NEW CORONERS SERVICE FOR NORTHERN IRELAND
News in Brief

**ANTI-MONEY LAUNDERING NEWSLETTER**

An electronic newsletter to update solicitors on anti-money laundering developments has recently been launched by the Law Society of England & Wales. The “Gatekeeper” newsletter which will be sent out on a bi-monthly basis will give information on latest government policy and other topical issues. Solicitors in Northern Ireland may subscribe to the newsletter via the website of the LSEW at www.lawsociety.org.uk

**EMINENT JURISTS PANEL**

Representatives of the Society’s Human Rights Committee recently met with two members of the Eminent Jurists Panel of the International Commission of Jurists. The Chair of the Panel, Justice Arthur Chaskalson, (former Chief Justice of South Africa and first President of the Constitutional Court of South Africa), and Jujice Paul Zaffaroni of the Argentinian Supreme Court, were visiting Northern Ireland to explore what experiences here have to offer to the current “war on terror” and the need to uphold human rights.

The visit is part of an independent global evidence gathering inquiry by eight eminent jurists over eighteen months before producing a report into the impact of terrorism and counter-terrorism measures on human rights and the rule of law.

**DISCRIMINATION COMPLAINT PACK**

The Information Pack which was launched some months ago by the Equality Commission to assist people wishing to complain about unlawful discrimination is now also available in Simplified Chinese, Polish, Lithuanian, Russian, Spanish and Portuguese.

The Pack contains details of how to lodge a case with the Industrial Tribunal or the Fair Employment Tribunal. It also contains guidance and answers to FAQs on lodging the originating claim and on completing the Questions Procedure.

As well as being of great practical assistance to individuals, the Pack is also of particular use to those who advise and represent complainants.

Copies are available from the Strategic Enforcement Division of the Equality Commission at 028 9050 0600.

**DOMESTIC VIOLENCE HELPLINE**

Over the 12 month period February 2005 – January 2006 since the introduction of the 24 hour freephone Domestic Violence Helpline (08009171414), there has been a 16% increase in the number of calls managed by the Helpline compared to the previous year.

The total number of calls managed during this period amounted to 21,358 compared to 17,948 in the previous year. Prior to introduction of the freephone, the vast majority of calls came from North & West and South & East Belfast Trust areas. Since the availability of the freephone, there has been a noticeable increase in calls from outside the Belfast area.

**DEVELOPMENTS IN LOWER CHICHESTER STREET**

Lower Chichester Street is currently closed to through traffic. Proposals from Laganside Corporation to redevelop in the area to improve its appearance, have received support from the Judiciary, Court Service, Belfast City Council, the Bar Council and the PSNI. The proposals include the creation of green spaces, access by vehicles to the RCJ /Bar Library and the provision of a bus lane.

The work is scheduled to commence in June 2006. Planned works for the front of the RCJ will be carried out simultaneously by the Court Service to complement the proposed scheme in Lower Chichester Street.

**HOUSING LAW PROPOSALS**

The Department of Social Development has issued proposals to change the way the Social Housing Development Programme is managed.

The consultation on the Housing (Amendment) (NI) Order 2006 seeks views on proposed changes to the existing law and procedures. The main proposal is to transfer responsibility for the management of the Social Housing Development Programme from the Department for Social Development to the Northern Ireland Housing Executive. Copies of the Consultation Document and draft Order can be downloaded from the Department’s website at: www.dsdni.gov.uk/index/current_consultations.htm

**FIRST ASBO IN BALLYMENA**

The first ASBO in Ballymena has been imposed on a 64 year old man who, it was claimed, left shoppers and shopkeepers alike intimidated and threatened by his behaviour. Each day he travelled to the centre of Ballymena from hostel accommodation in an outlying village and spent the day causing annoyance around the town. He has now been banned from causing harassment in various commercial locations in the town for two years.
April 2006 saw the launch of a new Coroners Service for Northern Ireland as part of the Court Service. The creation of the new Coroners Service follows a Fundamental Review of Death Certification and Investigation in England, Wales and Northern Ireland.

The new Coroners Service will modernise a system which has changed little in the preceding 30 years.

The Court Service has been developing a programme of service modernisation. The proposals developed by the Court Service were the subject of a consultation exercise during 2004.

The new Coroners Service for Northern Ireland came into operation from 3rd April 2006. The key changes that have been implemented at this time can be broadly described under the following headings:

**Single Northern Ireland Jurisdiction**

The previous 6 outlying Coroners districts within Northern Ireland have been amalgamated with that of Greater Belfast in a staged programme since May 2005, with the final district being subsumed on 30th March 2006. The single Northern Ireland Coroners jurisdiction was established by direction of the Lord Chancellor from 30th March 2006.

**Premises**

The Coroners Service will be based in Mays Chambers, May Street, Belfast. Inquests will be held in the new premises as well as continuing to be held in the Old Townhall Building, and in other courthouses throughout the province.

While this is the first stage of the modernisation process, work is continuing in formalising protocols with other agencies, the development of a performance inspection process and participation in a national Coronial Council.

All of the changes to the Coroners Service are aimed at ensuring that the services provided to the bereaved at a difficult and distressing time are of the highest standard and are consistent across Northern Ireland.

**Coroners Liaison Officers**

Two newly appointed Coroners Liaison Officers, Grainne Barker and Ron Simpson, are also in post from 3rd April 2006. They will, in the initial stages of the Coroners investigation, provide bereaved families with information in...
cases where a post mortem examination has been ordered by the Coroner.

They will also actively case manage these cases providing a key link with families during the Coroner’s investigation of the death.

**Public Information**

There are several updated leaflets and pamphlets which outline the services provided to the public, an explanation of why a death has been reported to the Coroner and details about the Coroner’s investigative process. The development of a dedicated Coroners Service website is nearing completion and will contain information and links for the bereaved, members of the public and other agencies involved in the death investigation process.

A Coroners Charter is in the final stages of development and will outline the standards of service that the public can expect together with a commitment to promoting the participation of the bereaved in the process of the Coroner’s investigation. The installation of a new computer system has provided benefits in the monitoring of progress and tracking of cases, the availability of improved statistical information and enhanced data capture available for the creation of case files.

**Presiding Judge and Full-time Coroners**

Mr Justice Weir has been appointed as presiding judge of the Coroners Service to provide guidance and leadership and hear complex cases.

There are also now 3 full-time Coroners in Northern Ireland, as opposed to the former 1 full-time Coroner with two deputies and 6 part-time coroners with 4 deputies.

Mr John Lecky, previously the Coroner for Greater Belfast, assumed day to day responsibility for the new Coroners Service and is the senior Coroner for Northern Ireland. He is assisted by Ms Suzanne Anderson and Mr Brian Sherrard who have been appointed as full-time Coroners with effect from 3rd April 2006.

We are grateful to the Northern Ireland Court Service for this article.
Public Prosecution Service update

The Public Prosecution Service (PPS) came into effect as a statutory body on 13 June 2005. Subject to its full implementation, the Service will assume responsibility for all criminal cases previously prosecuted by the former Department of the Director of Public Prosecutions and the Police Service of Northern Ireland. In addition to taking decisions as to prosecution in all cases submitted by the police, it will in due course also handle cases submitted by other statutory authorities eg the Driver & Vehicle Testing Agency.

DEVOLVED STRUCTURE

The PPS is a regionally based organisation. On full implementation of the Service, there will be four regions, each coterminous with one or more court divisions. Each of the four regions will be headed by a Regional Prosecutor. The Regional Prosecutor will have overall responsibility for decisions as to prosecution and for the conduct of all prosecutions in that region, with the exception of those cases which are considered by prosecutors in Headquarters.

Across Northern Ireland there will be six regional offices known as Chambers. The Belfast Regional Office is located in Belfast Chambers, the corporate headquarters for the PPS. Other Chambers are to be located as follows:

Lisburn (Eastern Region)
Londonderry and Ballymena (Northern Region)
Omagh and Newry (Western & Southern Region)

NEW SERVICES

In addition to the PPS’s primary role in reaching decisions to prosecute or not to prosecute and for the conduct of criminal proceedings in Northern Ireland, a range of additional services is to be available which are designed to enhance the effectiveness of the Service.

These are:
- an enhanced service to victims and witnesses
- prosecutorial and pre-charge advice to police
- review of all charges prior to submission to court
- production and issue of summonses
- presentation of cases in the Magistrates’, Youth and County Courts by public prosecutors

A range of options has been developed for dealing with offenders other than through prosecution. These include restorative cautioning, informed warnings and Youth Conferencing.

PROGRESS TO DATE

Whilst the new PPS structures are not yet fully in place throughout Northern Ireland, the rollout of the new Service has been ongoing and considerable progress made during 2005/06.

The PPS Belfast Region, which covers six police districts, became fully operational in June 2005. In August 2005, the Western & Southern Region assumed responsibility for the conduct of all youth offences occurring in the PSNI districts of Armagh, Banbridge and Newry & Mourne. The full range of services is already available in the five police districts within Fermanagh & Tyrone.

Most recently the PPS has opened its first regional office outside of Belfast in Lisburn. The office - to be known as Lisburn Chambers – will serve a population of almost 475,000 people in six District Council areas (Ards, Castlereagh, Craigavon, Down, Lisburn and North Down) which are coterminous with PSNI districts.

The Regional Prosecutor for the Eastern Region will be supported by eight senior public prosecutors, 20 public prosecutors and an administrative staff numbering 60 persons. The office will take decisions in approximately 13,000 cases per year or approximately 20% of the total criminal case load in Northern Ireland.

On completion of the project, the PPS will process 65,000 to 70,000 cases per year and have a total staff of 580 to include 170 lawyers.

PLANS FOR FULL IMPLEMENTATION

The original target date for full implementation was end December 2006. However, it is now likely that the project will extend into 2007. Implementation of the Service has been significantly impacted by difficulties in the procurement of suitable regional accommodation. Two new regional offices in Ballymena and Omagh are being developed and will be completed at the end of 2006 and early 2007 respectively.

Efforts to find suitable premises in Londonderry and Newry are ongoing. Contingency plans are under development and in the event that accommodation cannot be found, these alternative arrangements will be put in place by mid-2007.

An additional Belfast office has been acquired and will accommodate a number of central legal functions and support services, including Finance and Human Resources. The new building will also act as a base for the induction and training of new staff. This building will be available in mid-2006.

PROSECUTION POLICIES

- Code for Prosecutors

The PPS has published a new Code for Prosecutors, incorporating a Code of Ethics. The Code sets out the general principles to be applied in decision-making and general guidelines for the conduct of prosecutions. It also defines the standard of conduct expected from prosecutors.
Domestic violence
The Service has recently launched a major new policy initiative on domestic violence. The PPS states that it is determined to prosecute such cases fairly and effectively.

The policy document defines what is meant by domestic violence; sets out the roles of the PPS, explains how it makes decisions, provides information on how it can assist victims and sets out its responsibilities as public prosecutors in relation to, for example, applications for special measures, bail applications and concerns in relation to sentencing.

Copies of both of the above policies are downloadable from www.ppsni.gov.uk.

Victims and witnesses
The PPS states that meeting the needs of victims and witnesses is one of its central objectives. It intends to publish a policy statement “Victims, witnesses and the new Public Prosecution Service” for consultation in summer 2006, which will provide details of the range and standard of service which victims can expect from the PPS.

Community Outreach
The PPS has also recently published its community outreach strategy. As recommended by the Criminal Justice Review, the aim of community outreach is to increase public confidence in the independence, fairness and effectiveness of the PPS. The strategy document describes the manner in which the PPS will engage with the community and with relevant statutory and voluntary agencies and community groups. It seeks to increase the community’s understanding of the PPS’s role as prosecutors and to listen to the community’s concerns. This document is also available from the PPS website at www.ppsni.gov.uk.

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For further information on these roles and other opportunities, please contact Julia Hughes for a confidential discussion on 028 90 325 325 or email j.hughes@brightwaterNI.com.

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www.kpmg.ie
Terrorism Act - draft Code of Practice published

A public consultation process on the draft Code of Practice for the detention, treatment and questioning of persons arrested under Section 41 and Schedule 8 of the Terrorism Act 2000 (TACT) has begun.

Section 23 of the Terrorism Act 2006 amends Schedule 8 of the Terrorism Act 2000 to extend the maximum period of time that terrorist suspects can be held before being charged, from 14 days to 28 days. During the passage of the Act through Parliament, the Government gave an undertaking to produce a dedicated Code of Practice to cover this type of detention before bringing the 28 days provision into force.

SUMMARY

Section 41 of the Terrorism Act 2000 gives a police constable the power to arrest a person whom he reasonably suspects to be a terrorist. The Government agreed that the power to detain individuals without charge for up to 28 days was something which should be governed by a separate Code of Practice.

People who are arrested under Section 41 are subsequently held under the provisions of Schedule 8 to the Act, which provides them with certain rights and covers various aspects of a person’s detention while a police investigation continues.

In addition to the checks and balances within the Act itself, the new Code of Practice on which comments are now sought, provides a guide for police officers and aims to ensure that the rights of individuals arrested on suspicion of terrorism are upheld, while maintaining the effectiveness of police powers to investigate terrorism.

In the main, the Code replicates, with some exceptions, the TACT Code to be issued by the Home Office for England and Wales, which is based on the existing provisions of their PACE Code. A review of the PACE Codes in Northern Ireland is currently the subject of a public consultation exercise and a revised NI TACT Code will be required once the draft PACE NI Codes come into effect later this year.

