New year, new start. It’s a hackneyed idea, but January is the month when we vow to restructure our businesses to eliminate the stresses and chaos of the year just past.

If the source of your firm’s chaos is uncertainty as to where responsibility for functions lie, then the solution could be creating an effective management structure.

While solicitor firms have traditionally relied on the partnership model, it’s likely that in most modern firms in order to achieve and efficiently run practice, a flexible structure tailored to the people in your firm will be required.

No definitive model exists, but Alan Matthew, Convener of the Society’s practice management committee, offers an outline of some possible structures.

“The most effective type of management structure”, he writes, “will probably be the type where one person co-ordinates the management of the whole firm with individuals responsible to him or her for specific ideas”.

“The management structure should include everyone from the most senior to the most junior and it will only work effectively if everyone is kept advised of who does what and everyone accepts the disciplines imposed.”

If that fails, and your practice remains fraught, we offer tips for a healthy office where stress is eliminated and positive attitudes pervade.

If that sounds unfeasible, then it’s still worth taking our stress management audit to identify whether the levels of stress at which you operate are acceptable for healthy living.

Finally, we speak to the new Solicitor General, Elish Angiolini. The solicitor profession has welcomed her appointment and in a wide-ranging interview she outlines her priorities. We join in wishing her every success.
Back to the Future
After the festive break and far too many videos and TV films, the new year invites us to look forward as well as to reflect as the diary fills up with new appointments and ongoing business from last year is completed. I became a solicitor in 1980. That year's Journal comments on the failure of the then devolution measure and expresses a view that a Scottish Parliament would have made the law more responsive to social change.

The responsiveness of Parliament is very much in my mind as the Scottish Parliament's Justice One Committee Inquiry into the Regulation of the Legal Profession in Scotland continues. The Committee is concentrating mainly on complaints procedures of the different branches of the Scottish legal profession. It has made it clear that it intends to deal with public perception. I believe with increasing conviction, particularly in comparison with other branches of the profession at home and abroad, that the resources the Society devotes to Client Relations and the commitment of those involved ensures that a good job is done within the existing structure of the law.

Improvements must of course be ongoing for any successful system as well as critical appraisal which assists an organisation to strive for excellence.

The inquiry aims to determine whether or not the structure reflects the needs of Scottish consumers and their aspirations whilst balancing the importance of an independent legal profession. The change in consumer demands and perceptions of last twenty years call into question some of the legislative provisions that deal with discipline. As a Council member for more than ten years, I have always considered that I was remote from the Scottish Solicitor's Discipline Tribunal other than being a member of the body which instructs prosecutions before the Tribunal. However Council is bound by statute not only to recommend solicitor members to be appointed by the Lord President but also to fund the Tribunal. There is an issue of perception that these arrangements may not meet the public needs. Twenty years ago the argument was advanced that it was proper that a profession pay for discipline of its members. We will see if that argument is advanced again. The Society will continue to represent its work, ideas for improvements and standards and consumer protections expected of and applied by solicitors in Scotland.

The Frighteners
Whilst new technology can be intimidating, the pace of change and the uses of new technology are clear. In a 1980 edition of the Journal there was an advertisement for word processors and automatic engraving machines! Last year Alastair Thornton wrote in this column about electronic communication and the way ahead. In December, Council gave enthusiastic support to a paper presented by Gordon Brewster, the Society's Director of Online Services. It is now the policy of the Council that the Society proceeds with detailed work on providing members with a system of encryption. The Scottish Legal Aid Board and the Registers of Scotland are already well advanced with their electronic developments. For agencies such as these to deliver on the Government's policy requirements for electronic business, they need solicitors to be fully involved. It is therefore vitally important that a common system of secure communication is established.

For Love or Money
I joined the Council in 1991. The Aspect column of that year's January edition discussed the civil legal aid crisis, the difficulty that firms were facing in doing legal aid work profitably and the concerns of sheriffs that civil work was being done by the more inexperienced and newly qualified solicitors. The legal aid concerns of 10 years ago are still with us but have changed. The irony is that legal aid work is probably being done by more experienced solicitors than 10 years ago. The crisis is where their successors will come from.

Back to the Future Part II
In looking back and in talking to lawyers from other jurisdictions, it is clear that we are dealing with issues in 2002 that are not so different from those considered by our predecessors and which many other jurisdictions are also now facing. Scottish solicitors are of course world-renowned for their legal system, their ability and their integrity and I am sure that we are well able to meet any challenge.

The Secret of My Success
A few weeks ago I attended the launch of the Society's Certificated Management courses. This is a joint venture with the Institute of Management and Perth College and will give participants a Certificate in Management and also fulfil their CPD requirement for a year. The cost at £352.50 (incl. VAT) is, in my view, ludicrously inexpensive. I hope that many members will see this as a worthwhile initiative and take advantage of the opportunities the new course presents.

It's a Wonderful Life
As the trials and tribulations of life continue I reflect on George Bailey in that fabulous film, It's a Wonderful Life. He realised the opportunities and challenges of life and met them with the support of his friends, family and clients. I hope that you too will have success and good health in the new year.

Send your answers to: bethflynn@lawscot.org.uk
Law Society of Scotland launches its first certificated management courses for solicitors

THE Law Society of Scotland has launched the first of its Certificated Management courses for solicitors. The Society has teamed up with the Institute of Management and Perth College, part of the University of Highlands and Islands Project, to offer a new open supported learning course in management. (See November 2001 Journal, p44 for further details)

The tailor-made course will enable solicitors to study from their homes or offices in their own time and at their own pace. Solicitors who complete the course successfully will be awarded an accredited certificate from the Institute of Management. The completed course will also be recognised by the Scottish Fellowship of Management for Continuing Professional Development, which solicitors must complete every year.

The course is tailored to the needs of solicitors focusing on financial management up-to-date. This way they can learn from the comfort of their own home or office with the support of tutorial workshops.

The Institute of Management’s Membership Director Peter Thomson added: “The importance of developing management talent and expertise cannot be overstated. This applies as much in the legal profession as in all other walks of life. “The Institute of Management is delighted to be associated with this exciting new venture by the Law Society of Scotland, and we are confident it will bring great added value to the high professional standards for which Scottish law is already renowned.”

The Society’s Update department organises a wide range of seminars each year, keeping practitioners up-to-date with changes in the law, general business and management. These include many practical seminars including management of accounts and e-commerce.

Scottish Solicitors’ Management CPD Programme

A FULL YEAR’S CPD REQUIREMENTS FOR ONLY £250 plus £50 = £352.50 inc VAT

The Induction Tutorial for the Personal Development Module of the CPD programme, will take place at 26 Drumsheugh Gdns on Tuesday February 26th at 12.30pm.

For a registration form or more information please contact:
Vivien Henderson 0131 476 8205 or e-mail: vivienhenderson@lawscot.org.uk

The views expressed in the Journal of the Law Society of Scotland are those of invited contributors and not necessarily those of the Law Society of Scotland. The Law Society of Scotland does not endorse any goods or services advertised, nor any claims or representations made in any advertisement appearing in the Journal. Readers should make appropriate enquiries and satisfy themselves before responding to any such advertisement, or placing reliance upon any claim or representation made in any advertisement appearing in the Journal.

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High Court Review

THE High Court Judge Lord Bonomy has been invited by the Justice Minister, Jim Wallace, to carry out a review of the practices and procedures of the High Court and of those who serve the Court with a view to making recommendations for the better use of judicial resources in promoting the interests of justice. He intends to consult widely from January to April.

In the first instance Lord Bonomy seeks comments in writing on the deficiencies of the practices and procedures of the Court and the working practices of those who serve it and on the improvements that might be made. Comment is invited from all with experience of, or an interest in, the workings of the Court and of those who serve it, including present and former members of any body playing any role in the Court, and members of the public who have experience of the Court.

Written comments should be sent to The Honourable Lord Bonomy, Parliament House, Edinburgh, EH1 1RF.

Authors Wanted

The Society has a joint books agreement with the publishers Butterworths, the express purpose of which is “to ensure that there continues to be made available to the Society’s members and the legal profession in Scotland a range of books and publications on Scots law and legal practice and related subjects.”

The Society and Butterworths would welcome suggested book topics and authors willing to write under the joint books programme. All suggestions should be sent to:

Carole Dalgleish, Commissioning Editor (Scotland), Butterworths,
4 Hill Street, Edinburgh
EH2 3JZ or DX ED 211
or
e-mail Carole at caroledalgleish@butterworths.co.uk

Rate of Interest on Landed Securities

The Commissioners on the rate of interest on Landed Securities in Scotland have resolved that the rate of interest on such First Class Landed Securities shall be 5% per annum for the six months from and after the term of Martimas (28 November) 2001.
Regulation Inquiry Update

THE First Committee of the Scottish Parliament continues its inquiry into the regulation of the Legal Profession in Scotland. The Society were invited to give evidence on the 5th December along with The Scottish Conveyancing and Executry Services Board. Evidence was subsequently taken from The Crown Office, The Scottish Executive Justice Department, The Scottish Solicitors Discipline Tribunal, the Scottish Legal Services Ombudsman and Marsh.

The Committee have received written evidence and a briefing from the Society about its regulatory functions and have chosen to concentrate their attentions on the complaints procedures of the different branches of the profession. The Committee’s questions have sought to assess how perceptions can be changed about the profession and the different bodies handling complaints against their members with options such as splitting off the complaints function from the Society and other regulatory bodies to a separate body. Discussions have also included the idea of an independent receipt system which would allot the complaints to the appropriate body for investigation and consideration. Time limits have also been discussed. After evidence has been taken, the Committee will prepare a report of their conclusions and recommendations which it is hoped, will be published in the spring of 2002.

The transcripts of all the evidence to date are available on the Scottish Parliament’s website at www.scottish.parliament.uk

Mortgage Rights Act

As you may already be aware, the Mortgage Rights (Scotland) Act 2001 came into force in December 2001. It is relevant to conveyancing practitioners since it deals with applications to suspend enforcement of standard securities etc.

A copy of this Act can be found by accessing Conveyancing Essentials, the Conveyancing Committee’s section of www.lawscot.org.uk and looking at Scot Wortley’s legal resources online. If you click into this you will find an index of legislation and can easily find your way to the Mortgage Rights (Scotland) Act.

This Act is worth a read, especially if you deal with repossessions.

Linsey Lewin, Secretary, Conveyancing Committee

Yacht Club

Following the AGM in May 2001, members were invited to take part in the Round Mull Race on 6 – 8 July organised by Oban Sailing Club to compete for trophies in the Multi-Hull, Fast and Slow Handicap classes. As a result of the short timescale to clear diaries, placate non-sailing partners, etc, no members were able to attend. However, it is the Committee’s general intention to organise something similar this year and all ideas and comments as to suitable events, timing, etc will be welcome.

Would all members who have not yet paid their subscriptions – you know who you are! – please now send their cheques to the Secretary & Treasurer.

If there is sufficient demand, Club Burgees (tastefully designed by our Commodore) could be available at a cost of around £15 each. Please contact the Secretary if you are interested.

Finally, are you interested in attending a Club Dinner? This might be part of one of the forthcoming race meetings or a separate event. Again, please contact the Secretary.

The Committee comprises:

Commodore:

Clive R M Franks, Franks Macadam Brown, LP1 Edinburgh 3

Vice Commodore:

Sandy Reid, Kidstons & Co, LP22 Glasgow 6

Secretary & Treasurer:

David D Robertson, Church of Scotland General Trustees, LP121 Edinburgh 2

Committee:

Lorne Byatt, Corporate Counsel, Voxar Ltd, Bonnington Bond, 2 Anderson Place, Edinburgh EH6 5N P;

Dot Latimer, 7 Keith Crescent, Edinburgh EH4 3NH;

Ruth Martin, Digby Brown, DX ED182 Edinburgh:

David Preston, Hosack & Sutherland, LP1 Oban.

News

Information from
the Registers

turnaround times

The current average turnaround times in working days from the Registers of Scotland are as follows:

- Sasine Writs 9 working days with a maximum of 13 days for the latest County
- Unattached Deals with W hole* 32 working days with a maximum of 64 days for the latest County

* An unattached Dealing with whole is a Dealing which is not dependent on the processing of a prior First Registration, Transfer of Part or Dealing with Whole for its completion.

The published Agency turnaround times for the Land Register is an attempt to capture the elapsed time that an application is in the Keeper’s hands and is capable of being processed by his staff. The only period of time not included in the turnaround time measurement is that time where a requisition has been raised with the submitting agent. Turnaround times are calculated at the point where the finished Land Certificate is despatched to the Agent. For obvious reasons Saturdays and Sundays are not included in the measurement taken.

The turnaround time in the Sasine Register is purely the elapsed time (once again, without Saturdays and Sundays) as writs which are withdrawn during the recording process are excluded from the turnaround time calculation.
Careers Events

DURING 2001 the Society ran a number of careers events around Scotland. The aim is to give interested students the opportunity of finding out at first hand the wide variety of career options available to lawyers. These events were organised in partnership with local authorities and careers advisers. So far we have held events in Aberdeen, Glasgow, Edinburgh, East Renfrewshire and Falkirk. We plan to hold more events like this in 2002 and are optimistic that the support given by members of the profession in the areas already visited will be repeated in other parts of the country.

