

SOO

THE **SPG** JOURNAL

Spring 2018

TO INSPIRE | TO PROMOTE | TO LEAD
SUPPORTING SOLICITORS IN SOLE PRACTICE

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- Detailed guidance from Stephanie Pritchett on GDPR
- Growing your business through LinkedIn
- Paul Epstein discusses some thorny issues on legal privilege
- Advice from Miller on M&A
- Mental health at work
- Council update from Lubna Shuja
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FROM THE CHAIRWOMAN

Summary of the past year, and plans for the next few months:

Welcome to our Spring edition of SOLO the Sole Practitioners' Group journal. This edition is full of information to assist you in your practise as a sole practitioner.

Change I will say has been a consistent feature of my term as Chair since November 2016 to date. Charles Darwin said: "It is not the strongest of the species that survive, nor the most intelligent, but the one most responsive to change." As mentioned in the last edition of Solo, I believe that change is inevitable and essential for growth. There have been some changes in our Group as well as in the profession. Changes in our Group have made way for a new group which was formed by some members from the SPG who now cater for a different demographic of our profession. We applaud their innovation. There are changes in our profession, which we have endeavoured to cover in this edition. As you know we exist as an organisation to support solicitors in sole practice as well as to inspire and to promote our members. In this edition we seek to serve that purpose.

SPG has been involved in a period of consultations with the SRA on their Evolve website project and we have been involved in the research process on your behalf. SPG has also represented you in the process of consultations in the new Accounts Rules which is due for publication in Autumn 2018. The Honorary Secretary of the Group has also been involved on your behalf in a consultation which relates to changes in Will drafting.

The General Data Protection Regulation (GDPR) is due to come into force on 25 May 2018. This calls

for a need to check our processes as solicitors to ensure we are compliant. This is a major change. There are two articles on this topic in this edition, emphasising the gravity and importance of these changes and encouraging us to start the process of compliance early. In this edition, there are the articles about the usefulness of LinkedIn in growing your client base as well as information about general well-being which is not to be overlooked.

These past few months the SPG has made contact with various Regional Groups and we are continuing to engage with our members by way of phone calls and enquiries. Our new regional lead Penny Raby has travelled to various regions to join with the Regional Groups during their meetings and has returned with valuable positive feedback from our members. We continue to look for new ways to serve you better.

On behalf of SPG we were invited to the Annual Luncheon for The Institute of Legal Finance & Management (ILFM). This was an informative lunch during which there was ample opportunity to network for SPG.

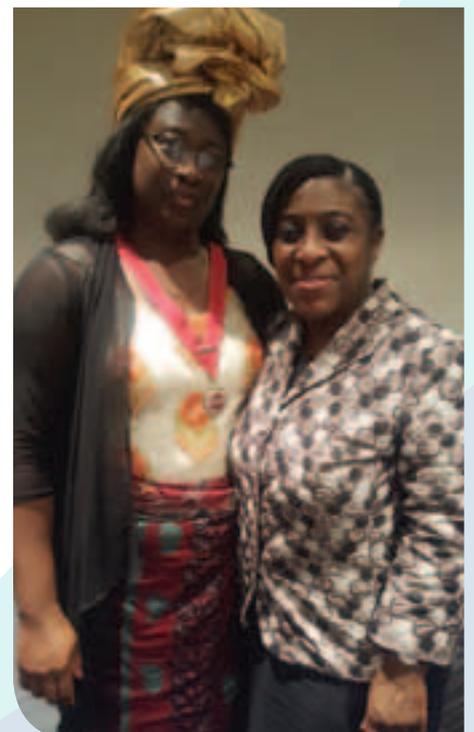
In October at the SRA COLP/COFA conference the SPG was represented. We had an opportunity to connect with some of our members who attended this conference as well as introduce ourselves to new members who have not engaged with us yet.

In early November SPG was represented at the Legal Education and Training Forum debate on the SQE organised by Melissa Hardee of Hardee Consulting. The Forum was



hosted by Professor Avrom Sherr at The Institute of Advanced Legal Studies in London. A very informative and engaging debate provided a critical appraisal of the effect and workings of the forthcoming SQE from various parts of the profession and academia.

Towards end of the November, SPG represented you at the Black Solicitors Network awards dinner. It was a grand event with various people being acknowledged and honoured for their achievements in the legal profession.



On 1 December 2018, SPG was invited as guest of the SRA at the British Nigerian Law Forum Christmas dinner in London. This event was well attended by various dignitaries both in the UK and Nigeria such as from the SRA, Law Society etc, and the special guest at the event was Mr A B Mahmoud (OON) the President of the Nigerian Bar Association.

SPG thanks our outgoing committee member Martin Smith a founding member of the SPG who left the profession last year. He has been a



Sukhjit at SRA Conference October 2017

very active and hard-working Executive Committee member in charge of consultations.

At this point I want to express my heartfelt thanks to Miller for their ongoing support as the main sponsor of the SPG. As you know their support enables us to carry out the important work we do on behalf of sole practitioners nationwide.

The team at Miller has worked closely with The Sole Practitioners' Group since 2000. From sole practitioner

start-ups, Miller can provide guidance to help you better understand the PI process. They also can assist you with your PI renewals. Our confidence in Miller is such that we have on occasion requested advice for a member's professional indemnity insurance difficulties and they have always

been willing to provide any assistance required, for which we are thankful.

Finally, please take note of the details for our Annual Conference in 2018. As you know this will take place from 20th – 22nd April 2018. You can book on the Eventbrite website or alternatively by using the booking form provided in this edition of the Solo. As this year's conference is in the UK we, the Executive Committee, look forward to seeing as many of our members in attendance as possible. The theme for this year's conference is Learn and Prosper. You can be assured of quality presentations relevant to the management of your practice, as well as traditional SPG entertainment and an opportunity to relax in pleasant surroundings.

Best wishes

Kemi Mosaku

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REGIONAL GROUPS UPDATE

The Birmingham and West Midlands Sole Practitioners Group are holding regional group meetings on the following dates in 2018:

Monday 16 April 2018

Monday 25 June 2018

Monday 10 September 2018

Monday 26 November 2018

All the meetings will start at 5.30pm and will take place at:

No 5 Chambers
Steelhouse Lane
Birmingham
B4 6DR

If you would like to attend any of these meetings please contact Jerzy Kamrowski on jerzy@renatasolicitors.com.

If you would like further information about Regional Groups in your area, please contact Penny Raby on pennyraby@harmony-house.co.uk or 01386 555114.

SOLICITOR SOLE PRACTITIONERS' GROUP

Meet Your Executive Committee 2017/2018



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Kemi was called to the Nigerian Bar as a barrister and solicitor of the Supreme Court of the Federal Republic of Nigeria in 1989 and admitted as a solicitor of the Supreme Court of England and Wales in 2004. She has a varied work experience which includes working in the immigration department of the Home Office, private practice both in legal aid and privately funded matters in the UK. Her last role was head of immigration department in a firm before setting up as a sole practitioner. She specialises in Immigration and Human Rights Law. She also undertakes family law work and landlord and tenants. Outside of work Kemi is a trustee in a thriving charity and enjoys spending time with her three sons. She also enjoys keeping fit, music, networking, reading biographies and current affairs.



VICE-CHAIR

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Tahira has been a practicing solicitor for 20 years. She set up as a sole practitioner after being made redundant in 2010. She has found the SPG to be an extremely helpful point of contact on so many issues which are affecting the whole profession whilst paying particular attention to the needs of Sole Practitioners. Tahira understands that being a sole practitioner can be a lonely experience but networking with like-minded individuals makes all the difference. She is glad that there is an independent body outside of the Law Society that is working hard to look after its members interests. Tahira is based in Bury, Greater Manchester where she lives with her family. She has lots of interests outside of the law including politics. Tahira was previously an LEA school governor and has stood as a candidate in the local elections and is passionate about civic duty and putting something back into the community. It is a lot to juggle with but Tahira is proud of the work of the SPG because she believes in better representation for Sole Practitioners!



HONORARY TREASURER

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Kem qualified as a solicitor in November 2002 under the tutelage of Mr Martin Mears (former President of the Law Society). Kem has over twelve years commercial experience gained in a variety of demanding and challenging environments. Kem's employment history includes time spent at some of the most prestigious legal firms in Suffolk and Norfolk. A keen gardener, Kem has completed the RHS Level 2 Certificate in Horticulture and her other hobbies include reading, travelling and cooking in true "Nigella" fashion.



HONORARY SECRETARY AND COUNCIL MEMBER

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Clive has been a sole practitioner in Lymington in Hampshire since leaving a partnership in 1998. He specialises in litigation covering most aspects of private and commercial work. His other interests are as Chairman of his local Amenity Society in Lymington and Trustee of the New Forest Centre Museum in Lyndhurst. He has previously served as Chairman of the local Citizens Advice Bureau and Churchwarden and in the early 70s as a Resident Magistrate in the Seychelles. Clive has been actively engaged on behalf of SPG over the past 17 years. He is now one of the Groups two Council Members.



Sushila Abraham
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Sushila has lived in Surbiton, Surrey for over twenty years. She decided to start her own practice locally because she wanted to offer quality and care to the local community. She also wanted to be free from pressure to overcharge clients in order to meet the profit and billing targets set up by some of the bigger law firms. She is married to Matthew a barrister, and they have one son who has also qualified as a barrister. In addition to being wife and mother, running her practice in Surrey, and her role on the SPG Executive Committee, Sushila is also 'Cllr Sushila Abraham', having been elected as Lib-Dem local councillor in the Borough of Kingston in a by-election in February 2013 and then re-elected in May 2014. Sushila was also President of Surrey Law Society and was elected as Law Society Council Member for Surrey. She is also a Board member of the Membership Board at the Law Society and a Trustee of ICLR representing the Law Society. Sushila is a very community minded person and had run cookery classes for local school children, which she called "Suzie's Kitchen", believing in the importance of teaching life skills.



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Moses was admitted as a Barrister and Solicitor of the Supreme Court of Nigeria in 1987. He has also been admitted as a Solicitor of the Supreme Court of England and Wales. Moses is a Sole practitioner and specialises in Human Rights and Immigration. He is also engaged in general civil and criminal matters on a private fee basis. In his spare time he enjoys sailing and has participated in many sailing events around the world. He also enjoys discovering new places and spending time with his family.



**HEAD OF MARKETING SUB-COMMITTEE
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Having worked in some of the most prestigious banking and consultancy organisations, Sukhjit opted to provide a more personal one to one service and believed that this could be best done through his own practice. He has been based in Goodmayes in Ilford since 2003. In his private life, Sukhjit likes to get involved in a number of charitable activities, working with organisation to assist people from all backgrounds and ages in reaching moral excellence either in their private life or in their professional capacity. Whilst he is quite a shy person, Sukhjit has been part of two documentaries exploring the changes that have taken place in the traditional arranged marriage process. His children are still young and take up a great deal of his time but when he does have time for himself, Sukhjit likes to sit, read a good book and watch the world go by.



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Rahil Chaudhari is a Senior Solicitor at Arlingsworth Solicitors. Rahil secured an LLM at University College London and then went on to train and work at some of the most prestigious law firms in the City before joining Arlingsworth in 2005. Rahil is a highly experienced and versatile solicitor and has practiced in the fields of immigration, family, commercial, employment and litigation for the past 20 years. He now specialises predominantly in immigration, human rights and company law. Rahil has become a leading authority in these areas. Rahil's client base spans a wide range of sectors from multinational companies to private individuals. Rahil always works tirelessly to achieve successful results for his clients and he is driven by providing exceptionally high standards of client care.



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Joanna Connolly specialises in the areas of Consumer Credit, Contentious Probate, and Insolvency. Joanna is a solicitor with Higher Rights of Audience who is qualified to represent clients as an Advocate in the higher courts in England and Wales. She was previously Head of Consumer Credit Litigation at MSB Solicitors and has had extensive litigation experience both at County Court and High Court level. Joanna had conduct of the lead Consumer Credit Act High Court case *Carey v HSBC Bank Plc* [2009] EWHC 3417 (QB) as well as cases in the Court of Appeal.

**SOLO EDITOR**

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Josephine became a SP in 1997 and works in Bedford, specialising in family work. She has had a varied career working in London and the Home Counties doing commercial work, then moving to civil litigation. Married with three children, spare time is occasionally spent learning arts subjects. She is a big fan of the Open University. Other hobbies include upholstery, music and walking.



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Dorcas is a Sole practitioner, at home and abroad. She recently celebrated 10 years of being a SP with offices in London and Lagos. She flies in and out of the UK on a regular basis dealing with a variety of cases. She specialises in Immigration Law dealing with entry clearance cases, family reunion, visitors' and students' visa applications. The practice also deals with family and education cases, giving a voice to the weak and defenceless. Dorcas is married with four children. When she is not busy attending to clients, she works as a counsellor, nurse, cook, taxi driver, tutor of her four young adults. She loves to travel and finds shopping very therapeutic.



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David is a dispute resolution specialist with over 20 years' experience dealing with civil and employment law matters. After reading law at the University of London he trained and qualified in the City of London working at leading law firms before starting his own niche practice as a sole practitioner based in Covent Garden. Acting for individuals and SME companies he has dealt with a wide-range of cases ranging from judicial review in the European Court of Justice to contract and property disputes in the High Court and County Court. He is a member of the Employment Lawyers Association and speaks French. Married with a son who keeps him very busy when not in the office, he is also a school Governor of his local Primary School and enjoys reading, cycling and the cinema.

