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Relocation, Relocation

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Copy deadline for July / August Edition: Friday 20 July 2007
It is a rare privilege for the President of the Law Society of Northern Ireland in the one article to be able to mark the achievement and recognition recently given to two outstanding members of the profession.

I refer firstly to the appointment by the Lord Chancellor of the Society’s Chief Executive, John Bailie, to become a Master of the High Court, with particular responsibility as Taxing Master and for the Enforcement of Judgements Office. John has been Chief Executive of the Society for almost ten years, during which time he has given outstanding leadership and direction to the Society’s activities and, I believe, has been widely recognised as an intellectually powerful advocate and representative of the solicitors’ profession. His ability to clearly and carefully analyse the most complex of issues and to thereafter construct and present sustainable strategies on behalf of the profession, has been an invaluable asset to the Society during his tenure of office.

His ability to clearly and carefully analyse the most complex of issues and to thereafter construct and present sustainable strategies on behalf of the profession, has been an invaluable asset to the Society during his tenure of office.

I am absolutely convinced that the substantive recommendations of the Bain Report, which are presently with the Northern Ireland Executive, were hugely influenced by John’s careful, thoughtful and persuasive analysis. However, he would doubtless agree with me in adding a word of caution to these remarks in that there can be no certainty of the outcome of the Government’s consideration of the Report and there therefore remains a very significant challenge to the Society to ensure that our politicians fully understand and indeed, endorse the conclusions of the Review Group.

The Society has already held a dinner and presentation to mark John’s departure but I am sure our entire membership would wish to record its gratitude and appreciation of his ten years of service and wish him every success in his new post. I am confident that the Society, in its engagement with the new Taxing Master on the vexed subject of the “Hourly Rate”, can fully expect a process which will be entirely characteristic of John’s scrupulously fair and detailed approach to every contentious issue.

On 1 June 2007 it was my privilege to attend, in the Nisi Prius Court, a ceremony conducted by the Lord Chief Justice to appoint a number of new Queen’s Counsel to the Inner Bar of Northern Ireland. For the solicitors’ profession in this jurisdiction, the appointment of Barra McGrory as a QC is a landmark event and one which signals a huge breakthrough in our continuing campaign to achieve recognition and enhancement of the advocacy skills and rights of solicitors. It is entirely fitting and appropriate that Barra McGrory’s very high achievement as an advocate should now be recognised in his elevation to the most senior ranks of advocates in his profession.

Despite the commitments arising from his own substantial practice, principally in the Criminal Courts, Barra has been an unrelenting representative for the solicitors’ profession in its push for greater rights of audience. He has made an immense contribution to the various committees in the Society which have dealt with these matters. His appointment therefore gives us a great deal of additional satisfaction that this campaigning for many years has now received much deserved success and recognition. I have every confidence that Barra will continue to be a formidable proponent of the profession’s rights of audience and of the skills and talents which we, as solicitors, can bring to the field of advocacy generally.

It is entirely fitting and appropriate that Barra McGrory’s very high achievement as an advocate should now be recognised in his elevation to the most senior ranks of advocates in his profession.

The last six months has been a frenetic period for the Society, largely dominated by the lengthy and complex negotiations with the developer of the old Law Society House building, which has recently been demolished. We could not have anticipated the nature and
extent of the issues surrounding the project but happily these are now resolved and the Society moved immediately after Easter to its new temporary offices on the second floor at 40 Linenhall Street.

These premises are somewhat smaller than those which we left but I am confident that they will be sufficient for the Society's needs for the next two years until the new building is ready. The logistics surrounding the actual move were considerable but the Society's staff truly rose to the occasion and the shift went relatively smoothly. Great thanks and credit are due to Sue Bryson for her organisation and oversight of this part of the project.

An inevitable consequence of the size reduction in the premises has been that the Library facilities have been significantly pared down. Nevertheless, as you would expect, Heather Semple and her colleagues can still provide the very wide range of library services to the Society. It is a major focus for the Society's Project Board to ensure that the Library in the new building is as technologically advanced as possible as more and more Library facilities and services are available and delivered electronically. We would welcome any constructive and informed comment on this subject from any of our members.

Despite the disruption of the move the Society's work in all its various fields has continued unabated. The principal officers have continued to keep a watchful eye on the Bain recommendations but we do anticipate some delay in the process until the new Assembly Executive fits the proposals for legal services and regulatory supervision into its Programme for Government.

Over the last six months, Junior Vice President and Chair of the Access to Justice Committee, Donald Eakin, has led our discussion with Sir Tony Holland over the thorny issue of delay in Legal Aid payments to the profession. I am very clear, and have joined with Donald in robustly presenting our views, that the administration of this vital income flow to Legal Aid practitioners must be put on to a sustainable and accountable basis, which consistently and adequately remunerates those solicitors whose services are critical to the provision of acceptable access to justice in Northern Ireland. I do warn, however, that the already formulated budget for the Northern Ireland Court Service for the period 2008-2011 will inevitably impose even harsher reductions in the Legal Aid Fund. It is only at the highest political level that this process of a diminishing Legal Aid pot can be reversed.

It is only at the highest political level that this process of a diminishing Legal Aid pot can be reversed.

In the next few months the Society will engage in two major policy initiatives. Firstly under the skilful direction of Brian Speers, the Society's Education Committee will commence a fundamental review of the education requirements and structures that currently dictate the route of entry into the solicitors' profession. It is almost 30 years since the Bromley Report, which created the template for our current apprenticeship model. Whilst this has stood the test of time, I am increasingly aware that there is a need to consider what changes may need to be implemented to facilitate growth in the profession and a more modern approach to vocational training. When the review group begins its work, I would urge as many solicitors as possible to respond in detail.

With reference to the apprenticeship scheme, this is the time of year when you can expect to receive an endless stream of letters from students seeking apprenticeships. Subject to obtaining a satisfactory degree and the outcome of the Institute's Admission Test, places at the Institute are also dependent on the already formulated budget for the Northern Ireland Court Service for the period 2008-2011 which will inevitably impose even harsher reductions in the Legal Aid Fund. It is only at the highest political level that this process of a diminishing Legal Aid pot can be reversed.

Secondly, in our representations to the Bain Review Group, we gave a commitment that we would take steps to improve and modernise Solicitors' Terms of Engagement and procedures which should be available in every solicitors' practice.

I have recently formed a Working Party to bring forward proposals for some standard "Terms of Engagement" letters which can be utilised in all firms. It is also intended to agree a complaints template which, if properly operated, would sift out or prevent a great many minor complaints coming before the Society's Regulatory Committees. These recommendations and procedures, which may in part become mandatory, are designed to ensure that solicitors use their own endeavours to prevent complaints escalating to major difficulties both for their firm and the Society. These types of complaints handling regimes are fairly standard in other jurisdictions and ultimately will save all practitioners time and money.

Finally, although the Barcelona Conference, (brilliantly organised by Norville Connolly), did receive coverage in the last edition of The Writ, I would like to take this opportunity to personally thank all those colleagues who attended the event and in particular the large number of my fellow West of the Bann practitioners who had to leave home at 3am in the morning to get to Dublin Airport on time. I hope all would agree the Conference was a tremendous success and is a valuable opportunity for us all to escape from the ever increasing pressures of running legal businesses. I am sure many of you are already making a mental note to support Donald Eakin's conference next Spring in whatever tempting location eventually emerges from the Conference Committee's currently intense deliberations.
I sign-off after ten years as Chief Executive of the Law Society with very mixed feelings. On the one hand there is a natural excitement and apprehension about moving on to a new job, new faces, new challenges and fresh opportunities. On the other, a sadness about leaving valued colleagues and a workplace which has provided so much learning, experience and personal development.

Writ readers will be relieved to know that I do not intend to reminisce extensively about what has happened over the last decade. This will have to await the official memoirs. Courageous publishers and alert defamation lawyers please take note! Unlike the about-to-retire Prime Minister, I do not feel the hand of history on my shoulder, nor do I intend to agonise over my legacy. But it would be remiss of me not to share briefly some reflections on the profession and my time at the Society.

Somewhat to my own surprise, I find that ten years on I am probably more positive and less cynical about the ideals of the profession and the role which lawyers can and do play in the administration of justice. In particular, I am more than ever appreciative of the work done by those members of the profession who volunteer to serve the public interest with integrity and dedication through involvement in the work of the Council and the plethora of Committees, sub-Committees and Working Groups which are required to deal with governance, law reform, education and the promotion of the profession.

No-one reading this piece will be unaware of the ever-increasing pressures associated with pursuing a busy and successful career, whether in the private or public sector. I am continually amazed and impressed by the sacrifice of time and talent made by the office-bearers and Council members in turning up week after week, month after month to undertake the heavy-lifting on behalf of the profession. From first-hand observation I can say that this is largely a thankless task with little glamour and scant recognition.

It is a fair bet that although there is good reason to think that the solicitors’ profession is in reasonable shape post-Bain (see below), the demands of practice will continue to increase and there will always be new and seemingly formidable issues to be tackled by the Society. It is therefore essential that the Society has the benefit of strong leadership in whom the profession can repose confidence.

I believe that the Law Society of Northern Ireland has had a fine tradition of able and committed leadership which has certainly been maintained throughout my time at the Society. Bearing in mind the imminence of elections to a new Council this November, I would encourage all Society members, perhaps particularly the next generation of leaders, to give serious consideration to standing up, being counted and doing their bit.

In many ways my departure from the Society arises at an opportune time. We have seen the outcome of the Bain Review and we have embarked upon a programme of modernisation of the Society, expressed most concretely (excuse the pun) by the re-development of Law Society House. Although much has been done, there is always so much more to do. I shall miss the buzz and the chance to see these plans being brought through to fruition.

The core conclusion of the Bain Review was in these terms:

“Northern Ireland has a strong and robust legal profession, that has provided a good service to consumers, offered choice and access to justice, but which is not perfect.”

This conclusion and Report should provide a solid foundation and a well-designed blueprint for the profession to move forward with assurance. It also presents enormous challenges in terms of increasing transparency about the work of the Society, and to promote new skills and ways of working which enable solicitors to understand and adapt to a diverse and consumer-driven demand for legal services.

At a professional level I was reminded recently of a concise definition of key attributes of a Chief Executive of a Law Society in these terms:- “Broad shoulders, thick skin and knees that don’t jerk”. Insofar as I have attained these attributes over the last decade, I suspect that they may come in handy in the place to which I have gone.

At a personal level, Rosemary and I have been overwhelmed by the expressions of goodwill conveyed to us over the past few months by so many members of the profession and others. I hope that I have not let too many people down too often. It has been an honour and a privilege to serve as your Chief Executive.

John W Bailie
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For more details on these and other interesting opportunities contact Katherine on 028 9032 3333 or e-mail legal@blueprintappointments.com
News in Brief

**JUDICIAL APPOINTMENTS**
The Northern Ireland Judicial Appointments Commission has published on its website (www.nijac.org), details of its projected programme of judicial and tribunal appointments for 2007-2008.

The programme is indicative only and will inevitably change during the year as requirements evolve. Those interested should refer to the website for the up to date position at any given time. Advertisements for individual schemes, including dates, will be posted on the website in conjunction with advertisements appearing in the Press.

**DEATH CERTIFICATES FOR THE DISAPPEARED**
The Northern Ireland Office has promised to introduce new legislation to ease the pain suffered by the relatives of the disappeared. The legislation would allow for the issuing of death certificates in cases where it has not been possible to locate the remains of a victim.

Under the Births & Death Registration (NI) Order 1976, a death can generally be registered only if a body is found in Northern Ireland and a cause of death can be established.

