

Avoiding Mortgage Fraud Claims

Claims experience arising from alleged mortgage fraud has tended to show that in almost all cases the solicitor has not been involved in the fraud nor has the solicitor benefited financially other than to receive fees for the transactions. In cases coming to the Professional Indemnity Insurers there are some common trends. Solicitors are asked to be 'on guard' and take heed of the following points:-

(i) It is worth enquiring from a new client in the property field which firm previously handled his work and the reasons for change and decision to move to a new firm i.e. why would a client from Leeds bring his work to a firm in Liverpool.

(ii) Enquire as to the arrangements for funding mortgages or remortgages. Is it clear that these can be serviced?

(iii) Often less prominent lenders who are keen to lend will operate with fewer checks than normal and their lending rate is usually higher.

(iv) Who arranges the valuations? It is preferable that they are arranged by the lender and are carried out by established qualified valuers.

(v) Query cases where valuations of properties multiply within periods of weeks.

(vi) Know your client - understand his financial capabilities and business plans.

(vii) Where the client fails to service the mortgage the lenders first call for recovery will be the Solicitor.

(viii) In the more serious claims rarely are one or two properties involved so that a claim is made on each property.

(ix) The absence of a deposit.

(x) The mortgage exceeds the valuation of the property.

(xi) An unusual arrangement between vendor and purchaser whereby the vendor remains in the property as a tenant.

(xii) The vendor pays the purchaser's solicitors costs.

Members of the NIYSA Committee at the Millennium Young Lawyers Four Jurisdictions Conference - Belfast, 24-26 March 2000



Front Row (L-R):-

Tracey Diamond, Mary Clare Kelly, Maureen Bell, Nessa Agnew, Catherine Calvert

Back Row (L-R):-

Paddy Oliver, Jonathon Hewitt (Chairman), Martin Hart, Darren Duncan

Andy Small is also a Committee member but is absent from the photograph.

Turn to page 10 for more photographs.

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Temporary closure of Old Townhall Building

The Northern Ireland Court Service has informed the Law Society of the temporary closure of the Old Townhall Building for the months of July and August of this year.

Structural changes are to be made to the Old Townhall Building to make it suitable for its new use as a family Court Centre when the new court complex opens in Autumn 2001. It has been decided that the most effective way for these structural changes to be made is to close the building during court recess periods. Therefore the building will be closed to the public and no courts will be held there during the months of July and August this year.

The Belfast Recorder's Court will sit as normal up to Friday 30th June after which it will break for the summer recess. The courts will resume on Tuesday 29th August and arrangements

have been made for courts to sit during the period from Tuesday 29th August to Friday 1st September in three courtrooms in the Royal Courts of Justice - The Court of Appeal, Queens Bench 2 and Queens Bench 3, and in Court No 4 in Belfast Magistrates Court Building. The District Judge's Court will sit in Court No 6 in Belfast Magistrates Court Building.

The Old Townhall Building will reopen on Monday 4th September and the courts will return to normal on that date.

The Summer Vacation Court will sit as necessary in Court No 4 in Belfast Magistrates Court Building to deal with urgent proceedings from any County Court Division. In addition, dates will be fixed when adjournment applications can be made to a Belfast Judge in relation to Belfast Recorder's Court Cases.

The County Court Office will continue to

be located at the Old Townhall Building. However, as the building will be closed to the public, arrangements will be made to enable County Court Documents to be stamped in Belfast Magistrates Court Office. Also documents may be delivered to the County Court Office by leaving them at the Magistrates Court Office during this period. The office can be contacted by post, telephone at 028 9032 6260, or fax 028 9031 3771.

The Court Service believes that carrying out the work during recess periods is necessary to avoid any disruption to the courts when the new court complex comes on stream and they are confident that these arrangements will minimise the inconvenience. They regret any inconvenience that might be caused to practitioners and litigants during this period and should appreciate the cooperation of practitioners in making this as painless as possible.

FAX NUMBER FOR USE BY SOLICITORS IN MAGHABERRY

With the introduction of the new legal visits / video-conferencing facilities at Maghaberry, it is now possible to have a dedicated fax number made available to members of the legal profession. The number of the fax line is 028 9261 6082.

Please note that this number should be used for **all** fax transmissions from solicitors to the prison regardless of whether the fax is intended for the Governor or an inmate. Staff in the legal visits / video-conferencing area will ensure that the fax is delivered to the relevant party. Please note that the normal rules regarding confidentiality of legal correspondence cannot be applied if legal representatives choose to communicate with their clients in this way.

