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A Solicitor’s Duty of Care

Are some clients just too high risk to advise?

Where a husband has his own business or owns a share in a business the situation may arise where he wishes to use the family home as security for a loan to finance his business ventures. In such circumstances his wife may be asked either to release her interest in the property or to mortgage it.

It is well recognised that she has to obtain independent legal advice and that she should be allowed to make her own decision without any undue influence from her husband. Later on, if the lender seeks to enforce the security, it is in the interests of the wife (and her husband, if they are still on good terms) for her to get the charge set aside on the grounds that she was not properly advised of the consequences of mortgaging her interest in the family home.

It is likely that a court will be sympathetic to the position of a wife or person in a similar situation because it will see her as the more vulnerable and less worldly wise party who was the victim of aggressive lending practices and a husband in financial difficulties. It is therefore of vital importance that any solicitor who is asked to advise a wife is aware of the way that a court would view the conduct of a solicitor in retrospect.

A solicitor’s duty of care

Where the extent of a solicitor’s duty is in issue, the basic test is that of the reasonably competent practitioner having regard to the standards normally adopted in the profession. It is not a subjective test of “if I were you I would.”

In Midland Bank Ltd v Hett, Stubbs & Kemp [1979] Ch 384, 403, Oliver J said that “the court must beware of imposing upon solicitors...duties beyond the scope of what they are requested and undertake to do.”

In Re Coomber [1911] Ch 723, Fletcher Moulton LJ said that a solicitor should put clearly before the client the nature and consequences of the act so that from the clear language of an independent mind they should know what they are doing.

Where a wife is charging the family home as security for the husband’s business debts to a bank, the scope of the responsibilities of a solicitor who is advising the wife was set out clearly by Lord Nicholls of Birkenhead in Royal Bank of Scotland v Etridge (No. 2) [2001] UKHL 44, [2002] 2AC 773, paras 64-68. The starting point as a general proposition is that the scope of a solicitor’s duties dictated by the terms of his retainer. In this particular type of case the bank is concerned that the solicitor has brought home to the wife the risks involved in the proposed transaction.

As a first step the solicitor needs to explain to the wife the purpose for which he has become involved. He should also explain that, should it ever become necessary, the bank will rely upon his involvement to counter any suggestion that the wife was overborne by her husband or that she did not properly understand the implication of the transaction. Typically, as a core minimum, a solicitor should explain the nature of the documents and the practical consequences this will have for the wife if she signs them. She could lose her home if her husband’s business does not prosper. She could be made bankrupt. He will need to point out the seriousness of the risks involved.

Padden v Bevan Ashford

In the recent case of Padden v Bevan Ashford Solicitors [2011] EWCA Civ 1616, the Master of the Rolls gave a judgment which was very critical of the solicitors who acted for the claimant and allowed an appeal by the claimant against dismissal of her claim for damages. Her claim was based on an allegation that the defendants had failed to advise her properly in a transaction whereby she effectively lost her interest in her home and other assets.

The claimant had been told by her husband, completely out of the blue, that their joint bank account had been frozen because of a dispute with a third party. The husband’s solicitor told the claimant that the only way her husband could avoid a criminal prosecution was to sell the house which was held in joint names. He explained that she should get independent advice for the sake of formality but that she should ignore any advice she might be given not to sign the necessary documents to effectively give up her interest in the house and other assets.

A particular point to note in this case is that the claimant was specifically told to ignore any advice she was given not to sign the documents. Any solicitor getting involved in those circumstances was starting in a position where the odds would be stacked against them being able to properly advise a client. Where a client has adopted a position in advance and is already opposed to taking proper advice, it is very difficult to get the client to listen and to consider the points being made in favour of a different course of action. A solicitor knows from experience that it is difficult even in many straightforward situations to ensure that the client understands the proceedings. It can be virtually impossible when a client is distressed and agitated, especially if her mind has already been made up.

In this case, when the claimant tried to see an independent solicitor, the first two solicitors she called on sensibly declined to advise her. In the result those two solicitors took the most prudent course of action and were very wise. The claimant then called in unannounced with the defendants, telling the receptionist that she needed to see a solicitor urgently not least because she needed to get back home to her children. She was given a short appointment with a newly qualified solicitor which may have lasted as little as five minutes, although she...
suggested it may have been as long as 15 minutes.

The claimant’s main concerns were that her husband not be sent to prison, not for his sake particularly but for the sake of the children. The solicitor advised the claimant not to proceed with the proposed transaction but the claimant made it clear that she was going to do so. The solicitor did not make an attendance note of the meeting and did not charge the claimant for the advice.

About two weeks later, the claimant called in to a different branch of the defendant solicitors’ offices with her husband. There she saw another solicitor who witnessed her signature and that of her husband on four documents, one of which was a second mortgage over the house. The solicitor certified in the mortgage that the claimant had had the consequences of this deed and the obligations that it imposed on her explained and that he was satisfied that she understood the nature of the deed and its meaning and effect and that to the best of his knowledge she freely consented to it without undue influence or in reliance upon any misrepresentation.

Subsequently, the claimant’s husband was convicted of obtaining substantial amounts of money by deception from a number of third parties and was sentenced to six years in prison. One of the third parties from whom he had taken money, was the second mortgagee, who then sought to enforce her rights over the property. The claimant tried to set aside the documents on the ground of undue influence in proceedings which were eventually compromised. The claimant then issued proceedings against the defendants claiming damages for having negligently failed to advise her properly.

The comments made by the Master of the Rolls on the conduct of the two solicitors who saw the claimant are important and can be summarised on the following lines:

1. It is not sufficient simply to advise a client in such circumstances not to enter into the transaction.

2. The ultimate purpose of consulting a solicitor is to ensure that one understands the nature, effect and potential consequences of the transaction and is not under a misapprehension or undue influence.

3. A solicitor should emphasise to the client the desirability of exploring why she was prepared to put her home and assets at severe risk simply to protect a husband who turned out to be a fraudster. In this case, whatever she did, a prosecution was almost inevitable.

4. A solicitor, properly advising a wife, should tell her about the importance of finding out all the relevant facts, before she executes the documents.

5. If the client indicates that she has insufficient time to be properly advised the solicitor should explain that she needs full advice about the course of action she is proposing to take coupled with some investigation as to the facts.
6. The client should have been told in clear terms that a hurried short meeting was simply inappropriate, bearing in mind the importance, riskiness and probable pointlessness of the transaction.

7. In this case, the solicitor should also have been aware of the inadequacy of the information available, the upset and emotional state of the client and the pressure being put on her. In these circumstances it is important for the solicitor to explore and test the client’s reasons for proceeding.

8. Even though the client was set on the course of entering into a highly disadvantageous transaction, the court considered that was as much in favour of her case for breach of duty as against it.

9. The second solicitor in the defendant firm who saw the claimant should not have done so in the presence of her husband.

10. It is not sufficient for a solicitor to excuse himself on the basis that he was simply witnessing documents rather than advising the client.

11. The most important purpose of independent legal advice in this case was to explain to the client that her main or perhaps sole reason for entering into the transaction (to keep her husband out of prison) was very weak as it could very probably not be achieved.

Comment

This judgment confirms that a solicitor has a very high duty of care to a client who is under pressure to sign documents which will give a third party security over her share in property which is often to her personal disadvantage but for the benefit of her husband or, partner or someone who usually has considerable influence over her.

Some aspects of this judgment are common sense and should not give rise to any concern for solicitors. However, in other respects this judgment sets a higher duty of care than that established by Etridge. It is reasonable to point out that a solicitor cannot properly give a wife independent advice when her husband is also present. It can also be accepted that a solicitor should not sign a certificate to the effect that he has independently advised a client when all he has actually done is witness her signature. In such circumstances a solicitor should realise the considerable risk of the client coming back at a later date to make a claim against him.

It is of much more concern that a solicitor who simply advised a client against proceeding with a transaction was found to be in breach of duty. In such circumstances it may not be possible to get a client to engage rationally in a discussion about her predicament nor to consider her position in an objective context. The solicitor who was faced with a client coming in off the street without an appointment and who had no prior knowledge of the situation, did her best without any detailed information as to the facts within the time period available. It was acknowledged that the client was determined to proceed with the transaction regardless of the advice she was given. However, that was not sufficient for the Court of Appeal to consider that the solicitor had properly discharged her duty to advise the client.

In consequence a solicitor should be very cautious when faced with advising a client in situations like this.

Questions to ask:

• Is this person an established client?
• How much background information do you have about the circumstances in which she finds herself?
• Can you take an objective view?
• Have you got time to talk to her and advise her properly?
• Is the fee that you will charge sufficient to justify taking the risk of being sued for damages for failing to give proper advice?

If you have doubts – don’t do it!

Sarah Witchell

Notice of Discontinuance

Applications to register as a student of the Law Society of Northern Ireland under Regulation 8(3) of the Solicitors’ Admission and Training Regulations 1988 (“Experienced law clerks”)

Please note the alternative route to train and qualify as a solicitor under Regulation 8(3) is being discontinued.

Applications to register as a student of the Law Society of Northern Ireland under Regulation 8(3) or 8(5) of the Solicitors’ Admission and Training Regulations 1988

The closing date in 2012 for applications under Regulations 8(3) and 8(5) will be Tuesday 8 May 2012 at 5.00pm. For further information see: www.lawsoc-ni.org/joining-the-legal-profession/
The Sir William Whitla Hall at Queen’s University in Belfast was the venue for the Society’s Admission Ceremony in early February 2012.

More than 130 newly admitted solicitors from across Northern Ireland were admitted into the solicitor profession before the Lord Chief Justice for Northern Ireland, the Right Honourable Sir Declan Morgan, the Society’s Registrar, Alan Hunter and the President, Imelda McMillan.

The newly admitted solicitors were joined at the ceremony by family members, friends and their Masters who had supported them throughout their professional studies.

Speaking after the ceremony, the President, Imelda McMillan, said:

“The Law Society of Northern Ireland has today welcomed the next generation of solicitors to the legal profession. They join us during a period of uncertainty and challenge. However, I am confident that they, like their colleagues before them, will continue to provide great service to their clients and commitment to the community throughout Northern Ireland.”

From left: Alan Hunter, Society Registrar; Imelda McMillan, Society President and the Lord Chief Justice for Northern Ireland, the Right Honourable Sir Declan Morgan.
The President presented two awards to newly admitted solicitors who were recognised for excellence in their studies.

They were:

Maria McNally for Excellence in the Professional Conduct Course.

Elaine Kirk for Excellence in the Solicitors’ Accounts Course.

Imelda McMillan, President of the Society.

The Lord Chief Justice Sir Declan Morgan, addresses the newly admitted solicitors.

The Registrar and Chief Executive of the Society, Alan Hunter, presenting the newly admitted solicitors.

Brian Speers, Senior Vice-President, introducing proceedings.

Maria McNally receives her award from the President

Elaine Kirk receives her award from the President.
A Master’s Voice

The following article is a reprint of an article used in previous years but which still accurately extols the benefits of having an apprentice.

At this time of year the scramble for places in the Institute and the Graduate School at Magee - and hence for places in solicitors’ offices reaches fever pitch. Those of us who have more years behind us than before us in the profession have perhaps forgotten the anguish and stress experienced by young idealistic law graduates who have struggled to overcome many obstacles to put themselves on the brink of a career in the law only to find that the greatest obstacle of all is, to a large extent, outside their control. I refer of course to the lottery of finding a “Master”.

At a time when solicitors’ practices are facing strong competition, a down-turn in some areas of work, particularly conveyancing, a curtailment of legal aid and increased costs, there is an understandable temptation to dismiss out of hand the prospect of taking on an apprentice with the attendant extra costs this will entail.

My opening remarks are not a prologue to an argument that we, as a profession, have a moral obligation to ensure that those graduates who make it through the system should, as a matter of course, find appropriate Masters and be given a solid training. There may well be some merit in that argument but I would prefer to commend to you the real benefits that the employment of an apprentice can bring to your firm:-

1. Long term planning

How many times do we hear the complaint from our colleagues that they cannot get assistant solicitors? This is a common complaint particularly in the provincial towns. I am always amazed at this. It seems to me that the employment of an apprentice gives the employer the option, two years down the line, to employ a solicitor who has been trained in the methods and ethos of the firm. An apprentice given good training, respect and good working conditions will invariably reciprocate with loyalty.

2. Development and growth

When we look at how our firms are to grow and increase fee income how many of us take into account the positive potential of an apprentice and later (if kept on) a young solicitor? Most of them have a wide circle of friends, some of them have many useful contacts and all of them will bring in varying amounts of work through these friends and contacts. Apart from this it’s quite astounding, in my experience, how in a very short period of time, they develop their own contacts and build up their own portfolio of clients. Often they do this from the crumbs thrown from their Master’s table whilst at the same time being available to deal with all that “loss leader” work which increasingly lands on all our desks.

3. A breath of fresh air

Don’t forget that these students have all done their law degrees more recently than you. Whilst in your employment they are attending lectures on all aspects of law, practice and procedure. Whilst they may not have your experience, most of them are likely to know more about recent changes in the law than you do. You can learn from them. Furthermore, it is likely they can assess the law faster than you through their natural use of modern technology.

4. You think you cannot afford an Apprentice?

“It’s not just the £240.00 per week you have to pay during those first four months – it’s the fact that they haven’t a clue what they are doing.”

This is by far the most common complaint about the current system and on the surface would appear to be a justifiable one.

This is in my view not so. On the contrary you have on your hands a highly motivated individual who has worked extremely hard to get to this stage (often at great expense). That person will almost certainly be computer literate and, whether male or female, will have excellent typing skills. He/she will not need a secretary. You will be amazed at how quickly he/she will tune in to the working environment. As a rule apprentices have no hang ups or bad habits (the only bad habits they will pick up will be from you). They are extremely willing to turn their hands to anything and, without exploiting them, you will be able to extract from them a tremendous amount of work and at the same time give them that insight into the reality of private practice which will be invaluable to them when they attend the Institute or the Graduate School for the first time.

If you have used them properly you will be very disappointed to see them go to the Institute or the Graduate School in January and delighted when they turn up on your doorstep every Monday of term. Their shock and bewilderment of having to work during the two summers they are with you will only be matched by your delight at being able to solve some of your holiday dilemmas and having a few more days off than usual yourself. Adopt the correct approach and you will find that you have an employee worth every penny of his/her wages.

5. Generally

Firms can only grow through the introduction of young talent. Properly nurtured that talent will reflect your own standards. Properly treated that talent will stay with you. You will have little turnover of professional staff. Clients like continuity. A sensible approach to the employment of apprentices will provide that continuity. Sole practitioners and small firms wrongly believe that they cannot afford apprentices. I believe, on the contrary, that they can be their salvation. Often the best time to take an apprentice is when you think you do not need one.

6. And finally

Whether or not we have a moral obligation to ensure that those who have worked hard to qualify find placements can be debated elsewhere. I contend that you have an obligation to yourself and to your firm to give serious consideration to the employment of an apprentice. In the longer term failure to do so may be your loss and someone else’s gain.

J G O’Hare & Company Solicitors
Call for Masters

The Society each year draws up a list of members who are qualified and willing to act as Masters. This list will be provided on request to students who are seeking apprenticeships.

If you:
1. have practised as a solicitor for at least seven years, and
2. have been a principal for at least three years, and
3. are willing to act as a Master for the two year term commencing September 2012 and
4. can provide a suitable training environment for an apprentice

please complete the form below and return it to the Admissions Officer at the Society.

The relevant criteria are set out in the Solicitors’ Admission and Training (Qualification of Masters) Regulations 1988 as amended by the Solicitors’ Admission and Training (Qualification of Masters) (Amendment) Regulations 1992.

At present the minimum wage for apprentices is as follows:
(a) for the first 16 months of the apprenticeship £240.00 per week.
(b) for the last eight months of the apprenticeship £270.00 per week.
(c) During the Institute/Graduate School term, when the apprentice is in his/her Master’s office each Monday, a minimum wage of one-fifth of the prescribed first level rate (namely £48.00 per week).

MASTERS 2012

I confirm that I am interested in acting as a Master as and from September 2012 and am willing for my name to be added to a list of potential masters and circulated to students seeking apprenticeships.

Name of intending Master....................................................................................................

Name of firm........................................................................................................................

Contact name and details of the person to whom application should be made
(if different from Master)

Would you prefer to receive applications from prospective applicants:

CV by email
CV by post
Firm’s own recruitment procedure (please detail)

Date ……………………………………….

Please return the completed form to:
Admissions Officer, Law Society of Northern Ireland, Law Society House, 96 Victoria Street, Belfast BT1 3GN or DX422 NR BELFAST 1.

Security of Members

The Minister for Justice, David Ford MLA, has invited the Society to pass to him information in relation to concerns members of the profession may have, from time to time, in respect of their personal security.

Members with concerns in respect of their personal security are encouraged to contact the Police Service of Northern Ireland and report the matter to the Minister for Justice. The PSNI and Minister for Justice should then carry out the necessary steps to ensure your protection, in accordance with their duties under Article 2 of the European Convention on Human Rights. Members are also encouraged to notify the Society of their concerns.

Where any member has notified the PSNI and Minister of a security concern but feels that their concerns have not been adequately addressed the Society is happy to raise these on their behalf.
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Attention all new principals/partners/sole practitioners

Solicitors’ Training (Practice Management Course) Regulations 1995

The above Regulations (reproduced here) apply to any solicitor becoming a principal for the first time after 30 August 1995. For such a solicitor it will be compulsory to attend a Practice Management Course. The solicitor in question can attend at any time up to six months after becoming a principal or alternatively up to 12 months before becoming a principal.

