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High stakes

Dawn Goodman, winner of STEP's Trusted Advisor of the Year award for 2013, talks to Sally Percy about private client litigation and working with families in crisis.

Dawn Goodman TEP is no stranger to breaking new ground. The Withers partner is a pioneer in her field of private client litigation. She was also the first litigator to be admitted as a member of STEP and, in 2013, was named winner of STEP's Trusted Advisor of the Year award, which was voted for by STEP members for the first time.

A new specialisation

After qualifying as a lawyer in 1980, Dawn initially specialised as a commercial litigator and divorce lawyer, working for Surrey firm Potter & Kempson, where she made it to partner. In 1987, she moved to City-based Withers, which wanted to establish a specialist practice in trust and estate litigation. As the specialism did not exist at the time, the firm had struggled to find lawyers with the right background to populate its new practice. 'I was lucky enough to have taken a tax case up to the House of Lords and I had done a holographic will case,' Dawn recalls. 'That turned out to be a greater level of experience than anyone else they interviewed, which is why I was lucky enough to get the job.'

But Dawn soon found she was embarking on a journey into the unknown. 'I had to develop not only my own skill base, but recognition of private client litigation as a skill in itself,' she recalls. 'There were no real specialists outside the Bar at that time - the work was mainly done by non-contentious private client lawyers, teaming up with commercial litigators.' Of those early days, she says: 'It was scary because there were few colleagues to bounce ideas off, but quite exciting at the same time. Trust and estate litigation took a while to get off the ground, but it gained momentum with big cases and with growing recognition within the profession that this was a new specialisation.'

The founding of the Association of Contentious Trust and Probate Specialists (ACTAPS) in 1997 gave impetus to the new specialisation, and it really took off once recognised by directories such as *Chambers* and *The Legal 500*. Now the specialism boasts a vibrant network of trust and succession litigators worldwide.

Over the years, Dawn has been involved in a broad range of proceedings in her niche field, ranging from consensual actions to hostile and complex litigation. Disputes over estates and wills, trusts, succession, inheritance claims, and proprietary estoppels all feature in her line of work. She also deals with matters relating to fraud, professional negligence and divorce. A particular focus for Dawn is foreign succession claims, i.e. where there is a conflict between different legal jurisdictions. She often handles multi-jurisdictional disputes involving conflicts between common-law, civil-law and Shari'a legal systems. The Koran, for example, is very specific about how much a wife and children will inherit when a man dies. 'You can end up with a collision between Koranic law and common or civil law,' Dawn says. 'And you can end up with a lot of "jurisdiction shopping". There can be proceedings going on in two or three different jurisdictions, where people are trying to get the best result for themselves, because there can be a lot of money involved.'

Cross-border private client litigation can be long and drawn-out, making time frames uncertain. 'In India, for example, the legal system means it may not be the generation that litigates that gets to see the result,' Dawn explains. Meanwhile, the boundaries that define whether a case should be determined within one jurisdiction or another are not clearly defined. Furthermore, differences in what can be achieved in different jurisdictions mean there is a lot of strategy involved in deciding where to start legal proceedings. 'You then have to make sure you don't adopt a position in one jurisdiction that might trip you up in another, because it is very likely that proceedings will be taking place in more than one jurisdiction,' she explains. 'It is highly academically challenging when you are dealing with how laws in different parts of the world interact or conflict with each other,' says Dawn. 'It's also culturally fascinating.'

Inevitably, the nature of the job means that Dawn needs to keep up with trust and succession litigation in the UK and all over the world, particularly in the key jurisdictions of Guernsey, Jersey, the Isle of Man, the Cayman Islands, Bermuda, the Bahamas, New Zealand, Canada, Hong Kong and Singapore.

Families in crisis

The stakes are high in the world of trusts and estates, and Dawn has encountered some highly emotional situations during her career. 'We are generally dealing with families who are undergoing a degree of trauma,' she explains. 'We are not only dealing with people who are concerned about their private welfare - we're dealing with people in crisis.' Being a divorce lawyer was a 'very useful start' to her career, Dawn says, since it enabled her to hone her empathetic and sympathetic skills. 'Having had a sound training in dealing with people who are highly distressed because of divorce was extremely useful,' she continues. 'But there are occasions when I feel I should have done a degree in psychiatry. That would have been immensely helpful.'

Dawn still practises in trust and divorce law, advising trustees and beneficiaries caught up in divorce proceedings. But, while there are similarities between divorce and trust work, there are also differences. In divorce, a court wants to see a fair result between the two divorcing parties and to look after the children. In trust litigation, the court will seek an outcome that is in the best interests of the beneficiaries, but it also needs to abide by the long-standing body of case trust law that exists, as well as the relevant statutory provisions, including the sometimes rather novel ones emerging from certain offshore jurisdictions. Furthermore, the involvement of beneficiaries typically means there are far more parties involved in trust litigation than in a divorce.

For example, in 2012, Dawn acted on behalf of 18 beneficiaries in *Re the A and B Trusts* [2012] JRC 169A in Jersey. This test case involved the removal of a trust protector in the absence of serious misconduct. 'It's been quite widely referred to as important in outlining what the duties of a protector are and also the circumstances in which they can be removed,' Dawn explains. This was by no means Dawn's largest case, however; one of her trust litigation cases in the 1990s involved an astonishing 84

defendants located all around the world.

Trusts in the limelight

While private client litigation doesn't have the same 'peaks and troughs' as commercial work, Dawn says it still presents interesting challenges of its own. Global efforts from governments to tackle tax evasion have thrust trusts into the limelight and now trustees are being asked to disclose more information about their trusts' activities. Dawn anticipates this trend will continue over the coming years. She also points out that some trusts are suffering significant financial issues after overstressing themselves during the downturn, which, again, has serious implications for the trustees of those trusts. Meanwhile, in England and Wales, the Jackson reforms are proving a headache, since practitioners are being asked to estimate the cost of litigation, something that is extremely difficult, and even more so with emotionally charged trust and estate litigation.

Dawn has been involved with STEP since the 1990s, after she spoke at an event. She understands she was the first litigator to join the Society. Her association with STEP has proved invaluable, she says. 'When I need a lawyer in another jurisdiction, the first thing I do is take down the STEP membership directory.' She is a regular speaker at STEP events around the world and praises the 'bedrock of knowledge and expertise' that the network offers. 'STEP is an excellent organisation, and the way in which it has taken off is truly remarkable,' she states.

Being voted Trusted Advisor of the Year in 2013 meant a 'huge amount', says Dawn. While the Withers team had previously been recognised in the awards for its contentious trusts and estates work, it was the first time it had won in the trusted advisor category. 'It was a very nice recognition that Withers is up there among the most noted firms,' Dawn continues. 'For me, it was an extremely welcome surprise that STEP members could regard someone who is a crisis handler as a trusted advisor. I was overwhelmed and humbled to be chosen.'

The *Chambers Global 2014* directory refers to Dawn as a 'doyenne of trust litigation'. But, while legal expertise is clearly essential to her work, Dawn is the first to admit it takes more than that to excel in her field. 'You have to be empathetic and take a sympathetic approach to a client's issues,' she says. 'But you also need to be able to say when something isn't sensible.' And, while she tries to avoid bringing work home with her, she always makes herself available to clients via her BlackBerry.

So what does it take to be a trusted advisor in Dawn's view? 'Every client needs to feel they are important to you,' she says, 'and that they can rely on you to do the best for them in what is often a very difficult situation.'

Sally Percy is a freelance editor and journalist.

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