It should also be noted that inmates do not have access to fax facilities and that they may only reply via telephone or letter.

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All Monies Clauses in Residential Mortgage Deeds

The Non-Contentious Business Committee of the Law Society has reviewed the practices of the four major banks in Northern Ireland in relation to their standard mortgage documentation used in residential conveyancing. Whereas "All Monies" clauses are inevitably necessary in commercial transactions, the Committee has been concerned about the use of these clauses in residential transactions without the borrowers being made fully aware of their implications.

The Committee wrote to the four banks requesting both a copy of the Standard Mortgage Deed used by each in residential conveyancing and a statement of their attitude generally to All Monies clauses. Both the Bank of Ireland and Ulster Bank confirmed that they did not use All Monies clauses in their standard residential mortgage documentation. After some correspondence with the First Trust Bank it confirmed that these clauses have been withdrawn.

The attitude of the Northern Bank has been somewhat different and as members of the profession are no doubt aware that bank still relies on an All Monies clause in their residential Mortgage Deed. The actual words are "...all sums and liabilities of whatever nature now or in the future due owing or incurred by me/us to the bank in any way whether a loan or jointly with anyone else, including my/our liability as guarantor and even if the liability may depend upon events which may or may not happen...."

There is a heavy onus on members of the profession both to adequately warn Mortgagors about the ramifications of signing such a clause and to keep adequate records of having fully advised clients on the implications thereof. In correspondence the Northern Bank have taken the position that if any solicitors attempted to remove by negotiation the All Monies clause from the Bank's mortgage, then that obviously was not in

the best interests of the Bank and the solicitor was therefore faced with a clear conflict of interest. In those circumstances the Bank suggested that in order for the Bank then to receive best advice ".....instructions are rescinded by the Bank from the external solicitor and the in-house solicitor's office acts on the Bank's behalf in connection with the matter..."

Where this situation arises the Committee is of the view that the solicitor's first duty lies with the mortgagor client and accordingly instructions from the Northern Bank should be declined at that point. The Bank should so be informed.

Having written to the Northern Bank in relation to this matter, the Bank has indicated to the Society that at some stage in the future it is likely that the All Monies clauses will be discontinued from domestic property. However to date the Bank has not informed us of a definite date for so doing due to ".....staff training which is required..." and ".....requirements for IT amendments..."

Pending the promised change of policy by Northern Bank the simple rule with regard to that bank's mortgages should be "Look after the interests of the client and let the Bank look after itself!"

The Law Society of England & Wales, The Law Society of Scotland, The Law Society of Northern Ireland Joint Brussels Office

Joining Forces

The Law Society of Northern Ireland has joined the combined Brussels lobbying office of the Law Society of England & Wales and the Law Society of Scotland.

The Law Society of England & Wales established its Brussels Office in November 1990 and was the first national Law Society/Bar in the EU to have a representative office in the city. In January 1993, the Law Society of Scotland joined the Office, and in May 2000 the Law Society of Northern Ireland came on board. The UK Law Societies are now jointly represented by a team of three people: the Head of EU & WTO Affairs, who is assisted by the Deputy Head, and by the Brussels Office Manager.

Since June 1996, the Brussels Office has been sharing premises with the

German Federal Bar (Bundesrechtsanwaltskammer) which represents the interests of some 1,000,000 German lawyers as well as the interests of the Austrian National Bar and the Italian Bar. English Law Society President Robert Sayer said "The three UK Law Societies working together will provide a much more effective voice in Europe." The Office also shares premises with the German Federal Bar, the Austrian Federal Bar, the Italian National Bar and the Trier Academy of European Law.



Free the law

An exciting new concept in legal information provision is currently being developed in the UK and Ireland. Initially codenamed 'Free the Law' it is a website providing free interlinked access to databases of law and legislation from the British and Irish Courts and Governments. This service has got off to a very promising start since its inception at the beginning of the year, and usage is now running at 100,000 hits a week.

Who is in charge?

The project is being co-ordinated by the British and Irish Legal Information Institute (BAILII). This is an independent body with steering committees in the UK and Ireland which has secured co-operation from judiciary at the highest level. The project will emulate the successful Australian (AUSTLII) model which provides access to all cases and statutes from all courts and legislators in each of the 9 Australian jurisdictions.

