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INDEX JAN-MARCH 2009

04 Cover Story:
Taxation of costs and the hourly rate

08 Responding to policy and law reform initiatives

11 Just a winter warmer?

17 Copyright Licensing Agency requirements for firms in Northern Ireland

20 Are your employees eligible to work in the UK?

24 The risks of the parked car

35 Social Security update

43 High Court and Court of Appeal Decisions

51 Library Update – Skiing Accidents
Taxation of costs and the hourly rate

Why a survey of solicitors’ firms is now being carried out by the Law Society.

The Society’s President, Barry Finlay, recently wrote to all solicitors’ firms in Northern Ireland to inform them about the ongoing survey of costs and overheads involved in the running of solicitors’ practices in Northern Ireland. All firms should by now have received a survey questionnaire. In his letter the President stressed the importance of responding to the survey.

The President also referred to the “increasing number of complaints from solicitors in recent years about the ever expanding expenses of running a solicitor’s practice and about the ever shrinking margin of profit”. He stated that a major cause of this was the “unrealistically low hourly rate figure” set by the Taxing Master in the taxation of solicitors’ costs.

The President pointed to the hourly rate as the single biggest factor which determines amounts allowed on taxation of costs. The leading case of Donaldson had been taken in 1996 to determine a figure based on evidence submitted to the Taxing Master who sets the rate in April of each year. As a result, a figure for that time was arrived at which was a few percentage points below the amount which then applied in comparable areas in England and Wales.

In recent years, the Society’s Remuneration Committee has submitted survey evidence to the Taxing Master and held a series of meetings with him presenting a detailed case for a reasonable rate to be set but these efforts have not been successful.

“‘The President pointed to the hourly rate as the single biggest factor which determines amounts allowed on taxation of costs.’”

We have also tried to agree a methodology of arriving at the hourly rate without having to go through the long and tortuous process of an appeal but this has simply not proved possible, even with all our efforts. It is clear that in England and Wales that no such procedure is necessary and an hourly rate is published by the Court Service there on 1 January every other year.

It was felt best and approved by the Council of the Law Society that for objectivity and accuracy PriceWaterhouseCoopers should be engaged to carry out the survey and advise on the results. They have also been retained on the basis that they will be able to act as expert witnesses. They are experienced in this field and advise on salaries in the private and public sectors to government and other professions. They will also be able to submit comparator evidence in support of the survey findings.

It is of immense concern to the Council of the Society that the regions referred to in the Donaldson test case now have much higher hourly rates. Oxford for example has an hourly rate of £213, compared with our current figure of £141 which is made up of £94 for the hourly rate plus a 50% uplift (£47) representing the profit element - contrast legal executives in Oxford who charge an hourly rate at £158. It is this information which clearly illustrates that the process of arriving at a true and reasonable hourly rate for Northern Ireland has failed to reach anywhere near the appropriate or correct rate.

The need for firms to participate in the survey by completing and submitting the questionnaire is therefore self-evident. We are living in difficult economic times. The Society will take every step necessary to ensure that this matter is satisfactorily addressed and resolved, including if necessary, bringing another test case to the High Court. It is and will remain a concern of the profession that we are forced to have to take steps which appear not to be required elsewhere. Nevertheless, it is our intention to establish the principles to avoid this being required in the future.
With the New Year well under way it is becoming evident that every solicitors’ practice in Northern Ireland is facing greater economic uncertainty than ever before.

The global financial situation is now increasingly impacting upon the local economy and solicitors’ practices generally.

With this in mind I thought it important in the first bulletin of 2009 to begin by providing an overview of what the Society has been doing on your behalf.

**Responding to the Economic Downturn**

The Society has been engaging with policy and decision makers. The Society has also sought to support solicitors’ practices by disseminating information on how to deal with the practical implications of the current economic situation.

**Representations to Government and the Banks**

Members will be aware of the ongoing work by the Society in relation to historical delays in payments and the future of legal aid funding.

In January and February 2009, the Presidential team and I requested a series of meetings with Jack Straw MP, Lord Chancellor and Brigid Prentice MP, Parliamentary Under Secretary at the Ministry of Justice to discuss these issues.

The meetings were part of a series of meetings to raise our issues and the need for urgent action.

Both the Lord Chancellor and the Minister acknowledged the impact of the economic downturn on members and recognised the Society’s strong concerns in respect of historical delays in payments and the level of legal aid funding. They indicated that a programme of work was ongoing in relation to the issues discussed.

Ministers made it clear that the legal aid allocation in Northern Ireland is unlikely to increase in future years. They accepted that funding needed to be made available for work already done and in the system. The Society will continue to argue the case for adequate legal aid funds to be made available to ensure the most vulnerable within our community have the access to justice which they require.

Ministers have made available an additional £24 million for the legal aid budget for 2009/2010. This will primarily assist with the funding backlog of Very High Cost Criminal Cases.

In mid February the Presidential team and I met with the Chief Executives of the four main banks in Northern Ireland. In this series of meetings we raised a number of issues in relation to the economic and conveyancing downturn, lending policies and availability of lending to firms and also some of the specific concerns sent through to us by our members.

The banks while recognising the impact that the economic downturn was having on members explained their own constraints and difficulties.

There has been an obvious shift in the position of banks in respect of lending to a more risk based and immediate contact approach. This will impact upon solicitors’ practices over the coming months.

The Society’s key message to members is to ensure that you keep in regular contact with your bank in relation to your own position.

In addition to these representations to Government and the banks, the Society has also focussed on seeking to support practices. We have sought to do so by disseminating practical information and advice on how to deal with some of the practical implications of the current economic downturn.

In January and February 2009, we held a series of CPD seminars throughout Northern Ireland on the theme of the Downturn in the Economy.

The seminars, which were free, were well attended and attracted CPD hours. The seminars included presentations on:

- Risk Management & Claims,
- LawCare,
- Managing Budgets and Tax Advice,
- Employment Issues,
- Practice Management and Business Planning.

Feedback from the courses was positive and constructive.

Given the continuing impact of the economic downturn on members it is our intention over the coming months to continue to identify further programmes, in order to support members.

**In other news…**

**Progress on new Law Society House well advanced**

As passers by on Victoria Street in Belfast will have seen construction on the new Law Society House is very advanced. It is anticipated that the move will have taken place and that all business will have returned to Victoria Street by June 2009.

**Progress on new Law Society Website nearing completion**

The development and population of the new Law Society website is nearing completion. The new website has a greater focus on providing members with access to events, news and information about the Society’s activities.

A future edition of the Writ will carry a feature article on what the new website will offer as well as a users’ guide for members.
News in brief

- **REVIEW OF DEVELOPMENTS IN EMPLOYMENT LAW**

A paper entitled “Review of Developments in Employment Law 2008-09” by Patricia Maxwell, Senior Lecturer in Law at the University of Ulster, is downloadable from the website of the Labour Relations Agency – www.lra.org.uk

The aim of this paper is to highlight key developments in employment legislation in Northern Ireland during the period from 1 January 2008 to 6 March 2009. It also seeks to identify a few (of many) significant case decisions from the appellate courts which may prove important for Tribunals throughout the United Kingdom. Finally, it seeks to highlight some likely future developments at both domestic and European level.

- **PLANNING SERVICE WEBSITE RE-LAUNCHED**

The Planning Service website, which is one of the most visited government websites in Northern Ireland, has been extensively re-designed to meet the evolving needs of its customers.

The provision of planning information on the site has been re-organised to be more customer focused. The website provides enhanced accessibility with new dedicated sections for home owners, businesses, farmers and renewable energy. This is expected to grow in the future to provide advice and guidance on a range of subjects including waste management and mineral extraction.

The site also provides comprehensive access to supplementary planning guidance including Design Guides for Conservation Areas in Northern Ireland and Development Guidance Notes for the Greater Belfast Area.

For further information see www.planningni.gov.uk

- **CHILDREN ORDER STATISTICAL BULLETIN 2008**

The Department of Health, Social Services and Public Safety has recently published the ‘Children Order Statistical Bulletin 2008’. This statistical bulletin presents information on a range of issues relating to children’s social care, including child protection, looked after children, and children’s homes.

The publication is based on annual Children Order statistical returns, introduced in December 1996, and returned to the Department by Health and Social Care Trusts.

To facilitate trend analysis, data is presented for the six-year period from 2003 to 2008, and where available equivalent figures for England, Scotland and Wales have been included to put Northern Ireland figures within a wider social care context.

- **INCREASED WEARING OF SEATBELTS**

The overall seat belt wearing rate for car occupants has increased since April 2005.

A major survey commissioned by the DOE shows an increase in belting-up by both front and back seat passengers, with the rate for drivers remaining the same.

In total 15,499 cars were observed and details of 23,211 occupants recorded. Fieldwork carried out at 15 sites throughout Northern Ireland involved observing stationary traffic and recording details including gender, estimated age and whether a seat belt or child restraint was being used by car occupants.

- **PROTECTION FOR VICTIMS OF HUMAN TRAFFICKING**

Victims of human trafficking in Northern Ireland and across the UK will benefit from a range of support and services following the announcement that the UK has joined 19 other Council of Europe members by ratifying the Council of Europe Convention Against Human Trafficking. The convention will become binding in the UK on April 1 2009.

11 victims of human trafficking have been recovered by PSNI operations in Northern Ireland - six sexual exploitation, two domestic servitude and three forced labour.

- **MENTALLY DISORDERED OFFENDERS VICTIM INFORMATION SCHEME**

The Victims of Mentally Disordered Offenders Information Scheme came into operation on 15 December 2008. It is a statutory Scheme made under the Justice (NI) Act 2002 as inserted by s 46 of the Domestic Violence Crime and Victims Act 2004.

Information will be made available to victims regarding the discharge or temporary leave of absence of mentally disordered offenders.

Through the Victim Information Scheme, victims will also be given the opportunity to make representations about whether a mentally disordered offender should be subject to any conditions during leave of absence or on discharge from hospital.

A dedicated telephone line has been set up for victims of mentally disordered offenders who would like to know more about the Scheme. The number to contact is 0845 602 5488.

- **12TH ANNUAL REPORT ON PUBLIC APPOINTMENTS**

The Central Appointments Unit of the Office of the First Minister and Deputy First Minister today published the 12th Annual Report on Public Appointments in Northern Ireland.

The Report is in two volumes. Volume 1 provides information on the public appointments process and reports on progress during 2007/2008. Volume 2 lists those individuals who held public appointments in Northern Ireland at 31 March 2008 and the bodies on which they served.

Copies of both volumes are available from the OFMDFM website at www.ofmdfmni.gov.uk

- **TEST PURCHASE OF ALCOHOL**

From 8 December 2008 the police now have powers to test purchase the sale of alcohol to minors. This measure is designed to reduce the capacity of under-18s to buy alcohol and to pinpoint and punish those licence holders who sell alcohol to minors. Guidelines for police have also been published – for further information see www.nio.gov.uk
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Responding to policy and law reform initiatives

In this article Donald Eakin, Senior Vice President of the Society and Chair of the newly established Policy & Law Reform Sub-committee, reflects on the Society’s response to policy and law reform initiatives issued by Government during 2008.

Over the past twelve months the Society has streamlined its procedures for responding to consultation exercises issued by Government and its agencies. The Society’s Committees, with the support of the Secretariat, have responded to a broad range of consultations, commenting on matters of both specific interest to the legal profession and of general interest to the public, primarily in areas related to the justice system.

The Society has now established a Policy and Law Reform Sub-committee of the Policy Co-ordinating Committee. The Chief Executive and Colin Caughey, the Policy Officer, provide draft responses to the Sub-committee for consideration. This Committee has primary responsibility for the Society’s input to the process of policy and law reform. The Committee liaises with the other Committees of the Society in the preparation of responses to consultation exercises ensuring the Society’s key messages to Government are consistently made.

What follows is a summary of consultation responses the Society has submitted during the later part of 2007 and 2008.

Devolution of policing and justice

In November 2007, the Society made a written submission to the Assembly Executive Review Committee’s enquiry into the devolution of policing and justice in Northern Ireland. The Society emphasised the need for any new structures to support the independence of the judiciary and the prosecution service.

The Society also stressed the need to address chronic under-funding in the area of legal aid and supported the non-ministerial departmental model for the Northern Ireland Court Service (NICtS) as proposed by the Lord Chief Justice.

With agreement now reached on the process which will result in the transfer of powers in policing and justice matters to locally elected politicians in the Assembly, the Society will take a keen interest in how this issue develops in coming months.

“The Society emphasised the need for any new structures to support the independence of the judiciary and the prosecution service.”

Land Registry – E-Registration

The Society established an E-Registration Working Group to draft its response to the Land Registry’s consultation on E-Registration. The Society in its response addressed a number of specific matters it considered exposed solicitors to undue risk, including the requirement that a solicitor apply a digital signature on their client’s behalf and the archiving of mandates. The Society awaits Land Registry’s response to its submission and looks forward to engaging constructively with the Registry as this initiative develops.

Northern Ireland Law Commission: First Programme of Law Reform

The Society responded to the Northern Ireland Law Commission’s First Programme of Law Reform, which contained proposals for law reform projects to be carried out by the Commission. In its response, the Society welcomed the Commission’s Land Law Reform Project. Whilst emphasising the need for adequate resources to be focused on this project, the Society suggested a number of additional reform projects which the Commission might wish to take forward.

Northern Ireland Executive Programme for Government

In its response to the consultation on the Programme for Government and the Investment Strategy for Northern Ireland, the Society emphasised the important role solicitors play in society and stressed the importance of the legal sector to growth in the Northern Irish economy.

Procedures for enacting private legislation

The Society assisted the Assembly’s Committee on Procedures in its enquiry into an appropriate procedure for the enactment of private legislation. In its oral and written evidence to the Committee, the Society highlighted the need for adequate regard for human rights and equality issues and particularly the need to ensure adequate access for the involvement of disadvantaged individuals in the process.

The recently published Report of the Committee adopted many of the Society’s recommendations - not least of which was the recommendation that both objectors and promoters be allowed legal representation at Committee enquiries and that there be the opportunity for cross-examination.

Financial Eligibility for Legal Aid

In its response to the NILSC consultation on Financial Eligibility for Civil Legal Aid, the Society argued strongly against the Commission’s proposal to incorporate housing equity into the new test. Following the completion of the consultation exercise, the Society was pleased to note that the NILSC has decided not to proceed with this proposal.
Defence remuneration in non-Crown Court cases

NICtS has developed significant proposals for reform to the system of payment of fees for representation in non-Crown Court cases - principally in the Magistrates’ Court. The Society’s Magistrate’s Court Fees Working Group has been engaged in discussions with NICtS and prepared detailed responses to the consultation documents which have been issued.

NICtS is proposing a standard fee matrix. It was originally proposed that travel and mileage would be subsumed within the standard fee but it is now understood that travel and mileage will be disaggregated and paid separately. The Society would like to thank the members of the Working Group and all those who responded to the Society’s consultation on NICtS’s proposals.

Very High Cost Criminal Cases

The Society responded to the NICtS consultation on new contractual arrangements for Very High Cost Criminal cases (VHCC). The Society’s submission was informed by the views of a Working Group of VHCC practitioners, a number of whom also met with Court Service officials.

The Society focused on the chronic inefficiencies in the current system and the need to ensure that adequate resources and measures are in place to address the current backlog before any new arrangements are introduced. In relation to the proposed new scheme, the Society has made a number of suggestions to ensure its efficient operation post-implementation.

Jury service

The Court Service consultation on jury service contained proposals that members of the judiciary and members of the legal profession should be eligible for jury service. The Society met with Court Service officials to express in strong terms its opposition to this proposal.

In its written submission, the Society stressed that due to the size of this jurisdiction and the interconnectedness within the Northern Ireland legal profession, solicitor jurors would invariably know their colleagues representing defendants or the prosecution in the trial for which they are called to sit. Not only would this create delay in the justice system but it also had the potential to undermine public confidence therein. The Society awaits Court Service’s response.

Fine Default

The Northern Ireland Office consultation on Fine Default contained proposals for the introduction of Fines Enforcement Officers and for an extension of the disposals available where default has occurred. The Society emphasised in its response the need to ensure adequate regard is had for the particular circumstances of offenders and for the need to ensure that the penalty is commensurate with the offence.

Murder, manslaughter and infanticide

The Northern Ireland Office also recently consulted on UK wide proposals for reform to the law relating to murder, manslaughter and infanticide. In its response, the Society welcomed the proposed modernisation of defences to murder and to the law relating to complicity to murder.

Judicial appointments process

The Society submitted a detailed and comprehensive response to the Northern Ireland Judicial Appointments Commission’s consultation on the judicial appointments process. Subsequently, the Committee met with the NIJAC to discuss the findings of the consultation and on 27 November 2008 another meeting discussed the related research carried out on behalf of the NIJAC into barriers and disincentives to applications to judicial office.

Criminal Damage

The Society provided a written submission to the Ad Hoc Committee on Draft Criminal Damage (Compensation) (Amendment) (Northern Ireland) Order 2008, which proposed broadening eligibility for criminal damage compensation. The Society’s submission was commented upon positively in plenary session for the emphasis therein on equality provisions and the need to ensure equality of opportunity.

Bill of Rights for Northern Ireland

The Society made a written submission to the Northern Ireland Human Rights Commission in its inquiry into the prospects for a Bill of Rights for Northern Ireland. Whilst the Society took no position on whether a Bill of Rights should be introduced, it recommended that should such a decision be taken, it should contain a number of rights relating to the administration of and access to justice.

Role of Civic Forum

In response to the Office of First and deputy First Minister’s consultation on the Civic Forum, the Society again highlighted the important role played by the legal profession and stressed the need to ensure adequate facilities are in place to ensure professional organisations are able to raise matters of importance with Government.

Management of apartment blocks

The Society is currently preparing a response to a consultation being carried out by a MLA on a Private Members’ Bill relating to the right to manage apartment blocks in Northern Ireland.
Changes to Trade Union and Employment Law

In relation to a Department of Employment and Learning consultation on changes to Trade Union and Employment Law, the Society’s submission provided analysis of the jurisprudence of the European Court of Human Rights as laid down in the case of ASLEF v UK (2007) 45 E.H.R.R 34 and recommended the extension of individuals’ right to representation before the Industrial Court.

