THE Bill OF Middlesex

THE OFFICIAL JOURNAL OF THE MIDDLESEX LAW SOCIETY | **MARCH 2021**

The season is changing

- Gender-Equality and Economic Recovery
- Court in the age of Covid
- Brexit and Security
- Unprecedented Times?

Middlesex Law Society


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Miles Sriharan

President's Report

MARCH 2021

I have taken over the mantle of the Presidency of Middlesex Law Society in a year of crisis, being the pandemic ("Wartime" in the words of the Prime Minister). First and foremost, I give full credit and gratitude to my predecessor President, Ms Alberta Owusu-Tevie. Alberta served two full years and more. Following her stepping down, I hope to build on the good work she did. I know hers will be a hard act to follow because of her experience and seniority. I view this opportunity as a privilege to serve the Society and the profession at large. I gain strength by having the support of more experienced members such as Michael Garson (TLS Council Member) and former MLS Presidents Maralyn Hutchinson and Maurice Guyer. Their presence and input will improve my confidence that I can fulfil the tasks of navigating the Society and achieving our goals during my tenure.

With God's blessing, and the fantastic work of the NHS, the vaccination programme has given a light at the end of the tunnel to the people of this country. The legal profession kept the light burning without being blown out. Many firms in our constituency kept offices open whilst others continue to provide an excellent service working from home. In Conveyancing, the market did not fall or crash but kept the work going in residential and commercial transactions. In litigation, the vulnerable and deserving people are being served, Courts are functioning, members of our profession, Solicitors and Barristers kept the Courts functioning and the rule of law is being upheld without a sign of anarchy in our country (the country which gave the Magna Carta to the world). Therefore, I urge all the members of our profession to be proud and as my father always says, *"We lawyers do not undergo hardship and suffering, but we* ***overcome struggle and hardship.****"*

The distraction of Covid has meant we have forgotten the implementation of Brexit and we are now free to do trade deals and business with all the nations in the world including our neighbours and partners being the European Union. I am confident that our country will prosper in the future and better times are coming not only for business and markets but also will bring prosperity for the Legal Profession. The speed of the vaccination programme covering all vulnerable people first, the Government putting its arm around the people in their difficult times giving all the financial supports, such as furlough schemes, self-employed grants, business grants, guaranteed CBil loans and Bounce Back loans, the stamp duty holiday, which is assisting first-time buyers and in turn Conveyancing firms all over the country, have in my opinion become a front-line model in the world for other countries to admire. That gives me the hope that growth and prosperity is around the corner. I urge all our members to gear up, invest in your Firms and be ready to enjoy the prosperity. This is my vision for our Profession for the next two years.

For our Society, we have survived during this pandemic and we must now activate and increase our activities in the coming years. I urge all the committee members who are active or dormant, to be pro-active and commit to the Society. We have to serve our members to the maximum by offering a helping hand whenever they need it in these times more than ever and to increase and support the knowledge base by offering regular seminars and courses.

This is the time to look forward with hope and encouragement of what is on the horizon. I therefore call upon all members to take part in our future activities, educational courses, and social functions which we will notify to you. We actively encourage you to send us articles, anecdotes, campaign issues, subjects for future seminars and anything else law related – either myself or Maralyn Hutchinson.

Thank you all and may your God bless you and our Middlesex Law Society. ■

Miles Sriharan
President

Editor's Notes

Greetings from the Editor's office. The sunshine is with us once more and we are all hopeful that later this year our lives may be free of lockdown limitations and we can get on with the new normal, whatever that holds for each of us.

In this issue, we offer a range of articles from a range of practitioners as they relate their lockdown experience and how it has affected their practice and how they have managed to cope with the changes imposed on them.

One of the emerging trends of 2020 was the resurgence and increase in domestic violence and we have been pleased to give publicity to Hillingdon Women's Centre and specialist Counsel as they highlight their involvement in this coalface area of the law. It does not get more real than this.

As ever, the articles from our Council Member Michael Garson are of high quality, timely and direct readers attention to the important issues which should resonate with all practitioners.

We want your feedback on any aspect of the Bill, so do email us or your Council Member with ideas for future events or meetings, problems, issues, topical information about changes in your firm, matters of concern you would like raised in Council or with our local MPs.

Are you a budding author or photographer or artist? Do you set crosswords, quizzes or questions for fun? If so, please contact me as we would like to publish more from our readers and members. Do you have a noteworthy legal ancestor or was a predecessor in your firm unusual, important or eccentric? Stories and anecdotes to me please.

We are considering running a profile of a Middlesex Law Society member – if you would like to be considered to answer a light hearted set of questions, please contact me or tell me about someone else you know that we could approach and why that person should be featured.

I look forward to hearing from you and thank you in advance for your support. With best wishes. ■

Maralyn Hutchinson
Acting Editor
Middlesex Law Society

The Bill of Middlesex *recommends*

Podcast: Lady Hale talks to Sally Penni, barrister and founder of Women in Law UK

- **Talking Law with Sally Penni: Lady Hale (libsyn.com)**
  Baroness Hale of Richmond's illustrious career includes becoming Britain's first female Law Lord, the first woman to serve on the UK Supreme Court and its first woman President. In this episode of Talking Law Lady Hale discusses the very high-profile case of the Proroguing of Parliament in 2019, how it feels to be an icon, and even her trademark spider broaches.

Nature / History

- **Blair Castle (digitalvisions.uk)**
  There's a virtual tour of the stunning Blair Castle and grounds in Pitlochry PH18 5TL which you can enjoy from your sofa. The tour enables you to go inside the hall, stairs and some rooms. You can read about its history here: History of the castle – Blair Castle (**blair-castle.co.uk**)

Books

- **Those Who Are Loved by Victoria Hislop (goodreads.com)**
- **The Mirror & the Light (Thomas Cromwell, #3) by Hilary Mantel (goodreads.com)**

Streaming Films

- Misbehaviour (2019)
  Misbehaviour review: Miss World drama fails to keep its feminism intersectional | The Independent | The Independent
  The film is based on the true events from the 1970 Miss World contest in the Royal Albert Hall. A group of women plan to disrupt the event with long lasting impact.

Music / Art

- The Metropolitan Opera on Demand: Fantastic reviews of Philip Glass's Akhnaten (and Egyptian Pharaoh who attempts to change society) **Met Opera on Demand**.
- Cocktails at the Frick Museum: short talks about individual paintings and a suggested drink! **Cocktails with a Curator | The Frick Collection**

Michael Garson

Council Member round-up

By Michael Garson

There have been significant developments taking shape over recent months and more are expected as we start to be released from the pattern of working from home. I will touch upon a few of the current topics:

Qualification
You may have read that the new SQE is proceeding and it was recently confirmed that QWE – 'qualifying work experience' – will require certification of time spent working on the part of employers but no assessment of capability is required. This is bold change signals SRA confidence in the sufficiency of their new Part 1 and Part 2 final examinations. The solicitors' market may expect a tide of new entrants who could provide limited legal services as freelancers where they cannot find employment. They will need to help to adjust to the reality of practice. One only has to read the SRA's published list of enforcement decisions each month with fines up to £2000 to recognise the number of young respondents who appear to be poorly trained and badly supervised. Recent cases coming to the disciplinary tribunal show that some have little understanding of professional ethics and the boundaries to professional conduct. It would be seriously damaging for the reputation of the profession if SRA admit a host of new solicitors only for this to be followed by a steady flow of strikings off at the tribunal a few years later. Unfortunately, during the interval between the misconduct and enforcement there is risk of harm to members of the public.

SRA Enforcement
SRA have recently published a report on its new enforcement policy which highlights the focus of risk and warnings and is an interesting read – **www.sra.org.uk/globalassets/documents/sra/research/upholding-professional-standards-2018-19.pdf?version=4af086**.

Transparency Regulation
It has also published a one year review of its transparency rules which indicates its ongoing monitoring of firm's web sites and enforcement in this area – **www.sra.org.uk/globalassets/documents/sra/research/year-one-evaluation-of-transparency-rules_research-report.pdf?version=4a91a4**.

In addition the legal press has recently highlighted cases where fines have been imposed for breaches of the current transparency regulations. There will be more to come as both the Competition and Markets Authority (CMA) and the Legal Services Board (LSB) have indicated the move to the introduction of more requirements specifically in the area of quality indicators and rating by digital comparison tools.

Continued on next page

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There is no agreed definition of what constitutes 'quality' and more uncertainty will follow in this new area as SRA roll out new regulations to fully implement the CMA 2016 and 2020 recommendations after its three month review – **www.gov.uk/cma-cases/review-of-the-legal-services-market-study-in-england-and-wales**.

Anti-Money Laundering
On 20 January we received the latest Legal Sector Affinity Group guidance relating to the money laundering regulations of 2017 and 2019 – **www.lawsociety.org.uk/en/topics/anti-money-laundering/anti-money-laundering-guidance**.

This comprises a virtual rewrite of the 2018 guidance and is over 200 pages!

It is worth bearing in mind that where there is an alleged infringement – 'You may be asked by your regulatory body to justify a decision to deviate from this guidance.' It is essential that you review your policies controls and procedures as well as carry out an annual audit.

Although the policy objectives may be supported you may consider the unlimited scope of the legislation and the expectations of the legal profession to be extremely burdensome. The current regulations do present a blunt instrument where one size is taken to fit all.

LSB Plan
The recent Legal Services Board consultation closed on 5 February – **www.legalservicesboard.org.uk/news/lsb-invites-contributions-to-a-new-strategy-for-the-legal-service-sector**. The Law Society response was debated at a meeting on 27 January and is here.

There is some difficulty in aligning with the LSB attraction to spending money on technology rather than confining itself to the areas which are firmly within its terms of reference – overseeing performance of the SRA and other legal regulators. There is lack of consistency between the 9 regulators the LSB supervises and perhaps more could be done to reinforce public confidence and understanding of where legal regulation applies. It seems questionable whether the work proposed in relation to unregulated organisations is designed to reinforce the importance of regulated providers rather than increase the LSB sphere of influence.

