

MOVERS & SHAKERS

[THIS WEEK'S] STAR MOVE



Tech wizard

London firm Druces LLP has announced a new partner for its corporate team, **Neil Pfister**. Neil previously headed the corporate and commercial department at Downs Solicitors, before moving to Fletcher Day for eight months. He offers particular expertise in IT issues: he specialises in advising technology and software clients on matters including e-commerce, IP law and start-up issues. His past experience includes founding an IT company which provided bespoke software for local government, and he is also the editor of technology law website IT Legal.

Neil said of his arrival: 'I am excited to be joining Druces at such a critical time for businesses working in today's technology driven markets and am looking forward in particular to developing new offerings through Druces' established client base of public and privately-owned businesses.' Head of corporate Toby Stroh also said: 'Neil's hire is a significant move for Druces especially given the importance of IT and technology to all of our clients' businesses. His arrival will add to the talent pool that our clients have at their disposal and strengthen Druces' Corporate & Commercial practice.'

The Italian job

20 Essex Street has announced that **Paolo Busco** will be joining chambers as a Registered European Lawyer. He is qualified to practise in Italy, and is registered as a European lawyer with the Bar of England and Wales. He specialises in public international law and

dispute resolution, particularly arbitration.

A notable anniversary

Justin Parker, a partner in the Kidderminster office of mfg Solicitors, is celebrating ten years of practice as one of the UK's select group of notary publics. Commenting on his career

milestone, Justin said: 'I can't quite believe it's been ten years but perhaps they've flown by due to the varied nature of the work. It can include anything from power of attorney for use in Spain, to buying property in France or as far away as Botswana, the US or Australia. It has been extremely rewarding

helping people and businesses across the world.'

The real deal

London firm Lewis Silkin LLP has announced that **Anthony Van Hoffen** has joined the firm as partner. He has moved to the firm after 15 years at Eversheds Sutherland, nine of which were as partner. He is qualified as a lawyer, notary and conveyancer in South Africa, and re-qualified to practise in the UK in 1999. Anthony focuses his practice on real estate matters, specialising in large commercial developments, infrastructure and regeneration projects.

DON'T MISS NLJ M&S Profile

Philip Hackett QC of 36 Civil on his accidental route into the profession on [www.newLawjournal.co.uk](http://www.newlawjournal.co.uk).



NLJ ON THE WEB

Read Richard & Hannah's article in full at www.newLawjournal.co.uk

LITIGATION TRENDS

A more generous privilege post-Bilta?

Bilta (UK) Ltd & Ors v Royal Bank of Scotland Plc & Anor [2017] EWHC 3535 (Ch) involved a claim against RBS for alleged fraudulent trading in connection with VAT fraud.

In March 2012, HMRC wrote to RBS stating that they had sufficient grounds to deny RBS's VAT reclaim in relation to certain carbon credit trades on the basis that RBS 'knew or ought to have known' that the trades were connected with fraud.

RBS appointed solicitors to conduct an investigation into the circumstances surrounding the trades. This resulted in a report in response to HMRC's letter that argued, amongst other things, that RBS did not know that the

trades were connected with fraud. The documents created in that investigation included transcripts of 29 interviews with RBS key employees and ex-employees. The claimants sought disclosure of those documents pursuant to CPR Pt 31. RBS resisted disclosure on the basis that the documents were subject to litigation privilege.

The arguments on privilege

In order for RBS to succeed in its claim to privilege, it had to meet the Three Rivers criteria (established in *Three Rivers District Council v Governor & Company of the Bank of England* (No 6) [2005] 1 AC 610):

- ▶ litigation must be in progress or in contemplation;
- ▶ the communications must have been made for the sole or dominant purpose of conducting that litigation; and
- ▶ the litigation is adversarial, not investigative or inquisitorial.

The claimants accepted that the first and third conditions applied, and so the case centred on whether RBS, bearing the burden of proof, was able to establish that the documents had been produced for the sole or dominant purpose of litigation, ie the threatened assessment by HMRC.

The claimants placed

considerable reliance on the controversial decision in *SFO v ENRC* [2017] EWHC 1017. This was a civil claim where the Serious Fraud Office (SFO) successfully challenged Eurasian Natural Resources Corporation (ENRC)'s claim to privilege over documents shared between ENRC and its former law firm during an internal investigation into alleged criminal activity. The investigation was carried out in an attempt to dissuade the SFO from commencing proceedings, and therefore it was said that the investigation did not have a 'litigation purpose'.

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