Anyone who wishes to attend the next available course should fill in the form provided and return same to The Admissions Officer, The Law Society of Northern Ireland, Law Society House, 96 Victoria Street, Belfast, BT1 3GN or email admissions@lawsoc-ni.org

I wish to attend the next available Practice Management Course.
NAME (please print)……………………….……...
ADDRESS ....................................................
.......................................................................
.......................................................................
Phone no………………………….................
Date………………………………………………
Email............................................................
Status (ie principal or assistant and if applicable date became principal) .................................

The Regulations

The Council of the Law Society of Northern Ireland in exercise of its power under Article 6 and Article 74(1) of the Solicitors’ (Northern Ireland) Order 1976 as amended by the Solicitors’ (Amendment) (Northern Ireland) Order 1989 and all powers enabling it in that behalf and with the concurrence of the Lord Chief Justice of Northern Ireland hereby makes the following Regulations.

1. These Regulations may be cited as the Solicitors’ Training (Practice Management Course) Regulations 1995 and shall come into force on the 30 day of August 1995.

2. (i) The Interpretation Act (Northern Ireland) 1954 shall apply to the interpretation of these Regulations as it applies to a statutory instrument.

(ii) In these Regulations the following expressions shall have the following meanings respectively:
“the Order” means the Solicitors’ (Northern Ireland) Order 1976 as amended by the Solicitors’ (Amendment) (Northern Ireland) Order 1989.
“the Council” means the Council of the Law Society of Northern Ireland.
“solicitor” means a solicitor of the Supreme Court.
“Practice Management Course” means a course of practical training in the management of a solicitor’s practice, the duration, form and content of which shall be prescribed by the Council from time to time.
“principal” means a solicitor who is a sole practitioner or is a partner in a firm of two or more solicitors.
“practice” means the business of a sole practitioner or a firm of two or more solicitors.

3. A solicitor who becomes a principal for the first time shall, within a period not exceeding six months after the date on which he becomes such, be obliged to attend a Practice Management Course unless he has attended a Practice Management Course within the twelve months preceding that date.

4. Breach of these Regulations may be treated as professional misconduct for the purpose of Article 44 of the Order.

5. The Council shall have the power to waive any of the provisions of these Regulations in any particular circumstances or case.

Mr Justice Weatherup addresses Council meeting

As part of the Society’s ongoing Judicial Engagement Programme, the President of the Society, Imelda McMillan, invited The Honourable Mr Justice Weatherup to address the Society’s January 2012 Council meeting.
Solicitors’ apprentices set for international competition

Apprentices from the Institute of Professional Legal Studies were celebrating in January after winning the regional heat of the Law Society of Northern Ireland’s Client Consultation Competition.

The competition, which is held annually, provides an opportunity for law students to participate in mock client solicitor interviews. Those participating are then judged on how they conduct the interview, how they establish a professional relationship, how they analyse the scenario, how they extract the relevant information, how they assess the needs of their clients taking into account all available options including non-litigious solutions.

Participating in this year’s competition were students from the undergraduate Schools of Law at the University of Ulster at Jordanstown and Queen’s University Belfast and teams from the Graduate School of Professional Legal Education and the Institute of Professional Legal Studies.

This year’s winning team were Julie Ann McCaffrey and Kevin Gallagher from the IPLS and they will represent Northern Ireland at the international “The Louis M Brown and Forrest S Mosten International Client Consultation Competition” in Dublin, in April 2012.

Julie Ann is an apprentice with Cleaver, Fulton, Rankin Solicitors. Kevin is an apprentice with Worthingtons Solicitors. Speaking after the competition, the President of the Society, Imelda McMillan, said:

“I am delighted that so many students participated in this year’s Client Consultation Competition and I wish to congratulate the winning team from the IPLS and wish them the best of luck in the international competition in Dublin.”

Practice Management Week raises £1600 for Solicitors’ Benevolent Fund

The Chair of the Practice Management Sub-Committee, Norville Connolly, has presented John Gordon, Trustee and Director of the Solicitors’ Benevolent Fund, with a cheque from the Society for £1600. The money had been raised from the attendance fees for the seminars involving the BBC NI and Invest NI, which took place during Practice Management Week in November 2011.

The Solicitors’ Benevolent Fund supports local solicitors and their families through difficult times by providing financial support and help. Members are encouraged to consider giving a donation throughout the year to help support the ongoing work of the Fund.

From left: John Gordon and Norville Connolly.
Make a run for it!

Whether you’re a finely honed athlete or have a body shape more reminiscent of Rumpole of the Bailey, 2012 could be your opportunity to shine in sport.

We’re calling on the legal fraternity to step up to the plate and take part in the 2012 Belfast City Marathon on Monday 7 May to raise funds for Friends of The Cancer Centre, the Law Society’s official charity of the year.

If you’re up for the mega-challenge of running the 26 miles 385 yards course solo then now is the time to lift the pace of training in preparation for the big day! We’re also hoping that less hardy souls will be prepared to tackle the team relay (over distances of 3.5 – 7 miles) or even the 3 mile Fun Run which is such a popular feature of Belfast’s Marathon Day.

From serious and dedicated runners, to sporting wannabes, relay teams and fun runners (or walkers!) everyone can enjoy the great sense of achievement that comes with crossing that finishing line . . . but it’s a sense of pride that can run even deeper. If you opt to fund-raise for Friends of The Cancer Centre your achievement will not only be personal, it will make a important and lasting difference to the lives of the 9,000+ people who will be diagnosed with cancer in Northern Ireland this year.

Your involvement in the 2012 Belfast Marathon could also provide vital help for cancer patients and their families. Every step you take could be a step towards improved facilities, vital medical equipment, key posts, patient comforts and important medical research.

Up for the challenge? Entries close on 20 April 2012. Download your official entry at belfastcitymarathon.com and, please, check out friendsofthecancercentre.com or contact Kelly on info@friendsofthecancercentre.com or 028 9069 9393 to raise funds for The Law Society’s chosen charity!

New Head of Brussels Office

Mr Mickaël Laurans has been appointed the new Head of the joint UK Law Societies’ Brussels Office. Mickaël joins the Brussels Office from the Law Society of England and Wales, where he has held the position of International Policy Manager for the past nine years and worked on furthering the practice rights of and business development opportunities for English/Welsh solicitors and firms in the Europe and Commonwealth of Independent States (CIS) region. He was particularly involved in a number of cases on freedom of movement and mutual recognition of qualifications at the level of EU Member States and the European Court of Justice.

Mickaël has also been the Information Officer for the UK delegation to the Council of European Law Societies and Bar Associations (CCBE) since June 2005 – a role that has seen him work closely with both staff and Council members of the Law Society of Scotland on the full width and breadth of EU issues affecting the legal professions.

A native of France who became a dual national when he took British citizenship in 2006, Mickaël studied French and EU Law, Economics and Politics at the Institut d’Études Politiques de Rennes before moving to the UK in 1996 and achieving two masters degrees from Exeter University and Birkbeck College. Mickaël is a member of the Society of European Affairs Professionals (SEAP).

Mickaël takes over from Julia Bateman who left to take up her new role as Head of International Relations at the Law Society of England and Wales in September 2011.

Commenting on his appointment, Mickaël said: “I look forward to working even closer with my colleagues at the Law Society of Northern Ireland. The EU has a clear impact on the way solicitors practise in an increasing number of practice areas and it is more crucial than ever that the interests of Northern Ireland solicitors be represented at the heart of the European institutions.”

The Brussels Office represents the interests and views of the profession to the EU institutions. As well as campaigning on issues of key importance such as anti-money laundering and practice rights, the Office also provides a valuable advice and information service on the latest EU legislative and case law developments in a number of different practice areas. The Society looks forward to working with Mickaël and developing new ways in which we can work together for the benefit of our members.

For more information contact Peter O’Brien (peter.obrien@lawsoc-ni.org).
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Insurance Claims
Claims Assessment, Professional Negligence, Consequential Loss, Medical Negligence, Personal Injury & Fatal Accident.

Fraud
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Asset Investigation & Tracing
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For more information contact Johnny Webb on 028 9043 9009 or email johnny.webb@bdo.co.uk

www.bdoni.com

BDO in Northern Ireland is authorised and regulated by the Financial Services Authority to conduct investment business.
President welcomes Communication Conference to Law Society House

In January 2012, the President, Imelda McMillan, welcomed the Royal College of Speech and Language Therapists (RCSLT), the Department of Justice NI and the Youth Justice Agency, to Law Society House for a unique conference on communication issues affecting victims and offenders.

The conference, which had been organised by the RCSLT, DOJ NI and NI Youth Justice, brought together legal and health practitioners as well as the Justice Minister, David Ford.

Commenting on the event, the President said:

“The Law Society is delighted to have hosted today’s event and to have contributed to the discussion highlighting the communication issues facing offenders. Solicitors have experience of the communication barriers and difficulties which many young offenders face and we welcome today’s event as a positive step in addressing this important issue.”

Law Society Choir raises £2000 for the Alzheimer’s Society

The Society’s Pro Bonos Choir raised £2000 for the Alzheimer’s Society from its Christmas Concert which was held at St Malachy’s Church in Belfast city centre. This is the second year that money from its Christmas Concert has been donated towards the Alzheimer’s Society.

The Law Society Choir has already started rehearsals for its Spring/Summer programme 2012 and its first concert is scheduled for Friday 15 June 2012 when they will be performing Vivaldi’s Gloria.
Retirement Issues for Solicitors

Recent research has confirmed an impression which is surely self-evident to most of us, namely that the vast majority of solicitors approaching retirement have not adequately prepared for it, and certainly are unlikely to have had any formal guidance for what lies ahead. Nor will they have given adequate thought as to what life will hold for them after they have left the office. While some enlightened corporate employers, and some sectors within the civil service, may provide relevant courses and seminars for prospective retirees, such provision is sometimes lacking in the professions.

The traditional meaning of “retirement” is a single event, a “withdrawal” from the workforce into a life of leisure, relaxation, and a gentle slide towards the end of life. But with ever increasing expectations of longer lives with better health prospects, and, until recently at any rate, with solicitors and other professionals retiring at an earlier age than hitherto, to-day’s retirees are not intent on “fading away”. Generally speaking they want to find fulfilling activities and involvements. Yes, they certainly want leisure and fun, but, contrary to the popular media view of retirement, the most important matter persons want in retirement is their own fulfilment.

Retirement needs to be seen more as a point in a journey rather than a destination. A sudden change of lifestyle from active involvement to retirement can be extremely traumatic after any initial euphoria has passed. After a lifetime of living by agenda, workaholism, being constantly under pressure to manage a firm and keep on top of a demanding workload, working long hours in the office or at home, being a person of importance to one’s clients and involving an enhanced status as such, a change of pace, whether sudden or gradual, with long hours to be filled, particularly in winter, and a loss of short term purpose, increased isolation, and in some cases a perceived virtual loss of identity, can in many cases lead to health problems, such as low mood and even depression. Prospective retirees would do well to be aware of this, and to plan ahead accordingly. It has been said that in a typical case one should start to plan for retirement five years ahead of the event.

It is, of course, obvious that most solicitors will have been, at least from the mid-career point onwards, aware of the need to plan specifically for their financial circumstances, and will have made provision accordingly. But they are less likely to have planned, otherwise than in a vague kind of way, for their personal lifestyle needs. And conversely, their firms will have agreed some form of retirement policy which will provide procedures, structures and expectations aimed at enabling or requiring partners to retire at a certain age, making provision for retirees’ individual clients to be passed over to continuing members in an orderly manner, and for the assets of the retiring partner to be withdrawn and replaced.

In many cases this potentially complex process will be designed to take place, not all at once, but over an agreed period of time. This scenario will typically provide for the scaling down, progressively, of the number of hours worked by the retiring member during the “phase-down” period, and the surrender of “control” (a particularly difficult matter for some), the withdrawal of capital, the disengagement from equity partnership and replacement by salaried partnership and/or “consultancy”. Of course, the circumstances of individual firms vary enormously, with the sole practitioner (who may seek to dispose of the practice by way of a sale) at one end of the scale and large firms at the other. In this jurisdiction with so many small firms the circumstances in many are often unique and personality centred. Special considerations will usually arise in the case of “family firms”, where the patriarch/matriarch may be perceived never to retire formally, maintaining an ongoing presence well into old age, whatever the actual level of input in to the operation.

Again, provision should be made, on the part of the putative retiree and the firm, to cover the event of sudden death or incapacitating illness, which will perforce effect the end of a career. Such matters will often be covered by appropriate insurance arrangements.

All of these commercial aspects of retirement merit a more thorough consideration than is covered in this article. Perhaps it would be useful to add at this point some further comment on some of the more “personal” aspects of the topic.

For many, blessed with a particular temperament or outlook, or already enjoying ongoing commitments or interests, including such activities as the pursuit of sports and hobbies, grandparenting, spending more quality time with family and friends, serving actively on boards or committees, church work, or even enjoying second homes abroad, retirement will be a welcome state which will enable them to devote more time to those activities, and to pursue them with relish and vigour. Others may have taken up part-time public sector legal work, where higher compulsory retirement ages (if any) are enjoyed.
But this happy state of affairs is by no means always the norm. A recent study carried out in the United States, after extensive research, made the following findings:

The vast majority of prospective retirees have not had the benefit of any retirement planning, and only a small minority have explored beyond financial issues how they might become socially engaged and spend their time in retirement. All the interviewees would have highly valued involvement in some form of planning process.

Prospective retirees should focus as much on developing a balanced social portfolio as on planning a balanced financial and pension set of arrangements. They need to find involvements which will enable them to meet new friends. Having spent a working lifetime in a working environment, they now need to become more involved in the broader community. Many interviewees, when asked what kind of sense of purpose they would welcome, stated that they would like to make a contribution towards helping others, to be civically engaged. Also high on the list was a desire to continue to learn, whether at lectures, in travel combined with an education programme, or to have new “hands on” learning experiences.

Interestingly, a significant percentage of interviewees (about half) in response to the question “If offered a job, would you go back to work?” said “yes”.

The study concluded that there is an urgent need for increased retirement planning programmes, whether they come from the public sector, private sector, or both, and that there is a market for such programmes. In conclusion, it is apparent that all solicitors, whether prospective retirees or their colleagues who will continue at work, will be well advised to pay more attention to the whole broad issue of retirement. It is never too early to think about it, particularly for those who currently spend their lives “fire-fighting” or whose very identities are defined by their roles in legal practice, or who are driven by a puritan work ethic when in employment.

It is suggested that individuals should become involved, well before they retire, in the activities and organisations which they believe will sustain and interest them. Five years before retirement is the time to begin to look into such matters.

For those seeking further information, some interesting features on this broad topic can be found on the website of the Canadian Bar Association (www.cba.org).

John G Neill

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The Institute of Professional Legal Studies is offering a Conveyancing Update Seminar.

The Seminar will concentrate on major developments in Conveyancing law and practice since January 2009. In particular, the following subjects will be discussed:

- Land Registry de-materialisation;
- The implications of the Housing Amendment Act (NI) 2011 on private tenancies;
- Pre-contract enquiries concerning Radon, flood plains and water/sewer pipes;
- The Law Society model Building Agreement and the Builders Consumer Code;
- Recent legislation affecting high hedges and statutory nuisance;
- Law Society guidance on purchasing apartments;
- Changes regarding SDLT;
- The Provision of Services Regulations 2009;
- Future reforms.

Speakers: Mr Charles O’Neill and Mrs Ruth Craig

Charles has extensive knowledge and experience in conveyancing. Having worked in private practice for a number of years he is now a legal adviser in the Co-Ownership Housing Association. He is Vice-Chair of the Northern Ireland Board of the Chartered Institute of Housing. He is also the author of ‘The Law of Mortgages in Northern Ireland’.

Ruth practiced as a solicitor before coming to the Institute, where she teaches conveyancing. She is a senior lecturer and Associate Director at IPLS. She was consultant editor of ‘Residential Property Law in Northern Ireland’ and served on the Law Society committee established to respond to the draft Private Tenancies Order.

When: Monday 18 June 2012
Time: 9.30am – 1.00pm
Venue: Institute of Professional Legal Studies, 10 Lennoxvale, Belfast
Cost: £90

3 CPD hours will be awarded for attendance at this Seminar.

Booking form and cheques, made payable to QUEEN’S UNIVERSITY BELFAST, should be sent to Mrs Joan Playfair, Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY. Tel. No. 028 90 976521 or j.playfair@qub.ac.uk

Closing date for applications: Friday 8 June 2012
Applications will be taken on a first-come first-served basis

Conveyancing Update Seminar Booking Form

Name: ________________________________
Firm: ________________________________
Address: ________________________________
Email Address: ________________________________
Tel. No: ________________________________ I enclose remittance of £ ________________________________
First Time Order in Northern Ireland

Solicitors will be only too aware of the increase in the number of applications for possession of residential dwellings.

The purpose of this article is to highlight the potential benefit of Time Orders as illustrated by a recent successful case brought by Housing Rights Service.

If a secured loan is regulated by the Consumer Credit Act 1974, sections 129 and 136 of the Act permit the court to make a Time Order if it is "just" to do so. The scope of a Time Order is wide: the court may amend the loan agreement, extend the term or alter the rate of interest.

In this case, the client borrowed £9,000 but lost his job due to the economic downturn. He was unable to maintain regular payments but paid what he could. Despite trying to negotiate a restructuring of the loan, possession proceedings were initiated. Although almost half of the original loan had been paid, with the addition of fees, interest and charges he ended up owing £18,000. He became severely depressed.

In granting a Time Order the Master considered all of the circumstances of the case. He referred to guidance set out in Southern and District Finance v Barnes[1996]1 FCR 679. For example, he considered the fact that the loan was for the relatively low sum of £9,000, the borrower had lost his job, been seriously ill, there was nothing to suggest that it was his fault or that his intentions were not honourable or realistic and the fact that, with negative equity, the lender would have received no financial benefit from selling the property. The Master stated that the lender had no "viable recourse as an unsecured creditor against a defendant who is wholly dependent on state benefits".

