THIS MONTH:
Donald Eakin
President
The Northern Ireland Social Care Council was established on 1 October 2001. One of its main functions is to register and regulate the social care workforce to raise standards, strengthen professionalism and protect the public.

The Council wishes to recruit legal advisers to sit on its Committees; Registration Committee, Preliminary Proceedings Committee, Conduct Committee and Restoration Committee.

<table>
<thead>
<tr>
<th>Legal Advisers</th>
<th>Will ensure that proceedings before Committees are conducted fairly and will advise Committees on legal issues and questions of law. A legal adviser must be a barrister or solicitor who has been qualified to practise in Northern Ireland for not less than 10 years.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Term of appointment</td>
<td>3 years</td>
</tr>
<tr>
<td>Location</td>
<td>Committee meetings will be held at the NISCC Office in Belfast</td>
</tr>
<tr>
<td>Time Commitment</td>
<td>Legal Advisers should be prepared to commit at least 10 days per year to NISCC business. Advisers will be used on a rotational basis “as and when required”</td>
</tr>
<tr>
<td>Remuneration</td>
<td>Legal Advisers will be paid a daily fee. Reasonable travel and subsistence expenses incurred will be reimbursed.</td>
</tr>
<tr>
<td>Training</td>
<td>An induction programme will be provided for all Legal Advisers.</td>
</tr>
</tbody>
</table>

To request an application pack
Please Email Cathy Kennedy at catherine.kennedy@nisocialcarecouncil.org.uk or telephone on 028 9041 7604

The closing date for receipt of applications will be 31 January 2008

NISCC welcome applications from all sections of the community and are committed to equality of opportunity. It is important that Legal Advisers are independent of the Council therefore any persons related to members or staff of the Council should not apply.

Further Information
Please visit our website at www.niscc.info or telephone Mrs Colleen Stirling on 028 9041 7600.

Raising Standards - Strengthening Professionalism - Increasing Protection
INDEX DECEMBER 2007

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Email addresses

The Society is committed to developing a policy of e-delivery of information to its members. Apart from being environmentally advantageous, it allows the immediate despatch of timely information which is of interest and importance to practising solicitors.

We are currently checking our data to ensure we hold accurate email addresses of all solicitors on the Society's roll. To assist us, we would be grateful if you could send a confirmation email to the following address indicating your name and that of your firm. Similarly, if your email address has changed, we would be grateful if you could provide confirmation to this address.

confirmemail@lawsoc-ni.org
Donald Eakin became the President of the Law Society on 28 November 2007. Donald was educated at Howard Memorial Primary School, Moygashel, Royal School Dungannon and Queen’s University Belfast, graduating in 1974 and qualifying as a solicitor in 1977. Having served his apprenticeship with the Belfast firm of F J Orr & Co, he then moved to the firm of Macaulay & Ritchie where he is now the Senior Partner. They have offices in Belfast, Bangor and Larne. Donald is a former Chairman of the Belfast Solicitors’ Association and has been a long standing member of Law Society Committees and latterly Council. In his first President’s message for The Writ, Donald writes:

\[ It is absolutely vital that the Society engages actively with local politicians and participates at the heart of Government. \]

The unanimous finding of the Legal Services Review Group under Sir George Bain was that our Society should continue to discharge its regulatory role under the supervision of an independent Legal Services Oversight Commissioner. This will bring considerable changes for us. The Society is currently engaging with both civil servants and politicians regarding the draft legislative proposals and in particular the cost of setting up the required complaints investigation department and the Office of the Legal Services Oversight Commissioner.

To meet the demands of the new system, it is already quite clear that there will be a significant extra cost to the annual Practising Certificate fee, even if the Society implements the Bain recommendation of the polluter-pays principle as part of the funding arrangement. It is equally clear that if there is any dilution of the recommendation that the proposed new arrangements be effective and proportionate for Northern Ireland, then the associated costs will be very considerably higher, both in setting up and operating any totally independent regulatory authority.

We also anticipate that the new legislation will extend the rights of audience of solicitors in the higher courts. I look forward to dealing positively with the new Chair of the Bar Council, John O’Hara QC and the Bar Council itself, to resolve the difficulties being faced by our Solicitor QC Barra McGrory and our Solicitor Advocates in both leading a junior barrister, or being led by a barrister QC. My view is that any QC, appointed independently and on merit, is entitled to be fully recognized and to lead junior counsel or properly accredited Solicitor Advocates. The Society has put in place the Crown Court Code of Practice to address solicitors’ and advocates’ issues and to protect all parties. It is to be hoped that these problems will soon be favourably resolved.

I remain very concerned about the inability of the Legal Services Commission to timeously settle accounts due to virtually all practitioners who carry out legal aid work. Over recent months, the Society’s Presidential Team has been making and will continue to make strong representations at Ministerial level and with the new Chair of the Commission about improving service delivery and adequacy of budgetary provision. Other public services do not face these issues – the Society requires that urgent steps are taken now to address these difficulties and that appropriate measures are put in place to bring much needed longer term stability to legal aid provision.

In coming months in conjunction with our new Chief Executive, Alan Hunter, I will be examining the resources of the Society and how these can be best utilised to meet the challenges ahead and to meet the requirements of our members. One of my priorities for my year as President is that the Society should communicate more effectively with its members. In a recent meeting with a small delegation of solicitors geographically removed from the Greater Belfast area, I was struck by the clear lack of awareness by many members of the vast bulk of the work undertaken by the Committees and Council of the Society.

As a first step a Communications Officer will shortly be appointed and I urge all colleagues to actively engage with the Society staff and/or
with me in relation to matters of concern to you or your local association or interest group. Over the next 12 months, I and the Chief Executive hope to have the opportunity to meet with as many local associations or groups of lawyers as possible and to continue the process of making the Society fit for purpose in today's ever changing world.

If I could achieve one positive influence during my term as President, it would be that members of the Society generally participate in and influence the running of the Society in a much more proactive manner. I hope to play my part in doing that and sincerely hope that each of you will also play your part.

With the reconstruction of Law Society House we have a wonderful opportunity to create facilities for the benefit of all our members (and in particular not just for those in the Greater Belfast area). I know that both the Project Board for the new premises and the Library staff are working hard to incorporate fit for purpose information technology and facilities in the new building which will best meet the needs of all our members.

Hopefully you will by now all be aware of the very important Education Review being undertaken in relation to the training of solicitors and I hope that you, as an important stakeholder in the process, will advise the Society of your views. We are all aware of the vast pool of law graduates and indeed other graduates, who are competing for a limited number of solicitor training places. However there are many other factors which must be considered. Please take time to read the discussion document and respond. Obviously we hope for an informed and comprehensive debate leading to positive proposals for the future but to achieve this we really do need extensive feedback from members and other stakeholders.

The core principles governing our Society remain valid for all our members and our commitment to the rule of law and access to justice for our citizens still has universal application. We must all strive to preserve and uphold the need for our profession to be free to give impartial and independent advice within the sanctity of our client’s right to Solicitor/Client confidentiality protected by an independent judiciary free from political control or interference.
**USING CREDIT CARDS ABROAD**

In the case of Office of Fair Trading v Lloyds TSB plc (2007) UKHL 48, the House of Lords has ruled that consumers can continue to claim refunds on goods from credit card companies if their purchase was made abroad.

Section 75 of the Consumer Credit Act 1974 allows consumers to claim refunds from their credit card issuers as well as the seller of the goods if there has been a breach of contract or a misrepresentation.

This case arose in 2004 when the Office of Fair Trading (OFT) asked the High Court to rule on whether s. 75 applied to goods bought overseas. The High Court said it did not, ruling for the banks, but the OFT appealed and won. The House of Lords has now backed the appeal court's ruling.

The decision, which means the s. 75 rules apply as long as the sum spent is between £100 and £30,000, is likely to cost the credit card industry significant sums.

**CLERK TO THE ASSEMBLY STEPS DOWN**

The Northern Ireland Assembly's Chief Executive and Clerk, Arthur Moir (the former Registrar of Titles), has stepped down from his post because his upcoming retirement date meant that he would be unable to see a major review of staffing at the Assembly to its conclusion.

Mr Moir will spend the final months of his career providing legal consultancy work for the Northern Ireland Civil Service. His position as Clerk and Chief Executive is being filled on an interim basis by a director from the Scottish Parliament in Edinburgh.

**KERB CRAWLING TO BE AN OFFENCE**

The Northern Ireland Offence has announced plans to make kerb crawling a criminal offence, following response to a consultation in which 90% of recipients answered positively when asked if laws against kerb crawling should be introduced.

The proposals form part of a draft Sexual Offences (NI) Order, which is currently out for further public consultation. It is intended that the offence will come into effect in early Spring 2009 - see www.nio.gov.uk - follow Public Consultation link.

The announcement coincided with the introduction of a similar ban in Scotland. The Scottish Parliament passed the Prostitution Act 2007 in February making it a criminal offence and fining motorists £1,000 for committing the offence.

**KILLER NOT TO BE DEPORTED**

The English High Court has ruled that Learco Chindamo, the killer of school headmaster Philip Lawrence, will not be deported to Italy on completion of his prison sentence.

The Court has upheld an earlier ruling by an Asylum & Immigration Tribunal that Italian-born Chindamo (who had lived in the UK from the age of six) no longer posed a serious threat to society and that by virtue of European Union immigration rules, an EU citizen cannot be deported because he has committed a serious crime. It also found that any deportation would also represent a breach of his rights under a. 8 of the ECHR which protect an individual's right to family life.

**CAUSEWAY IT PROJECT**

A follow-up inspection by Criminal Justice Inspection Northern Ireland of the Causeway IT Project which is aimed at improving the way local criminal justice agencies share information has found that the delivery of the second phase of the programme should be achieved by next summer in line with its revised timetable.

The inspection found that two thirds of the recommendations made by the Inspectorate in July 2006 have been achieved, and failures within the various criminal justice agencies to provide the necessary resources to support the £43 million Causeway IT system in its initial stages have been addressed.

**SDLT NEWS**

The latest issue of the SDLT Practitioners’ News (Issue 19) is now available from the HMRC website at http://www.hmrc.gov.uk/so/newsletter-index.htm

**CHANGES TO AMOUNT OF STATUTORY LEGACY**

The Administration of Estates (Rights of Surviving Spouse or Civil Partner) Order (NI) 2007 SR 452 comes into force in relation to the estates of persons dying on or after 1 January 2008. It increases the amounts under section 7 of the Administration of Estates Act (NI) 1955 by reference to which a surviving spouse’s or civil partner’s rights in relation to an intestate’s estate are determined.

Where an intestate dies leaving a spouse or civil partner and issue, the surviving spouse or civil partner will take the personal chattels, the first £250,000 (with interest) and a share of the residue. Previously this was £125,000.

Where an intestate dies leaving spouse or civil partner and no issue but also leaving other near relatives, the surviving spouse or civil partner will take the personal chattels, the first £450,000 (with interest) and a share of the residue. Previously this was £200,000.
Matrimonial Solicitor
Belfast to £42k
Our client is a Belfast-based firm who are recognised as leaders in the field of Criminal Law and Administrative/Public Law. Their full range of services include: personal injury, litigation, defamation, matrimonial, professional negligence, commercial/business advice, and conveyancing. They are now looking for an experienced Matrimonial Solicitor to head up their matrimonial department. This is a superb opportunity for a career driven individual. Ref 6342

Conveyancing Solicitor
Belfast to £35k + benefits
Leading Belfast firm requires a Conveyancing Solicitor to join their City Centre office. This forward thinking firm have an established and lucrative client base and in order to maintain their professionalism with their clients they wish to recruit an experienced and successful candidate who can deliver a service of the highest standard. This is an excellent opportunity to join an increasingly expanding firm. Attractive salary and benefits package available for the right candidate. Ref 6985

Corporate Solicitor
Belfast to £30k
Our client is one of Northern Ireland’s most respected commercial law firms, held in high regard by clients for the commerciality that they show and by staff and peers for their approach to offering career development opportunities. Due to their continued expansion they wish to recruit a Corporate Solicitor. It is essential that the suitable candidate will have experience in mergers & acquisitions, privatisations, private equity and venture capital. This is an exciting opportunity for a career driven individual. Ref 6474

Employment Law Solicitor
Belfast £Neg
A successful practice based in the heart of Belfast currently requires an Employment Law Solicitor. This role would suit a candidate who is interested in acting for applicants in employment matters as this firm only acts for employees. Our clients have a busy tribunal workload, therefore the candidate would need some experience in tribunal procedures. Ref 7120

General Conveyancing Solicitor
Co Down to £45k
Our client is a well known firm of solicitors with offices in both Co Antrim and Co Down. Their conveyancing department is expanding rapidly and due to their increased workload they wish to recruit an experienced Solicitor to join their dynamic team. This position is ideal for a career driven individual. Ref 7198

In-House Litigation Solicitor
Co Down £Neg + benefits
Our client is one of the world’s leading manufacturing companies who export to more than 120 countries worldwide. An exciting opportunity has arisen for an ambitious and successful Litigation Solicitor who has experience of commercial litigation. Our client is offering an excellent salary for the right individual and a superb benefits package. Ref 7184

Probate Solicitor
North West to £40k
Our client is a well-respected law firm with an excellent reputation. They have recently expanded all their departments and due to an ever-increasing level of activity now wish to expand their probate department further. The successful individual will have experience in probate and wills. Experience in conveyancing and litigation is desirable but not essential. Ref 5297

General Practice
Co Armagh to £37k + benefits
Several well known firms have opportunities within their conveyancing, litigation and matrimonial departments. Candidates with experience in any of these areas will be considered. Successful individuals will be well rewarded as our clients are offering an attractive salary and benefits package. Ref 6316

Commercial Property Solicitor
Dublin £Neg
A large commercial firm, based in the City Centre, currently requires a Commercial Property Solicitor. They have a strong link with all the major players and intermediaries in the property industry and continue to receive significant instructions. Cross practice teams enable them to provide integrated and streamlined advice on property taxation, property finance, construction, planning and environmental law. Clients include leading Irish and international investors, developers and financial institutions. Their professional team of solicitors provide a full service, including the tax, financing, environmental and planning aspects of deals. The ideal candidate will have experience in commercial property, ideally gained in a corporate environment. Ref 6586

Corporate Solicitor
Dublin £Neg + benefits
Based in the City Centre, our client, an international law firm, currently has an opportunity for a Solicitor to join their corporate department. The ideal candidate will have experience of commercial law including commercial contracts, start-ups, joint ventures, shareholder and boardroom disputes and franchising and distribution. This is an opportunity not to be missed. Excellent career prospects and benefits package for the right candidate. Ref 6587

For more details please call Orla Milligan at PRG LawSearch on 028 90 443685 or email orlamilligan@prglawsearch.com

BELFAST 02890 443680 • EDINBURGH 0131 550 1460 • GLASGOW 0141 331 9380
www.prgrecruitment.com

Professional Recruitment Group Limited, trading as PRG, acts as both an Employment Business and an Employment Agency.
The Law Society Council for the period November 2007 to November 2009 is as follows:

**Ordinary Representatives:**
- Stephen Andress
- Brian Archer
- Kevin Brown
- Alex Coleman
- Norville Connolly
- Catherine Dixon
- Joseph Donnelly
- Donald Eakin
- John Gordon
- Paul Johnston
- Anne Kinder
- Barra McGrory
- Imelda McMillan
- Rory McShane
- Richard Palmer
- Gavin Patterson
- Alastair Rankin
- Michael Robinson
- Stephen Scott
- Brian Speers
- Brian F Walker

**Constituency Representatives:**
- **Northern Circuit**
  - John W D Pinkerton
  - Anne Brown
- **Southern Circuit**
  - James L Cooper
  - Arleen Elliott
  - Elizabeth McCaffrey
- **Eastern Circuit**
  - Barry Finlay
  - Colin Haddick
  - Simon Murray

Profiles of these Council Members will be available in forthcoming editions of The Writ.

**A letter to the Editor**

22 November 2007
The Editor
The Writ

Dear Sir,

Having been a constituency member of the Society’s Council since 1995 and having had the honour and privilege of being its President, I am well placed to know just how much “blood, sweat, toil and tears” is expended by a relatively small number of solicitors on behalf of our profession. I refer, of course, to those solicitors who are members of Council and also those who are co-opted members of various committees.

They give freely of their time and unsparingly of their effort and talent. Most of them are in the private sector and as Napoleon said: “when you’re marching you’re not fighting”. If you are a sole practitioner and you are on Law Society business that is down time and you are not earning. As an employed solicitor you will no doubt get paid during your time out of the office but it is still down time for your employer and fees are not being generated in your absence. Either way it is a sacrifice.

The Society could simply not function if solicitors were not willing to make that sacrifice. I am delighted to say that this year we had an election for Council which demonstrates quite clearly that we have an abundance of solicitors (even though there are two vacancies in the Northern Constituency) who are prepared to look beyond their own self interest to work for the common good of their fellow professionals and for that of the society we serve.

What really hacks me off, however, is when I get accosted by the question “What is the Law Society doing about…?”, usually from someone whose sole involvement with the Society is sending in their annual application for a Practising Certificate. Not only are they unwilling to commit (“I’m so busy, I just don’t know how you do it!”) but it would appear from the number of votes cast in the recent Council election that they are too busy even to vote. The greatest number of votes cast for any single candidate was 403 which would indicate to me that out of a membership of 1850 or so, the vast majority of solicitors did not actually bother to vote at all.

