THIS MONTH:

Shaping the future of legal education
### Legal Opportunities

<table>
<thead>
<tr>
<th>Role</th>
<th>Salary Range</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Commercial Property Solicitor</strong></td>
<td>£Excellent</td>
</tr>
<tr>
<td>Excellent opportunity for an ambitious solicitor to join a well known firm. Our client is offering an excellent environment with realistic opportunities in their medium sized firm. The ideal candidate will have a commercial property background, but may have specialised in other areas such as banking or corporate work. Ref: 22697</td>
<td></td>
</tr>
<tr>
<td><strong>Corporate/Commercial Solr.</strong></td>
<td>£30,000 - £55,000</td>
</tr>
<tr>
<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 MBOs, acquisitions and disposals as well as experience in general commercial law. Ref: 9664</td>
<td></td>
</tr>
<tr>
<td><strong>Conveyancing Solicitor</strong></td>
<td>£20,000 - £35,000</td>
</tr>
<tr>
<td>Based in County Armagh, our client is a well established and reputable general practice. Due to continued growth, they are now looking for a solicitor to assist in all conveyancing matters for the firm. Working with the property partner, the role will involve conveyancing and remortgage work. Ref: 23574</td>
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</tr>
<tr>
<td><strong>Family Solicitor</strong></td>
<td>£20,000 - £25,000</td>
</tr>
<tr>
<td>Our client is seeking a recently qualified solicitor to join their dynamic firm and manage all family cases for the practice. This is an exciting opportunity for an ambitious solicitor seeking responsibility early in their career. Reporting to the managing partner, this role will offer excellent long-term career prospects. Ref: 19525</td>
<td></td>
</tr>
<tr>
<td><strong>Banking Solicitor</strong></td>
<td>£35,000 - £55,000</td>
</tr>
<tr>
<td>Top Belfast based commercial firm seeks an experienced 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 duties from straight forward facility and security issues to more complex securitisation and syndication instructions. Ref: 9493</td>
<td></td>
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<tr>
<td><strong>Employment Solicitor</strong></td>
<td>£25,000 - £35,000</td>
</tr>
<tr>
<td>Our client is a dynamic city centre firm. They are currently seeking to recruit an experienced employment solicitor to manage all employment matters for the firm. Working on mainly contentious issues on the applicant side, this is an excellent opportunity for an ambitious professional. Ref: 23461</td>
<td></td>
</tr>
<tr>
<td><strong>Conveyancing Solicitor</strong></td>
<td>£20,000 - £30,000</td>
</tr>
<tr>
<td>Based just outside Belfast, our client is a well respected local firm. They are currently seeking to employ an articulate conveyancing solicitor to manage a busy residential caseload. This excellent position also provides potential to take on commercial property responsibilities. Ref: 9712</td>
<td></td>
</tr>
<tr>
<td><strong>Locum Solicitor</strong></td>
<td>£10.00 - £20.00 p/h</td>
</tr>
<tr>
<td>This leading North Down practice seeks a locum solicitor for maternity cover for their conveyancing department. This role is available from November 2007 until October 2008. The ideal candidate will have strong conveyancing experience. Excellent terms and conditions are available with potential for flexible hours. Ref: 9657</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
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Shaping the future of legal education in Northern Ireland

What do you think of the present arrangement for training solicitors?

Are apprentices an expensive luxury who do not know enough to be of use in the office?

Should vocational training be only available to those who can find an office in which to complete their apprenticeship?

If you have found an office to take you on, should you automatically be entitled to a vocational training place at the Institute of Professional Legal Studies or at any other additional training establishment?

Should all training of solicitors be done in the office like the “good old days”?

Should vocational training be completed before in office training starts?

How should we recognise or encourage firms to be “training firms”?

Why can my apprentice not just be trained in the specialist subjects I need for my practice?

The Society will shortly launch a Consultation Document as part of a review of the education and admission of solicitors. The purpose of the review is to re-examine current arrangements for post-graduate training and qualification of solicitors in order to decide whether and, if so, how these arrangements should be modified or altered. The review does not extend to CPD.

Every lawyer in Northern Ireland should have an interest in the education and training of future solicitors.

“Not only does training affect the quality, skills and experience of individuals who will come to work in law firms, but it also affects the perception of the profession by the public and those who scrutinise it.” (1)

The Society invites you to engage in the debate and to make your views known by responding to the Consultation Document.

Why is there a need for a Review?

The last major review of legal education was the Bromley Report published in 1985. It is appropriate to assess the current training system and see if it meets today’s training requirements. Changes include: the approval in principle by the Law Society of a second vocational legal training provider in Northern Ireland (the University of Ulster), changes in educational practice, increasing degree of specialisation, increasing numbers of legal executives and paralegals, scrutiny of the profession from government and other sources, increasing expectations of the public, the need to ensure our system reflects current domestic and EU legislation, and the potential impact of devolution. In the light of these factors, is the present training fit for purpose? Does it produce solicitors who have appropriate knowledge and skills to start work as a solicitor? Does it give them a sound foundation on which to develop, to have confidence in themselves, to be of use to their Masters, to be professional and competent in their dealings with clients, colleagues and the courts, and not to be a risk to their firm’s professional indemnity insurance? Does the training enable and inspire them to understand and uphold the values of the profession?

The existing system in Northern Ireland

The current vocational training system for solicitor trainees consists of a two-year apprenticeship combining office placement and a training course in a vocational law school (eg the Institute of Professional Legal Studies). Bromley recommended that

“intending students should not begin their course of professional training until they have gained at least three months’ practical experience in an office; and that throughout the period of the Institute course they should maintain a close link with the office and should be required to spend part of each vacation working in it.” (2)

The apprenticeship begins with four months’ training in office, followed by a one-year training course with holidays and Mondays spent in the office. The final eight months are spent in office. Assessment is by way of exam, coursework assessment and practical exercises. At present there is no direct assessment of the time spent in the office. Previously trainees were asked to complete apprentice workbooks relating to the skills learnt in the office.

Bromley recommended that the subjects studied on the training course should include: Queen’s Bench Procedure, Chancery, Matrimonial, County Court Practice, Criminal Law Procedure & Evidence, Conveyancing and Landlord & Tenant, Office Management (Solicitors’ Costs & Professional Conduct), Industrial and Social Security Tribunals, Commercial Law to include Bankruptcy and relevant tax law. The subjects currently offered in the vocational training course at the Institute include the above topics plus: Criminal Damage, Family Law, Consumer Law, European Union, Company Law & Partnership, Enforcement of Judgements, PACE and Sentencing, Wills & intestacy, Revenue, Administration of Estates, Licensing and Legal Aid. There is also skills training in drafting, negotiation, advocacy, client care including interviewing, and legal research (including computer-based research).

Other models:

Scotland

In Scotland all intending solicitors are required to attend a twenty-six week Diploma in Legal Practice. During the diploma, students study compulsory courses in conveyancing, civil court practice, criminal court practice, private client, financial services and related skills, accountancy, professional responsibility and a choice of either company and commercial or public administration.

They must then complete a two-year contract with a practising solicitor. During
this period, trainees must complete logbooks detailing the range of their work. In addition, solicitors responsible for supervising trainees must review performance on a quarterly basis. After six months of training, trainees are required to attend a Professional Competence Course, which comprises 36 hours of core requirements and 18 hours of electives. After completing the first year of training, subject to certain conditions, a trainee can apply to be admitted as a solicitor in order to gain experience of appearing in court.

The Law Society of Scotland is currently reviewing its education system.

### England and Wales

In England and Wales prospective solicitors attend a one year Legal Practice Course (LPC) (full-time) or two year (part-time). LPC students must study three compulsory subjects: business law and practice, civil and criminal litigation, and property law and practice. They must also choose three elective subjects. Students are taught legal skills: writing and drafting, interviewing and advising, professional legal research and advocacy. Accounts, Professional Conduct and Client Care, European Union Law, Revenue Law and Human Rights are taught pervasively, ie as they come into other subjects and are not taught as separate subjects in their own right.

Trainees then undertake a two year (full-time) or four year (part-time) training contract.

During the LPC students will be assessed on a minimum of 14 occasions, by means of examinations and in oral and written skills assessments.

The Solicitors’ Regulation Authority is currently reviewing its training procedures.

### Republic of Ireland

Applicants (including law graduates) have to sit an entrance exam consisting of eight papers. If successful they may do their professional training. Prospective trainees must firstly secure a two-year training contract with a firm of solicitors. The in school training consists of a six month full-time Professional Practice Course (PPC1), and a three month full-time course (PPC2) taken part of the way through the training contract. The courses are assessed through continuous assessment and end of course examinations.

During the in-office training period trainee solicitors are required to gain general practice experience in (i) Conveyancing and Landlord and Tenant Law, (ii) Litigation, (iii) Wills, Probate and Administration of Estates. They may also spend up to a maximum of six months of the in-office training on secondment in another training solicitor’s office. Secondments often occur where the primary training solicitor’s office is unable to provide specialised experience in a certain area.

### Masters

Should there be training or support for Masters? What are your views on the current eligibility requirements to be Master? At present, subject to the discretion of the Education Committee, a Master has to be qualified for seven years and a partner for three before he or she can take on an apprentice? Is this an appropriate period and, if not, what is? You will shortly receive the Consultation Document on the Education Review. Please read it and respond. It is essential that you make your views known. The consultation period will end on 22 February 2008. No decisions have been taken or proposals prepared. This is your chance to influence the outcome. Please contribute to this process. As Chair of the Education Committee I would reiterate the comments of Alan Hunter, our Chief Executive and encourage you to respond.

The Society has set up a dedicated email address for your responses: educationreview@lawsoc-ni.org Email us or write to Anne Devlin at the Law Society.

### Discussion questions

- What proportion of time should be spent in the office?
- Should there be monitoring and assessment of the period of in office training?
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### Footnotes

2. Report of the Committee on Professional Legal Education in Northern Ireland (The Bromley Report) Summary of Recommendations

This article was prepared by Brian Speers, CMG Solicitors & Chair of the Education Committee and Anne Devlin, Assistant Secretary, Education.
This firmly alternative view of Sir George Bain in rejecting “Tesco Law” (Alternative Business Structures) but instead focusing on the importance of “Access to Justice”, is one which the vast majority of European colleagues support. I have also been pleased to be asked by Bar representatives from several developing nations in Africa to explain to them the Bain blueprint. For those countries where political stability and democratic rights are often under considerable pressure, the independence of the legal profession is of vital importance. The prospect of a Government appointed quango dictating their very existence is unacceptable.

One of the notable Bain proposals is that solicitors’ rights of audience in Northern Ireland should be extended to the higher courts in a manner similar to those which exist in England and Wales. As a consequence, in the last three months we have been pressing the Ministry of Justice through the Northern Ireland Court Service to agree a change in the law to remedy this matter. I am now very hopeful that rather than having to wait for Westminster legislation (which could take several years) all parties will now agree to affect the enhanced audience rights by way of additional clauses to the Northern Ireland version of the Legal Services Bill which is intended to be part of the Assembly’s legislative programme for the 2008-2009 Session. This is entirely appropriate particularly given Barra McGrory’s well merited appointment as Queen’s Counsel. It should also be recorded that the Bar Council has affirmed its support for these changes.

The challenges to the profession which are now posed by the new Stormont Assembly should not be underestimated. We must appreciate that the devolution of power (which will presumably, sooner rather than later include Policing and Justice) makes it essential that this Society recognises the imperative of interfacing, persuading and lobbying our politicians to ensure that all legislation which directly affects the provision of legal services, is enacted on an informed and justifiable basis, which preserves and enhances the work of lawyers in this community. We are determined that the Law Society, both in terms of its employees and Council members, whilst remaining politically neutral, learns quickly and effectively how to succeed under this new dispensation.

One of our recent “forays” into the political arena was in a very robust and contentious meeting with David Hanson MP who is the Westminster Minister with responsibility for the Northern Ireland Court Service. However, despite our trenchant criticism to him of the Court Service’s decision to hugely increase court fees, he would not budge from his argument that the private citizen pay for access and use of the courts and judiciary. If “Access to Justice” in a sophisticated democracy is to be as equally important as the existence of health, transport and other basic services, it seems perverse that Government is almost pricing it out of reach. Nevertheless, our unsuccessful encounter with Minister Hanson only serves to underline the need going forward, to win this type of political debate in our home territory.

It is especially in the context of these new challenges that I welcome our new Chief Executive, Alan Hunter, and very much look forward to his leadership and fresh ideas. I know he shares with me the need for this organisation to continue to punch above its weight and to better marshall the huge array of talent available within the profession. A warm welcome also to Colin Caughey who, almost fresh from University, has joined us as a Legal Policy Executive.

As you have thankfully endured the President’s musings to this point, you cannot have failed to note that this...
edition of The Writ majors on the Society's forthcoming Education Review. This Project is so significant that I am separately writing to all practitioners. I simply repeat my plea in that letter - please respond both critically and constructively to the very fundamental issues raised in the Review. I hear so many complaints about our current education system for new lawyers, particularly from country (as opposed to Belfast) solicitors that I would be surprised and disappointed that when given the opportunity, the complainants did not respond.

The recent appointment of Anne Devlin as our new Education Secretary will undoubtedly be an important additional resource in the very heavy workload of Brian Speers and the Education Committee. I might also add that the recently announced intention of the University of Ulster to provide around thirty new vocational training places at Magee College, is a very welcome development. The Education Committee has worked immensely hard in successfully concluding the very detailed negotiations which have preceded this development.

As I look forward to what I trust will be a soft landing for not only this Singapore Airlines Jumbo Jet but also the approaching end of my Presidential Year, I very deliberately have mentioned this trip to the IBA as certainly one the “perks” of the year in office. But I think it is important that this Law Society takes these trips. It is important that we keep challenging our English colleagues that their acceptance of the Clementi proposals is not a template for other jurisdictions. Further it is important for lawyers from a diverse range of Law Societies to continually learn from each other.

