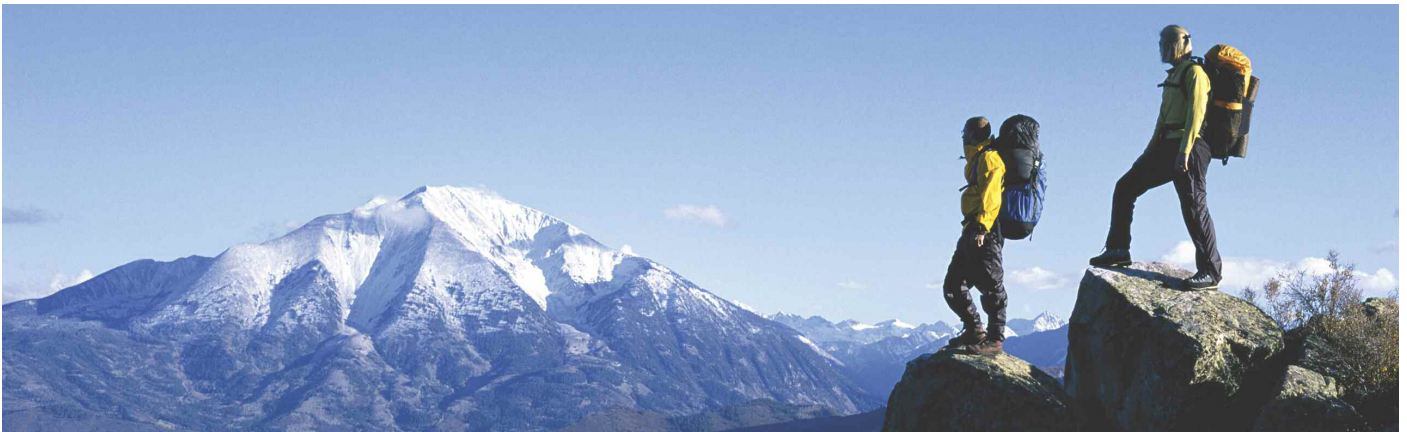


Blandy's

Winter 2007/8 Edition

BRIEFING

Looking forward to a special year



As we enter 2008 we begin a special year for everyone connected with Blandy & Blandy. The firm was founded in 1733, so this year we are celebrating our 275th anniversary. This is a significant milestone for us, as it would be for any organisation.

Blandy & Blandy is the oldest law firm in the Thames Valley and the 25th longest established in the country. Throughout our history the firm, our partners and staff have been at the heart of the community in Reading and the surrounding area. We are proud to have built many lasting relationships some of which survive to this day.

Although we now operate across a much wider region, our offices are still located in the centre of the town and we continue to view the area as our home.

Of course the firm has been witness to many changes over the years. The market for legal services now is very different from that in the 18th century but it is because we have continued to adapt to and to keep pace with these changes that we are still regarded as a leading firm today.

Last year was no different. The firm's numbers grew to over 100 for the first time in our history and, as the volumes of work increased, we invested in a new practise management system to ensure that we can continue to offer our clients the highest levels of professional service.

The legal directories (Chambers and the Legal 500) rated eleven of our practice areas highly and recognised six of our 18 partners as national leaders in their fields of law. The Lawyer magazine rated us in the Top 200 UK Law Firms for the first time, one of only nine Thames Valley firms to be listed.

None of this progress would have been possible however without the continuing support and loyalty of our Staff and more importantly our Clients and Contacts. We are very grateful to you all and hope that during the course of this year we will have the opportunity to thank many of you in person.

Hopefully you will already have noticed the new look for Blandy's Briefing. This is part of our new corporate identity which we have launched

this month with a new house style, new logo and a new website. This new livery is intended to more accurately present the firms modern and forward looking approach whilst retaining our traditional core values of excellence, integrity, achievement, versatility and approachability that have seen us through the last 275 years.

On behalf of everyone at Blandy & Blandy may we wish you a happy and prosperous 2008.

Philip D'Arcy and Nick Burrows
Joint Managing Partners

INSIDE

Focus on Employment
Focus on Family



BLANDY & BLANDY
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Focus on employment



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The enormous number of employment compliance issues and the rapid rate of change in Employment law mean that employers increasingly require access to specialist, practical and timely advice if they are to avoid expensive claims.