The new legislation could be modelled on the Presumption of Death (Scotland) Act 1977 which allows a spouse or other family member to apply to a court for a declaration that the missing person may be presumed dead if he or she has been missing for more than seven years and has not been heard from during that period. A court order allows the missing person’s presumed death to be registered and a death certificate issued to the families.

**LAWYERS WITH KIDS**
English solicitors and working parents, Joanna Lyons and Alison Spicer, have created a new website designed to provide a discussion forum for lawyers having to balance their working and family lives. The site, www.lawyerswithkids.com, provides weekly news stories, problem pages, discussion forums and a blog.

**REVIEW OF SECTION 75**
The Equality Commission has recently completed a review of how effective the s.75 legislation (which is aimed at changing the practices of government to ensure that equality of opportunity and good relations are at the heart of decision making) has been in bringing about positive change to people’s lives.

A report containing conclusions and recommendations for making s.75 more effective in the coming years has been published. It can be downloaded from the Commission’s website at www.equalityni.org Anyone who wishes to comment on the report can do so up until 6 August 2007.

**POLICE OMBUDSMAN**
The Police Ombudsman’s Office has joined with other police oversight bodies across the globe to launch a new organisation to promote independent investigation of complaints against the police.

The Police Ombudsman’s Office is one of 10 police complaints bodies which together form the steering group of the International Network of Independent Oversight of Policing (NIOP).

The aim of the organisation, which recently held its inaugural steering group meeting, is to promote the highest standards of independent police oversight across the world. It will also provide an opportunity for oversight organisations to share knowledge and learning.

**NIHRC REVIEW**
The latest issue of NIHRC Review has been published. The fourth issue of the 16-page publication focuses on the need to build a human rights culture in Northern Ireland.

It includes contributions from the Secretary of State, Peter Hain, arguing that human rights and security are not only compatible but must go hand in hand; from Bob Collins, Chief Commissioner of the Equality Commission for Northern Ireland, who provides an important perspective on human rights and the equality agenda and from Nuala O’Loan, Police Ombudsman, who reviews her investigation into the death of Raymond McCord Jnr.

**NEW CARE SUITE**
The PSNI has opened a fully refurbished Child Abuse and Rape Enquiry (CARE) suite at Garnerville police training facility in East Belfast. CARE detectives receive specialist training on child abuse and rape trauma syndrome and this refurbishment is the latest stage in a project designed to upgrade facilities in this important area.

The refurbished CARE suites, which cost in the region of £325,000, provide a non-threatening environment for the interview of children, comfortable interview rooms for victims of sexual offences and well-equipped medical facilities where forensic medical officers can carry out examinations. There are four medical/interviewing suites throughout Northern Ireland at Garnerville, Coleraine, Londonderry and Portadown.

Last year, 1,742 sexual offences were reported to the PSNI. There are presently 12 CARE units staffed by a total of 85 highly trained officers.

**RESTORATIVE JUSTICE SCHEMES ACCREDITED**
Four community-based restorative justice schemes supervised by Northern Ireland Alternatives have been recommended for accreditation under the government’s community-based restorative justice protocol.

A report published by Criminal J ustice Inspection Northern Ireland has indicated that, in its view, there are no obstacles to the organisation or the scheme sponsors securing accreditation.

Fears that community-based restorative justice schemes were a front for paramilitary organisations or that people were forced into taking part in restorative justice by paramilitaries, were also addressed in the course of the inspection. CJINI found no evidence that there was any such problem in relation to NI Alternatives or its scheme. There was no evidence of the schemes being driven by paramilitaries and every indication to the contrary.
A Bill of Rights for Northern Ireland?

The Bill of Rights Forum, set up under the St Andrew’s Agreement of 13 October 2006, has now commenced its work. In this article, Neil Faris, a member of the Forum, explains its role and seeks solicitors’ views on whether there should be a Bill of Rights for Northern Ireland – and if so what are to be its contents?

The Belfast Agreement

The Bill of Rights project has its origins in the Agreement of 10 April 1998. Paragraph 4 of the Human Rights Section provides:

“The new Human Rights Commission for Northern Ireland . . . will be invited to consult and advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and - taken together with the ECHR - to constitute a Bill of Rights for Northern Ireland. Among the issues for consideration by the Commission will be:

• the formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland; and
• a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors.”

The work of the Northern Ireland Human Rights Commission

In 2000 and 2001 the Commission carried out a widespread consultation exercise. On 14 September 2001 it launched its major consultation document, Making a Bill of Rights for Northern Ireland. The document contains 19 sections including the rights set out in the ECHR. Additional sections include - rights concerning identity and communities, the rights of women, the rights of victims, the rights of children, language rights and social, economic and environmental rights. A draft Bill of Rights was also included.

However, this venture met with significant opposition at political levels, particularly from the unionist parties. There was also considerable controversy in the voluntary sector on issues such as identity and community rights.

There was also considerable controversy in the voluntary sector on issues such as identity and community rights.

The Northern Ireland Office indicated that it was not willing to accept advice or initiate legislation unless there was clear evidence of widespread political support within Northern Ireland. Consequently the Project stalled, although the Commission issued a revised draft in 2004.

The issue was raised on the agendas of the various inter-party and inter-governmental talks processes culminating in the St Andrew’s Agreement.

Questions

Is then the way clear now for a Bill of Rights? There are some significant issues relating to the respective roles of the Forum and of the Commission. There is the central question posed in the title of this article. I set out some questions and would very much appreciate readers’ own comments:

1. Does Northern Ireland need any Bill of Rights ‘supplementary’ to the ECHR?

On one view the Human Rights Act 1998 (as part of Northern Ireland’s law) itself forms a ‘Bill of Rights for Northern Ireland’. On this view additional rights could inhibit the political work of the Assembly and the Executive, given that the Northern Ireland Act 1998 already contains stringent provisions to guard against human rights breaches?

The other view is that the ECHR does not go far enough in human rights protection, drafted as it was so long ago as 1950. This is the line being promoted actively by the voluntary sector in Northern Ireland which wishes to see extensive new human rights protections.

2. What new rights?

If there is to be a Bill of Rights, is it to include as comprehensive a list of rights as envisaged by the Commission in its Consultation Document? How is consensus to be reached on an ‘agreed’ list of new rights?

3. ‘Both communities’ or ‘all communities’?

The text of the Agreement focuses on the two main communities of Northern Ireland. The voluntary sector and the Commission believe the new Bill of Rights is for ‘all communities’ of Northern Ireland. Is that permissible within the text of the Agreement?

4. The Forum’s role?

Most Forum members seem to envisage that the Forum should engage in consultation and produce its own draft Bill of Rights? But is the more useful role for the Forum to seek to make agreed recommendations to the Commission to inform the Commission’s advice to government?

The Forum is composed of 14 representatives of civic society and 14 political representatives. As such, it presents an opportunity for dialogue on this potentially crucial legal development. I would certainly welcome any comments from colleagues on these or other points in regard to the proposal for the Bill of Rights.

Please send your comments by email to Neil at neil.faris@btinternet.com
Litigation in the Commercial Court - a solicitor’s perspective (part two)

In the second part of his article on Litigation in the Commercial Court, Gareth Jones considers Reviews in the Commercial Court and some issues about Discovery. The first part of this article, which examined the framework within which the Commercial Court operates (Order 72 of the RSC and the Practice Directions), was published in our last edition.

Reviews

Unlike say a personal injury claim in the Queen’s Bench, the Commercial Court is involved actively in case management. It is the Judge who ensures that the action is prepared in compliance with the Directions, with the intention of ensuring that when it becomes fixed for hearing the matter is ready to be heard. This objective is achieved through regular Review Hearings before the Commercial J judge. The Commercial J judge will also deal with interlocutory disputes by way of Summons rather than those being dealt with, as in the ordinary list, by the Master.

As the progress and shape of the action will therefore be determined in the course of these Review Hearings, it is essential that the solicitor ensures the Review Hearings are properly prepared for. Accordingly, whoever attends (whether the instructing solicitor, someone else from the office or counsel) should be fully briefed on the issues likely to be addressed.

Preparation for the Review Hearing therefore cannot be left until the day or two before. If it is the first Review, then the solicitor needs to have checked through the preliminary standard Directions and noted the present position with regard to each of the preliminary Directions. If it is a subsequent Review Hearing, then preparation for that really commences immediately following the previous Review when Directions will have been given, and a timetable set for various matters to be addressed.

Communication is the key to proper preparation - that is both communication with your colleagues representing other parties and communication with the Court Office. If, for whatever reason, it has not been possible to comply with a Direction (and especially in situations where the Direction cannot be complied with or cannot be complied with within the time directed), you will be asked at the Review why this had not previously been brought to the Court’s attention. Indeed, if it is the only outstanding matter for the Review to deal with, attendance at the Review will have been unproductive and you may be ordered to pay the costs of that Review.

Communication is the key to proper preparation - that is both communication with your colleagues representing other parties and communication with the Court Office.

An efficient diarying system is required both by way of reminder to yourself as to what you need to have done and to remind you what obligations are on the other parties, as if they fail to meet deadlines, you should be able to show that you have taken steps to ascertain why.

It is important to lay the groundwork for the proper presentation of your client’s position at the Review Hearing. If additional time is required then, rather than turn up at the Review Hearing and ask for additional time, you will be expected to have written to the other parties seeking their consent and then to the Court Office setting out the position and requesting additional time and if necessary the postponement of the next Review Hearing. Ideally, the solicitor who is primarily responsible for the case will appear at the Review Hearing, whether with or without counsel. If that is not convenient, then whoever attends Court should bring the file or the relevant parts of it and copies of any relevant correspondence to be produced to the Judge.

When a dispute arises, solicitors’ correspondence on interlocutory issues and matters subject to Directions are frequently requested by the J judge. This should be borne in mind by solicitors when formulating such letters.

Many solicitors with commercial actions are not based in Belfast and it is not always convenient to combine attendance at the Commercial Review with other business in Belfast on a given day. Therefore an arrangement has to be made for counsel to deal with the Review. It is essential that counsel is comprehensively briefed for Review Hearings. If there has been relevant correspondence dealing with matters which were directed at the previous Review Hearing, then counsel should be provided with all that correspondence and the dates upon which various steps were taken such as a letter of instruction to an expert, a request for documentation etc.

Discovery

Discovery of documents by List and the Rules relating to this should of course be familiar to all practitioners whether engaged in general litigation or commercial litigation. There are no separate Rules of Court relating to the discovery process in the Commercial Court. What follows, therefore, are merely some tips which may have particular
relevance when dealing with the discovery process in an action in the Commercial List.

It will be more likely that a commercial action has a very significant volume of documents which will raise logistical issues of assembling and ordering those documents. However, some attempt should be made to ensure that a degree of selectivity is applied to the process and that only documents which are actually relevant to the issues are dealt with.

There are two aspects, of course:
(i) complying with the obligation to provide your own client’s discovery, and
(ii) ensuring that the other parties have provided adequate discovery.

As far as your own client’s documents are concerned this is an issue which should be addressed when you first receive instructions from the client. Remember that you will have to answer awkward questions if it transpires that documents which were relevant have been disposed of, perhaps quite innocently in accordance with your client’s document retention and destruction policy, after the date you were instructed.

Therefore discuss the obligation to comply with discovery with your client at the outset and take a note of the types of documents your client has. You should give instructions with regard to the collating, location and securing of those documents, including electronically stored documents. For your own protection, and to assist your client, it is worth writing to your client, at an early stage, in relation to their discovery obligations.

When you come to prepare the list of documents on behalf of your client remember to send the draft list to the client for approval and confirmation that it contains all documents which are relevant.

If your client is a business or body other than an individual, it is likely to have a formal document retention policy. Ascertain what that is and measure what you receive against that policy. Apply a similar approach to other parties’ discovery, ask other parties’ solicitors whether their clients have document retention policies and if so what they are. If necessary seek discovery of the document retention policy and any other relevant part of a quality assurance standard they may subscribe to. Remember that quality assurance standards will require the documenting of customer complaints, product recalls etc.