By the time you read this, there will have been an election for a new Law Society Council for 2007–2009. That Council will have the great pleasure of returning to the new Law Society House, the building of which is progressing without the discovery of any ancient relics and also on budget. I wish all the members of the new Council well and in due course I hope that some of them will put themselves forward for the position of President. For me it has been an immensely rewarding experience only made possible by my understanding partners who have endured (but I hope not enjoyed) my almost daily absence in Belfast or further afield. It has been my privilege to see at first hand the unfortunately unheralded commitment of fellow lawyers to the Society’s Committees and projects and hope that this will continue in the very challenging year ahead.

Finally one of the highlights of my year was the wonderful support from the profession for the sell-out Barcelona Conference. Next year’s event in Berlin promises to be equally exciting and exhausting but thankfully with more civilised flight times. I urge you to give it your full support and even encourage some of the younger solicitors to repeat the succession of late nights in Catalonia!

Late delivery of skeleton arguments

Practice Direction 4/2005 sets out the procedures, and particularly the timescales, for the delivery of skeleton arguments for the Court of Appeal and Divisional Court. Notwithstanding efforts by the court offices to ensure compliance with the timescales in the Direction, skeleton arguments are consistently being submitted late. This places unnecessary and often unreasonable pressure on the other party and on the court.

Paragraph 10 of the Direction provides that subject to any contrary direction by the court, four copies of skeletons and all related documents shall be lodged:

- Applicant - at least ten working days before the date fixed for the hearing
- Respondent - at least five working days before the date fixed for hearing
- Any other party - at least five working days before the date fixed for hearing

Paragraph 12 states that where the skeleton arguments, annexes and copies of related authorities and documents are submitted electronically to the Office and other parties the time scale for submission is reduced by one working day.

From Monday 5 November if a skeleton argument is late the party concerned will be contacted by the court office and will be required to appear before the Lord Chief Justice at a review hearing in order to account for the delay.

For the purpose of such review hearings skeleton arguments will be deemed to be late if they have not been received by the court office by close of business on the date by which electronic submission of skeleton arguments is required.

The Practice Direction is available on NICIS web site at www.courtsni.gov.uk
CRUMLIN ROAD GAOL – OPEN PRISON

A major restoration programme at Crumlin Road Gaol has been unveiled together with plans for it to be open to tourists and visitors for a limited period of time.

£1million has been invested in improvements that include weather-proofing, health & safety repairs and restoration work. The façade of the Sir Charles Lanyon designed building has also been transformed, with security walls and fencing removed and the railings and main gates repaired. Restoration of the hanging cell area has also been completed.

Guided tours of the Gaol are available on Thursdays and Saturdays until 15 December 2007. Admission is by prior booking only through the Belfast Welcome Centre at 47 Donegall Place, Belfast - Tel: 028 9024 6609, Email: welcomecentre@belfastvisitor.com Suitable footwear and warm clothing are recommended.

The Gaol (which recently hosted a production of Macbeth as part of the Belfast Festival at Queen’s) will close again for essential repairs and restoration after Christmas 2007.

FORCED MARRIAGES

Westminster legislation aimed at protecting the victims of forced marriages and preventing them from taking place will extend to Northern Ireland. The Forced Marriage (Civil Protection) Act 2007 makes provision for protecting individuals against being forced to enter into marriage without their free and full consent and for protecting individuals who have been forced to enter into marriage without consent. Once it comes into force, courts here will be able to make orders to protect the victim or the potential victim and help remove them from that situation.

The court will have a wide discretion in the type of forced marriage protection orders it will be able to make to enable it to respond effectively to the individual circumstances of the case and prevent or pre-empt forced marriages from occurring. Third parties will be able to apply for an order on behalf of somebody else.

PLEURAL PLAQUES IN THE HOUSE OF LORDS

The House of Lords in Johnston v NEI International Combustion Limited has recently upheld the Court of Appeal decision preventing sufferers of pleural plaques from claiming compensation for negligent exposure to asbestos dust during their employment.

In a conjoined appeal with Rothwell (Original Appellant and Cross-respondent) v Chemical and Insulating Company Limited and others and Topping (Original Appellant and Cross-respondent) v Benchtown Limited (formerly J ones Bros Preston Limited, the Lords decided that proof of damage is an essential element in a claim in negligence, and that the symptomless plaques are not compensatable damage.

They also held that the risk of future illness or anxiety about the possibility of that risk materialising does not amount to damage for the purpose of creating a cause of action.

POLICING BOARD ANNUAL REPORT

The Northern Ireland Policing Board (the Board) has published its third Annual Report into the Police Service of Northern Ireland’s (PSNI’s) compliance with the Human Rights Act 1998.

The 316 page report, which monitored how the police have met human rights responsibilities under the Human Rights Act 1998 on 15 key policing areas, found that significant progress had been made with a high level of compliance across a number of areas. However, progress in implementing some of the previous year’s recommendations was mixed, and there were some areas of non-compliance causing concern.

DISABILITY DISCRIMINATION DEFINITION AMENDMENTS

From 31 October 2007 more provisions of the Disability Discrimination (Northern Ireland) Order have been brought into force which widen the definition of disability.

A person who has cancer, HIV infection or multiple sclerosis is to be deemed to have a disability, and hence to be a disabled person.

In addition, mental illness does not have to be clinically recognized for the purpose of being considered a mental impairment under the legislation.
Be at the cutting edge...

...Money Laundering Regulations 2007 - are you prepared?

Contact OPSIS for information on the forthcoming seminar, ‘Risk management and the Implications of the Money Laundering Regulations, 2007’.

T: 028 90 653006
Alan Hunter has joined the Law Society as Chief Executive. Alan was educated at Queen’s University Belfast where he graduated in Law and completed the course at the Institute of Professional Legal Studies. Following a period of practice at the Bar, Alan joined the Government Legal Service as Legislative Draftsman in 1988 and subsequently the Northern Ireland Court Service in 1990. During his time in the Court Service he had responsibility for working on policy and legislative initiatives such as the County Court procedural reforms, reform of Jury Law and certain criminal justice issues. Alan subsequently was appointed as Director of Legal Aid in the Court Service in 1998 and as Director of Judicial Services in 2003. He was Chief Executive of the Judicial Appointments Commission before joining the Society on 1 October.

Speaking about his appointment Alan said: “I am delighted to take up this appointment, particularly at this challenging and interesting time as the profession faces a further period of significant change. The challenges that we face, as we look together to the future, include preparing for implementation of the review of legal services including the legislative stages and further reform of the legal aid system. Significant changes would also follow upon devolution of criminal justice policy and legislation to the Northern Ireland Executive. The prospect of devolution of these matters presents us with the very real opportunity of new ways of engaging with Government to further our aims to ensure increased access to justice for our clients and fair remuneration for practitioners. It is critically important that access to justice for members of the community is preserved and that the wide network of solicitors’ practices in this jurisdiction is maintained.

“We are also about to embark upon a consultation exercise in relation to education for entry to the profession. This is a central issue for the future of the profession and I particularly encourage you to respond to this important consultation exercise. “I look forward to meeting you and working with you as we address the significant challenges which lie ahead.”

Our client is a leading medium sized law firm based in Belfast city centre. The firm has an excellent reputation in the local market. Led by a strong management team, the firm has a progressive ethos and are committed to a quality service to its clients. The practice is seeking a professional to join their property team. This is a truly exceptional opportunity for a qualified lawyer looking for a move offering autonomy, responsibility and excellent future prospects.

**The Role**
- Strong team member working within the property department.
- Advise on all non-contentious aspects of commercial and residential property matters.
- Advise on commercial conveyancing transactions.
- Solid experience dealing with landlord & tenancy agreements.
- Advise on aspects of commercial property finance.
- Maintain relationships with clients and develop new business.

**The Person**
- Qualified solicitor with 0-5 years’ experience in property matters.
- Team player with an approachable and friendly personality.
- Candidate must be seeking a role focusing on non-contentious matters.
- An ambitious person looking for a role that can offer excellent career development.

The position is offering an excellent remuneration package commensurate with level of experience.

Interested candidates should contact Ronan Savage for a confidential discussion on 028 90 325 325. Alternatively send your CV in strictest confidence to r.savage@brightwaterNI.com.
New Victim and Witness of Crime Strategy launched

A new range of measures has been unveiled by Government to support the victims and witnesses of crime. The recently launched Victims and Witnesses Strategy is a new five year strategy aimed at improving the services provided to all victims and witnesses of crime in Northern Ireland. It was developed by a multi-agency group, the Victims, Vulnerable or Intimidated Witnesses Steering Group (VVIW) which represents the interests of all the criminal justice agencies, Victim Support NI and NSPCC.

Part of the strategy includes the Victim Support Witness Service which has now been rolled out to all Magistrates’, Youth and Crown Courts. The Witness Service offers the following service to adult victims and prosecution witnesses:

- The opportunity of someone to talk to
- Pre-trial familiarisation visit to the court
- A quiet place to wait
- Accompaniment into the courtroom
- Practical help eg assistance with expenses forms; and
- Access to those in a position to answer specific questions about their case

The strategy also includes a new web-based information guide for victim and witnesses, which can be accessed from the new CJ SNI website www.cjsni.gov.uk. The walkthrough provides a step by step guide to the criminal justice system, explaining the roles and responsibilities of the criminal justice agencies and signposts victims and witnesses to a range of support organisations.

The strategy aims to improve the level of service for all victims and witnesses of crime in 5 strategic objective areas: Access to Information; Case Progression; Quality Service; Support to Victims and witnesses and Listening to Victims and witnesses. It is intended that the five year plan will be continually reviewed by the VVIW Group who shall produce annual action plans setting out the commitments for the incoming year.
Understanding the Corporate Manslaughter and Corporate Homicide Act 2007

The Corporate Manslaughter and Corporate Homicide Act 2007 will come into force on 6 April 2008, across the UK. The Act sets out a new offence for convicting an organisation where a gross failure in the way activities were managed or organised results in a person’s death. This will apply to a wide range of organisations across the public and private sectors. In England and Wales and Northern Ireland, the new offence will be called corporate manslaughter. It will be called corporate homicide in Scotland.

Under a new approach, courts will look at management systems and practices across the organisation, providing a more effective means for prosecuting the worst corporate failures to manage health and safety properly.

Managing risks - not risk aversion
This is an opportunity for employers to think again about how risks are managed. The offence does not require organisations to comply with new regulatory standards. But organisations should ensure they are taking proper steps to meet current legal duties. From next April, the 2007 Act will mean that those who disregard the safety of others at work, with fatal consequences, are more vulnerable to very serious criminal charges.

Understanding the offence
An organisation will be guilty of the new offence if the way in which its activities are managed or organised causes a death and amounts to a gross breach of a duty of care to the deceased.

The new test
Juries will consider how the fatal activity was managed or organised throughout the organisation, including any systems and processes for managing safety and how these were operated in practice.

Gross breach
The organisation’s conduct must have fallen far below what could have been reasonably expected.

Duty of care
A duty of care exists for example in respect of the systems of work and equipment used by employees, the condition of worksites and other premises occupied by an organisation and in relation to products or services supplied to customers.

The Act does not create new duties - they are already owed in the civil law of negligence and the new offence is based on these.

Penalties
An organisation guilty of the offence will be liable to an unlimited fine. The Act also provides for courts to impose a publicity order, requiring the organisation to publicise details of its conviction and fine. This will be commenced at a later date when sentencing guidelines are available (expected in autumn 2008). Courts may also require an organisation to take steps to address the failures behind the death (a remedial order).

Exemptions
The offence does not apply to certain public and government functions whose management involve wider questions of public policy and are already subject to other forms of accountability.

For example, it does not apply to strategic decisions about the spending of public money or military operations. Other functions, such as policing, the response of the emergency services, child protection and statutory inspection are also exempt, other than where organisations owe responsibilities to employees or for the premises they occupy.

The new offence will apply to the management of custody, but this will come into force at a later date.

DPP consent
In England and Wales and in Northern Ireland, the consent of the relevant
Director of Public Prosecutions is needed before a case of corporate manslaughter can be taken to court.

Further information about this can be obtained from the Crown Prosecution Service (www.cps.gov.uk) or the Public Prosecution Service for Northern Ireland (www.ppsni.gov.uk)

In Scotland, all prosecutions are initiated by the Procurator Fiscal.

**Key questions**

Who is covered by the new offence? The offence applies to all companies and other corporate bodies, operating in the UK, in the private, public and third sectors. It also applies to partnerships (and to trade unions and employers’ associations) if they are an employer, as well as to Government departments and police forces.

What do organisations need to do to comply with the law? All employers must already comply with health and safety legislation and the Act does not affect those requirements. However, the introduction of the new offence is an opportunity for employers to satisfy themselves that systems and processes for managing health and safety are adequate.

For guidance on health and safety duties and how to meet them, employers should contact the relevant regulatory authority.

Can directors, senior managers or other individuals be prosecuted for the offence? No. The offence is aimed at cases where management failures lie across an organisation and it is the organisation itself that will face prosecution. However, individuals can already be prosecuted for gross negligence manslaughter/ culpable homicide and for health and safety offences. The Act does not change this and prosecutions against individuals will continue to be taken where there is sufficient evidence and it is in the public interest to do so.

Can the offence be avoided by senior managers delegating responsibility for health and safety? No. Failures by senior managers to manage health and safety adequately, including through inappropriate delegation of health and safety matters, will leave organisations vulnerable to corporate manslaughter/homicide charges.

Senior managers should ensure they and their organisation are complying with current health and safety laws. New guidance “Leading health and safety at work - Leadership Actions for Directors and Board Members” is being drawn up jointly by the Institute of Directors and the Health and Safety Commission, and will be published UK-wide later this year.