The Code covers various aspects of police detention including:

- Custody records
- Initial action when people are arrested and brought to a police station, including special consideration for juveniles, mentally vulnerable or other individuals who may require special attention
- Detainees’ property - finding out what a person has in their possession on arrest and deciding what to do with it
- The detainees’ right to tell another person that they have been arrested
- The right to legal advice
- The right for citizens of independent commonwealth countries and foreign nationals to confer with a representative of their country
- Conditions of detention
- Care and treatment of detainees
- Cautions
- Interviews
- Access to interpreters
- Review and extension of detention, including procedures to apply for extension of detention up to 28 days, and transferring detainees to a prison
- Annexes

EXTENSION OF DETENTION - BACKGROUND

Individuals who are arrested under Section 41 of the 2000 Act can be held individually for up to 48 hours. If the police need to extend that period they, or the Director of Public Prosecutions, must apply to a judicial authority for a warrant of further detention. These warrants will authorise detention for seven days, unless the person making the application or the judicial authority stipulate a shorter period. The warrants can be extended by up to seven days at a time, up to a total period of 28 days. The power to detain for 28 days will not be used every time a person is arrested on suspicion of terrorism, in fact it is envisaged it will only be used in a few, exceptional cases.

TRANSFER TO PRISON

One of the key changes included in the draft Code of Practice is for detainees to be transferred to a prison once a warrant has been obtained that would take the period of detention without charge beyond 14 days. This measure is to ensure that detainees have access to the facilities of an institution that is used to dealing with longer periods of detention.

The draft TACT Code of Practice can be viewed or downloaded from the Northern Ireland Office website at www.nio.gov.uk. Copies in other formats can be made available, on request, by e-mailing policepowers@nio.x.gsi.gov.uk

Any comments on the draft Code should be sent to the NIO or forwarded by e-mail to policepowers@nio.x.gsi.gov.uk by 21 June 2006.
Changes to the law in Northern Ireland came into force on 3 April 2006 as a result of the commencement of:

**Criminal Justice (Evidence) (NI) Order 2004 (Categories of Offences) Order 2006**

This Order prescribes categories of offences which are ‘of the same type’ for use as an indicator that a defendant has a propensity to commit offences of a certain type. The Order provides additional guidance to the underpinning Criminal Justice (Evidence) (NI) Order 2004 which came into operation on 9 April 2005.

Where a defendant has a previous conviction which is in the same category (as prescribed by the Order) as that with which he is charged, this creates a strong presumption that the previous conviction should be admitted as evidence. However, it will still be possible for the defence to argue that such evidence would be prejudicial to the fairness of the trial and therefore should not be admitted.

The categories included in the Order cover:

- **Theft**: the offences contained in the category are related directly to an interference with property or the taking of property that belongs to others.

- **Sexual offences against persons under the age of 17**: the offences in this category cover any sexual activity committed in relation to children and young people under the legal age of consent.

Where a defendant has a previous conviction which is in the same category (as prescribed by the Order) as that with which he is charged, this creates a strong presumption that the previous conviction should be admitted as evidence. However, it will still be possible for the defence to argue that such evidence would be prejudicial to the fairness of the trial and therefore should not be admitted.

The categories included in the Order cover:

- **Theft**: the offences contained in the category are related directly to an interference with property or the taking of property that belongs to others.

- **Sexual offences against persons under the age of 17**: the offences in this category cover any sexual activity committed in relation to children and young people under the legal age of consent.

The absence of categories for other types of offences does not prevent previous convictions from being admitted if a person demonstrates a propensity to commit a certain type of offence.

**Criminal Justice (Evidence) (NI) Order 2004 (Commencement No. 3) Order 2006**

This Order commences sections 44-46 and Schedules 1 and 2 of the Criminal Justice (Evidence) (NI) Order 2004 (the “2004” Order). These provisions ‘tidy up’ current legislation in light of the new law on the admissibility of bad character evidence in criminal proceedings. Sections 44-46 allow the Secretary of State to make an Order to make any supplementary or consequential provisions which he deems necessary to give full effect to any of the provisions of the 2004 Order. Schedules 1 and 2 make a number of consequential amendments to and repeals of existing legislation.

Copies of these Orders can be found on the Office of Public Sector Information website (www.opsi.gov.uk)

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**QUEEN’S BENCH SUMMONS COURT**

**Sitting during the Long Vacation 2006**

1. Having regard to representations made to the Masters on behalf of Solicitors, the Queen’s Bench Summons Court will again sit on a number of specified days during the Long Vacation.

2. The Master will generally not entertain an application for adjournment of a summons listed for a specified day, but where such an application is allowed the summons will be adjourned to a Thursday or Friday Court after the commencement of the Michaelmas Term, and not a subsequent specified day during the Vacation.

3. The Master will not adjourn a summons listed for a specified day to enable Counsel to be briefed or to facilitate the attendance of Counsel.

4. The specified days on which the Summons Court will sit during the Long Vacation 2006 will be:
   - Tuesday 25 July
   - Tuesday 8 August
   - Tuesday 22 August

**J W WILSON**  
Master (Queen’s Bench and Appeals)

**C J MCCORRY**  
Master (High Court)

May 2006

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**Clinical Negligence Practice Alert**

The Society’s Contentious Business Committee wishes to bring the following matter to the attention of practitioners.

The Central Office of the High Court is presently conducting a review of all outstanding clinical negligence Writs that have not yet been set down for Trial. Preliminary letters have already been sent in most cases to the issuing solicitor. The Court intends that outstanding cases shall then be fixed for review before the Senior Queen’s Bench Judge during the Trinity term.

The handling solicitor will be expected to attend the review in person and provide a detailed account of progress to date with an outline and timetable of anticipated preparatory work in readiness for Trial.

It may well be the case that claims have settled or cannot proceed further. It is recommended that solicitors carefully review their clinical negligence cases and ready themselves for this process. Should the case have resolved but an order for costs is required the matter can be brought before the Court so that taxation of costs can be ordered under the second schedule.
Probate

At the request of the Probate Office, we reprint Master Ellison’s recent Practice Guidance Note in relation to the appropriate Inheritance Tax Certificate to be inserted in Oaths to apply for grants of representation.

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
Practice Guidance Note (Probate) Oath to apply for grants for representation/Inheritance tax certificates

Following the introduction of excepted estates as described in the Inheritance Tax (Delivery of Accounts) (Excepted Estates) Regulations 2004, Regulation 4, whichever of the following inheritance tax certificates is appropriate to the facts should be used in the oath to apply for a grant:

(1) For an excepted estate where the gross value does not exceed the inheritance tax threshold which applied at the date of death (“the IHT threshold”):

‘To the best of my (our) knowledge, information and belief the gross estate passing under the grant does not exceed £……. and the net estate amounts to £……. and this is not a case in which an inland Revenue Account is required to be delivered.’

(2) For an excepted estate where the gross value exceeds the IHT threshold but does not exceed £1m and the chargeable net estate after deducting the spouse and/or charity exemption(s) does not exceed the IHT threshold:

‘To the best of my (our) knowledge, information and belief the gross estate passing under the grant amounts to £……. and the net estate amounts to £……. and this is not a case in which an inland Revenue Account is required to be delivered.’

(3) For estates which are not excepted estates:

‘To the best of my (our) knowledge, information and belief the gross estate passing under the grant amounts to £……. and the net estate amounts to £…….’

Dated this 19 of December 2005
R A Ellison Master (Chancery)

GUIDANCE NOTE

Practice Guidance Note (Probate): Oath To Apply For Grants of Representation/Inheritance Tax Certificates

The Practice Guidance Note is intended to ensure that the form of the IHT certificate in the oath corresponds with the practice applicable in England and Wales pursuant to the Inheritance Tax (Delivery of Accounts) (Excepted Estates) Regulations 2004.

In this jurisdiction, where the gross estate does not exceed the relevant IHT Threshold (currently £275,000 for deaths after 5 April 2005) the Probate Office has been indicating that the net estate should be expressed in Oaths as “not exceeding” the historic IHT threshold which happens to be closest to the net estate figure as per the form IHT 205. Accordingly if someone died in, say, May 2004 having left a net estate of £60,000 the resultant oath would say that the net estate “does not exceed £70,000” (i.e. the IHT threshold that would have applied if the death had been in May 1987, which while providing a convenient artificial ceiling is strictly irrelevant).

That certification practice is replaced by that described in subparagraph (1) of the Practice Guidance Note.

REMINDER– NEW ARRANGEMENTS FOR FORM IHT200s

As from 9 January 2006 all estates where form IHT200 is completed are initially being handled by HMRC Capital Taxes in Nottingham. This means that when applying for a grant from the Probate Registries in Belfast or Londonderry, you should send the IHT200, supporting papers (and where appropriate, payment) to:-

HMRC Capital Taxes
Ferrers House
PO Box 38
Castle Meadow Road
Nottingham
NG2 1BB

Sending these to the Belfast office may result in unnecessary delays, as the Belfast office no longer has the facility to stamp D18s or to accept bank payments.

Once initial processing has been completed, the cases will be allocated to caseworkers across all three IHT offices as now.

For the avoidance of doubt, this change only applies to estates where Form IHT200 is required - all application for grants for excepted estates should continue to be sent to the appropriate Probate Registry.
The Budget contained a number of changes to Inheritance Tax (IHT). The operational consequences of these changes are as follows:

**IHT Threshold**

The threshold is increased to £285,000 for chargeable events occurring on or after 6th April 2006. Please remember that in establishing whether an estate qualifies as an excepted estate, the threshold remains at £275,000 where the deceased died on or after 6th April 2006 and an application for probate or confirmation is made before 6th August 2006.

**Settled Property**

Most transfers into trust are now immediately chargeable to IHT when made. The exception is where the trust is set up for a disabled person. Practitioners will need to report all such transfers to the Capital Taxes Office (CTO) on form IHT 100. This means that the excepted transfer and termination regulations will have more purpose than previously and the CTO will be reviewing the cash limits in those regulations. A&M trusts may now be subject to ten-year and exit charges.

**Pensions**

There are two aspects to changes to the IHT treatment of pensions. Firstly, where a scheme member dies under age 75, the Finance Bill contains legislation that will enable the CTO to continue with its existing treatment in relation to a scheme member’s dealings with their pension scheme. As now, the CTO’s pension specialists in Edinburgh will continue to consider whether any such dealings give rise to a charge to IHT.

The second change provides for an IHT charge where assets remain in a fund that has provided an Alternatively Secured Pension (ASP). Where a scheme member dies on or after age 75 and the left-over ASP funds are used to pay benefits to a surviving spouse, civil partner or financial dependent, an IHT charge will arise when the survivor’s entitlement ceases, usually on their own death. In other cases (unless the funds are left to charity), the charge will arise on the death of the scheme member. The CTO will be revising form IHT100 and form D6 to cater for this latter situation and will produce a new form for scheme providers to notify us of the former.

**Pre-Budget Report**

The proposals announced in the Pre-Budget Report about excluded property trusts and the measure to prevent revertor – to – settler trusts circumventing the Pre-Owned Assets charge took effect from 5 December 2005.

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NORTHERN IRELAND COMMERCIAL PROPERTY LAWYERS’ ASSOCIATION

First NICPLA CPD Event

On Friday 5 May 2006, the Law Society’s Lecture Hall was packed to capacity as just under 100 practitioners attended the Northern Ireland Commercial Property Lawyers’ Association’s first venture into CPD provision.

They had come to hear a presentation on Development Acquisition Problems given by Alan Riley, a property support lawyer with Halliwells LLP in Manchester and a former Senior Lecturer at the College of Law in Chester, who had previously delivered seminars for CLT.

In the context of development, Alan, in a most informative and entertaining presentation, considered issues such as ensuring proper access/services, dealing with party wall disputes, boundary problems, working round restrictive covenants and dealing with planning obligations.

Buoyed up by the success of this first event, the Association’s Committee is now putting together a CPD programme for the second half of the year – details of which will appear in forthcoming editions of The Writ.

If you have not yet joined the Association and are interested in so doing, please complete the membership application form below.

MEMBERSHIP

The Northern Ireland Commercial Property Lawyers’ Association welcomes new members. The membership fee of £20 is now due for the year 2006. Discount on the costs of seminars will be offered to members. Please return the form below to our Treasurer, Deirdre Magill of Tughans, 30 Victoria Street, Belfast BT1 3GS with cheques made payable to the Northern Ireland Commercial Property Lawyers’ Association.

MEMBERSHIP FORM

I enclose a cheque for £20 made payable to the Northern Ireland Commercial Property Lawyers’ Association.

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A European Pye

Just a short update on the Pye situation. Firstly, the Grand Chamber of the European Court of Human Rights has accepted the referral in mid-April. Thus it will take its place in the queue for hearing. Secondly, I am grateful to Mr John Gibson of the Land Registry for bringing certain matters to my attention arising from a recent CPD seminar held by EULIS (European Land Information Service) and ELRA (European Land Registry Association). Apparently, there are moves afoot to bring greater harmonisation to land law matters throughout Europe. That being the case, then, bearing in mind that the common law lawyers will be in the minority in the Grand Chamber, one wonders what approach might influence the majority of the European Judges.

We are grateful to E J David McBrien LLB, LLM, Barrister-at-law of the Inn of Court of Northern Ireland and of the King’s Inns, Dublin for this update.
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Large, professional practice currently has an excellent opportunity for an experienced Practice Manager who will be responsible for 20 support staff. Bookkeeping experience is also essential and Alpha law experience advantageous. This busy position is an excellent opportunity for a career driven individual with excellent managerial and accounts experience. Ref: 4029

Litigation Solicitor
North West  Up to £32k
Our client, a prestigious firm of Solicitors, is seeking a Solicitor with expertise in General Litigation to include Personal Injury and RTAs. The team require a hard working individual who can take on a busy workload. Suit 4 years’ + PQE. Ref: 8963

Commercial Litigation Solicitor
Belfast  Up to £28k
One of Belfast’s top law firms has a vacancy for an experienced Litigation Solicitor. Our client has an excellent reputation with a lucrative client base. Suit 3 years’ + PQE.

