



The Bird & Bird Story

A HISTORY OF TWO BIRDS ACROSS THREE CENTURIES



Edward Fennell



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Edward Fennell read Modern History at the University of Oxford before entering a career in the media. He has written a weekly column in The Times about law and lawyers for over twenty years but has also produced documentaries for television, organised exhibitions on historical themes and managed conferences linked to the professions and public service. He has twice won the award for Legal Journalist of the Year.

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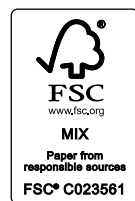
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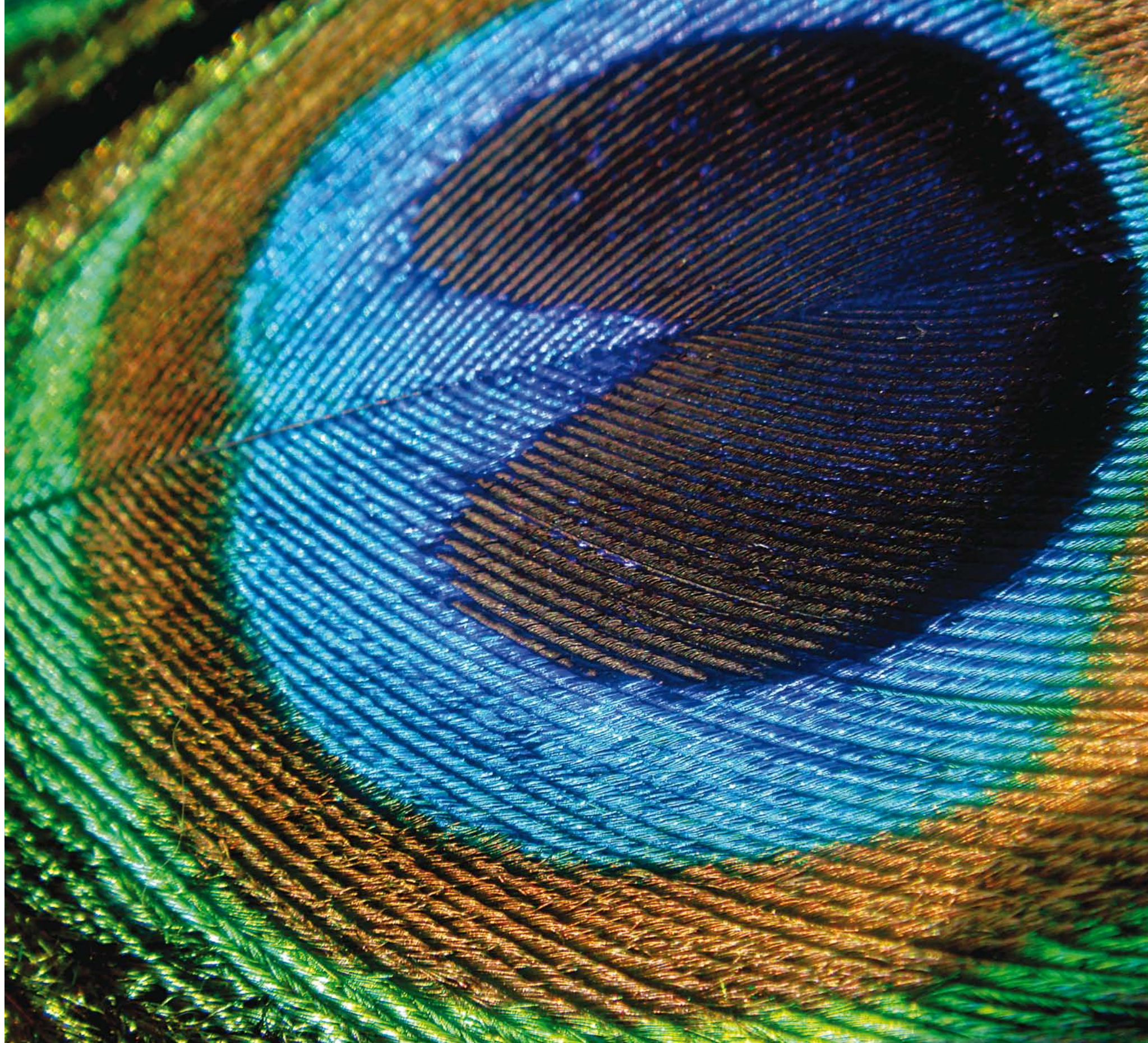
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FOREWORD

Welcome to this history of Bird & Bird. It is a fascinating tale which I hope will be of interest to everyone connected with the firm and to others who are intrigued by the legal market.

What our history demonstrates is that our claim to be the world's leading law firm in business sectors where technology plays a key role is well grounded in many decades of dedication to these areas. Our long and distinguished track record as a technology-focused firm is a source of considerable pride.

But the story of Bird & Bird is not only about a successful law firm—it is mainly concerned with all the different individuals who, over the last 166 years, have taken the firm to where it is today by their collective efforts and hard work, dedication and commitment to excellence.

The changes in the legal market since William Bird founded the firm in 1846 have been extraordinary. Great resilience and a distinctive identity have been necessary to survive for so long. Although each generation has developed the firm in its own particular way, I believe that much of the DNA of the firm has been passed on from generation to generation enabling us to maintain many of the main characteristics of the firm. Continuity of our character and values has been vital to our progress. Our core purpose today is the same as when we started—to work together with a common financial interest in helping our clients to succeed—and our success is still ultimately dependent on our ability to have the best people with the right attitude and values working throughout the firm.

One of the reasons why we have been able to expand and grow so rapidly over the last 15 years without losing our character and soul is that we have been scrupulously careful in selecting from amongst those who wished to join us. All recruits are reviewed against our core values and principles. So, in fact, most partners and others who have joined over the past decade or so already had many of the core Bird & Bird characteristics when they arrived. That was often why they were attracted to us in

the first place and why, almost without exception, they have adapted so well to how we operate.

So this history of Bird & Bird is really about all the people who in different roles—partners, managers, associates, consultants, secretaries, PAs, support staff and others—over the years have been vital in delivering the high quality of service to clients in which we take such pride. I express my thanks and appreciation to them all.

Equally though we are extremely grateful to all our clients. Without you we would not be in business. It is only due to the trust you have shown us over the last 150-plus years that we have been able to build the firm to where we are today. So our history and success is closely linked to our clients' success. Many thanks to you all.

The fact that we now have written the story of Bird & Bird's first 166 years is not only important for understanding our origin and heritage. The history and the key factors that have made it such a success story represent solid ground on which to stand when setting the direction for the future. We look forward to many, even more successful, decades ahead as Bird & Bird spreads its wings still further across the world.



A handwritten signature in black ink, which appears to read "Michael Frie". The signature is fluid and cursive.

Michael Frie
Chairman

INTRODUCTION

When is it ever the right time for a law firm to publish its history? Conventionally the researchers get to work as part of a major ‘birthday’ celebration such as a centenary or 150 years. Well, Bird & Bird is already a long way past both of those. Instead, the right time for Bird & Bird is *now* because, as I write, we are on the verge of major change (for more on that see the Afterword). So this is the ideal moment to take stock and remember where we have come from because in our history is to be found the vital clues to our character and culture today.

The story of Bird & Bird starts in Dickensian London back in the 1840s. It was a successful firm to the extent that it survived when others fell by the wayside and it grew steadily, if not dramatically. Then, suddenly, during the past 20 years we have deliberately gone for growth: first, transforming our presence in London and then expanding across the globe, starting with our landmark opening in Paris around the Millennium.

Regularly since that time we have continued to add people and offices, each with their own story to tell and histories of their own. That is why it is important to capture the essence of Bird & Bird and the personalities of some of its key people now before they are forgotten and lost in an ever-increasing maelstrom of activity and further growth.

In the limited space we have available we have not attempted to capture every detail, every deal or even person who has been involved. There are many individuals and transactions which, sadly, have had to be left out and I hope that this will be understood. But what we have managed, I think, is to take an authentic (although selective) slice through the past 160-plus years—starting with the Bird family who gave the firm its client base on which we have built—to capture the unique talents of the firm which have enabled it to reach the place where we are today.

To ignore or dismiss this legacy would be a big mistake. But, in addition, there has been handed down a certain kind of culture from the diverse characters of the



people behind the headlines. We have always encouraged individuality and vivid personalities to thrive at Bird & Bird, but there has also been a shared set of objectives. We may work in very different ways, but we have all worked towards the same goals with a common set of values. The fact that we have preserved these values at a time when we have recruited extensively has been critical and will remain so for the future.

So the culture of the firm goes very deep. The drive to be increasingly better at what we do and this sense of being very different from other law firms is very important for us. It applies to every member of the firm, from the most senior to the most junior and whether lawyers or non-lawyers. It is not to be easily shaken because the contribution of every person is valued and appreciated whoever they are, whatever their role.

So in recognising and celebrating the firm’s history and culture I hope we are going a little way towards ensuring its survival into the future. And I thank everyone involved, past and present, for making Bird & Bird the remarkable and fascinating law firm it is today.

A handwritten signature in black ink, appearing to read 'DKerr', written in a cursive style.

David Kerr
Chief Executive Officer



Prelude

A BIRD'S EYE VIEW

Walk into Bird & Bird's glistening office in Fetter Lane in the City of London and it takes an act of imagination to sweep back over 160 years to the birth of the firm in 1846. What, you might ask, can a global firm operating at the leading edge of technology in the second decade of the 21st century have in common with a tiny office of English attorneys early in the reign of Queen Victoria?

In geographical terms, admittedly, the firm in London has not come far from its first long-term home at 5 Gray's Inn Square. In fact, it is no more than a brisk five-minute walk across the great thoroughfare of Holborn which runs from London's West End down to the City. But when you consider that there are now offices in 20 other major centres across the world—including Paris, Stockholm, Rome, Beijing, Munich—then the leap economically, socially and in working practices seems so vast that the past might appear irrelevant.

Probe a little, however, and a different picture emerges.

Although Bird & Bird is now seen as a thoroughly modern law firm, sharply focused at the leading edge of technology and global in its coverage, there is a clear line in its development which goes back to those early years of the Victorian era. One client leads to another and running progressively through that process of evolution over more than 160 years is a direct line of personal connection—a chain of continuity—between today's partners and those of the mid-19th century. Each generation from 2012 backwards through 16 decades has known, and is linked, to the one before.

Therefore to understand the character of Bird & Bird you must reach back to see how scores of individuals intermingling and overlapping from one set of partners to the next have acted in concert and in response to the events around them to build the firm as it is today.

London skyline.

'Running a law firm is like herding cats and the challenge is to make sure you do not lose direction, that things don't go astray and that you make sure you don't build up practice areas that conflict with your core business'.

David Kerr

Bring on the Birds

The dominant story for the first century is that of the Bird family. 'Twobirds' is the e-mail address of the firm. But maybe, more accurately, it should be 'Threebirds', because until the mid-20th century Bird & Bird was dominated by a trio of Bird family members—father, son and cousin—who enjoyed great longevity (Sir William Bird II was 95 when he died!). It was the strength of their relationships which provides a clue to the continuity within the firm and the way it evolved into such a strong distinctive brand.

So the Birds collaboratively provided the foundations upon which the modern firm has been built. Moreover, back in the day when firms were small—and deliberately kept small by law—the Birds as individuals played an important role in City life. They were well-known figures not just in the law but in the wider world of finance and, indeed, politics. It was a small firm but in no way an obscure one.

After the Birds had gone—they finally died out in 1950—there was a period when the firm had to take stock. In a sense it continued to live with the legacy of the Birds into the 1960s and 1970s, trying, not entirely successfully, to work out how to take its undoubted skills forward into a rapidly changing future.

A renewed vigour

Then, in the 1980s, came a new generation and a fresh burst of vision and ambition which first secured the firm's survival and took it on to its current success. By focusing with great clarity on how the firm could distinguish itself from the so-called 'Magic Circle' firms (the elite handful of highly profitable City of London firms doing financially based work, and also from the large number of middle-ranking outfits) a dynamic group of partners crystallised their aspirations around business sectors where technology plays a key role. As a result, Bird & Bird can now claim to be the world's leading technology-based law firm.

But it could not have done that out of nothing. There were enough historic relationships and a track record dating back to the Bird era which enabled the firm's new management to make their ambitions look credible and a logical development from what had gone before.

Moreover, there was something in the character of the firm which lent itself to this new strategy. After all, Bird & Bird had never been taken over. There may have been minor mergers with other smaller firms, but the Bird & Bird identity has never been threatened. On the contrary, always within the firm there has been

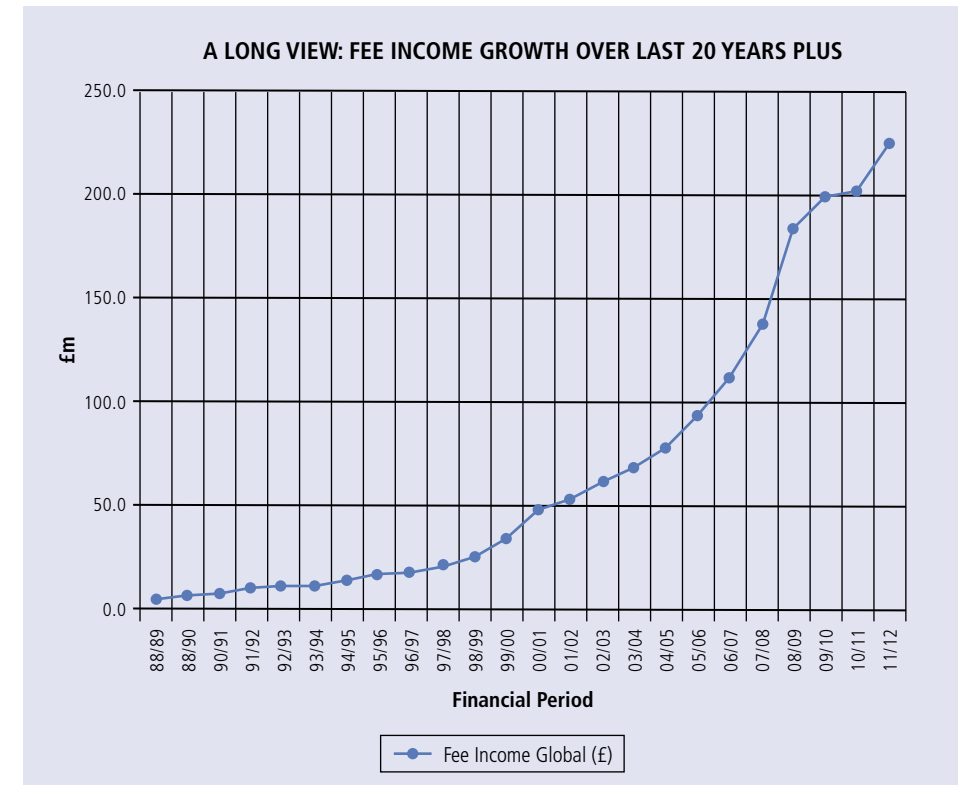
a stubborn, highly individualistic determination to survive with its distinctive character intact.

The challenge of growth

Admittedly, as the firm sharpened its sector focus and expanded internationally, there has been a significant influx of entrants from other firms. Has this changed the underlying culture? It would seem not. Almost invariably those who are drawn to the firm—and are welcomed by the partnership—are like-minded individuals who have a 'Bird & Bird outlook' on the law and its place within their lives. In other words, they are all dedicated lawyers but that is not the total sum of their interests.

So, despite the massive changes, the character of Bird & Bird has remained consistent over the decades. It produces high-quality, innovative, free-thinking, sometimes quirky lawyers who thrive in an atmosphere of mutual respect. It doesn't favour clones, the uninspired or 'Yes men' (or women). It likes strong characters with minds of their own—provided, that is, they are superbly good at their job.

This has resulted in a history rich in individual endeavour. And that is the story which we will now explore.





Chapter 1

BIRD ON THE WING 1830s–1950

In the beginning, back in the 1830s, there was just one Bird. William Frederick Wratlaw Bird came down to London from the Birmingham area of the English West Midlands to qualify as an attorney (later the term was to become solicitor) and very quickly he decided to go into partnership with a certain William Windsor Fisher.

Their tiny firm, Bird & Fisher, occupied offices to the east of St Paul's Cathedral in the heart of the City. However, that partnership, in what became something of a pattern, did not last very long. By 1846 William Bird had moved as a sole practitioner further west into new offices at 8 Verulam Buildings, which formed part of the great legal and professional complex of Gray's Inn.

This was a step up in the world and it did not take too long before William Bird had formed a new partnership. This time his opposite number was James Moore and in 1853 the two-partner firm of Bird & Moore moved around the corner a short distance into 5 Gray's Inn Square. The firm was to remain in Gray's Inn Square—aside from during World War II and its aftermath—for almost 150 years. By contrast, however, the partnership with James Moore lasted barely another two years and by 1855 William Bird was again solely in charge, setting his personal seal on the firm as it moved from embryo into infancy.

Exactly what kind of work Bird & Moore was doing initially we do not know for sure. It is likely, though, to have been predominantly private client work for the middle classes. So to get a sense of what the legal world was like back in the 1840s and 1850s it is helpful to turn to the great English novelist Charles Dickens, author of literary masterpieces such as *David Copperfield*, *Bleak House* and *Oliver Twist*.

Dickens, in fact, was active as a writer between 1835 and 1870, exactly the period of Bird & Bird's start-up. And he knew the legal world well: one of his early jobs as a teenager was as a humble lawyer's clerk with the firm of Ellis and Blackmore, which

William BM Bird in his chambers, 1875.



Gray's Inn Square
in 1905.

was also based in Gray's Inn. Indeed, its premises were just a few paces from where William Bird and James Moore had set up shop.

This is not surprising. Gray's Inn was one of the great historic institutions of the London legal scene. Like Lincoln's Inn, the Inner Temple and the Middle Temple (which hosts the chapel made famous by the thriller *The Da Vinci Code*) it had been a home to lawyers going back to the Middle Ages. Packed full of barristers' (that is advocates') chambers and firms of solicitors, it was at the heart of the legal establishment. Look at the map opposite and you will see that the Inns of Court—in conjunction with the Royal Courts of Justice—represented a great wedge of territory stretching northwards up from the River Thames for about a mile.

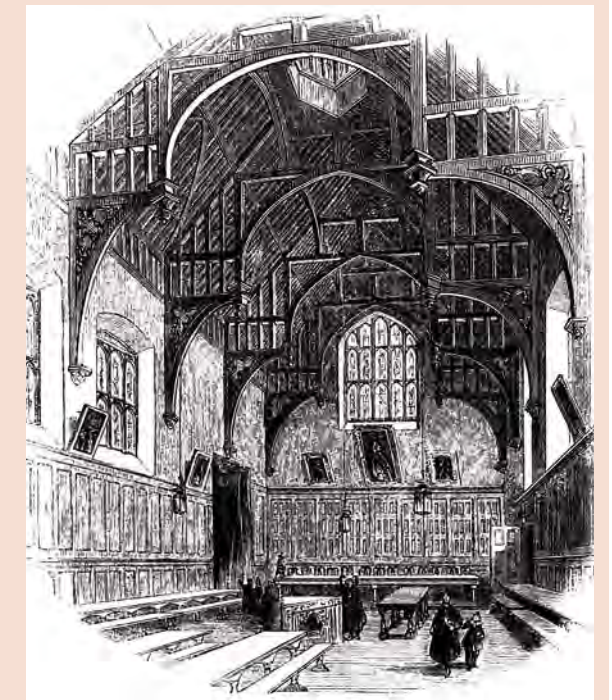
So William Bird's firm was at the heart of the legal world from the beginning. Yet at the time when he was getting into his stride the world of the law was labouring under its history and overloaded with delay. Dickens himself was one of its greatest

Gray's Inn

Almost from the start of the firm until it made the move into Fetter Lane just short of 150 years later the history of Bird & Bird was rooted in Gray's Inn, one of the most powerful legal centres in London.

Home to one of the four Inns of Court, to which all barristers in England and Wales belong, Gray's Inn has traditionally hosted other professionals concerned with the law, including attorneys and solicitors.

Rather like the earliest colleges of Oxford and Cambridge Universities, Gray's Inn started primarily as a series of lodgings for lawyers in the Middle Ages. It began to grow in stature architecturally in the 16th century with the laying out of extensive gardens (to be surrounded in due course by fine buildings) by Sir Francis Bacon, the distinguished thinker, writer, politician and lawyer. Gray's Inn students were famous in Elizabethan times for putting on plays, and it was in Gray's Inn Hall that *The Comedy of Errors* by William Shakespeare was first performed in 1594.



Gray's Inn Hall, 1870.

Although heavily bombed during World War II, when the Bird & Bird offices were destroyed, Gray's Inn has now largely returned to its former glory (albeit through extensive renovation). Amongst many facilities it now hosts a large part of the City Law School (formerly the Inns of Court Law School).

5 Gray's Inn Square, the original Bird & Bird offices, is currently part of a successful barristers chambers 4-5 *Gray's Inn Square*. 2 Gray's Inn Square, to which the firm returned after World War II, is now also the seat of barristers chambers 2-3 *Gray's Inn Square*. Charming though these buildings are, they could no longer meet the demands of a large and expanding global law firm.



critics. Having gained some insights as a solicitor's clerk, he was well positioned, when he reached maturity as an author, to expose the legal world's shortcomings and its maze of complexity. In particular, the courts in Dickens' time were not an edifying scene and frequently ruinously expensive to all sides of a case. The various grades of lawyer–judges, advocates and solicitors plus various other hangers-on–were depicted by Dickens as being more concerned with maintaining their status and privileges than achieving anything like justice or settlement for their clients.

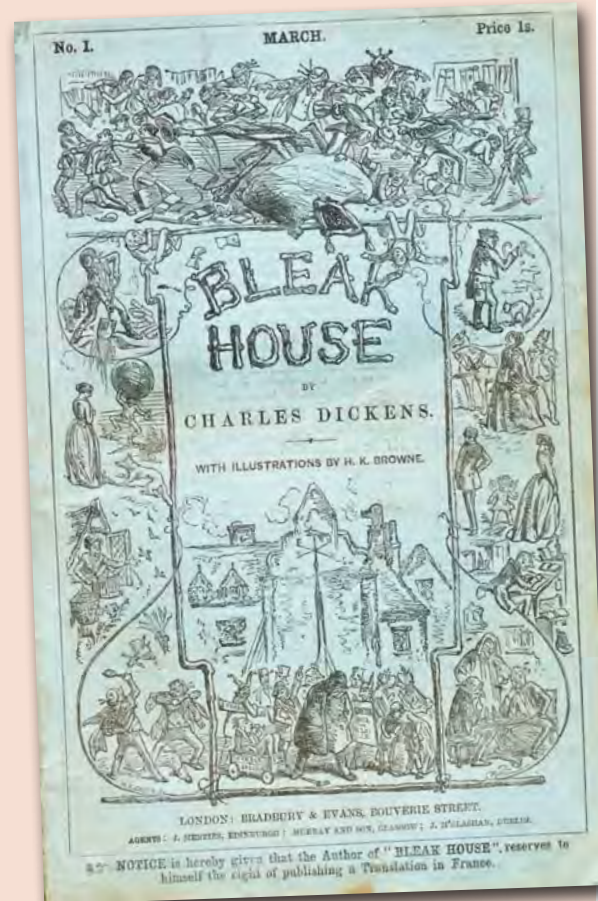
However, change was afoot, and as William Bird's career started to make progress the English legal system was beginning to undergo major reform. The Victorian spirit of modernisation was to produce rationalisation both of the courts and the

Bleak House

Dickens was, perhaps, at his most acid about lawyers in *Bleak House* (published in 1852–53, just seven years after William Bird set up shop), where the plot hinges on an interminable family law case wending its way through the courts. Here is how he described the lawyers:

“The various solicitors in the cause, some two or three whom have inherited it from their fathers, who made a fortune by it, [are] ranged in a line, in a long matted well (but you might look in vain for truth at the bottom of it), between the registrar's red table and the silk gowns, with bills, cross bills, answers, rejoinders, injunctions, affidavits, issues, references to masters, masters' reports, mountains of costly nonsense, piled before them.”

‘Mountains of costly nonsense’! Dickens believed that lawyers made everything more complicated than necessary as a way of boosting their incomes. (It is an accusation still sometimes made today!) However, reform was on its way, and by the 1870s the worst forms of abuse had been rooted out.



Patent controversies in the Dickens era

The early years of William Bird I's legal practice were a time of great controversy over the patent system. Although there is no direct evidence to suggest that Bird himself became involved, he would, almost certainly, have been aware of the problems confronting inventors attempting to secure their rights.

In *Little Dorrit*, for example, Dickens goes to considerable lengths to explain how a certain Daniel Doyce—a ‘smith and an engineer ... a very ingenious man’—has spent years in developing ‘an invention (involving a very curious secret process)’.

However, as soon as Doyce seeks to protect his invention legally he ceased to be in the eyes of the government ‘an innocent man’, but is treated instead as ‘a man to be shirked, put off, brow-beaten, sneered at, handed over ... and dodged back again; he is a man with no rights in his own time, or his own property; a mere outlaw, who it is justifiable to get rid of anyhow; a man to be worn out by all possible means’.

Through Doyce, Dickens describes graphically the problems of dealing with the authorities, their delays and their lack of competence in reviewing his work. ‘Mine is not a particular case’, says Doyce, ‘I am not worse used than a hundred others who have put themselves in the same position.’

By contrast, says Doyce, inventors in other countries are treated much better. ‘And that's the reason why so many go there’, he adds dryly.

Similarly, in *A Poor Man's Tale of a Patent*, Dickens described the procedures (albeit in exaggerated form) that an inventor needs to follow including attending 34 different offices (in fact, it was seven) with extortionate fees being paid to each. ‘No man in England could get a Patent for

an Indian-rubber band, or an iron-hoop, without feeling all of them’, he complains.

In reality, by the time *Little Dorrit* was published matters were improving significantly, stimulated by the Great Exhibition (of global industry) held in London in 1851. The Patent Law Amendment Act 1852 streamlined the system by, amongst other things, creating a single process for the UK as a whole (as opposed to one for each of the nations).

Yet many people were still dissatisfied and in a debate in Parliament in 1856 complaints were made about the costs imposed on inventors which were regarded as a tax on ingenuity. So, following the publication of *Little Dorrit*, Dickens was approached by the chairman of the South London Association and invited to sign a petition in support of the Patent Law Reform League. The great author expressed his sympathy, but declined nonetheless to put his name to the campaign.

Little could the Bird lawyers have guessed, at this point, that patent law was to play such a large part in their future story.



Charles Dickens in 1858.

legal profession itself. The world of law, in short, was gradually coming into line with the demands of the new industrial society and the needs of a thriving commercial economy at the time when the British Empire was approaching its peak. A new model was adopted which in some respects remained pretty much the same until the reforms of the 1960s.

Victorian flourishing

Bird & Moore was ideally placed to take advantage of the new opportunities which were profitably opening up. We are now moving from the world of Dickens into that great chronicler of later Victorian times, Anthony Trollope, whose novels, it has been pointed out, are ‘famously (and infamously) populated with legal actors: solicitors, barristers, judges, and jurors, with the odd criminal and breacher of contract thrown in for good measure. The law also provides the novels with well-wrought plot lines, often involving social and communal regulation of property, and in particular, landed property and questions of inheritance’ [A Ben-Yishai, ‘Trollope and the Law’ in C Dever and L Niles (eds), *The Cambridge Companion to Anthony Trollope* (Cambridge University Press: Cambridge, 2010) ch 12].