**What will happen in practice**

Employers have a legal duty to report certain incidents at work, including work-related deaths.

The police will lead an investigation if a criminal offence (other than under health and safety law) is suspected. They will work in partnership with the HSE, local authority or other regulatory authority.

The Government expects that cases of corporate manslaughter/homicide following a death at work will be rare as the new offence is intended to cover only the worst instances of failure across an organisation to manage health and safety properly.

Cases of corporate manslaughter will be prosecuted by the Crown Prosecution Service in England Wales and Public Prosecution Service in Northern Ireland. Corporate homicide cases will be prosecuted by the Procurator Fiscal in Scotland.

Health and safety charges may be brought at the same time as a prosecution for the new offence, as well as in cases where it is not prosecuted.

**Further information**

The full text of the Corporate Manslaughter and Corporate Homicide Act 2007 is available on the Office of Public Sector Information website: www.opsi.gov.uk

Further guidance on the offence, including background information, is available on the websites of the Ministry of Justice (www.justice.gov.uk) and Northern Ireland Office (www.nio.gov.uk)

Guidance on health and safety at work is available from the Health and Safety Executive (www.hse.gov.uk) and the Health and Safety Executive for Northern Ireland (www.hseni.gov.uk)
The Third Annual Report from The Lay Observer, Alasdair MacLaughlin, is the twenty ninth in the series. In addition to being presented by the Lay Observer to the Lord Chief Justice, to the Department of Finance & Personnel and to the Council of the Law Society, this Report has also been laid before the Northern Ireland Assembly.

Most members of the profession will be aware not only of the important role played by the office of The Lay Observer but will recognise the commitment and effort brought to the role by the present incumbent, Alasdair MacLaughlin.

In Mr MacLaughlin’s first Annual Report, he focussed on ACTION – Prevention and Cure. In his second, he moved more firmly into the area of learning from the processes of complaints handling in the interest of development and change. He considered it was essential to ensure that individual complaints were dealt with in an effective, efficient and empathetic way. He also highlighted that well-conducted complaints handling should throw up ways of understanding better what was going on, so that trends and observations could better inform how to bring about improvements, including methods of prevention and learning for the Society, for the profession and also for The Lay Observer. Accordingly he chose for his theme for that Second Report, ACTION - Squaring the circle, which he felt encapsulated what a learning organisation does when it seeks to improve its performance.

For his Third Report (which covers the calendar year 2006), The Lay Observer has chosen the theme of ACTION - Moving on. He states that it is vital to carry out complaints handling to the highest standards within the constraints of the law and to learn from and act on the lessons learned from complaints handling elsewhere.

Over ten sections, the Report covers the work of The Lay Observer in monitoring and scrutinizing how the Society has handled complaints in the last calendar year. There are sections on the Role of The Lay Observer, Final Outcomes of referrals, and details of complaints statistics and comments thereon. Mr MacLaughlin also devotes a section to the importance of Continuing Professional Development.

Given the Review of Legal Services carried out under the chairmanship of Professor Sir George Bain, he considers it helpful, where practicable to do all that is possible to anticipate what might develop, so that the transition to whatever is decided by Government can be as smooth as possible. His Third Annual Report attempts to address some of these matters.

Mr MacLaughlin is pleased to be able to point to further practical progress in improving the processes of complaints handling in conjunction with the Society. His recommendations set out in Section 9 of the Report are again this year focussed largely on a modest number of functional improvements which look forward to the new order while at the same time as improving the current approach. Each of the five recommendations is under active consideration by the Society with a view to the provision of a full and formal response in the very near future.

One new development since last year is the creation of a designated website for The Lay Observer. Those who access it can visit areas which deal with his Role, Complaints (Types of Complaint dealt with, Making a Complaint etc), Annual Reports, Useful Contacts and Feedback. The website may be accessed at www.layobserverni.com.
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**Introduction**

On 1 April 2007 the Private Tenancies (NI) Order 2006 ("the Private Tenancies Order") came into force. This represents the biggest change in the regulation of the residential private rented sector in nearly thirty years. The legislation is in six parts:

1. Introductory
2. Obligations of landlords and tenants
3. Unfitness and disrepair
4. Certificates of fitness and rent control
5. Amendments to the Rent (NI) Order 1978 ("the Rent Order")
6. Miscellaneous

Part I of this article will consider the definition of a private tenancy and the obligations of landlords and tenants respectively. In Part II (which will be carried in the next edition of The Writ), the powers of district councils in respect of unfitness and disrepair; certificates of fitness and amendments to the Rent Order will be examined.

**Part 1. Introductory**

A. 3 of the Private Tenancies Order defines a private tenancy as any tenancy of a dwelling-house (which includes a part of a house) which is not:

- A Fee Farm Grant
- A tenancy for a term certain exceeding 99 years unless the tenancy is or may become terminable before the end of that term by notice given to the tenant;
- A tenancy under which the landlord is the Crown or a government department or the NIHE or a registered housing association or is held in trust for purposes of a government department; or
- A holiday letting

Where the context permits in this legislation a private tenancy includes a protected and a statutory tenancy.

**Part 2. Obligations of landlords and tenants**

**Statement of Tenancy Terms**

A. 4(1) of the Private Tenancies Order states that where a private tenancy of a dwelling-house is granted on or after 1 April 2007 the landlord shall (free of charge) within 28 days of the grant of the tenancy give the tenant a prescribed notice. The terms of such notice are contained in The Tenancy Terms Regulations (NI) 2007 and comprise:

1. the address of the dwelling-house
2. the name and address of the landlord
3. the name and address of the tenant(s)
4. the contact phone number of the landlord
5. the contact phone number of the agent (if any) and a description of the services provided on behalf of the landlord
6. the emergency out of hours telephone contact number for the landlord or agent (if any)
7. the term of the tenancy (weekly, monthly, quarterly etc)
8. the tenancy commencement date
9. the duration of the tenancy and the termination date (if any)
10. the notice of termination which must be given by the landlord and the tenant (except in the case of a fixed term tenancy)
11. the rent payable, the dates on which this is due and the method of payment
12. the amount and purpose of any returnable or non returnable deposit payable and the conditions under which it will be repaid (if applicable)
13. the amount and purpose of any other payment which the tenant is required to make in addition to rent and rates (for example, in respect of heating)
14. the repairing obligations of both the landlord and the tenant
15. details of any other obligations on the landlord or tenant forming part of the tenancy agreement
16. an inventory of any furniture or furnishings provided under the tenancy
17. the information set out in the Schedule to the Tenancy Terms Regulations (NI) 2007
18. the following notice must be included as part of the Statement of Tenancy Terms:

**Additional information to be included in every statement of tenancy terms supplied in connection with premises let under a private tenancy.**

**General**

1. Your tenancy is not a protected or statutory tenancy within the meaning of the Rent (Northern Ireland) Order 1978. You have the protection of the legal rights described below but other terms and conditions of your tenancy are a matter for agreement between you and your landlord.

**Repairs**

2. Your landlord is obliged to keep in repair all gas fittings, flues and installations. Your landlord must also provide you with a copy of the record of required safety checks made in relation to gas appliances or flues, or, in certain circumstances, display prominently in the dwelling-house a copy of that record. Responsibility for other repairs is determined by your tenancy agreement but you can get help
from the environmental health department of your local council for some items of disrepair.

**Fitness for human habitation**

3. A dwelling-house built before 6 November 1956 which is let under a private tenancy commencing after the introduction of the Order and which is not a prescribed dwelling-house and in respect of which there is no current certificate of fitness must be inspected by the district council to ascertain if it is fit for human habitation. Where a dwelling-house does not meet the fitness standard it is subject to rent control and an appropriate rent will be determined by the Rent Officer for Northern Ireland.

**Rent Book**

4. All private tenants have a legal right to a rent book. Your district council has powers to take legal action where this requirement is not complied with.

**Notice to quit**

5. A notice to quit must give at least four weeks written notice of the date on which it is to take effect.

**Illegal eviction and harassment**

6. It is an offence for your landlord or anyone acting on his behalf to harass you or your household or illegally evict you. This could include interfering with your home or your possessions or cutting off services such as water or electricity with the intention of making you leave your home. Your local council has powers to take legal action should any of these occur.

**Security of tenure**

7. You cannot be evicted from your tenancy without a possession order issued by a Court of Law, although you may be liable for legal costs incurred if an Order is issued.

**Rent and rates**

8. You are entitled to apply for help with the payment of your rent and rates through Housing Benefit, which is a Social Security benefit paid by the Housing Executive. You may also be entitled to rate relief or rates exemption. For further information contact your local Housing Executive office or the Rates Collection Agency.

**Further information**

9. If you would like independent advice or information on your rights and obligations you should contact a solicitor, or Housing Rights Service (telephone number 028 9024 5640), or Advice NI, (telephone number 028 9064 5919) which will be able to give you details of your local independent advice centre, or your local Citizens Advice Bureau (see the telephone directory for details).

If a prescribed term of a tenancy (whether such tenancy was created before or after 1 April 2007) is varied (including by omission) the landlord will likewise have to give a notice (free of charge) to the tenant containing information relating to the variation within 28 days of the variation. Failure to comply with the requirement to serve the tenancy notice or notice of variation constitutes an offence.

**Rent Book**

A. 5 of the Private Tenancies Order restates the provision contained in the Rent Order requiring a landlord to furnish a rent book (free of charge) to a tenant. The rent book must be provided within 28 days of the date on which the tenancy is granted. The rent book is to be used to maintain a written record of rent and other payments made regarding the tenancy. The Rent Book Regulations (NI) 2007 state that a rent book must contain the following particulars and information:

1. The address of the dwelling-house
2. The name of the tenant
3. The name, address and telephone number of the landlord
4. The name, address and telephone number of the landlord’s agent (if any)
5. The rent payable and the period covered by each payment
6. The capital value of the dwelling-house
7. The amount of rates payable in respect of the dwelling-house
8. The amount of any rates included in the rent or payable by the tenant in addition to rent, and the period covered by each payment
9. The amount and description of any other payment which the tenant is required to make in addition to rent and rates (for example, in respect of heating)
10. The tenancy commencement date

While a landlord may be able to recover rent from a tenant in the absence of having provided a rent book he commits an offence if he fails to supply a rent book within the specified period.

It is also an offence for any person who, on behalf of a landlord, demands or receives rent in respect of the tenancy where there is no rent book. However, such a person has a defence if he can prove that he neither knew nor had reasonable cause to believe that the tenant had not been supplied with a rent book within the specified time.
Repair and maintenance
The Private Tenancies Order makes default provision for repairing obligations in respect of any private tenancy granted on or after the commencement of the legislation or any protected or statutory tenancy which was a regulated tenancy under the Rent Order.

This is the one area of the Private Tenancies Order where the default provisions are subject to any express provision in the contract of tenancy. It is not possible to contract out of the other provisions of the Private Tenancies Order.

Under the default terms the landlord is under a duty under a private tenancy to:

- Keep in repair the structure and exterior of the dwelling-house (including the exterior paintwork)
- Keep in repair the interior of the dwelling-house (subject to the tenant’s duties as listed below)
- Keep in repair and good working order:
  - Installations for the supply and use of water, gas and electricity and for sanitation (including basins, sinks, baths and toilets etc)
  - Installations for space heating or heating water
  - Appliances for making use of the supply of water, gas or electricity which the landlord has provided under the terms of the tenancy; and
  - Any fixtures, fittings or furnishings which the landlord has provided under the terms of the tenancy
- (If the letting is re part of a building), to keep in good order and condition the common parts of the building which the tenant is entitled to use and to keep the common parts adequately lit and safe to use

The landlord’s obligations do not extend to oblige him to repair or maintain anything which was not constructed or provided by him or his predecessors in title nor anything which the tenant is entitled to remove from the property and does not oblige him to rebuild or reinstate the property in the event of destruction by fire or other accident. Nor is he required to carry out works unless he has actual knowledge that the property needs the work to be carried out.

The tenant is under a duty under a private tenancy to:

- Take proper care of the property as a good tenant
- Make good any damage to the property wilfully or negligently done or caused by the tenant, any sub-tenant or any other person lawfully living in or lawfully visiting the property
- Keep the interior of the property in reasonable decorative order
- Not to carry out any alterations to the property without the consent of the landlord, but that consent shall not be unreasonably withheld

The standard required by both the landlord and the tenant is to be determined having regard to the age, character and prospective life of the property.

These default provisions are the same as the repairing obligations contained in the Rent Order in respect of regulated tenancies.

Entry and inspection of the property
A. 12 of the Private Tenancies Order provides that a tenant shall permit the landlord and persons reasonably authorised for that purpose to enter the property at reasonable times and upon reasonable notice to:

- Inspect the state of repair of the property; and
- Carry out works which the landlord is under a duty to execute

It will be remembered that it is not possible to contract out of these provisions, therefore the landlord must be afforded access. If a tenant does not permit the landlord access the landlord may apply to the County Court for an order empowering himself and persons authorised by him for that purpose to enter the dwelling-house and carry out the works. Such a court order may be made subject to such conditions as to the time when the works are to be carried out and any provision relating to the accommodation of the tenant and his household as the court considers fit.

Default term of the tenancy
A. 13 of the Private Tenancies Order provides that if a private tenancy is granted which does not provide for the term of the tenancy the term shall be six months beginning on the date on which the tenant is entitled to take possession of the property. This does not apply to a statutory tenancy which by its nature attracts security of tenure.

Notice to quit
The Private Tenancies Order provides, in a. 14, that a notice by a landlord or a tenant to quit a dwelling-house let under a private tenancy shall not be valid unless it is given in writing not less than four weeks before the date on which it is to take effect. This applies to all tenancies whether granted before or after the commencement of the new legislation.

