

McCormicks Briefing

Autumn 2021



McCormicks
SOLICITORS

Praise for practice

Mediation misconceptions

Different divorce rules

Any tragedy involving the use of a licensed firearm quite rightly shines the spotlight on the licensing process and whether elements of it need to be changed or updated. Partner Peter Minnikin, who heads our Crime department, looks at the potential ramifications of the fatal shooting in Plymouth, where the coroner in charge of the case has asked the Independent Office for Police Conduct to examine whether changes to weapons licensing have been made since a man shot dead three women in County Durham almost 10 years ago.

Firearms licensing – changes afoot?

For many the game shooting season is well underway, whilst for others it will be starting shortly. Following the tragedy in Plymouth, what can shotgun and firearms certificate holders expect?

Whilst it is often cited that the UK has some of the strictest firearms' legislation in the world, the guidance (rather than the law) issued to individual police forces can be followed sporadically and not necessarily applied uniformly across the UK.

Thankfully, tragedies such as the one in Plymouth involving legally held firearms and shotguns are rare but, what we have seen when they have occurred in the past, is firearms licensing departments being instructed to review the certificates they are responsible for.

This has often led to a purge in certificate holders, weeding out those that have a certificate but have perhaps not owned a shotgun or firearm for some time or others that the police now deem unsuitable to hold a certificate following their last licence renewal.

It is anticipated that firearms licensing departments will be instructed to carry out social media checks on new and existing certificate holders. Whilst this has been suggested within the guidance for some time, it is only



routinely conducted by a number of firearms licensing departments and not across the board. The advice has always been and must remain that, if you are going to post your shooting pictures on social media be careful who they are circulated to and what they contain, for example alcohol! Also consider who has access to them. It has not been unknown for police forces to attempt to revoke a certificate when an image has been found of somebody posing on a shoot day with an individual the police would consider as undesirable and therefore bring the certificate holder's suitability into question.

However, perhaps the biggest change that we will see is with the involvement of General Practitioners in the firearms licensing system. As long ago as 2016, the Home Office convened a working group on medical involvement. It was agreed then that an applicant for a certificate should have their medical declaration verified via their GP

before a certificate was granted. A marker would then be placed on the firearms owner's medical notes. This would ensure that any health condition that developed during the life of the certificate that potentially ruled out the possession of firearms or shotguns could be reported to the police and the certificate revoked.

Several successful trials were conducted; however, the British Medical Association withdrew its agreement and the initiative collapsed. Therefore, it was left to each police licensing department to interpret the guidelines as they wish. Some chose to verify the applicant's medical declaration but most do not. Whilst GPs can be asked to place a marker on medical notes, it is not compulsory, and it is not known how many comply.

It has also often led to GPs charging considerable sums of money for a letter confirming an applicant's suitability for a certificate. With some GPs refusing to provide such a letter, leaving

an applicant between a "rock and a hard place", with the licensing authority refusing to grant a certificate without the letter and

the GP refusing to provide one.

It is yet to be seen the exact ramifications of this tragedy on those who legally own and use firearms, however, it appears that certainly more scrutiny will be taken over applicants, delving into their private lives. Certainly, I believe it is only a matter of time before GPs are statutorily required to provide information to all parties in the licensing process.

Peter Minnikin is Head of the Crime, Corporate Crime and Risk Department.

He is expert in dealing with firearms licensing matters, particularly appeals against refusal of grant of a certificate or revocation.

Peter is a Solicitor and Higher Court Advocate specialising in all aspects of Crime, Corporate Crime, Fraud and Regulatory work.

He appears regularly in the Magistrates Court and police stations to represent clients in respect of a full range of criminal and motoring offences.

He is frequently instructed to represent clients as a Higher Court Advocate at proceedings before the Crown Court, often being instructed to represent defendants charged with sexual

offences, fraud and violent offences.

Peter has expertise in dealing with substantial and high profile cases, working closely with QCs and other Counsel. He has represented clients charged with serious fraud offences, including prosecutions by HMRC. He is often instructed to represent clients charged in relation to conspiracy to supply drugs cases. These cases involve careful consideration of thousands of pages of evidence, including detailed examination of phone and financial records.



Peter Minnikin

CONTENTS

P3 Road to normality
P4 Praise for practice

P6 Criminally good

P7 Mediation misconceptions

P9 No-fault divorce
P10 Out of hours

This is our first newsletter in some time when we are not all in lockdown and I hope you have been enjoying some relative freedom since our last issue.