The LSB wish to continue to put much effort into exhorting lawyers to solve the issue of 'unmet legal need'. They come late to this party as they have done little about 'access to justice' in the face of reducing legal aid since 2006 and the Carter inspired reforms – **https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/272392/6993.pdf**

Their solution is to increase transparency requirements thus following the views of the CMA. This compounds the fundamental confusion of 'increased competition' (which reduces price) and 'availability of service'. There is a failure to recognise that those who have no money to pay for legal services will not be able to find help for free from the market. There is a belief that greater transparency will magically produce affordable services.

Would anyone who has any views they would like to discuss please contact me.

COVID-19 and Recession
In addition to the many COVID-19 related issues continuing into 2021 the profession seems headed for another tough year with a high cost to renewal of professional indemnity insurance. Renewal is the passport to practise and despite an increase of between 25-35% in premiums in September 2020 and difficulties for some conveyancing firms in finding cover, very few firms have actually closed. There are a number of reasons for this and many suggest that risk exposure has been increased with firms reducing top up cover or taking out loans that will need to be repaid. It is possible that a wave of closures will come later in the recession and follow the end of lockdown. Meanwhile the insurers are indicating that pressures remain, and so premiums are unlikely to fall over the next year.

The Membership Ballot
Recently some of you, albeit not many, voted in the ballots issued by the Law Society about changes to the future composition of the Council. The results mean that over the country there is a reduction in the number of geographic seats meaning that constituencies will increase in size. There will be a corresponding increase in specialist practice seats and seat for groups. The precise electorates and voting lists for elections for these have now to be worked out.

London is effectively being divided into 4 regions and most of our existing members will fall within the new North West area as the constituencies of Central and South Middlesex and North Middlesex will cease to exist.

When it comes to the next council elections for the new seat in 2022, no person will be entitled to stand for election if they have served for more than 12 years. As I will not be standing in any event, if anyone is interested in the work of Council and learning about how the governance works I am more than happy to provide the background information you may need in order to assist your efforts to become an effective member. ■

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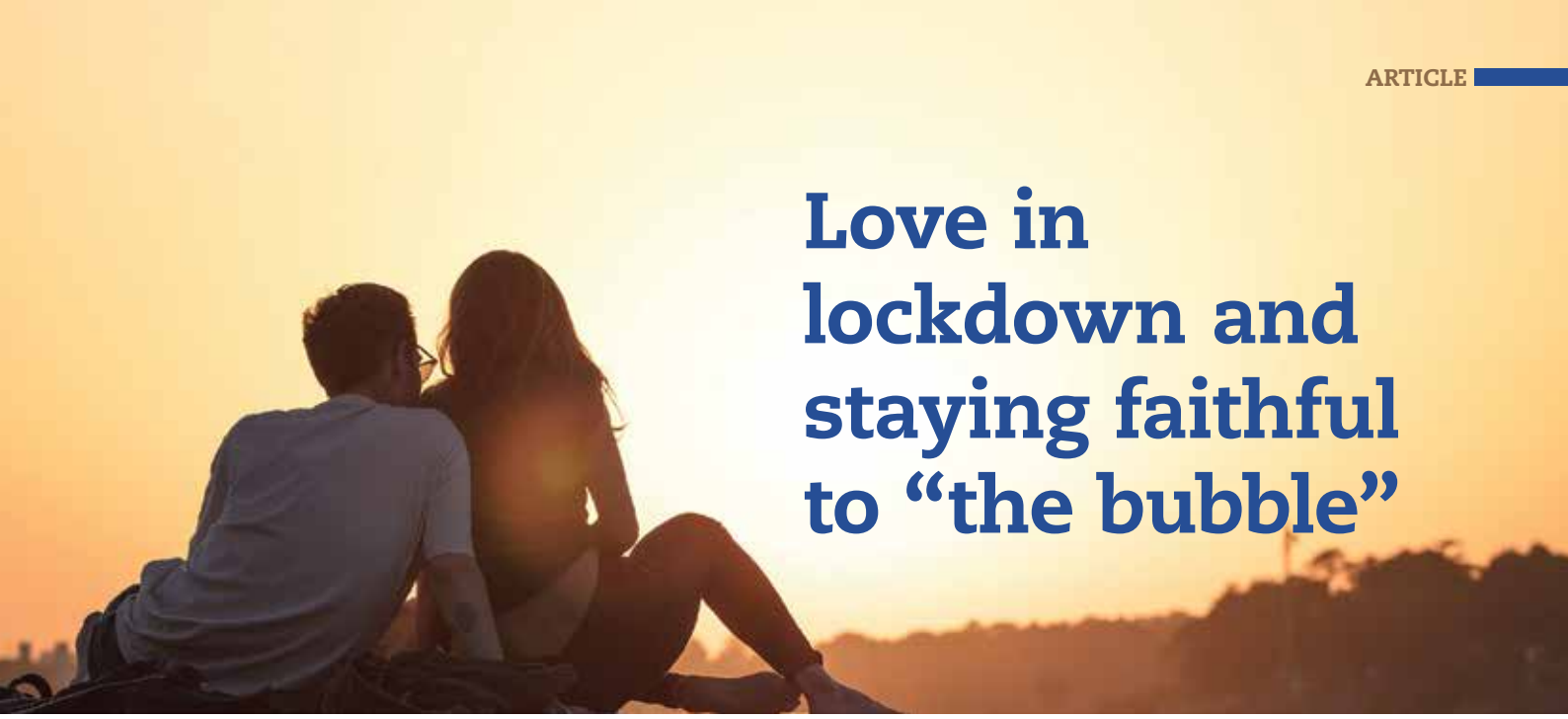


Love in lockdown and staying faithful to "the bubble"

Working in family law allows me to have first-hand exposure to the well-known nickname given to January, which is "divorce month".

However, at the start of the pandemic lockdown in March 2020, family matters flourished and continued to do so throughout the year. Each lockdown has been a testing period for many families and divorce cases remain high as couples reach their limit trying to live under the same roof, especially in the ongoing restrictions which make it feel much longer than before.

We have come to the unfortunate realisation that domestic abuse notoriously increases in lockdown as victims are confined to the homes they share with their perpetrator. Children disputes also increase as contact centres repeatedly shut down and mixing households has become a thing of the past. The only avenue available for couples to maturely barter is through solicitors who now operate from their homes. Whilst the court system has managed to play catch up with the virtual world, case management and the listing of hearings took an unsettling turn at the start of the first lockdown due to endless cancellations of face-to-face hearings.

This has now caused a frustrating backlog and we are often told to wait 11-weeks if not more from the date of receipt to hear any progress. Cases are listed months apart and remain subject to the nerve-wracking uncertainty, especially for the private client, of not having the case heard as judicial availability becomes scarce. I can illustrate this as one of my matters required an urgent hearing to deal with interim contact arrangements and the closest listing was some 6 months away. Whilst we managed to move the hearing date closer date in the end, the exchange of emails to get to that result was endless and there remained a lot of indecision about which cases could be moved around. This and the many other new challenges the pandemic has brought us is something we have just had to get used to.

Work aside, as 2021 Valentine's day has been and gone, as solicitors even we are entitled to a little romance when away from our desks which have so easily made their way into our living rooms. It is fair to say that this February 14 was like no other. Everything turned virtual and "hands, face, space" is everyone's daily mantra. Even though fancy arrangements at our favourite restaurant were not possible, we did try to enjoy the Valentine season regardless of being in a relationship or not. Self-love and mental health awareness are more important than ever as cases of the new variant virus have surged and turned every hospital across the UK into warzones. There is arguably no room for mental health as we are all expected to keep positive for not being positive. Reaching out to friends and family whilst in lockdown is essential as we enter more and more uncertainty. Work-life balance cannot go ignored, especially as it is now more challenging to escape the offices we have set up at home – arguably very easy to let the hours run away.

The resulting restrictions from the pandemic have certainly been necessary for the wider public health, however, it is still important for everyone to enjoy some type of normality with friends and loved ones. The virtual world has offered a very helpful hand and Zoom meetings alone contribute towards at least 300 million daily interactions, compared to just 10 million in December 2019. The dating world is officially virtual, unless one enjoys entertaining the idea of love at the first 2 metre distance whilst hiding behind a mask. The idea of long-distance relationships is something no longer considered a mystery and even though the pandemic has resulted in a lot of families being torn apart, technology has allowed people to come together, whether it's been small social interactions or large-scale gatherings such as Zoom weddings.

Science is still trying to win the battle and it is of some comfort to know that millions of people have been vaccinated since December 2020.

In the meantime, all we can do is continue keeping safe as best as we can. The March 2021 anniversary marked a whole year since the pandemic sent the UK into lockdown, and Valentines presented an opportunity to think outside the box about how we can treat the person we love when all designer shops, restaurants and entertainment are shut. Love and creativity are not shut down, so don't let the pandemic prevent you from spoiling your nearest and dearest? ■

Marilyn Willows
Partner
Desor & Co

Gender-Equality and Economic Recovery

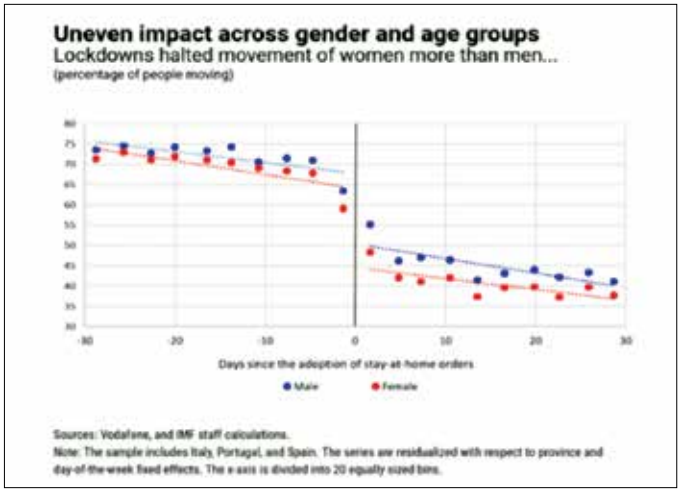
Vicky Pryce, Chief Economic Adviser and board member, Centre for Economics and Business Research, examines the impact of COVID-19 on the progress of gender-equality and argues that economic recovery for everyone would be helped by free childcare for under-fives. In the long-term it would pay for itself.