Conclusion
The Private Tenancies Order makes substantial provisions in respect of the information to be given by landlords to tenants. The requirement to supply a rent book and statement of tenancy terms should lessen any confusion as to the responsibilities of each of the parties. The new legislation also makes provision for powers for the district councils to issue notices of unfitness and disrepair and to issue (where appropriate) certificates of fitness. These will be considered in Part II of this article.

We are grateful to Charles O’Neill for this article. Part 2 will be carried in the next edition of The Writ.
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Priority Searches - some guidance from Land Registers

Priority Searches are lodged in accordance with s.81 of the Land Registration Act (NI) 1970 and Rule 187 of the Land Registration Rules (NI) 1994 as amended.

It is not uncommon to see folios spattered with Priority Search entries relating to the same dealing for which the original priority was sought. This comes about due to failure to lodge the protected dealing within the first forty day period of protection resulting in solicitors attempting to “top up” the search as they see it.

Most solicitors do succeed in lodging the dealing within the period and one would have thought that forty days was ample time to lodge but delays can and do happen. It is worth noting at this point that it is not so long since the priority period was fifteen days. However, it is important to assess what can go wrong if the dealing is not so lodged and explode any myths surrounding this type of search.

**GENERAL POINTS TO NOTE:**

1. Priority is only protected if the qualifying application is lodged within forty days and if it is order. The first point here is self-explanatory. The second can cause difficulties. If a solicitor, for example, lodges a transfer within the period which has not been properly witnessed and, for example, a Charging Order is lodged also during the period, the deficiency in the transfer will defeat the priority protection unless it is detected by LRNI staff, the situation addressed and the amended transfer relodged within the priority period. The likelihood of this happening is slim. Hand in hand with the expeditious lodgement of the dealing, therefore, is the importance of ensuring that the document lodged is in order together with any additional proofs which may be required.
2. The word Priority used in the term Priority Search does not mean that Registry staff give priority to this type of application over other types.
3. Priority Searches cannot be lodged to protect priority in a case involving compulsory first registration of unregistered title although many attempts have been made to do so.

**TOPPING UP:**

Solicitors cannot extend the period afforded by a Priority Search by applying for another before the forty day period has expired. The new application is treated as a new Priority Search creating a new period of priority.

If, for example, a solicitor lodges a Priority Search and “tops this up” on day 38 of the search period and lodges the dealing protected within the second priority period on day 50, there is no problem with priority being given (priority deriving from the second search) as long as there is no intervening dealing.

However, if another solicitor in the above example had lodged a Charging Order on day 25 of the Priority Search, the dealing lodged within the second priority period by the solicitor who had applied for the original Search on day 50 would not have priority over the Charging Order. This solicitor applied for the second search on day 38 and this search would only afford priority over any other dealing lodged between days 38 and 78.

If possible, efforts should be made to ensure that the relevant dealing is in order in all respects and is lodged within the period of the initial search. This is particularly important as it is LRNI’s understanding that application for Priority Search is now a lending institution requirement in all mortgage instructions relating to registered land.

There can be repercussions from not pursuing the finalisation of related registrations. In some cases involving mortgages, it may be possible to resolve matters quickly and inexpensively between solicitors acting for mortgagees who accept priority rankings as first and second mortgagees and where there is a willingness to “sort out” the priority issue.

In other cases, particularly those involving registrations of Charging Orders, extreme difficulties can arise when attempting to deal with a creditor who, after all, is really only interested in realising the debt after what most practitioners would regard as a lengthy and expensive process.

Further guidance on Priority Searches can be found on pages 114 and 115 of the Land Registration Manual (Second Edition).

We are grateful to the Land Registry for this article.
The Northern Ireland Legal Services Commission (NILSC) has issued for public consultation its proposals for introducing a new financial eligibility test for determining access to Civil Legal Aid in Northern Ireland. The consultation document builds on research undertaken by Dr Tony Dignan to develop a simplified test which reduces the complexity of the current test whilst maintaining eligibility at or around current levels. A draft Equality Impact Assessment of the proposed new test has also been conducted and is issued with the consultation document.

The consultation period runs from 5 November 2007 to 8 February 2008. Both documents can be downloaded from the NILSC website www.nilsc.org.uk and/or is available upon request from:

The Secretary
NILSC
2nd Floor, Waterfront Plaza
8 Laganbank Road
BELFAST BT1 3BN
Tel: 028 9040 8888
Email: accesstojustice@nilsc.org.uk

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Insolvency Law - the matrimonial home

In this article Jason Byrne of McManus Kearney Solicitors, considers how the Insolvency (NI) Order 2005 has brought some certainty regarding the bankrupt’s matrimonial home.

The Insolvency (NI) Order 2005 (“the 2005 Order”) came into operation in this jurisdiction on 27 March 2006 and effectively brought the insolvency legislation in Northern Ireland up to speed with the position that had already been enjoyed in England under the Enterprise Act 2002 since April 2004.

This new legislation introduced many amendments affecting the bankruptcy of individuals ranging from the loss of Crown preference to the reduction of the automatic discharge period for a bankrupt from three years to one year. However, perhaps one of the most welcome of these amendments is the time limit that is now imposed on a Trustee in Bankruptcy in realising his interest in a bankrupt’s matrimonial home.

The position under the previous legislation, namely the Insolvency (NI) Order 1989 (“the 1989 Order”), was that upon adjudication all of a bankrupt’s assets automatically vested in the Trustee in Bankruptcy without the need for any conveyance, assignment or transfer deed to be executed. This automatic vesting was open-ended in that title to the bankrupt’s assets remained with the Trustee until they were either disclaimed or sold or if the bankruptcy was subsequently annulled. The fact that the bankrupt may have in the interim obtained his discharge from bankruptcy did nothing to affect the position.

It is an all too common scenario where a debtor is adjudicated bankrupt and at the date of his adjudication he is either the sole or joint owner of the matrimonial home which is usually heavily charged and has little equity. The bankrupt and his/her spouse may fail to take up the Official Receiver’s or Trustee’s offer to purchase their interest in same for a nominal or relatively small amount for a variety of reasons such as not being able to afford the amount required, however small, or more often than not the ‘ostrich syndrome’ where heads are well and truly buried in the sand hoping that the bankruptcy would pass them by.

In practice however the Trustee’s unrealised interest was simply noted by the Insolvency Service to be revisited again at some future date. In the interim, the bankrupt may well receive his discharge from bankruptcy. If a Trustee was appointed that Trustee may have since obtained their release and the case effectively becomes dormant.

Given the substantial economic boom enjoyed by the Northern Irish property market it usually transpires that the value of the property in question has leapt considerably when it is re-valued some years later. It is usually only now that the implications of what was previously failed to be addressed by the bankrupt and his family comes to light. The Official Receiver’s interest which could have previously been purchased for a nominal amount could now have a value ten or even twenty times more.

Imagine the uncertainty and distress that this scenario causes to a bankrupt’s family who probably have long since put the bankruptcy behind them and carried on with their lives totally oblivious to the financial time bomb that was ticking all the while. The unfortunate reality is that in such circumstances the value of the unrealised interest, which may have been previously difficult to purchase, now holds a value that is virtually impossible to deal with and the bankrupt and his family face the real prospect of losing their home. The Trustee in Bankruptcy also faces the unenviable task of acting as the enforcer in such difficult circumstances.

A decision is currently awaited from the High Court in relation to how realised interests in dwelling houses in bankruptcies taking place after 1 October 1991 but before 27 March 2006 are to be dealt with. For further information on this, see Dear IP24 issued by the Insolvency Service on 3 September 2007. However, for new cases after 27 March, there now exists a degree of certainty as to what is to happen.

Article 17 of the 2005 Order inserts a new Article 256A into the 1989 Order and this applies to cases where the bankrupt’s estate comprises of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal place of residence of either the bankrupt, the bankrupt’s spouse or a former spouse of the bankrupt. At the end of three years, commencing on the date of the bankruptcy the bankrupt’s interest in such a dwelling-house, which would have vested in the Official Receiver or Trustee in Bankruptcy upon adjudication, will now cease to be a part of the bankrupt’s estate and will automatically re-vest in the bankrupt without the need for any conveyance, assignment or transfer deed to be executed.

To prevent this re-vesting and ultimately the loss of an opportunity to add to the funds potentially available to the bankrupt’s creditors, the Trustee must take one of five specified actions within the first three years of the bankruptcy which include either realising their interest, applying for an order for possession and sale of the property or applying for a charging order over the property.

The new legislation ensures that the bankrupt’s home will be dealt with normally within the first three years of the bankruptcy. It will also avoid the unnecessary administrative costs in closing a bankruptcy case only to re-open it again some years later to deal with an unrealised asset.

In a case where a bankrupt has an interest in one or more properties the Trustee will need to identify which one of these...
properties fulfils the criteria set out in the legislation to ensure that the interest in that property is dealt with within the legislative time limits. It would therefore be potentially difficult for a bankrupt to argue that his valuable holiday villa in the South of France where he spends two weeks each year with his family is in fact his sole or principal place of residence and as such falls within Article 256A of the 2005 Order.

The Insolvency (Amendment) Rules (NI) 2006 introduces a new Rule 6.229 to the Insolvency Rules (NI) 1991 which states that in cases where Article 256A applies a Trustee must now serve notice (Form 6.86) as soon as is reasonably practicable to do so on the bankrupt and either the bankrupt’s spouse or civil partner or former spouse or civil partner as the case may be. The service of Form 6.86 puts all relevant parties on notice that their dwelling-house falls within the remit of the bankrupt’s estate and that the Trustee has an interest in same thereby avoiding any future uncertainty.

The 2005 Order also makes provision for pre-commencement bankruptcies, being bankruptcies where the bankruptcy order pre-dates the commencement date of the new legislation. In such cases the three years begins to run from the commencement date of the 2005 Order being 27 March 2006 and therefore in most pre-commencement bankruptcies a bankrupt’s former interest in his matrimonial home could re-vest in the bankrupt on 27 March 2009 unless one of the specified steps are taken by the Trustee in Bankruptcy.

This new approach to a Trustee’s interest in the bankrupt’s matrimonial home will no doubt reduce the length of time required to administer a bankrupt’s estate as the interest in such a property is usually the last asset to be realised. This should also reduce the administrative costs of a bankruptcy which are paid as a priority in a bankrupt’s estate and in theory these combined factors could result in a swifter and higher dividend to ordinary unsecured creditors. From a bankrupt’s point of view the new legislation introduces a degree of certainty and clarity regarding the consequences of the bankruptcy on his matrimonial home and the related implications for his family. Therefore the introduction of Article 256A to the 1989 Order should be welcomed by all parties involved in a bankruptcy where the bankrupt’s estate comprises of an interest in a matrimonial home. □
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Projects Solicitor
Belfast £Neg
If you have experience in project work, PFI/PPP then contact us as soon as possible. This is an exciting opportunity to join a firm that deals with large scale construction/transport deals and are interested in being involved in some of the largest infrastructure projects being carried out. You will have experience within a similar type of environment. Excellent working conditions and remuneration package on offer. Ref 5703

Conveyancing Solicitor
Co Antrim £38k
Our client, a well known firm of solicitors which devotes itself to being specialists in Employment law. This modern and friendly firm with an office in the suburbs of the city has a vacancy for an employment law specialist. Excellent career prospects and remuneration package. Ref 4827

Employment Solicitor
East Belfast £Neg
Our client is a well known firm of solicitors which devotes itself to being specialists in Employment law. This modern and friendly firm with an office in the suburbs of the city has a vacancy for an employment law specialist. Excellent career prospects and remuneration package. Ref 4827

Commercial Property Solicitor
Belfast £Neg
PRG's client is a respected law firm based in Ireland. This firm provides a comprehensive legal service across the full spectrum of the commercial property industry. Its clients are drawn from a wide range of organisations, both domestic and international. If you are ambitious, keen to establish yourself in one of Ireland’s top firms, then you should call to discuss this unique position and relocation opportunities.

Solicitor
London £75k + excellent benefits package
Our client is a top 20 global law firm and its award winning London office has been involved in Europe’s largest M&A transactions and is regarded as one of the premier international funds practices. The London office continues to expand and our client is currently looking to recruit high quality lawyers in the following disciplines, across all levels of qualification: Funds, Corporate, Private Equity and Acquisition Finance. These are significant opportunities with transparent prospects that will see you work in one of the City’s most dynamic and enterprising offices.

Interested in taking your career professionally and financially forward?
Paul Steven heads up PRG Executive Search’s legal business and has considerable experience of assisting lawyers in senior roles within Scottish law firms. With extensive experience working exclusively in the legal sector, both in Scotland and the rest of the UK, he has worked with all of the top law firms and many of the best niche boutique firms. The professional and financial opportunities in the buoyant Scottish legal sector are such that this could be an ideal time to discuss the possibilities of relocation or just have a chat about the market generally, therefore please call Paul Steven on 0131 550 1463 or email paulsteven@prgexecutivesearch.com

For more details please call Orla Milligan at PRGLawsearch on 02890 443680 or email orlamilligan@prglawsearch.com

Belfast 02890 314 644 • Edinburgh 0131 240 0790 • Glasgow 0141 331 9380
www.prgrrecruitment.com
Amended ‘Points in Practice’ Practice Guidance Note issued

The original Practice Guidance Note issued on 12 February 2007 included a requirement that in all applications where power is reserved to other executors the Oath for Executor should state either that notice of the application has been given to those executors or that the Master has dispensed with such notice. However, following submissions from Society representatives at a meeting of the Chancery Division Liaison Committee, on 19 July 2007 Master Ellison issued a short amending Practice Guidance Note removing that general requirement and indicated to the Society that the original Practice Guidance Note would be re-issued to incorporate both that change and the new non-contentious probate fees which have since come into operation on 24 September 2007.