Looking ahead

With the resumption to work of the Northern Ireland Executive, the Society anticipates a tide of consultation documents and legislation in coming months.

Of particular import for the Society and its members will be the Legal Complaints and Regulation Bill which will implement the recommendations of the Bain Report on Legal Services. The Bill is currently at drafting stage and the Society has attempted to input where appropriate to this process. It is understood the Bill will be published and a formal consultation exercise carried out in Spring 2009.

Legal aid will be another area which will see massive reform in 2009 as the NILSC takes forward the Funding Code for Northern Ireland along with proposals for the reform of the Statutory Charge and the test for Financial Eligibility in Civil Legal Aid cases.

The Society looks forward to the year ahead and to the opportunities it will have to influence the process of policy and law reform. The Society will continue to request assistance from members via The Writ in the drafting of responses. In addition if members wish to input in any way to current consultations or law reform initiatives please do not hesitate to contact the Society.

Donald Eakin, Senior Vice President

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The number of calls to LawCare’s help line related to alcohol abuse is always proportionally higher in the first few months of the year. In the cold light of day it seems that many seasonal revellers start to see their drinking behaviour as rather more sinister than it appeared during the festive season.

**Denial is a major part of alcohol addiction, and one which makes it difficult to tackle.**

Around one in five people in the UK regularly drink above the recommended safe levels of alcohol, and around 5% are dependent on alcohol ie they cannot stop drinking without suffering unpleasant and dangerous withdrawal symptoms. Somewhere between these two figures are those for whom alcohol is a problem. They drink despite the difficulties it causes them, they are preoccupied with alcohol, they find it hard to stop at just one or two drinks and they cannot imagine enjoying themselves without a drink.

Alcoholism is difficult to define and even more difficult to quantify. At what stage does someone cross the line between heavy drinking and alcoholism, between alcohol abuse and dependency? And once that line is crossed, what hope do they have of recovery?

For the purposes of examining the statistics of alcoholism, it is very instructive to look at what happens to one hundred imaginary but typical alcoholics over a 10 year period. These are people who drink daily, often at inappropriate times and who have faced criticism at work and at home because of their drinking. Although these alcoholics will come from all walks of life, a higher percentage will be men, or will be aged 30% of male lawyers and 20% of female lawyers drink to excess.

The good news is that ten years down the line 18 of these alcoholics will have recognised their problem and entered inpatient treatment at some point. The cost and length of stay varies according to the treatment centre but the average stay is 10 weeks at a total cost of around £8,000. In about 70% of cases this cost will be borne by the National Health Service. It is worth noting that the cost of the treatment centre bears no relation to the likelihood of the treatment being successful.

Of those 18 alcoholics, eight will leave against medical advice before the course of treatment is completed and go back to their old drinking patterns. The remaining 10 will leave treatment and most will continue to attend follow up or AA meetings. At the end of the 10 year period six of them will still be sober and living happy and productive lives, despite a 25% chance that they will have relapsed briefly at least once.

Six of the remaining 82 alcoholics will attempt to control their drinking through a recognised programme, often through a local alcohol service. Of these, two will succeed and will be drinking at normal levels 10 years later. The remaining four may have briefly reduced their alcohol intake but will find that part of what being an alcoholic means is having an inability to control their drinking and will fail in their attempt to do so, although half of them will go on to try other methods of achieving sobriety.

13 of our initial group of 100 alcoholics will start attending AA meetings. Of these, eight will attend only a few meetings before dropping out, two will remain sober for several months, and three will continue to attend sufficiently to be completely sober (despite an 40% likelihood of temporary relapse) 10 years later.

Discounting those drinkers who have tried other methods, two of the remainder will recognise their problem and will be successful in achieving a measure of sobriety entirely through their own efforts, or perhaps with the support of their family, friends, GP and colleagues.

Although there is considerable overlap because several of our sample group will try more than one method of recovery, this still leaves 61 who have either not recognised their problem or not addressed it. Denial is typical in alcoholism - the addict insists to himself and others that there is nothing wrong with his pattern of drinking, even though it may be costing him his health, his family and his career. He will come up with ever more ingenious excuses and ways to attribute his problems to anything but the bottle, holding up alcohol as his solution and saviour.

57 of our problem drinkers will still be vehemently defending their right to drink 10 years after our start date, despite the fact that many of them will have lost their jobs, families and friends through drinking. Four will have died as a direct result of their addiction, through liver disease, alcohol related cancers, road accidents, falls and house fires. In addition, most alcoholics can expect their lives to be significantly shorter as the health problems alcohol causes assert themselves in later years.

**Alcohol related deaths amongst the legal profession are double the national average. Lawyers as a profession have the highest national mortality rate related to chronic liver disease and other alcohol related diseases.**

If you have the nagging feeling that you might be drinking more than other people, then ask yourself which category of alcoholic you will fall into. With effort and help, 10 years from now you have a good chance of having a fulfilling and happy sober life. Without it, you have a 4% chance of being dead.

The chances of recovery are best if the problem is tackled in its early or middle stages; it is a myth that the alcoholic has to reach “rock bottom” first or that he cannot be forced to face up to his problem.

- Have your family members or friends ever commented on your drinking?
- Does it annoy you when they do?
- Do you ever drink in the mornings?
- Are you in the habit of going to the pub for lunch and then not bothering with the “lunch” part?

**Or do you know someone who seems to have some or all of these problems?**

If so you or they may be developing a problem.
Alcohol is a dangerously addictive drug and it can destroy you and everything you value, remarkably quickly. LawCare can provide, in complete confidence, information about the dangers of alcohol and strategies for recovery. We can even help you to gauge whether you have, or are developing, an alcohol problem.

Everyone has their own way of dealing with the stresses of work and life but there are good ways and bad ways. We can also help you learn to deal with your stress without using a bottle.

Case History: *

James, the managing partner of a medium sized firm, telephoned us with concerns about their assistant, Alastair. He was arriving at work in the morning smelling of alcohol, the quantity and quality of his work was deteriorating and he was becoming argumentative with other members of the staff. We sent James a copy of our publication “An Alcoholic in the Firm?” He approached Alastair in a supportive manner, indicating that the firm was anxious to keep his services and to ensure his recovery. However, it was also made clear that if he was unable to deal with the problem then his future with the firm was likely to be a short one. It was suggested that Alastair should contact LawCare.

After some persuasion he did so. Initially, he was in strong denial both of the nature and the extent of the problem. However, we put him in touch with one of our local volunteers and were able to persuade him that a sensible first step would be to go to a meeting of Alcoholics Anonymous. The volunteer took him to his first meeting. Within two weeks Alastair had stopped drinking altogether and after two months he returned to work on a structured part-time basis, the amount of time that he put in at the office increasing over the next few weeks. He is now working full time in a fully effective professional manner and the firm is delighted with his progress.

* Steps have been taken to protect the identities of all concerned

LawCare is a confidential, free** advisory service to help lawyers, their staff and immediate families deal with problems which are interfering with, or have the potential to interfere with, work performance and/or family life.

The LawCare service takes the form of initial telephone discussion and includes referral where necessary to expert assistance and/or support from a fellow lawyer who has recovered from the same problem.

A wide range of information leaflets is available and LawCare is also happy to make CPD accredited presentations, which are offered free except for expenses.

www.lawcare.org.uk  Helpline 0800 279 6869

**Any subsequent professional counselling or treatment will normally have to be paid for unless available on NHS or covered by private health insurance.

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Money Laundering Compliance

Solicitors’ (Money Laundering) Compliance Regulations 2007

In 2007 the Society considered it appropriate that the Money Laundering Regulations 2007 (SI 2007 No. 2157) be incorporated into the Society’s general framework and made the Solicitors’ (Money Laundering) Compliance Regulations 2007.

Breaches of these Regulations are now taken forward by the Society as matters of conduct. The Society’s monitoring teams undertake inspections of the required Anti-Money Laundering systems, as the Society is required by Regulation 24(1) of the Money Laundering Regulations 2007 to effectively monitor solicitors in Northern Ireland and to take necessary measures for ensuring compliance by such persons with the requirements of those Regulations. The Society also adopted the Practice Note issued by the Law Society of England & Wales on 22 February 2008 which is downloadable from http://www.lawsociety.org.uk/productsandservices/practicenotes/aml.page

The text of the Solicitors’ (Money Laundering) Compliance Regulations 2007 is set out below.

Solicitors’ (Money Laundering) Compliance Regulations 2007

The Council of the Law Society of Northern Ireland in pursuance of the power confered on them by arts. 74(1) and 75 of the Solicitors’ (Northern Ireland) Order 1976 (as amended) and paragraph 6 of Schedule 15 to the Financial Services Act 1986 and all other powers enabling them in that behalf and with the concurrence of the Lord Chief Justice of Northern Ireland, hereby make under arts. 33, 34 and 35 of the said Order the following Regulations:

1 These Regulations may be cited as the Solicitors’ Accounts (Amendment) Regulations 2007 and shall come into operation on 31 March 2008.

2(i) Other expressions in these Regulations shall have the meanings assigned to them by the Solicitors’ (Northern Ireland) Order 1976 or the Solicitors’ Practice Regulations 1987 or the Solicitors’ Accounts Regulations 1998.

(ii) In these Regulations the following expressions have the following meanings respectively:

Money Laundering Regulations means the Money Laundering Regulations 2007 (SI 2007 Number 2157);

“Relevant person” and “Independent legal professionals” have the meanings given to them by Regulation 3 of the Money Laundering Regulations;

“Other business” means any business which is not legal or notarial services as described in Regulation 4 of the Money Laundering Regulations.

3(1) Every solicitor shall in respect of all other business carried on by the solicitor comply with the provisions of the Money Laundering Regulations as if such other business constituted legal or notarial services.

For the avoidance of doubt, paragraph 3(1) is without prejudice to the application of the Money Laundering Regulations to legal or notarial services.

Made by the Council of the Law Society on 28 November 2007

Money Laundering Reporting Officers

The Proceeds of Crime Act 2002 requires regulated firms, such as solicitors’ practices to nominate officers – Money Laundering Reporting Officers (MLROs) – to make internal assessments of suspicions in relation to money laundering; to assess this information and to make any necessary Suspicious Activity Reports.

Nominated officers are susceptible to criminal liability. The MLRO of a firm of English solicitors was recently fined £5,000 for entering into an arrangement which facilitated the laundering of money.

The MLRO designation is one of significant responsibility both personally and for the practice. Nominated persons should have sufficient knowledge, skills and status within the firm, to keep the necessary records to ground non-reporting or to make appropriate reports.

It is recommended that firms review their arrangements to ensure that MLROs have the appropriate level of authority and expertise to undertake the task.

Solicitors’ Accounts Regulations

Designation of client accounts

Our Monitoring Accountants frequently note and reporting Accountants report that client deposit accounts in particular – but occasionally client general accounts - are not designated as client accounts. It is essential that accounts are correctly designated because a. 77 (3) of the Solicitors’ (Northern Ireland) Order 1976 provides that “a bank or building society at which a solicitor keeps an account for clients’ money, shall not, in respect of any liability of the solicitor to the bank or society, not being a liability in connection with that account, have or obtain any recourse or right, whether by way of set-off, counterclaim, charge or otherwise, against money standing to the credit of that account”.

Regulation 2 (1)(v) of the Solicitors’ Accounts Regulations 1998 defines a client account as meaning an account in the name of a solicitor in the title of which account the word client appears.

Failure to properly designate client accounts could unfortunately result in loss to clients, in the event of a solicitor being in financial difficulty and impair any redress which the client might have to Banking Compensation arrangements in the event of a Bank failing.
Notice

Notice is hereby given that the One Hundred and Forty-Fifth Annual General Meeting of the Solicitors’ Benevolent Association will be held at the Law Society, Blackhall Place, Dublin 7 on Monday 20 April 2009 at 12.30 pm

1. To consider the Annual Reports and Accounts for the year ended 30 November 2008.
2. To elect Directors.

To deal with other matters appropriate to a General Meeting.

COMPANY AND COMMERCIAL LAWYERS’ GROUP UPCOMING EVENTS

INSOLVENCY SERIES

**Part 1 - Options and opportunities in a difficult climate**

This presentation will cover practical insolvency solutions (including pre-packs and informal options) and will deal with company valuations from a general perspective as well as reflecting on current activity in the M&A market place.

<table>
<thead>
<tr>
<th>Date:</th>
<th>8 April 2009</th>
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<tr>
<td>Speaker:</td>
<td>John Hansen (Partner, Licensed Insolvency Practitioner) and Steven Spillane (Partner, Corporate Finance) both of KPMG.</td>
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<td>CPD hours:</td>
<td>1.5</td>
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<td>Cost:</td>
<td>free for members &amp; £5 for non-members</td>
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<tr>
<td>Venue:</td>
<td>Spires Conference Centre, Church House, Wellington Street, Belfast</td>
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<tr>
<td>Time:</td>
<td>12pm-2pm – light lunch provided from 12pm</td>
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| Part 2 - Insolvency – a practical approach |

<table>
<thead>
<tr>
<th>Date:</th>
<th>May 2009 [Date TBC]</th>
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<tr>
<td>Speaker:</td>
<td>Kieran McGarrigle of L’Estrange &amp; Brett and Garth Calow of PricewaterhouseCoopers</td>
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<td>CPD hours:</td>
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Refreshments provided

Details and venues for the following courses to be confirmed – not yet available to book.

- **Drafting and negotiating contract terms**
  
  Date: June 2009  
  CPD hours: 6

- **Companies Act 2006 – an update**
  
  Date: 17 Sept 2009  
  CPD hours: 3

- **Because I’m Worth It! - demonstrating added value to the client**
  
  Date: Dec 2009  
  CPD hours: 1.5

**Booking Form - Seminar** (delete as appropriate):

**Insolvency Series Part 1 – Options and opportunities in a difficult climate**

**Insolvency Series Part 2 – Managing insolvency – a legal approach**

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Send cheque made payable to “Company & Commercial Lawyers Group” and booking form to Kathryn Walls, Mills Selig, 21 Arthur Street, Belfast, BT1 4GA
A reception was held at the Law Society on Friday 19 December 2008 to celebrate the award of the Solicitor Advocate certificate to 32 successful participants in that year’s course. The President, Barry Finlay, gave a short speech encouraging all newly qualified Solicitor Advocates to avail of every opportunity to exercise their advocacy skills while also assuring them that the Society is fully supportive of the enhanced role of Solicitor Advocates at all levels of contentious hearings and arbitrations.

The President spoke highly of the success of the course and the commitment of the Course Director, Fiona Donnelly, as well as all members of the Advocacy Working Party in promoting what is recognised as a jewel in the crown of Law Society educational programmes.

The assembly was reminded by the Working Party Chairman, Tony Caher, that a Refresher Course for all qualified Solicitor Advocates was due to be held under the auspices of the Law Society of Ireland at Ballymascanlon Hotel, County Louth, during the weekend of March 26 2009. That Refresher Course provides an opportunity for Solicitor Advocates from the three jurisdictions, Northern Ireland, Republic of Ireland and Scotland, to meet together in a NITA environment and enhance those skills of oral advocacy in the beautiful setting of the Ballymascanlon Hotel.

The participants who successfully completed the 2008 Advanced Advocacy Course were:

- Shauna Benson
- Joanne Carmichael
- Norville Connolly
- Gary Daly
- Gareth Doran
- Conleth Downey
- Kathy Downey
- Jarlath Fields
- Mark Finegan
- Philip Gordon
- G Les Graham
- Mark Harvey
- Andrew Kinney
- Caroline Maguire
- Seymour Major
- Kelly Marner
- Kathryn Minnis
- John Murphy
- John McAtamney
- Des McCann
- Carol McLean
- Damian McDaid
- Shelia McGivern
- Siobhan McMahon
- Joseph McVeigh
- Fidelma O’Hagan
- Sinead Owens
- Patrick Sheridan
- Jonathan Taylor
- Stephen Toal
- Connel Trainor
- Alistair Wilson
Advanced Advocacy - 10th anniversary course

2009 brings the 10th Advanced Advocacy Course which most solicitors will appreciate is a significant milestone in the development of Solicitor Advocacy in Northern Ireland. The demand for the course continues to grow, with last year, 2008, seeing the biggest number of applications to date. Please ensure that you or anyone within your practice, firm or body who has expressed an interest in completing this programme completes without delay the application form which is enclosed with this edition of the Writ as an insert.

Despite rising costs and expenses, the Advocacy Working Party has managed to keep the costs of the course at £1,100. This is without doubt the best value for money in respect of any training course for any branch of the legal profession in these islands. Not only will all successful participants obtain a Certificate in Advanced Advocacy, with all the benefits that accrue but they will obtain the full requirement of CPD hours for the year. It is clear that at a time of low morale, falling revenue and a disappearing client base for many practitioners, the increasing opportunities which advocacy brings is one of the few good news stories for the solicitors’ profession.

We could fill these pages with testimonials from past years’ participants and indeed from the trainers, judges and witness participants who have experienced the “NITA method” over the last ten years. Once again, NITA and its president, Lonny Rose, (based in Boulder, Colorado), have undertaken to provide a team of top class faculty/trainers for the Advocacy module in September and because of the significant milestone of ten years teaching and over 250 qualified Solicitor Advocates, special efforts are being made by many eminent US jurists and trial lawyers to keep their diaries free for the week of September 7 2009.

Finally we would ask that all past participants and qualified Solicitor Advocates note the date for the awards ceremony and anniversary dinner on Friday, September 11 2009. Invitations and details of venue will follow in later editions.

Note: An application form for this year’s course can be found on pages 27-30 of this Writ

The Advocacy Working Party

Thinking of becoming a Solicitor or Barrister?

Come along to an Open Day at the Institute of Professional Legal Studies at 10 Lennoxvale

When: Monday, 11 May 2009
5.00pm – 6.30pm

An opportunity to experience life at the Institute
- Mock Interviews
- Advocacy Skills
- Legal Research
and to speak with members of staff.