This was certainly a good reflection of what Bird & Moore was now doing. In common with the practices of other leading solicitors across Gray’s Inn the firm’s main practice focused on wills, trusts, probate, estates and property work for the wealthy landed gentry and others who were doing well out of the industrial expansion of Britain.

By the mid-1870s, therefore, expansion was in the air. In 1875 William Bird took on his son—another William (Barrott Montford) Bird—as his articled clerk and in 1878 a new partner, Theodore Ratcliffe, joined the firm. At this point the name changed briefly to Bird Moore & Ratcliffe. However, once again, the partnership was short-lived and Ratcliffe departed just two years later (his name also being excised) in 1880. This coincided with William (Barrott Montford) Bird II being admitted as a solicitor and becoming a partner. So for four years father and son worked—one trusts happily—together until 1884, when the father retired.

William Bird II—more correctly, as he was to become in later years, Sir William Barrott Montford Bird—was a formidable figure. Having become a partner, presumably in his late 20s, he was to continue with the firm for 70 years, retiring only shortly before his death in 1950.

Such a span—embracing as it does the Boer War, World War I and World War II, plus an extraordinary level of social and technological change—reflects the true coming of age of the firm and then its progression into early maturity. The partnership was expanded and the beginnings are to be seen of its reputation for expertise in the field of intellectual property (IP).



William BM Bird.

William Bird II’s early years, however, were not that easy. Although his father had retired, he appears to have kept in contact with his early clients with unfortunate results. His health was poor and he seemed to have offended a number of people. It was all William Bird II could do to smooth ruffled feathers. Nonetheless things settled down and progressively the firm began to build an industrial base, attracting a strong following in the most important technologies of the time, coal mining and iron making.

The first taste of IP

Once again expansion was on the agenda, and in 1891 a new figure, Edmund Strode, joined the firm. This time the relationship lasted for more than a couple of years. In fact, Strode was to stay until 1905, and for that period the name adopted was Bird Moore & Strode.

The firm's first (reported) trade mark case on behalf of Eastman Photographic

Bird & Bird had already made an impression on trade mark history before the end of the 19th century through its involvement in a successful appeal to the House of Lords in 1898 to register the trade mark 'Solio'.

The appeal was against a refusal to register the mark on the basis that it brought to mind the sun and hence, for photographic materials, was

a word having some reference to the quality or character of the goods in relation of which it was sought to register it. John Moulton QC and D M Kerly had been instructed by the firm with Kerly, the junior counsel in that case, having written in 1894 the first edition of what was to become the leading textbook on trade mark law (currently in its 17th edition and still going strong).



Kodak factory at Harrow, 1890s.

Around this time also the firm began to get a taste for IP work. In 1898 it took on its first ever reported trade mark case on behalf of the Eastman Photographic Materials Company Ltd for its photographic paper.

Exactly how the connection with Eastman was made is sadly lost, but it was clearly an important development and reflects the way that William Bird II—or maybe even Edmund Strode—was mixing in the right circles and starting to gain a reputation for this type of work. Just a few years later, in 1909, Bird & Bird conducted its first recorded patent case on behalf of the (wonderfully named)

'Z' Electric Manufacturing Co Ltd against Marples, Leach & Co Ltd in a matter concerning filaments for incandescent electric bulbs. The early signs of Bird & Bird as a technology-focused firm are to be seen.

In the meantime a third Bird family member had joined the firm. Ernest Edward Bird was a second cousin of William Bird II and, proving that blood is thicker than water, he was to remain with the firm for well over 40 years. Ernest, who might be regarded as the surrogate son of the childless Sir William Bird II, became a partner in 1901, bringing the partnership briefly to a total of three before Edmund Strode departed four years later.

Perhaps it was no wonder then that with the departure of Strode the decision was taken to consolidate the firm as a proper family firm. The name Bird & Bird was adopted—maybe in perpetuity?—in 1905 and so, some 60 years after William Frederick Wratislaw Bird had started in practice, the firm had reached its maturity (at least in terms of consolidating its name).

Punching above its weight

Although the firm continued as a small partnership, it packed a considerable punch. By the turn of the century in 1900 William Bird II was evidently one of the leading solicitors on the London business scene, valued for his commercial acumen as well as for his legal skills. He was appointed a director of Williams Deacon's Bank (which was to become many years later a constituent of the Royal Bank of Scotland) and was also on the boards of a number of iron and steel-making companies.

'Z' Electric Lamp Manufacturing Co Ltd v Marples, Leach & Co Ltd (1909)

The first case in the Reports of Patent Cases in which the name of Bird & Bird appears saw the firm acting for the patentee 'Z' Electric Lamp Manufacturing Co Ltd. The subject matter of the patent (No 21,654 of 1906) was 'Improvements in the manufacture of filaments for incandescent electric lamps'. In a subsequent decision related to this patent an important principle was established in the judgment of Fletcher Moulton LJ, namely that:

'The patentee's obligation is not to be omniscient; the patentee's obligation is to

put the public in possession of his inventions, and if he does that bona fide in such a way that they know its advantages practically, and they can obtain those advantages practically, the fact that he has formed an erroneous view in theory of that which procures those advantages, or the state of things in which those advantages occur, does not, in my opinion, militate against him.'

Bird & Bird continued to act in further patent litigation for this company in the years which followed.



Sir William Bird
Member of Parliament
for Chichester
unveiling Chichester
War Memorial.

In keeping with this status his personal wealth accumulated substantially, and in 1920 William Bird II was awarded a knighthood. It is highly significant, however, that the citation for William's knighthood was in his capacity as Founder of the Salters' Institute of Industrial Chemistry and for providing scholarships for chemistry science graduates in order that they could continue their research.

No clearer evidence could be given, indeed, for the interests of the Bird dynasty and the importance of its commitment to the field of science and technology. The knighthood could even be said to represent the formalisation of the link between Bird & Bird and the sector with which it would be most closely identified 90 years later.

No doubt the knighthood was also very useful, however, in paving the way for Sir William to be elected unopposed as Conservative Member of Parliament for Chichester (near his country estate in Sussex) at a by-election in 1921. This followed the resignation of the sitting Conservative MP, Lord Edmund Bernard Talbot, who had been appointed as Lord Lieutenant of Ireland just as the Irish crisis was reaching its climax.

This was, of course, a time of political turbulence, and in the following 1922 General Election, Sir William was re-elected with a massive majority over his only opponent, a Labour Party candidate. But there was another election the following year and this time he lost his seat to a Liberal opponent.

Maybe sensibly he decided not to stand for Parliament again—although it should not be overlooked that in the course of this somewhat short parliamentary career Sir William enjoyed the distinction of participating in the ceremonial opening of the Bognor Golf Course when over 300 people were present to watch him drive the first ball!

The unseen heroes: managing clerks

By this time, it was Ernest Bird who increasingly became the driving force within the firm, as his older cousin diverted his energies elsewhere (although continuing to retain a flat above the office in Gray's Inn).

The firm had grown in the 1920s to a total of about 50, with most of the routine work being undertaken by managing clerks—lacking formal qualifications (having had no opportunities to gain them), but astute and experienced—equivalent to senior paralegals today. These managing clerks represented the part of the firm where most of the real fee earning was done. Amongst the most senior were men of

considerable ability and personal talent. For example, Claude Sasse was regarded as the Birds' right-hand man and entrusted with wide responsibility for the running of the firm. Subsequently he was appointed to be a trustee in the administration of William Bird II's will. Then there was Tom Thurgood, a man of enormous personal presence, whose specialism was medico-legal work, advising hospitals on their defence against accusation of negligence. Solicitors routinely deferred to him.

Also in the late-1920s and 1930s a young clerk by the name of Arthur Hodges began to make his mark. Through a combination of natural intelligence and raw cunning he was to become an enormous asset to the firm across a number of areas, but especially in IP. That, however, was to lie ahead in the post-Bird era. For the time being, in the period between the Wars, the bulk of the firm's practice remained for



Ernest Bird.

A man of high society

William Bird II came to be the embodiment of the glitteringly successful man of the City in the golden days of the late-Victorian/Edwardian era before the calamity and horrors of World War I changed everything.

His status was embodied, perhaps, by the purchase in 1905 of a grand mansion house, farm house, cottages and 2,000 acres of land which constituted the Eartham Estate near Chichester, Sussex.

The house was particularly distinguished as having been designed by Sir Edwin Lutyens, the leading architect of the British Empire at its peak. As well as being celebrated for his large country houses, he achieved a unique status for his vast government buildings in New Delhi, India. By owning such a house William Bird II was staking his claim in the upper echelons of British public life.

This was endorsed further when he became the High Sheriff of Sussex, briefly a Conservative Member of Parliament (1921-23) for Chichester and also gained a knighthood.

Meanwhile, his status in the City was underpinned by his membership of the Salters' Company, an historic City of London Livery Company whose origins go back to medieval times. William, along with his cousin Ernest, also a member of the Company, left his mark on the Salters by commissioning a replica of the 16th-century Mostyn Salt (an enormous silver salt cellar) held in the Victoria & Albert Museum. This played a key role part in the Salters' Company's official dinners distinguishing those who sat 'above' the salt from those who sat 'below' it.

Sir William's entry in *Who's Who* (the directory of members of the British Establishment) was very revealing. It ran: 'Solicitor 1880—retired—travelled around the world in 1901; shot big game in Nepal, East Africa, the Sudan'. By emphasising the pursuits of the wealthy leisured classes at a time when so much of the globe was 'painted red' (as belonging to the British Empire) it put in context Sir William's achievements with Bird & Bird.



Eartham House—home of Sir William Bird.



John V. King
Chichester

private clients. These were still predominantly the very wealthy—as Arthur Hodges described it in his memoirs: ‘The main business of the firm (in the 1920s/30s) was drawing up wills, winding up estates, conveyancing, trust work and generally pandering to the whims of the upper classes. Litigation was not regarded as a very respectable or profitable activity. It was merely tolerated as a necessity to enable the nobility to get divorced, contest estates, suppress libels and so on.’

Ernest Bird, by now the day-to-day leader of the firm, ensured that he looked the part when dealing with clients of this quality. ‘We were solicitors to the nobility’, recalled Arthur Hodges. ‘Sir Ernest Bird used to be driven to the office from Holland Park [a very exclusive part of London] by his chauffeur Plumb whose job it was to wait outside the office, polishing the car and awaiting further instructions.’

Like his cousin William, Ernest collected directorships in the City and enjoyed considerable prestige as well as wealth. Nonetheless, despite the grandeur of this aspect of the life of the firm, the technology and industrial work was ticking increasingly loudly in the background.

John Venning, a young solicitor, had been appointed as partner in 1909 and was to go on to develop a significant patent practice which continued right through to the 1940s. Foremost amongst Venning’s clients was the Dutch electrical products company, Philips NV, and this connection was to be invaluable in establishing Bird & Bird as a serious player in the IP and technology market in the years ahead. By the 1930s John Venning had become so important to Philips that he was appointed one of the three managing trustees of Philips’ English trust—a position which was to prove most useful with the outbreak of World War II.

In the back office, however, away from the work for high society and major corporate clients, Bird & Bird was happy to undertake routine legal chores of a more modest nature. Debt collecting, for example, was an important staple source of income, and the firm also acted—thanks to its London address—as agents for regionally based solicitors (such as Jefferies of Southend, Harrisons of Worcester and Sydney Mitchell of Birmingham) in their cases in the London courts. As Arthur Hodges recalled, ‘The Divorce Registry was in Somerset House

[adjacent to Waterloo Bridge, overlooking the Thames] as was the Companies Registry so I was often down there presenting petitions and doing company searches to find out the registered office of defendant companies so that we could effect service by post.’

The firm also undertook what Arthur Hodges calls ‘poor persons’ work’ and his first job—as an 18-year-old recruit in 1928—was to ‘run up and down Chancery Lane (which runs parallel to the firm’s current home in Fetter Lane) to and from the law courts (in the Strand) issuing writs at 30 bob a time [£1.50], plus issuing summonses, drawing up orders and delivering briefs to counsel in the Temple [the other great Inn of Court]’.

What is clear is that in this period between the two World Wars, when the firm was still primarily the family business of William Bird II and Ernest Bird, it was run very efficiently and operated as a ‘tight ship’. ‘Ernest Bird was the big autocratic boss’, recalls Arthur Hodges. ‘His command was law. Any member of the staff summoned to the sanctum [Ernest Bird’s office] went in with trembling knees.’

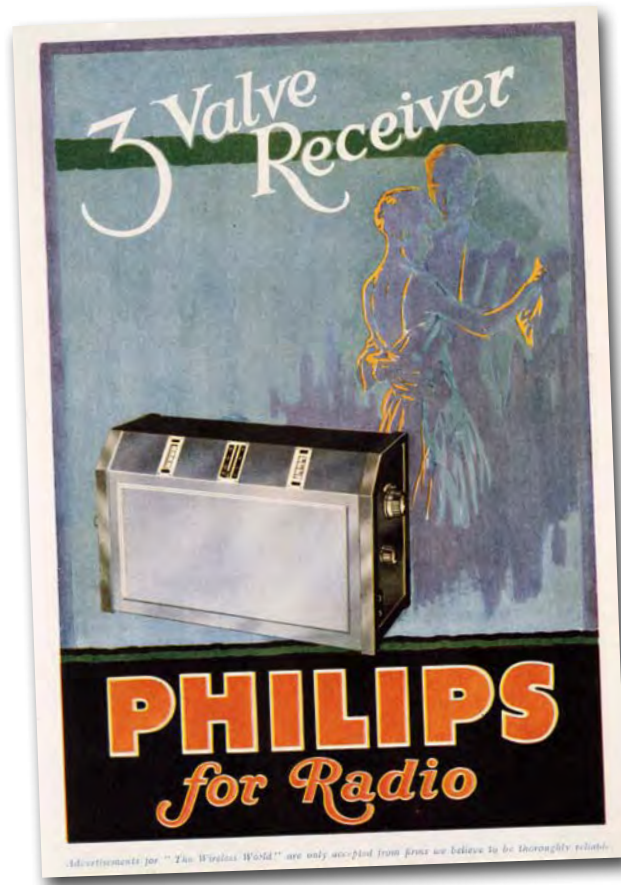
This rigour came through powerfully in the way the firm was administered. Summary details were kept in a very systematic way, not just of all correspondence, but also of all telephone calls, both incoming and outgoing. These then formed the basis for billing clients. In retrospect this system was described as being ‘top heavy, cumbersome and a duplication of work’, but it gives an insight into the thoroughness with which the affairs of the firm were conducted. (In contrast, it must be said, to some of the practices followed in the post-war period when the Birds were no longer in charge.)

The world in crisis

With the coming of World War II, however, business was to change significantly. A number of the firm’s staff, including Arthur Hodges, were called up to the armed forces, and in a demonstration of the Birds’ wealth (and generosity) these men continued to be paid while on active service. But while, no doubt, some of the family work continued to be undertaken, there was devastation when Gray’s Inn was bombed in 1941 and 5 Gray’s Inn Square was destroyed.

At this point the firm removed to Theobald’s Road slightly to the north of Gray’s Inn, and there it remained until the mid-1950s, by which time a new era had dawned.

Philips advertisement, 1928.



A newspaper clipping showing bomb-damaged Gray’s Inn, 1941.

Meanwhile, Ernest Bird, renowned in the City and the profession for having ‘a safe pair of hands’, had taken over as President of the Law Society (the professional body for solicitors in England and Wales).

This was, perhaps, the most prestigious role to which a solicitor could aspire, and it brought with it, at that time (but not today!), a knighthood. Amongst his achievements, Ernest Bird is remembered for having chaired in 1943 the shortest ever Annual General Meeting of the Law Society—a bombing raid on central London prompted him to reduce substantially its usual length.

Two years later, as the war came to an end, Sir Ernest died and the sun started to set on the Bird era. Sir William Bird was to continue until 1950 (dying at the age of 95), but clearly he had been a peripheral presence for a number of years, coming to London primarily to attend board meetings of Williams & Glyn’s Bank and the occasional lunch with Ernest—even in the midst of the wartime carnage—at the Dorchester Hotel.

Philips’ debt to Bird & Bird during World War II (1940)

Bird & Bird played a key role during World War II on behalf of Dutch client, Philips NV, which had a strong UK presence based on its manufacture of radios, televisions and even electric shavers (first manufactured in 1939).

At the start of the war Philips employed 45,000 people worldwide, but once the Netherlands had been occupied by German forces in 1940 the company’s assets would normally have been taken over by the ‘Custodian of Enemy Property’, an official of the UK government.

Fortunately, this scenario had already been envisaged in the 1930s by the Philips UK management with advice from John Venning. In order to forestall this eventuality and to preserve the company’s assets an English trust was established into which Philips’ UK assets were transferred. John Venning had been appointed as one of the three managing trustees of the trust and, in effect, had virtual control of a large part of the Philips empire outside of the Netherlands throughout the rest of the war.

The success of this arrangement proved to be an important foundation for the later development of Philips during the rest of the 1940s and 1950s. John Venning subsequently received a presentation from the company to recognise the importance of what he had achieved on its behalf.

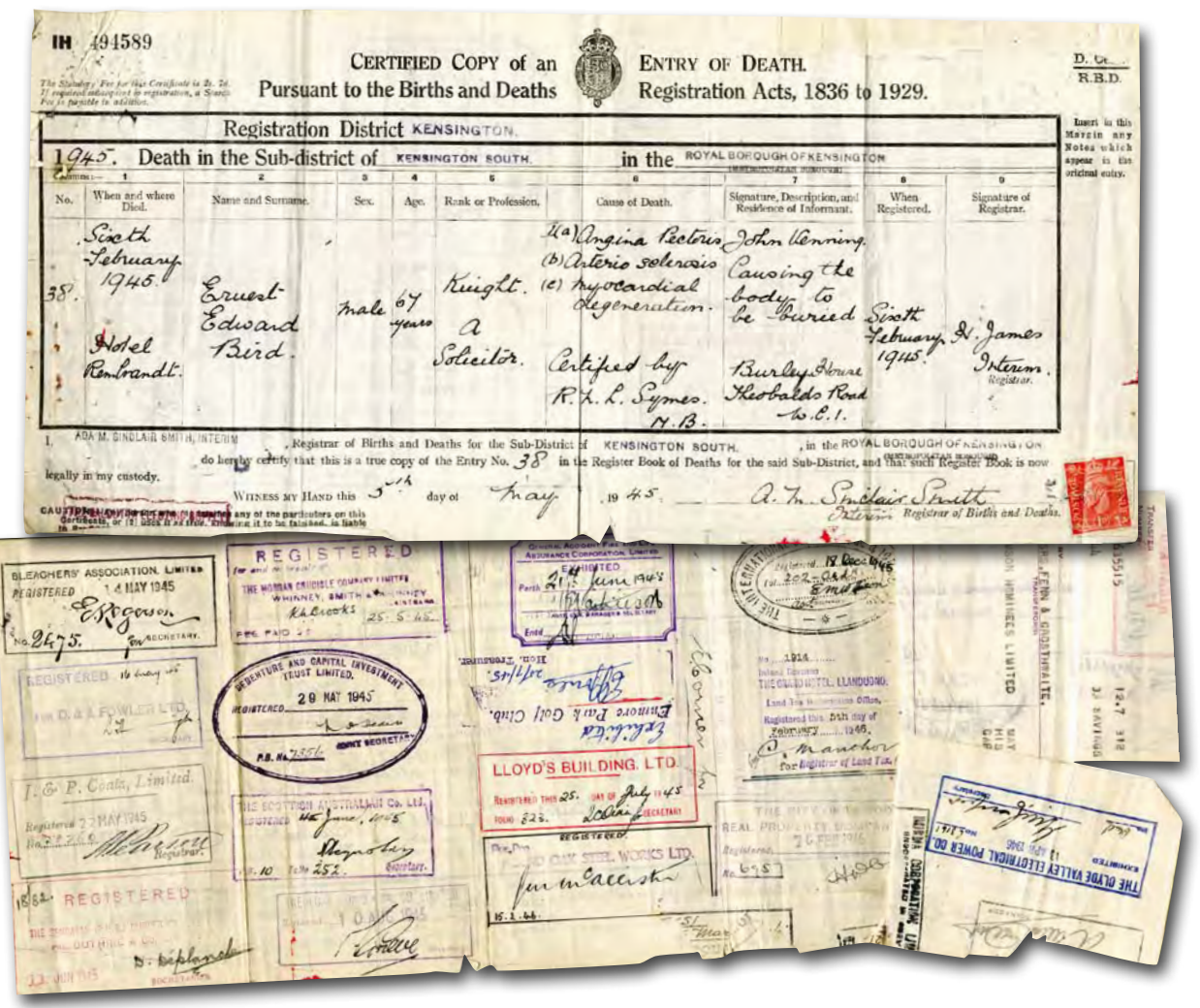


A Philips EL 3520 model tape recorder from the 1950s.

There were no further Birds to take on the mantle of leadership, and Sir William left all his capital and goodwill in the firm to his remaining partners. This was to be a valuable asset to them and their successors. In particular it meant that there was no necessity for prospective partners to buy their way into the partnership. By the same token, later on, it made it much easier both to cease paying annuities to retired partners and also to break the lockstep structure of profit-sharing.

So the post-Bird cohort of partners had been bequeathed a significant inheritance. But how would they take the firm forward without the steadying presence of a Bird beside them?

Front and back of Ernest Bird's death certificate showing companies with which it had to be registered.





Chapter 2

FROM POST-WAR TO THE ARRIVAL OF THATCHERISM 1950s–1970s

With the end of the Bird era a kind of gentle torpor descended on the firm. Maybe reflecting the broader state of Britain, exhausted by war and struggling slowly to rebuild, there was a decline in entrepreneurial leadership. In the aftermath of the Birds perhaps there was a presumption that the firm could just continue to tick over on ‘legacy’ clients without any direction from the top.

Even so, things did not stand still. And, as a whole, the next 30 years were to mark an important period of transition as the firm gradually redefined itself by moving away from being a predominantly private client firm to one which was focused on commerce and industry. In effect, the foundations were gradually being laid for the process of rapid evolution which was ignited by the arrival of Margaret Thatcher as Prime Minister in May 1979.

Initially the leadership of the firm fell to John Venning, who had been a partner since before World War II, but had operated, understandably, very much in the Birds’ shadow. Venning found it difficult to give new urgency or direction to a small team of partners—one of whom was his own son, Michael—who each had their own, almost private, interests.

In any case, the firm had enough on its plate given that in 1954 it had to manage a move back into Gray’s Inn, this time to 2 Gray’s Inn Square, a couple of doors along from where the firm had previously been based. Maybe there was a sense that, with the return to Gray’s Inn, things would somehow be back to how they were before 1939.

The reality was, however, that the pre-war wealth of the affluent classes and the landed gentry had taken a knock. As a result the importance of the private client was to diminish steadily. It was, perhaps, in recognition of this impending trend that the firm undertook its first mini-merger in 1958 with Richard Furber & Son Windsor &

A new office in 1954 –
2 Gray’s Inn Square.



Alan Woods.

Brown. This merger was to prove highly significant in the long run because it brought into the firm a young lawyer, Alan Woods, who was to play a crucial role some years later by strengthening its technological credentials. Not only was Woods to go on to become Senior Partner, but in 1973 he was to co-found the Society for Computers and Law and become its first paying member.

Meanwhile, of course, John Venning's own expertise lay in the field of IP. So it would seem that even as far back as the 1950s there were hints of that marriage between IP and technology which were to become the firm's hallmarks half a century later. The senior partners during this transition period—John Venning 1950–64, Rex Hyem 1964–72, Bernard Williamson 1972–79 and Alan Woods 1979–88—were all first-rate lawyers, but it was Rex Hyem and Alan Woods who provided the direction to the firm and ensured its continued growth.

Read it up in the library

This affinity with the world of technology was given even greater weight by Arthur Hodges, the multi-faceted managing clerk, who had now come back from military service and re-enters the story of Bird & Bird in a major way.

Describing the post-war period, Hodges offers this fascinating titbit of information:

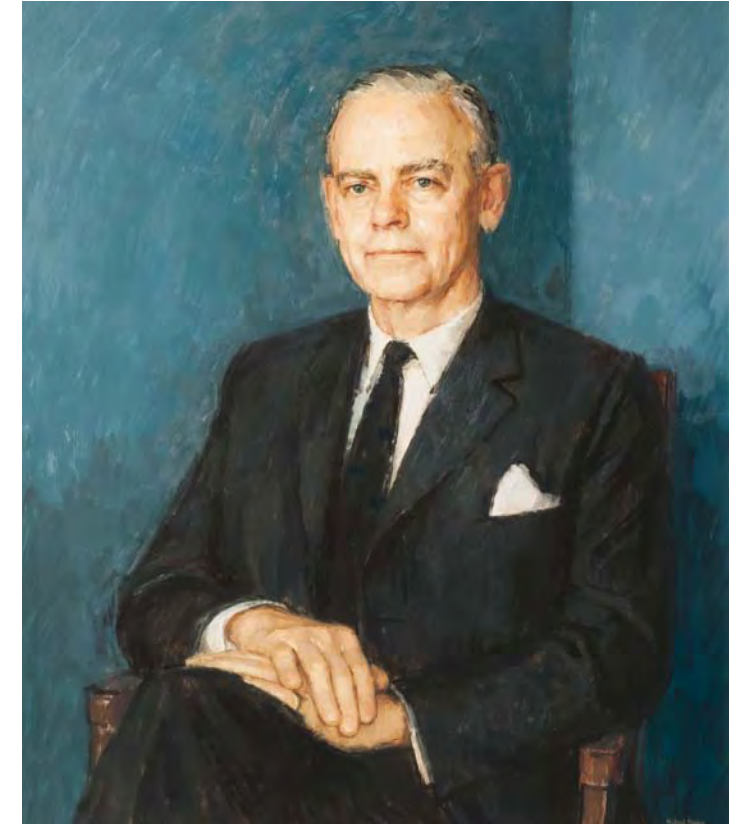
'The patent work grew and grew. I did all the practical stuff and when I came up against a technology with which I was not familiar I used to get books out of the library and read up the relevant chapters and so was able to keep abreast of the work ... At a conference with counsel and technical inspections and experiments I was well able to understand the subject matter and I used to take almost verbatim notes that clients and counsel found very useful as a record of the progress of the case.'

In another patent action concerning the make-up of car trim, Hodges took home to his garage workshop a piece of the product and spent the weekend investigating it to discover the exact components. As a result crucial evidence was made available. 'Naturally infringement was proved and we won the case!', Hodges triumphantly declared.

Rex Hyem and John Venning undertook some patent work, as did John Hartley and Karl Arnold, following their arrival at the firm in 1960 and 1962 respectively. John Hartley was primarily a commercial lawyer and joined following an invitation from Rex Hyem to himself and his partner Douglas Johnson. Hartley subsequently established a commercial department.

The only downside to Hodges' impact was that as rapidly as he trained up the next generation of managing clerks with a similar dedication to technical detail, they were head-hunted by other firms. Obviously, then, word was getting around that Bird & Bird had something special to offer in this field. Unfortunately, it seemed that the firm's management had not picked up on the need to incentivise its able young clerks to remain with the firm.

In fairness, though, Bird & Bird was already adopting a new approach to professional skills. The management seems to have realised that—rather than relying on managing



Rex Hyem.

Arthur Hodges: solicitors' clerk extraordinaire

The 'engine room' of solicitors' firms (until the social revolution of the late 1950s and 1960s) was powered by managing clerks. These were usually unqualified, but intelligent men, normally from modest backgrounds, who did much of the routine legal work—which would today be done by associates—while under the nominal supervision of solicitors.