Accordingly the “Points in Practice” Practice Guidance Note has now been re-issued with those and other minor or consequential amendments. Those amendments include the addition of paragraph 9(3) of the First Schedule to the Note drawing attention to the proviso in Order 97 rule 26(1) of the Supreme Court Rules that, where an executor entitled to a grant resides outside Northern Ireland, notice of any application for a grant to his attorney pursuant to the rule must be given to the other executors (if any) unless such notice is dispensed with by the Master. New Paragraph 9(4) of the First Schedule to the Note draws attention to the requirement in Order 97 rule 26(2) that the Master has to be satisfied by affidavit that it is desirable for a grant to issue to an attorney of a person entitled to a grant and resident in Northern Ireland.

The recent re-issue of the Practice Guidance Note (as amended) is now available on the websites of the N I Court Service at www.courtsni.gov.uk and on the Society's Library's Libero database at www.lawsoc-ni.org.

New arrangements for the initial payment of Inheritance Tax on delivery of Form IHT 200

Introduction
On 5 November 2007, HMRC changed the process for making the initial payment of IHT where payment is made by cheque. From 5 November, practitioners need to send their cheque with a bank approved payslip carrying an IHT reference to HMRC Cashiers in Nottingham. This means that you will need to contact HMRC to obtain an IHT reference and the payslip before submitting form IHT200. This new process should also be used to obtain a reference number before using the Direct Payment Scheme.

How do I obtain a reference and payslip?
You will need to apply in writing for a reference number for any case where there is tax to pay on delivery of form IHT200. There will be two options. You can apply:
- online through the HMRC website, or
- by post, using form D21.

If you use the online option, (see the “Do it Online” link on the side bar of the IHT home page at www.hmrc.gov.uk/cto/iht.htm) you will receive an email acknowledgement that HMRC has received your request. This facility is purely for the issue of references and HMRC cannot enter into further email correspondence by this route.

What happens next?
HMRC will allocate a reference to the estate and send details of the reference together with a payslip and a pre-addressed envelope to you by post. They aim to reply to all requests for a reference within five working days for online requests and within 15 working days for postal requests.

What should I do when I am ready to deliver form IHT200?
First, you should write the IHT reference number in the top right-hand corner of the IHT200. Then, if you are paying the tax by cheque, fill in the payslip and put the payslip and cheque (and nothing else) in the pre-addressed envelope. You are requested not to fold the cheque or payslip or use staples or paperclips. You should then send your payment to Cashiers at Nottingham. You will also send form IHT200 and supporting papers to Nottingham.

What about paying tax using the Direct Payment Scheme or from funds with National Savings?
If you are paying the tax using either of these sources, you should apply for a reference by using this new route, but otherwise follow the existing process.

How far in advance should I apply for an IHT reference number?
The sooner the better; but HMRC suggest - as a minimum - three weeks before you expect to be delivering form IHT200.

How can I get form D21?
You can download form D21 from the HMRC website, or obtain a paper copy from its Forms Orderline on 0845 30 20 900; option 1.

What about Capital Transfer Tax and Estate Duty deaths?
You should follow exactly the same process if you need to make an initial payment of tax/duty for a death prior to 18 March 1986.

Do I need a reference when there is no tax to pay, but an IHT200 is still required?
No, there is no need to apply for a reference where there is no tax to pay - you should simply send the completed form IHT200 etc. to HMRC in the normal way.
These come into force on 15 December 2007. They will entirely replace the Money Laundering Regulations 2003 (SI 2003/3075) and implement the Third Money Laundering Directive (2005/60/EC) within the United Kingdom, whose government strategy is to detect, disrupt and deter crime and terrorism through a range of strategies including measures to restrict criminal access to the financial system. This reflects international obligations. Solicitors should familiarise themselves with the detail of the new Regulations. They are downloadable from www.opsi.gov.uk/si/si2007/20072157

What are the rules?
The Money Laundering Regulations require firms to put preventative measures in place. They require firms to ensure that they know their customers (including conducting customer identification and verification and undertake ongoing monitoring where applicable), to keep records of identity and to train their staff on the requirements of the Regulations. The Proceeds of Crime Act 2002 and the Terrorism Act 2000 provide the criminal offences of money laundering and terrorist financing and impose obligations on firms and individuals to report suspicions of money laundering or terrorist financing.

Key changes in the 2007 Regulations
These are set to significantly change the way in which solicitors approach anti-money laundering compliance generally and client due diligence in particular. The Law Society of Northern Ireland previously adopted the "Money Laundering Guidance" issued by the Law Society of England and Wales. We are taking the same approach again and adopting that Society's new "Anti-Money Laundering Practice Note".

It is available on www.lawsociety.org.uk - click on "Anti-Money Laundering". We will also be providing a full CPD programme in early 2008.

Some of the key changes in the 2007 Regulations are outlined below with reference to chapters in the Practice Note.

1. The 2007 Regulations formalise the trend in taking a risk-based approach to AML compliance. This means that firms are able to assess the risks they actually face as a result of their client demographic and practice type, and then target resources appropriately. Consequently, where a client is easily identified but engaging in a high-risk transaction, more effort can be put into monitoring the transaction and the source of funds for suspicious activity, rather than on client identification.

Chapter two of the Practice Note outlines the risk-based approach and how it can be applied to AML compliance, while the third chapter outlines how it can be incorporated effectively into a firm's systems, policies and procedures.

- Enhanced identification of beneficial owners is required by the 2007 Regulations. Chapter four looks at good practice for identifying beneficial owners and highlights how the risk-based approach can be applied when allocating resources. There is detailed advice on what constitutes beneficial ownership within a trust, with worked examples to illustrate the process.

- Firms need to be able to identify and apply enhanced due diligence to clients who are "politically exposed persons" (PEPs). The note provides a practical and balanced approach to meeting this obligation without automatically needing expensive computer databases.

- Advice on electronic verification sources (EVS) is included in the main body of the Practice Note. Each EVS provider offers different services with different levels of
certainty and firms’ requirements will also vary. The Practice Note outlines the key issues solicitors need to take into account when assessing which EVS provider is best suited to their needs and whether electronic verification is the most appropriate Customer Due Diligence (CDD) method for a particular client or class of clients.

- The 2007 Regulations permit greater reliance on other regulated persons for completion of CDD on your clients. The Practice Note outlines the difference when using another person as a verification source, outsourcing and reliance. Information is provided on options for passporting clients between different offices of a firm, particularly where one office is in another jurisdiction.

**Risk-based approach**

The Practice Note specifically recognises the risk-based approach. Chapter two outlines what the risk-based approach is and the key issues likely to affect a law firm’s risk profile. The Society believes it is reasonable for firms to start from the perspective that the majority of their clients are not trying to involve them in criminal activity. Firms then need to take a reasoned and proportionate approach to mitigate the risks that particular areas of practice or clients present in a money laundering or terrorist financing context.

By applying the risk-based approach firms should be able to focus their resources on the areas of greatest risk leading to a more effective and less burdensome approach to compliance while providing enhanced flexibility to respond to emerging risks.

**Client identification**

In line with the 2007 Regulations, the Practice Note adopts the distinction between obtaining identification details and verifying those details. It retains the flexible approach to outlining a variety of sources which solicitors can use to verify identity details, but leaves the decision to solicitors to adopt a verification method which best suits their risk profile, their practice and individual clients. The Practice Note continues the Society’s cautious endorsement of electronic identity checks as another verification method, which may be appropriate, and at times particularly useful, depending on the circumstances.

By applying the risk-based approach firms should be able to focus their resources on the areas of greatest risk leading to a more effective and less burdensome approach to compliance while providing enhanced flexibility to respond to emerging risks.

The Practice Note recognises that solicitors have a professional duty to know their clients and fully understand the instructions they are being given. As such, it encourages solicitors to consider the large amount of material they are likely to hold on-file regarding clients which will enable them to comply with requirements to:

- Keep client identification material up to date
- Verify the identity of existing clients; and
- Conduct ongoing monitoring of business relationships

**Beneficial owners**

The Practice Note advocates a proportionate approach to the identification and verification of beneficial owners, taking into account all of the circumstances of the retainer and the specific client. In the particularly fraught area of beneficial owners of trust arrangements, the Society has provided detailed worked examples to assist solicitors, and others, to ensure that relevant persons are identified.

**Reliance**

The 2007 Regulations extend the ability to rely on other regulated persons for client due diligence checks to the wider regulated sector. The Practice Note provides advice on the difference between:

- reliance
- outsourcing
- use of another person as a verification source and
- ‘Passporting’ clients between offices

Solicitors are reminded that the ultimate responsibility for ensuring that their clients are appropriately identified and verified remains with them.

**PEPs**

In line with the European Commission’s directions on implementing the Third Directive, the Practice Note takes a pragmatic approach in dealing with the enhanced due diligence required with respect to Politically Exposed Persons. Solicitors are not required to conduct extensive investigations as to whether a client is a PEP. Depending on the risk profile of the firm, they are advised to ask standard questions of all clients or conduct some form of electronic check.

NOTE: Please note that this article is no substitute for attendance at the CPD seminars (to be held in early 2008) where the particular enhanced due diligence required for beneficial ownership will be examined in detail.
Advanced Advocacy 2007

The eighth annual Advanced Advocacy Course was successfully completed by a further 22 Solicitor Advocates in September 2007. Most of you will be familiar with the format of this course which is run under the auspice of NITA (National Institute of Trial Advocacy) from the US.

A number of innovations were introduced into this year’s programme:

Firstly, the Advocacy Working Party decided to use a family law case file to encourage practitioners in that field to participate. That proved very successful and the object was achieved as can be seen from the roll call of newly qualified Solicitor Advocates. A novel experiment of changing the format of the case file to a criminal case for the mock trials before the High Court Judges on the final day of the course was also widely acclaimed.

Secondly, the Course Director, Fiona Donnelly Solicitor, introduced solicitors from Scotland to take part in the September module, joining our colleagues from Northern Ireland who had undertaken the Advanced Evidence Course in June. The sharing of court experiences and the intermingling of lawyers from both jurisdictions was a unique feature and one which everyone involved hopes will be repeated in the following years.

The successful marriage of two groups of solicitors from such distinctive legal systems, underlines the validity of NITA’s claims that advocacy skills and principles are transferable to any tribunal or forum. Furthermore, apart from the benefit of watching and sharing advocacy learning, each member gained a great deal from the camaraderie and fellowship created by the team spirit engendered by this course. To quote from Andrew Henderson Solicitor Advocate from Thompsons in Glasgow, ”The warmth of the welcome from our Northern Ireland colleagues was something which I am sure all of us from Scotland will remember for a long time.”

Of course the Advocacy Working Party and all who have participated in these programmes over the years recognise none of this could have been achieved without the involvement of NITA’s superb US Faculty and in particular the support of that organisation’s President, Professor Lonny Rose. This year we had an exceptional team led by Bob Stein from New Hampshire. Bob has been involved in our course four times now and all of us hope he will continue to visit us and share his awesome skills and professionalism for many years to come.

The Advocacy Course is regarded by many as the jewel in the crown of continuing legal education programmes. There are now almost 200 certified Solicitor Advocates in Northern Ireland and their achievements will be further recognised when the legislation promised for next year extending Rights of Audience in the Higher Courts, is enacted. A further milestone was reached in the last year with the appointment of Barra McGrory Solicitor Advocate as Queen’s Counsel.

The enduring success of this course is due not only to the good fortune of the close ties we have developed between the Society and NITA but also to the dedication of that group of local programme directors and tutors, in particular Fiona Donnelly and the support given to the project by Council and the secretariat. Next year’s course which as always will carry full CPD requirements will be advertised in the New Year’s editions of the WIT and all firms whether civil or criminal, employment law or family law, should ensure that as many of our members achieve this distinction as possible and add value to the services provided to our clients and the courts.

We are grateful to Tony Caher of the Advocacy Working Party for this article.

The Faculty 2007. From left: Professor Lonny Rose, NITA; Bob Stein, NITA; Judge Derek Rodgers; Marcia Levy, NITA and Judge Nancy Vaidik, NITA.

Programme Director, Fiona Donnelly, brightening up Hillsborough Courthouse.

End of a long, gruelling week, three successful Solicitor Advocates (from left): Maura McCallion, Siobhan McMahon and Emma O’Neill.
Tribunal Reform - Going places except NI

Les Allamby, Law Centre (NI) director, maps the slow progress of tribunal reform in Northern Ireland and finds the current system is still seriously lagging behind Britain in many of its services to claimants and others involved in the tribunal system.

Reform of the tribunal system in Britain reached an important milestone with the passing of the Tribunals, Court and Enforcement Act in July 2007. This article charts the reform in Britain and contrasts this with the lack of progress in Northern Ireland, highlighting a number of major gaps in the rights of appellants using the tribunal system locally.

Background
Sir Andrew Leggatt's Report: the Review of Tribunals for Users – One System, One Service was published in August 2001. The report noted that tribunals, which had grown to number over 70, had become the largest part of the civil justice system in England and Wales. The (then) arrangements had grown in a haphazard way with wide variation of practices and approaches and virtually no coherence. The report found that these arrangements met the needs and convenience of government departments and other bodies running tribunals rather than the needs of users. Leggatt's recipe for reform was the creating of a unified tribunal service independent from the government departments making the original decisions under appeal. Alongside this, other recommendations aimed to increase the accountability of the work of tribunals, improve the information available to appellants and create a more user-oriented service. On Northern Ireland, the review noted the separate jurisdiction but stated that its recommendations applied equally strongly to the tribunal system in Northern Ireland.

A consultation document issued with the Leggatt review by the Lord Chancellor's Department was followed by an announcement that the main recommendations had been accepted in March 2003 and by the publication of a White Paper a year later. The White Paper Transforming Public Service Complaints, Redress and Tribunals went beyond discussing tribunal reform and examined broader questions about the use of alternative and proportionate dispute resolution as a means of resolving public service disputes.