Around 50 senior pupils from Falkirk schools took part in a very successful event on 4 December. The event was arranged jointly by the Society, Falkirk Education Department and Careers Central. Eight lawyers, mostly from the Falkirk District, gave generously of their time to share with the pupils an insight into the type of work done by different branches of the profession. Private Practice, Criminal and Civil, In-house, Scottish Executive, Procurator Fiscal Service, Faculty of Advocates, opportunities abroad, as well as an outline of the LLB and Diploma in Legal Education and the traineeship were discussed. This was a full and busy morning – lots of information sharing and some interesting questions. The pupils seemed amazed at the wide variety of careers in law open to them and they and the careers advisers and teachers said they learned a lot. Margaret Graham of Careers Central said: “It was a very worthwhile event. The feedback from the schools has been very positive and we hope to work with the Law Society to give a similar opportunity to schools in Clackmannanshire and Stirling in 2002.”

Professional Competence Course

AT a recent meeting of the Professional Competence Course (PCC) Accreditation Panel, initial approval was granted to all four of the first tranche of potential providers of the PCC. These institutions have now been invited to make their detailed applications by the end of March.

Three further initial applications have now been received and these will be considered by the Panel in early course. The Panel wishes to advise any future applicants that the accreditation procedure will take at least eight months from the date of receipt of their initial applications.


THE Society has agreed that those firms which are licensed for incidental investment business and who have an accounting period straddling the commencement date of the new regime of 1 December 2001, the Compliance Certificate to be submitted for such a period is to be the Compliance Certificate under the old Investment Business Compliance Certificates Rules 1997.

The Johnstone Wright Fund

THE Governors of the above fund, who are representatives of the Faculty of Advocates, the WS and SSC Societies, will meet in April 2002 to fill vacancies on the Roll of Annuitants (which is open to widows and spinsters of the professional classes of Scottish birth or parentage, and preferably associated with Edinburgh, in straitened circumstances). Those who intend to apply are asked to lodge their applications before 15 March 2002 with the Secretaries, Morton Fraser, Solicitors, 30-31 Queen Street, Edinburgh EH2 1JX, from whom application forms may be obtained (quoting reference “RG”).

Academy of European Law Trier

THE ERA has published its programme for the first half of this year. There are seminars on Company Law, Consumer Protection, Environmental Law, Financial Services, Fundamental Freedoms, Institutional Community Law, Judicial Co-operation in Civil Matters, Justice and Home Affairs, Private Law, Private International Law, Procedural Law, Public Procurement, World Trade and External Affairs. Full details of the programme are available from the ERA.

Secretaries, 30-31 Queen Street, Edinburgh EH2 1JX, from whom application forms may be obtained (quoting reference “RG”)
Multiple Claims
ScotRail, Derailment at Stranraer, October 10 2000

TAYLORS Solicitors, 15A Moray Place, Edinburgh, would like to enquire if other solicitors have been instructed with regard to claims on behalf of clients who may have been injured in a derailment of the Newcastle to Stranraer train on Tuesday 10th October 2000. The train was derailed near Glenluce, Wigtonshire. We would welcome an opportunity of co-ordinating any claims as the insurers have denied liability.

They can be contacted on 0131 226 1117, fax 0131 226 1247, DX ED 400

MEREDITH Louise Hunter, a solicitor practising in Perth, Western Australia, has a client who has asked her to do some research regarding a potential medical malpractice claim. The client suffered from asthma as a child and was subject to a treatment known as Sun Ray Therapy. This was apparently carried out at the Russell Institute in Paisley in or about 1956 or 1957.

The client recalls hearing or reading something about a group of solicitors in Scotland pursuing a class action against the Russell Institute as a result of medical problems such as “sensitive airways” and melanomas suffered by patients who had received the “Sun Ray Therapy”. Unfortunately her client cannot recall where she heard about the class action and cannot recall whether the treatment was in the form of ultra violent or infra red rays.

Her client now suffers from some of the symptoms set out above and would like some more information about the class action.

She can be contacted at e-mail address mhunter@iinet.net.au office phone number is (08)9371 5600 or 0417 182733

Family Law Association Committee 2001/2002
Hon President Sheriff Brian Kearney
Chair Lynne Di Biasio
Vice Chair Anne MacTaggart
Secretary Angela Alexander
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Committee Tom Ballantine
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Steven Wight
Lesley Gordon
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Rachael Kelsey
Shona Templeton
Irene Kerr
Catriona Turpie
Fiona Gavin
Administrator Carole Sheridan
An experimental initiative to bring the fundamentals of the legal system to senior school pupils was launched last month by Austin Lafferty.

Fifth year pupils from Holyrood Secondary School in Glasgow participated in a mock criminal trial at Glasgow Sheriff Court, raising their awareness of the workings of the justice system and offering would-be solicitors an opportunity to test their potential.

Austin Lafferty said: “Everyone was pleased with the outcome. The educational people were delighted that it had been beneficial, informative and enjoyable for the children. I did not take direct opinions from all the observers, but there was no doubting the positive atmosphere.

“I tried to teach without lecturing, and let the flow of information and analysis be as two-way as possible. I must say I was not expecting the barrage of enthusiasm and input from the pupils.

“We all want to go forward with it. Although there is some minor tweaking to be done, you could do these seminars in any school, with any group of people.”
**W hen can we destroy files?**

I was interested to read in the November issue of The Journal the article relating to File Ownership. In particular I was pleased to note the position with regard to conveyancing transactions and the method of dealing with files in that connection. On page 47 of the Journal it was stated that so far as sales are concerned we no longer have to keep the file after one year of completion of the transaction. I was under the mistaken belief clearly that ten years applied to sale files. I should be grateful if you could simply confirm the position for me as this will allow my firm a tremendous opportunity to clear out a vast backlog of files which are taking up space.

S Michael Scott, Lockharts, Ayr

There has been a change in the guidance for sale transactions but note that completion is not the same as settlement. It means after any outstanding matter has been dealt with, such as retention of funds; and also after the missives have ceased to have effect.

Bruce Ritchie, Professional Practice Director, The Law Society of Scotland

Hackneyed metaphors can become so familiar that one loses sight of their factual basis. Refreshing, therefore, to see the photograph concerning the Football Conference (page 9, December 2001 Journal). Someone has, literally, moved the goalposts!

Chris Eadie
BOYLE SHAUGHNESSY, Glasgow. The partners of JOHN S BOYLE, and JNO. SHAUGHNESSY, take this opportunity to announce the merger of the two firms with effect from 12th November 2001. The new firm is known as BOYLE SHAUGHNESSY and operates from Glasgow City Centre at 30 Hope Street, Glasgow, G2 8QN, telephone 0141 248 1888, fax 0141 248 2030 and e-mail bsh@boyleshaughnessy.com.

ARCHIBALD CAMPBELL & HARLEY, WS, Edinburgh, are pleased to announce that on 1st October 2001 Innes Miller was assumed as a partner and that Alison Smith joined as an associate from STEEDMAN RAMAGE.

IAN MccARRY, Glasgow, is pleased to intimate that with effect from 12th November 2001 Richard McKay has been made an associate of the firm and continues to be based at our office at 31 St Andrew's Street, Glasgow G1 5PB.

MACLAY MURRAY & SPENS, Glasgow, Edinburgh, London and Brussels, is pleased to announce the assumption of Allan Nicolson and Eleanor Kerr, both formerly partners of McGRIGOR DONALD, to be partners of the firm with effect from 1st December 2001. As at that date, the business of the private capital unit of McGRIGOR DONALD merged with MACLAY MURRAY & SPENS and will now be carried on by Alan and Eleanor and the other partners of the Tax & Private Capital Department within MACLAY MURRAY & SPENS, 151 St Vincent Street, Glasgow, G2 5NQ, telephone 0141 248 5011.

McVIES, W S, Haddington, are delighted to intimate that with effect from 1st January 2002 we are pleased to announce the resignation of Stephen James Morrice from the partnership with effect from 30th November 2001.

PETERKIN S, Aberdeen, are pleased to intimate that with effect from 1st January 2002 their associate Stephen Andrew Harper has been assumed as a partner in the firm.

STROACHAN S, Inverurie and Aberdeen, are pleased to intimate that with effect from 1st December 2001 Stephen Dowds, Hamish Duthie and Louise Robertson have acquired the Inverurie and Kemnay offices and will be continuing in partnership under the new name of THE KELLAS PARTNERSHIP. The telephone and facsimile numbers of the Inverurie and Kemnay offices remain unchanged and the new e-mail contact will be info@kellas.biz.

LESLIE WOLFSO N & C O, Glasgow, are pleased to announce that with effect from 1st November 2001, Fergus Ewing, MSP has been assumed as a partner and Annabelle Ewing MP appointed as a consultant. Fergus and Annabelle both formerly of EWING & CO, can, when not engaged on political duties, be contacted through the firm's office in Glasgow.

specialist accreditations
The undernoted have been accredited as specialists in the following areas:
Construction Law
Craig Douglas Turnbull, MacRoberts, Glasgow
Charity Law
Andrew Colin MacDuff Liddell, J & H Mitchell, Pitlochry
Scottish Solicitors’ Discipline Tribunal

A COMPLAINT was made by the Council of the Law Society of Scotland against George Lang Barrowman, Solicitor, who latterly practised as a partner in the firm of Barrowman & Co at 7 Kathrine Street, Kirkintilloch, and whose present address is 10 Castle Park Drive, Fairlie, Ayrshire (“the Respondent”).

On 12th September 2001, the Tribunal found the Respondent guilty of professional misconduct in respect of his misappropriation of funds amounting to £206,753.05 and breaches of the Solicitors (Scotland) Accounts Rules 1987. In respect of the foregoing, the Tribunal ordered that the name of George Lang Barrowman be struck off the Roll of Solicitors in Scotland.

The Respondent did not attend the Hearing and there was no submission in mitigation.

Scottish Solicitors’ Discipline Tribunal

A COMPLAINT was made by the Council of the Law Society of Scotland against John Desmond Francis Chute, Solicitor, Inveresk House, 3 Inveresk Village, Musselburgh (“the Respondent”).

On 9th October 2001, the Tribunal found the Respondent guilty of professional misconduct in respect of his breaches of the Solicitors (Scotland) Accounts Rules 1997, his failure to stamp and record deeds timeously and his failure to respond to the Law Society. The Respondent was censured, fined in the sum of £2000 and a restriction was imposed on his Practising Certificate.

The circumstances were that the Respondent was a sole practitioner operating from his own home without secretarial support. He explained that he had difficulty with bookkeeping and records and that it was his intention to wind up his practice by 31 October 2001.

The Tribunal was concerned by the ongoing nature of the breaches of the Accounts Rules and the delays in stamping and recording deeds. The Tribunal was not satisfied that the Respondent presently had the capacity and confidence to cope with the management of a legal practice and accordingly an Order was made limiting for a period of five years the Respondent’s practice within the profession to that of a qualified assistant with a further proviso to the effect that upon the expiry of that period of restriction the Respondent would require to satisfy the Discipline Tribunal that he is then fit to manage a practice before a full Practising Certificate might be issued.
THE DANGEROUS LINK between chronic office chaos, stress and depression

For many businesses, January is the time to address the office chaos that impedes successful working and generates personal stress. Nancy Byerly Jones makes some suggestions for identifying and correcting office matters that may be adding stress to your life.

Impaired or addicted lawyers usually turn to medical and mental health professionals for help. They can also get support through their bar association's lawyer assistance programme (LawCare in Scotland offer a 24 hour helpline, 0800 279 6669). To ensure the most secure foundation for recovery, however, it is also important to address the negative and costly influence on our lives of chronic chaos, disorganisation, low morale, and similar problems in our offices. Too often, this important factor in our emotional welfare is overlooked and, unfortunately, there are too few community or bar-sponsored resources for this type of help. This omission leaves us vulnerable to backsliding, short-lived success stories, and increased odds of repeating a vicious cycle.

Are your work habits and office environment putting you at risk? A few key questions to ask yourself include:

- Is your office in a state of constant chaos, disorganisation, or high stress?
- Do you find yourself with the same stresses on your plate and the same problems within your office year after year?
- Are you setting goals for yourself and office that never seem to be achieved?
- Do you dread the start of yet another day at the office?
- Are you in control of your work, or is your work in control of you?

If you answered yes to even one of these questions, then your personal health and quality of life are likely to be negatively affected sooner or later. The extent of the negative impact depends on factors such as:

- The frequency and severity of client complaints.
- How far (and long) we can stick our heads in the sand in an effort to avoid the truth.

If ignored for too long, chronic problems at the office can play a big part in setting the stage for battles with depression, substance abuse, and other stress-related problems. Traditional sources of help tend to focus on medical and psychological needs only, often overlooking chronic office stress as a factor to address. Medication, therapy, and support groups do have admirable success records. However, these success stories may only be temporary if chronic and stressful office issues are not factored in when creating and applying a comprehensive and realistic recovery plan.

Below you will find a few tools and suggestions for identifying and correcting office matters that may be adding stress to your life. Treat this information as a "starter kit" to help you focus your attention on an often overlooked area that can dramatically affect the likelihood that a lawyer will sink into depression or turn to substance abuse as an escape.

A Look in the Mirror
The following situations offer a small sampling of office patterns that, if ignored, can lead to chronic and crippling stress:

- Chronic, office-wide chaos.
- Unclear mission; no written long-term goals.
- Are your work habits and office environment putting you at risk? A few key questions to ask yourself include:
  - Is your office in a state of constant chaos, disorganisation, or high stress?
  - Do you find yourself with the same stresses on your plate and the same problems within your office year after year?
  - Are you setting goals for yourself and office that never seem to be achieved?
  - Do you dread the start of yet another day at the office?
  - Are you in control of your work, or is your work in control of you?