Another aspect is discovery of electronically held information which may be relevant to the issues in the action. The disclosure of electronic documents is something which is dealt with separately within the Practice Directions of the English Commercial Court. It directs the parties to consider what electronic documents there are likely to be which are relevant, requires co-operation of the parties to agree the electronic format in which the documents are to be provided on inspection and identifies factors which will be relevant in assessing reasonableness, such as the likely number of documents, the ease and expense of retrieval, the location and accessibility of such documents, the costs of recovery and of disclosure, and the significance of any document which is likely to be located during this search.

Apparently as many as 9 out of 10 corporate documents are electronic documents and that of those, some 70% never migrate to paper. Therefore it can be appreciated that the handling of electronic disclosure correctly is of vital importance in a commercial action. In a case of suitable value and where there are likely to be very large amounts of relevant electronically held documents, it may be appropriate to employ a firm which specialises in assisting lawyers with electronic disclosure.

Finally, on the subject of discovery you should be alert to, and may need to advise your client in relation to, the sometimes competing requirements of full disclosure and data protection legislation. Another piece of legislation which can be relevant is the Freedom of Information Act. It may provide an alternative means of accessing documents and information when relevant documents are likely to be held by a public body.

Gareth Jones, who is a partner in the firm of C & H Jefferson, Belfast, is a member of the Society’s Contentious Business Committee. He is also one of the Society’s nominees to the Commercial Court Liaison Committee. He can be contacted on 028 9032 0545 and at garethjones@chjefferson.co.uk about any matter you may wish to have raised at the Liaison Committee.
COMPANY AND COMMERCIAL LAWYERS' GROUP
UPCOMING EVENTS

Seminar: **Companies Act 2006**

- Directors' Duties after Companies Act 2006
  - Directors, appointment and removal
  - Minimum age
  - Corporate directors
  - Duty to know the company's constitution
  - Independent judgment
  - Skill and care
  - No conflict of interest and duty
  - No benefits from third parties
  - Declaration of interest
  - Service agreements
  - Substantial property transactions
  - Loans and quasi-loans
  - Protection from liabilities

- Shareholder rights and disputes after the Companies Act 2006
  - Derivative claims under the Companies Act 2006
  - Unfair prejudice petitions
  - Recent themes in unfair prejudice
  - Contracts/Arrangements/Understandings amongst members
  - The role of legitimate expectation
  - Strike out applications
  - Valuation problems
  - Procedural aspects and management of petitions
  - Types of relief

**Date:** 15 October 2007  
**Presented by:** CLT (Andrew Harvey)  
**CPD Hours:** 6  
**Cost:** £140 for members and £180 for non-members  
**Venue:** TBC - Central Belfast  
**Time:** Registration from 9.00am sharp

Lunch and refreshments provided

Companies Act 2006 Booking Form

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Send cheque made payable to "Company & Commercial Lawyers Group" and booking form to Claire McKibben, Elliott Duffy Garrett, Royston House, 34 Upper Queen Street, Belfast BT1 6FD
### Projects Lawyer
**Belfast**

Our client is a well known and prestigious firm of solicitors who have a long history of working on major public infrastructure projects in the Republic of Ireland and Northern Ireland, including those involving private sector partners and private sector finance. The firm’s specialist PPP and projects group has been very active over the past few years and has built up a strong level of expertise in the practice area. Due to their increased workload they wish to recruit an experienced Projects Lawyer to join their growing firm. You will have excellent client relation skills and in-depth knowledge in this area. **Ref: 5703**

### Corporate/Finance Solicitor
**London**

Our client is a highly progressive and dynamic organisation which was established in 1982. Due to an ever-increasing level of activity they are looking to grow their corporate team with additional Corporate Lawyers. As well as confidently dealing with clients, you will have the technical ability and commercial awareness to market yourself both internally and externally. Lawyers with private equity experience (particularly PE deals, venture capital or funds raisings) are sought - this experience may have been gained whilst training. You will have plenty of opportunity to develop yourself and gain experience to start to manage deals over the next few years. **Ref: 5639**

### Commercial Property Solicitor
**Belfast**

Are you looking to progress your career within one of Northern Ireland’s premier firms? Then look no further. Our client is now seeking to recruit an experienced solicitor to join its dynamic and expanding Commercial Property Department. You will be involved in high class investment and development deals. This is an excellent opportunity to be part of a friendly team where career advancement is encouraged. Commercial Property experience is essential. **Ref: 5920**

### Residential Conveyancing Solicitor
**South Belfast**

Our client is a general practice which has an experienced team of lawyers with a wide range of knowledge. Due to growth and development the firm are looking ideally for a solicitor with strong knowledge in conveyancing. You will be expected to work on a busy caseload within a very supportive environment. **Ref: 5021**

### Litigation Solicitor
**Greater Belfast**

Our client, an expanding Legal firm, have a superb opportunity to join their growing firm. They currently have an excellent opportunity for an experienced Probate Solicitor with Estate Planning experience. **Ref: 5903**

### Legal Executive
**Belfast**

Our client is an extremely busy firm with a heavy workload in Residential and Commercial Conveyancing. Due to their increased workload they wish to recruit a candidate with experience in assisting with Conveyancing cases, and who has experience in dealing with clients on a daily basis. A law degree is essential. **Ref: 8965**

### Employment Solicitor
**Belfast**

An excellent opportunity has arisen with a top expanding law firm. Together with colleagues from their Dublin and London offices, their team of lawyers service the needs of a local, national and international client base. Our clients team of specialists provides a comprehensive range of services to clients across various legal disciplines, in particular, in Corporate Law, Mergers and Acquisitions, Commercial Property and Projects and Construction. They currently wish to recruit an Employment Law Solicitor with a Commercial background. Litigation experience is advantageous although not essential. **Ref: 5863**

### Corporate Solicitor
**Belfast**

Our client is a successful and highly regarded Corporate / Commercial firm with a highly successful and proven team of lawyers. Due to the growth and development of the firm they are looking ideally for a lawyer with excellent Corporate experience to assist with the busy workload. With large connections in the Republic of Ireland, our client already advises domestic and international companies in the province. You will have experience in Corporate Finance work including public and private company acquisitions and disposals, management buy outs, private equity transactions and commercial contracts. Experience of projects work including PFU/PPP transactions is also desirable. **Ref: 4443**

### Commercial Property Solicitor
**Belfast**

Our client is a well known commercial law firm in Northern Ireland. They currently wish to recruit an ambitious Commercial Property solicitor who can assist with the team’s busy workload. Working alongside some of Northern Ireland’s most well known solicitors this will be an excellent opportunity for an ambitious individual to learn from some of the best lawyers in town. **Ref: 5313**

### Solicitor
**Greater Belfast**

General firm of solicitors who provide a wide range of services to their clients, to include Litigation, Conveyancing and Criminal Law are expanding their firm and have the need for another ambitious solicitor. With two offices in Greater Belfast, they wish to recruit a solicitor for their expanding office. Working alongside the senior partner this will give a client focused individual excellent experience in dealing with all aspects of law, ideal for a newly qualified solicitor. **Ref: 5683**

### Probate Solicitor
**Belfast**

Our high profile client has a wide range of public and private sector clients. These clients include many public companies, institutional lenders and investors who come from within the United Kingdom, the Republic or Ireland and elsewhere around the world. They currently have an excellent opportunity for an experienced Probate Solicitor with Estate Planning experience. **Ref: 5903**

### Conveyancing Solicitor
**North West**

Our client is a well known commercial law firm in Northern Ireland with three very successful offices. Their sub office in Derry was established to provide dedicated Corporate and Commercial law services to businesses and companies on both sides of the border in the North West of Ireland. Due to their increased workload they wish to recruit an ambitious solicitor with commercial property experience. This is an excellent opportunity to join a busy firm of solicitors where career advancement is encouraged. **Ref: 6100**

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For more details please call Orla Milligan on 028 90 314644 or email orlamilligan@prglawsearch.com

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The peripatetic client has been with the profession for some time. The “have file, will travel” syndrome has been encouraged over the years by the consumer organisations and by solicitors themselves who do not feel they can afford to turn a client away. Little attempt has been made to understand the implications of such a change for the client and the solicitors involved. Scant consideration appears to be given to the financial implications of such a change by the client, by the new solicitor and the old solicitor who has no contingency plans for that unhappy day.

There have been a number of complaints over the years to the Society about the failure of solicitors to hand over files on clients’ instructions. These complaints usually emanate from the client or the new solicitor, whose request to transfer papers has been totally ignored over several months. It is discourteous to ignore correspondence from a client or a colleague. To do so where a client wishes to change solicitor may result in disciplinary action being recommended, should the Client Complaints Committee decide that there was unnecessary delay in transferring papers.

However, the Society’s role in such complaints may be limited. Certainly if there has been no response to an authority to pass papers, a complaint to the Society will usually elicit a response. Should a solicitor claim he has a lien on papers as security for costs incurred, then the Society cannot interfere with the claim. It would be a service issue once it was established that the lien was invalid. Other than to encourage the expeditious delivery of a bill of costs and cash statement (if the latter is appropriate), the Society may not be able to take any further action.

If the client has been legally aided from the outset, then the Society will encourage the speedy delivery of the report on case and the transfer of papers. If there is a claim for pre-certificate costs at all? Assistance would have been available under the Green Form Scheme either using the general authority or seeking special authority. Was the failure to secure this assistance inadequate professional service? The Client Complaints Committee might take such a view and exercise its powers under the provisions of a.41A (1) of the Solicitors’ (NI) Order 1976 as amended and reduce the costs and direct the transfer of the file.

Given the limitations of role of the Society in such complaints, it would be advisable for solicitors to give early consideration to the legal rights and remedies for all parties where the solicitor/client relationship is terminated. Solicitors should always remember that a client might terminate the retainer at any time. Once the client has decided to do so, the solicitor is entitled to bill the client for the work done to the date of termination of the retainer.

The fee is payable on a “quantum meruit” basis. If the bill is discharged, then the solicitor must hand over all the client’s papers and documents. (For precise details of what does or does not belong to the solicitor or client see Cordery on Solicitors, 9th edition at pages E405-406). In general it can be said that the client is entitled to anything which he has paid for.

It is most unhelpful to the client if the new solicitor does not immediately address the possibility of the lien being claimed with that client. It should be explained to the new client that he is liable for his former solicitor’s costs up to the date he ceases to act. Some consideration should be given as to how the client will actually meet any bill delivered. If he has no realistic proposals to make then perhaps the new solicitor should pause for thought. He could be in the same position one year later.

Having established the new client’s financial position, any request for papers should be accompanied by a request for a detailed Bill of Costs and outlay. This will usually assuage the solicitor’s disappointment at losing the client.

Where correspondence has been ignored, it has usually been because the former solicitor feels that his own rights have been overlooked.

Once the bill is delivered, the problems usually arise. The promised funds may no longer be available or may be less than adequate. There is a natural reluctance on the part of the solicitors to part with their papers without payment – “no fee, no file”. Is there anything the new solicitor can do to assist the new client and old solicitor when this situation develops? The most direct solution is to pay the entire bill – a rare practice these days.

A practical suggestion which the Law Society staff have made from time to time is to ask the new solicitor to consider what position he would have been in, if he had commenced the work. Usually that would mean he also would have been out of pocket to the extent of the outlays. An offer to pay the outlays and a professional undertaking in respect of the professional fee has proved an acceptable arrangement on a number of occasions. As between the solicitors it is a halfway house solution, with both getting something out of the transfer without too much blood letting.