The Time Order made in the case amended the regulated agreement, reduced the monthly interest and instalment and extended the term, which made the payments affordable. This avoided the likelihood of a balance outstanding on expiry of the term. The Master’s judgment is reported.

Whilst this was the first Time Order granted in Northern Ireland, it is hoped it is the first of many.

If you have a client who needs help with mortgage debt, and you are unable to assist, you may wish to refer them to the Housing Rights Service Mortgage Debt Advice Line on 0300 3230310 from 9.30am – 5.00pm Monday, Wednesday and Friday and from 9.30am - 8.00pm Tuesday and Thursday.

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hays.co.uk/legal
The Strabane Court list was over by lunchtime but I was asked not to leave as I had unfinished business - a retirement lunch in the kitchen. Amanda had baked a sponge cake; local solicitors gave me bottles of fine wine. It was all a lovely surprise because I thought no-one knew that this was my last court. Retirement had come after 33 years on the bench. It was an emotional occasion indeed.

As I drove home through the beautiful countryside of my native County Tyrone on a lovely July afternoon, I reflected on those years. It seemed a long time since my first court in Portadown Town Hall in July 1978. It was all so different then. There was little or no paperwork other than the few summonses and charge sheets. Was justice of lesser quality then? I do not believe so. In those days justice was still brought to the people - in quaint little village court houses like Ballycastle, Clogher, Hillsborough; it was dispensed in little halls like the Annesborough Hall in Newcastle, Gibson Park RFC and similar. The local villagers knew when one of their number came before the court. Public opinion ranging from scandal, disgrace and ostracism was a significant deterrent sadly lacking in the sheltered institutional anonymity of the modern centralised courts.

As I drove I tried to analyse my nostalgia. I had not applied for the position in 1978 - rather had been head-hunted by the head of Court Service at a time when the position carried an all too real risk of personal danger. There was a risk that adequate numbers of lawyers might not be recruited. The resulting propaganda spin by the paramilitaries would have been devastating against the background of the Diplock Courts. I reflected with profound sorrow on my colleagues who had paid with their lives to ensure that it did not happen. I recalled that when President of the Law Society in 1989 I was warned by a District Commander of the RUC not to go to a conference in the Republic the following weekend because there was a terrorist plot to shoot me. I had the pleasure of informing him that the conference in question had been during the previous weekend! It was regrettable that it was never officially recognised by government that the magistrates and judiciary took the heaviest casualty rate of any section of the community in the troubles nor was the debt of gratitude government owed to them ever acknowledged. Court staff were similarly at risk.

I thought too of the many practitioners - individual unique personalities - real characters who had either passed away or retired. They had blended their charismatic charm, wit and humour with the sheer skill and brilliance of their advocacy. Their absence is much missed in the stale banality of the modern institutional courts.

Finally, I cannot let the opportunity pass without paying my own tribute to the personnel of the Northern Ireland Court Service. In the 33 years I presided in over 3,000 courts throughout the province, never once was I let down by a member of staff. On the contrary, each and every clerk was invariably on top of her/his task, perfectly prepared, knowledgeable, courteous, helpful and carried out their functions with dignity to the highest professional standards, even in stressful circumstances when the threat to their safety was all too real. Without them I would too often have floundered. They have my utmost gratitude and I consider they deserve a collective medal of the purest gold.

Subjectively, I never considered myself self-important or arrogant - certainly tried not to be. Yet in retirement sometimes - just sometimes, I miss the buzz of the courts - being addressed as “your worship” or latterly “judge”, of people standing when I came into court, of being saluted by police officers - but it was all too grand for a farmer’s son from Tyrone.

Jim McFarland
Law Society engagement on cost of motor insurance

The Society has initiated a programme of engagement with local politicians on the issue of motor insurance. In doing so the Society has highlighted that:

- damage payments to injured parties in this jurisdiction are in line with the public’s expectations;
- the system of legal costs in this jurisdiction is cost effective and compares favourably with that in England & Wales; and
- the legal culture of this jurisdiction encourages early settlement of claims.

The Society has also made specific reference to its Claims Advice Service which will ensure that repairs to damaged vehicles and the provision of replacement vehicles are carried out at the lowest possible cost.

In January 2012 a Law Society delegation, consisting of Rory McShane, Alan Hunter, Peter O’Brien and Colin Caughey gave oral evidence to the Committee for the Environment on the cost of motor insurance.

In his opening statement Rory McShane raised a number of proposals which the Society considers will assist in reducing the cost of motor insurance. The principal proposal made was for an all encompassing prohibition on the payment of referral fees, similar to that which has been proposed for England & Wales.

Following this evidence session the Assembly debated the issue of motor insurance on 6 February 2012. Prior to this debate the Society lobbied a number of MLAs on its position. There was a balanced debate with an appreciation for the variety of factors which influence the cost of motor insurance, including the practices of insurance companies and claims management companies.

The Society Chief Executive has followed up with a meeting with the Minister for the Environment and will soon be meeting with the Minister for Finance and Personnel.

The Society is also encouraging all Solicitors’ Associations to meet with their local MLAs and provide them with an overview of the Society’s position. If you would like further information on this please contact Colin Caughey, Policy Adviser to Chief Executive at the Society or via email at colin.caughey@lawsoc-ni.org

New Society information leaflet

The Society has launched a new leaflet entitled ‘Buying and Living in a Property with Common Spaces’. This complements the Society’s earlier leaflet on ‘Buying and Living in an Apartment’. It is for solicitors to distribute to their clients and is intended to supplement the advice and assistance provided to clients when they are going through the conveyancing process.

The leaflet highlights issues to consider when moving to and living in a development with common spaces. In particular it discusses clients’ responsibilities and the necessity to execute these responsibilities to ensure that the development is properly managed.

Those wishing to order the new leaflet can phone the Law Society reception 028 9023 1614 to request hard copies of the leaflet.

Alternatively the leaflet is available for download in the Publications Section of the Society’s website - www.lawsoc-ni.org
The National House-Building Council is developing a new online system for the acceptance of Buildmark cover. Boyd Hackett of NHBC explains why, and what benefits it will bring for both conveyancers and their clients in the following article.

Some readers will have already heard of a forthcoming online system for the acceptance of Buildmark cover for new homes. The system will both improve consumer protection and have real benefits for conveyancers, giving them greater control of a more efficient and streamlined process.

**Why change?**

Our independent research indicated that many conveyancers were not checking that homes had the benefit of cover before the contract becomes binding as the Council of Mortgage Lenders’ (CML’s) guidance requires. This means that many purchases currently go ahead without conveyancers knowing whether they are protected by Buildmark warranty prior to formation of the contract.

Replacing the existing paper-based process, the new system should also eliminate storage of paperwork, possible postage delays and the need to issue revised documents when plot information changes (as any plot amendments are completed by NHBC and will be automatically updated on the system), making the whole process more efficient and easy to manage.

**Key features**

NHBC’s online system will put conveyancers in control and allow them to check, easily and quickly, that warranty is in place prior to formation of the contract.

It will provide immediate access for conveyancers to log in during the purchase, so they can input the sales information and download necessary documentation, such as the CML cover note and, once the sale is complete, the NHBC insurance certificate.

Conveyancers will no longer have to rely on developers sending them the documentation, or call NHBC to check that Buildmark cover is in place.

Consumers will be better protected, as conveyancers will be in control of the acceptance process and can easily check if their clients are covered by Buildmark warranty prior to formation of the contract.

Plus, if there is an issue that may prevent NHBC signing off the property at the final inspection (for instance, if the developer is no longer registered), NHBC will flag that immediately.

Replacing the existing paper-based process, the new system should also eliminate storage of paperwork, possible postage delays and the need to issue revised documents when plot information changes (as any plot amendments are completed by NHBC and will be automatically updated on the system), making the whole process more efficient and easy to manage.

**How will it work?**

**Developer**

- registers plot with NHBC

**NHBC**

- issue policy number and activation code

**Developer**

- forwards policy number and activation code to prospective purchaser’s conveyancing solicitor

**Conveyancing solicitor**

- logs into their account to check cover and input client’s details

**Conveyancing solicitor**

- logs back when forming contract and at completion to upload details. Once complete, Buildmark cover will be activated and the documentation will be available to download

**What next?**

The new system is currently in development, and we are working with the Law Societies in England and in Northern Ireland and with the Council for Licensed Conveyancers to ensure that it meets the needs of the industry.

We are planning to launch in April 2012 through the NHBC website. Conveyancers will be contacted before then, with further information about how they can register and start to enjoy the benefits as soon as possible. A user guide will also be available to explain how the system will work.

Boyd Hackett is Project Manager at NHBC. If you would like any more information about the new system or have any ideas or comments, please contact Boyd on 01908 747718
Practitioners should be aware that the provisions of the High Hedges Act (NI) 2011 become fully operative on 31 March 2012. The Act contains a number of technical definitions, including the definition of what constitutes a “high hedge” (section 2 of the Act).

A high hedge is - (a) a barrier to light, (b) formed wholly or predominantly by a line of two or more evergreens (or semi-evergreens), (c) that rises to more than two metres. Excluded are trees which are growing on land of 0.2 hectares or more in an area which is forest or woodland.

The basic procedure under the Act is as follows (“B” is the owner or occupier of the land upon which the high hedge is situated, and the party complaining is “A”):

1. A first approaches B concerning the high hedge adversely affecting reasonable enjoyment of A’s domestic property and endeavours to negotiate a resolution of the problem with B.
2. If A is unsuccessful, A then lodges a complaint with the appropriate Council (section 3) and pays the appropriate fee (section 4). Each Council may determine an applicable fee (if any), up to the statutory maximum of £360.00.
3. The Council then determines the appropriate action, if any (sections 5 & 6), under the Act.
4. The Council’s action may result in the issue of a “remedial notice” (section 5) which may require initial action to be taken before the end of a “compliance period” (such as reduction in hedge height by a specified amount - but not to a height of less than two metres) and any further preventative action following the end of a compliance period, and any consequences of non-compliance. The remedial notice will specify an “operative date”.
5. The remedial notice may be relaxed or withdrawn by the Council (section 6).
6. If B fails to take the action specified in the remedial notice he may be subject to criminal proceedings (section 10).
7. Either A or B can appeal against the Council’s decision to the Northern Ireland Valuation Tribunal (NIVT) (section 7).
8. NIVT shall arrange for the NIVT Valuation Member to conduct a site visit. Statutory powers of entry upon land, upon due notice, are provided in the Act both to the Council and to the NIVT. A two-Member NIVT panel (Legal Chairman and Valuation Member) shall then determine the appeal by quashing or varying the remedial notice, by issuing a remedial notice where none has been issued, or by dismissal of any appeal. There are no oral hearings.
9. There is no further appeal from the NIVT determination to any superior court or tribunal (save for the operation of judicial review).
10. If any action such as is specified in the remedial notice is not taken within the compliance period, the Council can itself take appropriate action and can recover any expense reasonably incurred from B (section 12).
11. Any remedial notice, and any fees payable or expenses recoverable under the Act, may be registered as a statutory charge on Title (section 15) under Schedule 11 of the Land Registration Act (NI) 1970.

Conveyancing practitioners will note that Pre-contract Enquiries and Requisitions on Title might well need to be amended to include specific enquiries and requisitions pertaining to the provisions of the Act and associated matters. The Act will also impact upon statutory charges investigation by conveyancing practitioners.

There has been significant public concern expressed in support of this legislation both prior to and throughout the public consultation process. Many practitioners will know of the considerable frustration, indeed anger, arising from the substantial adverse affect upon reasonable enjoyment of domestic property caused by impenetrable thickets of substantial neighbouring bushes and trees. For the first time, this problem now has a statutory legal remedy in Northern Ireland.

Many problems arise not on account of ill-will or consciously motivated unneighbourly behaviour, but rather on account of the incapacity of the hedge owner, physically or financially, to manage rapid growth of popular hedging plants that have now grown beyond ready management and control. Other cases will arise from a (perhaps understandable) desire for privacy or protection of land or, conversely, from quite unreasonable or indeed irrational behaviour, or from long-standing conflict. Many cases, it is anticipated, will inevitably give rise to strong feelings and emotions, for neighbourly negotiation will have already been tried in all cases, but to no avail.

Practitioners may now expect to be consulted about the High Hedges legislation and concerning matters of complaints, remedial notices and appeals (and possibly even criminal proceedings from time to time). Some aspects of conveyancing practice will also need to be adjusted to take account of the impact of the new legislation.

For some clients it will be “time to trim”; for others, the remedy now exists to many years of neighbour-inflicted light loss.

Jim Leonard
Solicitor

1The High Hedges (2011 Act) (Commencement) Order (Northern Ireland) 2012
2The High Hedges (Fee) Regulations (Northern Ireland) 2012
3The High Hedges (Fee Transfer) Regulations (Northern Ireland) 2012
The power of the press as a marketing tool

Paul Tweed of Johnsons Solicitors Belfast, Dublin and London, recently delivered an address to a QUB Alumni event held at Allen & Overy’s London offices. He has kindly agreed to The Writ carrying the following extracts.

I have to be grateful to cream buns and boxing for the launch of my career as a media lawyer and the relative success of my firm, from being a small private client operation in the late 1970s to the multiple jurisdiction practice it is today. Although our bread and butter work remains very much focused on the insurance industry, it is the media cases that attract all the publicity, which in turn has contributed in no small measure to our expansion.

It all began back in the mid 1980s when I was involved in what has come to be known as the cream bun case. The Sunday World had published a story falsely claiming that two of the leading Queen’s Counsel of their day, Bob McCartney and Des Boal, had fought over the last chocolate éclair in a Holywood cake shop. (That’s Holywood, Co. Down by the way!). The story turned out to have been fabricated by a local solicitor with either a grudge or a bizarre sense of humour (we never really found out which), but a case that should have been settled early with an appropriate apology, got out of control very quickly with the newspaper adopting an extremely provocative stance which resulted in a viciously fought case lasting a couple of weeks (and involving the top Silks of the day fighting the case out on its merits on another level altogether), and with the plaintiffs ultimately being awarded £50,000 each.

However, this case will be forever embedded in my conscience as it contained all the raw ingredients of libel litigation. One of the first things I say to any young trainee joining our firm is that the law often takes second place in a defamation action to the two key requirements, namely judgment and guts.

Fortunately this case had a happy and justified ending, with the newspaper backing out of their Appeal at the last minute. The firm then began to attract media related cases on an increasing basis until 1991, when we moved on from buns to boxing.

We had been advising the well known boxing manager and entrepreneur, Barney Eastwood, in relation to an ongoing battle he had been having with his former prodigy, Barry McGuigan, for some years following on from the fateful World Championship contest in Las Vegas. However, what was purely commercial litigation up to that stage, took a dramatic twist when McGuigan made a number of unfounded allegations regarding BJ Eastwood’s conduct, which in turn led to the longest libel action in Northern Ireland legal history.

I had thought that the Sunday World case had possibly been the exception in terms of aggression and ill-feeling between the lawyers but the Eastwood case really took the biscuit in this regard. In fact, one of our High Court Judges remarked that the correspondence between solicitors was far more defamatory than the subject allegations, and we nearly had one or two repeats of the World Championship boxing contest down at the Law Courts on a number of occasions. However, after a five and a half week hearing, Mr Eastwood was awarded £450,000 by a Belfast jury and secured him the vindication we had been looking for from the outset, when he had originally proposed an apology with a donation to the Royal Victoria Hospital Intensive Care Unit.

It was at this time that I suddenly realised the power of the press as a marketing tool.

Not only were there regular media reports of the daily dramas in the witness box but the result itself received the sort of publicity I had never believed possible. The firm obviously benefited and this led to the beginnings of our American practice, with a high profile case for Jimmy Binns, the Philadelphia lawyer who acted for many well known Hollywood personalities such as Sylvester Stallone and Kevin Costner (and indeed played himself in the movie Rocky IV).

We subsequently had well publicised litigation for Liam Neeson, Colin Farrell, The Corrs and other well known personalities with Irish connection.

We then realised that the time was right for expansion, first into Dublin and then London, and in doing so I quickly learned that the media defendants were extremely
uncomfortable about the prospect, not just of having to litigate in Belfast (which was still regarded as the Wild West so far as many London publishers were concerned), but they also tended to be much more co-operative when faced with the prospect of multi-jurisdictional proceedings. By this I mean that our clients with international reputations, often had, and indeed still have, the option of suing a defendant newspaper in either one jurisdiction for all damage caused to their reputation, or in each and every jurisdiction where they have a reputation and the libel has been published.

Our client base soon expanded further to include J Lo, Harrison Ford, Demi Moore, Whitney Houston, Diego Maradona, Vanessa Redgrave and Reese Witherspoon. Gradually we had developed an international practice.

Indeed, it is not just the Hollywood stars who have been encouraged to come to us but the largest single group of claimant clients for whom we act is now made up of journalists, followed a close second by lawyers. While this is not necessarily an indication of our prowess as media lawyers, it is interesting that these two groups will be in a better position than most to know when there has been a libel, and when they should be entitled to appropriate redress.

We also soon realised that an apology given before the High Court in Belfast could be communicated back down the internet from Sydney to Los Angeles, just as quickly and effectively as an apology in the High Court in London.

Indeed, speed and timing is of the essence in libel litigation, and in the case of Britney Spears this was an under-statement given that it subsequently turned out that, although allegations that her marriage had broken down were absolutely correct at the time we received instructions, within a matter of weeks the situation had turned over on its head. Fortunately we managed to get three cases resolved before things went pear shaped. I still break into a cold sweat when I think back as to what could have been, had we been lined up ready to go before a jury!