Perhaps I am wrong in attributing this apparent lack of enthusiasm for Council and the workings of the Society to self interest. Perhaps we should be looking at the way in which we conduct elections in the future. As it is, all we have is a stark published list of candidates’ names, period. No photographs, no pen pictures, nothing. I believe that it would greatly benefit not just those who stand for election, but those who have the potential to vote for them, to have some kind of election campaign. As it is the electorate is blissfully ignorant as to who the candidates are (with a few notable exceptions), what they look like, where they work, what their field of expertise is, what their particular interest is, whether they have a particular agenda, why they want to stand for Council and, if they are sitting members, what they feel they have achieved during their time on Council.

We have two years until the next election for Council. If we use that time to shake ourselves out of our lethargy and make the election process more interesting, competitive and inclusive, I believe it would greatly benefit the profession as a whole.

Yours sincerely
John W.D. Pinkerton
e-mail: jwdp@pinkerton-law.com
Practising Certificate reminder

By the time you read this you should have received the Application Form (PCR1) to facilitate the renewal of your Practising Certificate. The covering letter which accompanied the PCR1 emphasised the importance of correct completion and timely return of the form to the Society. You are reminded again that all forms must be returned no later than **5 January 2008**.

As regards correct completion, please bear in mind:

1. The responsibility for proper completion and return of the form lies with the individual applicant solicitor (i.e. not the firm or employer)
2. The application must be accompanied by the personal signature of the applicant and be both signed and dated
3. The application must be accompanied by the correct remittance. By way of reminder, the Practising Certificate Fee for 2008/2009 is £850.00. The prescribed Compensation Fund contribution applicable to the applicant is also calculated and shown on the PCR1. For 2008/2009 the relevant full-contribution is £950.00 (payable by solicitors with more than six Practising Certificates since admission); the half-contribution is £475.00 (payable by solicitors receiving their fourth, fifth or sixth Practising Certificate), and a Nil contribution is levied in accordance with the relevant statutory provisions on solicitors receiving their first, second or third Practising Certificate following admission
4. For solicitors in private practice the Practising Certificate Application Form must be accompanied by the correct and original Professional Indemnity Insurance Certificate. It is common for the Form to arrive with the Society with no Insurance Certificate, with a photocopy of an Insurance Certificate, or with the wrong Insurance Certificate. In respect of each solicitor a Schedule will have been provided by the Society broker (MARSH) which clearly identifies itself in these terms: “(NB: This schedule should be forwarded to the Law Society as evidence of insurance)”

The Society is particularly keen to optimise communication with members by email. If the information held by the Society is incorrect or incomplete, please update as required at Part B (iii) of the Application Form.

The Society is appreciative of your co-operation and attention in all these respects.

ALAN HUNTER
Registrar

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CPD reminder

As we enter the Christmas party season, CPD is probably the last thing on most people's minds. However, the CPD year is once again coming to an end, and this is a reminder for those who have not yet completed and sent their Record Card to the Society.

It is compulsory for every solicitor who currently holds a Practising Certificate to complete 15 hours of CPD and to send his or her completed Record Card to the Society. There are some exceptions to this, such as those solicitors who will have worked less than 200 hours by the end of the year, or those who are retiring before the end of 2007. Other exemptions are given on page 3 of the orange 2007 CPD Record Card.

The completed Record Cards should be sent to the Society with all relevant sections filled in. We would ask that you do not include certificates of attendance at events, as this generates a huge amount of paper to be stored within the Society. However, each solicitor should retain these attendance records on file until the end of 2008 and be able to produce these if selected as part of the random sample.

Finally, thanks to all those of you who have already sent in their 2007 Record Card. Receiving a percentage of the cards before the holiday period means that we can begin processing the cards much earlier.

If you have any queries about CPD, please contact Susan Duffy at the Law Society on 028 9023 1614 or via e-mail at susan.duffy@lawsoc-ni.org

Have a wonderful Christmas and looking forward to seeing you all at the Society's CPD events in 2008.
Looking for help? Try the Library

Michael Robinson, outgoing Chair of the Library and Information Services Committee, offers a personal account of his professional dealings with the library service.

One of the many disadvantages of working in a busy general practice is that, increasingly, many clients present with problems and issues which require custom-made solutions and answers. These inevitably require hours of research and background reading which are, all too often, not fully appreciated or remunerated.

In January 2006, I was approached by a long-standing client with the news that he was taking advantage of the new Civil Partnership legislation. His intention was to do so in early February and he was seeking advice in relation to and the negotiation and drafting of a Pre-Civil Partnership Agreement.

As is all too often the case, this inquiry arrived at a time when I was overwhelmed with existing client demands and all of the other practitioners in the firm, were similarly overburdened. If I was to meet the reasonable demands of a good and repeat client, within a tight time frame, the burden of research and drafting would be mine. Or maybe not.

Until I joined the Library Committee I was blissfully unaware of what the library actually did. Having been closely involved with the service for some time I am a believer in getting the message out to others who are perhaps equally unaware that the library offers a reliable, professional and cost-effective service to all the membership.

Heather Semple, Derval McFetridge, Denise Hanna and Roisin Austin are the highly experienced team in the Law Society Library who have, for many years, offered a research service similar to that provided by the librarians in the large London legal practices. By calling in personally to the Library or by making a telephone approach, it is possible to commission the Library staff to carry out research into any legal matter. They will do so promptly by accessing, not only their hard copy resources and electronic data bases but, where necessary, by contacting colleagues in other jurisdictions and keepers of more specialist information resources, not normally readily available to legal practices in Northern Ireland.

It is not, of course, the duty or the responsibility of the library staff to interpret the information provided in response to any particular query. That burden rests with the lawyer making the enquiry. But what a substantial benefit to any busy practitioner to be able to call up research from a team of skilled personnel with a deep knowledge of where particular information is likely to be found.

Within two hours of my telephone call to the Library I was the happy possessor, by email, of several precedent Pre-Civil Partnership Agreements, a number of commentaries on the then recent Civil Partnership legislation and a variety of judicial dicta on the enforceability of Pre-Nuptial and, by extrapolation, Pre-Civil Partnership Agreements. This enabled me to advise my client, conduct the necessary negotiations and to complete all necessary drafting, in a timely manner, whilst continuing to satisfy the demands of other business and clients.

In addition to Civil Partnership, the library team has also given me a helping hand with MRSA and LLP. I have a list of other curiosities which will undoubtedly bring a smile to their faces and which I know, from personal experience, they will be equally adept at answering.

These are exciting times for the library service as we contemplate the design of and move to a new library back in Victoria Street which aims to provide a range of library services which are relevant and attractive to the profession in the 21st century. We would welcome any views you would have about the library service in this regard to heather.semple@lawsoc-ni.org
Be seen in the best light:
Lexcel Standard – 2007 Revisions

Should my firm apply for Lexcel accreditation?

The Lexcel quality standard sends important messages to legal services funders, clients and intermediaries about the value for money and quality of service expected from accredited firms.

Independent research indicates that:

- 81% of Lexcel accredited firms had benefited from improved client care and client satisfaction
- 78% of firms identified Lexcel as an important risk management tool that had led to a reduction in complaints
- 75% of firms identified Lexcel as a useful business improvement tool
- 71% of firms indicated that Lexcel accreditation is beneficial in providing consistently high levels of service

The Ridley Partnership – market leaders for Lexcel, Risk Management, Practice Management and Training in Northern Ireland with over 300 client firms supported over the past seven years.

Revised Standard – Lexcel 2007
Our Principal, Jane Ridley, was invited to sit on the Lexcel Revisions Panel for the 3 yearly review. Jane and the team are now advising firms in Northern Ireland on the new Lexcel standard and the benefits to firms having Lexcel accreditation in this changing legal services landscape.

The revisions to the standard are both practical and flexible and are particularly appropriate for the smaller law firm looking to demonstrate tangible improvements in efficiency and effectiveness.

To arrange an informal discussion with Jane Ridley or a member of the team about how your firm could:
- Benefit from Lexcel 2007

Or to discuss:
- Specific practice management issues
- The challenges and implications of legal reform
- Preparation for the changes to the administration of legal aid

Please contact us on:

Tel: 0845 – 600 2729
E-Mail: info@theridleypartnership.co.uk
The Annual Council Dinner took place at the Balmoral Conference Centre, King’s Hall, Belfast on Friday 26th October 2007.
John Comerton, Rodney McCune and Karamjit Singh.

Henry Algeo, Caroline Boston and Jim Kirkpatrick.

Aidan Hanna, Noelle McGrenera QC, Rosario Boyle SC and Philip Joyce.

Paul Shevlin, Michael Lynch and Michael Wilson.

Kevin Brown, Drusilla Hawthorne and Rosemary Connolly.

Don Anderson, Alban Maginnis MLA and Alasdair MacLaughlin.
Practice Note: Ancillary relief

This Practice Note, which is being issued by Master Redpath, will come into operation on 1 February 2008.

### PRE-APPLICATION PROTOCOL

#### 1. INTRODUCTION

1. The aim of the pre-action protocol is to ensure that:
   (a) Pre-application disclosure and negotiation takes place in appropriate cases
   (b) Where there is pre-application disclosure and negotiation, it is dealt with - i. Cost effectively
   ii. In line with the overriding objective set out in Rule 1A of the Rules of the Supreme Court (Northern Ireland) 1980
   (c) The parties are in a position to settle the case fairly and early without litigation

1.2 The court will treat the standard set in the pre-application protocol as the normal, reasonable approach to pre-application conduct. If proceedings are subsequently issued, the court will take into account non-compliance with the protocol and, if so, consider whether non-compliance merits consequences.

#### 2. GUIDANCE NOTES

**Scope of the protocol**

2.1 This protocol is intended to apply to all claims for ancillary relief as defined by Rule 1.3 of the Family Proceedings Rules (NI) 1996. It is designed to cover all classes of case, ranging from a simple application for periodic payments to an application for a substantial lump sum and property adjustment order. The protocol is designed to facilitate the operation of Ancillary Relief applications.

2.2 In considering the option of pre-application disclosure and negotiation, legal representatives should bear in mind the advantage of having a court timetable and court managed process. There is sometimes an advantage in preparing disclosure before proceedings are commenced. However, legal representatives should bear in mind the objective of controlling costs and in particular the costs of discovery and that the option of pre-application disclosure and negotiation has risks of excessive and uncontrolled expenditure and delay. This option should only be encouraged where both parties agree to follow this route and disclosure is not likely to be an issue or has been adequately dealt with in mediation or otherwise.

2.3 Legal representatives should consider at an early stage and keep under review whether it would be appropriate to suggest mediation (when available) to the clients as an alternative to solicitor negotiation or court based litigation.

2.4 Making an application to the court should not be regarded as a hostile step or a last resort, rather as a way of starting the court timetable, controlling disclosure and endeavouring to avoid the costly final hearing and the preparation for it.

**First letter**

2.5 The circumstances of parties to an application for ancillary relief are so various that it would be difficult to prepare a specimen letter of claim. The request for information will be different in every case. However, the tone of the initial letter is important and the guidelines in para 3.7 should be followed. It should be approved in advance by the client. Solicitors writing to an unrepresented party should always recommend that he or she seeks independent legal advice and enclose a second copy of the letter to be passed to any solicitor instructed. A reasonable time limit for a response may be 21 days.

**Negotiation and settlement**

2.6 In the event of pre-application disclosure and negotiation, as envisaged in paragraph 2.2, an application should not be issued when a settlement is a reasonable prospect. If it is considered desirable the parties may wish to consider having the agreement made a rule of court.

### Disclosure

2.7 The protocol underlines the obligation of parties to make full and frank disclosure of all material facts, documents and other information relevant to the issues. Solicitors have a responsibility to inform their clients in clear terms of this duty and of the possible consequences of breach of the duty. This duty of disclosure is an ongoing obligation. Any material changes after initial disclosure has been given should be disclosed. Solicitors are referred to the Guidance Notes for Applications for Ancillary Relief in the High Court.

#### 3. THE PROTOCOL

**General principles**

3.1 All parties must bear in mind the overriding objective and try to ensure that all claims are resolved and a just resolution achieved as speedily as possible without costs being incurred unreasonably. The need of any children should be addressed and safeguarded. The procedures which it is appropriate to follow should be conducted with minimum distress to the parties and in a manner designed to promote as good a continuing relationship between the parties and any children effected as is possible in the circumstances.

3.2 The principle of proportionality must be borne in mind at all times. It is unacceptable for the costs of any case to be disproportionate to the financial value of the subject matter of the dispute.

3.3 Parties should be informed that where a court exercises a discretion as to whether costs are payable by one party to another, this discretion extends to pre-application offers to settle and conduct of disclosure. (Order 62 of the Rules of the Supreme Court (Northern Ireland) 1980).

**Identifying the issues**

3.4 Parties must seek to clarify their claims and identify the issues between them as soon as possible. So that this can be achieved they must provide full, frank and
clear disclosure of facts, information and documents which are relevant. Material should be sufficiently accurate to enable proper negotiations to take place to settle the differences. Openness in all dealings is essential.

Disclosure
3.5 If parties carry out voluntary disclosure before the issue of proceedings the parties should exchange schedules of assets, income, liabilities and other material facts, using the Guidance Notes for Applications for Ancillary Relief in the High Court as a guide to the format of the disclosure. Documents should only be disclosed to the extent that they are required by the Guidance Notes. Excessive or disproportionate costs should not be incurred.

Correspondence
3.6 Any first letter and subsequent correspondence must focus on the clarification of claims and identification of issues and their resolution. Protracted and unnecessary correspondence and ‘trial by correspondence’ must be avoided.

3.7 The impact of any correspondence upon the reader and in particular the parties must always be considered. Any correspondence which raises irrelevant issues or which might cause the other party to adopt an entrenched, polarised or hostile position is to be avoided.

Experts
3.8 Expert valuation evidence is only necessary where the parties cannot agree, or do not know, the value of some significant asset. The cost of a valuation should be proportionate to the sums in dispute. Wherever possible, valuations of properties, shares etc should be obtained from a single valuer instructed by both parties. To that end, a party wishing to instruct an expert (the first party) should first give the other party a list of the names of one or more experts in the relevant speciality whom he considers are suitable to instruct. Within 14 days the other party may indicate an objection to one or more of the named experts and, if so, should supply the names of one or more experts whom he considers suitable.

3.9 Where the identity of the expert is agreed, the parties should agree the terms of a joint letter of instruction.

3.10 Where no agreement is reached as to the identity of the expert, each party should think carefully before instructing his own expert because of the costs implications. Disagreements about disclosure such as the use and identity of an expert may be better managed by the court within the context of an application for Ancillary Relief.

3.11 Solicitors should note that from the date of the implementation of this protocol all expert witnesses to include estate agents will be expected to sign an expert’s declaration.

3.12 Whether a joint report is commissioned or the parties have chosen to instruct separate experts, it is important that the expert is prepared to answer reasonable questions raised by either party.

3.13 When experts’ reports are commissioned pre-application, it should be made clear to the expert that they may in due course be reporting to the court and that they should therefore be mindful that they will be required to sign the usual expert witness declaration.

3.14 Where the parties propose to instruct a joint expert, there is a duty on both parties to disclose whether they have already consulted that expert about the assets in issue.

3.15 If the parties instruct separate experts the parties should be encouraged to agree in advance that the reports will be disclosed and attempts should be made to ensure that discuss the issues directly with each other prior to trial with a view to agreeing values or otherwise narrowing issues.

SUMMARY
3.15 The aim of this protocol is to assist the parties to resolve their differences speedily and fairly or at least narrow the issues and, should that not be possible, to assist the Court to do so.

The Family Proceedings Fees (Amendment No.2) Order (NI) 2007 SR 2007 No.453

This Order amends the Schedule to the Family Proceedings Fees Order (Northern Ireland) 1996 so as to:

(a) insert the fee for filing an answer/reply to a petition/answer and the personal application fee for a matrimonial interview in that part of the Schedule dealing with the commencement of proceedings
(b) insert the fee for a C2 application in that part of the Schedule dealing with proceedings under the Children (Northern Ireland) Order 1995; and
(c) delete the above fees where they were previously listed in the Schedule

This Order does not increase or reduce any fees.
The price of privilege

We are grateful to Brian Walker, Council Member and Past President, for this article which is based on a presentation he delivered at a seminar on Suspicious Activity Reports in September 2007.

The purpose of this article is to give some indication of privilege and nothing in it should be taken as a definitive statement of the law. It is for the reader to study the relevant case law in detail.

I shall begin with a discussion of the law on privilege, to illustrate the present law from certain leading cases and to give you a general background which I hope will lead to a better appreciation of the broad principles.

Literary critic, Middleton Murray has stated: “No Barrister wastes his forensic oratory upon the Law Lords. When the appeal is made to reason it cannot be heightened by being garnished with an appeal to emotion where its force will be diminished.”

However, it is my job to attempt to do the impossible because I believe passionately in the principle of privilege and that every professional lawyer should be prepared to sacrifice his or her career to protect the principle of privilege from the abuse of power by the Executive, by market forces or by currently fashionable ideas.

I attended a seminar recently on what I will call the triangle of legal principles. It was a fascinating exposition of the difficulty of practising law in this jurisdiction because we are in effect continually trying to reconcile three legal systems. Each of us is in the middle of a triangle of National law, European Union law & European Convention of Human Rights law.