The White Paper created further impetus for the creation of a unified tribunals service launched by the Department of Constitutional Affairs in April 2006. Key tribunals transferred at this point included the Appeals Service covering social security and child support appeals, Employment Tribunals, the Criminal Injuries Compensation Appeals Panel, the Mental Health Review Tribunal and Special Educational Needs and Disability Tribunal. Further tribunals have come under the unified tribunal service remit since the initial transfer. The Tribunal Service is currently beginning an interesting pilot on alternative mechanisms to resolve disputes in social security appeals.

New legislation
The creation of a united tribunal service did not require legislation but many other reforms did. The Tribunals, Courts and Enforcement Act passed all its legislative stages in July 2007. The key parts of the Act covering tribunal reform include the:

- introduction of new judicial arrangements for the status of tribunal judiciary including provision to allow High Court judges to hear upper tribunal cases and certain judicial reviews to be dealt with at the upper tribunal.

Preparation is now at an advanced stage to introduce an upper tribunal and to create the Administrative Justice and Tribunals Council, building on the work of its predecessor, the Council on Tribunals.

The position in Northern Ireland
In spite of the momentum elsewhere, little was heard on tribunal reform beyond the creation of an inter-departmental working group to look at how Leggatt's review and the White Paper could be applied in Northern Ireland. In November 2005, a conference jointly sponsored by the Appeals Service, Department of Constitutional Affairs and Law Centre (NI) highlighted the limited progress being made. It came as quite a surprise in March 2006, when Peter Hain announced in a statement on the Review of Public Administration the intention to introduce tribunal reform in Northern Ireland with the transfer of tribunals to the Northern Ireland Court Service. No further detail was given as to how the transfer would unfold in practice.

Since then, once again, little progress has been made. In practice, new tribunals concerning parking adjudication and rating valuations have been created under the responsibility of the Northern Ireland Court Service, an inter-departmental committee continues to meet and some scoping of the work of tribunals has been undertaken.

An unsatisfactory situation
The anomalies created by the lack of reform have been thrown into even sharper relief by the passing of the
In effect, tribunals which have a UK wide remit, for example those covering tax and excise issues and immigration, will be subject to the reformed arrangements while the vast majority of tribunals which operate in a separate Northern Ireland context will not. The enhanced level of scrutiny, accountability and scope for research and monitoring will not apply to tribunals in Northern Ireland except for those with a UK remit. The new upper tribunal and judicial arrangements will not apply to Northern Ireland tribunals.

It is difficult to over-emphasize the unsatisfactory nature of the current situation for claimants and others involved in the tribunal system. The contrast between the level of accountability provided by the operation of the Tribunals Service in Britain (with its published framework document, business plan and annual report) and the approach in Northern Ireland is stark. At present, almost no tribunals in Northern Ireland produce and publish an annual report or a business plan with strategic objectives. Gathering statistics across tribunals is time consuming and difficult. Further, no significant research into tribunals and the views of appellants has ever been conducted in Northern Ireland.

Moreover, Northern Ireland continues to have no equivalent of an Employment Appeals Tribunal to bridge the gap between going from an Industrial or Fair Employment Tribunal to the Court of Appeal with all the expense of using the court as a legal remedy.

The new Administrative Justice and Tribunals Council will widen the long-standing gap in accountability given that its predecessor also had no remit for Northern Ireland. As a result, the fragmented, incoherent and largely not user friendly tribunal system found by the Leggatt review remains intact in Northern Ireland.

More people use the tribunal system than the civil and criminal courts, making the need for reform even more pressing. The devolution of justice throws further uncertainty into the mix. Nonetheless, the announcement of a time scale for legislative reform, a commitment to introduce an Administrative Justice and Tribunals Council and the creation of a shadow body, plus commencement of a long overdue research programme, could all happen immediately. This would then start to close the gap between what appellants can expect in Northern Ireland and what their counterparts receive in Britain.

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**Law Centre (NI) training course**

In Northern Ireland, there has been a significant rise in prosecutions for immigration offences.

This course is primarily aimed at practising criminal defence solicitors interested in developing their knowledge and awareness in this area of law. It may also be of interest to other advisers who work with foreign nationals who have immigration concerns.

The course aims to increase awareness of the implications that a criminal offence will have on a foreign national's immigration status and promote familiarity with immigration issues within the criminal context. It will include:

- an overview of immigration offences
- appeals against deportation
- remedies, including bail applications and civil claims for unlawful detention
- policy and legislative changes

The course will count as 3 hours towards Bar Council and Law Society Continuing Professional Development.

**Date:** Wednesday 21 November 2007  
**Time:** 4pm – 7.15pm  
**Venue:** Law Centre (NI), 124 Donegall Street, Belfast, BT1 2GY  
**Tutors:** Buster Cox, Anna Morvern, immigration advisers at Law Centre (NI), Stephen Cassidy of Higgins, Hollywood and Deazley Solicitors  
**Cost:** £105 (£85 for Law Centre members)

Tea, coffee and course materials will be provided. The venue has disabled access.

Apply by Monday 19 November to Jill Girvan, Law Centre (NI), Tel 028 9024 4401, Fax 028 9023 6340
Law Society’s Inaugural Writers’ Evening

The Ormeau Baths Gallery provided the colourful and inspirational backdrop to the recent Writer’s Evening hosted by the Law Society. This event was aimed at encouraging and cajoling practising solicitors to write for local legal publications, and to turn ideas into articles. An added bonus was that the Writer’s Evening coincided with the Gallery hosting the annual RUA Exhibition which, together with good food and wine, ensured that this was perhaps one of the least taxing way of caching CPD hours.

Chaired by the Society’s new Chief Executive and Writ Editor, Alan Hunter and the editorial team were on hand to outline the benefits of contributing an article, namely;

**CPD element**
Under the Society’s CPD Regulations, writing articles can allow you to claim up to 7.5 hours of CPD, which is half the annual requirement

**Reputation**
Writing for the Writ gives you the opportunity to become the thought leader on a subject, which is a valuable way of attracting new clients

**Exposure**
The Writ has a circulation of just over 3000, and is sent to every solicitor on the Society’s Roll, together with every member of the judiciary. The Bar Library take multiple copies, and it is also distributed to the Institute of Professional Legal Studies and other Law Societies in these islands. It is also intended to offer a copy to all MLA’s as part of the Society’s developing engagement strategy with the new devolved administration.

The Writ is also published on the web to a worldwide audience of potential clients, allowing profile enhancement of yourself and your firm in niche areas. Someone can “Google™” your name and be taken directly to your Writ contribution.

All Writ articles are indexed by Current Legal Information, an abstracting service used heavily by lawyers and law librarians throughout the UK. Statistics from this information provider show that requests have been made for copies of Writ articles from outside Northern Ireland.

**Career development**
Legal writing is an additional skillset to include on your application form, whether it be for a job with a new firm, a job within the public sector, or a judicial post. Regular publication can also open up opportunities for media broadcasting or teaching at tertiary level.

Attendees were given an analysis of recent requests received by the library by way of illustration of subjects of current interest within the profession. Any solicitors interested in writing, or in the preparatory stages of an article, were offered access to all library resources and services free of charge.

Miriam Dudley, Programme Director of SLS addressed the audience from a publisher’s perspective. She outlined the range of publications produced by SLS, and detailed the editorial and research assistance on hand to any who wish to join their ranks of editors and authors. She also provided an insight into the production process, from conception to completion of a finished book.

Nick Garbutt from AsItIs Consulting and founder director of the Mightier Than the Sword writing school addressed the issue of best practice in writing generally, and provided a useful set of tips when considering diversifying your career in this way.

Finally, Don Anderson from DA Media finished the evening talking about how to get your article published. He also outlined the ways in which a legal article can be adapted and re-packaged according to each particular media type.

We hope that the evening sufficiently enkindled and encouraged all those present to get writing...
The Markets in Financial Instruments Directive (MiFID)

The Markets in Financial Instruments Directive (MiFID) is a key part of the European Union’s Financial Services Action Plan. Its principal objective is to harmonise the manner in which financial services are delivered by providing common standards of regulation across EU member states. MiFID will replace the Investment Services Directive.

One of the implications is that, historically, the trading of securities has been restricted to stock exchanges. MiFID removes that restriction by opening up the market to permit a greater variety of market venues for trading of financial instruments. New venues for trading investments will open up.

MiFID was transposed into UK law in January 2007 and took full effect from 1 November 2007.

Solicitors firms in Northern Ireland which are Exempt Professional Firms (EPF’s) for the purposes of the Financial Services and Market Act 2002 and subject to the Society’s Financial Services Regulation 2004 (as amended) will be indirectly affected by the Directive.

Solicitors are themselves exempt from MiFID as they provide investment services only on an incidental basis in the course of professional activity. Because of the impact of MiFID on firms of stockbrokers in particular, there will be changes in the way they conduct business with you. Individual firms will be notifying you directly of any new arrangements. Broadly, however, the Solicitors Financial Services Regulations 2004 will extend to trading in securities, as this has become “regulated business”.

Association of Collaborative Family Lawyers

Annual General Meeting

The Annual General Meeting of the Association of Collaborative Family Lawyers will be held:

On: Wednesday 21 November 2007
At: 4.30pm
Venue: Council Chamber, 40 Linenhall Street, Belfast

All welcome!

Proposed training course

There are now some 80 family law solicitors across Northern Ireland who are trained in collaborative practice.

If you are interested in joining this growing band, the Association hopes to bring Pauline Tessler back to Northern Ireland for what will probably be one last time in the spring of 2008.

Below is a form whereby you can register your interest now in enrolling in this course. The course provides 12 CPD hours including all 3 client care hours. All are welcome and it would be a pity if, when a potential client telephoned your office to enquire, you were unable to offer this service.

I am interested in training in collaborative practice.

I would be grateful if you would let me know about any training course which is likely to be held in early 2008.

Name:
Firm:
Tel:
Email:
BSA Dinner Dance 2008

The annual BSA Dinner Dance will be held on
Saturday 2 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 reservation cannot be made unless a cheque (made payable to
Belfast Solicitors Association) is received with the booking request.
Confirmation of booking will be sent out in writing.

Tables are for 10 people and any requests for vegetarian
meals should be made at the time of booking.

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!

BSA Annual General Meeting

The AGM of the BSA, at which
the office bearers report on
the past year and at which the
election of Chairman, Secretary,
Treasurer and Committee
Members is held, will take place
on Friday 23 November 2007 at
The Law Society's premises, 40
Linenhall Street, Belfast, from
1.00pm to 2.00pm with tea/
coffee and sandwiches served
from 12.30pm.

BSA CPD events

22 November 2007
“Arthroscopy of the Upper Limb”
Michael Eames FRCS

6 December 2007
“Flats and Apartments - A Solicitor’s perspective”
John Neill, Carnson Morrow
Graham Solicitors

Both seminars will be at The Edge, Mays Meadow, Belfast commencing at 1.00pm with
tea/coffee and sandwiches from
12.30pm and can be booked
via the website at www.belfast-
solicitors-association.org (if
you are a member please log in
to the Member Section before
booking to avail of the members’
rate of £20.00 per seminar). The
fee for non-members is £40.00
per seminar.
Lunchtime Lecture - The Trustee Act

“The Trustee Act (Northern Ireland) 2001 - Practical Issues”

Speaker: Mr David Crozier, Navigator Financial Planning

Topics: Duties of Trustees, Choosing Trustees, Trustee Investment, Tax Issues

Date: Thursday 13 December 2007

Time: 1.00pm - 2.00 pm (refreshments provided from 12.30 onwards)

Venue: The Edge, Mays Meadow, Belfast

Cost: £10 for members of the NIYSA* and £20 for non-members

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 one hour CPD entitlement (client care and practice management)
* All Solicitors aged 36 or under are automatically members of the NIYSA

BOOKING FORM - Lunchtime Lecture - The Trustee Act

Please use block capitals

NAME

FIRM

ADDRESS (DX if possible)

E-MAIL

TELEPHONE

NUMBER OF PERSONS ATTENDING

I ENCLOSE REMITTANCE OF £

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
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 & Country Club with Ciúin Spa & 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. (The first 30 places will be available at the substantially subsidised price of £140.00) 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 & 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 & materials BUT THE FIRST 30 PLACES WILL BE AVAILABLE AT THE SUBSTANTIALLY REDUCED PRICE OF £140 PER PERSON.
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. 2.
FIRM 1. 2.

ONE CONTACT ADDRESS

E-MAIL 1. 2.