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A Look in the Mirror
The following situations offer a small sampling of office patterns that, if ignored, can lead to chronic and crippling stress:

- Chronic, office-wide chaos.
- Unclear mission; no written long-term goals.
Weak or haphazard internal leadership.
Unclear and inconsistently enforced policies and procedures.
Little, if any, true teamwork, cross-selling of services, or support of one another.
Lack of loyalty to the firm and a distrust of partners or other co-workers.
Poor communication and people skills.
Criticism voiced publicly and frequently; compliments or appreciation rarely, if ever, offered.
Low office morale.
  - High employee turnover.
  - Chronic procrastination.
  - Poor planning and prioritising resulting in last-minute panics.
  - Lack of time-management skills.
  - File mismanagement and disorganisation.
  - Repeated failure to meet deadlines promised to clients.
  - Frequent client complaints, many of which are of the same type (e.g., unreturned phone calls, not being kept informed about the status of their cases).

There is good news and bad news about this incomplete list of potential time bombs within our offices. The bad news is that these types of problems are all too common within many offices. The good news, however, is that there is a great deal that we can do to fix these problems and thus decrease work-related stress. All it takes is your willingness to get started, rather than waiting for someone else to "just fix it."

Let's be honest. We all have days when we grumble to ourselves.
  - "Can I trade this job for whatever is behind Door #1?"
  - "Nice perfume, but must you marinate in it?"
  - "Daily panic and chaos... this is what I get for surviving law school?"
  - "Our office is the world's largest natural source of sarcasm!"
  - "Is there a sign outside my door that reads Endless Interruptions Appreciated & Welcome?"
  - "Have I thanked you lately for your whining, chronic complaining, and negative attitude?"
  - "If our cash flow was as big as your ego, we would be enormously rich!"
  - "Thank you for being such a jerk; it helps make me look nicer!"

It is indeed a good thing our thoughts can't be heard by our supervisors, peers, and employees. When these types of thoughts recur on a daily basis, however, you run the risk of losing your sense of humour, and the risk of becoming overwhelmingly stressed increased. Couple chronic office stress with other health problems or tension on the home front and the odds for addiction or mental health problems increase astronomically. And yet, when faced with substance abuse problems or depression head-on, many lawyers fail to consider what role the "state of the office" may have played in getting them to that point. It makes sense that a lot of our stress-related problems could be eliminated or greatly reduced if only we took a proactive stance toward the state of our firms and offices before it's too late.

What to Do

The tips offered below suggest a few ways to get the ball rolling toward a healthier, stronger, and friendlier office, which also translates into happier and better-served clients. These tips are for those folks so fed up with the chronic stress at their offices that they are willing to roll up their sleeves, seek out whatever resources are needed, and do their part in improving their work environments. This necessarily includes a commitment to work on improving personal work habits and attitudes. In other words, the tips are for those who are ready to sever (once and for all) the frightening link between chronic office problems and excessive office-induced stress, depression and/or substance abuse.

Finally, you should be aware that others in your office may refuse to help address the real issues. They prefer the risks associated with chronic office stress, and just won't co-operate in your efforts to turn things around. If that is the case, and you feel you've tried your best and given proposed changes a fair time frame within which to take root, then it's time to consider other workplace options. The bottom line in this situation presents a stark choice - Are you willing to accept and live with your current office environment as it is, or should you summon the courage to replant yourself and your skills in a different office with a different group of people?

Tips for a healthy office include:
1. Decide what kind of firm and reputation you want to build and in which direction you want your "ship" to be heading.
2. Take a hard, honest, and thorough look at the strengths and weaknesses of your entire office - its "crew", the equipment, space, design, systems, policies, procedures, clients, marketing, and so on.
3. Make a master list of all the changes needed and then prioritise them.
4. Create and follow a simple, annual action plan.
5. Decide what steps need to be taken by whom and by when.
6. Make sure all employees understand the firm's philosophy, mission, and goals. Of course, make
1. Make sure all your partners are in agreement first!
2. Monitor your action plan regularly. Hold everyone (including yourself) accountable to do their parts. If there are no consequences for non-compliance, there's no need to create a plan in the first place.
3. Obtain employee input on ways to improve efficiency, systems, and technology.
4. Voice criticisms privately.
5. Praise deserving employees.
6. Provide sufficient training for all employees.
7. Ensure that the right person consistently and fairly enforces policies.
8. Make a budget, stick to it, and practice that takes any and all your firm.
9. Settle all unresolved conflicts with your partners and any others in your office (you need to demonstrate healthy conflict-resolution practices so that other employees will follow your example).
10. Avoid procrastinating.
13. Each one has motivated and inspired me personally and professionally.
14. Likewise, each of those success stories involves lawyers and staff members who were stressed out, exhausted, and fed up with their own work in control of them instead of the other way around. In many cases, the lawyers had to face the reality that they were working in the wrong office or with the wrong mixture of personalities for them.
15. Remember, it's easy to point out others' faults, but it takes courage to take an honest and thorough look at our work habits, our offices, and ourselves. It also takes a lot of character to make the really tough decisions, even if they prove unpopular, in order to create a less stressful work environment.
16. Update your systems and procedures - avoid the dangerous pitfall of "We've always done it this way so why change now?" Beware, however, of making rules or policies that are unwelcome to consistently and fairly enforce.
17. Review your interviewing and hiring system and techniques; take steps to avoid future "bad" hires.
18. Provide a spectrum of teaching styles (classroom, individual one on one training, training manuals) to accommodate your employees' diverse learning styles.
the right direction. You - no one else - are in charge of when you pick up the ball and run with it.

There is no doubt that unchecked chronic office stress is an often overlooked factor in depression, substance abuse, and other impairments. Just as there are many excellent programmes and resources for these types of problems, there are many self-help tools to assist us in turning things around in our offices - if we really want to do so. Experienced legal management consultants can assist in the process, as can practice management advisors provided by a few proactive and very caring state bar associations for their members. The bottom-line question is this: Are you willing to accept the same work-related stresses in your life year after year and accept the fallout from them? Or are you willing to take the necessary steps to look for and create healthier and better working environments for yourself and for your employees? The answers may not always be easy to face, but the ultimate choice is indeed yours, thank goodness.

Nancy Byerly Jones is an attorney, certified mediator, and legal management consultant. She lives in the North Carolina mountains where she conducts retreats for attorneys and staff. This article first appeared as The Dangerous Link Between Chronic Office Chaos, Stress, depression and Substance Abuse in The American Bar Association's GP Solo publication, July/August edition 2001, Volume 18 Number 5. Reprinted by permission of the American Bar Association.

Others in your office may refuse to help address the real issues. They prefer the risks associated with chronic office stress.

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**stress management self-audit chart**

Take the test to find out if your stress levels need to be addressed.

1. Do you feel that the stress in your life is out of control?
2. Do you feel stressed out the better part of most days?
3. Are you able to tune out your work when out of the office?
4. Are you able to tune out your personal problems when in the office?
5. Are you in control of your work, or is it in control of you?
6. Do you have trouble falling asleep?
7. Do you overeat or fail to eat as a result of stress?
8. Do you explode when angry?
9. Are you irritable more often than not?
10. How many vacations have you taken during the past five years?
11. Were the vacations relaxing?
12. Do you drink more alcohol than you once did?
13. Do you drink more than one drink each day?
14. Are you taking any medication for relaxation purposes?
15. Have you used or do you use illegal drugs of any kind?
16. How much exercise are you getting each week?
17. Do you have frequent headaches?
18. Do you often feel tired or sluggish?
19. Do you worry about committing malpractice?
20. Do you worry about the management of your firm?
21. Do you get to spend enough time with your family?
22. Do you get to spend enough time with your friends?
23. What are your favourite activities, and how often do you do them?
24. Do you have a mentor, good friend, or family member with whom it is easy to talk things over?
25. On a separate sheet of paper, make a list of everything that causes you stress.

(a) Categorise each stress according to the length of time it has affected you e.g. (one year or longer, six to nine months, less than three months).

(b) Note those stresses that you have absolutely no power to control (e.g. the way someone else acts, who your relatives are) so that you can begin teaching yourself not to waste energy and time worrying about uncontrollable facts of life.

(c) Review everything left on your stress list after excluding those stresses that are out of your control to change, and decide what, if anything, you are willing to do to reduce or eliminate those stresses (e.g. talk with someone with whom you had a disagreement, become a better time manager and less of a procrastinator).

(d) If you decide not to do anything about some stresses that you at least have some control over, then begin teaching yourself to stop worrying about them, griping about them, or otherwise allowing them to have a negative effect on your life.

(e) Are you willing to repeat this exercise frequently to remind yourself of what causes you stress; what, if anything, you might be able to do to eliminate or reduce certain stresses; and what areas you need to learn to accept as out of your power to control?
Solicitors normally carry on business in partnership and the Partnership Act, 1890, Section 24 (5) provides that every partner is entitled to take part in the management of the partnership. This however is too vague for the requirements of the modern world and will invariably require the partners to agree to a management structure. This is also the case in the small number of firms which operate as incorporated practices or limited liability partnerships. How each firm does, in practice, manage itself will depend upon the nature of the firm, size, location(s), and type of business being undertaken.

Partners are responsible for the conduct of its business. Invariably, they are also responsible for delivering the legal services that are the product of the firm. It is vital that the partners agree who will be responsible for the different aspects of the management of the business and delegate to them the necessary authority to carry out this task.

Management of a firm of two or three partners with perhaps ten or twelve employees is radically different from a firm of twenty or thirty partners and two to three hundred staff. If you do not have a Partnership Agreement in place then you must certainly do so immediately. However, this is no substitute for a management structure. Unfortunately there is no standard template for a management structure. There is, however, a process that should be followed to achieve the desired end result (i.e. an effective management structure and efficiently run practice).

The first step is developing a Business Plan. This will set out where the firm is, in its particular market and where the firm aims to be in the future. A management structure can then be prepared with a view to implementing the Business Plan. I would recommend that you consider using outside help to prepare a Business Plan. You should spend some time researching your potential market, profit levels, setting up costs, etc., and should complete costings.

**How do I go about preparing a Business Plan?** The most important factor here is to prepare a proper document. Many firms believe they have a Business Plan but they simply have not written it down. If it is written, it is much easier to communicate to partners, staff and others and it allows you to measure progress and adjust the plan, where necessary.

Ideally, the Business Plan should comprise an introduction to the firm, an outline of the current business, a review of the past performance of the firm, the vision of where you want to go including goals and targets, critical success factors and long term strategic objectives, future plans and an indication of how the firm is to implement these plans, resource implications (both financial and other) and, lastly, the financial projections.

Having gone through the planning process the management structure will be much easier to handle. The partnership, personnel and succession planning will need to put “round pegs in round holes”. As with any planning operation, it may be necessary, from time to time, to re-define tasks and offer training.

Following the preparation of the Business Plan the Partnership Agreement should be reviewed in the light of any major policy decision regarding how the firm is to be managed and by whom. Appropriate authority must be given to those appointed so that they have the freedom to act within the guidelines/parameters laid down. Those appointed to the task must accept the discipline imposed by the structure. The management structure should be set out in writing and everyone in the firm should be aware of it. If there is a staff handbook then perhaps the structure might be included to simplify an induction programme. It is vital that the
partners fully accept the structure and all it entails.

In today’s fast moving pressurised world it is very necessary to measure management responsibility in relation to fee earning workload. Stress is a major factor. Differing responsibilities may combine to over stress even the best of us. Sometimes a person may suffer underlying stress or depression due to a lack of management responsibility and a perceived lowering of status. Again the management structure must be flexible and responsive to the people involved, fee earning and in-house needs.

What type of management structure?

There are many different types of structure appropriate to legal practices and these can vary from setting up a management board, naming a management partner or even appointing a non-lawyer as Chief Executive! Historically, the benevolent dictatorship has existed where the Senior Partner has taken all the management decisions. With the right dictator, the decisions are taken quickly and the other partners do not spend unremunerative time on management matters. In a small firm this may still be appropriate although today the complexities of business make it very difficult for one person to have sufficient know-how or indeed the time to fulfil the job properly. Moreover, new partners may be excluded from management and have little real idea as to how the firm is performing. Sadly there are examples from time to time of new partners whose experience of partnership are negative and costly to them financially. Succession may also be a problem.

The management structure must be flexible and responsive to people concerned.

Management is sometimes delegated to a committee of partners. Committees can bring together know-how from different areas of the business. The committee must ensure it is clear about who is responsible for implementing each decision.

The committee type structure leads on to one or more individuals having specific responsibility for managing different areas, e.g. Corporate or Private Client, Office Administration, Personnel, Finance, Premises, IT and Online Services, Training, etc. This will only work efficiently if there is proper co-ordination perhaps through the medium of a Managing Partner/Chief Executive or an Executive/Management Committee. The most effective type of management structure will probably be the type where one person co-ordinates the management of the whole firm with individuals responsible to him or her for specific ideas. This can be shown as follows:

<table>
<thead>
<tr>
<th>Partners</th>
<th>Chairman</th>
</tr>
</thead>
<tbody>
<tr>
<td>Managing Partner/Chief Executive</td>
<td>Managing/Executive Committee</td>
</tr>
<tr>
<td>Finance</td>
<td>Personnel</td>
</tr>
<tr>
<td>Cashiers</td>
<td>Selection</td>
</tr>
<tr>
<td>Time Recording</td>
<td>Salaries</td>
</tr>
<tr>
<td>Budgets</td>
<td>Discipline</td>
</tr>
<tr>
<td>Reports</td>
<td>Training</td>
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<tr>
<td>Admin/Premises</td>
<td>Info Techn</td>
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</tbody>
</table>

The designated Cash-Room Partner and the Client Relations Partner should be part of the Management Structure together with the Managing Partner and the Finance Partner. In a larger firm it may not be cost effective for the partners to meet often. In this case, the partners should appoint a Policy Committee with delegated powers. The Chairman/Senior Partner would normally chair this Committee.
Who should be the managers?
The time and legal know-how of the partners are among the main assets of the firm and it is, therefore, vital that the use of these assets to deliver legal services cost effectively should be maximised.

