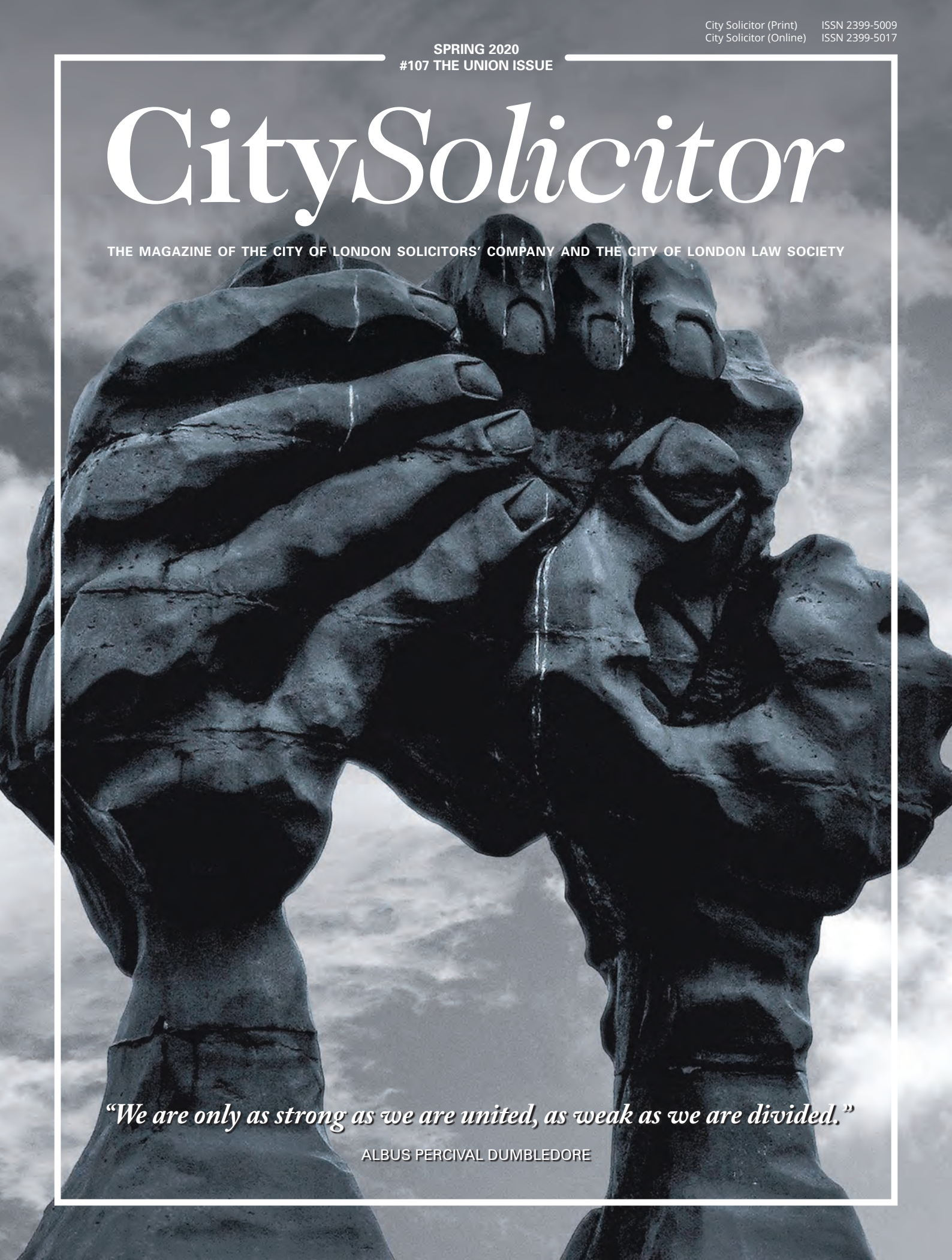
City Solicitor (Print) ISSN 2399-5009
City Solicitor (Online) ISSN 2399-5017

SPRING 2020
#107 THE UNION ISSUE

CitySolicitor

THE MAGAZINE OF THE CITY OF LONDON SOLICITORS' COMPANY AND THE CITY OF LONDON LAW SOCIETY



"We are only as strong as we are united, as weak as we are divided."

ALBUS PERCIVAL DUMBLEDORE

- INTERACTIVE
- PINPOINT
- TYPE
- PAYROLL
- PRECISION
- BOOKKEEPING

Pick 'n' mix Quill's software & services

legal accounts software | practice & document management software
smartphone apps | form packs | court bundling | outsourced cashiering
outsourced typing | outsourced payroll | plus much much more!

0161 236 2910 info@quill.co.uk www.quill.co.uk/picknmix

The City of London Solicitors' Company

The City of London Solicitors' Company Court of Assistants

Master
JOHN WOTTON

Senior Warden
ROBERT BELL

Junior Warden
TONY KING

Stewards
EDMUND PARKER
SARAH DE GAY

Full Assistants
Past Master ALDERMAN VINCENT KEAVENY
Past Master DAME FIONA WOOLF, D.B.E, D.L.
Past Master NICHOLAS HUGHES
Past Master ALDERMAN DAVID GRAVES
Past Master RUPERT JONES
DAME JANET GAYMER, D.B.E., Q.C. (Hon.)
JOHN ABRAMSON
MARY-ANN WRIGHT
COLIN PASSMORE
VIRGINIA CANNON
EDWARD BIBKO
GARETH LEDSHAM

Additional Assistants
STEPHEN DENYER
ELEANOR SHANKS

Chair of the City of London Law Society
EDWARD SPARROW

Ex-officio assistants
Past Masters
SIR MAX WILLIAMS
KEITH HINDE, O.B.E., T.D.
JOHN YOUNG
DAVID BIDDLE
STUART BEARE
WILLIAM KING
RONNIE FOX
MICHAEL MATHEWS
MICHAEL CASSIDY, C.B.E., Dep.
BRIAN GREENWOOD
ALASTAIR COLLETT
NIGEL BAMPING
KAREN RICHARDSON
ALEXANDRA MARKS, C.B.E.
ALDERMAN SIR DAVID WOOTTON
JOHN WHITE, T.D.
MARTIN ROBERTS

Clerk
LINZI JAMES

The City of London Law Society

The City of London Law Society

President
*THE MASTER

Chair
EDWARD SPARROW

Chief Executive
DAVID HOBART

Treasurer
*TONY KING

Secretary
LINZI JAMES

Administrator
ELIZABETH THOMAS

Legal Policy Analyst
KEVIN HART

Committee
CHAIR
PRESIDENT
ELISABETH BALTAY
†PAUL BARNES
RUPERT BOSWALL
SARAH CLOVER
†SALOME COKER
†ED CROSSE
†SIMON DAVIS
†CHRISTOPHER DIGBY-BELL
NICHOLAS HUTTON
JULIE NORRIS
BEN PERRY
PAMELA THOMPSON
NILUFER VON BISMARCK

* Ex-officio, appointed by the CLSC
† Ex-officio as members of the Council of The Law Society

Keep up to date by following us on social media:

- City of London Solicitors' Company @CLSC2 and City of London Law Society @TheCLLS
- Linzi James City of London Solicitors Company
- City of London Solicitors Company
- City of London Solicitors Company

Contact Us
4 College Hill, London EC4R 2RB
Tel: 020 7329 2173
Fax: 020 7329 2190
mail@citysolicitors.org.uk
www.citysolicitors.org.uk
Twitter @TheCLLS and @CLSC2

Editor
Philip Henson (ebl miller rosenfalck)

Editorial Board
Robert Bell (Bryan Cave Leighton Paisner LLP), Chair
Philip Henson (ebl miller rosenfalck)
David Hobart (CLLS)
Joel Leigh (Howard Kennedy LLP)
Katherine Ramo (CMS)
Justine Sacarello (Lloyds Banking Group)
Elizabeth Thomas (CLLS)

Journalist
Maroulla Paul

Published on behalf of
The City of London Solicitors' Company and
The City of London Law Society

by
LANSDOWNE PUBLISHING PARTNERSHIP LIMITED

Lansdowne Publishing Partnership Ltd
11 School House, 2nd Avenue
Trafford Park Village
Manchester M17 1DZ.
T: 0161 872 6667
W: www.lansdownepublishing.com
E: info@lansdownepublishing.com

Printed by Buxton Press

Lauren is no Van Gogh...

...but when it comes to legal indemnities, she's capable of masterpieces.

With years of experience handling large commercial enquiries, Lauren has these down to a fine art. And while she doesn't know her Picasso from her elbow, when faced with challenges such as access, restrictive covenant, or adverse possession issues, she's equipped with the perfect palette to create the ideal legal indemnity solution.

When you're next faced with a challenging legal indemnity enquiry, count on Lauren to draw on her expertise.
Call her on **01603 617617** or email **enquiries@cli.co.uk**.

Countrywide Legal Indemnities
3 St James Court, Whitefriars, Norwich NR3 1RJ
DX 5261 Norwich

Tel: 01603 617617 Fax: 01603 622933
Email: enquiries@cli.co.uk
cli.co.uk

Countrywide LEGAL INDEMNITIES

what's happening in the (legal) world

what's happening out of the office

what happens in the other side of a solicitor's mind

editor's letter

WELCOME TO OUR FIRST ISSUE OF THE NEW YEAR AND THE NEW DECADE.

