newlawjournal.co.uk VOL 168 7805 | £8.00 10 August 2018

New Law Journal

Leading on debate, litigation and dispute resolution

Employment update
Ian Smith signs off for the summer with a hattrick

Together forever?
Owens: how to plead a divorce case

A better deal?
Proposed solutions for leaseholders of houses

Disclosure

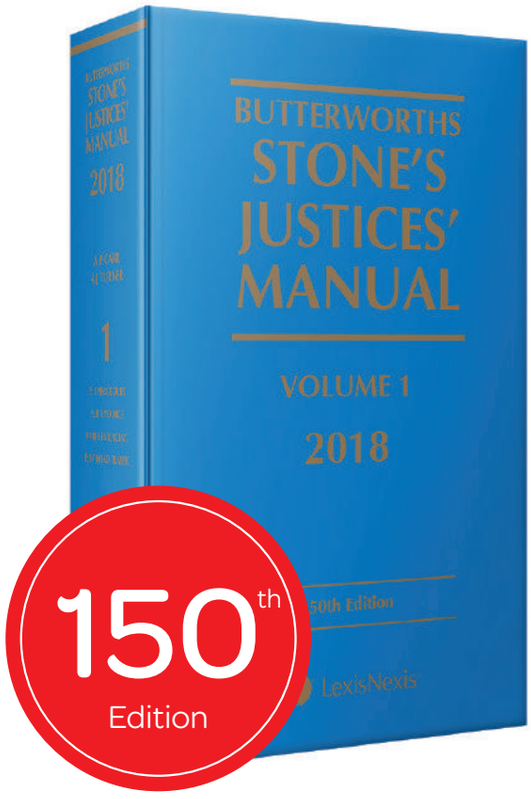
Take 2

GDPR: Bringing the cloud into chambers

ISSN 0306-6479

Butterworths Stone's Justices' Manual 2018

Now in its 150th edition, Butterworths Stone's Justices' Manual is the most comprehensive and authoritative reference source in its field. In three volumes, it provides the most reliable and current coverage of all the changes affecting magistrates' courts, including criminal procedure.



Updates for 2018 include:

- Criminal Finances Act 2017
- *Ivey v Genting Casinos UK LTS (T/A Crockfords Club)*
- *Loake v CPS*

Order your copy or find out more by visiting
lexisnexis.co.uk/stones18

LexisNexis® | 200

LEGAL WORLD

NEWS

COMMENT

EXPERT ANALYSIS ON LITIGATION & DR

SPECIALIST

INSIDE COURT

PROFESSION

BACK PAGE

THIS WEEK'S HIGHLIGHTS

7 COVER STORY

Disclosure: take 2

9 Employment

Sleeping on the job

Ian Smith issues a spoiler alert

17 Tax

Taxing matters

The motive test & unlikely costs awards

20 Compliance

Blue sky thinking

Bringing the cloud into chambers

LexisNexis, Lexis House, 30 Farringdon Street, EC4A 4HH, Tel: 020 7400 2500, Website: www.newlawjournal.co.uk

EDITORIAL Editor Jan Miller 020 7400 2582 | **Commissioning & news** Jan.miller@lexisnexis.co.uk | **Assistant editor** Rosie Johnson | **Consultant editor** David Greene

ADVERTISING & MARKETING LexisNexis, Quadrant House, The Quadrant, Sutton, Surrey, SM2 5AS
Head of advertising sales Rosie Ellett rosie.ellett@lexisnexis.co.uk | **Advertising sales executives** advertisingsales@lexisnexis.co.uk

PRODUCTION & DESIGN Design and Technology Manager Elliott Tompkins | **Production** Nigel Hope | **Design** Jo Jamieson

Annual subscriptions £389 one year, £701 two year (@ 10% discount). For trainee, student and academic discounts please call customer services on 0330 161 1234 customer.services@lexisnexis.co.uk We're here to help; for any queries about your subscription contact the customer services team on 0330 161 1234.
Reprints Any article or issue may be reprinted. Details available from Rosie Ellett rosie.ellett@lexisnexis.co.uk

Registered as a Newspaper at the Post Office. Printed by The Manson Group, St Albans, Herts AL3 6PZ. This product comes from sustainable forest sources. The views expressed by NLJ's contributors or advertisers are not necessarily those of the proprietors. Author Guidelines: NLJ author guidelines can be found at http://www.newlawjournal.co.uk/nlj/content/submission-guidelines. ISSN 0306-6479

EY joins forces with Riverview Law

Global reach seen as a winning formula for the legal market

Accounting giant EY is buying legal services firm Riverview Law to boost its offering as a market 'disruptor'.

EY Law comprises more than 2,200 law practitioners in member firms across 81 jurisdictions. Riverview, which uses bespoke technology to provide in-house legal teams with managed legal services, will be known as EY Riverview Law. The deal is due to complete on 31 August. Chris Price, EY global head of alliances—tax, will become CEO of EY Riverview Law.

According to EY, the acquisition will help organisations manage legal instructions, re-direct work that does not need legal input, triage work to the right team and manage all stages of work, including document creation.

EY: legal disruptor

Cornelius Grossmann, EY global law leader, said: 'Legal managed services is one of the fastest growing segments of the legal market. This acquisition underlines the position of EY as a leading disruptor of legal services, it will provide a springboard for current EY legal managed services offerings and bolster the capabilities that we can help deliver for EY clients.'

Karl Chapman, CEO of Riverview Law, said: 'Becoming part of EY is a real strategic fit for our team and is in line with our commitment to deliver world-class service and counsel to Riverview Law clients who are at the core of everything we do. As part of EY, we will have even greater resources to help them drive business outputs from their legal inputs.

'We believe that the combination of the Riverview Law operating model, operating platform and people, alongside the EY brand, EY clients, existing legal services offering and global scale is a winning formula for the legal market.'

Riverview, which launched in the Wirral in 2012, uses artificial intelligence technology to conduct tasks that might be undertaken by a paralegal and works with corporate clients on a fixed-fee, money-back guarantee and annual contracts basis.

NEWS IN BRIEF

Reporting misconduct

The Solicitors Regulation Authority (SRA) has announced a public consultation on proposed changes to its rules surrounding the reporting of potential misconduct by law firms. Discussions with firms have highlighted different interpretations of its current rules in terms of the proper stage at which the SRA should be informed of possible misconduct, and the evidence threshold for doing so; the proposed changes are intended to clarify the process. The consultation can be found here: *bit.ly/2vb9f6Z*.

Paediatric experts

A guide to the use of paediatricians as expert witnesses in the family courts has been published by the Family Justice Council and the Royal College of Paediatrics and Child Health. The guide *Paediatricians as Expert Witnesses in the Family Courts in England and Wales: Standards, competencies and expectations* can be downloaded from *www.judiciary.uk*.

Advance of the online court

Online hearings of social security appeals are to be piloted in the autumn, the Senior President of Tribunals, Sir Ernest Ryder, has said.

In a speech to the Administrative Law Bar Association, 'Justice in a Modern Way', given last month but published this week, Sir Ernest said: 'We are designing and trialling questions in plain language that build intuitive application forms using judges, our expert panel members, behavioural psychologists and volunteer users who are asked about the language people prefer to use.

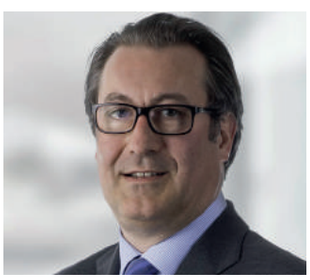
'From the autumn we will pilot digital evidence sharing with Department of Work and Pensions and asynchronous conversations so that we can conduct some live hearings without the need for a disabled user to face a difficult journey to a hearing room which many say they find threatening.'

Sir Ernest said some tribunals may trial live streaming in the interests of open justice, as currently takes place at the Supreme Court. He said the Court of Appeal Civil Division will trial live streaming in the next legal year.

LSLA president welcomes new dawn for disclosure

A two-year disclosure pilot scheme which will introduce a new set of disclosure rules in the Business and Property Courts has been welcomed by Julian Acratopulo, president of the London Solicitors Litigation Association (LSLA).

Under the new regime, 'Disclosure Duties' will bind the parties, including the duty not to inundate the other side with a host of irrelevant documents. Acratopulo, pictured, says the reforms will introduce 'greater flexibility' to the process. Writing in this week's issue, Acratopulo says that for the pilot scheme to work, practitioners must embrace the opportunity to approach disclosure differently. He adds that the prospect of increasing competition from overseas partly in response to Brexit serves to 'put a premium on the pace of change'. See Comment, p7.



Legal aid payment victory

Law Society commended for bringing JR proceedings

Lawyers have hailed a legal victory on controversial cuts to criminal legal aid fees.

In *The Law Society, R v The Lord Chancellor* [2018] EWHC 2094 (Admin) last week, the High Court quashed new regulations cutting payments for document-heavy Crown Court cases, which the society argued amounted to a 37% reduction in fees.

Leggatt LJ and Carr J said consultees were entitled to expect that a government department undertaking a consultation would be 'open and transparent', and the Ministry of Justice's (MoJ's) failure to disclose statistical analysis underpinning its decision made the consultation unfair.

Christina Blacklaws, president of the Law Society, which brought the judicial review, said the changes introduced last December to the Litigators' Graduated Fee Scheme (LGFS) meant huge amounts of work on the most complex Crown Court cases had gone unpaid. Practitioners who made relevant claims under the 2017 regulations are advised to immediately apply for redetermination.

John Halford, partner at Bindmans, which represented the Law Society, said: 'Legal aid was established, and should function as, a basic, non-negotiable safeguard of fair process and individual liberty in criminal cases.

'But rather than cherishing this vital part of the British legal system, successive ministers have undermined it with over a decade of cuts based on carelessly made decisions like this one.'

An MoJ spokesperson said: 'The changes we made to the LGFS were intended to ensure payments better reflect the work being done in legal aid-funded criminal proceedings. We will carefully consider the content of the judgment and determine next steps.'

Unduly lenient

Sentences were increased for 137 criminals through the Unduly Lenient Sentence (ULS) scheme in 2017.

Victims, prosecutors and members of the public can ask for certain Crown Court sentences to be reviewed under the ULS if they think the sentence is too low. The Attorney General's Office or Solicitor General then asks the Court of Appeal to review if they believe the judge made a gross error in sentencing.