In larger firms the Managing Partner may need to devote all his or her time to managing but where possible day-to-day operation should be handled by non-lawyers who are not in the main fee earners. It may be found beneficial to employ non-legal but professional managers i.e. Financial Services, Debt Collection, IT, Chartered Accountants or Law Accountants (S.O.L.A.S.), Marketing, Human Resources, Property, Health and Safety, Data Protection and/or others in the management structure and give them sufficient authority to undertake their tasks successfully. Not every firm can justify the employment of full time specialists. It is possible to hire part-time managers or use consultants.

It needs to be recognised that some partners have little interest in management, preferring instead to concentrate on the delivery of legal services. Some solicitors do not want to be a partner because they are uninterested in management. However, some will be, or will have the potential to be, skilled managers. The management structure should include everyone from the most senior to the most junior and it will only work effectively if everyone is kept advised of what and everyone accepts the disciplines imposed.

I offer below some services which you may find helpful and I would take this opportunity to thank Sandy Weatherhead and Fiona Westwood who wrote the full papers on Management Structures and Business Planning respectively contained in the Better Client Care and Practice Management Guidance Manual which formed the basis for this article.

The Practice Management Committee offer assistance to solicitors through the Practice Advisory Service when those wanting to discuss management or business difficulties or opportunities receive a one day visit from an experienced member of the profession on a totally confidential basis. The Advisor will prepare a report that will be given to the firm either on the day of the visit or shortly thereafter. I would stress that the Society do not receive feedback from the advisor although the senior advisor may telephone the firm after the visit seeking comments on the service (not, I hasten to add, the matters discussed concerning the firm). Telephone 0131 225 9852 to be put in touch with the senior advisor.


The Marketing Committee provide the Marketing Advisory Service. The service is delivered by independent marketing consultants and I would commend it to you. Contact Linsey Lewin at the Society, telephone 0131 476 8174 or linseylewin@lawscot.org.uk

Since I did mention stress in this article I feel I should draw your attention to Lawcare. For solicitors suffering from stress, depression, illness or addiction or indeed for those affected by a solicitor displaying the aforementioned symptoms, Lawcare offer a totally confidential advice and support service by operating a 24-hour telephone helpline on 0800 279 6869.

Alan S Matthew is Convener of the Law Society of Scotland’s practice management committee.
EFFECTIVE CROSS SELLING - is it possible or just a

Fiona Westwood continues her series looking at practical solutions to tackle problems by examining how to achieve successful cross selling.

Nearly every professional firm speaks of the importance of cross selling its full range of services to clients, yet very few firms achieve it in practice. However, the strategy of cross selling is sound as the effort and time it takes to attract new clients away from their existing professional advisors is considerable. It is much easier to sell new services to existing clients who already appreciate the quality of what we provide to them. We understand our clients and what they value, and as a result can focus on explaining the benefits our additional services will bring them.

We are all too familiar with the problems associated with selling professional services. Quite apart from the difficulties of selling something intangible, our clients often do not want to buy from us in the first place, seeing our service as a necessary evil, which should be bought as little as possible. Also, professionals are deeply uncomfortable with the concept of "selling", and even perceive it as something inherently unprofessional.

Even when professionals are brave enough to try to introduce clients to other parts of their firms, it often can go wrong. When work is referred to another professional or department, the client may not enjoy the experience which reflects badly on the professional making the original referral.

Given that the strategy is correct, how are we to achieve effective cross selling?

1 Educate our clients

As outlined in last month's article on "Winning Pitches", most clients have difficulty understanding what professionals actually do. Think how little we understand the details of what is involved in forensic accounting or facilities management!

As a result, we need to start by educating clients about the range of services we provide. By this, I mean that we need to give them basic information about what we do, and most importantly what benefits that will bring to them. The best professional brochures and websites provide illustrations, sometimes by way of case studies or stories, of the successes these firms have achieved for their clients.

2 Working out the benefits

Many professionals seem to have become incapable of seeing it from the client's perspective. As a result, when asked to define the benefits, they talk a lot about the technical content of what they do. However, we must be able to define the benefits of our services from the client's point of view. Most clients value speed of response and that their professionals focus on results rather than the process.

For example, the benefits of our litigation department should not describe the expertise of our partners but should instead illustrate our speedy resolution of what appear to clients as being insurmountable difficulties and where appropriate our ability to build future relationships rather than irretrievably damage them. Yes, I can hear my fellow court colleagues commenting that that is easy to say but very difficult to achieve, but that is the point I am making. To earn high quality fees and win high quality clients and work, we need to be able to do what many people cannot do.

3 Ask the clients

The easiest way to introduce new services to our clients is to ask them what they want! Many professional firms are reluctant to ask clients directly, yet those who do find their clients are delighted to be asked. Clients are pleased that their opinion is being sought and are happy to comment by way of direct discussion rather than written questionnaires. Asking people to spend their time filling in forms seems to underline many clients' perceptions that "we are too busy and important to spend time with our clients!"

I asked one of my senior director clients (who does not work in the professional sector) recently to describe what he wanted from his professional advisors. He said: "This is kind of asking the difference between 'that's my right and expectation as a client' i.e. good professional service and the WOW factor where you are really taken by surprise because it's well beyond what you expected."

Criteria

- very caring client service from the start and then throughout
- high quality timely communications
- delivered on time
professionals requires clear, concise, good descriptive English
- priced competitively and up front
- careful recommendations (beyond the fear of litigation stuff)
- precisely agreed contract and carefully specified
- relevant support and back-up when needed
- available when needed or at least user-friendly contactable

Many of us will look at that list and say that, in essence, what he describes is nothing hard or difficult, yet he finished by saying that “to be ‘wowed’ would be a rare occurrence for me and many others!”

4. Hand holding clients is not a waste of time

Once we have ascertained what our clients want and what they will want from us in the future, we can then introduce new services to them. This is a very important stage in the relationship and must be handled with care. Clients, like most people, are resistant to change. They do not like having to get to know another professional and will not take it well if they have to explain themselves to other people within our firm. They will expect that introduction to their background and life stories to have already been made!

Retaining contact with them with regard to the new service is vital. Too often, referring professionals hand clients over without any attempt to keep in touch with them. Too often the new professional keeps the referrer out of the communication loop which causes professional and client problems on all sides. Clients feel abandoned and forced to build the new relationship themselves. Particular knowledge of the client’s situation may be missed in the handover which can cause professional indemnity problems.

It is important to keep all three sides of the triangle in touch with each other as this new relationship develops. Initially at least, the client will check out the new service or advice with the original professional who should be kept informed before the client is to make sure that the advice or approach will be acceptable to the client. This may initially not look cost effective but it will pay dividends in the long term by developing a strong and cohesive relationship.

5. Make sure we reward cross selling

Professionals are reluctant to get involved in anything which is described as “selling”. They see it as unprofessional and not what they should be asked to do. Yet, many of them talk about the importance of client care and of delivering high quality professional service. It is important therefore to build on that inherent commitment to client relationships rather than put them off the concept by talking about increasing their selling skills. Cross selling is about developing and deepening their existing relationships with their clients. Once professionals see it from that perspective, it is much easier to encourage them to do it.

However, we also need to ensure that our structure and culture supports that aim. Too often, firms specify the importance of cross selling in their business or marketing plan yet operationally, set people fee and time targets which actively discourage it. Many firms operate on a “keep what you kill” policy! Professionals and clients alike must believe in the quality of the service we provide and the people providing it. Cross selling will not be achieved in an atmosphere of distrust and resentment. We need to ensure that we follow through by developing ways to reward the people who implement it. These should include recognition for the introduction to the new service, a percentage reward on the fee recovered and reciprocity. We also need to ensure that people and departments trust each other and are willing to share clients.

Implementing successful cross selling is one of the core elements of sustainable business growth. We know our existing clients and what they value. We should build on this and expand the range of services we provide to them. Clients choose us because they trust us and our professional judgment. It is important to maintain and not damage that connection. Cross selling implies that we trust the professional we refer our client on to and that the client will benefit from that additional service. We need to believe in the value that we can provide to our clients.

How to do it?

- Give clients basic information about the services you provide, couched in language they understand and detailing the benefits that these services will provide for them
- Work hard at defining these benefits from the client’s perspective
- Ask key clients what they value, why they choose us, and what they want from us now and in the future
- When introducing clients to new services, maintain the existing personal relationship
- Stop using the word “selling” within the firm and start talking about deepening existing client relationships
- Encourage sharing of clients and reward people for attempting successful cross selling
- Believe in the quality of the service we provide and the people who provide it

Fiona Westwood runs her own management and training consultancy specialising in working with the professional sector. A solicitor with 20 years experience of private practice, she established Westwood Associates in 1994.

e: faw@westwood-associates.com
Keeper’s corner

This is the first in a quarterly series of updates by Alan Ramage, Keeper of the Registers of Scotland, intended to keep members of the profession abreast of developments in the registers.

Registers Direct

The second phase of the Registers Direct service was released on 26th November 2001. In addition to the Sasine and Chancery and Judicial Registers which have been available since January, customers now have access to Land Register information, including the Application Record, Title Sheet Records and Title Plans. The service also includes access to an Index Map facility to access information about registered interests through a map-based search.

The system has been subjected to intensive testing and trialling. In the course of this year over 1,000,000 searches of the system have been carried out by both customers and Agency staff. Responses from existing customers have been very encouraging and access is being made available on a staged basis to all those customers who have applied to become account holders.

Automated Registration of Title to Land (ARTL)

The ARTL pilot system has been operational since January 2001. To date some 83 parallel registrations have been successfully completed on the system. A further 84 have been started and are at various stages of completion. The total number of firms with access to ARTL is now 54. Following feedback received as a result of firms using the pilot, the ARTL system has been updated in a number of respects. For instance, aside from a large number of cosmetic changes, a comprehensive set of stamp duty screens has been added, as has an interface with Companies House.

We hosted a reception at the Glasgow Hilton in November to demonstrate the new updated ARTL system with over 80 solicitors and other interested parties attending. The keynote speaker was Jim Gallagher, Head of Scottish Executive Justice Department, who delivered a speech on behalf of Iain Gray, the then Deputy Justice Minister. Mr Gallagher spoke of Scottish Ministers’ commitment to expanding e-commerce in Government services in Scotland and how ARTL was an important strand in that. Solicitors were encouraged to become actively involved in the project. Indeed following the reception we have had eleven enquiries from firms seeking information on the pilot as well as from one local authority and these are being progressed with a view to offering enquirers the opportunity to become actively involved in the pilot.

The Council of Mortgage Lenders (CML) has now become formally involved in the project and have appointed a representative to sit on the ARTL Steering Group. In addition the CML have outlined in writing to us those aspects of lending practice which ARTL will have to take cognisance of.

The pilot still has approximately 4 months to run and it is to be hoped that solicitors will use this time to use the system and offer feedback.

Timeshare Salmon Fishings

When difficulties over the registration of timeshare rights in Salmon Fishings were identified a couple of years ago the Conveyancing Committee under the Convenership of Stewart Brymer took on the role of facilitator and encouraged positive dialogue between ourselves and solicitors acting for some of the fishing
schemes. That dialogue has continued to date with beneficial results.

The original idea was to put together a stated case for the Inner House which would settle for once and for all whether or not a grant of a pro indiviso share in salmon fisheries, subject to conditions which were intended to give the user exclusive right to fish with a given number of rods in a particular week of the year while preventing occupation at any other time, was an effective conveyance of an interest in land which could be registered. That idea was not pursued, but the dialogue was continued and it can be reported that we have been in discussions with solicitors acting for the holders of timeshare salmon fishing rights in a particular scheme to identify possible other ways forward. The debate has focused on methods of converting the scheme into a certificated one where title to the fisheries as a whole is vested in trustees or a nominee company and each proprietor of a fishing period receives a Certificate as evidence of his right to fish with however many rods at a set time. These certificates will not be registrable, but can be traded.

It appears that agreement is close with regard to the particular scheme which will involve certain remedial conveyancing recorded in the Sasine Register. This is not an appropriate place to set out the full detail, but any solicitor acting for clients in another scheme who wishes to discuss a similar approach should contact John Glover at Meadowbank House (telephone no 0131 659 6111 ext.3029).

Crown Copyright - Title Plans

In my capacity as Keeper, I think it politic to draw to the attention of conveyancing solicitors Paragraph 4.23 of the Registration of Title Practice Book (2nd edition), which warns that unauthorised copying of Ordnance Maps and/or Land Register Title Plans is a breach of Crown Copyright.

We have seen numerous examples of such breaches of Crown Copyright. It appears that many solicitors have been photocopying Ordnance Maps and Land Register Title Plans for use as deed plans etc., without official permission.

Ordnance Survey asserts that it has intellectual property rights in its maps and mapping data that are protected under the Copyright, Designs and Patents Act 1988 from unauthorised copying by Crown Copyright. The protection extends from the publication date to the end of that calendar year and then 50 years from the end of the year when they were first published.

Land Register Title Plans derive from digital Ordnance Maps and are made by us under Ordnance Survey license. It is likewise a breach of Crown Copyright to copy Title Plans, unless a license has been obtained from Ordnance Survey.