The road to normality

The transition to a more normal way of life has not been without issues and, as I write, Covid levels remain high and we continue to be urged to be cautious.

There have, however, been more things in the calendar to enjoy this summer. We were delighted to see both the Great Yorkshire Show and the Theakstons Old Peculier Crime Writing

Festival being able to stage their events in July, albeit with some changes to normal procedures. Both were hailed as a great success and, for many in our region, were a fantastic first opportunity to get out and about.

We are also pleased that our friends and clients at Leeds United and Harrogate Town have been able to welcome fans back to their grounds at Elland Road

and Wetherby Road respectively.

On a business front, the return to more normal ways of working has also, necessarily, been gradual but we have managed to achieve some fantastic ratings in the latest edition of the leading guide to the legal profession, the UK Legal 500, about which you can read more in this issue. I do not think I have ever been called a "superstar" in print

before! More seriously, I cannot thank the team, many of whom have had their own major issues to deal with this year, enough for the dedication, skill and hard work which have led to these rankings.

I am also pleased to welcome two new members to the team: Hayley Carr and Lucy Harbron, both of whom also feature in this issue.

While I think the road back to complete

normality might be somewhat longer than we hoped initially, there are signs of progress on many fronts and long may this continue.

Peter McCormick OBE



Stephen Hopwood

Managing Partner Stephen Hopwood and Consultant Solicitor Carol Hancock are two of only three solicitors in Yorkshire and the Humber to be recommended by the Feminist Law Society.

The Feminist Law Society compiles, manages and hosts the Survivor-Led Database of legal practitioners, whereby survivors recommend solicitors and barristers with whom they have had positive experiences while being represented in cases of domestic abuse. This database

Two of our Family lawyers have become the first in North Yorkshire to be recognised by the Feminist Law Society for their expertise in working with survivors of domestic abuse.

Feminist family lawyers

came into being after inspirational survivor and outstanding campaigner, Rachel Williams of Stand Up To Domestic Abuse, put out a call for assistance in making this national directory a reality.

Stephen Hopwood,

who heads the Family department, said: "We pride ourselves in having a friendly and understanding approach which helps guide clients through the legal issues and practical considerations that need to be addressed at a sensitive and emotional time."

Carol Hancock creates insightful and highly accessible content via her YouTube Channel, The Survivor Diaries, based on her own experience of domestic abuse, and runs a successful Facebook group with the same name which has more than 1,000 members.



Carol Hancock

Good luck Nigel

Good luck to our long-term friend and client, the Chief Executive of the Yorkshire Agricultural Society, Nigel Pulling, who has announced his retirement after more than 20 years at the helm.

Nigel will retire from his role in March 2022 after overseeing a number of hugely

successful commercial projects across the Great Yorkshire Showground, not least being able to hold a Great Yorkshire Show this year, despite the complications of Covid regulations.

He said: "I couldn't have ended my tenure on a better show. We were devastated to

cancel last year and, despite the challenges and restrictions placed on this year's event, it was an incredible achievement for the team. The atmosphere of celebration and enjoyment from both the farming community and visitors was second to none."

His tenure also includes the building of Fodder, the Regional Agricultural Centre (the Society's HQ) and the multi-million pound rebuild of Hall 1 in the Yorkshire Event Centre.

We send him our best wishes for a long and happy retirement.



Yorkshire Agricultural Society Chief Executive Nigel Pulling who is retiring.

"Unique" and "a practice which punches above its weight" are just two of the descriptions of McCormicks in the newly published UK Legal 500, the leading guide to the legal profession.

Senior Partner Peter McCormick OBE, who is once again listed in the Leading Lawyer and Hall of Fame sections, wins his own adjectives, including "one of the godfathers of sports law" and "a true superstar."

These are just some of the testimonials in the guide that highlight the practice's skill and service in the 19 areas of law for which it is recommended.

As mentioned above, Peter McCormick, is listed in the elite "Leading Lawyers" section which highlights outstanding lawyers nationwide. Both Peter and consultant Neil Goodrum are also in the Hall of Fame for London, with Peter highlighted for Sport and Neil for Mediators. Partner Phil Edmondson wins a place in the Next Generation Partners list for Sport.

Peter is also listed as a Leading Individual for Sport in Yorkshire and Humber, while Philip Edmondson is a Leading Individual for Sport in London.