Because of their experience and natural intelligence the most senior of these clerks were trusted to take on the highest level of work. The outstanding example of this at Bird & Bird was Arthur Hodges, whose natural aptitude in so many areas—from science to technology and languages—would have made him an outstanding solicitor had he been born just a generation later.

Having started as an 'outdoor clerk'—essentially a messenger boy—in the late 1920s young Hodges became very streetwise and was familiar with all the 'wheezes and dodges' needed to turn the wheels of the legal processes rather quicker than normal. But it was later, as he matured, that the firm increasingly relied upon him to provide technical expertise in relation to IP cases. Having learned basic science at school—mechanics, hydrostatics, electricity and magnetism—he went on to acquire both academically and by experimentation a wide variety of technical expertise. This proved invaluable to the firm as no one else—including

the solicitors—had a comparable level of scientific competence.

As a result, the 'technology partner', John Venning, started to entrust Hodges with the responsibility for drafting briefs for counsel. He drafted affidavits which, unburdened by professional formation, were models of clarity. 'I used to write graphically in plain English using short words and sentences that drove the point home', he reported. '[It was once remarked that it was possible to] recognise my work as it was written not in prolix incomprehensible legalese but in concise Hodgese.'

Aside from the war years, when he was in the Middle East (acquiring languages which also came in useful later when engaging in foreign correspondence for the firm), Arthur Hodges had been employed by Bird & Bird for just short of 50 years by the time he retired in 1977.

He was famous amongst the partners of the firm for having said, somewhat sniffily, on the occasion of being given a pay rise, 'It's a good thing that I don't rely on this job for a living'. Indeed, he was a man of many parts, and it was discovered on his departure that he had, in fact, been running a second job in the betting business on the side which was, maybe, more lucrative than being a solicitors' clerk. By this stage, however, he was already recognised—although maybe not fully appreciated—as a unique talent.

clerks—it needed to look to the longer-term future and start recruiting junior lawyers who could boost further the firm's IP expertise. Hence there was a deliberate policy in the early 1960s to recruit young lawyers with an interest in these subjects with the intention of consolidating the firm's profile and reputation in this area.

New blood

The most significant move was when Karl Arnold arrived in 1962. Then aged in his late 20s, Arnold came from Bristows, another firm with a strong track record in IP. During his period of 'articles' at Bristows—the 'on the job' training aspect of qualification to become an English solicitor—Arnold had focused exclusively on IP (a practice no longer permitted), so he brought with him a very high degree of specialisation. This strength was compounded by the fact that he came from a family of patent and trade mark attorneys. Given that solicitors gained much of their work via trade mark attorneys, this was obviously a very attractive asset!

Arnold was ambitious, and although Bristows was very well regarded, it was managed very much as a family business and prospects appeared limited to an outsider. So when Bird & Bird advertised with the aim of attracting a young lawyer with IP credentials, Arnold jumped at the opportunity. 'In the early 1960s there was a great shortage of solicitors on the market and I had a choice of offers', he explains. 'However, Bird & Bird was the firm which most closely matched what I wanted to do. Due to the work of Rex Hyem, Gordon Forbes Higginson and John Venning they had quite a reputation in the patent world along with desirable, high-profile clients.'

Interviewed by Rex Hyem—at the time when John Venning was the senior partner—Arnold was offered a job on the spot because he so clearly matched up to what the firm needed. Once recruited, he started to work for partner John Hartley (primarily a commercial lawyer and founder of the firm's commercial department) and was thrown immediately into a trade mark action on behalf of Berlei, the lingerie manufacturer, in a case against Sarong. 'It went on for six years but never got to trial!', Arnold recalls. Nonetheless it meant that, from the very beginning of his career with Bird & Bird, Arnold was immersed in complex, high-quality work for high-profile clients.

Of course, the prime IP client of the firm in the trade mark and patent area was still Philips, the international electrical and electronics giant. This relationship now stretched back over many decades and had been reinforced by the firm's good stewardship of the firm's assets in wartime. As it happens, one of the key areas of



Karl Arnold.

An era of simpler transactions

Documentation was very much simpler back in the 1960s and 1970s. ‘When Rex Hyem undertook the joint venture between BP and Shell for National Benzole it required just a couple of folders of paper’, says Trevor Cook. ‘To be frank, this was partly because the profitability of law firms did not depend, as it frequently does today, on having large numbers of associates grinding away through minute detail like a process-driven factory. Clients did not have such high expectations of fancy, complex agreements. People didn’t fool themselves that every “t” could be crossed and every “i” could be dotted.’

activity on behalf of the company was to secure ‘extensions’ of the term of patents (which added an extra five years to the term) either on the grounds of ‘war loss’ or because of ‘exceptional merit’ (which applied notably to pharmaceuticals). These extensions were particularly important to Philips because of the innovatory work which it had undertaken in developing colour television just ahead of the opening of hostilities in World War II. The commercial exploitation of this development, inevitably, was suspended during the period of the Netherlands’ occupation so, in effect, five years of the patent had been wasted. But in what proved to be a critically important case Karl Arnold secured the invaluable extensions (on products such as the glass on cathode ray tubes) that Philips needed. It was to consolidate the close relationship between the company and the firm.

‘We were very intent on developing this IP practice during the early 1960s so it was very useful having Philips as a client because we were guaranteed all their work’, says Arnold. ‘Beyond that, however, we had to fight for every piece of new activity.’

The main source of new clients and work in the patent area was via patent agents. Fortunately, Bird & Bird had developed strong relationships with Dr David Hardisty, a partner in Boulton Wade Tennant, which used the firm’s services regularly for the ‘settling’ of patent assignment documents (a role that the patent agents themselves were prevented by statute from performing). This mostly consisted of routine matters such as standard form letters to research scientists and technicians, but it also included more interesting work for clients such as Technograph, which had invented the printed circuit board.

Karl Arnold understood the importance of building the firm’s reputation through having blue chip clients, not least because this would help put the firm on shortlists at a time when US manufacturers were becoming seriously interested in investing in the UK and were increasingly obliged to undertake litigation in the British courts.

Patent litigation, therefore, was increasingly important for the firm, but, as Arnold pointed out, the downside was that it often consisted of ‘one-off’ pieces of work. Even the most satisfied clients did not necessarily come back—or rather did not need to come back—after the litigation was concluded. What the firm needed in greater numbers was regular ‘repeat business’ clients on similar lines to Philips.

So the challenge for Arnold and his colleagues was how to get the opportunity to make pitches to potential clients, especially those which were internationally based, without having to rely on the patent agents as intermediaries.

Dow hits town

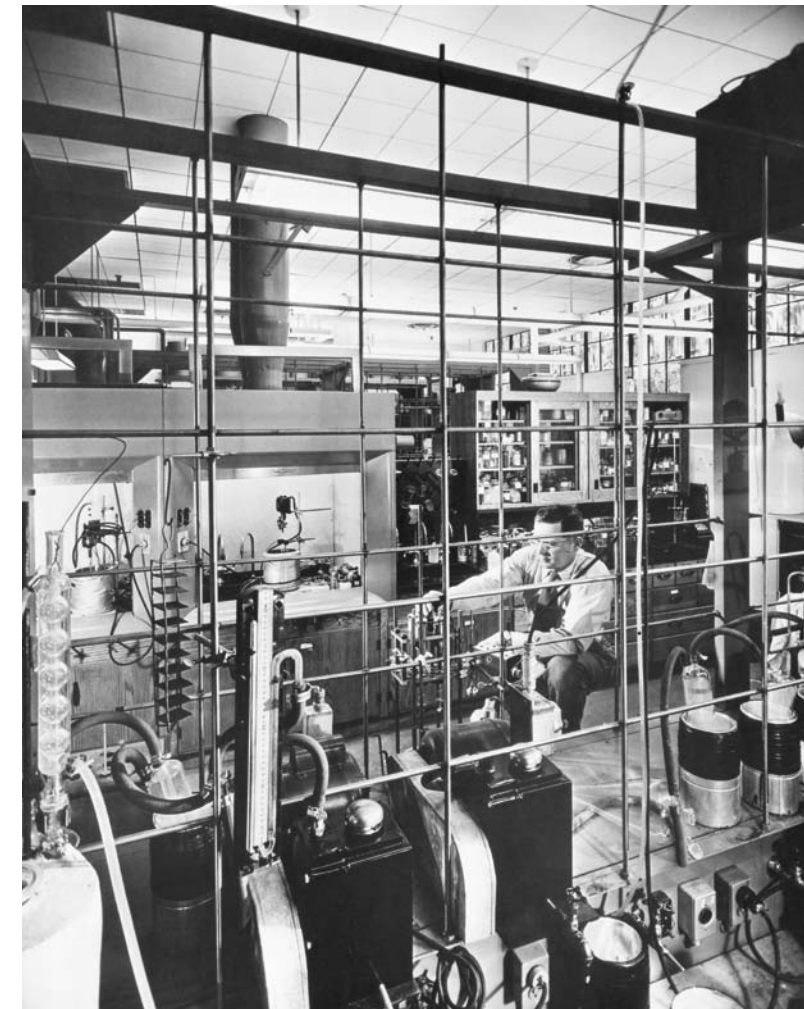
A major opportunity presented itself in the mid-1960s in the shape of Dow Chemical. Dow at that time wanted to break out of the USA and get into the global market. It was advised that in order to get into Europe it needed locally based partners, so in the UK it opened negotiations with Distillers to create a company called Distrene.

Bird & Bird had been recommended to Dow by Boulton Wade Tennant. This progressed into a healthy relationship over a number of years. Again, by being involved in high-profile, important cases the reputation of the firm started to grow and there was name recognition on the international stage.

Important though it was, however, IP work was by no means the firm’s only source of income. A number of the firm’s lawyers were still engaged in private client work and there was also a strong presence in the medical negligence field working on behalf of the enormous South East Thames NHS region. ‘Agency work’ too—where City firms notionally acted in court for solicitors based in the regions—continued to be a significant source of income.

However, the reality was that over the next 10 to 15 years these activities started to decline. The agency work was phased out because the management did not believe that it was genuinely adding value to the process. And gradually the private client work tapered off. Although Bird & Bird continued to serve the remaining ‘old-style’ family clients—who had originally been with the Birds since before World War II—the work was contracting significantly, and there was

Scientist working in a Dow Chemical research laboratory, c.1950s.



Bernard Williamson—senior partner (1972)

Bernard Williamson was an amazing and erudite man who could (as Trevor Cook recalls) write—or rather dictate—exquisitely expressed seven-page letters based simply upon a couple of notes written on the back of an envelope.

His talents were recognised outside the firm and, at the time of the Festival of Britain in the early 1950s, he provided advice to the Arts Council on issues related to the Lord Chamberlain’s powers to approve the performance of certain early English plays!

He was, however, regarded as being slightly eccentric, not least because he did not always send bills to his clients. This was a hangover from the

days of deference to old, established, prestigious clients, but was in marked contrast, nonetheless, to the tight financial controls in place under the Birds. It was symptomatic of a non-commercial approach in the period following World War II and reflected the way that the firm’s partners tended not to be driven primarily by money. However, it meant that the firm was marking time somewhat complacently, buoyed up by the very small historic rent it was paying in Gray’s Inn.

This was reflected, perhaps, in the way that the firm was able to recruit but not retain talent. ‘There were about five or six assistant solicitors in the firm in 1970 when I joined as a “newly

qualified” working for Williamson and four other partners in the private client department’, recalls Graham Camps. ‘Maybe it is significant that many of these assistants were to move to other firms—big firms—and did well there in the early 1970s.’

So, as Camps puts it, there still wasn’t a great sense of dynamism in the firm. But, of course, that was to change.



Dining at Gray’s Inn, 1963.

no attempt to grow the practice or attract ‘new money’ clients such as footballers, film stars or people who had done well out of property development. The result was that by the 1970s and early 1980s there were just two partners—Keith Wallace and Graham Camps—undertaking private client work. Then, in 1984, Keith Wallace moved to Richards Butler (where he subsequently headed their pensions department) and was succeeded by Pauline Smith running the trust department.

This willingness to let the old ways gradually wither and strike up on a new path also extended to the firm’s working methods and its responsiveness to clients. ‘Traditionally the legal profession had a reputation for tardiness’, recalls Karl Arnold. ‘Generally speaking there was no sense of urgency in responding to clients. However, we wanted to change this. Even if we could not give an answer to a client by return of post the least we could do was acknowledge that their letter had been received—something which very few firms did at the time.’

Obviously, in the absence of e-mail and the internet, the pace of life and client expectations were much lower than in the 21st century, but Bird & Bird was increasingly determined to break out of a complacent ‘Dickensian’ model of operation—it was, after all, serving progressive and dynamic technology-based clients at a time when much was being made of dynamic change in the UK economy driven by (in Prime Minister Harold Wilson’s famous phrase) the ‘white heat of technology’.

A powerful double act

The IP practice was important and growing, but could still be seen as slightly at a distance from the main body of the firm’s traditional-style Gray’s Inn work. Much of this routine work—in fields such as debt collection, health service litigation and work on behalf of the Philips pension fund—was still being undertaken by ageing managing clerks.

However, due to social and educational change, this was not a viable policy for the future. The ‘Arthur Hodges generation’ was coming to its end and going forward the firm had to look for a new type of properly qualified assistant lawyer who had a technical bent or capability. Several were recruited, but their stay with the firm was relatively short as they progressed on to set up their own niche firms in the early 1970s. (Amongst these was Gregor Grant, who left with partner Keith Needham to set up the well-reputed practice Needham & Grant.)

It was at this point that Karl Arnold realised that the way to progress the development of the litigation practice was to recruit a patent agent who would have first-hand technical understanding of the patent business. So in 1972 the firm took the fairly unusual step of advertising specifically for a patent agent who was interested in joining a firm of solicitors.

The result was the recruitment of David Harriss whose arrival in 1973/74 marked another major step up in the evolution of the firm’s reputation as a firm with a strong commitment to IP work. Working together, Arnold and Harriss took on major cases in the 1970s such as the battle between Polaroid, Bird & Bird’s client, and Kodak over the patent rights to instant film. The case initially seemed simple—it was introduced to the firm by another firm of patent agents—but, in fact, it lasted for six years and



David Harriss.

was fought across the world in all the main territories. This entailed regular trans-Atlantic travel by the Bird & Bird lawyers to the Polaroid headquarters and resulted ultimately in massive damages being paid to Polaroid—and the end of Kodak’s aspirations to produce instant film.

Based on the success of attracting this level of work Arnold and Harriss were hungry to grow the team further. Another patent agent ‘convert’ was recruited, Dr Miles Gaythwaite, but once David Harriss had taken responsibility for recruitment, he started to look specifically for trainees with technical

and scientific backgrounds to join the team. ‘We had reached the conclusion that it was imperative for people to have a technical background in order to do this kind of work’, recalls Harriss.

Trevor Cook, a chemist by background, proved to be a particularly important recruit to the team in 1974. However, for a period following the unexpectedly premature death of Rex Hyem (in 1972), the firm experienced considerable uncertainty and drift. Bernard Williamson had taken over as senior partner, but although gifted as a lawyer, he was not very interested in providing leadership or direction to the firm as a whole. Instead much of the firm remained sunk in the atmosphere of a somewhat sleepy, typical private-client Inns of Court law firm. Evidence for this was that it did not, for example, take advantage of the relaxation of the limit on the size of partnerships as some firms—such as Clifford Turner—had been quick to do. Indeed, Bird & Bird still had only about a dozen partners.

‘Frankly, when I arrived the firm as a whole gave the impression of still being rather rudderless’, says Trevor Cook. ‘In retrospect, you would not have bet any money on the firm even existing—let alone being a Top 20 firm—40 years later.’

Gradually, though, Alan Woods—often seen as a somewhat intimidating figure to the younger lawyers—began to assert himself. He steadied the ship and took over the day-to-day direction of the firm, creating an atmosphere which allowed the more dynamic partners—especially those in IP—to set their own agenda.

Woods himself was quietly progressive and became very actively involved with the Society of Computers and Law, thereby promoting publicly the fact that the firm had some specific commitment to the Information Technology sector. In fact, the

How Trevor Cook first encountered the law

Trevor Cook studied for a degree in chemistry at Southampton University, where he distinguished himself by becoming Head of the Technical Services crew responsible for setting up lighting systems for visiting bands and managing the University’s semi-professional stage. Trevor admits that he was the only person sober and drug-free enough to be capable of writing the necessary submissions to the Student Union requesting financial support for the technical equipment required in its support of the entertainments programme. He then built on these excellent credentials by becoming a member of the Student Union executive and subsequently Treasurer of the Student Union.

In this role he used his time well, learning the basic elements of organisational politics by keeping the Union on the straight and narrow legally at a time when Southampton’s Student Union had the reputation for being the most radical in the country. ‘We were in constant danger of veering

off into *ultra vires* territory’, he explains. ‘It was in this context that I came into contact with the law for the first time and realised that I quite enjoyed it. I didn’t learn much chemistry at Southampton but I learned an awful lot of other stuff!’



reality was that beneath a somewhat inert appearance the firm could boast some exceptionally able people. Amongst these Karl Arnold stood out by the way he was running the patent department with a very clear bias towards technology. Moreover, as the 1970s wore on, Arnold started to address the marketing of the firm’s patent expertise in a systematic way. As well as making more active contacts with patent agents and trade mark attorneys in the UK, Arnold was a frequent visitor to the USA, where he had many professional and personal friends.

This move was to have an impact far wider than was originally appreciated. Just at the time when there was a gradual awakening to the beginnings of globalisation in the technology and IP field and the realisation had dawned that protection could no longer be confined to just one jurisdiction, Bird & Bird was at hand ready to help American clients deal with these matters in the UK and across Europe.

Initially, it must be said, there was some reluctance by the partnership as a whole to support these marketing initiatives. Fortunately, Alan Woods was increasingly

Trevor Cook joins the firm—and becomes a partner!

I joined the firm as a trainee in August 1974 primarily because of my father's business connection with Karl Arnold. So, in a sense, I benefited from nepotism. But that also gave me a strong sense of responsibility towards the firm.

Upon qualification I immediately went into IP and started slogging away at that area of work. Then, one day in 1981 I was called into the office of the senior partner, Alan Woods. I was a bit nervous because I thought I had done something wrong.

So I was very surprised when he asked me whether I would like to become a partner. My immediate reaction was to ask him whether my take-home pay would be any less!

Actually, unlike some firms where new partners were expected to put money into the firm, it was not required at Bird & Bird. Instead you were asked to put aside some funds in case the firm got into financial difficulties. But it was very much an honour system. In fact I did put some money away—but no one ever checked up on it.'

supportive, not least because, by this time, the IP team was earning considerably more than the more traditional departments within the firm. Along with the commercial property practice—also doing very well at this time—IP was a winner which deserved to be backed. Indeed, one of the strengths of the patent market was that it was relatively unaffected by the economic crisis in the UK in the late 1970s. As David Harriss points out, 'This kind of IP work tends not to be cyclical. So a good amount of work continued to come in and we could expand. Plus many of these cases went on for a long time.' Indeed, as Karl observes, 'I can rarely remember us not having enough work to keep people fully busy.'

So although there were conservative elements in the firm who were unsympathetic to the way the firm was veering, it was clear to Alan Woods and his most energetic lieutenants which way the firm had to go in terms of modernisation.

Yet despite these positive signs, Karl Arnold remained concerned about how far it was possible to take an IP practice. 'Although there were some big IP cases he always inculcated into me a fear that IP work would dry up', says Trevor Cook. 'So he was anxious that the firm should progress on a wider front.'

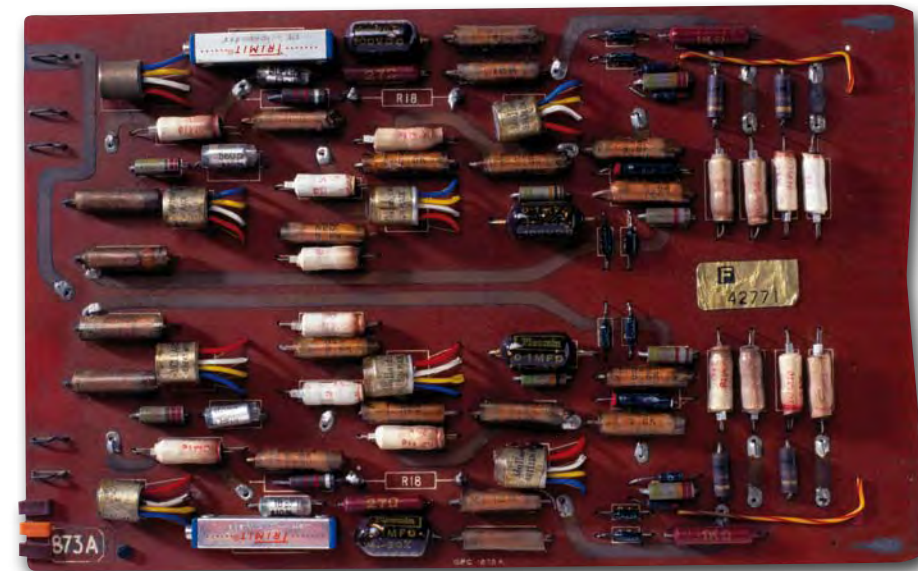
Moreover, as a still small firm, Bird & Bird did not have it all its own way in the IP and technology area. In particular, by the end of the 1970s, there was also the threat presented by some of the major City practices—such as Clifford Turner, Linklaters & Paines and Herbert Smith—who were starting to become interested in a broader approach to IP work. Historically they had restricted their interests in it to licensing, but the commercial importance of IP litigation was starting to be appreciated. As a result, although Bird & Bird was doing well, it also became fearful that if the 'big

beasts' in the City moved in to offer both IP and commercial services, then it could be at risk.

The response was that the firm would have to take the fight to the City's big boys. And in doing so it had to start making some significant strategic choices about where it would put its efforts—and where it would not. 'We recognised that we needed to expand our base of services especially in the commercial area', said Harriss. Concomitant with this, however, was the decision not to develop further the private client practice. Although it would continue under the direction of Graham Camps, who had become a partner in 1975, in order to serve longstanding clients of the firm it was moved to the periphery of operations. The main thrust of Bird & Bird's energy and investment was now—consciously or not—to be in the field of technology.

Building the corporate side

To make the new orientation to technology—and corporate-based clients—work effectively, however, it was apparent that the firm needed to boost its capacity in the corporate and commercial field. Under John Venning it was small and had merely ticked over. It was therefore obvious that there was no way of growing the business from within its own resources given the urgency of the need. Instead Woods and Arnold pushed together (in 1978) for a major lateral hire. The person they managed to recruit, to their delight, was Colin Long from Clifford Turner, who brought with him substantial experience in working with large technology clients (albeit in the



Bird & Bird's work with Technograph, the company responsible for the invention of the printed circuit board, was representative of its shift toward technology.

Middle East). It was the right call and, in the long term, Long's arrival proved to be a decisive catalyst in giving the firm credibility, contacts and capacity in the commercial field.

This came just around the time when the 'Thatcherite' revolution—by fostering competition, opening up markets and encouraging new entrants to the utilities field—meant that a new area of commercial law was being created and with new clients to match. Colin Long with his Clifford Turner reputation and Middle Eastern credentials was ideally positioned to take Bird & Bird into this exciting new arena.

But although the firm was now starting to build the capacity to break into serious, large-scale commercial work, there was a long way to go. Moreover, it was disadvantaged by a lack of strength in mainstream litigation. So, as Colin Long points out, it was 'a story of three paces forward and two paces backwards'. The result was that—aside from IP, where the quality of work was good and attractive to young lawyers—too many trainees were departing the firm on qualification to join 'Magic Circle' firms which by this time (around the turn of the decade) were starting to gain considerable traction and expand significantly. How could Bird & Bird make progress across a number of fronts, and not just IP? That was the big question as the firm entered the 1980s.

Margaret Thatcher arrives at Chelsea Town Hall to vote in the 1979 General Election. By the following morning she was Britain's first woman Prime Minister and the political, economic and social landscape was set for fundamental change.



Colin Long 'looks around a bit'

Colin Long was to have a significant impact on the development of the firm, enhancing significantly its profile in the technology field and injecting a sense of urgency into areas such as marketing. He is now a consultant to the firm.

'I was originally with Clifford Turner—now, of course, Clifford Chance—where I had spent a number of years as a young lawyer setting up their Middle East practice including the offices in Dubai and Sharjah. Whilst there I had managed to attract Cable & Wireless as a client—which was perhaps my best career break of all time.

However, when I came back to London I discovered that, basically, they had forgotten about me and, of course, I had no London practice at all. Because of this I got passed over for partnership when I was expecting to get it and so, being an impatient kind of guy, I began to question whether I really wanted to work for a big firm at all! After all, I had been running a small office and had got used to operating at that more handy size. So in mid-1977 I started to look around a bit. Then I saw an advertisement in The Times from Bird & Bird which said that they wanted someone to head up their new "Company Law" Department, as they called it.

Well, that sounded an interesting challenge. So I came along and met them, including John Hartley, who had been looking after the fairly small amount of corporate work the firm had previously been doing. Anyway, they seemed a nice group of people. There was a family atmosphere but it



was also very professional and straight. I felt that it was a good quality base to build on for the future. It had people like David Harriss, who wanted to push the firm up to another level—and I felt that I could do something useful for them coming in, as I did, with a fresh mind.

But one of the first things that I did was to change the name from "Company Law" to "Corporate Department". It showed we meant business. Most fortunate of all, Cable & Wireless followed me here.'



Chapter 3

THE THATCHER REVOLUTION OF THE 1980s

Politically the period from mid-1979 onwards through the 1980s was dominated by the mighty figure of Margaret Thatcher, the ‘Iron Lady’. Although fraught with social and industrial conflict this was a period of enormous change, some of it at least being very positive for business. The ‘Thatcherite’ revolution meant fostering competition, opening up markets and encouraging new entrants (especially to the utilities field). In effect, a whole new area of law and regulation was being created in which City of London lawyers played a crucial role—and with it came new kinds of clients never present before on the UK business scene. Following ‘Big Bang’ (the liberalisation of financial services in 1986), London began its rise to become the world’s leading financial centre 20 years later. (The full implications of the subsequent financial crisis and the accompanying scandals have yet to be seen.)

Although not all these developments were directly relevant to Bird & Bird, there were significant new opportunities opening out for the firm. And with the recent arrival of new recruit Colin Long—who had moved across from Clifford Turner—the firm gained a corporate lawyer who was hungry to drive forward into areas of work which hitherto had been somewhat neglected. Almost at one stroke, it seemed, the prospects of the firm might be transformed. ‘Suddenly we had in the commercial group some real specialism and this kick-started our commercial team’, said David Harriss.

What Colin Long brought with him was a range of experience of working both in the Middle East and in the technology area where—via IP and related work—he had been involved in creating the first software licences. He also had the immense virtue of having connections with Cable & Wireless. ‘I had got quite fond of the telecom industry’, recalls Long, ‘so I stayed in touch with the Cable & Wireless legal department which, as it happened, was primarily made up of company secretaries’.



Top: The Stock Exchange Trading Floor in 1968.

Bottom: The London Stock Exchange in 1988.



North Sea oil exploration.

Using this relationship as a vantage point Long began the new decade by aiming to capitalise on Bird & Bird's very strong base of IP clients into the corporate area. 'We were lucky enough to be engaged to help Dow Chemical in its forays into North Sea oil exploration and developments with Sovereign Oil of Canada', he explains. 'That was a big boost to the new corporate department and we followed that up with a number of heavyweight deals including for Goodyear, the tyre company, which was a client on the technology side, but for whom we also did corporate work.'