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Hamish is based in Fulham, London. Having initially specialised in copyright and trade mark work, both in the City and New York City, his practice now includes conveyancing, wills trusts and probate, as well as litigation. Married with three children, when Hamish is not in the office or involved in SPG matters he enjoys open-air swimming, sailing, overnight bike rides, and also has a passion for the theatre.

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Penny has been a SP specialising in family law for 20 years, working with her husband Mike a Forensic Accountant on divorce cases involving business and complex asset and income tracing. She won Worcestershire Family Lawyer of the Year award in 2014 and was nominated for the National Family Law Magazine Family Law Firm of the Year for 2015. She has appeared on radio and television and, with Mike, has toured their networking pantomime 'Snow White and the Seven Small Business People' internationally, including a notable performance at the 2016 SPG Conference in Prague!

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Lubna qualified as a solicitor in 1992. She was a partner in a high street firm in West Yorkshire for many years and then started her own practice in Birmingham in 2007 undertaking mediation, family and civil litigation. Lubna became a CEDR accredited Mediator in 2005, and is dual qualified to conduct both Civil and Family mediations. She has done shuttle mediations (where parties prefer not to meet) and also time limited mediations (2-4 hours duration). Lubna is also involved with various regulators and she Chairs a number of Disciplinary/Professional Conduct Committees. She is a Law Society Council member where she represents the interests of sole practitioners and sits on the Membership Board (soon to be renamed the Membership and Operations Committee).



INTERNATIONAL ARM

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Nick was admitted as a solicitor in 1979 and was a junior partner in two firms in London before starting his own practice in the West End in 1987. In 2011 he moved on to create a niche international commercial and family practice in Chancery Lane. He is a Member of the Solicitors Family Law Association and has trained other professionals on family law matters and anti-money laundering. Nick is married with four children and he has a range of hobbies which include travel, music, tennis, reading and photography.



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Satnam specialises in education and disability law, including exclusions, admissions and Special Education Needs Tribunal advocacy. He acts for parents, schools and local authorities. His first job was as an elected, full time Vice-President of Cambridge University Students' Union. After qualifying in a large commercial firm, he worked in a London local authority as Head of Litigation. He is also a fee paid Financial Ombudsman. He has been a SP for over ten years, and is based in East Finchley, London.



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Charley is the owner of Byword, an event organising and administration company. Specialising in legal administration, Byword has clients including the Employment Lawyers Association, Assurety and Employment Law Bar Association. Byword are also administrators of the Institute of Directors Central London Branch. Byword are delighted to be retained by the Sole Practitioners' Group to manage the administration of the group alongside the Executive Committee, the team looks forward to meeting members and contributing to the group's success.



CONFERENCE VENUE
see pages 20 and 21

Would you like to inspire your fellow Sole Practitioners?

SOLO is a bi-annual publication which aims to inform and support sole practitioners and is delivered in both hard copy and digital formats.

The SOLO editorial team welcomes contributions from our members. Do you:

- Have a comment to make regarding recent legislation?
- Want to update your fellow Sole Practitioners with the latest developments in your specialist area?
- Want to share your opinions with fellow members?
- Want to share a cultural experience?

Then we want to hear from you!

SOLO is your publication, produced by Sole Practitioners for Sole Practitioners.

If you would like to write an article or a letter for SOLO, or have any suggestions of content, then please get in contact by **emailing info@spg.uk.com with details.**

If you would like to advertise in our publication, or at the Conference, please contact **info@spg.uk.com** for further details.

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SOLO JOURNAL

Contributions to SOLO are welcome. Editorial or Advertising – **contact details are available on SPG's website www.spg.uk.com.**

Editorial Board – Josephine Duchenne, Lubna Shuja, Oluwakemi Mosaku and Joanna Connolly.

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IS THERE ANY *faith* IN THE LAW?



In this age of decreasing formal religious worship you may wonder what point there is in writing on this subject. However the law, and religion (or faith) are legally connected. Law arises from the Crown and Parliament and the courts. Thanks (or no thanks) to Henry VIII it was decided that the new Protestant religion and the Crown and the Establishment should be inextricably linked by providing that the Protestant religion, now the Anglican Church, is the Established Church of England and Wales.

There is a lot of argument about whether the Anglican Church should continue to be the Established Church and there may be changes to this when Charles becomes king and changes one of his titles, from Defender of the Faith, to Defender of Faiths.

This situation can be compared interestingly with more modern

democracies such as France and America, where there is a complete separation between government and religion. This I believe is because it was considered that to bring religion into government was likely to create more problems than it solved and in the 18th and 19th centuries when these governments were formed, the idea was to get away from wars resulting from religious differences.

We on the other hand managed to get our Civil War out of the way in the 17th century and due to a carefully managed constitution between the Crown and Parliament, adjudicated on by the courts, the established Protestant, subsequently Anglican, religion, continued to be established to this day.

We see the benefit of this in our ongoing ceremonies, obviously the Coronation and recently Remembrance Day where there is a short service. I am writing this having watched Remembrance Day as usual and seeing the numerous representatives of all the faiths in this country attend at the Cenotaph to lay wreaths.

There is argument as to why the Church of England is entitled to have about 30 bishops sitting in the House of Lords as a result of "Establishment". However as I understand it, the most vociferous supporters of that are other faiths, who know that with an established religion, faith in general will be considered to be an important part of the fabric of this country. Whilst obviously not every faith can be "established", if there is one faith which can "represent" faith in general and cooperate ecumenically between faiths, as has happened for the last many years, then this allows faith in general a prominent part to play in the life of this country.

What prompted this article was an invitation for me to attend the service at Winchester Cathedral on 8th October

2017 for the opening of the legal year. A similar service is held in St Margaret's Church Westminster where the judges process across the road from Westminster Hall and back again after the service.

I presume most areas of the country have such services and can I suggest that you look into these and attend one at least once, because they do provide a sense of civic pageantry. In the Winchester Cathedral service there was a civic procession with lots of maces; a legal procession with the judges and barristers; a second civic procession with more county council members and more maces; a high sheriffs procession (by whom I was invited), together with eight other high sheriffs of neighbouring counties, and finally a cathedral procession with the cathedral dignitaries.

A jolly good chance for everyone to dress up and have a drink afterwards and indeed to buttonhole the odd judge about one's particular concerns about the law. As Chairman of the Executive Committee in 2002, before the official schism between The Law Society and the Sole Practitioners Group, I was invited to the service for the opening of the legal year at St Margaret's Church, Westminster.

At that time I was just getting my opposition to Alternative Business Structures up to speed and on crossing Westminster Hall after the service I met the then Lord Chancellor, Lord (call me Charlie), Faulkner, dressed trendily as a New Labour Lord Chancellor in a morning suit more suitable to an undertaker. As I and a colleague out dressed him in our solicitors' gowns he felt obliged to allow me to let him have my views on the dangers of alternative business structures for a few minutes. In the event it may not have had an overall effect on the end result but it did enable there to be an exchange of views!

My apologies for this digression. One of my reasons for writing this article is that I was so impressed by the address at the Winchester service by the retired Bishop of Liverpool, The Rt Rev James Jones. Some of you may know of his great importance in the sequence of events which led up to the second inquest into the Hillsborough disaster by writing a report which effectively changed the attitude of Government and the Establishment to the importance of the individual victims in such situations.

As the sermon is longer than can be accommodated in Solo, can I direct you to his website, www.bishopjamesjones.com, where the full version is printed. I invite you to read it from whatever faith point of view you have, as I think it is apposite to the way in which we as solicitors should conduct ourselves as lawyers within the boundaries of our various faiths, or possibly none, in carrying out our professional duties.

In the course of his work he was appointed KBE for services to the bereaved and to justice, his citation reading: *"The Right Rev James Jones, lately Bishop of Liverpool as Chair of the Hillsborough Independent panel, led what is widely recognised as the most successful enquiry of its type in recent times. His report led to the quashing of the original inquest, fresh criminal investigations and the largest ever investigation into the police. He developed a ground breaking new forum for engaging bereaved families, making them part of the criminal investigations process while not prejudicing outcomes."*

I urge you to read the sermon as it is a very good overview of faith in the context of administering the law.

Clive Sutton
Honorary Secretary

BUYER BEWARE IN LEGAL M&A

IF YOU FEEL THE URGE TO MERGE THEN MAKE SURE YOU DO YOUR HOMEWORK.

Everybody loves a good deal, especially at this time of year. One option for small law firms looking to shrug off growing competitive pressures and stand out from their rivals is to buy another firm. A law firm can be transformed by an acquisition – for better or for worse, so it's essential to do the groundwork to ensure it doesn't regret the decision.

Over a quarter of law firms expect to merge with or acquire another firm over the next 12 months, according to the 2017 Smith & Williamson Law Firm Survey. But look before you leap, and don't be so blinded by a takeover's potential positives that you ignore its negatives.

A major consideration when buying another law firm is deciding whether to become its 'successor practice'. Although it is the simplest way to do a deal it has plenty of pitfalls for the unwary.

The definition of a successor practice is laid down in the SRA's Minimum Terms and Conditions of Insurance, but essentially it means a law firm not only takes on the staff, work and clients of the firm it buys but also its liabilities.

The acquiring firm's insurance policy would now cover any claims made against the practice it has taken over, even on work done long before it was bought.

"A law firm needs to be very confident that it is aware of all the potential insurance liabilities of a firm it acquires before choosing to become a successor practice to it," says Richard Brown, Head of the Solicitors' Practice at Miller Insurance. 'Take time to understand its culture and history before going ahead.'

Some firms have been sunk by the weight of liabilities they unwittingly took on through becoming a successor practice, says Frank Maher, a Partner at Legal Risk, who has advised on hundreds of mergers and acquisition (M&A) deals involving law firms.

One firm that rushed into a deal was subsequently forced to pick up a string of claims made against the practice it had purchased. Sometimes those claims do not even originate with the firm that has been acquired, but with a firm that has been bought by the acquired firm. The result is that the perpetrator of the original recklessness is totally unaffected whilst the claims and excesses fall on the unwitting successor firm.

Professional indemnity could be a deal-breaker

As **PI insurance** is one of a law firm's biggest expenses, it's important to assess what the impact on it would be of buying another firm before pressing ahead with the transaction.

PI insurance could be a deal-breaker: if that firm's type of work or the way that the work has been carried, or, more importantly, its claims and disciplinary records mean that it is a higher insurance risk, then a firm might well discover that, as its successor practice, its insurer does not want to renew its policy.

Its premium could go up by so much that the deal is no longer attractive or even viable.

Look before you leap is the experts' advice, and don't be so blinded by a takeover's potential positives that you ignore its negatives.

"Consider the successor practice provisions in detail and think of the bigger picture for your firm before agreeing to a deal," says Maher.

Brown agrees: "Sometimes, if you believe there are endemic problems then it's simpler to just walk away."

One way for a law firm to buy another without taking on all of its liabilities is for the acquired firm to effectively

close down to allow the creation of a new entity.

By electing to shut down, the firm's liabilities are ring-fenced from the new firm's, in return for a run-off premium paid to its current PI insurer. "We're seeing an increasing number of law firms do this, with the acquiring firm paying the premium for the run-off cover as part of the asking price," says Brown.

Although it's an effective option to insulate an acquiring firm from any future problems it isn't cheap. "Run-off cover averages between two and a half and three and a half times a firm's annual PI insurance premium," Brown explains.

Holding former partners to account

Despite the potential pitfalls of a law firm becoming a successor practice to the one it has acquired, it remains the simplest and quickest method of doing a takeover. One way of helping to reassure an anxious buyer is for the partners of the firm being bought to offer indemnities to the firm that has taken over their business, such as agreeing to reimburse it for any increase in its renewal premium or policy excess resulting from claims for work done by them in the past.

If these partners leave as a result of the takeover then it's important to include these indemnities as part of their exit deal, says Brown, otherwise their liability effectively ends when they walk out the door. "I've seen cases where partners have left without providing any guarantees for past work, forcing their former colleagues to deal with the fallout from a string of claims," he adds.

For partners that are asked to offer indemnities as part of a sale, it's important they know what the fine details of the acquiring firm's insurance policy are before they agree. Even though a claim will be

for work done by the previous firm it will be paid according to the terms of the acquiring firm's existing policy, not that of the previous firm.

One sole practitioner's retirement plans were ruined because he failed to understand that simple but crucial difference, explains Maher. He sold his business to a larger firm and agreed, as part of the deal, to pay the excess on any claims arising from work he'd done in the past. But it wasn't until a claim was made that he realized he was required to pay £50,000 – the acquiring firm's retention for each claim – rather than the £3,000 contribution required under his old PI policy. Worse, he was informed the claimant – a mortgage provider – was preparing to make a further two-dozen claims for conveyancing work he had done.

Planning for PI cover changes

Solicitors considering selling their businesses should also think about what impact potential changes in PI cover over the next few years could have on their plans.

The SRA has signalled its desire to alter the minimum terms and conditions, including possibly lowering the current compulsory cover limits of £2 million and £3 million, according to the type of law firm.

That's a particular consideration for any sole practitioners or partners looking to retire soon, says Maher, as the firm that takes over their business might buy less cover than they did in the past. That's a potential worry, he says.

"I'm seeing an increasing number of cases now where claims are being made against partners because the firm's PI cover has been exhausted."

Also, the Solicitors Indemnity Fund, which pays claims against closed law firms after their six-year run-off

cover has expired, is set to close in 2020, with no current plans for a replacement.