Our Solicitors have won 43 individual recommendations, up two from last year, while the firm as a whole is recommended for 19 areas of law, including Reputation Management (London), which is also new for 2021. The other areas are: Corporate and Commercial; EU and Competition; Crime: Fraud; Crime: General; Dispute Resolution/ Commercial Litigation; Finance/Insolvency and Corporate Recovery, Agriculture and Estates; Charities and Not-For-Profit; Contentious Trusts and Probate; Family; Private Client:

Praise from top legal guide

Personal Tax, Trusts and Probate; Commercial Property; Property Litigation; IT and Telecoms; and Sport; along with London rankings for Dispute Resolution: Mediators; Professional Discipline and Sport to add to the new Reputation Management listing.

The practice has again led the way for Harrogate and North Yorkshire-based practices as the only one recommended in seven areas of law, namely EU and Competition, Insolvency and Corporate Recovery, Contentious Trusts and Probate, Dispute Resolution: Professional Discipline (London) Sport (Yorkshire and the Humber and London) and Reputation Management (London).

Peter McCormick said: "The UK Legal 500 bases much of its rankings' research on the views of clients and we are delighted that we have been able to continue to provide such a high level of service during the past year with all its challenges of working from home and being unable to meet in person. This underlines our strength as a team!"

What the guide says...

Agriculture and Estates

Led by Harrogate-based name partner Peter McCormick, the agricultural and estates offering at McCormicks counts the Royal Horticultural Society and various charities within its impressive portfolio. In addition, the team is particularly well known for assisting landowners with the diversification of their estates (including overseeing building conversions for both commercial and residential use).

McCormick is a longstanding member of the Country Landowners and Rural Business Association. "Able led by Peter McCormick, this practice punches above its weight. Good sound advice across a number of fields – employment, litigation, commercial dispute resolution and succession planning." "They adopt a sensible common sense approach to achieve the desired outcome. Their advice on succession planning in respect of a family business was excellent."

Charities and Not-For-Profit

The charities offering at McCormicks is led by name partner Peter

McCormick (a noted trustee of the Football Foundation). The team advises clients in respect of regulatory guidance and counts The Royal Horticultural Society and The War Memorials Trust within its diverse portfolio. Notably, the firm has longstanding advisory relationships with Harrogate International Festivals and the Premier League Charitable Fund. "The team are all approachable, friendly and supportive. They have a breadth of knowledge and the ability to convert legalese to plain English."

Commercial Property

McCormicks has built up a sizeable portfolio of commercial property and residential investor clients, landed estates and charities. The firm's work includes property sales and purchases, landlord and tenant matters, property management and disputes. Heather Roberts is experienced in commercial letting, regeneration schemes and specialist areas of agricultural law, such as shooting rights.

Contentious Trusts and Probate

At McCormicks in

Harrogate, the key name is founding partner Peter McCormick. Known for assisting executors, trustees and potential beneficiaries of significant family estates, the team also handles cross-border matters regarding assets which may require protection or seizure. Philip Edmondson and Elaine Lightfoot are other important contacts

Corporate and Commercial

McCormicks provides 'top-notch advice' and is instructed by leading sports sector clients on commercial contracts and corporate matters. Overseen by Peter McCormick and James Towler, the team advises UK and international clients, and has expanded its sector strength across the aviation, hospitality and leisure industries. Also in Harrogate is Emily Steed, who focuses on corporate restructurings and incorporations. "McCormicks grasp the subject matter quickly and provide transparent, non jargon advice. They understand the ethos of our business and how we work." "They understand the business and the person in depth



"Superstar"
Peter McCormick



"Commercially astute"
Philip Edmondson



"Excellent for insolvency work"
Will Bates



"Pragmatic and sensible"
Stephen Hopwood



"Excellent communicator"
Elaine Lightfoot

and company values."
"Brilliant unique sports practice, particularly Football. Unrivalled reputation in football. Top notch advice and at regional rates."
"Peter McCormick – exceptional commercial advice."

Crime: Fraud

McCormicks' client portfolio includes individual defendants, companies, solicitors and professional bodies involved in serious fraud investigations and criminal prosecutions. It also represents clients in major POCA proceedings. As a member of the defence panel for the National Pharmaceutical Association, the practice (which is led by Peter Minnikin) is instructed by the NHS fraud team to advise on matters involving an interplay between pharmaceutical regulation and fraud offences. Minnikin specialises in fraud cases where there has been an abuse of a position of trust, as well as HMRC investigations

and money laundering prosecutions.