As Long comments, the fact that Dow, introduced through Karl Arnold, was a client represented a real coup for the firm since the normal expectation would be that it would have gone to a major City—probably 'Magic Circle'—firm. 'Because Dow had its European legal headquarters in Switzerland, it probably wasn't so attuned to the established legal hierarchy in London and that helped to give us a break', he says (somewhat self-deprecatingly).

In short, the Dow case illustrated the point that with new international clients arriving in London Bird & Bird had an opportunity to show off its merits and build on its global links. In what might be regarded as early evidence of the benefits of globalisation, the firm was finding it easier to win non-British clients than to break into its own local market in the corporate field.

One immediate consequence of this development was the need for the firm to start cross-selling. Indeed, one of Long's objectives was to encourage the greater awareness of teamwork so that partners would act in a slightly less 'proprietary' way and start to share their clients with their colleagues. 'You have to remember that we were coming out of an era when lawyers were generalist in their approach', he says. 'There were litigators doing commercial work, commercial lawyers doing IP and IP lawyers doing commercial. Personally I felt that was the wrong approach. The way forward in my view was for people to stick with what they were really good at and allow other people to do the same. It was a major issue and it took some years to sort out. But in due course we got it right.'

Linking up with Cable & Wireless

Thanks to his impatient energy, Colin Long became a Bird & Bird partner within a couple of years of joining the firm and, before too long, his link with Cable & Wireless started to bear fruit. Long recounts:

'I heard from a contact in C&W that they were thinking of setting up a joint venture with BP and Barclays Bank to form the first ever competition to BT. C&W would have the licence but it would be operated by the new joint venture under the name Mercury. Anyway, they asked whether I might be prepared to take on the legal work because they wanted it to be done by a non-aligned firm which was not acting for any of the three constituent companies. So would I be interested? Well, of course, I said that I would be delighted.'

So they went away to think about it and consult amongst themselves. BP didn't know me but they did know Bird & Bird through BP Oil & Benzole Producers and Russell Elden, BP's legal counsel. Anyway I was out of the office one day and when I returned I found a post-it note on my desk left by my articled clerk, Stephen Johnson, saying "We got Mercury!" And that was the start of a long relationship with the company, constantly acting for them until the firm began acting for BT in 1993.'

Mercury initially had a mere handful of legal staff, so Long was 'given the keys of the front door and I came and went as if I were their in-house lawyer'. Meanwhile, says Long, what was so satisfying for him personally was the way the Bird & Bird management 'just left me to get on with it'.

Mercury was to turn out to be one of the firm's biggest clients for both corporate and litigation services for many years. 'Effectively we pioneered regulatory litigation', he says. 'One case went as far as the House of Lords. It was great fun and it propelled the firm forward into a new area—which was exactly what we needed.'

Mercury Communications

At the time when Bird & Bird was awarded the role of external counsel to Mercury the company only had one actual employee, with the majority of the dozen or so staff being secondees. These included Gordon Owen, who was responsible for ‘Project Mercury’ at Cable & Wireless and was to go on to become the first Managing Director of the company. The seconded lawyer was Maev Sullivan, who came from BP’s legal department and who subsequently became their first General Counsel (and a lifelong friend of Colin Long).

Eventually after a couple of years or so BP and Barclays dropped out, leaving Cable & Wireless as the sole shareholder. Colin Long explains:

‘My first task was somewhat historic. It was to help Mercury to negotiate with British Telecom, formerly part of the Post Office and still a government department before its privatisation two years later in 1984. They had been told, nay ordered, by the DTI to come to a deal with Mercury to connect Mercury’s cables (i.e. fledgling network) to BT exchanges, but were very unhappy and reluctant to do so. When we first met them with their in-house lawyer, a property specialist, David Gloag, they were very nervous and wary. After some strained discussions of a term sheet (during which I had to warn them we could use EU competition laws if they did not play ball), they said–“Well, we need to draft an interconnection agreement”. To put them off doing this, I said I had already started drafting (I had not) and so could let them have a draft in a matter of a day or two. They seemed grateful!’

Following several weeks of protracted negotiations the first-ever interconnection agreement was developed and this became a primitive model for later versions and eventually formed the basis of BT’s licence obligation to connect with other licensed public operators. Mercury also had the first-ever competitor’s licence.

Maybe not surprisingly Mercury ended up in many regulatory and contractual disputes with BT. However, the first dispute was actually with its trade union, the Post Office Engineering Union (POEU) in 1983. As part of its campaign against the Conservative government’s aim to privatise BT the following year, the POEU instructed its members not to connect Mercury’s cables to BT. Long recalls that:

‘We then applied for an interlocutory injunction against this and in the High Court the judge refused on the grounds it was a trade dispute, making the union immune from liability. This was reversed by the Court of Appeal, who found that it was unlikely the union would succeed at trial in proving this was a trade dispute rather than one politically motivated, so Mercury’s application for an injunction was granted and the union complied.’

For years afterwards the main focus of Bird & Bird’s work was on the interconnection agreement with BT and disputes with BT over the implementation and pricing. These could be taken to Oftel (the national telecoms regulator) for binding determination and Long wrote all the submissions to Oftel on these various disputes.



‘Throughout the helter skelter of these legal processes, Maev Sullivan as General Counsel remained both passionate in her determination to pursue the justice of Mercury’s cause, and rock solid in her support of Bird & Bird’, says Long. ‘She was a great and appreciative client.’

Attracting bright young talent

The Mercury connection not only brought a lot of high-quality commercial work to the firm, but it also made the firm more attractive to the kind of able and ambitious IP, corporate and tax lawyers the firm needed in order to grow the practice still further.

Amongst these was Graham Smith, who joined the firm as an assistant in

Mercury v. BT, in the early 1990s.

Graham Smith: ‘interested in science’

‘I saw a job ad from Bird & Bird for an IP litigator in the *Law Society Gazette*’, recalls Graham Smith. ‘I nearly didn’t apply for it as the ad said that a science degree was preferred. I had got A levels in science, but hadn’t studied it at university. But anyway I plucked my courage up, applied and got the job! To be honest I knew virtually nothing about Bird & Bird. It was the science that I was interested in and I had done one copyright case at my previous firm, Penningtons. So I joined the firm to learn IP litigation. But they were pleased that I had some commercial litigation experience behind me because it represented a way of broadening the firm’s base of experience.’



1983 having previously worked at Penningtons under a litigation partner doing both commercial and divorce litigations. He was almost immediately drawn into working for Colin Long to help in the various battles against BT.

‘We were there at the start of telecoms liberalisation acting for a number of new providers’, says Smith. ‘It was all new but we quickly gained a reputation for our telecoms work because of what Colin Long was doing. It was great fun being at the new, cutting edge and doing work for pioneering businesses. Before then, of course, there were no such things as independent 0898 providers or chat line numbers. So, for example, we did chat-line litigation against BT at the time when BT was cutting them off. On the first occasion, we acted for three of the chat lines which had been told on a Friday afternoon that they were to be cut off on the following Monday. So we gathered our forces over the weekend and were in court on the Monday morning trying to get an injunction to stop it. In fact, we weren’t successful but it was a high-profile case and generated a lot of interest. It all dragged on for ages but ultimately they were closed down. Some time later, of course, they opened up again, but under a tough code of practice.’

Sporting chance

Another of those recruited was Justin Walkey. ‘Immediately I’d joined the firm I found myself doing an incredibly broad range of transactional work from full company listings through to private M&A, debt equity finance—anything that came through the door’, he says. ‘Basically Colin Long was looking to diversify the firm beyond IP and so we took on anything we could get.’

A little later—once the firm had achieved considerable traction in the communications area—Walkey started to look for new fields to conquer. This led him, almost by chance, into the sporting sector. ‘The first sports contract I ever did was for Beefeater Gin and their sponsorship of the Oxford & Cambridge Boat Race’, recalls Walkey. ‘The fact that it was Beefeater Gin impressed my father, who was a Navy man, enormously!’

Once his appetite for sports law had been whetted Walkey was delighted to be introduced to tennis star Stefan Edberg, who had reached the point in his career when he needed some serious global tax advice. As it happens the recommendation came from Swedish lawyer, Michael Frie (now the firm’s Chairman, but then with a Swedish firm) who had been conflicted out of working for Edberg.

The Edberg introduction proved to be of major significance as it opened the door into a whole new range of contacts and marked the start of the development of the firm’s sports practice. Moreover, it gave Walkey personally an outstanding opportunity to build in an area to which he had a natural affinity. ‘Like lots of people I enjoy my sport as both a participant and as a spectator’, he says. ‘When I was younger I did lots of sports at county standard or better—rugby, cricket, tennis, sailing, swimming, snooker. I liked the idea of working in a very tangible sector but also one which was very immature in which you could grow and make an impact. And, frankly, when I started sport—as a legal specialism—was very immature indeed. As a result I recognised there was an enormous amount of potential there. Very few law firms were doing sports law at that time. So it gave us a tremendous chance to make our name.’

Justin Walkey joins ‘the family’

‘I joined Bird & Bird when I was one year qualified in spring 1984. As it happens I’d already tried out a couple of other career areas prior to this including journalism and marketing. I’d always been interested in sport—Mark Macormack, the great sports agent, had actually offered me a job. But anyway I applied to Bird & Bird at a point when it was really very small and Colin Long recruited me into the corporate department (such as it was).



Before too long, though, I found myself doing some “soft IP” work for the IP partners—technology transfer, brand licensing, trade mark settlement and that kind of thing. To be honest I was often flying by the seat of my pants and I had to learn very quickly.

What struck me most was the incredible warmth of the reception I received here—which was in considerable contrast to the firm where I had been working! It was a very friendly atmosphere, almost like a family.’

Justin Walkey scores an ace with Stefan Edberg

‘Thanks to Michael Frie I managed to get Stefan Edberg as a client and that taught me a lot about the sports business and how to represent individual sports people’, recalls Justin Walkey. ‘Basically we provided Edberg with a business management service. However, we were very careful not to cross over the line from being his lawyer to becoming his agent. So Edberg always had a separate agent. But what we did for him was to organise advice regarding his finances and investments as well as his performance and psychological support. This meant that he—and the others we represented later—came to rely on us extensively. It meant that a lot of trust was involved. But at its heart we were running Edberg’s global tax structure which, even in those days, was a complex matrix of arrangements. And I must say it worked pretty well.’



Stefan Edberg on his way to beating Boris Becker in the 1988 Wimbledon Finals.

IP continues to boom

The determination to extend the firm’s reach beyond IP was in itself recognition of just how strong and important IP was to the firm by this stage. Boutique firms can survive on being ‘one-trick ponies’, but Bird & Bird did not want to be caged up in that space. While efforts were going ahead to expand the firm’s scope the IP practice was going from strength to strength under the leadership of Karl Arnold backed up by David Harriss, Trevor Cook and Miles Gaythwaite in particular.

One of the most notable cases in the 1980s was on behalf of Dow Chemical in a long-running dispute with ICI and the Japanese company Ishihara Sangyo Kaisha over the rights to a family of herbicides which treated broad-leafed crops against grass weeds. The case was global in scope and, in that sense, it marked another landmark for the firm’s development and international reputation. Trevor Cook in particular was allocated the key role in driving matters forward. He explains:

‘I had, in effect, been adopted by the clients as the co-ordinating lawyer not least because I knew the documents extremely well. I had them copied double-

sided and carried them with me all the time. But also, I think, my chemical background meant that I could understand what we were talking about—I wasn’t phased by the long words!’

This case proved to be an eye-opener for Cook, who was required to undertake a vast amount of foreign travel in his co-ordinating role. ‘I went regularly across Europe and to the USA but also to Japan on a couple of occasions.’

As well as learning an enormous amount from the lawyers he met internationally he was also inspired by the in-house lawyers for the clients. ‘The Dow lawyers were quite remarkable’, he says. ‘They were trying to claw back a position which was widely felt to be untenable. But, nonetheless, after three years they got a settlement which gave them the freedom to operate with their lead compound. It was an amazing result under the circumstances.’

As well as being good for Dow, it was also good for Bird & Bird and helped to enhance the firm’s reputation in this field. It also led to a series of major pieces of pharmaceutical litigation for clients including Merrell Dow and Hoechst Marion Roussel (each with its origins in Dow). Both the antihistamine terfenadine case (for Merrell Dow) and the anaemia treatment erythropoietin case (for Hoechst Marion Roussel) went to the UK’s ‘supreme court’ in the House of Lords. Significant indeed.

Expanding the team

By the mid-to-late 1980s work was buzzing in both the IP and the commercial areas. Consequently there was an acute need to bring in fresh and able lawyers to handle the rush, and it is significant that amongst those recruited at this time were David Kerr, Justin Walkey and Morag Macdonald.

For the IP group in particular this period of growth was very important since it meant a doubling in size to a

Michael Frie gets to know Bird & Bird

Michael Frie (now the Chairman of Bird & Bird) came across twice from Sweden in the 1980s to visit Bird & Bird’s office in London. Initially when he saw the offices in Gray’s Inn Square he was amazed because they were so old-fashioned and mired so deep in history. But what did he make of the firm’s lawyers?

‘Well, the first proper contact was a lunch in the office. It was on a Friday and before we sat down to eat everyone had gin and tonics. Then when lunch was served we were given white wine and then red wine. It was a very long lunch and, frankly, everyone got drunk and then they went home—they certainly weren’t in a state to do any work in the afternoon.’

The second time I visited it was several years later and it was towards the end of December. I wanted to introduce them to a new client, Stefan Edberg, then destined to become the World No 1 tennis player (in both singles and doubles). Unfortunately because it was Christmas, no one seemed interested—apart that is from Justin Walkey. It was all very relaxed and they were very nice people. But I concluded that, by and large, they were a lot of lazy layabouts.’

The Dow Connection

Bird & Bird's strategically important relationship with the major chemical company Dow Chemical has its origins in patent litigation which Karl Arnold undertook for the company with Dr David Hardisty of the patent agents (now patent attorneys) Boulton Wade Tennant.

Karl Arnold, David Harriss and Trevor Cook all worked on patent litigation for Dow against Spence Bryson, and Trevor Cook played a central role in global litigation concerning herbicides between Dow and ICI and Ishihara Sangyo Kaisha in the 1980s.

In the 1990s Trevor Cook worked for Dow's pharmaceutical subsidiary, Merrell Dow (later Marion Merrell Dow) on the defence of its antihistamine drug terfenadine, in a patent case which went to the House of Lords as *Merrell Dow Pharmaceuticals Inc v Norton & Co Ltd*. The subsidiary was later sold to Hoechst (it is now part of Sanofi) and Trevor Cook was again involved

advising on its attempt to bring an erythropoietin product to market (which involved clearing the path of a patent belonging to Kirin-Amgen). This led to a further appointment in the House of Lords in the case of *Kirin-Amgen v Transkaryotic Therapies and Hoechst Marion Roussel*.

This biotechnology patent case was of great significance as it was the first time in a generation that the House of Lords had analysed the law of patent claim construction and how one can determine whether or not a patent claim is infringed.

The outcome was that the firm was successful in establishing that its clients' 'gene activated' erythropoietin product did not infringe Kirin-Amgen's patent. It also established that the specific claims of Kirin-Amgen's patent asserted against its clients were invalid. The principles clarified by the case have been applied in every case ever since.



Houses of Parliament, until recently the seat of the UK's 'Supreme Court' within the House of Lords.

Recruiting David Kerr

David Kerr started his career at Clifford Turner, but by 1985 he wanted to move on. His 'particulars' (that is his personal and career details) were received by David Harriss, who passed them on to Colin Long for consideration. Colin recalls:

'I thought they looked interesting so I phoned an old contact of mine at Clifford Turner and asked him what he thought of David. His comment was that he thought that he would do very well working in the kind of technology-based practice that I was trying to create. So that was encouraging.

Anyway we had him in for interview and I quickly saw that he had the right kind of personality for me to work with. He was engaged and enthusiastic. So I said to him, "If you come to work here I'll teach you

all I know about telecoms—it's a very interesting area, I think you'll enjoy it". So he joined and quickly showed a penchant for the technology field.

What David was particularly good at—given that he was quite young himself—was getting on well with our younger technology clients. He really grew up here. He saw how a "can do" attitude could work for the firm. And the firm has become known for that approach to serving its clients ever since.'



total of five partners and four associates so that it constituted almost one third of the firm.

Even so Trevor Cook confesses that at the time he adopted a rather downbeat approach to the firm's prospects. Maybe echoing Karl Arnold he was especially pessimistic about the prospects for patent litigation. 'I actually said to Morag when she was interviewed "There is no future in this patent business"', he recalls. 'The truth is that we were frightened of being trapped in a niche and just being seen as patent litigation lawyers—an area which we thought was going nowhere. So we were always looking for the "holy grail" of new areas of work and that was why we were so keen to expand into the field of technology more generally.'

Notwithstanding Cook's fears, the patent work continued to come in especially from chemical companies whose patent litigation was primarily connected to polymers. That said, there was also some mechanical work including, Macdonald recalls, a big case involving a sewing machine for a Japanese client. The biggest demand of all, however, for Macdonald's services was in the field of trade mark litigation. She says:

Morag Macdonald switches sides

Morag joined the firm in the mid-1980s when women were only starting to have a significant impact on the profession.

'I studied Maths, Physics and Law at Cambridge and, in those days, if you were a mathematician there seemed to be only two career options—computing or teaching. I didn't care much for either of those but I was interested in the law. I'm afraid that made me the black sheep of my family—everyone else was a scientist!

Anyway I was called to the Bar in 1984 and had a pupillage with one of the very few specialist IP sets of chambers in London. The analytical side of the law fitted well with my maths training. However, it was unfortunate timing because work at the UK Patent Office was drying up as a lot of work switched to the newly opened European Patent Office. Opportunities were thin on the ground but, curiously enough, the only time I actually appeared in court on my own as

an advocate was in a case where Bird & Bird were on the other side!

Given the conditions at the time I decided that there would be a better future for me working in IP with a firm of solicitors. Given their IP interests I applied to Bird & Bird although the firm was absolutely tiny at that stage. I was interviewed by Karl Arnold. He asked me if I had any questions. I said, "What's the firm's attitude towards women?" That floored him!

But they took me on and my arrival—and Graham Smith becoming a partner—meant that the IP group doubled in size and actually represented one third of the firm with five partners and four associates.

For four years I continued simply being qualified as a barrister. It was only when partnership loomed in 1989 that I had to re-qualify as a solicitor. Ironically due to the reforms brought in by the Legal Services Act I could go back to being a barrister again.'

'Actually for quite a long time I was better known for doing trade mark litigation than patent litigation. Indeed there was no electronic litigation and little mechanical trade mark litigation. Even the pharmaceutical litigation was pretty low key at that point. But we were nothing like as specialist then. On the other hand we did many more interlocutory injunctions and a number of Anton Piller orders [now known as search and seizure orders].'

The first venture into word processing

As a barrister by training Morag Macdonald had never learned to use a Dictaphone for her correspondence. In chambers she had always used a computer and typed her own letters. So, having arrived at Bird & Bird, the management agreed to buy a word processor for her—the very first in the firm. And this started a trend. Some five years later Bird & Bird made an important point by becoming the first firm in London to put a computer on every lawyer's desk. As in many other things, Morag had started a trend.

Extending the scope

Meanwhile Colin Long had been promoting the need for the firm to start to think and plan strategically. For Long it was not enough for the management to act tactically on a day-to-day basis. It needed to have a longer-term vision which would start to bring coherence to the disparate but complementary strengths of the firm in the fields of IT, IP and communications. The way to do this, he argued, was to put them together by making a clear, integrated and fully rounded 'Technology' offer to clients.

In fact, talking about the firm in terms of a focus on technology did not require much formal debate, says Macdonald, because it came out of a recognition one should play to one's strengths. Trevor Cook too was also clear about the benefits of this approach in marketing terms.

'It differentiated us from other people and allowed us to tell a story which spoke to our strengths in IP litigation. But it also gave potential for other areas of the practice to use the technology theme as part of their story as well. For example, some of the work we'd do for telecoms companies was routine work, such as licensing and leasing telephone masts. But that was positioned in the technology field and that's why we got it. So promoting ourselves in that way played to our strengths. We were so far away in size from the big City firms that having the beginnings of a sector-focus enabled us to punch above our weight. Under that umbrella we could expand across a wide range of telecoms, pharmaceuticals, biotech and computing.'

This concept of adding complementary areas of expertise—and then cross-selling them—won increasing support amongst the partnership, and it was to continue to

The European Patent Office in Munich.



bear fruit in later years when, for example, aviation and energy further enhanced the firm's offer to the legal market. Colin Long says:

'Perception lags reality and what we were trying to do was to enlarge the perception of the firm beyond purely IP. We were building a client base which included a range of industrial sectors and to whom we offered more than IP alone. That was the important thing.'

In fact, according to Long, Bird & Bird in the 1980s had broadly acquired the core characteristics which can still be discerned today.

'It was user-friendly, not arrogant and it delivered on its marketing messages—in other words, it did what it claimed to do. Above all, maybe, it “tried harder” to satisfy its clients. It had lawyers with scientific and technological backgrounds as well as legal qualifications. It had people who had worked in the industries they serve. And it is these factors which give them an edge over the blander City firms in serving this particular segment of the market.'

Lunch is for wimps! A long hours culture in the 1980s?

Contrary to the image of big City commercial life in the 1980s put out by films like *Wall Street*, when the Michael Douglas character declared 'Lunch is for wimps!', Bird & Bird did not make a fetish out of presenteeism. Indeed, Trevor Cook was known



Michael Douglas in the film *Wall Street*.

not only to have lunch, but actually to take a lunch break, going off into Holborn or Fleet Street to buy books and records.

'Bird & Bird then—as, probably now—never fostered a long hours culture for its own sake', says Morag Macdonald. 'Instead we have always had a sensible approach to this. In the litigation department if we were going to court, then we worked all hours. And if something had to be done to a deadline—such as an interlocutory injunction which we did three or four times a year—then we would put in all the work necessary to meet the deadline either in the evenings or weekends. But we did not go in for long hours for their own sake or just to make us look good. That wasn't the Bird & Bird style. And generally speaking, it must be said, there wasn't the same pressure on us as there is today.'

Nonetheless, the nagging desire by the firm to be absolutely upfront about what kind of firm it was remained strong. So, driven by a combination of fear and ambition, the firm's partners decided that the time had come to put its cards on the table.

One of the ways it did this was to start to place a sharp emphasis on high-profile marketing. In reality, this chimed very much with what Karl Arnold had in mind. He had spent quite a lot of time in the US and was very clear about the need to engage with clients. Consequently, as soon as the restrictive regulations (on marketing) were lifted in the mid-1980s, the firm was quick to capitalise on the new opportunities available.

To give energy to this drive the firm decided to establish a professional in-house marketing function undertaken by Karen Bohling, a new appointment to the firm. This was a novel move, rare at the time on the London legal scene, and Bohling was certainly a groundbreaker.

'I liked Karen's attitude and the fresh perspective which she brought to the job', said Long. 'She was good at cajoling our people to do things which, as they were marketing, were slightly alien to most, and she also helped with our first brochures, sector capability statements and some of our "campaigns"—all pioneering stuff at the time!'

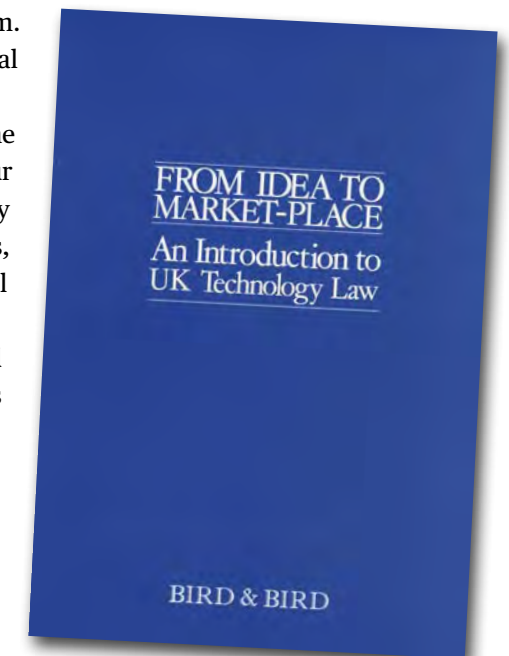
To make maximum impact with the brochures and other publicity material the design consultancy Wolff Olins was commissioned to develop a consistent house style and branding for the firm's promotional material. Also, in line with the new priority to raise the firm's profile, it was decided to undertake the writing of journal articles and books in a strategic way.

As an innovative expression of this new approach a booklet was put together and published in 1987 under the title *From Idea to Marketplace: An Introduction to UK Technology*

The importance of science

Morag Macdonald was slightly unusual in the legal profession at large for having a science and maths background. But it was not so unusual at Bird & Bird as it would have been at many other law firms. Trevor Cook and a number of other key partners were scientists by academic background and Morag considers that this is genuinely advantageous—especially when doing patent law. She says:

'I've not used directly much of the science I learned at university, but it gives me an awareness and understanding of the subject which is enormously useful. In essence it's a basis for learning new things. In fact, I don't understand how you can start to do complex patent work if you're not a scientist.'



'From idea to marketplace'—1987

The publication in 1987 of *From Idea to Marketplace: An Introduction to UK Technology Law* was a major step by the firm in staking its claim to be the foremost firm in London for understanding the wide variety of legal issues associated with technological innovation. What made it so significant was that, perhaps for the first time in the UK, lawyers started to assert that intellectual property rights were on a par—indeed perhaps even more important—than owning land, buildings or machinery. As the introduction commented, maybe to the surprise of some of its readers, 'The most valuable assets of a high technology business may be its inventions, know-how and designs'.

Originally the brainchild of Colin Long, *From Idea to Marketplace* was very much supported by Alan Woods, the Senior Partner, as being a potentially critical initiative for the firm. The task of writing was divided between Colin Long, Trevor Cook and Miles Gaythwaite and—although they were uncredited—it gave them considerable pride and satisfaction. 'People really made use of it', recalls Trevor. 'They kept it on their shelves, referred to it and found it very valuable.'

As the title suggests, the book covered comprehensively the full range of issues from 'securing the technology rights'—patents, designs, copyright—both in the UK and abroad through to commercialising the technology. En route it took account of issues of competition law, regulatory controls, and finance. The final section dealt with litigation to defend the rights.

Nothing similar existed, and it was so well received that it rapidly required a first reprint and then a second reprint. A second edition was then produced to take account of the Copyright, Designs and Patents Act 1988. The overall effect of the book was invaluable for Bird & Bird, serving as a 'calling card' for technology clients at a time when the firm was starting to remould its image to the outside world.

Building on this reputation further, in 1988 Sweet & Maxwell published Colin Long's *Telecommunications Law and Practice*, which further consolidated both Long and the firm's reputations as the 'go to' firm for telecommunications work. 'We had a launch party for this at a London club I recall', says Long. It had been a decade of launches.

Law. This was a piece of collective writing by Colin Long, Trevor Cook and Miles Gaythwaite and was designed to make a big impact on the market, laying out the Bird & Bird stall as being, in effect, the most forward-looking, technology-friendly firm in the City. It was putting down a clear marker, in other words, about how the firm now saw itself. It was also sending out the specific message to the technology market that Bird & Bird was the law firm which could give it support throughout the whole cycle of developing an idea, protecting that idea, taking it to market and then defending it if necessary through the courts. If a technology client needed a 'cradle to grave' service for its product ideas, then Bird & Bird had all the answers. 'It wasn't just a fluffy thing', says Trevor Cook. 'It had real value and utility for people. Clients would keep it and refer to it.'