Vicky Pryce

The case for targeted support for women to ensure they can return to work and contribute to the economic recovery, when the crisis comes under control, is overwhelming. According to the UN women represent globally some 70% of health workers[1]. In the UK, women dominate the front line of the national health service and care sector and are therefore more exposed to the disease itself. At the same time, they have been amongst the worst affected by job losses. Globally, the estimate is that women are almost twice as likely to be losing their jobs during the pandemic. There is a real danger that any progress we have seen in gender equality will be going backwards due to COVID.

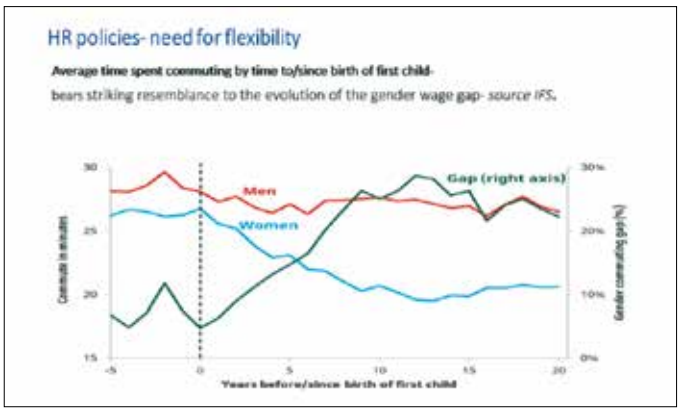
Short-term and long-term consequences

The adverse short-term consequences may leave a trail of longer-term issues that will need to be addressed by policymakers around the world. But the problem is not confined to developing countries. An IMF study using anonymised Vodaphone and other data in Italy, Spain and Portugal to track mobility of people, since the pandemic, found that though mobility of both men and women dropped substantially as countries got closer to and then into a lockdown, that of women dropped even more as the chart below, which appeared in the IMF's World Economic Outlook in October 2020 indicates.



The question of course is how quickly that will get reversed. If not, we may well end up post-pandemic with an even bigger pay gap than before. We know that, during normal times, the pay gap starts to widen after women have their first child and continues to widen for a good 12 years thereafter. What is less well-known is that this is mirrored in the widening gap between the commuting distance to work between men and women, as women search for jobs closer to home that offer greater flexibility and fit with their childcare arrangements, for which they still are the main ones responsible in the household.

This is shown in the chart below produced by the Institute of Fiscal Studies. What it shows is that the more the radius within which one is searching for jobs must be shrunk in size to ensure there is good proximity with school/nursery/home, the more the pay gap between those not constrained by this – mostly men – widens.



The result of course is that women who assume the main childcare responsibility are penalised financially for the flexibility they need, particularly if they also end up working part-time, as 42% of working women in the UK do. The gap between full-time men's hourly wage and part-time hourly wage is as high as 34%. Not only are women therefore on average poorer during their lifetime than the men but also suffer in relation to benefits on retirement. By the time a woman in the UK reaches pension age for example, her pension wealth on average is about a fifth of that of the average man.

Extra childcare responsibilities major disincentive to continue working

COVID-19 can only have made that worse as health concerns and childcare issues intensified during the period of lockdowns and other social distancing restrictions. Though schools in much of the UK have stayed open during the latest lockdown uncertainty over future course of events may again hamper women's willingness to return to work. A survey for Social Europe in June 2020[2] showed the extra stress that women with children have experienced compared with that of men during lockdown has acted as a disincentive for women to carry on working – and many of these women may find it difficult to re-enter the market when things start getting back to 'normal'. According to the report a greater percentage of women than men, working from home, experienced work life conflicts always or most of the time. It was almost twice as difficult for women to concentrate on their job because of family responsibility, they found it harder giving enough time to the job, were too tired after work to do their normal household chores and worried more about work. Mothers in the survey were 47% more likely than men to have either lost their jobs or to have quit because of the crisis. At the same time, research showed that during the lockdown the lowest paid down the earnings scale in the UK were also those with the lowest share of tasks that could be done from home[3]. As women tend to be over-represented on the lower paid occupations, it is no surprise that they would be disproportionately affected.

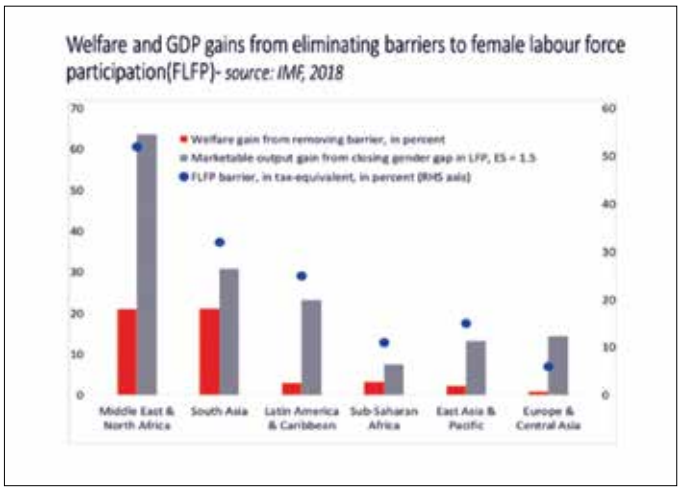
This is confirmed by an LSE study[4] for the UK which showed that women and those from disadvantaged backgrounds were amongst those groups most at risk of losing jobs or having a reduction in pay during the pandemic. A survey by the law firm Shoosmiths found that during the pandemic while 75% of men had their furlough pay topped up by their organisation, only 65% of women did, possibly reflecting the areas, such as, hospitality where many women work, and which has faced greater difficulty during the pandemic.[5]

What next?

Even if women do return to work, they may well be faced with more problems in terms of caring responsibilities. In the UK, there are concerns that some 10,000 childcare providers may not be able to carry on after the crisis and some 150,000 nursery places may disappear[6]. The cost and availability of childcare particularly for pre-school children remains a major issue across the world, working as an obstacle to women's proper participation in the workplace. From an economic perspective, it adds a clear market failure to many others that still exist, such as, information asymmetries and conscious and unconscious biases. This deprives the economy of skills and therefore productivity and prosperity and restricts growth potential. This calls for extra attention to be placed in both the provision and cost of childcare, as I have argued in my book[7]. Free childcare for the under-fives would, in the long-term pay for itself, in more tax collection, faster growth and a better use of skills across the economy translating into higher productivity and competitiveness. In the interim any move to make childcare costs tax deductible would certainly be a move in the right direction.

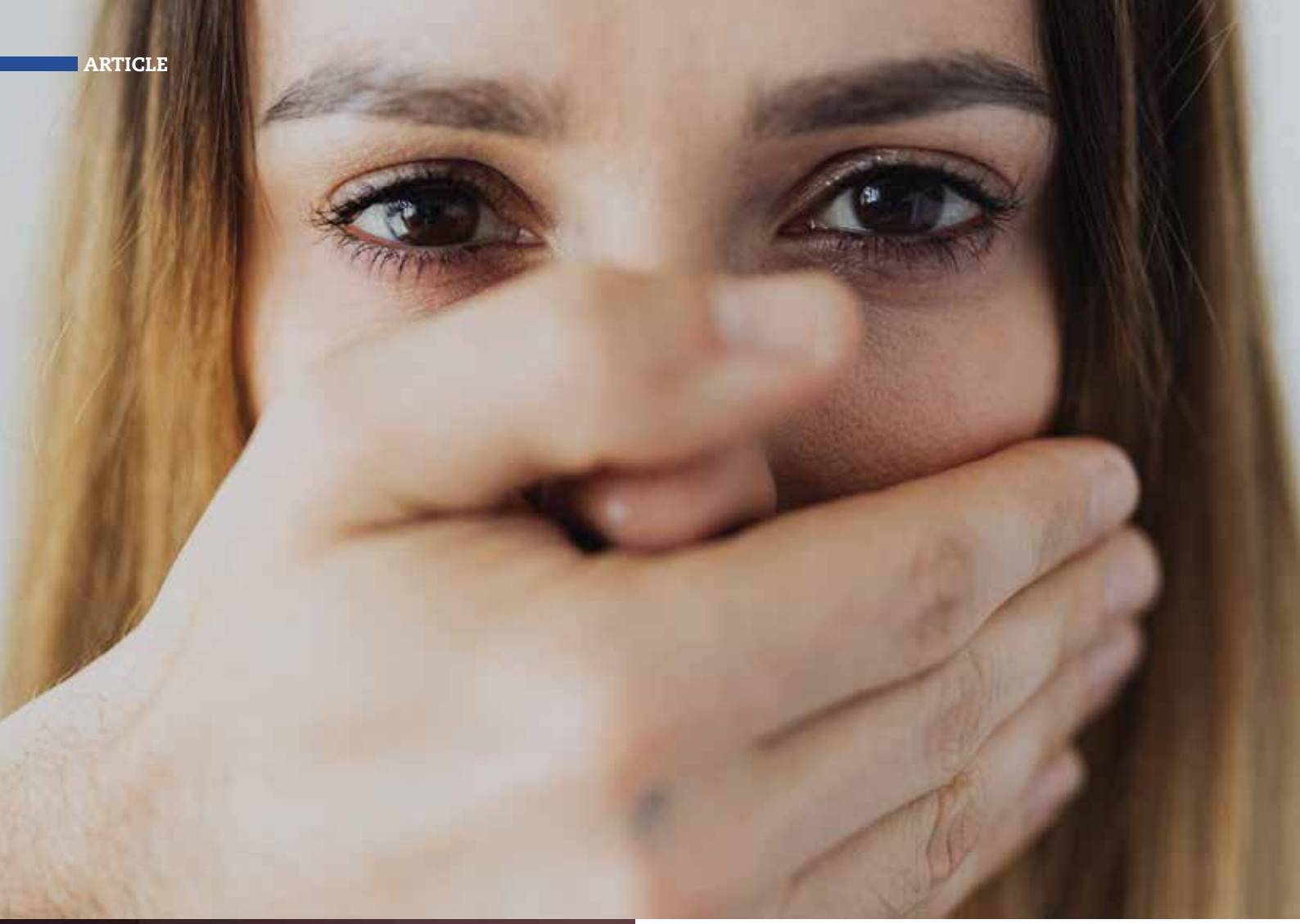
As an IMF study has indicated, the removal of obstacles to women's employment results in substantial growth and welfare benefits as illustrated in the Welfare and GDP chart.