Crime: General

At McCormicks, Peter Minnikin leads the crime, corporate crime and risk department. He is instructed as a Higher Court Advocate in proceedings before the Crown Court, where he represents defendants charged with sexual offences, fraud and violent offences. Minnikin is spearheading the firm's regulatory prosecution offering and is currently acting for a pharmacist charged with possession and intent to supply large quantities of prescription medication.

Dispute Resolution/ Commercial Litigation

McCormicks' commercial litigation practice is experienced in handling contractual and corporate disputes, debt recovery issues, professional negligence claims and contentious probate work. The 'very commercially astute' Philip Edmondson leads the team and counts breach of contract

claims, partnership disputes and insolvency-related litigation among his areas of expertise. Senior Partner Peter McCormick 'is fantastic in sports disputes' with particular experience acting for football leagues, including the Premier League and the Isthmian League, as well as football clubs and players. The group is also growing its roster of digital and IT sector clients. "The practice is unique in that they make you feel like the most important client, nothing is too much trouble and you never need to chase or wait longer than is expected."

"In Peter McCormick, they have a commercial litigator of unparalleled experience and unusually astute judgment. In Philip Edmondson, they have someone with specialist sports knowledge, energy and client dedication." "Peter McCormick is fantastic in sports disputes, particularly football. Has done some excellent litigation

work for me." "Peter McCormick – unique sports lawyer. First choice every time. Great practical advice. Very commercial. Value for money." "The practice is unique in that they make you feel like the most important client, nothing is too much trouble and you never need to chase or wait longer than is expected." "Phil Edmondson – very commercially astute and level-headed."

Dispute Resolution: Mediators (London)

McCormicks Senior Partner Peter McCormick OBE is nationally praised for his sport-related mediation work. In addition to his role as chairman of the Premier League's legal advisory group, McCormick is a member of a panel of legal specialists for Sport Resolutions (UK), which provides mediation and arbitration facilities for parties involved in sport-related disputes, while in late 2020 he stepped in as interim chairman of the Football Association.

Mediating regularly for over 19 years, Neil Goodrum at CEDR Chambers consistently acts as lead mediator in contract and commercial cases; and is a former senior litigation partner at McCormicks, where he remains a consultant. Recent work highlights have included a clinical negligence dispute concerning causation and quantum in relation to extremely serious injuries.

EU and Competition

McCormicks is known for handling competition litigation for its sports clients, notably The Premier League. Philip Edmondson oversees the team, which handles both contentious and non-contentious matters for clients across the sports, entertainment and leisure sectors. Peter McCormick has experience appearing before the Competition Appeal Tribunal in investigations.

Family

At McCormicks,



Peter Minnikin



Emily Steed



James Towler



Heather Roberts



Sara Morgan

Harrogate-based partner Stephen Hopwood leads the family team. The firm specialises in financial matters, domestic abuse and children's law. Its strengths are complemented by a number of strategic partnerships with accountants and mediators, as well as budgeting controls on each matter to provide financial certainty for clients of various income streams. "A solid practice with a good reputation in the local area." "Stephen Hopwood is a pragmatic and sensible lawyer who has excellent client skills."

Finance/Insolvency and Corporate Recovery

At McCormicks, Philip Edmondson and Will Bates are "excellent for insolvency work". The team is notably strong in insolvency matters in the football industry; Edmondson counts the Premier League and Leeds United Football Club among his clients. Name partner Peter McCormick is another key individual. "Excellent regional practice. London advice at regional rates. "Phil Edmondson and Will Bates are excellent for insolvency work." "McCormicks offers very specialist/niche advice to the football industry. There is a huge amount of experience within their ranks which provides a quick and reliable service." "Peter McCormick – Unique connections within the game of football and lots of experience of governance/legal issues across a breadth of topics."

IT and Telecoms

McCormicks works with a number of sports, media and entertainment clients, advising them on a range of matters including copyright, trademarks, and other contentious work. Practice head James Towler is the key name.

Private Client: Personal Tax, Trusts and Probate

The "very efficient" team at McCormicks provides a broad range of private client services, with a particular focus on estate planning, administration, Court of Protection matters and trustee/settlor advice. The firm also has expertise in the establishment of discretionary trusts, charitable giving, fiduciary duties, mental incapacity and lasting Powers of Attorney. The key partners are Peter McCormick and Elaine Lightfoot. "Very efficient and helpful team, they deal with all queries very promptly." "Elaine Lightfoot is an excellent communicator. She pulls together a team of advisers well to meet the client's needs."

