

# McCormicks Briefing

Autumn 2022



QUEEN ELIZABETH II  
1926 - 2022

A recent Court of Appeal ruling has provided clarity to Executors and Trustees in respect of their ability to charge their time for acting in these roles during estate administration. As many people will have experienced, the role of Executor can be an incredibly involved one and some estates can take many months, and in some cases many years, to administrate in full. Elaine Lightfoot looks at the issue of expenses.

# To charge or not?

Executors and Trustees are entitled to be reimbursed for their legitimate expenses incurred in dealing with an estate. The issue debated in the case *Da Silva v Heselton* (the estate of Gladys Dulcie Townsend) is whether an Executor, whose profession was not one relating to estate administration, is able to charge their time for acting as an Executor/Trustee given Mrs Townsend's Will contained a standard charging clause. One of Mrs Townsend's Executors, Mrs Heselton, had charged the estate a total of £43,350 to cover administration charges of £300 per month for renting out a property that formed part of the estate. The charges were raised over a period of 13 years.

Mrs Heselton, along with another original Executor, were both eventually replaced as representatives of the estate and the payment to Mrs Heselton of her fee was disputed. Mrs Heselton argued she was entitled to charge under the charging clause included in Mrs Townsend's original Will. The clause included in the Will was very much a standard

clause included in many Wills completed professionally.

The clause in question stated:

"My Trustees shall have the following powers in addition to their powers under the general law or under any other provision of this Will or any Codicil hereto....for any of my Trustees who shall be engaged in any profession or business to charge and be paid (in priority to all other dispositions herein) all usual professional and other fees and to retain any brokerage or commission for work or business introduced transacted or done or time spent by him [or] his firm in connection with the administration of my estate or the Trust powers or provisions of this Will or any Codicil hereto including work done or business outside the ordinary course of his profession and work or business which he could or should have done personally had he not been in any profession or business."

The Court's key concern was whether a Trustee engaged in a profession/business could charge for all work done/time spent in the estate administration

regardless of whether their work had any connection with their profession or business (the wider view) or whether such a person could only charge for services in the course of their profession or business (the narrower view).

The Court's decision was a unanimous one confirming the narrower view that "a Trustee or Executor can rely upon the charging clause in the Will to charge for work done or time spent in the administration of the estate only if that work falls within the scope of their profession or business in question; that is to say if it is work of a type which would attract or incur their usual professional fees." For example, a surveyor may charge for carrying out a valuation and a builder could charge for building work on an estate property but not for other work on the estate including time spent on locating assets, attending meetings etc. There can be no charge for work done or time spent on administration if it had nothing to do with the Executor's respective profession or business.

I am happy that there has been clarity on this

issue as it is a question raised frequently but I believe the decision may deter individuals from taking up their role as Executor and is an issue clients should consider carefully when making their Wills.

Where Executors and Beneficiaries are the same people, the inability of non-professional Executors to charge their time is less likely to be a contentious issue as any work carried out by such Executors will save money for themselves as Beneficiaries in the long run. That said, the role of Executor can be incredibly involved and in cases where the Executors are not Beneficiaries, they may be reluctant to undertake a great deal of administration work themselves given the time involved.

Careful consideration must be given when making a Will and it is often advisable for testators to discuss with their proposed Executors whether it will be a role they are willing to take up in the future. Ultimately, such Executors can instruct professionals to assist them with all aspects of estate administration.

**Partner Elaine Lightfoot heads our Private Client team.**



Elaine Lightfoot

Her areas of expertise include Wills, Trusts, Settlements, Inheritance Tax Planning, the Administration of Estates and Trusts of all sizes and complexities, together with Lasting Powers of Attorney and Court of Protection matters. Elaine also advises in respect of care home fees planning.

Elaine also handles work for a number of clients in Agriculture and Rural Affairs, guiding them on the protection of their wealth and the successful handing on of it to future generations. She is also active in the Charities field, advising a number of charities on their formation and operation.

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As the nation has come together in mourning the loss of the only Monarch many of us have ever known, I would like to pay my own tribute to her diligence, devotion, and service over a long and eventful lifetime.

# Time for reflection

The apocryphal curse "May you live in interesting times" has never seemed more appropriate to the circumstances in which we have all, and not least to our late Queen, found ourselves over the last two-and-a-half years.

She broadcast a message of hope during the darkest days of Covid and then suffered the heartbreak of losing her husband of more than 70 years and having to mourn alone at his funeral.

Every time I write my welcome, we seem to be facing another challenge, from Covid to Ukraine to the cost-



Peter and Kathryn McCormick meet the then Prince of Wales

of-living crisis, and we are not yet out of the woods.