Solicitors are in the middle of that Bermuda triangle and again I quote Middleton Murray: “not until you have patiently worked your way into the creative centre can you truly say that you apprehend it.”


There is also another triangle which solicitors must understand as a solicitor has three roles. They have a role as an officer of the court. They have a role as advisor to the client and they have a role as a monitor of Regulations.

The European Union continued happily for about twenty five years without any recognition of the concept of legal privilege and it was only after a dawn raid on a United Kingdom company and the assistance of the then President of the CCBE David Edward that the Court came to recognise legal professional privilege which it borrowed really from our common law and transformed it into a newly established principle of Community law.

Solicitors should be familiar with the principle of Proportionality which can be found in express terms in the relevant Treaty of the European Union. This is very important in understanding the background of European Directives. Frequently, I am asked to persuade Government that money laundering Regulations should have a minimal threshold. This request betrays a lack of understanding of where the principle of Proportionality came from. To our legal system it is a foreign concept. Its origins are in German law.

There are two elements of Proportionality. Firstly, the law must be appropriate to achieve the end result and secondly, that it should not go beyond what is necessary to achieve its objective. Thus, the Directives coming from Brussels are coming from a culture which has enshrined in it an expectation that everyone concerned with the enforcement will make pragmatic decisions rather than dogmatic decisions.

Our own legal tradition has always, when in doubt about legislation, tried to discover the mind of Parliament at the making of the legislation. This is quite clearly a different approach. The law which has been created by the European Convention of Human Rights could perhaps be described as a rights-orientated legal culture. This is contrary to our traditional law which is that the judicial function is limited to a review of the existing law.

The Pye Decision demonstrates the difference between the European Court of Human Rights and the approach of our Courts as demonstrated by the Three Rivers J judgment of the House of Lords. In the latter case the speech of Lord Carswell was not just a reversal of the Court of Appeal but was a complete destruction carefully engineered from a succession of pieces of case law over 150 years. Lord Carswell’s assertion of the extent of privilege and the importance of the extent of privilege is in the best traditions of our law. This J judgment is much more important than Bowman v Fels. It is the father of Bowman and Fels.

If you contrast the Pye Decision of the Grand Chamber delivered 30 August 2007 and the style of that majority decision, you will see how that Court has managed to fashion its decision in much more general terms. ‘The Court has found that the interference with the applicant companies’ possessions was a control of use, rather than a deprivation of possessions, such that the case-law on compensation for deprivations is not directly applicable. …The Court is not in theory required to settle disputes of a private nature, in respect of which States enjoy a wide margin of appreciation. …the court concludes that the fair balance required by Article 1 of Protocol No. 1 was not upset.”

It is not for the confines of this article to continue this discussion however. As we turn to the development of privilege you shall see how the background of the three systems for every developed legal system must provide special protection to communications between lawyers and their clients.

In the words of the Supreme Court of the United States in Upjohn Company v United States 449 US 383 1981, “this is the oldest of the privileges for confidential information known to the common law.”
In the case of R (Morgan Grenfell & Co Ltd) v Special Commissioner of Income Tax [2003] I quote, “It is a fundamental human right long established in the common law. It is a necessary corollary of the right of any person to obtain skilled advice about the law. Such advice cannot be effectively obtained unless the client is able to put all the facts before the advisor without fear that they might afterwards be disclosed and used to his prejudice.”

The Courts in Morgan Grenfell and Bowman v Fels recognised this privilege and it is important to remember that unless legislation specifically overrides the principle of privilege, either explicitly or by clear implication, then the enquiring authority has no right to override that principle. Examples of the overriding of this principle are the Terrorism Act 2000 and the Proceeds of Crime Act 2002.

I have stated that legal professional privilege is recognised in the European Court of J justice and the European Court of Human Rights and in the procedural roots of English law.

Lord Carswell confirmed that legal professional privilege can be divided into two. Firstly there is legal advice privilege and secondly there is litigation privilege.

Legal advice privilege is a communication between a lawyer and his client for the purpose or giving of legal advice in both litigation and in non-litigious matters.

Litigation privilege is a communication between a lawyer and his client or third parties for the purpose of litigation.

Legal professional privilege has existed at Common Law since at least the sixteenth century and probably before that. In 1833 the Courts had firmly established the principles of legal professional privilege as being in the interests of the administration of justice. Litigation privilege is justified on the ground that disclosure of documents would enable a party in our traditional adversarial litigation to see a part of his opponent’s brief. I emphasise again that the Courts recognise that if a client is to obtain effective legal advice he requires absolute trust and the ability to discuss and communicate frankly with his lawyer, that communication cannot occur if the communication itself is likely to be disclosed at a future date.

Sir Gordon Slynn said in the A M & S Europe Ltd v European Commission 1983 case that the privilege sprung “essentially from the basic need of a man in a civilised society to be able to turn to his lawyer for advice and help and if proceedings begin for representation. It springs no less from the advantages to a society which evolves complex law reaching into all the business affairs of persons, real and legal, that they should be able to know what they can do under the law, what is forbidden where they must tread circumspectly and where they run risks.”

Baroness Hale in Three Rivers District Council v Governor and Company of the Bank of England (No 6) case said “legal advice privilege restricts the power of a court to compel the production of what would otherwise be relevant evidence...the privilege belongs to the client but it attaches both to what the client tells his lawyer and to what the lawyer advises his client to do. It is in the interest of the whole community that lawyers give their clients sound advice, accurate as to the law and sensible as to their conduct. The client may not always act upon that advice...but there is always a chance that he will. There is little or no chance of the client taking the right or sensible course if the lawyer's advice is inaccurate or unsound because the lawyer has been given an incomplete or inaccurate picture of the client's position.”

Legal advice privilege does not include conveyancing documents, client account ledger, a solicitor’s bill of costs or a solicitor’s appointments diary.

Privilege is absolute. If it were not so, it would undermine the lawyer's ability to give a cast iron guarantee of confidentiality to his client. It can be asserted in a reply to any demand for documents (electronic or otherwise) and is not confined to a right to be asserted only in a court of law but it either criminal or civil. The Three Rivers No 6 case makes it quite clear that a connection with litigation is not necessary. Legal advice privilege does attach to lawyer client communications. This absolute privilege even survives the death of the client.

No court can draw an adverse inference from an assertion of privilege.

Lawyers are in a unique position and the courts will not extend the principle of privilege to non-lawyers unless there is specific legislation to the contrary. Thus a client who retains personnel consultants to give employment law advice is obliged to disclose that advice in a court of law but he wouldn’t be obliged to disclose it if the same advice had been given by a lawyer. To quote one case “to extend the privilege to unqualified advisers such as personnel consultants is in our opinion unnecessary and undesirable. Once the privilege is established the lawyer's mouth is shut forever.”

The Human Rights Act of 1998 which incorporated the Convention into our law has not really increased the extent of privilege. The right to a fair Trial (Article 6) necessarily includes the right to privilege. Campbell v United Kingdom (1992) 15 EHRR 137 demonstrates that interference with correspondence between a prisoner and his lawyer breaches Article 8 (right to family life, his home and his correspondence).

I trust I have demonstrated that privilege is something which needs to be protected at all costs. There are, however, some exceptions.

Mr Thanki QC in his excellent book, “The Law of Privilege”, published by Oxford University Press has specified six types of exceptions:

A crime exception.

Obviously there is no privilege in something which is actually part of a crime. Privilege cannot attach to legal advice on how to commit murder, however, this exception is limited to criminal activity and doesn’t extend, for example, to breach of contract.

Where the communication is a fact in itself.

If the existence of the communication is a fact which is important in a case then clearly privilege does not attach.
Where another party has a right to the document.
If somebody else already has a right to the document then there is no point in a certain privilege.

Where secondary evidence can be given of the communication.
If somebody has noted extracts from a document in another document then these extracts are not privileged.

Where there is a particular relationship.
Examples of this are: a company and its shareholders; all the partners are joint tenants.

Where there is a special statutory exemption.
Some of the statutory provisions include criminal justice legislation where you have a suspicion that funds have been derived from or used in connection with criminal activity or that the property is the proceeds of a criminal conduct. Similarly, drug trafficking legislation where you believe that funds have been derived from drug trafficking. Another example is that a bankrupt cannot withhold privileged documents from the Insolvency Service.

The Serious Organised Crime Agency (SOCA) was created by the Serious Organised Crime and Police Act 2005. SOCA was born on 1 April 2006. I commend to you a study of the SOCA website and I do not propose to rehearse its contents. By the end of this article you should have at least some knowledge of the Proceeds of Crime Act 2002, the Money Laundering Regulations 2003 and the Money Laundering Regulations 2007 which come into operation consequent to the Third Directive on 15 December 2007.

I quote from the website on making a Suspicious Activity Report “…2002 Act expanded, reformed and consolidated the UK’s criminal money laundering offences … the preferred method for reporters is to submit their suspicion on the SAR Form…” “They prefer electronic submission but my own opinion is that in seeking to make their work easier they are imposing a policing rather than a reporting role upon lawyers. Readers should be aware of the requirement to disclose, the consent procedures, the requirement not to “tip off”.

Our own Law Society will, I presume, adopt the same approach as the English Law Society to the new Regulations and I, therefore, would ask every office to download the Law Society’s anti-money laundering booklet which is an excellent presentation. You will there see reference to the first Directive of 1991, the second of 2001 and the third of 2005, the Proceeds of Crime Act 2002, the Terrorism Act 2000 and the Money Laundering Regulations of 2007.

It is impossible for me to summarise this in a few paragraphs but I draw your attention to some basic concepts:

1. The Proceeds of Crime Act and Terrorism Act prohibit certain activities and positively require reports of suspicious activities. The Money Laundering Regulations 2007 require you to demonstrate that you have systems in place for the monitoring of clients and cases which enable you to identify suspicions. If you do not have these policies then you are committing a criminal offence punishable by a fine or up to two years in prison.

Each firm must have a nominated officer to receive disclosures and that officer must have access to everything in your office. His/her decision to report cannot be overridden by anybody else. Like any adequate monitoring system you are going to have to be able to demonstrate random file audits, file check lists, records of staff queries, records of reports, procedures as to how to rectify system failures, education and continuing training of staff.

In other words it is a mirror of Financial Services Regulations and it is quite clear that the Law Society inspections are going to become very onerous. The Financial Services industry now has a compliance requirement of a Compliance Officer for every five fee earners. The Bain Report was more a battle of Jutland than Trafalgar for the Law Society and it is quite clear that the monitoring of complaints, the monitoring of Home Charter, the monitoring of money laundering, the monitoring of Financial Services and monitoring of Accounts Regulations will become much more sophisticated and much more interdependent in the foreseeable future.

2. I am not going to go into customer due diligence except to say that every client who crosses your threshold should be subjected to this process. There should be absolutely no exceptions because if you make exceptions you are courting trouble. For example now you must complete CDD for a beneficiary of 25% of an Estate. You must not only complete this at the commencement of the transaction but regularly monitor it.

In the case of a partnership you must obtain information on partners, in the case of a company you must confirm the existence of the company and confirm the authority of the person representing the company and so on. In the case of an executor of an estate you must establish their identity. You must have in place enhanced procedures for clients you do not meet and for politically exposed persons. Existing clients are not exempt.

3. The paper identifies correctly the four elements of offences under Proceeds of Crime Act – knowledge, suspicion, reasonable grounds for suspicion and beliefs on reasonable grounds. In Da Silva (1996) EWCA Crim 1654 it is stated that the essential elements in suspicion is that the defendant must think there is a possibility which is more than fanciable that the relevant facts exist. As I have said previously the test is a subjective one. The three sections 3.2.7 of concealing, 3.2.8 arrangements, 3.2.9 acquisition use or possession are identified. The defences of making disclosure, having a reasonable excuse for not making disclosure but having an intent to make it and the adequate consideration defence are identified.

4. It deals very fully with Bowman v Fels. It makes the following statement that professional legal advisors have a discretion to give advice to their clients about disclosure so if a client becomes aware that his bank has made a disclosure, he is entitled to seek advice on his legal position. Again I refer you to what I have previously said about privilege and I hope that I have demonstrated that if you are familiar with the principles previously outlined you will not be subject to criticism in court.

5. It deals with privilege circumstances and the difference between privilege circumstances, exemption in the Proceeds of Crime Act and privilege. This basically loosens the very strict interpretation of the concept of a client to include communications with the employee of the client,
other professional assistant in a transaction, etc.

6. It deals with the Terrorism Act 2000 in detail, particularly sections 15 – 18 and the defences.

7. It deals with the reporting mechanisms, SOCA.

8. It also deals with civil liability, professional indemnity insurance and some other matters which I have not the time to discuss.

In conclusion I want to say that none of these learned documents, however valuable, provide any information on the most successful defence. That defence is your reputation as having the ability to say, No. You all operate within reasonably small structures which are isolated from each other and you, therefore perhaps, do not appreciate the importance of your own reputation. If you have the reputation among your colleagues and among the public that you will not take chances, that you will uphold the best traditions of the profession at all costs then you have less of a chance of attracting clients who have the potential at least to destroy your career if not to rob you of your liberty.

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**Case Law**

B v- Auckland District Law Society (2003) 2AC 736 PC
Bowman v- Fels (2005) 1 WLR 3083 CA
Campbell v- United Kingdom (1992) 15 EHRR 137
Da Silva (1996) EWCA Crim 1654
New Victoria Hospital -v- Ryan (1993) ICR 201
R (Morgan Grenfell & Co Ltd) -v- Special Commissioner of Income Tax (2003) 1 AC 563
Upjohn Company -v- United States 449 US 383 (1981 US Supreme Court)

**Text Books**

English Public Law and the Common Law of Europe edited Dr Andenas 1998
The Law of Privilege edited by B Thanki published by Oxford University Press 2006
Assembly Legislative Programme 2007-2008

The Executive Committee of the Assembly has announced its planned Legislative Programme for the 2007/2008 Assembly Session. Eighteen Bills have been identified in total – three of which (the Libraries Bill, the Taxis Bill and Health (Miscellaneous Provisions) Bill) were introduced into the Assembly before the summer recess and are at Committee Stage. Details of all the Bills, including their sponsoring department and key proposals, are detailed below:

OFFICE OF FIRST MINISTER & DEPUTY FIRST MINISTER
Public Authorities Reform
To abolish the Fisheries Conservancy Board and the Northern Ireland Disability Living Allowance Advisory Board and amend the appointment processes in relation to certain other bodies.

DEPARTMENT OF AGRICULTURE & RURAL DEVELOPMENT
Diseases of animals
To protect and improve NI’s animal health status through enhanced disease prevention, biosecurity and control measures; to enable policies to be introduced reflecting the latest developments in research and technology to trace and combat disease; and to clarify and extend existing enforcement powers and introduce measures to deal with certain types of offences.

DEPARTMENT OF CULTURE ARTS & LEISURE
Libraries
To provide for the establishment and functions of the Northern Ireland Library Authority; to enable the Department of Culture, Arts and Leisure to make grants in connection with the provision of library services; and for connected purposes.

DEPARTMENT OF EDUCATION
Education reform
To restructure education bodies and their functions in line with the Review of Public Administration.

DEPARTMENT OF THE ENVIRONMENT
Taxis
To make provision regulating taxi operators, taxis and taxi drivers, and for related purposes.
Road Freight (Licensing of Operators)
To ensure the safe and proper use of goods vehicles, ensure fair competition in the industry, protect the environment around operating centres, enable more effective enforcement and contribute to a reduction in organised crime.

DEPARTMENT OF FINANCE & PERSONNEL
Building Regulations (Amendment)
To allow the Department to write regulations to promote sustainable development and further the enhancement and protection of the environment; to enhance district council’s powers to address dangerous buildings and to move the building regulations away from current “deemed to satisfy” provisions towards a guidance-based system.
Budget 2008
Budget (No 2)
Presumption of death
To create a single and comprehensive procedure in Northern Ireland for obtaining a court order which would declare a missing person to be presumed dead and which would be binding for all purposes, specifically the registration of the missing person’s death.

DEPARTMENT OF HEALTH, SOCIAL SCIENCES & PUBLIC SAFETY
Health (Miscellaneous Provisions)
To amend the Health and Personal Social Services (NI) Order 1972 in relation to the provision of health care; to amend the Smoking (NI) Order 2006 to provide that in certain circumstances premises may not be smoke-free only in relation to performers; and for connected purposes.
Children (Emergency Protection Orders)
To remove an incompatibility with the European Convention on Human Rights of a procedural aspect connected with Emergency Protection Orders in respect of children.

Public Health Amendment
To permit the Department to make regulations in connection with contamination, and thus comply with World Health Organisation International Health Regulations.

DEPARTMENT FOR SOCIAL DEVELOPMENT
Charities
To provide for better regulation and governance of all charities operating in Northern Ireland.
Pensions
To improve coverage, generosity and sustainability of the State Pension and enact some simplification measures in private pensions.
Mesothelioma
To provide for people with mesothelioma to be paid a lump sum compensation payment within six weeks of making a claim.
Child maintenance
To enable parents to make a choice about their child maintenance by removing the requirement for parents with care who claim benefits to be treated as applying for child maintenance; to encourage parents to make their own arrangements by increasing the amount of maintenance that parents with care on benefit can keep before it affects their benefits and to simplify and streamline the child maintenance assessment process; and improve collection and enforcement processes and increase efforts to collect and manage debts.
Contact OPSIS for information on the forthcoming seminar, ‘Risk management and the Implications of the Money Laundering Regulations, 2007’.