Our Employment team provides contentious and non-contentious advice as well as advocacy and training for our clients. They are highly regarded for their friendly high quality service by clients ranging from large multi site PLCs to medium sized owner managed businesses and private individuals

Our Employment team

The growing team is headed up by partners Sue Dowling and Tim Clark who are both experienced advocates at Employment Tribunals and Associate Sukhpal Matharoo. The team was bolstered by the arrival last year of three new lawyers: Anna Weedon from Boyes Turner; Rebecca Hill from Wedlake Bell and Laura Binnie from Bond Pearce.

To see profiles of individual team members please log on to www.blandy.co.uk

Quote:

"Particularly strong in contentious work, Blandy & Blandy has seen a sharp increase in claims based on stress, anxiety and depression."

The Legal 500



Age

discrimination update

When do the regulations apply ?

The Regulations apply not only during the employment relationship, but also when recruiting. For example, it has been decided that a job advertisement stipulating that candidates be 'young', 'energetic' and 'dynamic' contravenes age discrimination laws.

In addition, employers must give employees between 6-12 months notice of their retirement date and a retirement age of below 65 will need to be objectively justified. There is also a duty for employers to consider employees' requests to continue working beyond the employer's normal retirement age.

All employees are now eligible to bring a claim for unfair dismissal (provided they have one year's service) as the upper age limit of 65 has been removed.

In practice

Other than in the management of retirement, there is a perception that the Regulations have had fairly limited impact in practice so far. However that is largely because of the lead time in cases reaching Tribunal.

The question of whether it is lawful to retire employees below the age of 65 has also been debated and is currently being referred to the European Court of Justice for a ruling. Until then, all cases on this particular issue are stayed.

There is certainly scope at this stage for employers to find themselves involved in claims in which the new law is tested. While few age cases have made it to a final hearing yet, Tribunals anticipate that the current level of 200 age claims per month in the UK will increase to around 1,000 by this time next year.

For further information or advice, or to check that your employment policies comply with the new age discrimination legislation, please contact **Sue Dowling** or **Tim Clark**.

It is now over a year since the Employment Equality (Age) Regulations 2006 came into force, outlawing discrimination on the grounds of age. Here is a reminder of the key principles and an overview of how the new legislation has operated in practice so far.

What amounts to discrimination ?

Direct and indirect discrimination on the grounds of a person's age is now prohibited. The law applies to everyone and therefore protects an employer's entire workforce, whatever their age. Treating an employee less favourably due to their age is unlawful unless you can show that such treatment is objectively justified - e.g. that there are certain training requirements or other experience that is necessary for the performance of the job.

As with other forms of discrimination, victimisation and harassment on the grounds of age are also prohibited, although there have not been any cases yet. For example where an older member of staff feels offended by 'jokes' directed towards his old age.

FORTHCOMING EVENTS

Mock Employment Tribunal
Thursday 7th February, Reading

Do you know what it's like to attend an Employment Tribunal hearing?

Taking part in an Employment Tribunal hearing can be a daunting experience for even the most experienced manager. As employee rights increase, so does the risk of employers becoming involved in Tribunal claims. It is important - particularly for managers and HR professionals - to understand how the procedures work.

Our free half-day seminar will allow you to attend a realistic mock tribunal hearing and gain an insight into how Employment Tribunals work in practice. We are fortunate to have our Senior Partner Richard Griffiths, a real-life part-time Employment Tribunal Chairman, chairing the event and you will have the opportunity to ask questions of him, as well as our team of Employment lawyers and experienced tribunal advocates.

