegations which are not relevant to the determination of the child welfare issues that are before the court. In circumstances where delay is inimical to the welfare of a child and the courts, the Family Court emphasised the need to evaluate the existence or otherwise of a pattern of coercive and controlling behaviour without significantly increasing the scale and length of the proceedings – this is where the significant challenge lies.

6. There is a distinction between judges needing to understand the potential psychological impact of sexual assault on a victim and the importance of Family judges avoiding being drawn into an analysis of factual evidence based on criminal law proceedings.

The importance of focussed judicial training was also mentioned and there is a mandatory freestanding sexual assault awareness training in place for Family judges. Sir Andrew McFarlane also commented in July 2021 that there is an ongoing programme of training on issues relating to domestic abuse and the Judicial College is developing new training covering the impact of the Domestic Abuse Act 2021 and the guidance of *Re H-N*. Given the volume of cases and the potential detriment to the children involved of prolonged proceedings, this is helpful guidance for judges and practitioners alike. Whilst *Re H-N* has already been cited in several cases since March, it will be a challenge, but an important one, to see how complex issues like coercive and controlling behaviour can be evaluated without increasing the scale and length of the proceedings. ■

David Carver
Associate
Charles Russell Speechlys

Uninsured Claims arising from second closure of Solicitors Indemnity Fund

The Solicitors Indemnity Fund (SIF) is due to close in September 2021 in respect of supplementary run off cover provided by it.

Insurance policies compliant with SRA requirements for professional indemnity (PI) insurance provide 6 years run off cover for firms which have ceased. The issue is however that legal liability can persist for longer than 6 years before becoming statute barred.

The SIF had been providing protection beyond the PI run off cover, but this is now ceasing and any ongoing liability will not be insured.

The potential gap will be of concern to retired solicitors who could now find themselves liable for historic claims. There is also the issue of personal appointments such as trusteeships or executorships undertaken by employees of firms. PI insurance is typically not bought by individuals but rather by firms, and consequently they will also be concerned once the 6 year cover under PI has passed.

The Law Society is warning solicitors to consider potential liabilities and purchase further run off insurance, but is aware that practitioners may face issues in practice. The UK PI market is currently facing difficult trading conditions, in what has been described as the worst hard market in 3 decades.

The Law Society has flagged that around 10 per cent of negligence claims occur after the six year run-off period, and highlighted conveyancing, probate, child personal injury settlements and matrimonial property as sources of claims.

Whilst not as common, the impact of claims arising from personal appointments can be more devastating as the liability is owed by the individual rather than firm. As such, protections such as limited liability company status would not apply.

Experts warn that historic claims can be significant even for low value work. "I have seen a multi-million pound claim arise from a personal injury case which had been settled for £2,000, and a £3m claim from a £25,000 conveyancing transaction," said Frank Maher of Legal Risk.

Mark Sommariva of Brunel Professions says: "We're standing by to support former clients and other retired solicitors to find cover. The insurance market is challenging at the moment and the availability of cover will depend on former solicitors' risk records and practice areas."

Brunel Professions is a leading provider of professional indemnity insurance to the legal profession. To find out more call Mark Sommariva on 07980 221468/ 0203 475 3275.


Colin Bohanna

Clio introduces legal client intake and client relationship management solution to the UK and Ireland

Clio Grow will enable law firms in the UK and Ireland to deliver a more efficient and client-centred experience by automating the client intake process

Clio, the world's leading provider of cloud-based legal technology, announces the UK and Irish release of Clio Grow, the legal client intake and client relationship management solution already used by thousands of legal professionals worldwide. As the legal landscape continues to change in response to remote work, an increasing number of legal clients expect to find, contact, and interact with a lawyer online. The addition of Clio Grow in the UK and Ireland will empower legal professionals to meet this changing demand and balance meaningful client touch points throughout the entire client journey.

Since 2015, lawyers in the UK and Ireland have relied on Clio Manage – the world's leading legal practice management software – to manage clients, organise matters, automate tasks, and to simplify time recording and billing processes. When combined, Clio Manage and Clio Grow form the Clio Suite, the legal industry's first and only end-to-end software solution focused on enhancing the client experience.