In total, 173 sentences were referred to the Court of Appeal for reconsideration, compared to 190 in 2016. Some 943 requests were received by the Attorney General's Office, an increase on the 837 received in 2016. To give context, about 80,000 Crown Court cases are heard each year.

The scheme was extended last year to include 19 terror-related offences including supporting extremist organisations.

Law firms cannot be banks

Solicitors have been issued with a stern warning not to provide banking facilities through a client account, whether to their client or others, after several prosecutions.

Last year, a firm was fined the Solicitors' Disciplinary Tribunal's (SDT's) highest ever fine of £500,000 for processing money through a client account in breach of the rules.

The Solicitors Regulation Authority (SRA) this week issued a warning against the practice—professional rules state that firms should only have money going through their client account if there is a proper connection to a legal service that the firm has provided. The risks involved include money laundering, improperly hiding assets in a commercial or matrimonial dispute and inadvertently giving credibility to questionable investment schemes.

In the past 12 months, the SRA has prosecuted 20 solicitors and three firms at the SDT for breaching the rules. Three solicitors were struck off and two more suspended, while the SDT also levied £763,000 of fines.

In its warning, the SRA provides 11 case studies illustrating what is and is not acceptable. A firm acting under a lasting power of attorney, for example, can make payments for the client's personal living expenses and medical care.

A firm instructed to hold commercial rental deposits until a lease ends would not be in breach but if that firm held the rent deposits indefinitely then it would breach the rules.
Paul Philip, SRA Chief Executive, said: 'Our rules are not intended to prevent usual practice... money passing through the client account can be entirely legitimate where there is a clear legal service being provided.'

The SRA advises that firms cannot justify processing money through the client account due to having a retainer with a client. It cautions against firms holding funds to enable them to pay a client's routine outgoings, for instance when based abroad.

THIS WEEK ON THE WEB

MOST READ ON NLJ ONLINE

- Serjeants' Inn—Nageena Khalique QC (Movers & shakers)
- School's out but still homework to do (David Greene)
- Unreasonable behaviour on trial (Pt 2) (Simon Blain)
- Disclosure pilot gets green light (News)
- Surviving the 'POCA freeze' (Mickaela Fox & Nicholas Medcroft)

THE WEEK'S TOP TWEETER

The Young Fraud Lawyers Association at @YoungFraudLaw

READ MORE ONLINE AT WWW.NEWLAWJOURNAL.CO.UK

NEWS IN BRIEF

Evidence matters

Tini Owens remains married, albeit reluctantly, to her husband, Hugh, after the Supreme Court refused her appeal last week. Although her high-profile case has boosted calls for divorce law reform, however, solicitor and *NLJ* columnist David Burrows thinks Mrs Owens might have had her decree nisi by now if her case had been handled differently. He writes that 'in the course of the judgments of Lord Wilson and Lady Hale, disturbing elements of the way the case had been put before the court below emerged'. In this week's *NLJ,* Burrows investigates whether all the relevant evidence was heard. For his analysis, see p12.

Take up thy pen

The Junior Lawyers Division (JLD)'s eighth annual essay competition is now open for applications. This year's essay title, 'How will the rule of law be affected by advances in legal technology?' should be tackled in no more than 2,000 words, and submitted before the deadline of 30 November 2018. Anyone with the status of LPC student, LPC graduate or trainee solicitor as of the closing date is welcome to apply; as well as a cash prize of £500, the winner will also see their essay published on the JLD website. Entries should be sent via email to *juniorlawyers@lawsociety.org.uk*.

MOVERS & SHAKERS

[THIS WEEK'S] STAR MOVE

Through the door

3 Hare Court has welcomed **Sir David Baragwanath**, the former president and a current appellate judge of the United Nations' Special Tribunal for Lebanon, to chambers as a door tenant.

Originally from Auckland, Sir David is an overseas bencher of the Inner Temple, a former New Zealand Member of the Permanent Court of Arbitration in The Hague, and past president of the New Zealand Law Commission. He was appointed Queen's Counsel in 1983 and focused his practice on public and commercial law. His standout cases include acting as lead counsel advising the Royal Commission of Enquiry into the Mount Erebus air disaster in Antarctica, and representing the Maori people before the New Zealand Court of Appeal in cases which helped to recognise and restore indigenous rights.

Security guard

36 Commercial, part of The 36 Group, has welcomed top silk **Dean Armstrong QC** to chambers. Dean, who was formerly with 2 Bedford Row, is widely considered an expert in cyber security law, particularly in terms of commercial and regulatory aspects. He is the co-author of *Cyber Security Law and Practice*, and has advised leading financial institutions and companies on areas such as the GDPR and the impact of Brexit on data regulation.

Technological revolution

International firm Withers has announced that boutique tech law firm JAG Shaw Baker will be joining it in order to create a new legal offering for technology companies, investors and entrepreneurs.

JAG Shaw Baker specialises in advising key clients within technology sectors such as life sciences and digital technology. Its six partners along with its 40-person team have now joined up with Withers, operating from its London and Cambridge offices.

Head hunting

Buckinghamshire law firm Parrott & Coales has appointed **Fiona Hewitt** to head up its dispute resolution department.

Fiona has over 18 years of experience in the contentious field, with particular expertise in contractual, service and property cases, shareholder and partnership disputes, and negligence. She formerly spent two years as the head of dispute resolution at South East firm Brethertons Solicitors, and is also an honorary solicitor for UK charity Changing Faces.

DON'T MISS NLJ M&S Profile

CILEx's new president Philip Sherwood discusses the art of motorcycle racing at *www.newlawjournal.com*.

Disclosure: take 2

Recognition of the need for change is the key first step to effecting change, says Julian Acratopulo

The much used observation that the only thing certain about Brexit is its uncertainty, remains as applicable today as it did 12 months ago. The government's Brexit white paper has done little to allay concerns among legal practitioners about the post-Brexit landscape.

The white paper's Free Trade Agreement (FTA) approach to services leaves some, including the Bar Council, concerned that the UK will be forced to negotiate different bilateral agreements with the other 27 member states. The switch to a FTA could also mean that UK legal professionals lose their right to advise on both EU and UK law in the other member states and in the CJEU. Given that UK legal services sector exports are currently valued at almost £4bn per year, practitioners and the judiciary must continue to focus on ensuring the English courts will remain as attractive to international litigants as they did before Brexit.

One feature which has attracted international litigants for numerous years, is the English disclosure regime. Litigants the world over have been drawn to the English courts in part thanks to our transparent approach to disclosure, which requires each side to produce information both helpful and harmful to its case. However, with the proliferation of electronic disclosure in the digital age, concerns have been expressed, including from end users, that the CPR regime lacks the necessary flexibility and has become outmoded. The Disclosure Working Group (DWG), chaired by Gloster LJ and composed of experts including High Court judges, solicitors, barristers and e-disclosure experts, has highlighted the vast and unmanageable increase in the volume of data now produced by electronic disclosure, which has led to unrealistic demands, significant wasted time and expenditure.

Immediate past-president of the London Solicitors Litigation Association (LSLA) Ed Crosse, has been at the forefront of the development of the DWG's 'Disclosure Pilot Scheme', which has just been approved by the Civil Procedure Rule Committee. This has been introduced to address this problem head on. From 1 January 2019, the two-year pilot will introduce a new set of disclosure rules in the Business and Property Courts. It will introduce greater flexibility into the current system and, as a result, will help ensure that the English courts remain responsive to the demands of individual cases.

Under the pilot rules, 'Disclosure Duties' will bind the parties, including the duty not to inundate the other side with a host of irrelevant documents. Advisers will be obliged to co-operate with their adversaries prior to the first Case Management Conference (CMC), as they will have to provide the court with the estimated work and cost of their disclosure. Any non-compliance with such duties may be penalised with sanctions.

Standard disclosure, often accused of being responsible for the production of an overwhelming quantity of irrelevant documents, although still available, will no longer be the norm. In its place, 'Disclosure Models' provide five different disclosure options. Such options range from 'Initial Disclosure' of only known adverse documents, with no search required to be undertaken and providing for a maximum of 200 documents, through to wide ranging searches with the broadest test of relevance to be applied. The fundamental feature of disclosing 'known adverse documents', which has been so attractive to international litigants in the past, will remain as an underlying requirement in each disclosure model. If the pilot is a success, the existing Part 31 will be revised, and it may be extended to courts other than the Business and Property Courts.

One key requirement for the pilot scheme to be successful is that practitioners embrace the opportunity to approach disclosure differently. Lawyers are notoriously suspicious of change and typically unwilling to cast off the comfort blanket of the familiar. These reforms, however, deserve a proper opportunity to flourish. Equally, judges will need to take a more active case management role, including deciding whether the Disclosure Model proposed by the parties at the first CMC is appropriate for the case. This should present no real challenge to a modern judiciary which is flexible in its thinking. However, recruitment of the next generation to the judicial ranks remains a troubling issue.

Much has been written about the under representation of solicitors on the bench and why that might be, eg lack of security of tenure and the ability to recommence private practice. However, the key issue is not the relative numbers of solicitors and barristers taking judicial posts but the broader question of diversity.

As a former City solicitor, Lord Chancellor David Gauke is an advocate of judicial diversity. In April of this year, he announced the Pre-Application Judicial Education (PAJE) programme, an initiative from the Judicial Diversity Forum to remove barriers to candidates from underrepresented groups applying to be judges. PAJE aims to increase diversity both through education and through targeted support towards applicants from underrepresented groups, namely, women lawyers, BAME lawyers, lawyers with disabilities and those from a 'non-barrister professional background'. PAJE funding will amount to an estimate of £152,000 over three years. This initiative is encouraging, but ultimately it is important not only to encourage a broader base of applications for judicial posts but also to have a selection process which is structured to test the qualities that make good judges in a way that is sensitive to encouraging successful candidates from a broad pool of applicants.

Recognition of the need for change is the key first step to effecting change. LSLA is positive that there appears to be a broad consensus in the profession of the need to reform and to make the infrastructure of our system fit for purpose in the modern world. That need exists irrespective of the Brexit landscape, albeit the prospect of increasing competition from overseas only serves to highlight the issue and put a premium on the pace of change. NLJ

Julian Acratopulo is president of the LSLA (*www.lsla.co.uk*).