Both of these changes could mean that a retired solicitor's house, pension or assets could be at risk if they have any sizeable claims made against them, warns Maher.

It's another reason why solicitors should start to plan for their retirement long before they eventually stop working, says Brown.

"They need to start to make financial provisions for the run-off premium and other liabilities as soon as they can, otherwise the cost could become a big hurdle preventing some from retiring when they want."

Doing your homework before acquiring a new business

There are plenty of potential traps for the unwary in buying or selling a law firm, Maher says. That's why it's so important to consult experts before signing on the dotted line.

"For many law firms, and particularly sole practitioners selling their own practice, or buying another, might be the first, and only, deal they would do. Whereas, someone who has done deals of this kind in the past and knows what to look out for can sort most of the problems out relatively easily."

Doing your homework on a potential target is essential, argues Brown, including what impact it might have on your insurance cover. "You need to be very clear about what you're taking on, otherwise you could be letting yourself in for a whole host of problems."

If you would like to know more about any of the issues raised in this article, contact a PI insurance specialist at Miller Insurance on 020 7031 2741 or visit www.miller-insurance.com/solicitors



GENERAL DATA PROTECTION REGULATION – FOUR POINTS FOR SOLE PRACTITIONERS AND SMALL BUSINESS OWNERS TO CONSIDER

BY NICHOLAS WOOLF, DIRECTOR AND PRINCIPAL, NICHOLAS WOOLF & CO,
AND SAM CHEESBROUGH, BARRISTER, NICHOLAS WOOLF & CO

The provisions of the General Data Protection Regulation (Regulation (EU) 2016/679) (“GDPR”) will apply from 25th May 2018, and has far reaching potential ramifications for the ways that sole practitioners, and other small business owners, process data in the future.

With that in mind, and with the deadline for compliance now just under six months away, here are four points to consider when implementing the GDPR in your firm.

1. What is the GDPR for?

In short, the GDPR is intended to regulate the processing (which includes the use and storage) of personal data. Personal data is information that can directly or indirectly be used to identify a person, such as name, location data and email addresses. If you want to process any of this data, and/or use it for a particular purpose, then you will either need to obtain the explicit, positive consent of the individual concerned, or show that the processing falls within one of the criteria of “necessity” set out in the GDPR.

This may have ramifications for the way in which you conduct your business. For example, if a person consents for you to use their data whilst you are providing a service for them, they may not be consenting for you to send promotional material, articles, or possibly even communicating with them in the future to touch base.

2. Consent or necessity?

Where possible, written consent ought to be obtained as soon as possible and, in any event, before you consider yourself to be instructed by the individual concerned. Whilst you should not make consent a pre-requisite to providing your services, it may be advisable to think carefully before relying upon a ground of necessity. If a person is reluctant to give you consent, they are unlikely to take kindly to your use of their data in any event!

Consent needs to be a conscious, positive choice, so no pre-ticked tick boxes. Where possible, provisions in your terms and conditions relating to consent should be in clear and plain language,

and should be pointed out to the data subject. The individual should also be informed of their right to withdraw consent. For the avoidance of doubt, the individual should also sign a declaration that clearly sets out that they are giving you their consent to process their data.

3. What about existing clients?

It may be that you are in a position where you do not have the consent of your existing clients, but do have the consent of your newer clients. You will likely want to ensure in due course that all clients have given their consent to your using their data. Keeping separate databases for your old and new clients (or clients who have given consent and those who have not) will help you to systematically obtain the consent of your older clients to avoid potential issues in the future. It will also ensure that you know which clients, if any, have withheld your consent, so you can deal with their data accordingly.

4. What do I need to do?

By and large, the GDPR is a significant “beefing up” of the current Data

Protection Act, the GDPR nevertheless has similar aims, and principles in mind. If your processes and procedures are compliant with the law as it stands now, then compliance with the GDPR is more likely to be a matter of supplementing and enhancing what you are already doing, rather than a wholesale overhaul. Nevertheless, it is likely that you will need to supplement your existing policies, training and security measures, and review your storage and retention of data (including paper) in order to comply with the GDPR.

When approaching this task, it is worthwhile keeping the following in mind:

- a. Do you obtain the consent of your clients to use their personal data? If so, is their consent given positively (opt-in rather than opt-out) knowingly and willingly? For example, are consent clauses in

your terms of service written in clear language and set out in your terms in a logical and obvious way?

- b. Why do you need the information? Is it worth the risk of non-compliance with the GDPR in using the data for particular purposes? Is it possible to find ways to satisfy that purpose without using personal data?
- c. Do the terms of consent draw the parameters sufficiently widely for your purposes? Does it cover marketing emails? Does it enable you to process the personal data after the service has ended? How are you going to deal with existing clients' data going forward?

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6th December 2017

DISCLAIMER

This note comprises the view of the author as at 6th December 2017. This note is not a substitute for legal advice. Information may be incorrect or out of date, and may not constitute a definitive or complete statement of the law or the legal market in any area. This note is not intended to constitute advice in any specific situation. You should take legal advice in specific situations. All implied warranties and conditions are excluded, to the maximum extent permitted by law.

“Question for the acronymically minded:

If an ABS or an LLP with RELs, RFLs and EELs and CLS/LAA funding breaches SOCA rules, or being an EPF under its DPB breaches FCA regulations, must the COLP or the COFA report to OLC, LSC and LeO as well as SRA? If LSG posts SDT outcome, can PDS or ORC or AUS ask LSB or LSCP to refer to ICRS? What steps must MLRO and MLCO take?

Answers in triplicate, please, ...”

Hamish McNair

IT'S A LAWYER'S LIFE

With Joe Egan, President of the Law Society of England & Wales

1. Why did you become a lawyer?

I returned to England after travelling around the world and needed a proper job. I'd read a book called something like the making of the English Legal System and thought it might be interesting.

2. If you hadn't become a lawyer, what would you have done instead?

Something in the travel or hospitality industry although there weren't the same opportunities then that there are now.

3. Do you wish you had?!

No. Whilst I can't say I've loved every minute of my career it's not far off. I have never regarded it as work rather a pleasant way of spending my days which happily provided me and my family with a comfortable living.

4. Describe a typical day in the life of being president.....

The intensity of the job surprises. As vice president I spent most of the week working on behalf of the society but usually doing only one or two events each day. Now I can start with a working breakfast, then go on to a meeting with the CEO. From there I might be whisked (by tube) to Whitehall for a meeting with an MP we are trying to establish a relationship with. Occasionally, I will then spend the day at a meeting of the Membership or Management Board then host a dinner in Chancery Lane.

5. What would you say has been your greatest challenge in life?

Many of my clients were ineligible for legal aid but not well off enough to pay counsel's fees. Whilst I was comfortable doing crown court work it was, to me, much more challenging to do final hearings in matrimonial or civil hearings

not least dealing with counsel who could often be quite supercilious.

6. What has been your proudest moment?

My children have given me many proud moments. They have all turned into sensible responsible caring adults with a capacity to enjoy life.

7. How do you manage to relax away from work?

If you ask my wife she will probably say football, football, football. I loved playing which I did (at a low level) well into my forties. Now I have two season tickets for Bolton Wanderers and Manchester City. I also love music, opera, theatre and often have two or three books on the go at once.

8. Is there anything still left to do on your 'bucket list'?

I have been fortunate enough to be able to do most of the things I wanted to do. Before I became a solicitor I did a three year round the world trip. Upon retirement the idea of tracing the route but in luxury this time appeals although it is probably not as easy to travel through Afghanistan these days. There was one journey I did in Peru where it took the bus 17 hours to drive up one side of the mountain and then down the other side. By plane it takes 20 minutes. In India we would often spend an hour arguing whether we could have the room for four pence rather than five pence. You get the picture?

9. What makes you really angry and really happy?

Really angry at all kinds of injustice. I find it hard to understand any lawyer who is not a member of Amnesty. Happiness? When my wife smiles at me the sun rises in the sky.



The Law Society

10. If you could change anything about your life, what would it be?

On the one hand I would have loved to have been better at sport but then I would have been a different person and some of my charm would vanish.

11. How would you like to be remembered?

I am not really that bothered about being remembered. The idea of people telling my grandchildren that their grandad was a lovely bloke appeals.

12. What advice would you give to sole practitioners today?

Don't be afraid to expand. There are lots of really able youngsters out there who will make great lawyers and look after your clients as well as you do.

Joe Egan is the 173rd President of the Law Society, having taken office in July. He founded his own practice in Bolton in 1986.

DOCUMENT SHARING IN THE MODERN LAW FIRM

Gone are the days of lawyers having to carry heavy briefcases and large folders full of documents. Technology has enabled lawyers and their clients to share and collaborate across multiple documents with single handheld devices such as tablets or laptops.

FOR THE CLIENT

As clients become more adept at using cloud technology and increasingly reliant on it, law firms are expected to offer a quicker more efficient service as standard. In addition, as clients express a wish for their documents to be handled sensitively and securely, the market demand for this readily available technology is making it a necessity rather than a choice for legal practices to provide up-to-date document sharing technology to their clients.

In 2017, the document sharing system LawConnect's inaugural year, over 63,000 documents were shared with clients by more than 800 law firms, this is a clear indication that clients are adopting the technology offered within the LEAP practice management solution.

“...the process is simple...access... from anywhere any time...”

Part of the attraction to your clients in using systems such as LawConnect is that they can expect better document security and version control than email can offer. Also, lawyers and clients can collaborate in real-time by storing, sharing, reviewing and refining documents. No matter what the size of the file – the process is simple – documents can be instantly accessed from anywhere at any time by the client and from any web-enabled device.

FOR SOLE PRACTITIONERS

Solicitors are also starting to demand shared document technology because

of the added benefits it can bring to a legal practice. Feature-rich technology enables a lawyer to see if a client has viewed a document, access shared documents instantly and revoke access to documents if necessary.

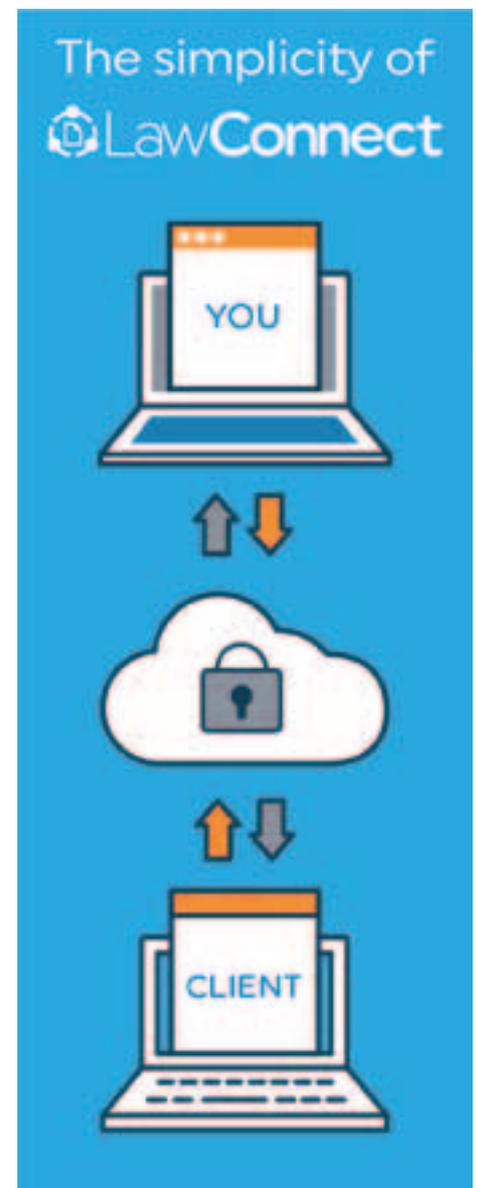
Offering clients instant access to their documents and case files means that all parties can locate the latest version quickly and review, collaborate and respond accordingly. An additional benefit to using LawConnect is the system integrates seamlessly with LEAP's legal practice management platform. Lawyers can share documents directly from within the electronic matter.

LEAP UK's CEO Peter Baverstock comments: *“LawConnect is a simple yet safe legal document management system. We are delighted that it is being so widely used by the legal market and we have heard of many instances of end users recommending LawConnect to their lawyers.”*

Andrew Nuttall of Adlington Law Limited comments: *“LEAP is constantly improving its system and you get regular updates of all changes. One recent addition at no extra cost was LawConnect which allows you to share documents to all your customers and suppliers within seconds of producing a letter/fax or PDF document. This is very useful if we require our client to sign documents and return them the same day. It is quicker than using the postal system and awaiting the return of important documents.”*

The simple fact is that if law firms don't offer this technology, clients will go

elsewhere, even if that means to your competition. Document sharing is now a key driver for your client base and not something that can just be ignored.



For more information call us on **0843 713 0135** or visit leap.co.uk

REPORT FROM LAW SOCIETY COUNCIL MEMBER – LUBNA SHUJA



Update from the Law Society Council Meeting on 7 December 2017

I attended the Law Society Council meeting on 7 December 2017 in my capacity as Council Member representing sole practitioners. I attach below a summary of the key issues discussed by the Council during that meeting. If you would like any further information, or wish to discuss any issues affecting sole practitioners, or you would like me to raise any matters with the Law Society, please do not hesitate to contact me on info@legalswan.com or on 0121 551 7866.

General Data Protection Regulations (GDPR)

The General Data Protection Regulations (GDPR) come into force in May 2018 and the Law Society website contains information to assist with preparation for this. Listed on the website are 10 aspects of the GDPR that your compliance review must cover.