Events of recent years have caused deep divisions amongst us so it feels right that now, with a new chapter ahead, we look towards reparation and to unity. Whether that will be possible or whether new events will cause even further separation only time will tell but we, at City Solicitor, felt it fitting to devote this issue to the theme, UNION.

Our own union in the UK, at the moment, seems under threat. We look at the issues facing England, Scotland, Northern Ireland and Wales both within their own countries as well as their relationship with each other as a bigger entity. The maxim has always been that we can achieve more by working together than we can as individuals but this is not a mantra that our world seems to be adopting right now.

Interestingly, what is happening politically and socially with splintering and divisions seems to be the opposite trend of what we are seeing in our own profession where more and more firms are merging.

As ever, I would like to thank all the people who have contributed their time to make this edition possible.

We would love to hear your opinions on UNION with regards to both the legal profession and the world generally as, indeed, we welcome any feedback on the content of City Solicitor.

Philip Henson
Editor
mail@citysolicitors.org.uk

"We look at the issues facing England, Scotland, Northern Ireland and Wales both within their own countries as well as their relationship with each other as a bigger entity."

ARE WE STANDING UNITED?

Or are we about to

"Small is beautiful." "Big is best."
"Work together." "Go your own way."

In business, politics and life we are constantly witnessing comings together, then breakings away. Like every other fashion the "big vs small" argument is subject to perennial change.

As we finally leave the EU, where does that leave the UK as a whole? Is Brexit also the beginning of the end for the United Kingdom?

Despite Boris Johnson's refusal, the SNP is clamouring for a second Referendum, seemingly wanting to see Scotland as an independent country.

Northern Ireland is the only place in the UK with an EU land border, currently a heavily reduced land border with the Republic, but Brexit threatens that.

Wales believes it should have a separate legal jurisdiction. Despite the current Justice Minister saying this is not on the cards, It seems inevitable that sometime in the future it will happen. Could that then lead to further separation?

Even within England there is division between north and south, anger that London gets preferential treatment over other places. There is a rising momentum demanding a shift of power away from the capital.

Tribalism is pervading through every aspect of human nature; we seem to feel the desire to belong to one thing and, at best, be disdainful of and, at worst, hate those who belong to another. History has shown us this in relation to race and religion – but even which football team we support, or which side of a river we live on can cause conflict.

It seems it is no longer enough to be British – we desire to be more strongly Welsh, Scottish, English or Irish – and even within those definitions, we want to distinguish and drill down further.

"To hold the United Kingdom together will require all the resources of statesmanship."

Vernon Bogdanor is one of the UK's foremost constitutional experts and Professor of Government at Kings College, London.

"At the beginning of the 21st century, the future of the United Kingdom seemed assured. But, after nearly two decades of the new century, it has become a question mark. The current borders of the United Kingdom date only from 1922. Brexit emphasises how contingent they are. Indeed, Brexit could threaten the Union both in Northern Ireland and in Scotland, both of which voted Remain in 2016.

The EU was, in the words of the EU Select Committee of the House of Lords, 'in effect, part of the glue holding the United Kingdom together since 1997'. EU law ensured consistency of legal and regulatory standards in all parts of the United Kingdom, including devolved policy areas such as agricultural and fisheries. There was, therefore, a guaranteed UK-wide single market, part of the larger EU internal market. After Brexit, however, it will be for the British government and not the EU to uphold its single market. But the British government's interpretation of what that requires may well not be the same as that of the devolved bodies. The glue could become unstuck both in Northern Ireland, which has, for the first time in its history, elected more nationalist than unionist MPs, and in Scotland.

In September 2018, Theresa May's government promised to launch a 'devolution framework' for England to provide 'clarity – on what devolution means for different administrations so all authorities operate in a common framework'. That framework document has not yet appeared. As a result devolution in England and in the other parts of the United Kingdom remains on an ad hoc and unplanned basis, subject to the whims of rapidly changing ministerial incumbents. So we find ourselves, in the words of the late Lord Bingham, regarded by many as the greatest judge of his generation, 'constitutionally speaking, in a trackless desert without any map or compass'. After Brexit, the need for such a 'map or compass' becomes even more compelling so as to yield clear ground rules for our revised territorial arrangements. We need, therefore, as a report by the Bingham Centre for the Rule of Law pointed out in 2015, a 'Charter of Union which would lay down the underlying principles of the UK's territorial constitution and of devolution within it'. The Charter would provide a road-map to the workings of government and the territorial distribution of power appropriate to a multi-national state. It would lay down the rights and duties of Westminster and the devolved bodies, and, although drawn up with the consent of the devolved legislatures, it would establish a principled framework for the United Kingdom as a whole. It would be a Charter of Union laying out what was needed to retain an economic and social union in the UK as well as a constitutional and political one. The Charter would be enacted by Westminster and could indeed prove a first step towards a codified constitution, although, obviously, such a constitution must, at the present time, appear a distant aspiration.

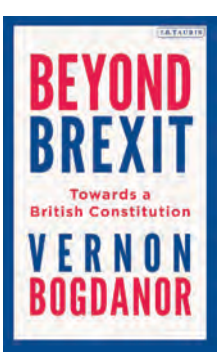
The accumulation of unresolved constitutional problems in Britain's territorial constitution, aggravated as they are by Brexit, means that post-Brexit Britain is approaching a constitutional crossroads.

To hold the United Kingdom together while transforming our over-centralised system of government will require all the resources of statesmanship of which Boris Johnson's government is capable."

How will all this play out? Could Boris Johnson find himself the last ever Prime Minister of the United Kingdom? Or, will we somehow and somewhere find the glue to put it all back together?

City Solicitor would like to thank Vernon Bogdanor and article.com for their invaluable input for our articles on the UK, Scotland, England and Northern Ireland.

Readers may also be interested in Bogdanor's latest book, Beyond Brexit – Towards A British Constitution.



LONDON: the golden goose or the greedy gander?

Breaking away from the EU has not led to the "united" kingdom we had hoped for. Not only are there problems between England and the rest of the UK, but divisions are rife within England too. Apart from the obvious split between Brexiteers and Remainers, there is an increasing divide between London and the rest of the country.

"The United Kingdom is now firmly on its way out of its half-century relationship with European institutions."

Think Tank "UK In A Changing Europe" had this to say:

"While the UK suffers some of the largest interregional inequalities in the developed world, these might be exacerbated if, as some economists expect, the more prosperous parts of the country prove to be less affected by and/or more resilient to, any economic impacts of Brexit."

Former Chancellor Sajid Javid promised to "unleash Britain's potential – uniting our great country, opening a new chapter for our economy and ushering in a decade of renewal".

Plans to address imbalances between London and the rest include redistributing resources away from the "southern powerhouse" to the "midlands engine" and the "powerhouse of the north."

But whilst this may please anyone north of Watford, London is not taking this well with both the Mayor, Sadiq Khan and the Chair of the Business Lobby Group, London First, Paul Dreschler warning the government against this course of action.

London contributes £39.9 billion in tax revenue every year to the national balance sheet and in the financial year ending March 31 2019 was top of only 3 areas to produce a surplus rather than a deficit. Therefore, could reducing inequality be an economic disaster?

Chief Special Adviser to Boris Johnson, Dominic Cummings thinks not. He has adopted the paper, "A Resurgence of the Regions", by Richard Jones, a Professor at the University of Sheffield, as the agenda "about how the new Government could really change our economy for the better, making it more productive and fairer".

Alexander Jan, is Chief Economist with Arup, the leading staff-owned built environment consultancy.

"Nearly four years on from the Brexit referendum result of 2016, the United Kingdom is now firmly on its way out of its half-century relationship with European institutions. Polling experts tell us that at least one of the drivers for Brexit was that voters felt frustration at the remoteness of decision-making affecting their everyday lives. Whether Brussels was really to blame for this is a moot point. What we do know is that by western democratic standards, the UK – and specifically England – is almost uniquely dominated by its governing centre. And as things stand, if "taking back control" means more power for Whitehall and no more power for town halls, there must surely be a limited prospect of voters feeling any more connected to their democratic institutions in five years' time than they did four years ago.

In some ways, it is true that Scotland, Wales and Northern Ireland enjoy some important devolved powers when compared to other OECD countries. But in England, apart from a hotch-potch of devo-deals, combined authorities – plus of course police and crime commissioners a devolution deficit persists. Over the last few decades, England's citizens have seen very little reform. Worse still, austerity has made it even more difficult for local authorities to adapt to changes in their areas for things like school places, day care, transport, policing or housing. This in turn has led to the corrosion of trust in government as an institution.

This process of centralising control is deep rooted. It has its origins in the 1930s and 40s when nationalisation of public services took over from municipal provision. In some ways this was understandable – it was a response to patchy provision of education and health and a desire to replace the postcode lottery with universal standards. But by the 1980s and early 1990s the "Whitehall knows best" doctrine – practised by successive governments – had led to the emaciation of local government. Central control of business rates, the use of rate capping, abolition of the metropolitan counties and

the introduction of the poll tax all but removed the ability of city halls to respond flexibly and rapidly to local changing needs and economic circumstances.