Homebuyers Plus

Moving searches **forward.**

Identified: risk from one or more kinds of flooding

Groundsure's Homebuyers Plus is a new residential environmental risk report, an enhanced version of the existing Homebuyers report.

Based on Land Registry polygons, with new features, improved layout, intuitive design and clearer navigation, Homebuyers Plus saves time and improves workflow for conveyancers.

To find out more, visit: **groundsure.com/nlj** or contact your preferred search provider.

@groundsure info@groundsure.com +44(0)8444 159 000

Groundsure
LOCATION INTELLIGENCE

Employment law brief

Far from sleeping on the job, Ian Smith signs off for the summer with a hattrick & issues a spoiler alert

IN BRIEF

- Is a sleep-in carer entitled to the national minimum wage for the whole shift?
- Does a successful internal appeal against dismissal automatically revive the employment?
- Can an employee rely on the statutory extension of the effective date of termination if there has been a proper summary dismissal?

In the three cases considered this month, the Court of Appeal and the Employment Appeal Tribunal (EAT) have resolved three contentious questions in employment law:

- Is a sleep-in carer entitled to the national minimum wage (NMW) for the whole shift?
- Does a successful internal appeal against dismissal automatically revive the employment, even if the contract is silent on the matter?
- Can an employee rely on the statutory extension of the effective date of termination (where no notice has been given) if there has been a proper summary dismissal?

Spoiler alert: the answers are no, yes and no, which is preferable to the more common 'it depends'.

Sleep-in carers

Employers in the caring field will have been relieved to read this passage from Underhill LJ's conclusions in *Royal Mencap Society v Tomlinson-Blake* [2018] EWCA Civ 1641, now the leading case on payment for time on-call/sleeping-in: '... I believe that sleepers-in... are to be characterised for the purpose of the Regulations as available for work... rather than actually working... and so fall within the terms of the sleep-in exception in regulation 15 (1A)/32 (2); and we are not bound by authority to come to any different conclusion. The result is that the only time that counts for NMW purposes is time when the worker is required to be awake for the purposes of working.' (at [86])

This was the appeal in one of the three cases which, before the EAT, were referred to as the *Focus Care* cases and which raised the question directly whether care workers performing this task must be paid the NMW for all the hours in the shift, or only if/while awake to undertake a particular task or tasks. The answer is now the latter.

The Court of Appeal reached this position in two stages: (1) looking at the National Minimum Wage Regulations (1999 and now 2015) a priori; and then (2) by considering the barnacles of case law that have encrusted this area for several years. With regard to the latter, the judgment manages to avoid any head-on clash with the two major Court of Appeal (CA) and Court of Session, Inner House (CSIH) decisions on similar (but not identical) issues and instead overturns EAT-level cases that had led to major complications.

Regulations

On the question of the regulations, the court took the hitherto-unusual step of starting with the original report of the Low Pay Commission on which the 1999 NMW Regulations were based. This stated quite clearly that in the particular case of sleeping-in carers, they envisaged that they would be treated as only being 'available' for work and so subject to the particular 'sleeping' exclusion from the NMW which found its way into reg 15 of the 1999 Regulations, now reg 32 of the 2015 Regulations (on the assumption that it is 'time work'; reg 27 if it is 'salaried work'). According to the court, this was the natural meaning of the regulations themselves and would have justified their decision per se if that had been the only question.

However, it was of course also necessary

to consider the extensive case authority which, to put it shortly, had introduced the complication that some sleeping-in might be construed as being *actual* work (as opposed to availability for work) to which regs 15/32 would not apply (thus attracting the NMW for the whole shift). The case review starts with *British Nursing Association v Inland Revenue* [2002] EWCA Civ 494, [2002] IRLR 480 (the night time emergency booking service case) whose reasoning and outcome are not questioned. However, it is pointed out that anything said about sleeping-in (where the worker is *expected* to sleep, not merely permitted) was obiter.

The second case, *Wright v Scottbridge Construction Ltd* [2003] IRLR 21, 2002 Scot (D) 34/10 (the night watchman case) is frequently cited, but according to the judgment here simply adopts the reasoning in the *BNA* case. A third Court of Appeal decision is mentioned, that in *Walton v Independent Living Organisation Ltd* [2003] EWCA Civ 199, [2003] IRLR 469, but although that did concern sleeping-in it was not particularly helpful because it was dealt with as an 'unmeasured work' case, and in any event the Court of Appeal held for the employer. Up to this point, the judgment sees nothing to doubt its prima facie view of the meaning of the regulations themselves. It then mentions an EAT case which appears to go the other way (*MacCartney v Overley House Management* [2006] IRLR 514 [2006] All ER (D) 246 (Jan)) but that case concerned the concept of working time for the purposes of the Working Time Regulations 1998 (SI 1998/1833) and the court took the view (not always the received wisdom) that working time cases are *not* necessarily helpful in NMW cases, partly because of different drafting and also because the Working Time Regulations are backed by an EU Directive.

Having reached this point, the judgment then proceeds to where it considered it all started to go wrong, namely the decision of the EAT in *Burrow Down Support Services Ltd v Rossiter* [2008] ICR 1172, [2008] All ER (D) 49 (Oct), where the previous CA/CSIH authorities were construed to mean that sleeping-in might be either actual work or availability for work *depending on the nature of the work*, thus leading to extensive case law as to how to tell. The key holding in the Court's judgment at this point is that nothing in either the *BNA* or the *Scottbridge* cases required such a distinction. Crucially, it is declared that *Burrow Down* is *wrongly decided*, crucial because the subsequent EAT level case law is essentially concerned with applying *Burrow Down*, one way or another. At [83], Underhill LJ lists the cases that applied *Burrow Down* (to hold the worker entitled to the NMW for the whole shift) and those which distinguished it (to hold that reg 32 applies and payment is only for hours awake and working). It must now be assumed that the former cases are also wrongly decided. It is again said that none of this undermines the *BNA* case. What it did do was to disapprove the judgment of Simler P in the EAT in the instant case. It is said that she had valiantly tried to reconcile the conflicting cases, but that that had been based on a distinction in *Burrow Down* that was misconceived; the advantage of holding that *Burrow Down* was simply wrong was that 'this difficult and intractable case law can be put to one side'.

> *"The answers are no, yes & no, which is preferable to the more common 'it depends'"*

The effect of successful internal appeal

In *Patel v Folkestone Nursing Home Ltd* [2018] EWCA Civ 1689 the claimant was summarily dismissed on two main grounds. He pursued an appeal and was told it was successful, but it transpired that it had only been specifically allowed on one ground. The other (potentially impugning his honesty) was important to him and in the light of what he had been told he refused to return to work and claimed unfair dismissal. The preliminary point arose as to whether he had been dismissed at all. The Employment Tribunal (ET) held that he had been, on the basis that there was nothing expressly in his contract saying that a successful appeal would produce reinstatement. The EAT allowed the employer's appeal, holding that a successful appeal implicitly revives the contract of employment (applying *Salmon v Castlebeck Care (Teesdale) Ltd* [2015] IRLR 189, [2015] All ER (D) 240 (Jan) which had accepted such an implication).

On further appeal, the claimant again tried to establish the need for express contractual coverage, arguing that the leading case of *Roberts v West Coast Trains Ltd* [2004] IRLR 788, [2004] All ER (D) 147 (Jun) was distinguishable because the contract there did indeed cover the employer's powers on an appeal. However, the Court of Appeal disagreed and upheld the decision of the EAT, which had been correct to rely on *Salmon*.

The simple rule in *Roberts* is not reliant on express contractual coverage and so here there was no dismissal. This was further said to be in line with the decisions in *McMaster v Antrim Borough Council* [2011] IRLR 235, [2010] NICA 45, and *Ladbrokes Betting & Gaming Ltd v Ally* [2006] UKEAT/0260/06, [2006] All ER (D) 77. At [26]-[29] Sales LJ summed the position up as follows: 'I consider that the short answer to this ground of appeal is that it is clearly implicit in a term in an employment contract conferring a contractual right to appeal against disciplinary action taking the form of dismissal that, if an appeal is lodged, pursued to its conclusion and is successful, the effect is that both employer and employee are bound to treat the employment relationship as having remained in existence throughout. This is not a matter of implying terms, but simply the meaning to be given to the words of the relevant contract, reading them objectively.

'By including a contractual right of appeal in the employment contract, the employer makes available to the employee a facility to seek to overturn the disciplinary decision made against him and to have the dismissal treated as being of no effect. If the appeal is successful, then subject to any other contractual provisions, the employee is entitled to be treated as having never been dismissed, to be paid all back pay and to have the benefit of all other terms of his contract of employment through the relevant period and into the future. Those terms include the usual implied duty of an employer to maintain trust and confidence.

'Conversely, if the employee exercises his right of appeal under the contract and does not withdraw the appeal before its conclusion, it is obvious on an objective basis that he is seeking to be restored to his employment and is asking and agreeing (if successful) to be treated as continuing to be employed under his contract of employment for the interim period since his previous dismissal and continuing into the future, so that that dismissal is treated as having no effect. It is not a reasonable or correct interpretation of the term conferring a right of appeal that a successful appeal results in the employee having an option whether to return to work or not.

'If an appeal is brought pursuant to such a term and is successful, the employer is contractually bound to treat the previous dismissal as having no effect and the employee is bound in the same way. That is inherent in the very concept of an appeal in respect of a disciplinary dismissal.'

A further twist

There was, however, one further element to all of this at the end of the judgment. The question in the appeal was whether there had been an *ordinary* dismissal by the employer. There had not, but this left

open the position of an employee such as this claimant who objects to an *aspect* of the legal reinstatement, here the apparent failure to exonerate him of a serious charge. As pointed out in the text, the judgment emphasises that in such circumstances the employee may claim to have been *constructively* dismissed due to perceived unfairness in the form of the reinstatement (hence the importance of the mention in the passage above of the continuing application of the implied term of trust and confidence). The eventual result was that the court left it open to the claimant to seek to rely on such an alternative ground.