Professional Discipline (London)

McCormicks is best known for football-related disciplinary work, but also acts in SRA investigations and SDT defence work. Peter McCormick OBE is a sports-related regulatory and disciplinary expert and has recently been serving as interim head of the Football Association; Peter Minnikin acts for medical practitioners, physiotherapists and the Yorkshire Agricultural Society; Philip Edmondson is litigation services head; and senior associate Sara Morgan represents pharmacists. "Excellent litigators who are pragmatic, thorough, technically good, and value for money." "They are definitely a go-to firm in this field – their knowledge and integrity are impressive." "Peter McCormick OBE leads this work, and his team has a really strong reputation in this area, particularly in relation to sports matters."

Property Litigation

McCormicks handles

a wide variety of contentious property work, ranging from landlord and tenant conflicts to dilapidation claims and boundary disputes. Clients include private investors, developers, landed estates and charities. Name partner and well-respected commercial litigator Peter McCormick chairs the firm. He works with Philip Edmondson and Heather Roberts.

Reputation Management (London)

A heavyweight in the sports sector, McCormicks is a top choice law firm for clients in the world of sport and entertainment. Peter McCormick OBE has strong ties with the Premier League and advises on defamation and reputation management issues across the board. Philip Edmondson leads the dispute resolution team. "A very strong and efficient practice with a deep insight into what fits into clients' needs. The department has springboarded from Peter McCormick's stellar reputation and he has nurtured and developed a powerful team." "Peter McCormick is a true superstar. His client base alone shows that he is truly appreciated by heavy hitters in a very competitive field."

Sport (London)

McCormicks takes its name from football industry heavyweight and founding partner Peter McCormick, "one of the godfathers of sports law". Among many other stand-out accolades, in November 2020 he stepped in as interim chairman of the FA; his practice spans regulatory, disciplinary, reputation management and defamation affairs. The department is also led by Philip Edmondson, a disputes specialist who was recently appointed

as a non-executive director to the Board of British Weight Lifting, as well as James Towler who oversees the group's corporate and commercial activities, covering disposals, acquisitions, group reorganisations. "Peter McCormick is considered one of the best in the sector. We have used this firm in a variety of areas from board level to advising on furlough and employment matters. They have great contacts within the industry and such commercial acumen. They guide you through matters with ease." "Industry leading football and sports lawyers. Good value for money. Commercial and collaborative with practical advice." "Peter McCormick is the best football lawyer in the UK." "Peter McCormick: one of the godfathers of sports law, hugely well known in football."

Sport (Yorkshire and the Humber)

McCormicks has an excellent track record in the sports sector and has an impressive number of key names on its client roster, including The Premier League. Under the leadership of Peter McCormick, who splits his time between London and Harrogate, the practice handles a range of contentious regulatory work and litigation matters; the latter is headed up by Philip Edmondson. Transactional lawyer James Towler advises national and international clients on corporate mandates, particularly acquisitions and disposals. The group is also skilled in advising shoot proprietors on lease renewals and site operations work. Head of the commercial property practice Heather Roberts and senior associate Sara Morgan, who advises on employment law, also contribute to the practice.

Criminally good

It was marvellous to be able to take our seats at the Theakston's Old Peculier Crime Writing Festival again this year.

Harrogate International Festivals made a huge effort to provide a Covid-safe event, with the audience meeting in a large marquee in the grounds of the Old Swan Hotel in Harrogate, the event's usual venue.

McCormicks is a Core Supporter of the event and it was great to see so many people enjoying seeing the host of top names who took part, including Ian Rankin, Val McDermid, Mark Billingham and Ann Cleeves.

The annual Crime Novel of the Year award went to Chris Whitaker with *We Begin at the End*. Special presentations were also made to Ian Rankin OBE and Mark Billingham, the winners of the Theakston Old Peculier Outstanding Contribution to Crime Fiction Award for 2021 and 2020, respectively.



Simon Theakston of sponsors Theakston's Old Peculiar gets proceedings under way

Mediation is increasingly used as an alternative to the traditional route of taking disputes before the courts. It is also a tool that has proved useful during the pandemic, with even higher value claims being resolved virtually. However, misconceptions about the method remain. Here, Hayley Carr, part of our Commercial Litigation team, takes a look at the facts and fallacies.

Mediation misconceptions

What is mediation?