The Director, Mrs Anne Fenton, will speak at 6.00pm in the Lecture Theatre

To confirm attendance please email: j.playfair@qub.ac.uk no later than 30 April 2009.
The Copyright Licensing Agency (CLA) issues licences, on behalf of copyright owners, under the framework established by the Copyright, Designs and Patents Act 1988 (since amended by the Copyright and Related Rights Regulations to ensure that UK law is compliant with the EU Directive 2001/29/EC.)

**Does my firm need a licence?**

There are various types of licence available, according to the size of your firm or organisation, and according to the amount of photocopying and/or external dissemination of copyright material (ie books, journals, magazines and other commercially published works) carried out.

**If your firm carries out any photocopying of copyright material, a licence is required.**

**If your firm does not carry out any photocopying of copyright material, a licence is not required, although it is advisable to have a written policy in place informing all staff that no copying is to be carried out.**

**What does this licence entitle me to do?**

Up until now, a small business licence (for firms of up to 50 employees) or a business licence (for firms with 51 employees or more), covered your firm with a blanket licence to do the following;

- Photocopying from titles published in the UK and most major overseas countries according to the following limits:
  - One chapter from a magazine, journal or other periodical
  - One chapter from a book
  - One entire case from a published law report
  - Or 5% of the publication, whichever is greater
- Scanning from titles published in the UK and the US
- Storage of articles on a secure internal intranet for up to 30 days

**The new Law Licence**

The Law Society of England and Wales, together with the City of London Law Society, has successfully negotiated a new Law Licence which reflects more practically the requirements of a law firm. Following negotiations with the Law Society for Northern Ireland Librarian, the terms of this licence have been extended to firms in Northern Ireland.

Additional permissions include:
- additional rights to make digital copies, reflecting the much increased use of digital technology in law firms, including the use of electronic case files and shared email folders
- the right to share copied copyright material with clients and other third parties such as counsel

**The Small Business Licence is still available to firms who require copying for purely internal purposes.**

**Exempt material**

Much legal material used in law firms is exempt from copyright, and can be copied, stored and disseminated freely. This includes:
- All legislation
- All EU material
- All material held on Libero
- Any material used for non-commercial purposes
- Any material used for judicial proceedings (ie. after a Writ has been issued)

Firms are advised to consult the relevant legislation for a complete list of exemptions

**Excluded material**

Some material by specific authors or publishers is not covered under the terms of any CLA licence and therefore photocopying and scanning is not permitted under any circumstances. This includes all newspapers (which are covered under a Newspaper Licence Agreement) and some legal journals.

**How much do CLA licences cost?**

The Law Licence and Small Business Licence are available at the same fee per annum;

- **Small Business Licence**
  - (Firms with 1-10 total employees) £123.33 + VAT
  - (Firms with 11-50 total employees) £384.34 + VAT

- **Business Licence**
  - (Firms with over 51 total employees) £384.34 + VAT plus £25 per professional employee

**How the Law Society Library can help**

We are pleased to answer any queries you may have regarding CLA licensing. In addition we can advise you if any material you subscribe to is on the list of the CLA’s excluded list, and we can, if you wish, liaise between you and the CLA to arrange the best licence suited to your requirements.

For further details contact
Heather Semple
Head of Library and Information Services
Law Society Northern Ireland
Tel: 028 9023 1614
Email: heather.semple@lawsoc-ni.org
IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION

Transfer of Probate Business to Chancery Division

The title of all applications for grants of representation, originating and interlocutory processes and other documents which before the transfer of probate business from the Family Division pursuant to The Rules of the Supreme Court (Northern Ireland) (Amendment) 2007 (SR 2007 No.189) and The Rules of the Supreme Court (Northern Ireland) (Amendment No.2) 2008 (SR 2008 No. 401) would have had to be lodged or filed in the Probate and Matrimonial Office should include "CHANCERY OFFICE (PROBATE)" immediately below "CHANCERY DIVISION".

Correspondence about probate business should be addressed to the Chancery Office (Probate), Royal Courts of Justice, Belfast BT1 3JF.

Dated this 16th day of January 2009

By the Direction of the Honourable Mr Justice Deeny

Master Ellison
SLS Programme of CPD Events
SLS is planning the following CPD events over the next few months. Booking forms will be available in The Writ or please contact us for further information.

2 April: Probate Practitioners’ Day. Radisson Roe Hotel, Limavady

20 April: Legal Research On-Line Workshop. John Knowles, Law Library QUB and NI Court Service staff


30 April: Probate Practitioners’ Day. Stormont Hotel, Belfast

6 May: Personal Insolvency. William Gowdy BL and Stephen Gowdy, King & Gowdy

11 May: Equality and Industrial Tribunals: John Wadham, Group Legal Director of the Equality and Human Rights Commission

4 June: Conduct of Inquests and Judicial Review. John Leckey, Senior Coroner and Professor Paul Matthews (author of Jervis on Coroners)

Dates for Your Diary:

SLS Legal Publications
Lansdowne House, 50 Malone Road
Belfast BT9 5BS
Tel: 028 9066 7711
Fax: 028 9066 7733
DX: 4330 NR Belfast 34
Are your employees eligible to work in the UK?

Introduction

This is the first of three articles outlining changes that mark the most radical shake-up of the immigration system in its history. This shake-up includes:

- strengthened rules on employing foreign nationals
- stricter border control and immigration measures and
- a clamp down on illegal working

Undoubtedly, these increase the administrative burden on employers and create a higher risk of prosecution and penalties.

This first article focuses on the Document Checks required to determine if potential employees are eligible to work in the UK. The other articles will consider the new Points Based System and rules that apply to European migrants.

Overview

The strengthening of rules commenced on 29 February 2008 when Sections 15-25 of the Immigration, Asylum and Nationality Act 2006 (and various pieces of secondary legislation) came into force. The centrepiece of the legislation is the creation of two new offences:

- an offence of negligently employing an illegal migrant punishable (where the employer has not established the statutory excuse) by a civil fine up to £10,000 per illegal worker and
- the offence of deliberately employing an illegal migrant punishable by an unlimited fine and/or imprisonment

The new arrangements will apply only to those employees who started work with an employer on or after 29 February 2008. Employers that employed illegal migrants, between 27 January 1997 and 28 February 2008 will be liable to prosecution under the 1996 Act, if they did not establish the statutory defence at the point of recruitment.

Avoiding liability

In order to have a statutory excuse sufficient to avoid conviction, employers must check and copy a specified combination of original documents prior to proposed employment commencing. There are two Lists of acceptable documents: List A and List B, detailed in Table 1 overleaf.

List A includes UK or EEA passports and other documents that show a person’s entitlement to live and work in the UK indefinitely.

List B includes passports and other documents, showing limited leave to remain and work in the UK.

Documents provided from List A will establish an excuse for the duration of the migrant’s employment, provided the employer observes the further obligations to verify and retain copies of the documents. On the other hand, List B documents contain documents that indicate that the holder has restrictions on their ability to be in the UK. Where those documents are provided the employer will only be able to rely on the statutory excuse for 12 months, after which the defence will lapse, unless the Document Checks are repeated at least once in the 12 months; the person provides documents from List A or; they leave employment. By carrying out the repeat checks, an employer will be able to keep the excuse alive.

The measures are not compulsory but an employer who ignores them will be unable to avoid the penalties if found to be employing illegally; the burden is on the employer to show the requirements have been met. Whilst the checks should be completed before employment commences, employers can choose when to ask for the specified document/s eg at interview or when an offer has been made. If the latter, the offer letters should include an appropriate condition such as:

‘This offer of employment is conditional on your production of appropriate documentation demonstrating your right to work in the UK.

On your first day, please bring with you your passport. If you do not hold a British passport, a passport from a country within the European Economic Area (EEA) or a non-EEA passport which entitles you to work in the UK, we will need to see additional documentation to verify your entitlement. You should contact me to find out which documents you will need to provide’.

Establishing the Statutory Excuse:
3-Step Procedure

Employers should follow Steps 1 to 3 below for every potential employee, prior to the commencement of employment. Employers must keep accurate records of any checks and note on employees’ files if, and when, follow up checks are required.

Step 1: Prior to employment commencing employers should require all prospective employees to provide one original document, or two original documents in defined combinations, from List A or List B.

Step 2: Employers must take reasonable steps to establish the validity of each document by:

- Checking and being satisfied that any photographs are consistent with the appearance of the prospective employee and it is that person
- Checking that the date of birth is consistent with the appearance of the prospective employee
- Checking that expiry date/s of any limited leave to enter or remain has not passed
- Checking any UK Government endorsements (stamps, visas, etc) to ensure the potential employee is permitted to do the type of work being offered
- Being satisfied that the documents are genuine, have not been tampered with, and that they belong to the holder
- Asking for further documents evidencing the position if documents with two names are provided (eg marriage certificates, divorce decrees, etc).

Although the Government does not expect employers to be experts in the detecting
of forged documents it does require them to take all reasonable steps to verify the document’s authenticity. The Guidance states that a falsity would be considered to be reasonably apparent “if an individual, who is untrained in the identification of false documents, examining it carefully but briefly and without the use of technological aids, could reasonably be expected to realise that the document in question is not genuine”.

The measures are not compulsory but an employer who ignores them will be unable to avoid the penalties if found to be employing illegally.

Employers who are unsure can contact the Employer Checking Service, which is jointly run by the BIA and the Identity Passport Service, for help. The Council of the European Union also maintains a website: Public Register of Authentic Identity and Travel Documents Online (PRADO). This contains samples of passport and identity documents from all European Union Countries.

Step 3: Employers must take copies of the relevant page/s in a form that cannot be altered (eg photocopy or scan).

If the document is a passport, or other travel documents, the pages that should be copied are:

- The front cover and any page containing the holder's personal details (in particular, nationality, photograph, date of birth, signature, date of expiry or biometric details); and
- Any page containing UK Government endorsements, noting any page with a date of expiry and any relevant UK immigration endorsement that allows the prospective employee to do the type of work being offered or carried out.

If the employee produces any other document it should be copied in its entirety. Copies should be kept securely for the duration of the individual’s employment, and for a further two years after employment has ended. The employer should not keep documents any longer than necessary, nor should they retain originals.

In relation to follow-up checks, employers should repeat Steps 1 to 3 above and record the date of each subsequent check.

Avoiding racial discrimination.

Employers must carry out the Document Checks on all potential employees, in the same way and at the same stage of the recruitment process to avoid any unlawful racial discrimination allegations.

The Equality Commission in Northern Ireland (ECNI) has published an Employers’ Guide “Employing Migrant Workers a Guide for Employers on Promoting Equality of Opportunity.” The Guide deals with the issue of requesting details of a job applicant’s nationality, immigration status or work permit status. The ECNI states:

“There is no need to ask applicants about their immigration status and it is good practice not to do so as it may mislead employers in to making discriminatory decisions. Questions about nationality are best left off the application form. This does not prevent employers from conducting equal opportunities monitoring, (by way of a separate and confidential form) about the ethnic or national origins or nationality of their employees.

However, it is permissible to ask job applicants whether they need permission to work in the UK. This is best done through a simple question on the application form such as: “Do you need a work permit to work in the UK?”

“...It is also unlawful for employers to employ a person who is subject to immigration control where that person does not have permission to work in the UK. In practice, most migrant workers do not come within this category. Employers can avoid committing an offence by requesting all persons who are about to start working for them to provide at least one document from a prescribed List of documents. To avoid discriminating against any person on grounds of race, employers who make such Document Checks should request all prospective new employees, regardless of their ethnic or national origins or nationality, to provide the relevant documents. Employers should not merely ask migrant workers to provide the documents; local workers should also be asked to provide them as well.”

Further information

The Border & Immigration Agency (BIA) has published the following documents to assist employers adjust to the changes and amend their recruitment procedures:

- Comprehensive Guidance for Employers on Preventing Illegal Working;
- Code of Practice: Prevention of Illegal Working, Guidance for Employers on the avoidance of unlawful discrimination in employment practice while seeking to prevent illegal working and;
- Code of Practice: Prevention of Illegal Working, Civil Penalties for Employers.

These documents can be downloaded from: http://www.bia.homeoffice.gov.uk/employers/preventingillegalworking/complyingwiththelaw/
Table 1

LIST A

Single documents
- A passport showing that the holder is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK.
- A passport or national identity card showing that the holder is a national of an EEA country or Switzerland.
- A residence permit, registration certificate or document certifying or indicating permanent residence issued by the HO or BIA to a national of an EEA country or Switzerland.
- A permanent residence card issued by the HO or BIA to the family member of a national of an EEA country or Switzerland.
- A Biometric Immigration Document issued by the BIA which indicates that the person is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.
- A passport or other travel document endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has the right of abode in the UK, or has no time limit on their stay in the UK.

Document combinations
- An official document issued by a previous employer or Government agency, which contains the permanent National Insurance number and name of the person and ONE of the documents listed in A-G below:
  - An Immigration Status Document issued by the HO or BIA to the holder with an endorsement indicating that the person is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK; or
  - A full birth certificate issued in the UK which includes the name(s) of at least one of the holder’s parents; or
  - A full adoption certificate issued in the UK which includes the name(s) of at least one of the holder’s adoptive parents; or
  - A birth certificate issued in the Channel Islands, the Isle of Man or Ireland; or
  - An adoption certificate issued in the Channel Islands, the Isle of Man or Ireland; or
  - A certificate of registration or naturalisation as a British citizen; or
  - A letter issued by the HO or BIA to the holder which indicates that the person named in it is allowed to stay indefinitely in the UK.

LIST B

- A passport or travel document endorsed to show that the holder is allowed to stay in the UK and is allowed to do the type of work in question, provided that it does not require the issue of a work permit.
- A Biometric Immigration Document issued by BIA which indicates that the person named in it can stay in the UK and is allowed to do the work in question.
- A work permit or other approval to take employment issued by the HO or BIA when produced in combination with either a passport or another travel document endorsed to show the holder is allowed to stay in the UK and is allowed to do the work in question, or a letter issued by the HO or BIA to the holder or the employer or prospective employer confirming the same.
- A certificate of application issued by the HO or BIA to or for a family member of a national of an EEA country or Switzerland stating that the holder is permitted to take employment which is less than 6 months old when produced in combination with evidence of verification by the BIA Employer Checking Service.
- A residence card or document issued by the HO or BIA to a family member of a national of an EEA country or Switzerland.
- An Application Registration Card issued by the HO or BIA stating that the holder is permitted to take employment, when produced in combination with evidence of verification by the BIA Employer Checking Service.
- An Immigration Status Document issued by the HO or BIA to the holder with an endorsement indicating that the person named in it can stay in the UK, and is allowed to do the type of work in question, when produced in combination with an official document giving the person’s permanent NI Number and their name issued by a Government agency or a previous employer.
- A letter issued by the HO or BIA to the holder or the employer or prospective employer, which indicates that the person named in it can stay in the UK and is allowed to do the work in question when produced in combination with an official document giving the person’s permanent NI Number and their name issued by a Government agency or a previous employer.

Table 2: Checklist:

1. Ensure that all prospective employees provide documentary evidence of their right to work in the UK before they are permitted to begin work.
2. Check documents for all recruits, regardless of their apparent immigration status or racial or ethnic background in the same way and at the same stage of the recruitment process.
3. Ensure that the original documents are provided from List A or List B.
4. Carry out and retain copies in accordance with the procedures set out in the guidance. Repeat the Document Checks every 12 months where documents from List B have been provided.
5. Carry out documentary checks within 28 days of the date of any transfer of an undertaking.

We are grateful to Michelle McGinley for this article. Michelle is an employment solicitor with the Engineering Employers’ Federation (NI) and regularly advises and represents organisations in employment matters.
Farewell to Dame Joan Harbison

The Chairman of NIJAC, the Right Honourable Sir Brian Kerr, the Lord Chief Justice of Northern Ireland, has paid tribute to Dame Joan Harbison CBE, DBE, Hon LLD who resigned as a Commissioner for Judicial Appointments on 31 January 2009.

Dame Joan was a founding member of NIJAC which was established in June 2005. The Lord Chief Justice thanked Dame Joan for her substantial contribution to the work and the success of NIJAC and wished her every success for the future as she concentrates on her new role as the Older Peoples’ Advocate.

Career history
Dame Joan began her career as a teacher and qualified as an educational psychologist in 1972. Following this Dame Joan lectured in education at Stranmillis College of Education for 24 years and was Chief Commissioner of the Equality Commission for Northern Ireland during 1999-2005.

Widely experienced in the public sector, at both local and national level, Dame Joan was previously the Chair of the Commission for Racial Equality for Northern Ireland, Vice-Chair of the Eastern Health and Social Services Board and the Standing Advisory Commission on Human Rights.

In recognition
In 1992 she was awarded a CBE and was knighted as a Dame Commander of the Order of the British Empire in 2004. A year later she received a Honorary Degree of Doctor of Laws (LL D) all in recognition of her contribution to public life in Northern Ireland.

New role
On 3 November 2008 she was appointed the Older Peoples’ Advocate pending the establishment of a full-time Commissioner for Older People.

Dame Joan said she was particularly sorry to leave NIJAC at this exciting time in its development and wished all the Commissioners and staff well as work continues. She added that the recent NIJAC review of practices and procedures, informed by research, would continue to ensure that all those appointed to judicial office would get there on the basis of merit.

Welcome to two new Commissioners

Due to Dame Joan’s resignation and that of Mrs Fiona Bagnall, Presiding District Judge (Magistrates’ Court), last May, NIJAC has secured two new Commissioners. The Lord Chancellor has appointed a judicial member and a lay member with effect from 2 February 2009 until 4 June 2013.

District Judge (Magistrates’ Court) Amanda Henderson will replace Presiding District Judge Fiona Bagnall and Dr Nichola Rooney will replace Dame Joan Harbison CBE DBE.

**District Judge (Magistrates’ Court) Amanda Henderson**
District Judge Henderson was educated at Queen’s University, Belfast (QUB) and was called to the Bar in 1984. She was appointed a deputy district judge (magistrates’ court) (formerly known as deputy resident magistrates) in 2002, and subsequently was appointed a district judge (magistrates’ court) in 2005.

**Dr Nichola Rooney**
Dr Rooney has been a Consultant Clinical Psychologist in the Health Service for 17 years and for the past eight years she has worked as a senior manager at the Royal Hospitals, Belfast. She is currently Head of Psychological Services for the Belfast Trust.