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
Annual Practice Management Seminar

Date: Friday 23 November 2007

Time: 12:30pm - 5:00pm (refreshments provided from 12:00pm onwards)

Venue: The Edge, Mays Meadow, Belfast

Cost: £40 for members of NIYSA* and £60 for non-members

Topics/Speakers:
- Risk Management for Solicitors - Gary Thompson, Marsh Financial Services
- Practice Management Issues for Solicitors - Michael Barnett & Mervyn Dolan, Moore Stephens Accountants
- Effective Listening and Communication Skills in the Workplace - Dr Des Rice, Executive and Life Coach
- Career Development and Recruitment Trends - Ronan Savage Brightwater Recruitment

Cheques and Booking Forms to:
NIYSA c/o Julie Reid
Edwards & Company Solicitors
28 Hill Street
Belfast BT21A or DX410 NR

Email: julie.reid@edwardsandcompany.co.uk

* Attendance at this Seminar will provide three hours’ CPD entitlement (client care and practice management)

* All Solicitors aged 36 or under are automatically members of the NIYSA

BOOKING FORM - Annual Practice Management Seminar

Please use block capitals

NAME

FIRM

ADDRESS (DX if possible)

E-MAIL

TELEPHONE

NUMBER OF PERSONS ATTENDING

I ENCLOSE REMITTANCE OF £

Please return booking form and cheques to:
NIYSA c/o Julie Reid, Edwards & Company Solicitors, 28 Hill Street, Belfast BT2 1A or DX410 NR
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 one hour CPD entitlement (client care and practice management)
* All Solicitors aged 36 or under are automatically members of the NIYSA

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

Please use block capitals. One form per room

**NAME:**

**FIRM:**

**ONE CONTACT ADDRESS**

**E-MAIL** 1.  2.

**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
High Court, Court of Appeal and Tribunal Decisions

**High Court and Court of Appeal decisions**

**APPLICATION BY H A S FOR JUDICIAL REVIEW**
Application for judicial review of a decision of a RM to issue a warrant for the arrest of the applicant. - interpretation of Magistrates’ Courts (NI) Order 1981 a. 20 (5). - different J justices of the Peace signed the complaint and the summons so there was no jurisdiction to deal with the summons and it could not be served. - RM subsequently issued a warrant for the arrest of the applicant on foot of an application by the Public Prosecution Service. - whether validly issued. - whether unlawful. - definition of “cannot for any reason be served with the summons”. - HELD that the RM’s ruling be upheld and application dismissed
HIGH COURT
11 DECEMBER 2006
WEATHERUP J

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY CD**
Appeal from a judgment dismissing application for judicial review of the decision of the Life Sentence Commissioners not to direct applicant’s release from prison. - standard of proof required to establish serious criminal allegations made in proceedings before the Commissioners. - whether cross-examination of witnesses on key issues is necessary for such proceedings to be complaint with the ECHR. - extent to which there has been delay such as to offend against a. 5(4) ECHR. - HELD that there was no avoidable delay in the case and no procedural unfairness but that the panel was wrong in deciding that no higher quality of evidence than normal was required in order to establish the allegations against the appellant. - appeal allowed and appellant granted judicial review of the panel’s decision in the form of an order of certiorari quashing it. - application to be considered afresh by a differently constituted panel
COURT OF APPEAL

**IN THE MATTER OF AN APPLICATION FOR AN ORDER FOR ADOPTION BY DMCC AND IN THE MATTER OF F1 A CHILD**
Application for intercountry adoption. - applicant a professional person domiciled in Northern Ireland who was asked by the child’s mother to adopt the child, since the mother felt unable to sustain the child in her native Kosovo. - Trust carried out an assessment of the applicant which was positive and the applicant was approved by the Adoption Panel and was granted the right to be the legal Guardian of the child by the relevant Kosovo authorities. applicant entered Northern Ireland with the child on a six-month visitor’s visa which has since been extended. - suitability of the applicant to adopt the child. - welfare considerations of the child. - child habitually resident outside the UK at the time of her entry into the country. - by virtue of amendments to the 2002 Regulations in 2006, the prospective adopter must ensure that the Department has notified the prospective adopter that it agrees that the prospective adopter’s case should proceed, and Department will not issue such a notification unless it in turn has been notified by the other jurisdiction that it agrees that the adoption should proceed. - this amendment also ensured that the situation which arose in this case could not occur again and could not act as a precedent - HELD that the making of this order is likely to give the child a degree of confidence in her new status which should assist in persuading her without anxiety to visit her birth family in Kosovo
HIGH COURT
1 OCTOBER 2007
MORGAN J

**CHARLES JOHNSTON v CHIEF CONSTABLE OF THE ROYAL ULSTER CONSTABULARY AND POLICE AUTHORITY OF NORTHERN IRELAND AND THE SECRETARY OF STATE FOR NORTHERN IRELAND AND THE ATTORNEY GENERAL FOR NORTHERN IRELAND**
Writ of Summons issued alleging that the Secretary of State for Northern Ireland failed to comply with EU Council Directive 1976/207 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions. - plaintiff’s application to join the Full time RUC was rejected since he did not meet the height requirement and was instead offered and accepted a position in the RUC Reserve. - financial differences between engagement in the Full time and Reserve RUC. - defendants liable to compensate plaintiff for financial losses sustained as a result of the failure to implement the Directive and that they unlawfully discriminated against him throughout the period from his appointment to the Reserves to his eventual appointment with the Full time RUC. - whether cause of action statute barred. - European jurisprudence in relation to limitation. - accrual of the cause or causes of action
HIGH COURT
24 SEPTEMBER 2007
STEPHENS J
High Court, Court of Appeal
and Tribunal Decisions

IN THE MATTER OF AN APPLICATION FOR
JUDICIAL REVIEW BY LM
Application for declaration that the Compensation
Agency’s decision to refuse the applicant’s
claim for criminal injuries was unreasonable,
unlawful and void and should be quashed.
- application for declaration that the decisions
of the Compensation Agency in which they
refused to accept the applicant’s applications
for review of the decision on the grounds that
the decision was outside the statutory time limit
were unreasonable, unlawful, void and should
be quashed. - applicant’s claim refused due
to lack of evidence to show on the balance of
probabilities that the applicant was the non-
consenting victim of a sexual offence. - conflicting
versions of events given to the police after the
incident and the police did not recommend
prosecution against the alleged offender and
no charges were brought. - whether procedural
unfairness. - applications dismissed
HIGH COURT
19 SEPTEMBER 2007
GILLEN J

APPLICATIONS BY RK, LO AND CM FOR
JUDICIAL REVIEW
Applications for judicial review of decisions of St
Cecilia’s College, Londonderry, and Admissions
Appeal Tribunal, the Western Education and
Library Board and the Department of Education.
- operation of the admissions criteria by the school
in the context of suggestions that prospective
pupils have been furnishing false addresses
in order to gain preference in the admissions
procedure. - allegations of ‘grannying’.
- approach of the Department to proposals made
by the school to offer extra admission places
so as to include a number of pupils with sisters
who had earlier been admitted to the school.
- whether admissions criteria were applied correctly.
- Tribunal’s review of the approach of the school.
- presumptive integrity and burden of accuracy
with regard to the application forms. - HELD that
the decisions of the Tribunal in respect of each
applicant be quashed and applicants be admitted
to the school
HIGH COURT
21 SEPTEMBER 2007
WEATHERUP J

POLICE SERVICE OF NORTHERN IRELAND
v MARK MCCLURE
Case stated from RM’s decision to convict the
appellant of possession of offensive weapons in
a public place contrary to a. 22(1) of the Public
Order (Northern Ireland) Order 1987. - appellant
was in paved area outside a house. - whether
the magistrate was wrong in law to determine
that the applicant was in a public place at the
time of the incident. - HELD that this was a
public place and appeal dismissed
COURT OF APPEAL
6 SEPTEMBER 2007
KERR LCJ

R v STEPHEN ANTHONY COURTNEY AND
JEAN BERRY
Sentencing. - possession with intent to supply
drugs. - money laundering. - possession of
criminal property knowing or suspecting that it
represented proceeds of criminal conduct
CROWN COURT
21 SEPTEMBER 2007
HART J

SCOTT, GERARD MARTIN & ORS v
BELFAST EDUCATION & LIBRARY BOARD
Preliminary issue on whether tender documents
give rise to an implied term of fairness and
good faith. - whether implied term of fairness
and good faith require the absence of any
material ambiguity in the tender documents.
- proceedings by way of originating summons
between plaintiffs as contractors and BELB
as employer. - plaintiffs sought an interim
injunction in the first place restraining the
defendants from proceeding with a tendering
process in respect of the award of measured
term contracts for general building works,
and secondly the plaintiffs sought an order
restraining the award of any measured term
contract for the maintenance work. - whether
an implied contract between tenderers and
prospective employers which is said has
developed at common law and has emerged
in parallel with legislation on the domestic and
European scene in relation to public service
contracts and the public interest in relation to
the management of public service contracts.
- whether implied contract arises out of all
tendering processes. - whether intention to
create legal relations. - HELD that an implied
contract can arise from the submission of a
tender and that an implied contract may arise
from a tendering process for a public works
contract, even though the particular contract
is below the financial level of the Regulations
that apply in relation to public works contracts.
- also HELD that the implied terms of such an
implied contract extend to the implied term of
fairness and good faith.
HIGH COURT
15 JUNE 2007
WEATHERUP J
IN THE MATTER OF AN APPLICATION BY SEAPORT INVESTMENTS LIMITED AND AN APPLICATION BY MAGHERAFELT DISTRICT COUNCIL, F P MCCANN (DEVELOPMENTS) LTD, YOUNGER HOMES LIMITED, HERRON BROS LIMITED, G SMALL CONTRACTS AND CREAGH CONCRETE PRODUCTS LTD FOR JUDICIAL REVIEW

Applications for judicial review concerning environmental assessments carried out under the Environmental Assessment of Plans and Programmes Regulations (NI) 2004. - community policy on the environment. - whether the provisions of the Directive were correctly transposed into the Regulations. - whether the requirements of the Directive and the Regulations were complied with. - DOE exercising the functions of the consultation body where it is also the responsible authority as regards the plan or programme. - whether there is no designated authority to be consulted on the environmental effects of implementing plans and programmes when those plans and programmes have been drawn up by the Department. - nature of the consultation process required by the Directive. - development of plans and environmental reports. - HELD that the designation of the DOE as the consultation body under r.4 of the 2004 Regulations does not properly transpose a. 6.3 of the Directive. - that the absence of appropriate time frames in r.12 does not properly transpose a.6.2 of the Directive. - that the environmental reports prepared in the draft Northern Area Plan and the draft Magherafelt Plan are not in substantial compliance with Sch.2 of the Regulations. - that the sequencing of the environmental reports and draft plans was not in compliance with r.11 & 12 and a.4 & 6 of the Directive.

HIGH COURT
7 SEPTEMBER 2007
WEATHERUP J

Industrial and Fair Employment Tribunal Decisions

ARBUCKLE, JAMES KINCADE AND RICHARD EAGAN v NATIONAL ASSOCIATION OF SCHOOL MASTERS’ UNION OF WOMEN TEACHERS AND MS C KEATES

Applicants claimed they had been unjustifiably disciplined by first respondent. - whether the respondent unjustifiably disciplined the claimants contrary to a. 31(1) of The Trade Union and Labour Relations (Northern Ireland) Order 1995. - applicants claimed they were unjustifiably disciplined, suffered victimisation, harassment, public humiliation, embarrassment and detriment because they sought to exercise their rights or to assist those exercising their rights under the law to bring complaints to the Certification Officer and the Industrial Tribunal. - two articles were published in the respondent’s newspapers, critical of the applicants. - public comments were made by the General Secretary Chris Keates at the respondent’s 2006 Conference, critical of the applicants. - Tribunal found the respondents did not unjustifiably discipline the claimants and dismissed claims.

912/06IT 21 SEPTEMBER 2007

FEARON, STEPHANIE v CHEZ TEREZ

Applicant claimed unfair dismissal and sex discrimination. - claimant was employed by Action Cancer as a Retail Support Officer since 2002. - in 2005 she was made redundant and later applied for the publicly advertised job of Retail Manager. - whether dismissal was fair under provision of a.130 of Employment Rights (Northern Ireland) Order 1996. - whether failure to consult claimant about redundancy was unreasonable conduct on part of respondent. - whether claimant was discriminated against on the grounds of her sex in the recruitment exercise for the post of Retail Manager. - decision of the Tribunal was that the claimant was unfairly dismissed and that she was unlawfully discriminated against, on the ground of her sex. - Respondent ordered to pay £30,892.00

961/05IT 4 SEPTEMBER 2007

LYNN, SEANA v RIO & BRAZIL LTD

Applicant claimed constructive unfair dismissal. - whether the claimant had been constructively dismissed pursuant to a.127 (1) (c) of the Employment Rights (Northern Ireland) Order 1996. - whether dismissal was fair or unfair. - applicant was employed a temporary manager in respondent's shop from 2003 until 2007. - on 27 December 2006 applicant was accused of stealing stock. - applicant contended that she was forced resign as result of unjustified and unfair disciplinary proceedings against her. - whether four conditions were met as set out in Harvey on Industrial Relations and Employment Law at Div DI 3 para 403. - Tribunal found that claimant was unfairly dismissed and the respondent was ordered to pay to the claimant the sum of £1,640 by way of compensation for unfair dismissal.

477/07IT 13 SEPTEMBER 2007

MEGAHEY, CATHERINE ANNE v ACTION CANCER

Applicant claimed unfair dismissal and sex discrimination. - claimant was employed by Action Cancer as a Retail Support Officer since 2002. - in 2005 she was made redundant and later applied for the publicly advertised job of Retail Manager. - whether dismissal was fair under provision of a.130 of Employment Rights (Northern Ireland) Order 1996. - whether failure to consult claimant about redundancy was unreasonable conduct on part of respondent. - whether claimant was discriminated against on the grounds of her sex in the recruitment exercise for the post of Retail Manager. - decision of the Tribunal was that the claimant was unfairly dismissed and that she was unlawfully discriminated against, on the ground of her sex. - Respondent ordered to pay £30,892.00

961/05IT 4 SEPTEMBER 2007
PAULAUSKAS, ZYDRUNAS v MCCULLA (IRELAND) LIMITED
Decision on a pre-hearing review. - whether the claim for unfair dismissal has been presented in time. - was it reasonably practicable for the claim to be presented within the time limits laid down in the Employment Rights (Northern Ireland) Order 1996. - applicant was employed as driver. - employment was terminated in September 2006 but did not lodge claim until January 2007. - applicant is Lithuanian but was aware of Citizens Advice Bureau. - decision of the Tribunal was that there was no jurisdiction to hear the claimant's complaint of unfair dismissal as it was not presented to the tribunal within the time limits set down in the Employment Rights (Northern Ireland) Order 1996.