Where is it found?

<http://www.bailii.org>
<http://austlii.edu.au>

What is on it now?

To quote the BAILII website 'BAILII includes all freely available UK and Irish data which is available on the web as well as much data which is not otherwise available'

The system contains around one gigabyte of legal materials and well over 100,000 searchable documents with about 2.5 million hypertext links. BAILII is continually expanding, and at the time of writing included the following databases from the 5 jurisdictions of UK and Ireland

- UK House of Lords Decisions
- UK Employment Appeal Tribunal Decisions
- UK Social Security and Child Support Commissioners' Decisions
- Court of Appeal of England and Wales Decisions
- High Court of England and Wales Decisions
- Scottish Court of Sessions Decisions
- Scottish High Court Decisions
- Scottish Sheriff Court Decisions
- Irish Supreme Court Decisions

- Irish Legislation
- Irish High Courts Decisions
- Irish Competition Authority Decisions
- Irish Information Commissioner's Decisions
- UK Legislation

During May it is hoped to add the following:

- UK Statutory Instruments
- Scottish Legislation
- Scottish Statutory Instruments
- Irish Statutory Instruments

What about Northern Ireland?

Legislation

It is arguable that lawyers in Northern Ireland may benefit most from BAILII. There is a lack of bibliographical research tools making legislative research cumbersome and time consuming. For the first time Irish (Northern Ireland since 1921) Statutes Revised are available electronically from 1495 - 1982. Ideally this would be brought up to date to add value to the database.

Caselaw

A digital feed has been established between the Northern Ireland Court Service and BAILII. Currently all judgements approved for reporting since September 1999 from the High Court and Court of Appeal are available. The database was last updated on 13th May 2000 and holds 21 High Court decisions and 10 Court of Appeal decisions. It is intended that unreported decisions will be available when the web site of the Court Service goes live towards the end of the year.

Links

A useful feature of the BAILII website is the comprehensive list of links to local organisations and documents, making it an excellent initial access point for a variety of legal needs.

Are there any hidden costs?

BAILII is and will remain free to the end user, apart from the usual online connection fees. The driving force behind the project is the concept of making legal materials free indiscriminately. As Andrew Mowbray, the Co-Director of AUSTLII and

person responsible for building and maintaining BAILII says

'If you are going to pass laws which fine people and if ignorance is no excuse then you need to make sure that [people] can actually read what the law says'

So who pays?

Initial funding of £100,000 for the pilot project was obtained by private funding. A parallel study is currently being undertaken by the UK Steering Group to determine the method of meeting recurring outlay. The most likely means is by way of unobtrusive on-site sponsorship.

BAILII is a site developed by those in legal information provision for those with legal information needs. It is independent, non-commercial and has integrity. The House of Lords decision of *Dimond v Lovell* was posted to the site as soon as it was handed down. Above all it is free - try it and see

Heather Semple
 Librarian

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Association of Family Solicitors for Children

The Association of Family Solicitors for Children was inaugurated at a meeting at Law Society House on 10th May 2000.

The Members of the Association elected the following Solicitors as Officers of the Management Committee of the Association:-

Chair

Karen Fox
Bogue & McNulty, Solicitors
3 Carlisle Circus
Belfast BT14 6AT

Vice Chair

Judith Brown
Alan M Brown, Solicitors
288 Newtownards Road
Belfast BT4 1HF

Treasurer

Eileen Ewing
Holmes & Moffitt, Solicitors
289 Shankill Road
Belfast BT13 1FT

Secretary

Clare Doherty
McCann & McCann, Solicitors
10 Royal Avenue
Belfast BT1 1DB

The following Solicitors were elected as Members of the Management Committee:-

Jacinta McCullough
McCullough & Co, Solicitors
Unit 4, 734 Upper Newtownards Road
Belfast BT16 1RJ

Niall Small
Small & Marken, Solicitors
31 Church Street
Antrim BT41 4BE

Tara Caul
Children's Law Centre
3rd Floor, Philip House
123-137 York Street
Belfast BT7 1AB

Fiona Holmes
John Ross & Son, Solicitors
30 Frances Street
Newtownards BT23 7DN

Denis Humphrey
Denis D Humphrey, Solicitor
10 Donaghadee Road
Bangor BT20 5RU

Mr Desmond Perry, Resident Magistrate, was made an Honorary Member of the Association at the invitation of the Management Committee.