So, the call for action is clear. Women are in a majority and yet the enormous sums spent by governments to support the economy, during the crisis, have hardly been directed at the problems they face. If not corrected this will be to the detriment of the economy as a whole and to the chances of a strong and sustainable post- COVID recovery. ■



Vicky Pryce is Chief Economic Adviser and board member at the Centre for Economics and Business Research, a former Joint Head of the UK Government Economics Service and author of 'Women vs Capitalism', (Hurst Publishers, 2019). She is also visiting Professor at Birmingham City University and some of the themes in this article draw from and expand on a blog she did for BCU's Centre for Brexit Studies in November 2020.

1. ***https://www.unwomen.org/en/news/stories/2020/9/feature-covid-19-economic-impacts-on-women***
2. ***https://www.socialeurope.eu/covid-19-fallout-takes-higher-toll-on-women***
3. ***https://voxeu.org/article/large-and-unequal-impact-covid-19-workers***
4. *LSE study: 'Generation COVID: Emerging work and education inequalities'* ***https://www.lse.ac.uk/News/Latest-news-from-LSE/2020/j-October-20/One-in-10-young-people-lost-their-job-during-covid-19-pandemic***
5. ***https://www.shoosmiths.co.uk/insights/articles/covid19/covid-19-and-its-impact-on-women-at-work***
6. ***https://centreforbrexitstudiesblog.wordpress.com/2020/10/30/we-rightly-worry-about-the-young-but-what-has-covid-done-to-womens-gender-equality-progress/***
7. *Women vs Capitalism', Vicky Pryce, Hurst Publishing, 2019*



The Shadow Pandemic:

Domestic Abuse during lockdown

By *Fran Northcott*

As the Project Coordinator for Hillingdon Women's Centre, Fran oversees the Workplace Safespace programme; a community-based employer's initiative on Domestic Abuse. Fran is currently studying for a Master's degree in Gender, Culture, and Media at Goldsmiths University.

Domestic Abuse is defined by the Home Office as any incident or pattern of incidents of controlling, coercive, threatening, violent, and/or abusive behaviour between family members or intimate partners over the age of 16. Domestic Abuse exists across all sectors of society and identity, and is frighteningly common, with 1 out of every 4 women experiencing it at some point in their lives.

COVID-19 and the resulting lockdowns and restrictions have been necessary for the wider public health but spell disaster for those experiencing Domestic Abuse who live at home with their perpetrator. Domestic Abuse cases have increased dramatically since March 2020 when the first national lockdown was introduced; during the first three months of the lockdown more than 40,000 calls were made to the National Domestic Abuse helpline[1]. At least 35 women were killed by their partner or ex-partner during the period between 23 March 2020 and the beginning of July[2], and with restrictions continuing and an uncertainty as to when normalcy will return, the so-called Shadow Pandemic of Domestic Abuse continues to flourish.

Home is not a safe place for everybody. The stay at home and social distancing orders implemented in March 2020 forced people to stay in; an appropriate move to combat the risk of transmitting the virus, but devastating for those who live with their perpetrator. Not only is a victim-survivor suddenly trapped with their abuser – the home isolation offering more opportunities to inflict violence – but these measures allow perpetrators to act without scrutiny or intervention. The Office for National Statistics reported that 1 in 5 offences recorded by police during and immediately after the first England and Wales lockdown involved Domestic Abuse – And these are only those instances which are reported; with victim-survivors shut in with their abuser and under near-constant supervision, there is less opportunity for them to reach out and seek help.

The consequential economic uncertainty of the COVID-19 pandemic has exacerbated class inequalities and increased the level of unemployment. The resulting anxieties and stress of experiencing a job loss or feeling insecure about financial matters increases the likelihood of existing tensions between family members and partners becoming abusive. Additionally, victim-survivors who are made redundant may be financially dependent on their abusive partner or family member, which makes the situation even scarier and more daunting to leave, even more so if there are children in the household. There are a multitude of reasons why someone may not leave their perpetrator, and COVID-19 has amplified all of these.

Hillingdon Women's Centre is a safe space for women who are in need of support. Based in West London in the borough of Hillingdon, our main services are related to Domestic Abuse. The centre's work is trauma-informed and built upon the principles of sisterhood, empowerment, practical support, and advice, to enable women to reach their full potential. We have seen first-hand the impact of women trapped at home with their abuser, and since the pandemic have appointed a new Domestic Abuse case-worker and partnered with two other specialist organisations to deliver an employer's initiative on Domestic Abuse.

Workplace Safespace is a Ministry of Justice-funded initiative delivered online by Hillingdon Women's Centre, The Sharan Project, Belina GRoW, and Hillingdon Council, which began in September 2020 and which ended end in March 2021. The community-based initiative provides free specialist training and consultation to local businesses in and around the London Borough of Hillingdon in order to equip employers and their staff with the skills and knowledge to prevent and tackle Domestic Abuse.

The overarching goal of the Workplace Safespace initiative is to send a strong and unmistakable message that all forms of Domestic Abuse and Gender-based Violence are unacceptable. We are striving to achieve this through developing a coalition of local Hillingdon organisations and supporting them to develop an effective Domestic Abuse policy; training staff to recognise the signs of and reduce the risks related to Domestic Abuse; and guiding employers in establishing both physical safe spaces in the workplace, and digital safe spaces online, for disclosures of Domestic Abuse.

The Workplace Safespace programme consists of three training modules and an optional consultancy phase. Module 1 looks at defining Domestic Abuse, exploring the differing forms it can take, t he warning signs, the effects it can have, and establishes the employer's role. Module 2 investigates harmful practices, Honour-based abuse, the impacts and risks of these, and how to address them. Participants are also guided in how to create the right environment for a Workplace Safespace.

During the consultancy phase, organisations are guided in how to create, or update an existing, Domestic Abuse policy and in how to establish a physical safe space for disclosures at work. Since lockdown measures and restrictions are ongoing, this area has now been developed to discuss online and virtual alternatives for safe spaces for employees while they work from home or are furloughed. Training participants are also encouraged to attend monthly networking events featuring guest speakers to expand their knowledge on different perspectives and marginalised groups' experiences with Domestic Abuse. Module 3 contextualises Domestic Abuse within the Hillingdon borough and explores issues such as gaslighting, victim-blaming, and male Domestic Abuse, and provides an opportunity for organisations to ask questions and discuss their Workplace Safespace experience. To date, the project has trained nearly twenty local businesses and, consequently, will benefit approximately 890 employees.

Initiatives such as the Workplace Safespace programme ensure an established and sustainable infrastructure to support employees experiencing abuse now and in the future. There are multiple attributing factors to the increase in Domestic Abuse during lockdown and restriction measures; here I have only touched on a few, but it is vital that we all understand the sheer scale of this issue and recognise that Domestic Abuse is everybody's business. ■

www.hillingdonwomescentre.org
www.workplacesafespace.org

1. *Townsend, Mark 'Shock new figures fuel fears of more lockdown domestic abuse killings in UK' 15 Nov 2020 in The Guardian*
2. *Counting Dead Women* ***https://kareningalasmith.com/counting-dead-women/***

What's your Plan?

Over the last 12 months the three periods of lockdown have been a cruel and uneven intervention and some will emerge having prospered whilst others may not.

If you decide to close or cannot obtain professional indemnity insurance on acceptable terms that means facing the issues of an orderly exit. The most exceptional cost may be the premium for run off insurance that will become payable to your existing indemnity insurer upon ceasing to practise and this may cost for six year protection between 2.5 and 3.5 times your annual premium.

There is an extensive list of matters that need to be considered when closing down a practice. The matters that need to be dealt with are extensive and potentially fraught with danger include:

People – employees, clients, lenders, suppliers intermediaries; **Contracts** – bankers and loans, premises subscriptions; **Professional** – regulators SRA and others, Client account audit, PII insurers, ICO and Land Registry.

It is a difficult and stressful activity as closure can be mandated in a matter of weeks and months where the minimum terms insurance cannot be secured in time. This contrasts with the many years that it takes to build up a practice. Even when the exercise has been completed – is it ever completely 'done'? There is a long tail to such matters as safe custody or return of deeds and documents and retention of records (e.g. for money laundering).

The scope of matters that need to be dealt with are not greatly different from those managed, (usually over a more extended period of time) by firms that start up or restructure. In preparing to deal with a merger the same questions need to be addressed though there may be a good deal more flexibility as to how they are handled and the time span for doing so.

The close down, sale and merger routes are heavily overlaid by factors involving personal emotion, prejudice, predisposition and often very fixed ideas. In this context, particularly where situations are unplanned, it is important to obtain support. Help can be obtained through audit, outsourcing or professional representation and through the various pastoral care organisations – Law Care (**www.lawcare.org.uk/about-us/supporting-solicitors**); the Solicitors' Charity (**thesolicitorscharity.org**) or Solicitors Assistance Scheme (**www.thesas.org.uk**).

The key to finding a pathway is the ability to sound out each difficult decision with an objective listener. By doing so problems that seem large or intractable may often reduce or resolve. The more important issues tend to come to the fore.

In the current climate, the financial outlook for many firms will at best be uncertain. There are obvious problems with continuing which may be posed by personal situations, financial inactivity by clients or client failure, financial failure, difficulties in working and falling into loss.

During 2020, many issues could be deferred through a variety of forms of government funding and relief. These, plus loan assistance, may have masked weaknesses and enabled bills to be paid – of which professional indemnity insurance premiums may be the largest, along with wages and rents paid or rolled over. The timeframe for unwinding from the economic pressures arising from COVID-19 has not yet been determined but the moment of reality will arrive.

The question is how to prepare. Essentially, the viability of an ongoing firm or closure of an existing firm or restructuring and recovery of a firm needs to be focused by its business plan in four main areas:

- Core service and profitable client market
- Governance structure for all contracts,
- Controls ensuring cash flow from regular billing of work in progress, disbursement and bill recovery, and long-term funding.