No one can be compelled to give a professional undertaking or to accept one - that is a matter of personal judgement. A solicitor cannot be compelled to stand guarantor for his client by way of undertaking. The general reluctance to accept an undertaking in this situation is understandable. The solicitor is still being asked to hand over a file, knowing that when and how payment is eventually made is out of his control.

It has been established that if alternative security is available a lien can no longer operate. There are no precedents in textbooks to suggest that a colleague’s undertaking is sufficient. However, some recent feedback from cases brought before the Courts here would seem to suggest that a solicitor’s undertakings are being regarded as good alternative security. We do not know of any case where a solicitor claiming a lien has argued against accepting a particular colleague’s undertaking, although there is no reason why
such an argument could not be presented.

Before taking on an existing client, a new solicitor should consider the financial consequences for himself, which he should discuss with the client. Consideration should be given as to how much of the costs payable on a completed case will be due to the first solicitor and how much will be left to meet the work which will have to be done. What solicitor/client charge should be reasonable for a changeover? If it is not financially viable then why take the case? Do not believe for one moment that if you choose to give a personal undertaking which is accepted, that your colleague will not enforce it. He must eat too and these days no one can really afford to be outstanding properly due costs for the sake of a fellow solicitor's feelings.

The existing solicitor should consider what is on offer to him - if he is offered his outlay, well, he is better off today than he was yesterday. A personal undertaking from a colleague for the remainder may be a better prospect of payment than the original client (whose departure may not be entirely regretted).

In the midst of the various negotiations, the client can take the role of villain, which may be totally unjustified. Often he is horrified at the size of the bill delivered. He is flabbergasted that he could be in such debt - he was not told about the costs in advance or even on an occasional basis. Solicitors frequently complain that clients only leave them when they are asked for funds. However, the request usually only comes when the solicitor suddenly realises that the case has become expensive in time and outlay paid by him on behalf of the client.

If his own bill surprises the solicitor, why should the client be otherwise?

For the solicitor, predicting costs is a risky business but letting costs mount over a prolonged period is not altogether a sensible course of action. Once again attention is drawn to the possibilities of entering into contentious and non-contentious business agreements with clients as provided by arts.64 and 71A of the Solicitors’ (NI) Order 1976 as amended. The client will be fully informed of the costs of a case and provision can be made for interim billing or payments on account of costs incurred or to be incurred. Proper use of such agreements could remove the necessity to rely on a lien at all or at least only to the extent of small outstanding balances.

The peripatetic client will not be as cavalier about moving on if he has actually invested money in his case and need not be treated with distrust by a new solicitor. A client paying under such an agreement will be more vociferous in his requests for positive action and of course expect to see value for money but since he is supposed to be getting that anyway, there should be no problem.

Moira Neeson, Secretary to the Client Complaints Committee

Contributors Sought

The editorial team for the Writ is open to any suggestions for articles and features which readers may have. If you would like to submit something for inclusion in forthcoming editions or would like to discuss an idea you may have for an article, please don’t hesitate to contact:

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Tel: 028 9023 1614
email: peter.obrien@lawsoc-ni.org
or heather.semple@lawsoc-ni.org
NIHE options to re-purchase

As practitioners will be aware, the Northern Ireland Housing Executive sells its houses to sitting tenants pursuant to a statutory house sales scheme. That scheme was revised in 2004 (“the 2004 scheme”).

As a result of the 2004 revisions, the owner for the time being, of any dwelling which has been sold by the Executive pursuant to the 2004 scheme, is obliged to notify the Housing Executive and to offer to the Housing Executive the right to re-purchase the dwelling, in the event of there being a proposed re-sale which would constitute a “relevant disposal” of the dwelling (as defined by the house sales deeds) within a period of 10 years from the date of the original purchase from the Housing Executive. The Housing Executive’s house sales deeds now contain a provision to this effect.

The Housing Executive has brought to the Society’s attention that some dwelling bought from the Housing Executive since the 2004 changes to the scheme, have been re-sold without the dwelling having first been offered to the Housing Executive pursuant to the option to purchase provisions.

Practitioners are reminded of the duty to notify the Housing Executive in advance of any re-sale constituting a relevant disposal of the dwelling as outlined above. Practitioners are also reminded that the house sales deeds provide that any damages which may become due to the Housing Executive in respect of any breach of the obligations imposed by the option to purchase provisions are charged as a burden on the dwelling.

In the event of any proposed re-sale of a dwelling, the owner should promptly notify the Housing Executive of his/her intention to dispose of the dwelling by writing to the Housing Executive Land & Property Manager for the area in which the dwelling is located. If the Housing Executive, or its nominee, intends to exercise its option to purchase the dwelling, it must serve written notice of that intention upon the owner within a period of six weeks thereafter.

Practitioners are asked to ensure that when acting for clients in the sale of dwellings affected by the Housing Executive option to purchase provisions, they take the necessary steps to ensure that they make those clients fully aware of the obligations imposed by these provisions.

Queen's Bench Summons Court

Sitting during the Long Vacation 2007

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

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

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

4. The specified days on which the Summons Court will sit during the Long Vacation 2007 will be:
   
   Wednesday 4 July
   Wednesday 8 August
   Wednesday 22 August

C J McCORRY  
Master (Queen's Bench and Appeals)  

R E BELL  
Master (High Court)

Dated: May 2007

In the High Court of Justice in Northern Ireland  
Queen's Bench Division

Practice Note No 1 - 2007

Applications for inspection facilities pursuant to Order 29 Rule 4 of the Rules of the Supreme Court

1. An application for inspection facilities for an engineer or similar expert shall not be entertained by the Master unless:

   (a) the summons includes a schedule containing a clear and concise description of the property, inspection of which is required

   (b) the grounding affidavit clearly sets out the reasons why inspection facilities are necessary or expedient; and

   (c) the application papers include the relevant pleadings in the action

2. An application which does not comply with the requirements of paragraph 1 may, at the Master's discretion, be dismissed with costs awarded against the applicant.

3. This Practice Note shall take effect from 6 September 2007.

C J MCCORRY  
Master (Queen's Bench and Appeals)  

R E BELL  
Master (High Court)

Dated: 22 May 2007
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The Enforcement of Judgments Office (EJO) and the Supreme Court Taxing Office (SCTO) are at the forefront of customer service development and delivery. They are holders of the gold standard in the EFQM Steps to Excellence Scheme, one of only 18 public sector organisations in Northern Ireland to receive this. Never ones to rest on their laurels the EJO and SCTO have developed Customer Charters setting out standards of service their customers can expect to receive.

The Charters were officially launched by the Lord Chief Justice on 24 April 2007. The Lord Chief Justice, speaking at the event, endorsed this latest development in customer service:

"The delivery of quality services is at the heart of the public service reform agenda and these Charters represent the next natural milestone in the delivery of such services in what is a key part of the civil justice system in Northern Ireland. The EJO is now widely regarded as being the best in its field in terms of its business performance and service delivery. I think that to truly recognise the quality of customer services being delivered by the EJO and SCTO, it is important to recognise the significant business transformation that has taken place over the last few years."

"A key strand of service development has been the provision of online services. Many of you have already signed up to using these services and I encourage you to make full use of them. For those of you who have not already done so, please make it one of your priorities to sign up soon. These services make an enormous difference to the effectiveness of the system as a whole and make life a lot easier for all those involved."

The Lord Chief Justice went on to congratulate the managers and staff in all that they have achieved.

"You can be rightly proud of what you have done in transforming the business which has gone a long way in improving public confidence in the enforcement process. You have also ensured that the organisation is well equipped to deal with the challenges ahead and I wish you every success with that work."

**About the Charters**

The Charter documents can be accessed through the Court Service website at www.courtsni.gov.uk and hard copies can be obtained from the Information Centre -028 9041 2383.

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**EJO Mission Statement is:**

“To take appropriate and prompt enforcement action in relation to all judgments lodged.” Throughout the enforcement process the EJO will balance the needs of the creditors against the ability of the debtor to pay.

**SCTO Mission Statement is:**

“To take appropriate and prompt action in relation to all taxation cases lodged.” The Taxing Office will process your business, impartially and fairly and as far as possible be flexible in meeting your needs.
J Christopher Napier, Master, Enforcement of Judgments Office and Supreme Court Taxing Office, retired at the end of May 2007. The EJO has been his judicial domain for 17 years, a remarkable achievement.

Master Napier reflects on his time as Master in EJO.

“During my time as Master I have seen many changes but none that have had the impact of those that have taken place over the last five or six years, particularly on the enforcement side of my area of judicial responsibility. Indebtedness, as we all know, is a much more widespread and ingrained social condition – much more than it was 20 or even 10 years ago. It is a fact that it has become increasingly difficult for people who get into trouble, to find a way out of it.

“The management of indebtedness is now firmly established on the Government’s agenda and the agencies involved in it are responding, with varying degrees of success, to the challenges this presents.

“In relation to the EJO, we realised some time ago that we could no longer be content to sit as the ‘agency of last resort’ and that we had to play a more proactive role in the process, particularly in relation to the education of those pursuing debt and those who have judgments made against them.

“We discovered at the start of our own modernisation programme that the information available at that time on the enforcement process was disjointed, inaccessible and in many cases, inaccurate. We were simply not fulfilling our social responsibility to those who were already subject to the enforcement process or to those who would be coming into it.

“We set about changing this situation by first of all supporting our major creditors in

We were simply not fulfilling our social responsibility to those who were already subject to the enforcement process or to those who would be coming into it.

As for the challenges ahead, I believe the EJO is in a good position to meet these. The changes needed have been a long time in coming but the work has started now in a very meaningful way.

“As a result of all of this, customer understanding of the process has improved immeasurably. Although much work remains to be done to ensure that this is built upon and becomes firmly established.

“As a public body, we exist to provide responsive services which meet public need. Enormous strides have been made in improving the quality of these. I would like to add my personal thanks to the managers and staff for all that has been achieved.

“As for the challenges ahead, I believe the EJO is in a good position to meet these. Primarily we need to see through the review of the EJO’s governing legislation which is presently underway. I would like to take this opportunity to thank the NI Court Service for getting it on the agenda. The changes needed have been a long time in coming but the work has started now in a very meaningful way.”
The relocated library

As you can see from these pictures, the relocated Law Society library is fully operational and offers a full range of library services from its new premises in 40 Linenhall Street. While the library is smaller than the one in Victoria Street, the core library services which are physically available are supplemented by an increased range of electronic sources.

The library is a one stop shop for all your information needs. The staff have many years of legal research experience and can access material on your behalf and disseminate legal information to your individual requirements. Please give us a call, drop in or send us an e-mail. Set up a deposit account and each time you use a chargeable service we can debit your account.

Electronic resources

The library offers a number of services to the profession. We subscribe to a wide range of legal electronic databases. We have recently subscribed to the Complete Law Library, LexisNexis online platform which offers solicitors access to a vast array of precedent texts, caselaw and commentary. Solicitors can also access, via the library staff:

- LEXIS for all unreported and reported caselaw
- Precedent texts including Encyclopedia of Forms and Precedents, Practical Commercial Precedents, Kelly Draftsman, Employment Precedents and Company Policy Documents as well as some precedent textbooks
- A selection of legal journals
- Law reports including All England and Weekly Law Reports, Family Law Reports and Industrial Relation Law Reports
- UK Legislation

Libero

The library database on the members section of the Law Society website (www.lawsoc-ni.org) has proven to be a useful research tool for solicitors. The database is maintained by library staff and contains FREE remote access for the membership to:

- NI caselaw - 1999 onwards, reported and unreported
- All Practice Directions
- Industrial and Fair employment decisions - 2002 onwards
- NI primary and secondary legislation - 2002 onwards
- All Taxing Master’s decisions
- Industrial court decisions

As well as the full text of all these collections, solicitors can also access the catalogue for all the textbook and journal holdings.