Ordnance Survey takes a very firm line against unlicensed copying. In that regard, it has successfully pursued court actions against a number of persons in recent years.

Information about licenses should be obtained directly from Ordnance Survey. Unfortunately, the contact details given at Paragraph 4.23 of the Registration of Title Practice Book are now out-of-date. The current contact point is:

Copyright Licensing
Ordnance Survey
Romsey Road
SO16 4GU
Telephone: 023 8079 2913
Fax: 023 8079 2535
E-mail: copyrightenquiries@ordsvy.gov.uk

Additionally, Ordnance Survey’s website (www.ordsvy.gov.uk) provides outlines of licensing arrangements and intellectual property policies. On the website’s home page, at the foot, there is a link marked “© copyright and trademarks” that leads straight to these outlines.

Review of Land Registration (Scotland) Act 1979

As part of their sixth programme of law reform, the Scottish Law Commission will undertake a detailed review of the Act. It is now more than 20 years since the commencement of the Land Register in Scotland with the launch of the county of Renfrew as an operational area on 6 April 1981. To inform the Commission’s work, my staff are currently preparing a submission for the Commission outlining the areas where we consider the Act stands in need of revision. The submission will be wide-ranging. It looks in some detail at the principles underlying the rectification and indemnity provisions and their practical application, taking into account litigation involving the Keeper. It deals with operational issues as diverse as the coverage of the Land Register and the triggers for first registration; matters relating to title descriptions and identification on the Ordnance Map; and whether Land Certificates should continue to be a feature of the registration system. The new legislation will also need to take account of developments in technology to ensure the process of registration enables electronic registration. The submission will be distributed to representatives of the Law Society through the Joint Consultative Committee.

Data Integrity

Data Integrity is becoming a key issue for all organisations, as more use is made of the data they hold on-line. We are also aware of the emergence of a number of quality problems associated with land and charge certificates. This, together with the increasing exposure of data via the on-line Registers Direct Service, has led to concerns about the quality and consistency of some elements of the data held by us.

Within the Sasine Register 19,000 paper volumes have been scanned on to an electronic imaging system including 9,000,000 individual images. In the Land Register there are more than 700,000 individual digital Title Sheet Numbers, each with an associated Title Plan and various underpinning data sets. The Land Register database changes on a daily basis as applications are processed. Last financial year around 550,000 deeds were given effect to in each of these registers.

One of our principal objectives is: “To provide ready access to up to date and error free Registers, thereby ensuring that the public can have faith in the information that they contain.” The quality and sustained integrity of Agency data is, therefore, a key target for us and we are working hard to improve in this area.

The profession expects accurate, consistent, complete and current data. Feedback from the profession is helping to shape and inform our procedures and practices. This will lead to regular improvements in the quality of services provided in the future. Regular Customer Surveys have also highlighted areas of concern. In response, a structured Quality strategy is being developed and a dedicated Data Integrity Team established to monitor and promote a number of Quality initiatives. Further reports on this topic and on progress made will be included in regular updates.

The Keeper will be delighted to receive any feedback either on the series itself or individual issues covered.
SINCE

In Bank of Scotland v Mitchell 2001 GWD 39-1447 Sheriff Davidson refused to grant a warrant of citation. The writ, in proper form, was presented by a firm of English solicitors. The writ, if warranted, was to be returned to a firm of Scottish solicitors who would cite the Defender. The writ had been drafted by the English solicitors but revised by the Scottish. After service the English solicitors would prepare the minute for decree for the Scottish to sign. If the action was defended the Scottish solicitors would act. No warrant was granted. W hist section 32 of the Solicitors (Scotland) Act 1980 allowed anyone to draft a writ provided they received no direct reward for it, this only covered the situation of such a person being employed by a person employed by a qualified person. In the present instance an unqualified person had drafted the writ whilst employed by an English solicitor. It was an offence for such a person to have drafted a writ in terms of section 32. Further it was an offence for an unqualified person to conduct litigation in the Scottish Courts unless it was for no reward.

Pleadings

In McTear v Imperial Tobacco 2001 GW D 34-1322 Lord McCluskey concluded that in an action for damages arising from the death caused by lung cancer it was necessary to aver what the tobacco related health risks were and how they had come or should have come to the Defenders' attention. The Pursuer could not rely on wide media discussion or other litigation in which these risks had been raised. Lord McCluskey also indicated that reference to the complete reports brevitatis causa would not result in the complete contents of the reports being read as positive averments in favour of the party making the reference. In Smith Maritime Ltd v Miller Methil Ltd 2001 GW D 36-1359 the Defenders counterclaimed for damages arising from the Pursuer's breach of contract. The damages were based on a penalty clause in the contract between the Defenders and a third party. The Pursuer attacked the relevance of the averments. There was no specification firstly, as to the manner in which the Pursuers knew of the contract, its terms, and in particular the penalty clause, secondly, as to the contractual delivery date and the actual date, and lastly, how the losses were calculated. Sheriff Cusine, in allowing a proof before answer, decided that all the Defender had to aver was that the Pursuers knew of the contract in question and its terms. How the Pursuers came to know of the contract and the extent of their knowledge was a matter for proof. Further the Defenders did not have to specify the manner in which the losses were calculated as what was claimed was minimal when compared to the potential liability in terms of the penalty clause.

Jurisdiction

It is not often that a decision appears dealing with domicile. In Marsh v Marsh 2001 GWD 36-1358 Sheriff Principal Young found that a Thai citizen did have a domicile of choice in Scotland. He reached that conclusion as the Pursuer had decided to live in Scotland without limit of time, she had returned to Scotland when her marriage to her husband, who lived in Malaysia, had broken down, she had passed her driving test in Scotland, and given her daughter UK citizenship. The fact that she had nowhere else to go strengthened her willingness to reside in Scotland.

Lis Alibi Pendens

In Bain v Bain 2001 GWD 32-1270 Lord Dawson upheld a plea of lis alibi pendens in an action for recompense relating to improvements to heritage and interdict against the Defender evicting the Pursuer from the property. The Defender had raised proceedings for possession of the heritage in the Sheriff Court. Notwithstanding the claim for recompense raised a different issue, both actions raised the same issue, namely the Pursuer's entitlement to remain in the property, and accordingly the plea required to be sustained.

When to intimate motions

In Semple Cochrane plc v Hughes 2001 SLT 1123 Lord Carloway was moved to exercise his dispensing power to allow a motion to recall a decree granted in absence to be heard though the motion was enrolled late. In this case the motion for decree in absence was not
intimated to the Defender's agent, notwithstanding that the Pursuers' agents were aware that the Defenders had instructed agents. The Defender's agents had not at that stage entered appearance, hence there was no strict requirement to intimate the motion. In exercising the dispensing power, Lord Carloway observed that when the identity of the Defender's agents was known, and that the Defender intended to defend the action, it was good practice to intimate the motion for decree in absence. Might it be suggested that a similar view might be taken when in reparation actions the identity of the Defender's insurers are known but no notice of intention to defend is lodged timeously. If in those circumstances decree in absence is taken, it appears to me that a repining note is likely to be granted. The converse of course also applies, namely that if intimation is given it may be more difficult for the dispensing power to be successfully pleaded. Lord Carloway also rejected the Pursuers' representations that for the motion to be granted, exceptional circumstances had to be established. It was a question of considering where the interests of justice lay once it was established that failure to comply with the rules was the result of a mistake, oversight, or other excusable cause.

Reinstatement of a plea previously repelled

In George Martin (Builders) Ltd v Jamal 2001 SLT (Sh Ct) 119 Sheriff Stewart refused to allow a preliminary plea previously repelled at an options hearing as a result of no rule 22 note being lodged to be reinstated by way of amendment. He indicated that such a process would only be allowed if the other party had by amendment introduced material, which justified the preliminary plea of new. In light of this decision does the same apply if a preliminary plea is repelled at an options hearing as a result of an absence of a rule 22 note and the options hearing is then continued? The observations of Sheriff Principal Cox in Ferguson & Menzies Ltd v J W Soil Suppliers Ltd 1998 SCLR 1042 may come in handy in this regard.

Amendment

In Milnbank Housing Association Ltd v Page & Park 2001 GW D 40-1533 Lord Carloway was moved to refuse a proposed amendment outwith the prescriptive period. In allowing the amendment, Lord Carloway set out that in deciding the issue, a practical as opposed to technical approach had to be taken. Did the claim after amendment remain fundamentally the same. If pre, and post, amendment matters could be viewed as elements of one claim relating to the same obligation, then the proposed amendment was not prescribed. If not, it had prescribed. Lord Carloway then dealt with particular examples. In contract, a claim based on one provision may relate to a separate obligation based on a different term. If a claim arising out of contract is based upon an obligation to perform one's part of the contract with reasonable care, then an action based on one aspect of negligence may enable other aspects of negligence outwith the prescriptive period. The same applies to delictual claims. It is a question of fact and circumstance. Alterations in legal bases or factual averments if material or major may be of significance. In Esmail v The Bank of Scotland 2001 GW D 39-1448 the Defenders had agreed to a proof before answer restricted to quantum. Thereafter, as a result of the terms of a joint forensic report, the Defenders sought to amend their pleadings. The result of the amendment would of necessity widen the scope of the proof to certain aspects relating to the merits. It also sought to raise issues of causation and contributory negligence. Lord Macfadyen agreed that it was competent to allow certain averments in the proposed amendment, albeit it widened the scope of the proof beyond simply quantum. He further made certain observations with regard to the use of esto. He made it clear that esto could only properly be used when an assertion of fact made by another party is the hypothetical basis for the esto case. It cannot be used when the hypothesis is based upon an assertion no party offers to prove as a fact. He further refused certain aspects of the proposed amendment having regard to the procedural history of the litigation.

Options hearings

In McPherson v Mutch 2001 GW D 40-1498 Sheriff Principal Young followed the line of authority began in Gracey v Sykes 1994 SCLR 909. He allowed an appeal against a Sheriff's decision to allow a proof before answer holding that there existed a preliminary matter of law, which if successful would lead to decree in favour of the Pursuer. He accordingly recalled the allowance of a PBA and fixed a debate.

To sist or not to sist

In Ferns v Hendron 2001 GW D 33-1303 Lord Bonomy recalled the sist. The Defenders sought the recall of the sist in an action, which had been sited to enable the Pursuer to apply for legal aid. In moving the motion the Defenders argued that legal aid had been refused and the actions were time barred. In opposing the motion, the Pursuer argued that the principal issue in the case would be determined in other actions in which there were clear...
paralled about establishments also run by the Church. In granting the motion Lord Bonomy indicated that the Defenders were entitled to have the issue of liability decided as soon as possible having regard to the interests of justice. In view of the fact that it was unlikely that legal aid would be granted, that the other actions were against establishments run by other branches of the Church, that the events occurred at least 20 years ago, and that there was a real risk of time bar, these interests supported the grant of the motion.

Appeals

In Phillips v Kvaerner Govan Ltd 2001 GWD 40-1497 an appeal was taken against a Sheriff's award of damages attacking the Sheriff’s assessment of witnesses. Amongst the attacks mounted against the assessments were that the manner of dress of the witness was irrelevant. The Inner House indicated that whilst the manner in which a witness was dressed could not directly result in a witness being credible and reliable or the converse, it could form some circumstance which could give the judge at first instance an impression as to the witness's account.

Expenses

In Ackerman v Logan's Executors 2001 GWD 35-1346 an argument that an award of expenses made during the currency of a litigation was contrary to Article 3 of the European Convention of Human Rights was rejected. In Donachie v Happit Ltd 2001 GWD 40-1520, the Pursuer had sued two Defenders in a reparation action. The First Defender had not pled apportionment of liability against the Co Defender. The First Defender's tender was accepted by the Pursuer. On the acceptance of the tender, no order in relation to expenses was made for or against the Co Defender, who now sought an award of expenses either against the Pursuer or the First Defender. The Pursuer argued that no order should be made in favour of the Second Defender or if it was, the Pursuer was entitled to relief against the First Defender. The Pursuer was found liable in the expenses to the Second Defender. The Pursuer had chosen to sue both Defenders from the outset. There had been no suggestion that it was appropriate to sue the Second Defender from anything pled by the First Defender. It made no difference that the action was settled by tender as opposed to judgment. The Pursuer had put the Second Defender to the cost of the litigation. Another reminder of the cost which can be incurred if a number of Defenders are sued on the basis of 'let's not leave anyone out'. It is preferable to sue sometime prior to the prescriptive period and see what the defences say. In another action in which a tender was involved the question arose as to the date to which the Pursuer was entitled to expenses when the tender was accepted. The tender was lodged on the first day of a four-day proof after the Pursuer's witnesses were heard. On the morning of the third day the Pursuer accepted the tender. In allowing the Pursuer the expenses of the second day, Lord Carloway in Pagan v The Miller Group Ltd 2001 GWD 38-1428 indicated that notwithstanding an immediate consultation with Counsel had been possible when the tender was lodged, the importance of the decision together with the sums involved made it unreasonable for the Pursuer to make an instant decision. He was entitled to sleep on it and consider it in the light of the following day's evidence. In Cameron v Cameron 2001 GWD 39-1479 one of the issues to be dealt with by Sheriff Principal Nicholson in the appeal was the question of expenses. The Defender had not tendered in the divorce action in respect of his wife's claim for capital but had made two offers in respect of her claim during the course of the proceedings which were greater than that eventually awarded. In his decision on the aspect of expenses, Sheriff Principal Nicholson considered that it would be unrealistic for a court at first instance to ignore the consequences of an award of a capital sum in considering the question of expenses. A court should regard to offers made when considering the question of expenses. In many instances a formal minute of tender was not possible in a divorce action. There were other ways in which offers could be made to settle financial claims. The principle of expenses following success could not be used unreservedly in family actions. Questions such as what was craved and what had been ultimately awarded were other factors to be considered.