The key question to a plan will be whether if you ask all partners to state the main points of the business plan will they all give the same answer with the same priorities. There has never been a more important time to ask the question and ensure that differences of view are resolved. ■

Michael Garson
Council Member & Member of Professional Indemnity Insurance Committee

Court in the age of Covid

In common with the rest of the population, advocates have had to get used to conducting business online. In our case, this means conducting court and tribunal hearings by video and telephone. Online hearings are heralded by some as 'the future' and 'the new normal'. One year into this collective experiment, I remain sceptical. Although there are some advantages to online hearings quite apart from the practical need to deal as best we can with the pandemic, there are drawbacks, some serious, some perhaps less so.

In the latter category, firstly, there are the common or garden technical difficulties. I'm sure readers will be familiar with the sensation of attempting to piece together a recognisable human face from a seemingly random assortment of pixels. In similar vein, I would bet that the majority of conversations now consist of participants shouting 'Hello? Can you hear me?' at each other in increasingly despairing tones.

Secondly, there is the worry that follows from opening up one's living space to the public gaze – and the occasional pangs of envy at the living spaces of others., I'm sure I'm not alone in having had occasional panics over whether the country's court users can see old clothes and teacups strewn over the background. On the other hand, I expect we've all had opponents who appear to live in mahogany rooms decorated with first edition books, with the odd Stradivarius or original Rembrandt to add to the décor.

Although the above may be whimsical or frivolous, there are, as noted above, serious downsides. Those without available workspace, or those without reliable broadband connections, face being significantly disadvantaged. The relative democracy of the courtroom does not apply where one participant is using ultrafast broadband on an expensive desktop, and others are desperately hoping that the battery on their ageing smartphone holds out. I recently had two asylum hearings in succession which had to be adjourned when the vulnerable appellants were unable effectively to log in (and to stay logged in). Although we all understand the need to adapt to the circumstances, there is a danger that court users – particularly those who are impecunious and/or vulnerable – are excluded by this march to adopt online hearings.

There is a further, and perhaps less obvious, drawback to the online hearing. The adversarial system in use in England and Wales relies to a large extent on trust between the parties. That trust is developed by conversations at court – and at public events – among advocates, solicitors, and judges. The ability to trust an opponent's plain dealing must surely have saved untold time and associated cost, in ensuring that trials and disputes proceed efficiently, without the need to litigate every last point, regardless of whether it is in dispute. While I have no doubt that such trust and comradeship can be fostered in a world of online courts, I am sceptical that it can be fostered so efficiently, and to the same extent. The virtual world may have a tendency to leave the population atomised; atomisation of advocates and judges in an adversarial system of justice would, in my view, be very dangerous indeed.

We are doubtless only at the beginning of the use of virtual hearings; it seems likely that the technical difficulties will be mitigated as experience develops. As regards the principled objections to the growth of online courts, it is submitted that – should in person hearings come to be regarded as an outdated relic of the pre-pandemic age – something of immense value would be lost. ■

Gary Dolan
Drystone Chambers

Brexit and Security

Conducting a practice that crosses over Immigration and Extradition has given me a real time view of the impact leaving the European Union has had on the security of the United Kingdom. It is unclear what effect a suffering economy, coupled with the need to increase spending on defence will have on national security. Brexit has created a deep uncertainty around the protection of the UK from general crime, terrorism and organised crime.

By doing immigration appellate work and prosecuting extradition cases, my practice requires me to be in the orbit of the Home Office, Government Legal Department, Crown Prosecution Service, National Crime Agency and general law enforcement. I work every day with these bodies in some form or another and therefore national security and the protection of our borders are at the forefront of my mind at all times.

I, like many in my corner of the profession, anticipated our exit from the European Union with mixed emotions made up of fascination, trepidation, and uncertainty. A lot of people in the lead up to 11pm on 31 December 2020 asked me what I thought would happen to extradition work and the conduct of cases under the European Arrest Warrant (EAW). At that time I was instructed by the extradition unit of the CPS to prosecute cases on behalf of requesting states at least three or four days a week. Those outside the extradition bar were curious as to what mechanisms had been put in place for after our departure. I had no clear answer because nobody really knew. We did not know what was going to happen or how we would deal with these cases till the eleventh hour. I was in court on 31 December 2020 as the last cases under the EAW came in. It felt as though we were crossing over into an unknown territory, grateful in the knowledge that at the very least the 'no deal' option had been removed from the table with the Trade and Cooperation Agreement (TCA).

One of the beliefs held by those who supported Brexit was that it would make us safer and give us more security. The extradition courts show otherwise. The Home Secretary has expressed confidence that the UK is safer out of the EU, however that is difficult to comprehend in reality when liaising with police officers and the National Crime Agency on a daily basis.

There is no reference in the TCA to 'mutual trust' as previously existed under the Framework Decision. As set out in the Universal Declaration of Human Rights and in the European Convention on Human Rights, cooperation between the UK and EU is based on 'the parties' and member states' longstanding respect for democracy, the rule of law and the protection of fundamental rights and freedoms of individuals.

So far, so good. In practice, however, from day 1 it was evident that cases were going to be chaotic and protracted. On 1 January 2021, the UK automatically forfeited its membership of Europol, Eurojust, the European Arrest Warrant (EAW) and the Schengen Information System (SIS II). SIS II allowed UK

law enforcement and security officials access to real-time information from member states. Prior to 1 January 2021, initial arrests on an EAW would take place either when police act on the EAWs themselves, on routine traffic stops or when arrested on domestic criminal matters. A simple check on someone would flag up that they were wanted by a member state and had fled their home jurisdiction, rendering themselves in effect a fugitive. A trip up to Westminster Magistrates Court that day or at least the day after would lead to the beginning of extradition proceedings.

The SIS II database which is the most widely used security system in the EU is a worrying loss. It provides information and real time alerts to police and border guards on criminal suspects, terrorists, traffickers and missing persons. We will only understand the full impact in due course, but the loss of SIS II is significant when considering that in 2020, UK law enforcement accessed the system 600 million times and now since having their access removed, crime agencies and British police have had to delete some 40,000 alerts for known criminals.

As an immigration practitioner I know very well that a prominent feature of most illegal immigration is the use of false documents and IDs by people who come into the UK through the assistance of 'agents". These 'agents' take advantage of people desperate to enter the country by creating false documents and facilitating illegal entries into the UK. The Home Office has indicated that there is a concern around this. EU nationals with a European ID card will not be allowed entry into the UK from 1 October 2021 unless they meet certain conditions. If none of the conditions are met it is feared that the risk that people will resort to document fraud and the creation of false national ID cards will significantly increase.

In the short term the lack of shared databases with the EU will undoubtedly increase the risk of national security threats. Brexit did not eliminate the ongoing threats to the UK from terrorism, financial crime and organised cross-border criminal activity. Cooperation between the UK and the EU remains essential. How quickly the Government can rectify this issue and set up alternative structures and mechanisms is anybody's guess.

Senior law enforcement and security figures have also expressed concerns about the loss of access to real-time data, and the impact this will have on tackling terrorism and organised crime. Sir Iain Blair the former Metropolitan Police has warned of this and has stated that the country will be less safe *'as we've lost full access to Europe-wide, real-time, interrogatable databases on criminal records, fingerprints, criminal intelligence'.*

Brexit and the concerns around security has meant that immigration and extradition proceedings have moved closer to each other and expertise in both fields will prove a useful tool. Deportation cases are expected to rise as EU nationals increasingly will become subject to deportation orders. Surrender arrangements between the UK and EU under the TCA in theory look familiar to the extradition arrangements before Brexit. In reality, timescales have slowed down and there are various challenges to arrest warrants and extradition proceedings that can delay cases significantly. What we now rely on is how cooperative the EU is with the UK and how well we develop our relationship with them.

Watching and waiting when talking about our security seems like a daunting future… we continue to do both. ■

Irene Sriharan
Immigration & Extradition Barrister
10 King's Bench Walk

To Ask or Not to Ask – that is the question?

Most lawyers tend to ask a lot of questions and:

- better understand their client
- build working relationships
- probe for evidence
- to test opinions
- derive an objective view – the truth?

Questions are a legitimate tool of the trade of all lawyers: prosecuting, defending, investigating, transacting and they are an important part of the service that solicitors are trained to deliver.

The ambit of questions in relation to Enquiries before Contract in conveyancing has been a prime growth area for decades and is a continuing source of difficulty. In the past Law Stationers published a variety of forms of enquiries before contract until curtailed by the development of the Law Society Transaction Forms in the 1990's. These were adapted and changed to meet the challenge of Home Information Packs and then republished with the development of the Conveyancing Quality Scheme in 2011(CQS) which adopted TA6 and TA7 for the sale of second-hand residential homes [the TA8 form being for New Homes].

It was felt at the time that subject to exceptional facts and circumstances, a standard set of enquiries should be sufficient to establish support for a report on title to property and offer sufficient protection for capital invested by a buyer or lender.

However additional questions abound as conveyancers identify all kinds of issues that might be irksome to a buyer – even if they do not affect market value. The time taken and burden of the additional work is expensive, and many do not feel it should form a necessary part of the legal work. To an extent solicitors are victims of their own success as the public recognise that the information provided through solicitor is more accurate than other sources.

The traditional principle of "Caveat Emptor" has to an extent been eroded by statute and regulation. In response to the Consumer Rights Act 2015 increased vendor disclosure is encouraged but, save in the case of fraud and deceit or what might be deemed to be a material omission or misrepresentation, the buyer still bears the risk of something not being as they might expect or wish. Even if there is a defect that should have been disclosed, the buyer has the burden of having to seek redress.