During the day you will learn:

- How Employment Tribunal procedures work and what to expect
- The importance of preparation
- How witnesses give their evidence and are cross examined
- How submissions are made to the Employment Tribunal
- How decisions are made at the Employment Tribunal

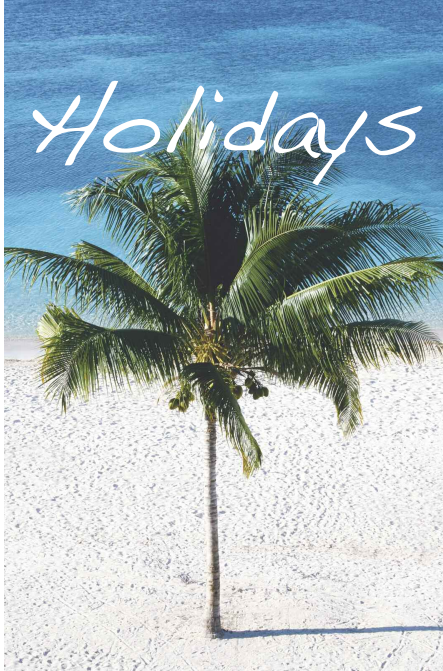
Who should attend?

HR practitioners, Managers, Senior Managers and Directors who may at some time have to face an Employment Tribunal claim.

Reserve your place now

Places are limited. To reserve your place at this free event please email the name, position and contact details (address, email and telephone numbers) of those who would like to attend to events@blandy.co.uk - Please type Mock Tribunal in the subject line.

For more information please contact our marketing team on 0118 951 6800



& holiday pay FAQ's

issue to the European Court of Justice ("ECJ") for a preliminary ruling. A decision is likely to be made in the spring. In the meantime the position remains as above.

Q. Is rolled up holiday pay permissible?

A. *It seems likely! In an earlier case the ECJ concluded that rolled-up holiday pay was incompatible with the Working Time Directive. However it went on to say that payments made by way of rolled up pay could be counted towards employer's liability to pay holiday pay, provided the arrangements made were transparent and comprehensible.*

The tribunal has recently re-visited this issue in Lyddon-v-Englefield Brickworks Ltd. In this case, a rolled up holiday payment was permissible where the employee was told that his daily rate included holiday pay, despite not being told how much of the day's pay was holiday pay and not given a written contract with statement of terms. The tribunal found that the employee would realise that the rate of holiday pay would be the standard rate paid to all employees and would be able to deduce the

actual rate of payment once he received a pay-slip detailing precise calculations for determining that rate. On these facts the payments were considered transparent and comprehensible.

It seems likely now that rolled up holiday payments actually made will be permissible and defeat any complaint of breach of the Working Time Regulations where the payment satisfies the ECJ requirements of transparency and comprehensibility.

Q. How do the amendments to the Working Time (Regulations) 2007 affect holiday entitlement?

A. *Holiday Entitlement has been extended! The annual leave entitlement is increased from 4 weeks to 4.8 weeks in each leave year from 1 October 2007, and will be increased to 5.6 weeks from 1 April 2009. This translates to 24 and 28 working days for those on a 5 day week. For those working fewer days, the entitlement is pro-rata less, but for those working a 6 day week there is to be a cap of 28 working days.*

Q. Can an employee claim payment in lieu of leave not taken during a period of extended sick leave, and can statutory annual leave be taken during sick leave?

A. *No! (At least, not at the moment). However, the right to annual leave continues to accrue during sick leave and accrued leave can still be taken on the employee's return to work provided the leave year has not ended or the employer permits untaken leave to be carried forward. The House of Lords has referred the*

Issues to consider when *redundancies* may be around the corner

> Keep employees informed of issues which may affect staffing requirements on a regular basis - redundancy announcements are less likely to be a surprise and be challenged if the workforce is kept informed.

> When it becomes clear that redundancies are in issue start informing and consulting employees - delay is something that a tribunal will criticise as depriving an employee of an opportunity to explore his options.

> Consider asking employees if they wish to take voluntary redundancy in order to limit the number of compulsory redundancies.

> In cases where multiple redundancies are in issue an early start to the process can ensure that the employer is not left paying employees for whom it has no work. When making 20 or more employees redundant within a 90 day period, there is a duty to follow a 'collective consultation' process involving providing for the election of employee representatives and developing a timetable for detailed consultation. In all but

the most exceptional cases, a 30 day consultation period is required and notice cannot be given during that time. Where 100 or more redundancies are in issue, the period increases to 90 days.

Punitive compensation based on actual earnings for the period for which the Tribunal believes that the employer should have consulted is the default position if the employer fails to comply with collective consultation rules.

> There are requirements to notify the DTI in multiple redundancy situations.

