

Spread the word...

We are delighted to offer our continued support to the prestigious Glasgow Graduate School of Law, the combined Graduate teaching facility of the University of Glasgow and the University of Strathclyde.

One of our Associates, Susie Cowan, and one of our assistants, Allyson Gilchrist, teach post-graduate students on the Private Client course of the Diploma in Legal Practice. Law graduates must gain this post-graduate diploma before commencing the two year traineeship that leads to full qualification as a solicitor. Susie has been a tutor for five years, having taken over the role from Jacqueline Leslie, also an Associate of the firm. Allyson has just completed her second

academic year as a tutor. The firm has a strong

association with the Law School, as one of our partners, Pamela Niven, was also a tutor for a number of years, as was consultant Elspeth Talbot.

The Private Client course covers aspects of wills, tax planning and executries, as well as touching on Trusts and the ever growing area of dealing with adults with incapacity. These are all areas central to the practice of Bird Semple as private client solicitors:

Having this association with the Glasgow Graduate School of Law in the Private Client area is something that the firm feels is important for a number of reasons. It is an opportunity for our solicitors, as specialists in this area, to "give something back" to the institutions that train future practitioners and helps ensure that we remain involved in the academic side of the law as well as day to day practice. It also makes students aware of our business as a specialist firm in this area of practice, hopefully inspiring others to follow in our footsteps!



Susie Cowan

Allyson Gilchrist

Competition

We are delighted to offer you the opportunity to win Sunday lunch, with a glass of Prosecco, for four people at Cail Bruich West!

Cail Bruich West is located in the bohemian district of Glasgow's West End, adjacent the hinterland of the Glasgow Botanical Gardens. Under the guidance of chef patron Chris Charalambous, Cail Bruich West (like its' sister restaurant, Cail Bruich Quarriers, winner of Scotland's Best Rural Restaurant 2010) offers a sumptuous menu adhering to the principled aim of "seasonality and freshness". Cail Bruich's respect for Scottish food and passion for evoking that special dining experience for

customers marks their uniqueness in the restaurant industry. The warmth of the family owned and operated restaurant means diners receive a personal touch on every visit.

To have a chance of winning simply answer the following question:-

When were Home Reports introduced?

Now just complete and return the enclosed postcard or e-mail competitions@bsemple.com on or before 30th June 2010.

The Brief

Has it Really Been Ten Years?

ON 1ST MAY 2010 THE FIRM CELEBRATED ITS FIRST DECADE IN ITS PRESENT FORM WHICH, DESPITE THE STRAITENED TIMES IN WHICH SCOTLAND CURRENTLY FINDS ITSELF, IS CAUSE FOR CELEBRATION.

When our former commercial colleagues in the "old" Bird Semple determined to tie their fortunes to Dibb Lupton Alsop (now DLA Piper) in the Autumn of 1999, the partners of the firm's then Private Client Department were faced with some serious choices. Over the previous 30 years, the firm had undergone numerous changes of name and composition, all driven by the needs of its corporate and commercial clients. Private clients had accommodated these many changes, notwithstanding that they were for the most part irrelevant to their own legal needs.

Lawrence Marshall, Norman Alexander and I felt that the coming merger of the firm's commercial departments with Dibb Lupton Alsop provided an opportunity to recognise both the requirements and the loyalty of the firm's long standing private clients, by creating a firm devoted solely to their needs.

Whether such a firm would be viable was something of an unknown quantity! However, the clients' loyalty in the face of the numerous previous changes gave us confidence that, if we could provide a quality service in a purely private client firm, they would continue to support us.

In the event, the succeeding ten years have more than repaid that confidence. Liberated from the constraints of a large "all service" structure, we have been able to focus solely on providing excellent private client service. Clients have not only maintained their longstanding loyalty to us, but have been happy to refer friends and family for advice.

We have always valued the "generational" nature of our work; acting for several generations of clients' families, and it has been particularly rewarding over the last ten years to see many members of the younger generations becoming clients in their own right.

We have also been appreciative of the support of many professional contacts in the accountancy and financial services worlds, and indeed in other general practice or specialist legal firms, who have valued our input, particularly in relation to asset protection, capital taxes planning and trusts. We have made many

new friends as a result of these contacts, for the benefit of our mutual clients.

There have been significant changes in the legal profession over the last ten years, with perhaps the most radical, the introduction of Alternative Business Structures (permitting external ownership of legal practices) now on the near horizon. There have also been changes within the firm, as first Norman, and more recently Lawrence, retired. We have been fortunate to attract, in Tom Monteith, Pamela Niven, Karen Fulton and Karen Lang, younger partners of exceptional ability and commitment, who will help us to meet the challenges of the post ABS world.