What we have now found is that we can run highly specialist practices in London and Dublin, supported by a much cheaper cost base in Belfast, which together with multi-jurisdictional qualified lawyers, has given us a very strong competitive edge. It is often just as easy to get a legal team from Belfast to Brighton as it is from Manchester – a fact recently acknowledged by one of the Judges there.

I therefore very much believe that the way forward is to continue to utilise the lower overheads and extensive expertise from Belfast, while bringing lawyers in as and when required, meaning that we can keep a very tight rein on our expenditure in our London and Dublin operations - a benefit that Allen & Overy have found in doing it the other way round in opening a Belfast service centre to support its prestigious London and worldwide operations.

In Belfast we have access to three airports offering national and international connections – two within thirty minutes or so travel time, and Dublin airport being less than two hours away. We have a highly trained work force which is more than capable of competing with the UK’s best, and we also have much goodwill coming from the other side of the Atlantic, which has made it easier for us to attract American clients.

Of course, we have to deliver the service and, certainly so far as the media litigation is concerned, we are only as good as our last case. However, our civil litigation defence practice is also continuing to thrive on the basis of similar principles, whereby we are able to service work for the likes of Bombardier in England. Based on the extensive experience our team has gained in Northern Ireland, we have simply gone on to apply the same principles from the same lower cost base.

In these difficult economic times all firms, no matter where they are based, should be concentrating on niche specialisation and to maintaining total flexibility in order to compete in this extremely volatile market. In times of declining fee income and even more competitive tendering processes, keeping overheads down is more important than ever.

Paul Tweed
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It was 7.53 pm on Thursday 9 February 2012. I was on a treadmill in the Roe Valley Leisure Centre. I had seemingly been there for a life time. The numbers on the machine were slowly going towards what I needed, ie 5.75K, they showed 4.75K ie I had only one kilometre to go.

During the day I had travelled 225 kilometres and was less than seven minutes away from, if not victory, then at least the sweet relief of being able to stop. How had I got here? What shape was I in? And how much was I going to enjoy the champagne and birthday cake on a table tantalisingly out of reach, beside this infernal machine?

It was my birthday and I had decided to celebrate it by doing something slightly different.

I received so many texts of support that day and well wishes on this mission of madness but one of them made me laugh out loud – it simply said: “Are you not a bit old to be having your birthday in the leisure centre?” They had a point. Normally, if you are a kid you go to Hide Away Hall and run amok surrounded by noisy children and fizzy drinks. Instead of that I was upstairs, running slowly, surrounded by sweaty athletes and energy drinks. Why had I been on the blatter since 7.00 am?

Well it all started when I decided on New Year’s Eve to make a resolution that I would attempt Ireland’s first Indoor Ironman.

It seemed a good idea at the time and January was fairly busy with lots of other pressing concerns, so suddenly last Wednesday the reality began to bite and I wondered if I had bitten off more that I could chew. In a few sleepless hours time I was due to swim 152 lengths of the pool, sit on a gym bike until I chalked up a bum numbing 180K, then trudge on a treadmill for a mind numbing 42.195K.

The contrast between the “Limavady Indoor Ironman” and my last Ironman could not have been greater. Indoors there was a field of one and all day I would travel no further than 50 metres away from the car park and I didn’t see fresh air all day. In Barcelona last October I was in a field of over 1,300 with blue skies, a blazing sun with a temperature of over 30 degrees, a crystal clear sea and a bike ride up and down the Mediterranean coastline where there was 1,000 fans alone on the finish line with a live band and an electric buzz surrounding the whole event that would have lit up the National Grid.

If I thought however, I was to have a lonely day, I was very much mistaken. I could not believe the amount of support I was to receive all day.

It started well before 7.00am when Barry Toorish and Cathy Farren opened the leisure centre early for me. Twenty minutes later I was poolside in my lucky funky trunks. Mervyn Kelly was there also to do sterling work for me in the pool and set the pace. I had specifically asked big Mervyn to swim a lot slower than he normally does so I could stick to his toes like glue and save up to 25% energy. Obviously you can try that in open water but it’s a lot harder with the likelihood of one or both of you going off course. In a normal outdoor race you are meant to swim 3.8K but with my sense of direction it could easily be 4K. At least, even I couldn’t get lost in a 25 metre pool with a reassuring black line on the bottom.

If Mervyn and I thought we were the heroes however, we were very much mistaken. Poolside on two chairs were young Alberta and Patrick Kelly, already in their Limavady Grammar School uniform, there to perform an heroic act of dedication. They were going to count all 152 lengths. Believe me it would have been more exciting watching paint dry at a rained off cricket match. Another message of support I received was a card from Ray Rowe that was to inspire me all day. It read:-

"Party Time!"

From left: Darren Mornin, President of Limavady Rotary Club; Peter Jack and Roberta and Patrick Kelly.
“It’s not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of Deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, who comes short again and again, because there is no effort without error and shortcomings; but who dies actually strive to do the deeds; who knows great enthusiasms, the great devotion; who spends himself on a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who neither know victory or defeat”.

Theodore Roosevelt

Young Alberta and Patrick were not to be the only set of heroes during the long day. But it’s not often you jump out of a pool after 2.5K, do a live interview with Joe from Radio Foyle, grab a quick drink, leap back in the pool, do the remaining 1.3k in metronomic fashion behind the peerless Mervyn, then dash to the changing room, change, wait a few minutes, do another live interview (with the clock still running but hey, the benefit was I was getting some recuperation), then hit the bike just after 8.30 a.m. which had been my original target all along. When I decided to embark on this mad jaunt, I was very well aware that I would only find the tedium bearable if I had a goal. And inspired by my Limavady Rotary colleagues who had gathered over 3,000 books to send to an empty school library in Malawi, I thought I would try and raise the funds for their transport so I wrote to some of my legal colleagues and gave them a challenge. I asked them to guess how much weight I would (a) lose or (b) perhaps gain. I also posed the same question to all those who contributed to my bucket on race day and almost without exception, they all thought I would lose weight, well, you would kind of think that would be expected after 226K of toil and sweat? Well strange things happen sometimes in sport. In a week, in which grown up footballers refused to shake hands and a frozen pitch in Paris deprived a TV audience of millions of an enjoyable Saturday night, who knew if this would be another Tale of The Unexpected?

Of the three disciplines, I knew the bike would be the easiest physically but also conversely the longest. I had decided my race pace would be 30K an hour so that my pulse would be fairly low, thereby saving up all those extra heart beats for the latter stages when the going finally got tough on the treadmill. I had an early pre-school visit from Sharon and Mark to encourage me and it then dawned on me that the most I had ever stuck it out on training on a gym bike had been two hours, so I wasn’t exactly looking forward to hours 3, 4, 5 & 6! However, I am a great believer in the “carrot and stick” approach. The stick was obviously the 60 minutes of effort, making sure that I travelled at least 1K every two minutes; the carrot was food, glorious food and at the end of every 60 minutes I would wobble off the bike, down the stairs, to the nearest changing room to throw water round my face and to powder my nose as it were and then to amble back to my work station for the day. Thankfully I had phoned in sick as I do every birthday, but talking of work, my entire staff turned up to see how the boss was doing.

I thanked them profusely and reminded them that “Justice must not only be done, it must be paid to be done!” So with those inspiring words still ringing in their ears from their fearless leader, they headed back down to RG Connell & Son, their eyes bright with enthusiasm. Talking about enthusiasm, I had more visitors that day than the Queen of Sheeba had after giving birth. I will not attempt to begin to list all of the names of the people who came in to wish me well, as I will obviously offend people whom I have neglected in a fog of memories. May I apologise to them? But I distinctly remember over the course of many hours being visited by a school Principal, two entire wide eyed P6 classes who had to stand behind me, so my ability to communicate sensibly was somewhat limited (sorry kids). But not only
was I having visitors to come and watch but there were those who came to share the pain. After Mervyn’s splendid effort in the pool (where Heather McLaughlin and Davy Patterson also swam in adjacent lanes), Sammy Moore, natural historian and story teller extraordinaire, sat on a bike beside me for at least an hour and half. Later also on the bike there was Heather again and Tony McKenna, my TTC wingman. I just hope that I made some sense in the subsequent conversations. Meanwhile, I relished the coffee and toast Laura brought me from the office and then indulged in an epicurean delight of flap jacks, bananas, energy gels, electro light replacement drinks, mars bars, Lucozade drinks, jelly babies etc. Basically if it didn’t move, it got consumed. As the hours ticked by, my hourly score seemed fairly consistent. Hour one was 30.41K; then 30.66K for the second hour; 30.46K, for the third hour (I think there was a radio interview in there somewhere); 31.49K for the fourth hour where I got really carried away, then 30.78K for the fifth hour. As the end of every hour approached I would holler and Jacinta, Sinead or Lorraine would run up and verify my score and sign the sheet so I had independent confirmation that this just wasn’t an endless dream. All the staff and management were great. I am not sure if Carlsberg make leisure centre staff but if they did…….

I was just knocked out by the support and encouragement I got all day – TTC members, fellow Rotarians, athletes, all of them had a kind word. They will never know how much it meant to me.

For the last sit on the bike somebody whose brain was still working (which ruled me out ages ago) calculated that I had to do 26.20K to bring up the 180K which was the magic number I needed before I could begin the apparent transformation from cyclist to runner. For the craic, I weighed myself after the second discipline and was astonished to learn I had put on 1.8K. If I was a betting man this was not the particular horse I would have backed. Six hours on a bike and I gained weight!!

I had thought long and hard about whether to have a shower after the bike, but I decided for the sake of a few minutes it would be psychologically worth it. I was off the bike at 2.42pm and at 2.50pm, I was showered and dressed, if not exactly feeling like a runner then at least looking like one. It was in this third discipline that I knew that I would be finally tested. In an outdoor race you are concerned about the potential difficulties of the swim (including jelly fish and over amorous fellow competitors) and the bike (punctures, crashes etc) and the indoor version was a doddle from that point of view, but after nearly 360 minutes on the bike where I had been sufficiently focused not to need my Kindle or music, it was then on to the torturous treadmill.

Join me in the next issue to see if I make it to the finish line!

When you make a Will, you probably think the one thing you can’t leave your loved ones is good health.

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Roy McFadden (1921 – 1999)

Roy McFadden was born in Belfast in 1921 and practised as a solicitor in Northern Ireland after being indentured in 1940 and retiring in 1984 before his death in September 1999.

To many Roy was not an ordinary lawyer. He was a writer and one of a distinguished constellation of Northern Irish writers that included John Hewitt, Robert Greacen, WR Rodgers, Sam Hanna Bell and Joseph Tomelty.

As a schoolboy he attended Knock Grammar School and Regent House in Newtownards before studying and graduating in law from the Queen's University in Belfast.

His first major collection was “Swords and Ploughshares” published by Routledge in 1943 which also published two later collections, “Flowers of a Lady” (1945) and “The Heart's Townland” (1947).

During the Second World War he was a pacifist and was attracted to the socialist realism which can be found in “The Heart's Townland” where the reader can discern the voice of an anti-war poet.

Roy was married with five children and, in 1954, became the sole principal of his law practice. He continued to write, with widely anthologised and produced a steady stream of poems including “Elegy for the dead of the Princess Victoria” in 1953 as well as reviews, short stories. He edited the literary magazine “Lagan” in 1945-1946 and he founded and co-edited a similar magazine “Rann” between 1948-1953.

Throughout a successful legal career, he always remained conscious that as a writer and a lawyer he inhabited “two worlds”.

In 1979 his collection, “A Watching Brief”, is unified by the common theme of a lawyer going through the forms and ceremonies of a lawless city.

The key poem of that publication has, almost defiantly, a Yeatsian entitled “The Law Courts Revisited” and with the kind permission of the Lagan Press which published his “Collected Poems” in 1996, that poem is reproduced here.

Throughout his work there is no overstatement in his verse, no posturing and the precision of his vocabulary marks out a significant poet.

When the spotlight fell on Northern Ireland in the late 1960s, McFadden kept to the shadows and resisted the seductive trend towards poetry as a circus art.

His papers were lodged after his death at the Queen’s University as he had requested and they can be consulted there at the Special Collections Library.

Joe Rice, Solicitor, is currently preparing a detailed article on Roy McFadden and would be grateful if members could contact him with any stories, reminiscences, anecdotes, photographs or materials from any colleagues or friends who knew him. Joe can be contacted at JRice@johnricesolicitors.com

The Law Courts Revisited

The side courts closed, Queen’s Bench and Chancery – Counsel gone
Back to the burrow of their library, Litigants home
To chew the frayed ends of the argument, Cleaners’ time
To mop and scour the day’s sufficiency
Of crumpled claim and counterclaim, Stubbed-out or smouldering plea,
And to restore
Its impassivity to the Great Hall –
Eight pendant golden lanterns inculcate
A humour that refers
You back to that same atmosphere
When you,
Though half a lifetime younger, seemed the same
And you,
Alone in the russet light with just
The marble names of your profession’s dead
Sentenced at Ypres, the Somme and Passchendaele,
Carved on a wall’s reflecting apple-sheen,
Fraternise, and hesitate between
A youth approaching from the lecture room
And your advancing self; contextually
Set in the italics of the mood.

* 
Snap out of it, you hear McKelvey say.
Those were the days
When terror and confusion ruled
The Central Office, and apprentices
Cringed in with papers for advice and got
Red lugs from upstair despots. And
Some sedentary sadists in the Seat
Office peered at wills for pinholes, clips’
Rusty implications, and required
Affidavits of redemptive prose.
And:
That old warlock with the flaming face
And stick-supported legs, who jokers said
Punctually beat his passive clerk around
The clock to break the tedium; and, enraged,
Shouted Shut the Door when you’d just knocked. 
In retrospect, material for a laugh. 
No laughing-matter then, when you contrived
To cut through paper jungles to My Lord.

* 
I am a social engineer
He said with some acerbity
In answer when you asked him what
A lawyer’s special role might be.
But does he question what’s amiss
With the machine he services?

* 
But once in, what was it, a year,
Those upstairs spiders in their offices
Prepared to meet their god when the Lord Chief
Stalked through the corridors. I tell you, Mac,
Even their pens clicked upright to alert
Till after he had passed. But – bear with me –
The sweetest memory is of ’45,
Election Day remember, when we were
Part of an amazed majority.
Ecstatically recall
Their worried wireless
Bellowing news of Labour landslides and
Staunch Tory strongholds taken. Masterful,
I brusquely cautioned them for dallying:
Hurry along, or you’ll be nationalised.

* 
Litigation’s disguised violence.
Was it McKelvey or yourself who thrust
Anarchic horn into the prim debate?
Then, goring heifers for the hell of it:
Every judgment smacks of blasphemy.

* 
Give me facts, the barrister
Admonished, ruffling out his brief;
Beyond him, the gestating fact
Of his shot body on the floor.
Local Belfast solicitor’s firm, McCallion Keown Solicitors, has become the first legal practice in Northern Ireland to receive the new Quality Standard Mark - Lexcel v5.

The firm, which is based on Belfast’s Oldpark Road, was awarded the Lexcel v5 Quality Mark in February after successfully completing the Practice Management Standards Programme which is administered by the Law Society.

Lexcel v5 is the new version of the Society’s Management Standard and helps assess risk management within legal practices in respect of claims and complaints and helps ensure better customer service which in turn contributes to increased client retention and provides greater support for outcomes-focused regulation (OFR).

McCallion Keown was assisted throughout the Programme by Next Level Impact - one of Northern Ireland’s leading management consultancy, leadership and training companies - which provides a complete Lexcel support programme.

Just 20 companies were accepted onto the Next Level Impact Lexcel support programme, with McCallion Keown Solicitors being the first Northern Ireland firm to be awarded the Lexcel v5 award.

Commenting on the announcement of the Quality Award, Steven Keown, partner in McCallion Keown, said:

“We are delighted following the announcement. As a firm we have invested a lot of time in achieving the Quality Mark because we acknowledge the competitive advantage it offers in the market place as well as the lower professional indemnity insurance premiums offered by insurers.

“Clients can be confident that McCallion Keown is working to ensure that they receive the best customer service and the Lexcel V5 is proof of our ongoing commitment.”

Speaking of the professional assistance received from Next Level Impact, Steven Keown said:

“Martin Rice and his team at Next Level Impact have provided us with the direction, support and guidance, helping us streamline Lexcel implementation and focus on continuous improvement within our firm. Without their expert guidance, we would definitely not have achieved Lexcel in such a timely and effective manner.”

Martin Rice, Managing Director of Next Level Impact said:

“Many legal practices are deterred from applying for and achieving the Lexcel Quality Mark because of the perceived time and bureaucracy involved. Our support programme provides practical assistance to firms so they can still focus on fee earning as they progress towards accreditation.”

Speaking on behalf of the Law Society, President Imelda McMillan, said:

“This is a considerable achievement for McCallion Keown Solicitors and is a reflection of its commitment and hard work in obtaining this important quality standard mark for the practice.”
Obituary Harry Coll, OBE

Henry (Harry) Anthony Coll was born on 5 November 1946 to Henry and Josephine Coll. Harry and his sister Annette were brought up in Derry where he was educated at St Columb’s College.

Harry graduated from Queen’s University Belfast with an LLB (Hons) in 1969. Unable to obtain an apprenticeship at first, he spent a year as a teacher in Claudy. He then became apprenticed to Tony McRoberts in A. Pearson Elliott & Co and qualified as a Solicitor in 1973. Harry joined Elliott Duffy Garrett, established by James Elliott, Gerard Duffy and Brian Garrett on 1 April 1973, where he became a Partner.

Harry was to make a huge contribution to the ethos, reputation and success of the firm. He was the firm’s Managing Partner from 1999 to 2006 and Chairman and Senior Partner from 2007.