So what should the new government do about any of this? To rebuild trust in politicians, ministers firstly need to embark on a structured devolution programme which leads to a lasting, clear and radical shift in how England is governed (and how public services are paid for). The big prize is to reconnect citizens with more powerful, locally elected representatives. This would start us on the road of restoring faith in Government institutions in general.

Secondly, Whitehall needs to allow local government the freedom to come up with much more diverse solutions to the problems we are collectively trying to tackle. It surely cannot be that the housing needs of Grimsby are somehow solved by the same response as that for Greenwich, or that transport in Leeds should be treated the same as Lowestoft. Greater freedom for councils would enable them to try out new ideas and learn from each other much more.

Thirdly, and perhaps most importantly, we need to devolve much more in the way of taxation. As things stand, England's local authorities have very limited control over their own taxes. They can neither set nor retain the lion's share of the property imposts that are collected by them; four fifths are controlled by central government. (The Mayor of New York has seven times the level of fiscal autonomy as his London counterpart. In Tokyo the figure is even higher). As a result in England, the linkage between economic growth and local taxes is weak. By any measure, this makes it harder for councils to convince voters to support development that would otherwise grow the local tax base. Shifting public opinion on that front could produce a more benign, pro-development economic climate generating public and private investment in skills, jobs and competitiveness.

For anyone concerned with the reasons behind 'vote leave', tackling social justice or improving public sector decision-making, the case for English devolution is compelling. The jumbled, and hard to navigate, series of ad hoc deals for some cities and city regions needs to be reformed into something more transparent, coherent and long term. A council that is able to explain to its voters how development will lead to better schools, social care or transport services is surely more likely to succeed. And one that raises much more from a localised tax base will surely stimulate greater scrutiny and interest from its residents and businesses.

In a more devolved regime, cities in say the Northern Powerhouse, would be able to make the case for pro-business policies confident in the knowledge that they could reinvest locally to the benefit of their workers and residents. Some councils may choose to cut their business rates to attract investment. That may lead to an element of tax competition between authorities as has been seen in the United States. But the statutory requirement for councils in Britain to balance their books means that reckless policies

are unlikely to be pursued. England's local authorities have never defaulted on their debt obligations.

In surveys on trust in the UK and elsewhere, research shows local politicians consistently outperform those from central government. It follows that stronger authorities can be key to rebuilding faith in British governmental institutions. But to do that, they need to be free to innovate, raise revenues, invest and test new ways of doing things. With more autonomy they could help to tackle many of the long-standing challenges that voters are signalling they want to be addressed. They might also be able to save Whitehall and its politicians from future calls for radical reform that might herald the end of yet another union."

Vernon Bogdanor believes devolution is needed.

"In his poem, The Secret People, G.K. Chesterton wrote, `Smile at us, pay us, pass us, but do not quite forget; for we are the people of England that never have spoken yet'. But it is difficult for the people of England to speak when England has no constitutional status or voice. For England, by far the largest part of the United Kingdom, is the anomaly in the devolution settlement, the only part of the United Kingdom not to enjoy a representative devolved government and legislature. But devolution in England is badly needed to resolve the imbalance between London and the rest of the country. The fundamental case for it is the stimulus it gives to local patriotism, which can lead to real improvements in public services. In a decentralised system of government, each unit strives to ensure that its performance is better than that of its competitors, and such competition is likely to raise public service standards. A centralised system, by contrast, institutionalises grumbling. If those who run

"Devolution in England is badly needed to resolve the imbalance between London and the rest of the country."

"Boris Johnson has been the first politician since Joseph Chamberlain in the 19th century to use a mayoralty as a springboard for national leadership."

the National Health Service declare that its standards are satisfactory, central government will be tempted to respond that in that case it does not need extra resources. Trumpeting success in a centralised service would be letting the side down. The emphasis is always on deficiencies. That cannot be good for morale or pride in performance.

An English Parliament, situated perhaps in Wolverhampton or Newcastle, would hardly stimulate local patriotism, for it would be as remote as Westminster, which would become a mere debating society for foreign affairs and economics. And it would lead to a seriously unbalanced quasi-federation. There is no federal system in the world in which one of the units represents over 80% of the population. The nearest equivalent is Canada where 39% of the population live in Ontario. Federal systems in which the largest unit dominates tend to fall apart, as the history of the former Soviet Union, dominated by Russia, the former Czechoslovakia, dominated by the Czechs, and the former Yugoslavia, dominated by Serbia, show. Symmetrical federalism with an English Parliament is, therefore, not a practical proposition.

Nor is regional devolution. In 2004, voters in the north east, thought to be the region most sympathetic to devolution, rejected it by four to one in a referendum. It is doubtful if opinion has altered very much since then. In England, by contrast with many countries on the Continent and by contrast with federal states such as the United States and Canada, there is little regional feeling. If one asked someone in Bristol or in Canterbury which region they belong to, they would probably respond with a blank stare. In England, the regions are ghosts.

Therefore the only sensible path to devolution in England is to build on existing institutions such as local authorities. In 2014, George Osborne, the first Chancellor to represent a northern constituency since Denis Healey in the 1970s, inaugurated the Northern Powerhouse, since extended. It now provides for devolution to 10 city regions, 8 of which are led by directly elected Mayors. These city regions represent around 7 million people; and, if one includes the London Mayoralty and the local authority Mayors, around one-third of the population of England now live under Mayoral regimes. The powers of the various authorities differ from area to area, but in general the metro Mayors are responsible for infrastructure issues crossing boundaries such as transport and strategic planning, while the combined authorities are responsible for local skills and employment. Greater Manchester has in addition powers to integrate health and social care, a power which could well be extended to the other regions.

The most important power enjoyed by the new Mayors is not, however, on the statute book at all. It is the power to act as spokespersons for their areas even over matters for which they have no statutory responsibility. With an electoral mandate behind him or her, a Mayor can mobilise public opinion and speak for local electors, as the traditional council leader could not, providing a clear focus of accountability for voters, personalising local government and so helping to regenerate it. For one of the reasons why local government has been so little valued in Britain and found itself unable to resist centralisation is that there has been so sharp a separation between local and national political roles, with the local role being seen as distinctly subordinate. The metro-Mayors may well alter that perception.

In Britain, before Boris Johnson, only John Major and Theresa May of postwar prime ministers had executive experience in local government. Boris Johnson has been the first politician since Joseph Chamberlain in the 19th century to use a mayoralty as a springboard for national leadership. His success may well be an augury for the future. The metro-mayors might provide an alternative route for political leaders by making the control of territory rather than backbench and ministerial experience the basis for political power".

So, is devolution of power away from London and to the rest of England the way to unite this country? Or is devolution a dirty word that will bring with it not only even more division but also economic destruction? Leaving the EU has not left us as one United Kingdom, or one united country even. The cracks are deep. It will take a lot to fix.

SCOTLAND.
a part of...
or apart from?

If a week is a long time in politics, then six years must be a lifetime. *It was six years ago that Scotland held an Independence Referendum where the country was asked whether it wanted to become independent from the rest of the UK. 55% per cent of the votes said no, they wanted to remain and so that was that as this was always proclaimed as a once in a generation vote.*

But that was not that at all as, in 2016, the Brexit Referendum happened and whilst across the UK, 52% per cent voted Leave, 62% of voters in Scotland backed Remain.

As a result, the SNP felt a second independence vote in Scotland (indyref2) could be justified as Scotland was in effect being forced out of the EU against its will. In the December 2019 election, this opinion seems to have been supported by the Scottish public as the SNP won 48 of the 59 seats.

In January of this year the SNP leader, Nicola Sturgeon, had her request for a second referendum formally rejected by the UK government. Sturgeon saw this as a Tory attempt to "deny democracy" and insisted that "Scotland will have the right to choose."

Bolstered by the support of Unison, Scotland's largest trade union, who declared themselves in favour of the shift of power from Westminster to Holyrood, the First Minister outlined her proposals for a constitutional convention in an attempt to build further momentum. At the end of January a vote in support of a second referendum to be held this year was passed by the Scottish government. A poll by YouGov showed majority support for independence at 51% with a further poll by Survation showing that 61% believe that it should be the Scottish, not British, Parliament that determines the timing of a new referendum.

"Brexit exposes the conflict between the Westminster view of the sovereignty of Parliament and the Holyrood view of the sovereignty of the Scottish people."

SNP Depute Leader Keith Brown MSP said:

"Scotland voted overwhelmingly to reject Brexit but we have been dragged out of the EU against our will by a Tory government with no mandate here. The people of Scotland must have a choice over our future – so we can remain at the heart of Europe as an equal and independent country.

Unison, Scotland's biggest trade union, is the latest respected body to support a transfer of powers so the Scottish Parliament can hold a fresh referendum at a time of its choosing. The democratic right of the people of Scotland to determine our own future cannot be ignored by Westminster."

Donald Tusk in a BBC interview with Andrew Marr made it clear that any requests from Scotland to rejoin the EU would be welcomed "enthusiastically".