Summary dismissal

The decision of Judge Eady in *Lancaster & Duke Ltd v Wileman* UKEAT/0256/17 considers and decides a point of law on the statutory extension of the effective date of termination (Employment Rights Act 1996 s 97(2)) which surprisingly was hitherto not covered directly by authority (though had been assumed in two earlier cases). The question was whether, when s 97(2) permits the claimant to add on the minimum notice that she should have had under s 86, it refers only to the prima facie one week's notice in sub-s (1) or implicitly activates the *rest* of that section, including its *exclusions*.

> *"The question in the appeal was whether there had been an 'ordinary' dismissal by the employer"*

This may sound very technical, but it was of immediate practical importance to this claimant. She was dismissed summarily for gross misconduct two days before attaining the two years' service necessary for an unfair dismissal action. She sought to add on the one week minimum s 86(1) notice under s 97(2) to complete her qualifying service *but* the employer countered that she could not do so because s 86(6) preserves the employer's right to dismiss summarily for gross misconduct, in which case the s 86(1) extension does not apply because *no* notice is required. Neat. The ET held for the claimant but the EAT allowed the employer's appeal. As a matter of statutory interpretation, s 97(2) refers to 'the notice required by section 86', not 'by section 86(1)'; thus, it requires a consideration of the whole of that section. If Parliament had meant to incorporate the extension period simpliciter it could have said so (as indeed it had in earlier legislation). The judgment cites *Harvey* DI [746] as backing this interpretation, along with the *IDS Handbook* and *Tolley's Employment Law*. As a matter of case law, the EAT points out that this approach had been assumed (without being expressly decided) in the leading case of *Lanton Leisure Ltd v White* [1987] IRLR 119, EAT and subsequently in *Duniec v Travis Perkins Trading Co Ltd* UKEAT/0482/13, [2014] All ER (D) 136 (Aug).

The law was thus on the employer's side, but the case still had to be remitted for a rehearing because *Lanton Leisure* decided that in order to rely on the s 86(6) exception an employer must not just aver that there had been gross misconduct but must prove it to the ET's satisfaction; given its decision here, that had not been considered on the facts by this ET and it was this point that was remitted. **NLJ**

Ian Smith, barrister, emeritus professor of employment law at the Norwich Law School, UEA & general editor of *Harvey on Industrial Relations and Employment Law*.

Owens & how to plead a divorce case

Mrs Owens & the Supreme Court: was all the relevant evidence heard before the court below? David Burrows investigates

IN BRIEF

▶ Was Tini Owens given a proper trial of all of the allegations which she could have put before the first instance judge?

Mrs Tini Owens (TO) is to remain nominally married to Mr Hugh Owens (HO) (*Owens v Owens* [2018] UKSC 41), at least till one of them can obtain a decree nisi based on their having lived apart for five years (Matrimonial Causes Act 1973 (MCA 1973) s 1(2)(e)) in early 2020. The Supreme Court has refused her appeal, for much the same reason as did the Court of Appeal (*Owens v Owens* [2017] EWCA Civ 182, [2017] 4 WLR 74). However, in the course of the judgments of Lord Wilson and Lady Hale, disturbing elements of the way the case had been put before the court below emerged. These suggest that TO may not have been given a proper trial of all of the allegations which she could have put before the first instance judge.

This is worrying. The case has generated a wide press. It is used as support for the undoubted need for reform of English divorce laws. Resolution, the association of family practitioners, joined in the Supreme Court appeal (though its submissions were only referred to briefly). It applies only to the tiny minority—perhaps 0.015%—of defended behaviour petitions. But if, with more attention to detail of evidence, any available corroboration and a proper time estimate (as will be explained), the case had been given its full attention by the court, perhaps Mrs Owens would have had her decree nisi from His Honour Judge Tolson QC.

In what follows it will be important to address the law as it is. In the Court of Appeal Sir James Munby P emphasised this point after he had summarised the statute and case law (adopted also by the Supreme Court). He continued: '[38] This is the law. This is the law which it was the duty of Judge Tolson to apply. It is the law which it is equally our duty to apply. It is well known that many hold the view that this is not what the law should be, that times have moved on since 1969, and that the law is badly out-of-date, indeed antediluvian. That may be, and those who hold such views may be right, but our judicial duty is clear. As Sir Gorell Barnes P said in *Dodd v Dodd* [1906] P 189, 206, our task is *jus dicere non jus dare* – to state the law, not to make the law.'

That said, as was argued in '*Owens*: a dead marriage but no divorce' (167 *NLJ* 7740) that the courts were entitled to look at irretrievable breakdown of marriage deductively; that if a marriage was found to be dead then it could be concluded that had irretrievably broken down; and that the intention of Parliament (on grounds akin to *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997, [1968] 2 WLR 924) was that a dead marriage should not be preserved. In 'Unreasonable behaviour on trial', *NLJ* 15 June 2018 p11, Simon Blain used the Supreme Court case to outline the MCA 1973 divorce (though did not mention the s 2 provisions to enable parties to attempt reconciliation, nor the s 3 restriction on divorce within a year of marriage) and to ask whether behaviour is to be regarded as subjective to the spouse said to suffer from it; or by some objective test. (In *Owens* Lord Wilson confirmed that it is a subjective test ([23], [28] and [39]).)

A marriage which is over; but no divorce

The parties were married in 1978 and separated in February 2015. TO filed a petition for divorce in May 2015 contending that the marriage had irretrievably broken down. The petition was based on allegations as to HO's behaviour, which the wife argued meant she could not reasonably be expected to live with him within the meaning of s 1(2)(b). In her petition and amended petition, she gave particulars of incidents, which included occasions where the husband was alleged to have made disparaging or hurtful remarks to her in front of third parties. The husband defended the case and argued at the trial that the examples given of his behaviour were not such as to satisfy the requirements of s 1(2)(b). The judge agreed and dismissed the petition. The Court of Appeal agreed with the judge and dismissed Mrs Owens's appeal.

But did she plead her case; & was all her relevant evidence heard?

A troubling feature of this case is the way it seems to have been run before the first instance judge. This being a defended divorce there was a Family Procedure Rules 2010 (FPR 2010) r 7.22(2) case management hearing. Counsel for TO said a half day—yes really, for a defended divorce with weak grounds—was sufficient for the final hearing. HO said three days. One day was fixed. Both parties agreed to limit their evidence to themselves. No corroborative evidence was called. TO amended her original five-paragraph particular petition to 27 instances of behaviour; but those were restricted only to allegations which occurred since 2013. The judge restricted the evidence to hearing only four particulars, where her counsel had deliberately restricted reliance on only a few allegations.

The result was, as Lord Wilson explained: '[19] … was that no evidence was put before the judge in relation to most of the 27 examples, apart from the written confirmation of their veracity on the part of Mrs Owens and from the mixture of

responses to them which Mr Owens had given in his amended answer and confirmed to be true in his witness statement. It also follows that, although at one point Mrs Owens told [HO's counsel] that Mr Owens had been making hurtful and disparaging remarks to her long before 2012, in effect no evidence was given in relation to the marriage prior to its two final years.'

'Uneasy feelings'

Lord Wilson felt that the case '[42]…. generates uneasy feelings: an uneasy feeling that the procedure now conventionally adopted for the almost summary despatch of a defended suit for divorce was inapt for a case which was said to depend on a remorseless course of authoritarian conduct and which was acknowledged to appear unconvincing if analysed only in terms of a few individual incidents; an uneasy feeling about the judge's finding that the three incidents which he analysed were isolated in circumstances in which he had not received oral evidence of so many other pleaded incidents; and an uneasy feeling about his finding that Mrs Owens had significantly exaggerated her entire case in circumstances in which Mr Owens had not disputed much of what she said.'

> *"Pending any change in the law, which must come from Parliament, what is the court to do?"*

For Lady Hale, the approach to evidence was 'the most troubling' aspect of 'a very troubling case' ([46] and [50]). She explained this, on analogy with constructive dismissal and by reference to the context of a relationship: '[50]… This was a case which depended upon the cumulative effect of a great many small incidents said to be indicative of authoritarian, demeaning and humiliating conduct over a period of time. Those who have never experienced such humiliation may find it difficult to understand how destructive such conduct can be of the trust and confidence which should exist in any marriage.'

She would have allowed the appeal and sent the case back to be tried again (Lord Wilson and the two justices who agreed with him do not comment on this point); but the Supreme Court was told—by the same lawyers who were at fault in conducting the abbreviated hearing?—that counsel viewed 'with dread' further litigation in the event that TO could, in any event, proceed

© Steve Parsons/Dominic Lipinski/PA Images

under s 1(2)(e) in early 2020. Lady Hale was therefore 'reluctantly persuaded that the appeal should be dismissed'. You wonder, though—despite counsel's 'dread'—what the difference might be in terms of TO's costs if her petition were fully pleaded before another judge; and if in those circumstances she had been granted a decree (ie had succeeded on her petition)?

Lord Mance was also troubled by the short listing arrangements; but felt that it was not possible to 'interfere': '[58] … I do not think that we can now interfere to say that it was not possible in the circumstances to have a fair determination…' by Judge Tolson QC.

Practice & law reform

As Lord Wilson stresses, s 1(2)(b) 'sets at a low level the bar for grant of a decree' (at 17]). A relatively anodyne behaviour petition can be followed—as was the case with TO—with an application to amend (FPR 2010 r 7.13); though this should be fully pleaded and accompanied by a statement (which will be treated as evidence in chief: FPR 2010 r 22.6(2)) and by statements of any corroborative witnesses.

The present substantive law may be unsatisfactory. That is another issue. But if a case is properly pleaded, given what the party—a divorce petitioner seeking a decree nisi in this type of case—seeks to achieve, then it is difficult to imagine another where a spouse who shows that their marriage has broken down, cannot also show that their spouse has behaved in such a way that they cannot reasonably be expected to live with him or her.

Pending any change in the law, which must come from Parliament, what is the court to do? Its inquiry under MCA 1973 s 1, said Lord Wilson, at [28], proceeds in three stages:

(1) By reference to the allegations in the petition, the court must 'determine what the respondent did or did not do';
(2) The court assesses 'the effect which the behaviour had upon this particular petitioner in the light of the latter's personality and disposition and of all the circumstances in which it occurred'—ie the subjective test; and
(3) In the light of these two assessments, is there 'an expectation that the petitioner should continue to live with the respondent would be unreasonable'?

And finally, said Lord Wilson a little inscrutably: '[45] Parliament may wish to consider whether to replace a law which denies to Mrs Owens any present entitlement to a divorce in the above circumstances.'