Harry married his wife Marie, also from Derry, on 9 September 1969 and they settled to live on the Antrim Road, Belfast. Harry was immensely close to and proud of his son Peter, who is a member of the Bar, and daughter Eimer, a Solicitor in the Official Solicitor’s Office, and his grandsons, Fintan and Matthew. Sadly he never got to meet the two most recent additions to the family – his grandsons Patrick and Rory.

Against a commercial litigation and administrative law background, Harry’s professional life was spent largely specialising in Employment Law and he gained a distinguished reputation as a leading employment practitioner within and beyond the legal jurisdiction of Northern Ireland.

Harry was a lawyer of considerable intellect and a formidable and forceful advocate for his clients. He loved and got great satisfaction from his work as a Solicitor in private practice. Harry was never happier than when he was surrounded by statutes and textbooks working out some point of statutory interpretation and debating the practical side of legal issues with his colleagues. Always able to see the bigger picture and the human side of commercial legal issues, he applied himself not only to advising his clients on the law but also to working out solutions to problems. He is and will continue to be remembered by his clients for his invaluable support and wise counsel.

Harry was an active member of the legal profession in Northern Ireland and also involved in other related activities. He was elected President of the Law Society of Northern Ireland and an honorary life member of the American Bar Association in 1984. He was appointed as a Deputy Resident Magistrate in September 1986 and continued to serve as a Deputy District Judge. In 1996 Harry was appointed as a Commissioner of the Equal Opportunities Commission for Northern Ireland and then in 1999 to its successor, the Equality Commission. Harry also served on the Management Committees of the UK Employment Lawyers’ Association and the European Employment Lawyers’ Association.

Outside his professional life Harry was involved for many years in the voluntary business regeneration sector in Belfast. In 1992 he was involved in founding Springvale Training Limited which, in partnership with the then Training & Employment Agency, provided training opportunities in the Greater West Belfast area and he was also a director of Ortsus Business Development Agency. In 1994 Harry was awarded an OBE for services to employment.

Harry was also a member of the Board of the Ulster Orchestra and shortly before his death joined the Board of Governors of Aquinas Grammar School.

In his free time Harry enjoyed meeting up with his Antrim Road friends in St Malachy’s Old Boys Club on a Friday night, golf at Fortwilliam at the weekends, and the annual “boys” golf trip to Portugal each May, which was a firm fixture on his calendar for many years. Harry was happiest and increasingly spent more of his time in Donegal where he and Marie had made a second home and where he had got to know the local area and become part of the community.

By nature Harry was generous of spirit, down to earth, devoid of any arrogance or pomposity, resourceful, a straight talker but courteous. To his friends and colleagues he was kind, loyal and supportive, a great storyteller and always ready for a laugh, often when the joke was on him.

Harry was diagnosed with cancer in July 2009. Although close to retirement age at that time, he was determined to keep working and to stay involved with Elliott Duffy Garrett, his clients and the profession. Determined to do his best to maintain business as usual Harry continued to work through medical procedures and treatment and represented clients before Tribunals and served as a co-opted member of the Industrial Tribunal Rules Committee until shortly before his death. In February 2011 Harry’s condition deteriorated suddenly and rapidly. He passed away peacefully in hospital on 15 March 2011 with his family around him.

Harry is remembered by his colleagues in EDG for his encouragement and inspiration as a leader, mentor and friend over many years. He was especially committed to the wellbeing of younger lawyers in the early stages of their legal careers with the firm, particularly those who, like himself, had not come from a legal background.

Harry was predeceased by his sister Annette in 2008. He is survived by his wife Marie, son Peter, daughter Eimer, daughter-in-law Julie, son-in-law Mark and grandsons Fintan, Matthew, Rory and Patrick.

We are grateful to the Partners of Elliott Duffy Garrett for the content of this obituary.
High stakes: the impact of welfare reform in Northern Ireland

The Welfare Reform Bill has completed its passage through Parliament. A Bill for Northern Ireland will be introduced shortly. Les Allamby examines what the Bill is likely to contain including potential changes to passporting arrangements for legal aid and what impact it will have on Northern Ireland.

Background

The Welfare Reform Bill is generating considerable political discussion at the time of writing. The proposal to cap benefit payments to the median level of earnings (£26,000 a year) has received particular attention. The proposal will affect 67,000 households in Britain with 60 per cent of the households affected being in Greater London. This reflects higher housing costs faced by claimants in the private rental sector even after recent significant cuts to Housing Benefit. Figures are not available in Northern Ireland although the impact will be less severe as housing costs in the private rental sector are generally lower. Nonetheless, families with four or more children and those large families who are caring for a family member outside of their benefit household will be vulnerable to the cap. Other parts of the Bill, however, will have considerable ramifications for Northern Ireland.

The impact of the Bill cannot be divorced from the wider impact of welfare reform proposals. The Chancellor’s emergency budget and comprehensive spending review statements in 2010 announced expenditure savings in social security totalling £18 billion. This was in addition to inherited proposals from the previous government to move claimants from Incapacity Benefit to Employment and Support Allowance, saving up to a further £4 billion. The savings in Northern Ireland are around £500 - £600 million a year. At the same time, the government announced a major shake-up of means-tested benefits with the introduction of Universal Credit at a cost of £2 billion. Universal Credit was a proposal contained in Dynamic Benefits, a research report from the Centre for Social Justice – a think tank chaired by Ian Duncan Smith who proposed Universal Credit as a way of simplifying social security and improving work incentives. Unlike the government’s version, the Centre for Social Justice proposed a model costing £4 billion which would pay for itself over time by encouraging more people into work.

The government also announced from an early stage that anyone transferring to Universal Credit would not lose money at the point of change. With so many other savings being implemented before the introduction of Universal Credit from October 2013 onwards, this does not amount exactly to doing “everything it says on the tin”.

Universal Credit

Universal Credit will replace Income Support, Income-based Jobseeker’s Allowance, Incidence-related Employment and Support Allowance, Housing Benefit, tax credits and the Community Care Grant and Crisis Loans part of the discretionary Social Fund. Universal Credit is a working age benefit payable to pension credit age. It will have an overall savings limit of £16,000.

Universal Credit will be paid both to people in and out of work. The disregard of earnings for Universal Credit aims to allow claimants to lose no more than 35 pence in the pound when working (if a non-tax payer) and 24 pence in the pound if currently paying tax. Universal Credit will provide these arrangements regardless of the numbers of hours worked in order to encourage claimants to take mini-jobs and then expand their working hours. For the self-employed, a new minimum income will be assessed (ie the national minimum wage) when calculating Universal Credit.

The benefits will be administered by the Social Security Agency, with work seeking arrangements to be administered by the Department for Employment and Learning (or whatever successor arrangements are implemented following its abolition).

Other key provisions

The Bill for Northern Ireland will propose the replacement of Disability Living Allowance for people of working age with Personal Independence Payment. The new benefit will be determined through a new detailed assessment test. The Treasury report accompanying the announcement of the change contained a target of reducing expenditure by 20 per cent. Such a reduction will have a particular impact in Northern Ireland where the proportion of claimants on DLA is almost twice the average for Britain.

A significant issue yet to be determined is how to deal with passport benefits (free school meals, health benefits, legal aid entitlement etc). More people will qualify for Universal Credit and a simple shift of existing passport benefit would be expensive. As a result, the Department for Work and Pensions has asked the Social Security Advisory Committee to produce a paper on options. This is important for solicitors as the existing passported benefit arrangements for legal aid will almost certainly change.

A further part of the Bill in Britain is much tougher work seeking arrangements. A comprehensive Work Programme was introduced in Britain in June 2011 to provide training, apprenticeship and work experience opportunities. Alongside this are increased sanctions, with some claimants subject to loss of benefit for three months, six months and three years for a third failure to take part in certain activities. In Northern Ireland, no Work Programme is proposed until at least April 2013 and it is unlikely to be as comprehensive. As a result, there is a strong case for a different approach to sanctions. Finally, the transfer of Council Tax Benefit to local authorities in Britain comes with a ten per cent reduction in funding. A similar reduction is likely for the rate rebate scheme which will have an adverse impact on work incentives.
The contributory principle central to the Beveridge welfare state also takes a further knock. Contributory ESA based on national insurance contributions paid is to be restricted to twelve months and will be applied retrospectively once the Bill is in place. The government was persuaded to include an amendment allowing those who have lost entitlement to contributory ESA due to time limits to requalify when subsequently placed in the support group. The impact of this change will be on older workers, with almost half those on Contributory ESA only being aged 50 or over. Those claimants with a partner in work or savings over £16,000 will be unable to transfer to a means-tested benefit.

A further key issue is the proposal to introduce size related criteria for help with public rented sector rents. Claimants under occupying Housing Executive or Housing Association accommodation will lose benefit. Unlike parallel provision already in place in the private rented sector, it is difficult to see where public sector tenants can readily move to, especially those in purpose built Housing Association accommodation designed to meet special needs. Moreover, approximately 70 per cent of Housing Executive stock has three or more bedrooms.

Outside of the Bill, the government is also seeking to make far reaching changes to the provisions for help with mortgage costs and bereavement benefits. The former includes proposals that after two years of help with mortgage interest any further payments will be made subject to a charge on the property.

The way ahead

The Northern Ireland Bill is likely to be published in March or April 2012. There will be a need to ensure full Assembly scrutiny given that the changes to social security are the most fundamental for a generation. The Institute for Fiscal Studies analysis of the proposed tax and benefit changes revealed that London and Northern Ireland would be the most affected areas. In Northern Ireland this was down to larger families and greater reliance on Disability Living Allowance.

The programme for Government proposes setting up a working group to look at the impact of welfare reform and the question of whether the £20 million Social Protection Fund introduced in 2011/2012 will be extended further will no doubt arise.

The stakes are particularly high in an economic climate which suggests Northern Ireland will take longer than elsewhere to recover from the recession. This will be an interesting test of mettle for the Folks on the Hill.

Training programme for 2012/2013

The Law Centre’s training programme for 2012/2013 will be available on line at www.lawcentreni.org from April 2012.

Migrant Workers’ Rights in Northern Ireland


The original guides have been merged into a single document which applies to all workers from EEA, A8 and A2 countries of the European Union, as well as to work permit holders from outside the EU.
Law Centre Award for Law Centre

Law Centre (NI) Director Les Allamby scooped the award for leading on political impact at the 2012 CO3 Leadership Awards. The awards celebrate the leaders of third sector organisations who deliver dynamic and inspiring leadership.

The award is a recognition of Les’s work and the work of the Law Centre as a whole in promoting social justice.

Lawyers tee up to support local charity

Action Cancer is set to be the sole beneficiary of a unique and ambitious fundraising drive by Belfast law firm, McCann and McCann and Irish art dealers, Hanna Fine Art.

An exclusive limited edition draw – restricted to only 100 tickets - offers participants the opportunity to win the world’s most sought-after golf collectable, “Golfing Giants” – a limited edition print hand-signed by Rory McIlroy, Graeme McDowell and Darren Clarke.

The costs of organising, managing and promoting the draw are being shared jointly by the two Belfast firms to ensure that every penny of the money raised goes directly to the charity.

For a donation of only £100, participants’ names will be entered into the draw for the print and each will receive a personalised certificate from Action Cancer.

Kerry Anderson of Action Cancer said: “We are delighted to be the beneficiary of this unique fundraiser and would like to thank Hanna Fine Art and McCann and McCann for choosing Action Cancer as the beneficiary. The funds raised will support our life-saving prevention, detection and support services for people in Northern Ireland.”

The print is the only piece of golf art to be hand-signed by all three of our golfing giants and is universally regarded as the most iconic and coveted of golfing collectables and an important and valuable piece of sporting memorabilia.

The winner of “Golfing Giants” will also receive a set of three collector’s photographs of Darren, Rory and Graeme signing the prints as proof of authenticity and provenance, further adding to the investment value of this unique golfing collectable.

Paul Hanna of Hanna Fine Art: “This is a fine example of how creative partnerships between business and the arts can be forged for the benefit of charity. This is a true win-win situation for all involved, providing the opportunity to win this unique and much sought-after print whilst supporting Northern Ireland charity Action Cancer.”

The awards were presented as part of CO3’s biennial leadership conference, Dealers in Hope: a leadership conference to take us forward, held on 23 and 24 February in the City Hotel, Derry. CO3 (Chief Officers 3rd Sector) is a membership organisation for Northern Ireland’s third sector leaders. Its members lead a wide range of organisations; from charities, social economy organisations and partnerships, to community, faith-based and voluntary organisations.

Paul Moylan, Partner at McCann and McCann, added: “We take our corporate responsibility very seriously and have a proud tradition of supporting local charities. We are delighted to sponsor this unique event which is set to raise substantial funds for one of our most deserving charities.”

Les Allamby
I returned to my office in January 2012 from the much needed Christmas break to find an email from Bill Robinson, President of the American Bar Association (ABA) who visited Belfast last October. His email was entitled ‘Onward and Upwards in 2012’ and it reminded me of the great enthusiasm that President Robinson and others have for the future of the legal profession here in Northern Ireland and beyond. I believe that it serves as an apt expression of optimism with which we must strive to look forward in 2012.

Before Christmas our Association was represented at the Annual Law Society Dinner and we wish to congratulate Imelda McMillan on her election as President of the Law Society of Northern Ireland. We had the honour of meeting President McMillan on behalf of our members in January and we look forward to working closely with her and the Society to strengthen and develop our profession over the year ahead.

The annual NIYSA Christmas Disco was held before Christmas and as usual it was a great success, bringing members and friends together to celebrate some festive cheer!

The NIYSA theme for 2011-12 is one of ‘engagement.’ We have been engaging with many organizations over the past few months and we have an ambitious plan for 2012 to continue developing links within the profession and with business and civic society.

We were delighted to be invited to join Junior Chamber International (JCI) Belfast at its Chair’s Dinner in City Hall before Christmas, as well as continuing to develop our relationship with the Junior Lawyer Division (JLD) of the Law Society of England & Wales.

We have come together to organise a ‘Young Leaders’ Conference’ to take place on 25 May 2012 at the stunning Riddell Hall at Queen’s University, Belfast.

The motto is ‘Inspiring Leadership’ and our mission statement is:

“We are committed to encouraging & inspiring the leaders of tomorrow across industry and the professional services in Northern Ireland – through education, sharing ideas & creating personal development opportunities.”

This is a unique event, bringing together business, corporate, legal, accountant and industry leaders. Register your interest early as we are expecting great demand for this event. (See details overleaf).

The NIYSA are planning an event in Derry City over the coming months as well as launching a new website to ensure that members across Northern Ireland can participate in our events.

Finally, we are committed to developing links with charities and community groups to allow our members to contribute to the local community.

If our Association can assist you in any way or you wish to find more information, join us on Facebook, LinkedIn or contact the NIYSA Committee.

Onward and upwards in 2012!

Conor Houston
Chairman NIYSA
chouston@johnjricesolicitors.com
NIYSA – BUS TRIP TO 2013 CITY OF CULTURE!!!

Date: Friday 20 April 2012
Time: Buses leaving PEC, Belfast at 6.45pm
Leaving Londonderry/ Derry at 1am (returning to PEC)
Location: Metro Bar
Cost: £10 (non-refundable)
Booking details: Visit http://www.eventelephant.com/niyسابستريپتocityofculture2013 to book your place (bookings close Friday 13 April 2012)

This is our first annual social event to take place outside of Belfast and we are heading to the UK’s City of Culture 2013- Londonderry/ Derry for a night out with our members in the North West!

All young solicitors are welcome at the event – for those who need transport a return bus is provided from Belfast. Ticket includes return bus fare, buffet and a complimentary drink!

Book early to ensure your place on this event!