The purpose of the Association is to promote the interests of children and young persons within the legal system and to be a pressure group to lobby in favour of establishing properly funded legal mechanisms to ensure all children and young persons have access to justice. The Association would welcome the views of the profession.

A meeting of the Association will take place at Law Society House at 5.00pm on

29th June 2000. Members and associate members are encouraged to attend.

Please contact any of the above named Committee Members on or before 21st June 2000 with any suggestions or queries you may have which you would like the Association to consider at the forthcoming meeting.

If you are interested in becoming a Member of the Association, please return the form below, completed, together with cheque made payable to the Association of Family Solicitors for Children, to Clare Doherty, McCann & McCann Solicitors, 10 Royal Avenue, Belfast, BT1 1DB.

Association of Family Solicitors for Children

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Heart Trust Fund (Royal Victoria Hospital)

The main object of this established and registered charity is the support and furtherance of the vitally important treatment, both medical and surgical, provided for patients in the Cardiology Centre in the Royal Victoria Hospital, Belfast, and the equally important work of research into heart disease carried on there.

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

Further details about this charity and its work will gladly be supplied by the Secretary, The Heart Trust Fund (Royal Victoria Hospital) 9b Castle Street, Comber, Co Down, BT23 5DY.

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Review-Lawyers getting the most from the internet

*An evening seminar by Legal-Island
Friday 31 March 2000
The Stormont Hotel, Belfast*

Is your business WWW or ZZZ?

It is impossible to drive along the Sydenham Bypass without seeing NTL's ingenious slogan, yet until now the Legal Profession in Northern Ireland has tended to be more on the zzz side of the Internet spectrum. The aim of this seminar, hosted by Legal-Island, was to enable lawyers in Northern Ireland to keep up to date with, and exploit the opportunities the Internet affords. The following is a precis of the material expertly presented at the seminar by Barry Phillips and David Smith.

At its most basic, the Internet is a time-and-labour saving office tool. It enables solicitors, barristers and clients to communicate cheaply and quickly via email. Efaxes extend this concept: it is possible to send and receive faxes more efficiently via the Internet than via the traditional fax-machine. There is also the possibility of "teleworking" (working at

home whilst linked up to the firm via a telephone line), which increases flexibility and productivity.

As far as research goes, the Internet provides a vast source of information available at any time, easily accessed and easily stored in the computer. Whether using a familiar website-the House of Lords website carries all the latest judgements (<http://www.parliament.the-stationery-office.co.uk/pa/>) or pooling resources on a particular topic with millions of other people in a Newsgroup, the Internet will revolutionise the way lawyers do their research.

The business world depends increasingly on the Internet for advertising, and even for interacting with their customers. This concept is easily transferable to law firms. Judicious advertising of a firm's legal specialisms at an appropriate site would clearly be of great benefit. Moreover, a website devoted to the firm would allow the increasing number of people in Northern Ireland with Internet access (78,000 households or 13% of the population) to browse through the firm's

areas of interest and even to email legal queries directly to the firm. Providing easy and direct access to something as traditionally intimidating as a law firm is in everybody's interest.

Some words of caution are necessary, however: this new technology must be used wisely. For instance, Internet users should be aware that hackers can jeopardise the security of email, and firms seeking to introduce the Internet into the workplace should draw up and implement a suitable Internet use policy to ward against misuse and potential litigation.

It is not possible in such a short compass to do justice to this informative, interesting and above all extremely useful seminar. For that reason, I suggest that those of you who wish to explore further the usefulness of the Internet visit Legal-Island's website (<http://www.legal-island.com>) where you will be introduced in more detail to the potential of the Internet for the Legal Profession in Northern Ireland.

Rachel Hutton BL

The Law Society of Northern Ireland/NIGALA Liaison Group

The Family Law Committee has set up the Law Society of Northern Ireland/NIGALA Liaison Group to consider matters relating to the working relationship between Guardians Ad Litem and Panel Solicitors and associated issues. The Group's first task is the development of a protocol.

The Society has nominated the following solicitors to be its representatives on the Liaison Group:

Nigel Broderick,
John J Rice & Co,
39 Movilla Street,
Newtownards,
Tel: 028 9182 2323

Karen Fox,
Bogue & McNulty,
3 Carlisle Circus,
Belfast,
Tel: 028 9035 1502

Niall Small,
Small & Marken,
31 Church Street,
Antrim,
Tel: 028 9446 8000

Please contact one of the above by Friday 23rd June 2000 with any suggestions or queries that you may have which you would like the Group to consider. The Group is particularly keen to receive views on the expectations of solicitors for the working relationship with Guardians Ad Litem and also on training.