Shortly afterwards, in order to get the same message out to an even bigger audience, the firm decided to adopt the neat and effective slogan 'Bird & Bird—The technology law firm'. This meant that the direction of travel was now clear. Moreover, this was underpinned by the decision in 1990 to create the firm's first ever Managing Partner, with David Harriss being elected to the job by the partnership. In harness with Karl Arnold as Senior Partner it meant that the most senior partners with the clearest vision and the greatest ambition to give Bird & Bird a distinctive identity were now the ones who were running the show.

In fact, by the end of the 1980s, Colin Long had departed the firm having fulfilled, it must be said, the transformational role originally envisaged for him. Combined with his legal abilities he had a very dynamic and positive attitude, wanting to get things done—and done fast. This 'can do' attitude went down well especially with American clients. And it was because of his non-UK client base that Long was keen that the firm should start developing an international reach.

However, that was a step too far for the partnership at that point at the end of the 1980s. The firm was still changing within London and was reluctant to take on heavy commitments elsewhere. As a result, Long departed to pursue his career elsewhere. He took with him, however, considerable satisfaction that through him the commercial and corporate practice had grown very substantially, attracting people such as tax lawyers to create a 'modern corporate law department'.

But was the firm truly looking as modern as it felt? The 1990s would answer that question.

An early partners retreat. Alan Hung, Miles Gaythwaite, Karl Arnold, Alan Woods, Bernard Williamson, John Hartley, John Parker, Cyril Clifford, Robert Camac, Graham Camps, John Ransome, Alex Maitland-Hudson, Colin Long and David Harriss.



Chapter 4

SHARPENING THE TECHNOLOGY FOCUS IN THE 1990s

The 1990s was the decade when Bird & Bird emerged from its somewhat quaint and historic quarters to present itself to the world as a fully switched-on, forward-looking law firm fully in tune with the spirit of the age.

The ingredients had been there for some time but they needed to be brought together into a coherent package of people, office and image which could then grow and expand.

Like any transition process, however, it did not all go smoothly. But by addressing some deep-seated difficulties and working through tensions in relationships, the firm emerged much stronger as a result.

One of Karl Arnold's most significant moves at the beginning of the decade was to commission Touche Ross to undertake a systematic analysis of the firm's strengths and weaknesses. As a result, a more structured approach to management was proposed and it was left to David Harriss, the firm's first Managing Partner, to implement the changes. Fortunately, Harriss had the skill and wisdom to make the right decisions in somewhat difficult circumstances.

The results of the report were telling. According to Touche Ross the firm's strengths included:

- its reputation as a well-established firm
- a commitment to excellence
- commercial awareness and market orientation
- acknowledged leadership in fields of intellectual property, telecommunications and information technology
- lawyers with a technical background
- a high-quality client base, especially in the specialist fields.

London's Cyberia Café, on Whitfield Street in Fitzrovia, 1990s. A sign of the changing times, Cyberia was the UK's first 'internet café'.

On the other hand its weaknesses included:

- lack of an extensive corporate client base
- dominance of/over-reliance on specialisations
- low ratio of associate lawyers to partners
- low profile in the wider market place
- some gaps in expertise
- problems in recruiting and retaining ‘high flyers’.

These findings were very helpful because they crystallised for partners a number of issues—such as the firm’s narrowness of expertise, client base and staff retention—which they had been concerned about for some time. They also nudged the firm towards action in other areas, such as finding more appropriate accommodation, which were to have enormous implications.

In any case, arising out of this analysis a statement was agreed by the partners which set out the firm’s medium-term management objectives. This stated that:

‘The objective over the next three years is to develop Bird & Bird into an international commercial law firm, having well-recognised and respected expertise in a number of selected business areas. We will build on our present specialisms and use them as spearheads to enter new areas of work and to provide opportunities to extend the range of the firm’s services.’

Latitude with attitude

David Kerr and Justin Walkey were made partners at the same time in 1987 and became ‘full partners’ in 1990.

‘I am just very grateful for the freedom that I was given as a partner at a young age to play a key part in developing the firm’s strategy’, says David Kerr. ‘It’s a great testament to Karl Arnold and David Harriss that they allowed me to do that. I hope that I’ve given that same freedom to others.’

Justin Walkey has similar sentiments:

‘In making us partners they gave us a lot of headway, leeway and trust. But the broad principle was that if you could make it work and the clients were paying the fees then everyone was happy. It meant that you had a lot of latitude in what you were doing. The result was that we were constantly refreshing the client base as the firm got bigger. In fact, you could say that we were pretty much given the keys to the sweetshop on the transactions side of the business.’

This formalisation of where the firm was heading provided a powerful sense of purpose to the firm at the very start of the 1990s. The election of David Kerr and Justin Walkey as full partners was emblematic of a new generation starting to shape the way the firm would develop. And this was complemented, following digestion of the Touche Ross report, by the critically important decision by the partnership to quit in February 1991 its home in Gray’s Inn Square—thereby breaking a geographical relationship which went back to the very birth of the firm—and move to a modern office block in Fetter Lane.

The relocation was, probably, long overdue. For many partners—but not necessarily all—it sent out the message that the firm was forward looking and (literally) moving with the times in line with the management objectives. It was a powerfully symbolic occasion marking Bird & Bird’s definitive transformation from a 19th century, genteel, still slightly sleepy law firm serving private clients into an alert 20th/21st century law firm bristling with energy and at the leading

The need for a new office

One of the issues referred to in the management consultancy exercise undertaken by Touche Ross was the need for the firm to be based in an office which embodied its values and character. This was clearly not the case any longer with the offices in Gray’s Inn regardless of how much some visitors may have been charmed by their appearance.

Moreover, things were changing in Gray’s Inn. As an historic tenant of the Inn Bird & Bird had been insulated financially from many of the changes in the 1960s and 1970s, especially the rate of inflation of accommodation costs. This helped profits considerably and bred a certain amount of financial complacency. However, it could not go on forever. It became even more apparent when Gray’s Inn started to charge realistic rents to its tenants. Those who took an interest in the firm’s finance realised that for years its financial success had been artificially inflated because low rents had been paid for accommodation.

At the end of the 1970s Gray’s Inn was obliged to become much more commercial in its management of its estate, and a rent review resulted in the rent charges rocketing fourfold. Some of Bird & Bird’s cosy old practices—such as barely charging anything at all to the firm’s many charitable clients—could no longer be sustained.

Meanwhile some of the partners—especially those who were trying to reshape the firm as a modern, technology-focused firm believed that the old-fashioned premises scarcely sent out the right messages about being attuned to the modern world. This was compounded by the fact that any kind of large-scale cabling of the building would be impossible because it had historic, protected status.

By 1990 everything pointed in the direction of a move into a contemporary building enjoying the kind of facilities and infrastructure that a progressive law firm would require. The hunt for new offices began.

The move to Fetter Lane

The search for new premises led to 90 Fetter Lane, which seemed perfectly situated, just a quarter of a mile (400 metres) south of the Gray’s Inn office in one of the historic connecting roads running off Fleet Street up to Holborn. It was promoted as a modern headquarters building, but it also satisfied the firm’s key requirements. It was within the boundaries of ‘the City’ and therefore conveyed the status and location which the corporate lawyers desired, yet it was also

within easy walking distance of the Royal Courts of Justice, which was of great importance to the IP litigators. In short, it matched absolutely the image that Bird & Bird’s leading lights wanted to project.

So in 1991 the move was undertaken. This was a major exercise and was largely co-ordinated by Alastair Graham, the firm’s recently appointed Director of Finance, who was to play a central role thereafter in the firm’s development logistically, financially and internationally and continues to do so.

As Graham points out, the modern technology-friendly office enabled the firm to become fully wired up and placed a computer on every lawyer’s desk. The experience of setting up a new law office also provided useful experience, perhaps, for Graham when he came to do the same thing in a number of new offices around the world.

‘It was transformative in the way we thought about ourselves’, says Graham. ‘As part of the move we invested heavily in technology. The collective view was that if we are going to do this then let’s spend the money and do it properly. And indeed throughout the 1990s we were to continue to invest in IT and accountancy systems in order to keep ourselves up to date.’

But while there was an initial thrilling gush and delight in the new premises (at least by most people) there quickly followed a reminder that everything comes at a price and that timing is critical. Bird & Bird had made the right move but its timing—and the price it paid—almost immediately presented the firm with a critical challenge.

Artist’s impression of 90 Fetter Lane.



edge of technology and the laws that regulated it.

But although the office move was undoubtedly the right decision, the timing could not have been worse. Long-term management decisions can often be overtaken by short-term changes in circumstance, and as luck would have it the office move—which also involved a massive hike in rental costs—coincided with the deep recession of 1991/92. ‘The first year after the office move was a complete nightmare’, recalls the then Director of Finance Alastair Graham.

The inevitable financial stringency had an enormous impact on the firm’s bottom line. As a result the initial dividing up of profits along the traditional lockstep system lines made grim reading. Younger partners such as David Kerr and Justin Walkey who had been working extremely hard were not able to be properly rewarded.

The upshot was that in 1993 the firm’s lockstep system was tested to breaking point. The truth was that it had become unsustainable. At a time when the younger partners were transforming and expanding the firm’s client base—especially in the technology area—they faced the possibility of earning less than their associates because of a relative decline in income and a massive increase in overheads.

In these conditions it was profoundly divisive to continue paying the more senior partners at a relatively high level. Graham Camps—the recently appointed Staff and Recruitment Partner—was at the centre of the storm. ‘The move to 90 Fetter Lane forced us to look in a completely different way at how we dealt with profitability’, he explains. ‘Frankly, there was a feeling that some of the older partners were taking a disproportionate slice of the profits. In fact, in the run-up to the crisis I personally had urged one or two people, in the interests of fairness, to remain on the lockstep point where they were and not to move up. But, of course, that suggestion was not always well received.’

After robust discussions and some frank persuasion the partnership came to the pragmatic but radical conclusion that lockstep had to be abandoned and replaced by a new merit-based system.



Historical research undertaken into the site at Barnard’s Court, 90 Fetter Lane (formerly the site of the White House Coaching Inn).

A lot of good came from it

‘It’s not necessarily a bad thing that a firm goes through a difficult challenge like our debate about the introduction of lockstep’, says David Kerr. ‘Not only do you learn from it but change can happen during those kinds of periods which can be very healthy. So, in retrospect, it was probably a very good thing to have occurred even though it felt tense and risky at the time.’

‘We set up an allocations committee to manage the merit-based system’, says Camps, ‘This was based on half a dozen key factors and this helped enormously to resolve the tensions. With this move—which was actually accepted by the partnership without too much debate—the firm had turned the corner.’

Indeed Trevor Cook, who had just reached the top of the lockstep—and was therefore entitled to take the greatest rewards—said that he was ‘entirely comfortable’ with the move. ‘Breaking lockstep was enormously significant’, he says. ‘Without it we would not have been able to remunerate properly our younger partners. It took 12 years to get to the top of our lockstep system and then you were there forever—and that was why some of our previous senior partners back in the 1970s had failed to act in the most efficient way.’

Looking to the future

The move away from lockstep did more than just solve an immediate problem. It had beneficial repercussions which are still felt today. ‘Breaking lockstep was a major watershed in the development of the firm’, says Morag Macdonald. ‘It enabled us to rejig and redirect the firm in a way which would have been impossible if lockstep had still been in place. By introducing a merit-based system we changed the culture of the way we operated. It also meant that we could invest for the future. Fortunately we had a predominantly young partnership which was prepared to be patient and wait for the benefits of the new system to emerge.’

Alastair Graham agreed. ‘The move away from lockstep was a vital stage in our development. But it was only in retrospect that we fully appreciated the scale of its significance.’

It meant that younger partners who had been considering leaving the firm over the lockstep issue decided to stay, and this gave assurance for future prospects to junior lawyers seeking to build a career at the firm. Indeed, David Ayers, Nick Perry and Dominic Cook, all trainees of the firm (or more accurately, articled clerks) in the mid to late 1980s, remain to this day as partners in London (Commercial) with almost 75 man (and boy) years of Bird & Bird experience between them.

The way that Bird & Bird was able to adjust to new circumstances and weather the very severe economic storm at the start of the 1990s was a tribute to its intrinsic, underlying strengths—notably the personal decency of its people—and an intelligent willingness to adapt to new circumstances.

‘By this time Bird & Bird had a lot of very good lawyers who liked to do a good job’, says Trevor Cook. ‘We had a greater critical mass [of talent] than some of the other firms—such as Turner Kenneth Brown, for example—which, unfortunately, failed to survive that difficult period at the start of the 1990s.’

One major benefit was that as the economy started to move forward again the firm’s growing reputation and new, smart image meant that it could attract experienced talent from major firms in areas for which the firm was not well known. These included, for example Trystan Tether (Banking), Ian Hunter (Employment), Richard Ward (Tax), Neil Blundell (Corporate), Chris Barrett (Corporate) and Jonathan Baker (Real Estate). All of these were to play an important role in due course either in the Global Board or in international practice groups.

Also amongst the new recruits were Hamish Sandison and Roger Bickerstaff who came from Linklaters (& Paines, as was). Sandison, later to become Chairman, was explicit that he was much impressed by the commitment of the firm to a positive future and the way that it was investing in people and infrastructure. Both Sandison and Bickerstaff were to prove highly effective in growing the practice for public and private sector clients alike.



Ian Hunter, joint head of international employment and former member of the Board.

Alastair Graham: much more than an accountant

Alastair Graham, a professional accountant, joined the firm on the recommendation of his father-in-law (a judge), who said that Bird & Bird had a good reputation in IP. ‘I thought there might be some interesting challenges for two or three years before moving on’, he recalls. More than 20 years later he is still with the firm.

As Director of Finance Graham originally modernised the firm’s accountancy systems and lead the movement to ensure that the firm had a proper IT system in place. However, after 2000, he was to become increasingly involved in the firm’s human and capital infrastructure, especially once Paul Colvin had been recruited to take over the

finance director role. In effect he had a ‘development role’ rather like the ‘Minister without Portfolio’ (as the British say about the senior government minister who is an all-purpose ‘Mr Fixit’) within the highest level of the firm’s management.

‘I developed a unique position within the firm’, he explains. ‘I came to wear various hats spending time with new partners and was involved in all aspects of recruitment. I did a lot of travelling with David Kerr when we were investigating new international possibilities. And I have been heavily involved in overseeing the commissioning of new offices and systems around the world. It is still a lot of fun.’



Chris Rees (left) and Roger Bickerstaff.

Another prominent key recruit around this time was Christopher Rees, who had held a senior in-house legal role at Data General. Again it was significant that someone in his position wanted to join Bird & Bird. Moreover, it meant that the firm gained an injection of commercial awareness and a corporate approach which had, perhaps, previously been lacking. As well as his expertise in the IT arena he was well connected and also brought disciplines of credit control and cash flow which were invaluable given the tough conditions following the office move. Such was his impact that when David Harriss moved up to Senior Partner—following Karl Arnold’s retirement in 1993—Rees was elected to take over the role of managing partner (which he was to hold until 1996).

Reinforced by these ‘big hitters’ the firm was much more confident about taking on ‘high end’ IT-based work, and it renewed the drive towards the more sophisticated areas of the technology market.

So although the early 1990s were a testing period, the firm emerged from it much stronger. Indeed, the combination of breaking lockstep with the move to new premises meant that the Bird & Bird partnership now started to look quite different and increasingly modern. Its lawyers were well rated in the various directories. And, as Trevor Cook points out, it is sometimes easier to make a reputation in a new, growing field of work than in one which is large and already well established.

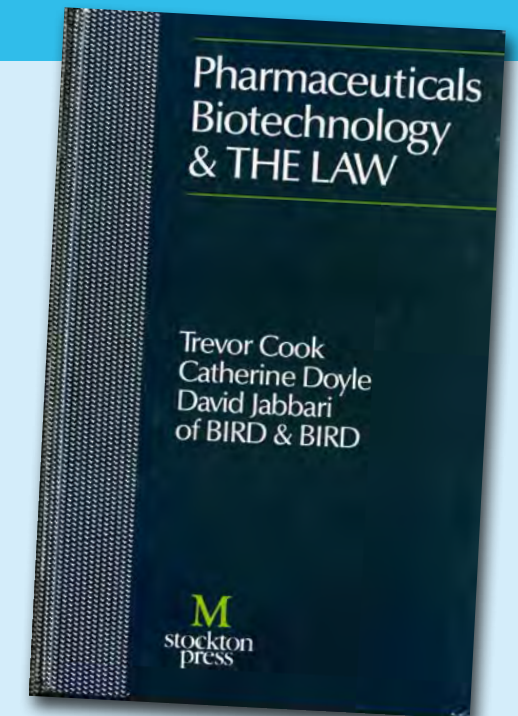
Having weathered the storm, the firm was on the verge of a major growth spurt. But as David Kerr, by now the Business Development Partner, put it in 1993, the aim was not growth in itself, but the development of cutting-edge expertise. He wrote:

‘The central aim of partners is to run a profitable firm transacting high-quality legal work. To this end our wish is to be perceived in the marketplace as being genuinely expert in dealing with legal requirements and companies and other organisations involved in certain sectors of industry. We do not believe growth or mergers are of themselves a strategy. If growth occurs as a result of the firm doing the work and projecting itself in its marketing activities, then it is obviously very welcome ... This could include merging with small firms in certain cases. But there has to be a well-defined business reason for taking any such step.’

This statement offers an insight into the state of mind at the time and highlights the caution with which expansion was seen—even though the firm was expanding at quite a pace. The pleasing fact was that in order to keep up with the increasing demands for its services the firm had to take on a number of high-level lateral hires.

A groundbreaking book

In 1991 Macmillan published *Pharmaceuticals, Biotechnology and the Law*. Authored by Trevor Cook, along with Catherine Doyle and David Jabbari, it had taken three years to write and, to the pleasure of the authors, was received with considerable interest. ‘There were a lot of people writing about computer law but no one seemed to be writing about pharmaceuticals law—it did rather seem to be a gap in the market’, says Cook. ‘Personally I was starting to get more work in this interesting area and it seemed to be a useful thing to do. Indeed it was quite groundbreaking at the time. But, like most major writing projects, by the end I was just pleased to have got it done and over with! You do them because you have said to someone that you will. And then it’s only guilt that drives you on to completion.’



In the pharmaceuticals field, for example, the firm had enjoyed a run of major successes in the early 1990s, including widely reported cases for clients. Meanwhile technological advances and novel commercial developments were creating a fresh set of legal issues to which the growing technology team could apply its skills.

British Rail
Telecommunications
logo.

'What do you know about bailment?'

A good example of this came in the shape of a major piece of business from British Rail Telecommunications Ltd (BRT), which had been set up with about 3,500 people to provide BR with all its telecommunications needs from signalling to administration.

BRT needed its own lawyers and planned to hold a beauty parade drawn from the usual selection of 'Magic Circle' law firms. However, through a chance piece of good fortune via a personal contact at BRT, combined with the firm's growing telecommunications reputation, Bird & Bird was slipped onto the shortlist almost at the last moment.

Responsibility for making the pitch lay with David Kerr. He was the final person to be interviewed and came in after all the other firms had paraded large teams and put on elaborate slide show presentations. What Kerr did not know was that they had all been wrong-footed by being unable to answer a key question put by John Drake, BRT's Chief Executive Officer, 'What did they know about bailment?'

Kerr had no elaborate presentation to make. Instead he was on his own with only a single, neatly folded sheet of paper for support. That piece of paper summed up

the firm's experience and expertise in this field. When read out it made a powerful impression. But then came the killer punch. 'What did he know about bailment?' 'Ah, bailment!' Kerr replied with enthusiasm. He then proceeded to explain how he had applied this technique in recent deals. Even more to the point he added, 'And I can tell you why you have asked that question. You want a finance lease so that you can have a balance sheet.'

This brilliantly incisive and perceptive reply immediately won Bird & Bird the work. The project took over two years to complete and included formulating the longest right of way in the country—only nine inches wide but 10,000 miles long. And it was on transactions like these that the Bird & Bird reputation in the sector started to blossom. (The firm was fortunate that some years later it was able to engage John Drake as a part-time consultant. He subsequently became Chief Operating Officer of London.)

John Drake.



The firm's first internet client

Following the computer revolution in the 1980s it was only a matter of time before the world would become interconnected. But it wasn't clear how it would happen or who would lead this next phase in the technology explosion. Graham Smith was alert to the signs of things to come. He says:

'The real turning point for me was around 1993 when online services started to rear their heads, the internet was just beginning and the first web browser then appeared. I was one of the first lawyers—not the only one, but one of a small group—to see the potential of it all and make a speciality of it. Basically I just grabbed the opportunity and ran with it.'

Our first internet client arrived in 1994, a company called Hyperlink, which was an internet advertising and marketing agency and ISP all rolled into one. They just walked through the door. They'd obviously picked up on our reputation from somewhere as being

interested in this kind of thing. Mind you, at that stage you could impress people simply by knowing what a domain name was. You have to know a bit more than that now!'

The owners of Hyperlink eventually sold out, but as Graham Smith notes, 'A few years ago they came back to us with a brand new idea, Eigenharp, an electronic musical instrument. So they were innovating all over again—and it was gratifying that they still wanted to work with us.'



The Eigenharp.

Booming litigation and the arrival of the internet

Litigation in the IT field was one of the other star areas for the firm in the early to mid-1990s.

For example in 1991 Bird & Bird had undertaken a major action on behalf of Philips following the merger of Sky with British Satellite Broadcasting. The adoption of the Sky technology meant that Philips was left high and dry with stocks of—now redundant—'set top boxes'.

'We were litigating against BSKyB for damages and we won at first instance', recalls Graham Smith. 'It was a big, interesting piece of litigation.' Sadly for Philips the outcome in the Court of Appeal was not favourable, but it put Bird & Bird once more in the front line of testing the law in novel circumstances.

Having been with the firm since the early 1980s Graham Smith was now really hitting his stride. As IT grew in importance as an industry it was also increasingly

contentious. Bird & Bird had the distinction of initiating the first judicial review against Oftel. ‘It was in relation to a company called Computer Dial, for whom we were acting’, recalls Smith. ‘It was a pretty open-and-shut case. We started proceedings and when they looked at it they must have realised that they hadn’t got a leg to stand on and caved in. So it was very successful from our point of view but also of wider significance because it was a genuine “first”.’

Cases of this kind meant that the time had come to give this area of work its own discrete identity.

‘It was around this time that I heavily discouraged the phrase “general litigator”’, says Graham Smith. ‘Instead I was very keen that people should know specifically how to litigate in particular kinds of dispute whether, for example, IT projects or telecoms disputes. That was when, in effect, I started to become known as an IT lawyer.’

Interestingly, though, Smith was also drawn into other areas of the firm’s practice, including even, on one occasion, sport. ‘I did some sporting litigation including doping cases which came through Justin Walkey’s sports practice’, he explains. ‘The first was quite a big case on behalf of Peter Korda, a Czech tennis player. The first thing you do is go over to the International Olympic Committee’s laboratory in Lausanne and observe the test being done on the B sample. And that was not new for me. I had done that often in patent litigation cases—sitting there watching experiments—so

‘Internet law and regulation’

In the summer of 1995 Bird & Bird was approached by publishers FT Law & Tax to write a groundbreaking and authoritative book to be entitled *Internet Law and Regulation*.

But speed was of the essence, and led by Graham Smith the team of eight contributors managed to get it written in 13 weeks.

‘The deal was that if we got it written in three months then they would publish it within two months. It was obviously a fast-moving field and we didn’t want to risk the possibility of being overtaken by events if there had been a delay of, say, six months before publication. So it came out in February 1996 and was the first proper

textbook in the field and it certainly had an impact. Clients have it and read it, and indeed there are still a lot of lawyers today who say that they originally came across the firm through this book.

The first chapter gives an overview of the internet, describing in some detail how it all divides up, who the principal players are, and so on. And although we’re now heading for a fifth edition—and it has become a monster of half a million words—that is the chapter which has changed the least. I take a lot of pride in that because I tried to write it in a “future proof” way, drawing out the essential substance which would remain true. And I think it’s worked.’

I decided I knew enough to do doping cases too!’

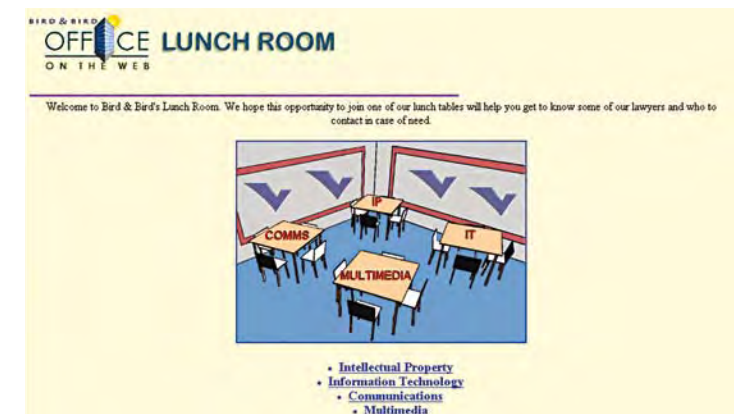
By this point in the decade the potential of the internet was starting to be appreciated by the business community and in 1994 the firm attracted Hyperlink, its first internet client. The company’s owners had literally walked in ‘off the street’ due to Bird & Bird’s reputation amongst ‘techies’, so Graham Smith saw that the time was ripe to consolidate the firm’s reputation within the legal community as well.

‘In 1996 I decided that we should focus some effort on raising our profile in the Directories’, recounts Smith. ‘I did 30 speaking engagements that year—especially about subjects like electronic evidence and IT litigation. It almost killed me! But, nonetheless, it had the desired result as word got round more generally about our specialism in this field. As a result we became a Tier One firm.’

In these circumstances it was highly appropriate that in 1995 the firm launched its own internet site through the development of www.twobirds.com, thereby making it the second UK firm with an online presence.

Meanwhile, due to the firm’s growing profile in the technology field, various approaches were made to the firm inviting it to write books and articles which would address the legal issues in this new area of law. This resulted in major works such as the authoritative text *Internet Law and Regulation* for FT Law & Tax. Equally significant was the approach by the States of Guernsey to assist with their proposed electronics legislation. Both of these projects were undertaken by Graham Smith, who by now had carved out a reputation nationally in the area of IT litigation.

As a result of this the firm was able to go on to act for an increasing number of big name internet players. ‘We had a lot of these funny-named start-ups coming to us, but fortunately we did not get involved with any “fees for equity” deals or anything like that, so were not impacted very much by the subsequent dot com bust’, says Smith. ‘Perhaps more importantly in a legal sense the technology has enabled for



The home page and the ‘lunch room’ from the first iteration of [twobirds.com](http://www.twobirds.com), 1995.



The new world of mobile phones, 1992.

the first time in history the free flow of information across borders and has massively increased opportunities for freedom of speech. This gives rise to lots of fascinating cutting-edge issues, many of which address fundamental principles of law, freedom and liability.’

Meanwhile other aspects of the firm’s practices—such as property (often linked to technology), corporate finance and commercial—continued to progress, although there were growing pressures and sharper competition. Increasingly the firm realised that it was best placed to capture this work when it lay within the technology context. Hence the development of specific areas of technology-focused expertise became a hallmark of the growth phase of the 1990s, with lawyers such as finance partner Trystan Tether equally happy to talk about electronic payment systems as to discuss complex international financing transactions. Similarly new recruit Roger Bickerstaff became involved in many innovative IT and outsourcing projects and helped build the London office’s leading reputation in this field.