There are many who might have hoped he would speak in stronger terms; though given the weakness of the way Mrs Owens's case had been pleaded and presented, perhaps the judge's comment could be no stronger. **NLJ**

David Burrows, *NLJ* columnist & solicitor advocate (*@dbfamilylaw*).


© istockphoto/georgeclerk

Leasehold enfranchisement

Professor Nick Hopkins & Thomas Nicholls outline the Law Commission's radical plans for leasehold houses & enfranchisement law

IN BRIEF

▶ An overview of the Law Commission's *Leasehold enfranchisement* paper, and the reforms it proposes in order to provide a better deal for leaseholders and simplify the enfranchisement regime.

On 19 July 2018, the Law Commission published the *Leasehold enfranchisement: A summary of proposed solutions for leaseholders of houses* paper. It outlines provisional solutions for reform of enfranchisement law relating specifically to houses. These suggestions will be fully developed in a full Consultation Paper in September, which will address enfranchisement of both houses and flats.

Leasehold houses are not a new phenomenon, but have become more common in recent years—there are now 1.4m, according to the government. But why are houses sold on a leasehold basis at all?

The justification for selling flats on a leasehold basis is apparent: leasehold facilitates the management of blocks despite positive covenants not running with land.

That is less readily applicable to houses, except to enforce positive covenants on an estate. Indeed, many argue that there is no reason for selling houses on a leasehold basis, other than to extract additional profit from homeowners by retaining the freehold interest, and imposing ground rent to create (and sell) valuable income streams. This criticism is epitomised by the existence of 'onerous' ground rents, such as those which double every ten or so years.

The Leasehold Reform Act 1967 introduced a right for leaseholders of houses, assuming they met constrained qualification criteria, compulsorily to buy the freeholds of their properties from their landlords, or to obtain a 50-year lease extension. In the past half-century, countless changes have been made by a multitude of Acts of Parliament, affecting almost all aspects of enfranchisement (alongside extending and adapting the rights to flats). The Law Commission's project on leasehold enfranchisement stems from our 2016 public consultation held in preparation for the Thirteenth Programme of Law Reform.

Provisional solutions

Enfranchisement law has been accused of being inconsistent, complex, and costly. Criticisms arise around the:

- premiums paid for the exercise of the right by leaseholders;
- expense incurred by both landlords and leaseholders for valuation and legal fees; and
- process involved in exercising enfranchisement rights.

The current law has also been said to encourage litigation, and a 'gaming' approach to negotiations, both of which might favour experienced landlords, who tend to have the deeper pockets. Key provisional proposals include:

- the removal of the requirement that leaseholders must have owned the lease of their houses for two years before making a claim;
- the removal of technical barriers and complexities in the rules concerning eligibility for enfranchisement rights, and the introduction of a coherent set of criteria based around a new concept of a 'residential unit' (reducing the litigation caused by the definition of the word 'house');
- for those leaseholders of houses who still choose to extend their lease, replacing the current 50-year one-off lease extension right with a right to purchase a longer extension (for instance, 125 years) at a peppercorn ground rent; and
- improving and simplifying enfranchisement procedure, from making claims to litigating. We will consult on whether (and if so how far) leaseholders should continue to contribute to their landlords' non-litigation costs.

We have also set out options to reduce the premium payable by leaseholders to exercise their rights, in line with our terms of reference.

1. The first option involves the use of a simple formula, such as a ground rent multiplier. While this route would likely reduce uncertainty and costs, there is a risk that it would not provide sufficient compensation in many cases. It takes into account only the value of the term of the lease (the income the landlord will receive), but not for the value of the reversion. As such, it may be an option only in those cases where the reversion does not have a value. That is the context in which a ground rent multiplier has been used in Scotland.
2. The second option involves adopting an approach more closely resembling the current regime, with a premium based on market value, but which might involve removing 'marriage value' from the calculation, and/or prescribing the rates to be used in the calculation. This route would benefit landlords and tenants by reducing uncertainty, particularly if a readily-accessible online calculator were created. If the government decided to do so, then the rates could be fixed to favour leaseholders.

The ultimate decision on premiums is a political one and will be for the government. There is a difficult balance to strike, as the interests of leaseholders and landlords are diametrically opposed. Care will need to be taken to ensure that 'sufficient compensation' is paid to landlords, so that any reforms are human rights compliant.

Next steps

Our full Consultation Paper relating to both flats and houses, will be published in September. The houses paper is available via *bit.ly/2MmYe9i*. **NLJ**

Professor Nick Hopkins, Law Commissioner, & **Thomas Nicholls,** research assistant.

Return of mutuals in the public sector?

Peter C. Young & Martin Fone discuss how risk mutuals can provide a cost-effective option for local authorities

© iStockphoto/Pyrosky

IN BRIEF

- Traditional risk financing mutuals for local authorities in the UK stopped after a 2009 court case.
- However, a closer look suggests they are permissible and could be an important risk management tool for local authorities.

For nearly 80 years almost all UK local authorities procured insurance through a risk mutual, Municipal Mutual Insurance Limited (MMI). Owing to several factors, Municipal Mutual ceased trading in 1992. In response, a commercial market emerged; one that proved to have chronic issues of unavailability, unaffordability, and unacceptable terms and conditions.

Partly in response to market instability, in April 2007 nine London Boroughs resurrected the mutual idea with the London Authorities' Mutual Limited (LAML) and in August of that year nine Fire and Rescue Authorities followed suit, creating the Fire and Rescue Authorities' Mutual Limited (FRAML).

LAML and FRAML were established as regulated and authorised mutual insurance companies owned by the authorities themselves. Subsequent court rulings and central government responses led to uncertainty as to the legality of these risk mutuals despite the fact different forms of the risk mutualisation idea already existed.

Existing mutuals

Examples of public sector mutuals can be found in the UK. Notably, however, each one relies on the provision of a discretionary indemnity, meaning that even if all the terms and conditions of cover have been satisfied, the decision to meet a claim is made entirely at the discretion of the mutual's board. The claimant has no contractual certainty and has no redress under contract law if a claim is turned down by the board.

The benefits of offering a discretionary indemnity primarily relate to cost savings. The protection offered is not classed as insurance and therefore falls outside of the Prudential Regulatory Authority's regulatory ambit—offering significant savings in terms of capitalisation, solvency maintenance and regulatory compliance costs. Of course, members would need to be satisfied there is sufficient financial resource available to meet anticipated claim and operating costs. Discretionary coverage does not attract Insurance Premium Tax. Motor Third Party Liability and Employers' Liability cannot be offered directly by discretionaries.

The NHSLA

Established in 1995, the National Health Service Litigation Authority (NHSLA) handles negligence claims made against NHS bodies in England. Its indemnity offer states 'all benefits… shall be given at the sole discretion of the Administrator on behalf of the Secretary of State whose decision in these matters shall be final and binding'. Further, 'these Rules shall not, under any circumstances, be construed to imply that any contract of insurance exists between the Member and the Administrator or that the benefits available to the Scheme are not discretionary'. The basis of the indemnity is clear—it is discretionary.

The scheme also operates with a triple lock. In order to qualify for indemnity, the NHS body has to have held continuous membership in the NHSLA from the date that the incident giving rise to a claim occurred through to the date when the claim is settled. Given the complex nature of many clinical negligence claims, the timeline can stretch over a number of years.

Contributions, the discretionary term for premiums, are based on what may be termed a pay-as-you-go basis. The NHSLA's projected expenditure—operating expenses and claims costs—are estimated for the forthcoming year and divided between participating members with some adjustment made reflecting member experience. This means the future claims costs beyond the forthcoming 12 months are not funded. As of 31 March 2016 the NHSLA estimated that it had potential liabilities of £56.4bn, representing the estimated value of known claims together with an actuarial assessment of claims that have been incurred but not reported.

The FRIC

The Fire and Rescue Indemnity Company (FRIC) has been operating since November 2015, with an initial membership comprising the same nine Fire and Rescue Authorities that made up FRAML and who then formed an insurance purchasing consortium. It is structured as a hybrid mutual with a layer of protection offered on a discretionary basis with excess of loss insurance above it to provide the requisite policy limits.

The RPA

The Risk Protection Arrangement (RPA), introduced on 1 September 2014, offers cover to 'academy trusts and free schools against losses due to any unforeseen and unexpected event', covering all the risks that would normally be met by a standard school's insurance policy. The pricing for the cover was originally £25 per pupil per academy and was reduced in September 2016 to £20 per capita.

From a structural and regulatory perspective, the RPA is a bit of an anomaly. Its rules clearly state that 'the RPA is not an insurance scheme but is a mechanism

through which the cost of risks that materialise from 1 September 2014 will be covered by government funds'. Search through the registers of both the PRA and the FCA and it cannot be found. However, the language used in the covers offered is analogous to that which a guaranteed indemnity insurance company would use, 'subject to the Definitions, Extensions, Exclusions and Conditions of the Rules, the Administrator of the RPA will pay to the Member...'. It appears to be offering cover with the certainty of an insurance company outside of the insurance regulatory environment.

Finally, and most recently, it should be noted that the Local Government Association announced it has initiated a process for creating a discretionary mutual for its members.

Discussion

For authorities considering mutualisation, the key question is whether the general powers of competence are sufficiently robust and all-embracing to allow their creation of, and participation in, a risk financing mutual. The FRICS model has utilised these powers and to date has not been challenged on the question of vires in the way that LAML was (see box in right-hand column). This may be a source of encouragement for prospective mutual developers. However, the well-being powers were viewed in government circles as being broad enough to support most, if not all, forms of partnership and shared-working between authorities but nevertheless did not survive judicial scrutiny. The general powers of competence, similarly, are viewed as wide and all-embracing. Unlike the well-being powers, however, they have yet to be tested seriously in the courts.

While, on the balance of probabilities, a mutual relying upon the general powers of competence for its vires would likely survive judicial review, there are some troubling aspects to the wording of the powers. As an example, s 4(1) of the Localism Act 2011 restricts the use of the powers 'to do things for a commercial purpose only if they are things which the authority may, in the exercise of the general power, do otherwise than for a commercial purpose'. An argument could be run that says that the participation in a mutual for purely economic reasons may not be sufficient to satisfy the limitations of the general powers of competence. But to argue this may misjudge the purpose and rationale behind risk financing mutuals. Their purpose is not to make an underwriting and operating profit in the way that a commercial insurer may seek to but, rather, to offer financial savings through reduction in expenses, operating costs, profit demands and through the enhanced predictability that sharing risks can provide.