Those of you who know me well will, however, realise that my view is that challenges always

present new opportunities. They force us to look at new ways of doing things, explore avenues we might otherwise ignore and collaborate to achieve success.

Succeeding in difficult times requires hard work, perseverance and determination and I wish you all the best of luck in riding the storm, while remembering Samuel Goldwyn's quote: "The harder I work, the luckier I get."

We are looking forward to rewarding some of that sort of grit and perseverance soon when we hold the first Yorkshire Young Achievers Awards since the start of the pandemic and, if you are in need of some uplifting and inspirational news, I urge you to book your table now. See page 5 for details.

We will continue to celebrate all the successes around us, from Leeds United FC and Harrogate Town, to the Theakstons Old Peculiar Crime Writing Festival and the Great Yorkshire Show, and the triumphs of our Yorkshire Young Achievers as we battle on.

It only remains to say, Long Live the King! Kathryn and I were lucky enough to be presented to King Charles III and the Queen Consort when they visited Harrogate in 2016.

They have a huge gap to fill but I am sure they will take on the challenge in the same spirit of service that the Queen embodied.

**Solicitor Brian Nuttney has been promoted to Senior Associate.**

## Step up for Brian

Brian is part of our thriving Crime and Fraud department and appears regularly in the Magistrates' Courts and police stations across North Yorkshire and further afield, representing clients across a wide range of criminal and motoring offences.

He is a qualified police station representative and holds Duty Solicitor status.

Head of the department, Partner Peter Minnikin, said: "Brian is an

important part of what is a very busy team – as illustrated by our recent appointments of two new lawyers – and his promotion is well deserved."

Brian has substantial experience preparing cases for the Crown Court, advising clients and instructing Counsel in a wide range of matters including serious sexual offences, including historic sex offences, violence, drugs and fraud.

Prior to his career in law, Brian was a successful journalist

and worked as deputy editor for a number of regional newspapers.

McCormicks is the only firm in Harrogate to be recognised for its Crime work in the latest edition of Chambers UK 2022.



Brian Nuttney

**Partner James Towler has been named Corporate Lawyer of the Year (Yorkshire) in the 2022 Acquisition International Legal Awards.**

## Recognition for James

James is the head of our Corporate and Commercial department and also won recognition in the most recent edition of the UK Legal 500, the leading guide to the legal profession.

Acquisition International is a monthly digital business magazine which was launched in

2010 and is circulated to 85,000 professionals.



James Towler



Falsifying information on a CV can lead to deep water.  
Head of Employment Iain Jenkins looks at one recent case.

# Making it up

Bringing in the police is a serious step. Employees can be dismissed where they have lied on their CV...



We are all prone to embellishment, exaggeration and hyperbole but a successful applicant for a CEO role took this way too far when fabricating a CV.

Perhaps having watched Tom Hanks and Leonardo DiCaprio in the film *Catch Me If You Can*, Mr Jon Andrewes decided to apply for a job in 2004 as CEO of a hospice. He did not have the relevant experience and qualifications but created a fictitious CV. He did have two qualifications (a diploma and teaching certificate) but claimed to have four degrees and post-graduate qualifications and to be in the process of a PhD, he was later referred to as Dr Andrewes with all

the hospice literature being changed. He also fabricated his managerial experience to make it sound more impressive than it was.

Surprisingly he appeared to be a success in the role and in 2015, using the same tactics, he was appointed to two roles as a director and then Chair of two NHS Trusts.

His background and qualifications were then investigated presumably because the employer had become suspicious and the police were called when the reality of the situation became clear.

Mr Andrewes was charged under the Theft Act and the Fraud Act and sentenced to imprisonment. The Court was asked to make a confiscation

order (under the Proceeds of Crime Act) to recover earnings obtained by him in the roles he had undertaken, which amounted to over £600,000. He was ordered to repay some £97,000 being the amount he had available.

Mr Andrewes appealed on the basis that the award was disproportionate and did not reflect the value of the work for his employers. The Court of Appeal agreed and set aside the award.

The Prosecution appealed to the Supreme Court arguing that it was entitled to take all of the earnings. Again, Mr Andrewes argued that value had been given but the Supreme Court rejected both approaches. In its

Iain Jenkins is Head of Employment.