Vernon Bogdanor says:

"Whilst Boris Johnson's Brexit deal makes special provision for Northern Ireland, no such special provision is made for Scotland, which is being extruded from the European Union against the wishes of its voters. The Scottish government, moreover, has no statutory role in negotiations with the EU nor in the repatriation of powers from Brussels which is a consequence of Brexit.

The Sewel Convention which was put into statute in section 2 of the Scotland Act 2016 provides that Westminster will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament. But, in the first Miller case in 2017, the Supreme Court unanimously took the view that, even though embodied in statute, the convention was not justiciable and not enforceable by the Courts, declaring that 'these matters are determined within the political world'.

Brexit exposes the conflict between the Westminster view of the sovereignty of Parliament and the Holyrood view of the sovereignty of the Scottish people.

From the viewpoint of the British government, devolution was a delegation of power from Westminster, and the Scottish Parliament remains subject to the continuing sovereignty of Parliament. The Scottish conception, by contrast, is that devolution was a response to the sovereign will of the Scottish people, as expressed in the referendum of 1997, a referendum confined to voters in Scotland. This principle of the sovereignty of the Scottish people had been affirmed by the Scottish Constitutional Convention in 1989, which had issued a Claim of Right declaring, 'We, gathered together as the Scottish Constitutional Convention, do hereby acknowledge the sovereign right of the Scottish people to determine the form of government suited to their needs'. The independence referendum in 2014 appeared to show that the British government

accepted that the Scottish people were in fact sovereign over their future. For that too was confined to voters in Scotland.

The 2019 election re-opens the Scottish question since the SNP won 48 of Scotland's 59 seats, albeit on a minority – 45% – of the Scottish vote. Although the SNP won fewer seats than in 2015 when it won 56, the context is now quite different. Hardly anyone in 2015 suggested a second independence referendum. But by 2019, circumstances had changed because of the conflicting position on EU membership taken by Scottish and English voters in the 2016 referendum.

Some have suggested further devolution as a response to the Scottish question. But Scotland already has all the powers that it needs to run its domestic affairs, including the power to vary the level of income tax paid in Scotland. The trouble is that, as is shown by poor health and education outcomes in Scotland, her domestic affairs are not being run very effectively. That is not a problem that can be cured by further devolution. Instead, Scots should be allowed to escape from interminable constitutional wrangling. Its government should concentrate on the improvement of public services. The danger of further devolution is that it would leave Scottish MPs at Westminster with too little to do and thus fuel the separatist cause.

But, to resolve the conflict between the sovereignty of Parliament and the sovereignty of the Scottish people, Westminster should specify in legislation the precise circumstances in which the British government would think it justifiable to proceed with legislation altering the devolution settlement or encroaching without consent on the powers of the devolved bodies. The government should be required to justify its decisions in this respect to Parliament; and legislating without consent should become subject to sunset provisions – it should last only for a specific period of time, and be subject to specific renewal should a government wish to extend the period. This would end the unlimited discretion which Parliament now enjoys over the interpretation of the Sewel Convention, and help to ensure the protection of Scottish interests during the Brexit process.

Such a reform could also help to weaken the Scottish case for independence which is far less powerful than is often thought. Brexit will yield powers to Holyrood in areas repatriated from Brussels, such as agriculture and fisheries. Some of these powers are, it is true, being retained by Westminster, yet the bulk of them will return. But an independent Scotland which re-joined the EU would, of course, have to return them back to Brussels, something which would hardly please Scottish fishermen. Scotland would also lose the benefit of the rebate negotiated by Margaret Thatcher at Fontainebleau in 1984 and it would be required to join the euro, which would mean reducing the budget deficit from 7% to 3%, an operation which would make the austerity Chancellor, George Osborne, look like Santa Claus! Moreover, independence after Brexit would require a hard border between England and Scotland. It is a paradox that Scottish nationalists,

who favour a soft border in Ireland, are prepared to contemplate a hard border with England. But perhaps these inconsistencies matter little when it comes to stoking grievances against the English. 'It is not too difficult', P.G. Wodehouse once wrote, 'to tell the difference between a Scotsman with a grievance and a ray of sunshine'."

Alasdair Douglas is Chair of LawWorks and also of the Strategic Communications Agency, DRD Partnership. He believes that there are a lot of forces that have led to the victory of the SNP and are not necessarily independence related.

"A lot of Scottish people like me, call us the professional Scots if you like, revel in our existing sense of nationhood and question what can separation from the rest of the UK actually add to that?

When addressing the whole question of nationhood, it is easy to see how a nation can strive for and desire to be independent and one's heart can go either way on that, but this is totally separate from the economic arguments. Scotland is a tiny country. It's GDP is about 16 or 17 times smaller than the rest of the UK, about 22 times smaller than Germany. The metaphor "he who pays the piper calls the tune" is apposite here. It would be very difficult for Scotland, if it were to be separate from the UK or a part of the EU, to have any sway over the economic policies that would affect it. There has been a lot of exaggeration on the economic strength of Scotland – the oil price used in the SNP's economic prospectus in 2014 used a figure of $113 per barrel that has only been achieved for a couple of months in the last 50 years.

It's important also when looking at the rise of the SNP to look at the reasons behind this happening. Businessmen in their droves, knowing there was never any chance of getting the Tories in, voted for Alex Salmond in order to get rid of Jack McConnell. Independence had nothing to do with their motives."

"The political declaration pays scant attention to services, focusing more on goods and the mobility of individuals."

Whilst this game of chess between the Scottish and British governments continues, life does go on and, although the leaving of the EU on January 31st was seemingly against the will of the Scottish people, nonetheless it happened and Scotland, like the rest of the UK, has to deal with the practicalities that Brexit brings.

Linda Murray is Director of Strategy at Scottish Enterprise (https://www.scottish-enterprise.com) which is actively helping businesses prepare for the challenges that face them after the transition period ends.

"Following the 2016 referendum our first step was to go and talk to as many businesses as possible, face to face, about what lies ahead. We spoke directly to over 2,000 companies and took on board a lot of work needed to be done. We understood the strength of working with others and launched Prepare for Brexit in November 2018 (https://www.prepareforbrexit.scot) with partners which shows just how much can be achieved with a joined up campaign. We wanted to instil positivity and to get focused on not just the challenges but the opportunities. A diagnostic tool has been developed to help businesses determine the right questions to ask themselves and then provides both web based support but also access to people – that personal interface is really important. Businesses, like everyone else are fatigued by the events of the past three years, but now that we have formally left the EU it is not the time to be complacent. We need to act throughout the transition period to be prepared for whatever the final deal is and importantly support Scottish businesses."

Michael Clancy,Director of Law Reform at The Law Society of Scotland, had this to say:

"The political declaration, as it stands, pays scant attention to services, focusing more on goods and the mobility of individuals. Whilst we are conscious there are obstacles in front of us, we cannot let that detract us as we have to be sure citizens continue to get advice as they did before otherwise that is detrimental to everyone, not just in the UK but in Europe too. The declaration is confirming certain rights – but what use are the rights in the absence of anyone being able to get advice around them?"

On the subject of the current stand off between Sturgeon and Johnson, Clancy looks at the situation from a legal perspective;

"The Scotland Act of 1998 did not give unlimited competence to Holyrood but rather devolved matters such as police, the judiciary, health and social work. These are very distinct from the powers still reserved to the government of the UK. The First Minister asked for a Section 30 order to give the power to hold a second Referendum but the Prime Minister made it clear he was not minded to do this. Whilst this has led to a political standoff, it is, ultimately, a matter of law and the UK Parliament are not under any legal obligation to grant the First Minister's request. That does not mean it is the end of the story as politics are not always constrained by legalities. Who knows what the twists and turns of the politics of the next few years will bring about?"

Katie Hay is Head of International at the Law Society of Scotland. Like Clancy, she firmly believes that professional – obviously including legal – services should be dealt with as a matter of priority in the negotiations leading up to a trade agreement.

"Irrespective of political opinions, we all have in common that we want to clarify the position on services during our negotiations on what the future relationship will look like. Working closely with colleagues at the other UK law societies and bars to promote our members' interests throughout the Brexit process, it is clear that there is more that binds the legal profession in each of the UK jurisdictions than separates us. But it is going to be difficult to negotiate a deal around services that is fundamentally different from the ones that the EU has already in place with non member states such as Canada, Korea or Japan within the time available. These do not go anywhere near as far as what we would hope for so it is a tall order to think that we can find a mutually acceptable solution. A lot of our Scottish members currently work on a "fly in, fly out" basis when giving legal advice in Europe – if that cannot continue, that loss will be keenly felt."

Scotland is a country on the brink of a recession and where public spending exceeds tax revenue by more than £12bn each year. Surely it is precisely this factor, its very poor economy and not politics or the law or the constitution that will ultimately determine whether or not it remains a part of the UK.

SEA CHANGE FOR IRELAND – or a tempest in a teacup?

Throughout the Brexit dramas of the past three years, one of the most critical and volatile questions that needed to be addressed was the problem of the Irish border. Yet, even now that the UK has left the EU, it is a question that still has not been resolved.

