Prenuptial agreements
- for better for worse
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Tightening the knot or loosening the noose: prenuptial agreements and measuring matrimonial happiness in pounds and pence

In this article, Darren McAuley of Thompsons McClure Solicitors, recounts the path trodden by our Courts in relation to prenuptial agreements and concludes with a reflection on the English Court of Appeal’s decision in Crossley. This case is the clearest judicial offering yet that such agreements are likely, in certain circumstances, to carry significant (if not conclusive) weight in determining ancillary relief applications. Given that this area of family law is rife with unpredictability, a chink of certainty in whatever guise is a rare phenomenon. But is it a welcome one?

And yet the belief that prenuptials are exclusively preserved for the well-heeled celebrity is a misplaced one. The fact that Northern Ireland has millionaires (4,000 at time of asking in 2004) should not divert attention from the much wider pool of potential prenuptial beneficiaries here. Those entering into their second marriage for example may be keen to ‘ring fence’ assets recovered from their first marriage, regardless of wealth size, should their new found love not last the distance. Not an unreasonable action plan given that in 2007 while divorce rates in England and Wales dipped the number in Northern Ireland increased by 14% from 2006.

From Catherine Zeta Jones and Michael Douglas (infidelity clauses et al) to Tom Cruise and Katie Holmes, the media is full of those who have taken the prenuptial plunge.

The increased celebrity usage of prenuptial agreements has undoubtedly played its part in influencing how they are viewed in legal circles. From Catherine Zeta Jones and Michael Douglas (infidelity clauses et al) to Tom Cruise and Katie Holmes, the media is full of those who have taken the prenuptial plunge. The commitment incumbent with the union of marriage has failed to stagnate a love affair blooming between couples and prenuptials. Even Kanye West, the rapper, in his song “gold digger” rapped “we want pre-nupt. It’s something that you need to have “cause when she leave your a** she’s going to leave with half”. Who gets what on a marital breakdown is higher now on the wedding list than ever before and there is little denying that prenuptials have become an unlikely worldwide fashion accessory.

From wishing to separate ‘matrimonial’ assets from ‘non-matrimonial’ ones, to wanting genuine security and peace of mind, the motivational spectrum for considering prenuptials is a wide one. Yet provided the boxes of independent legal advice for both parties, full disclosure, reasonable financial provision and absence of duress, are ticked then our Courts are increasingly attracted by the notion that if parties enter into prenuptials then they should not have to fret that the agreement will be abandoned at the drop of a hat by the judiciary simply because either there is a question mark over why it was drafted in the first place or because one of the parties has subsequently taken an unjustified fancy to trying to wriggle out of it.

As the Northern Ireland Courts have, unfortunately, been starved of prenuptial cases the gauntlet for developing case law has fallen to their English counterparts. The Court’s nurturing of agreements can be traced back further than Edgar v Edgar 1980 3 ALL ER 887 but for the purposes of this article Edgar provides a perfectly acceptable jumping off point. The Court in Edgar (albeit in the context of a separation agreement rather than prenuptial) highlighted the importance of “formal agreements properly and fairly arrived at with competent legal advice”. Prenuptials gained in prominence during the 1990s. In S v S: Staying Proceedings 1997 2 FLR 100 Wilson J (now Wilson LJ) prophesised: “a cautionary note…(that) there will come a case… where the circumstances surrounding the pre-nuptial agreement and the provision therein contained might, when viewed in the context of the other circumstances of the case prove influential or even crucial”.

The subsequent cases of N v N (divorce: ante-nuptial agreement) 1999 2 FLR 745 and M v M (prenuptial agreement) 2002 1 FLR 654
established that prenuptials could be relevant as “other circumstances of the case” albeit retreating from saying they are determinative. K v K (ancillary relief: prenuptial agreement) 2003 1 FLR 120 demonstrates that an agreement may also gain entry into s 25 Matrimonial Causes Act 1973 (MCA 1973) (the equivalent Northern Ireland legislation is the Matrimonial Causes (NI) Order 1978 a 27) under ‘conduct such that is inequitable to disregard’.

These cases culminated in the Court of Appeal decision of Charman v Charman 2007 EWCA Civ 503 where the Family President asked: “if, unlike the rest of Europe, the property consequences of divorce are to be regulated by the principles of needs, compensation and sharing, should not the parties to the marriage, or the projected marriage, have, at the least, the opportunity to order their own affairs otherwise by a nuptial contract?” The signposts could not have been clearer.

More recently in Ella v Ella [2007] EWCA Civ 99 in the context of deliberating whether Israel or England should be the jurisdiction for ancillary relief matters Thorpe LJ held that a prenuptial agreement entered into by both parties which, inter alia, provided for Israeli law to govern the financial dispute arising from the relationship breakdown was “a major factor” in deciding the proper forum.

The above cases demonstrate that prenuptials are seen as a potentially relevant factor but not binding. This is because the Court has a statutory obligation (in keeping with its quasi-inquisitorial role) to consider all the circumstances of the case. There may be times when the nuts and bolts of the agreement require loosening. The birth of children post agreement or the lengthy passage of time between marriage and separation, are both capable of materially altering the financial needs, obligations and responsibilities of both parties and could likely demand giving the prenuptial a closer inspection. If prenuptials were to become binding it would replace unpredictability of outcome with sureness but it would conversely place the judiciary in a stranglehold, extinguishing the availability of their s 25 MCA powers.

Family practitioners hung their heads in dismay that the opportunity for a potentially groundbreaking decision on prenuptials had sunk

And so to Crossley v Crossley [2007] All ER(D) 396, a big money case whose facts according to the Court of Appeal were “extraordinary”. It presented Thorpe LJ with another opportunity to chew over the changing role played by prenuptials. Briefly the facts were that both parties had substantial pre-marital wealth. The wife had been married three times before - the husband twice. They signed a prenuptial, both having had independent legal advice. They married in January 2006 and separated in March 2007. The wife then made her financial claim, contrary to the terms of the prenuptial. Did the agreement bar her application? She said no, alleging that her husband had not been frank with his financial disclosure when the agreement was executed. The case was listed for directions.

The Judge at first instance denied the wife’s request for full disclosure and ordered it to be abbreviated. The wife appealed. Hearing the appeal Thorpe LJ held that “if ever there is to be a paradigm case in which the court will look to the prenuptial agreement as not simply one of the peripheral factors in the case but as a factor of magnetic importance, it seems to me that this is just such a case”. He later added that there was “a developing view that prenuptial contracts are gaining in importance in a particularly fraught area that confronts so many parties separating and divorcing”. The die was set.

The Court in Crossley did not say that the prenuptial was binding so from that perspective the law was not changed. The prenuptial was however “magnetic” because, taken together with other facets of the case, it amounted to a compelling argument that the wife should not benefit from any financial provision outside that provided for by the prenuptial. The marriage was very short, childless and for the majority of the time the parties lived apart. Looked at, in combination with the prenuptial, there was “a very strong case that a possible result…will be that the wife receives no further financial award” . Accordingly the husband’s sword for piercing the wife’s case had been greatly sharpened by the existence of the prenuptial but he would still have had his sword even without the agreement.

As it transpired the wife withdrew her claim in February 2008 before the court was due to hear the case again. One imagines she did so because, unlike the Titanic, she saw the iceberg. Family practitioners hung their heads in dismay that the opportunity for a potentially groundbreaking decision on prenuptials had sunk.

Final thought

Although Crossley is an English Court of Appeal case, and therefore not strictly binding on Northern Ireland Courts, given the similarity of the matrimonial legislation the writer sees little reason why the decision will not be “accorded the greatest respect” here (see Re: McKernan’s Application (1995) NI 385, paragraph 389 as approved in Donnelly –and- Donnelly (2002) NIFam 16). Even so, the undercurrent of judicial opinion may have swept prenuptials close to the shore of binding enforceability but they are not there just yet. The s 25 MCA 1973 line of sand
(Article 27 MC (Northern Ireland) Order 1978) has not been washed away and remains the starting point and finishing point for settling ancillary relief cases. Crossley may have boosted the status of prenuptials significantly but it is not a trail blazer.

The legislation may well be amended in the foreseeable future to reflect the growing significance of prenuptials. Indeed, the Westminster Parliament has virtually left the Matrimonial Causes Act in peace for over a generation. It appears that the English courts have, since the turn of the millennium, recognised that they will have to be responsible for changing family law in the light of changing social attitudes. In June 2008 the Law Commission announced that it was beginning a project on the use of pre-nuptial agreements in marriage and civil partnerships. The project is due to start in September ‘09.

For now, however, the mere absence of prenuptials from statute will not banish them into the wilderness. ‘Fairness’; ‘sharing’ and ‘compensation’ make significant appearances on the ancillary relief stage yet they are notable by their non-attendance on the legislative cast list. Legal advisors should feel able to advise with reasonable confidence that prenuptials cannot be ignored and are more relevant now than ever before. But when asked by the curious client ‘how relevant?’ the advisor is on shakier ground. One expects that in such a scenario, more often that not, the ‘it depends on the facts of each case’ card will be played. Such is the nature of the family law beast. Such is the spectre of professional negligence that perpetually haunts the beast.

One must also recognise that there is still a world of difference between the ‘big money cases’ such as those which feature in the law reports, where a significant imbalance in the division of money between the parties still leaves both of them with more than enough to meet their needs, and cases where there is barely enough, or indeed not enough to go around. In the former, prenuptial contracts may well be of ‘magnetic’ importance. In the latter, the consideration of ‘needs’ or ‘fairness’ is far more likely to trump even the most carefully worded of prenuptials.

Few areas of practice are as susceptible to frequent and swift transformation as family law. A little more judicial light shone on prenuptials would undoubtedly prove helpful to all concerned and the writer predicts that the number of reported cases will increase. But for the time being the task of evaluating how relevant a prenuptial is might be undertaken in much the same way as one might attempt stirring cement with an eyelash.
**News in brief**

**COAC NEWSLETTER**
The Children Order Advisory Committee Newsletter (7th Edition) is available for download from the Northern Ireland Court Service website.

This edition of the newsletter has been expanded to include a new section providing the opportunity to exchange information and to share new developments within the work of agencies and disciplines associated with the Children Order Advisory Committee. As usual the newsletter continues to provide details of recent judgements and new publications of relevance and interest to child care professionals in Northern Ireland.

This newsletter can be accessed using the link below or via the Publications section on the www.courtsni.gov.uk website:


**NEW ASSISTANT INFORMATION COMMISSIONER APPOINTED**
Aubrey McCrory has been appointed to the position of Assistant Commissioner for the Information Commissioner’s Office (ICO) in Northern Ireland. He succeeds Marie Anderson.

Mr McCrory will lead the ICO’s Belfast office, developing links with central and local government as well as representative groups. He will have responsibility for engaging regularly with organisations and public authorities across Northern Ireland to raise awareness of the role and functions of the ICO in Northern Ireland, resolving freedom of information complaints and advising on data protection issues in the private, public and community and voluntary sectors.

**POPULATION INCREASE**
The Northern Ireland Statistics and Research Agency (NISRA) has published figures revealing that the size of the resident population in Northern Ireland at 30 June 2007 is estimated to be 1,759 million people. This is a 1% increase on the previous year.

The figures also show that 32,000 people came to live in Northern Ireland in the year to June 2007 and 22,000 people left. Migration has added almost 10,000 residents to the Northern Ireland population in each of the last two years and has a greater effect on the population than the excess of births over deaths.

**POLICE COMPLAINTS MEDIATION TRIAL**
The Office of the Police Ombudsman has announced the launch of a trial project to gauge support for the use of mediation as a way of dealing with some less serious complaints against the police. The project is being launched initially in North and West Belfast. Depending on feedback it may be rolled out in other areas.

Project Co-ordinator Gillian Loughran said: “Mediation will usually involve face to face dialogue between the complainant and the police officer so that they can discuss and reach agreement on a suitable way of resolving the issues between them”. The trial project will run until next February.

**PRISONER OMBUDSMAN APPOINTED**
The NIO has announced the appointment of Pauline McCabe as the next Prisoner Ombudsman for Northern Ireland. She replaces Brian Coulter and officially took up her post on September 1. Ms McCabe is a Business Consultant since 1999 to present. She was a Member of the Northern Ireland Policing Board from November 2001 to May 2007.

The Prisoner Ombudsman considers any eligible complaint referred by a prisoner, or former prisoner, (as appropriate), regarding his or her treatment in prison and, if she considers it fitting, to make recommendations concerning that complaint to the Secretary of State or Director General of the Northern Ireland Prison Service.

The Prisoner Ombudsman is supported by a small team of investigators and administrative staff currently based in offices in Belfast city centre. Further information on the role of the Prisoner Ombudsman can be found on www.niprisonerombudsman.gov.uk

**YOUTH CONFERENCE SERVICE LEAFLET**
The Youth Justice Agency has launched its new Youth Conference: Your Decision leaflet in conjunction with the Public Prosecution Service (PPS).

The new child friendly leaflet explains the processes a young person will face when they have been referred for a diversionary youth conference from initial referral by the PPS through to completion of an agreed action plan. The layout was carefully designed with young people in mind and is easy to understand.