He advises on all areas of contentious and non-contentious employment matters including:

- Settlement agreements and negotiated exits
- Directors and boardroom disputes
- Claims for unfair/wrongful dismissal, discrimination and whistleblowing in the Employment Tribunal
- Drafting and negotiating contracts of employment and service agreements
- Advising on grievance and disciplinary matters and the termination of employment
- TUPE advice and advising on employment aspects of corporate and property transactions
- Advising on the implementation and enforcement of restrictive covenants and confidentiality obligations
- Trade union issues, redundancy and restructuring
- Partnership matters and disputes

Iain has advised businesses across a range of sectors including technology, manufacturing, financial services, recruitment, transport and logistics and health and social care.

Iain is a CEDR accredited mediator and an accredited workplace mediator. He can also be instructed as an independent investigator in relation to employment issues. He also advises on GDPR and Data Protection matters in employment and commercial work, including compliance and data breaches.



Iain Jenkins

view the correct way forward was to work out the difference between Mr Andrewes' actual earnings and the lower earnings he would have obtained had he not used fraud to obtain his employment. A confiscation order could be made for the excess so that no "profit" could be made from the fraud, it being recognised that the employer had received some value.

The obvious lesson is that employers should check carefully the qualifications and experience of candidates, particularly those being appointed to a senior role. An inspection of certificates may not be enough and background research with institutions should be done among other

checks. You never know who is out there!

Bringing in the police is a serious step. Employees can be dismissed where they have lied on their CV, although if they have more than two years of continuous service then a process should be followed. An employer should notify the police if the employee has committed a criminal offence by working in a role they are not qualified for, however, there is no obligation in other cases and the approach may depend on what the employee has lied about. Perhaps enhancing a degree qualification might be less serious than the complete fabrication indulged in by Mr Andrewes.

**McCormicks has a new Practice Manager.**

**Sonia Jones has been promoted to reflect her sterling work in supporting all activities across the practice, including management, human resources and the smooth running of day-to-day activities.**

# New Practice Manager

Senior Partner Peter McCormick said: "Sonia joined us in 2007 and has become more and more involved in the management of the firm, especially since Kathryn McCormick stood back from the practice in 2019, so it was a logical step to reward her for all her hard work with this promotion."

Since joining the firm, Sonia has become first point of contact for many clients. She is key to the firm's effective internal communications and also plays a part in external marketing initiatives, such as McCormicks events and this newsletter.

She also assists with the practice's charitable work, most notably the firm's flagship charity, the Yorkshire Young Achievers Foundation. She became a Trustee of the Foundation in 2012, having previously supported the charity as Secretary to the Trustees, and continues to fulfil both duties.

She deals with regulatory compliance as well as the organisation and marketing of events, such as the Yorkshire Young Achievers Awards Gala Dinner every November.



Practice Manager Sonia Jones

**McCormicks is delighted to have welcomed two new faces to the team this autumn.**

## Welcoming new faces

Alex Harrison joins as a Solicitor working in the Commercial Litigation team.

He brings experience in a wide range of Commercial Litigation matters, including disputes in contract, debt recovery, property, IP and construction.

Alex also has experience in professional negligence claims, harassment, defamation and insolvency (individual and corporate) matters.

Alex prides himself upon giving added value to clients by way of a transparent and holistic approach to balancing

and achieving objectives. He always attempts to understand the bigger picture as soon as he is instructed and keep this in mind throughout the matter. This is to ensure he offers pragmatic advice, which focuses on the key points and anticipates potential issues.



Alex Harrison

Alex's advice always includes consideration of whether alternative dispute resolution is suitable and he has experience of assisting clients through mediation.



Hayley Firth

Also new to the team is Hayley Firth who joins as Accounts Manager. She will work with Accounts Assistant Hollie Jackson to ensure the smooth running of the accounts department.

**The excitement is mounting for the return of the Yorkshire Young Achievers Awards after a two-year absence because of the Covid pandemic.**

## Getting Set

The Awards dinner will be held on Thursday 17 November at the Centenary Pavilion at Leeds United's Elland Road ground and is the main fundraiser for the Yorkshire Young Achievers Foundation which makes grants to young people and organisations supporting

them across the region.

We can promise some exciting winners and a wonderful evening. To book a place at £65 or a table of ten at £600, simply visit Gala Dinner - Yorkshire Young Achievers Foundation.

We are also lucky enough to have the support of a superb set

of sponsors again, with the return of Ridding Park, Leeds United and Nabarro McAllister and new support from CHR Estates, Martin Gerrard, Jamboree Entertainment Ltd, Harrogate Town AFC and GMI Property.