Immediately after January 31, a senior Whitehall source was reported as saying:

"We are planning full checks on all EU imports – export declarations, security declarations, animal health checks and all supermarket goods to pass through border inspection posts."

Which obviously raises the question of where precisely these border checks will be.

This proposal is the polar opposite of what Boris Johnson said in the lead up to the last General Election in November 2019 when he very clearly stated that there would be "no forms, no checks, no barriers of any kind".

So, understandably, there is a real feeling in Northern Ireland of being let down which has fuelled talk of Northern Ireland uniting with the Republic of Ireland and leaving the UK.

Unlike Scotland, Northern Ireland can choose to leave the UK at any time it wants – and there is nothing this, or indeed any other, British government can do to prevent it.

Vernon Bogdanor explains this unique situation:

"In the Belfast or Good Friday Agreement of 1998, implemented in the Ireland Act, 1998, Northern Ireland was put in a unique position. Its continued membership of the United Kingdom was made conditional upon the continuing consent of a majority of its people. Provision was made for regular referendums to be held in the province to test whether that consent remained, whenever the Secretary of State of Northern Ireland believed that there might be a majority for joining with the Republic. Were a majority to vote for joining with the Republic with a concurrent majority in the Republic also in favour, the British government placed itself under a duty to facilitate the transfer.

Northern Ireland is also in a unique position in the EU, since if it did decide to join with Ireland, the European Council has agreed that the entire territory of the united Ireland would be part of the EU. Northern Ireland, therefore, is the only part of the UK that could rejoin the European Union without needing to re-negotiate entry.

In May 2018, an opinion poll showed that only 21% in the province, and a minority – 46% of the Catholic population – favoured Irish unity. Part of the reason for this is that survey evidence indicates that the Nationalist community has, since 1998, come to see the power-sharing form of devolution provided for in the Belfast Agreement as its preferred option. But the Northern Ireland Assembly was in abeyance for three years until January 2020 following a squabble between Unionists and Nationalists.
And the Belfast Agreement, for all its virtues, institutionalises the community conflict by requiring all members of the Assembly to register as 'Unionist', 'Nationalist' or 'Other'. It appears, however, that around half the population of the province no longer identify as either Unionist or Nationalist, and in the recent general election, the cross-community Alliance Party became the third largest party in the province increasing its vote by nearly 9%. Perhaps voters in Northern Ireland are coming to be less interested in the border issue, and more concerned with substantive policy matters common to the UK as a whole, such as the economy and public services.

But Boris Johnson's Brexit deal could endanger the Union.
It provides that Northern Ireland leave the EU customs union together with the rest of the UK. But Northern Ireland is to remain within the EU internal market for at least four years after the end of the transition period. This means that, if regulations in the rest of Britain were to diverge from those of the EU – and Brexit would be somewhat pointless if they were to continue as the same – then Northern Ireland would remain aligned with Ireland, an EU member state, rather than with the rest of the UK. There would be a regulatory barrier between Northern Ireland and the rest of the United Kingdom. Economically, Northern Ireland would seem to be a part of the Republic. Why then should it not also become politically a part of the Republic?

However, the Taoiseach, Leo Varadkar, has wisely implied that unification is not on the immediate agenda. Instead the need is for closer cooperation between the two communities in Northern Ireland, which was 'the philosophy underpinning the Good Friday Agreement'. If Northern Ireland is to remain part of the UK, it is vital that the Assembly be seen to be providing practical and effective government for both of the communities in the province."

Northern Ireland's unique position is not limited to constitutional matters but extends to the legal profession also.

"What the Northern Ireland Protocol aims to retain is the freedom of movement of goods between Northern Ireland and the Republic of Ireland."

Dr Frank Geddis is the Head of Research and Governance for the Law Society of Northern Ireland.

"The Law Society in Northern Ireland does not express a view on party political or constitutional matters, respecting the diversity of views and the unity of the profession. Fundamentally, the focus for the Society following the Brexit decision has been to focus on the issues of overriding interest for the profession and clients, including the ongoing provision of professional services and an effective system for the recognition and enforcement of judgments.

The main priority of the Society has been to underscore the commitment to the continuing mutual recognition of practice rights between Northern Ireland and Ireland without any disruption, following the UK's departure from the EU. Practising cross-border is an integral aspect of many firms within Northern Ireland and reflects the deep historical, economic and cultural links between the jurisdictions. Reciprocal admission and ongoing practice rights have been in effect long before the UK and Ireland joined the EU and the legislative basis for this pre-dates the Treaty of Rome. Provided a Northern Ireland solicitor has an Irish practising certificate, is on the Roll of solicitors in Ireland, holds the necessary insurance and meets all of the regulatory requirements of the Law Society of Ireland, their practice is unaffected. To that end, the Law Society of Ireland and the Law Society of Northern Ireland are working on a Memorandum of Understanding which will give full expression to the long held custom of reciprocal recognition and practice and commit to its continuation. This MOU is to be put in place in 2020 and before the end of the transitional period.

Northern Ireland solicitors are in a unique position in two important ways. Firstly, NI solicitors practising in Ireland must be regarded as EEA-qualified lawyers. The regulatory oversight of both Societies extends into the other jurisdiction and cross-border practice is seamless, regular and effective. Secondly, Northern Ireland-born solicitors qualify for EEA nationality through their entitlement to Irish citizenship under the Good Friday/Belfast Agreement. On this basis, we hold that such dual-qualified solicitors should have access rights and legal professional privilege before EU courts and institutions and the requisite entitlements under the Lawyer's Directives.

More widely, the Society is supportive of the future partnership agreement between the UK and the EU including a broader regime of practice rights similar to the Lawyer's Directives and effective arrangements for co-operation in civil, family and criminal matters to include the recognition and enforcement of judgments amongst other issues."

Adrian O'Connell is a partner at Tughans, which is the Legal 500 law firm of the year for Northern Ireland for this year and also judged by Experian to be the most active firm in NI.

"With a pro-Remain majority, a land border with the EU, and a high-dependency peace process, there was a sense that a solution for Northern Ireland would be found that offered the 'best of both worlds'. The concern is that the Northern Ireland Protocol

represents more of a 'falling between two stools' in that it creates impediments to doing business with both GB and the EU.

Whilst part of the UK, Northern Ireland will effectively remain part of the EU's single market for goods (but not services) and part of the EU's customs territory, raising the very real prospect of the need for checks on goods crossing the Irish Sea. What cost, form and where those checks will take place remains uncertain; whether Northern Ireland will benefit from UK or EU free trade deals remains uncertain as well; and the democratic consent mechanism means the position of Northern Ireland is up for negotiation every 4 years.

What the Northern Ireland Protocol aims to retain is the freedom of movement of goods between Northern Ireland and the Republic of Ireland (but none of the other freedoms – services, people and capital). However, to the extent that Northern Ireland business conducts more trade with GB than the rest of the EU combined, there is scope to argue that the Northern Ireland Protocol represents a greater risk to Northern Ireland business than a no deal scenario.

For Northern Ireland lawyers, concerns focus on the impact of the UK's departure on their regulatory framework, not least reciprocal recognition and the flow of data (in particular, personal data from Ireland to Northern Ireland), but Northern Ireland lawyers do not live in a vacuum. What is good for Northern Ireland business, in terms of extending access and reach to markets and trade on an 'all-Island' basis, can only be good for Northern Ireland."

The negotiations between the UK and the EU regarding future trade are not only crucial in determining an ongoing relationship between themselves, but the whole subject of border checks is also putting into question Northern Ireland's position within the UK. If Boris Johnson does go against his election pledges and there is a border, then Brexit could mean not just a split from the EU, but a split within the UK.

Computer says 'yes'

With our innovative smart forms, you can monitor your clients' progress in real-time.

You know the routine, you post off the inception forms and lo and behold the client sits on them. Well, now you have the power to speed up the process. Our online smart forms mean clients can complete forms from anywhere, on any device. You can even monitor their progress and 'politely' nudge them along. The entire process is fast, easy, secure and completely paperless – no printing or postage necessary. And to discover just how smooth the experience can be for you and your client, just sit tight – we'll come to you. **After all, the experience is everything.**

Get forms completed anywhere, anytime. Visit **www.infotrack.co.uk/computer** or call us on **0207 186 8090** to get started today.

InfoTrack

SEPARATE JUSTICE FOR WALES; what's the verdict?

In October, 2019 the Commission Of Justice in Wales, which was set up by the Welsh Government in 2017 and chaired by Lord Thomas of Cwmgiedd, former Lord Chief Justice, published its Report on its long term vision for the future of Justice in Wales. The 556 page Report was a result of over 22 months of work and proposed a radical blueprint recommending that control of both policy and funding be moved away from Westminster to Cardiff. 78 recommendations for reform were proposed including a new Justice Department of the Welsh government led by a Cabinet Minister, a Welsh High Court and Court of Appeal, and a criminal legal aid system run on 'Nordic' public defender lines.

On presenting the Report, Lord Thomas said:

"Justice should be determined and delivered in Wales so that it aligns with distinct and developing social policy and a growing body of Welsh law. The way that responsibilities are split between Westminster and Cardiff has created pointless complexity, confusion and incoherence in justice and policing in Wales."