221/07IT 7 SEPTEMBER 2007

TWEED, RUTH ELLEN v JUNCTION ONE LIMITED
Decision on pre-hearing review. - whether the Tribunal had jurisdiction to entertain the Claimant's complaint of unfair dismissal in view of the provisions of a.145(2) of the Employment Rights (NI) Order 1996 and r.15 of the Employment (NI) Order 2003 (Dispute Resolution) Regulations (NI) 2004, if applicable, regarding the time limit for presenting the said complaint. - applicant was employed from 21 June 2005 to 12 January 2007. - claimant appealed against decision but appeal was delayed. - Tribunal determined that r.15 of the Employment (NI) Order 2003 (Dispute Resolution) Regulations (NI) 2004 provides the Claimant with a further three months to 13 July 2007. - Tribunal found claim was in time and it had jurisdiction to hear claim.

221/07IT 7 SEPTEMBER 2007

WILKINSON, IAN JAMES v BELFAST CITY COUNCIL
Decision on pre-hearing review. - whether or not the claimant has established is that he is or was at the relevant time a disabled person for the purposes of the Disability Discrimination Act 1995. - applicant alleged he was disabled due his mental condition evidenced by panic attacks and poor concentration. - applicant failed to establish on the balance of probabilities that his mental impairments were substantial as set out in s.1(1) of the Disability Discrimination Act 1995. - Tribunal concluded that the claimant is not a disabled person within the meaning of the Disability Discrimination Act 1995 and dismissed claim.

2623/06IT 14 SEPTEMBER 2007

DEMAN, SURESH v DR G GUDGINE AND NIERC
Decision on a review. - whether the decision to stay all proceedings until further Order in circumstances where the parties had reached a conciliated settlement with the assistance of the Labour Relations Agency should be reviewed, and the decision revoked. - applicant did not appear but sent written submissions. - applicant alleged the agreement was reached in deception in which the Tribunal clerk withheld the vital information from the applicant. - found claimant did not establish mistake, duress or illegality. - Tribunal decided there were no grounds for setting aside the conciliated settlement between the parties, and the application to review the decision to stay the proceedings until further Order was refused.

477/07IT 14 SEPTEMBER 2007

Public Holidays

Pursuant to Order 64, Rule 5(1), of the Rules of the Supreme Court (Northern Ireland) 1980, the Offices of the Supreme Court will be closed to the public on the following days:

- **Monday 24 December 2007**
- **Tuesday 25 December 2007**
- **Wednesday 26 December 2007**
- **Tuesday 1 January 2008**

Over the CHRISTMAS PERIOD the Courts will not sit from Monday 24 December 2007 to Friday 4 January 2008 (both days inclusive).

13 September 2007
Simon Rogers
Principal Secretary to the Lord Chief Justice
Road Transport and Working Time

> Legislation

The Road Transport (Working Time) Regulations (Northern Ireland) 2005 SR 241

These Regulations implement the provisions of Council Directive 2002/15/EC concerning the organisation of the working time of persons performing mobile road transport activities.

The Regulations
- prescribe the maximum weekly working time and maximum average weekly working time of mobile workers (such as drivers, crew, and other travelling staff) who, in the course of their work, drive or travel in goods or passenger vehicles which are covered by the Community Drivers’ Hours Regulation (Council Regulation (EEC) No. 3820/85);
- prescribe the reference periods over which such time is to be calculated;
- regulate periods of availability, breaks, rest periods and night work; and
- require employers to keep records of the time worked and to provide copies.

They make it an offence to fail to comply with their requirements and provide for enforcement.


> Articles

Haul or nothing
Review the impact of the Road Traffic (Working Time) Regulations on the UK Haulage Industry, which imposes a maximum of 48 working hours on drivers and crew of vehicles over 3.5 tonnes, setting out the conflicting view of employers and trade unions.
Wighan: Employ law 2005, Apr, 8-10

Road Transport (Working Time) Regulations
Considers the scope and effect of the Regulations and highlights key provisions relating to the definition of working time, reference periods and sick and annual leave, notes the position where more than one employer is involved, and gives practical advice for employers
Hammerton: CSR 2005 28(24), 185-186

> Internet Sites

Guidance from the Department for Transport can be found at http://www.dft.gov.uk/pgr/freight/road/workingtime/rdtransportworkingtimeguidance?page=2#a1001

Guidance from the Trade Union Amicus http://www.amicustheunion.org/default.aspx?page=1550

All websites are correct at time of going to print.

> New Books in the library

Missing Wills

Re: Michael Shannon (deceased)
Late of: 29 Ophir Gardens, Belfast BT15 5EP
Date of Death: 11 July 2007
Would any person having knowledge of the whereabouts of the Will for the above named deceased please contact:
Nicola Lowry
Magennis & Creighton
572 Shore Road
NEWTOWNABBEY BT37 0SL
Tel: 028 9036 5777
Fax: 028 9036 5999

Re: Vivienne Margaret Dickson (deceased)
Late of: 14 Maxwell Park, Bangor, BT2 3SH
Date of Death: 22 August 2007
Would any person having knowledge of the whereabouts of the Will for the above named deceased please contact:
Michael Graham
Cleaver Fulton Rankin
Solicitors
50 Bedford Street
BELFAST BT2 7FW
Tel: 028 9024 3141
Fax: 028 9024 9096
Email: m.graham@cfirlaw.co.uk

Re: Joseph Conway (deceased)
Late of: 35 Aughascribba Road, Mountfield, Omagh, County Tyrone
Date of Death: 12 April 2001 at Leaghan, Creggan, Carrickmore, County Tyrone
Would any person having knowledge of the whereabouts of the Will for the above named deceased please contact:
Doris & MacMahon
Solicitors
63 James Street
Cookstown
County Tyrone BT80 8AE
Tel: 028 8676 2484
Fax: 028 8676 6781
Email: Roisin.Cross@Doris-MacMahon.com

Re: Bernard McMahon (deceased)
Late of: 59 Chapel Street, Newry, County Down, BT34 2DP
Date of Death: 31 August 2007
Would any person having knowledge of the whereabouts of the Will for the above named deceased please contact:
Gary Haughey
Campbell & Grant
Solicitors
17 Sugar Island
Newry
County Down BT35 6HT
Tel: 028 3026 6660
Fax: 028 3026 5080

Re: Thomas Anthony (otherwise Tony) Faith (deceased)
Late of: 3 Castle Avenue, Randalstown
Previous address: 37 Dunvale Ballymena and 14 Valiant Court, Antrim
Date of Death: 18 March 2007
Would any person having knowledge of the whereabouts of the Will for the above named deceased please contact:
O’Rorke, McDonald & Tweed
Solicitors
37/39 Church Street
Antrim
County Antrim BT41 4BD
DX No: 3453NR ANTRIM
Tel: 028 9446 3108
Ref: FA00160001/P1309/IMCM

Re: Mario Rizza (deceased)
Late of: 23 Trench Avenue, Belfast
Would any person having knowledge of the whereabouts of the Will for the above named deceased, please contact:
Paul M Graham & Co
Solicitors
70 Andersonstown Road
BELFAST

Re: William James Doherty (deceased)
Late of: 14 Derryola Bridge Road, Aghalee, Craigavon, BT67 0DJ
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

Re: Mr Norman James Millar (deceased)
Late of: 216 Duncairn Gardens, Belfast BT15 2GP
Date of Death: 28 February 2007 (approx)
Date of Birth: 14 July 1936
Would any solicitor having knowledge of the whereabouts of the Will for the above named deceased please contact:
Francis Crilly
Solicitors
24 Antrim Road
Belfast BT15 2AA
Tel: 028 9075 5722
Fax: 028 9035 2490
Ref: JC/5420
Missing Title Deeds

Folio: 38570
County: Down
Registered Owners: William David Robinson and Jane Johnston Robinson
Lands at: 38 Cloughey Road, Portavogie, County Down, BT22 1EF
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 further take notice that unless the said Land Certificate is produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.

Ferguson & Co Solicitors
11 Donegall Square South
BELFAST BT1 5JE
Tel: 028 9032 2998
Fax: 028 9032 6241

Folio: DN 31859L
County: Down
Registered Owners: Peter Shields and Diane Shields
Lands at: 15 Grey Castle Manor, Belfast, BT6 9QT
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 further take notice that unless the said Land Certificate is produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.

Claire Donnelly
Patterson Donnelly Solicitors
26 Balloo Avenue
Bangor
County Down BT19 7QT
Tel: 028 9127 4644
Fax: 028 9127 7300
Email: claire@pdslaw
Ref.: CD/EW/Woolwich

Folio: 29095
County: Antrim
Registered Owner: Gary Bates
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 further take notice that unless the said Land Certificate is produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.

Michael Ferguson Solicitors
249 Lisburn Road
BELFAST BT9 7EN
Tel: 028 9038 2030
Fax: 028 9038 2107

Folio: AN11839L
County: Antrim
Registered Owners: William Cavan and Mary Cavan
Premises: 5 Shepherd's View, Lisburn, County Antrim
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the under mentioned Solicitors.
And further take notice that unless the said Land Certificate is produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.

W G Maginess & Son Solicitors
68 Bow Street
Lisburn
County Antrim BT28 1AL
Tel: 028 9267 2161
Fax: 028 9267 0997
Classifieds

Folio: DN38501L
County: Down
Registered Owners: James Reid Thompson and Annie Thompson
Lands at: 2 Moorfield Drive, Comber, County Down
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the under mentioned Solicitors. And further take notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.
Elaine Early & Co
Solicitors
19 Castle Street
Comber
County Down BT23 5DY
Tel: 028 9187 1880
Fax: 028 9187 1882

Folio: AN25099
County: Antrim
Registered Owner: Glenwood Enterprises Limited
Lands at: Dairy Farm Centre, Stewartstown Road, Belfast
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Keenan Solicitors
54 Knockbreda Road
BELFAST BT6 0J B
Tel: 028 9049 3349
Fax: 028 9049 3500

Folio: DN 93292L
County: Down
Registered Owners: Stephen Robert Gabbey and Janet Elizabeth Gabbey
Lands at: 14 Glen Park Glen Road Comber County Down BT23 5RQ
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Claire Donnelly
Patterson Donnelly
Solicitors
26 Balloo Avenue Bangor
County Down BT19 7QT
Tel: 028 9127 4644
Fax: 028 9127 7300
Email: claire@pdslaw.co.uk
Ref: CD/EW/Woolwich

Folio: 14318
County: Armagh
Registered Owner: George Donaldson
Lands at: Ballyfannagh, Crossmaglen, County Armagh
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6 John Mitchel Place
Newry
County Down BT34 2BP
Tel: 028 3026 2269
Fax: 028 3026 5660

Folio: DN29813
County: Down
Registered Owner: Paul Stephen Jeffcutt
Lands at: 1 Church Hill Road, Banbridge, County Down, BT33 SLX
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Martin Brennan
Solicitor
117 University Street
BELFAST BT7 1HP
Tel: 028 9023 3477
Fax: 028 9032 1783
Registered Owner: Hilda Keenan (formerly Hilda Cowan)

Property: 42 Raby Street, Belfast

Would any solicitor holding or having knowledge of the whereabouts of the Title Deeds to the above mentioned property please contact:
Michael F Curran
Solicitor
29 Central Promenade
Newcastle
County Down
Tel: 028 4372 2970

Folio: AN 41935L
County: Antrim
Registered Owners: Gerard Thomas O’Connor and Maria O’Connor

Land at: 6 Park Manor Mallusk
Newtownabbey County Antrim BT36 4QH

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Solicitors
6 Mill Street
Newtownards
County Down BT23 4LU
Tel: 028 9181 7715
Fax: 028 9181 2374

Claire Donnelly
Patterson Donnelly
Solicitors
26 Balloo Avenue Bangor
County Down BT19 7QT
Tel: 028 9127 4644
Fax: 028 9127 7300
Email: claire@pdslaw.co.uk
Ref: CD/EW/Woolwich

Folio: 32727
County: Down
Registered Owner: Elizabeth Hinds
Lands at: Cloughey Road, Portaferry, County Down

Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the under mentioned Solicitors.

And further take notice that unless the said Land Certificate is produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for:
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The new email address for Advertising Manager, Karen Irwin, is now karen.irwin@dcprr.co.uk
Appointing a risk manager and implementing a risk management policy sounds simple but it is easy for such processes to become paper exercises with no measurable impact on the firm or reduction in risk exposure.

The most effective policy is to raise awareness of risk. The people who know most about risk in a firm are its staff but there is often difficulty in translating that knowledge into preventative action. Firms frequently suffer from risk inertia and operate on the basis that if it has not happened before, the chances are it will not happen in the future. People know their actions are risky but under pressure cut corners and keep their fingers crossed.

Raising awareness of risk among staff need not be a costly exercise and can be combined with in-house training that accrues CPD hours. The following is a suggestion for a simple exercise to begin the process of risk analysis at the level of the practitioners who are carrying out the work.

The first stage is for firms to gain a thorough understanding of the risks to which they are susceptible. Few problems are unforeseeable. It is not difficult to analyse the most vulnerable areas of work on the basis of past history in other firms and in your own. A quick look at cases and analysis of complaints published in the legal press reveal their repetitive nature. A review of the firm’s complaints record and claims history can highlight weaknesses.

Once a general review of problems has been undertaken, each department should reflect on how vulnerable they are in the light of this information. Risk can be analysed by looking first at generic risks to which all solicitors are susceptible. Look then at risks that affect a particular area of work, followed by risks that are departmentally specific to your firm, perhaps because of particular types of client or specialist work.

The next step is to consider precautionary measures. In putting these place, the normal rules governing risk analysis will apply and staff will need to consider how likely it is that the risk event will happen and what would be the consequences if it did. Measures should be proportionate to the risk. Practitioners are most likely to comply with simple processes which they have had a hand in designing; so staff themselves need to decide what to do about the risks they have identified.

This is a starting point for risk awareness, bringing to an end the fly-by-the-seat-of-your-pants approach, leaving stressed lawyers and a poor claims record.

The article was prepared by AFT Consulting, a division of Alexander Forbes Risk Services. The article first appeared in the Gazette, the journal of the Law Society of England and Wales.
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