**We hope to see you there!**



CHR ESTATES

GMI Property



RUDDING PARK  
— HARROGATE —



**Martin Gerrard**



Nabarro McAllister & Co.  
Chartered Surveyors

**McCormicks Solicitors has acted in a successful deal to facilitate a new minority shareholding in Norwich City Football Club.**

# Sealing the deal

The deal resulted in a group led by Mark Attanasio successfully acquiring shares from a variety of holders, including long-serving club director Michael Foulger's holding.

Our team, led by Head of Corporate and Commercial, Partner James Towler, acted on behalf of both the club and current joint majority shareholders Delia Smith and Michael Wynn Jones.

James said: "It has been a pleasure to work with the club and its majority shareholders on this transaction and I am delighted by the successful outcome."

In an email to James, Norwich City's Finance Director Anthony Richens said: "Thank you again for all your work over the past

few months, it's been fantastic to work with you all.

"Hopefully, this is the start of a successful period both on and off the pitch!"

Delia Smith and Michael Wynn Jones said: "We're really excited about the future. We care passionately about the football club and are confident that this will be right for all involved.

"Mark and his team come to us with amazing credentials. Their vision and way of working is very much aligned in how we work at our football club. They care about their community and supporters and that's exactly how we work.

"Our club is being run excellently, so we don't expect any big changes.

We look forward to collaborating with Mark and his team as they learn more about our club and we gain insights from their relevant expertise."

Attanasio is an American businessman and the chairman and principal owner of the Milwaukee Brewers Major League Baseball team. Over the course of Attanasio's 17-year tenure, the Brewers have been one of baseball's most competitive teams.



Partner James Towler who led the deal



**The Harrogate International Festivals team scored another winner with the return of the Theakstons Old Peculier Crime Writing Festival this summer.**

## Cracking crime

The Festival, which is supported by McCormicks, always attracts some of the top names in crime writing and this year was no exception with authors including Paula Hawkins, Tess Gerritsen, Val McDermid, John Connolly, Kathy Reichs, Lynda La Plante and Charlie Higson among the line-up.

The hotly-contested Crime Novel of the Year award went to Mick Herron with Slough House, while the Outstanding Contribution to Crime Fiction award went to Michael Connelly.

There was triumph, too, for the McCormicks table at the Murder Mystery dinner, with the team taking the top prize after correctly spotting the guilty party.

The practice sponsored the "Too Good to Write Off?" session, chaired by SJ Parris, which involved Bonnie MacBird, who has resurrected Sherlock Holmes, Sophie Hannah who has written four new acclaimed Hercule Poirot mysteries, Elly Griffiths, who has created 12 new stories for Jane Marple and Tom Harper, who worked with Wilbur Smith and has now taken on his mantle.



Michael Connelly receives the Outstanding Contribution award from Simon Theakston of headline sponsors Theakstons Old Peculier. Author Val McDermid spoke about his tremendous contribution to the genre over the last 30 years.

## Charity Cheer

Partner and Head of the Corporate and Commercial department James Towler was among 140 golfers who took part in a major fundraising event for Harrogate Homeless Project.

The event at Ridding Park featured a full day of golf before a gala dinner that included a raffle and auction and raised a grand total of £18,594.45.

Harrogate Homeless Charity provides vital services to adults experiencing homelessness in the Harrogate district, including counselling and a safe place to stay. McCormicks has supported the charity for a number of years and we are delighted by the success of this event.



Mark Fowler is a Solicitor working in our Criminal department and specialises in serious fraud, particularly tax fraud, and the Proceeds of Crime work connected to such cases.

# Out of hours

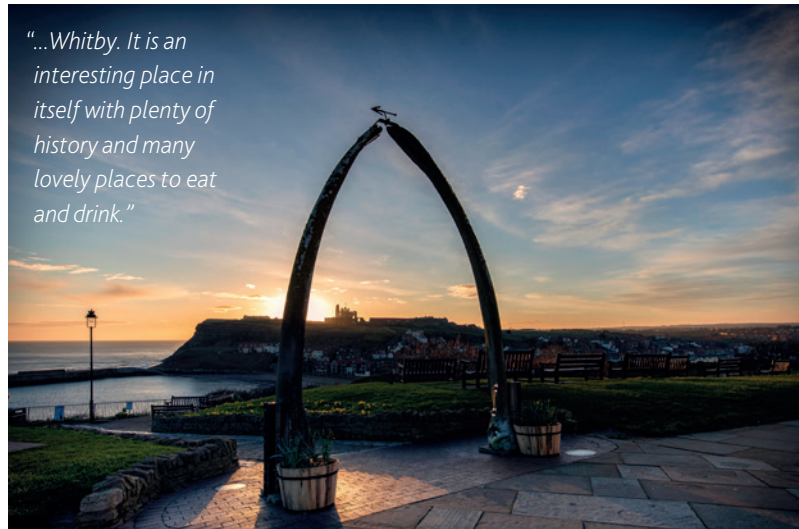
When he is not at work he uses similar levels of judgement to his professional work to indulge his need for speed!