There were 800 referrals to diversionary youth conferences by the PPS last year. Copies of the leaflet can be obtained from the Youth Justice Agency.

**TOO BUSY TO EAT**
Recent research has revealed that more than three quarters of people no longer eat three main meals a day – and those working in the legal profession are the most likely to succumb to unhealthy snacks.

Nearly 80% of lawyers admitted that they have gone a whole day without eating a single meal, surviving on bars of chocolate and biscuits instead.

Busy lawyers are also twice as likely to snack on the go – including in the gym!

And nearly a quarter of lawyers questioned admitted that they eat sweets instead of a proper breakfast, over three times the national average.
Forthcoming Law Society CPD courses

The Law Society is pleased to publish details of its October 08 – March 09 CPD Programme. There is a wide range of activity covering both Client Care and Practice Management and General group study.

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<th>Title</th>
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<td>Joint LSNI/Family Bar Seminar on Co-habitation</td>
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<td>Practice Management: Effective Writing as a Marketing Tool</td>
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<td>Asitis Consulting Ormeau Ave, Belfast</td>
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<td>20 Nov 08</td>
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<td>mighty Than The Sword: Effective Business Writing</td>
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To book a place or for further details of any of the above please contact Susan Duffy at susan.duffy@lawsoc-ni.org or tel: 028 9023 1614
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You’ve got no mail?

There’s nothing more frustrating that an email recipient not receiving the email you have carefully and laboriously composed. With much of today’s personal and commercial correspondence disseminated electronically, it is easy to assume that once the send button has been pressed that your email will automatically be safely sent and received. In this article, TCS solutions outline some common reasons for the non-delivery of emails, and provide some basic preventative tips.

INTRODUCTION

Email is what is known as a “best effort” communications medium. This means that while all components of an email system will do their best to ensure that email is delivered in a timely manner, there is no definitive way to absolutely guarantee that an email sent will arrive at its destination. This is ultimately due to the fact that there are a great many variables associated with an email as it travels from one person to another. However, there are steps which can be taken to increase the reliability of the medium.

EMAIL OVERVIEW

Broadly speaking, email is generally not as simple as a message being passed from one user to another. When an email is sent from an Outlook client on a standard Microsoft Windows network, it first goes to the Microsoft Exchange server on the organisation’s main server, which analyses the address of the recipient, determines from the host (the part after the ‘@’ symbol) where the email is going and then queries the domain to find out what mail server to send the information to at the other side. The Exchange server then sends the message out to that mail server.

Due to the distributed nature of the internet, the message will pass through many servers and network devices on its journey. Any of which could be a potential point of failure to prevent delivery of the message. Once the message then successfully arrives at the destination server defined by the domain, it then may be passed onto other mail servers within that organisation. Finally, it is delivered by the end mail server to the recipient’s mailbox, which they receive in their mail client the next time their mail is checked.

There is no definitive way to absolutely guarantee that an email sent will arrive at its destination. However, there are steps which can be taken to increase the reliability of the medium.

PREVENTION

There are some steps which can be taken to reduce the likelihood of messages not being delivered.

Minimise attachment size

While it is often necessary to send large attachments for various business reasons, the extra size often involves additional delay with email delivery. Each node throughout the network and the Internet has a great deal more data to transfer, which occupies more bandwidth and more time, and as a result, many mail servers will refuse email that is above a certain size. This size is configurable and is often set up based on an organisation’s needs, expected mail sizes and the amount of bandwidth they have available (their connection speed to the Internet) so it is often hard to gauge an appropriate size for any particular organisation.

Tools > Options > Preferences > Email Options > Tracking Options

To ensure that email has the best chance of delivery, smaller attachments are usually better. If the file must be sent and is a large Microsoft Office document, it could be compressed to a ZIP file or some other compression method to make it several orders of magnitude smaller than it would otherwise be. This achieves a good balance between the necessity of large files and the minimal amount of bandwidth used.

Read request

Most if not all email clients have the ability to request a read receipt from a recipient. This is a simple tag which informs the user when they open the message that the sender has requested a read receipt. This allows a recipient to send back a message automatically to the sender to let them know that they have successfully received the message. This option is not always configured in email clients and people who manually return read receipts sometimes opt out but if this functionality is insisted upon, it can be the best indication of whether an email has been successfully delivered.

Email clients can even be set up automatically to return a read receipt when it receives a request without even mentioning it to the user, so the clients could be set up with the minimum amount of hassle to the user, while ensuring mail is delivered. This is by far the most effective way of ensuring that an email has arrived at the desired destination.

Delivery receipt

Similar to the read request, a delivery receipt can be configured by the sender to be informed when the email has simply been delivered, as opposed to specifically read by the recipient. This, coupled with the read receipt ensures that a sender is always able to tell when an email has been delivered or read. These options are available in most email clients, but can be found in Outlook 2003 in the following location:

Tools > Options > Preferences > Email Options > Tracking Options
Regular server checking
When an email is sent through an Exchange server (or indeed any mail server), an entry is created in the log file with details on who the sender was, who the recipient was, and some details on what server it was sent out to. This does not necessarily contain full end-to-end details unless the email was delivered locally, as the server itself can only track email that travels through it. Any ‘hops’ beyond that can not be monitored directly. However, it will still give a good indication that the local server is processing the information as required. It is also important to ensure that logging has been enabled on the relevant Microsoft Exchange or Sendmail server, so that this information can be recorded.

Mistyped email addresses
It is a common occurrence that mail not arriving correctly was originally addressed to an incorrect address due to a typing error. It is vitally important to verify the correct email address initially and then make use of the contacts system provided by every email client to ensure that email addresses are correctly added once, so that the same correct address can be used for all subsequent email exchanges.

Spam filtering
Unsolicited emails or “Spam” is a huge problem for businesses these days. It is estimated that around 90 billion spam emails are sent out each day, which accounts for around 80-85% of all emails. As a result of this, a great deal of filtering has to go on within an organisation so that they are not overwhelmed by spam. While heuristic analysis is a good method of filtering which continues to improve as it filters, it is important to ensure that legitimate email is not getting accidentally marked as spam. This has two aspects to it.

Firstly, it is important to ensure that the server itself is not filtering spam before it is delivered to the recipient. This can be arranged with the server administrators by providing a list of legitimate senders (a full email address, such as user@example.com)/domains (a full trusted domain, such as example.com, where all users are trusted not to send spam) which can be added to a “white list,” a list which is provided to the spam server to treat all emails as legitimate.

Secondly, email clients such as Microsoft Outlook, Mozilla Thunderbird and many others provide their own “junk” email filtering to catch email which has not been caught by a server-level spam filter. A white list / blacklist (the opposite of a white list) can also be configured for this filtering system, as well as the severity of the filter. Many email clients have this feature; the settings for this system in Outlook 2003 can be configured in the following location:

Tools > Options > Junk Email

It is important to check the junk mail folder periodically if this feature is enabled to ensure that no email has been wrongly identified as spam. It is also important to ensure that if there is a rule configured in Outlook to move emails the server has marked as spam to another folder or to the trash, that they are occasionally checked to ensure the server has not identified any false positives.

CONCLUSION
While email sent internally should reach its destination provided the internal mail server is operating correctly, it is not possible to guarantee with 100% certainty that an external email will arrive in a timely manner to its destination, or indeed at all, due to the distributed nature of the Internet.

It is important therefore to take as many measures as reasonably possible to ensure that email will arrive as intended. The most common reasons for non-delivery are the issues discussed above; oversized emails, spam filter accidental positives, mistyped email addresses and email getting lost along the way. The use of these methods will allow for the maximum chance for email to correctly reach its destination in a timely manner.
Lay Observer Annual Report

The fourth Annual Report from the Lay Observer, Alasdair MacLaughlin, is the 30th in the series. In addition to being presented by The Lay Observer to the Lord Chief Justice, to the Department of Finance & Personnel and to the Council of the Law Society, this Report has also been laid before the Northern Ireland Assembly.

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

For his 3rd Report the Lay Observer chose the theme of ACTION – Moving on. For the 4th Report his theme is “Future Connections”. He states that he has been involved in strategic work in providing further comment to those involved in drafting legislation to implement the Bain proposals and assisting the Society to think ahead to ensure transition to the new situation is as seamless as possible.

Over nine sections, the Report covers the work of The Lay Observer in monitoring and scrutinising how the Society has handled complaints in the last calendar year. There are sections on the work of The Lay Observer, final outcomes and comments thereon and details of complaints statistics and comments thereon.

Section 8 of the Report makes five recommendations to the Society to further improve its complaints handling and to feed the complaints experience into the profession, to enable solicitors to improve their services.

Mr MacLaughlin reports that the Law Society has given continually high priority to complaints handling and what can be learned from complaints and complainants. However, the more subtle and very potent opportunity that every complaint offers to improve service is, in his view, of even greater significance.

Mr MacLaughlin commends the Society for finding ways of feeding back to the profession what is learned from complaints handling through the CPD programme, the Writ and speeches. Referring to the Solicitors’ (Client Communication) Practice Regulations 2008, Mr MacLaughlin says that, all things being equal, the incidence of taking complaints through two and three tiers (ie the firm, the Society and the Lay Observer) should be reduced as should the accelerating damage such processes can do when not handled well.

Finally The Lay Observer, asked that his Report, which he circulated to all firms, should be reviewed by a member of the practice to see if there are any implications arising from the Report for the practice concerned. The Reports were issued to the profession in July by the Lay Observer and the Society recommends that firms take on board this particular suggestion, particularly now the Solicitors’ (Client Communication) Practice Regulations 2008 are in force.

The Report covers the work of the Lay Observer in monitoring and scrutinizing how the Society has handled complaints in the last calendar year.

Alasdair MacLaughlin, the Lay Observer
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Witness Anonymity Orders - AG guidelines

Further to the coming into operation of the Criminal Evidence (Witness Anonymity) Act 2008, the Attorney General has issued Guidelines on the prosecutor's role in applications for Witness Anonymity Orders.

A Foreword

A.1 Every defendant has a right to a fair trial. An important aspect of a fair trial is the right of the defendant to be confronted by and to challenge those who accuse him or her.

A.2 Making an application for a Witness Anonymity Order is therefore a serious step to be taken by the prosecutor only where there are genuine grounds to believe that the court would not otherwise hear evidence that should be available to it in the interests of justice; that other measures falling short of anonymity would not be sufficient; and that the defendant will have a fair trial if the order is made.

A.3 Anonymous witness testimony is not necessarily incompatible with a. 6, even when it is the sole or decisive evidence against the accused but whether the measures used to allow a witness to give evidence anonymously in any particular case would make the trial unfair has to be evaluated with care on the facts of each case.

A.4 When assessing whether and in what terms to make an application for a Witness Anonymity Order, prosecutors have overriding duties to be fair, independent and objective. These guidelines set out the overarching principles by which a prosecutor should consider and if appropriate apply for a Witness Anonymity Order in accordance with the considerations set out in the Criminal Evidence ( Witness Anonymity) Act 2008.

B The prosecutor's duties

B.1 The effect of a Witness Anonymity Order is to prevent the defendant from knowing the identity of a witness. Without this information, the defendant's ability to investigate and challenge the accuracy or credibility of the witness's evidence may be limited.

B.2 When considering whether and in what terms to make a Witness Anonymity Order the court will consider to what extent the defendant needs to know the identity of the witness in order to challenge the witness's evidence effectively. This question will often be central to the question of whether, having regard to all the circumstances, the Witness Anonymity Order sought would be consistent with a fair trial.

B.3 The prosecutor's role is:
   • To act with scrupulous fairness.
   • To examine with care and probe where appropriate, the material provided in support of the application and the evidential basis for it. Prosecutors should in particular objectively assess any statement made by the witness or witnesses in question and the grounds on which it is based.
   • To be satisfied before making the application that, viewed objectively, it can properly be said that the Order is necessary and in the interests of justice and that the defendant can receive a fair trial.
   • To put before the court all material that is relevant to the application. Courts will rely to a significant extent upon the prosecutor and the investigator to provide relevant material. Material will be relevant if the prosecutor relies upon it to support the application, or if it may tend to undermine or qualify the justification for making the order at all, or for making it in the form sought by the prosecutor. Material is particularly relevant if credibility is or may be in issue, for example, if there is a known link between the witness and the defendant or a co-accused.
   • To disclose as much relevant material to the defence as possible without identifying the witness, including material that may tend to cast doubt on the credibility, reliability or accuracy of the witness's evidence.

B.4 The role of the prosecutor as an independent and impartial minister of justice is of paramount importance. Applications should only be authorised by prosecutors at an appropriately senior level within the prosecuting authority.

B.5 The interests of justice include the interests of the victim or victims, the interests of the witness or witnesses, the interests of the defendant and any co-defendants and the wider public interest.

B.6 Prosecutors should take all necessary and reasonable steps consistent with a fair trial and the interests of justice to ensure the safety of a witness or the avoidance of real harm to the public interest or the protection of property.

C Applications by defendants

C.1 The Act permits a defendant (as well as a prosecutor) to apply for a Witness Anonymity Order. Prosecutors should respond to such applications independently and objectively. Prosecutors should examine critically but fairly, the basis for any application and any material put forward in support of any application.