The Report was consistent with frustrations that Wales has suffered by the enormous cuts to the funding of Justice that have been imposed by the Westminster government in recent times. These cuts have seen the number of civil and family legal aid solicitors in Wales fall by over a third and, at the same time, advice offered by third sector organisations has all but disappeared completely. The Report states that funding for both legal aid and third sector advice in Wales should be combined into a single fund under the control of an independent Board.

"The way that responsibilities are split between Westminster and Cardiff has created pointless complexity, confusion and incoherence in justice and policing in Wales."

The Report wants restrictions on the Welsh Assembly's powers to be removed, aligning their position more closely with those held by Scotland and Northern Ireland. It proposes full legislative devolution of power and a full transfer of funding. The Law of Wales should be formally identified as such and taught at Welsh universities although the Report does not see the need for a separate Welsh legal profession.

The Ministry of Justice in London did not react positively to the Report and in January 2020, the Justice Minister, Chris Philp, confirmed this position by stating that the British government has no plans at the moment to adopt the recommendations for a separate Welsh jurisdiction, stating that it was his belief that the current legal system worked in the best interests of Wales and its people.

"Devolution in itself is no panacea; it does not automatically solve problems. For example, that has obviously been well documented in education, where per capita spending in Wales is much higher than in England, and educational outcomes in Wales are none the less worse than in England. So the idea that devolving something somehow automatically makes it better does not necessarily hold up."

Philp went on to refer to the "jagged edge" spoken of by Lord Thomas whereby the justice system is incongruent with specific Welsh legislation. He said that as the Report did not recommend a separate legal profession for Wales, to devolve issues such as prison, probation and Courts would only make that jagged edge worse.

Philp also commented that the issue of cost was not brought up by the Thomas Report stating that this was because it would cost Wales around £100m every year. He justified this cost by explaining Wales would have to address the fact they do not have either a women's prison at the moment, nor a Category A prison and, obviously, this would have to be rectified. He also talked about cost savings because of economies of scale that had been achieved in upgrading the MOJ's IT systems. For Wales to attempt to do this alone would be hugely prohibitive.

Lord Thomas had this to say:

"The Report needs more detailed consideration by everyone. It explains carefully why justice is not an island, but needs to be integrated with other domestic policy which is devolved to Wales. Devolution would, as explained in the Report, remove the jagged edge and not substitute a new one. The proposals for a shared legal profession are a modern and better way forward than the formalities which exist with Northern Ireland or in Australia. The Welsh government already contributes substantial funds for police and for third sector advice; the only additional cost, as funding for all day to day costs would be transferred, would be costs for policy development and for senior management. We have put forward a way of ensuring that such costs are minimal by proposals for an innovative, efficient and effective approach. A separate judiciary would be a long term decision for the Welsh Parliament."

Huw Irranca-Davies is a Welsh Labour and Co-operative politician. He is Assembly Member for Ogmore and was previously the Member of Parliament for Ogmore. He resigned his seat in Parliament in March 2016 to stand to represent the constituency in the Welsh Assembly.

Irranca-Davies believes that because of the increasing growth of "Made in Wales" legislation, it is "inevitable" that, in time, Wales will have its own separate and distinct jurisdiction, regardless of the political statements made by the British government.

"Governments are temporary. They are elected for a term. This government has clearly set its mind against a separate Welsh legal jurisdiction, but it will happen in time. It is inevitable. That is not to say the break up of the UK is also inevitable or that there is a drive to separatism. There are wider political discussions that need to be had on what overlaps and what should be distinct; even within a separate legal jurisdiction we are not looking at a wholesale separation in law."

Stand-offs between the UK government and the rest of the UK seem to be a common thread in today's politics and Wales is no exception to this. But it seems that a separate legal jurisdiction for Wales will happen. The question is not if, but when? And, the answer to that seems to be once the current government is no longer in power.

LIVERY NEWS
Some food for thought…

Good food enriches our lives beyond measure, as anyone who has been to a Livery Company dinner, enjoyed and said Grace for the pleasures of the table will know. But it's not just sustenance of the calorific kind the CLSC is interested in. The ethics panel debate we held on 12 November last year marked the first in our series of seminars on ethical and cultural issues, and the launch of our "Food for thought" series.

The session was chaired by Immediate Past Master Rupert Jones, took place (with thanks) at Weil Gotshal and Manges' offices and was attended by about 60 Freeman and Liveryman involved in the management of law firms. The focus was on what it now means, in the Square Mile, to go the extra mile for our clients. Whilst our conversation was held under the Chatham House Rule we are, with the kind permission of our expert panellists, able to share the following general themes and ideas with you.

1. Do we understand what ethics even means?

It was said by Phillip Davies MP, during the WEC's 2019 enquiry into sexual harassment in the workplace, that members of the legal profession were "all very clear" on their regulatory obligation to act in their client's best interests but had "no idea what on earth is meant" by upholding the rule of law and the proper administration of justice, acting with integrity and behaving in a way that maintains public trust. Our panel reflected on whether Mr Davies had a point.

Whilst it was accepted that for any practising City solicitor the foremost pressure is indeed acting in their client's best interests, it was thought that the public interest principles were also largely understood. The example of reviewing takeover documents and prospectuses was given, when what is right in terms of disclosure, rather than the legal requirements, is most often the leading voice in the room.

It was, however, acknowledged that, in England and Wales, training on ethics does not, on the whole, form a meaningful part of law degrees, vocational courses or even law firm learning and development programmes, and so tends to be "back filled" on the job. This was in contrast to the position in, for example, the US. Whilst City law firms had offered more training on SRA regulation in recent years, this tended to have a risk and compliance emphasis rather than exploring the ethical ideas which underpin professional rules. There was general agreement that talking about dilemmas being faced personally or by others, such as recent NDA stories, was the best way to learn.

2. Do we ever say "no" to clients?

There were some obvious "no's", for example when conflict rules dictate that a solicitor cannot act. Supporting a suggestion that there are multiple bidders in an auction process, when there are not, in an attempt to maintain competitive tension in the sale of a business was another line which clearly could not be crossed. Further, it was agreed that it was never actually in the client's best interests to go down that route.

3. Are ethics different in contentious, as opposed to non-contentious, work?

Litigators are very obviously officers of the court, which brings them into contact with ethical dilemmas routinely. For example, the need to run a trial for the client (as opposed to one's own financial gain), to disclose relevant documents to the other side (even if disadvantageous to your client's case) and to refrain from coaching witnesses were all matters of familiarity in the field of dispute resolution. That said, recent research by the Law Society unhappily suggests that over the last five years there has been a rise of about 50% in incidents of solicitors being disciplined for misleading the court.

4. What are some of the challenges to ethical behaviour, and how might we guard against them?

Becoming a workaholic, as opposed to being a hard-worker, was thought to be dangerous territory. The implication is that genuine workaholics lose perspective, always need to be in control and so do not seek the views of others when they should. Access to the views of others was thought to be key to staying ethical. Routine failure to seek a second opinion could lead to the inability to spot issues, or at worse to decide, having spotted an issue, to take an ethical risk.

Law firms could take greater responsibility for ensuring that their people take holidays, and sabbaticals, and for setting ground rules about, for example, checking email traffic, say, twice a day rather than continuously when out of the office. Holidays required planning too on the part of individual solicitors and facing up to telling clients about absences.

Checking with others, including junior colleagues, was an important protection. Consulting with people who think the same as you was less likely to be effective, and could result in the formation of "echo chambers".

A tone from the top was one of the keys to creating a culture whereby people feel able to challenge others in their environment, and demanded the right partnerial conduct.

5. Should there be room for second chances?

The Sorani James series of cases was referenced, which had led to the courts recently concluding that mental health issues were not "exceptional circumstances" which might excuse dishonest actions by a solicitor. It was noted that this was an area where law firms might be culpable too – dishonest acts were often committed in firms with "toxic" cultures, calling their integrity as an entity into account. The younger the dishonest solicitor in question, the closer the SDT/courts might therefore look at the possibility of rehabilitation.

6. Are ethical expectations changing?

In the very first (1960) guide to professional ethics (and etiquette), Sir Thomas Lund said "I should point out at once that standards of professional conduct change as time passes. What is entirely proper for one generation might be slightly irregular for the succeeding generation and highly improper for the next". This suggested a generational difference in ethics. Certainly that can be observed from earlier written standards – which prescribed that brass plates on the doors of law firms could not exceed a certain size, banned any form of advertising, omitted to refer to fee transparency at all and referenced "brother solicitors". But there were some constants too – such as honesty, integrity and putting a client's interests before one's own.

One recent phenomena was the reach of the regulator over the private lives of solicitors, which had been exacerbated by the growth of social media. The SRA's increased interest might be explained and possibly justified by the fact that almost all behaviour, whether in or outside of work, now seems to be visible and documented. The #MeToo movement was one example of the impact of this phenomenon.

7. Could the changing structures of law firms be a challenge to ethical behaviour?

The establishment of compliance departments by the bigger City law firms had perhaps been part of the problem – a "reliance on Compliance" approach may have led to individual solicitors "outsourcing" their personal ethical responsibilities. The SRA's new Standards and Regulations might spark a retreat from this, as the re-introduction of a separate Code of Conduct for individual solicitors (as well as another for law firms) should speak volumes to solicitors in terms of their personal responsibilities.