Mediation is a voluntary form of alternative dispute resolution (ADR) whereby an impartial third party (the mediator) assists conflicting parties to resolve or narrow issues

in dispute to avoid litigation. Depending on the respective positions and bargaining strength of the parties, the mediation process strives to resolve disputes through tailored communication

and negotiation techniques. There are many misconceptions relating to the mediation process, such as its purpose, enforcement of any agreement, public perception, its benefits as compared with litigation and the level of control the parties exert over it. As a result, mediation is often not utilised properly by parties in circumstances where it is highly appropriate and could provide many benefits without having to endure the associated time, stress, and expense of litigation.

"It is optional, so I am not going to bother"

While mediation is optional, as part of pre-action protocol and the overriding objective under civil procedure rules to deal with cases justly and at a proportionate cost, parties typically have an obligation to attempt some form of ADR prior to taking their case to court. Failure to do so could result in adverse cost consequences if the refusal is deemed unreasonable; in the case of *PGF II SA v OMFS Company 1 Limited* [2013], the Court of Appeal stated that silence in the face of an invitation to participate in ADR is generally, in itself,

unreasonable and likely to result in adverse costs consequences. If the mediator considers that a party is not co-operating or participating in good faith, he/she has the power to terminate the mediation. Therefore, despite it being optional, the consequences of refusing to participate could be financially grave and parties should think twice before succumbing to this misconception.

"It is not binding, so it is a waste of time"

Mediation is non-binding which raises concerns over the enforcement of the decision. Understandably, participants may question the whole process if they are left in the same unresolved situation with an unenforceable decision. However, it should be made clearer from the outset that a written mediation agreement, signed by the respective parties will be enforceable as a contract. Additionally, the fact the decision is non-binding could be beneficial, as it provides the parties with a sufficient degree of control to reject any proposal made by the other if it is not satisfactory.

When mediation is not executed with purpose it creates a problem, as rather than dispensing with the extensive formalities that come with litigation and reaching an outcome the parties wish to enforce, mediation is often viewed as simply an additional stage in the litigation process designed to appease the court. Since the vast majority of claims are resolved out of court, it is a fatal misconception that mediation is a waste of time. Whilst there is no guarantee that the mediation process will be successful, the Centre for Effective Dispute Resolution reported that 72 per cent of their cases are settled on the day, with a further 21 per cent settling shortly thereafter. Therefore, if approached with purpose and good intentions, the mediation process can be very effective.

"The process shows weakness, so I do not want to engage in any out-of-court discussions"

To initiate the mediation process one party must give notice to the other indicating that the matter has been referred to mediation. Making the first move and demonstrating a willingness to negotiate

Hayley Carr is a Litigation Executive within our Sport and Commercial Litigation team, assisting Partner Philip Edmondson and Senior Associate Will Bates in providing Commercial Litigation and Sports Disputes services to a broad array of clients, including insurers, charities, insolvency practitioners, the Premier League, Leeds United FC, Harrogate Town AFC, the Bostik League and a number of other sporting bodies and clubs.

Hayley has experience advising on a range of sports law matters including selection bias, doping in sport and age discrimination. She supported counsel in preparing for hearings at the Court of Arbitration for Sport in Lausanne, Switzerland, and Sports Resolution, London. Hayley assisted in successfully defending an Olympic athlete against a tampering claim

brought by UK Anti-Doping. She recently assisted a team that was appointed to provide Pro Bono legal services to athletes caught doping at the Tokyo Olympics and Paralympics.

Hayley has a first-class law degree and a Masters in international Sports Law. She has worked in Chicago, Illinois, reviewing miscarriages of justice and preparing subsequent civil rights claims. She also assisted in a wrongful police shooting trial at Cook County Court. Hayley recently completed her LPC at BPP University.



Hayley Carr

is often misconceived as weakness, with some parties simply refusing to participate or cooperate out of fear that their litigation strategy will be revealed, negatively impacting their case.

However, a private forum is established during mediation whereby the parties can ascertain the strengths and weaknesses of the case and each other's respective positions in order to establish how to move forward with ADR/litigation or attempt to resolve the dispute and settle the claim. As most cases have an element of risk, parties can usually recognise their respective risks early on and account for them during negotiations. This risk control is not present in litigation, where the outcome is determined by the judge and heavily influenced by how witnesses perform on the day. As parties have control over the outcome and timetable of the mediation, they can be creative with it, whereas a judge is limited in terms of the outcome available to a successful party and the schedule is strictly dictated by the court.

Parties should be aware that confidentiality and privilege are cornerstones of the mediation process and should be entrenched in the mediation agreement between the parties. As such, negotiations should not be stifled due to a lack of appreciation and/or understanding of these principles. The private nature of mediation ensures that any discussions between parties are without prejudice, meaning that if no settlement is reached, the information disclosed during negotiations cannot be referred to in court.