C.2 The prosecutor should provide the court with all material within the prosecutor's possession or control that is relevant to the defendant's application.

D Appointment and role of Special Counsel in applications for Witness Anonymity

D.1 The Act makes no statutory provision for the appointment of Special Counsel.

D.2 A criminal court may invite the Attorney General to appoint Special Counsel. However, in line with authority, such an appointment:
   • Should be regarded as '...exceptional, never automatic, a course of last and never first resort.' R v H and R v C [2004] UKHL 3. The need for Special Counsel has to be shown.
   • The court will take account of the seriousness of the issue that the court has to determine in the particular case. Whether credibility is at issue is likely to be an important consideration. The court will also need to consider the
extent to which Special Counsel could further the defendant’s case.

- The court itself can be expected to perform a role of testing and probing the case which is presented on the application. When coupled with the prosecutor’s duty to put all relevant material before the court, this may often be sufficient to enable a fair and informed decision to be reached without the need to appoint Special Counsel.

D.3 Where appointed, the role of Special Counsel is to make representations on behalf of the accused in any closed proceedings.

D.4 The Attorney General will consider each invitation to appoint Special Counsel on its merits, having regard to all the relevant circumstances of the case. In particular, in this context, to the basis of the application, whether it is opposed, the basis upon which it is opposed and the particular considerations that the court wishes Special Counsel to address.

D.5 A prosecutor making an application for a witness anonymity order should always be prepared to assist the court to consider whether the circumstances are such that exceptionally the appointment of Special Counsel may be called for. When appropriate a prosecutor should draw to the attention of the court any aspect of an application for a witness anonymity order or any aspect of the case that may, viewed objectively, call for the appointment of Special Counsel.

D.6 When a court decides to invite the Attorney General to appoint Special Counsel the prosecutor should (regardless of any steps taken by the court or any defendant) ensure that the Attorney General’s Office is promptly notified; and assist in ensuring that the Attorney General receives all the information needed to take a decision.

D.7 Where Special Counsel is appointed, he or she will initially be provided by the prosecutor with any open material made available to the accused regarding the application (and any other open material requested by Special Counsel). Special Counsel may then seek instructions from the defendant and his legal representatives. Only then will Special Counsel be provided by the prosecutor with the closed or un-redacted material provided to the court.

Her Majesty’s Attorney General
21 July 2008

Attorney General’s Office
20 Victoria Street
London
SW1 H ONF

1 Most recently, Shiv Malik and Manchester Crown Court and Chief Constable of Greater Manchester Police, Constable and Robinson Ltd and Attorney General as interested parties [2008] EWHC 1362 (Admin).

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Protecting frontiers protecting family

A seminar organised by The Youth and Family Judges’ and Magistrates’ Association (UK) Ltd

This seminar is aimed at all those in Northern Ireland having an interest in immigration controls in the UK including lawyers and those who advise, officials and those who operate controls and social workers and those who assist families. The seminar will cover all the broad aspects including refugee status and economic migration but there will be a particular emphasis on family issues and on Northern Ireland.

Date: Nov 19, 2008
Venue: the Bar Library
Time: 4.00pm to 6.00pm
Registration: £5 for members and £10 for non-members

Spaces are limited. Please confirm your place by sending the Registration Form, together with a cheque to cover the cost of the Registration Fee, to:

Mr Norman Humes JP
40 Lisanelly Park
Omagh
County Tyrone BT79 7DE
Tel: 028 8224 3477

Closing date: November 12
The Registration Fee is £5 for members and £10 for non-members

The Association Membership Fee is £10. Thus, non-members can join the Association and book their place at the seminar for a fee of £15.

Light refreshments will be available from 3.30pm. Seminar starts at 4.00pm sharp.

Speakers:
Phil Taylor, Regional Director, UKBIA, Scotland and Northern Ireland Region, will present five case studies illustrating the different types of problems with which UKBIA is faced.

Judge Mungo Deans, Senior Immigration Judge for Scotland and Northern Ireland, will discuss the kind of problems he is faced with in court and how he tries to deal with them.

Fionnuala Connolly, a barrister, will then give a presentation on the interrelationship between family issues and immigration law with some recent case-law examples in Northern Ireland.

Professor Harvey, Head of the Law School at Queen’s, will examine the human rights implications.

Speakers will be limited to 15 minutes leaving plenty of time for discussion afterwards.

Chair:
Les Allamby
Director of Northern Ireland Law Centre

PACE Order

Copies of the Revised PACE Order are available from the Society's Library at a cost of £25.00

To order a copy please complete the form below:

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Please may I order ______ copy/ies of the PACE Order

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Wilson Nesbitt (www.wilson-nesbitt.com) are a firm with over 80 staff (including four partners and a solicitor) based in offices in Belfast and Bangor. We are seeking approaches from solicitors with a client following or one or two partner firms who would like to join us to increase profitability by being able to:-

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The Home Charter Committee has given some consideration to the contents of the Home Charter Scheme "completion" letter and has successfully recommended to Council that it be amended to provide clarity as to the date attributable to knowledge of mortgages and charges. Accordingly paragraph 4 of the existing letter has been amended. The revised format is set out below. Please add it to your Home Charter packs.

Changes to Home Charter letter

To: The Vendor’s Solicitors

From: The Purchaser’s Solicitor

Dear Sir/Madam,

(PARTIES)

(PROPERTY)

Please find enclosed cheque for £ being the (balance) purchase money.

This cheque is sent to you on your undertakings as follows:

To authorise release of all keys.

To authorise the Vendor to deliver vacant possession of the property.

To furnish by return the executed assurance in favour of the Purchaser together with any further relevant original title deeds in your possession or (if they are not currently in your possession) to use your best endeavours to furnish them within ten working days of the date of this letter.

To repay all mortgages/charges affecting the property of which the Vendor’s solicitor is aware or ought reasonably to be aware at this date, and to furnish the vacated mortgage deed/executed release of charge as soon as possible after receipt from the lending institution duly registered (in the case of title subject to registration to the Registry of Deeds) or with the appropriate Land Registry fee (in the case of title subject to registration at the Land Registry).

To use your best endeavours to furnish last receipt for ground rent or provide an appropriate indemnity from the Vendor.

As the Vendor’s solicitor to complete generally in accordance with Contract insofar as it is within your control to do so.

Yours faithfully,
Many firms large and small are moving to online filing. It saves time and money and dramatically reduces mistakes.

With the discontinuation of the system of filing SDLT returns by CD Rom or 2D barcode from 1 November 2008, it is anticipated that there will be an even greater uptake for the online service.

Five good reasons to file online

1) Electronic SDLT 5
   The electronic SDLT 5 Certificate is delivered online, usually within moments of successful submission. It can be printed off and sent to the Land Registry immediately (along with the necessary documents) for registration. Early submission of your online application will also help you to lodge your application with Land Registry within the priority period of any ‘protecting official search’. This means never having to:
   - wait for SDLT 5s in the post again
   - chase-up certificates at HMRC

2) No SDLT 8
   Online filing guarantees that you will never receive an SDLT 8 letter asking for further information. The built-in validation means you cannot submit the return unless all the necessary questions have been answered.

3) Fast and efficient
   Notifying online is by far the speediest method of completion. Built-in validation and on-screen guidance means you only answer questions and complete forms (viewable in bite-size pieces) applicable to your specific transaction.

4) Immediate submission
   Once you have successfully completed your return online, you simply click the ‘submit’ button and it is filed online.

5) Saves time and money
   Online filing can also save your business time and money in other ways:
   - The risk of penalties for late submission of returns can be substantially reduced.
   - Forms can be prepared pre-completion and submitted immediately after completion has taken place.
   - Payment of tax due can follow on-line submission.
   - You do not need to keep large stocks of up-to-date paper forms and, if you use the automatic UTRN generation facility, you do not need separate supplies of paying-in slips.
   - There is less need to telephone the SDLT Helpline or refer to SDLT 6 Guidance Notes as interactive help is available on fields, with drop down menus for various codes.

Online customers can choose from commercial software suppliers’ products, with differing benefits across the range - including links to Case Management Software, ‘pre-population’ and other benefits. An HMRC product is also available.

Further information on filing SDLT returns online is available from www.hmrc.gov.uk/so/online/menu.htm

Save time and money - file your SDLT returns online

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New-build transparency via the CML Disclosure of Incentives Form

In recent years it has proven difficult for both conveyancers and valuers to capture the full details of discounts and incentives offered against newly built properties. This, in effect, has made the agreed price of new homes less than transparent.

This is bad news for genuine buyers and for lenders. Buyers may find themselves with a mortgage worth more than the property’s value, whilst lenders may find themselves lending outside their typical criteria and as a result exposed to a great risk of loss.

An undeclared discount or incentive is likely to cause the valuation to be inflated, skewing the loan to value ratio higher than the lender anticipated. This will reduce the investment required to purchase the property and the mortgage may even exceed the amount the borrower actually pays for the property. An example of the problem is as follows:

- Sales price: £100,000
- Mortgage: £90,000 (90% LTV)
- Incentives: £15,000
- Borrower actually pays: £85,000 to the developer

In the example above, the borrower will make a profit on the transaction and it is this possibility that has attracted fraudster to new-build properties, increasing the risk of loss for lenders. The FSA identified the risk of fraud against new-build city-centre flats as a growing concern in their Financial Risk Outlook.

The lack of clarity combined with the threat of fraud has served to undermine lenders’ confidence in new-build properties. As a result many lenders have reduced the maximum loan-to-value that they will offer on new-build properties in an attempt to reduce this risk.

To help restore confidence amongst lenders, from 1 September 2008 lenders have enhanced their instructions in part 2 of the Lenders’ Handbook. These changes require the receipt of the new CML Disclosure of Incentives Form from the builder/developer of any new-build, converted or renovated property, before the Certificate of Title can be submitted. The CML Disclosure of Incentives Form (which has already been distributed to members via the Society’s e-zine ‘E-former’) is available online from the Lenders’ Handbook page on the CML website http://www.cml.org.uk/handbook

The form includes a total of 12 questions amongst which is the requirement to disclose full details of all financial and non-financial incentives and provide details of any third-party interest in the transaction. This form has been developed in conjunction with lenders, valuers and developers.

The changes will not be limited to the conveyancing process; the RICS are making related changes to the Red Book. From 1 September 2008 all valuers are required to request a copy of CML Disclosure of Incentives Form whenever they value new-build property. The RICS will also be producing further guidance for their members, which will be published later in the year.

Notably, the Home Builders’ Federation and Homes for Scotland have amended their individual codes of conduct, to encourage greater transparency amongst their membership and a number of major builders have responded by taking individual steps to address this issue.

These measures combined will help to improve transparency and solve the problems caused by the current confusing and inconsistent disclosure.

This article answers some of the key questions that conveyancers may have about the changes lenders are making.

What changes will be made to the Lenders’ Handbook?
Currently s 6.3 of the Lenders’ Handbook requires the conveyancer acting on behalf of the lender to report certain transaction details, such as any discounts or incentives. Part 2 of the Lenders’ Handbook sets out each lender’s specific requirements.

With the agreement of our members, the CML will amend each lender’s specific instructions relating to s 6.3.2 of Part 2 of the Lenders’ Handbook. This will require the conveyancer to be in receipt of the CML Disclosure of Incentives Form before they can submit the Certificate of Title.

When will these changes take place?
The change to the Lenders’ Handbook are effective from 1 September 2008.

You can access the CML Disclosure of Incentives Form from the Lenders’ Handbook page on the CML website.

How do I get the CML Disclosure of Incentives Form?
The CML Disclosure of Incentives form should be supplied by the builder/developer’s conveyancer as part of the contract information pack they send to you.

If the builder/developer’s conveyancer asks you for a copy of the form, you should direct them to the CML website where they will be able to download it.

Will this create any additional burden?
No.

The conveyancer is already required to report any incentives or discounts to the lender under s 6.3 of the Lenders’ Handbook.

As it is the responsibility of seller to provide this form it will make the conveyancer’s job easier because all the relevant information should be in one place.
What happens if I do not receive the CML Disclosure of Incentives Form?
If you do not receive the CML Disclosure of Incentives Form from the builder/developer’s conveyancer you will not be able to submit the Certificate of Title to the lender.

You should then request the form from the builder/developer’s conveyancer reminding them that you cannot complete the transaction without it.

Will I have to send the CML Disclosure of Incentives Form to the lender?
The conveyancer will only be required to report the information on the CML Disclosure of Incentives Form to the lender in line with the lender’s instructions in Part 2 of the Lenders’ Handbook.

For example some lenders will only ask for incentives to be reported where they are in excess of 5% of the sales price. Some lenders may specifically ask in their Part 2 entry to be sent the CML Disclosure of Incentives Form.

What happens if the purchase re-negotiates the deal with the builder/developer after I have received the CML Disclosure of Incentives Form?
We are aware that renegotiations can happen late in the day and that the builders/developers may offer further incentives to keep the deal alive. The builder/developers conveyancer should report these additional discounts/incentives to you as soon as is practicable and in any event prior to completion.