Then as the hours ticked away towards the end of the Millennium, the firm received a bizarre boost to the business which will be looked back on by future generations as one of the oddities of history. ‘In the approach to 2000 a huge amount of IT work was brought forward because of fears over the Millennium bug scare’, recalls Graham Smith. ‘That was the upside. The downside was that there was a huge gap afterwards!’

Across the Channel

While business was bubbling along nicely in London, the growing influence of the European Commission in shaping both UK law and the way in which British businesses could operate across Europe as a whole meant that it was important for the firm to boost its awareness of what was happening in Brussels. So, in common with a number of other London firms, Bird & Bird decided in 1992 to set up a small operation in the ‘capital of Europe’. It was to be run by Peter Sandler as a ‘man and a dog operation’ and was primarily designed to be a ‘listening post’, minimally staffed, with its focus primarily on serving the existing client base.

Even so, small step though it was, the Brussels presence represented a landmark moment as the firm moved outside of UK territory and cut a foothold on the Continent. Moreover, the implications of this became apparent when in 1998 a duo of Belgian lawyers approached the firm with a proposal that they should join the firm and start a local operation. ‘We were approached by two Belgian lawyers—Jean-Paul Hordies and Agnes Maqua—who had a French-speaking media practice’, recalls Trevor Cook. ‘They came to us because we had such a strong brand recognition internationally because of our IP work. What they offered was a local Belgian law competence along with their associate Bruno Vandermeulen—who is still with us today as a partner.’

The outcome of the negotiations was positive and, as it were, without meaning to Bird & Bird had gained its first non-UK partners.

In 1995 the firm followed up the Brussels initiative by opening in Hong Kong, driven by a vision of the need to build both there and in the wider Asian market. Again this was quite opportunistic and at a minimal level and came about because a Bird & Bird lawyer was moving to Hong Kong with her husband. A desk space was rented from a friendly local firm and a brass plate was put up. It was a very small operation and again designed primarily to serve existing UK clients. But it reflected the growing awareness in the firm that the future lay in a global rather than an insular presence.

This was the beginning of the process by which David Kerr, who had set up a Business Development Committee made up of senior colleagues, began to think through systematically the principles of going international and what the long-term implications might be.

Arising out of these deliberations a strategy note was written in 1998 by Kerr which reveals that in the 1990s the basic principles upon which Bird & Bird might go global were being established.

The first principle enunciated by Kerr was that while there was a desire to grow Bird & Bird internationally it should not be on a ‘colonial model’. Instead each country’s office should be led by local partners who had the status of full partners in the international firm. Moreover, it was important that the local offices should retain their distinctive identities in keeping with the local jurisdiction.



The European Commission in Brussels.

The second principle was that, if the strategy proved successful, there would come a point when there would be more partners outside the London office than in it. ‘I don’t think that the partnership actually believed in this at the time, but they went along with it anyway’, says Morag Macdonald.

So in effect this strategy note set the tone for long-term future developments. A small group of the younger partners was emerging who were starting to set the pace for developing and realising a new vision for the firm. They had the ambition and the willingness to take this project on and make it work. As Macdonald puts it, ‘There was a core of us who thought in a similar way, who thought beyond the demands of the day-to-day work, who had an appetite for getting things done—and who knew how to achieve that in the context of the personalities within our partnership.’

Firming up the international ambition

David Kerr agrees that the formulation of a strategic approach to the internationalisation of Bird & Bird was largely due to a small, close-knit group of partners who thought alike and who began to shape a powerful vision of where the firm should be going.

‘The origins of the vision of how we wanted to see the firm develop lay with a number of predominantly younger partners at a time when Bird & Bird was still a relatively small London firm’, he says. ‘These partners—such as Morag Macdonald and Justin Walkey—shared with me strong views on how the firm ought to change.

That meant primarily by internationalising, but also by pursuing an industry sector focus which was bigger than the boutique model. And that, perhaps, was one of the core differentiators between us and other firms. Although we had opened in Brussels and in Hong Kong these were both fairly small offices which had limited objectives. Our view was that we should take the idea of internationalisation to a global level.’

By 1998 Kerr believed that the time was right to start putting this strategy into effect, and he says:

‘I had written for a partners’ retreat a short paper on what I thought the future should be for the firm. This was based around the idea of identifying key people

David Kerr on the need to go international

‘At the partners’ retreat in 1998 I proposed that the time had come for the firm to go international through a single partnership. I said that the clients and markets we were trying to target would cease to want to use us if our competitors were offering a range of international services and we didn’t.

So the proposal was just as much about defence as offence. But I must

stress that this was not just my opinion. There was a group of us—mostly younger partners—who had discussed this quite a lot between ourselves and this was the common agreement.

And I warned that if we didn’t act on this fairly soon then in five years the firm would no longer exist.’



Partners’ retreat in the 1990s.

in larger “generic” firms in the countries where we wanted to have offices and persuading them to join us in what we thought would be a more attractive model.

I said to the partners some pretty blunt things, including that one of the measures of the success of this strategy would be when the majority of partners in the firm were based outside the UK. Unless they too shared that vision, then they better not back what I was proposing. But if they wanted to be a real international player, then we could make this happen.’

These were strong sentiments, and Kerr’s vision was nothing if not ambitious. But how to go about it?

I had analysed that there were two routes to do this. The first, which was quite popular elsewhere, was a loose international network where the firms did not share profits. That would, perhaps, have been the easier route to set up and follow but in the long term I did not think that it would take us where we wanted to be.

The alternative was to follow the route of the Magic Circle—and bear in mind that I had come from Clifford Turner—which was to say that the only way we could make this work would be to have a single partnership which shared a common financial interest.

Our idea was in essence that we wanted people to be motivated to build this project together no matter where they were in the world. And I am glad to say that we have adhered to this model—to this same principle—since 1998. And I think it has proved to have worked.’

Getting the model right

One of the groups to whom internationalising came most easily were the IP lawyers. Almost by definition IP law is international. Most clients want their IP protected across Europe or across the world, so it was second nature for IP lawyers to think in international terms.

‘That was the way we worked anyway and we had many strong contacts already in a number of countries’, comments Morag Macdonald. ‘Indeed one of the key features about the way we were to expand after 2000 was that we targeted people with whom we had worked during the 1990s and who knew us and the way we operated.’

In reality, although Bird & Bird’s large-scale internationalisation project had not yet started, the critically important personal and professional relationships were already woven together around the world. They were to pay off big time on the other side of the Millennium.

However, the scenario that Kerr and his inner circle were keen to avoid was to drift almost by default into becoming a boutique trans-Continental firm based on



Members of the firm’s award-winning IP Group: Peter Brownlow, Alban Kang, Giovanni Galimberti, Christian Harmsen and Massimiliano Mostardini.

IP—in other words to be tightly focused on a single specialism to the exclusion of other areas of work.

‘We had seen this operating in the USA—typically in smaller boutique IP firms—and we felt that the market in the UK and Europe was too small to accommodate that’, says Kerr. ‘We certainly wanted to build on the firm’s IP heritage but to extend beyond that to become something much bigger.’

Many of the negotiations about the firm’s future development were conducted very informally in corridors and over coffee. ‘It was the Bird & Bird way of operating’, says Macdonald. Moving towards an international model would require a very different way of thinking for many of the partners. A major job had to be done to pave the way into persuading the rest of the partnership to buy into the vision and accept the risks that would accompany it. In particular, expanding into new territories implied costs and the possibility of reduced profits for a period as a result. ‘For many lawyers this was a bit unnerving’, says Macdonald.

So might there be another way of doing it? For example, by a major merger? That could still be an option worth exploring, especially with an American law firm. After all, America was the home of the most dynamic IT, IP and technology market in the world. Perhaps, as the Millennium approached, there were other options which needed to be examined.



Chapter 5

GOING GLOBAL IN THE NEW MILLENNIUM

By the time the Millennium loomed Bird & Bird had developed—under the leadership of David Kerr (who had become Managing Partner in 1996) and with the strong support of a closely knit leadership group—a clear sense of its identity and future mission as a full service, technology-lead firm.

But was this enough to satisfy the firm’s clients’ needs or its own aspirations?

Everywhere the talk in the business press and in the vision statements of ambitious corporations was ‘globalisation’. The growing industrial might of China was starting to be felt across the world, but the USA was still the dominant industrial power. And, by this time, the largest law firms in London were already well ahead in building their international networks.

Meanwhile Bird & Bird’s international capability was restricted to offices in Brussels (to service links with the European Commission) and in Hong Kong (as, in effect, a legacy of colonial status). For the firm’s technology-based clients this was clearly inadequate. They were operating across borders and were looking for an integrated service of legal advice which could bring coherence to their affairs. If Bird & Bird proved unable to offer that, then the clients would be tempted to look for legal services from other firms who had an international ‘one stop shop’.

Of course, Bird & Bird was not the only firm debating its strategy for international expansion. American firms were also going through a period of ambitious expansion in the late 1990s and were looking for footholds in Europe. A large number of them showed interest in Bird & Bird and serious discussions were undertaken with several because, for some partners at least, merger with a US firm would be an ideal solution. As Alastair Graham pointed out, ‘At that point the American market seemed to be much more important to us than the European.’



The Orrick episode

Amongst these negotiations in the late 1990s the best known—although not necessarily the most extensive—were with Orrick, Herrington & Sutcliffe (Orrick), which was based in San Francisco and New York and had a good reputation for its leading finance practice.

Orrick wanted a springboard for growth outside of the USA. And if it could do so by adding capacity and credibility in the technology sector, it would be even better.

Not surprisingly, Orrick checked out Bird & Bird and then made an approach to the firm. Naturally, David Kerr and his colleagues were initially flattered. Being courted by a major US firm had obvious attractions offering the potential, at one leap, to take partners' practices into the enormous American market. A merger, on the face of it, had a lot going for it.

This led to a period of discussion which, in its way, helped to crystallise and harden further Bird & Bird's sense of identity—who it was, where it was going and what kind of culture it wanted as a law firm.

What was initially encouraging was that the financial figures of the two firms—so often a stumbling block in transatlantic mergers—added up. The mutually beneficial strategic arguments could also be made. So then it came down to culture. What would be compromised—especially by Bird & Bird as the smaller entity—by seeking to unify the two firms? Would the inevitable loss of autonomy be balanced by a commensurate growth in business to make it worthwhile? How would partners feel about the culture and the character of the new merged firm?

As Graham Smith commented, 'I personally was opposed to merging with a US firm because I was sure it would end up as us becoming merely the London office of a much larger American firm.'

Indeed, as time went on and the partners reflected more deeply on the ramifications of the merger, it became clear that, in their heart of hearts, this was not the way they wanted to go. Bird & Bird was too distinctive in its identity and its partnership to want to be swallowed up in a (predominantly American) transatlantic firm. The talks were broken off. They had been time-consuming, but not a waste of time. The leadership and the partnership as a whole had learned a lot—emotionally and practically—from the exercise. 'But fortunately, in the end it didn't happen', said Graham Smith.

Looking back to that period Justin Walkey was clear why the American dimensions had to be explored—and, indeed, explored thoroughly. 'If you were genuinely thinking about going global, then you needed the US market', he says. 'We also felt there was a lot we could learn from the way the US firms did things. And of course at that time there were a lot of American law firms who were quite good at chatting you up. So their attention was quite flattering.'

Nonetheless the culture clash was inescapable. 'The biggest barrier for me was breaching the earnings expectation', he says, pointing out that there were a number of Bird & Bird lawyers who could have left the firm and gone to work elsewhere for a better financial reward. The reason that they did not do so was because they liked the culture and the freedom that Bird & Bird represented. 'Dealing with Americans who couldn't understand why anyone would be prepared to earn less than they might do elsewhere would be very difficult', says Walkey.

Europe beckons

So arising out of the Orrick escapade the direction ahead for the firm was clearer than ever. 'In retrospect I am very glad that we did not go ahead with the merger with any other US firm at this time', says David Kerr. 'From that time on we concluded that whilst we wanted to have good relations with US law firms we would not go there. Instead we would build up in Europe and Asia. Bird & Bird was to go it alone in its drive for international coverage. And that's the position that we have occupied ever since.'

London offices.



In taking this decision it was important for the firm to be explicit about what kind of international law firm it wanted to become, because major cultural implications would follow. In conjunction with his colleagues David Kerr confirmed the vision that had been hatching slowly since the early 1990s that the firm would not be a London ‘hub’ with a sprinkling of representative offices around the globe. Instead it would be a truly international firm—albeit based on the Bird & Bird culture—in which the non-London partners would, it was hoped, outnumber those in London and where individual national practices would have strong local identities woven into the Bird & Bird brand.

The building blocks of the strategy would be the recruitment of strong individuals with a high profile in their local markets who would bring credibility, profile and strong local knowledge to the Bird & Bird start-up. These local champions would attract—or bring with them—other local lawyers who shared the aspiration to create a new kind of international law firm. Ideally they would also have a following of clients who would accompany them. ‘When we were recruiting we always adhered to a strict rule that we would not compromise over who we recruited’, says Morag Macdonald. ‘If we had doubts about them then we would not proceed.’

Just how easy that process would be remained to be seen. There were, however, considerable financial implications in following this path. All expansion has costs attached, but starting up new offices from scratch might impose considerable demands on the partners’ pockets. A critically important decision was taken by the partnership to make this investment for the long-term future of the firm.

‘In retrospect it was remarkable that we got the backing of the partnership in London for this international expansion’, says Justin Walkey, ‘because the smart thing to do, purely from a self-interested partner’s perspective, might have been to say “Let’s spend absolutely nothing we don’t need to and, instead, let’s maximise our profits now and forget about the next generation”. But the decision was taken to look to the future.’

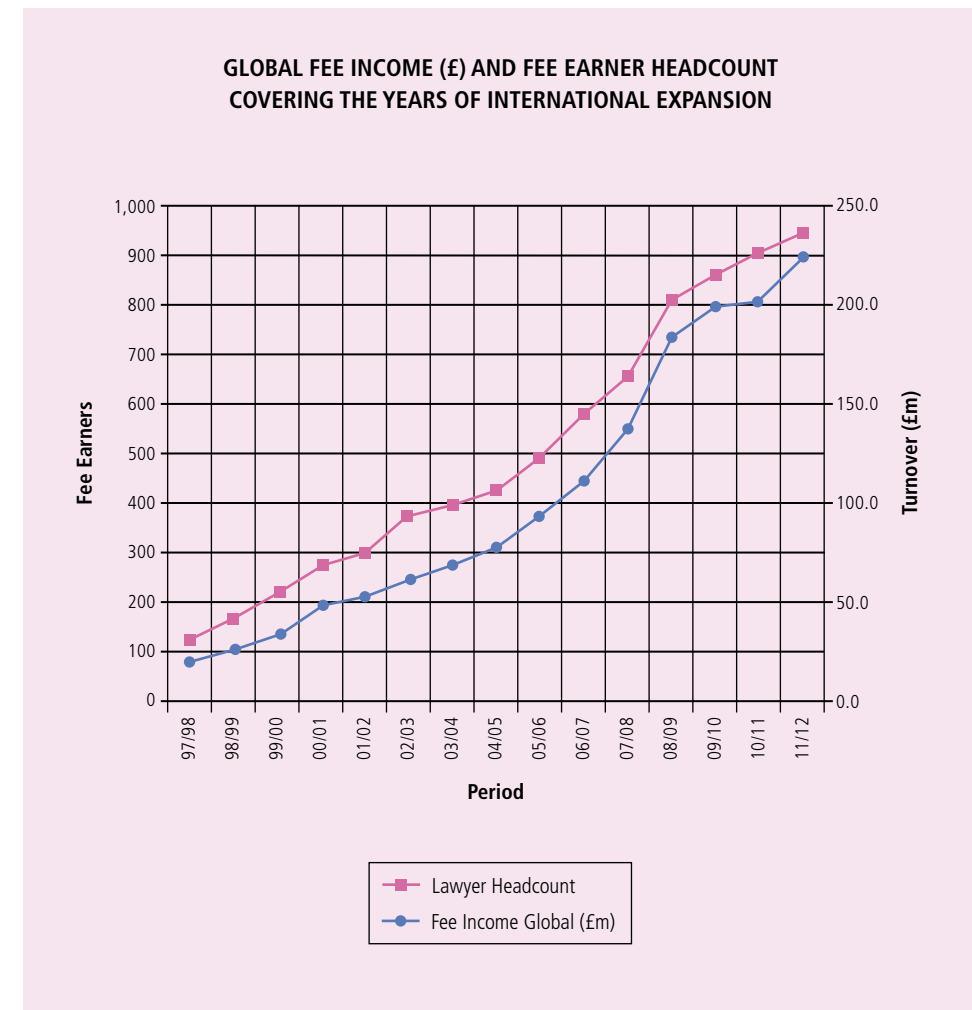
David Kerr, for his part, was very clear about what they were doing. ‘The real objective was to create a sustainable single global partnership for the future, with a common strategy and strong individuals with a passion for what they do.’

As it happens, Bird & Bird also had another card up its sleeve which meant it was well positioned for international growth. The abandonment of lockstep and the introduction of a merit-based remuneration system were to prove highly acceptable to the international recruits who were to join the firm in the years ahead. It meant, amongst other things, that the firm had just one profit pool which was not divided up by countries or jurisdictions.

But another decision had also been taken which would help to sort out the serious candidates from those who were just out to make a ‘quick buck’. As Graham

Camps explains, ‘When we brought new people into the firm we weren’t normally going to give them a guarantee of a certain level of income for the first three years as happens at some firms. Instead we would be asking people to make quite a leap of faith to join us. And therefore you need people who are sufficiently confident in themselves and have trust in the firm and the system to do this. But actually that’s also a strength because it means they really want to join the firm and they’re not there simply to pick up a guaranteed income.’ (Indeed, the practice of guaranteeing excessively generous rewards to new entrants proved to be the downfall of at least one major law firm in the years which followed, including most particularly Dewey & LeBoeuf, the US firm.)

So, that was the offer. Would there be any takers?





Paris launch party.
Frédérique Dupuis-
Toubol, Alastair Graham
and Marion Barbier.

FRANCE: THE BREAKTHROUGH IN INTERNATIONALISATION (2000)

To kick start the new strategy of growth David Kerr switched his eyes away from the Atlantic and now looked instead across the Channel/la Manche (depending on whether you were looking east or west!) to France, where Bird & Bird clients such as BT were already operating.

Enquiries started to be made in 1999 about who might be interested, available and had the right credentials to pioneer the new Bird & Bird approach. He or she would have to be strong in the IP field, have a following in the technology sector but also have the strength of character to risk this new venture.

Before too long Frédérique Dupuis-Toubol, a well-regarded partner at Jeantet Associés, was identified as a possible candidate by the Bird & Bird office in Brussels.

Although recognised as one of the leading telecoms lawyers in France at a top French firm, Dupuis-Toubol was not entirely happy. She was looking for wider horizons.

Now the Managing Partner of the Paris office and co-head of the French Information Technology/Commercial Groups, Dupuis-Toubol says:

'When I started to think about moving to an international law firm Bird & Bird was not my first idea! It was in 1999 and I was with a top-quality French firm—Jeantet Associés—which had just decided not to go ahead with an international merger. This decision caused problems within the partnership because a number of the lawyers, like me, felt that it was essential to go international. In my speciality of telecoms, especially, it was obvious that you could not just belong to a national firm. That would not satisfy the clients.'

So I was approached by a number of international firms—such as Allen & Overy, Ashurst, Jones Day—who were keen that I should join them. And it must be said that at that time those other firms were much better known in France than Bird & Bird because they had already established offices here. So initially I was very attracted—at least on paper—by the idea of joining them. They were international practices and they had Paris offices. It would be easy.'



Frédérique Dupuis-
Toubol.

Cultural gap?

'However, once I started discussions with each of those firms about the future of the legal business it was clear that there was a cultural gap. We did not share the same vision. In particular, they were not interested in the sector focus approach which I thought was so important. In every case it turned out that they only wanted to set up a Technology, Media and Telecommunications (TMT) department so that it could support their corporate practice. They were not really interested in a sector-based approach as such.'

So I was feeling a little disillusioned. But then I was introduced to Bird & Bird. It was originally through their Belgian partners with whom I was working on a matter at the time. One day they proposed a meeting at my office. I had assumed it was about the transaction which we were working on. But out of the blue they explained that Bird & Bird wanted to open an office in Paris and they asked if I wanted to join them. It was a big shock.'

A shared vision

'Initially, I must say, I was not persuaded because I was reluctant to have to do all the work in opening an office and, at that point, Bird & Bird was not properly international and had no network. However, some time later I came across to London and met David Kerr and some other partners. It was at that point that I realised we were thinking exactly on the same lines. For the first time I was

speaking with people with whom there was no cultural gap! And that was very unusual. I became convinced that this was the right thing for me to do. David mapped out his vision for the future—and I believed that it would happen. But when I told my colleagues at Jeantet that I was leaving and who I was joining they were really surprised!

For David Kerr in London their success in persuading Frédérique Dupuis-Toubol and her team to join the firm was a critical turning point. ‘She was clearly a market leader in France in one of our core sectors and had a very strong team around her—brilliant in telecoms and IT and sharing our vision’, says Kerr. ‘They agreed to join us because they were genuinely aligned with the strategy. It was the perfect way to start.’

The numbers were modest to begin with but with Dupuis-Toubol’s energy and reputation the office soon grew expanding also to an office in Lyons.

‘The rapid success in France gave us confidence that this was the right way to proceed’, says Kerr, ‘We went on in rapid succession to open in Sweden, in the Netherlands and in Germany. It was the same logic applied in each case and as time went on we got better and better at doing it. What we found was that once you had a market leader joining the international group, then the combination of top local market expertise together with the international brand and know-how was incredibly powerful.’

Expansion gathers pace

The Paris opening marked the start of a period of expansion whose speed of development was astonishing. Driven by David Kerr the firm took advantage of the window of opportunity that had opened—because the realisation had dawned everywhere about the need for international coverage—and drove through it at what might be seen as a frantic pace.

As Justin Walkey described it: ‘David had his foot right down on the accelerator while I was trying to apply a bit of a brake. It was always easier to move on to the next merger or set up a new office rather than doing the heavy lifting and bedding down the office which we had just opened. Backfilling is always harder work.’

In fact, according to Alastair Graham—who was to become a key part of the international expansion story as a ‘Mr Fixit’ in foreign parts—there was a joke running around the office that ‘[i]t had become imperative to find David Kerr’s passport and confiscate it otherwise we’d find that he’d gone somewhere on holiday and arranged a merger with the big local firm without consulting anyone’.

In reality, however, Kerr’s initial instincts about how to build an international partnership were correct. They were fuelled by great passion and vision and had to be refined over time as lessons were learned. But as country after country joined the fold in rapid succession something was clearly working wonderfully well.



SWEDEN: A RELATIONSHIP BUILT ON A GOLF COURSE (2000)

Stockholm.

Shortly after the inconclusive negotiations with Orrick ended in 1999 Michael Frie, then the managing partner of Gedda & Ekdahl, a medium-sized Swedish firm, was in England to play golf with Justin Walkey, whom he knew of old through the Stefan Edberg tennis connection.

On the golf course Michael Frie met up for the first time with David Kerr. As Frie describes it they ‘clicked’ immediately, both at a personal level and in the way that they thought about legal business. ‘Most lawyers think very negatively about the things that they cannot do’, says Michael. ‘But David was completely the opposite. He focused on what they could do. It was so refreshing.’

It was this meeting which was to form the start of a very powerful friendship which was to bear fruit a year later. By this time Frie’s firm had sharpened its appetite to be part of something bigger and offering greater scope for international activity. Until that point it had operated as a traditional Swedish firm in which the partners

were sharing costs but, beyond that, largely acted as sole practitioners. Frie and his closest colleagues felt that the time was right to achieve much more, but they would require a bigger platform from which to operate.

‘We were looking for opportunities and we realised that we had three options,’ says Michael Frie. We could merge with a larger Swedish firm. We could merge with a large, established international firm. Or we could do something absolutely brand new like joining Bird & Bird.

Personally I thought what Bird & Bird was offering was fantastic—a firm with a sector focus! We had partners who specialised in areas such as media, aviation, real estate and IT so it seemed to be a perfect match. I am sure that the clients must have been bored stiff with endless presentations from law firms about their various practice groups. Who’s interested in that? It’s so boring that even lawyers fall asleep. But a presentation focused on their sector where you talk about their business is how you get their attention.’

So Frie and his partners decided that a merger with Bird & Bird was the path they wished to pursue. And by building on the very good understanding which had been established with David Kerr the negotiations went well.

Nonetheless, it did mean that some of the older Gedda & Ekdahl partners changed their status to consultants, having recognised that the additional demands made by being part of an international partnership might be greater than they would want. ‘They saw it in a positive way’, says Frie. ‘Twelve years on and these partners are still with us. So it worked well for everyone.’

‘One language, many meanings’, says Michael Frie

‘One of the challenges in running a multinational organisation like Bird & Bird is to understand the way different nationalities operate and communicate. This is particularly so in the case of using English as the common language where you have a number of native speakers and a mix of those for whom English is their second language. The British, for example, use a lot of understatement. Hence if an English partner says something like “He’s probably not the best person for the job”, it means the individual concerned is a poor performer. But a non-native English speaker might interpret this expression literally and assume that it means that, while not the best person, he is the next best! But, of course, it doesn’t mean that at all. In fact, it’s quite the opposite.’



THE NETHERLANDS: BUILDING ON WELL-ESTABLISHED RELATIONSHIPS

The Netherlands was quick to follow the example of France in opening a Bird & Bird office. Moreover, there were interesting parallels in the circumstances. Marjolein Geus, a well-known Dutch communications lawyer, was feeling disillusioned at the strategic direction which her firm (which she had been instrumental in creating via a merger) had decided to follow. ‘The policy decisions being taken by a newly appointed managing partner ran directly counter to the earlier agreed direction for the firm to which I had been a party’, explains Geus. ‘I was feeling let down and betrayed.’

As a result Geus began to consider the options for herself and for her team. She was strongly aware of the need to develop an international presence and thanks to various personal contacts with Bird & Bird she began to envisage opening a Netherlands office for the firm as a very attractive possibility—not least because the firm was clearly ambitious and at the start of a major period of international growth.

So one day Geus phoned up David Kerr (whom she already knew well) with the suggestion that she should come across to Bird & Bird to create an office in The Hague.

A view of the government buildings in the Hague.



Marjolein Geus.

‘I simply phoned David up and told him that I wanted to open a Bird & Bird office and that I would be able to bring a number of other partners with me. I am delighted to say that he was immediately positive to the idea. Of course, the proposal had to be backed by the partnership but, really, the negotiations were very easy.’

In fact, by the time Marjolein Geus decided to put in a call to David Kerr to float the idea of joining Bird & Bird she had already gained valuable insights into what the firm was like through working on referral deals with them. ‘I was always struck by how pleasant it was to work with the Bird & Bird people’, she says, ‘both in terms of the quality of the work they sent and also at a personal level.’

(Significantly, a few years earlier Geus had held some preliminary discussions with a US firm about a possible merger. The experience was so off-putting—‘All they could talk about was the money with no reference to the culture or relationships’—that she never considered any kind of deal with a US firm again.)

Moreover, by 2000, Marjolein had ‘a spy in the camp’ at Bird & Bird and understood the direction that the firm was taking.



The Hague launch party.