THIS IS WAR

(But the Winner is the National Meningitis Trust)

Sue Bryson was the referee when Terry McAllister of McAllister Keenan (Larne) and Peter Jack of R.G. Connell & Son (Limivady) challenged each other to the title of Northern Ireland's fittest, if not craziest, athlete. The gauntlet was thrown down as they will both be participating in the Ireman on 29th July at Benone beach near Limivady, when they will swim 2.4 miles, then cycle 112 miles, then run 26.2 miles.

"I'm fed up to the back teeth with R.G. Connell & Son" growled pugnacious McAllister, the feeling was mutual as Peter Jack snarled "I have had it up to here with McAllister Keenan, lets have an 140 mile race and let the best lunatic, sorry Triathlete win!"

Sue Bryson had to keep the gladiators apart as they posed in Law Society House. Terry has done Ironman Distance before in Wolverhampton last August, Peter has done two - Almare in Holland in 1990 and Wolverhampton in 1998.

The two firms are laying money on their own particular front runner to be still standing when the opponent is defeated by up to 17 hours of continuous racing which starts at 6.15 a.m. The race also hosts the Home Nations Long Distance Championships between Ireland, England, Scotland and Wales. Much more important however, will be the personal Grudge Match, which puts Evander Holyfield -v- Mike Tyson into the shade. While neither is threatening to bite the other's ear off, no stone will be unturned in their quest for supremacy.

Sue however, as usual had a bright idea and has suggested ADR as a possible method of settling this fierce interconnecting feud. "What's ADR?" our intrepid duo

asked "Does it mean Athlete Drug Rehabilitation?" Sue gently explained to the two punch drunk sparring partners, that it's the method of settling disputes without losing face and getting bad publicity. The Society has a Dispute Resolution Service.

Both of them said they would try a drop of ADR - but only after they had slugged it out at Benone at the end of July.

Both athletes (who have recently had the necessary lobotomy to ensure that they have no mental impediment for the Big Day), are so confident of their own success, they have bet that the loser will pay £50.00 to the National Meningitis Trust. They are encouraging all lawyers, (whether they are boxers or triathletes or neither) to pledge a similar amount to this particular Charity while having a

guess at the respective finishing times of Terry and Peter.

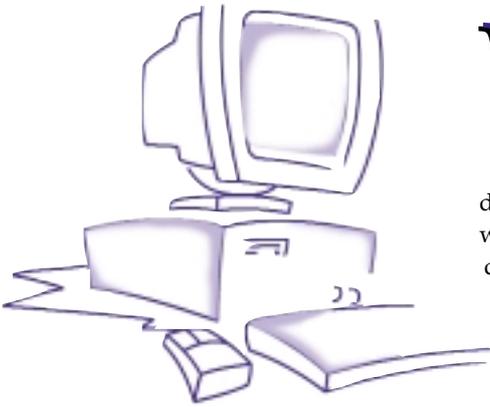
The lawyer with the closest guess will win a bottle of the finest champagne that the far from gallant loser can afford. Please send all cheques to the National Meningitis Trust c/o/ McAllister Keenan or R.G. Connell & Son.

Meanwhile both loonies, sorry lawyers, asked Sue if she could perform a Don King type role, but she replied that she would only be happy to referee any pugilistic bout - provided that the competents both agreed to accept the arbitrator's decision as final and binding. Otherwise she's keeping the bike!

Peter Jack



Referee Sue Bryson, Deputy Secretary of the Law Society between 'Gladiators' Peter Jack (r) and Terry McAllister (l).



WEB WATCH

downloaded file content. A first page on a web site 10k in size will take 2 seconds to download, 40k 8 seconds and so on.

According to Nielsen, any page taking longer than 10 seconds to download will lose a significant numbers of visitors as impatient surfers decide to move on to sites which deliver more quickly.