Family actions

In Ali v Ali 2001 GWD 38-1430 Lord Nimm Smith made certain interesting observations relating to what information required to be before a sheriff in an undefended divorce action in which the Pursuer sought financial provision. The Petitioner in the action before Lord Nimm Smith sought reduction of the undefended decree quoad the financial award. Evidence in affidavit form should support the claim. It is no obstacle to decree in such circumstances that the sums sought are at the top end of the scale. The sheriff can have regard to what is averred in the writ. If the Pursuer seeks an award for a financial provision based on grounds in addition to a fair sharing of the matrimonial property or based on special circumstances justifying other than an equal sharing this could justify an award at the top end.

Interim orders

In Institute of Chartered Accountants in Scotland v Kay 2001 SLT 1449 the Respondent sought the recall of interim orders which had had the effect of seizing his assets and appointing a Judicial Factor without intimation to the Respondent, Lord Carloway recalled the orders. He indicated that such orders should not be granted without prior intimation unless to do so risked the loss of funds. In the present case, the Petitioners were neither actual nor potential creditors nor did there appear to be any suggestion that the Respondent was insolvent. To end I simply wish all those who litigate in the civil courts to do so successfully in 2002.
Improving morale in the fiscal service and promoting victims’ rights are immediate priorities, the new Solicitor General tells Roger Mackenzie

IF the appointment of Elish Angiolini as the new Solicitor General can be viewed as positive evidence of an all-encompassing, modern profession, then much of the coverage surrounding her appointment probably suggests that the glass ceiling has been merely cracked, not shattered.

You might say that details such as your father’s job, spouse’s career choice and childcare arrangements are largely irrelevant to your suitability for the post of Solicitor General, but perhaps it’s indicative that times haven’t really changed that much. (The answers, in case you missed them, are coal merchant, hairdresser turned house-husband, and, see previous answer).

In fact, Elish Angiolini wasn’t surprised at the focus of the coverage. “It was natural that as something of a novelty, being the first solicitor, woman and fiscal to be appointed to the post, there would be a high level of media human interest. I think they were more interested in the personal aspect because of the unusual nature of the person appointed to the post rather than the position of Solicitor General itself.”

That was swiftly followed by some rumblings in the media of a rumoured mass resignation of advocate deputes in protest at QCs being overlooked for the post, which gained sufficient credence that Alan Turnbull was moved to write to The Herald on behalf of crown counsel to refute suggestions of “snobbishness and anti-woman and atavistic attitudes”.

Again, the new Solicitor General was pragmatic enough to expect some ructions.

“It’s natural where there is an unexpected change that people who have an interest will respond. It was evident more in the media rather than anything I personally experienced. I’ve had a significant volume of letters of support and welcome from advocate deputes, members of the Faculty and the judiciary, which diminishes the perception that there is sustained concern about the appointment of a solicitor to the office.”

She admits to feeling a burden of expectation from the solicitor profession. “I expect they would feel let down if I were to slip on a banana skin. I’ve had a particularly warm response from the solicitor profession and I hope their expectation isn’t misplaced and I deliver the goods.

“The appointment of a solicitor represents a fresh approach, signalling that change will be made where necessary but that merit and the needs of the system will continue to determine all future appointments.

“There are opportunities, challenges and threats from my appointment, and probably something for every element of the profession to consider. It should stimulate healthy debate about whether or not they need to embrace change.”

There is, however, no suggestion that her appointment marks any kind of change in the traditional role of the Solicitor General. There has been some feeling that her post would be akin to the DPP, focused more on administration and management than policy.

“It’s a constitutionally distinct role, not similar to the DPP. You can’t just graft that sort of office on to the system under the Scotland Act. I will be carrying out the same functions as my predecessor, not assuming a management role.

“The emphasis clearly stated by the First Minister has been to influence and drive forward changes to ensure the prosecution system in Scotland can maintain and improve its standing.”

Many of the immediate priorities have been identified by the Campbell and Jandoo reports. Nevertheless, the climate of an underfunded fiscal service is bound to make implementation of such priorities difficult.

In a letter submitted to the Justice 2 Committee, Crown Agent Andrew Normand wrote that the results of the Pressure Management Inventory “suggest that work-related pressure is having a serious impact on the well-being of many staff and on levels of job satisfaction across the organisation”.

Elish Angiolini said: “Staff are feeling pressure and that has been recognised by the Lord Advocate. As he has stated, there has been a significant increase in resources available to the department in the last three years, but fiscal don’t grow on trees .

“There is an extensive induction and training period before people are sufficiently experienced and expert to operate as a procurator fiscal. It’s not simply the case that they do a law degree and a traineeship and become a fiscal. There is a particular skills base needed, which
requires additional training and immersion in the ethos, regulations and policy of the prosecution in Scotland. That means there’s a gap - so that while there has been a significant recruitment of additional lawyers, we are still going through that training period with many of them. Additional staff can also represent a burden to some extent in that it puts additional requirements on other staff in dealing with the training and supervision of new recruits. It is quite clear however that there are additional resource issues as well as resource allocation issues, which are currently subject to major review. That review will be reporting in early spring and will look at how these issues can best be addressed.

There has been some suggestion that the recruitment process doesn’t attract the best candidates, appointing trainees or older members of the profession who have been frustrated in other career paths. “I think the standard of fiscals is exceptionally high and it’s a misconception to suggest otherwise. What isn’t always appreciated is the complexity and pressures of the job. There is a presumption that it is similar to other jobs in the profession but fiscals, for example, require a knowledge of forensic medicine, attending post mortems, scenes of murder and the ability to make decisions under pressure taking into account the added complexity of ECHR.”

Next year, the service will be taking on another 16 trainees “at the highest level of academic achievement” and Elish Angiolini disputes any suggestion about the calibre of other appointments. “Many people who have a career in one particular sphere in private practice may feel the time has come for a change or feel they need another stimulus. The department also provides a fascinating and creative new challenge for experienced and senior practitioners. Where we have failed is in recruitment from ethnic minorities, but hopefully we now have an environment and recruitment process in place to address that deficiency.”

Public concern about what seems to be a reduced number of cases going through the court system and the increased use of non-court disposals are acknowledged by the new Solicitor General. “The number of non court disposals depend on the profile of the cases which are reported. We should not look for a uniform result from year to year, it’s a matter for the PF looking at the individual case and using the Lord Advocate’s policy and guidance in prosecutions to determine what is the appropriate disposal. That won’t result in uniformity of result, but uniformity and consistency of approach to decision making in such cases. There can be no stock answer to the suggestion of a reduced number of crimes being prosecuted, a consistent and appropriate approach is needed. The ethos is that if a case is capable of being dealt with by way of alternative to prosecution then that is appropriate. This isn’t something the fiscal service is doing as a frolic of its own, Parliament has indicated that Fiscal fines are something it wants to have available. There are also other valuable alternatives such as diversion from prosecution for psychiatric treatment and social work diversion. We don’t have a desire per se to raise prosecution levels. What we want to achieve is the right decision in each case.”

Another area of personal interest is victims’ rights. As regional procurator fiscal for Grampian, Highland and Islands she piloted a victim liaison scheme which is set to be extended throughout the country. She rejects any suggestion this could compromise the prosecutor’s role. “The duty and obligation of the prosecutor is to exercise their role independently of any other person and they cannot be subject to any political expediency or particular lobby. The prosecutor is not a solicitor for the victim. That is not an excuse for insularity or absence of listening or understanding.

“There is no doubt victims have been marginalised in our system over the years. While the emergence of victim support and the witness court service have
transformed the experience of victims in a number of cases, there is still an unmet need and the Lord Advocate's creation of the Victim Liaison Office under the umbrella of the Crown Office is ground breaking. He recognises the need to ensure victims are not traumatised on a second occasion by the system. The VLO should address the need for information, guidance and support.

“On the public perception of the system, we have historically failed to sell ourselves and get the public to buy into the criminal justice system and to feel they have ownership of the system. Day to day the prosecution are doing a great job in a wide number of cases. Such work generates column inches every day without recognition of the immense hard work and professionalism behind such stories. But, generally, our part in that work only attracts headlines when things go wrong. We shouldn’t have the slightest complacency about that, but we also have to remind the public more effectively that we have one of the finest prosecution systems in the world.”

So, will she be a hands-on Solicitor General, appearing in the High Court and arguing appeals?

“The main role of the law officers is to provide direction on prosecutions, prosecution policy advice on legislation and legal advice to the Executive, so my ability to prosecute on a regular basis is limited. But the Lord Advocate argued the rape reference in the High Court very recently and I would hope that where there are significant issues I will have an opportunity to argue cases and will aim to do so.

On her experience for the task, “I have 18 years’ experience as a prosecutor and have prosecuted before district courts, sheriff courts and juries as well as investigating major cases. I think my skills base is sufficient for the post at this time.”

Having joined the fiscal department as a trainee, Elish Angiolini’s progress through the ranks is an encouraging story of meritocracy in action. Her fundamental skills as a solicitor as well as experience in policy and legislation as Head of Policy at the Department ought to leave her well equipped for the demands of the position in spite of the reservations of some. She pledges to learn from other jurisdictions but not implement change for change sake. That sounds like a fair start.
Advocate Derek O’Carroll reviews three more sites for you to log on to

**www.phillipsnizer.com/internetlib.htm**

This is part of the website of a New York law firm. It has provided extensive summaries of court decisions (mostly American) which are shaping the law of the web. This site contains summaries of over 250 cases on a huge range of aspects of the law including ‘click-wrap’ contracts (cf ‘shrink-wrap’ contracts), domain names issues (including cybersquatting), spamming and meta-tags in a delightfully assorted range of contexts. The summaries are grouped by subject and are also accessible in a single file. If the case looks interesting, a single click takes you to a more detailed, but still digestible, analysis of the case with a further link to the judgment itself, if available on the web. There is a search engine too. The cases are regularly updated and there is a free e-mail updating service also available. The links section takes you to a complete set of Federal Appeals cases since 1995 as well as some American statutory material. An additional feature of the site is an up-to-date summary of some legal issues arising from September 11th. This is a simple and well-maintained resource, packed full of useful information written by lawyers for lawyers which will be of help to anyone researching web law issues in this steadily expanding field.

**Subjective Rating**

**Speed**

**Usefulness to practitioners**

**Usefulness to non-practitioners**

**Site design**

**Ease of use**

**Updating frequency**

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**www.worldlii.org**

The very first of these columns reviewed the BAILII website: a product of the British and Irish Legal Information Institute, which was then in an early stage. Since then a host of other LII sites have developed to deal in the same way (i.e. free and comprehensive collections of law) with the law of other areas of the world. So now we have AUSLII (in fact the forerunner of BAILII), CanLII, HKLII, PacLII and IRLII. Bringing them all together is the ambitious aim of WorldLII. At the moment it is a prototype system intended to demonstrate the viability and functionality of a co-operative approach between the different LIIs. It contains databases on law for all the major land masses as well as databases on treaties, law reform, law journals and miscellaneous resources. The quantity of data is astonishing. The law of dozens of countries are covered: disappointing then to see that there are only three databases on Scots law (as opposed to 5 for Northern Territory, a state with a fraction of the population of Scotland). Still the site is still in development and is being done on a voluntary basis. For world law resources, there are many worse places to start a search.

**Subjective Rating**

**Speed**

**Usefulness to practitioners**

**Usefulness to non-practitioners**

**Site design**

**Ease of use**

**Updating frequency**

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**www.townleys.co.uk**

This London based firm claims to be the leading player (pun presumably intended) in European sports law. There may be those who dispute that or who doubt that such sports law is a distinct area at all. Far be it from me to express any opinion on that at all. The team (ditto) at Townleys seem however to do an awful lot of it and are happy to pass on at least some of their expertise in the form of practice notes. Most are written as if they were seminar papers or articles in legal journals (and quite possibly that is what they are). They cover a range of legal practice points in relation to specific sports and across the board. You may not get left on the sidelines if you do not use this website, but there may be certain useful hints and tips for any lawyer with an interest in this area. There is not much else on the web on sports law. Try www.tas-cas.org, the website of the Court of Arbitration for Sport and www.gfx36.dial.pipex.com/laws.html for a neat guide to the basics of Scottish angling law including references to the wonderful ancient statutory arcana that suffuses this area of law.

**Subjective Rating**

**Speed**

**Usefulness to practitioners**

**Usefulness to non-practitioners**

**Site design**

**Ease of use**

**Updating frequency**

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Derek O’Carroll welcomes comments on the reviews and suggestions for sites to review.
ICANN's Uniform Dispute Resolution Policy ("UDRP") has been adopted by all accredited domain name registrars for .com, .net and .org domain names as well as the new generic top level domains ("gTLD's") such as .biz, .info and .name. Nominet's dispute resolution service (as modified in September 2001) deals with disputes involving .uk names.

Under the UDRP the domain name holder agrees to submit disputes to a mandatory administrative proceeding. The proceedings are conducted before one of the administrative-dispute-resolution service providers. Disputes are heard in accordance with the Rules for Uniform Dispute Resolution Policy (the "Rules") and the selected dispute resolution service provider's supplemental rules (the Supplemental Rules"). As at 30th November 2001 there were 4 providers: One of the most high profile is the World Intellectual Property Organisation ("WIPO") which was involved in drafting the UDRP. Another, eResolution, has recently announced that it is ending its service amid allegations of bias in favour of the interests of IP owners. By November 2001 over 3262 cases had been filed with WIPO. Of these the overwhelming majority (1897) saw the name transferred.