CQS requires firms not to raise additional enquiries unless necessary or driven by express client instruction. The TA forms identify the necessary scope of buyer enquiries and align to the main lender requirements. They include and are updated to include the following aspects:

- Matters that go to support title – such as questions concerning detail of boundaries, easements, reservations and restrictions;
- The history of planning and statutory consents, building control notices for alterations or extensions, and details of repairs and notices concerning amenity and safety;
- Issues arising from standard enquiries relating to statutory enforcement such as gas safety or asbestos reports;
- Disclosure of restrictions on amenity and enjoyment such as disputes and the actual or potential exercise of rights by or against the property owner;
- The structural integrity, soundness or sustainability of buildings, ground and air is more problematic and limited enquiries concerning flooding, Japanese knotweed or historic claims for subsidence have been included, though buyers are well advised to commission their own surveys, tests and reports.
- The identity of suppliers of utilities is arguably unnecessary but has been found to be convenient by purchasers and such information, because it passes through the diligence of lawyers, is considered to be reliable. Whether such information should extend to alarm systems is questionable but security issues arising from technology enabled utilities are of growing importance.

Further questions concerning burglar alarms and home electronics and the cost of parking permits are not welcome and rarely justified. In addition over the last few years it has become more common to receive from some firms a stream of questions that can be traced to the decisions in P & P Property Ltd v Owen White and Catlin LLP and Dreamvar (UK) Ltd v Mishcon de Reya [2018] EWCA Civ. 1082.

These are rarely justified and may indeed increase risks to those posing the questions.

It is clear from the Law Society Code for Completion by Post (**www.lawsociety.org.uk/en/topics/property/code-for-completion-by-post**) that the seller's solicitor is warranting the identity of the seller. Ordinarily It is therefore unnecessary for the buyer to second-guess or question the diligence that the seller's solicitor has carried out in relation to the identification of the seller as the person entitled to transfer title.

However, some buyer's solicitors, ever mindful of avoiding disputes and wasted time in complaints, clearly wish to 'feel the collar' of the seller's solicitor to ensure that the appropriate due diligence has in fact been carried out. Nonetheless this introduces as an additional risk that in whatever way questions are phrased, the answers are unlikely to be bullet-proof and unlikely to unambiguously resolve all possible doubt.

In those circumstances it may be better not to ask the question and risk muddying the picture or the obligations that flow from the Dreamvar decision. It would, of course, be otherwise if the buyer or their solicitor had notice of facts or matters which made special enquiry particularly relevant.

A further difficulty with asking questions is to deal fully and correctly with the answers that may be given. This can be illustrated by the decision in Purrunsing v A'Court (a firm) and another [2016] EWHC 789 (Ch) where the seller's solicitor A, was negligent in failing to take necessary steps to identify the true owner of the property under offer and instead proceeded on the instructions of a fraudulent seller. However, in this case a licensed conveyancer, acting for the buyer raised an additional enquiry asking for confirmation that A was familiar with the seller and to check identification to support the seller's identity. A responded that he had no personal knowledge but that they had met the seller, seen his passport etc (which turned out to be a forgery). The disappointed buyer's claim against both sets of lawyers was settled as to half by his own conveyancer who had not reported and advised on the question raised and the owners – which were not ambiguous. From the perspective of the buyer's conveyancer the questions would have been better not asked.

I must stress that the purpose of this note is not to deter questions. They can be relevant and important but is important to understand the purpose of the question before it is asked. Questions which are spawned by inadequate training, understanding or supervision simply waste time and money and may be both dangerous to the firms asking and unhelpful to the reputation of the wider profession. ■

Michel Garson
Member of CQS Working Party

InfoTrack delivers a Powerful, Game-Changing, Electronic Client Onboarding Solution

UK-based, legal technology provider InfoTrack has delivered eCOS; a powerful, new electronic client onboarding solution that builds on their momentum in the digital conveyancing space.

Pioneers of digital conveyancing and the first legal technology vendor to facilitate electronic signatures for deeds, InfoTrack has been operating from its London base since 2015 delivering digital conveyancing solutions and services to more than 15,000 law firms across the UK.

eCOS (electronic Client Onboarding) connects law firms with their clients through a single portal and provides everything they need to onboard their clients, digitally. It's game-changing because it condenses a process that used to take two weeks, into just two hours. The ability to verify identity and funds authentically and safely in a single, data-driven solution for law firms is radical and has been welcomed by firms to support the conveyancing industry in a time of crisis.

"InfoTrack utilised 2020 to challenge what we knew about digital onboarding and double down on what our clients said they needed to get them through the challenges of high volume onboarding over the last 12 months" says Scott Bozinis, Chief Executive Officer at InfoTrack; adding "eCOS gives them everything from biometric Verification of Identity (VOI), Source of Funds solution (VOF) and client care packs, to onboarding questionnaires, therefore ending the practice of completing data using PDF Law Society TA forms".

Described as a 'virtual front office', eCOS integrates the entire onboarding journey to maximise the use of early digital data in a property transaction and streamlines how firms obtain key client information to start a transaction, It's client onboarding made simple.

"InfoTrack has helped us make the onboarding process smoother and more intuitive for clients. It has also reduced our reliance on post, enabling us to become greener as well as more efficient"; says Rob McKellar, Head of CLS Strategic Growth & Residential Conveyancing, Slater and Gordon.

eCOS is designed to streamline the client onboarding data within a property transaction. The earlier the data is gathered, the better informed all parties in the transaction are.

Jane Pritchard, Chief Product Innovation Officer at InfoTrack adds that, "Delivering an onboarding solution that enhances process is how we arrived at a virtual front office through eCOS. Challenging the traditional use of point solutions, we provide a fully connected took kit within the InfoTrack platform, seamlessly embedded into CMS with an integrated workflow. eCOS is all about collecting data early and speedily to power the complete conveyancing transaction. eCOS puts the conveyancer in the driving seat and into 6th gear. Collecting the early data in eCOS powers the complete conveyancing transaction (which the wider IT platform facilitates).

To find out more, visit **www.infotrack.co.uk/services/conveyancing/electronic-client-onboarding-solutions/** ■

"Unprecedented Times"?

The current pandemic has made life extremely difficult for all although the expression "unprecedented" is perhaps too widely used when one thinks of the Great Plague. It brought back memories to me of difficulties encountered when taking my Part 2 professional examinations in February 1972.

The main exam centre for London was the Alexandra Palace in Haringey, standing on top of the hill with a view across London. It is now probably better known as a venue for World Darts and Snooker. To ensure early attendance for morning exams, you had to stay in the area and I found myself sharing accommodation with other candidates in a local private house where I was welcomed by the little old lady owner as one of "my boys" for the exams.

It was not a happy time to be taking exams on which one's future career depended. The UK miners had declared a strike on 9th January, which was to last until 28th February. On the 9th February, Ted Heath, then the Prime Minister, declared a State of Emergency. Services were thrown into disorder and there were power cuts and black outs of up to nine hours a day on an unscheduled basis, most electricity relying on coal and coke driven power stations. To cap it all, the weather was absolutely freezing with a heavy ground frost over the week of the exams. At least the sun shone in the clear skies making a walk up the hill to the "Ally Pally" an uplifting experience.

Gathering outside the venue, it was noticeable that some of the candidates seemed better prepared with wide brimmed hats as well as the usual scarves and gloves. Once inside, it became apparent that these were generally the experienced "four year articled" candidates and those who were there for a resit, the hats protecting them and their work from the droppings of the unexpected pigeons perched in the rafters of the hall. The hall itself was set out with hundreds of desks, suitably distanced, stretching down the Great Hall facing Europe's largest organ at one end with a magnificent rose window at the other. The only heating came from Calor gas heaters imported for the week and lit as we came in. These were scattered along the rows, resulting in those sitting next to them stripping off to t-shirts whilst those two rows back could hardly move for the cold.

At the start of each we were told in no uncertain terms that the exam might finish unexpectedly if the lights went out. We were advised to make a start on each question to gain some marks, before returning to complete if time permitted.

Returning to my digs that evening, after dinner I decided to try to put in some last-minute revision for the following morning's exam, only for the lights to go out almost immediately. Struggling on with the candles kindly provided by my landlady, I was relieved to hear a knock on the door and an invitation from another candidate to visit the local pub, as both of us were getting headaches from trying to read under candlelight. A pint in a candlelit pub was certainly preferably to that!

The following morning there were repeated arctic conditions in the examination hall but on this occasion to my horror I found I had misread the sequence of subjects and that morning was faced with questions on my worst subject, Equity and Succession, when I had expected Family Law. Needless to say, that caused a further visit for a retake of that subject, this time during the Three-Day Week in 1974 at the end of my articles.

The intervening years had been much kinder, as I served my Articles with a very friendly firm in Dorking which actually paid a wage, although I was surprised when the £10.00 per week was reduced by tax and NI to nearer £7.00. One of the main duties of the two articled clerks during the summer was to arrange the rota for staff using the swimming pool at the back of the pub next door to the office, a total contrast to the rigours of the Ally Pally! But that's another story … ■

Richard Hansom

Transparency and comparison websites

In 2016, the Competition and Markets Authority (CMA) published its report into Legal Services which recommended a new way for 'consumers' to access solicitors by deciding that better information needed to be available for consumers about price and their choice of service provider. They believed this would increase competition and choice and thereby drive prices lower. The SRA responded by introducing its Transparency Rules that from 2018 require all firms to publish information on price, service, redress and regulatory status. Price information must be displayed in respect of conveyancing, probate, motoring offences, employment tribunals (claims for unfair or wrongful dismissal), immigration (excluding asylum), debt recovery (up to £100k) and licensing applications for business premises. Plans to extend into other areas such as family law were postponed.

Under pressure from the CMA, the SRA has treated compliance with the Rules as a priority and inspected firms' websites. It has now taken regulatory action for non-compliance, fining and rebuking firms and even putting restrictions on firm's authorisation. The SRA has stepped up its enforcement work and has extended this to working with consumer groups to encourage them to report non-compliance to the SRA. One aspect that is open to criticism is the placement of information. As a responder to the CMA consultation put it: *'The major challenge is that many firms appear not to be committed to this and seek to hide information in plain sight. Too few lead with this information'.* The safest course is to ensure that required information can be accessed from the landing page and not be more than a click away from any sub head pages on the topic. More SRA enforcement is to be expected.

The CMA also wanted the regulators to promote the provision of information on quality and for the information to be available not just to consumers but also to digital comparison tools (DCTs) and other intermediaries. However, the CMA desire for the usage of comparison web sites has not materialised. The SRA has encouraged the development of comparison websites and various comparison websites have been set up but there appears to have been little engagement or evidence of impact on the market.