> In all redundancy scenarios it is key that the employer establishes a genuine process of communication with the employee in which they are informed of the situation, given the opportunity to comment on it and considered for alternative employment.

> In redundancy scenarios involving less than 20 employees, the employer must follow the statutory minimum dismissal procedure prior to dismissal. It is easy in a redundancy scenario to fail to comply with

the formal requirements - i.e. writing to the affected employee(s), inviting him to a formal meeting, making clear his employment is in issue, holding the meeting and offering the right of appeal. Failure to comply will mean an automatically unfair dismissal even if there is a genuine redundancy situation.

> Where a number of employees are affected but some are to be retained, make decisions based on a comprehensive selection pool and use selection criteria reflecting the skills and experience required for the remaining roles.

> Be aware that selection for redundancy on certain grounds can give rise to claims of discrimination and/or automatically unfair dismissal e.g. because the employee is less productive or has been absent as a result of a disability, has been absent on jury service, refuses to work Sundays or has asserted a statutory right, raised health and safety concerns or made a protected disclosure under whistleblowing legislation.

Focus on family



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Our large nine lawyer Family Team is widely regarded as the leading practice in the Thames Valley and one of the top family practices in southern England. It is particularly renowned for its expertise dealing with the most difficult situations, ranging from sensitive work involving children's law and high value ancillary relief cases, to trust, tax and jurisdictional issues.

The team offers a sympathetic but no-nonsense approach to both straight forward and complex matters including divorce and separation; ancillary relief and other financial issues; the law relating to children; co-habitation and civil partnerships.

All our solicitors belong to Resolution, which commits family lawyers to resolving disputes in a non-confrontational way and the team is experienced in using both collaborative law and mediation methods.

Quote:

"Home to a large and prominent team, this practice enjoys a strong reputation throughout the regions, extending to the London market."

Chambers Guide to the UK Legal Profession

Our Family team

The team is headed up by partners Andrew Don, Brenda Long and Kerry Fretwell and Associate Sandra Marshall who each work with a dedicated assistant: Claire Dyer; Carrie Rudge; Natalie Friday and Emma Hillier respectively. In addition solicitor Sue Mason handles her own case load.



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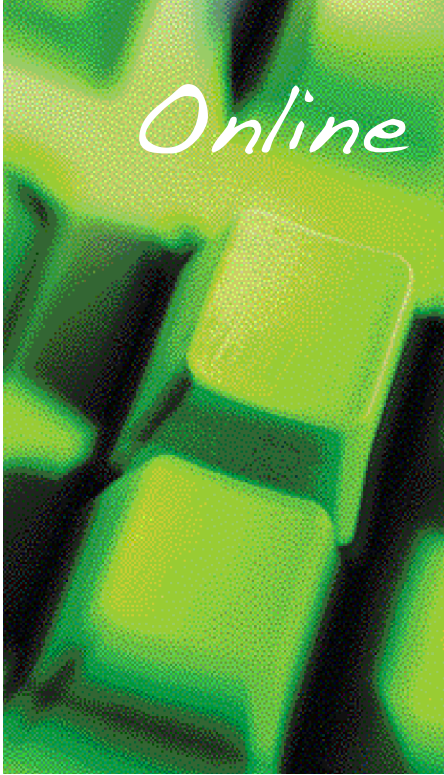
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To see profiles of individual team members please log on to www.blandy.co.uk

Online divorce services



There are now quite a few websites which offer an online divorce service, claiming to reduce costs, speed up the process and avoid the need to involve a solicitor. So are these claims really true and can you obtain a divorce without incurring solicitors' fees?

According to national statistics around 140-150,000 couples divorce each year in the UK. Of these, many will not instruct a solicitor and will obtain the relevant divorce forms and guides from the court office. If there are no children and financial matters are simple, the couple can reach an agreement and a solicitor does not need to be involved. This carries the risk that one of the parties will change their mind about the financial settlement at a later stage and will pursue further financial claims. Unless there is a court order preventing this, either party could subsequently pursue claims (unless remarried), although the passage of time would make such a claim more difficult. However, such situations are not very common.