Another potentially troubling aspect is s 2(3)(c) which 'does not confer powers… that authorise a person to exercise a function of a local authority'. A stand-alone insurance mutual would have been delegated powers by a participating authority to provide and enter into insurance arrangements on its behalf. How does this square with the restriction? The answer, probably, has to do with seemingly clumsy drafting. It is unlikely that Parliament would have intended to give permissive powers on the one hand and to countenance profit-seeking trading through a company, albeit with the restrictions discussed above, and then take it away with a restriction about delegating the function to a third party.

The general powers of competence may be sufficient to rely upon but there would have been greater certainty had the specific powers contained in ss 34 and 35 of the Local Democracy, Economic Development and Construction Act 2009 been implemented.

A cost-saving opportunity?

Perhaps more intriguing is consideration of the RPA and NHSLA models, where a government department is acting as a quasi-insurer and indemnifier of last resort in the event that contributions levied from participating entities prove insufficient to meet all claims and operating expenses. The starting point for these ventures was the recognition that the costs associated with insuring the respective risks in the commercial insurance market represented poor value and that there was an opportunity to make some significant savings by putting together a risk pooling arrangement. The initiative for these approaches, however, was taken by central government (in its broadest sense), perhaps reflective of the fact that the development of such a risk financing solution was too difficult, time-consuming and loaded with up-front cost commitments for individual entities or groupings to contemplate.

With local government finances so hard-pressed, the question needs to be posed as to whether it is appropriate for the Department for Housing, Communities and Local Government to consider the benefits of a similar scheme to that of the RPA or NHSLA for some or all of the risks and exposures of local authorities; utilising contributions from each authority on an agreed formulaic basis, backed by a government indemnity in the event that members' contributions were insufficient to meet liabilities. As the RPA has shown, such a scheme could operate outside of the current insurance regulatory environment (another significant cost saving) and the question of vires would be academic.

Risk mutualisation is widely and successfully employed elsewhere in the world. It would be advisable for the government to clarify some legal language, but there is a reasoned argument for suggesting that risk mutuals still may be a risk management option for the UK public sector. **NLJ**

LAML & the revival of the risk mutualisation movement

- For many observers the Court of Appeal judgment in *Brent LBC & Ors v Risk Management Partners Ltd* [2009] EWCA Civ 490 seemed to preclude a revival of the risk mutualisation movement in the UK public sector. The case centred on two key points: 1) whether Brent as a public body had sufficient powers (vires) to establish and join into mutual risk sharing arrangements; and 2) whether that local authority had been in breach of the Public Contracts Regulations 2006 by abandoning a procurement procedure and directly awarding contracts to an entity of which it was a founding member.
- From a vires perspective (as per s 111 of the Local Government Act 1972), the Court of Appeal held that the creation of a mutual was not incidental to the discharge of Brent's functions—rather it was incidental to the incidental. Further, from the perspective of the Local Government Act 2000—the so-called well-being powers—it was not for the economic benefit of the area but for that of the council itself. Although the Supreme Court, in *Brent LBC & Ors v Risk Management Partners Ltd* [2011]UKSC 7 [60], stated that Harrow (by this time Brent had abandoned its defence but the procurement argument was picked up by another LAML member, Harrow LBC) had not breached the 2006 Regulations in awarding its relevant insurance contracts to LAML outside of a formal procurement exercise, the vires point meant that the mutual had to be wound up.
- In an attempt to clarify the position, the then-Labour government incorporated two sections within the Local Democracy, Economic Development and Construction Act 2009, which gave local authorities and other public bodies specific powers to form and participate in insurance mutuals. These were never implemented. The subsequent Conservative-led Coalition took a different course by giving local authorities and other public bodies, by way of the Localism Act 2011, ss 1-6, 'the power to do anything an individual can do provided it is not prohibited by any other legislation'.
- These powers have not been tested seriously in the courts.

Peter C. Young, PhD is the 3M Endowed Chair & Professor of Risk Management at Minnesota-based University of St. Thomas. **Martin Fone,** is the CEO of Redwater UK, a London-based risk underwriting consultancy.

Taxing matters

Peter Vaines, tax guru & part-time bard, tackles the latest cases hitting the tax headlines, from over-reliance on residence to unlikely costs awards

IN BRIEF

- Interest paid by a UK company under a foreign loan facility is nonetheless UK source.
- The conundrum presented by the tax motive tests.
- Letting property can represent a business qualifying for business property relief, being more than the mere holding of an investment.
- Costs awarded at the First-tier Tribunal due to one of the parties acting unreasonably in the proceedings.

The Court of Appeal has now published its decision in *Ardmore Construction Ltd v Revenue and Customs Commissioners* [2018] EWCA Civ 1438, [2018] All ER (D) 143 (Jun) which was concerned with the meaning of UK source income—and therefore whether interest paid by the company was subject to deduction of tax at source.

There are some really difficult issues here, but the decisions of the Upper Tribunal and Court of Appeal (which upheld the decision of the Upper Tribunal) do not make it very easy to find the answer.

There was a loan from a foreign company enforceable only in a foreign jurisdiction and repayable outside the UK. It was not secured on any UK assets. On the other hand, the company paying the interest was resident in the UK and the interest was paid out of funds generated in the UK. The Upper Tribunal said that it was necessary to consider all the relevant facts, and that the residence of the debtor was not the most important factor. However, having looked at the other factors such as the proper law (foreign), the jurisdiction of enforcement (foreign), and the place of payment (foreign), the Upper Tribunal decided that they were of little or no weight. So, the matter was determined by reference to the residence of the debtor after all. Sounds like a pretty important factor to me.

The heavy reliance on residence creates a difficulty where the debtor is dually resident. The Court of Appeal said that dual residence did not arise in this case, so it could be disregarded. However, they went on to say that if Ardmore had defaulted on the loan, the assets against which the obligation would be enforced would be those in the UK. (I cannot resist the observation that a default had not occurred in this case either—so why was this not disregarded too?)

One would have thought that looking at the position in the round, or taking a practical approach, or divining the underlying commercial reality (or whatever your preferred formulation for a purposive test), one might say that a foreign loan from a foreign person, with interest and principal being payable and enforceable abroad, has got quite a lot going for it. Be that as it may, it now seems to be settled that the residence of the debtor is the conclusive factor.

However, perhaps enforceability is really the clue here. The whole idea of residence being an important determinant seems to be based on the idea that a loan will be enforced where the debtor is resident and that is what should determine whether it is a UK or foreign loan. The Court of Appeal highlighted that not only was Ardmore resident in the UK, but its assets were in the UK, so for all practical purposes the UK would be the place of effective enforcement of the loan. The fact that there was an exclusive jurisdiction clause for the loan only to be enforced elsewhere, did not override this practical reality.

That sounds fair enough as an underlying basis for the conclusion—but the difficulty with the argument is that in the classic, celebrated and authoritative case of *Westminster Bank Executor and Trustee Co (Channel Islands) Ltd v National Bank of Greece SA* [1970] 1 QB 256, [1969] 3 All ER 504, the loan was only enforceable in the UK, but the House of Lords said that this did not make the interest on the loan UK source income.

Maybe we should stop looking for a reason and just accept that interest has a UK source if the debtor is resident in the UK.

Motive test

Occasionally tax advisers are faced with a conundrum in connection with the tax motive tests that if a taxpayer claims a tax relief, he must have done so for the purpose of obtaining a tax advantage—so he is therefore disqualified from relief by reason of his tax avoidance motive. The most obvious example is investing in shares qualifying for the Enterprise Investment Scheme (EIS). Of course you want the tax relief—the whole purpose of the EIS is to encourage investment by the provision of a tax advantage and it is bound to be one of the purposes of making the investment (and so easy for HMRC to say that it is one of the main purposes). But by doing so, you are disqualified because of one of the main purposes would be the avoidance of tax. You fall squarely into s 178 of the Income Tax Act 2007. This has generally been regarded as merely an amusing point because it would be ridiculous to enact a relief which is denied by the very act of claiming it. Time to stop laughing now. This is exactly the argument made by HMRC in the case of *Oxbotica Ltd v Revenue and Customs Commissioners* [2018] UKFTT 308 (TC). This case involved a spin out from Oxford University of some innovative products which had been developed and patented by a number of professors who were the investors in the company. The facts reported in the case reveal a wholly conventional spin out, with no special or abusive features. The investors did however claim Seed EIS relief (shock horror). HMRC argued that the purpose of the investors was to secure tax relief under the Seed EIS rules; they therefore failed the motive test and they were disqualified from relief. You can just see Macbeth opening his post in the morning:

> *'Is this a tax relief which I see before me, the share certificate toward my hand? Come, let me clutch thee. I have thee not, and yet I see thee still. Art thou not, fatal vision, sensible to feeling as to sight? Or art thou but a tax relief of the mind, a false creation… Thou marshall'st me the way that I was going and such an instrument I was to use. Mine eyes are made the fools of the other senses.'*

Anyway, this argument by HMRC was roundly rejected by the tribunal—and so were all their other arguments.

Inheritance tax: business property relief

The tribunals have consistently held that letting property is an investment business, no matter how extensive the services which are provided. Business property relief cannot therefore apply because s 105(3) Inheritance Tax Act 1984 excludes entitlement to the relief if the business 'consists wholly or mainly of one or more of the following, that is to say, dealing in securities, stocks or shares, land or buildings or making or holding investments.'

The recent case of *Executors of the Estate of Marjorie Ross (deceased) v HMRC* [2017] UKFTT 507 (TC) involved holiday cottages which were let, and where loads of services were provided to the guests. The tribunal acknowledged that a high level of services was provided to guests and these services were more extensive that those considered in any previous decision. However, that was irrelevant because in the view of the tribunal, the relief would not be available 'however high the standard of services which were provided and whatever the level of expenditure incurred on those services'. The fact that the business was run on sound business lines and with considerable effort, was also irrelevant. This decision, together with the cases of *Lockyer and another v Revenue and Customs Commissioners* [2013] UKUT 050 (TCC), [2013] All ER (D) 36 (Mar) and *Trustees of David Zetland Settlement v Revenue Customs and Customs* [2013] UKFTT 284 (TC), and many others, looked like the end of the road with this argument. Well, maybe not.