"The introduction of Clio Grow to the UK and Irish markets is part of our commitment to ensuring that legal professionals around the world are equipped with the tools they need to be both cloud-based and client-centred," said Colin Bohanna, Clio General Manager for the UK and Ireland. *"By continuously improving our offering to the legal profession, we're helping firms remain consistently and predictably profitable while also making it easier for those in search of legal representation to connect with a lawyer anywhere, anytime."*

Firms using client intake and relationship management software are creating more manageable, effective, and profitable processes while also delivering the seamless, online and client-centred experiences prospective clients were looking for in their search for a lawyer. As highlighted in Clio's annual *Legal Trends Report*, law firms using client intake and relationship management software saw as much as 20% more cases and 9% more revenue in 2020 – earning an equivalent of £28,000 (€33,000) more per lawyer.*

To help law firms achieve better business performance, client intake and CRM software has been designed to improve client experiences by:

- Enabling online bookings directly from Google search results
- Capturing matter and client information quickly with online intake forms
- Reducing meeting no-shows with automated appointment reminders
- Helping monitor prospective client pipelines to ensure timely follow-ups

UK solicitor Sarah Khan-Bashir MBE, founder of SKB Law, which has Yorkshire and London offices, sees clear value in what this type of solution has to offer. With a focus on family law and providing legal advice at an affordable cost, efficient time management and easier client contacts are paramount to SKB Law.

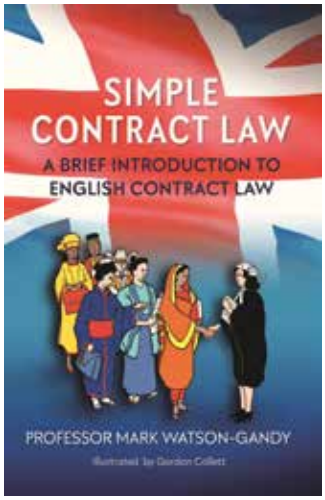
"My priority is making sure every client feels valued. As a busy sole practitioner, I'm constantly juggling a lot of tasks and time-sensitive matters, so finding a way to streamline our client intake process and being able to automate administrative follow-up frees me up to do the work that really matters for my clients. Importantly, it makes the process easier and more efficient for our clients, saving them time or resources. Clio Grow is game changing for SKB Law."

Clio is building on the momentum from its **recent rise to unicorn status** and the tectonic shift towards cloud-based technology to address the needs of the global legal community. Today's announcement signals another step in Clio's increased global expansion as it continues to build the first legal operating system on the market. As a leader in the legaltech market, Clio is shaping the future of the industry, enabling legal professionals to deliver meaningful work to their clients throughout their entire legal journey.

For more information about Clio Grow and its feature offerings, visit **clio.com/uk/grow**. ■

Simple Contract Law

Stripping English Law of Complexity



In his new book, Watson-Gandy has bravely done a complete about-turn on traditional dusty textbooks, writing an illustrated guide to English contract law that is fun to read, entertaining and succinct.

Synopsis of **Simple Contract Law: A brief introduction to English Contract Law:**

This book provides an essential introduction to English contract law. Written by practising barrister and law professor, Mark Watson-Gandy, whose infectious enthusiasm for the subject permeates the text, the book simply explains all the core concepts and leading cases and what the most common terms and conditions actually do. Whether you are a law student, businessman or an international lawyer, you will find "Simple Contract Law" to be an easy-to-read, concise, and informative first guide into the subject. Enlivened by the colourful back stories to the case law and with witty illustrations by Gordon Collett, this book is a welcome antidote to stale traditional contract law textbooks.

"People don't realise quite how important English contract law is for us all. English contract law has long been the preferred choice of law for international contracts – often even where the parties or transaction has no connection to the UK. The UK legal services industry is worth £60 billion to the UK economy; the UK legal services market is the largest in Europe and second only globally to the USA. Three quarters of those using London's commercial courts during litigation come from outside of the UK" explains the author. "I wanted to write something which would cut through the complexity, to give an accessible overview of the law. A quick and easy-to-read guide like this is long overdue."