So why involve a solicitor at all? Most cases in which a solicitor is instructed involve some kind of dispute between the parties, often about the financial settlement and sometimes about the arrangements for the children. It is in these cases that the experience of the solicitor in negotiating, dealing with other solicitors and, most importantly, advising on the court's approach to settlement is most needed. This is not something which can be replaced by an online service, which is process driven and does not provide a service tailored to the client's needs. The word which is conspicuously absent from most online divorce service websites is 'advice'.

What do the online providers offer and are their claims true?

'We use the UK's fastest divorce court' – but do you want to issue proceedings in the Llanelli County Court? What happens if a dispute arises and you have to attend Court, but both of you live in Reading? In the event of a dispute, wouldn't you rather have the proceedings in a Court known to your solicitor and in the Court which he/she advises is where you are most likely to secure the settlement you want?

'Children's arrangements catered for in all cases' – but not if an agreement cannot be reached, in which case you will need to attend Court and will probably want to engage a solicitor. This will be much easier if it is a solicitor who is already familiar with your case and the issues involved and with whom you have already developed a working relationship.

'All correspondence dealt with for you and

included' – this does not cater for a situation where the parties have reached an agreement on a financial settlement which the Judge is not prepared to approve. A Judge is not obliged to make an order simply because it is what the parties have agreed and will only do so if the terms of the settlement fall within the range of orders which a Judge would make. A solicitor can advise on whether the agreement is likely to fall within the range of likely orders and what to do if the Judge rejects the order. An online service for £400 is not going to be able to deal with this situation.

'A Divorce, a clean break agreement and a Will all for £397' – this headline rate conveniently excludes the Court fees which are payable for obtaining a divorce and a clean break order. These currently total £380 which is payable in addition to the £397, nearly doubling the true cost.

It remains the case that 'you get what you pay for'. A personal and quality service offering high level advice comes at a price. An inexpensive online service cannot provide an individual service and it is more likely that errors will arise. In a recent example, a client of an online service changed her mind about obtaining a divorce before the decree absolute was obtained. She notified the service and confirmed that she wanted to withdraw the petition and obtained a quote for issuing judicial separation proceedings, which she paid. She was then notified that her decree absolute had been granted – the application had been submitted in error. Unfortunately, a decree absolute cannot be reversed unless there has been a procedural error so she is now faced with the prospect of a negligence claim.

Checklist: things you should

Register the child's birth.

Registration must take place within seven weeks of the child's birth. If the required details are not provided a parent could be liable to a summary conviction and a fine up to £20.

If the child's parents are married the obligation to register the birth falls on both parents and either parent can register the birth without the other being present.

If the child's parents are not married the obligation falls on the child's mother. If the father's name is to be placed on the birth certificate he must be present at the time of registration or sign a statutory declaration of consent.

If the parents are not married and the father's name is not on the birth certificate the father will not have parental responsibility for the child. This means that he does not have a

legal right to exercise parental duties and rights in relation to major decisions affecting the child. For example consenting to medical treatment, choosing which school the child goes to etc.

Make or update your Will

A Will speaks from death and is the only document that validly stipulates what you would like to happen when you pass away.

For example:

- > Who you would like to act as Guardians of any minor children that you may have.
- > Who you would like to be in charge of dealing with the Estate i.e. The Executors.
- > Whether you would like to pass on any personal items e.g. sentimental personal possessions.
- > Whether you would like to make gifts of any fixed sums of money, called pecuniary legacies, to

Exploding divorce myths

“I would like to divorce my spouse for irreconcilable differences” – ‘irreconcilable differences’ is not a basis for a divorce in the UK. There is just one ground for divorce and that is that the marriage has irretrievably broken down. Proving the ground for divorce requires reliance on one of five facts, laid down by statute. These five facts are:

- a) That your spouse has committed adultery and you find it intolerable to live with him or her.
- b) That your spouse has behaved unreasonably and you cannot be expected to live with him or her.
- c) That your spouse has deserted you for a period of more than two years.
- d) That you and your spouse have been living apart for at least two years and your spouse consents to the divorce.
- e) That you and your spouse have been living apart for at least five years, in which case the spouse’s consent is not required.

“A ‘quickie divorce’ takes just 5 minutes” – the idea of the ‘quickie divorce’ is one which is perpetuated by the press. There are frequent reports of celebrity couples getting a quickie divorce in a court hearing which lasts a few seconds. The reality is that, even the most straightforward divorce process will usually take between four and six months.