Young Leaders Conference 2012

Save the Date

When: Friday 25 May 2012 Where: Riddel Hall, Stranmillis, Belfast

We are delighted to announce Northern Ireland’s first Young Leaders Conference, which will take place on Friday 25 May.
The conference, titled ‘Inspiring Leadership’, will bring together leaders from a wide range of business sectors including industry, academia, finance and law.
This will be a stand out event in 2012 for young professionals from any business sector who want to develop their leadership skills and engage with some of Northern Ireland’s top business leaders.
This is anticipated to be a sell-out event. To register your interest, please email youngleadersni@gmail.com
NIYSA Upcoming Lectures

March - June 2012

<table>
<thead>
<tr>
<th>DATE</th>
<th>TOPIC</th>
<th>SPEAKER</th>
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<tbody>
<tr>
<td>19/4/12</td>
<td>“A hitch-hikers guide to corporate Insolvency”</td>
<td>Toby McMurray, Partner, Tughans</td>
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<td>James Neill, Director, BDO Accountants</td>
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<td>3/5/12</td>
<td>Parole Commission Hearings</td>
<td>Pearse MacDermott, Solicitor, McCann &amp; McCann</td>
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<tr>
<td>17/5/12</td>
<td>Preparing for Contest – Magistrates’ Court</td>
<td>Gerard McNamara, Solicitor, Kevin R Winters &amp; Co</td>
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<tr>
<td>21/6/12</td>
<td>Emerging Markets &amp; Opportunities</td>
<td>Speakers TBC</td>
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</tbody>
</table>

All lectures at Law Society House – Tea, coffee & sandwiches available

Cost - £20 per lecture for NIYSA members (£40 for non-members)

To book a place, please send cheque made payable to ‘NIYSA’ with booking form to:
NIYSA c/o Charlene Graham, Trevor Smyth & Co 13 Chichester Street, Belfast BT1 4JB
### Belfast Solicitors’ Association

**Annual Lecture Series 2012**

<table>
<thead>
<tr>
<th>Date</th>
<th>CPD</th>
<th>Topic</th>
<th>Speaker</th>
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<tr>
<td>26.4.2012</td>
<td>1 Hour</td>
<td>“Ancillary Relief Developments”</td>
<td>Darren McAuley, Thompsons McClure, Solicitors</td>
<td>1.00 – 2.00pm</td>
<td>£20 Members</td>
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<td>10.5.2012</td>
<td>1 Hour</td>
<td>“Prison, Ombudsman Investigations and the Legal Profession”</td>
<td>Pauline McCabe, Prisoner Ombudsman</td>
<td>1.00 – 2.00pm</td>
<td>£20 Members</td>
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<tr>
<td>25.5.2012</td>
<td>3 Hours</td>
<td>Half Day Judicial Review Seminar</td>
<td>Mr Justice Treacy and Dr Gordon Anthony, Queen's University</td>
<td>2.00 – 5.00pm</td>
<td>£70 Members</td>
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<td>14.6.2012</td>
<td>1 Hour</td>
<td>“Alternatives to Liquidation”</td>
<td>Maria Glover &amp; Brigid Napier, Napier &amp; Sons</td>
<td>1.00pm – 2.00pm</td>
<td>£20 Members</td>
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<td>13.9.2012</td>
<td>1 Hour</td>
<td>“Business Valuation Trends and Liquidity”</td>
<td>Johnny Webb, BDO</td>
<td>1.00 – 2pm</td>
<td>£20 Members</td>
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<tr>
<td>28.9.2012</td>
<td>3 Hours</td>
<td>Client Care and Practice Management Seminar</td>
<td>Sandra Crawford, Carson McDowell, Feargal McCormack</td>
<td>2.00 – 5.00pm</td>
<td>£70 Members</td>
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<td>11.10.2012</td>
<td>1 Hour</td>
<td>“The Charities Act (NI) 2008 and Charity Regulation in NI”</td>
<td>Jill Steele LLB</td>
<td>1.00 – 2.00pm</td>
<td>£20 Members</td>
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<tr>
<td>25.10.2012</td>
<td>1 Hour</td>
<td>EJO Procedures</td>
<td>Master Andrew Wells</td>
<td>1.00 – 2.00pm</td>
<td>£20 Members</td>
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<td>8.11.2012</td>
<td>1 Hour</td>
<td>“Data Protection and Freedom of Information”</td>
<td>Catherine Vint, Senior Policy Officer (NI) Information Commissioner’s Office</td>
<td>1.00 – 2.00pm</td>
<td>£20 Members</td>
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<tr>
<td>6.12.2012</td>
<td>1 Hour</td>
<td>Update on Industrial Tribunal procedures</td>
<td>President Eileen McBride</td>
<td>1.00 – 2.00 pm</td>
<td>£20 Members</td>
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All lectures will be held at Law Society House, 96 Victoria Street, Belfast
Appointment of 2011/2012 BSA Chairman – Reg Rankin

The Annual General meeting of the Association was held on Friday 25 November 2012 at Law Society House and was well attended by our members. The Association extended a warm welcome to Her Honour Judge Brownlee who spoke on her personal experience as a solicitor in Northern Ireland. Reg Rankin of Breen Rankin Lenzi Solicitors was elected BSA Chairman for 2011/2012, John Burke of MacElhatton & Co Solicitors was elected Honorary Secretary and Colin Mitchell of McCartan Turkington Breen Solicitors was elected Honorary Treasurer.

Left: Susan Brennan, outgoing Chairman, presenting medal to incoming Chairman, Reg Rankin.

From left: Colin Mitchell, Honorary Treasurer; Reg Rankin, Chairman and John Burke, Honorary Secretary.

From left: Susan Brennan, Her Honour Judge Brownlee and Reg Rankin, Chairman.

BSA support to IPLS graduates

BSA Committee members Reg Rankin, Olivia O’Kane and Fiona Sterritt joined graduates at the Institute of Professional Legal Studies for the annual end of term party following their exams. By holding this annual event, the Association aims to support and encourage the students of legal education and the future of the legal profession at the Institute of Professional Legal Studies. Thanks are extended to the IPLS Director, Mrs Anne Fenton for hosting the event.
The BSA Golf Outing this year has been arranged to take place at Malone Golf Club, Belfast on Thursday 17 May 2012. The first tee has been reserved between 2.00pm and 4.00pm and the meal and prize giving ceremony will take place in the Club House in the evening.

The total costs will be £75.00 per player, being £50 for the golf, £16.00 for the meal and £9.00 subscription.

Malone Golf Club members and persons not wishing to take a meal should adjust their payments accordingly but we would ask that you make your reservation in advance of the day.

We would remind players that last year’s event was oversubscribed and therefore we invite you to submit your booking form as quickly as possible.

All members of the Association and their visitors will be particularly welcome. Given that there are usually only a few lady players, we would particularly encourage the female members of the Association to take part in the Annual Golf Outing.

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<tr>
<th>BSA Golf Outing Thursday 17 May 2012</th>
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<td>CONTACT NAME:</td>
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<td>Player Four:</td>
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Please forward this booking form together with cheque for the appropriate amount to John Palmer, C & H Jefferson, Solicitors, Norwich Union House, 7 Fountain Street, Belfast, BT1 5EA.

There will be prizes for the main competition for members with official handicaps and for visitors as well as a lady’s prize. A special competition for members without official handicaps will also take place. The main prizes will be decided on a Stableford basis on a full handicap (maximum 24).

Please contact John Palmer at C & H Jefferson, Solicitors on 028 9032 9545 for further details.
**Moir on Land Registration by Arthur H Moir LLB and Emily K Moir LLB**

**A review by Neil Faris**

**Part one**

**Introduction**

Sadly, but in common with much else in the law, the legislative and regulatory provisions for land registration in Northern Ireland have become ever more complex. As the authors of this work point out the legislation now comprises:

- the Land Registration Act (Northern Ireland) 1970 (‘the 1970 Act’)
- the Registration (Lands & Deeds) Order (Northern Ireland) 1992 (‘the 1992 Order’)
- the Land Registration (Electronic Communications) Order (Northern Ireland) 2011 (‘the 2011 Order’)


And this is not to mention the various Land Registry Fees Orders. (The Law Society in a recent Members’ Communication has helpfully notified us of a further fees increase). Finally, there are six sets of Statutory Rules by which compulsory first registration of title (‘CFR’) was imposed (by phases) across Northern Ireland ending with complete CFR on 1 May 2003.

As the authors of this important text book point out in their Preface, there is no consolidating legislation and as they moderately put it, the existence of so many pieces of legislation ‘has the potential to cause confusion’.

So the publication of this work is welcome indeed as a long needed guide and help for the ordinary conveyancing solicitor to the complexities of registered conveyancing in Northern Ireland. Certainly, the Land Registration Manual by Arthur Moir, himself, has been a great help to us all in provision of guidance notes and precedents but the authors have rightly recognised a need ‘to broaden the Manual’s approach and offer guidance on both law and practice’.

This new work, then, offers the conveyancing solicitor guidance and assistance across the whole remit of registered conveyancing. Part I covers the general principles of registration of title to land. Of particular interest will be Chapter 5 on Protecting Unregistered Rights, Chapter 6 on the Conclusiveness of the Title Register and Chapter 7 on Adverse Possession. Part II deals with general conveyancing procedures. Of particular interest here are Chapter 12 on Transfers of parts of folios and Chapter 13 on Transfers affecting Co-owners.

But most importantly each of the Chapters in these parts contains sets of precedents to assist the practitioner.

Then Part III contains in Chapter 20 an Index to the 1970 Act (as amended) and to the 1994 Rules (as amended). Chapter 21 is a Guide to the 1970 Act (as amended) and Chapter 22 is a guide to the 1994 Rules (as amended). Given as noted above that there is no consolidating legislation (nor is there any consolidation of the Regulations) these Chapters are set to be very useful navigational tools for everyone.

Finally, there are Appendices containing ‘Common Causes of Errors in Applications’ and a list of the Precedents contained in the book. The book is published by SLS Legal Publications (NI) to their high standards, containing detailed index, bibliography and tables of cases and legislation: all essential adjuncts to any research work.

In part two of this review (to be published in the next issue of The Writ), I shall touch upon two matters which have sparked some thoughts, recognising that there is so much of interest in the work which cannot be encompassed in any review.

But and by way of trailer for that, it seems to me there is a conundrum behind any system of registered title that is guaranteed by the State. Section 11 of the 1970 Act provides for the conclusiveness of the register, but this is expressly subject to the other provisions of the Act. Chief among the other provisions in this context is Section 69 which provides for rectification. In Chapter 6 on the conclusiveness of the register the authors cite Girvan LJ in Armstrong v Shields where he held:

> “Section 11 . . . is part and parcel of the scheme of registration which is intended to make the register conclusive evidence so that it contains the appropriate evidence which binds successors in title. . . .”

In Chapter 6 the authors set out first the principle of conclusiveness (paras 6.1 to 6.3). Then they set out some exceptions (paras 6.4 to 6.11) noting especially the exception that Section 64 provides that the description of land in the register is not conclusive as to the boundaries or extent of the land unless there is a note on the Folio that the boundaries are conclusive. Then the authors analyse the complex provisions of Section 69 which provide for rectification (paras 6.12 to 6.16). Anyone trying to grapple with this Section would be well advised to consider the analysis set out in regard to Sub-Sections (1), (2) and (3) of Section 69. They conclude (at page 100):

> ‘Commissioner, Northern Ireland Law Commission, but this review is written in my personal capacity.

> Technically, this is a Statutory Rule, rather than primary legislation, but it contains amendments to the 1970 Act made by the Department of Finance and Personnel under sections 1 and 2 of the Electronic Communications Act (Northern Ireland) 2001. (Note also that the 2011 Order is referred to in the book as ‘the Electronic Registration (NI) Order 2011’.)

> By email on 13 January 2012

> The work states the law as it stood at 3 October 2011 and this fees increase took effect on and after 1 February 2012


> [2010] NICH 10

> ‘They add, rightly, that ‘Unfortunately, it appears that this very important exception is not widely known, since many registered owners seem to regard the boundaries shown on the Land Registry map as sacrosanct’.” (para 6.9)
“The conditions imposed by Section 69(3) are, however, subject to Section (3) (iii) which gives the court an overriding discretion if in a particular case it would be unjust not to rectify against the registered owner.”

This does not appear to have been considered judicially in Northern Ireland. The authors helpfully refer to some English case law, though as they rightly point out it is not clear if the Northern Ireland Courts will apply the English reasoning in regard to the overriding discretion and each case must of course be decided on its own merits.

But the question may be arising now more frequently, given firstly that the whole of Northern Ireland is subject to CFR and secondly that the CFR system depends on solicitor certification of title. In the final part of Chapter 6 the authors set out the provisions for compensation contained in the indemnity scheme. In para 6.23 they refer to the power of the Department of Finance and Personnel to seek restitution from third parties when it pays compensation in accordance with the Scheme. In footnote 64 the authors point out that:

“A solicitor who negligently completes a certificate is likely to be regarded as a person who substantially contributed to the loss.”

In the next part, I shall consider some ramifications of this for conveyancing practice.

However, and instead of waiting for the next issue of The Writ, all conveyancing solicitors in Northern Ireland would be well advised to acquire Moir on Land Registration as an essential adjunct to conveyancing in Northern Ireland.

Neil Faris, Solicitor
Moir on Land Registration by Arthur H Moir LL.B and Emily K Moir LL.B
Published by SLS Legal Publications (NI) 2011
Price £135

Richard Houliston has been appointed Solicitor of Banking and Financial Services at A&L Goodbody. In his new role he will advise banks and other financial institutions on all aspects of banking practice, including facility letters (on a syndicated or bi-lateral basis), loan agreements, security documents, priority deeds, inter creditor agreements and subordination documents. He also advises borrowers, including businesses and public and private institutions, on all aspects of their funding requirements such as funding for acquisitions, re-financing, re-structuring or general working capital needs. Prior to joining A&L Goodbody in November 2011, Richard spent six years in Birmingham with leading UK national practice, SGH Martineau. During his time at SGH Martineau, Richard worked in the finance and restructuring group advising a number of leading bank and borrower clients. Richard is a member of Law Society of England & Wales and the Law Society of Northern Ireland.

If you wish to advertise in The Writ please contact Karen Irwin for rates, specification and copy deadlines at:

dcp strategic communication ltd
Bamford House
91-93 Saintfield Road
Belfast BT8 7HN

Tel: 028 9040 2296
Fax: 028 9040 2291
Email: karen@dcppr.co.uk
From the Courts - abstracts of some recent case law

ADMINISTRATION OF JUSTICE

IN THE MATTER OF AN APPLICATION BY A POLICE OFFICER FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

Application for leave to apply for judicial review. - whether the applicant’s identity should be protected by the grant of anonymity by the Court. - overriding objective and principles of open justice that court proceedings should be conducted in public. - a.8 ECHR and whether the conferral of anonymity on the litigant concerned is strictly necessary in special circumstances where to publish the litigant’s identity would prejudice the interests of justice. - whether there is an objectively verified, present and continuing risk to the life of the litigant concerned. - HELD that the applicant’s quest for anonymisation be granted

HIGH COURT
8 FEBRUARY 2012
MCCLOSKEY J

CONTRACT

WILLIAM CLINTON TRADING AS ORIEL TRAINING SERVICES V DEPARTMENT FOR EMPLOYMENT AND LEARNING AND DEPARTMENT OF FINANCE AND PERSONNEL

Procurement exercise taken by the Department the Employment and Learning (DEL) which had as its object the execution of contracts for the provision of certain publicly funded training and apprenticeship programmes in Northern Ireland. - plaintiff tendered unsuccessfully for contracts being procured by the Department. - requirement imposed by r. 47G(1) of the Public Contracts Regulations 2006 precluding the Department from executing any of the contracts in question. - whether the Department’s assessment to the effect that the plaintiff had failed to provide data in respect of achievements, success rates or destinations into positive outcomes reflects the application of an undisclosed or ambiguous selection criterion. - whether the principles of equality of treatment and transparency have been infringed to the plaintiff’s detriment. - whether, in its solicitation of clarification from thirteen other bidders, the Department acted in breach of its duty of equal treatment and/or contravened the competition rules. - manner in which information to potentially interested bidders about matters such as the rules of the procurement competition concerned and the formulation of contract skeleton and award criteria are expressed. - HELD that plaintiff’s challenge succeeds

HIGH COURT
24 JANUARY 2012
MCCLOSKEY J

HENRY BROTHERS (MAGHERAFELT) LIMITED V BRUSNWICK (8 LANYON PLACE) LIMITED

Application by plaintiff for summary judgment in respect of an auditor’s decision for the payment of a sum to the plaintiff contractor by the defendant developer. - parties had entered into a JCT98 contract (as amended) for the construction of an office block and a residential block. - parties had entered into a JCT98 contract (as amended) for the construction of an office block and a residential block. - clauses on practical completion and defects liability period and provisions in relation to payments. - dispute as to whether the works were complete and if so when they were so complete and what sums were due for payment. - whether alleged defects were properly notified in accordance with the contract and whether all retention money should be released. - HELD that judgment made for the plaintiff

HIGH COURT
16 SEPTEMBER 2011
WEATHERUP J

RESOURCE (NI) V NORTHERN IRELAND COURTS AND TRIBUNALS SERVICE

Challenge under the Public Contracts Regulations 2006. - attempts by Northern Ireland Courts and Tribunals Service (NICTS) to procure a new contract for the provision of security and ancillary services for courts in NI. - Resource (NI) (Resource) are the plaintiffs who secured second place in the contract procurement competition. - application by plaintiffs to impugn the decision of the NICTS to award the contract to G4S on the evaluation by NICTS of the cash collection, key performance indicators, service credits, efficiency savings measures dimension of the G4S tender. - whether all these factors, individually or collectively, operate to vitiate the impugned contract award and whether they give rise to infringements of the procurement rules and principles in play, warranting an appropriate remedy in consequence. - HELD that the first ground that during the evaluation by the NICTS of the cash collection dimension of the G4S tender the NICTS Evaluation Panel was guilty of a clearly demonstrated, serious and material error and that this ground succeeds in substance. - whether the award of contract should be set aside or awarded to Resource. - HELD that impugned contract award decision be set aside

HIGH COURT
18 NOVEMBER 2011
MCCLOSKEY J
From the Courts - abstracts of some recent case law

CORONERS

DUNCAN MCLUCKIE V CORONER FOR NORTHERN IRELAND

Appeal against decision to dismiss the appellant’s application for judicial review of a decision of the Coroner whereby he refused the appellant’s application for an order under a. 4(2) Contempt of Court Act 1981 postponing media reporting of inquest proceedings before the Coroner. - whether trial judge erred in law in concluding that the Coroner had no power to grant an order under s. 4(2) of the Contempt of Court Act 1981. - whether the trial judge failed to consider adequately or at all the extent to which media publicity about the appellant’s conviction during the course of the hearing of the Inquest would be likely to prejudice the jury in their consideration of the Appellant’s evidence and thereby prejudice the administration of justice. - applicant sought order of certiorari quashing the decision of the Coroner and an Order of Mandamus compelling the Coroner to make a restricted reporting order and a declaration that the said decision is unlawful and ultra vires. - HELD that appeal allowed and decision of Coroner quashed. - case returned to the Coroner for consideration of the application under s. 4(2) for an order postponing publication of the fact of the appellant’s conviction for murder and the fact that he is serving a life sentence in HMP CROWN COURT.