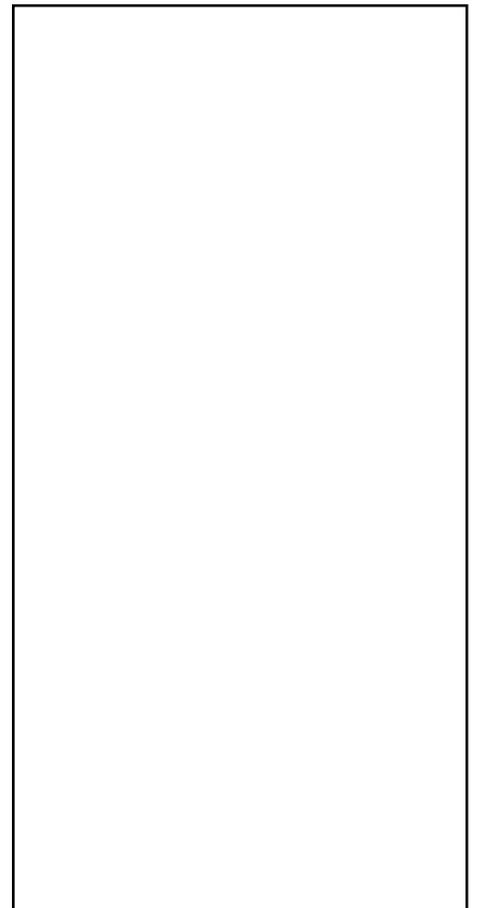
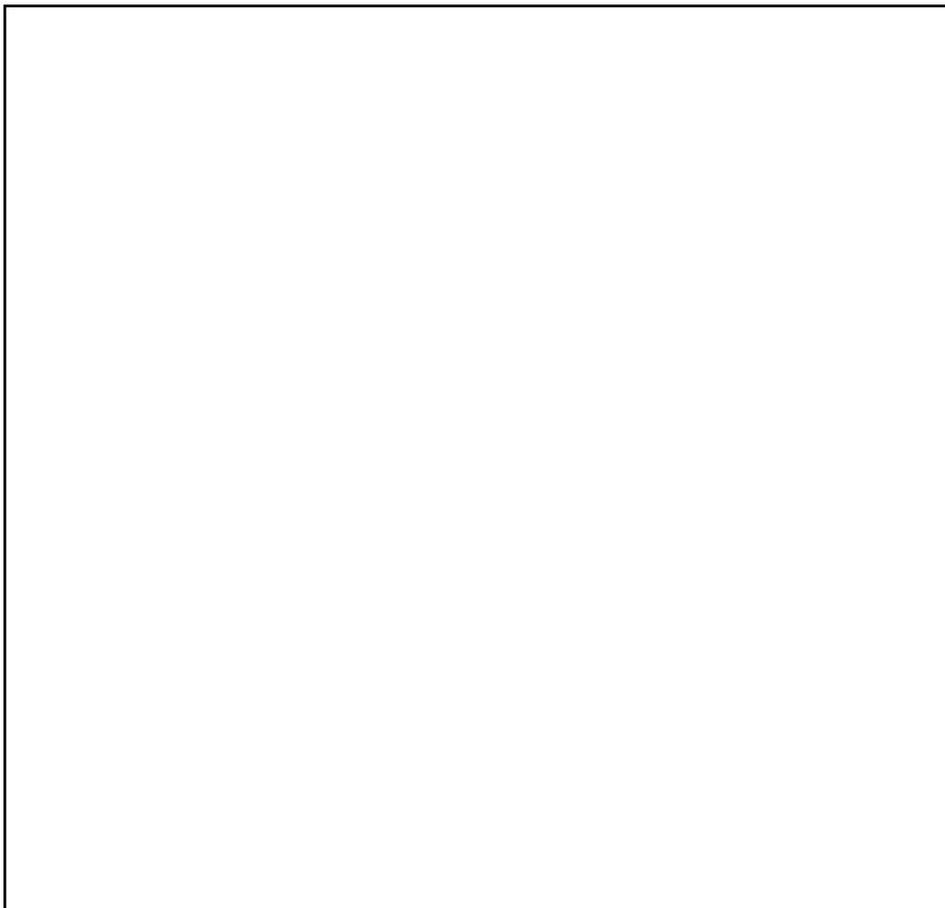
A glance at the sites listed on Legal-Island's page for law firms in Northern Ireland with a web presence (www.legal-island.com/nisols.htm) suggests that a good many of them would actually pass Nielsen's speed test. One of the fastest belongs to Patterson Donnelly Solicitors (www.pds-solicitors.co.uk). Their page weighs in at just 5k. The new site from the Law Society NI (www.lawsoc-ni.org) delivers well at just 8k in size (not counting picture gifs) while Elliot Duffy

Garrett's first page (www.edgsolicitors.co.uk) could be ahead of them all at just 1k if the photograph of the Waterfront Hall is disregarded.