Criminal Legal Aid Update

Litigator Graduated Fee Scheme (LGFS)

The Ministry of Justice (MoJ) announced that it will be going ahead with the proposed cut to the Crown Court Litigator Graduated Fee Scheme (LGFS), which will reduce the Pages of Prosecution Evidence (PPE) limit from 10,000 to 6,000 pages. Any PPE above 6,000 will need to be claimed under 'Special Preparation' (SP). The Law Society strongly opposed this cut in its response to the MoJ's consultation. Members undertaking this work indicate

that this cut will reduce their fee income by a considerable amount. The MoJ's Response to Consultation estimates that "legal aid providers submitting claims with above 6,000 PPE will receive around £26m to £36m lower fee payments" as a result of this change. The MoJ has stated that it will not however be reinstating the suspended across the board cut of 8.75%.

The Law Society has instructed counsel and has issued a Pre Action Protocol letter before action to the Lord Chancellor, with the aim of issuing judicial review proceedings against this decision to cut further the fees for criminal legal aid work.

The proposal for this short-term cut to the LGFS calls into question The Law Society's future engagement with the longer term reform of the scheme. Work in the Crown Court often subsidises magistrates court work, which is no longer profitable on its own. There are concerns that this cut will have an impact on access to justice for vulnerable clients if legal aid firms can no longer afford to undertake this unprofitable work. The Law Society recently published a report that indicated that the age profile of criminal practitioners is increasing as young solicitors find criminal practice increasingly unattractive. Further details are on the Law Society's website.

Crime Contracts

The 2017 crime contract started on 1 April 2017. There have been a number of issues raised by members around a new requirement for duty solicitors to undertake 14 hours work per week for the office that holds the duty slot in their name. This requirement is aimed at removing the duty rotas of 'ghost' duty solicitors who actually have little or no connection to the firm that gains the slot. However the rule is being interpreted in a narrow way by the LAA. The Society has been assisting some of

the firms that are in disputes with the LAA. The Society has formed a new 'Contract Review Group' (CRG) with the other Practitioner Groups, to engage with the LAA in order to find a solution to these issues.

Flexible Court Operating Hours

Following extensive lobbying by the Law Society and others, HMCTS had announced the deferral of the Flexible Opening Hours pilot, to allow further engagement with court users as well as a further tender process to secure an independent evaluator. HMCTS are intending on running many flexible operating hours pilots from February 2018. The pilots were initially proposed to commence from autumn 2017 but they have been pushed back due to an unsuccessful evaluation tender. HMCTS are clear that their intention is not for people to work longer hours. However, the Society believes HMCTS have provided no solution as to what measures will be adopted, or what listing techniques will help obviate this risk. The Society also has concerns as to how flexible hours in one jurisdiction would affect other jurisdictions and work such as the immigration tribunals. Further members have expressed their concern that hours will be extended and not flexible, and will cause difficulties for those with caring obligations.

Wills and Equity

The Law Commission makes a number of proposals, including around electronic wills, relaxing the formalities to making a valid will and bringing clarity to the law on testamentary capacity. The Law Society will be responding.

Lobbying on Brexit

All of the Law Society's major requests on civil justice co-operation after Brexit were adopted and a significant amount of its messaging was reflected in the Government's paper on cross border civil judicial co-operation which was published in mid-August.

The Law Society has fully engaged in the Government's work on Brexit maintaining five key priorities:

- Continued mutual access for solicitors to practise law and base themselves in the UK and EU member states
- Continued mutual recognition and enforcement of judgments and respect for choice of jurisdiction clauses in the UK and EU
- Ensure that legal certainty is maintained throughout the process of withdrawal, including transitional arrangements
- To maintain collaboration in policing, security and criminal justice
- Ensure that the Government works effectively with the legal services sector to continue to promote England and Wales as the governing law of contracts, the jurisdiction of choice and London as the preferred seat of arbitration

The Society had submitted written evidence to two parliamentary committees and held meetings with several key stakeholders. It had also been active in a number of Government industry/sector groups. The Law Societies' Brussels office had also organised a series of meetings with MEPs and law firms.

Law and Health Outcomes

There is a growing awareness that early legal advice can improve health outcomes where patients have access to legal advice to resolve issues that might be causing or contributing to a health condition. Health Justice Partnerships (HJPs) are arrangements that enable patients to obtain legal advice in the same location as their GP or hospital, potentially resulting in lower NHS costs as well as benefiting the patient. There are a few ad hoc HJP projects in England and Wales. The Society wishes to promote awareness and implementation of HJPs as a means to increase access to justice. To that end the Society will convene a round table meeting of stakeholders to further this project with further research on potential benefits and on funding opportunities. The longer-term aim

would bring together the experts in this field and build a lobbying group together with a communications plan, stating why this helps and how this would aid the NHS in saving money.

VAT and Disbursements

Council was provided with information about the potential consequences and implications for firms of the Brabners judgment, in which the Tribunal had agreed with HMRC that electronic searches formed part of the overall service provided to a client by a solicitor and therefore were subject to VAT between solicitor and client, even if VAT was not charged on the search by the search provider. This was a First Tier Tribunal decision, and therefore not definitive. Firms receiving a similar approach from HMRC in respect of historic electronic searches retain the option to go to the First-tier Tribunal. The Law Society is working on issuing guidance and making an approach to HMRC about this.

Legal Professional Privilege

The Law Society will be seeking permission to intervene in the appeal in SFO v ENRC, which is listed for early July 2018. The Society will be seeking to challenge the High Court's narrow interpretation of the scope of legal advice privilege and litigation privilege in the context of corporate internal investigations conducted in anticipation of regulatory or criminal proceedings.

Other Updates on Supporting the Profession

The Law Society had also been making submissions to HMRC on other matters including the proposed penalties for 'enablers' of tax avoidance. Council also noted the creation of a Law Society Quality and Standards in Education Committee to provide expert oversight of all aspects of quality and standards associated with the Society's education, training and accreditations. Council approved a refresh of the Society's logo to ensure that it remained fit for purpose in the digital age. This would be rolled out during 2018.

International engagement

Council noted that the Society had been represented at the International Bar

Association Annual Conference. The Society had also attended the Union Internationale des Avocats (UIA) annual congress in Toronto where President Joe Egan spoke on the disciplinary rules that should apply to lawyers working under mobility rules. At the end of November, the Society hosted the second round-table on women in the law, championed and chaired by vice president Christina Blacklaws, at which the strategy for the international programme on women in the law was presented and agreed.

Changes to governance for 2018

Council received a further progress report on the implementation of the new Law Society Board and its two main supporting committees (Policy and Regulatory Affairs Committee, and Membership and Operations Committee). The Board should be in place by the end of February 2018 and the Committees by the end of March. Council approved the Selection Committee's recommendation that Robert Bourns, past president, should be appointed as Board Chair. Other external recruitment and elections among Council members are now underway.

President's report

The President made his half-yearly report to Council. He had engaged extensively with political and non-political stakeholders both over the party conference seasons and in regular meetings with ministers and opposition spokespeople. There had also been active engagement with the judiciary, including a meeting with the new President of the Supreme Court, and the new Lord Chief Justice at whose swearing-in the President spoke on access to justice covering topics including court fees, criminal legal aid, and the courts modernisation programme. The President had also spent a great deal of time meeting local law societies and other organisations.

Lubna Shuja

SPG Law Society Council Member
December 2017

22nd ANNUAL CONFERENCE

LEARN AND PROSPER

*Friday 20th April 2018

12.30pm	Lunch followed by Golf Tournament (1.00pm Tee off)
6.30pm to 7.00pm	Regional meetings roundup – Regional Liaison Officer Penny Raby
7.00pm to 11.30pm	Drinks reception (sponsored by the SRA) buffet with music and dancing (smart casual wear)

*Saturday 21st April 2018 (5 hours CPD)

10.00am to 10.15am	Welcome to Conference	Kemi Mosaku (Chair SPG)
10.20am to 11.00am	How to get paid what you're worth (followed by break)	Vanessa Ugatti
11.35am to 1.00pm	SPG AGM (followed by lunch)	SPG Executive Committee
2.00pm to 2.30pm	The New Flexibility in the Profession and the SRA	Jane Malcolm (Director SRA)
2.30pm to 3.15pm	Professional Standards and The Law Society (followed by break)	Joe Egan (President of The Law Society of England & Wales)
3.45pm to 4.30pm	GDPR – what are the problems we face?	Richard Hodgson, barrister
4.30pm to 5.30pm	How can we deal with the impact of GDPR?	Paddy Synott and Zarina Lawley (Millers Insurance main group sponsors)
6.30pm to late	Champagne reception (sponsored by Leap) Gala Dinner, entertainment and dancing	

*Sunday 22nd April 2018 (2 CPD hours)

9am – 11am	Duck herding with sheepdogs followed by Team competition, (sponsored by Leap)	
11.30am to 12.00pm	Using social media to reach new clients	Rachel Tombs
12.00pm to 12.30pm	Risk and Run Off – not an instruction! How to cope with both	Paddy Synott and Zarina Lawley (Millers Insurance)
12.30pm to 1.15pm	How to get the best from your legal software (interactive session)	Leap Legal Software
1.15pm to 1.30pm	Close – SGP conference & lunch	Tahira Shaffi (New SPG Chair)

*Please note this programme may be subject to change

All sole practitioner solicitors are invited to join us at our Annual Conference weekend where we have an excellent panel of speakers lined up. We also invite members of small firms who will find our event extremely useful and an economical way to achieve training objectives. As with previous conferences, you are most welcome to bring family members to enjoy the hotel and the social side of the weekend.

The conference will start on Friday 20th April at lunchtime with an optional

golf competition. On Saturday 21st April, there will be a full day of presentations by eminent guest speakers. On the topical issue of General Data Protection Regulation, our speaker will provide detailed notes to take away.

Accommodation

We have secured special conference rates at the beautiful refurbished rooms in the main house which are in the wings either side of the original stately home. There are two types of rooms at Heythrop – the traditional rooms attached to the main

house where we are having the event, and the modern rooms in the Crowne Plaza wing next door (but attached), which may be cheaper online. We make this clear so that members have the best choice available.

Thank you!

The Committee would like to thank all our sponsors for their kind generosity, who will be available to advise members of their services during the Conference.

SPG 22ND ANNUAL CONFERENCE, 20TH TO 22ND APRIL 2018

Heythrop Park, Enstone, Oxfordshire OX7 5UE

BOOKING FORM

Please complete this form and either return it with payment by 30th March 2018 to: The Conference Organiser: SPG PO Box 353, Uxbridge UB10 0UN or book online. For queries, email: info@spg.uk.com

Delegate details

Title

Full Name:

Mr/Mrs/Miss/Ms/Dr

Firm/organisation:

E-mail address:

Please tick if you are happy to be contacted by e-mail about events and products by SPG

Address:

Postcode:

Tel:

Additional requirements: e.g. access, dietary:

Delegate Fee

- | | | |
|--------------------------|--|--|
| <input type="checkbox"/> | Sole Practitioner Delegate | £150.00 (incl. VAT) (£125 plus vat £25)
(includes delegate lunch on Sunday) |
| <input type="checkbox"/> | Non Sole Practitioner Delegate
(inc 7 hours CPD, lunch on Saturday and Sunday for delegate only) | £180.00 (incl. VAT) (£150 plus vat £30)
(includes delegate lunch on Sunday) |

Name of guest (if applicable):

- | | | |
|--------------------------|--|--|
| <input type="checkbox"/> | Member and Non-Member – Friday welcome buffet | £24.00* (incl. VAT) |
| <input type="checkbox"/> | Member and Non-Member – Saturday Gala Dinner | £66.00* (incl VAT) |
| <input type="checkbox"/> | Member and Non-Member – Friday Afternoon Golf
Golf 18 holes (inc light lunch) – bring your own equipment | £36.00 (incl VAT)
*Includes wine and soft drinks |

Total payment: £ _____ Cheques are made payable to **“SSPG Ltd”**

Cheques to be made payable to **“SSPG Ltd”**

BACS payment to SSPG Limited, sort code 40-35-34 account number 52255081, please quote your name.

Accommodation – bookings to be made DIRECTLY BY DELEGATE WITH THE HOTEL by quoting SPG

Heythrop Park Hotel – £110 inc VAT single, £125 inc VAT double/twin per night. To book call 01608 673333.

PLEASE BOOK AS SOON AS POSSIBLE AS LIMITED ROOMS AVAILABLE.

Booking terms

Payment for event bookings is due immediately on completion of the booking and cleared funds must be received by 18th April 2018. We accept cancellations (less 20% administration charge up to 30 days before the event date. Cancellation requests must be made in writing by emailing info@spg.cuk.com. Thereafter the full charge is payable and no refunds can be made. Delegates may be substituted at any time at no extra charge. The organisers reserve the right to alter the programme and speakers should the need arise.

FINDING BALANCE: LOOKING AFTER YOUR MENTAL HEALTH AT WORK



Chris O'Sullivan, Head of Workplace Mental Health at the Mental Health Foundation

Chris leads on workplace mental health for the Foundation across the UK, combining programme and policy activities on workplace mental health with the management of our corporate partnerships and workplace training and consultancy services.

Chris's background is in mental health policy, research and campaigns. Before joining the Foundation Chris was a programme manager working on policy into practice projects in public mental health. He spent three years providing research into practice support for the European Commission in developing the EU Pact on Mental Health. Prior to that Chris worked for See Me – Scotland's programme to end stigma and discrimination in mental health.