HIGH COURT
21 DECEMBER 2011

MCCLOSKEY J

CRIMINAL LAW

R V MARK JOHN BOYD

Defendant caused death by dangerous driving. - defendant gave a different version of events placing the blame on the driver of the other vehicle. - defendant obtained a head injury during the collision. - whether this would lead to amnesia or false memory which would cause the defendant to give a false account of the accident and lead to an aggravating factor in the sentence. - HELD that the defendant be sentenced to 33 months imprisonment and be disqualified from driving for 10 years.

CROWN COURT
21 NOVEMBER 2011

BURGESS HHJ

R V J CROLLY

Appeal against sentence. - appellant pleaded not guilty to murder but guilty to manslaughter on the grounds of diminished responsibility and sentenced to 6 ½ years imprisonment before being eligible for consideration for release under the Life Sentences (NI) Order 2001. - whether the minimum term to be served was manifestly excessive in the light of sentences imposed in various cases of manslaughter, since it was the equivalent of a 13 year substantive sentence. - appellant was alcohol dependent. - aggravating and mitigating factors. - HELD that the sentence was not manifestly excessive and appeal dismissed.

COURT OF APPEAL
27 SEPTEMBER 2011

HIGGINS LJ, GIRVAN LJ, COGHLIN LJ

R V MARK HADDOCK AND OTHERS

Defendants charged with murder. - accomplice evidence. - Serious Organised Crime and Police Act 2005 and the statutory provisions relating to defendants who assist in the investigation or prosecution of an offence. - liability of secondary parties. - delay. - adverse inference. - good and bad character. - contaminated evidence. - duress. - memory. - effect of alcohol and drug abuse. - confusion of roles. - contradictions with the evidence of victims and police. - demeanour of witnesses. - HELD that the evidence before the Court was too weak and flawed to convict the accused and all but one of the other defendants.

CROWN COURT
22 FEBRUARY 2012

GILLEN J

R V PAUL STOCKMAN

Sentencing. - defendant pleaded guilty to manslaughter and not guilty to murder. - mitigating and aggravating factors. - likelihood of re-offending and risk of serious harm, particularly within domestic relationships. - HELD that the defendant be sentenced to 12 years imprisonment.

CROWN COURT
25 NOVEMBER 2011

HART J

CREDIT

BARRY MATCHETT V HEATHER HAMILTON

Credit hire litigation. - plaintiff claims damages arising out of a road traffic accident where liability is admitted. - dispute between Crash Services Limited and the defendant’s insurance company relating to the hourly rate for the labour element of the Crash accident repairs invoice. - cost of hourly rate of labour. - governing principles of restitutio in integrum. - restoration in original condition. - reasonableness. - appeal against decision of the District Judge to award a lower “going” hourly rate. - HELD that the cost of the hourly rate claimed is unreasonable and appeal dismissed.

HIGH COURT
21 DECEMBER 2011

MCCLOSKEY J
DAMAGES

BARRY MCGURGAN V CHRISTOPHER CAIRNS AND CONNOR DEVINE

Damages. - plaintiff was towing a horse in a horse box when he was in collision with a motor vehicle owned by the defendants. - horse sustained injuries and had to be destroyed. - liability admitted by the defendants. - value of racehorse. - dispute over pedigree and potential. - HELD that the value of the horse at time of death is £12,000.

HIGH COURT
25 NOVEMBER 2011
WEATHERUP J

DISCOVERY

DEPARTMENT OF ENTERPRISE, TRADE AND INVESTMENT V PHILIP BLACK, DAVID JAMES CLEMENTS, DAVID MCCONAGHY, ALBERT MCCORMICK, SAMUEL SIDLOW MCFARLAND AND DAVID HENRY COLIN FERGUSON

Application for discovery brought by the respondents in the course of disqualification proceedings issued against them by the appellant. - appellants are not prepared to file replying affidavits in defence of their disqualification proceedings prior to the applicant providing discovery. - whether the respondent’s application was premature. - whether the documents sought were either subject to legal privilege or part of a “fishing expedition”. - respondents were directors in the Presbyterian Mutual Society, and other directors are not the subject of proceedings. - respondents claim that the alleged grounds for unfitness could apply to all of the directors of the company, that in seeking disqualification orders against some directors but not others the applicant has acted with apparent bias and unfairness, by the currently applicable test, so as to render the defendant company vicariously liable. - whether the harassment was so closely connected to the employment on the shop floor to render the defendant liable. - HELD that the texts were sufficient in number and content to pass the threshold in respect of torment of the victim which would sustain criminal liability and were both oppressive and unacceptable, that the messages emanated from an employee of the company and that the employer is liable. - damages of £11,500 awarded.

COUNTY COURT
16 DECEMBER 2011
MCREYNOLDS HHJ

EVIDENCE

K V PUBLIC PROSECUTION SERVICE

Appeal by way of case stated from a decision of Strabane Youth Court whereby it refused an application on behalf of the appellant to exclude, under a. 76 Police and Criminal Evidence (NI) Order evidence of admissions made by the appellant to the police on the ground that it was obtained during police interview in the absence of an appropriate adult. - appellant voluntarily attended a police station to answer questions regarding criminal damage. - he wished to proceed without a solicitor, was cautioned and admitted he was involved in the criminal damage. - whether the police should have arranged for an appropriate adult to be present during the interview and their failure to do so had such an adverse effect on the fairness of the proceedings that the court should exercise discretion and exclude the evidence. - whether the Youth Panel should exercise its discretion to exclude the evidence of the interview because the Secretary of State had failed promptly to amend the PSNI Codes of
Practice following the passage of the PACE Amendment Order which extends the age of those entitled to the presentence of an appropriate adult from a person under 17 to a person under 18. - whether the appellant should be treated as a youth. - whether inconsistent with the appellant’s a. 6 ECHR rights. - HELD that appeal dismissed
COURT OF APPEAL
27 SEPTEMBER 2011
HIGGINS LJ, GIRVAN LJ, COGHLIN LJ

R V MARIANO PERIERA AND MARITO SOARES
Ruling on admissibility of police interview evidence. - defendants charged with sexual offences who were arrested and interviewed by the police. - defendants were Portuguese nationals whose mother tongue was Tetum, and police had engaged the services of a translator to translate the statements and questions of the police officers and responses of defendants - defendants object to the content of their interviews being introduced in evidence based on the failure of the police to ensure they were given a correct caution prior to each interview. - purpose, form and administration of police caution. - problems of literally translating the caution into another language. - whether the caution was correctly translated. - HELD that the admission of interviews should not be allowed since the cautions were incorrectly administered
CROWN COURT
20 SEPTEMBER 2011
MCFARLAND J

Y V MCG
Application by respondent seeking ancillary relief pursuant to a summons. - history of the marriage and considerations under a. 27 Matrimonial Causes (NI) Order 1978. - parties are in dispute as regards the effective length of the marriage. - whether relationship moved seamlessly from cohabitation to marriage without any alteration in the way the couple lived. - whether matrimonial conduct can be taken into account. - financial conduct of the husband and the assessment of his credibility. - whether investment properties should be included in the consideration and treated as matrimonial property. - HELD that the property be divided according to the terms of the judgment
HIGH COURT
9 JANUARY 2012
BELL, MASTER

FAMILY LAW

SL V RG
Appeal by mother against orders made by Judge whereby she dismissed the mother’s application to permanently remove the 2 young children of the parties from their present home in Northern Ireland to the Republic of Ireland and defined the future contact arrangements for the respondent father with the children. - approach of courts to relocation cases. - HELD that in the interests of the welfare of the children the application by the mother is refused and decision of Judge upheld
HIGH COURT
2 FEBRUARY 2012
WEIR J

HEALTH AND SAFETY

LEANNE SMITH AS PERSONAL REPRESENTATIVE AND ADMINISTRATRIX OF THE ESTATE OF DAVID JOSEPH MCLOUGHLIN (DECEASED) V RODNEY WILGAR T/A WILGAR CONTRACTS
Plaintiff is the partner of the deceased and the administratrix of his estate who sues by virtue of the Fatal Accidents (NI) Order 1977 on her own behalf and by virtue of the Law Reform (Miscellaneous Provisions) Act (NI) 1937 by reason of the death of the deceased in the course of his employment as painter and decorator with the defendant. - deceased fell from a ladder at a great height and struck his head on the ground. - liability of defendant. - whether defendant guilty of breaches of statutory duty under the Management of Health and Safety at Work Regulations (NI) 2000. - duty of employer to take into account the capabilities as
HIGH COURT
1 DECEMBER 2011
TREACY J

FIREFARMS

IN THE MATTER OF AN APPLICATION BY DGD (REVOCATION OF FIREARM LICENCE) FOR JUDICIAL REVIEW
Application to challenge a decision of the Minister of Justice dismissing the applicant’s appeal against the decision of the Chief Constable to revoke his Firearms Certificate. - applicant was granted a Firearms Certificate to retain firearms at his home address for sporting purposes and pest control. - PSNI had been called to remove the firearms which the applicant had stored in his father’s house, where he had not been authorised to store them, and whereby he was allowing another person to have illegal access to them. - whether the decision was Wednesbury irrational and disproportionate. - whether the applicant is a fit person to hold firearms. - HELD that it was procedurally unfair that the applicant was not given the opportunity to contribute by way of representation to the allegation of permanent storage made by DOJ officials to the Minister prior to the decision of the Minister being made. - decision of Minister quashed and application for judicial review allowed
HIGH COURT
1 DECEMBER 2011
TREACY J
regards health and safety of each employee
in entrusting tasks to that employee. -
deceased suffered from diabetes and was
subject to hypoglycemic attacks. - whether
the defendant was aware of this prior to the
accident. - HELD that the defendant did
have knowledge of the deceased condition,
and had he carried out a suitable and
sufficient assessment of the risks of this job
to the health and safety of the deceased he
would have provided a scaffolding tower
for him. - HELD that there was breach of
statutory duty and negligence, and that
the deceased was guilty of contributory
negligence and was one third to blame for
the injuries leading to his death
HIGH COURT
24 AUGUST 2011
GILLEN J

INSOLVENCY
IRISH BANK RESOLUTION
CORPORATION LIMITED V JOHN
IGNATIUS QUINN ALSO KNOWN AS
SEAN QUINN
Application to annul and rescind
bankruptcy order on the basis that the
court lacked the jurisdiction to open
main proceedings under a. 3(1) of EC
Regulation 1346/2000 on Insolvency
Proceedings or on the basis that the ex
parte order had been obtained through
misrepresentation and/or non-disclosure.
- centre of main interest of the defendant.
- whether the head office of a corporate
body is its main centre of interest. - where
the debtor's centre of main interests,
where he conducted the administration
of his interests on a regular basis before
the presentation of the petition for
bankruptcy, was. - whether that centre
of administration was ascertainable by
third parties. - HELD that the centre of the
defendant's main interest is the Republic of
Ireland and that the defendant had failed to
disclose relevant facts. - bankruptcy order
annulled
HIGH COURT
10 JANUARY 2012
DEENY J

JUDICIAL REVIEW
IN THE MATTER OF LORETO GRAMMAR
SCHOOL, OMAGH
Legitimate expectation. - whether the
representations and actions by the
Department of Education and the Minister
of Education gave rise to a substantive
legitimate expectation enforceable by the
Court. - School had set out the grounds of its
legal challenge to the Department's decision
making in respect of the proposed project to
redevelop the School. - whether the Minister's
decision breached the School's legitimate
expectation that the Department would
provide funding for the construction of a new
school building on the existing site. - School
also alleged breach of procedural legitimate
expectation. - HELD that the Department's

Appeal against an order of the Bankruptcy
Master. - applicants issued a Statutory
Demand asserting a debt owed by the
respondents relating to professional
services rendered by the applicant. - Master
dismissed the application and ordered that
the applicants be at liberty to present a
bankruptcy petition. - respondent defended
the bankruptcy petition on the ground that
the amount claimed comprised invoices for
professional services which had not been
agreed or established by legal process
and is therefore not a liquidated sum. -
further Statutory Demand issued by the
applicants relating to invoices for separate
years. - determination of the facts yet to be
concluded. - whether bankruptcy petition
legitimate. - whether the debt underpinning
the bankruptcy petition is for a liquidated
sum by virtue of an agreement between
the parties. - HELD that the decision of the
Master upheld and appeal dismissed
HIGH COURT
18 OCTOBER 2011
MCCLOSKEY J

IMMIGRATION
IN THE MATTER OF AN APPLICATION
BY HANS REUTER FOR JUDICIAL
REVIEW
Application by a former prisoner at HMP
Magilligan seeking relief in respect of his
detention by the United Kingdom Borders
Agency including a claim for damages
arising out of his detention. - applicant
challenges the manner in which the
respondent executed a deportation order
and alleges that the steps taken by the
respondent were characterised by delay
and that his detention became unlawful in
consequence. - applicant was taken from
HMP Magilligan to immigration removal
centres in England and Scotland prior to his
departure 5 days later. - whether unlawful,
ultra vires and Wednesday unreasonable.
- principles governing detention and
departure. - requirement of the Secretary
of State to act with reasonable diligence and
expedition when effecting removal. - HELD
that the continuing detention of the applicant
in the circumstances he experienced was
unlawful
HIGH COURT
13 JANUARY 2012
TREACY J

NOEL MOORE AND MARTIN GRIMLEY
PRACTISING AS MOORE GRIMLEY
CHARTERED ACCOUNTANTS V
RODNEY WILLIAMSON TRADING
AS COMMERCIAL VEHICLE SALES,
WILLIAMSON PROPERTIES, R W
FARM AND NORMANDY INN
Appeal against an order of the Bankruptcy
Master. - applicants issued a Statutory
Demand asserting a debt owed by the
respondents relating to professional
services rendered by the applicant. - Master
dismissed the application and ordered that
the applicants be at liberty to present a
bankruptcy petition. - respondent defended
the bankruptcy petition on the ground that
the amount claimed comprised invoices for
professional services which had not been
agreed or established by legal process
and is therefore not a liquidated sum. -
further Statutory Demand issued by the
applicants relating to invoices for separate
years. - determination of the facts yet to be
concluded. - whether bankruptcy petition
legitimate. - whether the debt underpinning
the bankruptcy petition is for a liquidated
sum by virtue of an agreement between
the parties. - HELD that the decision of the
Master upheld and appeal dismissed
HIGH COURT
18 OCTOBER 2011
MCCLOSKEY J

JUDICIAL REVIEW
IN THE MATTER OF LORETO GRAMMAR
SCHOOL, OMAGH
Legitimate expectation. - whether the
representations and actions by the
Department of Education and the Minister
of Education gave rise to a substantive
legitimate expectation enforceable by the
Court. - School had set out the grounds of its
legal challenge to the Department's decision
making in respect of the proposed project to
redevelop the School. - whether the Minister's
decision breached the School's legitimate
expectation that the Department would
provide funding for the construction of a new
school building on the existing site. - School
also alleged breach of procedural legitimate
expectation. - HELD that the Department's
From the Courts - abstracts of some recent case law

appeal be allowed in part and the order of the court varied to quash the decision of the Department to categorise the School project as non-compliant with regard to public expenditure guidelines

COURT OF APPEAL
10 JANUARY 2012
MORGAN LCJ, GIRVAN LJ, COGHLIN LJ

LEGAL AID

AN APPLICATION BY JOHN FINUCANE FOR JUDICIAL REVIEW
Applicant, who is a partner in a firm of solicitors, challenges a decision of the Legal Services Commission refusing to confirm that the criminal legal aid certificate issued to defendants represented by him would be funded under the provisions of the Legal Aid for Crown Court Proceedings (Costs) Rules (the 2005 Rules) as opposed to the new funding regime introduced by the Legal Aid for Crown Court Proceedings (Costs) (Amendment) Rules 2011 (the 2011 Rules). - whether the legal aid certificate is the defendants and was granted at a time when the original rates were in force, and therefore the decision of the LSC is unlawful. - whether the assigning of a new solicitor to represent criminal defendants does not constitute the issue of a fresh certificate. - practice of the LSC during the transitional arrangements between the 1992 and 2005 Rules. - presumption against absurdity. - practice of amending certificate by different High Court Judges. - HELD that a certificate had been granted while the 2005 Rules were in force and the decision of the LSC that the defendant's legal representation is to be funded under the new rules is quashed

HIGH COURT
6 OCTOBER 2011
TREACY J

POLICE

IN THE MATTER OF NEIL MONTGOMERY FOR JUDICIAL REVIEW
Applicant challenges the decision of the Police Ombudsman for Northern Ireland in finding that the applicant's complaint is not substantiated. - the complaint arose out of the entry to his home by the police without a warrant or consent. - statutory power under the Police and Criminal Evidence (NI) Order for police to justify their entrance into a home. - power of search. - whether the Ombudsman applied the incorrect test. - HELD that the officers had a genuine case for entering the applicant's home and application dismissed

HIGH COURT
16 SEPTEMBER 2011
TREACY J

PROBATE

IN THE MATTER OF AN APPLICATION FOR THE DECLARATION OF THE PRESUMED DEATH OF DEIRDRE MARIE O'FLAHERTY NEE DONNELLY
Application brought by Dr Kenneth O'Flaherty under the Presumption of Death Act (Northern Ireland) 2009 for the Court to make declarations of presumed death at an earlier date than allowed for by common law. - all formal requirements under the legislation had been complied with. - applicant was married to the disappeared person. - HELD that on the evidence heard the Court is satisfied that the person is presumed to be dead and that her death occurred on the morning of her disappearance and declarations made accordingly

HIGH COURT
9 JANUARY 2012
DEENY J

REAL PROPERTY

B v B
Appeal from an order of the acting Registrar of Titles whereby the appellant complains of an inhibition being registered by the Order of the acting Registrar of Titles on a folio which contains his dwelling house and of which he is otherwise the absolute owner subject to a mortgage. - HELD that the Order of the acting Registrar was correctly made and appeal refused

HIGH COURT
20 JANUARY 2012
DEENY J

IN THE MATTER OF AN APPLICATION BY AIDAN GREW FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
Application for judicial review to quash the decision of the Police Service of Northern Ireland (PSNI) to seize cash from the applicant's sister at HMP Maghaberry and to compel the PSNI to deliver the said sum of money to HMP Magheraberry to discharge the warrant under which he is held thereby securing his release. - applicant charged with fraudulent evasion of duty contrary to s. 170(2) Customs and Excise Management Act 1979 relating to a cigarette smuggling operation. - confiscation order made. - statutory basis for the seizure of the cash. - whether the PSNI had reasonable grounds for suspecting the money seized was recoverable property, was intended to be used for unlawful conduct and that the seizure was necessary. - HELD that the application for judicial review is refused

HIGH COURT
21 DECEMBER 2011
MORGAN LCJ, GIRVAN LJ, COGHLIN LJ

REAL PROPERTY

B v B
Appeal from an order of the acting Registrar of Titles whereby the appellant complains of an inhibition being registered by the Order of the acting Registrar of Titles on a folio which contains his dwelling house and of which he is otherwise the absolute owner subject to a mortgage. - HELD that the Order of the acting Registrar was correctly made and appeal refused

HIGH COURT
20 JANUARY 2012
DEENY J
ANNE BONES V STEPHEN ROBINSON
Ex tempore judgment. - action brought by writ of summons. - plaintiff claims that as a result of a sale carried out by public auction at her home the defendant agreed to buy and the plaintiff agreed to sell that property. - action for specific performance or rescission of contract. - defendant disputes that the land was sold and that the plaintiff had agreed to sell. - defendant also disputes the sale price and the validity of the contract. - whether the money he paid was for a deposit or was a loan on trust. - whether misrepresentation on the part of the vendors. - onus on the defendant to show that specific performance is not justified.