While we are happy to be a young firm (at only ten years old in our current iteration), we are conscious that we are only the current generation in a continuous line of service to private clients stretching right back to David Bird, who established business in Glasgow in 1845 as a "writer and share dealer". The extracts from David's diary, which appear on the firm's website, give a fascinating insight into the Glasgow of his day.

It is always well to remember, in these fast changing times, that many important things do not change – trust, integrity, commitment. I am confident that the team here will remain committed to demonstrating these unchanging qualities in their work for you. If we are able to do that, I believe we can look forward with confidence to many more decades of service to you.



Frank Fletcher
Managing Partner

Public Rights of Way

Public rights of way have been recognised in Scotland for hundreds of years and they continue to be important for providing people with access to the countryside. Some routes, such as the West Highland Way, cover a long distance. Others may only extend a few metres.

There are various methods by which public rights of way can be constituted. These are:

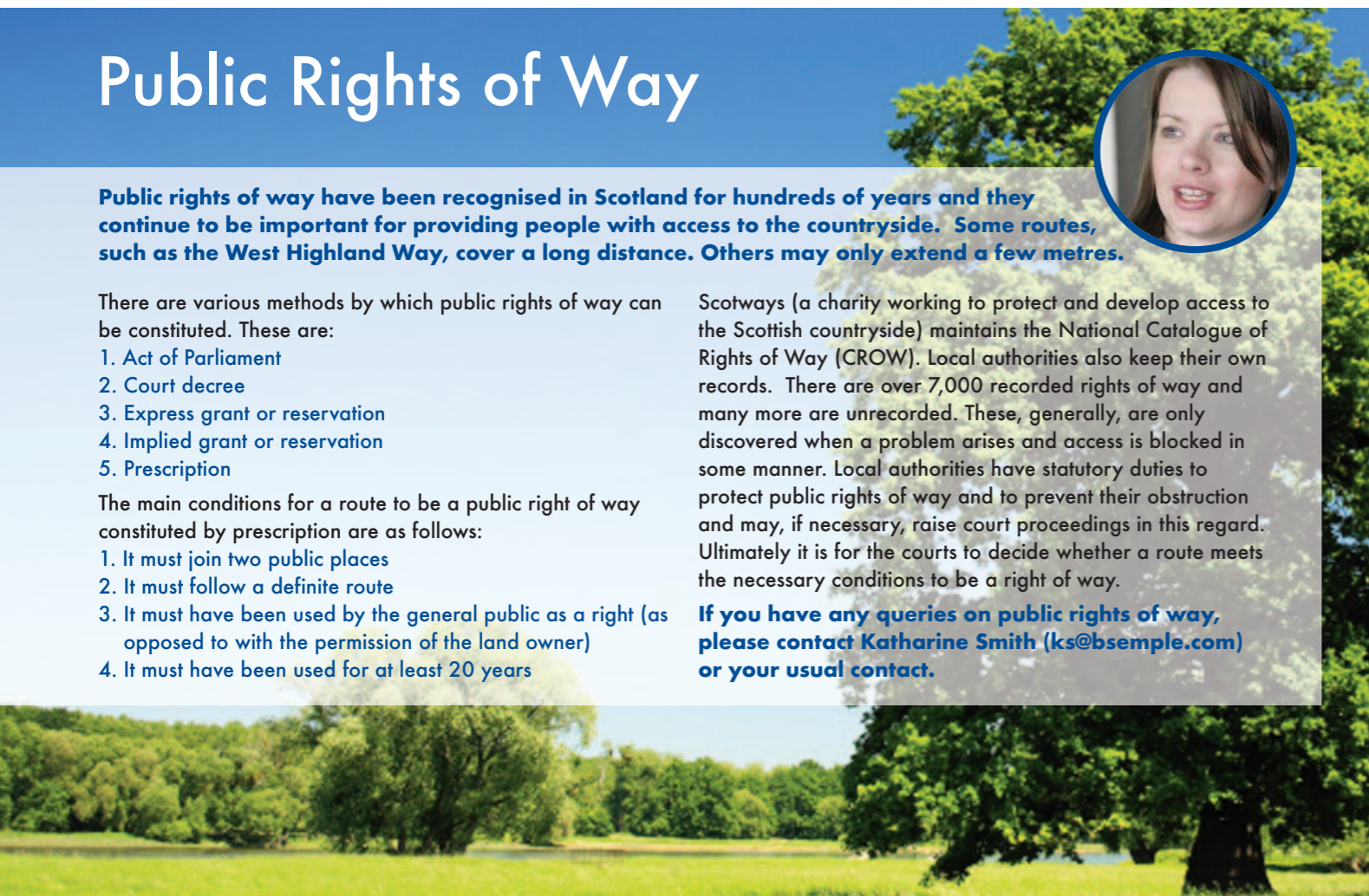
1. Act of Parliament
2. Court decree
3. Express grant or reservation
4. Implied grant or reservation
5. Prescription