You will only have to report these additional discounts/incentives to the lender in line with their instructions in Part 2 of the Lenders’ Handbook.

Will the builder/developer and their conveyancer be aware of the need to submit the CML Disclosure of Incentives Form?
We hope that there will be a good awareness of the need to use the CML Disclosure of Incentives Form because as part of the development of the Disclosure of Incentives Form, the CML has been in consultation with a wide range of trade associations representing house builders, including:

- Home Builders’ Federation
- Home Builders’ Association
- Homes for Scotland
- Construction Employers’ Federation in Northern Ireland

My question has not been answered in this list, what should I do?
We have also produced a frequently asked questions document that has been written in collaboration with the HBF, HFS and RICS. This is accessible at http://www.cml.org.uk/cmlfilegrab/?ref=5977

This provides further detail on the background to the form, explains what details are required, who should complete it and who should receive it and when.

Need a Drink?
If you are relying on alcohol to make you feel better after a difficult day, you may find that the days just become more and more difficult.

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The new Northern Ireland Environment Agency - evolution not revolution

Over the past few years, many organisations and individuals with an interest in the environment and its regulation have made repeated calls for the creation of an independent Environmental Protection Agency in Northern Ireland. The United Kingdom Environmental Law Association ("UKELA") was one such group that took an active role in promoting the formation of such an Agency. However, prospects of a fully independent environmental regulator for Northern Ireland were, it seems, finally put to rest in May of this year. Northern Ireland is now the only part of both the UK and the Republic of Ireland that does not have an independent environmental regulator.

In her final statement to the Assembly as Environment Minister, Arlene Foster announced that environmental protection was to remain a function of the Department of the Environment, albeit through a re-branded and revitalised Environment and Heritage Service ("EHS"). Many, both in industry and the wider community, along with UKELA, were disappointed by this decision. An independent "Environment Protection Agency" is now no longer a realistic prospect for the foreseeable future and new Environment Minister, Sammy Wilson, is unlikely to change course. Given the above, what improvements can realistically be expected within the Northern Ireland Environment Agency?

As with the EHS before it, the NI Environment Agency is an executive agency of the Department of the Environment. A significant criticism of this arrangement is that the lack of separation between Ministers and the environmental regulator compromises its ability to protect the environment. Whether a perceived or actual risk, this problem will persist. However, the Minister did at least appear to take on board concerns about the EHS at an operational level and perhaps the changes proposed will lead to better regulation.

"Better regulation" was the main focus of the Minister's proposals for the new NI Environment Agency. An Agency document "Better Regulation for a Better Environment" elaborates on this theme. Produced following extensive consultation with business and community stakeholders, the document proposes a number of changes, which, if implemented, would be considered positive steps. These include streamlined permitting procedures and a more risk-based approach to compliance assessment (with higher risk sites seeing more resources devoted to them). On paper at least, these are encouraging proposals, since over-regulation and lengthy application times have been long-standing sources of complaint from industry.

Plans to strengthen enforcement are also to be welcomed. Legitimate businesses, particularly in the waste and construction sectors, have for many years complained of over-regulation in the face of anti-competitive behaviour from illegal operators. A new Agency-wide Environmental Crime Unit will be responsible for policing the environment and a revised Enforcement Policy is intended to clearly set out what businesses can expect. The NI Environment Agency also intends to strengthen its focus against serious and persistent offenders and will utilise increased powers to recover assets gained through illegal activity. Proposals have also been made for a new system of "administrative penalties" for lesser offences, such as fixed fines. Such penalties would decriminalise relatively minor breaches but with financial penalties that would still incentivise compliance.

Efforts are also to be made to make the new Environment Agency more accountable and transparent. The Board of the Agency now includes two independent members and all Board meetings will be open to the public. A "Better Regulation Board" consisting of leaders from various business sectors has also been formed. These proposals will go some way towards improving the perception of the Agency but, in UKELA's view, it will never be thought of as truly independent from the political pressures of Stormont.

Whilst the new arrangements fall short of the best model for effective regulation and environmental protection, UKELA is committed to working with the new set up to ensure that the best environmental outcomes are delivered. The key test is whether the NI Environment Agency and Department of the Environment can deliver better environmental protection, which will need adequate resourcing and getting the right skills in place. UKELA will be seeking discussions with the new regulators.

UKELA is also jointly sponsoring an event on 18 November 2008 along with the CBI and Carson McDowell Solicitors, in which senior figures representing the new arrangements will set out their proposals and provide a forum for constructive discussion on the many issues raised. UKELA aims to make the law work for a better environment and to improve understanding and awareness of environmental law.

UKELA's members are involved in the practice, study or formulation of Environmental Law in the UK and the European Union. It attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors. UKELA prepares advice to government with the help of its specialist working parties, covering a range of environmental law topics, including a Northern Ireland Working Party.

UKELA works on a UK basis and seeks to ensure that best legislation and practice are achieved across the devolved jurisdictions. For further information and to join, visit www.ukela.org

Andrew Ryan is an Associate at Carson McDowell solicitors specialising in environment law and also the convenor for the UKELA Northern Ireland Working Party.
Guidance on loans to clients

The Professional Ethics and Guidance Committee has recently had occasion to consider the position where a solicitor makes a loan to a client to facilitate the payment of Inheritance Tax due in a deceased estate where bank funding for same is unavailable.

The Committee are of the view that such a loan is subject to the provisions of Regulations 12 (A) and (B) of the Solicitors’ Practice Regulations 1987. These Regulations are set out in full below.

Solicitors should provide the client with the information required in Regulation 12(B)(3)(b) and ensure they have obtained a signed statement from the client in accordance with the provisions of Regulation 12(B)(3)(c).

12A A solicitor shall not for the purpose of obtaining or retaining instructions from any person or of securing the transfer of that person’s instructions from another solicitor:

(a) make or offer to make, whether directly or indirectly, any payment to or on behalf of that (or any other) person; or
(b) give (or offer to give) any undertaking to any third party to facilitate the provision of money or credit by such third party to that (or any other) person.

12B (1) Without prejudice to the provisions of Regulations 12A, a solicitor shall not directly or indirectly lend money to a client without requiring that client to obtain independent legal advice on the terms of that loan, other than as provided by paragraphs (2) and (3) of this Regulation.

(2) A solicitor may make an advance to his client in respect of the proceeds of a claim which has been settled or for which judgment has been obtained or in respect of other funds due to the client but which have not yet been received provided:

(a) there is no prior claim on the proceeds or funds, whether by operation of the statutory charge under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, or pursuant to an undertaking, or otherwise; and
(b) the solicitor has obtained a signed statement from the client acknowledging:
(i) the reasons for the advance
(ii) the amount of the advance
(iii) that no interest will be paid to the solicitor
(iv) that the advance is to be re-paid by deduction from the proceeds or funds due in the particular case as soon as these are received
(3) A solicitor may make an advance to his client in anticipation of receipt of the proceeds of a claim or of other funds which will become due to that client provided:

(a) the advance is not made for any of the purposes specified in Regulation 12A;
(b) the solicitor has informed the client in writing of the estimated net amount of proceeds or funds likely to be received and that the advance may give rise to a conflict of interest at a later date which may result in the client being required to obtain independent legal advice; and
(c) the solicitor has obtained a signed statement from the client acknowledging:
(i) the reasons for the advance
(ii) the amount of the advance
(iii) that no interest will be paid to the solicitor
(iv) that the advance is to be re-paid by deduction from the proceeds or funds due to the client in the particular case as soon as these are received
(v) that the advance will be due and repayable to the solicitor whether or not the anticipated proceeds or funds are received
(4) Nothing in this Regulation shall prevent a solicitor from making payments on behalf of his client in respect of outlays which may form part of the solicitor’s bill of costs.
(5) In conveyancing transactions nothing in this regulation shall prevent a solicitor making a short term advance on behalf of his client where there is a binding contract in order to facilitate completion of the transaction.

The Solicitors’ (Advertising, Public Relations and Marketing) Practice Regulations 1997 (as amended)

The Professional Ethics and Guidance Committee has noted that some firms are including in their letter heading a reference to solicitors within their firms being “admitted to practice in…” a variety of other jurisdictions.

The Committee considers that such a statement may be inaccurate or misleading and therefore in breach of Regulation 4 (b) of the above.

It is necessary for the sake of accuracy to distinguish between “admission” and “qualification”.

Admission means simply that a solicitor is on the Roll of Solicitors in another jurisdiction. However, unless admission is coupled with holding a current Practising Certificate, a solicitor is not entitled to practice in that jurisdiction.
Fancy becoming the next Botham, Boycott or Imran Khan? Well here is your chance! The Society has been contacted by Terry O’Sullivan, a practising solicitor from Cork, who is hoping to form an All-Ireland Cricket team consisting of practising Solicitors and Barristers to play in next year’s Lawyers’ Cricket World Cup. He has invited members with an interest or passion for cricket to contact him detailing cricketing experience, contact details and age. Any interested cricketers should confirm their interest by emailing Terry O’Sullivan at: cricketlawyers@gmail.com

Pub Quiz
Friday 7 October
at the Errigle Inn, Ormeau Road, Belfast

Starting at 8.30pm followed by a disco.

Admission £3
Everyone welcome.

DATE FOR YOUR DIARY

Make your Practice Recession-Proof
Prepare for tomorrow, adapt today

WHEN Thursday 23rd October 2008
TIME 1.30 pm – 4.30 pm
(light lunch served 12.15 pm – 1.15 pm)
WHERE Malone Lodge Hotel, Belfast
‘Bowness Suite’ (car park at rear of hotel)
SPEAKER Hamish Munro
Law Firm Consultant

SEMINAR FEE Cost £110 + VAT (discounts for 2/3/4 attendees)
CPD POINTS 3 (Client Care)

This seminar will focus on best practice in efficient solicitors’ practices – in business planning, profit improvement, client service and governance/regulation to help you improve profitability and cut costs.

The seminar will cover topics such as:

• Responding to economic downturn – survive the credit crunch and beat the competition with the right strategy and initiatives
• Turn enquiries into business – tips on managing enquiries into profit
• Systems’ efficiency – costs improvement and speedier business
• Cash and financial management – simple tactics for tighter controls
• Case and project management – improved working practices
• Working to new regulatory demands – fewer complaints and better dialogue

This event is part sponsored by AM Systems, Belfast.
Please contact 02890 456700 for booking form
Adjudicating on opportunistic company name registrations

On 1 October 2008, the Company Names Adjudicator Rules 2008 comes into force, giving effect to s 69-74 of the Companies Act 2006. Proceedings will be administered by The Company Names Tribunal and cases will be decided by company names adjudicators (who are also trade mark inter partes hearing officers), based at the United Kingdom Intellectual Property Office, in Newport (formerly the Patent Office).

Company names adjudicators will deal only with disputes about opportunistic company name registrations; that is, solely with applications (complaints) made under s 69(1)(a) and (b) of the Companies Act 2006. These sections provide for complaints by businesses or persons who have a goodwill or reputation associated with a name and where that name (or a similar name likely to suggest a connection with the complainant) has been opportunistically registered as a company name by someone else with a view to obtaining money from the complainant, or to prevent the complainant from registering the name.

Company names adjudicators cannot deal with cases where someone feels that another company name registration is too similar to, or ‘too like’, their own company name but where there is no suspected opportunism behind the registration. These sorts of disputes or complaints are dealt with by Companies House.

Alternatively, if the company name is used as a trading name it may be actionable under the law of passing off. However, an application which is made to the company names adjudicator because the applicant is aggrieved that someone has a company name which is too similar will not succeed simply on the basis that the holder is trading under the name and causing confusion. Practitioners are advised to note the various defences in s 69(4) and (5) of the Act.

An application to the Company Names Tribunal must fall within the bounds of s 69 of the Companies Act 2006. Applications outside its remit will not be refunded. Applicants do not have to have a registered company name but must demonstrate goodwill/reputation in the name at the time that it was adopted by the registration holder as the company name.

If the application is successful, the adjudicator will order the respondents to change the company name registration to something which does not offend. If the registration holder does not do this, the company name adjudicator has power to order the registrar of companies to change the name to a name of the adjudicator’s choosing.

Further information is available on The Company Names Tribunal website.

Judi Pike
The Company Names Tribunal
at the UK Intellectual Property Office

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Considering Streamlining? Share accommodation!

The Unit 5 Citylink Business Park Belfast office building has a limited number of available work stations which may be of interest to solicitors seeking to downsize or set up on their own account. These offer a high quality, fully managed, serviced solution on flexible terms.

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- Additional filing storage

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Unit 5 Citylink Business Park, Belfast BT12 4HB

Terms are flexible and bespoke solutions negotiated
The launch of our Consultation Document on our First Programme for Law Reform is a moment to note in Northern Ireland law. We seek your consultation responses.

**Land Law**

Our flagship project is Land Law Reform which is already under way. Sarah Witchell, our senior lawyer on the Project, has already written about it in the April edition of the Writ. Our Conference ‘Time to Get Real – A New Lease of Life for Land Law’ reveals some radical proposals. Solicitors can very much assist us in the process, and let us know whether or not we have got it right.