Under the Rules, the Complainant selects an approved provider who keeps a publicly available list of its panellists and their qualifications. The Complainant elects to have the dispute resolved by a single or a three-member panel. Fees vary (currently from US$950 - US$3,000) depending on the provider, the number of domain names and the number of panellists. Fees are payable by the Complainant unless the domain name holder (the "Respondent") elects to expand the panel from one to three in which case they are split evenly between the parties. The remedies available under the UDRP are cancellation or transfer of the name - not damages.

The mandatory proceedings do not prevent either the Respondent or the Complainant from submitting the dispute to a court either before the mandatory proceeding is commenced or after it is concluded. If a decision is taken to cancel or transfer the domain name the panel will wait 10 days before implementing the decision. If during that time a court action is not commenced the panel's decision will be implemented. As part of the UDRP the Complainant agrees to submit any challenges to the decision to the court jurisdiction of either the domain name holder's address (as set out in the Registrar's Whois database) or the principal office of the Registrar (the principle of "Mutual Jurisdiction").

The complaint sets out the name and address of the Respondent, the domain name, trade mark and the Registrar. It must specify:

- the manner in which the domain name is identical/confusingly similar to the trade mark
- why the Respondent should be considered as having no rights or legitimate interests to the domain name
- why the name should be considered as having been registered and used in bad faith
- The UDRP lists 4 non-exclusive illustrations of bad faith registration and use;
  - registration primarily for the purpose of selling, renting or otherwise transferring the name to the complainant or to a competitor for consideration in excess of out of pocket costs
  - registration to prevent the owner of the trade mark from reflecting the mark in a corresponding domain name, provided there is a pattern of such conduct
  - registration primarily for the purpose of disrupting the business of a competitor
  - use of the domain name with the intention to attract for commercial gain users to the domain holder's site by creating a likelihood of confusion with the complainant's mark as to source sponsorship affiliation or endorsement of the site or a product or service on it.

Cases are dealt with speedily - the total timeframe for the procedure is 45-60 days. Costs depend on the number of panellists but are likely to be less than court costs.
Nominet

Nominet UK operate a dispute resolution service (DRS). The Respondent has to submit to proceedings under the DRS. Under the DRS Nominet has the power to transfer, suspend or cancel a domain name - not to make an award of damages.

The Complainant must prove that:

- they have rights in a name or mark identical or similar to the domain name
- the domain name in the hands of the Respondent is an Abusive Registration

An Abusive Registration is a name which was registered or otherwise acquired in a manner which at the time took unfair advantage of or was unfairly detrimental to the Complainant’s rights, or has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant’s rights. The DRS Policy gives a non-exhaustive list of some factors, which might show an Abusive Registration. They include

- circumstances indicating that the Respondent has registered or acquired the name (i) primarily for the purpose of selling, renting or otherwise transferring the name to the Complainant or a competitor for valuable consideration in excess of out of pocket costs (ii) as a blocking registration against a name or mark in which the Complainant has rights or (iii) primarily for the purpose of unfairly disrupting the business of the Complainant
- circumstances indicating that the Respondent is using the name in a way which has confused people into believing that the name is registered to, operated or authorised by or otherwise connected with the Complainant
- the Complainant can demonstrate that the Respondent is engaged in making a pattern of Abusive Registrations
- where the Respondent has given false contact details.

Failure to use the name is not of itself evidence of an Abusive Registration. The illustrative factors are similar to those under the UDRP, but false contact details are unique to Nominet. No reference is made to applicable law (cf. UDRP) and unlike UDRP the procedure involves an informal mediation.

Upon receipt of the Complaint Nominet contacts the Respondent, who is asked to demonstrate why it is not an Abusive Registration. The Complainant may file a reply. In each case the written submissions are limited to 2000 words (a shorter limit than ICANN). Model submissions are available from Nominet if required. Mediation by DRS staff follows for 10 days. In the absence of resolution the matter is referred to an independent expert. A fee of £750 is payable by the Complainant. The experts appointed by Nominet are consulted in a strict rotation. A written determination is required within 10 days. Decisions are published.

Appeals to a panel of 3 other experts are possible on payment of a £3,000 fee. The time and expense involved under the DRS registration is likely to be less than that offered by a court (unless the action proceeds as undefended or is settled at an early stage in proceedings). Even so, if the Complainant does not like the results there is nothing to prevent them initiating court proceedings for a second bite at the cherry.

Lisa and Pauline head up Brechin Tindal Oatts Intellectual Property Consultancy. For more information visit www.bto.co.uk.
This month, Alistair Sim looks at the risk management issues arising from delays in the context of managing the expectations of clients.

**CLIENTS** need to be kept regularly informed of the progress of their transaction, even if that means reporting and explaining lack of progress. Not only is this a basic professional responsibility but it allows clients to plan ahead and helps to manage clients’ expectations. Failure to communicate with clients consistently features as one of the principal grounds of clients’ complaints about service.

Case study

Mr Dickens telephones his solicitor, Smith, about evicting tenants from one of Dickens’ residential properties. The property has been let on a short assured tenancy. Dickens has already served a notice to quit (downloaded from the Internet). The notice has now elapsed with the tenants still in possession. He now wishes to have the tenants evicted. Smith advises that he will get right onto this (especially since Dickens is quite a good client who owns and rents out several commercial properties). Dickens wants to put the flat on the market as soon as possible.

Smith dictates the details and passes the file to his secretary. A week later, Dickens calls to say the tenants are still not out. Smith assures him that matters are in hand and the action is prepared. Later that day, the summons appears on his desk, only just having been typed. Annoyed that he hadn’t chased this up he tells his trainee to get it down to court that day.

Dickens phones up next week and asks what is happening with the case. Smith advises the papers are with the court and he is expecting everything to get moving soon. A week passes and Smith receives an angry call from Dickens asking why the tenants are still there. Smith explains to Dickens that he requires to have the summons returned by the sheriff clerk. Smith then calls the court himself, to discover that the summons had been misplaced and was only now being warranted. The summons is then returned as it was unsigned. Having attended to this, it is returned to court by Smith. Having received the warranted summons, Smith proceeds to have this served (although recorded delivery bounces and sheriff officers are instructed). He then sends out a letter to Dickens explaining that the case will call in three weeks’ time.

In three weeks, Dickens calls and asks what is going on with the case – it has now been six weeks since his initial consultation. Smith explains that the tenants are seeking to defend the action but that Dickens shouldn’t worry as he has mandatory grounds for repossession. In six weeks’ time, Smith reports back to Dickens that they have decree but extract has been superseded for 6 months as the tenants have small children and the wife is pregnant.

Dickens is apoplectic at these “delays”, refuses to pay any more fees and moves all his business to another solicitor. In addition, he also gets himself into serious trouble by changing the locks on the premises and throwing the tenants’ belongings onto the street.

Risk management points:

- Managing clients’ expectations - many “delays” are not “delays” at all and are simply part and parcel of normal procedures – the client should be
dissuaded from placing blame for these issues at the door of the solicitor.

- Flagging up risks which the client may encounter
- Timetabling processes with the client
- Checking office systems

It is easy in this scenario, to simply accept that a client has been lost (and this, of itself, is unlikely to substantially affect the firm’s revenues). It is also easy to discount this situation from a risk management perspective because it is unlikely to lead to a claim on the Master Policy (unless, say, Dickens’ subsequent actions in evicting the tenants give rise to a claim which Dickens subsequently pursues against Smith on the basis that Smith never warned him against this course of action).

However, the loss of a client who generates a regular flow of fee income is not good for business and risk management goes beyond protecting oneself from major claims - by developing efficient systems within the firm, that is likely to enhance the level of efficiency, client satisfaction/retention and profitability.

In the above scenario, Smith ought to have paid more attention to the following:

At the initial meeting

The client should have been advised about the possible timescales of such an action for recovery. Regardless of the summary cause “fast track” system, clients’ and lawyers’ ideas of “fast” are often at opposite ends of the chronological spectrum.

Smith should have explained the procedure for getting the summons warranted - and that any type of procedure involves court processes, in addition to actions by the solicitor.

Smith should also have explained the procedure for service of the summons and the potential requirement to instruct sheriff officers.

In addition, some general comments to the client about the length of time a case might take would have been appropriate. The practitioner will know of the potential for superseded extract but why is there any reason to believe the client does? The effect for the client is the same – there is no possibility of having the tenant removed for another (potentially lengthy) period.

Depending on the client, it is perhaps appropriate to advise about the necessity for following court procedures and not taking the law into one’s own hands.

The timetable to which the client is working should also be investigated. It may be that the client is planning a particular course of action, based entirely on his estimation of how long a legal process will take. Without being disabused of this notion at an early stage, the client will inevitably be disappointed by the outcome.

These matters should be discussed at the initial meeting with the client or set out in a letter (or as part of the firm’s letter of engagement).

Post instructions:

It is often difficult to keep track of the various stages of transactions, particularly if there is a typing backlog. Being unable to advise the client as to the stage the transaction has reached does not instil confidence and may also lead to a misleading picture being given to the client (out of error, rather than deliberately). Checklists and diary reminders can alleviate these problems.

Similar checking procedures can also flag up problems where the return of documents is awaited.

Clients should be regularly informed of the progress of their transaction - not only is this a basic professional responsibility but it allows clients to plan ahead.

Failures to intimate

There are a number of situations where intimacy to third parties is required in litigation actions - one being intimation to the Motor Insurer’s Bureau in terms of the statutory agreements relative to uninsured and untraced drivers. As far as proceedings against uninsured drivers are concerned, practitioners who do not regularly deal with MIB claims should pay particular attention to the procedural rules laid down in the agreements. MIB must be given written notice that proceedings have been raised. The notice, application form and supporting documents (including copy wrt any relevant correspondence with Defender) must reach MIB no later than 14 days after commencement of proceedings. Delivery of documents by DX cannot, of course, be proved and service should be by recorded delivery or fax.

MIB, for obvious reasons, requires to be kept advised of any material progress in the conduct of such claims and practitioners who are unused to dealing with motor claims handling should be aware of the risks involved in failing to intimate properly.

Contributions and suggestions welcomed

Your contributions and suggestions are always welcome. If you are prepared to share practical risk management tips or to raise issues of concern which might be covered in a future issue of this page, that would be very much welcomed.

Have a successful and risk free 2002!

The information in this page is (a) intended to provide guidance on matters of practical risk management and not on issues of law and (b) is necessarily of a generalised nature. It is not specific to any practice or to any individual and should not be relied on as stating the correct legal position. Alistair Sim is Associate Director in the Professional Liabilities Division at Marsh UK Limited.

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The ruling dealt with three separate cases brought by trade mark holders against parallel importers selling goods in the UK which are covered by their trade marks. In the first case, Zino Davidoff challenged the right of a company to import into the EU and sell in the UK, quantities of two of its trade mark toiletries, “Cool Water” and “Davidoff Cool Water”, the products having been, in this case, originally put onto the market in Singapore, either by Davidoff or with its consent. In the other two cases, Levi Strauss sought to protect its trade mark Levi 501 jeans from being sold by Tesco and Costco in the UK, whereas the trade mark proprietors put forward the notion of consent could be implied in situations where all importers selling goods in the UK which are brought by trade mark holders against parallel importers, however, it is unlikely that this will be the last case dealing with exhaustion of community trade marks.

The full text of the cases (C-414/99, C-415/99 and C-416/99) can be found at the European Court of Justice website (www.curia.eu.int), in the “case law” section of the site.

ECJ Rules Consent is Key

EXHAUSTION OF TRADE MARKS:

at the end of November, the European Court of Justice gave its ruling on a trade marks dispute which has provoked much interest and speculation since first raised in the English High Court.

The ECJ, in its conclusions, agreed that “consent, which is tantamount to the proprietor's renunciation of his exclusive right under Article 5 of the Directive to prevent all third parties from importing goods bearing his trade mark, constitutes the decisive factor in the extinction of that right” (paragraph 41). The Court went on to indicate that if it were a matter for each Member State to define the concept of consent, there could be deleterious consequences for trade mark proprietors in that protection would vary from legal system to legal system. Therefore, it fell to the Court to supply uniform interpretation of the concept of consent as referred to in Article 7(1) of the Directive. The Court noted that the effect of consent being implied would be serious in that it would extinguish the exclusive rights of the proprietors to control the initial marketing of their goods in the EEA. The Court therefore considered that consent would normally have to be express, but that it was conceivable that consent could be implied in situations where all the facts and circumstances surrounding the placing of the goods on the market outside the EEA unequivocally demonstrate that the proprietor has renounced his right regarding the marketing of the goods within the EEA.

That being the case, the Court also concluded that the failure of the trade mark holder to expressly specify that the goods should not be imported into the EEA – in effect, the silence of the trade mark proprietor on that point – was not enough in itself to imply consent, as this would require to be express. Therefore, it was for the trader alleging consent to prove it and not for the trade mark proprietor to demonstrate its absence (paragraph 54).

Logically, therefore, the ignorance of the parallel importer that the proprietor objects to goods being marketed in the EEA, or the fact that the retailers from which the parallel importer has obtained the goods have not passed on details of such opposition, are irrelevant to the question of whether consent has been given.

The Court, therefore, in this case gave a fairly decisive opinion on the position of “consent” in this highly debated area. Given the value of the goods involved and the determination of the parallel importers, however, it is unlikely that this will be the last case dealing with exhaustion of community trade marks.