The Mental Health Foundation is the UK's charity for everyone's mental health. With prevention at the heart of what they do, they aim to find and address the sources of mental health problems.

We can all take steps to improve our own mental health, and build our resilience – our ability to cope with the challenges life throws at us. Self-care is a skill that needs to be practised just like any other. Though it isn't easy especially if we feel anxious, depressed or low in self-esteem, there are simple tips we can all try to follow to better support our mental health.

1. Talk about your feelings

It can be hard to talk about feelings at work. Having colleagues you can talk to really helps.

Identify someone you feel comfortable with and who will be supportive. You may want to think about what you want to disclose, who to and when a good time and place to do this could be.

Being open about how you feel at work, especially if you're a leader, might encourage others to.

If you don't feel able to talk about feelings at work, make sure there's someone you can discuss work pressures with – partners, friends and family can all be a sounding board.

2. Keep active

Regular exercise can boost your self-esteem and can help you concentrate, sleep, and look and feel better. Exercising doesn't just mean doing sport or going to the gym.

Experts say that most people should do about 30 minutes' exercise five days a week. Try to make physical activity that you enjoy a part of your day.

If you work in an office it can make a huge difference to get out for a walk or join a class at lunchtime, or to build in exercise before or after work to ease you into the day or create a space between work and personal time.

3. Eat well

What we eat can affect how we feel both immediately and in the longer term. A diet that is good for your physical health is also good for your mental health.

It can be hard to keep up a healthy pattern of eating at work. Try preparing lunches at home or choosing healthy options when buying lunch – and try to eat away from your desk.

Be aware that some people find public eating at work very stressful because of past or current eating disorders – so if someone doesn't want to come to work dinners, or makes different food choices in the office, don't pass comment or put pressure on them to join in.

4. Drink sensibly

We often drink alcohol to change our mood. We recognise the pattern of drinking more at the weekend or in the evening when work is difficult.

Be careful with work functions that include drinking. 'Dutch courage' may be tempting, but if you feel anxious you may drink too much and end up behaving in a way you'd rather not, which will increase feelings of anxiety in the medium to long term.

5. Keep in touch

Relationships are key to our mental health. Working in a supportive team is crucial for our mental health at work.

Work politics can be a challenge when we have mental health problems. It can be helpful to find a mentor or a small group of trusted colleagues with whom you can discuss feelings about work

– to sense check and help you work through challenges.

Try and make sure you maintain your friendships and family relationships even when work is intense – a work–life balance is important.

6. Ask for help

None of us are superhuman. We all sometimes get tired or overwhelmed by how we feel or when things don't go to plan.

Your employer may have an Employee Assistance Programme. These services are confidential and can be accessed free and without work finding out. You may also be able to access occupational health support through your line manager or HR service.

The first port of call in the health service is your GP. Your GP may suggest ways that you or your family can help you, or they may refer you to a specialist or another part of the health service.

7. Take a break

A few minutes can be enough to de-stress you. Give yourself some 'me time'.

If your employer offers mental health days – discretionary leave to look after your wellbeing – take these, and make sure you use them well.

Listen to your body. Without good sleep, our mental health suffers, and our concentration goes downhill.

It can be hard to take holidays and time off from work. When we're stressed, it seems even harder to take breaks we're entitled to when we need them most. When you're off work, ensure you take time to switch off your emails.

8. Do something you're good at

It's OK to be good at your job – when you feel stressed, it can be easy to forget your hidden talents. Concentrating on a hobby, like gardening or doing crosswords, can help.

If possible, you should plan your workload to include tasks you know



Mental Health Foundation

you're good at, to 'sandwich' things you know will be more difficult.

You may have a hobby you'd like to share or join in with colleagues on – a sport, book or craft club can be a great way to share skills with others.

9. Accept who you are

Feeling good about yourself boosts your confidence to learn new skills, visit new places and make new friends. Good self-esteem helps you cope when life takes a difficult turn.

Be proud of who you are. Recognise and accept the things you may not be good at, but also focus on what you can do well. If there's anything about yourself you would like to change, are your expectations realistic? If they are, work towards the change in small steps.

Self-acceptance and self-care can be difficult when you have a mental health problem.

It can be tempting to invest everything in building self-esteem around work success, often meaning that people with mental health problems give everything at work and are high achievers. This creates a risk that when things go wrong, when mistakes are made, or when change is necessary, people may take it personally.

Practicing mindfulness can help us to be more present with ourselves, our

work, and our families. It can help us feel more connected, take stock, and be compassionate to ourselves and others.

10. Care for others

In most jobs, you can choose to be there for colleagues – either as a teammate, or as a manager, when strategies like coaching and training are good ways to support others.

Many companies have volunteering opportunities and Corporate Social Responsibility programmes that enable staff to get involved in community work. Volunteering can be rewarding, and helps us to see the world from another angle.

Workplaces that support flexible working, carers' leave, childcare voucher schemes and other initiatives to support caring roles can have a big impact on staff mental health and productivity.

Remember, talking about your feelings isn't a sign of weakness; it's part of taking charge of your wellbeing and doing what you can to stay healthy.

Look After Yourself

Top 10 Tips for Good Mental Health and Wellbeing



Keep Active

Find a physical activity you enjoy and make it part of your life, you will feel better and boost your self-esteem



Take a Break

Use your lunchbreak to get away from your desk. Step outside for just a few minutes, it can re-energise you



Sleep is Important

Sleeping well can improve concentration and refresh you



Eat Well

A balanced diet rich in nutrients is good for both your mental and physical health



Drink in Moderation

Stay within the recommended alcohol limits: heavy drinking affects brain function and can cause disease



Keep in Touch

Maintain good relationships with friends, family and your wider community: strong connections can help you to feel happier



Share How You Feel

Talk about your feelings, it can help you cope with problems and feel listened to



Give Back

It has been proven that giving - time or money - can make you feel valued and give you a sense of purpose



Be Mindful

Mindfulness - positive emotions and paying attention to the present - can help you enjoy life more



Ask for Help

Asking for help is a sign of strength, and can lead to the right support for you, whatever you're going through

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Privilege – Some Thorny Issues

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Paul Epstein QC specialises in employment, discrimination and commercial work. He practises from Cloisters, London EC4Y 7AA: <http://www.cloisters.com/barristers/paul-epstein>

He is also a director of Assurety, a company that provides the UK's most innovative witness familiarisation: <http://www.assuretytraining.com/>



Introduction

The law of privilege has moved fast in the last couple of years. This paper addresses two thorny issues – whether legal advice privilege protects from disclosure documents produced during the course of an investigation, and whether it protects from disclosure an employee's communications with his lawyers that are stored on his employer's computer system.

A reminder first of the two main branches of legal professional privilege ("LPP"):

Legal advice privilege: (1) *communications*, (2) *in confidence*, (3) *between solicitor and client or internal agent*, (4) *re giving/receiving legal advice*, (5) *litigation need not be in contemplation*.

Litigation privilege: (1) *communications between (client or lawyer) and third party, or documents created by client or lawyer*, (2) *litigation is contemplated or has commenced*, (3) *for the dominant purpose of (a) obtaining advice/information in connection with the litigation, or (b) assisting in the litigation itself*.

The privilege is the client's, not the lawyer's.

Documents Produced During Investigation

This is a problem that occurs with legal advice privilege where the client is a corporate body (this article is NOT addressing litigation privilege; it is possible that litigation privilege will apply).

The problem is, who is the client? It matters because legal advice privilege protects only client/lawyer communications.

Although the client is the corporate itself, since a corporate has no natural personality, it is necessary to go further and identify the individuals at the corporate who are the client.

The relevant question is, which officers or employees are authorised by the corporate to communicate with its lawyers on its behalf for the purposes of seeking or receiving legal advice.

Some recent cases illustrate the difficulties for corporates wanting to rely on legal advice privilege to protect documents from disclosure.

Perhaps the best known illustration is *The RBS Rights Issue Litigation [2016] EWHC 3161 (Ch)*.

Lawyers interviewed current and ex-employees were for the purposes of providing information for lawyers to consider as part of their investigations on behalf of RBS into sub-prime exposures, and as part of their investigations into allegations a Mr Hong made about RBS Greenwich Capital's marketing of Super senior collateralised debt obligations and other matters. Notes were made ("Interview Notes").

RBS resisted disclosure of the Interview Notes. These documents were underlying material and did not contain legal advice from RBS' lawyers to RBS.

The claim to privilege failed.

Other cases are to the same effect, such as *National Westminster Bank plc v Rabobank Nederland [2006] EWHC 2332 (Comm)* Simon J, *Astex v Astrazeneca [2016] EWHC 2759 (Ch)* Chief Master Marsh, and *Director of the Serious Fraud Office v Eurasian Natural Resources Corp Ltd [2017] 1 WLR 4205*.

What then is to be done?

A solution sometimes suggested is that lawyers carry out the interviews and make the interview notes, and that they ensure that such notes are not verbatim records of the interviews.

The reason for the suggestion is that materials tending to show the trend of advice from lawyers ARE subject to legal advice privilege, and it is argued that selection of what to include in such non-verbatim interview notes would tend to show the trend of legal advice.

That is a high-risk approach, since there is little reason to think that such notes would show the trend of advice.

Another suggestion sometimes made is that lawyers carry out the interviews, make the notes, and weave their legal advice into those notes.

Again, it may be doubtful such a strategy would succeed, since the court

can simply order disclosure whilst also permitting redaction.

A further suggestion, which some US lawyers have advanced, is to have US lawyers involved in such investigations and for the investigations to take place in the US. The thinking behind that suggestion is that US law of client/attorney privilege WOULD protect underlying material such as interview notes from disclosure.

However, there is a difficulty with that suggestion if the court deciding whether legal advice privilege applies is an English court.

In *The RBS Rights Issue Litigation* Hildyard J said at [169] that an English court as a matter of public policy will apply English law to determine whether legal advice privilege applies even if the engagement or instructions have their closest connection with another jurisdiction (such as, in that case, the US.)

Finally, the client may choose to accept that certain material produced as part of an investigation is not protected from disclosure by legal advice privilege.

Employee's Legal Advice on Employer's Computer

In *Simpkin v The Berkeley Group Holdings PLC* [2017] 4 WLR 116 the employee sought an injunction to restrain his ex-employer from using his documents that he claimed were subject to LPP.

One of the key points was whether the documents had the necessary degree of confidentiality to benefit from LPP.

The judge concluded without much difficulty that the documents were not confidential as against the ex-employer and declined to restrain their use.

The factors on which the judge relied included in particular the ex-employer's IT policy saying emails were its property, the relevant material was prepared during the employee's employment, and the employee had no reasonable

expectation of privacy in circumstances where he saved the document on an unsegregated portion of the ex-employer's servers and his PA had access to the material.

Query whether the Information Commissioner's Office Employment Practices Code on Monitoring at Work, which was not referred to in argument, would have made a difference to the outcome? Whether or not it would have made a difference, it may often be a high hurdle for an employer to demonstrate the Code is satisfied.

The case does however show that, depending on the facts, an employer may be entitled to access material of the employee's that the employee believes is subject to LPP.

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Article submitted on
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Meet us at the SPG Annual conference at Heythrop Park



SPG have signed up for this annual event, which will take place on Monday 21st May 2018, a pleasant 10km walk around familiar sights in London. In 2017 participants raised a record breaking £800,000. The walk finishes at The Law Society and there will be a street party on Carey Street. For further information please see www.londonlegalsupporttrust.org where there are other ideas as to how you can get involved in fundraising and volunteering. We would love it if you could join us in supporting this event – email info@spg.uk.com

You may not be aware but there are regional legal walks which take place during the year so if you cannot make it to London, or indeed if you would like to walk more, check out what is in your area!



Jane Malcom is Executive Director of External Affairs at the SRA covering communications and corporate affairs. Previously she held a series of senior roles at the General Medical Council and prior to that worked at the Federation of Small Businesses.



NEW ACCOUNTS RULES – TRUSTING YOUR PROFESSIONAL JUDGEMENT

**JANE MALCOLM,
SRA EXECUTIVE DIRECTOR EXTERNAL AFFAIRS**

I'm sure that you are aware that, as part of our drive to make the Handbook clearer and simpler, we have been consulting on new Accounts Rules.

Why do we think it is needed? We want to make it easier for you to see what we expect and what can go wrong.

But the current Accounts Rules set out in minute detail how firms should run their accounting systems. It's time consuming, burdensome and above all complex – and that complexity means there lots of technical breaches. The result is confusion, cost and non-compliance rather than the good practice we all want to see.

I live out in the country so a stand out example for me is that the current rules mean that a sole practitioner in a rural area may have to drive to a bank several times a week to make sure cheques from clients are deposited within 48 hours of receipt. Sometimes that might be necessary, but the lack of flexibility for a highly qualified professional to decide what is best in the circumstances and best for their clients can't be right.

So we should be putting more trust in solicitors' professional judgement.

To do that, we have worked to create a new, simpler set of rules. We have stripped down the pages and pages of rules that say 'clients' money is clients' money – not yours' so that key message comes through loud and clear. The new rules have been reduced from 41 to seven pages focusing on the protections that really matter – keeping client's money safe.

We consulted on these rules over the last two years, and it has been hugely helpful to have input from yourselves and the SPG. In total we engaged with well over 10,000 people, and the moves towards shorter, clearer rules have been well received.