From 2002-2004, Dr Rooney was appointed by the Minister of Health as a member of the Human Organs Inquiry Relative’s Reference Group and she has also been involved in a number of Department of Health Committees for Policy Development (most recently in relation to the organisation and delivery of psychological therapies in Northern Ireland).

Dr Rooney is Chair of the Division of Clinical Psychology Northern Ireland and a member of the Executive of the Division of Clinical Psychology UK. In addition, she is also an honorary senior lecturer at QUB and has lectured frequently on post-graduate medical and clinical psychology doctorate courses. Dr Rooney is also a member of the Board of Studies for the Clinical Psychological Doctorate.
The risks of the parked car

A recent decision of the Northern Ireland High Court has meant that drivers leaving their cars parked on a double yellow line may not only be at risk of getting a ticket but may also be subject to third party proceedings in a road traffic personal injury action.

Connor v Jackson [2008] NIFB 102 is a recent decision of McCluskey J, whereby the defendant was exiting a filling station car wash, to turn right onto the main road. As the car entered the road, the defendant was struck by an oncoming motorcycle driven by the plaintiff. The defendant accepted responsibility and even received an informed warning. However, when the plaintiff issued proceedings, the defendant also issued third party proceedings against the driver of a car who had parked partly on the footway and partly on the road which had a double yellow line. The vehicle was obstructing the view of the defendant (to his right) from any oncoming traffic.

Interestingly, the third party contended that he had arrived on the scene of the accident and had stopped to help the injured party. The Judge rejected this in its entirety, finding the third party to be a ‘less than forthright and convincing witness’ and ‘the essence of his account unworthy of belief.’ The Judge concluded that the vehicle was present before the accident and therefore did obstruct the defendant.

Nonetheless, the Judge in conclusion robustly criticised the defendant for undertaking what was a ‘patently unsafe manoeuvre’ which he ‘could not have done so in reasonable safety’. The Judge concluded in finding the defendant negligent and stated:

To attempt to cross the road in the circumstances prevailing was probably the most dangerous manoeuvre he could have undertaken. It was an acutely risky exercise. I hold that his obligation was to stop and to wait until the obstruction of his view had been removed or, possibly, until a “traffic marshall” had been engaged to supervise, direct and control his manoeuvre and, as far as necessary, the movements of traffic on the carriageway.

However, the Judge then concluded that the third party was contributorily negligent. The Judge did not offer any detailed explanation for this finding, and no doubt the view taken of the third party may have played a part in the reaching of such a conclusion. Negligence was apportioned on the basis of 3/5 to the defendant and 2/5 to the third party but it being expressly recognised that apportionment is very much decided on a case by case basis.

Drivers leaving their cars parked on a double yellow line may be subject to third party proceedings in a road traffic personal injury action.

The interesting concept of this case is the third party proceedings. The decision of Davies LJ in Cootes & Another v Stone [1971] 1 W.L.R. 279 recognises that Regulations, for example the Highway Code, can be used to establish liability. A. 238 of the updated Highway Code, for example, stipulates that a driver must not park on yellow lines during prohibited times and must not park on double yellows lines at any time. It must be emphasised, however, that the mere existence of an outright prohibition does not result in automatic liability. This had been the decision of Ashworth J in Kelly v WRN Contracting Ltd [1968] 1 All ER 369 but was criticised in the Cootes case with one of the Appeal Judges finding it to be wrongly decided and that it should not be followed.

Thus, if the Regulations are simply the starting point, how was the third party found negligent in Connor?

A decision of the English courts in Ehrari (A Child) v Curry [2007] EWCA Civ 120, involved an unfortunate 13 year old who suffered severe brain injury. The child had entered the road from behind a parked car; the road was a busy London road. An oncoming lorry at approximately 20mph struck the plaintiff with the nearside wing mirror. The court found that the driver would only have seen the plaintiff for one second before the collision but despite it being accepted that a collision in all probability could not have been avoided, the fact that the driver did not take any evasive actions (eg swerving) resulted in the defendant being found 70% negligent. Moreover, the Court recognised that the Highway Code was a proper reference for analysis of thinking time and stopping distance and the obligation of disputing the contents therein rested on the party challenging who should have a sufficient expert to discredit the content of the Code. Again, this was a case where the tortfeasor’s ability to avoid a collision was severely limited, yet negligence followed.

Clearly, in Ehrari the blame was affixed to a party due to his actions but in Connor the Court was concerned with effectively an abandoned car.

The Privy Council in Seng Heng v Thevannasan son of Sinnapan [1975] 3 All ER 572 was a case involving a parked vehicle. A lorry driver had parked his lorry on the nearside of the road with ample space being left for a vehicle to overtake. However, the location of the vehicle was approximately 30m after a bend veering right. It was a dark night with misty conditions and despite the lorry having its hazard lights on, the driver was found partly to blame for a collision involving an oncoming vehicle. It was accepted that the vehicle was not illegally parked but that it was simply parked too close to the corner. This was despite the court concluding that the colliding vehicle was being driven too fast. The court was influenced by the persuasions that the lorry driver could have parked further down the road.

Interestingly, had the lorry driver broken down would the decision have been the same?
This was partly the facts in Lee v Lever [1974] R.T.R. 35 where a driver’s vehicle broke down. The driver pushed the car to the side of the road, so that the wheels were touching the grass verge. However, the battery had drained and no lights were on. An oncoming vehicle collided with the parked vehicle and liability was found to be equal on both sides. The court found that the oncoming driver ought to have seen the parked car but interestingly also stated that on leaving a car one should not assume that oncoming traffic shall be driven with ‘due care and circumspection.’

It would appear to be a harsh result, particularly when the court was of the opinion that there was very little else that the driver could have done apart from having a warning sign/light.

Whilst the above cases do not concern a third party, they show how the Court deals with the parked car or unexpected scenario. It suggests that the courts are not prepared to exonerate an individual in a situation where they cause some element of an obstruction or hazard regardless of whether same would have been unavoidable.

An oncoming vehicle collided with the parked vehicle and liability was found to be equal on both sides.

It would appear that the High Court in Connors was somewhat disappointed in the third party’s evidence. Not only was he a serving Police Officer, his evidence was discredited but the Court’s conclusion that the defendant was undertaking a manifestly unsafe manoeuvre, suggests that blame should have remained solely with the defendant. For practitioners it provides a more workable defence option to explore.

What about the illegal signage outside a shop or temporary scaffolding outside a building or a hedge that has not been trimmed in several years; all of which can obstruct a driver’s view? Are these scenarios where liability may also be shared?

The foolishness of one to undertake a manoeuvre which is patently dangerous should not be able to affix some blame on a party not actively involved.

We are grateful to John Fox of Barry Fox Solicitors in Omagh for this article.

**CHANGES TO THE LAW**

**ON SEXUAL OFFENCES**


There are a number of changes to the law on sexual offending behaviour:

— There are new laws on responsibilities surrounding consent to sex
— There is a new definition of rape and other assault offences
— There are many new offences of offending behaviour against children, some up to age 18
— Sexual abuse within family situations is targeted
— There are heavier penalties, many of which are life imprisonment
— There are new offences relating to sexual activity with people who have a mental disorder
— There are new offences associated with prostitution
— Illegal indecent images of children now includes images of children up to age 18

For more detail about what you need to know visit the NIO website at [www.nio.gov.uk/sexualoffences](http://www.nio.gov.uk/sexualoffences)
A Practical Introduction to Company Law

The Institute of Professional Legal Studies is offering a four week course in Company Law.

Issues covered in the course include Company Structure, Share Purchase Agreements and Commercial Lending.

This course will be of particular interest to those with limited practical experience.

When:  Monday, 27 April 2009
        Monday, 11 May 2009
        Monday, 18 May 2009
        Monday, 1 June 2009

Time:  9.30am – 12.30pm

Venue: Institute of Professional Legal Studies, 10 Lennoxvale, Belfast

Cost:  £450

CPD:   12 hours

Booking form and cheques, made payable to QUEEN'S UNIVERSITY BELFAST, should be sent to Mrs Joan Playfair, Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY.

Closing date for applications: MONDAY, 13 APRIL 2009
(Places are limited to 25 people)

A Practical Introduction to Company Law
Booking Form

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I enclose remittance of £

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Advanced Advocacy
for Solicitors

A Course to Promote
The Practice of Solicitor
Advocacy in Northern Ireland

Incorporating a Series of Lectures
on Evidence (Saturdays)
and
A Five Day Intensive Course in
Advanced Advocacy
About the Course…

The Law Society of Northern Ireland is delighted to announce this course in Advanced Advocacy for Solicitors. The course will consist of a series of lectures and a written dissertation in evidence followed by a practical five day intensive course in Advanced Advocacy. The Advanced Advocacy Course will be delivered by faculty members from the National Institute for Trial Advocacy (NITA) and local tutors drawn from the Bench, Bar and Solicitors’ Profession.

The five day Advocacy Course will utilise the highly respected methodology of the NITA organisation and the teaching facilities and technical aids at the Institute of Professional Legal Studies.

The number of participants will be limited to enable an acceptable tutor/participant ratio.

The course is open to all of those who hold a current Practising Certificate from the Law Society of Northern Ireland who have three years post-qualification experience. It is anticipated that demand for places may exceed availability and in that event places will be allocated by seniority. The cost of attending the complete course is £1,100.

A Certificate in Advanced Advocacy will be awarded on successful completion of the course. This is a composite course and those hoping to receive the certificate must attend both the series of Evidence lectures, complete all coursework assigned to them and attend the five day Advanced Advocacy Course.

When and Where…

The series of lectures will be delivered over two Saturdays in late May/June 2009.

The practical course in Advanced Advocacy will be held at the Institute of Professional Legal Studies, Lennoxvale, Malone Road, Belfast, lasting from Monday, 7 September until Friday, 11 September 2009.

Participants must attend all lectures in Evidence and all five days of the Advanced Advocacy Course in order to be eligible to receive the Certificate in Advanced Advocacy.
Why Should I Attend…

This is the tenth year of this widely acclaimed course which has the wholehearted endorsement of the Law Society. The Government has indicated that in future rights of audience should depend on competence and there is legislation pending to remove all restrictions on rights of audience for suitably qualified Solicitor Advocates. The entitlement to represent a client in Court may in due course not be the exclusive preserve of the legal profession. In a more competitive environment we, as solicitors, must clearly indicate our competence. Major reforms in the areas of legal aid, both civil and criminal, as well as the streamlined procedures that are to be put in place following the implementation of the Civil Justice Reform Group’s proposals, will place demands upon the Solicitors’ profession to have a sizeable number of well qualified civil Advocates if we are to maintain a major role in all areas of litigation.

The proposals contained in the Access to Justice (NI) Order 2003 have already had profound implications for criminal law practitioners. The changes in criminal legal aid have provided a major incentive for all firms intending to carry out legally assisted criminal work to have at least one certified Advocate in the practice. Competence at Advocacy is vital to ensure that Solicitor Advocacy is properly remunerated.

The Certificate in Advanced Advocacy will be duly accredited and validated by the Law Society. Full CPD hours will be awarded to all participants completing this course. By the end of this year over 250 members of our profession will have been awarded a certificate having completed this course. This allows those firms who include Solicitor Advocates to deliver a complete legal service to clients. Whether you are primarily involved in criminal or civil work, this course in Advanced Advocacy will enable you to improve and develop your Advocacy skills, obtain an insight into those factors that make one a competent Advocate and hopefully enhance the esteem in which Solicitor Advocates are held by the Judiciary and the public at large. The course this year will be using a case file dealing with family law issues and criminal practice.

Involvement of NITA

We are extremely fortunate to be able to deliver this Advanced Advocacy Course under the guidance of NITA which is acknowledged as the premier provider of trial and courtroom skills training in the Western world. NITA is a non-profit making body based at Boulder, Colorado, USA. It was set up to develop and promote methods and materials for trial Advocacy and alternative dispute resolution and to promote quality legal representation by skilled, professional and ethical Lawyers. The guiding philosophy of NITA teaching is learning by doing. Participants’ performances are videotaped then critiqued, providing each student with valuable feedback as to technique, style and strategy. The NITA trainers, known as faculty, include both academic and practising lawyers as well as serving and retired Judges and four members of that organisation will be involved once again in teaching the course in September. All those who have participated in past years will vouch for the expertise and stimulus provided by the US faculty.
I wish to apply for registration for the Advanced Advocacy Course incorporating lectures in Evidence and enclose a cheque for £400 which I understand becomes a non-refundable booking deposit once notification is sent to me of acceptance for the course. I undertake to pay the balance fee of £700 by 15 May 2009 and I understand that no refunds will be made in the event that I do not attend or complete the course.

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Please return to:  Advanced Advocacy Course Co-ordinator  
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                    BELFAST  
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Closing Date for Applications:  1 MAY 2009
Cheques to be made payable to:  The Law Society of Northern Ireland
Lawyers on television

Following on from my earlier article on the top ten legal movies, I was recently challenged as to why I had ignored the contribution of television lawyers. In fairness, television lawyers have a much tougher job than those in the movies. Not only do they only have 60 minutes to get their client off but then they have to do it all again same time next week. So here, in order of seniority, are the top ten lawyers on television.

Perry Mason

The doyen of all TV lawyers was of course Perry Mason, played by Raymond Burr, who famously never lost a case. The series ran for almost ten years and dates back to a time when TV was black and white, men were men and women were wrongly accused of killing their husbands. Perry Mason finally stopped practising law in 1966.

The prison population in the US has been increasing ever since. These facts apparently are not unrelated.

Petrocelli

Whereas Perry Mason was a true blue American, Petrocelli’s shtick was that he was ethnic, an Italian American with a few dodgy connections he could rely on when he needed information. Petrocelli was essentially a detective with rights of audience.

He was also a two dimensional character who was supposedly building his own house and most episodes would end with Petrocelli mixing a bit of mortar while waiting on his legal aid cheque.

Lionel Hutz

The Simpson’s long-suffering family lawyer has been a personal favourite of mine for years. Battling with his various addictions, he is obviously in the wrong job put still hoping for that one big score. Always ready to compromise his own case and abandon his client at the first sign of trouble, he is without doubt a hero of our time. Despite never having been able to win any of the many actions the Simpsons have initiated, he remains their trusted advisor.

Rumpole of the Bailey

No list could be complete without John Mortimer’s classic journeyman barrister, Horace Rumpole BL. Rumpole is essentially a subversive at heart, refusing to play by the rules of either his chambers or the court. Safe in the knowledge that a seat on the bench will never be his, he is never happier than when spiking the prosecution guns or downing a pint of Guinness with an O.D.C.

Judge Judy

There have been a few TV judges presiding over white trash disputes but Judge Judy has been the only real star. Like a Bean a’ Ti whose corns are giving her trouble, she has perfected the essential judicial skill of permanently being in a filthy temper. Judge Judy is the courtroom version of Jerry Springer, only in her programme you are waiting for her to lunge across the room at the claimants. Judy! Judy!

Ally McBeal

Ally McBeal, played by Calista Flockhart, was the hugely successful TV series about a hard working professional woman trying to keep her place in an office dominated by err…hard working professional women. Supported by a cast of quirky characters, Ally spent years flicking in and out of her daydreams while looking for love in all the wrong cases.

The series managed to maintain its following even while the court proceedings became ever more ridiculous. Considering some of the work they took on, I could never figure out how this firm made money but then in the world of Ally McBeal it was never about the money.
This series concentrates on one titanic piece of fairly ill defined litigation. Even after several episodes I still don’t know what the plaintiff’s cause of action is and I am not entirely sure I care. Glenn Close is essentially reprising her Cruella deVille routine as the plaintiff lawyer from hell. When your cast type is a cartoon character, it is proof, if such were needed, that they just don’t write good parts for women anymore.

The storylines were about big money divorces, big money clients and big shoulder pads. Basically this was Dallas for lawyers.

This series was a surprise hit for TV stalwart Martin Shaw. Martin Shaw first hit the small screen along side Lewis Collins as part of a Starsky and Hutch type double act called The Professionals. In fact both roles are remarkably similar involving as they do a lot of dressing up and casual sex. In keeping with the need to revive all things seventies, I can see a part for Lewis Collins as Judge Deed’s tipstaff.

As the resident lawyer at the Sacred Heart hospital, Ted Buckland should have it easy but clearly doesn’t. Having apparently never won a case, Ted sees every potential claim through the prism of his own depression. In his spare time Ted sings in a cappella group with other non-medical staff at the hospital. We all know he should get out more but then who would be on hand to diffuse those potential negligence actions. Ted’s considered legal advice to young doctors is “don’t kill patients”.

We are grateful to Michael Flanigan, Solicitor, Belfast for this article.
Victorious Belfast solicitors see off the Dubs

In arctic conditions at Corrigan Park on 29 November 2008, the Belfast Solicitors’ GAA Society met their southern counterparts from the Law Society of Ireland in an historic and unique game.

A match of this nature had never been played before and Corrigan Park was chosen as for many years it was the Antrim County ground before the opening of Casement Park in 1953.

The match also had a special poignancy as the winners were to be awarded the Brendan McCann Memorial Cup, in memory of this past solicitor and GAA stalwart.

The Belfast team had trained under the pupillage of Mr Charlie Sweeney and Mr Hugh Tohill and their sponsors, Bogart Menswear and Data Dispatch, had generously made sure the Belfast players were professionally attired and resourced.

Enthusiastic supporters at the match included the Lord Chief Justice, Sir Brian Kerr; the Lord Mayor of Belfast, Mr Tom Hartley, retired solicitor and three time All-Ireland winner Mr Sean O’Neill; Mr Donald Eakin, the then President of the Law Society of Northern Ireland; Mr James MacGuill, the then President of the Law Society of Ireland; and senior representatives of both Societies, together with members of the McCann family.

The match began at 3pm and it was evident from the off that both teams wanted to win to mark their places in history. This was demonstrated by the commitment from all the players. It was Shane Byrne who opened for Belfast, quickly followed by a coolly taken free from Andrew Morrow to create a 0.2 – 0.0 lead for Belfast. This pattern continued with veteran, Eoghan McKenna showing his guile to slot over an impressive point after close interplay with his teammate and work colleague Conor Gannon. Aidan Johnston and Paul McCrudden showed their grit by playing through injuries which forced Johnston to eventually retire after a battling defensive display.