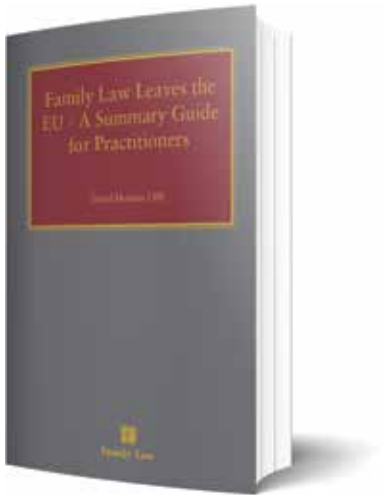
Simple Contract Law: A brief introduction to English Contract Law is available now for £9.95 on Amazon: **https://amzn.to/3kbb6Q4**. ■

Professor Mark Watson-Gandy K.S.G is a practising barrister at Three Stone Chambers in Lincoln's Inn and has appeared in high-profile cases in the UK and abroad. He is a Visiting Professor at the University of Westminster and at the University of Lorraine in France. He was made a Knight of the Order of St Gregory the Great in recognition of his work as a barrister and law professor in 2007. In 2020, he was appointed as one of the UK Ministry of Justice's "Legal Services are Great Champions" to promote English legal services internationally.

Family Law leaves the EU

A summary guide for Practitioners

An appreciation by Elizabeth Robson Taylor MA of Richmond Green Chambers and Phillip Taylor MBE, Head of Chambers, Reviews Editor, "The Barrister", and Mediator.



This new guide from the Family Law imprint of LexisNexis is most welcome at a time when so much confusion reigns in the world caused by the coronavirus pandemic. Any practitioner who is faced with trying to understand where we will be with family law matters on leaving the European Union on the last day of 2020 will be relieved to read this innovative sort work from Professor David Hodson OBE. We welcome the important additional section on public child law written by Maria Murphy for those specialists involved with local authorities.

We feel that this short paperback will be highly relevant to all family law practitioners as a quick accessible guide to the law and practice which will apply on the UK's final departure from the EU on 31 December 2020. The government has indicated that the UK will not be party to any further EU laws from January 2021, instead relying on existing international laws such as the Hague Convention, to which we will be a party in our own right.

There will also be new provisions to cover issues of national law, where previously EU law existed. Inevitably, some court procedures will need to change once the final break with Europe has taken place. This invaluable title gives us an overview of the legal position and the practical issues which are judged to arise in all areas of family law, including the preparatory steps which lawyers should take in readiness for departure, to advise clients as effectively as possible in the future.

The key topics cover the main substantive family law areas depending on what you are looking for: the governing laws; divorce; financial aspects including remedies; the Hague Convention 2007; the Lugano Convention; private children law; public children law; domestic violence; the service and the taking of evidence, Alternative Dispute Resolution (ADR), and legal aid; and potential areas of EU/UK future co-operation in the post-Brexit era.

When we woke up early on that morning of Friday 24th June 2016, many of us were looking at a most uncertain future. Hodson's "Family Law Leaves the EU" bridges an important gap for family law practitioners as we grapple with the post Brexit era whilst fighting a world pandemic. Thank you.

Family Law leaves the EU: A summary guide for Practitioners is available now from **www.lexisnexis.co.uk**. ■

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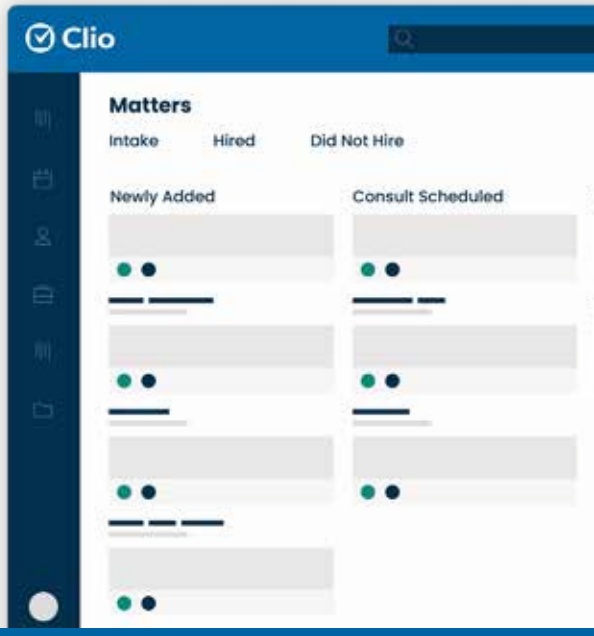

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*Statistics taken from Clio's *Legal Trends Report 2020*. 26% revenue increase observed in August 2020

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