T: 028 90 653006
Private Tenancies (NI) Order - part 2

Introduction
In Part I of this article (Writ Oct/Nov 2007), the obligations of landlords and tenants under the Private Tenancies Order were considered. This part will consider: the powers of district councils regarding unfitness and disrepair, the issue of certificates of fitness, and amendments to the Rent Order. Sources of further information will be listed.

Part III
Unfitness and disrepair
This part introduces for all private tenancies procedures for determining whether a property is fit for habitation.

Notice of unfitness
If a council considers:
(a) that a dwelling-house let under a private tenancy is unfit for human habitation (or if a flat that a common part is unfit for human habitation); and
(b) that serving of a notice of unfitness is the most satisfactory course of action then it may under a. 18 of the Private Tenancies Order issue a notice of unfitness requiring the landlord to carry out the works specified in the notice within such reasonable time as may be specified.

Any person aggrieved against a decision of a council to issue a notice of unfitness or a notice of disrepair may appeal to a County Court within 21 days of the service of the notice. The County Court may confirm, quash or vary the notice.

Failure to comply with a notice of unfitness or notice of disrepair attracts two sanctions:
1. It is an offence for anyone not to comply with a notice of unfitness or notice of disrepair within the specified period (a. 24 of thePrivate Tenancies Order); and
2. The council may do the works itself and charge the landlord for doing the works.

A person authorised by the council may:
1. At reasonable time and having given at least 24 hours notice enter the property to examine or survey it or where a notice of unfitness or notice of disrepair has been issued (a. 27(1));
2. At any time having given at least six days notice of his intention to do so to the occupier enter the dwelling-house to do works in remedying a notice of unfitness or notice of disrepair (a. 27(2)).

Landlords should also be aware that there may be repair grants available for remedying a notice of unfitness or a notice of disrepair.

Notice of disrepair
If a council considers:
(a) that an dwelling-house let under a private tenancy (or in the case of a flat, a common part outside the flat) is in such a state of disrepair that, notwithstanding that it is fit for human habitation, substantial repairs are needed to bring it up to a reasonable standard having regard to its age, character and locality; or
(b) its condition materially interferes with the personal comfort of the occupying tenant the council may under a. 19 of the Private Tenancies Order issue a notice of disrepair requiring the landlord to carry out the works specified in the notice within such reasonable time as may be specified.

Certificates of fitness and rent control
Perhaps the most important innovation in the Private Tenancies Order is the concept of a certificate of fitness. Councils are empowered to inspect certain properties with a view to issuing a certificate of fitness. If a dwelling-house does not achieve a certificate of fitness it will be subject to rent control. A property which is granted a certificate of fitness will only be subject to rent control if it is currently a protected or statutory tenancy as no private tenancy created on or after the commencement of the Private Tenancies Order will be a protected tenancy under the Rent Order. For the purposes of the new legislation it does not matter whether the tenancy is let furnished or not.

The following dwelling-houses require a certificate of fitness under article 33 of the Private Tenancies Order:

1. Those constructed before 6 November 1956 or provided by conversion of a building which was constructed before that date
2. Those which are not prescribed by regulation
3. Those which do not already have a certificate of fitness

The following dwelling-houses are prescribed and therefore do not need a certificate of fitness:

(a) a dwelling-house which was constructed after 1 January 1945 and before 6 November 1956
(b) a dwelling-house in respect of which a renovation grant has been paid by the NIHE
(c) a dwelling-house in respect of which a HMO grant has been paid by the NIHE
(d) a dwelling-house registered with NIHE as a house in multiple occupation; or
(e) a dwelling-house which is or was formerly let under a protected or statutory tenancy and in respect of which a regulated rent certificate was issued

In respect of (b) and (c) the exemption lasts...
for ten years from the date of payment of the relevant grant and in respect of (e) the exemption is for ten years from the date of the regulated rent certificate. A dwelling-house is assumed to have been constructed before the date in the legislation unless the contrary is shown.

Who can apply for a certificate of fitness?
1. On or after the commencement of the Private Tenancies Order a Landlord may apply at any time if he proposes to grant a tenancy
2. A Landlord must apply within 28 days after the granting of the tenancy if the tenancy was granted on or after the introduction of the new legislation (otherwise he commits an offence) (article 33(3))
3. A Landlord may apply at any time whether or not the dwelling-house is let at the commencement of the legislation (article 33(6))
4. A tenant may apply to have a dwelling-house inspected if there is a certificate of fitness in effect in relation to it (article 35)

An application for a certificate of fitness is to be made to the local council and will attract a fee of £50 (£100 for a re-inspection).

In a landlord’s application (before it considers the application) the council will serve a copy of the application and a notice on the tenant advising that he may, within 28 days, make representations to the council as to whether the dwelling-house is fit for human habitation. This does not apply if the property is not let at the date of the application.

If the application is made by a tenant, the council will serve on the landlord a copy of the application form and a notice advising that he may, within 28 days from the service of the application (the date in the legislation unless the contrary is shown).

If the council is satisfied that a dwelling-house is fit for human habitation it will issue a notice of refusal on the landlord advising him of the reasons and stating (where appropriate) the works which in its opinion are required to make the dwelling-house fit for human habitation.

If (i) a landlord is dissatisfied with the issue of a notice of refusal of a certificate of fitness or (ii) if a tenant is dissatisfied with the issue of a certificate of fitness; he may appeal to a County Court.

On appeal the court shall take account of the state of the dwelling-house at the date of the hearing as well as the date of issue of the notice of refusal or the issue of the certificate of fitness (as appropriate), and the court shall make no order as to costs unless it appears to the court that having regard to the conduct of the parties and all other circumstances it would be equitable to do so.

How long will a certificate of fitness last?
A certificate of fitness will only cease to have effect if:
1. A notice of unfitness has issued re the dwelling-house under a. 18
2. A notice of refusal of a certificate of fitness has issued under a. 36(5); or
3. A repair notice under article 41 of the Housing (NI) Order 1981 has issued.

Thus a certificate of fitness does not cease if the tenancy ends.

Tenancies subject to rent control
The following tenancies are subject to rent control after the introduction of the Private Tenancies Order:
1. Those which are a protected or statutory tenancy
2. A private tenancy granted on or after the 1 April 2007 provided:
   - It was constructed before 6 November 1956 or was provided by a conversion of a building constructed before that date; and
   - It does not meet the appropriate standard of fitness (ie it is neither a prescribed dwelling-house nor has it a certificate of fitness)

The Private Tenancies Order makes provision for the Rent Officer to establish an appropriate rent of a controlled tenancy. Once the Rent Officer has determined the rent either the landlord or tenant may (within 14 days from the date of service of the determination) apply to have the rent considered by a Rent Assessment Committee. The Committee may confirm or vary the Rent Officer’s determination.

If a dwelling-house is let under a controlled tenancy which is a protected tenancy or a statutory tenancy and there has been a change in circumstances the landlord or tenant may apply for a further rent determination.

The Rent Register
The Rent Officer will prepare and maintain the register of rents let under controlled tenancies. This will be publicly available. If a rent is registered in the Rent Register and the Rent Officer is satisfied that the property is no longer let under that tenancy she may remove the entry from the Register.

If a tenancy is controlled a landlord cannot recover any amount in excess of the rent limit for that tenancy. If the tenant has overpaid any amount in excess he can recover the excess provided that no sum may be recovered at any time after two years from the date of payment.

Amendments of the Rent Order
A. 57 of the Private Tenancies Order states that no private tenancy granted on or after the commencement of the Order shall be a protected tenancy under the Rent Order. Also, no further protected shorthold tenancies are capable of being created after this date. However it must be remembered that
any existing tenancy of a dwelling-house could be a protected or statutory tenancy. Therefore it is important for practitioners to establish if there is a protected or statutory tenancy in existence in respect of any letting of property.

A protected tenancy or statutory tenancy of a dwelling-house may not now be assigned save in certain circumstances (ie transfers on matrimonial, children, separation or civil partnership proceedings).

The security of tenure of a protected tenant is limited in that only one succession can take place instead of the two which were permitted under the Rent Order. However, any tenant who succeeded to the tenancy under the rules in force prior to the commencement of the Private Tenancies Order retains his statutory tenancy.

**Protection from harassment and illegal eviction**

The protection of tenants against harassment and illegal eviction is further enhanced by the Private Tenancies Order in that if a person with intent to cause a tenant; to give up occupation of a dwelling-house; or to refrain from exercising his rights, does acts likely to interfere with the peace or comfort of the tenant or members of his household or persistently withdraws or withholds services he shall be guilty of an offence. Furthermore, if a landlord or his agent does acts likely to interfere with the peace and comfort of the tenant or his household or persistently withdraws services he shall commit an offence unless he proves he had reasonable grounds for his actions.

**Part VI**

**Miscellaneous provisions**

There are a number of articles in the Private Tenancies Order which relate to miscellaneous and housekeeping matters. For instance, the DSD is empowered to give guidance to councils and the public and may collect information re private tenancies.

**Conclusion**

Sir John Semple in his “Review into Affordable Housing Final Report”, issued in April 2007, welcomed the introduction of the Private Tenancies Order and recommended that the Department for Social Development and district councils should ensure that all landlords comply with its terms. There may be further change in the private rented sector in the future in that the recommendations in the Review include: that there is a case for registration of all landlords (incorporating a mediation service between landlords and tenants); that consideration be given to longer periods of notice and tenancies as in the Republic of Ireland; that a deposit guarantee system should be considered to assist those on low incomes. Whatever the outcome of the Review, it is clear that 2007 will be noted as an interesting year in the provision of housing in Northern Ireland.

**Further reading**

- The Private Tenancies (Northern Ireland) Order 2006 (SI 2006/1459(NI 10))
- The Prescribed Dwelling-house Regulations (Northern Ireland) 2007 (SR 2007/ 38)
- The Prescribed Fees and Charges Regulations (Northern Ireland) 2007 (SR 2007/ 39)
- The Rent Book (Savings) Order (Northern Ireland) 2007 (SR 2007/ 40)
- The Tenancy Terms Regulations (Northern Ireland) 2007 (SR 2007/ 87)
- The Rent Assessment Committees Regulations (NI) 2007 (SR 2007/ 88)
- The Rent Book Regulations (Northern Ireland) 2007 (SR 2007/ No 89)
- The Private Tenancies (Forms etc) Regulations (NI) 2007 (SR 2007/131)

Copies of all this legislation are available from www.opsi.gov.uk

Booklets on: Private Tenancies; Repairs; Protection against Harassment and Illegal Eviction; and Protected and Statutory Tenancies are available from the Department for Social Development or at www.dsdni.gov.uk


We are grateful to Charles O’Neill for this article.

Whatever the outcome of the Review, it is clear that 2007 will be noted as an interesting year in the provision of housing in Northern Ireland.
The Electoral Commission is encouraging solicitors to support its registration campaign by informing homemovers about the need to change their details with the Electoral Office when they move to a new address.

Seamus Magee, Head of the Electoral Commission’s Office in Northern Ireland commented: “When people move house it is obviously a very busy time. On top of the physical move there are many small tasks that need to be completed including contacting various organisations to inform of a change of address. Very often people will remember to change details with utilities providers and the rates office but they often forget that they also need to provide the electoral office with their change of address details. We are reminding solicitors involved in conveyancing to inform their clients of the need to register their new details on the electoral register.”

Northern Ireland now operates under a system of continuous registration, which has replaced the annual canvass of electors. Previously, to keep their name on the electoral register, all eligible voters were required to register on an annual basis. However under the new system, once a person is on the register they only need to re-register if their personal details change.

The Commission, through a major public awareness campaign is also focusing resources on encouraging groups underrepresented on the electoral register to register. These include black and minority ethnic (BME) communities, young people aged between 16 and 24 years, people living in areas of higher social deprivation, those with physical and learning disabilities and homemovers.

“Many people do not realise that appearing on the electoral register is a legal obligation. The Commission encourages anyone not yet registered to do so and would ask that legal practitioners in Northern Ireland encourage unregistered persons to fulfil this obligation,” Mr Magee concluded.

All UK, Irish and EU citizens over the age of sixteen who have resided in Northern Ireland for the past three months are eligible to register to vote. Registration forms can be downloaded from www.aboutmyvote.co.uk. Alternatively, a form can be requested by calling the Electoral Commission’s helpline on 0800 0323 700.

Solicitors encouraged to support electoral registration campaign

Legal Moves

Robert G Sinclair & Co Solicitors announces two appointments:

Michael Burns has joined Robert G Sinclair & Co Solicitors as head of the firm’s commercial property and banking department.

A partner at Mills Selig and MKB Russells for several years, Michael specialises in development work, investment purchases and sales, commercial leases for both landlord and tenant, and property related lending.


Claire is responsible for developing the firm’s corporate legal department and specialises in M&A, company reorganisations, corporate governance, and shareholder, LLP and partnership agreements.
In its latest Report, Criminal Justice Inspection Northern Ireland (CJINI) has called on the Department of the Environment (DoE) and its Executive Agencies to get tough on hard-core offenders involved in environmental and vehicle-related crime. The Inspectorate urged the Environment and Heritage Service, Planning Service and Driver and Vehicle Agency to adopt a more direct, determined approach to enforcement as part of its regulatory responsibilities.

The recommendation was one of 15 made by CJINI following an inspection of how the DoE and its agencies interfaced with the criminal justice system.

"Crimes against the environment are often motivated by profit and carried out by persistent and hardened offenders," said Kit Chivers, Chief Inspector of Criminal Justice in Northern Ireland.

"The illegal disposal of waste at unauthorised sites for example is seen by many as a victimless crime. Yet in reality, this type of offence is very serious as it contaminates land and water as well as air pollution, all of which damages public health. Millions of pounds can be made by those who choose to breach the environmental and planning laws and construct unauthorised developments. Similarly, those who commit vehicle-related crime in Northern Ireland can present a road safety risk to other members of the public."

CJI Inspectors recommend that, more should be done to further enhance the good enforcement work already being undertaken by the DoE and its Executive Agencies.

"We believe the Department and its agencies need to fully incorporate enforcement within its Strategic and Business Planning," said Mr Chivers. "Effective enforcement relies on the support and confidence of the public and other stakeholder organisations. Therefore the DoE should develop a clear statement of intent on enforcement in relation to breaches or offences of environmental, planning and road traffic law. Weak enforcement on the other hand creates inequality. This can occur as illegal operators continue to compete unfairly with compliant businesses. Inequality is also created when private industry is prosecuted for environmental and planning offences yet Government bodies are exempt from prosecution."

"By strengthening relationships where intelligence and information is shared, and enforcement action is undertaken hand in hand with other agencies, better use can be made of the resources that exist to deal with those who flout the law," said Mr Chivers.

He added that Inspectors had found the best deterrent against environmental crimes was an effective enforcement system backed up with appropriate sanctions.

Mr Chivers continued: "There should be better implementation of the "polluter pays" principle where the offender is liable for the cost of repairing the damage they have caused and, in the case of an illegal dump, removing the waste from the site and disposing of it in accordance with the law. This cost can far exceed the maximum penalty a court could impose. When coupled with the new legislative powers that allow the DoE to re-coup its investigation costs from the offender, this approach to enforcement is likely to be an effective deterrent to most offenders."

For these reasons CJINI has recommended that detailed policies and procedures should be put in place by the Environment and Heritage Service to implement these new powers. Consideration should also be given to establishing a specialist legal jurisdiction with the option to establish an environment court. Mr Chivers concluded: "A more robust approach to enforcement should be accompanied by the establishment of a special legal jurisdiction similar to the provision which currently exists for commercial law and the Coroner's Service."
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On Saturday 15 September 2007 four local solicitors joined almost 100 other walkers in the Ulster Cancer Foundation (UCF) sponsored ascent of Ben Nevis which at 4408 ft is the highest mountain in Britain and Ireland. The solicitors were participating in the event in memory of Jennifer Shevlin who died in October 2006 from cancer. Jennifer had been the Society’s Assistant Secretary for Education for more than twelve years and was a keen hill walker.

The Ben Nevis Challenge was organised by UCF in association with UK Outdoor Pursuits and since the event began nine years ago they have escorted more than 3,500 walkers to the top of Ben Nevis, raising almost £2 million to help support local people affected by cancer.

Neil Grainger, Senior Area Development Officer with UCF said that the challenge of climbing Ben Nevis is an exhilarating personal experience which also benefits the work of UCF. He added that one in three people in Northern Ireland will be diagnosed at some time with cancer, a disease which touches the lives of so many people. UCF receives no government funding. It provides care services, education and information for all those affected and all funds raised are spent locally.

The Law Society gave a donation of £2000 to sponsor the event making the total collected to date by the four solicitors up to £4662. The idea for the challenge was initiated in memory of Jennifer by those who had worked closely with her during her career in the Society. It was taken up by Nigel Broderick and Attracta Wilson, long time members of the Society’s Education Committee, Anne Fenton, Director of the Institute of Professional Legal Studies and Kevin Delaney, Acting Secretary to the Education Committee in recent years.

Past President, Attracta Wilson, said: “The challenge began with a trip through the spectacular Scottish countryside to Fort William on Friday afternoon and the climb started at 7.10am next morning. Half way up rain, mist and wind joined the party for the duration. We reached the top shortly after 12.30pm. The wind chill was minus 17 degrees centigrade so the guides and mountain rescuers allowed us only a few minutes for rest and photographs. There was no view but the sense of achievement more than compensated. The total distance walked was 10 miles and as we had started less than 50 feet above sea level in Ben Nevis valley the total ascent and descent was 8800 feet. Apparently they call it the “easy tourist route!”