And we have made some important changes in response to feedback. For example, we originally put forward proposals to narrow the definition of client money to exclude fees paid in advance. However, feedback from some firms said it could have cost implications for them. This was not our intention, so we revisited our proposals and the final rule on this means that the vast majority of firms don't have to make any changes.

And that is generally true of all the amended Account Rules – if you are, like most firms, compliant with the current rules, you are likely be compliant with the new ones.

Our changes make the rules simpler and easier to navigate. They offer the appropriate protections to clients, but also much greater flexibility to firms where you might need it. You can use your professional judgement and focus on the right approach for your clients and business rather than working through unnecessarily complex regulatory bureaucracy.

We have now published the revised Accounts Rules, but they will not come into effect any earlier than Autumn 2018. We will keep you all updated once we have finalised the exact timings of the change.

Third Party Managed Accounts

In the same spirit of flexibility, we have also recently published guidance on the use of third party managed accounts (TPMA) as an alternative to the use of a client account. TPMA can be useful for certain firms as a way of reducing costs or the burden and risk of managing client money. For example, it could

work well for a sole practitioner who is only handling a limited amount of client money.

Our guidance sets out what firms should do when engaging a TPMA provider and our expectations – such as that the TPMA provider is regulated by the Financial Conduct Authority (FCA). Any firm using a TPMA will need to take an overview of the transactions on the account and keep appropriate records to reflect this. And of course we also would expect a firm to take reasonable steps to make sure the client knows about the arrangement and understands what it means for them.

Although you don't need our approval to use a TPMA, we do expect to be notified that you are using one.

Further information

Full details of what you need to know are in the TPMA guidance, which you can find at: [www.sra.org.uk/solicitors/code-of-conduct/guidance/guidance/Third-party-managed-accounts-\(TPMA\).page](http://www.sra.org.uk/solicitors/code-of-conduct/guidance/guidance/Third-party-managed-accounts-(TPMA).page)

Please call our Professional Ethics team on 0370 606 2577 if you want further advice.

You can also see a copy of the new Account Rules, as well as our response to what people said in response to our consultation at: www.sra.org.uk/sra/consultations/accounts-rules-review.page

All this is part of our wider programme of work to get rid of unnecessary red tape and focus on what really matters. For me that is the high professional standards that are at the heart of your work day in day out, supported by appropriate protections for the public. That should free you up to focus on your business and how you deliver high quality, accessible, affordable legal services to your clients.



SPEAKER AT CONFERENCE

"If there was only one action you took in the immediate future to grow your business, it has to be to read True Worth – a work of genius – and ring Vanessa!" Roger Salvetti, Director, Biscoes Solicitors

Hi I'm Vanessa Ugatti, The True Worth Expert and author of Amazon Best Seller, *True Worth, How to Charge What You're Worth and Get It* and I have the great pleasure and privilege of working with conscientious, experienced lawyers, just like you.

Running your own business as a sole practitioner is not easy, is it? There are many challenges, particularly

when it comes to charging. My job is to help you generate more revenue, have more time and create more freedom without having to:

- get more clients
- work longer hours, or
- compromise your value or values

which enables you to effectively manage situations such as:

- negotiating fees with a new client
- discussing fee increases with an existing client
- handling requests for discounts
- following up with late payers

"Vanessa spoke at the 2017 Symphony Legal Conference: her message was captivating – a real eye opener and her delivery was inspiring, passionate and powerful." Paul McCluskey, UK Head of Professional Practices, Lloyds Banking Group

So often, experienced and conscientious lawyers who are really good at what they

do find themselves under-charging, discounting or over-servicing their clients which not only causes a loss of income but also physical and emotional challenges too, such as:

- Stress
- Over-work
- Tiredness
- Lack of fun time/family time
- Health issues
- Resentment and even
- Overwhelm

Is this you?

I'm delighted to have been invited to talk at your Annual Conference in April, so if any of this resonates with you, please do come along and hear me speak.

In the meantime, if you wish to get in touch, please feel free to contact me on **01202 743961** or email: vanessa@thetrueworthexpert.com or visit www.thetrueworthexpert.com



PUTTING YOUR HOUSE IN ORDER HOW SHOULD SOLE PRACTITIONERS PREPARE FOR THE GDPR?

BY STEPHANIE PRITCHETT, PRINCIPAL OF PRITCHETTS LAW,
SPECIALIST DATA PROTECTION & PRIVACY LAW SOLE PRACTICE

Stephanie Pritchett is the Sole Principal of Pritchetts Law. She is recognised as an industry-leading lawyer and has over 15 years' specialist experience advising a wide range of clients on all aspects of data protection, privacy and marketing law compliance as well as information management. Stephanie has many years of legal experience in her own practice and previously as head of data protection law at a Top 50 UK law firm. She has been consistently independently rated for her expertise in this area and has been awarded *The Legal 500 UK* elite "leading lawyer" status, as well as the firm being top ranked both regionally and nationally in its latest guide. The most recent publication states that "team head Stephanie Pritchett *has a phenomenal reputation in the space ... and has a very hands-on approach which allows for solid, practical and relevant advice*". Stephanie has also appeared on BBC Radio, BBC News and BBC One's *Sunday Politics*, discussing topical data protection issues.

What is the GDPR?

The General Data Protection Regulation (GDPR) comes fully into force on 25 May 2018, following what will have been a two-year transition period. It's a big deal, representing the biggest transformation of data protection law in 20 years.

At the moment, our data protection rules and regulations are laid out in the UK's Data Protection Act 1998 (DPA) and the Privacy and Electronic Communications Regulations (PECR). But back in 1998, the world of technology was pretty different. The search engine Google had only just been founded, e-commerce was slowly beginning to take off and it would be another nine years before Steve Jobs released the iPhone. Fast-forward to 2017, and we're using social media, cloud technologies and apps that may require access to our location, images and emails. In addition, we're experiencing cookies, tracking technology and profiling on websites. All of this means that, behind the scenes, our "personal data" is being processed and forming part of massive – and ever-growing – datasets.

This in turn has led to the development of other technologies with names like big data and artificial intelligence (AI), which have major implications for data protection law and for lawyers as businesses processing personal data in their own right.

So, it's GDPR to the rescue: updating our data protection laws to fit today's technological landscape and emphasising the importance of protecting individuals' privacy.

Why should we comply?

The government has committed to implementing the GDPR post-Brexit.

This is to address the need for legislation that is fit for purpose today, and also to ensure that UK businesses can continue to share personal data as part of our trading relationship with Europe, whatever that might look like in the future (see our Pritchetts Law blog, "The Impact of Brexit on GDPR Implementation", for more detail).

The UK Data Protection Bill (DP Bill) is currently making its way through Parliament and is intended to be enacted before 25 May 2018. As a regulation, the GDPR will be in force from 25 May 2018 across the EU, without national legislation being required. However, the GDPR gives member states limited opportunities to set out how the GDPR applies in their countries and to set out permitted derogations to dovetail with other national legislation. The DP Bill therefore sets out the UK's position on these matters, as well as enabling the GDPR to survive post-Brexit.

The new raft of data protection legislation is definitely happening, and has prompted the UK and EU data protection regulators to publish several enhanced or new sets of guidance.

As if the law and the pages of regulatory guidance weren't enough, the Solicitors Regulation Authority (SRA) is also clear that we must comply. The SRA Code of Conduct (Outcome 7.5) requires that practices "*comply with legislation applicable to your business, including*

... *data protection legislation*". It goes on to state (IB 7.3) that correct behaviour involves "*identifying and monitoring financial, operational and business continuity risks including complaints, credit risks and exposure, claims under legislation relating to matters such as data protection, IT failures and abuses, and damage to offices*".

So, how should I start preparing for the GDPR?

Within the legal sector, the advent of the GDPR affects us more than most types of business because of the highly sensitive nature of the data that we may hold and share on behalf of our clients. If you haven't already, it's crucial to kick off preparations for GDPR compliance now, so that you have all your ducks in a row by 25 May 2018. But where should you start?

Well, the go-to place for free information and advice on implementing changes in your business, in preparation for the GDPR, is the Information Commissioner's Office (ICO), which is the regulator of the DPA and PECR, and is proposed to be the regulator of the GDPR, the DP Bill and the new version of PECR, too. If you have specific queries, the ICO has set up an advice service for small organisations (dial 0303 123 1113 and select option 4). However, for more general information about how to prepare for the GDPR, the ICO has produced a lot of helpful free guidance, including:

- A guide to the GDPR (see <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr>).
- A 12-step checklist (see <https://ico.org.uk/media/1624219/preparing-for-the-gdpr-12-steps.pdf>), which the ICO plans to refine further in response to calls from small businesses that they need access to targeted information about how to prepare for the GDPR.
- A blog series (see <https://iconewsblog.org.uk/2017/08/09/gdpr-sorting-the-fact-from-the-fiction/comment-page-1/>) by the

Information Commissioner, Elizabeth Denham, that explodes various myths that have grown up around implementation of the GDPR. A key blog highlights that although the potential new fines are real (fines of up to 4% of annual global turnover or €20 million, whichever is the greater), the ICO intends to use those new powers in a proportionate manner. So, although we may not actually be faced with a full €20 million fine, there is no doubt that the risks to us all are going up considerably.

Let's drill down to the specifics...

Right, so you're on board with what the GDPR is and why you need to start preparing your business to comply. You've maybe even used the ICO's information and advice to get a general feel for what's required. But what exactly are the changes in the GDPR that will affect you as a sole practitioner and small law firm?

Let's face it, as a reputable authorised legal practitioner, you should already have been complying with the DPA – so what should you particularly look out for under the GDPR?

Perhaps one of the most significant changes from the current DPA is that the GDPR requires, via the "accountability principle", organisations to *prove* how they comply with the law. This means, for example, that when the GDPR comes into force:

- We must keep records about and be able to detail our firm's decisions about how we process personal data.
- We must not only know who is in charge of data protection, but also ensure that everyone in our organisation understands how they need to comply. We will need to build our team and data protection knowledge base generally.
- We must have adequate technical and organisational measures in place to ensure compliance (see below for more on this), including data protection policies and procedures that are appropriate to our business.

- We must carry out effective data protection and data security training for our staff.
- We must ensure "privacy by design and by default" and carry out mandatory data protection impact assessments where these are required by the GDPR.
- We must consider whether we are required to have a Data Protection Officer (DPO) in place. Not all organisations will be mandated to do so. If you choose to designate a DPO in circumstances where it is not mandated, the term DPO comes with a raft of legal responsibilities under the GDPR – so, don't call yourself one if you aren't sure.

Ten steps to help sole practitioners achieve GDPR compliance

We all have busy practices to run and it's often hard to plan in time for our own compliance measures, alongside our day-to-day client work. We may not, therefore, be able to become GDPR-compliant overnight. We'll need to plan how to approach it in bite-sized chunks. Our 10 steps below suggest how to approach that process:

1. **Perform an information audit/data-mapping exercise** to clarify and document what personal data your firm actually holds, where it came from, where you hold it (physically and on systems), who you share it with, the legal basis for each of your processing activities and how long you need to keep it for. Consider setting up an information asset register.
2. **Review and audit your current levels of data protection compliance and carry out a GDPR gap analysis.** This should include carrying out a health-check of your data protection policies and procedures (see below) and ensuring that your current marketing practices comply with the GDPR and the proposed new E-Privacy Regulation. Set out a compliance plan that considers your firm's specific risks, being realistic

about your resources and the time available.

3. **Ensure fair and lawful processing.** This will include:

- Reviewing your current data protection and privacy notices on your online and offline data collection forms and websites, in your letters of engagement and terms of business and also those notices given to your own staff (don't forget that's required, too). These will need to be much more detailed under the stricter rules of the GDPR, including telling individuals about many of their rights (see below).
- Establishing a plan to make any necessary changes to comply with the more onerous requirements to provide detailed fair processing under the GDPR.
- Ensuring that you have a compliant legal basis for your processing. The GDPR, like the DPA, requires that you establish a legal basis for each and every process that you carry out, or have an appropriate exemption to rely on if you can't (the granular data-mapping exercise referred to above should assist with this). For example, you may decide that you process personal data on the basis of a contract for services with your client, on the basis of consent for a recipient of a newsletter or on the basis of legitimate interests where you might take steps to counter fraud.

4. **Check whether your data security procedures comply with the GDPR's "integrity and confidentiality" principle,** whereby personal data must be processed in a manner that ensures its security, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage. Article 32 of the GDPR provides much more detailed information than the DPA

on what's expected of us in terms of security. For example, encryption is now a legal requirement. Make sure that you and your IT consultants (more on these data processors below) assess all your current risks and systems. For example, have you encrypted your laptops, PCs, mobile phones, backup devices, USB sticks, etc? If you work from home, have you set up a split router for home and business to minimise the risks of friends and family introducing viruses, etc. to your firm? There are many security measures that can and probably should be introduced. A further SOLO article on this point alone may be required! In the meantime, check out the ICO's website, where they have provided lots of guidance on data security for small businesses.

It's also worth noting that the GDPR requires a "**privacy by design and default**" approach, where privacy and data protection compliance are incorporated at the start of any new project, rather than being bolted on at a later stage. We'd particularly suggest that sole practitioners consider running data protection impact assessments in situations where you are considering new outsourcing of business processes or systems (including to cloud providers – more on that below).