In 1998, a younger colleague of Marjolein Geus, Ronald Hendriks, had indicated that he wished to move to London to widen his experience. Geus regretted his departure, but was happy to arrange an introduction to the best firm she knew in the City, Bird & Bird. The match-up went well and Hendriks was recruited by the firm. However, once he arrived, he remained in contact with Geus and kept her informed about developments. ‘The fact that Ronald was flourishing in London with Bird & Bird was a good indication of the kind of firm it was’, she says.

Similarly Kerr’s enthusiasm was understandable. The Netherlands was a natural market for Bird & Bird and Geus already enjoyed a profile in London. When it came to a vote the partnership as a whole did not need much persuasion—although there was of course an awareness that another office opening would probably mean a short-term hit on profits.

Difficult exit

Much more complicated, however, was the departure of Marjolein Geus and her colleagues from her previous firm. ‘There was considerable opposition to us leaving’, says Marjolein. ‘They were very upset because they found it very threatening

Beam me up, Bird & Bird

Merger negotiations with the Dutch were going very smoothly until the final stage, when an unexpected problem arose, recalls Roger Butterworth, Bird & Bird’s General Counsel. He explains:

‘We were at the point of sorting out the final details when the Dutch team announced that they wanted Beamers [the English slang expression for BMW cars]. This came as something as a surprise to us, as company cars were never part of our package for partners. So we explained this to them and said, sorry, but that just wasn’t going to work. They listened and we thought that we going to move on, and then, to our even greater surprise, they said, “We must have our

Beamers”. This was starting to look serious. We were very keen to have the Dutch on board, but we couldn’t make a special allowance for company cars for them—and we weren’t going to introduce them for the firm as a whole. If it was going to be a deal breaker, then it would be very disappointing, but nothing could be done about it. So, to try and pin it down more, we asked them why exactly did they need Beamers? At this point they looked taken aback. “Why? To make presentations to clients, of course.” Then the light dawned. They wanted beamers—otherwise known on the English side of the channel as projectors. OK, well we thought that we could accommodate that, we said. Negotiations regained their previous, happy momentum.’

Hague opening the talk of the town

‘For our opening we held a big party and invited everyone on the legal and business scene in The Hague to come’, says Marjolein Geus. ‘It was the talk of the town both then and for a long time afterwards. To start up a new office on such a scale was unheard of and it sent shock waves across the Dutch legal scene. I was confident that, despite the complications with my previous firm, we would attract clients and be successful. In fact, in the end it proved to be easy, largely because we did a very good job for our initial clients and then we were active in cross-selling to them. We have never looked back—or regretted it—since.’

that we were taking so many of our colleagues with us. It was a terribly hectic period and a lot of obstacles were put in our path.’

One of the big issues that Marjolein had been forced, reluctantly, to negotiate was a strict non-compete clause which was designed to last for three years. In other words, she was unable to work for any of her previous clients for a significant period of time after the start-up.

‘As a result we had to begin totally from scratch in the Netherlands as

far as clients, name and reputation were concerned. So we needed to do lots of promotion and publicity. As it happens, though, our opening coincided with the collapse of the dot com boom, and this generated a lot of volatility in the market with many clients looking for new legal advisers. So it proved easier for us than might have been the case. Plus, of course, we had a great story to tell about international reach and sector specialism.’

Converting the colleagues

Persuading Marjolein’s associates to follow her in the new venture was not too difficult (although there was a small number who agonised over what was the right decision). David Kerr and Alastair Graham went across to The Hague to make a presentation to the associates while the senior associates, who might feel that they had more to lose by leaving their current firm, visited London to see Bird & Bird at first hand. Almost without exception they made the decision to follow Geus.

As a result Geus’s was able to set up in December 2001 with a team of 17 fee earners and 10 support staff—almost all of whom, aside from two Andersen lawyers, came with Geus’s previous firm—in an office in the centre of The Hague close to the courts.

‘We knew what we wanted to build. It was a full service, international firm with a sector focus. In other words our core group of people had a very similar outlook to that of Bird & Bird. The only thing we lacked, really, was the international dimension—and that was exactly what Bird & Bird could bring. But I would never have joined the firm if there had not been the right kind of personal fit and

an acknowledgement that we could have a lot of autonomy in the Netherlands. Fortunately we got both from London.’

Once the office was launched a considerable effort was directed into raising the profile of the firm and explaining its unique offer—based on sectoral focus and international capacity—to the Dutch market.

‘It’s important to understand that so much of our legislation and our transactions are conducted within a European context even for our national clients’, says Geus. ‘Our expertise in that area was one of our most important strengths over our national rivals. And right from the very start it was in the nature of the people who joined us to think in that way. They had the drive to go out and meet prospective clients and tell that story. We found that it did the trick in convincing potential clients why they should come to us.’

Immediately Geus and her colleagues set about a major promotional campaign of legal workshops, seminars and courses for clients—sometimes working in conjunction with the regulators which are based in The Hague. This was supported by writing articles, giving interviews and generally making an impact on the Dutch legal scene.

From a standing start the Netherlands office saw massive leaps in growth during the first two years as it added on new services.

‘There were certain practice areas where we urgently needed to recruit, such as tax and notarial groups to work in support of our real estate team in order to demonstrate that we were serious about being a full service firm. Clearly the Netherlands office was already on course for major growth.’



Ronald Hendrixx.

The Netherlands: where are we now?

Just over a decade after opening, Bird & Bird has 120 people in the Netherlands office and has a thriving practice. Its client base is very broad-embracing, for example, one of the country’s three mobile operators plus big names such as Postel (which has now gone international) together with many international investors (including, notably, a number of Chinese businesses).

‘Within the team we increasingly have people who understand how to use Bird & Bird’s

international network to the benefit of clients’, says Marjolein Geus. ‘And this now embraces the firm’s IT, media, energy and other practices as well as IP and comms. As a result, the reputation and standing we have achieved—for example, we are the only top-tier firm in communications—is very pleasing. In fact our only problem, I sometimes think, is that we have too many clients! But, honestly, that is something to be really proud about.’



The German launch party.

GERMANY: QUICK ACTION LEADS TO GIANT SUCCESS

Bird & Bird had been looking at the German market since the late 1990s for the right fit. Although there were preliminary discussions with several groups of lawyers, either they did not feel right or other complications arose.

However, the collapse of Enron in the period 2001/02 and the consequent demise (extraordinary as it was at the time) of Andersen, the global legal and accounting firm, set the scene for Bird & Bird's breakthrough in Germany.

The foundations of the deal lay in a history of co-operation dating back many years between Wolfgang von Meibom, the leader of 'Top 5' German firm Wessing, and Karl Arnold, David Harriss, Miles Gaythwaite, Trevor Cook and Morag Macdonald, who had worked together since the 1980s on a number of cases. Later a Bird & Bird associate, Oliver Gandy, was seconded to Wessing.

This all helped to lay the groundwork for extensive negotiation for a possible merger between the firms when some of the Wessing partners decided that they wanted to expand internationally in the late 1990s.

In the event, however, those negotiations proved fruitless, and a break-up of the Wessing partnership happened afterwards with von Meibom (followed by a

number of his colleagues) joining Andersen Legal as the Chief Executive Officer Legal.

Unfortunately for the ex-Wessing lawyers the timing was disastrous. Within a matter of months Andersen was in crisis following the Enron scandal. At that point von Meibom convened a meeting of all his partners at his house and informed them that they would need to find a home elsewhere because the clients were unlikely to remain with Andersen given the crisis it was facing.

Over the next few days a number of options were considered, including the possibility of starting up a new firm as well as joining with an English or US outfit. Some individuals also considered making their own arrangements.

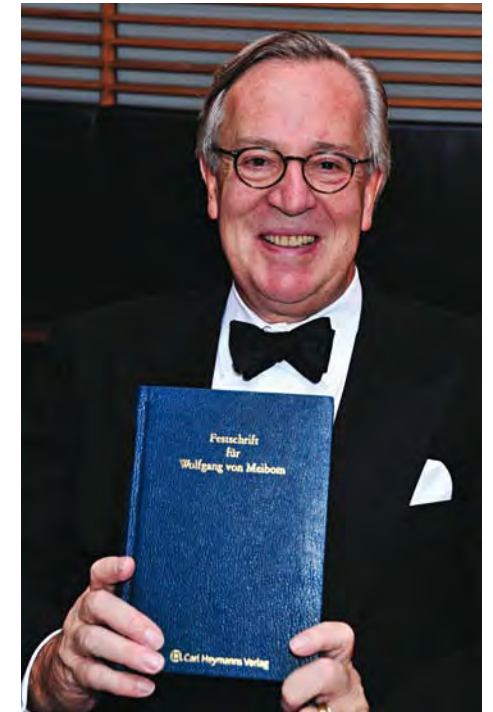
In the end it was decided that von Meibom—on behalf of a group of partners—should approach Bird & Bird. Initial contacts were through David Harriss and any residual tensions over the previous failed merger were quickly brushed aside.

'Wolfgang reported back that it would be a good opportunity because there would not be too much dominance from London', recalls Alexander Schröder-Frerkes, another key German partner. 'And although Bird & Bird was best known for its IP work there would be a chance for our corporate people—like me—to develop the German practice as we want.'

From the London end it was all quite a whirlwind. David Kerr recalls:

'We did that deal in three weeks, which was pretty amazing. So we were being opportunistic, but it was also absolutely in line with our broad long-term strategy. In relation to the size of the firm it was, nonetheless, a big gamble—there were a lot of people to take on and big premises in Dusseldorf. There would need to be a period of investment before we went into profit and the partnership as a whole would be carrying those costs. And this period—2002/03 was a time of economic recession. I remember repeatedly using the expression "We need to invest in a downturn". I look back now and feel that, yes, we did the right thing at the right time because unexpected opportunities pop out more in the down times than they do in the good times.'

Underlying the deal, however, was—as so often in the story of Bird & Bird's expansion—the critical fact that the principal people on both sides knew each other well. It was agreed that Wolfgang von Meibom was to be Managing Partner and Alexander



Wolfgang von Meibom.

Schröder-Frerkes would become his deputy. (A little later, in 2007, this was changed so that von Meibom was appointed Chairman of Germany and Schröder-Frerkes became Managing Partner.)

But how would the clients react? ‘It was a bit embarrassing’, admits Alexander Schröder-Frerkes. ‘Just a few months earlier we had been telling them what a great

Wolfgang von Meibom: an exceptional German lawyer

Wolfgang von Meibom is the dominant figure in the early story of Bird & Bird in Germany. Having led the move by the Wessing (and briefly Andersen Legal) partners plus their staff into the firm, he successfully carried with him also his existing ‘following’ of clients. In effect, then, most of the clients of Bird & Bird’s early German practice were attributable to von Meibom.

This was due largely to the fact that von Meibom was the leading figure of his generation in intellectual property law in Germany. His career was nothing short of outstanding.

Having entered the profession at the famous Patent Chamber of the Düsseldorf Regional Court, he completed his judicial training at the equally reputable Düsseldorf office Gewiese, von Rospatt and Dr von der Osten. It was there he made the decision to dedicate himself to intellectual property law and in 1973 he joined the law firm Dr Graf von der Goltz, Dr Wessing & Partners. He was appointed partner two years later.

During a secondment to Slaughter & May in London, von Meibom formulated his thoughts on how the German legal market could develop with regard to intellectual property law. Shortly afterwards, Kurt Wessing, one of Germany’s leading commercial lawyers, gave him the responsibility for setting up an intellectual property department and he was able to start turning his vision into reality.

Applying himself with great energy to this entrepreneurial task von Meibom succeeded in attracting the most prestigious German and international companies as his clients. He became particularly noted for supervising international patent infringement proceedings with both verve and strategic vision and, as a clear-sighted pragmatist, he was said to ‘lead his clients to economic success with legal finesse’.

His determination to transform his law firm into a modern commercial enterprise proved highly successful in the formation of Wessing Berenberg-Gossler Zimmermann Lange.

With a powerful personality and the charisma of a successful general, von Meibom earned the respect of the corporate world, the courts and his fellow attorneys and patent attorneys both at home and abroad. The link-up with Bird & Bird in the final years of his career had a transformative effect on the firm, launching it into a premier position in the German legal market.

Outside of his immediate professional practice von Meibom was involved in a wide range of academic and civic activities, including holding a visiting professorship at the China University of Political Science and Law and the Renmin University in Beijing, and acting as an honorary consul of Uruguay. Even in semi-retirement, he remains an outstanding figure on the German legal scene.



firm Andersen was. Now we were back again telling them what a great firm Bird & Bird was! Some scepticism was only to be expected—but they were relieved not to be with Andersen anymore.’

Sometimes in business you need a little bit of luck. In this case, the timing of Andersen’s endgame could not have been better. And, as matters were to turn out, the level of risk in Germany was much less than anticipated. The former Wessing IP group provided about 80% of the initial turnover in Germany and thanks to the reputation of Wolfgang von Meibom the ‘Wessing’ team—which had made the transition to Andersen—then came across to Bird & Bird without losing a single lawyer, secretary or client! It was a considerable achievement.

Moreover, Bird & Bird in Germany very quickly started to expand into other non-IP areas. In fact 10 years later—as the volume of work expanded massively—IP was to constitute just 50% of German billings as the firm recruited lawyers from a range of other specialisms who had seen the opportunities that Bird & Bird could provide.

The original German and Swedish connections. Wolfgang von Meibom, Arnold Harriss / Hartley Frie. Dinner at Rules Restaurant, London 2008, on the occasion of the retirement of Wolfgang von Meibom from the Board: Karl Arnold, John Hartley, David Harriss, Wolfgang von Meibom, Graham Camps and Michael Frie.



Milan.

ITALY: OPENING IN ITALY WITH THE MASSIMO EFFECT

‘I’m a son of Andersen!’ declares Massimiliano (‘Massi’) Mostardini. ‘When Arthur Andersen entered its fatal crisis over Enron we moved quickly to Ernst & Young but did not like it very much. I’m an IP litigator and, it must be said, Ernst & Young was not the perfect place for litigating in IP.’

‘So I was looking in the market for alternatives. One possibility was Coudert Bros. They told me “You will be the King of IP in Europe” so I went to the US for a meeting to discuss it in more detail. The meeting lasted for all of six minutes because the partner said that he wanted to go and play golf! He asked whether I wanted to join his firm—I said, “No”. Not too long after this Coudert ceased to exist!’

Meanwhile Bird & Bird was starting to consider how it might set up in Italy. The country had acquired a reputation as a very difficult jurisdiction for Anglo-Saxon law firms to enter and, according to Trevor Cook, there was considerable scepticism initially about opening an office in Milan at all.

However, a recommendation to David Kerr in London from Wolfgang von Meibom—who was by now running the very successful German practice—was taken very seriously.

‘Bird & Bird in London became aware of me through recommendations from both Wolfgang and also Telephonica’s in-house lawyers, for whom I had done a lot of work.’

Von Meibom had met Mostardini some time before at an event in Rome when they were both Andersen partners. After a good-humoured clash in a conference over the alleged slowness—or otherwise—of Italian process in the IP field they had a coffee together in a bar in the Via Veneto (famous from the Fellini film *La Dolce Vita*) and got on well. Von Meibom mentioned in confidence that he was considering a move to Bird & Bird. ‘I said to Wolfgang, “Well if this happens then remember me, because I knew Bird & Bird had a strong IP practice”. And that was exactly what he did!’

As a result, when Bird & Bird subsequently made contact with Mostardini he was immediately interested. ‘I did not know much about the firm’s wider practice, but I did know that amongst international law firms it had the strongest IP practice.’

As with most of its new recruits, however, Bird & Bird wanted to put Mostardini through his paces first.

‘It was like a martyrdom—that is a progress of examination towards sanctity, as we say in Italian. But maybe that’s just because I’m Italian. I was interviewed by lots of different partners from a number of offices. So it was a very rigorous process and included a number of interviews and discussions with David (Kerr) and Alastair (Graham)—it was a complete contrast with the token process at Coudert. It showed how serious they were taking it.’

Mostardini found these discussions very useful as they helped to establish the personal bonds which are essential to a healthy partnership.

‘I felt that I was naturally a Bird & Bird lawyer. There is a certain distinctive character that you find here. People here have a sense of life and values which are not just based on money. People here are committed to doing high-quality work but are also allowed to flourish as individuals. Great value is put on human relationships and in this sense Bird & Bird is fantastic. The level of co-operation and mutual support between the lawyers both in terms of work and in their personal lives is incredible.’



Massimiliano Mostardini.



The Spanish Steps, around the corner from the Bird & Bird offices in Rome.

Mostardini joined in 2003 with his younger colleagues from Ernst & Young, including Alberto Salvadè and Giovanni Galimberti. And then, assisted by Alastair Graham, a ‘fantastic office’ was found in Via Monte Napoleone in the heart of the Milan fashion district. Surrounded by all the glamour of Europe’s capital of style Bird & Bird’s Italian practice had taken off.

‘Because of their generation we did not have to deal with the big name prima donnas you sometimes see in Italy and elsewhere and which I do not see as being compatible with a modern international law firm’, says David Kerr, ‘We deliberately focused on a younger generation who wanted to become part of the kind of firm that Bird & Bird was becoming.’

The reality was that Mostardini found it easy to fit in at Bird & Bird. This was partly because, echoing Kerr’s analysis, ‘I don’t have the capacity to be a prima donna’. But also because Mostardini subscribes to the fundamental respect that operates across the firm for its people—as long as they are serious about law.

‘We were the luckiest ever foreign law firm moving into Italy!’ reflects Morag Macdonald. ‘Italian lawyers, as many foreign law firms have discovered to their cost, can be difficult to work with, but that is not true of Massi Mostardini and his wonderful colleagues at all. What’s more he was, without question, the best IP lawyer in Italy. So to get that combination of an excellent lawyer and great to work with was a fantastic asset in developing the Italian practice.’

Due to his personal reputation on the Italian legal scene, Mostardini swiftly attracted a number of new clients to Bird & Bird, especially from the telecoms and IP fields. In fact the speed of growth in Milan was, as Massimo says, ‘Scary’. In order to cope the firm had to recruit rapidly (the firm in 2012 has about 80 lawyers in Milan and 12 in Rome). And consistently, year on year, the Italian practice has met its budget—often months before year-end.



Javier Fernández-Samaniego and Laura Dolado at Madrid’s temporary office.

SPAIN: SUCCESS DESPITE RECESSION

By 2005 a Spanish presence had become very important strategically for the development of the firm’s comprehensive Europe-wide presence.

The chosen champion for this was Javier Fernández-Samaniego, who had previously been head of the Linklaters Madrid IT and Communications department. Over the next few years he was to build a team of first-rate colleagues, some with leading reputations in their field. These included, for example, consultant Manuel Conthe, a former chairman of Spain’s Securities and Exchange Commission and Deputy Minister for Economy in Spain’s Ministry of Finance, who was highly effective in building links into the Spanish Establishment. Having put a strong focus on IT, data protection and life sciences, the new office was quickly able to stand out from the rest of the Madrid legal market place.

Within six years, the office had moved into the Top 10 Commercial Law Firms in Spain as ranked by the Chambers and Partners legal directory. This was a hugely impressive performance from a standing start by an unknown brand in a highly sophisticated, saturated and competitive legal market against a background of a growing economic crisis in Spain. The development was aided by an increasing emphasis on work with a South or Central American connection while staying true to the strong sector focus with the appointment of the highly rated Hermenegildo Altozano and his Energy team in 2011.





CENTRAL EUROPE: POLAND, CZECH REPUBLIC, SLOVAKIA AND HUNGARY

The development of the firm's practice in Central Europe emerged from a relationship with Stephen Kines who had formerly been the founder of Linklaters' TMT practice for the region.

David Kerr and Stephen Kines had known each other for some time and largely saw eye-to-eye on how to run a law firm including, for example, the importance of innovative fee structures, more performance-based remuneration systems for lawyers and closer partnerships with clients.

Although preliminary discussions had been going on for some time it was not until 2008 that they began to harden up into concrete proposals. At that point Kines brought together his former Linklaters management team and four country heads from Poland, the Czech Republic, Slovakia and Hungary to explain what Bird & Bird had in mind and the opportunities that the firm wanted to pursue with the new proposed Central Europe operation.

In June 2008 the Bird & Bird partnership gave unanimous support to the business plan for the launch of the four central European offices with a 'soft launch' scheduled for 1 September 2008 and then a full launch on 1 May 2009.

Using the code name Project Vysehrad the start-up management team (Boris Doza for Operations, Tereza Cichova as HR and Jana Hornakova for Finance) was based in Prague through the summer and, given that some of the country heads were still in other jobs, the leadership team could only meet on weekends. Nonetheless, they were working on a very tight schedule—just two months from partnership approval to a four-country launch!

Lift-off

By 1 September 2008 they were ready to go with all the phones, premises and systems set up in the Prague office and an initial team of 20 drawn from a cross-section of backgrounds ranging from international to independent firms. The prime attraction for those who had left the international firms was the opportunity for greater local independence and more focus on interesting legal issues rather than purely on marketing and billable hours.



Meanwhile, those joining from local firms were looking for an international platform, but one where they would not be expected to surrender their independence.

Good management teamwork was vital. Fortunately the group had extensive experience of working together with Stephen Kines (in some cases for more than 14 years) and were able to share the administrative burden.

For everyone involved it was very important to have a credible brand and international expertise with a sector focus that would ensure a unique approach compared to all the generalist firms on the market. Obviously in this respect Bird & Bird was the perfect fit. But equally important was the desire to leave behind the traditional international law firm approach of relying on foreign leaders, but to move instead (over a three-year transition) to local leadership.

Culturally this was very important because the aim was to create a pleasant, creative and innovative place to work rather than a factory-like environment based on lawyers as 'billing machines' where unpleasant behaviour was tolerated if it was profitable. This meant having few rules and aiming to achieve growth organically (rather than driving for growth for its own sake).

A flexible and innovative fee structure was also vital given conditions prevailing in central Europe which were then exacerbated further by the increasingly dire global financial situation of 2008-10. Modest billing rates enabled the firm to attract team members who could bring across their practices fairly easily.

Overall, given the less than ideal trading environment since the four Central European offices opened, it is impressive that the start-up team of 20 has grown to 75 (2012) and that the financial progress is on the right lines. The Warsaw office, in particular, has been a great success, helped by the strong performance of the Polish economy.

Prague office.





The Beijing Central Business District.

CHINA: GROWTH IN THE ASIAN POWERHOUSE

Bird & Bird's first Asian office was in Hong Kong, and even though this was back in 1995 and was designed to serve the British market it was rooted in the same sector-based principle that was to inspire later developments. 'I spoke to a number of senior partners in Hong Kong', says David Kerr, 'and they all said to me that we must be mad adopting a sector approach there because every lawyer in Hong Kong is a generalist.'

However, a decade later it was clear that this was just as effective a strategy in China as anywhere else in the world.

At the start the office was very small indeed and relied on Vivien Crook, a young former assistant of David Kerr, who had gone out to the former British colony accompanying her husband. She did a very good job in getting the office started and was then followed by Richard Fawcett and a brilliant young IP partner, Matthew

Laight, who joined from another UK-based firm bringing with him his IP team.

Although work had initially come from foreign firms coming through Hong Kong to do deals in China, the addition of Laight's team added considerable capacity. As a result it also started to build up a good local client base. So the decision was taken to open representative offices in Beijing and Shanghai led by commercial partner Marcus Vass, who moved for a period from Hong Kong and helped establish a solid foundation for the 'mainland' China practice.

'These were start-ups for us and they were not easy despite the fact that China was booming', says Kerr. 'There is a bit of a myth, I think, that China is an easy market because there is so much going on. The reality is, in fact, that it is a very competitive market and you need very clear differentiators in order to distinguish yourself from all the other firms which are there. In addition you have all the rising People's Republic of China (PRC) firms which are seriously intent on growth so it's not easy at all. We are fortunate that we can still compete against those kinds of firms because we can draw on a global depth of sector and practice knowledge about how deals can be done and the disputes involved.'

The aim and the challenge now is that the offices in Shanghai and Beijing will be amongst the offices which enjoy the biggest growth in the years ahead. But no one underestimates the difficulties involved.



Matthew Laight.

China: the toughest of all markets

'China may be the toughest of all markets because so many law firms want to do business there and because Chinese firms themselves are increasingly large and ambitious', says David Kerr, 'However, what remains our biggest strength both in terms of attracting clients and recruiting talented lawyers is our commitment to depth of expertise in our chosen areas of practice. When it comes to strength in depth in the areas of law linked to technology we are very hard to match.'

'As it happens we do a lot of work for Chinese clients in Europe but this is not primarily because we have offices in China and Hong Kong but because of our international profile and reputation. The goal now is to continue building fast but strictly along sectoral lines of strength and with a wide range of clients.'



Helsinki streets.

FINLAND: FIRST-TIME MERGER

In late 2007 discussions commenced with Jori Taipale and his colleagues at Fennica Attorneys Ltd of Helsinki, resulting in a merger in May 2008. This built on strong practice and sector synergies between the two firms, and further established Bird & Bird in the Nordic Region.

Fennica was a market leader in a number of key sectors, including IT and Communications, and its clients include well-known multinational corporations for which Bird & Bird's high-quality international footprint was attractive.

What might have seemed like just another new office was in fact the first major international merger that Bird & Bird had undertaken since 2001. This brought about new challenges as it involved 10 new partners and more than 30 new lawyers. Moreover, a lack of operations staff fluent in Finnish at Bird & Bird, and little experience in the Finnish professional market of how to manage a merger with an English LLP stretched the skills of everyone involved.



Singapore.

SINGAPORE: LINKING UP WITH A LEADING FIRM

After some 13 years in China an opportunity arose to expand to Singapore, the second key regional hub in SE Asia alongside Hong Kong.

For many years work had been cross-referred to the Singaporean firm, Alban Tay Mahtani & de Silva. Regulations did not permit a full merger, but late 2008 saw the signing of a Global Association Agreement which had the practical effect of aligning the two practices as far as possible, with the Singapore office being known as ATMD Bird & Bird LLP.

Ranked as a top-tier IP firm in Singapore, ATMD was also well known for its corporate and dispute resolution practices. Over the immediate following years additional skills in tax, M&A, public securities and arbitration amongst others were added.



Alban Kang, Managing Partner of ATMD Bird & Bird welcomes guests at the Singapore launch party.

International desks and relationships with other law firms

For a number of countries in which Bird & Bird is active it has been unrealistic or even impossible for regulatory or other reasons to open offices at this time.

Instead the firm has pursued the route of creating ‘desks’ based in London, but focused on developing national practices, sometimes in conjunction with a locally based law firm. From the experience learnt by way of these desks, a more formalised process for the development of relationships has been developed. Styled ‘beyond our Firm’ this has provided a framework for dealing with law firm relationships in those territories in which Bird & Bird does not have its own office.

INDIA

In 2008 Nipun Gupta was appointed to head up a newly formed ‘India Desk’ to provide a proper focus and structure for the increasing amounts of work that the firm was being asked to do for Indian clients. Tight regulatory restrictions meant that the firm could not contemplate its own India office, but the desk approach ensured that the firm was better able to channel its expertise and reputation. The subsequent arrival of ATMD Bird & Bird in Singapore was a further boost to this project with the close trading ties between Singapore and India.

PORTUGAL

The opening of the Madrid office highlighted the need for the firm to have an answer to the question of client service in its neighbour Portugal. Through Spanish Managing Partner Javier Fernández-Samaniego contact was made with Teresa Anselmo Vaz, a former Linklaters colleague who was based in Lisbon and running her own practice.