Matrimonial Solicitor
Greater Belfast  Up to £33k
A well known firm of Solicitors with two offices has a vacancy in their head office for an experienced Matrimonial Solicitor. This is a superb opportunity for a Solicitor who wishes to join a busy and client focused firm with opportunities for career advancement. Suit 2 years’ + PQE. Ref: 3830

For more details and further information on these positions, please call Orla Stewart at PRG LawSearch on 02890 314 644 or email orlastewart@prglawsearch.com
A Master's Voice

At this time of year the scramble for places in the Institute 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, 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 lottery 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 aspect 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 £225 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 for the first time.

If you have used them properly you will be very disappointed to see them go to the Institute 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
The Northern Ireland Civil Service offers challenging, interesting work with real job satisfaction in a dynamic environment dealing with the most important issues of the day. Good training and promotion opportunities and an attractive benefits package make for a rewarding career with a leading edge employer.

**Head of Government Legal Service**  
- Belfast

**SALARY:** From £91,384  
**DEPARTMENT OF FINANCE AND PERSONNEL**  
**REF:** SC/13/05

This is a key senior post, with the opportunity to occupy a unique position at the core of the Northern Ireland administration. The individual appointed will be responsible for determining and delivering the culture for the new organisation, ensuring its successful inception and providing legal advice to Ministers and Departments at the highest level.

If you are a solicitor or barrister with senior leadership qualities and professional experience with particular emphasis on public law, together with a proven track record in successfully providing legal services, please contact Recruitment Service.

For an application form and more detailed information, including the duties and responsibilities of the post, as well as the criteria to be used during the recruitment and selection process, write to Recruitment Service, Northern Ireland Civil Service, Orchard House, 40 Foyle Street, Londonderry, BT48 6AT or visit the Recruitment Service website [www.nicsrecruitment.gov.uk](http://www.nicsrecruitment.gov.uk) or e-mail recruitment.cpg@dfpni.gov.uk

All requests must include your name, address and reference number SC/13/05.

Completed application forms must be returned to arrive no later than 12.00 noon (UK time) on Monday 19th June 2006.

The Northern Ireland Civil Service is an Equal Opportunities Employer. As Roman Catholics and women are currently known to be under-represented at this level in the NICS, applications from the Roman Catholic section of the community and from women would be particularly welcome.

**ALL APPLICATIONS FOR EMPLOYMENT ARE CONSIDERED STRICTLY ON THE BASIS OF MERIT.**
One of the most important features of any risk management strategy is monitoring compliance on the part of the fee-earners (including partners). However, law firms are reluctant to spend much time on monitoring as it does not produce fees.

Effective file reviews are an integral part of the process. Many firms struggle to strike a balance between spending too much or not enough time on the process; problems are also encountered in deciding what the process should address.

As many claims arise out of administrative failings by solicitors, they should take several important regulatory steps. They should check:

- money laundering compliance;
- Conflict of interest check;
- Use of attendance notes;
- Keeping the client advised of progress;
- Adherence to financial procedures;
- Undertakings; and
- File management.

**So how often should these reviews be carried out?**
Each fee-earner should be reviewed every six months as a minimum.

**How many files should be reviewed?**
Use management information reports to identify potential problems such as files that have been open for a long time, where the fee-earner appears to have an inordinate file load, or where there is evidence of a lack of time recording. It should not be necessary to review all of the fee-earner's files unless problems are identified in the initial review. Closed files should also be included in the process.

**How long should it take to review a file?** There needs to be a standard checklist identifying the matters to be checked. It should not take long to see whether the conflict check has been undertaken. In some firms, the fee-earner has to show to the reviewer that the procedures have been complied with by identifying the appropriate procedures on the file.

**Who carried out the review?**
As it is an administrative process, it does not have to be undertaken by a partner or senior fee-earner. It is not envisaged that the quality of the legal advice will be reviewed. Therefore, individuals from another department could undertake reviews.

This column was prepared by AFP Consulting, a Division of Alexander Forbes Risk Services UK and first appeared in the Gazette, the journal of the Law Society of England and Wales, 102/21 26 May 2005.
Practice Management Conference
Get all your group study CPD requirement in two days!!

For the first time the Law Society and the University of Ulster have come together in order to bring an exciting CPD event to the Northern Ireland solicitors’ profession. The event lasts ten hours, taking place on Friday 16 June and Saturday 17 June with a residential option. It will focus on practice management issues and is aimed at senior practitioners within the profession.

The conference, which has run successfully in Scotland and the Republic of Ireland, is group oriented and interactive in nature. Graeme McKinstry, a Scottish practitioner with extensive experience in training will facilitate the conference, while local experts will present on the following topics:

- **Financial and accounting structure** Tony Nicholl, Goldblatt McGuigan
- **Marketing your practice** Claire Aiken, Aiken PR
- **Business risk management** Gary Thompson, Ulster Insurance Services
- **Partnership management** Ian Huddleston, L’Estrange & Brett Solicitors

The delegates will then form smaller groups to discuss and resolve the many issues that occur in a hypothetical law firm.

The event allows practitioners to obtain all of their Client Care and Practice Management and the 10 hours group study requirement of CPD at one time. It will take place at the Ramada Hotel at Shaw’s Bridge in Belfast on Friday 16 and Saturday 17 June 2006. The payment options are below:

- **Attendance at sessions over two days (inc refreshments):** £295
- **Attendance at sessions over two days (inc refreshments) plus evening meal:** £320
- **Attendance at sessions over two days (inc refreshments) plus evening meal and accommodation on 16 June:** £450

**Booking Form**

Title: Name:  
Firm:  
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Cheque enclosed: __________________________ (made payable to “Law Society of Northern Ireland”)

I would like to attend (please tick one of the following options):
- **Attendance at sessions over two days**
- **Attendance at sessions over two days plus evening meal**
- **Attendance at sessions over two days, evening meal and accommodation on 16 June**
Transfer of an Undertaking (TUPE) - the new Regulations


These Regulations make provision in respect of Great Britain and Northern Ireland for the treatment of employees and related matters on the transfer of a business and the meaning of a transfer, when there are service provision changes. The Department of Employment and Learning (DEL) is currently considering implementing Guidance on the Regulations similar to that provided by the Department of Trade and Industry. Until that decision is made, DEL advises that reference should be made to the DTI Guidance to assist on the interpretation of the Regulations. The DTI Guidance can be downloaded from: www.dti.gov.uk/er/individual/tupeguidereg.pdf

Overview of the Regulations

There are five keys areas of change from the previous 1981 Regulations:

1. The new provisions governing changes of service provision (that is out-sourcing and in-sourcing) and which employees transfer as part of that process.

2. Freedom to negotiate changes to terms and conditions of employment where the seller is in administration and the exclusion from transfer of liabilities within the insolvency guarantee.

3. The duty to notify specified Employee Liability Information (ELI) to the incoming business 14 days before the transfer; a breach of which could result in a legal claim by the incoming business for compensation of £500 per employee.

4. A limited potential for the employer and employees to agree to vary contracts of employment in circumstances were a relevant transfer occurs.

5. The creation of a stand alone constructive unfair dismissal claim where there are substantial adverse changes in working conditions.

Each of these areas is considered in more detail below:

Service Provision Changes (SPC)

A relevant transfer includes both where an entity retains its identity in the hands of a new employer (the current test) and where there is a SPC. A SPC occurs where services are outsourced, brought back in house or assigned by a client to a new contractor, assuming the SPC involves “An organised grouping of employees … which has as its principle purpose the carrying out of the activities concerned on behalf of the client.” There are two exceptions to SPC. Firstly, if the service contracted is on a one off basis or is only required for a short term duration. “Short term” is a vague term and is therefore likely to be the subject of litigation. The second exception is when the contract relates to the supply of the service by the contractor for the client’s use. The DTI Guidance illustrates this with the example of a client engaging a contractor to supply sandwiches and drinks to its canteen every day so it can sell them on to its own staff.

Varying contracts

The Regulations provide for the prospect of an agreement between the employer and employee to vary the transferred employees’ terms and conditions. Confusion had been injected into this area by the House of Lords case of British Fuels Limited -v- Baxendale and Another; Wilson and Others -v- St Helen’s Borough Council 1998 I.C.R. 1141. In that case, the Lordships

TUPE 5 key areas of change

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queried whether terms and conditions can ever be varied by agreement between the employer and the employee where the reason for the change is the transfer itself. The new position is that variation of contracts remains void unless:

- The principle reason for the variation is an economic, technical or organisational (ETO) reason entailing changes in the workforce; or

- The outgoing business is insolvent and either the outgoing or the incoming business agrees variations with the appropriate representative of the employees. (See below).

Due to the courts restrictive interpretation of the words "entailing changes in the workforce" the scope to make changes to terms and conditions has been greatly limited. Disappointingly, the Guidance states that a desire to harmonise terms and conditions of transferring employees with existing employees will not be enough to constitute an ETO reason.

Employee Liability Information (ELI)

New obligations are imposed on parties regarding the information that must be provided to the incoming business. The ELI is:

- Identity/age of transferring employees
- Information contained in those employees’ statements of employment particulars
- Information regarding any collective agreements
- Information on any disciplinary action (excluding warnings and investigatory suspensions) within the last two years where the statutory procedure applies
- Information on any grievances within the last two years where the statutory procedures apply
- Information on any legal action taken against the outgoing business in the last two years, or any potential legal action the outgoing business has reasonable grounds to believe might be taken.

Somewhat radically, should the outgoing business fail to supply this information the incoming business can present a complaint to the Industrial Tribunal. The remedy available is a declaration in favour of the incoming business and compensation of at least £500 per employee for whom the information was required, unless unjust or inequitable.

Employee Liability Information (ELI)

The information must be provided at least two weeks before the transfer, unless special circumstances make this not reasonably practicable. In that case, it must be supplied as soon as reasonably practicable. The DTI Guidance provides the example of an outgoing business which was unaware of the identity of the incoming business until very late, or where the transfer takes place at very short notice. ELI need not be given in one instalment and may be provided by a third party. Importantly, it will not be possible for the parties to contract out of these requirements. Under transitional provisions, the duty to provide ELI applies only to transfers taking place after the 19 April 2006.

Insolvent businesses

The Regulations adopt a rescue culture in that they allow insolvent businesses to be transferred as going concerns more readily and therefore protect the employment of affected employees. The Regulations provide that liabilities from insolvent businesses for transferring employees will be met by the state fund as opposed to the incoming employer.

The liabilities will include:

- statutory redundancy pay
- arrears of pay
• payments in lieu of notice
• accrued holiday pay
• basic award for unfair dismissal.

These liabilities will be capped at the maximum week’s pay (currently £290). Anything above this will transfer across to the new employer. Insolvent businesses are also provided wider ability to vary terms and conditions provided certain conditions are met.

These conditions are:
• Changes must be agreed between the outgoing and incoming business and the employee representatives, which must be the trade union if recognised

• Any changes must not breach the statutory requirements
• Changes must be made with a view to the survival of the business

Constructive dismissal

The Regulations reverse the Court of Appeal ruling in Rossiter -v- Pendragon plc and Air Foyle Limited -v- Crosby - Clarke (2002) IRLR 483. Therefore transferring employees who find that there has been, or will be, a substantial change for the worse in their working conditions due to the transfer, have the right to terminate their contract and claim constructive unfair dismissal. It is no longer necessary for the employee to demonstrate that change constitutes a repudiatory breach of contract.

Conclusion

It was hoped that these new Regulations would inject must needed clarity into this area of law. However, the overall conclusion is one of disappointment. Whilst an attempt has been made to clarify some matters, employers find themselves left exposed as general phrases leave room for judicial manoeuvring and are likely to result in more cases to interpret them.

Michelle McGinley is an Employment Solicitor at EEF (NI) and regularly advises/represents businesses in Northern Ireland.

This article was drafted with the help of Anna Jones, Law Student at University of Ulster.
EMPLOYMENT LAWYERS’ GROUP (NI)

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Chairperson  Mary Lewis BL
Hon. Treasurer  Alana Jones

www.legal-island.com/elg.htm

LUNCHTIME SEMINAR

Update on Disability Discrimination

Speaker:  Suzanne Bradley BL
Date:  Friday 23 June 2006
Time:  1pm (tea coffee and sandwiches from 12.30pm)
Venue:  Old Bar Library (change of venue)
Cost:  Members £5, Non-members £10.

Attendance at this seminar will provide one hour’s CPD entitlement

Booking forms and cheques, payable to The Employment Lawyers’ Group (NI), should be sent to our Treasurer, Ms Alana Jones, Alana Jones Solicitors, 40b Frances Street, Newtownards BT23 7DN

BOOKING FORM

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Firm

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I enclose remittance of £
Telephone Conferencing for Family Lawyers

The background
Practice Direction 6/2005 enables a court dealing with a case under the Children (NI) Order 1995 to hold a Directions Appointment by way of Telephone Conferencing. This applies to both Private Law and Public Law cases.

What is Telephone Conferencing?
No doubt you’re familiar with the saying “I could do that with my eyes closed.” Well Telephone Conferencing is just that because literally you can’t see what's going on!

Spider phones (telephones with a built-in microphone and loudspeaker and no handset) have been installed in a number of judges’ chambers which allow for several people to participate in a conversation at one time over a secure line.

Where is it available?
In Newry, Londonderry, RCJ, Laganside, Craigavon and Dungannon ie in the High Court and at those Family Care Centres where Children Order cases are being processed.

Who can apply for Telephone Conferencing?
Any legal representative involved in such a case can ask the court or the court may suggest it. However, a conference call can only go ahead with the consent of the court and all parties. Accordingly from a practitioner’s point of view, it would be helpful to liaise with all the other parties in advance of a scheduled Directions Appointment to decide whether to make use of the facility or not. If so, you should endeavour to obtain the telephone numbers of all legal representatives at this stage.