Therefore, in some instances mediation may be a preferable forum, as the outcome can remain confidential as opposed to the publicity of court decisions which could cause irreparable reputational damage. The appropriate forum will, therefore, depend on the nature of the claim, the suitability of mediation based on the relationship between the parties, their respective bargaining strength, and the need for confidentiality. It is therefore important to recognise that suggesting or agreeing to the mediation process is not a sign of weakness. Rather, it shows leadership, commerciality, an understanding of the vagaries of the court system and an appreciation of the time and cost involved in litigation.

“Litigation is always the best way to resolve my dispute”

It is a common misconception that litigation is always the most appropriate forum to resolve disputes. Parties often feel their conflict would be better left in the hands of a judge to hear all the evidence and make a final, binding ruling. Admittedly, in some circumstances, formal litigation is the appropriate forum. However, in majority of cases and depending on the relationship between the parties, mediation provides more benefits than litigation.

For example, mediation is a party-centred process, with the primary focus being the party's needs. Parties can resolve their dispute entirely or partly, utilising the process to narrow the issues in dispute prior to commencing litigation. The process is flexible and heavily determined by the parties. As a result, each mediation will differ enormously to achieve a suitable outcome. This differs to litigation, where the final decision is determined by a judge without any input from the parties and could vary depending on the judge presiding the case.

Mediation is therefore more commercially friendly, as the parties are free to negotiate what terms they wish to settle on and can achieve a creative solution; this may include terms which are not within the courts' power to order, for example, that one party will continue to supply goods to the other for a fixed period. This also ensures the relationship between the parties is maintained as much as

possible which will be of greater importance to some parties than others. With litigation, it would be difficult to preserve the business relationship between parties for obvious reasons. Additionally, parties choose the mediator and can therefore select the most appropriate individual for the dispute, i.e. with specific knowledge of the matter/topic. As such, the mediator can offer a commercially viable (as opposed to legal) solution, which again, will be preferable in some circumstances. Crucially, it is important that the mediator has the confidence of the parties so that an appropriate compromise can be made to resolve the dispute. Sometimes an independent third party trained in negotiation and conflict resolution is necessary to assist with negotiations, particularly where positions have become entrenched with belligerent personalities on either side of the dispute.

Although Mediation is not free of charge, it is less costly than litigation, often quicker, less stressful and lower risk. However, this is only the case if the mediation is successful, which cannot be guaranteed. If a resolution cannot be achieved, the process will simply have added to the cost, time and stress of the litigation

process and potentially added to any existing tension between the parties. The appropriate forum must therefore be considered on a case-by-case basis.

Conclusion

If utilised correctly, there are many benefits to mediation such as saving costs, time and reputational damage. The chosen mediator should have the experience and knowledge to assist the parties beyond anything a judge could offer. If further knowledge or expertise on the matter is required, an early neutral evaluation can be requested whereby an expert gives an opinion as to what they believe the outcome would be if the matter was referred to court. If something more final is sought, an expert determination can be requested whereby a binding decision is provided. This again highlights the control parties are able to exert over ADR processes which is not prevalent in litigation. The resolution achieved by the parties can be commercially beneficial, thereby maintaining the business relationship between parties (if appropriate) rather than having to follow the letter of the law through litigation. In some instances, what is important and all parties are seeking is an apology. The mediation environment helps parties communicate and reach an amicable solution if approached in the spirit of wanting to settle.

At McCormicks we are strong advocates for mediation in appropriate matters. Experience tells us that there is a strong likelihood of a settlement being reached at mediation or in the weeks afterwards due to the work done at mediation.



A major change to the divorce system comes into force next year. Trainee Solicitor Lucy Harbron looks at the new rules.

No-fault divorce

The long-awaited reform of the process of obtaining a divorce will take effect on 6 April 2022 following the Divorce, Dissolution and Separation Act that received Royal Assent in June 2020.

Under the current legal system in England and Wales, for a married couple to obtain a divorce, one spouse must issue divorce proceedings against the other as the petitioner.

The petitioner must prove the ground that the marriage has broken down irretrievably by satisfying the court



that at least one fact of adultery, unreasonable behaviour, or desertion exists.