Many of the above companies have chosen to adopt a .co.uk finish to their web address indicating their presence in the United Kingdom. Of course, they are also in the European Union and may now register for a .eu finish to their web address. This is likely to be available shortly. Visitors to www.idr.co.uk can sign up for a name in the hope that it's still free. The frenzy for dot com addresses it seems might be heading in a new direction.

barry-phillips@altavista.net

"Usability" – it's a clumsy sounding word but the latest to become the guiding principle for web site design. Its greatest exponent is Dr. Jakob Nielsen (www.useit.com) who made his name at Sun Microsystems and regularly audits many of the top sites for usability rating. For him, sites must be easy to navigate and read and most importantly, quick to download. He observes that most Net users work through a regular modem operating at a speed of no more than 56 bits per second (bps). This is roughly equivalent to 5k bytes per second of





NORTHERN IRELAND
YOUNG SOLICITORS ASSOCIATION

*Notice of
AGM/Nominations
for NIYSA Committee
2000-01*

Please note that the Annual General Meeting of the NIYSA will take place on Thursday 6 July 2000 at 5.30pm at Law Society House. The deadline for nominations is Thursday 15 June 2000 and any such nominations should be sent to the following address:-

Nessa Agnew
Secretary, NIYSA
C/o NIHE
Legal Department
2 Adelaide Street
Belfast BT2 8PB

NOTE: All solicitors under the age of 35 are members of the NIYSA and are eligible to nominate committee members, stand as committee members and attend the AGM.

Three of this year's committee are stepping down and nominations for the new committee will be most welcome.

Were you there.... ?

Photographs taken at the Millennium Young Lawyers Four Jurisdictions Conference – Belfast, 24-26 March 2000





by *Brian Doherty*

CAUGHT IN THE WEB

The settlement by British Internet Service Provider (ISP) Demon of a libel action over a news group posting facilitated by Demon has raised concerns that ISP's may be forced to operate censorship rules to avoid such claims in the future.

THE WEB: LIABILITY: FREEDOM OF EXPRESSION

Following the settlement by Demon of a libel action a gay magazine 'Outcast' which had its Web Site closed by its ISP Netbenefit has indicated it will ask the European Court of Human Rights to rule that the UK libel laws breach the right to freedom of expression provided for by the European Convention.

'SHOOT TO KILL CLAIMS HEARING'

The European Court of Human Rights has now heard a case involving allegations that a 'shoot to kill' policy operated in Northern Ireland in breach of International Human Rights Law.

EUROPEAN COURT HITS CAMPAIGN TRAIL

European Court of Justice Judges have begun to appeal to member states

through international media for extra resources to run the European Court of Justice in the light of its sharply growing caseload. From 130 cases being lodged in 1980 with the creation of the Court of First Instance by 1999 545 cases were lodged before the European Court of Justice and 384 before the Court of First Instance.

EUROPEAN CONVENTION FOR IRELAND

The Irish Government have decided to bring the European Convention into domestic Irish law by October, 2 years sooner than expected, in order to meet at an early date a requirement in the Belfast Agreement to consider incorporation.

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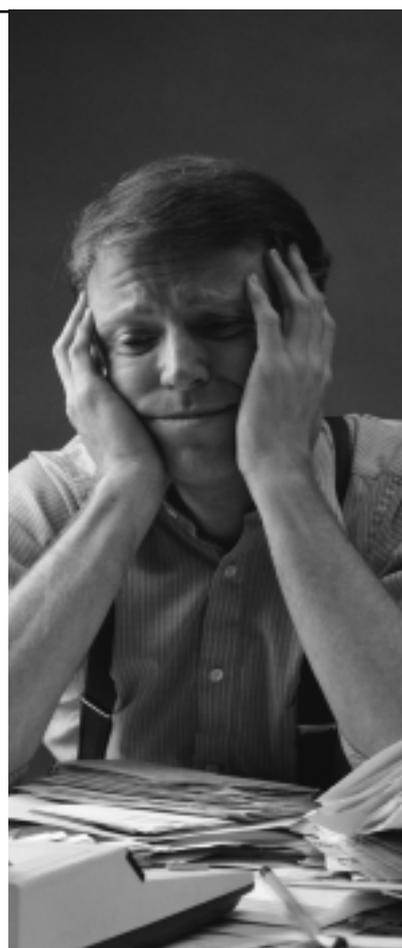
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Association of Women Solicitors (NI)