Against the run of play, Feeney of Dublin scored a goal after an attack had been stopped by the resolute Belfast defence, with Philip Collins giving a captain’s example of energy and team-work. The Belfast defence dealt with every attack by using quick ball work and the fitness of Joe Marley, Colm McElroy, John Turley and Aidan Donnelly was being used to great effect in setting up wave after wave of Belfast attacks.

This pressure paid off as target man McKenna was fouled and Byrne converted without hesitation. This seemed to motivate the Dublin players and they scored two points through Duffy and Moore without reply. However, this rally was short lived as Byrne, Gannon and Morrow continued where they had left off with a point each.

The Dublin Solicitors needed to get off to a quick start in the second half but they soon saw the match slipping beyond their control as Gannon using some deft skills set up Byrne, who by this stage was a constant thorn in the Dublin side and he bravely rounded the Dublin goalkeeper to net brilliantly.

Like their teammates further up the pitch, the Belfast defence, with Stephen Keown, Damian McElholm and Eamonn O’Connor all excelling, were taking control of proceedings in front of a confident Niall O’Connell between the Belfast posts.
Before his exit, McKenna deflected a high ball into Byrne’s path who ran through a flailing Dublin defence before crashing the ball off the underside of the crossbar with a rasping shot to register another Belfast goal and cap a Man of the Match performance.

The crowd knew that they were being treated to a masterclass in teamwork and off the ball running and support. The management used their expertise to introduce fresh legs from the obvious quality available on the substitute’s bench and these seamless replacements maintained the pressure on the Dublin players. David McDonnell, Gary Rocks, John Mackell and Paddy Corrigan started brightly while old warhorse Chris Sayers showed he still has the stomach for a battle.

The Belfast team, using a hard working forward line, a dominant midfield and an unwavering defence, continued to turn the screw with Byrne adding a further point and Morrow another brace to ensure the result was never in question.

The Dublin players, now playing for pride, added further points through Moore and McNamara to make it 2.11 to 1.04 and the match finished with the Belfast Society as worthy winners.

The Memorial Cup was presented to Philip Collins by Mrs McCann and the Lord Chief Justice, much to the delight of the now frostbitten crowd.

The committee would like to thank all of our esteemed guests, St John’s GAC who made the match possible and provided much needed refreshments after the game, our sponsors, our management team and finally the Dublin team who played the match in a great spirit making many friends both on and off the pitch.

We would like to invite new members, both playing and non-playing, to join the Belfast Solicitors’ GAA Society in 2009 to develop and build on this success.

Belfast Solicitors
N O’Connell; A Johnston,
P Collins, S Keown;
D McElholm, E O’Connor;
A Donnelly; P McCrudden;
C McElroy; J Turley;
C Gannon; J Marley;
A Morrow; S Byrne;
E McKenna; D McDonnell;
P Corrigan; V McCool;
G Small; D Andrews;
C Sayers; G Rocks;
M Loughrey; C Doran;
C Johnston; J Mackell;
J Byrne; D McNulty; M Finnegan.

Report by Malachy Kearney

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WELFARE REFORM KEY POINTS

The government has stepped up its welfare reform agenda following its pre-budget report and the Queen’s speech to Parliament. In the first of two articles, Law Centre (NI) director Les Allamby sets out recent changes and those in the pipeline which will be of interest to solicitors. The second article will set out the current arrangements for the treatment of compensation payments for personal injuries and how awards affect means-tested social security benefits.

EMPLOYMENT AND SUPPORT ALLOWANCE

From 27 October 2008 a new benefit, Employment and Support Allowance (ESA), has been introduced. ESA replaces Incapacity Benefit and Income Support (IS) for people claiming IS on the grounds of disability or being incapable of work.

There are two types of ESA namely, contributory ESA and income related ESA.

Contributory ESA is not means-tested and is based on having paid sufficient national insurance contributions. Income related ESA is not based on paying contributions but is means-tested.

Both types of ESA have an assessment phase normally lasting thirteen weeks while an assessment of ‘limited capacity for work’ is undertaken. This involves undergoing a work capability assessment (WCA). The WCA helps to decide whether a person has a limited capacity for work and also whether he or she has a limited capability for work related activity.

After thirteen weeks a person will either go into:

- the work related activity group where he or she will be subject to regular medical assessment and encouragement to work.

  A work related activity component is paid as part of ESA or;

- the support group where regular medical assessment and encouragement to work are not a prominent feature of ESA. A support component is payable as part of benefit which is worth more than the work related activity component.

Claimants on ESA can work in certain circumstances (permitted work rules). These are the same rules that apply to people still on Incapacity Benefit.

Existing claimants on Incapacity Benefit will continue on that benefit although the intention is that all Incapacity Benefit claimants will have to go through the WCA test by 2010 and all claimants will have been transferred to ESA by 2013. The Department of Work and Pensions has already announced its intention to review the WCA later this year.

Income related ESA will be a passport benefit for green form, ABWOR and civil legal aid.

CHILD MAINTENANCE

From 27 October 2008, a £20 a week disregard from income for child maintenance payments has been introduced for Income Support, income based Jobseeker’s Allowance and income related ESA. The intention is to increase this disregard to £40 by April 2010.

A full income disregard for child maintenance payments has been introduced for Housing Benefit and rates rebates.

BACKDATING BENEFITS

From 6 October 2008, the time limit for backdating Pension Credit prior to the date of claim is reduced from twelve months to three months.

For Housing Benefit and rate rebates for claimants under 60, the maximum period for backdating benefit due to continuous good cause for a late claim has been reduced from 52 weeks to six months. For claimants aged 60 or over, the time limit for backdating a claim has been reduced from twelve months to three months. There is no need to show any continuous good cause for late claim to have Housing Benefit backdated for three months if aged 60 or over.

IN-WORK/RETURN TO WORK CREDIT

An in-work credit of £40 a week for the first year in a new job for lone parents who have received Income Support or income based Jobseeker’s Allowance for more than twelve months has been available from April 2008.

A return to work credit of £40 a week for the first year for people moving from Incapacity Benefit or ESA into full time work paying less than £15,000 a year is also now available.
Only one of the above credits can be paid at any one time.

**EXPORTING DLA, AA AND CA**
The European Court of Justice in C299/05 Commission of European Communities v the European Parliament and Council of EU paved the way for Attendance Allowance (AA), Disability Living Allowance (DLA) and Carer’s Allowance (CA) to be exported in certain circumstances.

The Department for Social Development has issued guidance on the impact of this decision. A decision making guidance memo has issued. Memo DMG Vol2/B is available from Decision Making Services, Section 2A, James House, Gasworks Business Park, Belfast BT7 2JA.

**CHANGES TO HELP WITH MORTGAGE INTEREST**
The government has introduced additional help with mortgage interest payments available to claimants on Income Support, income based JSA and income related ESA. This came into effect on 5 January 2009.

In particular, full help with mortgage and interest will be provided after thirteen weeks for benefit for claimants who have not claimed previously or for some time. Previously, the waiting time for full assistance was either 26 weeks or 39 weeks depending on circumstances. In addition the limit on a mortgage which will be available for assistance is being increased from £100,000 to £200,000. However, a sting in the tail will see eligible mortgage interest for new claimants on income based JSA only paid for a maximum of two years. The government introduced these regulations under urgent procedures, bypassing normal statutory consultation with the Social Security Advisory Committee. Nonetheless, SSAC has announced its intention to consult on the time limit for mortgage assistance.

**INTRODUCTION OF A HEALTH IN PREGNANCY CHART**
The government is intending to introduce a new Health in Pregnancy Grant (HPG) from April 2009. The HPG is a one off payment of £190 made to all expectant mothers which can be claimed after the 25th week of pregnancy. Claimants must have received advice from a health professional and be ordinarily resident and present in the United Kingdom. The claim form must be signed by a health professional, for example a GP or a midwife.

The HPG will be administered by HMRC and is a non-means tested, non-contributory payment which does not count as taxable income. The payment does not count as income for means-tested benefits.

The grant will be payable from 6 April 2009 to women expected to give birth after that date.

**PRE-BUDGET REPORT**
A one off payment of £60 was made on top of the 2008 Christmas bonus which is payable to people receiving state retirement pension, DLA, Carer’s Allowance, Incapacity Benefit, contribution based ESA (including a support or work related activity component), Widow’s Pension, Widowed Mother’s Allowance, Widowed Parent’s Allowance, unemployment supplement or constant attendance allowance with disablement benefit;

Child benefit increases of £1.20 a week for the first child and 65 pence a week for other children were brought forward to January 2009 instead of April 2009.

**THE QUEEN’S SPEECH**
The Queen’s speech announced the Welfare Reform and Child Poverty bills. The Welfare Reform Bill has now been published. It will abolish Income Support and move all claimants onto either JSA or ESA. It will also abolish payments for dependants in Carer’s Allowance and Maternity Allowance.

The Child Poverty Bill will enshrine the commitment to end Child Poverty by 2020 into a statutory requirement. It will be published around Easter. The government is currently seeking views from the devolved administrations.

In addition, a new ‘one strike’ rule will be introduced where a person convicted of fraud will automatically have his or her benefit disallowed for four weeks.

A White Paper on social security reform was published in December. It contained further proposals to get lone parents to engage in seeking work (eventually including all lone parents whose youngest child reaches the age of twelve months). A review of the Social Fund was put out for consultation, including proposals to work with credit unions to deliver the Social Fund and charge interest. The latter proposal has been dropped following the political furore it created. A review of Housing Benefit has been pencilled in for later this year.

All told, it is a busy time for social security watchers. For more information on any of these issues, contact the Law Centre or visit our website www.lawcentreni.org.

**ECTHR RIGHT TO MARRY CASE**
In order to help with a European Court of Human Rights case, the Law Centre would like to hear from anyone in Northern Ireland who has had to seek Home Office permission to marry under the Certificate of Approval scheme. The scheme requires most immigrants to obtain permission from the Secretary of State before they may marry in the UK.

In our case, Sinead O’Donoghue and others v the United Kingdom, the applicants, who live in Derry, are a dual Irish British national, her partner who is a Nigerian national and their children. The Law Centre has been informed by the European Court that notice
of our application would be given to the government of the UK. In view of our first applicant’s nationality, the government of Ireland has also been invited by the Court to state whether they wish to submit written comments on the case. The web reference is www.bailii.org/eu/cases/ECHR/2008/1574.html, citation: [2008] ECHR 1574.

We complain that the Certificate of Approval (CoA) Scheme violates the applicants’ rights under arts. 8, 9, 12, 13 and 14 of the European Convention on Human Rights. Under art. 9, our complaint is that the couple’s right to manifest their religious beliefs was violated by their being prevented from solemnising their marriage in the Catholic Church as their religion required. Under art. 14, in conjunction with arts. 8, 9 and 12, we complain that the CoA Scheme was discriminatory on the ground of the applicants’ religion, as it would not apply to them if they were able or willing to marry in the Church of England according to Anglican rites. We further contend that the applicants were discriminated against on account of the second applicant’s nationality and their inability to pay the fee.

The House of Lords heard the English case of Baiai in relation to the Certificate of Approval Scheme earlier this year, but the Home Office has continued to maintain the Scheme after this judgement.

If you or your clients have had to seek permission to marry, with positive or negative experiences, particularly any difficulties in relation to payment of the required fee of £295, we would be grateful if you could contact Anna Morvern at Law Centre (NI) Western Area Office.
Email: wanna.morvern@lawcentreni.org
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For further information contact Dermot at:

Main Street, Rush, County Dublin
Tel: 00353-1-8438766
Fax: 00353-1-8438940
E: dermot@dermotmcnamara.ie
Web: www.dermotmcnamara.ie

Dermot McNamara & Company Solicitors
## BSA Annual Lecture Series 2009

<table>
<thead>
<tr>
<th>DATE</th>
<th>CPD</th>
<th>TOPIC</th>
<th>SPEAKER</th>
<th>TIME</th>
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<tbody>
<tr>
<td>2 Apr 2009</td>
<td>1</td>
<td>“Update in Developments in Case Law of Asbestosis”</td>
<td>Martin Hanna, Francis Hanna &amp; Co</td>
<td>1.00 – 2.00pm</td>
<td>£20 members £40 non-members</td>
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<td>7 May 2009</td>
<td>1</td>
<td>“Disability Discrimination”</td>
<td>Lisa Taggart, Equality Commission</td>
<td>1.00 – 2.00pm</td>
<td>£20 members £40 non-members</td>
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<td>21 May 2009</td>
<td>1</td>
<td>“Judicial Review”</td>
<td>Dr Gordon Anthony, Queens University</td>
<td>1.00 – 2.00pm</td>
<td>£20 members £40 non-members</td>
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<td>29 May 2009</td>
<td>3</td>
<td>Litigation half day seminar</td>
<td>His Honour Judge Burgess Master McCorry</td>
<td>2.00 – 5.00pm</td>
<td>£70 members £100 non-members</td>
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<td>11 June 2009</td>
<td>1</td>
<td>“Employers Liability”</td>
<td>Bernard Brady BL</td>
<td>1.00 – 2.00pm</td>
<td>£20 members £40 non-members</td>
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<td>10 Sept 2009</td>
<td>1</td>
<td>“Letters of Engagement and Client Communication Regulations”</td>
<td>Gavin Patterson, Hoffman Patterson, Solicitors</td>
<td>1.00 – 2.00pm</td>
<td>£20 members £40 non-members</td>
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<td>25 Sept 2009</td>
<td>3</td>
<td>Client Care and Practice Management seminar</td>
<td>Speakers to be confirmed</td>
<td>2.00 – 5.00pm</td>
<td>£70 members £100 non-members</td>
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<td>1 Oct 2009</td>
<td>1</td>
<td>Calculating Special Damages</td>
<td>Allison Hollywood, Forensic Services</td>
<td>1.00 – 2.00pm</td>
<td>£20 members £40 non-members</td>
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<td>15 Oct 2009</td>
<td>1</td>
<td>“Medical Negligence”</td>
<td>Paddy Mullarkey, Campbell Fitzpatrick, Solicitors</td>
<td>1.00 – 2.00pm</td>
<td>£20 members £40 non-members</td>
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<tr>
<td>19 Nov 2009</td>
<td>1</td>
<td>Industrial Tribunal Procedure</td>
<td>Eileen McBride, President of Industrial Tribunal</td>
<td>1.00 – 2.00pm</td>
<td>£20 members £40 non-members</td>
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<tr>
<td>27 Nov 2009</td>
<td>3</td>
<td>“Half day Criminal seminar”</td>
<td>Andrew Keogh, Author, CLSA Duty Solicitors Handbook</td>
<td>2.00 – 5.00pm</td>
<td>£70 members £100 non-members</td>
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<tr>
<td>3 Dec 2009</td>
<td>TBC</td>
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<td>£20 members £40 non-members</td>
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All lectures will be held at The Edge, May’s Meadow, Laganbank Road, Belfast.

Coffee and sandwiches will be available from 12.30pm and the lectures will start at 1pm unless otherwise indicated.

Cheques made payable to ‘BSA’, c/o The Administrator, Suite 7, Merrion Business Centre, 58 Howard Street, Belfast BT1 6PJ.
BSA - 65 years old

The book “Serving the City, A celebration of 65 years of the Association” is available at a cost of £40. To request a copy simply complete the order form opposite and return to:

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Belfast Solicitors’ Association
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58 Howard Street
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When a stroke strikes it is devastating, especially if you are in the prime of your life. The largest single cause of disability in adults in Northern Ireland, those affected can suffer from paralysis, loss of speech and depression.

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21 Dublin Road, Belfast, BT2 7HB.
or email: legacy@nichsa.com
Alternatively, ask your solicitor for our leaflet.
James Christopher Napier, former Taxing Master, died of cancer on 1 November 2008, just five days short of his 72nd birthday. He was admitted as a solicitor in 1961 and worked firstly in his family firm of Napier & Sons until he established the firm of J Christopher Napier & Co in 1969. He was appointed Taxing Master in 1990 where he remained until his retirement in 2007.

As a solicitor, he was a person of utmost integrity who dealt with all who came before him in a gentlemanly and dignified way. With his deep sense of fair play, his eye for detail and his work ethic, he acquired a reputation as one to pursue the law on his clients’ behalf without fear or favour. These were characteristics which stayed with him throughout his long tenure as Taxing Master.

Master Napier was a man who pursued many other interests outside of the law. He had a particular interest in the Irish language and culture and through this interest was a member of numerous organisations and groups which achieved so much in the advancement of Irish from both a social and industrial level. These included Gael-Linn, an organisation whose main aim is to foster and promote the Irish language and its heritage throughout Ireland as a living language and to establish enterprises on both sides of the border. He was closely involved in the setting up of the first Irish medium school in Belfast in the early 1970s and he continued to be instrumental in the setting up of further Irish medium schools throughout Northern Ireland.

He had a huge social conscience and as a result was one of the key people involved in the rebuilding of Bombay Street following its destruction in 1969 and was also closely involved in the setting up of Ballymurphy Enterprises and Whiterock Industrial Estate, providing crucial employment in the early 1970s to an area of high unemployment.

He was a quiet, thoughtful, scholarly man who was a member of the Belfast Literary Society. In addition, he loved to research the many aspects of Ulster Irish and published many works of poetry, fiction and intellectual treatises on this. He will be missed by all his friends and colleagues, although his loss will be felt the most by his family to whom he was so devoted. He is survived by his wife, Ann, four children and nine grandchildren.

Below is the obituary which was published by the Irish Times on 15 November 2008. This is reproduced with the kind permission of the Irish Times.

Gaeilgeoir and advocate for people ‘of no property’

JAMES CHRISTOPHER Napier (Seamus de Napier), who has died aged 71, practised as a solicitor in Belfast for many years and served as Taxing Master to the Northern Ireland Supreme Court from 1990 until his retirement from that post in 2007.

Coming from a prominent Belfast legal family (his brother, Sir Oliver Napier, was founding leader of the Alliance Party), he possessed a high energy level and a remarkable versatility as devoted husband and father, lawyer, creative writer and historian.