5. **Check that you are ready for data subjects to exercise their enhanced rights under the GDPR.**

You should examine your existing procedures to ensure that you can effectively comply with all the following rights held by individuals under the GDPR:

- **Right of access (subject access request (SAR)).** Consider how you would provide copies of personal data to an individual who lawfully requested it, within the reduced one-month timescale (you can't even charge the £10 fee any more!). Consider establishing an internal SAR policy to assist.

- **Right to have mistakes corrected.**
 - **Right to deletion/"right to be forgotten".** Consider how you would actually delete or destroy data belonging to an individual who lawfully requested it (of course, there are many reasons why you may not be able to do so). Some law firms are finding it particularly challenging to consider how they would exercise these rights via all of the third-party processors that those firms use.
 - **Right to suspend processing.**
 - **Right to have third parties to which we send personal data notified of any rectification, erasure or restriction of processing required.**
 - **Right to data portability.** As a law firm, we could be expected to provide an individual's data in a machine-readable format and would not be able to charge for transferring his/her data to a new law firm. Those using cloud-based practice management systems should be careful to ensure that their suppliers will enable them to do this (more on cloud services below).
 - **Right to object to direct marketing and also to processing carried out under the legal bases of public interest, legitimate interests or for scientific or historical research or statistical purposes.**
 - **Right to object to automated processing** (including profiling).
- ### 6. **Ensure that your data retention processes are up to scratch.**
- Establish how long you currently keep personal data for. Is it appropriate for the purposes articulated to the relevant individuals (note that the GDPR requires us to clearly tell individuals how long we'll store their data – in a

granular manner. References to “in accordance with the law”, or a generic policy that the individuals don't see, just won't cut it)?

Can you justify the periods that you have currently set in your practice – in a granular manner? Record that justification in a data retention policy and ensure that the policy is implemented (i.e. data is destroyed physically and electronically at the appropriate time periods set).

Ensure that your contracts with data processors stipulate, among other matters (see below), those providers' responsibilities in relation to return of and destruction of data stored on your behalf.

- 7. Review how you seek, record and manage consents for data processing, where consent is required (it may not be!).** Be aware that consent will often not be appropriate. There are several other lawful bases for processing personal data, which may be much more appropriate (see above). However, if there are areas where you have assessed that obtaining consents from clients or others is required, you will need to ensure that those consents are collected in accordance with the much more onerous terms for consent under the GDPR. See the Pritchetts Law blog for our articles on the changing requirements for consent under the GDPR. If your current methods don't meet the GDPR requirements, you should get on with refreshing these consents now.
- 8. Where you are collecting consents for marketing, or considering whether your legacy client and contact database is compliant, take care.** For marketing permissions, obtaining compliant consent is a particularly thorny issue. The ICO and its EU counterpart are still consulting on their own new consent guidance. They have avoided commenting on detailed issues around direct marketing that may be addressed under the new E-Privacy Regulation

(which is due to come into force alongside the GDPR, although the timing is looking a little tight now!).

You will need to consider what legal basis would apply to the marketing permissions that you seek to obtain going forwards, but also in relation to your legacy database. It's not as simple as emailing individuals to request that they reconfirm their consent. In March 2017, both Flybe and Honda were fined by the ICO for contacting individuals to confirm their consent to receive marketing because neither business could show that it had ever had consent to marketing. “Repermissioning” is tricky. Some firms who can't show that they had the correct lawful basis in the first place are choosing to delete a lot of individuals from their database now. It's a hard decision to lose a large percentage of your database, but it could be riskier to carry on marketing to those who haven't given their permission for you to do so.

- 9. Ensure that your outsourcing is compliant.** Ensure that you have carried out detailed due diligence (DD) on all of your suppliers who process personal data on your behalf (including those who destroy it for you, such as hardware destruction companies, shredding companies, etc.).

Also, ensure that you have contracts in place with your suppliers and that those contracts comply with the much more detailed obligations under Article 28 of the GDPR. For example, if you have outsourced to external cloud-based services (e.g. for accounting, practice management, data backup, hosted CRM databases, etc.), you'll need to run detailed DD on those providers, including checking whether they have subcontracted any of the services, whether any data is transferred outside the European Economic Area (in which case other obligations under the GDPR need to be complied with), what security measures are in place, what their rules are around data destruction, etc.

In general terms, data processors will have more direct accountability under the GDPR for things like security, and individuals will be able to take direct action against the data processors. However, there are still onerous obligations on us to ensure that our outsourcing to them is compliant. Please also bear in mind that we haven't even begun to consider the additional SRA obligations around outsourcing (see, for example, the Law Society Practice Notes on Cloud Computing, Data Protection, Information Security and Business Continuity and the SRA's guidance, “Silver Linings: Cloud Computing, Law Firms and Risk”).

- 10. Prepare for mandatory security breach reporting to the ICO and others.** The ICO will need to be notified within 72 hours, but without undue delay, of any serious personal data breaches unless it is unlikely to result in a risk to the rights and freedoms of natural persons. You will also have to notify individuals where the breach is likely to result in a high risk to their rights and freedoms.

There will be some tricky judgements to make in relation to breach reporting and some strict requirements about the form of that report and the breach records to be kept. We recommend that you implement and train your staff in relation to your bespoke security breach procedures – setting out your processes for internal reporting, as well as reporting externally to the ICO, SRA, affected individuals and others.

If you need practical help with your GDPR preparations, we at Pritchetts Law can offer various services, including data protection audits and GDPR gap analysis as well as provision of compliant data protection policies and procedures, so please contact us at info@pritchettslaw.com if you would like more information.

Article submitted 18th December 2017



MORE FROM THE HONORARY SECRETARY

In the last edition I was able to let you know changes to the executive committee and I am pleased to say that the ongoing committee is now working well together particularly in relation to a more regular production of Solo and also in preparation for the next annual conference, which I have no hesitation in confirming to you again, will be on the weekend of the 20th – 22nd of April 2018 as advertised in this edition.

Retirement of Martin Smith

However one further change to the committee which I have to recognise is the resignation of Martin Smith. This is because he has ceased to be a solicitor and is continuing practice as a notary public. Martin has been a member of the executive committee since the group was formed and is the last person in that category. The committee and the membership thank him for his long service and hope he will continue his association with the Group.

My honorary secretarial duties as mediator and interpreter of the constitution have not been required for the last six months and Charley Maserati of Byword, is able to do more as she understands the intricacies of the Sole Practitioners Group. However what might have been my free time has been replaced by dealing with a couple of items which have been quite time-consuming.

Time for a change?

The first was attending a conference held by the Westminster Legal Policy Forum dealing with civil justice reform, court modernisation, civil litigation fixed recoverable costs and the reform of

costs generally. The keynote speaker was Sir Christopher Jackson who is now preparing a follow-up report to his earlier report, to bring more changes to reform of costs and in particular review of fixed recoverable costs.

This was a very specialised conference and rather than review matters in this article for those who may not have such a detailed interest in it, I can say that the Westminster Legal Policy Forum provided a transcript of the conference to the delegates of which I was one, and they are happy for it to be circulated by me to members. For further details see our website.

Consultation on reform of the Wills Act 1837

A rather more taxing subject was the Law Commission's consultation on reform of the law of Wills. Quite frankly I could not see that a large amount of reform was needed but I think the main driver for reform was that the law emanated from an Act in the early part of the reign of Queen Victoria, and largely for that reason it ought to be brought up to date because we "do not speak like that any more". In my view there is an argument to say that if an Act stood the test of time, as the Wills Act 1837 has, and on the basis that almost everyone in this country knows that you need two independent witnesses for a signature to a Will, then there is not much wrong with it.

In the course of my researches for the SPG response I decided to go to a public consultation put on by the Law Commission, of which the nearest was in Eastbourne, in early November. Contrary to what one might have expected, Southern Rail from Lymington to Eastbourne and back was on its best behaviour and very efficient. The consultation, curiously held in the Eastbourne Centre for the Blind, was

attended by about 10 specialist Will solicitors and achieved its object of a public consultation by the presence of at least two members of the public who said nothing. There was a degree of scepticism among the specialist solicitors as to whether much of the consultation suggestions required the reform of a new Act of Parliament.

However what clearly was welcomed were any moves which allowed the wishes of the testator to be interpreted and carried out if the court could be satisfied as to them without the need for them to be prejudiced by unnecessary formalities. This meant that obvious technical mistakes could be corrected and indeed that questions of interpretation should be given a wider latitude for interpretation.

Believe it or not the consultation paper went to 256 very closely written pages with cases and footnotes and in itself is an interesting read. Amongst the questions it asked, were the following:

1 – Introducing 'dispensing powers' – a method of allowing a Court to recognise a will as being valid even where not all of the formalities have been observed. So long as the document was thought to reflect the testator's intentions (on the balance of probabilities) then it could be admitted to probate.

On your behalf I broadly agreed with that.

2 – It questioned whether a formal support scheme should be introduced in order to assist those who have diminished capacity to make Wills, thus avoiding the cost and time of an application to the Court of Protection for a statutory Will.

On your behalf I felt that this was such an unlikely situation to arise and that allowing third parties to support a testator would lead to impossible

conflicts of interest which made this an unnecessary step. Interestingly the Law Commission did not come down in favour of a universal register of Wills.

3 – It requested views on the principle of electronic Wills, and the technical consequences of this (for example, signature by typing your name is too open to fraud whereas a biometric system would require a huge amount of infrastructure which may make the cost prohibitive).

To be fair the Law Commission did not go so far as to propound electronic Wills but wanted to provide authority for them to be brought in by statutory instruments when the technicalities of protection and storage could be overcome. My view was that as long as paper will still be produced it surely could not be necessary to have to resort to the dangers of having Wills floating around in the electronic ether with problems of revocation, such as how you manage to revoke all the copies!

4 – It proposed that the age at which someone can make a Will be lowered from 18 to 16 (or potentially even lower

where the testator understands the consequences of what they are doing and there are good reasons for it).

I thought we could agree that for the few people who need to make a Will between 18 and 16 that age reduction could be made.

5 – It proposed that the test for capacity set out in *Banks v Goodfellow* be replaced, and that capacity to make a Will be judged by the test set out in the Mental Capacity Act 2005. This includes a presumption of capacity, the requirement to help someone to make a Will if possible and not to treat someone as lacking capacity simply because they make a bad decision. It also suggests introducing a code of practice of testamentary capacity to provide guidance on how and when capacity should be assessed.

My view on your behalf was that all the case law since the Wills Act, in particular the *Banks and Goodfellow* test, related specifically to the making of Wills whereas the Mental Capacity Act test related to such matters ranging from whether a person lacks capacity

to decide whether to have sugar in their tea at one end of the scale, to decide whether to be resuscitated at the other end of the scale. In addition on behalf of sole practitioners I am cautious of codes of practice which can be revised by nameless bureaucrats to suit their own views of how things should be.

6 – It questioned whether reform to the rule that marriage revokes a Will is required. The Law Commission believes that the rule is not widely known and could be a trap for the unwary.

My view was that the rule is widely known and is a protection for anyone entering into marriage who would reasonably expect to inherit their spouse's wealth and the rule should therefore remain in its basic form.

There were numerous other proposals and our eventual response which came to about 30 pages can be read on our website.

I look forward to seeing as many as possible of you at the conference.

Clive Sutton

AGM – Saturday 21st of April 2018

NOTICE IS HEREBY GIVEN TO ALL MEMBERS OF THE SOLICITOR SOLE PRACTITIONERS GROUP (“THE GROUP”)

- (a) That the 25th Annual General Meeting of the Group for 2018 will be held at 11.35am on Saturday 21st of April 2018 at Heythrop Park, The Drive, Enstone, Oxon OX7 5UE (or OX7 5UF for sat nav).
- (b) That there will be vacancies for elected members occurring on the Executive Committee of the group. For details of the vacancies please contact Clive Sutton.
- (c) That nominations to the Executive Committee must be sent in writing to the Honorary Secretary, Clive Sutton, and be received by him no later than Friday, 30 March 2018 (the nomination form can be obtained from Clive Sutton. His address is 3 The Old Print Works, 85b High Street, Lymington, Hants SO41 9A or email solicitor@clive-sutton.co.uk).
- (d) That all candidates, proposers and seconders must be sole practitioner members of the Group.

Clive Sutton Honorary Secretary

SPG AGM Agenda 2018

1. Apologies
2. Minutes of last meeting
3. Matters arising
4. Chairman's report
5. Hon. Secretary's report
6. Hon. Treasurer's report
7. Election of Members of the National Executive Committee
8. Any amendment to the Constitution, notice of which will have been given to the Members 21 days before the meeting
9. Any Other Business

COMMUNICATING WITH TRANSGENDER CLIENTS AND OTHERS



Robin Moira White is a barrister practising in employment and discrimination law from Old Square Chambers (London and Bristol). In 2011 she became the first barrister to transition from male to female in practice at the discrimination bar. She writes and lectures regularly on this area and *Chambers and Partners* describes her as the 'go to' barrister in this area.

Introduction

Gender-reassignment is the rarest of the nine characteristics given protected status by the Equality Act 2010. Accurate statistics are hard to come by – it is likely that questions on 'trans' status are likely to be included in the National Census for the first time in 2021 – but it is thought that around one in four thousand of the UK population have undertaken some process to alter their gender, meaning there are around 15,000 such individuals in the UK. Practitioners will be familiar with the need to understand, for example, the cultural or religious norms of those from other than white-Angican background. Transgender individuals can take practitioners by surprise. This short article attempts to provide some help in understanding and communicating with transgender ('trans') individuals.