Changing law firm structures had the potential, however, to pose new ethical tensions, especially where their focus was overly dominated by financial results.

8. Who should guard our ethics?

There were layers in the pyramidal structure which was necessary to support ethical conduct. Peers were thought to be an essential control, within a solicitor's own firm and then outside it. Ideally, the regulator should be the control of last resort.

9. And finally…

In terms of top tips for staying ethical, our panel's recommendations included: avoiding echo chambers; getting the tone at the top right; visualising, when faced with a dilemma, how things might look one year from now; and cultivating self-doubt.

These thoughts are just some of the crumbs from our ethics table. To feast on all the insights shared at our ethics seminars, we hope you'll be sure to join us at the next one.

And finally, we would like to thank our panellists (Paul Olney, former Practice Partner at Slaughter and May; Sarah Clover, Partner and practitioner in lawyers' professional liability at Clyde & Co; Clare Wilson, Partner and Head of Professional Risk at Herbert Smith Freehills; Iain Miller, Partner and specialist in solicitor and law firm regulation at Kingsley Napley). Without their thoughtful preparation and candour, our session would simply have been a seminar on regulation not ethics.

DATES FOR YOUR DIARY

Wed. 13th & Thurs. 14th May 2020 – Inter-Livery Clay Shoot.

Thurs. 14th May 2020 – Inter-Livery Golf – Prince Arthur Cup.

Mon. 18th May 2020 at 6.30 pm – The Company's Annual Service at the Chapel Royal of St Peter-ad-Vincula in HM Tower of London followed by Supper at Trinity House.

Mon. 15th June 2020 at 5.30 pm – The City of London Solicitors' Company AGM & City of London Law Society AGM & Champagne Party at Stationers' Hall.

Wed. 24th June 2020 – Election of Sheriffs at Guildhall followed by lunch.

CAR CULTURE AND THE LONG ROAD TO CHANGE

By Joel Leigh

Discovering how the invention of the car has influenced life for good and bad.

The latest exhibition from the V&A, 'Cars: Accelerating the Modern World', not only marks the first time the museum has focused on the automobile as a design object in its own right, but also considers the wider issue of how cars have shaped modern culture. What lends it some weight, however, is its refusal to flinch at the enormously problematic and unintended environmental consequences of global car ownership, and the urgent need for radically more sustainable methods of transport.

From a design perspective, the show introduces visitors to a number of prominent architects to demonstrate how their work was influenced by the invention of the car, highlighting for example the iconic spiralling ramp at the Guggenheim museum in New York, said to be inspired by designer and automotive obsessive Frank Lloyd Wright's earlier blueprint for a car dealership on Park Avenue.

And Wright wasn't the first to bring together cars and design. In 1916 the Italian architect Giacomo Matté-Trucco designed the avant-garde Fiat Lingotto factory on the outskirts of Turin in Italy, topping five manufacturing floors with a rooftop level test track, later used in a getaway sequence in 'The Italian Job', which was both a functional part of the production line and a unique design feature. The building is still the marque's headquarters.

Le Corbusier, another pioneer of modern architecture, described the Lingotto building as 'one of the most impressive sights in industry' and in the mid-1920's himself produced a futuristic blueprint for the redevelopment of central Paris known as the 'Plan Voisin', which aimed to rehouse three million of the city's inhabitants in a series of skyscrapers on stilts interconnected by vast highways, in a bid to address the housing shortages of post war France. Similar cityscapes were dreamt up in both pre-revolution Russia and post war Japan, the authors imagining the future of mass transport.

The exhibition also demonstrates how automotive design elements have found their way into consumer products in wider society. Although the application of aerodynamic testing to streamline cars was initially applied only to experimental models designed to break records, the science gained popular appeal in the 1920's and 30's and the shapes originally generated by engineers to reduce drag and improve speed began to appear in products as diverse as table fans, meat slicers and even ladies hats, the sleek curves and tapered ends flagging their modernity.

Alongside the drastic impact on the appearance of cars, such tests kick-started the inevitable shift towards affordability and mass production, beginning with the opening of Henry Ford's Detroit factories in the 1920's using a design influenced by the Midwest's meatpacking lines and culminating in 1969 when 95% of all car welding was carried out using the world's first industrial robotic arm, the 'Unimate'. Competition from Japan saw the motor industry become even more efficient, to the point that by the late 1980's there had been an exponential increase in global car ownership.

Mass production of cars led to a huge increase in petroleum production and the perception of a limitless supply of cheap fuel, which in turn encouraged the development of ever more petrol hungry models; a 1970's Cadillac consumed almost twice the petrol of its 1950 equivalent.

The link between petrol, power and prosperity even fed into the Cold War, with the USSR determined to better its enemy's production. The lack of environmental concern in the 1960's is presciently illustrated using an advertisement from Life Magazine featuring a picture of the Taku glacier in Alaska, below which the US's then leading energy company proudly proclaims, 'This giant glacier has remained unmelted for centuries. Yet, the petroleum energy Humble supplies – if converted into heat – could melt it at the rate of 80 tons each second!'. Until 2018 when it began shrinking, the Taku was the only significant mountain glacier which hadn't been affected by climate change.

Following the wave of oil company nationalisations after the formation of OPEC in 1970, oil producing member states agreed not to tolerate the lowering of crude oil prices by multinationals. Their decision led to a quadrupling of global prices and the resultant restrictions on petrol at the pumps finally turned the West's attention to concerns over the environmental credentials of petrol engines.

In an apparent change in attitude, President Carter gave a speech from the Oval Office advocating the need for talks about air pollution, carbon emissions and oil spills. For a while, compact cars became the norm, but the boom years of the 1990's saw an unfortunate return to bigger, more petrol hungry models and a 66% increase in energy use for transport.

Today, the world finds itself in serious crisis, a landmark report from the UN Intergovernmental Panel on Climate Change (IPCC) in 2018 having made clear the unavoidable and disastrous consequences of our actions and the need for drastic measures in the decade following to avoid huge rises in sea levels, deforestation, drought and extinction of species.

It goes without saying that any innovations in car design today must properly deliver in terms of future impact on global climate, particularly given the industry's poor track record to date.

Cars continues at the V&A until 19th April.

Joel Leigh is the motoring correspondent of City Solicitor and a Partner at Howard Kennedy LLP.

ONE LAST WORD

DID YOU KNOW?

Estate of the Union

The United States of America were once a clutch of colonies strung along the Atlantic seaboard of the North American continent and barely extending 50 miles inland. By the time of the Declaration of Independence, these original 13 colonies occupied an area roughly one-tenth of today's country. Over the next 200 years, the United States grew to fill the massive continent to the Pacific coast.

In over two hundred years of union, the United States of America has more than fulfilled its 'manifest destiny' to stretch from 'sea to shining sea'. From the original 13 colonies clustered on the northeastern seaboard, the country has stretched southwards and, most importantly, westwards. 'Go west, young man, go west and grow up with the country' urged Horace Greeley. And they did, in their millions, pushing beyond the Appalachians and over the Rockies until America finally stretched from coast to coast.

The United States did not expand with a single massive land grab or in a gradual, steady accumulation of territory. Instead, the country bought and fought its way to its current shape, its additional land being acquired in a series of landmark steps under a number of Presidents. Of these, three Presidents stand out as having presided over the greatest enlargements of the country – bringing in almost two-thirds of the land that comprises the USA.

James Polk and the Mexican Cession, Texas Annexation and the Oregon Treaty

In 1836, Texas gained its independence from Mexico. Less than 10 years later, its people voted to join the Union as the 28th state. Although much of this had been decided under the administration of Polk's predecessor, John Taylor, it was Polk who signed the formal documents integrating Texas into the United States on 29 December 1845. With Texas came at least 383,590 square miles in addition to claims over a vast expanse further west.

Tensions with Mexico would escalate into the Mexican-American War of 1846–48. Spectacular successes by the US Army would lead to the comprehensive defeat of the Mexican Army and the capture of Mexico City. Mexico sued for peace and unsurprisingly paid a heavy territorial price for its military failings. Under the Treaty of Guadalupe Hidalgo, 522,902 square miles was ceded to the United States. The current states of California, Nevada, Utah and Arizona and the parts of Colorado and New Mexico not acquired by the Texas Annexation were all hewn out of the Mexican Cessation.

Finally, President Polk signed the Oregon Treaty which brought an end to competing British and American claims to Oregon County in the continent's north-west. A compromise drew the boundary along the 49th parallel, dividing Oregon County between what would become the American states of Oregon, Washington, Idaho and parts of Montana and Wyoming to the south of the line and Canada's British Columbia to the north.

In all, part of the territory of at least 12 states of the Union and 1,188,749 square miles were brought into the Union under Polk's administration.