Accepting a cheque on behalf of UCF Neil Grainger said that the organisation depends on the fund raising efforts of the public in general in events like the Ben Nevis challenge. Also present were Jennifer’s husband Kevin, Brian Speers, Chair of the Education Committee and the four mountaineers.

From left: Kevin Delaney, Anne Fenton, Brian Speers, Neil Grainger, Kevin Shevlin, Attracta Wilson and Nigel Broderick.
The Companies Act 2006

The Companies Act 2006 (the Act) which received Royal Assent on 8 November 2006, will extend fully to Northern Ireland when implementation is finalised, bringing major benefits to business by modernising and simplifying company law.

The Government set out the commencement timetable for the Act by Written Statement on 28 February 2007 (WS2/07). There were three main phases to the implementation timetable, with most provisions being commenced on 1 October 2007, 6 April 2008 or 1 October 2008.

In line with this timetable, a major tranche of provisions was commenced on 1 October 2007, including those relating to directors’ general duties, the business review and company resolutions and meetings. A further tranche of provisions will be commenced with effect from 6 April 2008, including those relating to accounts and reports, audit and abolishing the obligation on private companies to have company secretaries.

WS2/07 also explained that Companies House (CH) in Cardiff would require sufficient time to implement important changes to its systems and processes affecting other important areas, such as company formation etc., and that provisions relating to these areas would not be commenced until 1 October 2008.

However, the Minister of State for Competitiveness at the Department for Business, Enterprise and Regulatory Reform, Stephen Timms, announced by further Written Statement on 7 November 2007 that, as business needs certainty about the implementation timetable and a considerable volume of work is still required, the Government has decided to delay the commencement date for most of the provisions due to be commenced on 1 October 2008 until 1 October 2009. The Minister also indicated that he intends to consult key stakeholders about the remaining commencement dates before making a further Statement in December setting out the final commencement timetable.

A major operation is currently ongoing to integrate Companies Registry for NI (CRNI) with CH. This was also scheduled for completion by October 2008. The Government’s decision now means that it will be necessary to delay full integration until October 2009. Further information about this will be issued by CRNI when more details are available.

The Minister’s full statement may be accessed at the following link http://www.berr.gov.uk/bbf/co-act-2006/index.html

The Companies (Cross Border Mergers) Regulations 2007


The main objective of the Directive is to protect any pre-existing employee participation rights in the merged company. There will be a requirement in some cases for merging companies to negotiate with employees about levels of employee participation and the Regulations set out the procedures for this.

A further broad intention of the Directive is to protect any pre-existing employee participation rights in the merged company. There will be a requirement in some cases for merging companies to negotiate with employees about levels of employee participation and the Regulations set out the procedures for this.

Although BERR has responsibility for the Regulations, the NI Department for Employment & Learning has had a role in ensuring that the employee participation elements extend properly to Northern Ireland, and has done so by drafting an accompanying Schedule so that references to GB legislation and organisations can read across to NI.

The Regulations also provide a right for employees to make a complaint to the Industrial Court where it is considered that the company has failed to comply with the terms of the employee participation agreement. To ensure compliance with the Directive and consistency with other related information and consultation Directives, the Department must also make a minor amendment to the Industrial Court (Proceedings) Rules (NI) 2007 to allow for legal representation where the parties in dispute choose to engage same.

Valerie Reilly
Employment Rights Branch
Telephone: 028 902 57560
Email: valerie.reilly@delni.gov.uk
The Court of Appeal in England handed down a judgment on 18 October 2007 in which Lord Justice Ward said that he regarded both parties as “completely cuckoo.” The parties had spent £100,000 in legal costs arguing over a case worth around £6000. The judge said that the case “cried out for mediation” which would have brought an air of reality to negotiations.

In the case of Egan v Motor Services (Bath) Ltd the purchaser had in March 2004 bought a brand new Audi TT3.2 litre V6 motor car for £32,300 which he claimed had a tendency to veer to the left. He complained and a series of experts for both sides including the AA and Audi inspected the vehicle over the next year, carrying out sophisticated tests in an attempt to resolve the problem. No agreement was reached and the purchaser began proceedings in Bristol County Court in April 2005. He sold the car shortly after and his claim was valued at about £6000 which was the difference between the second hand resale price and the original price paid to the vendor.

Following a case management conference in October 2005, further tests on the car took place by other experts and they gave evidence when the case started on 26 April 2006. It was adjourned after two days. More tests were carried out and the results were given in evidence at the resumed hearing on 8 September 2006 when the case ended. The judge eventually found as a fact that the car had a tendency to veer to the nearside but that this was normal “camber sensitivity” and within Audi's specifications. Judgment was handed down in December 2006. The plaintiff lost and he appealed.

Both parties were represented by solicitors and counsel at the hearing before three appeal judges who unanimously rejected the appeal. The review by the judges of the complex history of the dispute between the parties and their experts makes fascinating reading. Perhaps the only question eventually not in dispute was that the car did in fact veer to the left but whether this exceeded manufacturer’s tolerances and amounted to breach of terms implied under the Sale of Goods Act 1979 was less easy to resolve.

Lord Justice Ward, in a strongly worded plea for common sense, said that he regarded the parties as: “completely cuckoo to have engaged in such expensive litigation with so little at stake.” He said it was a paradigm example in which: “It behoved both solicitors to take the firmest grip on the case from the first moment of instruction” and he suggested that a copy of his judgment be given to the parties.

“...In this case the sheer commercial folly could have been amply demonstrated to both parties sitting at the same table but hearing it come from somebody who is independent... The cost of such a mediation would be paltry by comparison with the costs that would mount from the moment of the issue of the claim. In so many cases, and this is just another example of one, the best time to mediate is before the litigation begins. It is not a sign of weakness to suggest it. It is the hallmark of commonsense. Mediation is a perfectly proper adjunct to litigation. The skills are now well developed. The results are astonishingly good. Try it more often.”

The full judgment is available on the Library’s Libero database, accessible via the Society’s website at www.lawsoc-ni.org.

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**Order 64 of the rules of the Supreme Court (NI) 1980**

**Michaelmas Term**
Friday 5 September 2008 to Friday 19 December 2008

**Halloween Recess**
Monday 3 November 2008 to Friday 7 November 2008 inclusive

**Christmas Recess**
Monday 22 December 2008 to Monday 5 January 2009 inclusive

**Hilary Term**
Tuesday 6 January 2009 to Friday 3 April 2009

**Easter Recess**
Monday 6 April 2009 to Friday 17 April 2009 inclusive

**Trinity Term**
Monday 20 April 2009 to Tuesday 30 June 2009

**Long Vacation**
Wednesday 1 July 2009 to Friday 4 September 2009 inclusive
## Legal Opportunities

<table>
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<th>Position</th>
<th>Location</th>
<th>Salary Range</th>
<th>Description</th>
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<tbody>
<tr>
<td><strong>Partnership Opportunity</strong></td>
<td></td>
<td>£Excellent</td>
<td>Our client, an ambitious Belfast based firm, is seeking applicants for an excellent partnership opportunity. The ideal candidate will be an entrepreneurial, experienced and focused solicitor who is looking for a new and exciting challenge. Enquiries from sole practitioners very welcome. Ref: 22008</td>
</tr>
<tr>
<td><strong>Banking Solicitor</strong></td>
<td>Top Belfast commercial firm</td>
<td>£35,000 - £55,000</td>
<td>Top Belfast commercial firm seeks an experienced banking solicitor to join their renowned team. Based in the city centre, the role involves working on behalf of the local banking sector and large companies on a range of matters, from facility and security issues to more complex securitisation and syndication instructions. Ref: 9493</td>
</tr>
<tr>
<td><strong>Employment Solicitor</strong></td>
<td>This dynamic city centre firm is currently looking for an experienced employment solicitor to manage all employment matters for the firm. Working mainly on contentious matters on the applicant side, this is an excellent opportunity for a highly ambitious professional. Ref: 23461</td>
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<tr>
<td><strong>Private Client Solicitor</strong></td>
<td>Due to continued demand and growth, our leading Belfast based client is seeking to employ a confident solicitor to join their busy private client team. This is an outstanding opportunity for an articulate professional to further their career. Previous experience in conveyancing and probate essential. Ref: 8838</td>
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<tr>
<td><strong>Commercial Property Solicitor</strong></td>
<td>Excellent</td>
<td>£Excellent</td>
<td>Excellent opportunity for an ambitious solicitor to join this well known firm. Our client is offering an excellent environment with realistic future opportunities within a medium firm. The ideal candidate will have a commercial property background, but may have specialised in other areas, like banking or corporate work. Ref: 22697</td>
</tr>
<tr>
<td><strong>Corporate/Commercial Solr.</strong></td>
<td>City centre practice seeks a solicitor to join their team. Reporting to the corporate partner, our client is offering an excellent working environment with a varied workload. Must have a record of success in corporate transactional work including M&amp;As, acquisitions and disposals. Experience in general corporate law ideal. Ref: 9664</td>
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<tr>
<td><strong>Qualified Solicitor</strong></td>
<td>Our client is a top Belfast commercial firm. They are currently seeking to recruit an articulate and qualified corporate solicitor to join their dynamic team. The ideal candidate will have commercial practice training along with experience in company commercial and corporate transactions. Ref: 9664</td>
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<tr>
<td><strong>Conveyancing Solicitor</strong></td>
<td>Based in Co. Armagh, our client is a well established general practice. Due to on-going demand, they are now looking for a solicitor to assist in all conveyancing matters for the firm. Working with the property partner, this position will involve conveyancing and remortgage work. Ref: 23574</td>
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For further information on legal opportunities, please contact Ronan Savage for a confidential discussion on 028 90 325 325 or email rsavage@brightwaterNI.com
The funds raised from a “Bop ‘til you Flop” Night will go towards the Alzheimer’s Society, the nominated charity of James Cooper, President of the Society for 2006–2007.

In conjunction with Northern Bank, the Law Society held a “Bop ‘til you Flop” night at the prestigious Spring & Airbrake Nightclub on Friday 19 October 2007. Music was provided by Liam Barr and local bands Legal Tender and The Magic Slims and with help from the Camelot Foundation almost £9000 was raised for the charity.

Earlier in the year, the President’s Golf Day at Enniskillen had raised £3200, making a grand total contribution of £12200 to the Alzheimer’s Society.

James Cooper said: “I am delighted to support this very worthwhile charity and would especially like to thank Joe Donnelly of the Society’s Council who along with Janet Patterson, of Camelot organised such a successful event. Thanks also go to the enthusiastic musicians for the evening, David Neely of the Spring & Airbrake and of course all members of the profession and the public who attended or generously gave donations.”

Pictured from left are: Janet Patterson, Camelot; Joe Donnelly, Law Society; Richard Caldwell, Northern Bank; Karen Kerr, Alzheimer’s Society and the President of the Law Society of Northern Ireland, James Cooper.

Alzheimer’s Society
Christmas appeal
Help us to make this a Christmas to remember

This Christmas thousands of people in Northern Ireland will be trying to cope with the effects of dementia.

Christmas can be stressful, bringing back memories of happier times. People feel more isolated and alone, and it’s when many need the most support:

- The Dementia UK Report (NI supplement) estimates that there are 16,000 people with dementia in Northern Ireland - a figure due to rise to 47,000 by 2051
- Dementia is a term used to describe a collection of symptoms, the most common form of dementia being Alzheimer’s
- Symptoms include:
  - Decline in memory - unable to remember names, places or the way home
  - Communication skills - decline in the ability to talk, read or write.
  - Mood changes - people with dementia may feel sad, angry or frightened
  - Gradual loss of life skills - eating, dressing and using the toilet

We exist to champion the rights of everyone with dementia and those who care for them. That’s why we work hard to:

- Provide support through our confidential helpline
- Offer respite care, day care, outreach and befriending services
- Provide information to people with dementia, carers and healthcare professionals
- Raising awareness and campaigning
- Research the cause, cure and care of dementia
- Provide a network of branches throughout NI providing support and services in local communities

Please help us to give people living with dementia the support they deserve.
Donations can be posted to:

Christmas Appeal
Alzheimer’s Society Northern Ireland
86 Eglantine Avenue
BELFAST BT9 6EU
Tel: 028 9066 4100
Immigrant victims of domestic violence in Northern Ireland

Anna Morvern, immigration adviser at Law Centre (NI), explains the current legal position of immigrant spouses or partners who fall victim to domestic violence and calls for an end to a prohibitive fee which increases the risk of people staying in violent relationships.

Since December 2002, the Immigration Rules have provided for a grant of leave to remain for immigrant spouses or partners whose relationship has ended due to domestic violence during the first two years of their stay. The provisions relating to domestic violence in the Immigration Rules, at least in theory, offer vital protection for the small number of immigrants, usually women, who came to Northern Ireland to join their spouse or partner and who have become victims of violence.

The Home Office requires considerable evidence to show that the relationship broke down due to domestic violence. The evidence required is not specified in the Immigration Rules themselves but is listed in the Immigration Directorate’s Instructions, the guidance to government caseworkers as to how they should apply the Rules when they make decisions in individual cases. In the case of Ishtiaq, the English Court of Appeal earlier this year questioned whether the evidence must be that set out in the Immigration Instructions and whether an application must fail if the evidence is not from that list.

The Home Office tried to argue that the list of evidence in the Instructions constitutes an inflexible prescription, contending that false allegations of domestic violence could otherwise be made in order to obtain leave. The Appeal Court, however, was not convinced by these arguments, noting that Home Office caseworkers, like judges, are often charged with a difficult fact-finding task and with distinguishing fact from falsehood.

The Court of Appeal concluded that the Instructions provide strong guidance as to the evidence required to prove the breakdown of a relationship due to domestic violence, but no more than that.

This decision is to be applauded by legal representatives who act for immigrant victims of domestic violence in Northern Ireland. It is not a particularly creative or liberal interpretation of the law but it is a commonsense decision which acknowledges the difficulties that immigrants face when making any kind of formal application in what is often an unfamiliar system and language. Lawyers acting for victims will be all too aware that these difficulties are often exacerbated for victims of domestic violence, who will frequently encounter problems when they try to access authorities such as doctors and police to obtain formal corroboration of the violence suffered.

The Court held that it was not the purpose of the Rules to deny leave to victims of domestic violence who can prove their case but cannot do so in one of the ways that have been prescribed by the Secretary of State in the Instructions. Preventing an applicant from proving her case by producing relevant evidence outside that prescribed in the Instructions to caseworkers would defeat the purpose of the Rules, which was to ensure that victims should not feel constrained to remain in an abusive relationship solely in order to qualify for leave to remain.

Despite this positive decision, the ability of immigrant victims of domestic violence to seek protection is currently under considerable threat from two quarters. The first threat emanates from recent legislation. A woman who should be protected by the ‘domestic violence rule’, may not even get as far as putting in her application, because, in the same month that the English Court of Appeal promulgated its decision in Ishtiaq, the Home Office introduced new fees payable by applicants. The fee to be paid by an individual submitting an application for leave under the ‘domestic violence rule’ is now £750. The only exemption from this fee is if the applicant is destitute and can prove this with a letter from an official source, usually social services.

The Law Centre and others are vigorously challenging the new fee on a case-by-case basis and at policy level. For many immigrant women on the minimum wage or a low wage, struggling to make ends meet upon leaving a violent relationship, the fee is prohibitive. In effect, the new fee requirement will force numerous vulnerable women to make a choice between remaining in an abusive relationship, ‘disappearing’ underground, or having to become unwillingly destitute solely to meet the criterion for exemption. At the time of writing, legal challenges to this fee were in preparation.

The second threat is the proposal of the Border and Immigration Agency to “minimise the need for [Home Office] caseworkers to exercise discretion”, as set out in its recent consultation on ‘simplifying’ immigration law. The Court of Appeal in Ishtiaq affirmed the role of discretion in Home Office decision-making. For immigration practitioners, the exercise of discretion offers the promise of consideration of the individual facts of a client’s case and the possibility of an appeal if discretion should have been exercised differently. Yet the Home Office proposes to reduce the use of discretion across the board in immigration cases.
If legislation is to be ‘simplified’ in the manner proposed by the government, then the alternative might only be a ‘one-size-fits-all’ approach. Such an approach would be highly inappropriate, given the complexities of individual immigrants’ particular circumstances, which always merit careful individual scrutiny rather than a box-ticking exercise. The Immigration Law Practitioners’ Association, representing the concerns of its members, has rightly criticized the short-sighted tactic of reducing discretion:

“Whether viewed from the perspective of European Union law, human rights law or UK administrative law, both proportionality and regard to all the relevant circumstances of the individual case are fundamental requirements of a lawful decision. Reducing discretion for decision makers to be able to meet these requirements will cause their decisions to fail to command public confidence and lead to litigation; this in turn may add complication and further undermine public confidence.”

The protection of vulnerable immigrants and their ability to seek genuine safety in Northern Ireland should never be jeopardized by the motive of financial gain or by misguided attempts to abridge legal processes. This could not be more so than in the case of immigrant victims of domestic violence.