Expert witness database

As well as legal research, the library also maintains a database of experts in the medical and non-medical fields. This database is being continually expanded and revised and contains details of experts all over the UK and Ireland. For a small fee we are able to fax a list straight to your office.

CPD training

If you would like training on local and national commercial or non-commercial databases including Libero then, let us know. We can visit you at your office and tailor the training to suit you.

The library is a one stop shop for all your information needs.

From this...the last few days in Victoria Street. To this...the relocated library in Linenhall Street.
A report entitled “Family Resources Survey Northern Ireland 2005-06” containing statistics for the period April 2005 to the end of March 2006, has been published by the Statistics and Research Branch of the Department for Social Development.

Its key findings include:

- The average number of persons per household is 2.6 in NI compared to 2.3 in the UK.
- NI has a lower percentage of single-person households (25%) compared to the UK (30%).
- Half of all properties in NI have a capital value (as at 1 January 2005) less than £100,000.
- 60% of household income in NI is sourced from Wages and Salaries, compared to 64% in the UK as a whole.
- NI households source the same percentage of their income from self-employment as the UK as a whole (11%).
- Benefit receipt is higher in NI (62% of benefit units) than the UK average (58%) but lower than the North East (64%).
- 45% of benefit units in one-parent families are receiving Income Support.
- 53% of benefit units with children are in receipt of Tax Credits.
- 57% of households where there is a single adult with children are renting their home.
- 6% of households in NI have no savings account or bank account, compared to a UK average of 3%. This is the second highest level in the UK, after East Midlands.
- 94% of single parent households have some sort of savings account.
- 43% of those receiving care stated ‘Retirement Pension (state and other)’ as their main source of income; 18% from employment; 15% disability benefits; 21% other benefits; 21% other benefits and 1% other.
- 41% of informal carers provide ‘10 or more’ hours of care per week.
- Omagh & Strabane have the highest percentage of households in receipt of at least one benefit (86%). The District Council with the lowest percentage is Ards at 64%. The NI average is 76%.
- Derry & Newry & Mourne have the highest proportion of lone parent benefit units (9%). The NI average is 7%. 

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**Family resources survey**

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Power of arrest - supplementary guidance

Under a.26 of the Police & Criminal Evidence (NI) Order 1989 (as amended by a.15 of the Police & Criminal Evidence (Amendment) (NI) Order 2007), the power of arrest is only exercisable if a constable has reasonable grounds for believing that it is necessary to arrest the person. PACE Code of Practice G regulates the exercise of the arrest powers by police officers.

PACE Code of Practice G regulates the exercise of the arrest powers by police officers.

The Policing Policy Branch of the Northern Ireland Office has issued a circular to provide supplementary guidance on the necessity criteria as outlined in paragraphs 2.4 to 2.9 of Code G. Paragraph 2.9 states that the criteria are that the arrest is necessary:

- a) to enable the name of the person in question to be ascertained
- b) correspondingly as regards the person's address
- c) to prevent the person in question causing physical injury to himself or others, suffering physical injury, causing loss or damage to property, committing an offence against public decency or causing an unlawful obstruction of the highway
- d) to protect a child or vulnerable person from the person in question
- e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question
- f) to prevent any prosecution for the offence from being hindered by the disappearance of the person in question

In terms of paragraph 2.9(e) above, the Code states that this may include cases such as where there are reasonable grounds to believe that the person:

- has made false statements
- has made statements which cannot be readily verified
- has presented false evidence
- may steal or destroy evidence
- may make contact with co-suspects or conspirators
- may intimidate or threaten or make contact with witnesses

A further example falling under the criteria in 2.9(e) may be where it is necessary to obtain evidence by questioning.

Financial eligibility uprating Regulations

The following sets of Regulations came into operation on 9 April 2007.

**Legal Advice & Assistance (Amendment) Regulations (NI) 2007**
SR 2007 No 173

These Regulations amend the Legal Advice & Assistance Regulations (NI) 1981 so as to substitute a new scale of contributions payable for legal advice and assistance under a.7(2) of the Legal Aid, Advice and Assistance (NI) Order 1981.

**Legal Advice & Assistance (Financial Conditions) Regulations (NI) 2007**
SR 2007 No 174

These Regulations amend the Legal Aid, Advice and Assistance (NI) Order 1981 so as to:

- a) increase the upper income limit to make legal advice and assistance available to those with disposable income of not more than £215 a week (instead of £208)
- b) increase the lower income limit below which legal advice and assistance is available without payment of a contribution to £91 a week (instead of £88)

No changes are made to the capital limits.

**Legal Aid (Financial Conditions) Regulations (NI) 2007**
SR 2007 No 175

These Regulations amend the Legal Aid, Advice and Assistance (NI) Order 1981 so as to:

- a) increase the upper income limit to make legal aid available to those with disposable incomes of not more than £9138 (instead of £8872) or, in connection with proceedings involving a personal injury (£10074 (instead of £9781)
- b) increases the lower income limit below which legal aid is available without payment of a contribution to £3085 (instead of £2995).

No changes are made to the capital limits.
Commercial Counsel
Belfast, Northern Ireland

For more than 80 years, Caterpillar Inc. has been making progress possible and driving positive and sustainable change on every continent. With revenues of over $41 billion and more than 95,000 employees worldwide (10,000 in the UK alone), Caterpillar is a technology leader and the world’s leading manufacturer of construction and mining equipment, diesel and natural gas engines and industrial gas turbines.

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Any direct or third party applications will be forwarded to Laurence Simons International for consideration.
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John F Larkin QC and David A Scoffield BL

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“This excellent work... Although the emphasis is on practical guidance the work is not short on scholarship. It contains a comprehensive review of recent developments in all areas of judicial review, while setting its evolution in this jurisdiction in its proper historical context. I warmly commend it to all practising in this field – and, perhaps more importantly, those who wish to.”

*Sir Brian Kerr* Lord Chief Justice of Northern Ireland

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Passport application interviews

The UK Identity and Passport Service (IPS) has introduced significant changes to the passport application process to help fight passport fraud and forgery.

From 1 June 2007 all customers aged 16 and over applying for a passport for the first time in their own name must now attend an interview with the IPS in person in order to confirm their identity. This does not apply to anyone wishing to renew their passport.

The interview process will last approximately 30 minutes and customers will be asked basic information about themselves that can be checked to confirm their identity. This information will be destroyed shortly after the passport is issued.

Passport applications should be completed as normal using the standard passport application form. Applications can be sent directly by post or by using the Check and Send Service available at selected Post Office branches.

Applicants will then receive a letter requesting that they contact the IPS to make arrangements to attend for interview within four working days. These interviews will be held in Belfast at the interview office located at 1st floor, Norwood House, 96-102 Great Victoria Street, Belfast BT2 7BE. Other interview offices will also be opened in Armagh, Omagh and Coleraine.

These changes mean people applying for their first ever adult passport cannot leave it until the last minute to apply.

For these first time applicants more time should be allowed for the entire application process than before - IPS recommends leaving six weeks from the date of application. Applicants are strongly advised against making travel arrangements until they have received their passport.

It will no longer be possible for the IPS to provide a Fast Track (one week) service for applicants for first-time adult passports but the fast track service continues to be provided for those wishing to renew their passports.

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There seems to me to be an almost a monthly column in The Writ highlighting charitable works and activities carried out by members of our profession.

Recently Gary Fitzpatrick of Miller Shearer and Black solicitors, myself and eight friends travelled with the charity Habitat for Humanity to El Salvador to build houses and assist in its ongoing projects in that region.

Habitat for Humanity aims to tackle unfit housing and eliminate poverty housing on a global scale.

We had an initial task as a group of raising 35000 euro which was for house building materials, equipment etc and we were thrilled to raise in the region of 46000 euro, the largest ever by a Habitat group.

Whilst El Salvador is a beautiful country with stunning scenery, it also suffers extreme poverty. There is a large amount of slum accommodation and high levels of unemployment. However, all the people we encountered, regardless of their circumstances, were incredibly welcoming and generous and nowhere is the adage that "those who have the least, give most" more applicable than to the people we met on our trip.

The work was tough in searing heat (peaking at 35°C around mid-day). There was limited equipment available (not even a cement mixer!) and the building practices adopted were somewhat different in that houses are built to be earthquake proof.

The trip was an absolutely fantastic experience. We would like to give special thanks to our employers McCann and McCann and Miller Shearer and Black respectively for their donations and support, together with specific thanks to all our friends and colleagues from both within and outside the profession who donated and helped out with our trip.

If anyone would like further information about our trip or about getting involved with Habitat for Humanity feel free to contact me via e-mail at ggreene@mccannandmccann.com

Garrett Greene

A website covering our fundraising and trip which can be visited at http://home-build.blogspot.com

Additional donations can be made via this website and there is also other information there about Habitat for Humanity etc. 

Members of our group were predominantly office based and comprised lawyers, stockbrokers and insurance brokers. Being unaccustomed to outdoor manual labour, our blisters, daily suffering and Irish tans (from white to pink) provided great amusement to the locals.

We built one house whilst we were there. This house was going to accommodate a family of ten (some of whom are pictured here), who had been living on site in a tin shelter whilst the building project was going on. We are delighted that the money we raised will also build 10 similar houses in the region (the average cost to build a house in El Salvador is $4500).
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For more details on these positions, please contact Louise Cahoon on 028 9043 6678 / +44 7980 273352 or email all enquiries to louise.cahoon@access-recruitment.co.uk
Lee Hatton and Les Allamby of Law Centre (NI) review recent cases.

Widowers’ claims
Runkee and White v United Kingdom (2007) Law Centre (NI) has reached a friendly settlement with the United Kingdom in thirteen cases concerning widow-ers before the European Court of Human Rights (ECHR). The cases were referred from Citizens Advice, local independent advice centres and MLAs.

The Court observed it was permissible to treat groups unequally to correct factual inequalities
The claims concerned the failure to pay widowers any benefits equivalent to those paid to widows. The challenge was based on the failure to provide such benefits, contrary to a.14 (Freedom from discrimination) and a.1 Protocol 1 (the right to personal property). The ECHR had declared the claims admissible. Compensation of £80,000 was paid to the thirteen applicants. The compensation covered the failure to pay benefits equivalent to Widow’s Payment and Widowed Mother’s Allowance.

The claims were originally lodged in 2000. In April 2001 the government introduced bereavement benefits that were available to widows and widowers, although entitlement involved a leveling down of benefits payable for all new widows and widowers while widows already on benefit were given transitional protection.

The European Court of Human Rights has now given judgment on the one outstanding issue, namely, whether the failure to pay widowers a benefit equivalent to Widow’s Pension was contrary to a.1 Protocol 1 (right to property) and a.14 (freedom from discrimination). In

Runkee and White v United Kingdom (10 May 2007), the Court held that there had been no breach of the Convention.

The Court observed it was permissible to treat groups unequally to correct factual inequalities for example, that older widows were historically economically disadvantaged and required special treatment. The group was becoming less disadvantaged and the point at which special treatment was no longer justified was a matter of legislative judgment.

The Court noted that governments have a wide discretion in matters of economic and social strategy. As a result, the courts generally respect a legislature’s policy choice unless it is manifestly without reasonable foundation. The UK government could not therefore be criticised for not paying widowers a benefit equivalent to Widow’s Pension earlier than 2001.

The Court went on to follow its earlier judgment in Willis v UK (2002) in holding that failure to pay the equivalent of Widow’s Payment and Widowed Mother’s Allowance was in breach of the Convention. Similar findings have also been made on payments of tax allowances to widows only which also no longer apply.