Having now reviewed the effectiveness of its 2016 report, the CMA concluded that although there had been progress, further work is required to reinforce initiatives to develop DCTs. In February 2021, the SRA took a step further announcing that comparison websites and quality indicators would be a new 'hot topic'. It set out its plans to work with CILEx Regulation and the Council for Licensed Conveyancers. It will run two pilot schemes, one on conveyancing and the other on employment law. The pilot schemes will last for at least six months and the SRA are seeking firms to work with comparison websites to trial approaches. It aims to increase law firm engagement with customer reviews and comparison websites and increase the number of consumers accessing online information, beginning with using and leaving online reviews.

In readiness, the SRA has provided guidance setting out the business case for firms engaging with online reviews. It encourages solicitors to be 'authentic' and to engage positively with bad reviews, setting out suggested responses and reminding solicitors of their regulatory duties not to breach client confidentiality in any such response.

Given the difficulties many firms are facing in the current climate, it is to be hoped that the regulators temper their ambitions with a level of realism as to how much regulatory change the profession can cope with and indeed afford. It is hard not to question the CMA belief that consumer experience will be improved by its tactics to promote through proxies such as testimonials or price indicators – indeed the evidence so far is the opposite. Conveyancing is the most competitive of markets with price bearing little relationship to risk and yet there is evidence to suggest that prices have risen over recent years and the number of firms in that market has reduced rather than increased! ■

Money Laundering

The Legal Sector Affinity Group Anti-Money Laundering Guidance for the Legal Sector 2021 (AMLG) published on 2 February 2021 by the Office for Professional Body Anti-Money Laundering Supervision (OPBAS).

At over 200 pages, the guidance (now submitted for Treasury approval) undoubtedly increases the burden placed on practitioners following the Money Laundering and Terrorist Financing (Amendment) Regulations 2019. The guidance requires careful study and thought by all firms. All solicitors and firms will need to consider how the AMLG applies to them and make any necessary changes to their current processes and procedures.

The areas to be considered include more detailed guidance/ requirements in relation to policy controls and procedures including firm wide risk assessment and individual matter risk assessments, analysis of source of funds and separately source of wealth, training requirements, and understanding how AML technology operates to ensure it is used more effectively.

The AMLG is a response to the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 which came into force on 10 January 2020.

Firms are reminded that the Regulations expanded the definition of tax advice to include providing material aid, or assistance or advice on tax affairs of other persons including where provided through a third party. The Solicitors Regulation Authority (SRA) has provided guidance which is a good starting point for firms to consider if they are caught by these provisions and if they need to register with the SRA – see the deadline reminder at **www.sra.org.uk/sra/news/press/tax-advice-money-laundering**.

The SRA guidance makes it clear that there are circumstances where those practising for example, family, probate, employment and personal injury will be engaged in transactions with documentation and advice that comes within scope of these provisions. Despite the guidance, individual cases and some sets of circumstances will undoubtedly throw up difficult situations and the way forward may be unclear. This is especially the case where issues of client privilege may arise or protection for information acquired in the ordinary conduct of litigation by legal professionals. For example, if a family or employment lawyer acquires information about a scheme that bears the hallmarks of tax evasion is this privileged for the purpose of the money laundering regulations? Chapter 13 of the AMLG is particularly helpful.

Litigation privilege would include any step taken in litigation, from the issue of proceedings and the securing of injunctive relief or a freezing order up to its final disposal by judgment.

Each incident must be considered carefully and the circumstances of how and when the solicitor acquired the information or belief will be crucial. If the situation arises it may be prudent for the solicitor to obtain Counsel's opinion.

The SRA also published 'Sectoral Risk Assessment – Anti-money laundering and terrorist financing' on 28 January 2021. The SRA draws on the National Risk Assessment 2020 (NRA) published in December 2020. This highlights latest trends and a fresh upturn of crime following COVID-19. It confirms that the conveyancing sector is still high risk. There is increased emphasis and resource focused on the threat posed by the corporate and trust sector. The SRA notes that the creation and operation of corporate structures can be used to invest and transfer funds to disguise their origin and lend layers of legitimacy to their operations. There are planned reforms to Companies House and Limited Partnership structures to further mitigate against some of the identified risks and advance beneficial ownership transparency.

The SRA produce a risk assessment of law firms, to help firms to better understand the scale and types of risks they are exposed to. The SRA requires firms to consider the overall sectoral risk assessment as a part of each firm's firm-wide risk assessment and reference here by firms to the SRA can be helpful.

The SRA investigate firms if they receive information about a firm, but they also carry out a, 'proactive supervision programme'. When the SRA visits, they will ask to see firms' written risk assessments and policies, procedures and controls. A firm's risk assessment is to assist in the setting of appropriate policy and should not be disclosed to clients, or third parties, because it could be useful to those who are seeking to launder money. Having a risk assessment that reflects the reality of the matters handled by a firm is regarded by the SRA as an indication that suitable attention and thought has been given to the policies adopted by the firm. Firms should avoid any suggestion where templates and proformas have been copied that firms have not given thought and attention to the relevant issues.

The guidance sets out the risks a firm may face from the COVID-19 pandemic, the use of financial technology (such as fund transfer systems and crowdfunding platforms), the legal status of Cannabis and the wider economic pressures. SRA investigations have revealed that the most common weaknesses are inadequate checking of the source of funds, lack of independent audits, poor screening of staff and inadequate matter risk assessments. The SRA also observed that whilst larger firms have greater resources, the use of compliance teams to handle risk assessment may mean that fee-earners working on a case are less alert to signs that should

trigger investigation as a matter progresses. The SRA noted that smaller firms can be less aware of the risks around Politically Exposed Persons. It was also concerned that there was too much reliance on external help with compliance by all types of firms. It expressed concern that policies may be drafted by external experts with little knowledge of the firm or there was little understanding of the technical support a firm used, thus risks were not properly understood or dealt with.

The SRA also listed the highest areas of risk for firms. It will not be a surprise that conveyancing (given that property is an asset preferred by criminals) or the use of a client account to legitimise the source of money or tax advice were considered high risk areas. However, creating or managing trusts and corporate structures and family law may not receive consideration as a potentially a high-risk area. The guidance also sets out information relating to transaction, client and delivery channel risks.

There will be increasing focus on AML and firms should take the necessary steps to ensure they are complying notwithstanding that in the current climate this will be an unwelcome and costly exercise for all.

The Legal Sector Affinity Group guidance issued in January has been submitted to the Treasury for final approval. It represents the best efforts of the professional bodies including SRA accountants and the Law Society, UK Legal Sector Affinity Group, Elsie AG includes all the legal sector supervisors and the jointly published advisory note issued in January has now been submitted to the Treasury for final approval. It includes information to help the professions comply with ongoing obligations under the money laundering regulations and in particular the updates created by the SRA who have been particularly active in the period before in the last year carrying out inspections, and more activity was presaged by the presentations given at their November conference. There is a high expectation that the legal sector can yield far more results to enable the enforcement agencies to hunt down economic crime. The measures contained in the regulations affect many thousands of organisations and individuals. Whilst the guidance door requires risk based approach. There are many aspects that must be complied with in order to avoid breach. There are many open questions as to the means for achieving the ends.

In particular, the SRA drew attention on its website to the need for far more firms to register as tax advisers and attention is drawn to the definition as work of blank paragraph. There is also increased emphasis following the national risk assessment published in December 29, 2020 upon the activities of trust and company providers. Many practitioners will be involved in these activities in property management work and routine probate.

Many practitioners will not have realised the relevance of issues arising in respect of employment matters and matrimonial work, although neither is targeted as an area of high risk activity. The SRA have drawn attention to a rise in crimes associated with COVID-19 and lockdown and the reliance upon remote contact with clients and remote working. The guidance prescribes the steps that must be taken when using the services of organisations that provide non-face-to-face identification and verification. There are many kinds of trust corporate service providers to include company formations. ■

Michael Garson
Law Society Council and Board Member

Legal aid firms adopt more agile processes in the pandemic

During the pandemic, the main focus of the Legal Aid Agency has been to help providers continue legal aid services for clients, identifying new flexible ways of working. The pandemic has created opportunities for these providers to improve their systems by becoming more agile and therefore offer a better service.

Legal aid firms have their own specific problems, such as the closure of many courts, which having reopened are now dealing with a backlog of cases. At the start of the pandemic many law firms were still over reliant on old and traditional systems and methodologies, relying on paper-based systems and face to face contact. By adopting new methods of working and investing in better technology they are able to continue to help those most in need. **LEAP**, the cloud-based practice management software provider, is supporting these legal aid firms in this process, enabling them to maintain their contract obligations, and by working closely with the Legal Aid Agency, ensure the software is up-to-date with the latest requirements.

For legal aid practitioners, LEAP provides a wealth of innovative features, automations, integrations and legal aid content. LEAP provides a completely integrated Legal Aid software package including case management, time recording and billing solution for both criminal and civil matter types in England and Wales. This enables remote working so legal aid practitioners can continue to work uninterrupted from anywhere, capturing time and invoicing to ensure cash flow is not affected. The LEAP Mobile app allows voice to text dictation, time recording and scanning documents on the go. Lawyers can continue to work offline from the police station with automatic syncing.

To ensure compliance and consistency across multiple locations, Legal Aid updates (forms, rates and charges) are automatically applied in line with when legislation changes occur and accessible within the software. LEAP significantly reduces the time a firm spends on billing and assists firms with the compliance and the Legal Aid auditing process. Automatic fixed fee allocation for billing Crime and Civil Controlled Work and integrated submission for both via CWA (contract and work administration) ensures claims can be checked and submitted electronically in readiness for payment, ensuring a faster payment.

LEAP can offer a raft of valuable resources – a library of fully automated and up-to-date legal aid forms readily available and populated with matter data where possible – including CRM11, CRM7, CRM18/CRM18A, CW1, EC-Claim1.