Apart from consent, the only other main conditions are:
- the 15 mile rule ie - at least one of the parties should live OR one of the solicitors be based OR in public law proceedings, the Trust is based at least 15 miles from the court venue.
- the appointment should be relatively straightforward and last no more than 20 minutes. However, while this time limit will not be strictly adhered to by BT, participants need to be aware that the call is subject to time constraints.
- Apart from consent, the only other main conditions are:

Appropriate directions appointments for Telephone Conferencing
Examples of appropriate appointments might include:
- a basic case management issue where a request has to be made for an adjournment because reports are not going to be ready on time, or
- the renewal of Interim Care Orders, or
- a C2 being issued for access to a medical report or expert's statement
- a C2 being issued for access to a medical report or expert's statement
- a basic case management issue where a request has to be made for an adjournment because reports are not going to be ready on time, or
- the renewal of Interim Care Orders, or
- a C2 being issued for access to a medical report or expert's statement

When can I not apply for Telephone Conferencing?
- when it is the First Directions Appointment or
- if any party is a personal litigant or
- if any party intends to call evidence or rely on legal authorities/texts or
- there are more than four parties to the proceedings or
- if any party is outside the UK

How do I apply?
You have two options:

a) You can apply when you are in court and the date for the next Directions Appointment is being fixed OR
b) You can lodge a written request with the court office which will seek the judge's approval.

In either case, if the court says yes, you (as the applicant either for the Telephone Conference or in the case of a court’s own motion as the applicant’s representative in the initial proceedings) must complete a Request Form. This requires you to fill in some basic details including the names and telephone numbers of the various case participants. This Request Form (and the full text of Practice Direction 6/2005) are downloadable from the Court Service’s website at www.courtsni.gov.uk – follow Publications link – Practice Directions

NOTE: mobile phones can be used BUT may lead to impaired quality on a conference call – a land line is preferable.

When filled in, the form is to be lodged with the relevant court office. This must be done at least two working days before the date of the Directions Appointment. You are also asked to include a note on the form if there is anything unusual about the case.

You should bear in mind that time slots for a conference call will vary between court venues eg in the High Court, a Directions Appointment by telephone can only go ahead between 9.15am and 10.30am. You should contact the appropriate court to check these times.

Preparation as with all aspects of family law work is essential. You should file a copy of any proposed directions with the court (and provide a copy to the other parties) in advance of the conference call, so that any negotiations or minor issues can be resolved or clarified prior to the call. Practitioners should note that this system is not designed to facilitate protracted or contentious last minute negotiations that often take place at the door of the courtroom.

How will I know that the Conference is going ahead at the time and date requested?

When your request is granted, the court office will notify you. The court office will arrange the Telephone Conference with BT Legal Call. You are responsible for notifying the other parties, in writing, of the date and time fixed for the appointment.
Please remember: an adjournment of the conference call will be permitted only in exceptional circumstances and parties may be ordered by the judge to pay any cancellation charges.

What happens on the day?

You need to ensure that you are beside the right phone ie the number submitted in the request form at least 10 minutes prior to the scheduled time for the appointment. It is preferable that direct dial numbers should be used where possible but it doesn’t matter who your service provider or your line rental is with – it doesn’t have to be BT.

Just prior to the scheduled time, the BT co-ordinator will dial each person in the following order:

- The applicant’s solicitor (and counsel)
- The solicitor (and counsel) for all other parties
- Where applicable, the Guardian ad Litem; and
- The judge

You must remain on the line after being called by BT. The BT co-ordinator will bring you into the hearing and introduce you to the judge. Recording will not start until the judge has entered the ‘virtual court room’. BT will then leave the call – the judge co-ordinates who speaks and when.

You will be able to hear each person speak and they will be able to hear you. However, if you experience any difficulty in hearing what is being said, you should advise the judge who can contact the BT co-ordinator for assistance.

Unless the judge agrees, no-one should be in chambers with the judge and only those directly involved in the conference call should be present at each location, or again have secured approval from the judge to have whomsoever with you. This is simply to ensure that there are no surprises for anyone taking part. It also means you will have to make sure that you are able to take instructions from your client during the appointment, should the need arise - perhaps by having them on a separate land line or mobile phone.

Will I receive a note of what has been said or will it be a Direction Hearing note?

You will receive a written note of any directions in the same way as you receive them after a Directions Appointment in a courtroom. Also, BT retain a recording of the conference call for six months. If you require a copy, the court can request a CD version. These can be played back on “RealOne” or “Windows Media Player” software.

Does it cost me anything?

All telephone charges incurred for the conference call will be paid by Court Service during the currency of the pilot, unless the judge directs otherwise. The fee for a copy of the audio file on a CD is currently being considered by a Fee Policy Working Group in Court Service.

The Family Judiciary is keen that this facility should be used a lot more than it is at present. So during the pilot when you participate in a telephone conference, a short questionnaire will be sent, asking what you thought about it and for any suggestions as to how it might be improved.

The experience in other jurisdictions is that Telephone Conferencing can help free up valuable time by avoiding the inevitable waiting around to get your Directions Appointment dealt with, as well as the need to travel to and from court - time no doubt that each and every one of you could put to better use.

All that you need .... is a phone.

We are grateful to Austin Harper of the NI Court Service for this article.
Domestic Violence Pilot Scheme

A new way of handling cases of domestic violence in Northern Ireland is to be piloted by the PSNI and partner agencies. Police officers will work with representatives from statutory agencies and the voluntary sector to refer very high-risk victims to a Multi-Agency Risk Assessment Conference (MARAC) which will then draw up an action plan to assess and manage the risks to victims and children, monitoring and reviewing each individual case.

The pilot scheme will run in four District Command Units (DCU) until October 2006 – Antrim, Ballymena, Carrickfergus and Larne. If it’s found to be successful, police would hope to introduce the initiative to all DCUs.

There were 19,318 incidents of domestic violence between April 05- January 06, an increase of 1,861 on the same period the previous year. Of these, 7,817 were classified as offences, up 696 from the previous year.

The MARAC initiative is based on work carried out in South Wales where it has achieved significant results – substantial reductions in repeat victimisation and increased victim confidence in the criminal justice system.

Inspector Pauline Mooney from the Police Service Community Safety Branch, said: “The impetus for this pilot scheme has come from the Police Service but we hope that groups in the statutory and voluntary sectors will play a full and active part in this initiative. This is about trying to bring real change to a difficult, sensitive and sometimes neglected problem. We want to reduce the incidence of domestic violence and make victims feel safer. Individually, we can only scratch the surface of this problem but in partnerships like this, together we can make a positive difference.”

Availability of birth, death & marriage certificates made easier

A new computer system introduced by the General Register Office (GRO) for Northern Ireland has transformed how local councils register births, deaths, marriages, civil partnerships and adoptions.

The new Registration and Certificate Modernisation (RCM) system is a web-enabled network for recording civil registrations which electronically links all council offices with the GRO for the first time.

District Registrars in all 26 council areas can now register all life events electronically, eliminating delays and unnecessary paperwork. In addition, the local offices will be able to print copies of certificates for any registration made in Northern Ireland since 1997, regardless of where it was first recorded.

Welcoming the successful implementation of the RCM system, the then Finance Minister, Jeff Rooker, said: “This is a significant step in the introduction of major changes to reform and modernise civil registration. The new system replaces outdated technology and manual processes with 21st century technology. It helps District Registrars and GRO staff do their jobs more efficiently and, crucially, ultimately improves the service provided to the general public.

“For example, it means that if a parent has registered a new birth in Belfast but now needs another copy of the birth certificate, they can get this from a district council office anywhere in Northern Ireland.”

Prior to the introduction of the RCM system, District Registrars forwarded new registrations on disk at the end of each week to GRO. As well as replacing out-of-date technology, RCM speeds up the collection of statistical and management information. It also provides GRO with the infrastructure required for future modernisation and development.

The GRO has also issued a Consultation Paper entitled ‘Civil Registration in the 21st Century – Modernising a Vital Service’. The Paper proposes a wide range of reforms to the future role and operation of the service, with more choice in ways to register vital events, the provision of additional services and the wider use of technology.

A copy of the policy paper and the previous consultation document may be viewed on the GRO website www.groni.gov.uk. Responses to the consultation are requested by 7 July 2006.
Right to an Education – Article 2 First Protocol ECHR

In the case of Ali v Lord Grey School Head Teacher & Governors (2006) UKHL 14, the House of Lords by a majority of four to five (Baroness Hale dissenting), has held that a child who was unlawfully excluded from school under domestic law, pending the result of a police investigation into an arson attack within the school in which he allegedly took part, had not been deprived of his right to education under Article 2 of the First Protocol to the European Convention on Human Rights.

First Protocol – Article 2
“Right to education”

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Pending police investigation, the school had provided him with schoolwork to do from home. Following the discontinuance of the criminal proceedings due to lack of evidence, the school invited the boy and his parents to a meeting to arrange for his re-entry to the school but they failed to attend. At this time the Local Education Authority had also recommended that he be provided with tuition but this offer was never taken up. By the time he decided that he wished to return to the school, he had been removed from the school roll and his place in the school year had been filled.

The boy brought an unsuccessful claim for damages. On appeal, the English Court of Appeal found that his right to education had been denied in breach of Protocol 1 Article 2 of the Convention, and remitted the case for assessment of damages.

However, the House of Lords has now overturned this decision. In the first case in which the right to education was tested, the court has emphasised the limited nature of the ECHR right to education.

Lord Bingham described it as “weak... and deliberately so” by comparison with other Convention guarantees. Both he and Lord Hoffmann held that, not only is there no right to any particular kind of education if that is not something which the relevant national system provides but even where the national system does make a certain form of provision, there is no right of access to any particular institution. So even improper exclusion is not a breach of Article 2 if some alternative school place is available or the necessary minimum education is made available through a pupil referral unit.

According to Lord Hoffmann, Article 2 is only concerned with the procedure by which an individual has been refused entry to or expelled from a particular establishment if he is thereby “wholly excluded from some sector of the domestic educational system”.

On the evidence in this case, the pupil had not been excluded from school education in breach of his Convention rights.

It seems therefore that in future the courts will look at whether the parties (in particular the schools), have taken all reasonable steps that they are expected to take, rather than whether there has been a breach of domestic law. It will therefore rarely be the case that a school will be liable in damages for a violation of Article 2 of the First Protocol when it fails to comply with the domestic law of exclusion.
If you have not already obtained a copy of the Guidance prepared by the Matrimonial Office on drafting Matrimonial Petitions, this is now available for downloading from the Court Service website at www.courtsni.gov.uk – follow Publications link.

Similarly the new Ancillary Relief Guidance which came into operation on 1st May 2006 and introduces a number of far reaching changes to applications for Ancillary Relief is also available from that website – see also April edition of The Writ for an overview of the new arrangements.

**HOUSING EXECUTIVE – EJECTMENTS SOLICITORS PANELS 2006 - 2009**

**Introduction**

The Executive has six Ejectments Solicitors Panels. The Greater Belfast Panel has two members, while the Solicitors Panels for the other outlets have one member each. Each Panel covers a distinct geographical area.

The work mainly involves representing the Executive in possession proceedings arising out of rent arrears and to recover possession of dwellings which have been occupied by squatters. However, at the option of the Executive, Panel members may be required to represent the Executive in possession proceedings arising out of anti-social behaviour.

In addition, the members of each Panel may be required to carry out work for certain registered housing associations. (Any such work will have to be carried out on the same terms and conditions, including terms as to fee discount, as are applicable to the Executive).

**Duration of Panel**

Membership of Panels will be for a period of three years.

**Eligibility Criteria**

A firm will be eligible for appointment to any particular Panel if it satisfies all of the following eligibility criteria:

1. The firm’s principal or one of the principals must have been in practice as a principal on his/her own account for at least three years.
2. At least two solicitors must be working in the firm (including any employed solicitor).
3. The firm must be willing to designate a solicitor in the firm who will be primarily responsible for actually carrying out Panel work.
4. The firm must have substantial relevant experience.
5. The designated solicitor must have at least three years post qualification experience (or post qualification experience for periods in aggregate amounting to three years) as a solicitor.

**Selection Procedure**

A separate questionnaire must be submitted in respect of each Panel being applied for.

An applicant firm is free to make applications in respect of two, but not more than two, Ejectment Panels.

Any firm willing to be considered for appointment may obtain questionnaires and details of the selection criteria, by writing to the Ejectments Solicitors Panels Co-ordinator, Housing & Regeneration Division, 2nd Floor, The Housing Centre, 2 Adelaide Street, Belfast, BT2 8PB.

Completed questionnaires must be returned to arrive with the Co-ordinator at the above address not later than 4.00 pm on Tuesday, 27 June 2006. No acknowledgements will be sent.
BluePrint Appointments is a market leader in legal recruitment. Our consultants are valued by both candidates and clients for their market knowledge, honest advice and ability to deliver results. Our reputation has been built on the professional confidential service offered to candidates and clients.

**Commercial Litigation Solicitor - Belfast**
Our Client, one of the leading Commercial law firms in Northern Ireland, is seeking a Commercial Litigator to join their expanding team. Ideally you will be 1-3 yrs PQE. High-calibre, forward-thinking and entrepreneurial Commercial Litigators are required. In return you will be offered a very attractive package in a supportive firm who will encourage you up the career ladder.  

Ref: JO273823

**Conveyancing Solicitor - Belfast**
A superb opportunity has risen to join this busy Belfast firm in one of their three branches. Working in the Conveyancing department, you will be a minimum of 2 yrs PQE, dealing with Domestic Conveyancing and a small amount of Commercial. The role requires a highly motivated candidate with strong academics and sound experience coupled with a history of maintaining good client relationships.  

Ref: JO274366

**General Practice Solicitor - Co. Armagh**
Our client a Co. Armagh based Law firm is seeking a General Practice Solicitor to assist in this busy practice. The work load will involve Conveyancing, Litigation and Probate. On offer is a stimulating work environment, a competitive salary package and a clear career path.  