Right to reside and A8 nationals
Zalewska v DSD (2007 Court of Appeal NI) In this case, a Polish woman worked under the Home Office Workers Registration Scheme from July 2004 until the start of 2005. She then changed jobs but did not register this work and in July 2005 she finished work and claimed Income Support as a single parent. Her claim was refused on the grounds that she did not have a right to reside. A Tribunal decided that there were no derogations from a.7(2) of EEC Regulation 1612/68 in respect of A8 nationals and that she was still a worker under that provision as she was continuing to look for work. The application of the habitual residence test was incompatible with her rights under a.7 (2) and she was exempt from the habitual residence test on the same basis.

The Department appealed to the Social Security Commissioners, arguing that she was not covered by a.7(2) once she ceased registered employment and relied on the case of D v Secretary of State for Work and Pensions [2004] EWCA Civ 1468.

The Commissioner held that the claimant did not have a right to reside and was therefore not entitled to Income Support
The Commissioner held that the claimant did not have a right to reside and was therefore not entitled to Income Support [C6/05-06(IS)]. The derogations made in respect of A8 nationals were not incompatible with EC law, as a.18 of the EC Treaty allows for limitations to be imposed. Nor was the requirement for twelve months of registered work disproportionate to prevent undue burden on the state and to allow for monitoring of employment patterns. The limitations on the right to reside were within the permitted derogations, which by their nature permitted discrimination between A8 nationals and other EC nationals. The case of D, although not binding, was of persuasive authority and the claimant was not protected by a.7(2) of EEC Regulation 1612/68 once she ceased registered employment. The Commissioner granted leave to the claimant to appeal this decision to the Court of Appeal.

Rejecting the appeal, the Court upheld the Commissioner’s conclusions and held that the UK’s domestic legislation was proportionate with the derogation contained in the Accession Treaty. It also followed the
D case and held that on losing her job she no longer retained her worker status.

The Law Centre is considering whether to seek leave to appeal to the House of Lords, as it is an important test case on the relationship between the Accession Treaty, domestic law and European law.

Fraud and overpayments

R (IS) 1/07 - The claimant appealed against decisions that he had been overpaid Housing Benefit and Income Support because of undeclared assets and income. A request by all parties that the Tribunal hearing be postponed pending the outcome of related criminal proceedings was refused. The Tribunal hearing was heard in the claimant’s absence and he appealed to the Commissioner on the grounds that the Tribunal erred in refusing to adjourn.

The reasons for refusing to adjourn were cogent and reasonable

Dismissing the appeal, the Commissioner rejected arguments that the refusal to adjourn undermined the claimant’s rights under a.6(2) of the ECHR (presumption of innocence until proven guilty) and his right to silence as a defendant.

The reasons for refusing to adjourn were cogent and reasonable and although it might be necessary to consider a.6(2) in cases where separate proceedings covered the same ground and could result in both criminal and civil penalties, this did not apply here as a decision that an overpayment is not recoverable is not and does not result in a penalty. As the claimant did not attend the hearing, there could be no possibility of the privilege against the right to silence at the subsequent criminal trial being breached by the Tribunal’s questions and there was not impropriety in the Tribunal refusing to adjourn.

This decision therefore holds that there is no rule that criminal proceedings should take precedence over an appeal hearing such that the latter should always be adjourned until the former are concluded. Whether an appeal should be adjourned in these circumstances is a discretionary decision of the Tribunal. Commissioners will not interfere unless the Appeal Tribunal erred in law in its approach or arrived at a perverse decision.

CIS/1996/2006 - The claimant’s partner had been working without her knowledge with the result that she had been overpaid Income Support. He later admitted that he had lied about it and that he was aware that his earnings would have an effect on the Income Support which she had claimed for them as a couple. It was accepted that he had never told her and that she did not know he was working.

The Commissioner held that the overpayment was not recoverable from the claimant or her partner. As the claimant never knew the relevant material fact, she could not be deemed to have failed to disclose on her partner, despite his clearly knowing what effect his earnings would have on their income. Furthermore, following the Court of Appeal’s decision in B v Secretary of State for Work and Pension (2005) EWCA Civ 929, 20 July 2005; (2005) 1 WLR 3796; R(IS)9/06, the claimant’s partner could only be guilty of a failure to disclose if he was under legal duty to disclose. But Social Security (Claims and Payment) Regulations, Regulation 32(1B) placed no duty on him, as the partner of the claimant, to report or disclose any change in his circumstances.

Accordingly, notwithstanding that disclosure of his employment could reasonably have been expected of the claimant’s partner, the decision in B meant that the overpayment was not, and could not be, recoverable from him. Anything said in CIS/674/1994, about the possible liability of partners of claimants could no longer stand in the light of B.
Tripartite Weekend

Members of the BSA Committee attended the annual Tripartite Weekend in May involving its sister associations, the Liverpool Law Society and the Dublin Solicitors’ Bar Association.

This year it was the turn of the DSBA to host the event in Dublin, which began with a literary pub tour followed by dinner at the superb Vermilion Indian restaurant in Terenure on the Friday night.

On Saturday there was a visit to Croke Park, including its museum, a guided tour and lunch, or rather an afternoon of food and wine in one of the corporate boxes and following an all too brief respite, dinner and dancing at Boulevard Café in Exchequer Street.

Afterwards the assembled company retired to the Westbury Hotel for late night (strictly speaking early morning) drinks and some inebriated but sincere speeches of thanks to the hosts.

Belfast Marathon

The BSA took part in the annual Belfast City Marathon on the Mayday Bank Holiday with a number of teams running in the Team Relay event to raise funds for the BSA’s nominated charity, the NSPCC. Pictured at the race are Susan Brennan, Chair of the BSA Social Subcommittee and Joe Rice, Chairman of the BSA.

CPD Notice

Please note that the title of Mr Niall Eames’ FRCS lecture on 22 November 2007 has been changed to ‘Current Developments in Upper Limb Orthopaedics’
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Notice of AGM 2007-08

Please note that the Annual General Meeting of NIYSA will take place on Wednesday 27 June 2007 at 5.30pm at Mills Selig Solicitors, 21 Arthur Street, Belfast BT1 4GA.

The new Committee for 2007/2008 will be elected at the AGM and every member of the Association present at the AGM will be entitled to vote. No proxy votes will be allowed and the Chair shall issue a declaration of the results once the ballots have been counted.

Should you wish to nominate a member for a position on the NIYSA Committee please send your nomination to:

Barbara Johnston
Secretary, NIYSA
c/o Belfast Chambers
Belfast BT1 3JR
secretary@nilaw.com

The deadline for nominations will be Wednesday 13 June 2007

NOTE: All Solicitors under the age of 36 are members of NIYSA and are eligible to nominate committee members, stand as committee members and attend and vote at the AGM.
Legal Studies for Legal Assistants

The School of Law at Queen’s University, in conjunction with SLS Legal Publications (SLS), runs an introductory course in legal skills for those who work with law but who do not have a legal qualification.

The course is aimed primarily at legal secretaries and solicitors’ clerks although it would be of interest to anyone whose work has a legal dimension. Taught by a small group of lecturers from the Law School, the course aims to clarify core legal principles and enhance the legal knowledge and experience participants have gained through their work.

The course will run from September 2007 to May 2008 culminating in a small graduation ceremony. It involves one weekly two-hour class held on Tuesdays from 5-7 pm and it runs for twenty-four weeks with Christmas and Easter breaks.

The classes are informal in nature and students will be required to complete a number of assessment exercises. The course is divided into six parts:

- The Legal System
- Contract Law and Tort
- The Criminal Justice System
- Family Law and Inheritance
- Aspects of Commercial Law
- Property, Land and Conveyancing

For further information and an application form please contact:

SLS Legal Publications (NI)
Lansdowne House
50 Malone Road
Belfast BT9 5BS
Tel: 028 9066 7711
Fax: 028 9066 7733
DX: 4330 NR Belfast 34

We look forward to meeting you in September!

Legal Moves

Arthur Cox Northern Ireland has announced the appointment of Alan Taylor as a partner in its Corporate/Commercial Department.

Alan was previously a partner at another leading Belfast firm.

PRG Specialised Recruitment in Belfast has appointed Orla Milligan as Associate Director.

Orla specialises in recruiting legal professionals in private practices, public sector bodies and companies across Northern Ireland. She has seven years experience in recruitment having previously worked with Blueprint Appointments and Grafton Recruitment.
Solicitor

Our client, Multi Development UK, is one of Europe’s leading investor developers completing more than 100 major projects in 15 countries over its 25-year history. The company has won many international awards for its work and is at the forefront of its field in designing and developing retail led mixed-use regeneration projects.

From its UK headquarters in Belfast, Multi Development UK manages all aspects of its development portfolio in England, Scotland and Ireland, and is well known locally for the landmark Victoria Square project. In total, current projects have a combined investment value of over £1bn and to meet their rapidly expanding development programme they now seek to recruit a Solicitor to be responsible for all their UK in-house legal activity.

Role
- Drafting and reviewing agreements, joint-venture agreements, sale and purchase agreements
- Reviewing construction documents, leasing agreements, financing documents
- Supporting negotiations regarding acquisition of projects and/or companies
- Assisting and conducting in legal proceedings, judicial reviews
- Coordination of external lawyers, attorneys and tax advisors
- Work in close cooperation with Multi UK management
- Liaison with the Holding office in Gouda, the Netherlands

Person
- Ambitious, results-orientated, innovative individual with a track record that demonstrates leadership and integrity
- Proven track record of managing commercial contracts
- Commercially astute with excellent communication skills and a proactive approach
- Several years post qualification experience gained either in Practice or Industry

This position represents a superb opportunity to join one of the UK’s rapidly growing commercial property developers within a team of commercially minded, entrepreneurial professionals. Naturally, the position offers a highly competitive remuneration and benefits package that reflects the significance of this appointment.

To apply or for a confidential discussion please contact Phil Newton, quoting reference number 165, at Clarendon Executive, 12b Clarendon Road, Clarendon Dock, Belfast BT1 3BG, email phil.newton@clarendonexecutive.com or telephone 028 9072 5750.

Multi Development UK is an equal opportunities employer.
Solicitors’ Benevolent Association

143rd Report and Accounts
Year 1 December 2005 to 30 November 2006

The Solicitors’ Benevolent Association is a voluntary charitable body, consisting of all members of the profession in Ireland. It assists members or former members of the solicitors’ profession in Ireland and their wives, husbands, widows, widowers, family and immediate dependants who are in need. The association was established in 1863 and is active in giving assistance on a confidential basis throughout the 32 counties.

The amount paid out during the year in grants was 442,626 which was collected from members’ subscriptions, donations, legacies and investment income. Currently there are 46 beneficiaries in receipt of regular grants and approximately one half of these are themselves supporting spouses and children.

There are 18 directors, three of whom reside in Northern Ireland, and they meet monthly in the Law Society’s offices, Blackhall Place. They meet at Law Society House, Belfast, every other year. The work of the directors, who provide their services entirely on a voluntary basis, consists in the main of reviewing applications for grants and approving of new applications. The directors also make themselves available to those who may need personal or professional advice. The directors have available the part-time services of a professional social worker who, in appropriate cases, can advise on state entitlements, including sickness benefits.

The directors are grateful to both Law Societies for their support and, in particular, wish to express thanks to Michael G Irvine, Past President of the Law Society of Ireland, Rory McShane, Past President of the Law Society of Northern Ireland, Ken Murphy, Director General, John Baile, Chief Executive and the personnel of both Societies.

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

- The Law Society
- Donegal Bar Association
- Limavady Solicitors’ Association
- Roscommon Bar Association
- Tipperary and Offaly Bar Association
- Faculty of Notaries Public in Ireland
- Sheriffs’ Association
- Southern Law Association.