Notes
1. The Immigration Rules, paragraph 289, set out the requirements to be met. Since October 2005, the Rules also refer to civil partners (Statement of Changes in the Immigration Rules HC582).
2. Immigration Directorate Instructions, Section 4, Chapter 8, ‘Family members – victims of domestic violence’.
3. Ishtiaq v Secretary of State for the Home Department [2007] EWCA Civ 386
4. Ibid, paragraph 41.
**Rights in Progress**


**Third edition. Price £18.95**

A guide to using the Human Rights Act 1998, Rights in Progress explains how the Act can be used to advance people’s civic, economic and social rights.

The guide provides a practical introduction to a piece of the human rights jigsaw by relating the European Convention on Human Rights and the Act to the daily work of advisers and other practitioners. It examines the convention, analyses how it has been absorbed into domestic law through the Act and assesses the impact to date of the Act on social welfare law. The expanded Third Edition details recent cases in the European Court of Human Rights and in domestic courts in Northern Ireland, England, Scotland and Wales and examines new developments in cases cited in previous editions. An index of cases has been added for ease of reference.

Author Les Allamby said: "The Human Rights Act is neither the cure for all legal problems nor a charter for criminals and miscreants. Rights in Progress separates fact from fiction about the Act and sets out how the Act works and key decisions made by the European Court of Human Rights and courts in Northern Ireland and elsewhere. I hope readers will find the guide useful in their work as advisers or in discovering more about what the Human Rights Act actually can do in practice."

Commending the guide, NIHRC Chief Commissioner Monica McWilliams said: "An admirable piece of work. I strongly recommend it to all those working in the field of human rights and social justice."

**Rights in Progress** is free to all Law Centre (NI) full and comprehensive associate members and is available to others for £18.95 from the Publications Department, Law Centre (NI), 124 Donegall Street, Belfast BT1 2GY.

![Les Allamby presents the first copy of the new edition of Rights in Progress to Northern Ireland Human Rights Commission Chief Commissioner Monica McWilliams. Photo: Kevin Cooper, Photoline.](image)

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Overcoats and raincoats by Bugatti.
Leathers by Smarty of Switzerland.
Mix-a-size business suits by Douglas - £235 - choose any size of jacket with any size of trousers.
Extra trousers optional.
Law Centre (NI) hosted the Independent Asylum Commission when commissioners visited Belfast on 6 November to hear evidence from asylum seekers and refugees and the local agencies that work with them as part of a citizens’ enquiry into the UK’s asylum system.

The Commission’s impartial citizens’ enquiry hit the headlines recently by highlighting the plight of destitute refused asylum seekers who were sleeping on the streets and scavenging in bins to survive. The Commission is expected to produce hard-hitting recommendations for reform of the asylum system to present to government and policy-makers in 2008.

Commission Co-chair and former Lord Justice of Appeal, Sir John Waite, and Zrinka Bralo, a refugee, journalist and human rights campaigner represented the Commission, which includes peers, a bishop, and human rights experts. They heard first hand testimony from OFMDFM officials and a range of local people from Northern Ireland who are concerned about the asylum system, including:

- advisers from Law Centre (NI)
- the Northern Ireland Human Rights Commission
- the Northern Ireland Community for Refugees and Asylum Seekers
- Women’s Aid
- Northern Ireland Council for Ethnic Minorities
- the Refugee Action Group
- and asylum seekers and refugees living in Belfast

Sir John Waite, Co-chair of the Independent Asylum Commission, said: “The Commission is keen to know about the situation in Northern Ireland and how the stories we hear compare to those we have heard in England, Wales and Scotland. We want to know if asylum seekers are being treated fairly, and what impact asylum is having on host communities in Northern Ireland. Whilst having heard the points of views of government representatives and the NGOs, the Commissioners are particularly keen to hear from those with personal experiences in this area.”

Les Allamby, Director of the Law Centre (NI), said: “We were delighted to host the evidence session in Northern Ireland for the Independent Asylum Commission. This allowed local organisations, including our own, to make sure that a Northern Irish voice was heard on the important issue of the treatment of asylum seekers.”
BSA Dinner Dance 2008

The annual BSA Dinner Dance will now be held on

Saturday 9 February 2008 at the Europa Hotel, Belfast.

The pre-dinner Drinks Reception commences at 7.30pm
Followed by dinner at 8.30pm with music provided by The Booze Brothers

Tickets £40.00 per person

Bookings must be made in writing and addressed to:
The BSA Administrator, Suite 7, 58 Howard Street Belfast BT1 6PL

A booking form can be found on our website
www.belfast-solicitors-association.org
Any enquiries should be made by e-mail to:
info@belfast-solicitors-association.org

A donation from every ticket sold will be made to the Solicitors Benevolent Association.
As there is always high demand for places, members are recommended to book as early as possible to avoid disappointment.

The Europa Hotel is offering a preferential rate of £47.50 per person sharing a twin or double room including breakfast. Room reservations should be made direct with the hotel on 9027 1066, requesting the preferential rate for the BSA Dinner Dance.

We look forward to seeing you there!
Lunchtime Lecture Series - Inheritance Tax

**Dates:**
- **Tuesday 29 January 2008** - Inheritance Tax - The Basics
  The very basics; IHT-efficient wills; Business and agricultural property relief; Walden and Phizackerly - What now?
- **Tuesday 19 February 2008** - Life Policies and Pensions
  Can you trust a life policy? Keeping pension death benefits out of the estate; Using life policies in IHT planning.
  FA 2006 - the basics; Calculating the tax; Mitigating the tax; Timing of gifts.
- **Tuesday 22 April 2008** - Planning Using Lump Sums and Property
  Lump sum investment plans; AIM to beat IHT; The family home – can you or can’t you? Ideas for other property;
  Refresher session covering IHT changes in the Budget 2008

**Time:**
1.00pm – 2.00pm Refreshments will be provided from 12.30pm

**Venue:**
The Edge, Mays Meadow, Belfast

**Cost:**
£10 for members of the NIYSA* and £20 for non-members per lecture; A discounted rate of £30 for members and £60 for non-members is available for attendance at the entire series.

**Speaker:**
Mr David Crozier, Navigator Financial Planning

**Cheques and booking forms to:**
NIYSA c/o Ciarán Fegan
Higgins Hollywood Deazley Solicitors
523 Antrim Road
BELFAST BT15 3BS
Or
DX4500 NR Belfast 15
Email: ciaranfegan@HHDsolicitors.com

* Attendance at this Seminar will provide 4 hours CPD.
* All Solicitors aged 36 or under are automatically members of the NIYSA

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**APPLICATION FORM - Lunchtime Lecture Series - Inheritance Tax**

Please use block capitals. One form per room

**NAME:**

**FIRM:**

**ONE CONTACT ADDRESS**

**E-MAIL 1.**

**TELEPHONE OFFICE:***

**MOBILE:**

**NUMBER OF PERSONS ATTENDING:**

**I ENCLOSE A CHEQUE FOR £**
Made payable to NIYSA

Please return booking form and cheques to:
NIYSA c/o Ciarán Fegan, Higgins Hollywood Deazley Solicitors, 523 Antrim Road, BELFAST BT15 3BS Or DX4500 NR Belfast 15
In conjunction with the Society of Young Solicitors’ Ireland

Annual Conference

The NIYSA has pleasure in inviting its members to attend our annual conference, which will take place at the Slieve Russell Hotel, Ballyconnell, County Cavan. We are hosting the conference jointly with the Society of Young Solicitors’ of Ireland (SYS) and we are hopeful that the 2008 Conference will be a special event with a busy programme of seminar sessions and social functions. The venue for the conference is the exclusive Slieve Russell Hotel. The Slieve Russell hotel provides luxury hotel accommodation in a tranquil setting. Set in 300 acres, including 50 acres of lakes, the Slieve Russell Hotel Golf and Country Club with Clúin Spa and Wellness Centre offers a unique experience in relaxation and leisure. The Hotel is conveniently located and is a two hour drive from Belfast.

Date: 29 February - 2 March 2008

Times:
- Friday 29 February 20:00 - 21:30 Registration
- 21:00 - Late Welcome drinks
- Saturday 1 March 09:30 - 12:00 Lectures*
- 14:00 Health Centre, Swimming, Beauty, Treatments, Walking, Golf etc.
- 19:30 - 20:00 Pre dinner drinks reception
- 20:00 - Late Gala dinner, band and DJ (black tie)
- Sunday 2 March 11:00 Check out

Venue: The Slieve Russell Hotel, Ballyconnell, County Cavan

Cost: The cost of the conference is £185. This includes Registration Fee, two nights accommodation with breakfast per person sharing and Gala Ball which will be held on Saturday evening. Free travel to and from the conference will be provided and CPD points are available. Book now to ensure you benefit from the reduced rate and to avoid disappointment!

Speakers: Chairperson’s Introduction, SYS - Speaker TBC, NIYSA - Speaker TBC, EYBA - Speaker TBC

Notes: 1. Persons wishing to attend must apply through NIYSA.
2. Accommodation is limited and will be allocated on first come first served basis, in accordance with the procedure set out below.
3. The conference fee is £185 pps and includes Friday and Saturday night accommodation, breakfast, gala dinner and conference fee and materials.
4. One application form must be submitted per room together with cheque(s) for the appropriate Conference Fee.
5. Names of delegates to whom the cheque(s) apply must be written on the back of the cheque(s).

* Time spent attending these lectures may be counted when assessing the completion of your CPD requirements.

FULL LECTURE DETAILS AND TIMES TO BE CONFIRMED

APPLICATION FORM - Annual Conference Please use block capitals. One form per room

NAME 1.

FIRM 1.

ONE CONTACT ADDRESS

E-MAIL 1.

TELEPHONE OFFICE: MOBILE:

I DO REQUIRE TRANSPORT / I DO NOT REQUIRE TRANSPORT Delete as appropriate

I ENCLOSE A CHEQUE FOR £ Made payable to NIYSA

Please return booking form and cheques to:
NIYSA, c/o Claire Reid, NIYSA, Mills Selig Solicitors, 21 Arthur Street, Belfast, BT1 4GA, DX 459 NR
High Court, Court of Appeal and Tribunal Decisions

**High Court and Court of Appeal decisions**

**IN THE MATTER OF APPLICATIONS BY AM DEVELOPMENTS UK LIMITED AND BELFAST CITY COUNCIL AND BELFAST CHAMBER OF TRADE AND COMMERCE AND BOW STREET MALL LIMITED AND LISBURN CHAMBER OF COMMERCE AND CENTRAL CRAIGAVON LIMITED FOR JUDICIAL REVIEW AND IN THE MATTER OF A DECISION OF THE RT HON LORD ROOKER, MINISTER WITH RESPONSIBILITY FOR THE DEPARTMENT OF THE ENVIRONMENT**

Application for discovery of documents which are allegedly discoverable in judicial review proceedings brought separately by applicants. - restrictions on discovery in judicial review proceedings. - application dismissed

HIGH COURT
10 FEBRUARY 2006
GIRVAN J

**IN THE MATTER OF AN APPLICATION BYSONGADELE AMOS FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

Application for leave to apply for judicial review in respect of a decision to detain the applicant, and a further decision to direct his removal to Nigeria. - applicant had entered the country on a visitor's visa and was subsequently found in an internet cafe. - whether he was an employee in the shop. - whether he was in possession of keys to the shop. - whether the applicant's account of his reason for being in the shop matched the observations of the police and immigration officials who entered the shop. - approach to working in breach of visa conditions laid down in the Home Office Operation Enforcement Manual. - HELD that there was a departure from the requirements of the Manual in this case and that the applicant has made out an arguable case with a realistic prospect of success, and leave to apply granted

HIGH COURT
9 OCTOBER 2007
MORGAN J

**CIARAN CONVERY v THE IRISH NEWS LIMITED**

Damages for libel against the newspaper have previously been assessed and given, together with costs. - notice of appeal against the verdict lodged. - application for stay on the payment of damages and costs. - HELD that discretion should be exercised to grant a stay COURT OF APPEAL
26 OCTOBER 2007
KERR LCJ, HIGGINS LJ

**DEPARTMENT OF ENTERPRISE TRADE AND INVESTMENT v THE CARVILL GROUP LTD**

Appeal by way of case stated under the Magistrates' Courts (Northern Ireland) Order 1981 of a decision of a Deputy RM dismissing a complaint by the appellant which charged the respondent with having offered apartments for sale in Newry on terms that gave misleading indication as to their price. - whether this was misleading contrary to a. 13(1) of the Consumer Protection Order (Northern Ireland) 1987. - definition of “consumer”. - RM dismissed the case on the basis that it had not been proved that the witness who made the initial complaint to Trading Standards did not intend to occupy the apartment himself, and was therefore not a consumer. - whether the RM was correct in law in deciding that it was necessary for the prosecution to establish that a consumer had been misled by the advertisement. - whether the RM was correct in law in deciding that the advertisement was not misleading. - whether there was sufficient evidence in law for the defendant to discharge the burden of establishing the due diligence defence. - appeal dismissed

COURT OF APPEAL
23 OCTOBER 2007
KERR LCJ, MORGAN J, TREACY J

**IN THE MATTER OF AN APPLICATION BY ES FOR JUDICIAL REVIEW**

Applications by mother and father of a child arising out of an Emergency Protection Order made by the Family Proceedings Court. - whether, in the public interest, a declaration should be made that the provisions of a. 64(9) of the Children (Northern Ireland) Order 1995 are incompatible with a. 6 ECHR in that the provisions leave an individual with no right of appeal against EPOs. - whether the provisions of the Childrens Order deny the individual the right to apply to discharge an EPO in circumstances where the individual was present at the hearing at which the Order was made. - Salem principles. - nature of Emergency Protection Orders. - incompatibility and the legislative framework. - HELD that the process of confining inter-parties proceedings to a single hearing within a very short period is a wholly proportionate response to a legitimate aim of ensuring that the welfare and health of the child is maintained, and applicant's claim dismissed

HIGH COURT
5 SEPTEMBER 2007
GILLEN J

**IN THE MATTER OF AN APPLICATION BY GEORGE ES FOR JUDICIAL REVIEW**

Approach of courts to costs orders in judicial Review in circumstances where the substantive proceedings have been resolved or have become academic prior to the hearing but after leave for judicial review has been granted. - applicant challenged the removal directions issued by the Secretary of State. - whether breach of undertaking to extensively examine the personal circumstances of the applicant. - application for EEA application outstanding which suspends the removal directions pending the determination of the application. - judicial review application now academic subject to the question of costs being resolved. - applicant sought an order of costs against the respondent. - HELD that there should be no order for costs made

HIGH COURT
19 OCTOBER 2007
GILLEN J
IN THE MATTER OF AN APPLICATION
BY ANNE-MARIE MCCALLION FOR
JUDICIAL REVIEW AND IN THE MATTER
OF A DECISION OF A MINISTER
COMMUNICATED TO HER BY WAY OF
LETTER DATED 2 FEBRUARY 2007

Application for judicial review of Minister's refusal to exercise his discretion to award the applicant compensation pursuant to a. 10(2) of the Criminal Injuries (Compensation) (Northern Ireland) Order 1988. - applicant's husband had died after sustaining injuries in a fight. - whether the Minister in making his decision refused to take into account the international obligation to refuse compensation to the applicant on the grounds that no compensation shall be paid in respect of a criminal injury to any person who has been a member of an unlawful organisation or who has been engaged in the commission, preparation or instigation of acts of terrorism. - applicant's husband had been a member of the PIRA and had been involved in an attack on a soldier. - whether prime facie or arguable breach of a. 2(2) of the UNCRC. - HELD that the Minister in making his decision to refuse compensation to the applicant took into account the international obligation imposed on a. 2(2) of UNCRC and that his reason for concluding that there was no breach of the Convention cannot be accepted, and that his decision must be quashed.
HIGH COURT
25 OCTOBER 2007
MORGAN J

IN THE MATTER OF KR AND SR AND IN
THE MATTER OF THE CHILD ABDUCTION
AND CUSTODY ACT 1985 BETWEEN JR
AND SIR

Child abduction. - grave risk of harm. - children's objections. - application for the return of the children KR and SR to Slovakia pursuant to a. 12 of the Hague Convention by reason of their wrongful removal contrary to a. 3 of the Convention. - parents of the children had separated and the mother consistently opposed and frustrated contact between her husband and his children, despite the Court granting overnight contact to the father. - mother then removed her children to Northern Ireland. - whether the father had acquiesced. - burden on defence to prove that there is a grave risk that the return of the children would expose them to psychological or physiological harm. - HELD that if the children are to be returned, the objections held by them will be heavily influenced by the ability of the parents to resolve the issue as to how their father can play a meaningful and helpful role in their lives, but that the degree of influence asserted by their mother diminishes the weight of these objections and that the situation would not be intolerable for the children if they returned, and return order made accordingly.
HIGH COURT
11 OCTOBER 2007
MORGAN J

R v WANG HUAN

Application for leave to appeal sentence. - applicant sentenced to five years' imprisonment for manslaughter with a recommendation that he be deported upon serving the sentence. - whether the sentence was excessive. - whether the applicant had taken part in an attack on a soldier. - appeal dismissed.
COURT OF APPEAL
16 OCTOBER 2007
GIRVAN LJ

FRANCIS JOSPEH MCCUSKER v DECLAN MARTIN MCCUSKER AS PERSONAL REPRESENTATIVE OF ELIZABETH MCCUSKER (DECEASED)