The main conditions for a route to be a public right of way constituted by prescription are as follows:

1. It must join two public places
2. It must follow a definite route
3. It must have been used by the general public as a right (as opposed to with the permission of the land owner)
4. It must have been used for at least 20 years

Scotways (a charity working to protect and develop access to the Scottish countryside) maintains the National Catalogue of Rights of Way (CROW). Local authorities also keep their own records. There are over 7,000 recorded rights of way and many more are unrecorded. These, generally, are only discovered when a problem arises and access is blocked in some manner. Local authorities have statutory duties to protect public rights of way and to prevent their obstruction and may, if necessary, raise court proceedings in this regard. Ultimately it is for the courts to decide whether a route meets the necessary conditions to be a right of way.

If you have any queries on public rights of way, please contact Katharine Smith (ks@bsemple.com) or your usual contact.



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Home Reports One Year On

Alison Morton



It is now just over a year since the introduction of Home Reports in Scotland and opinion remains divided as to their success. The fact that the Home Reports have been introduced during a recession has meant it is difficult to ascertain the full effect of their introduction on the property market.

When Home Reports were introduced in December 2008 it was intended that they would bring transparency to the market place, by providing all prospective purchasers of a property with the same detailed information regarding value, condition and energy efficiency and thus reduce the practice of marketing property at a deflated asking price. It was also intended that the Reports would eliminate the need for multiple surveys.

According to a recent press release from the Royal Institute of Chartered Surveyors the Home Report has not hindered market recovery. Their survey of ten of the largest Chartered Surveyor firms in Scotland disclosed that 80% believe prices have not been affected by the Home Report, with 20% believing that prices are now higher.

The Home Reports do appear to have had some success in bridging the gap between the asking price, valuation and sale price of a property. The GSPC report that selling prices are now almost exactly the same as asking prices, but point out that this could also be because sellers have adjusted their expectations of price in the current market.

One of the main concerns of conveyancing practitioners is that

Home Reports have slowed down the purchase and sale process in that it can now take between two to four weeks to get a Report prepared and a property on the market.

It is now common for a purchaser to ensure that their lender will accept the Home Report before progressing missives. As a potential purchaser cannot discuss the survey with the surveyor who carried out the Home Report until such time as their offer is accepted, many purchasers will simply instruct their own independent survey. As a result many offers are still being issued subject to survey and the Home Reports have failed to resolve the multiple survey issue.

Despite mortgage lending being slowly on the increase, forecasters predict that we will not see huge growth in the market in the coming year, due partly to a fear of increased interest rates, a general freeze on income compared to inflation and the threat of further job losses. It remains to be seen whether or not Home Reports will continue to have an impact on the property market in the coming year.

If you have any queries about Home Reports or any other property matter then please get in touch with Alison Morton (am@bsemple.com) or your usual contact.

Be Prepared

We are all guilty of leaving planning for our futures for another day...or week...or month. If you ask someone if they have considered making a Will, the majority will say yes, but if you ask them if they actually have a Will... well that's another story!



Making a Will is a straightforward process which allows you, rather than the law, to determine where your assets will go in the event of death. Wills are not just for the elderly and not just for those with significant assets. They are worthwhile for everyone and can offer real peace of mind.

However, planning for the future does not begin and end with having a Will. There are many other matters which we should all be aware of when looking ahead, including:

Powers of Attorney

Most simply put, Powers of Attorney are documents that give someone (or some people) power to make decisions on your behalf. They let the Attorney(s) you appoint look after your affairs, as you would have been able to yourself.

These are often to be used when you are incapacitated, either through illness or accident. There are two different types of Power of Attorney. Firstly, the Welfare Power of Attorney. This allows whoever you appoint as your Attorney(s) (often family members or close friends) to make personal welfare and healthcare decisions on your behalf, in the event that you are no longer able to make these decisions yourself. Next, there is a Continuing Power of Attorney, often referred to as a financial power of attorney. These authorise your appointed Attorney(s) to handle your financial and business affairs, from withdrawing funds from your bank account to selling your house and everything in between.