Looking forward, family and mediation may well get a boost once (if) we get out of the current situation – and LEAP covers both these areas of law. There is currently a Criminal Reform happening whereby they expect to inject between £35-51M into legal aid. LEAP had to recently implement the Crown Court Scheme 12, which applied an update to the fixed fees that can be claimed along with additional hourly rates for paper heavy cases. All LGFS and AGFS claims can be automatically uploaded to the Crown Court Defence portal.

LEAP supports over 560 law firms practising legal aid (35-40% of the market): for more information on the software visit **legalaidsoftware.co.uk**. ■

A steady income is a lifeline for a charity and those it supports. London Legal Support Trust (LLST) was founded in 2003 to raise funds for specialist free legal advice agencies in London and the South East.

While working in South West London Law Centres, co-founder Bob Nightingale MBE, recognised that, simply put, *"none of the law centres had enough money to deal with the number of people that needed help"*. This, sadly, continues to be the case and as we move through 2021, LLST remains committed to continuing to raise desperately needed funds. **It is no cliché that these funds are needed more now than ever due to the pandemic.**

Alongside virtual and physical events planned, such as the **London Legal Walk** on the 18 October, there are a number of ways you can get involved to ensure that as many as possible in our community can access the legal advice they need.

For as little as £10 per month, you can help people like Steve*

Steve* and his brothers have learning disabilities. When their mother passed away, they managed their tenancy without a guardian. The legal advice centre who took his case on helped to secure their home and they avoided eviction with access to specialist services. Without this responsive approach, they would most definitely have ended up in the homeless system.

LLST provides financial and organisational support to the agency that helped the brothers, and many others like it. With a small monthly donation, you can help agencies continue their lifechanging work.

Payroll giving – your money working harder

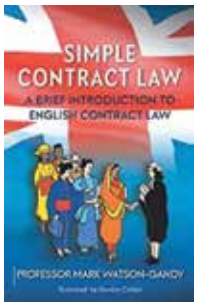
With payroll giving, you can donate every month from your pre-tax income. Your gift will go further at no extra cost to you. LLST will receive both the amount of your donation and the tax that would have been paid on it. For example, a £10 monthly donation could generate £12.50, £16.67 or £18.18 at no additional cost to you.

Setting up a regular donation to LLST means the charity can plan and work with the agencies who support so many vulnerable people in our community.

For more information and to donate, visit **www.londonlegalsupporttrust.org.uk/donate-today**. Alternatively, email Nicole Lilauwala **nicole@llst.org.uk** or Bob Nightingale **bob@llst.org.uk** who would be glad to assist you. ■ *(*name changed)*

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.


Zulfiqar Meerza

Private Prosecutions – what are they?

Private Prosecutions are prosecutions not brought by the Crown or other statutory prosecuting authorities (such as the Crown Prosecution Service (CPS)). A private prosecution can be brought by any individual or entity who is not acting on behalf of the police or other prosecuting authority, and who has been the victim of the alleged criminal acts committed against them by others. The right to bring a private prosecution is expressly reserved under section 6(1) of the Prosecution of Offences Act 1985. Other than the fact that the prosecution is brought by a private individual or entity, for all other purposes they proceed in exactly the same way as if the prosecution had been brought by the Crown.

There are some limitations on bringing a private prosecution, such as the Director of Public Prosecutions (DPP) having the power to take over private prosecutions and, in some cases, the private prosecutor must seek the consent of the Attorney General or of the DPP before the commencement of proceedings.

In principle, there is nothing wrong in allowing a private prosecution to run its course through to verdict and, in appropriate cases, sentence. However, there will be instances where it is appropriate for the relevant prosecuting authority to take over the prosecution to either continue it, or to discontinue or stop it.

There are many advantages in choosing the option to privately prosecute and one of the strengths of private prosecution is the ability to have more control over the proceedings. You also have the added benefit of potentially gaining a faster turnaround and final outcome. In cases of private prosecution, you do not have to wait for the police or the CPS to deal with your proceedings if the case is not classed as high priority, which can be the case more often than not in criminal or civil proceedings. Saving time in many cases means saving money, which again is a major advantage of private prosecution.

A private prosecution is unique in the sense that you are effectively the complainant, the police, the CPS and Minister of Justice rolled into one. You will shoulder the costs and responsibility of the entire investigation, although you will have the ability to potentially reclaim costs incurred at the end of the case, and you will not have the various police powers at your disposal, such as applying for a search warrant or interviewing a suspect under caution. You will therefore have to find creative ways to obtain evidence via alternative routes. One of the major pitfalls in bringing a private prosecution is potentially being more susceptible to claims of abuse of process due to there being more scope for scrutiny, and room for questioning the initiation and conduct of a private prosecution than a public prosecution. However, obtaining sound legal advice from private prosecution specialists will definitely help to avoid and navigate through any potential pitfalls.

Despite some of the disadvantages of bringing a private prosecution, they are more often than not quicker, focused and more efficient than public prosecutions. The disadvantages only really exist for those who ignore the Code for Crown Prosecutors, the Criminal Procedure Rules (CPR), are driven by inappropriate motive and proceed contrary to the public interest. As long as the private prosecutor can show from the outset efficiency, an independence of mind, objectivity, coming to court with clean hands and offering full and frank disclosure, bringing a private prosecution is an attractive way to seek justice and is most certainly something that is on the rise in the UK legal space. ■

Zulfiqar Meerza
Principal Investigative Lawyer
UK Serious Fraud Office (SFO)

Please note that this article has been written by the author in a personal capacity and not for or on behalf of the SFO.

In conversation with Jay Bhayani


Jay Bhayani

We love learning about our clients' business successes. The most interesting stories are from individuals who rose from unconventional beginnings and overcame the odds to accomplish their professional goals. It's inspiration for others in the same position that success can be theirs too.

In 2021, it's anticipated that two new law firms will open every working day. To help these budding start ups to get their businesses off to a flying start, we caught up with Jay Bhayani at Bhayani HR & Employment Law to share her wisdom on the practicalities of setting up a law firm.

Tell us a little about yourself and your practice
Bhayani HR & Employment Law is a niche practice offering straightforward employment law advice along with outsourced HR services. I launched the business six years ago and have grown to such an extent that I now have offices in Sheffield, Leeds, London and, most recently, Leicester.

Was it a smooth transition from partnership to sole proprietorship?
In a word, no. My original business plan was based on an agreement with the managing partner of the firm I was leaving whereby I'd arranged to take my team, clients and precedents with me. Unfortunately, this plan didn't materialise. The agreement fell apart because the partnership took umbrage with my leaving. I left with absolutely nothing and ended up with a 4-year trademark dispute over my name. Resultingly, I started completely from scratch on my own with not a single piece of paper, renting a small windowless unit off a dual carriageway somewhere. I did lots of crying and lots of planning. Although it felt far from it at the time, my previous firm actually did me a favour as I built a business fit for its time rather than relying on what I'd always done. I was also more determined than ever to prove to myself and others that I could succeed.

How did you go about building a business from the ground up?
I took measured risks, some of which were personal risks such as the trademark dispute which was costly, and thought carefully about whether I was taking the right steps at every stage of the journey. Plus, I worked hard. Even though it was exhausting, the hard work was more fulfilling and rewarding because I was doing it for myself. My only regret is wishing I'd set out on my own ten years earlier when I was in my early 40s with more time and energy.

How important is technology to running your business?
I've always had a physical office and I've always had a remote working infrastructure. There are some big draws to having an office, for example giving credibility to potential clients and distancing life at work from life at home. Likewise, I'm a fan of remote working and I've made this option available for employees from the outset. I have to confess, I didn't have a clue about technology but quickly discovered the benefits of cloud software. As long as I have access to a phone or laptop, I can see time recordings, outbound expenditure, inbound fees due and cash flow generally. The same concept applies to my staff who are currently spending only one day per week in the office with the rest of their time working from home. This single day in the office gives my employees the chance to collaborate, supervise, file and organise anything that can't be done at home. It gives me the chance to check in with them and ensure their wellbeing isn't being unduly impacted during these Covid times. It's Quill's cloud practice management and legal accounting software that allows us to operate in this truly flexible way.

As an outsourced service provider, do you advocate the outsourcing model?
From day one, I've been both a supplier and consumer of outsourcing services. Being a complete novice regarding financial management and compliance, I instructed Quill to handle my legal cashiering and payroll with the compliance responsibilities that accompany these jobs, for instance client account management and bank reconciliations. I simply wouldn't have known how to deal with any of this. As a new business, it's vital to concentrate on servicing clients and instruct help elsewhere. It would be impossible to replicate Quill's services in house because of its vast collective experience and knowledge in these heavily regulated functions. Outsourcing is a no brainer. Why would any business owner waste their management time on tasks outside your specialist areas when they could be charging a good rate delivering legal services instead? Outsourcing costs far less than paying for someone in house and outsourced suppliers have far more expertise than one person doing the role. Outsource to a company that understands how law firms operate and you're at a real advantage.

Do you have any parting tips for entrepreneurs?
Before going it alone, work out your relationship with the firm you're leaving so you know your starting point. Plan based on what the reality of your situation is whilst being adaptable and prepared to change as your business progresses. Get the right technology in place for remote working capabilities but don't completely rule out having a bricks-and-mortar office as well. Serviced offices are readily available and you don't need a huge space unless you have lots of staff. Speak to cloud software providers – Quill included – about technology. At the same time, play to your strengths and outsource to cover the skills you lack. Again, using Quill as an example, this could be legal cashiering and payroll support. In Bhayani Law's case, this would be outsourced HR support. With solid foundations in place, there's nothing you can't achieve with resilience, dedication and hard work. Success is yours for the taking.

About Jay Bhayani – Solicitor & Managing Director
Jay is a specialist employment law solicitor and leads the HR & Employment Law Team. She has over 25 years' experience of dealing with all aspects of HR and employment matters and specialises in complex and sensitive issues. The Firm's innovative Watertight fixed-fee HR support package is a cost-effective solution which provides complete peace of mind for clients. This, together with her energy and enthusiasm is a winning approach. In addition to her legal work, Jay is an 'Entrepreneur in Residence' at Sheffield Hallam University and a member of their management school advisory board, a past member of the Law Society's Women Lawyers Division Committee as well as a mum of two teenagers! ■

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