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

A true "dream" job would have been as a professional rally driver. Whilst at university, a friend and I discussed preparing a car and going rallying. This would have been in about 1980. It did not happen and the friend then left Sheffield to work in South Manchester. We did however keep in touch and used to go to watch the RAC rally most years. In late 1999, he contacted me and asked if I was still interested in rallying. My response was immediately to say "yes". We started rallying in the year 2000. Bill dropped out of the picture in 2004 but I have continued. I have always wondered how far I might have climbed had I started rallying at the age of 20 rather than 40.

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

Following on from my answer above, it would obviously have been the World Rally Championship, the ultimate pinnacle in the sport. Had I been successful in the sport, it would probably have been in my late 20s or early 30s, so in the late 1980s and early 1990s and therefore before the late great Colin McRae reached the pinnacle of this career. With a



*"...Whitby. It is an interesting place in itself with plenty of history and many lovely places to eat and drink."*

British World champion on the scene earlier the sport might have had a much greater impact.

**Where is your favourite place in Yorkshire and why?**  
Probably Whitby. It is an interesting place in itself with plenty of history and many lovely places to eat and drink. It has a steam railway, the North York Moors Railway, through to Pickering. There are some excellent rally stages close to hand on the North York Moors. The coastline is dramatic and excellent for walking.

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

A brandied peppered sirloin steak, medium rare, with chips, mushrooms and sweetcorn and a blue cheese sauce on the side, accompanied by a glass or two of St Emilion.

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

In view of the area of work that I specialise in, probably never to Trust a client!

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

If they can be considered a purchase, the first thing I would do would be to pay off both of my children's mortgages. Secondly, I would pay off my own mortgages. Thirdly, I would buy myself a new car, nothing extravagant but powerful and sporty enough to have fun. It would definitely be a petrol engine. My fourth purchase would be a new rally car so long as there was enough money available to run it in competition. My fifth purchase, dependent upon there being a very significant

sum of money, would be a shipyard. I have long had an interest in shipping and I would wish to re-establish Great Britain in world shipbuilding. Hopefully the yard could build ships to its own

order and then establish a new shipping line based here in the UK.

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

Pop down to my local micropub, the Itchy Pig, for a couple of pints of decent real ale. It has been running since August 2016 and has survived the pandemic. There is always someone to chat to and the subject will not be the law.

## What is your favourite season of the year and why?

Definitely Spring. Not too hot and not too cold. Everything is coming back to life after the winter.

Colours start to appear. A new awakening every year.

Solicitor Mark Fowler ready for action.



# QUEEN ELIZABETH II

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## OUR EXPERTISE

McCormicks offers the full portfolio of legal services to all forms of organisation including businesses, charities and sporting bodies, together with private individuals. The firm offers expertise in all areas of corporate and commercial work whilst maintaining a commitment to the personal client in areas such as rural property, tax, Trusts, probate, family matters and crime.



### Charities & Community

- Charities
- Not For Profit

### Corporate & Commercial

- Acquisitions and Disposals
- Banking and Finance
- Commercial Agreements
- Competition and EU Law
- Corporate Crime, Fraud and Risk
- IT and Data Protection

- Insolvency and Bankruptcy
- Intellectual Property
- Partnership and Company Law
- Regulatory and Disciplinary

### Crime

- General Crime
- Corporate Crime, Fraud and Risk
- Dispute Resolution and Litigation
- Commercial Disputes
- Mediation and Arbitration
- Partner/Shareholder Disputes
- Property and Construction
- Reputation Management

### Employment

### Family & Matrimonial

- Children
- Matrimonial

### Insolvency & Bankruptcy

### Mediation & Arbitration

### Property

- Agriculture and Estates
- Commercial Property
- Development and Regeneration

### Sport, Media & Entertainment

- Employment
- IT and Data Protection

- Insolvency and Bankruptcy
- Intellectual Property
- Media and Entertainment
- Mediation and Arbitration
- Regulatory and Disciplinary
- Reputation Management
- Sponsorship
- Sport

### Tax, Trusts, Wills & Estates

- Agriculture & Estates
- Care of the Elderly
- Tax and Trusts Disputes
- Trust and Tax Planning
- Wills and Probate

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