Ref: JO273342

**Matrimonial Solicitor - Belfast**
This 3 Partner firm is seeking a Matrimonial Solicitor to join its team. Candidates should have 4 yrs PQE and be confident in managing client relationships, workloads and priorities. This is a great opportunity for a candidate seeking a challenging role where they will need to use their own initiative.  

Ref: JO269711

**Conveyancing/Probate Solicitor - Cookstown**
Our client, one the oldest law firms in Northern Ireland is seeking an Assistant Solicitor to join its general practice in Cookstown. You will join 3 solicitors all of whom have over 10 years legal experience. The core work will include Conveyancing and Probate. A great opportunity for a candidate seeking either part-time or full time hours.  

Ref: JO266785

For more details on these and other interesting opportunities contact Fionnuala or Katherine on 028 9032 3333 or e-mail legal@blueprintappointments.com
The Law Society will be relocating in July to:

40 Linenhall Street
Belfast
BT2 8BA

for a period of approximately two years.

We aim to keep disruption of all our services to a minimum during the removal process, which will in any event coincide with the end of term and the annual holiday period.

Email contact details, telephone and fax numbers will remain unchanged.

Library Services will continue to operate during the relocation process, although some disruption may be experienced.

Further information on exact dates and details will be contained in subsequent editions of the Writ and on the Society’s website.

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**Macmillan Cancer Relief**

As you are aware Macmillan Cancer Relief is the President’s chosen charity for his year in office. In next month’s edition we hope to carry a report on the President’s Golf Classic held at Warrenpoint Golf Club on Friday 12 May.

We set out below a list of Macmillan Fund-Raising events for the rest of your diary in 2006.

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
<th>Location</th>
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<tr>
<td>Musical evening, Throne Room</td>
<td>Thurs 1 June</td>
<td>Hillsborough Castle</td>
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<tr>
<td>Dragon Boat Event, River Lagan</td>
<td>Sat 3 June</td>
<td>Belfast</td>
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<tr>
<td>Corporate golf event</td>
<td>Fri 16 June</td>
<td>Castlereagh Hills Golf Club</td>
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<tr>
<td>Macmillan Mid-Summer Ball</td>
<td>Fri 23 June</td>
<td>Queen’s University Belfast</td>
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<td>Zipline over River Bann</td>
<td>Sun 25 June</td>
<td>Coleraine</td>
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<tr>
<td>‘The Art of Life’ Art Exhibition</td>
<td>Tues 4 July - Mon 10 July</td>
<td>Castleward</td>
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<tr>
<td>World’s Biggest Coffee Morning</td>
<td>Fri 29 September</td>
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For information on any of the above events, contact Emma at Macmillan Cancer Relief on 028 9066 1166.
Law Society of Northern Ireland Online Directory of firms

The Law Society is pleased to announce the completion of the first phase of the Online Directory of Firms on the Society’s roll. It can be found at www.lawsoc-ni.org/cgi-bin/findafirm

The Directory is available on the Society’s website and is accessible to members of the public wishing to instruct a firm, as well as providing practitioners with contact details for other firms.

You can use the Online Directory to

- Search for a firm by a known name
- Search for a firm by geographical location – there are 74 towns across Northern Ireland for you to choose from. Main firms or branch offices located in each of these towns will be displayed

Contact details for each firm and names of individual solicitors working in each firm will be displayed.

Coming soon - phase 2

We will soon be expanding the functionality of the Online Directory so that it will provide categories of work that firms of solicitors undertake. We will shortly be inviting firms to choose categories from a prepared list and submit these details to the Society for inclusion on the website. This will provide an opportunity for members of the public and businesses alike to locate firms according to the type of advice and representation they require.

NORTHERN IRELAND YOUNG SOLICITORS’ ASSOCIATION

NOTICE OF AGM/Nominations for NIYSA Committee 2006-2007

Please note that the Annual General Meeting of NIYSA will take place on Thursday 22 June 2006 at 5.30pm at Mills Selig Solicitors, 21 Arthur Street, Belfast. The deadline for nominations is Thursday 8 June 2006 and any such nominations should be sent to:

Kiera Lee, Secretary, NIYSA
Mills Selig Solicitors
21 Arthur Street
Belfast BT1 4GA
Email: kiera.lee@nilaw.com

NOTE: All solicitors under the age of 36 are members of NIYSA and are eligible to nominate committee members, stand as committee members and attend the AGM.
Solicitors’ Accounts Regulations 1998

The Professional Ethics and Guidance Committee wish to draw practitioners’ attention to the following aspect of the Regulations, which routine inspections show to be frequently overlooked:

1. The definition of clients’ money

Regulation 2(i)(vi) defines clients’ monies as follows:

“client’s money” shall mean money held or received by a solicitor on account of a person for whom he is acting in relation to the holding or receipt of such money either as a solicitor, or in connection with his practice as a solicitor, as agent, bailee, stakeholder or in any other capacity, including monies received by the solicitor for the disbursement of professional fees and outlays including without prejudice to the generality of the foregoing, Counsel’s fees, professional fees and witnesses expenses; provided that the expression “client’s money” shall not include –

[a] money held or received on account of the trustees of a trust of which the solicitor is a solicitor-trustee; or

[b] money to which the only person entitled is the solicitor himself or, in the case of a firm of solicitors, one or more of the partners in the firm;

Clients’ money relates to all money falling into this definition, whether or not it is held in a current client account, or general client deposit account, or any individually designated client accounts. It includes monies held on individual deposit accounts and for which the solicitor is nonetheless accountable to the client. All such money must be included in client account reconciliations.

Furthermore when monies, in particular for settlement of bills of costs, are received which include a mixture of client and office monies, lodgements should be made in the first instance to the client account, with a transfer of the office monies thereafter.

2. Cheques payable to financial institutions

Regulation 9(2) reads:

“Where money drawn from a client account is payable to a person’s account with a financial institution, public body or other organisation, there shall be included in the payee details the name or account number of the person whose account is to be credited with the payment.”

Your client is not the only person from whom a financial institution or public body will be receiving money; in fact your office may be remitting money to any given institution or body in relation to a number of clients.

Inclusion of the payee details relating specifically to the client are essential to avoid confusion at best, or at worst, monies going astray and being credited to the wrong account by the recipient. Proper indications on cheques also avoid confusion within a solicitor’s own client account records.
Comments sought for Review of Environmental Guidance

The Northern Ireland Working Party of the United Kingdom Environmental Law Association ("UKELA") is seeking information concerning practitioners’ experiences of the investigation and enforcement of environmental crime in Northern Ireland.

The Government has recently announced a Review of Environmental Governance in Northern Ireland, which will examine the manner in which Northern Ireland’s environment ought to be regulated in the future.

The UKELA Northern Ireland Working Party wants to contribute to the review process. The Working Party believes that the Review of Environmental Governance provides an important opportunity for the review panel to consider the enforcement policies of the future regulator. Practitioners who have advised or represented clients charged with environmental crimes have unique insight into the operation of present policies concerning the investigation and enforcement of environmental crime. We invite practitioners to submit to the working party their views and experiences in relation to these policies.

In particular, do practitioners have experiences of acting in cases where they or their clients felt that adequate or effective enforcement action was not taken? Are there other cases where practitioners, acting for defendants, felt that unnecessary or oppressive enforcement action was taken? The working group would be interested in all views and submissions.

All submissions will be treated in confidence and used on a non-attributable basis to compile a report which will be submitted to the panel conducting the Review of Environmental Governance in Northern Ireland.

Please address your replies to: the working party convenor, Dr Brian Jack, School of Law, Queen’s University, 27-29 University Square, Belfast, BT7 1NN as soon as possible.
Formation of a Courts & Tribunals Service

On 21 March the Secretary of State announced that administrative responsibility for Northern Ireland departmental tribunals will transfer to the Court Service to become part of a new “Courts and Tribunal Service”. For the tribunals covered by this announcement, see table below.

This announcement reflects progress made by the Court Service over the past year in reviewing the operation of tribunals here in Northern Ireland. The work was undertaken by a group co-chaired by the Director of Court Service and made up of representatives from each of the Tribunal sponsoring departments.

The catalyst for this work was the tribunal reform in England and Wales, where the Lord Chancellor is undertaking a programme that involves the creation of a new unified Tribunal Service. The Tribunal Service in England and Wales came into operation in April this year and will eventually have responsibility for all tribunals throughout England and Wales.

Many of the factors that prompted reform in England and Wales are also evident in Northern Ireland. There are 17 separate tribunals operating locally. The Social Security Commissioner and Pensions Appeals Tribunals already operate under the auspices of the Court Service but the remainder are the responsibility of the Departments that make policy, make the decisions that are appealed and provide the funding.

These tribunals range from the Appeals Tribunals which hear around 12,600 cases per year and have a budget of £5m, to some Tribunals such as the Reserve Forces Reinstatement Committee which meet so rarely they have no separate budget allocation. These tribunals have developed as a response to individual departmental policy requirements, without any central co-ordination, planning or direction. More importantly, is the perception that a decision by a Tribunal which is administered by its sponsoring department might not be compliant with ECHR requirements.

The announcement that the existing Tribunals will move to the new Courts and Tribunals Service marks the start of a process that will be planned with the current Tribunal presidents and staff. It is likely that an incremental approach will be adopted to taking on this new and important area of work. An internal planning group will be established to help map out how this important change to the existing corporate structure of the Court Service will be managed. The transfer will initially be made under agency arrangements that are provided for in existing legislation.

As well as building on the structures that are already in place to support Tribunal operations, the Court Service is also in the process of setting up two new local Tribunals. The Parking Adjudication Service will come into operation in late Autumn and will decide on appeals against penalty charge notices issued under the DRD decriminalisation of parking initiative. The Northern Ireland Valuation Tribunal will come into operation in April 2007 and will deal with appeals arising under the reform of the domestic rating system. Appeals against water rates will also be heard by this Tribunal.

TRIBUNAL REFORM

LIST OF NI TRIBUNALS

Social Care Tribunal (DHSSPS)
Fair Employment Tribunal (DEL)
Industrial Tribunal (DEL)
Lands Tribunal (DFP)
Mental Health Review Tribunal (DHSSPS)
Planning Appeals Commission (OFMDFM)
Rent Assessment Panel (DSD)
Reserve Forces Reinstatement Committee (DEL)
Special Educational Needs Tribunal (DE)
The Appeals Service for NI (DSD)
Water Appeals Commission (OFMDFM)
Changing CPD Requirements

From January 2005 all solicitors in Northern Ireland are subject to the Continuing Professional Development Scheme (CPD).

The Ridley Partnership Ltd provides a range of 3-hour seminars, which meet the Law Society of Northern Ireland's Client Care and/or Practice Management CPD requirements. This year's seminar programme is targeted at 3 different levels of experience within a law firm:

- **Level 3** Senior Partners and Managers
- **Level 2** Staff and Solicitors who have some level of management responsibility
- **Level 1** Junior staff who need basic understanding of managing their work and the law firm environment

Please see below for forthcoming events between June and October 2006

**PRACTICAL MANAGEMENT FOR LAWYERS** (Level 1)

**Wednesday 14th June 2006 - The King's Hall Exhibition Centre, Belfast**

This course discusses management issues for all staff and includes an introduction to the basic principles of managing people and managing oneself, the office environment, billings and cash flow, operational risk and client care.

**FUTURE SEMINARS** (The King's Hall Exhibition Centre, Belfast)

- 13/09/2006 - Practice Management (Level 2)
- 11/10/2006 - Crisis & Reputation Management (Level 3)
- 16/10/2006 - Winning & Retaining Clients (All Levels)
- 06/11/2006 - Practice Management (Level 3)
- 15/11/2006 - Managing Business Risk (Level 3)
- 22/11/2006 - Winning & Retaining Clients (All Levels)
- 06/12/2006 - Lexcel (All Levels)
- 13/12/2006 - Client Care & Complaints Handling

Qualifies for 3 hours CPD

All seminar times: 2.00pm – 5.00pm

Cost per seminar: £125.00 + VAT per delegate

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Tel: 0845 600 2729 or Email: info@theridleypartnership.co.uk
In the first of two articles Les Allamby sets out the capital rules that apply when social services conduct a financial assessment on whether to provide help with payment towards nursing and residential care charges. The second article will look at equivalent rules for social security means-tested benefits.

Trusts have a duty to charge for residential care services. Once a person has been assessed as requiring residential care, the trust will undertake a financial assessment to ascertain whether that person can pay for her/his care of whether assistance with the care fees is required. The capital and income rules which trusts apply in conducting their financial assessments are similar to those applied in determining entitlement to Income Support (IS) although there are some significant differences. In effect, a person’s residential care is financed through both social security payments and social services financial support.

Articles 36 and 99 of the Health and Personal Social Services (NI) Order 1972 (1972 Order) place a duty on trusts to charge for accommodation in voluntary or private homes and in trust managed homes respectively.

Articles 36(8) and 99(6) of 1972 Order give trusts the power not to apply the full financial means test for the first eight weeks of a temporary stay in residential care. Trusts can set a standard charge for such a stay without looking at individual means. Some trusts have done this but others apply the full means test from day one.

When a trust undertakes a full financial assessment, it should be carried out in accordance with the Health and Personal Social Services (Assessment of Resources) Regulations (NI) 1993 (1993 Regs), as amended, to ascertain the person’s liability to pay. Guidance on charging is also contained in the ‘Charging for Residential Accommodation Guide (CRAG)’ which is issued by the Department of Health and Social Services and Public Safety and is regularly updated. When one or both members of a couple enter residential care, social services should assess them according to their individual means, although the liability of partners to maintain their spouse may be considered (Article 100 of the 1972 Order).

The capital rules
In order for a person to receive assistance from social services with care fees, s/he must have insufficient income to pay the fees and meet the capital limits.