He had a particular life-long devotion to Irish language and culture and was a soft-spoken but fierce advocate for the “men (and women) of no property”.

He was instrumental in highlighting defects in civil unrest legislation in the North and his work in this area helped lead to the eventual suspension of the Civil Authorities (Special Powers) Act (Northern Ireland), 1922.

He was known by his nickname Kit and cut a distinctive figure in Belfast legal circles, always wearing an fàinne ór and Pioneer pin. Once challenged that this overt display of identity might prejudice his client’s case, he replied that such an attitude might speak more of the Establishment than of him.

Raising his own family with Irish in the unpromising ground of east Belfast in the 1960s, he knew that Irish could be used in daily life amongst neighbours and the wider community. He became the unofficial - frequently unpaid - solicitor to the Irish language community in Belfast.

At the start of the 1960s, he facilitated a large number of people who wanted to change their names to the Irish version and he was one of those who helped to establish the Shaw’s Road Gaeltacht in west Belfast.

According to Lá Nua, the Irish language newspaper: “Fear ildánach a bhí Séamus mar athair cloinne, scoláire, dlíodóir, úrscéalaí agus stairí den scoth, ach thar aon ní eile bhí sé ina Ghaeilgeoir díograsach a chaith a shaol ag saothrú i ngort na hathbheochana.”

(Séamus was a versatile individual, whether as family man, scholar, lawyer, novelist and an accomplished historian but more than anything else he was an enthusiastic Irish language speaker who spent his life working for its revival and everyday use).
Shocked by the outbreak of the Troubles in August 1969 and the destruction of Bombay Street, he and other members of lucht na Gaeilge rebuilt the street, the first families returning to their homes in June 1970, 10 months after it was razed.

He was also one of those who took part in the tortuous negotiations with the pre-1972 Stormont government, leading to the establishment of the first Irish-medium primary school, Bunscoil Feirste.

He also helped establish the Whiterock industrial estate, the first initiative of its kind in west Belfast, as well as a knitwear factory in Ballymurphy, which at the time had the highest unemployment in Western Europe.

When he and his family moved to Downpatrick he became active in Cumann Ghaelach Leath Chathail and the Irish-medium nursery and primary school in the area, as well as the Lecale Historical Society.

His commentaries on Turas Phádraig, which described the saint’s second landfall in Ireland, was both informative and entertaining.

He researched Aodh MacAingil, the Franciscan monk from Downpatrick who became Archbishop of Armagh in 1626. He published poetry, novels and intellectual treatises on Ulster Irish. He also served on committees of Comhchaidreamh na Mac Léinn, and Comhdháil Náisiúnta na nGael.

His astute political instinct sensed that the direct-rule British government of the 1980s could provide public funding for the Irish language if a suitable vehicle could be established, and this led him to found Iontaobhas Ultach with an endowment of many hundreds of thousands of pounds.

In 2000 he was one of the founding members of Iontaobhas na Gaeilge.

The work of these bodies has contributed greatly to the current thriving position of Irish-medium education in Northern Ireland.

He is survived by his wife Ann, children Séamus, Stiofán, Róismhuire and Clíona and nine grandchildren.

James Christopher Napier: born November 6, 1936; died November 1, 2008

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Norman McCall 1934 - 2008

Norman McCall was born in Newry on 10 April 1934 and died on 11 July 2008 at the Royal Victoria Hospital Belfast.

He graduated from Queen’s University Belfast in 1956 and went on to serve his apprenticeship in the firm of J W McNinch & Son in Larne. In 1959 he received a special award from the Law Society in his final examinations and was admitted to the Roll of Solicitors in October of that year.

He commenced his career as a solicitor in Ballymena from 1959 until 1960 and thereafter he came to Ballyclare to practise in the firm of J W McNinch & Son. He subsequently became a partner in the firm until his retirement in 1998 when he was senior partner.

During his career he was Town Solicitor for Newtownabbey Borough Council from its inception in 1972. He served on the Legal Aid Committee and was also a Chairman of Appeals Tribunals.

In 1959 Norman received a special award from the Law Society in his final examinations and was admitted to the Roll of Solicitors in October of that year.

Norman is survived by his wife Rosemary, son Philip (solicitor) and two daughters Jane and Jennifer.

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High Court and Court of Appeal Decisions

ADMINISTRATION OF JUSTICE

IN THE MATTER OF AN APPLICATION [NO. 2] BY HAZEL ANNE GIBNEY FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

Police officer – member of the RUC Part Time Reserve Force. – injury on duty. – application for injury on duty benefit. – refusal. – reasons for refusal. – Regulation A10 Royal Ulster Constabulary Pension Regulations 1988. – definition of “member”. – part time Reserve Constables excluded. – Royal Ulster Constabulary Reserve (Part Time) (Appointment and Conditions of Service) Regulations 1996. – Police Service of Northern Ireland Reserve (Part Time) Regulations 2004. – application for judicial review. – discontinuance of judicial review. – Tribunal proceedings under the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000. – function of the Tribunal. – attempted resurrection of judicial review proceedings. – delay. – misuse of process. – presence or absence of public law element. – HELD that these are not public law proceedings, that the application for leave to apply for judicial review has not been brought promptly and there is no good reason for extending time and the application is a misuse of Court process. – leave for judicial review refused and application dismissed

HIGH COURT
18 DECEMBER 2008
MCCLOSKEY J

CONTRACT

FEDERAL SECURITY SERVICES LIMITED V NORTHERN IRELAND COURT SERVICE AND RESOURCE (NI) LIMITED

Contractual provision of security and ancillary services in 23 courts throughout Northern Ireland. – Court Service aborted the tendering process since it considered that the instructions and statement of requirements issued to tenderers were insufficiently precise regarding the requirement to hold a licence to provide security services. – whether this decision was unlawful and in breach of EU law and the Public Contracts Regulations. – plaintiff seeks an order annulling the impugned decision and an order requiring the defendant to complete the aborted competition, award the contract on that basis or, alternatively, award damages. - HELD that a reasonably well informed and normally diligent tenderer could have construed and understood the instructions to tenderers in various ways and that the impugned decision was proportionate and lawful

HIGH COURT
19 FEBRUARY 2009
MCCLOSKEY J

GEORGE MCCURRY V FREDERICK DAVID CHAMBERS, HUGH ROBERT CHAMBERS AND CHAMBERS HOMES LIMITED

Appeal by case stated from a decision of a Deputy County Court Judge adding the appellant as a third defendant in civil bill proceedings brought by the plaintiff respondent against the first and second defendants. - breach of contract and negligence in and about the building of a dwelling house and conservatory. - whether the claim against the appellant was statute barred, and an application to add the appellant as a party to the proceedings constituted the making of a new claim by the respondent. - appellant had been omitted as a party when proceedings were drafted in error, although the defendant’s solicitor had alerted the respondent’s solicitor to the error. - appeal allowed

COURT OF APPEAL
23 JANUARY 2009
KERR LCJ, GIRVAN LJ, COGHLIN LJ

O’KANE POULTRY LIMITED V GARTH HENRY

Order for specific performance of an agreement of indemnity and a separate deed made between the parties. - whether the defendant, as director of each beneficiary company, had been guilty of breach of contract in failing to take steps to call a meeting or seek a special resolution placing the various companies in the group into a members voluntary liquidation. - whether the defendant should make a statutory declaration that he had formed the opinion that the relevant company would be able to pay its debts in full together with interest at the official rate within a period not exceeding twelve months from the commencement of the winding up. - whether the court could be satisfied that the director should reasonably come to the conclusion on the material before him that the indemnity will be met within the requisite period. - construction of the indemnity agreement. - HELD that the application for specific performance must fail

HIGH COURT
11 DECEMBER 2008
GIRVAN LJ

AN APPLICATION FOR JUDICIAL REVIEW OF DECISIONS OF THE NIO PROCUREMENT UNIT BY FEDERAL SECURITY SERVICES LTD

Application for leave to apply for judicial review of the decision of the NIO Procurement Unit to abandon and re-stage the competition for the provision of security and ancillary services to the Northern Ireland Court Service. – whether the decisions were irrational and unlawful. – successful contractor did not have a valid security licence at the time of the submission of its application, and procedure abandoned. - whether breach of Public Contracts Regulations 2006. – whether the applicant could show an arguable case with a reasonable prospect of success. - HELD that the applicant has not established an arguable case with a reasonable prospect of success and application for leave dismissed

HIGH COURT
8 JUNE 2007
MORGAN J
High Court and Court of Appeal Decisions

D G WILLIAMSON LIMITED AND NORTHERN IRELAND PRISON SERVICE AND NORTHERN IRELAND OFFICE

Building and engineering contracts - works carried out by the plaintiff which gave rise to the issuing of disputed invoices. - plaintiff initiated the adjudication procedures contained in the Construction Contracts (NI) Order 1997 which resulted in the adjudicator ordering the defendants to pay a sum of money to the plaintiff. - whether the adjudicator had jurisdiction to determine the dispute on the ground that the Notice of Adjudication issued by the plaintiff referred only to the original contract and not to any further or extended contract applicable. - whether the contract was not a “contract in writing” as required by the 1997 Order and therefore was not subject to the provisions of the Order. - whether any valid award should be refused by the Court on the ground that the Notice of Adjudication issued to the plaintiff had not been served in accordance with the provisions of the Order. - history of the contractual relationship. - whether, by not receiving written confirmation of the acceptance of the offer to extend the terms of the contract, it was not a contract in writing. - HIGH COURT
27 JANUARY 2009
MCLAUGHLIN J

CRIMINAL LAW

AN APPLICATION FOR JUDICIAL REVIEW BY CD (NO.2)

Application for judicial review of a decision of the Life Sentence Review Commissioners by which they failed to direct the release on licence of the applicant who was a life sentence prisoner. - whether the decision of the Commissioners was unreasonable and unlawful in that coming to their decision the Commissioners took into account an irrelevant factor and/or applied an incorrect test. - whether the decision violated the applicant’s ECHR rights in failing to provide the applicant with a speedy determination of the lawfulness of the current detention. - whether the applicant was a relevant or dangerous risk to justify his continued status as a sentenced prisoner. – whether there was a sufficient causal connection between the original objectives of the sentencing court and the continuing detention of the applicant. - application dismissed
HIGH COURT
23 JANUARY 2009
WEATHERUP J

R V CIARAN GERARD CORBETT AND MICHAEL ANTHONY CORBETT

Sentencing. - defendants pleaded guilty to manslaughter and common assault. - personal circumstances of the defendants. - risk of harm and likelihood of re-offending. - sentencing guidelines to the offence of manslaughter. - aggravating and mitigating factors. - HELD that the first defendant be sentenced to 2 years and 9 months imprisonment and the second defendant be sentenced to 6 months imprisonment suspended for 2 years
CROWN COURT
20 FEBRUARY 2009
STEPHENS J

R V KRISTOPH EMMANUEL ALAUYA

Sentencing. - defendant pleaded guilty to murder, rape and theft. - minimum term to be served before consideration for release. - aggravating and mitigating factors. - HELD that the minimum term to be served is 22 years before being eligible for consideration for release and be ordered to sign the sex offenders register for life
CROWN COURT
29 JANUARY 2000
WEIR J

R V RONALD J CRAIG AND JAMES D H SPEERS

Appeal against murder conviction. - application for a direction that there was no case to answer in respect of the first defendant since there was no evidence of participation in the attack on the deceased. - reliability of evidence. - whether evidence contaminated. - whether the trial judge should have excluded the identification evidence. - HELD that conviction safe and should be upheld
COURT OF APPEAL
23 MAY 2007
KERR LCJ, CAMPBELL LJ, NICHOLSON J
R V GRAHAM RICHARD HARKNESS

Appeal against sentence. - appellant jointly charged with murder and possession of an article for the purposes of terrorism contrary to s.57 Terrorism Act 2000 and both accused pleaded not guilty. - Crown applied not to proceed with murder charge. - accused pleaded guilty to possession and was sentenced to 7 years imprisonment. - whether the learned Judge had erred in principle by failing to take adequate account of the fundamentally different factual circumstances between the offences to which the co-accused and the appellant had pleaded guilty and the significantly lesser degree of culpability on the part of the appellant. - whether the sentence of 7 years imprisonment was, in itself and quite separately from any comparison with that imposed upon the co-accused, manifestly excessive. - HELD that the respective degrees of culpability reflected by the differing activities of the appellant and his co-accused did not warrant any degree of distinction in terms of sentencing and appeal dismissed.

COURT OF APPEAL
5 DECEMBER 2008
KERR LCJ, HIGGINS LJ, COGHLIN LJ

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R V GEORGE IGNATIUS MARTIN AND MARY MARTIN

Sentencing. - defendants charged under Forgery and Counterfeiting Act 1981 of forgery and using a forged instrument in relation to the forgery of signatures upon 2 documents which were prepared to carry out a transfer of the share of property of the mother of the first defendant to the second defendant. - defendants refused to allow the mother of the first defendant to return home after a spell in hospital and a place was found for her in a nursing home. - defendants took advantage of being in sole ownership of the house to obtain a large amount of money by way of remortgaging the property. - whether the first defendant’s mother was aware that the procedures to transfer her interest in the house was taking place. - defendants’ motives for not allowing the first defendant’s mother back into the house. - aggravating and mitigating factors. - HELD that the defendants be sentenced to 6 months’ imprisonment.

CROWN COURT
13 FEBRUARY 2009
HART J

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R V LANA TERESA O’NEILL

Sentencing. - murder. - whether a minimum term of imprisonment should be imposed before consideration for release. - whether there should be a reduction in the normal starting point to reflect reduced culpability falling short of diminished responsibility. - aggravating and mitigating factors. - HELD that the minimum term the defendant serve be fixed at 10 years before consideration for release.

CROWN COURT
26 JANUARY 2009
WEATHERUP J

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R V PROCTOR

Sentencing. - defendant pleaded guilty on the basis he was a participant in a joint enterprise, to grievous bodily harm with intent and attempted grievous bodily harm with intent, and pleaded not guilty to attempted murder, which was ordered to lie on the file and not to be proceeded with without the leave of the Crown Court or Court of Appeal. - whether it could be proved beyond reasonable doubt that the defendant kicked or stamp on the head of the injured party. - aggravating factors including the fact it was a pre-meditated sectarian attack, the injuries were caused by kicking or stamping on head, the extreme severity of the results of the injuries inflicted on the most seriously injured party, leaving him in a probable vegetative state. - mitigating factors including the age of the defendant who had a clear record and pleaded guilty at the commencement of the trial. - HELD that the defendant be sentenced to a custody probation order of 12 years’ detention followed by one years’ probation.

CROWN COURT
6 FEBRUARY 2009
HART J

---

R V VAIDOTAS STIRBYS AND RICARDAS STONKUS

Defendants pleaded guilty to charges of manslaughter and assault occasioning actual bodily harm. - aggravating and mitigating factors. - HELD that the first defendant be sentenced to 4 years’ imprisonment and automatic deportation and the second defendant be sentenced to 240 hours community service with no recommendation for deportation.

CROWN COURT
15 JANUARY 2009
HART J

---

R V SUBRYAN

Sentencing. - defendant pleaded guilty to charges of threats to kill and kidnap and indecent assault and rape against 3 women over a 2 day period. - aggravating and mitigating factors. - HELD that the defendant be sentenced to 18 years imprisonment and be deported on release.

CROWN COURT
6 FEBRUARY 2009
HART J

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ATTORNEY GENERAL’S REFERENCE (NUMBER 1 OF 2009) GARETH MCCAUHAN

Sentencing. - offender pleaded guilty to the offence of causing death by dangerous driving and was sentenced to a custody probation order of 18 months’ detention in the Young Offenders’ Centre and twelve months’ probation. - Attorney General sought leave to refer the sentence on the ground that it was unduly lenient. - aggravating factors which included excessive speed and a pattern of dangerous driving before the incident. - mitigating factors which included the personal background of the offender and the remorse expressed. - HELD that the sentence imposed was not outside the established guidelines and application dismissed.