HMRC took the same view with regard to a livery business (which of course necessarily involves the use of land and buildings—or at least structures) saying that the business was nothing more than the letting or licensing of land for the use of others and was therefore an investment business—being the making or holding of investments: *Executors of M Vignes v HMRC* TC 6068.

However, the First-tier Tribunal (FTT) concluded that no properly informed observer could have concluded that the livery business was wholly or mainly a business of holding investments. They said that the Upper Tribunal in *Lockyer* had wrongly started from the pre-conceived idea that the business was wholly or mainly one of making or holding investments and then asked whether there were factors indicating to the contrary. The tribunal said that the proper starting point is to make no assumption one way or the other, but to establish the facts and determine whether or not the business is wholly or mainly one of making or holding investments.

This approach has now been supported by the case of *The Personal Representatives of Grace Joyce Graham (deceased) v HMRC* [2018] UKFTT 306 (TC) which also involved the letting of holiday accommodation and the provision of various services. The taxpayer represented herself and her impressive advocacy persuaded the tribunal that the services she provided were of such importance that the business should not be regarded as wholly or mainly an investment business. The tribunal said that the provision of 'the pool, the sauna, the bikes and in particular the personal care lavished upon guests by Louise Graham' distinguished it from a second home let out in the holidays.

It does not seem that the services provided in this case differed very much from those in *Marjorie Ross*, (or *Lockyer* or *Zetland),* all of whom were unsuccessful in their claims for business property relief, so Louise Graham's success is even more impressive.

The conclusion must be that letting property can represent a business qualifying for business property relief, being more than the mere holding of an investment—and that the nature and quality of the services provided is what makes the difference. After all that is why a hotel qualifies for relief. There is clearly a line—the tribunals refer to it—but we do not yet know where the line is. Maybe it will become visible in due course.

Costs

It is not very often that the taxpayer gets awarded costs at the FTT, so the case of *Cannon v HMRC* TC 6413, [2018] UKFTT 160 (TC) is worthy of some attention.

Unless the case is assigned to the Complex Track, costs are not awarded at the FTT unless one of the parties has acted unreasonably in bringing, defending or conducting the proceedings: Rule 10 Tribunal Procedure (First Tier Tribunal) (Tax Chamber) Rules 2009.

The tribunal held that HMRC had acted unreasonably in this case. They had rather a lot to say, but I particularly noticed one interesting passage. The judge said that HMRC had taken an entrenched position and were 'deaf to any kind of explanations and/or arguments that could properly be advanced by the taxpayer'.

This is an interesting phrase—and one which might strike a chord with some people.

However, that is not enough to give rise to an entitlement to costs. The unreasonable conduct must have been causative of costs being incurred which would not otherwise have arisen. That is by no means the same thing but there is clearly scope for proper recompense on these grounds.

However, it is important to recognise that although this was a case where the taxpayer claimed costs because he considered HMRC had acted unreasonably—it can work the other way round. **NLJ**

Peter Vaines, barrister at Field Court Tax Chambers (*www.fieldtax.com*).

Child

Ellis (by his Grandmother and Litigation Friend, Titley) v Kelly and another [2018] EWHC 2031 (QB), [2018] All ER (D) 28 (Aug)

The claimant's brain injury, sustained when aged eight he had been knocked down by the defendant's car, had arisen from momentary misjudgement on his part balanced against reckless conduct on the part of the defendant, whose driving was outside the claimant's expectation based on his understanding and experience. Accordingly, the Queen's Bench Division, rejected the defence of contributory negligence and entered judgment for the claimant on the whole claim, with damages to be assessed on a full liability basis. The court further dismissed the CPR Pt 20 claim against the claimant's mother.

Company

Re Zinc Hotels (Holdings) Ltd and other companies; Zinc Hotels (Investment) Ltd and another v Beveridge and others [2018] EWHC 1936 (Ch), [2018] All ER (D) 172 (Jul)

Where, as in the present case, administrators had been appointed under para 14 of Sch B1 to the Insolvency Act 1986 by a floating charge-holder, an additional administrator could only be appointed, both on an interim and a final basis, either by the floating charge-holder or by the court on the application of the existing administrators. Therefore, the applicants (who were the shareholders of the companies in administration) had no standing to seek an appointment of an additional administrator. The Chancery Division so ruled in dismissing the shareholders' application to appoint additional concurrent joint administrators and to remove the current administrators in respect of companies in the Zinc Group. The court held that no conflict of interest arose on the facts and that the current administrators were not in breach of their duties. Further, the court dismissed the shareholders' application for an injunction to restrain distribution of the sales proceeds of any assets realised in the administrations of the companies, pending resolution of certain claims.

Contempt of court

Re Yaxley-Lennon (known as Robinson) [2018] EWCA Crim 1856, [2018] All ER (D) 22 (Aug)

The defendant, Tommy Robinson, had no legitimate complaint about what had occurred in Canterbury Crown Court, making a suspended committal order of three months' detention for contempt of court. However, the Court of Appeal, Criminal Division, held that the finding of contempt made in Leeds Crown Court, following a fundamentally flawed process, in difficult and unusual circumstances, could not stand and the matter was directed to be reheard before a different judge.

Coroner

R (on the application of Maughan) v Her Majesty's Senior Coroner for Oxfordshire [2018] EWHC 1955 (Admin), [2018] All ER (D) 171 (Jul)

The standard of proof required for a conclusion of suicide, whether recorded in short-form or as a narrative statement, was the balance of probabilities, bearing in mind that such a conclusion should only be reached if there was sufficient evidence to justify it. Accordingly, the Divisional Court rejected the claimant's contention that a conclusion of suicide at an inquest required proof to the criminal standard, as the authorities relied on did not support it or did not correctly state the law.

European Union

Totel v Revenue and Customs Commissioners [2018] UKSC 44, [2018] All ER (D) 150 (Jul)

The taxpayer company (Totel) had failed to show that there was a true comparator among domestic claims sufficient to engage the EU law principle of equivalence in relation to the imposition of a pay-first requirement upon traders seeking to appeal assessments to VAT. Accordingly, the Supreme Court upheld the decision of the Court of Appeal, Civil Division, to that effect and consequently, dismissed Totel's appeal.

Legal aid

R (on the application of The Law Society) v Lord Chancellor [2018] EWHC 2094 (Admin), [2018] All ER (D) 35 (Aug)

The defendant Lord Chancellor's failure to disclose information concerning the consultation before his decision to reduce the maximum number of pages of prosecution evidence (PPE) served on the defence which could be counted in fixing graduated fees from 10,000 pages to 6,000 pages had been a fundamental flaw in the consultation process which had made it so unfair as to be unlawful. The Divisional Court, in declaring the decision unlawful and quashing the Criminal Legal Aid (Remuneration) (Amendment) Regulations 2017 (SI 2017/1019), further held that the Legal Aid Agency's analysis of increased expenditure had been vitiated by methodological flaws.

Negligence

Banca Nazionale del Lavoro SPA v Playboy Club London Ltd and others [2018] UKSC 43, [2018] All ER (D) 148 (Jul)

The appellant bank's appeal failed, in a case involving the first claimant London Playboy Club's alleged duty of care in giving a financial reference about an individual. The Supreme Court held that the relationship between the bank and the club had not been analogous to contract, and the bank was not liable to the club.

Privacy

SWS v Department for Work and Pensions [2018] EWHC 1998 (QB), [2018] All ER (D) 173 (Jul)

The applicant had failed to establish that justice demanded that he be allowed to make a statement in open court (SIOC) about his settled privacy claim against the defendant DWP, containing all the intimate detail that featured in an agreed draft, while derogating from open justice by allowing that to be done anonymously. The Queen's Bench Division held that a SIOC which named the applicant and explained the facts, without going into detail, was one that was fair and proportionate. **NLJ**

Blue sky thinking

Keith Plowman reports on cloud technology & the road to GDPR compliance

© istockphoto/ pixinoo

IN BRIEF

▶ Under the GDPR, no set of chambers or barrister can ignore the need to work in a secure manner that protects their documentation and data.

Although steeped in traditional practice methodology, the legal sector continues to rise to the challenge of delivering a modern justice system and digital courtroom. Contrary to common perception, barristers' chambers have often been quick to adopt modern working practises, including the use of IT. Lately that 'early adoption' has been spurred on by the General Data Protection Regulation (GDPR), a law that every organisation must abide by.

The Information Commissioner's Office (ICO) has made it very clear that reducing data held on paper and the associated risks is a key focus. We've previously read about barristers losing important documents or failing to secure client data properly and, with the GDPR now in force, we expect that incidents like these will not go unnoticed by the ICO.

Security

Under the GDPR, no set of chambers or barrister can ignore the need to work in a secure manner that protects their documentation and data. We knew technology would support our chambers' drive towards GDPR compliance, which is why we use Advanced's MLC V fully integrated mobile toolkit. It is designed with barristers in mind, helping with all aspects of their work and, with built-in cloud capabilities, enables secure remote working and centralisation of data and documentation.

We previously had a heavy paper practice—in fact, we'd frequently have trolley loads of documentation—and a lot of data was also held independently by barristers on their hard drives. Data was encrypted but held in silos, so there was no single system that barristers could use to access new instructions, input their written work or communicate with clients and the courts.

All of our information can now be accessed centrally through the toolkit within secure partitions to ensure the barristers and assigned clerks can only access details on the cases they are working on. Having all written work entered digitally as well as our documents stored securely in the cloud means barristers are avoiding the use of less secure, locally stored data or paper.

Of course, people are generally wary of changing working practices, but the GDPR isn't something that can be ignored or forgotten. Thankfully, most people have seen the immediate benefits of the toolkit. It's giving a barrister everything they need to manage their practice for the duration of a case, from the initial case review right through to court presentation or the delivery of advice to the client.

Transition

To support the transition any sceptical barristers were given a short training session to show its ease-of-use. Even the less technical savvy asked why they didn't have the MLC toolkit ten years ago.

We also provided barristers with an informative guide and checklist on the GDPR as the deadline approached. It meant that barristers didn't spend unnecessary time worrying about the GDPR, and therefore wouldn't miss out on client work or fees.