There are other proposals in our Consultation Document on which we also seek responses.

**Bail Law**

The second project addresses the law governing the granting of bail for adults and children in Northern Ireland. The legislative provisions on bail in this jurisdiction are derived from a diverse range of statutory sources. The project will include an examination of perceived weaknesses in the present law and the formulation of a draft codifying statute on the subject.

**Vulnerable witnesses in civil litigation**

While there is legislative provision for certain categories of ‘vulnerable witnesses’ in criminal cases, there is no such provision for civil cases, and in many instances it is a matter of judicial discretion. This is a project which we have inherited from our predecessor the Law Reform Advisory Committee so we are keen to take that forward.

**Conveyancing Law Reform for Flat Developments**

This is a topic on which the Irish Law Reform Commission has recently issued a report. Do conveyancing solicitors here consider that the law in Northern Ireland merits reform? Or are there administrative and other procedures that could be adopted to simplify the quite complicated processes involved?

**Landlord and tenant law reform**

This is a project which could follow on after the current Land Law Project. Are there views on areas of private sector tenancies and/or business leases which merit law reform?

**Environmental Law**

There has been a mass of new environmental legislation and regulations in recent years. We propose initially a scoping on the potential for:

- consolidation and rationalisation of environmental legislation
- a uniform enforcement regime through consolidation and rationalisation of enforcement powers (powers of entry, appeals, information, charging etc) and appeal rights
- a civil remedies regime
- environmental permitting (a new unified permit system) within environmental regulation

**Video links for secure accommodation applications**

There is concern as to whether the judiciary may deal with such applications by way of video link (so that the child or young person remains safely in the secure accommodation until the court has disposed of the matter) having regard to the child’s rights under a 6 of the European Convention on Human Rights and a 12 of the Convention on the Rights of the Child. Possibly, a protocol rather than legislation, could provide clarification for the courts and the parties involved?

**Suggestions please!**

This is not a closed list and we emphasise that we invite views from all on projects which at least would deserve consideration in any law reform programme.

In the words of Ronan Keane, former Chief Justice and Chairman of the Irish Law Reform Commission:

“…[a law reform] body must bring forward proposals for changes in the law which have a reasonable prospect of making our laws fair, relevant to society’s needs, easily understood and accessible to everyone.”

I hope we will be found to meet that challenge, but we invite your views.

**Selection Criteria**

Of course, not every suggestion can end up in the programme. So we have set out selection criteria in the Consultation Document (at pages 5 to 6).

**How to participate**

This is an opportunity for solicitors, along with everyone else in the community, to engage in this moment of law reform in Northern Ireland.

So I invite you to participate. The Consultation Document is available on our website www.nilawcommission.gov.uk

Consultation responses should be sent before 21 November 2008 by email to info@nilawcommission.gov.uk or by post to Philippa Spiller, Northern Ireland Law Commission, Linum Chambers, 2 Bedford Square, Bedford Street, Belfast BT2 7ES.
With dust on their feet...

Two LSNI Council members, Anne Brown and Libby McCaffery, provide a moving account of their recent experiences in Uganda for a Fields of Life Conference.

Why were a Strabane solicitor and a Ballymoney solicitor in Kampala last November during the week of CHOGM? It was certainly not to meet the Queen and the other Commonwealth Heads of Government, although we did enjoy the much improved roads from Entebbe airport to the centre of Kampala! We were at a conference entitled “Towards Excellence in Education”, run by Fields of Life, an all Ireland charity. It brought together for the first time the head teachers and directors of the 70 schools which have been built by Fields of Life over the past 10 years. Some delegates came from Burundi, Rwanda and Kenya but the majority were Ugandans.

Anne was there to give a presentation on land ownership and school governance issues and Libby’s role was to act as a group facilitator and interpreter for those whose first language was French. One of the more surreal experiences of the week was when Libby found herself translating for a Rwandan pastor interested in the teaching of deaf children, as part of a three-way conversation where information was being signed by a deaf teacher, translated into English and then into French! There is presently no secondary school teaching for deaf children in Rwanda, so perhaps some ideas may grow from the conversation.

Interestingly for the land lawyers among you, the Uganda land law system is based on the pre-1925 English system, so Anne’s summer reading of the Uganda land law text book was like a revision of Wylie! By contrast, Libby’s research, ably assisted by the Law Society’s Librarian Heather Semple, led her to discover that the Rwanda land law system is in a state of flux. The old Belgian-based legislation has been repealed but the new legislation has not yet been implemented. So maybe the Land Registry is not as problematic as we may think.

In fact, the November visit was the second time that we were in Uganda in 2007. In August we spent two weeks as part of a Fields of Life building team which travelled to Kiwoko in the Luweero district of Uganda, having raised the funds to build a nurses’ home for the CMS hospital there. The team ranged in age from 17 to a couple of retired people, with the rest of us in between. Although able-bodied and fairly fit, the women in the team were excused building duties and instead spent their time working in a local school and visiting several other children’s projects.

The prospect of having over 100 children in some of the classes was daunting but the children were terrific, discipline was not an issue and the musical interludes were spectacular.
We quickly learned that distances between places are calculated by time rather than miles or kilometres; the “right” side of the road is the side with fewest potholes and “chicken” is a game of nerves between drivers coming from opposite directions on the same side of the road. An hour and a bit on these roads every morning and afternoon to get to and from school was an eye-opener - definitely not for the faint hearted!

Over the fortnight we taught English, RE and art and craft classes in Shamma High School. Shamma is one of two schools in Uganda with a unit for deaf and hearing impaired children who are fully integrated into school life. The prospect of having over 100 children in some of the classes was daunting but the children were terrific, discipline was not an issue and the musical interludes were spectacular.

Singing without dancing is not an option in Africa, so the women’s team did get a bit of a workout. Our muzungu volley ball team acquitted ourselves well, although style and technique may have been somewhat wanting.

The school had delayed its Community Day so we could be there and of course we were asked to take part in the celebrations. Feeling somewhat crumpled beside the style and grace of our Ugandan friends, we did our best and gave a spirited rendition of “I’ll Tell Me Ma” and “Danny Boy”, which will never be quite the same again.

We were amazed and chastened at how much could be achieved by dedicated teachers with such limited resources, coupled with imagination and determination. A state primary school we visited, (which has grown from 200 to 500 pupils in the last three years), gets only a minimal amount per annum from the government for equipment and resources.

The Luweero triangle is infamous for the atrocities carried out during the reign of Amin and it was sobering to hear the stories of two brothers who had survived and were now working for peace and reconciliation.

We were amazed and chastened at how much could be achieved by dedicated teachers with such limited resources.

HIV/AIDS is rife in Uganda although the country is at the forefront in sub-Saharan Africa in its endeavours to combat AIDS. We thought that we had prepared ourselves fairly well for what we would encounter but nothing can prepare you for the sight and story of a young teenager who is orphaned and bringing up her younger siblings in very difficult surroundings whilst herself struggling with the disease. Or encourage you like three young girls looking after themselves while their mother was away looking after a sick grandparent. Without prompting, they sang for us and then went and changed into their best clothes to come and have lunch with us.

It was certainly not all work and no play. On our weekend off we went sightseeing and white water rafting on the Nile. The craic in the team and with our Ugandan counterparts was terrific and we became expert at negotiating the hospital campus and mosquito nets by torchlight when the electricity went off each night.

A number of people have suggested that we would have been much better sending out the money instead of going ourselves. We may have been able to do very little but the overwhelming and consistent feedback we got was how encouraged people were that we took time to come. The reality is that the nurses’ home got built, the schools received resources and links were established for ongoing support. We may not have changed much in Uganda but Uganda certainly had a profound effect on all of us who went there. One of our group put it eloquently when she said she would never be able to shake the dust of Africa from her feet. Even if we never return to Africa, we now have greater understanding, respect and compassion for how people live in Africa today.

It amazed us to discover that a school for 500-600 pupils can be built for £50,000. Work has started on one of the “hedge schools” which we visited and our dream would be to facilitate the building and equipping of the school. £3,000 will go a long way to providing all the books required to kit out a primary school.

Any donations for the work of Fields of Life would be much appreciated and may be sent to Fields of Life, 25 Carn Road, Portadown, Co Armagh, BT63 SWG.
New Lord Justice of Appeal
The Honourable Mr Justice Coghlin was sworn into office to the Court of Appeal in Northern Ireland before the Right Honourable Sir Brian Kerr, the Lord Chief Justice of Northern Ireland, on 5 September 2008. Mr Justice Coghlin succeeded Sir Anthony Campbell, who retired on 31 August 2008.

Appointment of a High Court judge
Her Majesty the Queen has appointed Bernard McCloskey QC to be a High Court judge in Northern Ireland. The judge was sworn into office before the Right Honourable Sir Brian Kerr, the Lord Chief Justice of Northern Ireland, on 5 September 2008.

Appointment of a Social Security Commissioner and Child Support Commissioner
Her Majesty the Queen has appointed Dr Kenneth Mullan to be a Social Security Commissioner and Child Support Commissioner for Northern Ireland. The new Commissioner was sworn into office before the Chief Social Security Commissioner and Child Support Commissioner on 12 September 2008.

Appointment of a Coroner
The Lord Chancellor has appointed Joanne Donnelly to the office of Coroner in Northern Ireland for a fixed term period of three years.

Joanne Donnelly was sworn into office before the Right Honourable Sir Brian Kerr, the Lord Chief Justice of Northern Ireland, on 15 September 2008. The Presiding Judge for the Coroners Service, Mr Justice Weir, and John Leckey, senior coroner, were present for the ceremony.
Assignment of District Judges
(Magistrates’ Courts)

The Lord Chief Justice has made the following assignment:

• District Judge Perry is to be assigned to the Petty Sessions District of Ballymena

This assignment is effective from 1 October ‘08.
Branching out into immigration work

**Kerry Lynn** has completed her apprenticeship as a solicitor at Law Centre (NI), working in the immigration unit. In this article, she shares the tools she found useful to begin practising in this exciting and busy area.

Immigration law is a growing area of practice in Northern Ireland and it is increasingly spilling into other areas of law. I began working in this area as a trainee in January 2008, with no previous experience. I now give advice to up to 20 people on an average morning on no previous experience. I now give advice to this area as a trainee in January 2008, with into other areas of law. I began working in Immigration law is a growing area of practice and Immigration and Citizenship Tribunal (AIT) and judicial review where necessary. At this time, I have represented before the Asylum and Immigration Tribunal (AIT) and have published briefings on the application and reform of immigration law.

**IMMIGRATION WORK**

Many firms are put off representing people in relation to their immigration status for two reasons. They think it is an insurmountably complex area of law and they believe that it does not pay. Accepting these assumptions, most firms in Northern Ireland cannot fully represent a significant section of the population. A recent Northern Ireland Statistics and Research Agency report puts numbers of migrants coming to Northern Ireland at more than 30,000 per year, and this is steadily increasing.

At Law Centre (NI), I have seen a significant overlap between immigration and other areas of law, mostly with criminal law, family law, social security law and employment law. The overlap with criminal law is set to increase with new offences being introduced in the draft Immigration and Citizenship Bill. For example, a custodial sentence of more than twelve months will now give rise to a presumption of deportation and therefore requires knowledge of this area if the client is subject to immigration control.

In family law, it is important that those subject to immigration control are advised on the implications of changes in their marital status. For example, a person subject to immigration control in the UK on the basis of marriage who divorces in the family court may lose the right to reside if s/he originally applied under the European provisions. Alternatively, the right to reside in the UK may fall away as soon as the couple stops living together if they originally applied under the UK immigration rules. In addition, the right to contact with one’s children is only a real right when the client has the right to remain in the UK in order to exercise it.

The significant overlap between employment law and immigration impacts on employees and employers alike. People subject to immigration control who work in a job for which they do not have permission are not able to enforce their employment rights (except perhaps discrimination) in industrial tribunals. Employers are committing a criminal offence, with increasing fines, by employing those without a right to work.

So what about the money? Work permit applications have become increasingly complex, and we are frequently referring work permit holders who have the means to pay to private practitioners, as they are beyond the remit of Law Centre (NI). There is also legal aid available for advice and representation at the AIT and judicial review where necessary.

So if your firm feels there is no benefit in branching out into immigration law, think again.

**WHAT IS IMMIGRATION LAW ANYWAY?**

The main areas of work for the Law Centre’s immigration unit are: immigration detention, bail and removal; asylum claims and appeal under the Refugee Convention 1951 as amended by the 1967 Protocol; entry clearance appeals; family member applications under European Economic Area (EEA) provisions; and securing a right to reside for A8 nationals (Polish, Latvian etc) and A2 nationals (Romanian or Bulgarian). Much of our work involves the European Convention on Human Rights, particularly Article 8 (Right to family and private life). We also make concessionary applications outside the immigration rules, for example for humanitarian protection under the Qualification Directive.