The full text of the cases (C-414/99, C-415/99 and C-416/99) can be found at the European Court of Justice website (www.curia.eu.int), in the “case law” section of the site.
COMPETITION LAW AND POLICY

Green Paper on the Review of the Merger Regulation

The Commission took firm steps towards revising the Merger Regulation, with the approval of a Green Paper on 11 December 2001. The Green Paper on the Review of the Merger Regulation aims to identify a more flexible system for the allocation of cases between the Commission and the EU Member States. To this end, there are plans to review the existing provisions on jurisdictional thresholds under the Merger Regulation. The Commission may also attempt a re-definition of the term ‘concentration’ as set out in the Merger Regulation and a re-examination of the test used for the assessment of concentrations. Under the current Regulation, a merger will not be allowed to take place if it creates or strengthens a dominant position. Many companies will take a great interest in plans to scrutinise the merger process and in particular, ways in which companies might be given improved rights of defence when a proposed merger is subject to a challenge.

In December, the Commission launched a public consultation which will end in March 2002. Once the consultation is completed, the Commission expects to publish a proposal for the review of the Merger Regulation later in the year.

The Green Paper can be found at the European Commission’s website: http://europa.eu.int/comm/competition/mergers/review/#green_paper.

COMPETITION RULES AND THE PROFESSION

ECJ clarifies the application of Article 81 to professional associations

The European Court of Justice (‘ECJ’) gave a preliminary ruling on 29 November 2001 following an Article 234 reference made by an Italian magistrates court concerning the interpretation of Article 81 of the EU Treaty (which prohibits anti-competitive agreements) and how it applies to those carrying on a professional activity (Case C-221/99). Although the case itself related to architects, the judgment will also have implications for other regulated professions. In the case, an architect had applied for a court order against a client for payment of her professional fees, as evidenced by an invoice endorsed by the relevant competent professional. The client applied to have the order set aside on the grounds that it was void. This was on the basis that the opinion provided by the professional association constituted a decision by an ‘association of undertakings’ contrary to Article 81. The ECJ considered that given the debtor could always challenge the opinion of the professional association and institute inter parte proceedings, that opinion could not itself constitute a ‘decision by an undertaking’. The Italian court had also questioned whether the setting of minimum tariffs as mandatory violated Article 81. The ECJ disagreed with this view, on the basis that sufficient freedom is given to each practitioner to set the relevant fee and this therefore did not lead to the creation of anti-competitive agreements. In addition, the Italian court queried whether Article 81 precluded national legislation which provided that members of a profession may set, at their discretion, the fees for certain services which they perform. The ECJ also ruled that this did not constitute a breach. A number of other judgments are expected in the coming months in relation to the application of the competition rules to the professions.

The “NOVA” case concerns the legality of fixed competitive agreements. The Manuel Arduino case concerns the legality of fixed fees. Both cases will be reported on once the judgments have been handed down.

The full text of the judgment in case C-221/99 (Conte v Rossi) can be found at the European Court of Justice website (www.curia.eu.int), in the “case law” section.

EMPLOYMENT LAW

Agreement reached on insolvency Directive to protect employees

On 3 December 2001, the Employment and Social Affairs Ministers reached a consensus on the proposal for a new Directive that will revise an existing Directive by taking into account the main developments in insolvency laws in Member States, the need for consistency with other employment law Directives and the recent case law of the European Court of Justice. The proposal lays down a general obligation to pay employees’ outstanding claims in respect of remuneration. This will be paid out by a guarantee institution. The Commission had proposed that the key date for the calculation of the period of remuneration be at the discretion of Member States, subject to a minimum remuneration period of three months. However, the UK and Ireland managed to secure a reserve so that in some instances only eight weeks of outstanding claims have to be paid.

FACTORING -
The Law and Practice of Invoice Finance
3rd edition

The necessity for a third edition of a book which was first published in 1991 is perhaps an indication of the speed of developments taking place within the factoring industry. Factoring and invoice discounting are now familiar and essential aspects of the contemporary system of business finance. This is so even in Scotland where the legal regime is less in favour than in England or other developed countries.

The first edition of Sallinger provided a fine balance between practical knowledge and legal expertise but it was deficient in that there was no treatment of Scotland. This was remedied in the second edition which included a separate section by R Bruce Wood on factoring as it applies to Scotland. The Scottish section is along with the remainder of the book now updated to take account of recent developments.

Bruce Wood provides the only up-to-date statement of the law of intimation that the writer is aware of. He also deals with the importance of the Tay Valley Joinery decision as a means of carrying out confidential invoice discounting in Scotland. As is noted by Professor Roy Goode in his introduction, there has been a marked shift to this product in recent years. Further comfort is given to undisclosed invoice discounters in this edition in relation to the decisions given in Sharpe v Thomson and Style Financial Services v Bank of Scotland. There is also now a useful treatment of the rights of a factor against an arresting creditor. Notice is also taken of the L M Tenancies case in relation to stamp duty. The implications of the case are covered both in relation to Scotland and England.

Rather oddly the text appears to ignore the provisions of Section 11(3)(a) of the Requirements of Writing (Scotland) Act 1995 which abolishes any rule of law requiring writing for the assignation of incorporeal moveables. Perhaps the authors are simply recognising that in practical terms it would be extremely difficult to evidence an assignation without writing. In the preface of the third edition it is noted that since the second edition was published a major development has been the greater use of electronic communication between the factor and client. It is disappointing that there is no discussion of the implications of this for factors acquiring title to debts. Perhaps this is not surprising given the more favourable English legal context arising from the doctrine of equitable assignment. In Scotland the implications of substituting electronic transfers for paper transactions will be considerable. It seems likely that there will require to be statutory intervention in this area of the law if Scottish businesses are not to be disadvantaged.

Finally in this context it is worth noting that Uncitral have for some time been considering assignments in relation to receivable financing although as Sallinger notes the process of consideration is still not completed. When and it is seems likely that further edition of Sallinger's book will be required and more importantly the Law Commission and the Scottish Parliament may then be prompted to bring Scots law into line with Uncitral recommendations.

Tony Deutsch
There was contract, delict property and intellectual property law – now there is e-law. Essentially, this is a combination of all these more traditional types of law and more as they apply and are adapted to the goings on in cyber space. It is a wide ranging area to cover – and one of great and continually growing significance.

With an impressive editorial board, this new publication sets itself an ambitious task stating its mission to be: "To report e-law to Scotland and to present Scotland to the world". This is with a view to assisting Scotland to make its own contribution to the development of the international legal regulation of the Internet and with that, presumably to maximise economic exploitation of the web by the Scottish population.

E-law Review has set out with a promising beginning. An introductory feature by Wendy Alexander, Minister for Enterprise and Life Long Learning, sets the scene by giving a general insight to the Scottish Executive's role in developing e-commerce. Ms Alexander sees E-law Review almost as part of the consultation/lobbying process. Paul Motion, a well known e-commerce expert, explains the Scottish Executive's current methods of implementing laws compatible with e-commerce and how business can get involved to influence the process before it is too late. Hector MacQueen makes a very complex Directive (the Copyright and Information Society Directive) readily understandable and tackles it from a more practical viewpoint. Other substantive areas covered are jurisdiction in cyberspace and privacy. A Current Comment section contains smaller titbits and a Current Awareness section lists relevant recent publications, articles and website news and events.

The back page "Alerter" contains useful snippets on various issues such as digital privacy, telecommunications, food and drugs, electronic prescriptions etc.

To Whom Is This New Publication Addressed? This new publication clearly has potential and will be of most use if it concentrates on the practical side of e-law as an effective vehicle for influencing the development of e-law as it is implemented in Scotland and perhaps even beyond. It will probably be of most use to legal practitioners who are regularly advising their clients on e-commerce law and its practical effects on their day to day business. It may also assist them in flagging up up-and-coming changes in the various laws which may impact their businesses and allow an opportunity to either cater for that in advance or indeed fend it off if appropriate before it becomes legislation.

Gill Grassie
ENTRANCE CERTIFICATES

issued during November/December 2001

BECHELLI, Damien Paul,
LLB(HONS) DIP LP

CARD, Thomas Yin Wai,
LLB(HONS) DIP LP

CHUNG, Shuk Chun Catherine,
LLB(HONS) DIP LP

GIBSON, Andrew Robert,
BSC(HONS) LLB DIP LP

HISLOP, Garreth,
LLB(HONS) DIP LP

LAFFERTY, Kirsty Anne,
LLB(HONS) DIP LP

LOUGHRAN, Nicola,
LLB(HONS) DIP LP M PHIL

MACFARLANE, Kathleen Mary
Elizabeth,
LLB(HONS) DIP LP

MC GILL, Grace Margaret,
LLB DIP LP

ANWAR, Mohammed Aamer,
MA(HONS), DIPRCR, LLB, DIPLP

BLAIR, Ashley Louise,
LLB(HONS), DIPLP

BROWN, Graeme David,
LLB(HONS), DIPLP

BRUCE, Pamela,
LLB(HONS), DIPLP

CAMERON, Anthony James
W illiam,
LLB(HONS), DIPLP

DAVIE, Alan Robert,
LLB(HONS), DIPLP

DONALD, Malcolm James Robert,
LLB(HONS), DIPLP

FELTHAM, Stephen Graham,
LLB(HONS), DIPLP

FLAVILL, Karin Eileen Helga,
LLB, DIPLP

GARDNER, Ross Scott,
LLB(HONS), DIPLP

GORDON, Claire Margaret,
LLB(HONS), DIPLP

GU N YEO N, Malcolm John,
LLB(HONS), DIPLP

HANLEY, Julie Anne,
LLB(HONS), DIPLP

HERD, Jennifer,
LLB(HONS), DIPLP

HUGHES, Janice O wens or,
LLB(HONS), DIPLP

KATAN I, Kamyar,
BA, LLB, DIPLP

KRISH N A, Veenpi Pryadarshani,
LLB(HONS), DIPLP

LAIN G, Natalie Margaret,
LLB(HONS), DIPLP

LAVETY, Sarah,
LLB(HONS), DIPLP

LOU D N O, Robert Duncan,
LLB(HONS), DIPLP

MATTHEW, John Stephen,
BSC, LLB, DIPLP

McBAY, Susan Kirsty,
LLB(HONS), DIPLP

McC O LL, Jacqueline Grace,
BA, LLB, DIPLP

McC O N N, Linda Elizabeth
BSC(HONS), LLB, DIPLP

McG LASH A N, Graham,
LLB(HONS), DIPLP

McG O LD R I C K, Pauline Isabella,
LLB(HONS), DIPLP

McL A U G H L I N, Colin James,
LLB(HONS), DIPLP

McQUADE, Paul Thomas,
LLB(HONS), DIPLP

MUKHER JEE, Mimi,
LLB(HONS), DIPLP

MURRAY, Kirsten Lee,
LLB(HONS), DIPLP

MCK IN N O N, Sarah Elizabeth,
LLB(HONS) DIP LP

SMITH, Karen,
LLB, DIPLP

WARREN DER, Karen Helen
Fowler,
LLB(HONS) DIP LP

WEST, Christine,
LLB DIP LP

APPLICATIONS

for admission November/December 2001

ANWAR, Mohammed Aamer,
MA(HONS), DIPRCR, LLB, DIPLP

BLAIR, Ashley Louise,
LLB(HONS), DIPLP

BROWN, Graeme David,
LLB(HONS), DIPLP

BRUCE, Pamela,
LLB(HONS), DIPLP

CAMERON, Anthony James
W illiam,
LLB(HONS), DIPLP

DAVIE, Alan Robert,
LLB(HONS), DIPLP

DONALD, Malcolm James Robert,
LLB(HONS), DIPLP

FELTHAM, Stephen Graham,
LLB(HONS), DIPLP

FLAVILL, Karin Eileen Helga,
LLB, DIPLP

GARDNER, Ross Scott,
LLB(HONS), DIPLP

GO R D O N, Claire Margaret,
LLB(HONS), DIPLP

GU N YEO N, Malcolm John,
LLB(HONS), DIPLP

HANLEY, Julie Anne,
LLB(HONS), DIPLP

HERD, Jennifer,
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LAVETY, Sarah,
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LOU D N O, Robert Duncan,
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MATTHEW, John Stephen,
BSC, LLB, DIPLP

McBAY, Susan Kirsty,
LLB(HONS), DIPLP

McC O LL, Jacqueline Grace,
BA, LLB, DIPLP

McC O N N, Linda Elizabeth
BSC(HONS), LLB, DIPLP

McG LASH A N, Graham,
LLB(HONS), DIPLP

McG O LD R I C K, Pauline Isabella,
LLB(HONS), DIPLP

McL A U G H L I N, Colin James,
LLB(HONS), DIPLP

McQUADE, Paul Thomas,
LLB(HONS), DIPLP

MUKHER JEE, Mimi,
LLB(HONS), DIPLP

MURRAY, Kirsten Lee,
LLB(HONS), DIPLP

PO LLO CK, Victoria Mary,
LLB(HONS), DIPLP

RUSSELL, Stuart Fraser,
LLB(HONS), DIPLP

SCULLY, Rebecca,
LLB(HONS), DIPLP

SIBBALD, Elaine Lea,
LLB, DIPLP

SKIMMING, Stephen Michael,
LLB, DIPLP

SN OW, Carol Phyllis,
BA(HONS), MPHIL, LLB, DIPLP

THOMAS, Timothy Robert,
LLB(HONS), DIPLP

UTTLEY, Donald Michael,
LLB(HONS), DIPLP

WA HLE, Viktoria Claire,
LLB(HONS), DIPLP

YO UN O G, Fiona Margaret,
LLB(HONS), DIPLP