The buck stops with the barristers (as data controllers) and they could still be fined by the ICO if they're non-compliant or if there is a breach but, for our chambers, we see barristers as an asset we can't afford to waste. We recognise that we need to protect these assets, so we put in the groundwork so that the barristers could concentrate on what they do best—advising and representing their clients.

Beyond helping us adhere to the GDPR, we have been taking advantage of all of the other benefits of working in a digital environment. The cloud is enhancing how our clerks and barristers work together. For example, our barristers can now work securely in the chambers' environment wherever they are, creating and saving their work while liaising with the clerks and sharing drafts with their clients. Furthermore, our clients can get a faster response to their instructions meaning an improvement in client service levels.

Time keeping has improved drastically too. Using the cloud-based mobile toolkit, barristers are able to easily record time spent on each case anywhere and at anytime. The assigned clerk can see it instantly too within the MLC system, so there'll be no missed or late bills.

Efficiency

Crucially, it will also improve our relationship with solicitors. After all, even an isolated incident of chambers sending a bill months after a case has been completed can be ruinous and create significant friction. The solicitor might not have the funds to pay the bill after that time and, in other cases, the clerk decides to write the money off to preserve the relationship and the solicitor is never even aware of the additional work. We wanted to address this inefficient approach and, thanks to embracing the cloud and mobile technology, we have. Put simply, the technology pays for itself as we expect fee income to improve considerably as inefficiencies are ironed-out.

We now work and practise in an increasingly digital world and the best way to operate a legal services business efficiently is through the use of technology.

While the cloud and mobile solutions will never replace or transform all of the services that barristers can offer their clients, they will help them adapt to the continued digitisation of the legal system and adhere to the GDPR. If they don't invest in them for the processes they can change, barristers will lose clients and fall behind the curve; and it's in all our interests to make sure that never happens. **NLJ**

Keith Plowman, senior clerk, Ten Old Square (*www.tenoldsquare.com*).

Housing Allocation and Homelessness: Law and Practice 5th edition

Are you prepared for the Homelessness Reduction Act 2017? In force since 3 April, it brings huge changes to the way that local authorities deal with homelessness and means you need a source that you can trust and rely on. Housing Allocation and Homelessness: Law and Practice will help you negotiate this new landscape by guiding you through the process, from first approach until resolution, providing housing advisers and local housing authorities with a very clear account of the new duties.

Written by three leading specialists in this area, and containing a preface by HHJ Luba QC, this fifth edition has been substantially revised and includes:

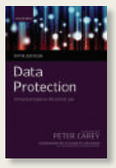
- Coverage of the law (as of April 2018) in both England and Wales
- A comprehensive account of the changes to homelessness law in England introduced by the Homelessness Reduction Act 2017
- References to the newly updated Homelessness Code of Guidance for Local Authorities
- Discussion and analysis of all of the latest case law
- A review of the latest county court and ombudsman decisions and policy developments

Order your copy today: www.lexisnexis.co.uk/HAH5

LexisNexis® | 200

Book review

Data Protection: A Practical Guide to UK and EU Law



Author: Peter Carey
Publisher: Oxford University Press
ISBN: 978-0199563548
Pages: 578
RRP: £97

The latest edition of *Data Protection: A Practical Guide to UK and EU Law* is a comprehensive and hands-on guide to an area of law which is becoming increasingly significant for all organisations. While the editor acknowledges a timing issue with producing the new edition (should they wait until Brexit so that the UK's legal position with the remaining members of the EU is clearer?), the decision to press ahead with publication in order to address current requirements and concerns resulting from the General Data Protection Regulation (GDPR) is one which many practitioners will be extremely grateful for.

Key features

Data protection is a complex of the law which is undergoing significant change. While many may view the subject matter as being quite dry, they are likely to formulate a different view having read the guide which is well presented, informative and very easy to read.

The guide provides an interesting background to the evolution of data protection law and sets out 13 key areas. Each key area explains the background, summarises the law and provides helpful commentary, practical guidance and real-life examples to assist practitioners with ensuring compliance with the law. The guide also signposts the reader to further guidance to aid with more complex matters should further information be required. If that wasn't enough, the GDPR—along with its Recitals—is set out in the Appendix for ease of reference.

> *"The guide details the significant updates to data protection legislation pursuant to GDPR"*

Content

The guide details the significant updates to data protection legislation pursuant to GDPR and, while it is acknowledged that further changes to data protection law will be forthcoming in the coming months and years, the guide helpfully flags where such changes are expected and what they are likely to entail. This is of particular significance in Chapter 10 on electronic communications, which provides a helpful explanation of the current law and comments on what the position is likely to be under the ePrivacy Regulation.

Chapter 13 focuses on creating a data protection compliance regime: it makes particularly good sense being the final chapter of the book as a compliant regime requires prior understanding of how data protection applies to the activities of the organisation. Luckily, the 239 pages which precede Chapter 13 explain everything from territorial scope, terminology and principles to appointing data processors, complying with requests from data subjects, and carrying out data protection impact assessments.

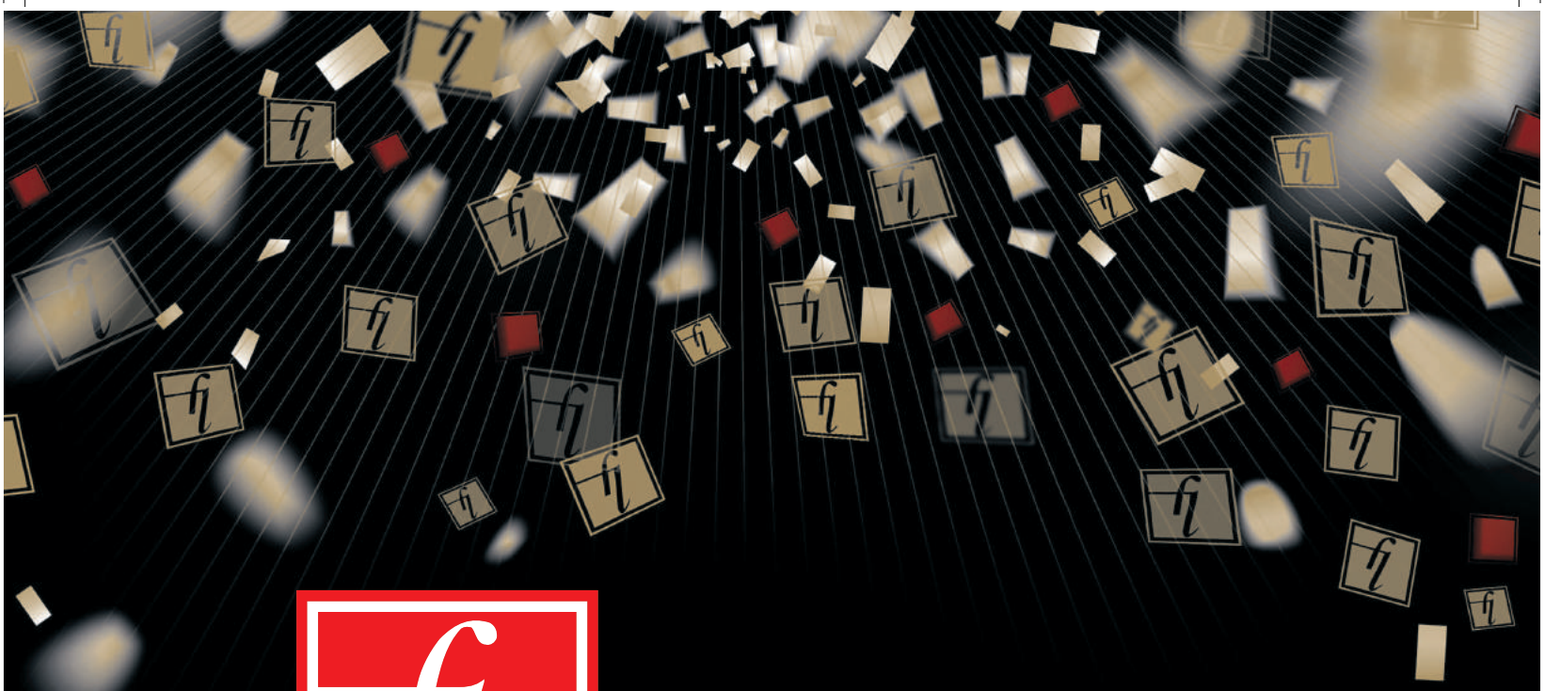
Also considered is the role of the data protection officer, and Chapter 12 sets out useful commentary on the scenarios where one is required and their responsibilities within the organisation.

As you would expect, the guide considers the role of the regulator and how data protection law is enforced in different member states. Examples of real-life data breaches are provided throughout the guide along with the consequences for each organisation which resulted from the breach. This helps to put into context the importance of ensuring compliance with the legislation and assists with identifying trends and key risk areas.

Overview

The guide is a very welcome publication and brings together commentary on data protection legislation from a variety of sources. There are a number of contributors to the guide, all of whom are highly regarded and active in their field and this is apparent through their practical and insightful application of data protection law throughout the guide. The foreword from the information commissioner, Elizabeth Denham, adds further weight to the guide which, as the synopsis suggests, is an invaluable handbook for all data protection practitioners. **NLJ**

Reviewer: David White, Rollits LLP (*www.rollitts.com*).



Family Law Awards 2018

LexisNexis®

Join Us

Buy a ticket or book a table today

Celebrate the outstanding achievements of family lawyers in England and Wales.

The 8th annual Family Law Awards will be held on Wednesday 28 November at The Ballroom South Bank, one of the most exclusive event venues in London.

This year's black tie event will feature a sparkling drinks reception, three-course meal and the awards ceremony. A DJ, disco and cash bar will ensure that this year's celebrations continue long into the night.

#familylawawards

www.familylawawards.com

Sponsored by

1GC | Family Law

4pb Four Paper Buildings

AlphaBiolabs™

CAPITAL FORTUNE Protection & Mortgage Advisers

DNA Legal YOUR QUESTIONS ANSWERED

Family Law LexisNexis®

GOLDSMITH CHAMBERS

HARCOURT CHAMBERS LONDON OXFORD

LexisNexis®

PUMP COURT CHAMBERS

Smith & Williamson