For people subject to immigration control, immigration status is key to all other areas of their life. If they cannot secure the right to reside lawfully, or the right to work, their lives can be put on hold, with constant fear of detention and removal. At times, families are unable to be together in NI, where they have built their home, and perhaps where their children were born. For example, if he has a poor immigration history or is unable to satisfy the immigration rules on maintenance and accommodation requirements, a father may end up living back in his country of origin and away from his family for years. While it is not always possible to succeed in these types of immigration applications, it is good for applicants to have a professional guiding them through the process and good for solicitors to work in an area where they can make a difference to people’s lives.

In our work, we refer to the UK Immigration Rules (HC395) and the Immigration (European Economic Area) Regulations 2006. The former can be found on the United Kingdom Border Agency (UKBA) website (www.ukba.homeoffice.gov.uk), along with the policy and guidance (such as the Immigration Directorate Instructions) that UKBA use in making decisions. It covers students, work permit holders, asylum claims, family members, visitors and any other basis upon which someone may seek to enter or remain in the UK.
European law enables the free movement of European nationals. EEA nationals are allowed to visit any other EEA member state for up to three months, or longer if they wish to reside while ‘exercising Treaty rights’. Their family members are included in these rights even if they are not EEA nationals. The main relevant legislation is the Immigration (European Economic Area) Regulations 2006, which specifies who is deemed to be exercising Treaty rights, and which family members are considered eligible. It is more user-friendly than one might expect from a piece of legislation inherited from Europe. The situation has been complicated by the accession of the A8 and A2 member states in 2004 and 2007 respectively. A8 and A2 nationals have had their European rights to reside and work limited for the first twelve months of registered work. Further details are found in Accession (Immigration & Worker Registration) Regulations 2004 & Accession (Immigration & Worker Registration) Regulations 2006.

If you are now feeling inspired to branch out into something new but don’t know where to start, read on.

**HOW TO START**

I had the benefit of a group of experienced immigration practitioners with a wealth of knowledge to help me learn quickly. This is also at your disposal. Law Centre (NI) offers a free advice line to members, including 100 local solicitor firms. It runs weekday mornings, and can offer the expert advice you may need to help you grasp the issues.

No immigration solicitor can function without the JCWI Immigration, Nationality & Refugee Law Handbook, 2006 edition by Duran Seddon. It costs about £50, it clarifies most of the more complex areas you are likely to come across and is easy to read. Updates are available online to subscribers of JCWI (www.jcwi.org.uk). The immigration ‘bibles’ to rely on at tribunal and in court are MacDonald’s Immigration Law & Practice, Seventh edition by MacDonald & Toal (£166) and Immigration Law Handbook, Fifth edition by Phelan & Gillespie (£50).

Caselaw can be accessed online using Electronic Immigration Network (EIN) or the Asylum & Immigration Tribunal website (www.ait.gov.uk and www.ein.org.uk). Because of the importance of immigration law to people’s lives, it is common for cases to end up in the Court of Appeal and the House of Lords. The JCWI handbook will refer to cases when describing the law if necessary but, with the ever-changing nature of immigration law, you need to keep abreast of changes and new cases, using journals and other electronic resources.

We sign up to Refugee Legal Group on Googlegroups, an email discussion forum for immigration practitioners throughout the UK, some of whom display an amazing degree of knowledge on complex legalities, procedures and practices. The subscription includes a fortnightly chronicle.

We subscribe to Immigration Law Practitioner Association (www.ilpa.org.uk). ILPA has a membership of 1,500 lawyers and is based in central London. Its monthly mailing, free to subscribers, makes essential reading. We also subscribe to, amongst others, the Immigration Advisory Service (IAS) Bulletins, Updates and Digests, Journal of Immigration Asylum & Nationality Law, and the Immigration & Nationality Law Reports. There is some overlap so there is no need to read all of them. However, this gives an idea of the amount of immigration law resources you could access.

There are many great training courses. ILPA courses vary in level and complexity. Solicitors are exempt from the requirement to undertake Office of the Immigration Commissioner (OISC) training before advising on immigration but if you are new to the field, an overview may be useful: Level 2 (Caseworker) training run by JCWI in a five day course in London is worth 27.5 CPD points. Law Centre (NI) has courses on, for example, European Law and Immigration, Assisting Women Immigrants, Foreign National Prisoners (see www.lawcentreni.org), and OISC offers online courses (www.oisc.gov.uk). Application forms may be obtained from the

UK Visas website if they relate to an entry clearance application (www.ukvisa.gov.uk/en/).

The UKBA website holds all other application forms, except for bail application forms, which can be found on the AIT website. The AIT, held Tuesdays and Thursdays in the Old Town Hall Building on Victoria Street, Belfast, hears bail applications, initial appeals to tribunal and reconsiderations.

**CONCLUSION**

There is a great need for immigration advice and representation in Northern Ireland, and it is not prohibitively complicated to take up as a new area. I hope this has given you the inspiration and the tools to think about it as a potential field for your firm. If thinking about branching out, why not come to an Immigration Practitioner Group (IPG) meeting at Law Centre (NI), Belfast Office. Call 9024 4401 to find out when the next one is scheduled.

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**Law Centre courses attract CPD hours for solicitors and barristers:**

- **Assisting Women Immigrants**
  - 6 October 2008
  - Derry

- **Immigration (EEA) Regulations 2006**
  - Case Law Analysis
  - 17 October 2008
  - Belfast

- **Employment Support Allowance**
  - 23 October 2008
  - Belfast

- **Employment Support Allowance**
  - 29 October 2008
  - Derry

**RING 028 9024 4401 FOR MORE DETAILS**
BSA book launch

The Belfast Solicitors Association is marking the Official launch of the book “Serving the City, a celebration of 65 years of the Association”, with a Gala Dinner at the Culloden Estate and Spa, on Friday 17th October 2008 at 7pm.

With champagne reception, after dinner speaker and guests Tickets at £100.00 per person includes a copy of the book

Dress: Black Tie

RSVP by completing the section below and return

Please return to:
The Administrator
Belfast Solicitors Association
Suite 7 Merrion Business Centre
58 Howard Street
Belfast BT1 6PJ

BOOKING FORM - BSA book launch

Name:
Address:
Contact telephone no:
Number of tickets:
Vegetarian Yes/No
Cheque enclosed amount £

BSA - 65 years old

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

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Suite 7 Merrion Business Centre
58 Howard Street
BELFAST BT1 6PJ

Name
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**ANNUAL PRACTICE MANAGEMENT SEMINAR**

**Date:** Friday 7 November 2008  
**Time:** 12.30pm – 4.00pm (refreshments provided from 12.00 onwards)  
**Venue:** Green room, Waterfront Hall, Belfast  
**Cost:** £40 for members of the NIYSA* and £60 for non-members.

Topics and speakers to be confirmed

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

Cheques and Booking Forms to NIYSA c/o Conor Houston  
John J Rice & Co. Solicitors  
Pearl Assurance House  
3rd Floor  
2 Donegall Square East  
Belfast BT1 5HB

E Mail – c.houston@johnjricesolicitors.com

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

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**BOOKING FORM** - Annual Practice Management Seminar

| NAME |  
| FIRM |  
| ADDRESS (DX if possible) |  
| E-MAIL ADDRESS |  
| TEL |  
| NUMBER OF PERSONS ATTENDING |  
| I ENCLOSE REMITTANCE OF £ |
High Court and
Court of Appeal Decisions

High Court and Court of Appeal decisions

COMPANY LAW

DANIEL MCATEER v JOHN JOSEPH MULLAN AND MARIA MULLAN
Specific performance of an agreement between the plaintiff, a chartered accountant, and the defendants in the purchase of shares.
- declaration sought by the plaintiff that he is the holder of one half of the total of the shares issued by the company and a declaration that he is a director of the company. - challenge by liquidators to validity of share sale agreement.
- enforceability of share sale agreement given that various versions were in existence. - whether the plaintiff was the holder of ordinary shares prior to the date of the petition for the winding up of the company was presented. - HELD that the plaintiff is neither a shareholder nor a director in the company
HIGH COURT
23 JULY 2008
CAMPBELL LJ

CONTRACT

IN THE MATTER OF AN APPLICATION BY AES KILROOT POWER LIMITED FOR JUDICIAL REVIEW AND IN THE MATTER OF A DETERMINATION OF THE NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATIONS DATED 23 OCTOBER 2007
Contract. - cancellation conditions in electricity generation licence. - whether requisite arrangements for cancellation condition had been met. - nature of Single Electricity Market and generation Unit Agreements. - whether sufficient consultation in the leading up to the determination. - whether Wednesbury unreasonable and irrational. - HELD that consultation process carried out on behalf of the Authority for Utility Regulation satisfied the common law requirements of fair procedure and application dismissed
HIGH COURT
6 JUNE 2008
GILLEN LJ

CRIMINAL LAW

R v TERENCE MALACHY DAVISON, JAMES MCCORMICK AND JOSEPH GERARD FITZPATRICK
Criminal law. - murder of Robert McCartney. - whether prosecution has established guilt beyond reasonable doubt. - burden of proof. - witness saw no weapon and there was an absence of blood at that particular spot. - mens rea of murder. - affray. - identification principles. - care warning when considering unsupported evidence. - adverse inference from failure to testify. - HELD that all accused be acquitted
CROWN COURT
27 JUNE 2008
GILLEN J

R v THOMAS GRAHAM
Sentencing. - murder. - minimum term to be served under a. 5 Life Sentences (Northern Ireland) Order 2001. - aggravating and mitigating factors. - reduction of starting point since the defendant suffered at the time of the murder from a mental disorder which lowered the degree of criminal responsibility. - HELD that the minimum term be set at 11 years
CROWN COURT
6 AUGUST 2007
STEPHENS J

R v TREVOR HAMILTON
Criminal law. - appeal against sentencing of whole life tariff. - HELD that, while this was a heinous offence, and that whole term order made by the judge should be quashed and appeal against sentence allowed and replaced with minimum term of 35 years before consideration for parole
COURT OF APPEAL
27 JUNE 2008
KERR LCJ, CAMPBELL LJ, HIGGINS LJ

R v THOMAS LESLIE AND GERALD MOONEY
Application for leave to appeal against making of confiscation orders against each of them under s. 156 Proceeds of Crime Act 2002 following their convictions for the theft of 11 quad bikes. - recoverable amounts. -
High Court and Court of Appeal Decisions

whether confiscation order should reflect the current resale value of the bikes. - goods had been returned to their true owner and the combined confiscation orders were double the true worth of the confiscated goods. - whether confiscation orders unduly harsh and disproportionate. - HELD that given the exceptional circumstances of the case the orders should have been apportioned between the two defendants, so leave to appeal granted COURT OF APPEAL 30 JUNE 2008 GIRVAN LJ

R v DANIEL MCARDLE
Appeal against sentence on charge of grievous bodily harm contrary to s. 18 Offences Against the Person Act 1861. - defendant stabbed his victim leaving him blind in one eye. - pre-sentencing and psychiatric reports. - length of custodial sentences under a.20 Criminal Justice (NI) Order 1996 and the need to protect the public. - HELD that the sentence passed at the original trial is not disproportionate and the appeal is dismissed COURT OF APPEAL 23 MAY 2008 KERR LCJ, CAMPBELL LJ

R v SAMUEL SHANNON
Application for leave to appeal against a sexual offences prevention order with a 5 year duration imposed on the applicant under s. 104 Sexual Offences Act 2003. - whether the prevention order was misconceived and not supported by the evidence. - whether the applicant poses a risk of causing serious sexual harm. - whether the conditions attached to the order were necessary or proportionate. - applicant has convictions for indecency, indecent assault and sending obscene messages by public telecommunications. - assessment of the level of risk recurence. - HELD that it was necessary to make a sexual offences prevention order in order to protect women from serious sexual harm, but that the appeal be allowed against the condition that the applicant is unable to own or drive a motor vehicle, since this limits the applicant’s ability to gain employment COURT OF APPEAL 5 AUGUST 2008 CAMPBELL LJ, HIGGINS LJ

R v JAMES STEWART, KEVIN BRENDAN KELLY AND WILLIAM JOHN MCNALLY
Sentencing. - corruption and offences under the Data Protection Act. - first defendant was a private detective enquiring into the backgrounds of those involved in motor accident claims who obtained information on the criminal convictions of various individuals from the other defendants who were acting in breach of their trust as police officers. - aggravating and mitigating factors. - HELD that defendants be sentenced to suspended prison sentences and fines COURT OF APPEAL 6 JUNE 2008 HART J

R v KASPARS VALTERS
Sentencing. - manslaughter. - defendant accused of murder of a homeless person. - defendant had been living in Northern Ireland for a period of 15 months. - whether deportation should be recommended. - aggravating and mitigating factors. - HELD that a custody probation order of 4 years’ imprisonment be imposed followed by 1 year’s probation and that deportation is not imposed CROWN COURT 27 JUNE 2008 HART J

R v CONRAD ZYCH
Manslaughter, sentencing. - deaths of drowning of crew members of the Greenhill vessel. - defendant admitted that as the boat approached harbour no lookout was being kept because all crew members were working on the catch. - whether failure to keep a proper lookout onboard a vessel was breach of a specific provision of the Merchant Shipping Act, and amounted to gross negligence given the weather conditions and circumstances at the time. - aggravating and mitigating factors. - HELD that a sentence of twelve months imprisonment be imposed CROWN COURT 26 JUNE 2008 HART J