Process

The process to transition from one gender to another is still not well understood by the general population and is surrounded by myth and misunderstanding. A good source of information, publicly available, are

the care standards for individuals making a gender transition. These are readily available on the web and are often called the 'Harry Benjamin' care standards after the American psychologist who first formulated them. They are now looked after by the World Professional Association for Transgender Health ('WPATH') and can also be found under that name.

The standards provide that an individual must first undertake a period of counselling to ensure that the individual truly has gender identity disorder and not some other condition, and secondly that they have faced up to the challenges that gender reassignment may pose. They may then be prescribed a hormone regime that will begin the transition process, and must undertake a period living in their 'new' gender, generally a minimum of a year, before genital surgery will be authorised. During this time the individual may undertake other procedures such as beard removal, facial surgery or a bilateral mastectomy, as relevant to their direction of travel. This process is supported by the NHS but public resources are limited and many individuals finance some or all of the process privately. Some aspects, such as facial surgery, are not available on the NHS and other aspects may be resource-limited in different NHS areas.

The average age for transition is thought still to be in the early forties but is rapidly coming down. Increasing awareness of transgender issues has resulted in a considerable increase in teenagers presenting as transgender. There is still some controversy about the treatment of transgender teenagers. Medical best practice is to prescribe them puberty

blocking hormones until age 16 when they are believed to be mature enough to make settled choices about their gender. Transition can be especially successful if a transgender teenager is able to transition before undergoing puberty in their somatic gender.

Terminology

There are a number of key terms which need to be understood:

"Transsexual" – Transsexual people experience a gender identity inconsistent or not culturally associated with their assigned sex, and desire to transition permanently to the gender with which they identify, usually seeking medical assistance (including sex reassignment therapy) to help them align their body with their identified sex or gender (Wikipedia);

"Gender Dysphoria" – *a condition where a person experiences discomfort or distress because there is a mismatch between their biological sex and gender identity* (NHS Choices);

"Gender Identity Disorder" (GID) – a condition in which an individual belongs to one gender on the basis of physical appearance and genetics but identifies psychologically with the other gender. The condition is diagnosed only if there is evidence of strong and persistent cross-gender identification and discomfort about one's sex, that these cause significant distress and social impairment, and that there is no concurrent endocrine disorder (Oxford Concise Medical Dictionary);

"Transgender" – Transgender people experience a mismatch between their gender identity or gender expression

and their assigned sex. Transgender is also an umbrella term, as, in addition to including trans men and trans women whose binary gender identity is the opposite of their assigned sex (and who are sometimes specifically termed transsexual if they desire medical assistance to transition), it may include gender queer people (whose identities are not exclusively masculine or feminine, but may, for example, be bigender, pangender or agender) (Wikipedia);

“**Trans**” – an abbreviation for transgender (Wiktionary).

“**Trans men**” – those who change from being female to men;

“**Trans women**” – those who change from being male to female;

“**Transition**” – the process of social change in presentation (and, for some but not all physical change) between genders. This is more formally known as “**Gender Reassignment**”. That term is becoming overtaking with “**Gender Confirmation**” but remains the protected characteristic under the Equality Act 2010.

“**Passing**” – where a trans person is not visible as a trans person;

“**Stealth**” – living in a way where nobody knows your previous gender history;

“**Transvestite**” – A person who sometimes wears clothes traditionally worn by and associated with the opposite sex; typically a male who cross-dresses occasionally by habit or compulsion. Transvestite should not be confused with transgender or transsexual; transvestites are often happy with their gender and have no desire to change their sex, but simply enjoy being able to cross-dress from time to time (Wiktionary).

“**A-gender**” – persons who do not identify with either gender.

“**Gender fluid**” – persons who at some times identify with one gender and at other times with another.

“**Gender queer**” – persons who adopt a gender identity at odds with normal gender roles or appearance.

Gender Identity and Sexuality. It is important to recognise that these are different. Transgender individuals may be gay, straight or bisexual, just as any other member of the population. A change of gender may involve a change in apparent sexuality to match the new gender, but it may not.

So, what is to be done in practice?

Misuse of pronouns

Misuse of pronouns is a situation that may well be very upsetting to some transsexual individuals and may (but will not necessarily) amount to harassment in some situations. As such care should be taken to educate staff (both in respect of their colleagues and also in respect patients) that a person should be addressed and referred to in the gender that they identify as. It should be clear from a person’s presentation (clothes, hair, make up etc) which gender they identify as. Where this is unclear, for example where a new service user (eg a patient) presents and it is unclear from looking at them which gender they identify as, then this should be dealt with as sensitively as possible (for example, asking the person discretely – *and in private* – what their preferred title is, eg Mr, Mrs, Miss, Ms etc).

Particular issues may arise when providing telephone services, e.g., banks or hotels where there may be a mismatch between a person’s gender identity and the sound of their voice.

Inappropriate use of terminology

Some terminology, whilst not obviously offensive to others, may be offensive to a transsexual person. Even the term “transsexual”, whilst the legal definition for the purposes of the EqA 2010, is considered offensive by some. Other examples of terminology that may be regarded as offensive include:

- Using transgender as a noun as opposed to an adjective, e.g., ‘X is a transgender’;
- Referring to ‘sex change’ rather than transition;
- Referring to someone who has transitioned as a “trans man” or a “trans woman”, rather than simply as a “man” or a “woman”.

Obviously offensive terms such as “tranny” should never be used. In practice, staff should be trained in appropriate terminology, both in terms of how to treat their colleagues and also how to treat service users and the friends and family of service users. “Trans” or “transgender” tend to be the most acceptable terms to individuals. In addition, transsexual individuals should be asked what terminology they would prefer.

Ultimately the right question is: how would you like to be treated?

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Seven ways of growing YOUR CLIENT BASE THROUGH LinkedIn

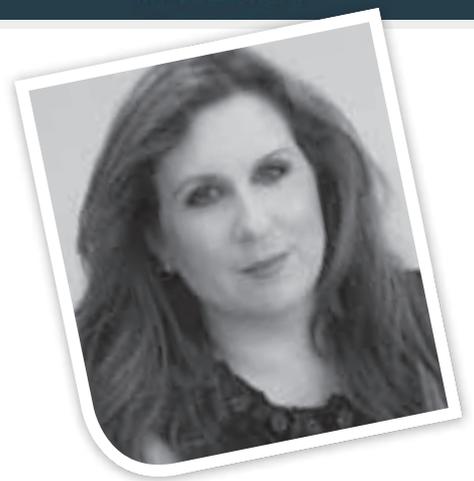
Until 2015, Rachel was a practising Solicitor with more than 15 years' PQE gained at both large city firms and smaller regional practices, overseeing much of the wider Business Development work that was undertaken at each firm. Rachel left practice to set up her own award-winning business, Links2Leads, which offers sole practitioners and high street law firms a comprehensive, insightful, outsourced and flexible Marketing and Business Development service.

Here, Rachel explains why LinkedIn is such a valuable tool for marketing your law practice and outlines the best ways to use it to attract new clients.

As the world's largest professional social platform, LinkedIn offers an excellent opportunity to expand your client base. You may think LinkedIn is just for job seekers, but it is, in fact, an incredibly cost-effective tool that can enable you to keep in contact with clients on a very regular basis and reach out to prospective target clients, thereby increasing your firm's profits. It should be a central feature of all commercial marketing strategies.

LinkedIn offers many opportunities to build on the "know, like and trust factor" for your law firm. Here are seven suggestions:

- 1. Optimise your profile pages so that people can find you.** With over 1/3 of the world's professionals using LinkedIn, ensure you stand out with a professionally drafted profile that puts you ahead of the competition. Your LinkedIn profile is one of the first things listed in Google search results. It should showcase your own personal or commercial 'brand' so take the time to ensure it is complete and up to date. Think about the keywords that people might use when searching for your services and ensure they are featured in your content.
- 2. Use professional photographs that portray the right image.** It is always a worthwhile investment to engage a professional photographer to take some group and individual photographs of you at work. These can be used for your LinkedIn profile and within your posts, as well as across your other social media sites, website and in other promotional literature. In order to become a client, people need to trust you. Having the right profile picture in place is the first step to building that trust.
- 3. Create a Company page.** A professionally written Company page should present your business in the best light to attract new clients. With professional images, the right keywords and regular posts, it should provide an introduction to your business which is informative, persuasive and impressive. Ensure your contact details are clear and signpost any relevant marketing material such as your website.
- 4. Write blog posts on LinkedIn Pulse to share your knowledge.** Through regular articles, you can demonstrate your expertise by highlighting changes in the industry. You can also build relationships by sharing the human aspect of your practise, demonstrating that you care about delivering the very best service for your clients.
- 5. Participate in groups.** Search out relevant groups that are full of your prospective clients. Comment on topics that are trending among members and you'll have the opportunity to be found by group

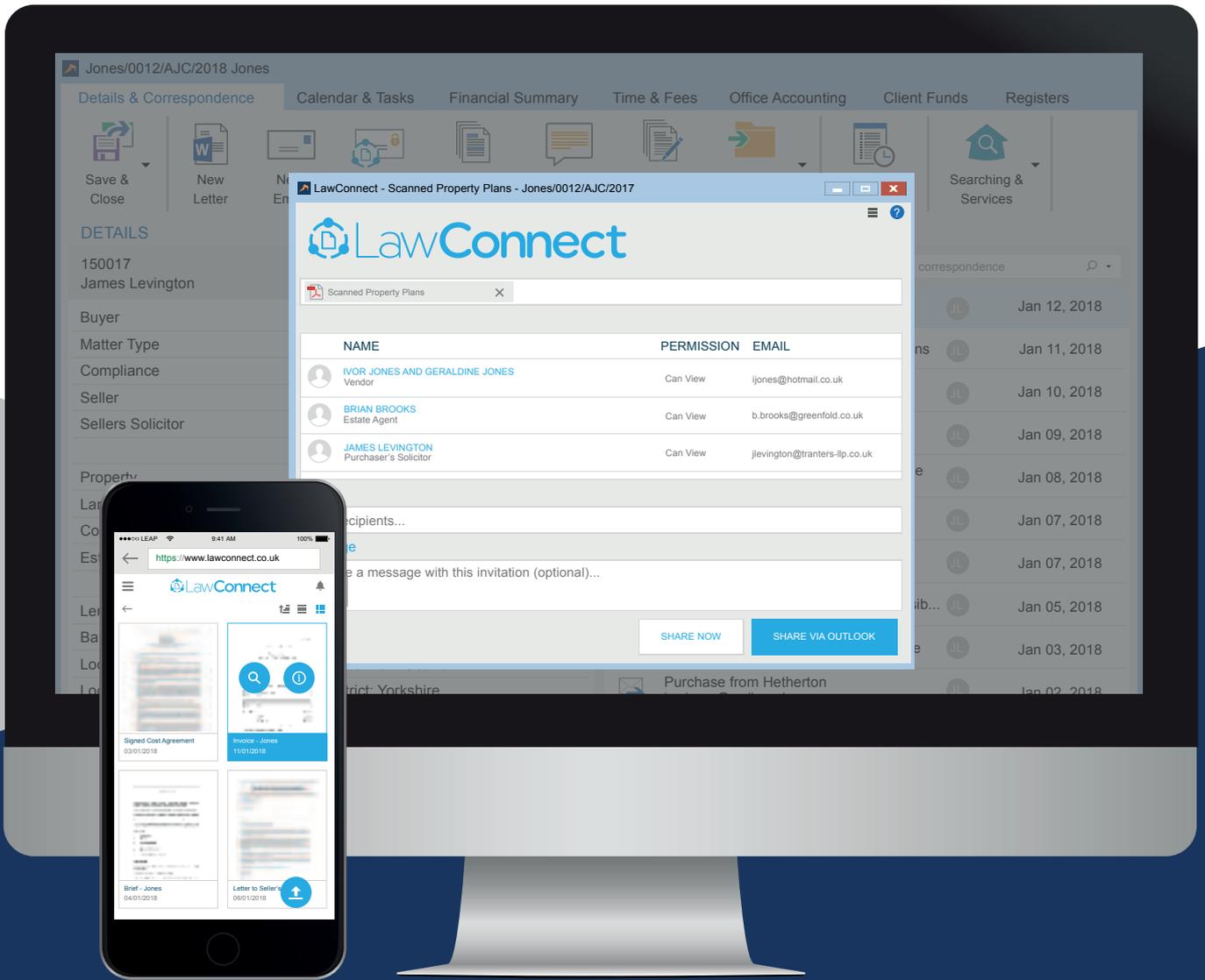


members who are searching LinkedIn for your product or service offering.

- 6. Give recommendations – and then ask to receive.** As human beings, word of mouth has always been the most effective form of advertising. We trust other people's opinion more than we trust companies or organisations themselves. LinkedIn recommendations are an important way of showing other people that you can do what you say you do on your Profile. They provide evidence as to why someone should work with you above all others.
- 7. Make use of Live Video.** Live Video on LinkedIn was launched this year, bringing it in line with other social media platforms such as Facebook Live. Video has become the preferred way for many people to interact with companies online. It is quick, easy and inexpensive to create an educational, informative and interesting video that contains an element of Q&A or introduces the viewer to your practice and what you can offer.

Earlier this year, LinkedIn had reached half a billion members in 200 countries. It is the most effective social media platform for B2B lead generation and opens up a world of opportunity for you and your practise. 50% of LinkedIn members say they would consider buying from a company they have engaged with on LinkedIn. Can you afford not to?

[Rachel Tombs, Links2Leads](#)



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