Appeal from an order made by the Master declaring that the plaintiff's writ of summons had not been duly served on the defendant. - whether the writ was enclosed with the a. 98 Notice and covering letter. - whether an error occurred in the solicitors practice whereby the writ was not enclosed, or whether the error occurred in the offices of the insurance company whereby the writ was not attached to the accompanying documentation. - HELD that there were procedural failures in the offices of the solicitor and of the insurance company in dealing with outgoing and incoming mail respectively, but that on the recollection of the plaintiff that he received a writ, the appeal is allowed and HELD that the writ was duly served on the defendant.
HIGH COURT
7 SEPTEMBER 2007
STEPHENS J

GERALDINE FENNELL v DAVID LEITCH,
MERVYN ANDERSON, RONALD
ROBINSON, ERIC KYLE, VERA WOODS,
STEPHEN COCKCROFT AND JAMES
PRINGLE SOLICITORS

Claim by the plaintiff against the defendants for professional negligence, damages, breach of contract. - plaintiff claimed carer's allowance out of her uncle's estate. - whether defendants acted negligently in preparing for the interlocutory hearings, in the conduct of these hearings, in their advice to the plaintiff to settle the action, and to properly advise the defendant in the aftermath of the settlement. - duty of care and skill of a solicitor, and whether the solicitors exercised reasonable care and skill. - relationship of solicitor and counsel. - duty of solicitor to warn the client of risks. - HELD that the claim is dismissed in its entirety since there was no real or substantial chance of success, that a binding settlement had been freely entered into, and there was no negligence or breach of contract at any stage of the proceedings.
HIGH COURT
28 SEPTEMBER 2007
GILLEN J

IN THE MATTER OF THE CHILD ABDUCTION
AND CUSTODY ACT 1985 BETWEEN JR
AND SIR

Child abduction. - grave risk of harm. - children's objections. - application for the return of the children KR and SR to Slovakia pursuant to a. 12 of the Hague Convention by reason of their wrongful removal contrary to a. 3 of the Convention. - parents of the children had separated and the mother consistently opposed and frustrated contact between her husband and his children, despite the Court granting overnight contact to the father. - mother then removed her children to Northern Ireland. - whether the father had acquiesced. - burden on defence to prove that there is a grave risk that the return of the children would expose them to psychological or physiological harm. - HELD that if the children are to be returned, the objections held by them will be
High Court, Court of Appeal and Tribunal Decisions

- whether the trial judge was wrong in law to make a recommendation for deportation of the applicant in the absence of the ability on the part of the court to take into account the risk of life to the applicant if deported to his homeland. - whether deportation would constitute a breach of a. 2 ECHR. - application dismissed COURT OF APPEAL 4 OCTOBER 2007 KERR LCJ

R v GARY JONES
Appeal against sentence. - appellant sentenced to 14 years imprisonment on conviction of a count of causing an explosion contrary to s. 2 Explosive Substances Act 1883. - sufficiency of evidence to allow the judge to have concluded beyond reasonable doubt that the appellant had caused the explosion. - whether the power of the Court under a. 3 of the Criminal Evidence (NI) Order 1988 to draw an inference from the accused's silence at interview was wrongly exercised and/or incorrect inferences were drawn. - whether, in evaluating the circumstantial evidence, inadequate consideration was given to other co-existing circumstances and/or evidence which weakened or destroyed the evidence of guilt. - whether there was a failure to consider the appellant's previous good character in relation to the propensity. - whether there was no or insufficient evidence that any explosion or any explosion likely to endanger life or cause serious injury to property had occurred. - HELD that the conviction is quashed COURT OF APPEAL 5 J JULY 2007 HIGGINS LJ

R v JOHN THOMAS MICHAEL MCDONAGH AND PATRICK MICHAEL WARD
Sentencing. - defendants pleaded guilty to wounding with intent contrary to s. 18 Offences Against the Person Act 1861 and aggravated burglary contrary to s. 10(1) Theft Act (Northern Ireland) 1969 CROWN COURT 21 SEPTEMBER 2007 COGHLIN J

R v KEOGHAN GERALD FRANCIS MCGUIGAN
Sentencing. - murder. - Practice Statement on the minimum term of imprisonment to be served before consideration for release by the Life Sentence Review Commissioners. - aggravating factors. - HELD that the minimum term which the defendant should spend in prison before being considered for release is 20 years, including the time spent on remand following his arrest CROWN COURT 12 OCTOBER 2007 HART J

R v THOMAS ANTHONY MCCARTNEY
Appeal against sentence on charges of causing death by dangerous driving, causing grievous bodily injury by dangerous driving and driving without insurance. - whether insufficient credit was given to the appellant's early plea of guilty and sincere remorse. - whether the judge failed to have adequate regard to the contents of the pre-sentence report and other medical evidence. - whether the judge failed to take sufficiently into the effect a custodial sentence would have on the emotional and psychological well-being of the appellant, the fact that the appellant was seriously injured and the fact that in the post release period the appellant would require considerably greater assistance to engage in the form of statutory supervision, since his cognitive function had deteriorated seriously. - new starting points in sentencing cases causing death or grievous bodily injury by dangerous driving. - appeal dismissed COURT OF APPEAL 6 SEPTEMBER 2007 KERR LCJ , HIGGINS, LJ AND GILLEN J

R v STEPHEN LEE WRIGHT AND RUSSELL HECTOR HUNTER
Sentencing. - first defendant pleaded guilty to murder and arson, second defendant pleaded guilty to manslaughter. - first defendant sentenced to life imprisonment. - minimum term to be served before referral to Life Sentence Review Commissioners. - higher and normal starting points and variation of the starting points for very serious cases. - aggravating and mitigating factors CROWN COURT 8 JUNE 2007 STEPHENS J

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY S, A MINOR, BY HIS MOTHER AND NEXT FRIEND
Application for judicial review of the decision of the PPS not to seek medical notes and records including counselling records relating to the victim of an alleged indecent assault, despite being requested to obtain these records by the applicant's solicitors so that they could be examined for the presence of any inconsistency in the accounts given by the complainant. - applicant is a defendant in Youth Court proceedings facing charges in relation to the alleged indecent assault of another young person. - Criminal Procedure and Investigations Act 1996 Code of Practice for Northern Ireland. - Attorney General's guidelines on disclosure. - application dismissed HIGH COURT 6 SEPTEMBER 2007 KERR LCJ , HIGGINS, LJ AND GILLEN J

R v ROBERT GERARD MCCAMLEY
Sentencing. - defendant arraigned on two counts on an indictment charged with attempted murder or alternatively unlawful malicious wounding with intent to cause grievous bodily harm. - whether the guilty plea was entered at the earliest opportunity. - injuries sustained by the victim and victim impact. - procedural requirements for the custodial sentences. - sentencing guidelines. - aggravating and mitigating features and factors relating to the offence and the offender. - HELD that the defendant be sentenced to six years imprisonment followed by two years’ probation CROWN COURT 6 SEPTEMBER 2007 STEPHENS J
IN THE MATTER OF AN APPLICATION BY X (BY HIS NEXT FRIEND) FOR JUDICIAL REVIEW OF A DECISION OF A SCHOOL AND THE NORTH EASTERN EDUCATION AND LIBRARY BOARD
Application for order of certiorari to quash the decisions of the principal of the school at which he was attending and the North Eastern Education and Library Board excluding him from that school, a declaration that the decisions were unlawful and an order of mandamus compelling the principal of the school to allow him to return. - application for disclosure of as assessment carried out by Social Services. - discovery in judicial review cases. - HELD that the application must be dismissed since the document now sought was drawn up after the applicant was suspended to dismiss him since the document now sought was drawn up after the applicant was suspended to assist in risk management and potential child protection matters, and that disclosure is not necessary to dispose fairly of the matter or to save costs, and that the decision to withhold disclosure of the document is measured, proportionate and compelling
HIGH COURT
4 OCTOBER 2007
GILLEN J

IN THE MATTER OF AN APPLICATION BY ASTRIT ZEKAJ FOR JUDICIAL REVIEW
Application for order of certiorari to quash the decision of the Secretary of State for the Home Department to remove her to the Republic of Ireland, and an order of mandamus requiring the respondent to accept the applicant back into the UK. - applicant had originally travelled into the UK. - applicant had originally travelled to the UK from Zimbabwe via South Africa and the Republic of Ireland. - whether her removal offended against her legitimate expectation that she would be informed of any decision to transfer affected her. - whether breach of EC Council Regulation 2003/343 (the Dublin Convention). - whether case should be dismissed on the grounds of delay. - absconder notification had been issued. - whether the removal of the applicant whilst she had a pending rights claim was unlawful. - HELD that the removal of the applicant whilst she had a pending human rights claim was unlawful in the absence of a certification by the Secretary of State that in his opinion the human rights claim was clearly unfounded, and an Order of Mandamus made requiring the respondent to accept the applicant back into the UK from the Republic of Ireland for the purpose of her processing her human rights claim if she still wishes to do so, and an extension of time limit granted accordingly
HIGH COURT
26 FEBRUARY 2007
GILLEN J

IN THE MATTER OF AN APPLICATION BY WILLIAM YOUNG FOR JUDICIAL REVIEW
Appeal from decision quashing a Planning Appeals Commission decision to refuse the respondent's application to retain an existing dwelling without complying with a condition of planning permission. - whether apparent bias on the part of a Commissioner. - whether an informed and fair-minded observer would consider that the Commissioner had a motive or incentive to decide the appeal in a particular way because of previous involvement. - HELD that the case for apparent bias has not been made out, appeal allowed and application for judicial review dismissed
COURT OF APPEAL
6 SEPTEMBER 2007
KERR LCJ, CAMPBELL LJ, HIGGINS LJ

IN THE MATTER OF AN APPLICATION BY TENDAI CINDY ZWOUSHE ZHANJ E FOR JUDICIAL REVIEW
Application for judicial review to quash the decision of the Secretary of State for the Home Department to remove her to the Republic of Ireland, and an order of mandamus requiring the respondent to accept the applicant back into the UK. - applicant had originally travelled to the UK from Zimbabwe via South Africa and the Republic of Ireland. - whether her removal offended against her legitimate expectation that she would be informed of any decision to transfer affected her. - whether breach of EC Council Regulation 2003/343 (the Dublin Convention). - whether case should be dismissed on the grounds of delay. - absconder notification had been issued. - whether the removal of the applicant whilst she had a pending rights claim was unlawful. - HELD that the removal of the applicant whilst she had a pending human rights claim was unlawful in the absence of a certification by the Secretary of State that in his opinion the human rights claim was clearly unfounded, and an Order of Mandamus made requiring the respondent to accept the applicant back into the UK from the Republic of Ireland for the purpose of her processing her human rights claim if she still wishes to do so, and an extension of time limit granted accordingly
HIGH COURT
26 FEBRUARY 2007
GILLEN J

Industrial Tribunal Decisions

BRANIFF, KATHLEEN v BRACKENWOOD CARE HOME
Claimant was dismissed for allegedly mistreating patients in the respondent's care home. - respondent had been given four written statements by other employees about the mistreatment of patients and sought advice from the Labour Relations Agency. - claimant was suspended and a disciplinary hearing was arranged. - although there were some shortcomings with the procedure used the tribunal found that the respondent acted in a fair and proper manner towards the claimant. - Tribunal dismisses the claim
781/07IT 10 OCTOBER 2007

BUCKLEY, PATRICIA v OLYMPIC LIFTS LTD
Claimant claimed unfair dismissal, non-payment of holiday pay and notice pay. - claimant worked as a credit controller/sales ledger clerk until she went on long term sick leave in January 2006. - claimant had stated her desire to return to work but would not be able to return to her job on a full time basis in the foreseeable future. - the respondent was not able to accommodate her in any other role. - respondent decided to terminate her employment on the grounds of her long term incapacity for work. - respondent had not been adequately informed of the claimant's medical position. - tribunal decided that the claimant had been unfairly dismissed and ordered the respondent to pay £13,236.37 but the claims
High Court, Court of Appeal and Tribunal Decisions

for holiday pay and notice pay are dismissed 133/07IT 12 OCTOBER 2007

CARABINE, STEPHEN v ROYAL MAIL
Whether claimant involved in industrial action. - if so, was the deduction of wages as a result of the claimant's involvement in industrial action. - claimant suggests that he was at the picket line but involved in union welfare duties and so should not have had any deductions from his wages. - a regional services manager who was also at the picket line saw the claimant on numerous occasions actively taking part in industrial action. - Tribunal decided that the claimant was on industrial action and that was why a deduction had been made from his wages. - claim dismissed 655/06IT; 1120/06IT 3 OCTOBER 2007

DONNELLY, PATRICK v BJM CHARTERED ACCOUNTANTS
Claimant claimed breach of contract regarding pension provision. - respondent advised all new members of staff about the stakeholder pension that was available and that in this instance the claimant was asked to notify the respondent about his intention to avail of the pension. - claimant had not completed the forms required for the pension scheme. - Tribunal found that the claimant had failed to establish on the balance of probabilities that there was a breach of contract by the respondent in the provision of pension arrangements. - claim dismissed 72/07IT 18 OCTOBER 2007

KIRK, J OHN v SOUTH EASTERN EDUCATION & LIBRARY BOARD
Application for costs by respondent. - respondent had submitted that the applicant had been unreasonable in making his application and that the application was misconceived. - applicant had not requested that his means be taken into account. - Tribunal decided that the actions of the claimant did merit an award of costs but the amount would have to reflect his limited income. - applicant ordered to pay £150 to the respondent. 929/05IT 9 OCTOBER 2007

MARTIN, J ULIE v OPENWORK SERVICES LTD
Claimant claimed that she was constructively dismissed. - claimant offered the position of Regional Sales Manager but the written terms and conditions of the position involved the recruitment of new franchisees. - claimant objected to the recruitment remit and refused to sign the contract. - Openwork offered her a refresher course in recruitment but after a grievance appeal by the claimant she resigned. - after careful consideration the Tribunal decided that the claimant had not been dismissed 215/06IT 4 OCTOBER 2007

MCCRORY, TRACIE MARIE v NORTHERN IRELAND PRISON SERVICE
Decision on a pre-hearing review. - claimant claimed indirect sex discrimination and equal pay claims. - claimant employed as an auxiliary prison officer from 1997 until the regrading of her position in 2002. -claimant's named comparator was also a prison officer. - although the claimant and the comparator have done like work since the regrading in 2002, prior to this date their jobs were different. - Tribunal decided that as a result of historical factors the claimant and her comparator had done different jobs when they were recruited and that the difference in pay is due to factors unrelated to sex. - claim dismissed 542/05IT 18 OCTOBER 2007

MCKESSICK, GARY v TOP DOG (ANIMAL HOUSING) LTD
Claimant claimed unpaid notice pay and holiday pay arising out of the respondent's dismissal of him. - claimant worked as a van driver for the respondent but had on numerous occasions been involved in accidents involving company vehicles. - respondent had spoken to the claimant about his reckless driving. - claimant continued to drive recklessly and after another accident causing damage to a company van the claimant was dismissed. - respondent paid all monies due to the claimant after his dismissal. - tribunal decided that the claimant's claim for notice pay and holiday pay are dismissed. 1045/07IT 10 OCTOBER 2007

SPAOLONZI, ROBERTO v RICHARD SWANSTON AND PETER BRADY T/A THE DENTAL STUDIO
Claimant claimed unfair dismissal. - claimant employed as a dental technician by the respondents. - respondents had made two members of staff redundant. - respondents drew up a list of grievances in the form of a letter highlighting the conduct of the claimant and after a meeting dismissed him as they felt he had undermined them in their efforts to keep the business solvent. - tribunal decided that the dismissal was unfair as the claimant was not afforded the long established rights of an employee facing the prospect of dismissal. - claimant's compensation was reduced by reason of the claimant's contributory fault 13307/05IT; 1488/05IT 11 OCTOBER 2007

TEODORESCU , MARIAN v TWISTERS NORTHWEST GYMNASTICS
Whether claimant was unfairly dismissed. - claimant employed as a gymnastic coach for respondent. - claimant lodged with respondent's brother. - as part of his conditions of employment the respondent paid the rent on his lodgings. - claimant wanted to bring his family to live with him and was looking for new lodgings. - claimant assumed that respondent would continue to pay his lodgings. - respondent refused and offered to contribute £40 per week which was declined. - claimant had also left the premises without permission and had been rude to pupils. - respondent had requested that the claimant attend a disciplinary hearing which the respondent conducted. - Tribunal decided that the reasons for the dismissal were fair and that the respondent had carried out a proper investigation. - claim dismissed 146/07IT 3 OCTOBER 2007
WOOD, MATTHEW v ANTHONY BARBOUR, JAMES MAWHINNEY AND ANN'S PANTRY
Claimant claimed unfair dismissal, breach of contract and unauthorised deductions. - applicant employed as a manager of the third named respondent's business but dismissed on the grounds of theft without notice or notice pay.
- Tribunal decided that the applicant had been unfairly dismissed on procedural grounds and ordered the respondents to pay £31,7125 in compensation.
2590/06IT; 2508/06IT 10 OCTOBER 2007

WRIGHT, RICHARD v STEVENSON & REID
Claimant claimed unfair dismissal. - respondent had fairly dismissed the claimant for misconduct and had followed the correct procedures leading up to the dismissal.
- claimant left the premises at his usual time and did not finish the stocktake.
- claimant was suspended on full pay the next day.
- tribunal decided that the refusal to carry out a reasonable instruction which was contained in the respondent's code of conduct is grounds for dismissal.
- dismissal was therefore fair and the claim must fail.
671/06IT; 860/06IT 12 OCTOBER 2007

CHAMBERS, RONALD v TESCO STORES LTD
Claimant claimed he had been discriminated against on the grounds of his religious belief/political opinion. - whether claim was presented within the specified time limit.
- claimant was made aware of the discrimination in May 2006 but the claim was not presented until March 2007. - although the claimant had been off work due to stress the Tribunal found that the claimant could still have lodged his complaint on time and therefore dismisses the claim.
62/07FET 3 OCTOBER 2007

The Society is seeking Expressions of Interest from firms of solicitors who fulfil the following criteria to join a panel of agents to assist in statutory interventions pursuant to the Solicitors (Northern Ireland) Order 1976. These are undertaken in the interests of the public and in pursuance of professional obligations.