ALAN LAVERTY v MICHAEL MCGUOID CONSTRUCTION, ASHLEY DECORATORS AND LEO MATURENS CONTRACTS LIMITED
Plaintiff injured after his leg fell down a manhole chamber and damages of £10,000 subsequently awarded. - whether second and third defendants, who stand together and accept the manhole cover was under their control and that they were responsible for the defective state, are alone liable for the agreed damages or whether they share responsibility with the first defendant, and if so in what proportion. - employment relationship between first and second named defendant. - whether the plaintiff was employed by one or more of the defendants. - HELD that the first defendant as employer is liable to the plaintiff for the injuries sustained and the first defendant is entitled to seek a contribution from the main contractor, with the main contractors liable to 70% of damages awarded and the employer liable for the balance HIGH COURT 29 MAY 2008 HIGGINS LJ

REGINA MCKENNA BY HER FATHER AND NEXT FRIEND WILLIAM MCKENNA v ROSEMARY CONNOLLY AND PATRICK MCGEE (JUNIOR) AS PERSONAL REPRESENTATIVES OF THE ESTATE OF FRANCIS MCGEE (DECEASED) AND MOTOR INSURERS BUREAU
Damages. - personal injuries. - plaintiff involved in traffic collision which caused severe injuries resulting in profound cognitive and physical disability and limited life expectancy. - general damages and care, equipment, transport and attendance allowance HIGH COURT 20 JUNE 2006 COGHLIN J
DISCLOSURE

IN THE MATTER OF AN APPLICATION BY THE APPLICANT X FOR JUDICIAL REVIEW AND IN THE MATTER OF A DECISION IN THE ROSEMARY NELSON ENQUIRY

Application for judicial review seeking relief in three separate matters arising from the decisions of the Rosemary Nelson enquiry, - whether the Inquiry should have disseminated certain sensitive material. - whether the Inquiry should have decided not to disclose witness statements adverse to the applicant which are adverse to him, and whether legal aid representation should have been refused. - HELD that until the process has been complete representation should have been refused. - whether legal aid representation should have been refused. - HELD that until the process has been complete representation should have been refused.

THE ROSEMARY NELSON ENQUIRY

AN INQUIRY INTO ALLEGATIONS OF sexual abuse making observations of the child at the Child Care Centre investigating allegations of sexual abuse. - failure to video the interviews. - HELD that the evidence is of insufficient weight to allow the court to rely on it, and that the Trust has failed to discharge the burden of satisfying the court to the requisite standard that the appellant sexually abused his daughter, and appeal allowed.

HIGH COURT
2 JULY 2008
TREACY J

IMMIGRATION

AN APPLICATION FOR JUDICIAL REVIEW BY JAMIU OLANREWAJU OMIKUNLE

Application for judicial review of a decision of the Immigration authorities declaring that the applicant was an illegal entrant to the UK and liable to removal. - applicant was in the UK on a student visa but failed to secure course fees and travelled to Northern Ireland for a family christening. - immigration official concluded the applicant had not provided a credible explanation in relation to his studies. - immigration rules for student entry. - HELD that it has not been established that the applicant practised deception in obtaining his student visa, or in gaining leave to enter, or in not reporting his change of study or in his interview with immigration officers. - applicant is not an illegal immigrant and Notice to a Person Liable to Removal will be quashed.

HIGH COURT
28 JULY 2008
WEATHERUP J

EMPLOYMENT

ANDREW ALEXANDER FAULKNER, PETER ROGAN AND ROBERT DAVID JOHNSTON v BT (NORTHERN IRELAND), BT CELLLNET, BT WHOLESALE, BY PLC AND O2 PLC

Appeal by way of case stated from a decision of the Appeals Tribunal during the course of a police disciplinary process. - disciplinary process initiated against the applicant subsequent to his conviction for a drink driving offence contrary to a. 161(a) of the Road Traffic (NI) Order 1995 and was required to resign from the Police Service. - judicial review has a realistic prospect of success. - whether judicial review has a realistic prospect of success. - whether judicial review has a realistic prospect of success. - whether judicial review has a realistic prospect of success.

HIGH COURT
23 JUNE 2008
STEPHENS J

FAMILY LAW

H v H

Contested applications in relation to the issue of a Decree Absolute. - ancillary relief and bankruptcy proceedings resulting in the sale of the matrimonial home. - whether respondent had deliberately stalled the sale of the matrimonial home and that the two sons of the family are refusing the quit the premises to allow sale to proceed. - whether the court can properly withhold the issue of a Decree Absolute in order to allow enforcement of an ancillary relief application. - HELD that withholding the issue of the Decree Absolute would not be a proper course of action and Order made that the Decree should be issued forthwith.

HIGH COURT
20 JUNE 2008
REDPATH M

JUDICIAL REVIEW

IN THE MATTER OF L AND M, MINORS

Application by Trust for a Care Order in respect of two children subject to an interim care order without the consent of the parents. - appeal by father against the decision against the interim care order and the finding of sexual abuse which underpinned the making of the order. - whether, on the evidence available, the court could reach the conclusion as to whether or not the child had been sexually assaulted. - observations made of the child at the Child Care Centre investigating allegations of sexual abuse. - failure to video the interviews. - HELD that the evidence is of insufficient weight to allow the court to rely on it, and that the Trust has failed to discharge the burden of satisfying the court to the requisite standard that the appellant sexually abused his daughter, and appeal allowed.

HIGH COURT
2 JULY 2008
TREACY J

The full text of these decisions are available on the Libero Database in the member’s section of the Law Society Website at www.lawsoc-ni.org
High Court and
Court of Appeal Decisions

AN APPLICATION FOR JUDICIAL REVIEW
BY JESSICA HAMILL
Application for judicial review of a decision of the Secretary of State not to extend the terms of reference of the Hamill Inquiry to include decisions made by and on behalf of the Director of Public Prosecutions. - whether in the test which the Secretary of State applied in making the decision he applied an exceptional circumstances test and was wrong in doing so. - whether his decision was unreasonable. - whether procedural unfairness. - HELD that no grounds of bias have been established and that the applicant succeeds on the first ground only
HIGH COURT
1 JULY 2008
WEATHERUP J

AN APPLICATION FOR JUDICIAL REVIEW
BY MW (MENTAL HEALTH)
Application for judicial review of a decision of the Mental Health Review Tribunal that the applicant should not be discharged. - role of the medical member of the Tribunal. - whether comments made by the medical member gave rise to a reasonable apprehension that the Tribunal had a preconceived concluded opinion in breach of the requirements of the Human Rights Act 1998 and a.6 ECHR. - whether the Tribunal, in relying on the comments, erred in law and was biased. - HELD that the fair minded and informed observer would not consider that there was a real possibility of bias and that the medical member of the Tribunal had not reached a concluded view on the applicant’s detention at the commencement of the hearing. - appeal dismissed
HIGH COURT
23 JUNE 2008
WEATHERUP J

AN APPLICATION FOR JUDICIAL REVIEW
BY JOANNE O’NEILL
Application for judicial review of NIHE’s refusal to purchase the applicant’s property under the Scheme for the Purchase of Evacuated Dwellings (SPED) and refusal of Chief Constable of PSNI to issue a certificate in connection with the SPED application. - eligibility of applicant for SPED scheme. - whether decisions were Wednesbury unreasonable or irrational. - whether inadequate reasons were given. - whether the applicant was directly or specifically threatened or intimidated. - HELD that the applicant was specifically threatened or intimidated and decisions of PSNI and NIHE quashed and new decisions taken on the application under the SPED scheme
HIGH COURT
28 JULY 2008
WEATHERUP J

LEGAL AID
IN THE MATTER OF AN APPLICATION BY DANIEL LUNNEY FOR JUDICIAL REVIEW
Application for judicial review of a resident magistrate’s refusal of applicant’s criminal legal aid application on the grounds that expenditure of public funds on this matter was not justified, that the applicant had had ample time to instruct and solicitor and be advised under the green form scheme, and that legal aid would not be granted until the applicant indicated whether he was going to plead guilty or not guilty, and that the applicant had already created avoidable delay. - whether grant of legal aid can be deferred pending the decision on what plea was to be entered. - discretion of Magistrate to grant legal aid in the interests of justice. - HELD that the issue of avoidable delay was not material to the essential issue which the magistrate had to determine, and that the applicant should have been granted legal aid and order of certiorari issued accordingly
HIGH COURT
27 MAY 2008
KERR LCJ, WEATHERUP J

PRISONS
AN APPLICATION FOR JUDICIAL REVIEW
BY EDWARD WATTERS
Application for judicial review of decisions of the Prison Service to remove the applicant from the pre release unit at Crumlin Road Belfast to HMP Maghaberry. - applicant a life sentence prisoner who was committed to prison on a discretionary life sentence for rape, with a minimum term set for 11 years. - applicant breached prison rules while in the pre-release Prisoner Assessment Unit and was transferred back to prison with a reduction in privileges. - whether the decision was unfair and contrary to natural justice in that the allegations were vague and not properly particularised, the complaints were not properly investigated and he was unable to challenge any decision. - applicable procedures. - whether there was a discretion to reduce the status of transfer the applicant out of the PAU. - HELD that there were a number of shortcomings in the procedures applied, and that s. 21 of the Judicature (NI) Act be applied to remit the decisions to the prison authorities with a direction to reconsider the decisions and take account of the current risk assessment to determine the applicant’s placement
HIGH COURT
30 JUNE 2008
WEATHERUP J

ROAD TRAFFIC
PUBLIC PROSECUTION SERVICE v MERVYN MONTEITH
Appeal by way of case stated from Resident Magistrate’s decision that to allow the prosecution to proceed with a summons charging the appellant with failure to comply with r.97(2) of the Motor Vehicles (Construction and Use) Regulations (NI) 1989 would amount to an abuse of the court and breach of the principle in relation to double jeopardy. - whether the Resident Magistrate was correct in law in regarding a trial for the summary offence of carrying an insecure load as giving rise to an issue of res judicata after the defendant had been acquitted on indictment of causing death by dangerous driving when both offences
were arising out of the same facts. - whether
the charge of dangerous driving causing
death depended on the same circumstances
as grounded the charge in the magistrates’
court. - whether the fact that both prosecutions
arising from the same incident warrant a stay
of proceedings.- whether the failure of the
prosecution to inform the respondent of the
issue of the summons before completion of the
trial on indictment warranted a stay. - HELD
that the magistrate should not have granted
a stay of proceedings, and that the case
be remitted to the magistrates’ court with a
direction that the prosecution of the respondent
should proceed
COURT OF APPEAL
21 JULY 2008
KERR LCJ, CAMPBELL LJ AND GIRVAN LJ

SUCCESSION

IN THE MATTER OF THE ESTATE OF
JAMES JOHNSTON DECEASED AND
IN THE MATTER OF THE ESTATE OF
CHARLOTTE ELIZABETH JOHNSTON
DECEASED AND IN THE MATTER OF
THE INHERITANCE (PROVISION FOR
FAMILY AND DEPENDANTS) (NI) ORDER
1979 BETWEEN DERмот JOHNSTON
v SINCLAIR JOHNSTON AND PEARL
ELIZABETH MCKEE AS PERSONAL
REPRESENTATIVES OF JAMES
JOHNSTON DECEASED AND PEARL
ELIZABETH MCKEE AS PERSONAL
REPRESENTATIVE OF CHARLOTTE
ELIZABETH JOHNSTON DECEASED
Applications for relief in the form of an order
that reasonable financial provision be made for
the plaintiff from the estates of the deceased,
and that he be registered as the fee simple
owner of lands and be entitled to a farm
account bank balance. - whether the plaintiff
has established entitlement to the land by
proprietary estoppel. - whether any promise
was made to the plaintiff. - whether the plaintiff
acted to his detriment in reliance on the
promise. - satisfaction of the equity. - HELD in
favour of the plaintiff
HIGH COURT
13 JUNE 2008
WEIR J

The full text of these decisions are available on the Libero Database in the
member’s section of the Law Society Website at www.lawsoc-ni.org

The Investigatory Powers Tribunal
4 New Members

The Investigatory Powers Tribunal exists to investigate complaints
about conduct by various public bodies, in relation to individuals,
their property or communications. The Tribunal also has
jurisdiction to consider claims under the Human Rights Act 1998
of infringements by certain bodies.
The Tribunal can investigate complaints about any alleged conduct
by or on behalf of MI5, MI6 and GCHQ (Government
Communications Headquarters).
We are looking to appoint three members, one each for England,
Scotland and Northern Ireland to take up post from January/
February 2009 and a further member for England to take up
appointment in 2010.

If you think you have the qualities required and want to apply for a post please go to www.appointments.org.uk or call
0870 240 3802 during office hours, quoting reference HO8040, for an information pack and application form (which are
available, on request, in large type, Braille or on tape).
Closing date: 14th October 2008.
Interviews will take place at the end of November 2008, in London.
The Law of Mortgages in Northern Ireland by Charles O’Neill

This book fulfills a longstanding requirement to have a comprehensive textbook on the law of mortgages in Northern Ireland. Its timing is particularly opportune having regard to the current economic slump and in particular the crisis in the housing market which will inevitably lead to mortgage default, repossession actions and disputed claims about legal and equitable interests and priorities.