COURT OF APPEAL
16 JANUARY 2000
KERR LCJ, HIGGINS LJ, GIRVAN LJ
High Court and Court of Appeal Decisions

DAMAGES

APPLICATIONS FOR JUDICIAL REVIEW BY PAUL UDU AND NYENTY VALENTINE

Court had held that the detention and removal of the 2 applicants from the UK on the grounds of deception was unlawful. - damages for compensation for wrongful imprisonment which flowed from the Immigration Service’s decision to detain them and require them to leave the country. - claim for psychiatric injuries and post traumatic stress disorder due to the applicants’ humiliating experiences during detention

HIGH COURT
11 JANUARY 2008
GIRVAN LJ

SEAN DEVINE V DANIEL MCAITEER AND GAVIN MCGILL

Damages for loss and damage sustained by the plaintiff by reason of the negligence, breach of contract and breach of fiduciary duty in and about the management of Roe Developments Limited as a company within the rules of the Enterprise Investment Scheme. - plaintiff contends he lost tax relief with interest which he was required to pay to HMRC because of a breach of the enterprise investment scheme regulations and statutory provisions in connection with his investments in Roe Development Limited. - duty of care owed to the plaintiff as his accountant and tax adviser. - duty of care owed by the first defendant as a director of Roe Developments Limited. - HELD that the defendant was found against in tort and contract in that he failed to ensure that the monies were employed in a way consistent with the statutory requirements

HIGH COURT
18 DECEMBER 2008
DEENY J

DISCOVERY

R V DANIEL MORRISON

Matter referred by the Criminal Cases Review Commission to Court which read all confidential annexures and concluded that the convictions of the appellants could not be regarded as safe and quashed the convictions. - whether Court should disclose the reasons for the quashing of the convictions. - at two private hearings the Court concluded that it is not possible for it to disclose all of the reasons that led to the quashing of the convictions, and the judgment is delivered with these constraints. - highly relevant material had not been made available to the DPP who was therefore not in a position to give full and proper consideration to whether the appellants should stand trial on those charges. - appellants deprived of the opportunity of applying for a stay of proceedings which would likely have succeeded

HIGH COURT
12 JANUARY 2009
GIRVAN LJ, HIGGINS J

FAMILY LAW

RE C1, C2 AND C3 [CHILD’S EVIDENCE: INTERVIEWS]

Threshold hearing in relation to an application for a Care Order in respect of 3 children. - allegations of child abuse and inappropriate sexual behaviour between siblings. - domestic violence. - Care Order currently made against siblings. - Mother had signed a document which showed evidence of significant neglect and exposure to violence which would have had a significant effect in the children and which would have been sufficient to engage the threshold. - Trust contends there are 4 additional matters on which the Court should make a finding in relation to inappropriate punishments. - disclosure of evidence made by children at Child Contact Centres which was not videotaped. - HELD that the additional matters cannot be proved to the standard of proof required although threshold conditions have been established

HIGH COURT
6 FEBRUARY 2009
MORGAN J

EXTRADITION

IRENE ROZAI TiEN E V THE REPUBLIC OF LITHUANIA

Appeal under s. 26(1) of the Extradition Act 2003 against a decision to order the appellant to be extradited to the Republic of Lithuania. – European Arrest Warrant had been issued in Lithuania in respect of the appellant seeking her arrest in relation to misappropriation of money. – appellant arrested and remanded in custody. – Judge ruled that no bar to extradition had been established and that the extradition would be compatible with the appellant’s ECHR rights. – whether the Judge erred in law in his application of the burden and standard of proof to the determination of the application by the respondent for the extradition of the appellant. – whether the Judge erred in that he failed to attach appropriate weight to the evidence of the applicant in that it would be unjust or oppressive to be extradited due to the passage of time and the appellant’s assertions about the Lithuanian policing and criminal justice system with regard to human rights. – appeal dismissed

HIGH COURT
6 JANUARY 2009
KERR LCJ, HIGGINS LJ, COGHIN LJ
RE JJ (WELFARE; NON-ACCIDENTAL INJURY; HEROIN ABUSE)
Application for a Care Order by the Trust in respect of a child whose mother had a history of heroin abuse. and is currently in foster care - child received a referral from the hospital social worker prior to its birth because an older sibling had died suddenly. - child admitted to hospital with a range of non-accidental injuries. - threshold for Care Order. - likelihood of significant harm. - whether interference with family life in breach of ECHR. - HELD that there would be significant risks to the physical and emotional welfare of the child if reunification with his mother is attempted, but there should be no reduction in contact between mother and child
HIGH COURT
4 FEBRUARY 2009
MORGAN J

RE R (SHARED RESIDENCE APPLICATION) (No 2)
Second application for a Shared Residence Order. - first application concluded that a Shared Residence Order was not in the best interests of R. - preliminary issue as to whether the cases were identical - preliminary issue as to whether the care proceedings should be stayed pending the decision in criminal proceedings. - whether the care proceedings should be stayed and that no documents held by the Court relating to the proceedings can be disclosed to anyone without a request for leave to disclose, and that the respondent be directed to file a statement in response to case made by the Trust. - HELD that the care proceedings should not be stayed and that documents held by the Court relating to the proceedings can be disclosed to anyone without a request for leave to disclose, and that the respondent be directed to file a statement in response to case made by the Trust
HIGH COURT
5 JUNE 2001
HIGGINS J

SOUTH AND EAST BELFAST HEALTH AND SOCIAL SERVICES TRUST V DW
Applications for care orders in respect of 6 sons of the respondent who are currently the subject of interim care orders. - allegations of sexual abuse and neglect. - decision awaited as to whether the DPP will mount a prosecution following an RUC investigation. - whether care order proceedings should be heard in advance of the criminal proceedings. - precedence in civil and criminal proceedings. - whether the care order proceedings should be halted given that the boys will not be cross-examined but video evidence be relied on instead. - whether breach of ECHR. - admissibility of hearsay evidence and videotaped interview in care order proceedings. - whether absolute right to cross-examine in civil cases. - rights and welfare of children. - whether the respondent should be directed to file a statement of evidence which she proposes to give or whether the care proceedings should be stayed pending the decision in criminal proceedings. - HELD that the care proceedings should not be stayed and that documents held by the Court relating to the proceedings can be disclosed to anyone without a request for leave to disclose, and that the respondent be directed to file a statement in response to case made by the Trust
HIGH COURT
4 FEBRUARY 2009
MORGAN J

HEALTH AND SAFETY
R V BELFAST CITY COUNCIL
Sentencing. - Belfast City Council pleaded guilty to a single count of failing to discharge in its duty to conduct its undertaking in such a way as to ensure, so far as reasonably practicable, that persons not in their employment who may be affected thereby were not exposed to risks to their health or safety in contravention to the Health and Safety (NI) Order 1978. - employee was crushed to death at landfill site, and a Health and Safety Executive report had revealed breaches in the Council's duty to ensure the health and safety of persons at the landfill site and that there were no banksman on duty at the tip-head to control or co-ordinate movements of visitors and bulldozers. - HELD that a fine of £40,000 be imposed on the Council
CROWN COURT
30 JANUARY 2009
HART J

FIREARMS
Applications for judicial review of decisions made by the Chief Constable of the Police Service of Northern Ireland and the Secretary of State for Northern Ireland in relation to the issue of firearm certificates to both applicants who are father and son. - PSNI believed the father associated with members of a dissident republican organisation. - whether the PSNI refused to provide adequate information as to the basis of the allegation. - declaration sought that the decision of the Secretary of State refusing applicants’ appeal was unlawful. - declaration sought that the decision of the PSNI to refuse to provide information on the basis of the allegation that his father associates with the CIRA is unlawful. - orders of certiorari sought to quash the decisions of the Secretary of State and the PSNI and order to compel the PSNI to provide information. - application to amend relief sought and judicial review grounds. - whether the applicants had been given sufficient information to enable them to make informed representations to the Secretary of State. - HELD that application to amend refused and applications for judicial review refused
HIGH COURT
27 APRIL 2007
GILLEN J
High Court and Court of Appeal Decisions

HUMAN RIGHTS

KENNETH CALLAGHAN V INDEPENDENT NEWS AND MEDIA LIMITED

Joined actions against the defendant.
- injunction sought in the first action to restrain Independent News Media to publish unpixelated photographs of the plaintiff from which he could be identified, or publishing any information that would identify his whereabouts.
- declaration sought in the second action that the defendant may not lawfully publish a photograph of any serving prisoner who is or has been assessed at the plaintiff’s Prisoner Assessment Unit unless it has been obscured. – whether as a sex offender who has committed murder there is a risk to his life if unpixelated photographs are published. – defendant wishes to publish the photographs to enable the public to take precautions in respect of the risk he poses. – whether misuse of private information and harassment. – whether the proposed actions of the defendant are capable of being restrained as an interference with its statutory responsibility. – application of ECHR and expectation of privacy. – freedom of expression. – legitimate public interest

HIGH COURT
7 JANUARY 2009
STEPHENS J

INQUESTS

AN APPLICATION FOR JUDICIAL REVIEW BY THE CHIEF CONSTABLE OF THE POLICE SERVICE FOR NORTHERN IRELAND AND IN THE MATTER OF A DECISION BY HER MAJESTY’S SENIOR CORONER FOR NORTHERN IRELAND IN RELATION TO THE INQUEST INTO THE DEATH OF PATRICK PEARSE JORDAN DECEASED

Application by the Chief Constable for leave to apply for judicial review in respect of a decision by the Senior Coroner made in connection with the inquest whereby he determined that the Chief Constable should provide him with a copy of the police report into the death of Patrick Pearse Jordan. - whether the investigating police officer’s report includes matters of opinion, comment, assessment, conclusions and recommendations which do not constitute information within s. 8 Coroners Act 1959. - whether an inevitable consequence of an examination of the investigating officer’s report would be the consideration of matters of civil or criminal liability. - whether the coroner needed to see this material in order to determine the scope of the inquiry. - whether the representatives of the applicant had already provided the coroner with witness assessments expressing opinions about the reliability of various proposed witnesses. HELD that none of the applicant's grounds have been met and application dismissed

HIGH COURT
18 DECEMBER 2008
WEATHERUP J

INSURANCE

DONALD CLEARY V PAUL ROWLAND AND HIGHWAY INSURANCE COMPANY LIMITED

Plaintiff injured whilst having a motor cycle lesson under instruction provided by the first-named defendant. - Master had ordered that the issue of liability, as between the defendants only, be tried as a preliminary issue as to whether the first-named defendant is entitled to be indemnified by the second-named defendant and/or the liability of the second-named defendant under the provisions of the Road Traffic (NI) Order 1981. – whether person under instruction is a third party. - whether the certificate of motor insurance specifically covers driving tuition and examination. - whether the insurance covered the actions of the first-named defendant as a rider of the motorcycle. - definition of “in charge”. - HELD that the terms of the policy do allow for cover for the plaintiff’s injury and that the plaintiff cannot be regarded as a third party

HIGH COURT
9 JANUARY 2009
TREACY J

JUDICIAL REVIEW

AN APPLICATION BY PAUL ANTHONY PETER ARKINS FOR JUDICIAL REVIEW

Application for judicial review of the decision of the Police Appeals Tribunal dismissing an appeal by the applicant against a finding of the Police Service of Northern Ireland Misconduct Panel at first instance and a review by the Chief Constable that the applicant be required to resign as a constable as a result of a drink driving conviction whilst off duty. - whether the appellate process as was applied to the applicant was unlawfully fettered since it stipulated a prescribed sanction and fettered the discretion of the disciplinary panel. - whether there is a conflict in the General Orders of the PSNI on the issue. - HELD that the Misconduct Panel and the Police Appeals Tribunal treated the general Order as a guidance only and there was no fettering of discretion as to the sanction to be imposed on...
the applicant, and that the Panel and Tribunal remained responsive to the circumstances of the particular case. - application dismissed

HIGH COURT
19 DECEMBER 2008
WEATHERUP J

MENTAL HEALTH

AN APPLICATION FOR JUDICIAL REVIEW OF THE PRISON SERVICE OF NORTHERN IRELAND AND THE DEPARTMENT OF HEALTH FOR NORTHERN IRELAND

Application for judicial review with regard to an alleged repeated failure to provide the applicant with adequate treatment when in the custody of the first respondent or living in the community. - applicant suffers from a personality disorder, and complains that treatment in a specialised unit was not available in the prison system of Northern Ireland. - whether this amounted to breach of duty by the respondents. - whether the respondents sufficiently attempted to address the applicants’ psychological and social difficulties. - HELD that the respondents acted reasonably to the prisoner in their care and

application refused
HIGH COURT
12 SEPTEMBER 2008
DEENY J

AN APPLICATION FOR JUDICIAL REVIEW BY X NO.2

Applicant had been detained under the Mental Health (NI) Order 1986. - application to challenge the decision of the Mental Health Review Tribunal for Northern Ireland which had been satisfied that the applicant suffered from severe mental impairment, but was not satisfied that the applicant’s discharge would create a substantial likelihood of serious physical harm to himself and to others and directed the applicant’s discharge, deferred for 6 weeks to enable a suitable care package to be put in place. - whether the Trust acted lawfully to defer discharge for 6 weeks. - construction of a.77(1) Mental Health (NI) Order 1986. - whether the acceptance or rejection of a care package was entirely at the discretion of the applicant and the Tribunal’s conclusion reached despite the absence of the care package. - HELD that the Tribunal did not have power to direct the discharge of the applicant at a future date in circumstances where there is a mandatory duty to discharge the applicant. - declaration granted that the decision of the Tribunal to direct the discharge of the applicant at a future date was unlawful
HIGH COURT
9 JANUARY 2009
STEPHENS J

NEGLIGENCE

KATHLEEN SHAW V DOCTOR DIARMUID DE BURCA

Proceedings by plaintiff for personal injuries, loss and damage sustained by her by reason of alleged negligence of the defendant, whom she consulted as a registered general medical practitioner, in and about the provision of medical care and advice for her. - defendant was a doctor at a centre for general practitioners to provide out of hours service to patients. - whether the defendant in this case has been proved to be guilty of such failure of care as no doctor of ordinary skill and competence would be guilty of if acting with ordinary care. - whether the defendant’s assertions as to the standard of care put the patient at risk. - defendant suffered a
sub-arachnoid haemorrhage (SAH). - whether the defendant applied the appropriate standard of care by failing to diagnose the SAH or failed to consider it as a possibility and refer the plaintiff to hospital, given the symptoms presented to him. - HELD that on the balance of probabilities the defendant was not negligent in any of the respects relied on by the plaintiff and that his diagnosis was reasonable and did not require reference for further hospital treatment and plaintiff’s case dismissed
HIGH COURT
16 DECEMBER 2008
GILLEN J

REAL PROPERTY

SARAH JOSEPHINE GRACEY V ROBIN BECK
Relief by way of order of sale of premises pursuant to Partition Acts 1868 - 1876 and order that proceeds of sale be divided in accordance with respective equitable interests of plaintiff and defendant. - declaration sought that plaintiff is the sole beneficial owner. - declaration of ownership of various items. - whether there was at any time sufficient clarity of common intention that the plaintiff can establish that she has acted to her detriment in reliance upon a declaration or an express or implied promise that she would take an interest in the property. - HELD that a declaration is made that the plaintiff is the sole beneficial owner of items listed in the judgment and defendant pay the plaintiff £10,338.20
HIGH COURT
12 NOVEMBER 2008
ELLISON M

NORTHERN IRELAND HOUSING
EXECUTIVE V NOEL GALLAGHER
Adverse possession. - plaintiff seeks possession of lands and injunction restraining the defendant from trespassing on said lands. - limitation of actions to recover land. - establishment of sufficient ownership and intention in adverse possession. - whether the plaintiff owned legal title to land on which the defendant had been keeping horses for a number of years. - HELD that the defendant has not achieved the necessary 12 years adverse possession, the plaintiff is entitled to an order for possession of lands and the defendant’s counter claim for a right of way to the property is rejected
HIGH COURT
22 JANUARY 2009
DEENY J

SUCCESSION

IN THE ESTATE OF JAMES DONNELLY (DECEASED) BETWEEN BERNADINE MARY HEGARTY AND MARY ELIZABETH COLLINS
Action arising out of the death of James Donnelly who died intestate. - plaintiff claims to be to be the daughter of the deceased and seeks relief accordingly. - DNA testing indicated that the plaintiff was the daughter of the deceased. - HELD that the plaintiff has discharged the onus, on the balance of probabilities, that she is the daughter of the deceased, and that relief ordered accordingly
HIGH COURT
13 JANUARY 2009
MCCLOSKEY J
Skiing Accidents

**Legislation**

**Package Travel, Package Holidays and Package Tours Regulations 1992 (SI 1992/3288)**

These Regulations implement Council Directive 90/314/EEC on package travel, package holidays, and package tours. They control the sale and performance of packages sold or offered for sale in the UK. The Regulations also set out what information must be given to the consumer before the contract is concluded (including information to be in brochures, where one is published) and information which must be given to the consumer before the package starts. They also lay down terms which must be included in the contract and prescribe the circumstances in which price revisions may be made.


**The Package Travel, Package Holidays and Package Tours (Amendment) Regulations 1998 (SI 1998/1208)**

Subject to transitional arrangements in relation to brochures, these Regulations amend the Package Travel, Package Holidays and Package Tours Regulations 1992 (SI 1992/3288) to bring the wording into line with that of Council Directive 90/314/EEC on package travel, package holidays, and package tours (OJ No. L158, 13.6.1990, p.59). In the requirements to provide information in brochures and before conclusion of contracts references to British Citizens are replaced by references to nationals of the member State or States concerned.


**Articles**

**Piste off** (Considers the circumstances in which liability may arise in negligence for skiing accidents)

Young: 2006 SJ 150 (11), 356

Mixed reaction to ruling on British skier who crashed into tree in the Alps (Comments on Anderson v Lyotier (t/a Snowbizz) on whether a French ski instructor was liable to pay damages to a British skier who was paralysed after an off piste accident while on a package holiday at a French ski resort)

2008: S.J. 152(47), 6

Excursions and ski packs revisited (Examines the liability of tour operators for the provision of excursions and other services sold by local representatives in resorts)

Chapman: 2005 I.T.L.J. 1, 7-11

Liability for accidents on school trips (whether a school was liable for the paralysis suffered by a school pupil whilst skiing off piste on a skiing trip when he had been reprimanded on a previous occasion for a similar incident. – considers the Chittock v Woodbridge School case)


Skiing and the law: Part 1 (the legal effect of the codes issued by Federation Internationale de ski for skiers)

Maxlow-Tomlinson: 1997 I.T.L.J. 2, 77-81

Ireland: legal duty owed by ski-tour operator to its customers to provide information about the facilities on offer in ski resorts (considers the O’Flynn v Balkan Tours case unreported)

Schuster: 1997 Consum. L.J., 5(1), CS5-6

**Caselaw**

**Anderson v Lyotier and another (t/a Snowbizz)**

Skiing holiday – Claimant sustaining serious injuries whilst skiing in off-piste area. – Claimant alleged negligence against tour operator and ski instructor – Whether injuries foreseeable – Whether ski instructor at fault – Whether claimant liable for own misfortune – Court ruled that claimant should have told defendant that what he was being asked to do was beyond his capabilities and also defendant should not have encouraged the claimant to ski off-piste. - Apportionment of liability was required. [2008] All ER (D) 216 (Nov); [2008] EWHC 2790 (QB)

**Lyon v Jarvis Hotels.**

Proof of negligence. – Claimant who was a moderately experienced skier visited dry slope ski centre. – claimant undertook two runs and on the third run was unable to stop on the slippery mats and sustained a fracture and dislocation of the left shoulder. – claim dismissed as claimant was travelling too fast and there was no evidence to suggest the matting was worn as centre staff were diligent in regard to safety concerns [2002] All ER (D) 348 (Oct).

**Derbyshire v First Choice Holidays & Flights Ltd (unreported)**

D on package holiday with First Choice which included accommodation, return flights, hotel transfer and the services of a local representative. – D booked skiing equipment and lessons (the ski pack) with a local business on arrival. – D had used the skiing equipment on his first lesson with no problems but when trying a simple turn he injured his leg. – D had been given the wrong size boot. - Held, that the purchase of the ski pack was not regulated in accordance with the 1992 Regulations because it was not pre arranged or inclusively priced and was sold separately outside the United Kingdom.