Most divorces are undefended. If so, it is a paperwork process and does not in fact involve the parties attending court at any point. The

application for the decree nisi, which is the first stage of the divorce, is dealt with by what is known as ‘the special procedure’ – now inappropriately named as there is nothing special about it.

The pronouncement of the decree nisi takes place in an open court hearing where the public can be present. However, in practice, a number of decrees nisi are listed together and the parties rarely attend. A court clerk appears in the court waiting area and announces that the decrees are about to be pronounced and then quickly returns to confirm that the Judge has pronounced them. This process takes just a few seconds and it is this which the press refers to as the ‘quickie divorce’. However, it has often taken three or four months to get to pronouncement of the decree nisi and it will take a further six weeks before the decree absolute can be obtained, which is the document which actually brings the marriage to an end.

It should also be appreciated that the financial settlement on divorce is usually the most complicated aspect of the process and can take far longer than the divorce itself.

“We have only been married a year, my wife has no claims does she?” – claims arise on divorce no matter how long the marriage lasted, although the length of the marriage might well affect the extent of the claims. Even if only married a short time, a fully contributing spouse will be entitled to share in the assets of the marriage.

“Following a divorce, the assets are always divided equally” – although equal division of the assets is usually the starting point on divorce, particularly following a long marriage, it is still possible to argue that there should be a departure from this position. The two main reasons are:

Need – if equal division of the assets would leave one party unable to meet their needs and the other in a stronger overall financial position, then this is likely to justify a departure from equality. This is particularly so where there are children whose needs would otherwise go unmet, as the welfare of any children following divorce must be given first consideration.

Contributions – if one party has made a greater contribution to the accumulation of the capital, perhaps as a result of capital owned prior to the marriage or because of inheriting a large sum during the marriage, this can result in an unequal division of the assets. However, a needs argument will always override a contributions argument.

Division of assets on divorce is not formulaic. The court has a wide discretion when exercising its powers, taking into account a number of factors. In addition, various principles can be drawn from many recent cases. The early involvement of a solicitor can help to identify the issues which need to be addressed and also the strengths and weaknesses in a case.

What you should do after you have a child

individuals or charities.

> Ultimately who you would like to benefit from the bulk of your Estate i.e. the residuary beneficiaries who may be your spouse or partner or your children. If your children, you can specify at what age you would like them to receive their entitlement.

If you were to pass away without making a Will, there is a prescribed list of beneficiaries of your Estate (stipulated by statute). If married,

your spouse will only receive a proportion of your Estate. If unmarried, your partner will receive nothing from your Estate.

Returning to work

> If you have told your employer that you will be returning to work on a certain date and you later decide to change your mind, you must give your employer 8 weeks notice prior to the date you were going to return.

> During your maternity leave (save for the first 2 weeks) you can work for up to ten days without jeopardising your maternity pay. These are known as “Keeping in Touch” days.

> All women have a right to return to work after maternity leave regardless of the size of the employer.

> If you fulfil certain criteria you have a right to formally request a flexible working pattern if you have a child under 6 (or under 18 if

disabled) and your employer must consider this request seriously.



New website

To tie in with our 275th anniversary and the launch of our new corporate identity we have redesigned and modernised our website www.blandy.co.uk. The new site is a complete redesign, easier to navigate and holding more of the information you really need.

The site will be regularly updated with news and legal updates from across the firm and will also contain a range of downloadable guides and newsletters written by our lawyers and covering a variety of important legal issues. If you would like to receive our legal updates direct to your inbox then you can register online to receive them.

To celebrate the launch, we are offering a bottle of Champagne to the first reader pulled out of a hat who correctly answers the following questions:

1 – Where will our Mock Tribunal be held on 7th February?

2 – What date was the article on prenuptial agreements published?

The answers can all be found on the new website.

Please email your entries to Blandyquiz@blandy.co.uk. Please type Quiz Answers in the subject line. Closing date for entries is 29th February 2008.

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Contact details for all Blandy & Blandy solicitors are available through our website www.blandy.co.uk or by telephone on 0118 951 6800

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solicitors