In such a situation the critical test for the book is whether or not practical guidance and information can easily be discerned in any given scenario. By and large the book does provide easily accessible answers to “What if?” type of questions as well as being a comprehensive treatise of the law.

Where the book will become an essential reference point for practitioners is in the use of the Appendices which constitute well over a third of the text. The precedents, particularly in Appendix A, may all be accessible in other diverse guides or text books but to have such a comprehensive range of precedents ranging from mortgage deeds to release of statute barred Orders charging land, and covering both Registry of Deeds and Land Registry titles, available in the one source will be invaluable. Reprinting the Council of Mortgage Lenders Handbook for Northern Ireland as Appendix B in the book is not quite so compulsive reading but even a cursory review of same would be a sobering reminder to practitioners of their duties and responsibilities each and every time they act for a mortgagee - never mind the consequences where the mortgagor defaults and the mortgagee wants to rely on its security.

The practical guidance in the book extends to considering the operating of the Law Society Home Charter Scheme, enforcement of judgments in the Enforcement of Judgments Office and a comprehensive set of precedents for possession and sale applications in the High Court with specimen draft Affidavits and details of Practice Directions issued by the Enforcement of Judgments Office and the High Court.

The Law of Mortgages is aimed primarily at practitioners but will also be a very useful guide for students and academics. The book appears to presume a basic knowledge of land law and the concepts of equitable interests and with that knowledge the analysis of the legislation and case law contained in the book is easily discernable. The analysis of the leading cases such as Barclays Bank plc v O’Brien 1994, and Royal Bank of Scotland v Etridge 2001 and of leading Northern Ireland cases such as Northern Bank Limited v McCarron 1995, Kelly v. Pollock 2002 and Northern Bank Limited v McKinstry and McKinstry 2001 is both concise and easily digested. The very extensive Chapter entitled the ‘The Discretion of the Court in Applications for Possession’ will surely be essential reading prior to advising either a mortgagor, a member of their family, or indeed the mortgagee where arrears on a mortgage arise or proceedings for possession are in contemplation.

Having regard to his working environment as a Solicitor in the Northern Ireland Co-Ownership Housing Association Mr O’Neill’s book has a comprehensive and possibly over extensive, analysis on the operation of the Co-Ownership equity sharing scheme and the effect of acquisition of the equity on the priority and transfer of the mortgage but with similar such schemes likely to grow (as evidenced by the recently proposed Scheme for Portadown), and with the growing prevalence of retirement equity release schemes and buy to let mortgages, the analysis of differing types of mortgage is clearly welcome.

The book also examines quirky situations which have not yet been fully developed such as the effect of the redemption of the ground rent on any mortgage on the property previously subject to the ground rent although no specific reference is made to the fact that First Compulsory Registration arising after redemption gives rise to a Qualified title which most mortgagees will not accept even though the leasehold title would have been acceptable prior to such redemption.

As Lord Justice Girvan has stated in his Foreword to the book, this is “a commendable work which without doubt will become a classic text in this field and will be cited regularly before the Court”. Having regard to the fact that many of the cases referred to in the book are decisions given by the same eminent Judge this is justifiable praise for a comprehensive work which will indeed be well thumbed by sensible practitioners seeking not only knowledge of the law but access to the practical information and precedents contained therein.

The Law of Mortgages in Northern Ireland is published in 2008 by SLS Legal Publications.

Donald Eakin
President Law Society of Northern Ireland
Construction Design and Management Regulations 2007

> Legislation

The Construction (Design and Management) Regulations (Northern Ireland) 2007 SR 291

These Regulations revoke and replace the Construction (Design and Management) Regulations 1995 (S.R. 1995 No. 209) (Parts 2 and 3) and revoke and re-enact, with modifications, the Construction (Health, Safety and Welfare) Regulations 1996 (S.R. 1996 No. 510) (Part 4). They implement in Northern Ireland the requirements of Directive 92/57/EEC on the implementation of minimum safety and health requirements at temporary or mobile construction sites

Commencement: 9 July 2007

http://www.opsi.gov.uk/sr/sr2007/nisr_20070291_en_1


Construction (Use of Explosives) (Amendment) Regulations (Northern Ireland) 2007 (SR 2007/299)

These Regulations amend the Construction (Use of Explosives) Regulations (Northern Ireland) 1997 (SR 1997/555) to align them to the Construction (Design and Management) Regulations (Northern Ireland) 2007 (SR 2007/291). They redefine a “construction site”, “construction work” and a “structure”; and require explosives to be stored, transported and used safely and securely, so far as is reasonably practicable.

Commencement: 9 July 2007

http://www.opsi.gov.uk/sr/sr2007/nisr_20070299_en_1

The Construction (Design and Management) Regulations 2007 SI 320 English Regulations


> Articles

All articles are based on the English CDM Regulations (SI 2007/320). At present there are no articles written specifically for Northern Ireland.

- Turn of the screw (why prosecutions under the 2007 Regulations are unlikely until 2009) Raeside: 2008 Building, 9, 70
- Ensuring safer sites Exall: 2007 SI 151(43), 1464-1465
- Reasonable practicability (examines the term “reasonably practicable”) Exall: 2007 SJ 151(42), 1428-1429
- Signposting routes – an absolute duty (discusses the duties under Part 4) Exall: 2007 SJ 151(41), 1388-1389
- Employer liability (duties imposed on construction sites including CDM co-ordinators, contractors and clients) Exall: 2007 SJ 151(40), 1351-1352
- Wider duties (discusses the new terms introduced by the Regulations) Exall: 2007 SJ 151(39), 1324-1325
- A positive development? (whether a breach of the Regulations gives rise to civil liability) Exall: 2007 SJ 151(38), 1286, 1288
- Monitor Q and A (whether the Regulations apply to small construction jobs) 2007: H & SM Sep, 11
- Surveying the new construction rules Birksby: 2007 LSG 104(18) 30

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

> Books in the library

- Myles, G: Health and safety at work brief. Locksley Press. Looseleaf

The library also has access to some looseleaf textbooks electronically.

> Websites

Health and Safety Executive

The Health and Safety Commission and the Health and Safety Executive were originally established as part of the 1974 Health & Safety at Work Act as two separate Non Departmental Public Bodies. From 1 April 2008 HSE became the single national regulatory body responsible for promoting the cause of better health and safety at work.

This site has useful information on health and safety in the construction industry.

http://www.hse.gov.uk/aboutus/index.htm

Health and Safety Executive (NI)

A link to Buildsafe, which has a selection of documents specifically related to health and safety in the construction industry.

http://www.hseni.gov.uk/

Construction Employers Federation

Useful section on health and safety for the construction industry

http://www.cefni.co.uk/

New books in the library

Missing Wills

Re: Laurence Patrick Gaffney (deceased)
Late of: 44a Greencastle Pier Road, Kilkeel, County Down BT34 4EL or 16 Greencastle Pier Road, Kilkeel, County Down BT34 4LR
Would anyone having any knowledge of the whereabouts of any Will made by the above named deceased please contact:
Mrs Margaret Casey
Casey & Casey
Solicitors
25/27 Lower Catherine Street
Newry
County Down BT35 6BE
Tel: 028 3026 6214
Fax: 028 3026 0909

Re: Sarah Isabella Chalmers (deceased)
Late of: 54 Bristol Park, Newtownards, County Down BT23 4RJ
Date of Death: 9 May 2008
Would anyone having any knowledge of the whereabouts of any Will made by the above named deceased please contact:
John Boston & Company
Solicitors
565 Upper Newtownards Road
BELFAST BT4 3LP
Tel: 028 9048 0460
Fax: 028 9048 9563

Re: Paul Duffy (deceased)
Late of: 36 Dunraven Gardens, Belfast BT5 5LG
Date of Death: 15 May 2008
Would anyone having any knowledge of the whereabouts of the Will of the above named deceased please contact:
Wylie & Company
Solicitors
37 Glen Road
Castlereagh
BELFAST BT5 7LT
Tel: 028 9070 9129
Fax: 028 9070 9139

Re: Alec Hamilton otherwise William Alexander Hamilton (deceased)
Late of: 23 St Jerome’s Grove, Judge Heath Lane, Hayes, Middlesex UB3 2PJ and 47 Culvahullion Road, Trinamadan, Gorton, County Tyrone BT79 8QE
Date of Death: 25 May 2005
Would any solicitor who is aware of a Will made by the above named deceased please contact the undernoted solicitors on or before 31 October 2008:
Andrew T Armstrong & Co
Solicitors
19 High Street
Omagh
County Tyrone BT78 1BA
Tel: 028 8224 1222
Fax: 028 8225 0059
Email: office@ia-armstrongsolicitors.co.uk

Re: Lynda Joy Christine Truesdale (deceased)
Late of: 17 Brooklands Road, Dundonald, Belfast BT16 2PD
Date of Death: 26 July 2008
Would any solicitor who is aware of a Will made by the above named deceased please contact:
John Boston & Company
Solicitors
565 Upper Newtownards Road
BELFAST BT4 3LP
Tel: 028 9048 0460
Fax: 028 9048 9563

Re: John Frederick Tector Topping (deceased)
Late of: 34 Warren Gardens, Lisburn, County Antrim BT28 1EA
Date of Death: 9 July 2008
Would any solicitor who is aware of a Will made by the above named deceased please contact:
Joseph Lockhart & Son
Solicitors
24 Bachelor’s Walk
Lisburn
County Antrim BT28 1XJ
Tel: 028 9266 3225
Fax: 028 9267 7621

Re: Joyce Reay (deceased)
Late of: 77 Garden Village, Muckamore, Antrim, County Antrim BT41 1NB
Would any solicitor having knowledge of the whereabouts of the Will for the above named deceased please contact:
Conway Todd & Company
Solicitors
22 Market Square
Antrim
County Antrim BT41 4DT
Tel: 028 9446 3477
Fax: 028 9446 5378
DX: 3540 NR, ANTRIM
Ref: P14/08SR/ED

Re: Maurice McCann (deceased)
Late of: 8 Ashley Crescent, Millisle, Newtownards, County Down
Would any solicitor having any knowledge of the whereabouts of the original Will or any paperwork belonging to the above named deceased please contact:
Miss Geraldine Smith
Wilson Nesbitt
Solicitors
33 Hamilton Road
Bangor
County Down BT20 4LF
Tel: 028 9127 8175
Fax: 028 9127 8199
Missing Title Deeds

Folio: DN 8339L  
County: Down  
Registered Owner: James Clarke  
Lands of: 16 Broomhill Park, Newtownards, County Down  
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the under mentioned Solicitors. And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice a duplicate Land Certificate may be applied for.  
John Ross & Son  
Solicitors  
30 Frances Street  
Newtownards  
County Down BT23 7DN  
Tel: 028 9181 3173  
Fax: 028 9181 9797

Folio: DN 16494L  
County: Down  
Registered Owner: Kathleen Christine Rainey  
Lands of: 6 Cherryhill Avenue, Dunonald  
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the under mentioned Solicitors. And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice a duplicate Land Certificate may be applied for.  
John Ross & Son  
Solicitors  
30 Frances Street, Newtownards  
County Down BT23 7DN  
Tel: 028 9181 3173  
Fax: 028 9181 9797

Folio: 12030  
County: Londonderry  
Registered Owner: George Logue  
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the under mentioned Solicitors. And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice a duplicate Land Certificate may be applied for.  
Martin King French & Ingram Solicitors  
52 Catherine Street  
Limavady  
County Londonderry BT49 9DB  
Tel: 028 7776 2307  
Fax: 028 7776 6232

Folio: 32951  
County: Down  
Registered Owners: Brian Victor Peirce and Rebecca Jennifer Peirce  
Lands of: South West Side of Ballymaconnell Road, Bangor, County Down  
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the under mentioned Solicitors. And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice a duplicate Land Certificate may be applied for.  
Thompsons Solicitors  
39 Frances Street  
Newtownards  
County Down BT23 7DW  
Tel: 028 9181 1652  
Fax: 028 9181 9645

Folio: AN 67434  
County: Antrim  
Registered Owner: Herbel Properties Ltd, 1st Floor Suite, Lesley Manor, 801 Lisburn Road, Belfast BT9 7GX  
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the under mentioned Solicitors. And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice a duplicate Land Certificate may be applied for.  
Carson McDowell Solicitors  
Murray House  
BELFAST BT1 6DN  
Tel: 028 9024 4951  
Fax: 028 9024 5768

Folio: AN 67434  
County: Antrim  
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Change of address

Please note that from 1 September 2008 the new registered address of Morgan McManus Solicitors (previously practising from 12 Paget Lane, Enniskillen, County Fermanagh) will be:
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Gortgomm
Newtownbutler
County Fermanagh BT92 8AD

Our telephone and fax numbers remain the same:
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The closing date for the receipt of applications is 5pm, Friday 17th October, 2008.
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