Living Wills – End of life Decisions

These are a developing subject for the legal system, and something that not everyone will have considered.

The proper title is, in fact, an "advance medical directive". As the name suggests, this is a document written in advance to outline a person's wishes with regard to medical treatment to be given (or not) in the event that that person becomes incapable of making their wishes known to medical practitioners.

These documents are not without controversy. England and Wales have recently given guidance on the impact of properly drafted medical directives, though there is no corresponding legislation in Scotland as yet.

However, even without a legal standing in Scotland, they could aid your doctors, friends and relatives in the event that they ever have to make these decisions on your behalf.

None of us like to consider a time when we may require additional help, or even have to go into a nursing home, but in ignoring the possibility, we could be cheating ourselves of being properly prepared. There are a number of issues to be considered, including:

Free Personal Care

In 2002 the Scottish Parliament unanimously voted to provide free personal care for the elderly. The intention was that personal care charges for people who are cared for in their own homes would be stopped, and every person who resided in nursing care would receive their personal care free of charge. The assessment for personal care would no longer be means tested. The Community Care and Health (Scotland) Act 2002 was enacted with the intention that personal care should be free for all.

Personal care for the elderly includes, but is not limited to:

- Shaving
- Cleaning teeth
- Assisting getting dressed
- Assisting getting up and going to bed
- Assisting with fulfillment of special dietary needs

The care can be provided to an individual in their own home, as well as in a nursing home, as long as the individual has been assessed as requiring the care.

But what people have to be aware of is the important distinction between "charging" and providing the free personal care, and if you do not involve your local authority when seeking care either in your home or in a nursing home, you could end up footing

the bill yourself.

Care Costs and Asset Protection

Many of you will have considered how you would meet nursing home costs in the eventuality that you need to go into a nursing home some day. A main concern for a lot of people is the threat that they may need to sell their home to pay the fees.

It is a myth that Local Authorities can force you to sell your home to meet care home costs. However, what they are allowed to do is take the capital value of the house into account when deciding if you are eligible for support in meeting care home costs.

There is an exception to this and, broadly speaking, where a spouse or dependant relative resides with you, the capital value of the property would be disregarded for care costs assessment.

Recently, Local Authorities have been taking a hard line against intentional deprivation of assets. If you give an asset, such as your house, away so that it doesn't get included in the assessment, the Local Authority could choose to view your assets as if you still had the house for the purposes of the assessment. Recent cases have seen Local Authorities look back as far as twelve years to check if you have given away any assets that could have been used to meet costs.

However, to protect your liquid assets there are some investments available which the local authority will disregard for the purposes of care costs. These investments may or may not suit your own investment needs and appropriate financial advice should be taken.

It is clear that there are many issues to be considered when planning for the future and that these affect people of all ages and at all stages. Taking action can give peace of mind and if you would like to discuss any of the issues raised here then you should get in touch with Pamela Niven (pjn@bsemple.com) or your usual contact.

Jacqueline Leslie

Getting to know you...



Tell us a bit about your career so far.

I studied law with options in French at Aberdeen University. I spent a further year in Aberdeen studying for the Diploma in Legal Practice before moving to Glasgow to take up a Traineeship with McGrigor Donald. My Traineeship confirmed that my interest lay in the private client area and I spent a further five years with McGrigor Donald as an assistant in their private client department. I then moved to Maclay Murray & Spens, becoming an Associate of the firm. I spent five years at Maclay Murray & Spens before moving to Bird Semple in 2005.

Why did you join Bird Semple?

After ten years working in large, mainly corporate focused firms, I was keen to move to a niche private client firm. The idea of being able to put a face to all the names in the office phone directory also appealed!

Jacqueline Leslie is an Associate in our Asset Protection team and works closely with Frank Fletcher. She can be contacted on 0141 304 3434 or jl@bsemple.com

What do you like best about your role?

I enjoy the challenge of drafting Wills and Trust Deeds and implementing schemes to mitigate tax for clients. Obviously, in this area of work, we do meet clients in sometimes difficult circumstances, such as when they have lost a loved one. Hopefully, however, the firm's friendly but professional approach makes dealing with the legalities of the situation as painless as possible.

What do you like doing out of work?

I have two young daughters who have a very busy social life themselves, which doesn't leave a lot of me-time. My main relaxation however is a weekly tap dancing class which is good exercise and good fun!