HIGH COURT
28 SEPTEMBER 2011
DEENY J

JOHN MONE V DRIVER AND VEHICLE AGENCY
Appeal pursuant to s. 59 Crime (International Co-operation) Act 2003 against the decision of the Driver and Vehicle Agency to disqualify the appellant from driving in the UK in mutual recognition of a driving disqualification imposed upon him by a court in Ireland. - whether the DVA erred in law in finding that no appeal is outstanding in relation to the disqualification imposed by the Court in Ireland. - conditions to be met before the UK authorities can recognise a foreign disqualification. - appellant had lodged an appeal against his disqualification in another Member State outside the fixed time limit. - HELD that in this case no appeal is outstanding and appeal against DVA dismissed.

COURT OF APPEAL
16 DECEMBER 2011
MORGAN LCJ, GIRVAN LJ, COGHLIN LJ

ALISTAIR NIGEL HAYES V MARLYN MCGUIGAN, THOMAS JOHN MCGUIGAN, GABRIEL MCGUIGAN, WENDY CLARKE, NOELEEN MCGINLEY AND THOMAS JAMES MCGUIGAN
Rectification. - plaintiffs claim that through a mapping error in a transfer part of their land had been inadvertently included in the defendant’s folio. - declaration sought that the boundary was as indicated on a map and that the Land Registry entries be amended accordingly. - plaintiffs claim adverse possession. - defendants claimed it was not an error as claimed. - that it was too late for rectification and that they or their predecessors in title had exclusive possession of the land in question. - whether the present owner is precluded from obtaining rectification by any delay or acquiescence on the part of his predecessors. - HELD that plaintiff is entitled to declaration sought.

MAGISTRATES’ COURT
31 JANUARY 2012
CONWAY DJ

ROAD TRAFFIC

R V JAMES JOHN STEWART CASWELL
Leave to appeal against determinate sentence. - applicant arraigned and pleaded not guilty to one count of causing grievous bodily injury by dangerous driving in public contrary to a. 9 Road Traffic (NI) Order 1995 and was sentenced to a determinate sentence of 21 months comprising 10 months and 2 weeks in custody and the same on licence. - application dismissed. - guidance on how to establish the factual basis for a plea where there is a dispute as to the relevant circumstances and how guideline cases should be approached.

RECORDERS COURT
11 JANUARY 2012
BURGESS HHJ

SUCCESSION

LIAM KINNEY V SARAH MCKITTRICK
Administration of estates on intestacy. - proprietary estoppel. - plaintiff seeks claim to lands. - whether there was expectation of interest. - credibility of plaintiff. - whether the deceased did make an enforceable promise that the plaintiff would get all his lands. - whether the plaintiff can be granted a life interest in the property.

HIGH COURT
18 NOVEMBER 2011
DEENY J

TERRORISM

BBC V PSNI
Application by the Police Service of Northern Ireland (PSNI) asking the Recorder to exercise his powers under the Terrorism Act to require the BBC to produce to the PSNI all journalistic material including broadcast, unbroadcast and unedited footage in respect of an incident supporting terrorism at Londonderry City Cemetery. - application is resisted by the BBC who allege it is an abuse of process. - whether the applicant has satisfied the Court that the material sought is likely to be of substantial benefit and value. - HELD that the application is not an abuse of process and that the Court cannot be satisfied that the condition of substantial value has been satisfied. - application refused.

RECORDERS COURT
11 JANUARY 2012
BURGESS HHJ
Pleural Plaques

Pleural plaques is a small area of benign scarring on the lungs which are not themselves a disease and have no symptoms. The thickening of lung membranes is an indicator of past exposure to asbestos and signifies an increased risk of developing the disease mesothelioma. Since 14 December 2011, people suffering from the asbestos-related lung condition pleural plaques in Northern Ireland have been able to seek compensation due to new legislation. The legislation reverses a House of Lords decision of 2007 which ruled victims could not claim compensation.

Legislation

Damages (Asbestos-related Conditions) Act (Northern Ireland) 2011 Ch 28
An Act to provide that certain asbestos-related conditions are actionable personal injuries. Commencement: 14 December 2011

The Damages (Asbestos-related Conditions) (2011 Act) (Commencement) Order (Northern Ireland) 2011SR 409
This Order provides for the Damages (Asbestos-related Conditions) Act (Northern Ireland) 2011 to come into operation on 14 December 2011

Articles

As the legislation only came into force on 14 December 2011, there has of yet been no articles or recent caselaw specifically for Northern Ireland.

An overview of the legal landscape of negligently inflicted asbestos related conditions (analyses the legal landscape concerning asbestos related conditions. Examines the historical use and regulation of asbestos and considers pleural plaques and the litigation surrounding them as well as pleural thickening and asbestosis)
McKenna: 2011 4 JPIL 205-238

Damages for pleural plaques – it’s still in the postcode (reports on the latest compensation developments for asbestos induced condition and discusses the Scottish and Northern Ireland case)
Fidderman: 2011 399 HSB 12-14

Power and authority (discusses the Axa decision seen as a victory for pleural plaques sufferers in Scotland)
Smith: 2011 Nov JLSS 16-18

Caselaw

Axa General Insurance v Lord Advocate
The Supreme Court held that the Damages (Asbestos-related Conditions)(Scotland) Act 2009 (the 2009 Act) was within the legislative competence of the Scottish Parliament as it was not incompatible with the rights of insurers pursuant to the First Protocol to the European Convention on Human Rights. Although the 2009 Act was amenable to judicial review by the court at common law, the guiding principle for the basis for such review was to be found in the rule of law 2011 UKSC 46; 2011 WLR 871 (available from Law Society Library)

Rothwell v Chemical & Insulating Co Ltd; Re Pleural Plaques Litigation
sub nom Grieves v FT Everard & Sons, Re Pleural Plaques Litigation
Each of the claimants had been negligently exposed to asbestos dust which had three foreseeable consequences. The claimant had developed pleural plaques; the claimant was at risk of developing one or more long-term asbestos related diseases; and the claimant had suffered anxiety at the prospect that he might suffer such disease. Whether, by aggregating with pleural plaques one or both of the other consequences, sufficient damage could be demonstrated to found a cause of action. HELD - The primary way that the claimants put their case was unsound. There was no legal precedent in English law, beyond first instance decisions, for aggregating three heads of claim which, individually, could not found a cause of action, so as to constitute sufficient damage to give rise to a legal claim [2006] EWCA Civ 27, [2006] 4 All ER 1161 9 (available from Law Society Library)

Johnston v NEI International
If the pleural plaques themselves were not damaged, whether they became damaged when aggregated with the risk which they evidenced or the anxiety which that risk caused. HELD– The appeals were dismissed. The development of pleural plaques, whether or not associated with the risk of future disease and anxiety about the future, was not an actionable injury. The same was true even if the anxiety caused a recognised psychiatric illness such as clinical depression. A claim in tort based on negligence was incomplete without proof of damage. In principle, neither the risk of future injury nor anxiety at the prospect of future injury was actionable. They could not, therefore, be relied upon to create a cause of action which would not otherwise exist.

NI Caselaw pre Pleural Plaques legislation – available on Libero

Kennedy V Harland & Wolff PLC
Damages. - whether anxiety arising from onset of asbestos related disease is included in previous judicial awards for damages. - whether separate condition of pleural plaques should be subsumed into award. - £35,000 damages
New Books in the Library

- Anderson, J. Recent developments in tort law. SLS occasional papers No.3 SLS. 2011

- Lewis, T. Employment law: an adviser's handbook. 9th ed. LAG. 2011
- Proctor, C. Goode on payment obligations in commercial and financial transactions. 2nd ed. Sweet & Maxwell. 2009
Missing Wills

Re: Hugh Kirk
Originally of: 35 Katrine Park, Finaghy Road South, Belfast BT10 0TH
Date of Death: 1 January 2012
Would any person having knowledge of the whereabouts of a Will for the above named deceased please contact:
Paul K Nolan & Co
Solicitors
135a Upper Lisburn Road
Belfast BT10 0LH
Tel: 028 9030 1113
Fax: 028 9060 1784
Email: law@plkn.co.uk

Re: John Gunning (deceased)
Of: 7 Roddens Crescent, Belfast BT5 7JN
Date of Death: 24 October 2011
Would any person having knowledge of the whereabouts of the Will made by the above named deceased please contact:
Andrew Kirkpatrick
Mills Selig
Solicitors
21 Arthur Street
Belfast BT1 4GA
Tel: 028 9024 3878
Fax: 028 9023 1995
Email: andrew.kirkpatrick@millselig.com

Re: Norman Crozier (deceased)
Late of: 15a Thornhill Drive, Belfast BT5 7AW
Date of Death: 26 November 2011
Would any firm holding or having knowledge of a Will made by the above named deceased please contact:
Millar McCall Wylie LLP
Solicitors
Eastleigh House
396 Upper Newtownards Road
Belfast BT4 3EY
Tel: 028 9020 0050
Email: pamela.mcmenemy@mmwlegal.com

Re: Gilbert Yeates (deceased)
Late of: 12 Breach Close, Belfast BT5 4QD
Formerly of: 114 Templemore Avenue, Belfast
Date of Death: 30 December 2011
Would any person having knowledge of the whereabouts of a Will made by the above named deceased please contact:
CMG Solicitors
3a Market Street

Re: Hugh Kirk (deceased)
Late of: 35 Katrine Park, Finaghy, Belfast
Date of Death: 1 January 2012
Would any person having knowledge of the whereabouts of a Will made by the above named deceased please contact:
Oonagh Maguire
Breen Rankin Lenzi
Solicitors
Unit 2
Slemish Building
105 Andersonstown Road
Belfast BT11 9BS
Tel: 028 9061 8866
Fax: 028 9061 8822
Email: Oonagh@brlsolicitors.com

Re: Owen McMullan
Late of: 55 Annacloy Road, Downpatrick
BT30 9AQ
Date of Death: 14 March 2005
Would any person having knowledge of the whereabouts of a Will for the above named deceased please contact:
Joe Napier
Napier & Sons
1/9 Castle Arcade
Belfast BT1 5DF
Tel: 028 9024 4602
Fax: 028 9033 0330
Email: joe@napiers.com

Re: Rose Quinn
Late of: 100 Blackrock Road, Broughderg, Omagh, County Tyrone BT79 8JG
Date of Death: 10 January 2012
Would any person having knowledge of the whereabouts of a Will for the above named deceased please contact:
P A Duffy & Co
Solicitors
27-29 Broad Street
Magherafelt
County Derry BT45 6EB
Tel: 028 7963 3433
Fax: 028 7930 1658
Email: magherafelt@paduffy.com

Re: Colm Kelly
Late of: 9 Crocknamohill Road, Draperstown, County Derry
Date of Death: 20 January 2012
Would any person having knowledge of the whereabouts of a Will for the above named deceased please contact:
P A Duffy & Co
Solicitors
27-29 Broad Street
Magherafelt
County Derry BT45 6EB
Tel: 028 7963 3433
Fax: 028 7930 1658
Email: magherafelt@paduffy.com

Re: Mary Catherine Doris
Late of: 45 Meenagh Park, Coalisland, Dungannon, County Tyrone
Date of Death: 30 March 2006
Would anyone having any knowledge of the whereabouts of the Will of the above named deceased please contact:
Francis Rafferty
Rafferty & Donaghy Ltd
Solicitors
2 Donaghmore Road
Dungannon
County Tyrone BT70 1EZ
Tel: 028 8772 7055
Fax: 028 8775 2085
Email: francis@raffertyanddonaghy.com

Re: Thomas Ernest Mathers (deceased)
Late of: 30 Prospect Heights, Carrickfergus, County Antrim BT38 8QY
Date of Death: 11 November 2011
Would any person having knowledge of the whereabouts of a Will made by the above named deceased please contact:
Reid, Black & Co
Solicitors
Six Mile Chambers
59 Main Street
Ballyclare
County Antrim BT39 9AA
Tel: 028 9335 2221
Fax: 028 9335 4102
Email: karen@reidblack.com

Re: Laurence Donnelly
Late of: 15 Hillside, Chapel Hill, Mayobridge, Newry, County Down
Date of Death: 18 November 2011
Would any person having knowledge of the whereabouts of the Will for the above named deceased please contact:
Solicitors
Office 1
16 Balloco Avenue
Bangor
County Down  BT19 7OT
Tel:  028 9145 6666
Fax:  028 9145 7700

Re:  Mary Tully  (deceased)
Late of:  4 Millhead Park, Belfast
Date of Death:  29 November 2011
Would any solicitor knowing the whereabouts of any Will for the above named deceased please contact:
Kieran Barrett
Haugheys
Solicitors
138 Upper Lisburn Road
Belfast  BT10 0BE
Tel:  028 9043 1222

Re:  Eileen Patricia McMinn  (deceased)
Late of:  36 Glendale Avenue North, Belfast
Date of Death:  6 December 2011
Would anyone having any knowledge of the whereabouts of any Will made by the above named deceased please contact:
Law Quinn

Re:  Alan Malcolm Stewart  (deceased)
Late of:  5 Dunboyne Avenue, Larne, County Antrim
Date of Death:  6 December 2011
Would any person having knowledge of the whereabouts of a Will made by the above named deceased please contact:
C T McAlpine & Son
Solicitors
Northland Row
Dungannon
County Tyrone  BT71 6AT
Tel:  028 8772 2718
Fax:  028 8772 3226

Re:  John Robert Stafford  (deceased)
Late of:  19 High Street
Omagh
County Tyrone  BT78 1BA
Date of Death:  6 January 2012
Would any person having knowledge of the whereabouts of a Will for the above named deceased please contact the undermentioned Solicitors within 21 days of the date of this advertisement:
Andrew T Armstrong & Co
Solicitors
19 High Street
Omagh
County Tyrone  BT78 1BA
Tel:  028 8224 1222
Fax:  028 8225 0059
Email:  office@a-armstrongsolicitors.co.uk

Re:  George Matthew Patton  (deceased)
Late of:  37 Drumard Park, Lisburn, BT28 2HU
Date of Death:  13 September 2011
Would any person having knowledge of the whereabouts of any Will made by the above named deceased please contact:
Reid & Co Solicitors
48 Bachelors Walk
Lisburn
County Antrim  BT28 1XN
Tel:  028 9266 3310
Email:  info@creidco.com

Re:  Jemima Johnston  (deceased)
Late of:  Spa Nursing Home, 77 Grove Road, Ballynahinch BT24 8PW
Date of Death:  7 June 2011
Would any person having knowledge of the whereabouts of an original Will made by the above named deceased please contact:
James Boston & Sullivan
Solicitors
1-3 Lombard Street
Belfast  BT1 1RB
Tel:  028 9032 0603
Fax:  028 9033 2770
Email:  paul.carson@bostonsullivan.com

Re:  Olwyn Frances Elizabeth Hazelton
Residence and Place of Death:  44 Old Newry Road, Banbridge, County Down
Date of Death:  22 December 2011
Would any person having knowledge of the whereabouts of any Will made by the above named deceased please contact:
The Last Will & Testament of the above named deceased please contact:

Re:  Mary Tully  (deceased)
Date of Death:  6 December 2011

Re:  Olwyn Frances Elizabeth Hazelton
Date of Death:  22 December 2011

Re:  John Robert Stafford  (deceased)
Date of Death:  6 January 2012

Re:  George Matthew Patton  (deceased)
Date of Death:  13 September 2011

Certificate relating to the above mentioned Folio shall forthwith produce said Certificate or communicate such information to the undermentioned 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.

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DX: 4221 NR Belfast 24
Tel: 028 9038 2030
Fax: 028 9038 2107

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Accountants
6 Annadale Avenue
Belfast BT7 3JH

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John G Neill LLB, MA
Contact:
CMG Solicitors
3a Market Street
Bangor County Down BT20 4SP
Tel: 028 9145 7911 or 028 9146 0818
Email: cjneill@btinternet.com

Certificate relating to the above mentioned Folio shall forthwith produce said Certificate or communicate such information to the undermentioned 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.

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