From April 2006, savings below £12,750 are ignored, while savings between £12,750 and £21,000 generate a tariff income. Capital above £21,000 will lead to no social services financial support. Tariff income will apply on savings between the lower and upper limit on the basis of an assumption of an income of £1 for every £250 (or part of £250) above, the lower capital limit.

Generally, a capital payment is a one-off or lump sum payment not made in respect of a specified period and not intended to form part of a series of payments. Capital includes property and savings in or outside the UK unless it is disregarded. Examples of capital are buildings, land, savings, stocks and shares and premium bonds.

When is capital ignored?
The rules on when a home is taken into account as a capital asset differ in a number of ways from IS and Pension Credit (PC). First, a person entering permanent residential care has the value of the home disregarded for twelve weeks. A person entering residential care on a temporary basis has the value of the home ignored providing s/he intends to return to the home which is still available or the home is being sold to buy another home more suitable to return to.

Second, when a person enters residential care, the value of the home is ignored if it is occupied by:

- a partner; or
- a relative who is 60 or over or incapacitated; or
- a child under sixteen whom the resident is liable to maintain; or
- a third party and the trust decides it is reasonable to do so in the circumstances.

This provides a far wider power to disregard the value of the property than that contained within IS and PC regulations. The discretion may be exercised, for example, where a long-standing carer or family member under 60 continues to live in the person’s property after her/his admission to care.

Third, unlike for IS and PC, social services must assess the value of actual interest in the home (ie a one fifth share must be valued at 20 per cent of the value of the property). The Local Government Ombudsman in England recently considered a case of a valuation where the property was jointly owned between a father and son (case number 03/C/09384, complaint against Lincolnshire County Council August 2004). The father had gone against Lincolnshire County Council (case number 03/C/09384, complaint against Lincolnshire County Council August 2004). The father had gone into residential care and the son did not wish to purchase his father’s share or sell his own. In this circumstance, the Ombudsman ruled the real market...
value of the property was nil and this approach should normally be applied to such cases. This emphasizes that any valuation needs to take into account whether there is a willing buyer and willing seller.

However, unlike IS and PC, the value of the home is not disregarded when it is up for sale except for up to three months after a person enters care on a permanent basis. Where a person cannot meet the care charges while the home is being sold, social services should meet the charges until a person receives the proceeds of the sale. Normally, a health and social services trust will enter into an agreement to pay any shortfall in fees in return for repayment once the proceeds of the sale are realised. Attendance Allowance or Disability Living Allowance (care component) which is treated as income when assessing entitlement to social services financial support can continue to be paid while a funding agreement like that outlined above is in place (see Chief Adjudication Officer v Creighton and Others 2002 NI Court of Appeal).

Jointly owned capital (other than property or land) is divided into equal shares regardless of what the actual share is.

Valuation and disposal of capital
The capital will be valued at its market or surrender value minus 10 per cent for the cost of sale and any encumbrance on the property or asset.

Under Regulation 25 of the 1993 Regs, any person who deprives him/herself of an asset in order to secure financial assistance may be treated as still possessing it. Trust staff therefore have a discretion whether to assume notional capital after deliberate deprivation of capital. The rule can also apply where a person fails to apply for capital which is available (this does not include capital available under a trust fund) and where someone else makes a payment of capital to a third party on a person’s behalf.

Whilst the timing of the disposal of the asset is relevant for determining who is liable for the care fees, there is no time limit beyond which deprivation cannot be considered. However, CRAG states that timing should be taken into account and that it would be unreasonable for social services to decide that a person who disposed of an asset when s/he was fit and healthy and not contemplating entering residential care did so for the purpose of reducing her/his future liability for care fees.

Where a person transfers an asset to a third party either six months prior to, or anytime after entering residential care, the trust has the power to recover care fees from the third party. If a person transfers an asset prior to six months before going into care, the trust can seek to recover the cost of the care fees from that person.

In Northern Ireland there has been no reported decisions on the scope of Regulation 25. However, there have been important decisions elsewhere.

In Yule v South Lanarkshire Council (1999) 2, Community Care Law Reports 395, Mrs Yule transferred the ownership of her home to her granddaughter more than a year before there was any significant deterioration to her health. The council decided that the transfer had been done to avoid or reduce the charges faced in residential care. The Scottish Court of Session held that the true purpose of any transfer of property could be determined without a specific finding having to be reached concerning the state of knowledge or intention of the resident. These issues were matters of fact to be decided by the council.

In Beeson v Dorset County Council (2002) Court of Appeal in England and Wales, the applicant had transferred ownership of his house to a son by deed of gift after suffering a stroke. This was done two and a half years before going into a care home. The council decided to apply the deprivation of capital rules. This decision was upheld through the council’s complaints procedure. The High Court distinguished the case from Yule due to evidence from the family about the father and son’s state of mind at the time of the deed of gift.

The High Court held that there must be some awareness of the possibility of being liable to pay for residential care for the deprivation rule to apply. The High Court held that the council either failed to apply the correct subjective test or, if it had applied the appropriate test, it failed to give adequate reasons for showing why it rejected the family’s evidence. The case was further appealed to the Court of Appeal on the question of whether the council’s complaints procedure was compatible with Article 6 of the European Convention on Human Rights (right to a fair trial). The Court of Appeal held that the procedure was compatible. For practitioners, the High Court decision 2001 EWHC Admin 986 is of most relevance.

In Robertson v Fife Council (2002) UKHL35, the council decided that Mrs Robertson had deliberately deprived herself of capital. As a result the council decided that she possessed notional capital above the upper limit and it had no duty to provide her with accommodation. The House of Lords held that assessment of need and whether there is call for
provision of services comes first. After that, there should be an assessment of financial means and what an applicant can afford. In effect, there is still a duty to provide accommodation. The wording of the legislation is different in Northern Ireland; however, it is strongly arguable that the principle outlined in the case applies here.

Advising clients on questions of disposal of assets and its implications for nursing and residential care charges is fraught with difficulties. Knowledge of social services and social security rules is essential alongside other issues around ramifications of giving up property rights. More details on this area are contained in the Law Centre’s Encyclopedia of Rights available in CD-Rom format to Law Centre members. To join the Law Centre, contact David Ashfield at 028 9024 4401.

Train with Law Centre (NI)

The Law Centre’s training programme for 2006-2007 is now on line. Access it through www.lawcentreni.org or contact our training department 028 9024 4401. Law Centre training covers legal issues in community care, social security, employment and immigration and carries CPD hours for solicitors.

Spring Courses at Law Centre (NI)

- Immigration Law and Practice: an Introduction
  21 & 28 June 2006
- Asylum and Immigration Tribunal Reconsideration Hearings
  22 June 2006
- Awards, Revision, Renewals & Overpayments of Tax Credits
  29 June 2006

Information Law Training in Belfast 2006

- 8-June
- Surveillance Law & the Regulation of Investigatory Powers Act (RIPA)

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Email: info@actnow.org.uk

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Current credit card default charges unfair

According to the Office of Fair Trading (OFT), credit card default charges (i.e. charges in standard credit card contracts for a failure to pay a minimum payment on the due date, exceeding a credit limit or a failure to honour a payment made), have generally been set at a significantly higher level than is legally fair.

Estimating that across the industry this has led to unlawful penalty charges currently in excess of £300 million a year, the OFT now expects all credit card issuers to recalculate their default charges in line with a statement of principles published by the OFT and to take urgent action where needed to reduce the level of credit card default fees. The industry has until 31 May to respond to the statement. These principles also apply to default charges in other consumer contracts such as those for bank overdrafts, store cards and mortgages.

Where credit card default charges are set at more than £12, the OFT will presume that they are unfair and is likely to challenge the charge unless there are limited, exceptional business factors in play. A default charge is not fair simply because it is below £12.

The OFT states that setting a threshold for intervention is a pragmatic pro-consumer action that is designed to give the industry the opportunity to change its practice without litigation. It is supported by detailed guidance to the industry as to how to reduce the likelihood of public enforcement.

A default charge should only be used to recover certain limited administrative costs. These may include postage and stationery costs and staff costs and also a proportionate share of the costs of maintaining premises and IT systems necessary to deal with defaults. Exceptional business factors which may affect the level of a fair charge may include policies to prevent casual defaults as operated by issuers such as Egg. Only a court can finally decide whether a charge is unfair or not.

John Fingleton, OFT Chief Executive, said:

“Our statement of principles provides practical guidance to banks which increases their incentives to compete vigorously while protecting consumers from being charged unfair amounts. Our threshold approach is a spur to changes in market practice. We expect credit card issuers to adjust their default fee levels quickly. We have not ruled out future legal action if the market does not respond positively.”

The OFT has published a short guide for consumers and consumer advice agencies setting out the principles on which default charges should be calculated. This can be downloaded from www.oft.gov.uk

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ADVERTISEMENT
Credit card cover on overseas purchases

Credit card purchases made abroad now have the same protection as those made in the UK following a recent ruling by the English Court of Appeal.

In Office of Fair Trading v Lloyds TSB Bank plc, Tesco Personal Finance Ltd and American Express Services Europe Ltd, the Court of Appeal overturned a previous ruling by the English High Court in November 2004 that section 75 of the Consumer Credit Act 1974 did not apply to overseas purchases.

Section 75(1) states that card issuers are jointly and severally liable for any misrepresentation or breach of contract in relation to a transaction with a cash price of £100 to £30,000 which is financed by an agreement regulated by the Consumer Credit Act 1974.

The Appeal Court judgment confirms the OFT’s view that credit card issuers are individually as well as jointly liable with suppliers if the consumer has a valid claim for misrepresentation or breach of contract by the supplier where the price of the purchase is above £100 but no more than £30,000.

Cardholders are therefore able to make a claim against the credit card issuer as well as or instead of the supplier.

Figures show that UK consumers spent almost £123 billion on domestic credit card transactions in 2004 and a further £12.5 billion on overseas transactions.

Section 75 covers foreign transactions including where:
- a consumer uses a UK credit card to buy goods while abroad
- a consumer orders goods from a foreign supplier while abroad for delivery into the UK
- a consumer in the UK buys goods which are delivered to a UK address from overseas by telephone, mail order or over the internet
- there is face-to-face pre-contract dealings with a foreign supplier

temporarily in the UK, or with a UK agent of a foreign supplier but the contract is not completed in the UK.

Tips for purchases by credit card:
- thanks to the consumer protection of section 75, money that seemed lost on a credit card purchase can be claimed back
- if payment is made by credit card, the money can be claimed back from the card company if the seller fails to honour the contract, or the item is faulty, or if the seller wrongly describes it, or if the supplier goes out of business
- an attempt to claim the money back from the seller does not have to be made first – the credit card company is individually liable
- if buying an item costing over £100 and a deposit is requested, consideration should be given to paying the deposit by credit card
- section 75 does not cover use of a debit or charge card

HEART TRUST FUND
(ROYAL VICTORIA HOSPITAL)

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

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

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

Further details about this charity and its work will gladly be supplied by the Secretary, The Heart Trust Fund (Royal Victoria Hospital), 9B Castle Street, Comber, Co. Down BT23 5DY. Tel: (028) 9187 3899.
(Registered Charity No. XN52409)
(Inland Revenue Gift Aid Scheme Code EAP76NG)
Judicial Conduct Code of Practice

On 3 April 2006 responsibility for complaints about the conduct of members of the judiciary as well as Presidents and members of the tribunals passed to the Lord Chief Justice from the Lord Chancellor. Also on that date, and following a consultation exercise, the Lord Chief Justice published a Code of Practice which sets out his arrangements for investigating complaints.

The Code, as well as a summary note on the complaints process, is available on the Court Service website at www.courtsni.gov.uk or on request from the Lord Chief Justice’s Office. The Code has been circulated to holders of judicial office and details about the complaints process have been circulated to Court Service Business Managers, Court Administrators and others. A printed information leaflet for potential complainants will be available shortly.

It is important to emphasise that the Code applies to judicial conduct and not to judicial decisions, the process of reasoning underpinning such decisions or the exercise of judicial functions generally. Such matters may only be challenged through the legal process.

Anyone wishing to make a complaint about the conduct of a member of the judiciary should write to the Complaints Officer, Lord Chief Justice’s Office, Royal Courts of Justice, Chichester Street, Belfast, BT1 3JF.

Judicial Appointments Ombudsman

The Lord Chancellor will be appointing a Northern Ireland Judicial Appointments Ombudsman in September 2006.

The Constitutional Reform Act 2005 provides for the establishment of a Northern Ireland Judicial Appointments Ombudsman who will replace the existing Commissioner for Judicial Appointments for Northern Ireland. The Ombudsman’s remit will be to handle complaints of maladministration from candidates for judicial office in relation to actions of the Northern Ireland Judicial Appointments Commission, the NI Court Service and the Lord Chancellor.

The Northern Ireland Court Service is responsible for administering the appointment process. Whilst the appointment does not come within the remit of the Office of the Commissioner for Public Appointments (OCPA), it has been agreed that the processes adopted will adhere to OCPA’s Code of Practice for Ministerial Appointments to Public Bodies and an Independent Assessor has been appointed.

The appointment has recently been advertised. The appointee must neither have held nor hold a listed judicial office nor be or have been a practising barrister or solicitor. The legislation also provides that Members of Parliament, Members of the Northern Ireland Assembly and those currently employed by the Civil Service are ineligible for appointment.
The Solicitors’ Benevolent Association is a voluntary charitable body consisting of all members of the profession in Ireland. It assists members or former members of the solicitors’ profession in Ireland and their wives, husbands, widows, widowers, family and immediate dependants who are in need. The Association was established in 1863 and is active in giving assistance on a confidential basis throughout the 32 counties.

The amount paid out during the year in grants was $421,414, which was collected from members’ subscriptions, donations, legacies, investment income and royalties from the Northern Ireland Land Registration Manual. Currently, there are 52 beneficiaries in receipt of regular grants and approximately one third of these are themselves supporting spouses and children.