To cover the ever greater demands on the association, additional subscriptions are more than welcome as, of course, are legacies and the proceeds of any fundraising events. Subscriptions and donations will be received by any of the directors or by the secretary, from whom all information may be obtained at 73 Park Avenue, Dublin 4.

Thomas A Menton, Chairman

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Revenue charity no: CHY892
High Court, Court of Appeal and Tribunal Decisions

**ATTORNEY GENERAL'S REFERENCE (NUMBER 1 OF 2007)**
**NIALL DAVID MCGONIGLE**

Application for leave to refer sentences to the Court under s.36 Criminal Justice Act 1988 on the ground that they were unduly lenient.
- armed robbery contrary to s.8(1) Theft Act (NI) 1969 and custody probation order of 30 months custody and 18 months probation imposed and ordered to run concurrently.
- aggravating and mitigating factors.
- sentencing practice for robbery. - concurrent or consecutive sentencing.
- HELD that the sentences passed in this case were unduly lenient and must be quashed and substituted for concurrent sentences of seven years’ imprisonment to comprise, with consent, five years’ custody and two years’ probation.

**COURT OF APPEAL**
9 MARCH 2007
KERR LCJ, HIGGINS LJ, STEPHENS J

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**BUBLE INNS LIMITED v BEANCHOR LIMITED**

Specific performance of oral agreement made between the plaintiff and defendant whereby the plaintiff agreed to purchase and the defendant agreed to sell properties. - no note or memorandum in writing under the Statute of Frauds (Ireland) 1690. - whether plaintiff could rely on the doctrine of part performance to render the agreement actionable. - plaintiff claims damages for breach of contract.
- defendant bringing action before the court for order vacating the registration of a pending action by the plaintiff in the Registry of Deeds.
- whether power of court goes beyond an assessment of good faith only. - risk of loss to defendant and interference with the peaceful enjoyment of the property. - whether power to vacate the charge but grant an injunction subject to a cross undertaking does exist.
- HELD that order made vacating the registration of the pending action and if the plaintiff is unwilling to give the cross undertaking the registration will be vacated.

**HIGH COURT**
12 MARCH 2007
DEENY J

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**CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND v KENNETH MARK CASSELS AND TANYA ELIZABETH CASSELS**

Appeal by way of case stated from a decision of a Youth Court which exercised its discretion under s.35 Road Traffic Offenders (NI) Order 1996 not to disqualify the defendant from driving after he pleaded guilty to having driven a motor vehicle while above the legal alcohol limit. - defendant had driven the victim of an attack home to avoid further injuries but was attempting a further journey when he was detected by the police.
- whether this constituted a reasonable reaction to an unforeseen emergency. - whether there were special reasons to justify the exercise of the Court's discretion not to impose disqualification from driving.
- whether there was an emergency in existence at the time of the detection of the offence. - Youth Court concluded that it was not prepared to impose a disqualification or endorse the defendant's licence with penalty points, against the advice of the Resident Magistrate on the panel.
- HELD that this conclusion was not one that was reasonably open to them and that the emergency had ceased to exist at the time of detection.
- appeal allowed and case remitted to the Youth Court.
- Court of Appeal also stated that the lay magistrates should have accepted the advice and guidance provided by the Resident Magistrate in this case.

**COURT OF APPEAL**
2 MARCH 2007
KERR LCJ, CAMPBELL LJ, HIGGINS LJ

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**MARK KING v BOARD OF GOVERNORS OF ST COLMAN'S HIGH SCHOOL BALLYNAHINCH, BOARD OF GOVERNORS OF ST PATRICK'S HIGH SCHOOL BALLYNAHINCH, BOARD OF GOVERNORS OF DRUMANESS PRIMARY SCHOOL BALLYNAHINCH AND SOUTH EASTERN EDUCATION AND LIBRARY BOARD**

Plaintiff suffers from dyslexia and learning difficulties. - duty of care of school to provide applicant special support and/or remedial teaching commencing in primary school and continuing thereafter between 1975 and 1987 following the Phelps decision. - limitation on dyslexia cases. - date by which plaintiff knew he had dyslexia. - plaintiff failed to issue a protective writ as advised by his solicitor.
- prejudice to each of the defendants given the time that had elapsed since the plaintiff had been at the respective schools, and lack of any records thereto.
- whether Court should exercise discretion.
- whether cogent medical evidence showing a serious affect on the plaintiff's enjoyment of life and employability.
- HELD that it would not be possible to fairly try the claims that the defendants culpably failed to ameliorate the plaintiff's condition.
- application dismissed.

**HIGH COURT**
23 FEBRUARY 2007
HART J

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**MARI J OHANSSON v FOUNTAIN STREET COMMUNITY DEVELOPMENT ASSOCIATION**

Case stated by an Industrial Tribunal to a requisition made by the appellant arising out of a decision issued by the Tribunal dismissing the appellant's claim alleging disability and race discrimination. - whether Tribunal erred in law.
- appellant unsuccessful in appointment process, despite having superior qualifications and more experience than the successful candidate. - whether Tribunal applied the right test correctly in concluding that the appellant would be unable to fulfil the primary purpose of the post.
- HELD that the appellant could not demonstrate that the Tribunal had erred in law.

**COURT OF APPEAL**
20 MARCH 2007
GIRVAN LJ

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**EDUCATION AND LIBRARY BOARD OF DRUMANESS PRIMARY SCHOOL**

DEVELOPMENT ASSOCIATION

Case stated by an Industrial Tribunal to a requisition made by the appellant arising out of a decision issued by the Tribunal dismissing the appellant's claim alleging disability and race discrimination. - whether Tribunal erred in law.
- appellant unsuccessful in appointment process, despite having superior qualifications and more experience than the successful candidate. - whether Tribunal applied the right test correctly in concluding that the appellant would be unable to fulfil the primary purpose of the post.
- HELD that the appellant could not demonstrate that the Tribunal had erred in law.

**HIGH COURT**
23 FEBRUARY 2007
HART J
ALISON MILLER v NORTHERN IRELAND OFFICE
Applicant a typist and secretary in the Education Department of HMP Magilligan. - action seeking damages from the NIO as her employer on the basis that it should have paid her an “emergency allowance” at the higher rate as opposed to the lower rate she was currently receiving. - allowance intended to compensate staff who are employed in prisons and have direct contact with prisoners. - level of rate determined by the amount of contact with the prisoners – contractual criteria that distinguishes between the higher and lower rate. - defendant had not provided applicant with written particulars of employment. - whether criteria had been correctly constructed. - in the absence of definitions provided by the defendant, whether a reasonable person would have understood the distinction between minimal and regular contact. - rates given to comparable office staff. - application dismissed
HIGH COURT
26 FEBRUARY 2007
STEPHENS J

NATURAL WORLD PRODUCTS LIMITED v ARC 21
Contract. - public tender of contract for the provision of organic waste services. - whether plaintiff’s disqualification at a late stage was unlawful and in breach of the Public Service Contracts Regulations 1993. - whether information learnt after the bid process was completed should be taken into account in their late application. - whether another bidder could legitimately complain that the plaintiff had been permitted to make a significant departure from its original bid to address a problem of which they were not aware of at the time that they submitted the bid. - HELD that the defendants misdirected themselves as to the proper meaning of the plaintiff’s bid, and the awarding of the tender must be set aside and defendants are obliged to return the plaintiff’s bid and complete their evaluation
HIGH COURT
16 MARCH 2007
DEENY J

R v STEPHEN PAUL MCFERRAN AND IAIN REA
Sentencing. - manslaughter, possession of firearms and ammunition with intent contrary to a.17 Firearms (Northern Ireland) Order 1981 and possession of explosive substances with intent contrary to s.3(1) b) Explosive Substances Act 1883, and possession of imitation firearm with intent to cause fear contrary to a.17A Firearms (Northern Ireland) Order. - first defendant had incited deceased to rendezvous at which he met his death, and was complicit in the knowledge that some harm was to come to him short of death or serious bodily harm. - aggravating and mitigating factors. - second defendant stored firearm which was used in the killing. - first defendant sentenced to five years imprisonment, second defendant to eight years imprisonment
CROWN COURT
26 FEBRUARY 2007
GILLEN J

R v JAYBE GAMBOA OFRASIO
Defendant indicted on a bill containing four counts under s.58 (1) (b) Terrorism Act 2000 of possession of a recording containing information of a kind likely to be useful to a person committing or preparing an act of terrorism. - application that no bill be entered in relation to each count. - whether one of the counts should, as an alternative, be quashed on account of being too vague and a duplication. - whether trial should proceed. - whether evidence must be taken at its best at this stage. - whether evidence adduced a reasonable jury properly directed could find the defendant guilty. - whether viewing and caching of a website (the automatic temporary storage on the temporary internet files folder of a pc) established possession of the document for the purposes of s.58. - whether intention on the part of the viewer to store the information on the computer. - HELD that viewing the downloads cannot be said to possess a record and application for a no bill be granted on counts two and three but refused on counts one and four
CROWN COURT
23 FEBRUARY 2007
HART J

R v BRENDAN JOHNSOPH RICE
Sentencing. - manslaughter. - defendant pleaded guilty to stabbing deceased during a prolonged fight involving a number of people. - defendant pleaded guilty to the charge at the first available opportunity. - aggravating and mitigating factors and risk of re-offending - HELD that the defendant be sentenced to 6 years imprisonment
CROWN COURT
2 MARCH 2007
HART J

COLIN JOHN SCOTT v BRIAN SCOTT
Application to have will with caveat proved in solemn form. - whether defendant is estopped from denying the defendant’s beneficial interest in half the deceased’s estate on the basis that the deceased encouraged the defendant to work on her lands and make improvements to the land and buildings thereon in the understanding and belief he would inherit half of the estate of the deceased. - whether suspicion about the circumstances of the knowledge and approval of the testator. - whether defendant could establish a proprietary estoppel by establishing an assurance, which may arise as a result of expectation, encouragement and detriment. - HELD that there was no assurance and that the defendant be provided with title to such part of the ground not left to him
HIGH COURT
2 MARCH 2007
MORGAN J

SOUTH AND EAST BELFAST HEALTH AND SOCIAL SERVICES TRUST AND TL AND NL
Application pursuant to a.18 Adoption (NI) Order for order freeing child (S) for adoption on the ground that her birth parents are unreasonably withholding their agreement. - domestic violence and alcohol abuse. - child currently being cared for by aunt and uncle, whose relationship with the birth parents has seriously deteriorated. - whether witholding parental consent was reasonable. - whether parental consent should be disposed of.
High Court, Court of Appeal and Tribunal Decisions

**IN THE MATTER OF AN APPLICATION BY CIARAN TONER AND HUGH WALSH FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

Applicants are convicted prisoners who wish to be included in the electoral register and exercise their right to vote. - application under O.53 r.3(2) (a) RSC for declaration that the disqualification of convicted prisoners from voting contained in s.3 and 4 of the Representation of the People Act 1983 does not apply to the forthcoming or any other future election to the Northern Ireland Assembly. - application for damages for breach of the applicant's rights under the ECHR. - effect of Hirst v UK heard in the Grand Chamber of the ECHR that a blanket prohibition against voting by convicted prisoners is incompatible with a.3 of the First Protocol of ECHR, and is being addressed by the University Human Resources department. - whether there was a suitable comparator. - Tribunal decided that claimant was unfairly dismissed and that the claimant suffered less favourable treatment as a fixed term contract worker contrary to the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002. - Tribunal made an award in excess of £36,000. 00778/05IT 21 NOVEMBER 2006