Implementation of the new legislation follows more than 30 years of campaigning by Resolution members to modernise divorce law and end the requirement for placing blame on one spouse. The Supreme Court case of *Owens v Owens* [2018] intensified this position. The case gained international recognition when Tini Owens was forced to remain in a marriage as she could not prove a fault-based fact and her husband refused to consent to divorce.

No-fault divorce will introduce significant changes that will allow a married couple to

either individually or apply together and use a statement to show that there has been an irretrievable breakdown as the ground for obtaining a divorce. There will no longer be a requirement to petition one another. The requirement to show bad behaviour will be removed and the respondent will not be able to contest the divorce by defending or cross applying for a divorce. The two-stage process will remain with adjustments to the terminology. The first stage of obtaining a Decree Nisi that confirms that the applicant is entitled to bring the marriage to

an end will be termed the Conditional Order. The second stage which legally ends the marriage known as the Decree Absolute will be referred to as the Final Order.

The time limits for obtaining a divorce, notwithstanding dealing with financial matters, will include the applicant waiting a minimum of 20 weeks from serving the application to applying for a Conditional Order. The applicant must then wait six weeks from the date that the Conditional Order was made to be able to apply for the Final Order.

During a time that can be very emotionally challenging for families, the no-fault divorce should assist separating couples by reducing conflict and animosity associated with placing blame on one party. Resolution believe that the new legislation should assist both parties to reach more amicable agreements and The Law Society has emphasised that there will be an important shift in focus to resolving children, property, and finance issues.

Lucy is currently completing her Training Contract. She mainly assists the Head of Family, Stephen Hopwood, in acting for a broad range of clients, dealing primarily with finance and children. She also assists the criminal department with all aspects of their work.

Lucy graduated from Newcastle University with a degree in History. She then completed the

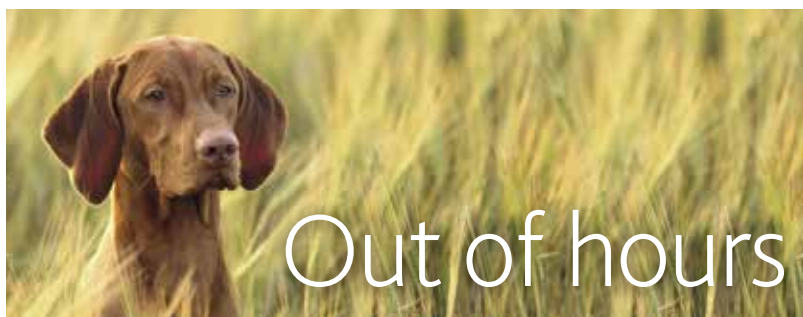
Graduate Diploma Law and Legal Practice Course at the University of Law in Leeds.



Lucy Harbron

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Out of hours

Partner and Head of our Commercial Litigation team Philip Edmondson shares his thoughts on why green is desirable, despite the fact it does not suit him, and sharing the views with a Hungarian Vizsla.



Philip Edmondson

Other than the law, what would your dream career be?

My dream career would have been as a professional golfer but that was sadly unrealistic. More realistically, as a confessed data geek, I could have had a dream career as a professional poker player or professional fancy sports analyst.

If you could win any sporting trophy or title, what would it be and why?

If I could win any title, it would have been the Masters. I look terrible in a green jacket but it

is still the one I would have wanted to win.

Where is your favourite place in Yorkshire and why?

I love walking at Rawdon Billing. I take my dog Pablo up there and you can see all the way to York and Bradford on a clear day.

If you could choose your last meal in advance, what would it be?

It would probably be some turf and surf combo; a fillet steak and lobster would not go amiss.

What is the best piece of advice you have ever been given?

I think that the best advice I have been given is that you only get one go at life and so you should really try to enjoy what you do, make the most of it and help those around you enjoy their one shot too.

If you suddenly came into a significant amount of money, what would your first five purchases be?



The poshest electric car I could lay my hands on.

A house somewhere on the west coast of Barbados.

Some kind of golf memorabilia involving Tiger Woods (I love the golfer but not the person).

Some debenture seats

on Wimbledon Centre Court.

Whatever my wife Lucy wanted (and this might use up the money for numbers 1-4 as well!)

What do you do to wind down after a busy day in the office?

I walk my dog, a Hungarian Vizsla, Pablo, and I get lost in reading sports stories or fancy sports stories online.

What is your favourite season of the year and why?

My favourite season of the year is Spring. I love the feeling that the days are getting longer and warmer and that we have got some better weather ahead of us. I am not a fan of the dark evenings.

OUR EXPERTISE



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