The tasks of Solicitor Agents include, but not exclusively so:

1. Basic assessment of the management structures within the firm to include the current billing system; personnel/IT resources; physical state of the premises; to construct current work schedules and undertake ongoing client management and moving to closure/disposal of the practice. This can often include the creation of a client database.
2. Identification of problem files at an early stage.
3. The assessment of the financial viability of the practice and its net worth.
4. Advising the Society as to whether the firm is marketable as a whole or in part or if the files would need to be distributed on a piecemeal basis and drafting sale documentation.
5. Issue of the Society's standard form of communication to clients.
6. The ability to communicate positively and effectively with concerned clients.
7. The identification and reporting upon issues of professional misconduct; professional negligence; breaches of Solicitors Accounts Regulations and general problems to ground Disciplinary Proceedings.
8. Working with forensic accountants appointed by the Society or the Society's own accountants to quantify Solicitors Accounts Regulations compliance and
9. Potentially long-term ongoing commitment to deal with client issues and in particular the running down of client account and the distribution of client papers.

Interested firms should have available a broad range of staff readily available both in terms of levels of experience and specific expertise; the ability to show a team approach; the ability to take up an assignment immediately and the provision of a single point of contact at partner level; significant Commercial and/or Chancery litigation expertise and established relationships with members of the Bar having similar expertise; knowledge of and/or willingness to acquire knowledge of the Society's legislative framework. They should be familiar with the preservation of evidence to satisfy police investigations and be able to prepare reports of high evidential value; be prepared to develop working relationships with the Society's accountant agents and to liaise if necessary with law enforcement agencies.

The Society will in dealing with Expressions of Interest take into account Quality Standards held by a firm and the compliance and Disciplinary Tribunal records of its members.

Expressions of Interest should be forwarded by Thursday 31 January 2008 in writing to Suzanne Bryson, Deputy Secretary, Law Society of Northern Ireland, 40 Linenhall Street, Belfast, BT2 8BA or alternatively email: Suzanne.Bryson@lawsoc-ni.org
## Legislation

### Tachographs

**Passenger and Goods Vehicles (Recording Equipment) Regulations (Northern Ireland) 1996 (SR1996/145)**
These Regulations impose requirements regarding the installation and use of recording equipment (tachographs) in vehicles, and make provision for the inspection and repair of such equipment.
Commencement: 3 June 1996

**The Passenger and Goods Vehicles (Recording Equipment) (Amendment No. 2) Regulations (Northern Ireland) 2005 SR 441**
These Regulations provide for the issuing of driver cards, company cards and control cards for use with digital tachographs, and provide for the payment of specified fees in respect of driver cards, which are held by drivers of vehicles required to be fitted with digital tachographs by the Community Recording Equipment Regulation, and company cards, which are held by the operators of such vehicles.
Commencement: 31 October 2005

**The Passenger and Goods Vehicles (Recording Equipment) (Amendment) Regulations (Northern Ireland) 2006 SR 274**
These Regulations modify the provisions of the Passenger and Goods Vehicles (Recording Equipment) Regulations (Northern Ireland) 1996 to take account of the new digital tachograph provided for by Council Regulation (EC) No. 2135/98, which amended Regulation (EEC) No. 3821/85 on recording equipment in road transport. A digital tachograph is one which complies with Annex IB to the amended Regulation.
Commencement: 31 July 2006

**Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card) Regulations (Northern Ireland) 2007 (SR 2007/36)**
These Regulations make provision in relation to the cards (company cards, control cards, driver cards and workshop cards) used with digital tachographs.
Commencement: 8 March 2007

All legislation is available from the Library

### European legislation


**Articles**

**Personal injury - road traffic accident - single vehicle accident**

Discusses the *Stephen v Peter* case on whether a driver injured when his lorry overturned could bring an action against his employer as the vehicle's tachograph was wrongly calibrated and allowed the vehicle to be driven at excessive speed.

*J.P.I. Law* 2005, 3, C128-129

**ECJ clarifies tachograph exception**

Notes the European Court of Justice ruling in *Criminal Proceedings against Raemdonck (C-128/04)* on whether, for the purposes of the road transport safety regime under Council Regulation 3820/85, the terms "materials or equipment" in Art.13(1)(g) were restricted to tools and instruments or extended to the goods necessary for the performance of the work which constituted the main activity of a vehicle’s driver.

*EU Focus* 2005, 163, 37

**Haulage boss jailed for seven years**

Comments on the *Health and Safety Executive v Keymark Services* case (unreported) on whether a road haulage director was liable for the deaths of three motorists who were killed by one of his lorry drivers, who had been asleep at the wheel and whom he had encouraged to work dangerously long hours, whilst tampering with the tachograph records.

*Fiddlerman: 2005 HSB 335, 1*

**Tachograph time sheet are admissible under s.24 CJA 1988**

Discusses the Administrative Court ruling in *Vehicle and Operator Services Agency v George Jenkins Transport Ltd* on whether tachograph time sheets were business records for the purpose of the Criminal Justice Act 1988 s.24 and were therefore admissible in evidence.

*2003: J.P.167(48), 903-904*

**Websites**

**Driver & Vehicle Licensing Agency**

Has a small section on digital tachographs

http://www.dvlni.gov.uk/drivers/tacho.htm

**Driver Vehicle Testing (NI)**

Has a section on FAQ’s regarding tachographs

http://www.dvtani.gov.uk/compliance/tachographsfaqs.asp

**Books in the Library**

**Criminal Proceedings against Raemdonck (C128/04)**

Interpretation of the words "material and equipment" in Council Regulation 3820/85 Art.13(1). - alleged infringements of the Regulation, which concerned exceptions to the requirement to keep tachograph records. - Held, giving a preliminary ruling, that R was not in breach of the Regulation. - Exception in a.13(1) only applied where driving the vehicle was not the driver’s main activity and where the driver used the "material and equipment" in the course of his work.


**Vehicle and Operator Services Agency v Jones**

Using a vehicle in which the recording equipment was not used as provided by Council Regulation 3821/85. - unauthorised withdrawal of the tachograph record sheet had been made before the end of the working period by the driver contrary to Art.15(2)j of the Regulation.

- Jones opened the tachograph cover because the speedometer was not working properly and he thought that that action might unjam the speedometer. - Result of Jones’ actions was that the styl of the tachograph were no longer in contact with the chart in the tachograph on which would normally have been recorded the speed. - If a driver interfered with the equipment with the result that it did not function properly, then, whatever his motive, he committed an offence under s.97(1)(a)(iii) unless he could rely on one of the specific defences set out in the Transport Act. 1968.


**Tachograph Analysis.**

*Journal of the LSNI* December 2007

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**New books in the library**

Missing Wills

Re: Margaret Williamson (deceased)
Late of: Flat 1c, Beechwood House, Woodland Drive, Newtownabbey, County Antrim, BT37 9SF
Date of Death: 24 March 2006
Would any person having knowledge of the whereabouts of any Will of the above named deceased please contact the undermentioned Solicitors:
Joseph Donnelly & Co
Solicitors
6 Callender Street
BELFAST BT1 5HX
Tel: 028 9024 2061/9032 5043
Fax: 028 9023 9118

Re: Henry Sherrard (deceased)
Late of: 235 Bangor Road, Holywood, County Down
Would any person having knowledge of the whereabouts of any Will for the above named deceased please contact:
R G Connell & Son
Solicitors
13 Main Street
Limavady
County Londonderry BT49 0EP
Tel: 028 7772 2617
Fax: 028 7772 2447

Re: Patricia Dougan (deceased)
Late of: 4 Ballydavey Cottages, Ballymoney Road, Holywood, County Down, BT18 0JL
Would any Solicitor who is aware of a Will made by the above named deceased please contact:
Joseph Lockhart & Son
Solicitors
24 Bachelor’s Walk
Lisburn
County Antrim BT28 1XJ
Tel: 028 9266 3225
Fax: 028 9267 7621

Re: Florence (McCluney) McCoy (deceased)
Late of: 11 Wilton Court, Northland Street, Belfast, BT13 2PS
Would any person having knowledge of the whereabouts of the Will for the above named deceased please contact:
Mr James W Russell
David Russell & Co
Solicitors
66 Abbey Street
Bangor
County Down BT20 4J B
Tel: 028 9127 4022
Fax: 028 9127 4327
Email: david@davidrussellsolicitors.co.uk

Re: Haida Maynard Stewart (deceased)
Late of: Hillside, Erganagh, Castlederg, County Tyrone
Would any person having knowledge of the whereabouts of a Will made by the above named deceased please contact:
Crawford, Scally & Co
Solicitors
45 Bowling Green
Strabane
County Tyrone BT82 8BW
Tel: 028 7188 3591
Fax: 028 7138 2298
Email: crawford.scally@btinternet.com

Re: Gerald McCready (deceased)
Late of: 66 Ballykeel Road, Moneyreagh, County Down
Date of death: 19 March 2007
Would any person having knowledge of the whereabouts of the Will for the above named deceased please contact:
Sarah Doherty
John M Hughes & Co
Solicitors
47 University Street
BELFAST BT7 1FY
Tel: 028 9032 0831
Fax: 028 9023 5017
Email: law@jmhughes.com

Re: Charlotte Harrison (deceased)
Late of: Wood Lodge, 50 Mill Hill, Castletownshend
Formerly of: 10 Park Avenue, Donaghadee
Widow of: The late Sydney Harrison
Would any person having knowledge of the whereabouts of the Will for the above named deceased please contact:
Miss Sarah Quinn
Wilson Nesbitt
Solicitors
33 Hamilton Road
Bangor
County Down BT20 4LF
Tel: 028 9127 8178
Fax: 028 9127 8197

Re: Sean Ignatius McElligott (deceased)
Late of: 1 Tullyneill Court, Sixmilecross, County Tyrone
Formerly of: 46 Shantavnoy Road, Altnaglun, Ballygawley, County Tyrone
Would any person having knowledge of the whereabouts of any Will made by the above named deceased please contact:
Simmons, Meglaughlin & Orr
Solicitors
20 Northland Road
Dungannon
County Tyrone BT71 6BL
Tel: 028 8772 2016
Fax: 028 8772 3398

Re: Desmond Bingham (deceased)
Late of: 68 Enagh Road, Dromore, County Down
Date of Death: 29 October 2007
We have been instructed by the next of kin to act in the administration of the above estate. Please advise us if you hold a Will for the above named.
Please reply to:
Nelson-Singleton Solicitors
21 Gallows Street
Dromore
County Down BT25 1BG
DX: 6020 NR DROMORE
Tel: 028 9269 3475
Fax: 028 9269 9560
Missing Title Deeds

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County: Down
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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 under mentioned Solicitors. And take further notice that unless the said Land Certificate is 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
41 Bridge Street
Banbridge
County Down BT32 3JL

Folios: 10774 & 26407
County: Armagh
Registered Owners: Ronald George Quinn & Louise Valerie Quinn
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Nelson Singleton
Solicitors
21 Gallows Street
Dromore
County Down BT25 1BG
Tel: 028 9269 3475
Fax: 028 9269 9560

Folio: 21868
County: Tyrone
Registered Owner: Finlay Breton Limited
formerly known as John Finlay, Concrete Pipes Limited
Lands of: Kilashee
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L'Estrange & Brett Solicitors
Amott House
12-16 Bridge Street
Belfast BT1 1LS
Tel: 028 9023 0426
Fax: 028 9024 6196

Folio: 23190
County: Down
Registered Owner: Henry Coleman McKey
Lands of: Drinn
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 under mentioned Solicitors. And take further notice that unless the said Land Certificate is 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.

Donard King & Co
Solicitors
27 High Street
Ballynahinch
County Down BT24 8AB
Tel: 028 9756 5525
Fax: 028 9756 1867

Folios: 3448, 3449 & 3451
County: Down
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Lands at: Kilbroney, Rostrevor,
County Down
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Patrick J Cole
Solicitor
12 Duke Street
Warrenpoint
County Down BT34 3JY
Tel: 028 4177 2021
Fax: 028 4175 2030

Folio: 2598
County: Londonderry
Registered Owner: Samuel Lennox
Lands at: Ballymaguigan Road, Magherafelt,
County Londonderry
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James O'Brien & Co
Solicitors
15 Broad Street
Magherafelt
County Derry BT45 6EB
Tel: 028 7930 9577
Fax: 028 7930 0677
Classifieds

Registered Owner: Henry Johnston Morrow  
deceased
Premises: 223 Glebe Road, Newtownabbey,  
County Antrim, BT36 6NE
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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 under  
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that unless the said Land Certificate is produced  
or adequate information as to its whereabouts  
is so communicated within three weeks of  
publication of this notice a duplicate Land  
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Solicitors
37/39 Church Street  
Antrim  
County Antrim BT41 4BD  
Tel: 028 9446 3108  
Fax: 028 9446 5592
Folio: AN26030L  
County: Antrim  
Registered Owner: The Secretary of State for  
the Environment  
Lands at: Rathlin Island  
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 Land  
Certificate or communicate such information to  
the under mentioned Solicitors. And take further  
notice that unless the said Land Certificate is  
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.
Carson McDowell  
Solicitors  
Murray House  
Murray Street  
BELFAST BT1 6DN  
Tel: 028 9024 4951
Folios: 21599  
County: Antrim  
Registered Owner: Most Reverend Cahal  
B Daly, Most Reverend Patrick J Walsh,  
Most Reverend Anthony Farquhar,  
Reverend Edward O’Donnell  
Lands at: Victoria Road, Ballyclare, 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 Land  
Certificate or communicate such information to  
the under mentioned Solicitors. And take further  
notice that unless the said Land Certificate is  
produced or adequate information as to its  
whereabouts is so communicated within three  
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Agnew Andress Higgins  
Solicitors  
92 High Street  
BELFAST BT1 2BG  
Tel: 028 9024 3040  
Fax: 028 9032 8063
Folios: 2580  
County: Armagh  
Registered Owner: George Stothers  
Lands at: Brannock  
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 Land  
Certificate or communicate such information to  
the under mentioned Solicitors. And take further  
notice that unless the said Land Certificate is  
produced or adequate information as to its  
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weeks of publication of this notice a duplicate  
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S C Connolly & Co  
Solicitors  
Bank Building  
39 Hill Street  
Newry  
County Down BT34 1AF  
Tel: 028 3026 5311  
Fax: 028 3026 2096
Folios: 39603, 39604  
County: Down  
Registered Owner: Patrick J Mullan  
Lands at: Mearne Road, Lecale Lower  
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of or information as to the whereabouts of the  
Land Certificate relating to the above mentioned  
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Certificates or communicate such information to  
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Solicitors  
7 Donegall Square West  
BELFAST BT1 6J F  
Tel: 028 9032 6636  
Fax: 028 9082 8386
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Businesses are faced all year round with the problems of employee absences, whether they are away on holiday, ill, have resigned, been dismissed or bereaved. Rarely a day goes past without some form of absence and law firms do not escape this loss of resource.

Risk management procedures are put to the ultimate test while a staff member is absent from work, especially if that person absent is a fee earner.

As with many risk management problems, the solution primarily lies in the sharing of information and in the adoption of standard procedures that will help to deal with a colleague’s file. Here are a few straightforward procedures that are simple to put into place and that will help to avoid the confusion and chaos that often surrounds a colleague’s absence from the office, whether it is planned or unexpected.

- Diary system. Introduce a standard daily system and a procedure for using it to ensure that all entries are treated the same way. The biggest advantage of diary systems is that they alleviate pressure on your memory and mean that when staff are absent the information stored in their heads is not out of the office as well.

- Case planner. Attaching these to the front of a file and marking completed actions off with a date means that any person who picks up the file can immediately see what has been done on the matter to date and what is still to do. Critical dates should also be marked on the front of files.

- When absences are planned, such as holidays, try to avoid two people from the same team or a secretary and fee earner being away at the same time – this is a simple but effective way to minimise risk.

- Keep the service good. If a holiday falls in the middle of a client’s case, then manage expectations by warning the clients and letting him know who to contact in your absence. This can help to avoid unnecessary calls to your office.

- Task lists. Encourage all to use task lists; these should be organised by the date of completion. It is important to keep any backlog to a minimum. This is something we should all do and it goes without saying that the pressure associated with backlogs of work can sometimes be tremendous and could be the cause of any employee’s absence in the first place. Clients will receive a service that is efficient rather than one based around constant firefighting.

This column was prepared by AFP Consulting, a Division of Alexander Forbes Risk Services UK. The article first appeared in the Gazette, the journal of the Law Society of England and Wales.
85% of businesses say embarrassing behaviour at past Christmas parties has not impacted an individual’s career growth at their company.

If you fall into the other 15% contact Abacus Professional Recruitment.

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