**BIGNAGT, ANDREW v UNIVERSITY OF ULSTER**

Whether claimant was unfairly dismissed by respondent's failure to renew fixed term contract. - did claimant as fixed term employee suffer less favourable treatment than a comparable permanent employee. - claimant was employed in 1999 as a lecturer in Social Policy/Sociology. - the post was advertised for period of five years and based in Coleraine campus. - on termination of contract Dr Biggart was not offered alternative employment. - university did not treat non-renewal of fixed term contracts in the same way as redundancy. - Tribunal was critical of the lack of procedures within the University Human Resources department. - whether there was a suitable comparator. - Tribunal decided that claimant was unfairly dismissed and that the claimant suffered less favourable treatment as a fixed term contract worker contrary to the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002. - Tribunal found that dismissal was a reasonable response of respondent and that claimant was not unfairly dismissed. 725/06IT 20 MARCH 2007

**MCDONAGH, MARTIN AND PATRICK STOKES v EVENT 22 LIMITED**

Whether claimants were discriminated against on the grounds of race. - claimants belonged to the Irish Traveller community. - claimants had been employed through a recruitment agency to work for the respondent as labourers over a weekend. - when they arrived for work on the Sunday they were asked to leave and told there was no work available. - claimants noticed that a “settled person” who they had worked with on the first day was still working. - respondent's manager informed the recruitment agency that the claimants had stolen from them. - claimants denied this and there was no evidence to back this accusation up. - Tribunal decided that each of the claimants were discriminated against on the grounds of race and each claimant was awarded £12,800 to include an award of aggravated damages 71/04IT; 72/04IT 1 FEBRUARY 2007

**EVANS, MARTIN v ROYAL MAIL GROUP PLC AND JOHN THOMPSON**

Applicant claimed unfair dismissal. - whether reason for dismissal fell within a.130(2) of the Employment Rights Order 1996. - whether dismissal was fair or unfair according to a.130(4) of Employment Rights Order 1996 and guidance set out in case of BHS v Burchill 1978 IRLR 379. - applicant was employed as a delivery postman whose duties included delivery of door-to-door items. - in January 2006 applicant failed to deliver items but claimed payment for delivery. - applicant was dismissed for wilful delay of mail and making a fraudulent claim. - claimant contended that delay was not intentional as deliveries had not been presented to him. - Tribunal found that dismissal was a reasonable response of respondent and that claimant was not unfairly dismissed. 5/06IT 10 JANUARY 2007
FET DECISIONS

DUFFY, GERALD v ULSTERBUS LIMITED
Applicant had been subjected to harassment and intimidation of a sectarian nature. - claimant felt that the respondent had not properly dealt with the situation. - claimant had worked for the respondent since May 1995 as a shunter/cleaner and then became a bus driver in 1999. - as a result of the situation at work, the claimant went on long term sick leave. - claimant resigned from his position in 2001 as he felt that the respondents did not offer him the support he needed in dealing with the harassment and intimidation. - claimant became an employee in his wife's dry cleaning business but still suffered from depression as a result of the harassment. - Tribunal found that the claimant had been unlawfully discriminated against on the grounds of his religious belief and the respondent is ordered to pay £59,211.69. - respondent also ordered to pay £19,950 as the Tribunal found that the claimant had also been victimised. 84/01FET; 28/02FET 30 MARCH 2007

MAWHIRT, THOMAS HENRY v BRITISH TELECOMMUNICATIONS PLC
Decision on a pre-hearing review. - applicant claimed discrimination on the grounds of religious belief contrary to Fair Employment and Treatment (Northern Ireland) Order 1998. - whether claim was presented within time limits and was it just and equitable to consider claim. - Respondent offered redundancy scheme in time-limited tranches with different severance terms. - applicant was rejected for the first tranche in March 2005 but accepted for second tranche in July 2005. - applicant started grievance procedure in July 2005 but did not lodge claim until August 2006. - Tribunal decided that it did not have jurisdiction as claim was out of time. 00091/06FET 26 MARCH 2007

ROGERS, JAMES NEILL v DUNNES STORES (BANGOR) LIMITED, GERRY MCLORNON, PAUL LOUGHRAN, STEPHEN KENNEDY AND CLAIRE MCPEAKE
Applicant claimed unlawful discrimination by reason of religious belief. - first named respondent situated in an interface area. - second named respondent issued a directive that staff members were not permitted to wear badges or emblems including poppies on their uniforms. - applicant found the decision offensive. - decision was eventually overruled by head office. - after the ‘poppy incident’ the claimant became involved in a disagreement about a work issue with another member of staff which resulted in an assault. - formal hearing took place and the applicant was dismissed. - Tribunal found that the claimant’s dismissal was not connected to the poppy incident as the claimant alleged but that he was dismissed for gross misconduct. - claim dismissed 56/04FET; 355/04FET 22 JANUARY 2007

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
Limitation Periods

Butterworths Personal Injury Litigation Service (book available in the Library) has a useful section (XVIII) detailing the limitation periods in personal injury claims in accidents overseas. Below are some of the limitation periods but please ask a member for staff for full details.

<table>
<thead>
<tr>
<th>Country</th>
<th>Limitation Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>Various, including 2 years if accident at work and 10 years in tort</td>
</tr>
<tr>
<td>Greece</td>
<td>5 years (or 2 years if against an insurer)</td>
</tr>
<tr>
<td>Spain</td>
<td>1 year for road accident and tort claims</td>
</tr>
<tr>
<td>Italy</td>
<td>Various, including 2 years for road traffic accidents and 5 years for torts</td>
</tr>
<tr>
<td>Portugal</td>
<td>Various, 3 years for tort, 2 or 5 years for injuries caused by negligence in criminal cases</td>
</tr>
</tbody>
</table>

> Articles

Limitation periods in Europe for liability claims
Kohler: 1997 13(3) P & MILL 23-24

Time for a change (assesses the time limits for claimants when issuing civil proceedings under the Limitation Act 1980)
Jefferson: 2007 7263 NLJ 352-353*

Law Lords backtrack in landmark personal injury case (reviews the Horton v Sadler case where the three year time limit could be disregarded and overturned the Walkley v PrecisionForgings Ltd case)
2006 7230 NLJ 1004 *

Just the limit (circumstances where time limits can be varied)
Spencer: 2007 29 LSG 45 *

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

> Legislation

Limitation (NI) Order 1989 a.7
Available from www.statutelaw.gov.uk or from the Law Society Library.

Limitation Act 1980 s.11 & s. 33
Available from www.statutelaw.gov.uk or from the Law Society Library.

> Books in the library

- Butterworths law of limitation. Looseleaf
- Butterworths personal injury litigation service. Looseleaf.

NEXT EDITION
Limitation Periods and Quantum - caselaw in which damages were awarded for diminution in value and loss of enjoyment.
Missing Wills

Re: Robert Ferris Milliken (deceased)
Late of: 13 Morpeth Street, Shankill Road, Belfast, BT13 and Knockbreda Male Health Clinic, Saintfield Road, Belfast
Date of Death: May 2007
Would any person having knowledge of the whereabouts of the Will for the above named deceased, please contact:
James J Macaulay
Solicitors
22A Cammone Road
Glengormley
Newtownabbey BT36 6HW
Tel: 028 9084 4926
Fax: 028 9084 4878

Re: Thomas Rankin (deceased)
Late of: 1 Sevenoaks, Crescent Link, Londonderry
Formerly of: 158 Culmore Road, Londonderry
Would any Solicitor having any knowledge of the whereabouts of the original Will or any paperwork belonging to the above named deceased or the title deeds to 158 Culmore Road, Londonderry, please contact:
Mrs Lenore Rice
Wilson Nesbitt
Solicitors
33 Hamilton Road
Bangor
County Down BT20 4LR
Tel: 028 0127 8176
Fax: 028 9127 8199

Re: James Michael Lynn (deceased)
Late of: 38 Deramore Park South, Belfast
Date of Death: 6 March 2007
Would any Solicitor holding a Will for the above named deceased, please contact:
Pauline Knight & Co
Solicitors
10 Wellington Park
BELFAST BT9 6DJ
Tel: 028 9050 9666
Fax: 028 9050 9669
Email: paulineknight@utvinternet.com

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Land at: 6 Backlower Road, Killycolpy, Stewartstown, County Tyrone, BT71 5ER
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County Derry BT45 6EB
Tel: 028 7930 0577
Fax: 028 7930 0677

Folio: 938
County: Antrim
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Fax: 028 9127 7300
Tel: 028 9127 4644
County Down BT19 7QT

Ref: DN 106574
County: Down
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Patterson Donnelly
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Fax: 028 9127 7300
Email: claire@pdslaw.co.uk
Ref: CD/EW/Standard

Ref: LY 18567L
County: Londonderry
Registered Owner: Christopher Thomas Hogg and Sheila Mary Hogg
Land at: 2 Knocklynn Park, Coleraine, County Londonderry
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And further take notice that unless the said Land Certificate is produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for:
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Or email: law@archerheaneymagee.com

Notice of Dissolution of Partnership
Morgan McManus Solicitors, Enniskillen
As of the 4 May 2007, Brian Morgan and Seymour Major, formerly practising as Partners in the Northern Ireland office of Morgan McManus Solicitors, have dissolved their Partnership. From that date onwards Brian Morgan will continue to practice under the name of Morgan McManus Solicitors from the same premises at 12 Paget Lane, Enniskillen and the same contact phone number, fax number and e-mail address. Seymour Major will, from that date, practice under the name of Seymour Major Solicitors, trading from the following address/contact details:
12 Belmore Street
Enniskillen
County Fermanagh BT74 6AA
Tel: 028 6632 4455
Fax: 028 6632 9896
Email: law@seymourmajor.com

This Dissolution has nothing whatsoever to do with the Clones/Republic of Ireland practice of Morgan McManus where Brian Morgan and Fergal McManus still continue as Partners.
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REPUBLIC OF IRELAND AGENTS

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The completed document must be submitted to the address below in a sealed, opaque envelope to be received no later than 4pm on Friday 20th July 2007.

Envelopes must be marked ‘Tender for Legal/Conveyancing Services’.

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So, how can you make sure that your files are fully comprehensive?

Ensure that firm-wide procedures are in place and all partners, associates, trainees, paralegals and support staff are complying with them. Keep a simple checklist at the front of the file. This checklist should highlight each important step within the case, whether it has been completed, and if not, when the deadline is.

This way, anyone picking up the file for the first time can see what exactly has been done and what still needs doing.

Make sure all staff are keeping the following within all client files:

- Retainer letter
- All correspondence, including faxes
- Hard copies of all emails
- Notes/minutes of all telephone conversations or meetings that take place between the client and/or third parties
- Deadlines for all aspects of the case including those to be undertaken by third parties
- A list of timings for when follow-up telephone calls need to be made or letters need to be sent out
- Documentation from third parties
- Invoices

Make sure you keep all paperwork in the file. Do not be tempted to keep current work on your desk, make sure that everything is filed at the end of the day. By carrying out this filing method, you will not run the risk of the colleague who is covering you missing half the documentation.

Ensure regular file audits are carried out throughout the practice. These do not have to be done by an outside firm.

The ideal method is that one of your colleagues, or even yourself, picks a random file, every six months or so and checks that it is comprehensive. This way any discrepancies in the file will be spotted and can be corrected.

The best advice is to check before you leave the office that if for some reason you were not able to come into the practice the following day, that someone else would be able to make sense of, and continue, your work.

This column was prepared by the Alexander Forbes Professions risk management team. The article first appeared in the Gazette, the journal of the Law Society of England and Wales.
Sometimes the grass is greener.

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Ref 2167 - Banking Solicitor
Top firm on market for Banking and Finance Solicitor. They require experience of 0-2 yrs PQE or if experience is lacking, at least a strong demonstrable desire to success in this field.

Ref 2366 – North West
A number of clients in the NW area of NI have posted a requirement for a Conveyancing Solicitor and a General Practice solicitor. Due to company requirements, the clients all require 1-4 yrs PQE in either field.

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