



More for Lawyers March 2021

I am sure that everyone reading this will be very happy that spring is on the horizon and that, with spring, comes the hope (if not expectation) of being able to resume something approaching a normal life. I hope that you have all made it through winter unscathed. As we enter a new season, we are glad to be able to offer our clients a new service - success fee agreements for commercial litigation cases - meaning that many people with good claims and not enough money to pursue them will now be able to take steps to recover their debt. Elsewhere in the law, there have been interesting developments in commercial and personal injury litigation and we look at each of these topics in this newsletter. I hope you also find it interesting.



Success Fees in Scotland



It is usually (but not always) a truism in the legal profession that what happens in London will eventually happen in Edinburgh. The most recent example of this is in relation to the way in which lawyers north of the border are entitled to charge for their work.

For some time now, English lawyers have been able to enter into damages based agreements or conditional fee agreements in terms of which they can share in their client's success in litigation. Until this year, the position has been quite different in Scotland.

Author: Richard McMeeken

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Mediation - the future for personal injury claims

Concluding a personal injury or clinical negligence claim on behalf of a claimant is often a bittersweet victory. Even after achieving the best possible outcome for the claimant, ultimately, the claimant still has to live with the consequences of another individual's negligent act which caused them harm.

Author: Nicola Edgar

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Enforcing Adjudicator's Decisions in Scotland - The Differences



The position on enforcement of an adjudicator's decision in Scotland is not identical to England and Wales. There are key differences that parties to an adjudication should be aware of.

Author: Sandra Cassels

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Car Crash and Medical Mistakes: How Does a Court Allocate Blame

It can be difficult for a court to say where liability should rest when more than one party contributed to the injury or death. If someone is injured in a car accident and then they receive negligent medical treatment, who is responsible for their injuries? This issue came before the court recently in the case of *MacPhie or Widdowson and others v Liberty Insurance Limited, NHS Grampian and NHS Highland [2021] CSOH 15*.

Author: Jenny Dickson

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What is likely to be big news in the litigation world this year?



In their latest video, commercial [litigation](#) partners [Nicola Ross](#) and [Richard McMeeken](#) talk about the three things they consider are likely to be prominent in 2021.

Authors: Nicola Ross & Richard McMeeken

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Commercial leases and termination through frustration

The Coronavirus pandemic has thrown up no end of interesting and challenging disputes, not least in the area of landlord and tenant. Many commercial tenants have been keen to take advantage of government backed restrictions on the usual enforcement remedies normally available to landlords. On the other hand, the key priority for landlords has been to keep rental and other periodic payments flowing.

Author: Kenneth Carruthers

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Litigation Updates for February and March

The following is a summary of some updates for February and March which might be of interest to those working in litigation in Scotland:

- The [Defamation and Malicious Publications \(Scotland\) Bill](#) was passed by the Scottish Parliament on 2 March 2021. The Bill was taken forward following recommendations made in the Scottish Law Commission's Report on Defamation (Scot Law Com no 248, 2017).
- The [Act of Sederunt \(Rules of the Court of Session 1994 and Sheriff Court Rules Amendment\) \(Miscellaneous\) 2021](#) came into force on 1 March 2021. It makes changes to the court rules and sets out new prescribed forms to deal with changes to the grounds of jurisdiction for divorces and dissolutions following legislation repealing Council Regulation EC 2201/2003.
- The Scottish Civil Justice Council is currently undertaking a review of the recent rule change making the online justice system mandatory (which is currently due to expire on 30 September 2021). The questionnaire is seeking views from court users who have used Civil Online and the Application Programme Interface developed by SCTS to submit claims. The deadline for response is 13 April 2021. Further information is available on the [Council's website](#).
- The Scottish Civil Justice Council released its January [Update Newsletter](#) on 29 January. The Newsletter provides updates on latest news, Council activity, recent rule changes, a committee business update and appointments.

More for Lawyers - Summer of CPD

In place of our usual annual More for Lawyers conference this year we will be spreading our CPD offering across a number of months in webinars which will make up our More for Lawyers Summer of CPD. Our programme of webinars is as follows:

- Thursday 20 May 2021 at 11am - Richard McMeeken and Nicola Ross - **A commercial case update**
- Thursday 24 June 2021 at 11am - Dianne Millen and Scott McAlpine, Advocate - **Conducting Family Law Cases Virtually**
- Thursday 22 July 2021 at 11am - Richard McMeeken and Kirsty Hood QC - **Common legal issues which arise in relation to contentious executry cases**
- Thursday 19 August 2021 at 11am - Nicola Edgar and Derek Couper - **Personal Injury and Medical Negligence Law: recent developments and future prognosis**
- Thursday 23 September 2021 at 11am - Morton Fraser's Planning Team - **Five hot topics in planning and environmental law**
- Thursday 28 October 2021 at 11am - Innes Clark and David Hossack - **Essential employment law**

The webinars will provide 45 minute slots of CPD. Further details of how to sign up to the sessions will be issued shortly.

Mediation as a route to resolution?

Dispute resolution is at the heart of what many lawyers do and is often thought of as a path leading to the Courts. We'd like to know from you if mediation is being used as a method of dispute resolution instead of heading to the Courts.

If you're a lawyer working in dispute resolution we'd like to hear your thoughts. It will take 3 minutes of your time. Please complete the survey here: <https://www.surveymonkey.co.uk/r/SSSSZXX>

Mediation podcasts

If you are keen to listen to some further thoughts on mediation why not review the podcasts from Morton Fraser's David Hossack and Laura McKenna in their Stand by Your Client series looking at how best to represent the claimant. The following links will take you to these:

- [Stand by your client](#)
- [Why Mediate?](#)
- [When is the Best Time to Mediate?](#)
- [Dealing with Obstacles to Mediation](#)
- [Selecting a Mediator](#)

Further podcasts in the series will be added to the Knowledge Hub on Morton Fraser's website.

More for Lawyers - Our Service

More for Lawyers is for our professional colleagues. Working in partnership with other law firms throughout Scotland we can ensure that our clients and theirs get the best possible service. Our focus is on litigation agency work in the Court of Session, Sheriff Appeal Court and the All Scotland Personal Injury Court. We also offer mediation services. We appreciate that the type of support you need from us may vary from case to case. With that in mind, our service can range from anything from lodging documents on your behalf to being involved in giving detailed advice and the day-to-day running of cases.

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