**Moores v Snow Dome Ltd (unreported)**

Action for personal injury. – M had been injured in an indoor skiing venue during a snowboarding...
lesson and sustained wrist fractures. – M claimed that there had been insufficient covering of snow causing ice. – defendant had given evidence as to the maintenance of the piste which the judge was satisfied with. – Held that conditions were not such as to have represented a breach of the duty of care and although there might at times be patches of ice forming in the snow, that did not constitute a failure to take reasonable care.

Chittock v Woodbridge School
C sought to recover damages from W, for personal injuries sustained during a skiing trip. - C, suffered low paraplegia as a result of his spinal injuries. - whether failure by school to provide appropriate supervision or to monitor his skiing or to provide appropriate instruction. – C had been previously reprimanded by teachers for skiing off-piste – Held that failure of the teachers to impose real sanctions after the off-piste incident was a breach of the duty of care owed by the school to C. - however, C was 50 per cent to blame for the accident as he was out of control and was travelling too fast at the material time. [2002] P.I.Q.R. P13

Costelloe v Thomson Tour Operations Ltd (unreported)
C injured as a result of the negligence of a ski lift operator while on a package holiday in Italy. - ski lift pass bought from the same travel agent through which he had also bought the package holiday. - T, maintained that the pass did not form any part of the package and that there was no commercial link between itself and the lift operator. - Held, giving judgment for T, that the pass was not part of the package and had not been sold by T, and T had not arranged for the purchase of the pass, as it had been supplied by the travel agent.

Websites
International Ski Federation
Useful information on how to ski safely, as well as rules of conduct for skiing (see below)
http://www.fis-ski.com/

Costelloe v Thomson Tour Operations Ltd (unreported)
C injured as a result of the negligence of a ski lift operator while on a package holiday in Italy. - ski lift pass bought from the same travel agent through which he had also bought the package holiday. - T, maintained that the pass did not form any part of the package and that there was no commercial link between itself and the lift operator. - Held, giving judgment for T, that the pass was not part of the package and had not been sold by T, and T had not arranged for the purchase of the pass, as it had been supplied by the travel agent.

Textbooks
The Library has a selection of travel law textbooks, which although do not deal specifically with skiing accidents do have some useful information and caselaw on travel law litigation.

New books in the library

Susskind, R. The end of lawyers? Rethinking the nature of legal services. 2008 Oxford University Press.
Pinto, A. Corporate criminal liability. 2nd ed. Sweet & Maxwell. 2008.
Bruce, M. Rights and duties of directors. 9th ed. Tottel. 2009.
Missing Wills

Re: John Ronald Burke (deceased)
Late of: 33 Main Street, Sion Mills, County Tyrone
Would any person having knowledge of the whereabouts of the Will for the above named deceased please contact:
Mr Michael Scally
Crawford Scally & Co
Solicitors
45 Bowling Green
Strabane
County Tyrone BT82 8BW
Tel: 028 7188 3591
Fax: 028 7138 2298

Re: Norah Imelda Wells (deceased)
Late of: 315 The Belgravia, Lisburn Road, Belfast BT9 7AP
Would anyone having any knowledge of the whereabouts of any Will made by the above named please contact:
Philip Gallen & Company
Solicitors
195 Lisburn Road
BELFAST BT9 7EJ
Tel: 028 9066 3364
Fax: 028 9038 1134

Re: David Andrew McCulla (deceased)
Late of: Liza’s Lodge, Front Road, Drumbo, County Down
Would anyone having any knowledge of the whereabouts of any Will made by the above named please contact:
John McKee & Son
Solicitors
32-38 Linenhall Street
BELFAST BT2 8BG
Tel: 028 9023 2303
Fax: 028 9023 0081

Re: Thomas McGurn (deceased)
Late of: Lisdead, Derrygonnelly, County Fermanagh & Graan Abbey Private Nursing Home, Enniskillen, County Fermanagh
Would any person having knowledge of the whereabouts of a Will made by the above named please contact the undersigned as soon as possible:
P J Flanagan & Co
Solicitors
5 Church Street
Enniskillen
County Fermanagh BT74 7DW
Tel: 028 6632 4521
Fax: 028 6632 5072
Email: sol@pjflanagan.com
Ref: MMCV/0027590002/CH

Re: Francis McCall Tainsh (deceased)
Late of: 22 Ainsworth Street, Belfast, County Antrim BT13 3EH
Would any person having knowledge of the whereabouts of a Will for the above named please contact:
Ms Christine Reid
Reid & Co
Solicitors
48 Bachelor’s Walk
Lisburn
County Antrim BT28 1XN
Tel: 028 9266 3310
Fax: 028 9266 3340
Email: creid@laveryreid.com
Ref: CR/T79

Re: John A McGinnis (deceased)
Late of: 87 Culnady Road, Upperlands, Maghera BT46 5TN
Would anyone having any knowledge of the whereabouts of any Will made by the above named deceased please contact:
P A Duffy & Co
Solicitors
27/29 Broad Street
Magherafelt
County Derry BT45 6EB
Tel: 028 7963
Fax: 028 7930 1658

Re: Jackson Taggart (deceased)
Late of: 1 Seaview Drive, Belfast
Would anyone having any knowledge of the whereabouts of any Will made by the above named deceased, please contact:
E J Lavery & Co
Solicitors
1-3 Hightown Road
Glengormley
County Antrim BT36 7TZ
Tel: 028 9084 3436
Fax: 028 9083 7927

Re: Anne Jean Lowther (deceased)
Late of: 1a Carnalea Park, Bangor, County Down
Date of Death: 24 November 2008
Would any person having knowledge of the whereabouts of any Will for the above named deceased, please contact:
W G Maginess & Son
Solicitors
68 Bow Street
Lisburn
County Antrim BT28 1AL
Tel: 028 9267 2161
Fax: 028 9267 0997

Re: Linda Cunningham (deceased)
Late of: 41 Ballyquintin Gardens, Bangor, County Down BT19 1SG
Would anyone having knowledge of the whereabouts of the Will for the above named deceased please contact:
Mr Jonathan A Hewitt
CMG Solicitors
80 Main Street
Bangor
County Down BT20 5AE
Tel: 028 9145 7911
Fax: 028 9145 0679

Re: Sylvia Boylan (formerly Barr) (deceased)
Late of: 30 Cloghagadddy Road, Magheravelly, Newtownbutler, County Fermanagh
Date of Death: 30 August 2008
Would any person having knowledge of the whereabouts of the Will for the above named deceased please contact:
Mr Nigel Greeves
Solicitor
### Missing Title Deeds

**Folio: FE84450**  
**County: Fermanagh**  
**Registered Owners: Seamus McDonnell & Anna Marie McDonnell**  
**Lands of: Land and dwelling at 159 Leck Road, Derryveene, Irvinestown, County Fermanagh**  
**Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above-mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned Solicitors.**  
**And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.**  
**T P Rafferty Solicitor  
47a Catherine Street  
Limavady BT49 9DA  
DX 3508 NR LIMAVADY**

<table>
<thead>
<tr>
<th>Folio</th>
<th>County</th>
<th>Registered Owner</th>
<th>Lands at</th>
<th>Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above-mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned Solicitors.</th>
<th>And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.</th>
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</table>
| **3457** | **Londonderry** | **James Kerr** | **Edgewater Private Nursing Home, Victoria Pond, Newbuildings, Londonderry** | Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned Solicitors. And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice a duplicate Land Certificate may be applied for. | **Louise McGinley**  
**McKeone & Co Solicitors**  
**1 Carlisle Terrace**  
**Londonderry BT48 6JX**  
**Tel: 028 7126 5566**  
**Fax: 028 7126 5533** |
| **20211** | **Down** | **Bridget Mary Cowan (deceased)** | **Ballymagreehan, Castlewellan, County Down** | Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned Solicitors. And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice a duplicate Land Certificate may be applied for. | **Paul McMullan**  
**Solicitor**  
**2-4 Church Street**  
**Ballynahinch**  
**County Down BT24 8AF**  
**Tel: 028 9756 2357**  
**Fax: 028 9756 5915**  
**Email: paul@pmcmullan.co.uk**  
**Ref: C96.1** |
| **1987** | **Antrim** | **Michael O’Neill & Anne Marie O’Neill** | **Townhill Road, Rasharkin, County Antrim** | Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned Solicitors. And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice a duplicate Land Certificate may be applied for. | **Jack McCann & Son Solicitors**  
**20 Ballymoney Road**  
**Ballymena**  
**County Antrim BT43 5BY**  
**Tel: 028 2564 2388**  
**Fax: 028 2565 1292** |
| **13223** | **Fermanagh** | **The Irvinestown Rural District Council** | **Chapel Road, Coa, County Fermanagh** | Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned Solicitors. And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice a duplicate Land Certificate may be applied for. | **Mr Mark Ellsmere**  
**Head of Legal Department**  
**Northern Ireland Water**  
**Northland House**  
**3 Frederick Street** |
BELFAST BT1 2NR
Tel: 028 9074 1166
Fax: 028 9035 4888

Folio: 1307
County: Down
Registered Owner: Peter Fitzpatrick
Lands at: Ballyvally, Colonallion, Warrenpoint, County Down
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned Solicitors.
And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice a duplicate Land Certificate may be applied for.
Emmet J Kelly & Co
Solicitors
Cameo House
41 Bridge Street
Banbridge
County Down BT32 3JL
Tel: 028 4062 9397
Fax: 028 4062 9397

Folio: DN126619
County: Down
Registered Owner: Sean Rooney
Land at: 7 Dundrinne Gardens, Castlewellan, County Down
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned solicitors.
And further take notice that unless the said Land Certificate is produced or adequate information as to its whereabouts is so communicated within three weeks of the publication of this notice a duplicate Land Certificate may be applied for.
Siobhan Church
Patterson Donnelly
Solicitors
26 Balloo Avenue

Bangor
County Down BT19 7QT
Tel: 028 9127 4644
Fax: 028 9127 7300
Email: siobhan@pdslaw.co.uk
Ref: SC/MW/Standard Life

Folio: 25694
County: Antrim
Registered Owner: John Robinson
Land at: Ballycorr Road, Ballyclare, County Antrim
(Premises: 155 Ballycorr Road, Ballyclare)
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce the said Certificate or communicate such information to the undermentioned solicitors.
And further take notice that unless the said Land Certificate is produced or adequate information as to its whereabouts is so communicated within three weeks of the publication of this notice a duplicate Land Certificate may be applied for.
Macaulay & Ritchie
Solicitors
Cathedral Chambers
11 Talbot Street
BELFAST BT1 2LD
Tel: 028 9032 9696
Fax: 028 9033 1305

Folio: 30447
County: Antrim
Registered Owner: William Hyde Waugh
Land at: Ballyoran, County Armagh
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce the said Certificate or communicate such information to the undermentioned solicitors.
And further take notice that unless the said Land Certificate is produced or adequate information as to its whereabouts is so communicated within three weeks of the publication of this notice a duplicate Land Certificate may be applied for.
T G Menary & Co
Solicitors

19 Windsor Avenue
Lurgan
County Armagh BT67 9GB
Tel: 028 3832 7811
Fax: 028 3832 1706

Folio: LY67631
County: Londonderry
Registered Owner: Sean McGlinchey
Land at: Heather Road, Creevagh, Derry BT48 9XD
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce the said Certificate or communicate such information to the undermentioned solicitors.
And further take notice that unless the said Land Certificate is produced or adequate information as to its whereabouts is so communicated within three weeks of the publication of this notice a duplicate Land Certificate may be applied for.
Mr Ciaran Hampson
Campbell Fitzpatrick
Solicitors
6 Castle Street
Derry BT48 6HQ
Tel: 028 7137 2660
Fax: 028 7126 7766
Email: ciaran@cfs-law.com

Folio: 18852 & 22759
County: Antrim
Registered Owner: Samuel Downes
Land at: Ballyeaston Road, Ballyclare, County Antrim
Take notice that any person having custody of or information as to the whereabouts of the Land Certificates relating to the above mentioned Folios should forthwith produce said Certificates or communicate such information to the undermentioned Solicitors.
And take further notice that unless the said Land Certificates are so produced or adequate information as to their whereabouts is so communicated within three weeks of publication of this notice duplicate Land Certificates may be applied for.
Gray Magee Martin Solicitors
22/24 Hillview Avenue

January to March 2009
Newtownabbey
County Antrim BT36 6AE
Tel: 028 9036 5955
Fax: 028 9036 5955
Folio: 34863
County: Down
Registered Owner: Northern Ireland Fire and Rescue Service
Land at: Slieve Croob, Dromore, County Down
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce the said Certificate or communicate such information to the undermentioned solicitors.
And further take notice that unless the said Land Certificate is produced or adequate information as to its whereabouts is so communicated within three weeks of the publication of this notice a duplicate Land Certificate may be applied for.

Legal Services Department
Belfast City Council
24-26 Adelaide Street
BELFAST BT2 8GD
Tel: 028 9032 0202
Fax: 028 9023 0716

Folio: FE1986
County: Fermanagh
Registered Owners: Alan Johnston and Caroline Geraldine Patricia Johnson
Land at: 50 Wattlebridge Road, Enniskillen, County Fermanagh
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce the said Certificate or communicate such information to the undermentioned solicitors.
And further take notice that unless the said Land Certificate is produced or adequate information as to its whereabouts is so communicated within three weeks of the publication of this notice a duplicate Land Certificate may be applied for.

Solicitor Required
Reavey & Co (www.reavey-ni.com) is a five partner firm based in two locations in south east Antrim. We have excellent office accommodation and have invested extensively in IT and staff training. We are always looking for ways to develop our business and would welcome approaches from solicitors who would like to join us and bring with them sustainable fee income. Any interested persons should have a background of working successfully in a team, a proven track record and be of realistic attitude. Consideration would be given to sole practitioners with a client base who wish to work on a consultancy basis. We would expect all interested parties to authorise our appropriate enquiry with Marsh & the Law Society. Approaches in strictest confidence either directly or in writing to:
Mr John Reavey
20 Bladon Park
BELFAST BT9 5LG

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Fax: 028 9038 6733

Paul Gannon MBA
31 Glencoe Park, Antrim Road, N’Abbey, BT36 7 PT
Tel: 028 9077 2027/07805 891154. Email: pgannon@hotmail.co.uk

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Paul Gannon
MBA
31 Glencoe Park, Antrim Road, N’Abbey, BT36 7 PT
Tel: 028 9077 2027/07805 891154. Email: pgannon@hotmail.co.uk

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Contact
Marc Fitzgibbon (Partner)

STEPHEN DONAGHY
I.Eng. M.Inst. AEA. F.IMI. M.SOE.

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Marc Fitzgibbon (Partner)
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Contact:

Dr Alan McIlmoyle
McIlmoyle & Associates
Animal Nutrition & Agricultural Consultants
20 Young Street, Lisburn, BT27 5EB
Tel: (028) 9266 1766
Fax: (028) 9266 1128
Email: info@mcilmoyleassociates.co.uk
Website: www.mcilmoyleassociates.co.uk

Taxation of Personal Representatives & Deceased Estates

The taxation of estates is a relatively complex and often confusing area of practice and is often poorly understood. The course will outline the taxation compliance regime connected with death estates from the tax year of death until the winding up of the estate. The obligation of executors and personal representatives will be looked at in detail with many worked examples to illustrate the position.

Date: Thursday 07 May 09
Time: 2.00pm – 5.00pm (lunch from 1.30 along with registration)
CPD Hours: 3
Venue: The Green Room, The Waterfront Hall, 2 Lanyon Place, Belfast
Price: £145 plus VAT (£21.75)
Speaker: Mike Nangle, Tax Partner with Dawson Nangle Tumelty one of the Provinces leading independent firms of Chartered Accountants.

Formerly a senior Inspector of Taxes, Mike is a Chartered Accountant who has worked in the tax field for over 20 years and advises on many aspects of taxation.

To book a place please contact Anna Harkness at:
Blue Sky Training Ltd, Ormeau House, 91-97 Ormeau Road, Belfast, BT7 1SH
Tel: 028 9026 1149
Email: anna@blueskytraining.co.uk
Or to view our full course content and book online visit our website: www.blueskytraining.co.uk
New Practice Announcement

Kevin Byrne FCA, is pleased to announce the commencement of a specialist litigation support and forensic accounting services practice with effect from 9 February 2009.

The practice will continue to serve the needs and requirements of the legal profession in relation to the provision of expert witness advice and testimony on behalf of both plaintiff and defence litigation practitioners, engaged in the following areas of litigation:

- Personal Injury
- Medical and clinical negligence
- Matrimonial settlements and divorce
- Shareholder and partnership disputes
- CONSEQUENTIAL loss and loss of profits
- Construction contract claims
- Insurance claims disputes
- Auditors’ and accountants professional negligence
- Commercial fraud

20 Adelaide Street
Belfast BT2 8GC
Tel: 28 9051 7066/9051 7122
Email: kb@kevinbyrne.co.com

HEART TRUST FUND
(ROYAL VICTORIA HOSPITAL)

The main object of this established and registered charity is the support and furtherance of the vitally important treatment, both medical and surgical, provided for patients in the Cardiology Centre in the Royal Victoria Hospital Belfast, and the equally important work of research into heart disease carried on there. The charity is authorised to use its fund to provide that support, or achieve that furtherance when, (but only when) public funds are not available, or are insufficient, for the purpose.

The Royal's splendid record in the fight against heart disease is too well known to need advertisement, and by an immediate cash gift or a legacy or bequest to this charity in your will, you can help directly to reduce the grave toll of suffering and death from this disease in Northern Ireland. The grim fact is that the incidence of coronary artery disease in Northern Ireland is one of the highest in the world.

The administration of the charity is small and compact and the trustees are careful to ensure that its cost is minimal. As a result donors and testators can be assured that the substantial benefit of their gifts and bequests will go directly to advance the causes of the charity.

Further details about this charity and its work will gladly be supplied by the Secretary, The Heart Trust Fund (Royal Victoria Hospital), 9B Castle Street, Comber, Co. Down BT23 5DY. Tel: (028) 9187 3899.

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