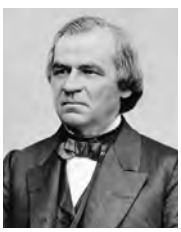
Thomas Jefferson and the Louisiana Purchase

Under President Jefferson, a single territorial expansion would change the nature of the United States and form the basis for its expansion over the next century. The Louisiana Purchase of 1802 saw at least 817,885 square miles added to the country. A timely overture to an overstretched and indebted Emperor Napoleon saw France accept $15 million (or approximately $284 million in 2012 dollars) in payments and debt cancellations.

This was one of the greatest bargains in American history, with the land costing less than 4 cents per acre in 1802 (less than 60 cents per acre in modern prices). What did America get for its $15 million? Territory that would make up all of the present-day states of Arkansas, Missouri, Iowa, Oklahoma, Kansas, and Nebraska, most of North and South Dakota and parts of Minnesota, New Mexico, Texas, Montana, Wyoming, Colorado and, of course, Louisiana west of the Mississippi River, including the city of New Orleans.

Perhaps most importantly, it gave the USA control of the Mississippi River system and made its 'manifest destiny' plausible if not inevitable.

Andrew Johnson and the Alaska Purchase ('Seward's Folly')



So, was the Louisiana Purchase the greatest bargain in America's history? Possibly, but it faces stiff competition from the purchase of Alaska in 1867. It didn't seem like such a great bargain at the time – various newspaper editors complained that 'the country would be not worth taking as a gift', that it was 'a frozen wilderness' and that it 'contained nothing of value but fur-bearing animals, and these had been hunted until they were nearly extinct'.

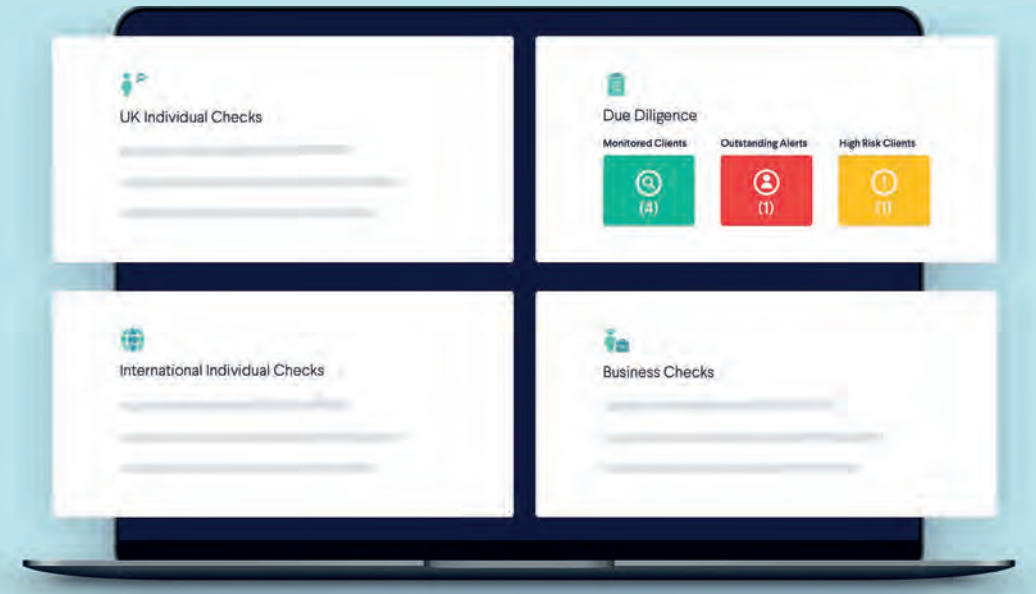
It seems strange today to imagine Alaska as the heart of Russia's American empire. The Tsars had extended their vast realm so far eastwards that they had reached the Baring Straits and crossed it to claim the territory of modern day Alaska as Russian America under the control of the Russian-American Company. But Russia feared it had overextended herself and that the territory was ripe for conquest by the neighbouring British in Canada.

Instead of being ignominiously turfed out of America, the Russians decided to sell Alaska to the Americans. The price set for this frigid slice of Arctic territory was $7.2 million, or about 2 cents per acre for the 586,412 square miles (an area more than twice the size of Texas and four times the size of California). The negotiations were conducted by Secretary of State William Seward and, to many sceptics, the purchase was known as 'Seward's Folly'.

History would prove Seward's astute decision in ways that even he couldn't have imagined. Alaska is rich in gold, copper and, of course, oil. It also occupies a strategically important position in relation to both Russia and the Pacific which would prove invaluable during the Second World War, the Cold War and in today's increasingly Pacific-orientated world.

This article was provided courtesy of Ian Chapman-Curry, Principal Associate at Gowling WLG and host of the Almost History podcast.

www.almosthistorypodcast.com



One platform for all your AML compliance needs

A “one-stop-shop” which makes compliance easy

- UK AND INTERNATIONAL INDIVIDUAL AND BUSINESS CHECKS
- EASY-TO-UNDERSTAND REPORTS
- PERSONALISED ACCOUNT MANAGEMENT

Call us now to book a free demo on:

+44 (0)113 333 9835

Or visit us online:

smartsearch.com

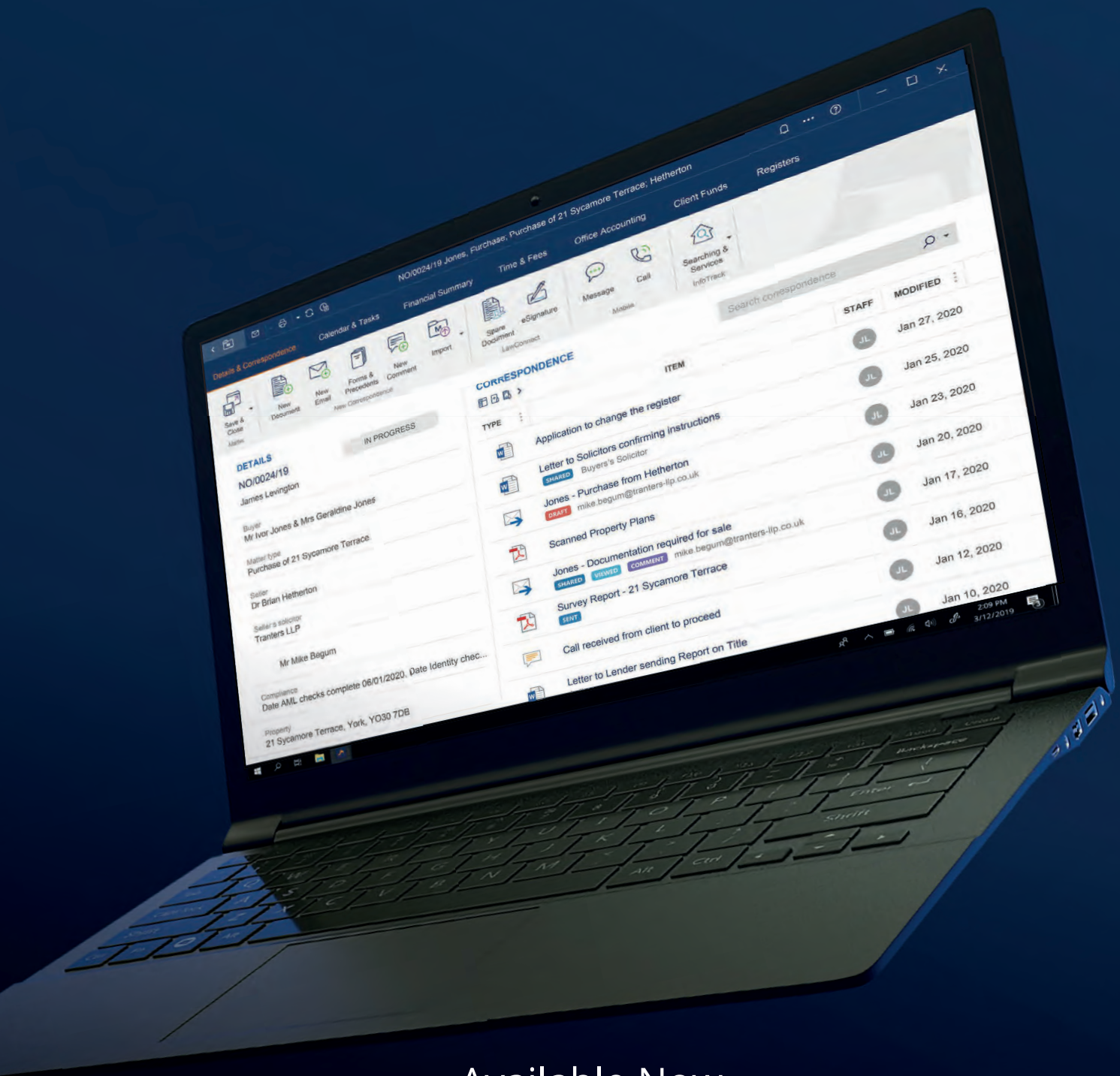
SmartSearch™ ///

SmartSearch delivers verification services for individuals and businesses in the UK and international markets. These services include worldwide Sanction & PEP screening, daily monitoring, email alerts and Automated Enhanced Due Diligence.

DOW JONES experian EQUIFAX

LEAP 2x

Innovation is at the heart of everything we do.



Available Now.

Find out more at leap.co.uk/2x

Call 0843 713 0135 for a free demonstration.