There are 15 directors, three of whom reside in Northern Ireland and they meet monthly in the Law Society’s offices, Blackhall Place. They meet at Law Society House, Belfast, every other year. The work of the directors, who provide their services entirely on a voluntary basis, consists in the main of reviewing applications for grants and approving of new applications. The directors also make themselves available to those who may need personal or professional advice. The directors have available the part-time services of a professional social worker who, in appropriate cases, can advise on state entitlements, including sickness benefits.

The directors are grateful to both Law Societies for their support and, in particular, wish to express thanks to Owen M Binchy, Past President of the Law Society of Ireland, Attracta Wilson, Past President of the Law Society of Northern Ireland, Ken Murphy, Director General, John Bailie, Chief Executive, and the personnel of both Societies.

I wish to express particular appreciation to all those who contributed to the Association when applying for their practising certificates, to those who made individual contributions, and to the following:

- The Law Society
- Dublin Solicitors’ Bar Association
- Belfast Solicitors’ Association
- Limavady Solicitors’ Association
- Local Authority Solicitors’ Bar Association
- Roscommon Bar Association
- Tipperary and Offaly Bar Association
- County Wexford Solicitors’ Association
- Conveyancing Committee
- Contributors to Irish Conveyancing Precedents
- Faculty of Notaries Public in Ireland
- Sheriffs’ Association
- Arthur Moir
- The Southern Law Association

To cover the ever-greater demands on the Association, additional subscriptions are more than welcome as, of course, are legacies and the proceeds of any fundraising events. Subscriptions and donations will be received by any of the directors or by the secretary, from whom all information may be obtained at 73 Park Avenue, Dublin 4. I would urge all members of the Association, when making their own wills, to leave a legacy to the Association.

I would like to thank all the directors and the Association’s secretary, Geraldine Pearse, for their valued hard work, dedication and assistance during the year.

Thomas A Menton, Chairman
### RECEIPTS AND PAYMENTS ACCOUNT YEAR ENDED 30 NOVEMBER 2005

<table>
<thead>
<tr>
<th></th>
<th>2005</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>RECEIPTS</strong></td>
<td>£</td>
<td>£</td>
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<tr>
<td>Subscriptions</td>
<td>196,375</td>
<td>186,521</td>
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<tr>
<td>Donations</td>
<td>26,532</td>
<td>26,437</td>
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<tr>
<td>Net investment income</td>
<td>44,815</td>
<td>41,373</td>
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<tr>
<td>Bank interest</td>
<td>1,609</td>
<td>1,607</td>
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<tr>
<td>Repayment of grants paid by way of loan</td>
<td>19,358</td>
<td>-</td>
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<tr>
<td>Refund of dividend withholding tax</td>
<td>17,590</td>
<td>-</td>
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<td><strong>Total</strong></td>
<td>306,279</td>
<td>255,938</td>
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<thead>
<tr>
<th></th>
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<tr>
<td><strong>PAYMENTS</strong></td>
<td>£</td>
<td>£</td>
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<tr>
<td>Grants</td>
<td>(287,178)</td>
<td>(258,710)</td>
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<tr>
<td>Bank interest and charges</td>
<td>(1,322)</td>
<td>(2,053)</td>
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<tr>
<td>Administration expenses</td>
<td>(16,576)</td>
<td>(17,599)</td>
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<tr>
<td>Currency loss</td>
<td>95</td>
<td>(977)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>(305,171)</td>
<td>(279,339)</td>
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<thead>
<tr>
<th></th>
<th>2005</th>
<th>2004</th>
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</thead>
<tbody>
<tr>
<td><strong>SURPLUS/(DEFICIT) FOR THE YEAR BEFORE SPECIAL EVENTS</strong></td>
<td>1,108</td>
<td>(23,401)</td>
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<tr>
<td>Royalties from Northern Ireland Land Registration Manual</td>
<td>23,064</td>
<td>-</td>
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<tr>
<td>Lawyers diaries and Christmas cards</td>
<td>240</td>
<td>14,253</td>
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<tr>
<td>Irish Conveyancing Precedents</td>
<td>550</td>
<td>454</td>
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<tr>
<td>Royalties from Law Society of Ireland: 1852-2003</td>
<td>-</td>
<td>340</td>
</tr>
<tr>
<td>Proceeds of sale of library books</td>
<td>-</td>
<td>436</td>
</tr>
<tr>
<td>Other income</td>
<td>-</td>
<td>389</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th></th>
<th>2005</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SURPLUS/(DEFICIT) FOR THE YEAR BEFORE LEGACIES</strong></td>
<td>24,962</td>
<td>(7,529)</td>
</tr>
<tr>
<td>Legacies</td>
<td>681</td>
<td>-</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>2005</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SURPLUS/(DEFICIT) FOR THE YEAR</strong></td>
<td>25,643</td>
<td>(7,529)</td>
</tr>
</tbody>
</table>
Institute of Professional Legal Studies 2006 Formal

This year’s Institute Formal was held in the Porcelain Suite of Ten Square Hotel, where the solicitor and barrister trainees were met by a red carpet reception. China and Porcelain were decked out in dozens of candles, balloons and flowers and guests were treated to pink champagne and Cosmopolitans on arrival. Ladies were presented with complimentary Armani perfume gifts supplied by Boots of Donegall Place.

Prize-giving and speeches by MC Fintan McAleer were followed by a chocolate fountain by Charlie’s Chocolate Angels and dancing to 70s and 80s numbers continued into the small hours.

The event was supported by a number of generous sponsors including The Bar Council of Northern Ireland, The Director of the Institute, Anne Fenton, John McKee & Son, Solicitors, Napier & Son, Solicitors, Patrick Fahy, Solicitors, Copeland McCaffrey, Solicitors and First Trust Bank. Prizes were kindly supplied by Institute lecturers - Martin O’Brien, Fiona Donnelly, Ruth Craig and Aine Maxwell. The Organising Committee would like to thank each of the sponsors for their very generous contributions which helped make the 2006 Formal a unique and memorable event.
Northern Ireland Young Solicitors’ Association

NORTHERN IRELAND YOUNG SOLICITORS’ ASSOCIATION
IN ASSOCIATION WITH BRIGHTWATER RECRUITMENT AND FIRST TRUST BANK

ANNUAL CONFERENCE & MID-SUMMER BALL 2006

Ten Square, Belfast

June 16th – June 18th 2006

Friday 16th June
Welcome and drinks reception

Saturday 17th June
10am –1pm- Practice Management seminar and light lunch. Seminar to include the following speakers and topics:
1. “Core values and the regulatory framework” - Suzanne Bryson, Deputy Secretary of the Law Society of Northern Ireland.
2. “General practice management issues including a look at UITF 40 and valuation of work in progress”
   - Michael Barnett, Director and Mervyn Bolan, Senior Tax Manager, Moore Stephens Chartered Accountants.

Saturday afternoon
Belfast Bus Tour

Saturday 7.30 pm
Drinks Reception Mid-Summer Ball in the Porcelain Room, Ten Square, Belfast (tables of 10)

Accommodation, which is not included in the registration fees, may be available at Ten Square. When booking please quote NIYSA as a preferential rate has been arranged.

REGISTRATION FORM

Please note: Your name and organisation will appear on your badge as you have specified below. A separate form should be completed for each delegate attending.

DELEGATE DETAILS

Title: Name: Surname:

Firm/Organisation:

Contact Address:

Telephone: Fax: Email:

Please tick the appropriate box(es) below:

☐ I will require vegetarian food
☐ I have other dietary requirements and would like to be contacted
☐ I have specific needs in relation to sight, mobility, hearing etc and would like to be contacted

The following fees exclude travel, accommodation and expenses etc. Please confirm which elements you wish to register for by ticking the relevant box below. Your booking will be confirmed by means of an acknowledgement letter that will be emailed to you once your registration has been processed and payment cleared (if paid in advance).

☐ I wish to attend the whole Annual Conference (Fri-Sun) @ £75.00 inc. VAT
☐ I wish to attend the Practice Management Seminar on Saturday 17th June only @ £60.00 inc. VAT
☐ I wish to attend the Friday night drinks reception only
☐ I wish to attend the Mid-Summer Ball only @ £35.00 inc. VAT
☐ I wish to attend the Friday night party and Mid-Summer Ball only @ £35.00 inc. VAT
☐ I enclose a bankers draft/cheque (drawn on a UK bank) made payable to Northern Ireland Young Solicitors Association

Cancellation Policy: Should you wish to cancel please advise Kiera Lee in writing as soon as possible. Payment must be in advance. No payments will be accepted on the day.

Please return this form as soon as possible to: Kiera Lee, NIYSA Secretary, Mills Selig Solicitors, 21 Arthur Street, Belfast, BT1 4GA. E-mail: kiera.lee@nilaw.com Tel: 028 9024 3678
## Legal Professionals Salary Survey 2006

<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>Newly Qualified Solicitor</strong></td>
<td>£20,500</td>
<td>£19,250</td>
<td>£22,000</td>
</tr>
<tr>
<td>2006</td>
<td>£24,500</td>
<td>£22,500</td>
<td>£26,500</td>
</tr>
<tr>
<td>% Increase</td>
<td>5.13</td>
<td>4.05</td>
<td>4.76</td>
</tr>
<tr>
<td><strong>Solicitor 1-2 PQE</strong></td>
<td>£30,000</td>
<td>£26,250</td>
<td>£35,250</td>
</tr>
<tr>
<td>2006</td>
<td>£32,000</td>
<td>£29,500</td>
<td>£40,000</td>
</tr>
<tr>
<td>% Increase</td>
<td>6.52</td>
<td>4.14</td>
<td>4.76</td>
</tr>
<tr>
<td><strong>Solicitor 3-4 PQE</strong></td>
<td>£39,750</td>
<td>£35,250</td>
<td>£53,750</td>
</tr>
<tr>
<td>2006</td>
<td>£41,250</td>
<td>£38,500</td>
<td>£58,000</td>
</tr>
<tr>
<td>% Increase</td>
<td>7.41</td>
<td>5.14</td>
<td>5.56</td>
</tr>
<tr>
<td><strong>Solicitor 5-6 PQE</strong></td>
<td>£48,750</td>
<td>£43,500</td>
<td>£72,000</td>
</tr>
<tr>
<td>2006</td>
<td>£50,750</td>
<td>£47,500</td>
<td>£75,000</td>
</tr>
<tr>
<td>% Increase</td>
<td>8.67</td>
<td>6.25</td>
<td>6.67</td>
</tr>
<tr>
<td><strong>Solicitor 7-8 PQE</strong></td>
<td>£52,000</td>
<td>£45,250</td>
<td>£72,000</td>
</tr>
<tr>
<td>2006</td>
<td>£55,750</td>
<td>£49,500</td>
<td>£77,500</td>
</tr>
<tr>
<td>% Increase</td>
<td>10.26</td>
<td>6.95</td>
<td>7.45</td>
</tr>
<tr>
<td><strong>Senior Solicitor/Partner</strong></td>
<td>£12,750</td>
<td>£10,500</td>
<td>£14,250</td>
</tr>
<tr>
<td>2006</td>
<td>£13,750</td>
<td>£11,500</td>
<td>£15,750</td>
</tr>
<tr>
<td>% Increase</td>
<td>7.95</td>
<td>5.26</td>
<td>5.95</td>
</tr>
<tr>
<td><strong>Legal Secretary 1-3 yrs</strong></td>
<td>£16,250</td>
<td>£14,500</td>
<td>£17,750</td>
</tr>
<tr>
<td>2006</td>
<td>£17,750</td>
<td>£15,500</td>
<td>£19,750</td>
</tr>
<tr>
<td>% Increase</td>
<td>9.09</td>
<td>6.45</td>
<td>6.85</td>
</tr>
<tr>
<td><strong>Legal Book-keeper 1-3 yrs</strong></td>
<td>£19,500</td>
<td>£16,750</td>
<td>£22,500</td>
</tr>
<tr>
<td>2006</td>
<td>£21,250</td>
<td>£18,750</td>
<td>£24,250</td>
</tr>
<tr>
<td>% Increase</td>
<td>9.58</td>
<td>6.98</td>
<td>7.48</td>
</tr>
<tr>
<td><strong>Legal Book-keeper 4+ yrs</strong></td>
<td>£24,450</td>
<td>£20,000</td>
<td>£29,000</td>
</tr>
<tr>
<td>2006</td>
<td>£26,250</td>
<td>£22,500</td>
<td>£32,000</td>
</tr>
<tr>
<td>% Increase</td>
<td>11.11</td>
<td>7.95</td>
<td>8.55</td>
</tr>
<tr>
<td><strong>Legal Office Manager</strong></td>
<td>£12,250</td>
<td>£10,500</td>
<td>£14,250</td>
</tr>
<tr>
<td>2006</td>
<td>£13,750</td>
<td>£11,750</td>
<td>£15,750</td>
</tr>
<tr>
<td>% Increase</td>
<td>12.6</td>
<td>9.80</td>
<td>10.66</td>
</tr>
</tbody>
</table>

*Figures may be higher.*

This Salary Survey is generally reflective of movement by local professionals within the local market. It is recognised that greater financial premiums shall be tabled to Solicitors who can offer experience of either (a) working for major international firms within larger markets (e.g. City of London, SE England, Dublin) and/or (b) specialist technical experience (e.g. Corporate/Commercial, Planning, Banking).

The above ranges are based solely upon salary offers made during 2005 and take no account of the monetary value of company benefits that may also have been available upon acceptance.

Typical employee benefits now being offered on the Northern Ireland market include: Contributory Pension, Life Insurance, Health Insurance, Private Healthcare, Bonus (performance or company), Parking, Study Assistance, Professional fees, Gym membership.

For a private and confidential discussion on current local market salaries and benefits or any other recruitment issue please contact one of our staff at Abacus Professional Recruitment.