This resulted in 2007 in a Co-operation Agreement being signed between the two firms. This development was to mark the beginning of a number of such agreements which over the next few years would cover Malaysia, Morocco and Tunisia.

MALAYSIA

The signing of the Global Association Agreement with ATMD in Singapore in 2008 gave the firm access to the services of Tay & Partners in Malaysia. Established in Malaysia in 1989, Tay & Partners had offices in Kuala Lumpur

Technology at work in a Kuala Lumpur laboratory.



Renewable energy in Morocco.

and Johor Bahru. Through them Bird & Bird was able to offer its clients the services of a full service law firm, which also had a strong focus on technology and IP, as well as commercial, corporate, employment and dispute resolution.

MOROCCO AND TUNISIA

Change is coming fast to North Africa, and since 2010 Co-operation Agreements have been signed with firms in Morocco and Tunisia. Driven by client needs, particularly in France, an agreement was forged in Morocco with the Casablanca-based El Amari & Associés. The firm was founded and is managed by Mohieddine el Amari, who benefits from a strong reputation in Morocco, along with substantial experience in France and internationally. There is a particular emphasis on infrastructure and finance.

Early in 2012 the firm was able to announce that it had agreed an association with Tunisian law firm Dakhlaoui Avocats. The ‘Arab Spring’ was throwing up new opportunities and additional coverage in North and Sub-Saharan Africa was needed. It was felt that Tunisia presented a number of prospects for infrastructure and further market developments within the firm’s core sectors, particularly energy, financial services, healthcare, IT and aviation.

DENMARK

The beginning of 2012 also saw a further development in Scandinavia, when the firm entered a Co-operation Agreement with Bender von Haller Dragsted (BvHD), an acknowledged market leader in Denmark. This is designed to complement the regional network of offices in Stockholm and Helsinki which has been enhanced recently within the Baltic region by the opening of a new German office in Hamburg.

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Bird & Bird

THE UNITED KINGDOM: CONTINUING GROWTH IN THE LONDON OFFICE

While the strategic direction of Bird & Bird during the Noughties was focused on international expansion and building a global platform, the development of the London practice remained critically important given that it was the largest within the firm's network. In particular it was recognised that the time had come to boost a number of the practice groups other than those which were IP-related. Achieving a better balance between contentious and non-contentious work also became a strategic objective.

Arising out of this commitment the Corporate team attracted a steady flow of new partners, bringing in skills in venture capital and private equity transactions, public securities practice and M&A (often with a technology slant). The cumulative impact of



15 Fetter Lane, London.

Bird & Bird converts to LLP status

In 2000 the Limited Liability Partnerships Act was enacted with the aim of giving professional partnership a 'legal personality' and, thereby, protecting the assets of the individual partners. The process of converting to a LLP involves the transfer of the business, clients, employees (and so on) and entails considerable complications.

'So far as City law firms are concerned, there were two waves of LLP incorporation', explains Roger Butterworth, who had joined Bird & Bird in 1998 as a corporate partner and carried out the extensive legal work for the LLP project. 'First there were a few early adopters in 2003

and then the bulk of firms in 2006-08. Bird & Bird was cautious in only starting the extensive preparations in 2007 once the international tax issues were resolved. Culmination of the project involved signature of about 200 documents by David Kerr and others over a four-hour period, with all partners having given a power of attorney to avoid signing in person.'

Following conversion the firm has 13 practising entities worldwide, plus a number of related non-practising entities, all of whose financial results are consolidated into the financial statements of Bird & Bird LLP annually.

this through the 2000s was to transform the corporate practice into one which could hold its own in terms of specialist reputation and breadth and depth of skills.

In particular there was a real boost to the practice in London with the appointment as partner in 2005 of Paul Briggs, formerly in-house at BAE Systems, who had immense experience in the fields of aviation and defence. He was soon to be joined by other partners with experience in aviation finance and regulatory matters. However, the practice moved up several gears when the firm merged in 2008 with Lane & Partners LLP, a highly regarded specialist firm operating in this field.

With over 30 professionals and billings in the region of £8m+ (€10m+), Lane & Partners LLP was an ideal fit given that it had a considerable cross-border practice and client base in aviation and aerospace (contentious and non-contentious), specialist dispute resolution (including arbitration and mediation) and engineering and construction, focusing on contractors (rather than developers).

Similarly there was also expansion in the energy and utilities field which was highly regulated, but where the firm's international footprint would be an asset in pitches. As the energy practice expanded in offices in mainland Europe with appointments of teams in Germany and Spain, the London office brought on two partners from SNR Denton who focused on the wind, renewable and clean tech areas, as well as having oil sector experience. They were soon joined by others more heavily into oil and gas and liquified petroleum gas (LPG), and specialist in utility regulation where once again the international footprint was to be a major attraction in the recruitment process.

The case of ‘Bloodgate’

In the summer of 2009 Bird & Bird’s London office hosted one of the most high-profile and controversial sports disciplinary cases in recent years, as Harlequins (the highly successful rugby union club) together with its director of rugby (former England international Dean Richards) and player Tom Williams plus the club’s physiotherapist, Steph Brennan, and club doctor answered misconduct charges.

The accusation was that they had fabricated a blood injury (through the use of what was later revealed to be a joke-shop blood capsule) at a key moment in the quarter-final of the 2008/09 Heineken Cup, Europe’s premier rugby tournament.

Max Duthie, a partner in the firm’s Sports Group, prosecuted the case (which came to be known as

‘Bloodgate’) on behalf of the Disciplinary Officer of ERC (the tournament organiser), and was assisted by Jamie Herbert, an associate in the group. After three days of submissions and evidence—including demonstrations to the disciplinary committee and to the accused of what the contents of a joke-shop blood capsule looked like when smeared across the face and hands, and also when spat out—Williams and Harlequins were found guilty. The case was subsequently appealed after Williams admitted his involvement in the scheme, prompting further admissions from Richards and Brennan at an appeal hearing in Glasgow.

As a result Richards was banned from any participation in the sport for three years and Brennan for two years. It was a sensational outcome which received massive media attention.



The litigation practice was renamed the Dispute Resolution Group and enjoyed growth in those areas which supported the firm’s sector focus. Alternatives to litigation such as mediation and arbitration also expanded. Meanwhile, in 2007, the London office’s Commercial practice attracted a team of three commercial IT and data protection partners (plus additional lawyers and support staff) from Barlow Lyde & Gilbert who also had experience in banking, financial services and insurance.

The reputation of the Sports Group under Justin Walkey continued to rise and before too long reached the pre-eminent position in its field. Additional talent continued to be recruited, including the Sports Law team from Hammonds, which helped to take the firm into a lead position in the world of sports regulation, doping and championship disputes. Meanwhile, complementing sport, was the development of the firm’s expertise and panache to the area of art law.

Reflecting all these developments the number of lawyers within the firm continued to grow both through lateral hires of partners and senior associates. However, the firm considered it vital that these external appointments should not be seen as road blocks to internal candidates. Similarly, the retention of trainees on qualifying was considered a vital part of the firm’s culture and values, even when other firms were taking the short-term decisions not to retain. Once again the philosophy of playing the long game—which came to the fore in the late 1990s—served the firm well in the 2000s.

The international strategy in retrospect: a review of why it worked

Although there were significant risks for Bird & Bird in pursuing a rapid expansionist policy post-2000 it turned out, by and large, to be remarkably successful.

Certainly, in the early years, all the openings were to prove profitable very quickly. Alastair Graham reports that he never really had bottom-line worries. Even so, the pursuit of the vision dreamed up by David Kerr together with his closest colleagues in the 1990s was an undoubted act of faith. For five or six years the firm was committing itself to making an investment in sustaining the new offices and paying the incoming lawyers. The fact that it was preponderantly a young partnership made them more prepared to be patient and to take the medium-to-long-term view. But although Kerr was confident that the ultimate benefits would be substantial, there was no guarantee of this—and in the meantime the partners individually would take a hit in terms of their profits. ‘We never got any pushback from the partners about this but, on each occasion of a new opening, there would be tough questioning about why exactly we were doing this’, says Kerr. ‘They wanted to test whether it had all been thought through correctly.’

That was why Kerr and key partners and colleagues like Alastair Graham always looked carefully at the rival firms in the country under review to see their strengths



Bird & Bird's clean tech energy practice has expanded greatly in the past decade.

and weaknesses. In the case of Italy and Spain, for example, they saw that the established leading IP experts were approaching the end of their careers. This meant that there was likely to be space and opportunity for Bird & Bird to come in and make an impact pretty quickly.

Almost invariably they were correct, with the financial performance of each of the new offices turning out to be better than had been expected. 'The Germans in particular were both cash flow positive and profitable within a few months', says Kerr. 'It was an incredible performance and an interesting example of an excellent group becoming even stronger as they took advantage of our brand and what our network could offer them.'

Likewise Italy has proved to be extremely successful due to the powerful contribution of the start-up team and the leadership of Massi Mostardini whose very professional, internationally minded approach was very much in line with the firm's strategy. And then, once he was established, Mostardini was very successful in luring away top lawyers from other leading firms—'Most of them were my personal friends!' he says with a laugh.

One of the key advantages Bird & Bird had during this period was its well-established international connections at a time when globalisation was dramatically increasing the amount of cross-border work. These established relationships enabled the firm to attract people—such as Wolfgang von Meibom and Michael Frie—who were at the very top of their class in their own countries, but who were known and trusted by Bird & Bird. 'We had worked together with them on deals over many years', says Kerr. 'In von Meibom's case, for example, the links went back two decades, and it was a real pleasure to be able to bring him and his colleagues into the firm.'

And when the London partners didn't have a connection themselves, they normally knew someone who did.

As the firm expanded internationally the need for greater resources to help bring about the benefits of the expanded firm became ever more apparent. Mindful of the impact that large 'central costs' could have on the partnership profits if not properly controlled, a careful programme of expansion of resources was put in place.

IP lawyers: a little bit different?

According to Morag Macdonald the international IP group has always been a key part at the core of Bird & Bird. 'It has contributed to giving us strength, unity and coherence', says Macdonald. 'It has shaped the culture in a fundamental way.'

Because IP work is so international by nature Morag and her colleagues were already well known across the European and American IP community—even if they remained relatively unknown to other parts of the corporate law and business community. It was this profile which proved to be very empowering at the start of the internationalisation process which commenced around 2000. It formed a bond of understanding which was very useful once negotiations commenced.

Beyond that, however, maybe there is something about IP lawyers which sets them apart. For a start, according to Morag Macdonald, they are very keen not to be marginalised as the

'poor relations'—as can sometimes happen in corporate finance-based firms. Arising out of this they also have a 'fear of being taken over—especially by US firms!'

Above all they regard themselves as free thinkers who really enjoy their work intellectually and socially. 'Unlike some parts of the legal world we are not especially motivated by money', says Morag Macdonald. 'We do this job because we get a lot of satisfaction out of it. We won't do something we don't want to do just for the sake of more money.'

Michael Frie confirms that the strength of the firm in the IP field has given Bird & Bird the ability to work with leading global companies at the highest level. 'IP has provided us with the chance to cross-sell our services', he says. 'One has to be honest and say that without IP opening the door for us we wouldn't be working across the board for so many major organisations.'

United Arab Emirates

The United Arab Emirates is well known internationally for its commitment to key industry sectors, including health care, TMT, infrastructure (major projects across transport and utilities), clean technology and aviation and aerospace. Mark Pinder, as the new head of the Abu Dhabi Office felt that ‘The UAE’s ongoing substantial

investments in major commercial and corporate projects across health care, energy and TMT presented an ideal opportunity for Bird & Bird’s expertise in delivering practical and profitable commercial solutions on complex deals’. Lengthy delays in obtaining the necessary licences finally saw the office open in the Spring of 2011.



Bird & Bird’s prospective new office in Aldar HQ Building, Abu Dhabi.

As each new office was opened a key member of the local team was identified to help with the co-ordination of all the enormous range of issues associated with a new practice or the consummation of a merger. Above all it was the practical matters which had to be got right. What size of premises and on what terms? What were the IT infrastructure issues which needed to be addressed? Had all of the tax and regulatory questions been addressed? What about conflicts and new contracts of employment?

How best could the existing finance systems be set up? Was a significant data transfer process needed? And, of course, any new venture needed good publicity.

Whilst the new ventures might be described as the ‘glamour’ end of the work for the operations teams (although many of the individuals involved would probably say that the work was simply hard and a lot of it!), the day-to-day operations of the firm required continual improvement. As the firm’s partnership expanded rapidly—moving progressively from under 100 to 200 by 2009—the internal systems and infrastructure needed to evolve. In doing so it was crucial to avoid creating a large corporate ‘overhead’. Equally important was to avoid suppressing the spirit of local autonomy which had been the hallmark of the plan for international expansion.

‘One of the lessons we learned early on was the importance of going for a leading reputation,’ says Kerr, ‘or someone who was on the verge of achieving a leading reputation. Our experience in Italy, for example, is very instructive in that respect. Massi Mostardini was very, very special. I was told by several clients that he was the up and coming star and that despite the fact that he was relatively young we should do everything we could to bring him in—and they were right!’

In Spain too the firm adopted the same formula. ‘We went for a young partner, Javier Fernández-Samaniego, who already had a strong reputation in the IT sector. By choosing the right guy to lead the office it is now trading well even in a tough market.’

Meanwhile when it came to the younger lawyers (who followed in the wake of the big names), Bird & Bird was offering salaries and opportunities which were often much better than could be expected from locally based law firms. Indeed, the Bird & Bird all-round package was even more attractive than those offered by the international accountancy-based firms. Hence, within three months of opening in Milan, Massimiliano Mostardini had succeeded in attracting a team of young lawyers from Deloitte (again from an Andersen background) who were convinced that Bird & Bird made sense as a better deal.

But it was not just a matter of making very attractive financial offers. These lawyers had been targeted because they were seen to have much to gain in a variety of ways from joining the firm. As Kerr puts it, if you are a lawyer working in a large ‘generic’ law firm—as many of the targets were—it is easy to feel that your particular practice area is being overlooked or not given sufficient value. What Bird & Bird could offer was the prospect of moving from being ‘just another’ partner—a ‘squad player’ in football parlance—to being a really prominent person and key decision maker in an even bigger firm.



2012
Executive Directors
Non-Executive Directors
Operational Directors.

Another important ingredient to the attractiveness of the firm was the idea that they were building a truly international firm. One of the ways Bird & Bird has done this is by working hard at establishing firm relationships at a personal level. As Michael Frie says:

'Bird & Bird is one of the fastest growing firms in Europe. The important point though is that we have done this in a sustainable way by thinking very carefully about whom we take on and then working hard to ensure the personal relationships are successful. For example, as a way of binding together the multinational partnership we use annual three-day retreats where, along with business issues, there is also a strong emphasis on creating a strong social atmosphere. You take time to talk to your fellow partners without needing to be a lawyer all the time.'

Also, points out Kerr, great efforts were made in the early years to take the 'Britishness' out of the firm.

'So, for example, we did a lot of things on the governance side in terms of creating a new corporate management structure—a Board, a Chairman and a CEO and ensured that there was at least a minimum representation from outside the UK on the Board. In fact, there was a bias built in to favour the non-UK partners.'

'Fortunately we have now got beyond that stage, and we no longer need it. But it was there initially to reassure those who were joining us that they would not be swamped by the sheer volume of UK partners.'

Relatively quickly, in fact, an international Bird & Bird culture emerged. Each office has its own, national version of this, but the underlying principles are the same. As Marjolein Geus describes it in the Netherlands, 'We work within a strong, collective team atmosphere and with a very down-to-earth outlook'.

Maybe this is best described as the hallmark of Bird & Bird offices across the globe. Although each office has its own individual culture reflecting the national context, there are certain broad characteristics which all the offices have in common. That stems from the initial offer made by David Kerr and his partners to the prospective joiners. And such was the success of these pitches that none of the talent targeted by the firm turned down the invitation of joining Bird & Bird.

'Our argument was that we had a different strategy to offer which would empower them locally, but also make them part of a bigger international brand. And they found that an incredibly compelling proposition.'

Nonetheless there is no room for complacency. Morag Macdonald admits that maintaining the culture of the firm has become harder as the firm has grown in size and extended across the continents.

'The younger partners need to appreciate how important the special ethos is to the firm. But you cannot take it for granted. You have to work to preserve it and in due course it will be a challenge to the next generation of partners to sustain it.'

So where will Bird & Bird go next? That's in the Afterword.

AFTERWORD

In my Introduction I wrote that the purpose of writing this history was to give everyone engaged with the firm an opportunity to review where we have come from—and reflect on what is distinctively different about Bird & Bird—because we are on the verge of change. So what does that mean?

In recent months we have been thinking and consulting widely about the strategy for the next decade. As a result, the pattern of our future development is now becoming clear.

Most importantly we are confident that our underlying assets—in-depth sectoral strength, international reach and client service innovation—mean we are ideally placed to undertake the challenges ahead.

First, we plan to **follow the technology** into new sectors as the power of technological innovation is adopted and developed in a growing number of contexts. So, as an example, if (as seems likely) the medical health industry starts to make much more use of information technology, then we would want to become active in that field.

Second, we aim to **continue our path of international expansion** by entering new territories in Asia, the Middle East, South America and other high-growth emerging markets. We will be opening offices and entering innovative co-operation agreements. And our plans are ambitious. Our target is that 20% of the firm's turnover should be in Asia within the next three to five years.

Third, we shall **take advantage of the wave of regulatory change** which we believe will sweep around the world in the next few years. It has already started in the UK, where the Legal Services Act 2007 is acting as a catalyst for cultural change, so that law firms can be structured in a variety of ways and lawyers can combine with other types of professionals. Moreover, this rewriting of the regulatory rules is giving us confidence that, building on our legal expertise, we can credibly enter new areas of work. We believe that, in due course, other jurisdictions will follow the UK's lead and that Bird & Bird will be well placed to offer clients a spectrum of high-level professional services.

All of these developments will be reflected in how Bird & Bird structures and organises itself. As this history has explained, for 90% of its life Bird & Bird was a London-centric firm. The expansion over the past decade has changed that fundamentally. London remains for us a vital legal market simply because of its importance as a world-leading business and legal centre. But increasingly the management of Bird & Bird will be global in nature, with key roles occupied by people who are located in a variety of places around the world. Two birds have flown the nest. There is now no limit on where we may go next.

David Kerr
October 2012



TIMELINE

1846

1846 William Frederick Wratlslaw Bird sets up shop as an attorney in partnership with James Moore in Gray's Inn. The firm is called Bird & Moore.

1853 Bird & Moore moves to grander accommodation at 5 Gray's Inn Square where, under various titles, it is to remain until 1941.

1884 William Frederick Wratlslaw Bird retires and is succeeded in running the firm by his son William Barrott Montford Bird. There is a range of clients including the coal and iron-making sector. The firm goes on to advise on the formation of one of the first electric light bulb companies—signs of things to come.

1898 The firm—now under the name Bird Moore & Strode—undertakes its first recorded trade mark case on behalf of the Eastman Photographic Materials Company.

1900

1905 Following the recruitment of Ernest Bird, a cousin, the firm is rebranded as Bird & Bird.

1909 The firm conducts its first reported patent case.

1914–8 World War I.

1922 Sir William Barrott Montford Bird is elected as MP for Chichester.

1928 Arthur Hodges—who is to become an exceptional managing clerk—joins the firm.

1939–45 World War II.

1941 The firm's offices in Gray's Inn Square are destroyed by bombing.

1943 Sir Ernest Bird is President of the Law Society and enjoys the distinction of presiding, briefly, over the Annual General Meeting in the midst of an air raid.

1950

1950 Sir William Bird dies and leaves his capital in the firm to his partners, a move of considerable long-term significance.

1954 The firm returns from its temporary accommodation to Gray's Inn Square.

1958 The firm gains Alan Woods, a partner of great influence, through a merger with Richard Furber & Son.

1967 A further small-scale merger with Ranken Ford & Chester.

1973 Alan Woods co-founds the Society for Computers and Law.

1979 Margaret Thatcher becomes the Prime Minister of a new Conservative government.

1984 Liberalisation of state monopolies opens the scope for new entrants into the telecoms sector. Bird & Bird is hired by Mercury.

1989 Bird & Bird conducts the first judicial review of Oftel.

1991 The firm leaves its antique offices in Gray's Inn and moves to new offices in Fetter Lane.

1991/92 Economic recession hits British business hard. The firm opens on a small-scale basis in Brussels.

1993 The firm abandons the lockstep system under pressure from younger partners.

1995 The website twobirds.com is launched and a presence is established in Hong Kong.

1996 David Kerr becomes Managing Partner of Bird & Bird.

2000

2000 The Paris office is opened representing the start of a new era and the new Millennium. An office also opens in Sweden led by Michael Frie.

2001 The attack on the 'Twin Towers' in New York. The firm opens in the Netherlands.

2002 The firm recruits a number of former Andersen Legal lawyers to establish a Bird & Bird office in Düsseldorf.

2003 The firm opens in Milan, again with a former Andersen Legal lawyer leading the office.

2004 The number of partners passes 100 for the first time. The office in Beijing is opened.

2005 Further substantial expansion in Europe including the opening of an office in Spain.

2008 Bird & Bird wins the International Law Firm of the year award at The Lawyer awards. New offices open across central and eastern Europe and in Finland.

2009 World economy faces difficulties following the global banking crisis.

2010–12 An ongoing series of announcements of new offices and partnership arrangements in Asia and Africa.

OFFICES

Bird & Bird has 23 offices located across 16 countries in Europe, the Middle East and Asia.

BELGIUM

Brussels

CHINA

Beijing

Hong Kong

Shanghai

CZECH REPUBLIC

Prague

FINLAND

Helsinki

FRANCE

Lyon

Paris

GERMANY

Düsseldorf

Frankfurt

Hamburg

Munich

HUNGARY

Budapest

ITALY

Milan

Rome

THE NETHERLANDS

The Hague

POLAND

Warsaw

SINGAPORE

SLOVAKIA

Bratislava

SPAIN

Madrid

SWEDEN

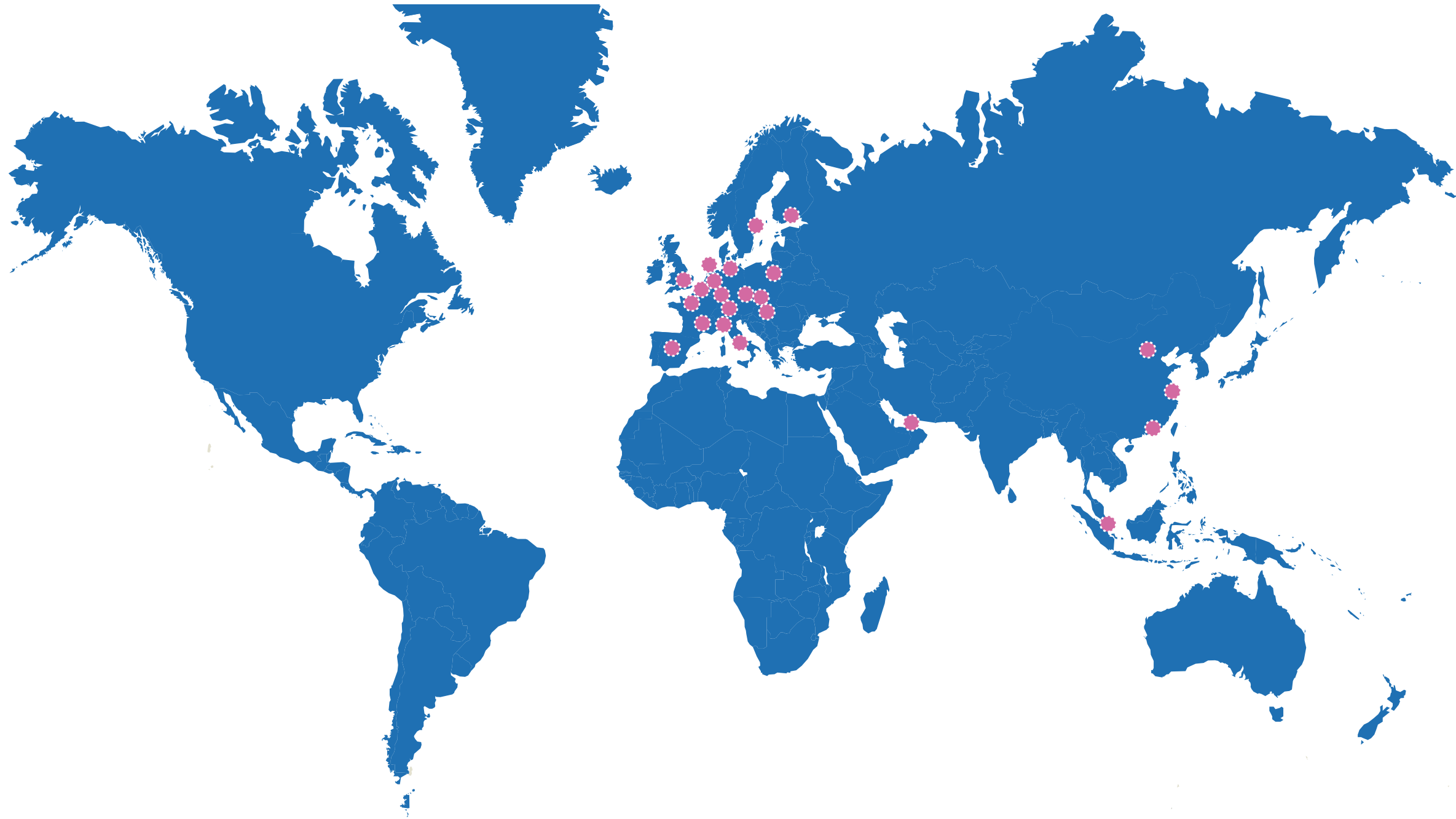
Stockholm

UAE

Abu Dhabi

UK

London



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One of the firm's leading partners once told me that the reason he joined Bird & Bird was because of the friendliness of the people on the reception desk. I have certainly found that to be the case. The first people that I must acknowledge therefore are those several members of staff who always gave me a warm smile and welcome during my frequent visits to Fetter Lane in 2011 and 2012.

I must also express strong thanks to Maree Folland and Cecilia Cheung for giving me invaluable contacts, insights and vital pieces of information as the research proceeded over many months.

Amongst partners (past and present alike) there was a remarkable generosity of time and support for the project from Karl Arnold, Roger Butterworth, Trevor Cook, Frédérique Dupuis-Toubol, David Harriss, Michael Frie, Colin Long, Morag Macdonald, Massimiliano Mostardini, Alexander Schröder-Frerkes, Graham Smith and Justin Walkey. I am grateful for their deep understanding of the firm which has provided the core of the book. Also crucial to the story has been Alastair Graham, admittedly not a lawyer but an enormous presence in the firm in recent years.

I am also grateful to Paul Colvin, Hugh Garety, Christian Harmsen and many others for individual perceptions on the firm, its culture and way of working. Then, once the research and writing were complete, a fresh team came on board



co-coordinated by Joanna Hicks who was a tower of strength in weaving together all the separate elements. Janson Woodall masterminded production and Susan Pugsley applied great creativity on design while Kathryn Swift was a model of diligence in editing the text and Neil Burkey ever-resourceful on picture research. Alexandra Luff and Tracey Chambers added an extra dimension from Bird & Bird.

Above all others though I must thank the 'father' and the 'midwife' of this history—respectively David Kerr and Graham Camps. Between them they embody the quality and the character of this fine firm which I have so much enjoyed getting to know and understand.

To them I dedicate this work.

Edward Fennell
August 2012

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