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**Belfast Office**
11 Chichester Street, BT1 4JA
T: 028 9031 3157
E: info@abacus-pr.com
W: www.abacus-pr.com

**Portadown Office**
Unit 4, Acorns Business Centre, Woodhouse Street, BT62 1JG
T: 028 3839 3339
E: portadown@abacus-pr.com
W: www.abacus-pr.com
**DIRECTOR OF PUBLIC PROSECUTIONS v MC**
Appeal by way of case stated. - admissibility of evidence in assault proceedings in Youth Court. - RM sat alone in a voire dire hearing. - whether lay members should have participated in the decision as to the admissibility of identification evidence. - proper approach and disposal of case. - HELD that it was wrong to sit without other panel members of the Youth Court and case submitted for hearing by a different panel.
7 APRIL 2006
COURT OF APPEAL
KERR LCJ, CAMPBELL LJ, WEATHERUP J

**GERARD HIGGINS v HOMEFIRST COMMUNITY TRUST AND MICHAEL J HERRON LIMITED**
Damages for breach of contract and negligence. - tender for construction of children's home. - enforceability and acceptance of contract. - attempted renegotiation of contract period. - HELD that defendant was not liable for breach of contract and negligence.
7 APRIL 2006
HIGH COURT
COGHLIN J

**IN THE MATTER OF AN APPLICATION BY TALIA MCDOWELL (A MINOR) BY HER MOTHER AND NEXT FRIEND ALIX MCDOWELL AND FOR JUDICIAL REVIEW AND IN THE MATTER OF THE SPECIAL EDUCATIONAL NEEDS AND DISABILITY (NI) ORDER 2005**
7 APRIL 2006
HIGH COURT
GIRVAN J

**IN THE MATTER OF AN APPLICATION BY RYAN MCKINNEY FOR JUDICIAL REVIEW**
Appeal of dismissal of appellant's judicial review application challenging the Secretary of State's decision to restrict his participation as a candidate in the Northern Ireland Assembly elections because he was a civil servant. - Northern Ireland Pay and Conditions of Service Code. - guidance issued to civil servants. - control of political activities by civil servants. - art. 10 ECHR. - European jurisprudence. - need for political neutrality of civil servants. - proportionality of the restriction imposed on the appellant. - appeal dismissed.
26 APRIL 2006
COURT OF APPEAL
KERR LCJ

**IN THE MATTER OF AN APPLICATION BY TALIA MCDOWELL (A MINOR) BY HER MOTHER AND NEXT FRIEND ALIX MCDOWELL AND FOR JUDICIAL REVIEW AND IN THE MATTER OF THE SPECIAL EDUCATIONAL NEEDS AND DISABILITY (NI) ORDER 2005**
7 APRIL 2006
HIGH COURT
GIRVAN J

**IN THE MATTER OF AN APPLICATION BY GERARD MCDONNELL FOR JUDICIAL REVIEW**
Application for judicial review of decision of PSNI constable to arrest the applicant under art. 26 PACE. - application for judicial review of subsequent decision of RM to accept jurisdiction in respect of charges preferred against the applicant under s.20 Offences Against the Person Act 1861 and to remand applicant on bail. - assault inflicting grievous bodily harm. - whether arrest was lawful. - whether attempt to circumvent the requirement for personal service of summons. - whether arrest for the purpose of charging. - HELD that arrest was lawful, and applications dismissed.
WEATHERUP J
HIGH COURT
27 APRIL 2006

**IN THE MATTER OF AN APPLICATION BY RYAN MCKINNEY FOR JUDICIAL REVIEW**
Appeal of dismissal of appellant's judicial review application challenging the Secretary of State's decision to restrict his participation as a candidate in the Northern Ireland Assembly elections because he was a civil servant. - Northern Ireland Pay and Conditions of Service Code. - guidance issued to civil servants. - control of political activities by civil servants. - art. 10 ECHR. - European jurisprudence. - need for political neutrality of civil servants. - proportionality of the restriction imposed on the appellant. - appeal dismissed.
26 APRIL 2006
COURT OF APPEAL
KERR LCJ
THE NORTHERN IRELAND CERTIFICATION OFFICER FOR TRADE UNIONS AND EMPLOYERS ASSOCIATIONS AND FRANK CUNNINGHAM, JANICE GAULT, ALISTER GOOD AND FELIX MOONEY

Appeal by way of case stated from deputy RM’s decision in proceedings brought by the Northern Ireland Certification Officer for Trades Unions and Employers’ Associations against the respondents. - respondents alleged to have been involved in setting up and administration of the Northern Ireland Hotels Federation Ltd. - allegations that the respondents failed to produce relevant documents or attend an inspector appointed by the appellant as required by art. 12B(4) of the Industrial Relations (NI) Order 1992. - whether the NIHF constituted an employers’ association for the purposes of the 1992 Order. - whether respondents had a case to answer. - HELD that appeal allowed in respect of all respondents except one, and the matter remitted to the Magistrates’ Court

4 MARCH 2006
KERR LCJ, CAMPBELL LJ, SHEIL LJ
COURT OF APPEAL

IN THE MATTER OF S (CARE ORDER: CARE PLAN: CONTACT)
Application under art. 20 Adoption (NI) Order 1987 for revocation of previous freeing order granted. - application by Trust for care order under art. 50 Children (NI) Order and subsequent order under art. 53(4) authorising Trust to refuse contact between child and mother. - measure of contact afforded to mother and father in making of care order. - whether threshold criteria is satisfied. - law in relation to care plans. - HELD that matter be adjourned to enable Trust to reconsider care plan and produce a more choate and acceptable one. - interim care order made in the meantime
HIGH COURT
15 MARCH 2006
GILLENN J

IN THE MATTER OF W AND M (FREEING FOR ADOPTION ORDER: BIAS: SENSE OF GRIEVANCE)
Application by Trust for freeing order for adoption without parental consent. - Trust had complied with decision-making process under the Adoption Agency Regulations and right of parents under art. 8 ECHR. - whether adoption in best interests of children. - whether bias on the part of the Trust’s decision maker. - whether reasonable sense of grievance or injustice. - HELD that parents are withholding their consent unreasonably and order made freeing children for adoption
HIGH COURT
7 APRIL 2006
GILLENN J

INDUSTRIAL AND FAIR EMPLOYMENT TRIBUNAL DECISIONS

CASSIN, BARRY STANLEY RILEY & GAVIN COULTER v J OHN MCKEAG T/A THE REGENCY PATISSERIE AND DEPARTMENT FOR EMPLOYMENT AND LEARNING
Whether claimants were entitled to a redundancy payment upon termination of their employment, or whether fire at the business premises of their employer had frustrated the performance of their contract and so would not be entitled to any remedy. - Tribunal concluded that the effect of the fire resulted in the business ceasing permanently and had not started up again. - claimants’ contracts of employment had been terminated by operation of a rule of law in the form of frustration and were made redundant and that consequently the prescriptive element in Articles 171 and 174 of the Employment Rights Order 1996 operates to afford a remedy to the claimants. - First named respondent ordered to pay first named claimant £2,160, the second named claimant £540 and the third named claimant £810

2673/04IT; 2730/04IT; 2731/04IT
14 March 2006

FOSTER, GERARD v THORNTON ROOFING (IRELAND) LIMITED
Decision on a pre-hearing review. - claimant alleged he had been unfairly dismissed. - respondent claimed the claimant did not have the requisite qualifying period. - tribunal found that the claimant had worked for 11 months and so was outside the qualifying period. - claim dismissed and claimant ordered to pay £250 costs to the respondent
996/05IT
22 February 2006

High Court, Court of Appeal and Tribunal Decisions
GRIER, MOYRA SCOTT v PAUL JOHNSTON  
Decision on remedy. - claimant entitled to £1,380.93 for redundancy pay, notice pay and unpaid wages  
1308/05IT; 1343/05IT  
13 March 2006

MCKIMM, PAULINE v SOUTH & EAST BELFAST HEALTH AND SOCIAL SERVICES TRUST  
Claimant claimed unlawful deductions from earnings. - claimant employed as a residential social worker which involved weekend and overnight work for which the claimant was remunerated for. - claimant was a victim of a physical assault during work which resulted in a period of sick leave absence. - claimant did not want to return to her job after her sick leave and was offered redeployment but was not offered any of the additional salary enhancements which she had in her previous position. - tribunal felt that as there was a consensual variation of contract and the claimant voluntarily and willingly agreed to the new position there is no case made out of unlawful wage deductions. - claim dismissed  
9594/04IT  
15 February 2006

NEELY, FIONA v BILL CLINTON T/A ORIEL TRAINING  
Claimant alleged she had not been given a P45 or an itemised pay statement. - she also claimed that she had not been paid at a higher rate for the last week of her employment. - tribunal could not find any evidence to support the claimant and dismissed the claims  
345/05IT  
13 March 2006

PRESTON, JOYCE CAROLINE v PAUL JOHNSTON  
Decision on remedy. - tribunal satisfied that the claimant is entitled to compensation in the sum of £4,660.86 for redundancy pay, notice pay and unpaid wages  
1291/05IT  
13 March 2006

DORNAN, ANN v CRAIGAVON & BANBRIDGE TRUST  
Claimant claimed breach of contract and constructive dismissal. - respondent contended that the claimant had resigned. - claimant had been the subject of an investigation for gross misconduct and had been put on precautionary suspension. - claimant was exonerated and resigned a few months later. - tribunal found that the respondent followed the correct disciplinary procedures and that the claimant had made the decision to resign herself. - claim for constructive dismissal fails  
491/01FET  
27 January 2006

WARD, TERENCE ANTHONY v CALCAST LIMITED, CECIL CRAIG, TREVOR MCGREGOR, JACI CARSON & TERRY MULVEY  
Claimant claimed religious discrimination and harassment as the third named respondent was appointed to attend daily production meetings in the absence of the usual representative. - claimant felt he had seniority and he had been religiously discriminated against. - Tribunal is not persuaded that attendance at the daily production meetings conferred seniority on anyone attending and therefore dismisses the claim for religious discrimination  
249/03FET  
27 January 2006

THE FULL TEXT OF THESE DECISIONS ARE AVAILABLE ON THE LIBRARY’S LIBERO DATABASE AT www.lawsoc-ni.org OR BY CONTACTING THE LIBRARY
Recommended Reading

**Occupational Stress**

**Articles**

- **All stressed out.** Discusses employers’ liabilities for stress at work and reviews case law on employers’ statutory and common law liability for stress at work. Feldschreiber: 2005, L. Ex. Aug., 16-18

- **Employer’s liability for work related stress.** Explains work related stress and its implications in terms of employees’ abilities and employers’ liabilities. Corbitt: 2005, J.P. 169(50/51), 976-978 *

- **Personal injury law.** Considers Hone v Six Continents Retail Ltd decision on whether a pub manager’s excessive working hours caused his psychiatric injury and should have been foreseeable by the employer. Allen: 2005, L.S.G. 102(48), 16 *

- **A stressful business.** Comments on the Court of Appeal decision in Hartman v South Essex Mental Health and Community Care NHS Trust and five joined cases on the liability of employers for psychiatric injuries caused to their employees from work related stress. Considers the principles to be applied in determining the foreseeability of the risk. Mclvor: 2005, P.N., 21(2), 123-128

- **Personal injury - health and safety - employers liability.** Comments on the Court of Appeal decision in Hone v Six Continents Retail Ltd Cooksley: 2006, L.P.I. Law, 1, C3-6

* Due to the implementation of the Copyright Directive this article must be ordered directly from the publisher

**Caselaw**

- Walker v Northumberland CC [1995] 1 All E.R. 737 (QBD)
- Sutherland v Hatton [2002] EWCA Civ 76; [2002] 2 All E.R. 1 (CA)
- http://www.publications.parliament.uk/pa/ld200304/ldjudgmt/jd040401/barber-1.htm

All of the above cases are available from the Library

**Northern Ireland caselaw**

- Beattie -v- UTV Breach of contract and breach of duty to provide a safe place of work. - whether defendant ought to have foreseen risk of psychiatric injury or acted in a way likely to cause psychiatric harm 10 March 2005 NIQB Higgins J
- McCotter -v- McNally and Others Stress at work. - plaintiff contends that he developed a psychiatric illness as a result of the stress to which he was exposed in the course of his employment with a firm of solicitors. - whether psychiatric injury to employee was reasonably foreseeable by the defendants. - HELD that the application be dismissed 24 September 2004 NIQB Morgan J

All of the above cases are available from the Libero database via the members section on the Law Society website

**Books in the library**

- Harvey on industrial relations and employment law (Looseleaf)
- Tolley’s employment law (Looseleaf)

The library has an extensive selection of textbooks on employment law for reference

New Books in the Library

- **Ancillary relief: guidance notes for applications in the High Court.**
  Northern Ireland Court Service. 2006 (also available electronically from Libero on the Law Society website)

Re: Randolph (known as Ralph) Nellins (deceased)
Late of: 17 Woodlawn Heights, Richhill, County Armagh BT61 9PQ
Formerly of: 178 Dobbin Road, Richhill, County Armagh BT61 9LW
Date of death: 14 April 2006
Would any person having knowledge of the whereabouts of the Will for the above named deceased please contact: Mrs Mary Catherine Dixon James H Rodgers & Co Solicitors 15 Church Street Portadown County Armagh BT62 3LN Tel: 028 3833 7211 Fax: 028 3835 0980

Re: Harriet Davison (deceased)
Late of: 15 Sunninghill Park, Belfast BT14 6SN
Date of Death: 4 April 2006
Would any person having knowledge of the whereabouts of the Will for the above named deceased, please contact: Mrs Meg Nixon Nixon & Co Solicitors 15 Church Street Portadown County Armagh BT62 3LN Tel: 028 3833 7211 Fax: 028 3835 0980

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