Equal Opportunities Commission Report: Conclusions

The findings of this report indicate the need for the solicitors' profession in Northern Ireland to urgently address the lack of equal opportunities for its women members. The solicitors' profession plays a major role in sex discrimination work in Northern Ireland. Its members advise women and men who bring complaints of sex discrimination to industrial tribunals. They also provide advice and support to employers on sex discrimination and equal opportunities issues. It is, therefore, both ironic and unacceptable that some women solicitors face the same lack of opportunities, as do many of the people they support.

The research has shown that there is, indeed, a 'Glass Ceiling' for women solicitors in Northern Ireland. Women in the profession face similar barriers to progress as has been found by women in many other professions, such as nursing and teaching (see Morgan et al, 1995). Evidence obtained from the survey indicates that women tend to be in the lower grades and lower pay brackets in the profession. The problem is particularly notable in the private sector. Despite their years of professional experience and excellent academic qualifications, women are less likely to become partners in law firms than their male counterparts. It was found that less than half of women solicitors with 10 to 19 years of experience were partners, compared with 86% of men. The research found that the barriers to career progression for women solicitors cannot be explained by reference to either post-qualification experience, academic achievement or whether women had taken maternity leave.

The evidence contained in the survey supports the view that the large increase in women entering the profession in recent years does not appear to have made an impact in terms of the promotion of equal opportunities for women and men; the provision of family friendly policies, or changing attitudes to women's work. It was a notable finding that in private practice, part-time solicitors were concentrated in the lower grades. This is of some concern because the lack of part-time and job sharing options at the senior level of any management structure may

create problems for those women with caring responsibilities. In addition, the findings revealed that men, in both the public and private sectors, were more likely to have access to flexible working arrangements. In spite of the greater caring responsibilities carried by women, less than a third of women in the survey had access to such arrangements.

The survey also draws attention to a potential infringement of employment law by some private firms within the profession in Northern Ireland. Under current legislation, new employees have a statutory right to obtain a written statement from their employer, which clearly stipulates the main terms and conditions of their post. In the survey it was found that few solicitors employed in the private sector had a formal contract.

As indicated in the findings, the treatment of some women on maternity-leave was problematic, with over a quarter reporting that the impact on their career had been substantial. In addition, there was also a lack of awareness of maternity leave entitlement. It was found that just over half of women solicitors employed in private practice did not even know what maternity leave conditions they were entitled to from their employer. Many women received only statutory maternity pay, while some received no pay during maternity leave; and over a quarter continued to work from home during their maternity absence. In the private sector, nearly three quarters of those who had taken maternity leave, felt pressured not to take additional unpaid leave.

The reports of sexual harassment, assignment of stereotypical tasks, and the perception of discrimination reported by many provide further evidence of a serious problem facing the solicitors' profession. The lack of female progression in the profession, allied to the absence of family-friendly policies, and the dissatisfaction expressed by many women respondents, suggests that the profession is undervaluing its women members. Focus group discussions indicated that this has resulted in a loss to the private sector of some experienced women solicitors, who have either left the profession entirely, or moved from private practice to the public sector. Clearly, the business case for providing suitable conditions of employment should be highlighted within

the profession.

Finally, focus group participants drew attention to the important issue of management structures within the profession. A major recommendation was for the profession as a whole, and the Law Society in particular, to recognise that there is a problem of poor management practice in some private legal firms in Northern Ireland. It was argued that the lack of managerial expertise, combined with a failure to comply with some basic aspects of employment law, has led to many difficulties in areas such as formal contracts of employment and maternity provision.

It is notable that the Law Society in Northern Ireland does not have an equal opportunities policy. In 1995, the Law Society for England and Wales adopted a practice rule, which provides that solicitors must not discriminate on the grounds of race, sex or sexual orientation in their relations with clients, staff, solicitors, barristers or other persons. (Appendix 1). In 1998, the Bar Council for Northern Ireland introduced an Equality Code for the Bar. A similar move by the Law Society is long overdue, and would be a first step toward promoting change in the profession.

The equal opportunities policy, which has recently been adopted by the Legal Aid Department of the Law Society to cover its own employees, could inform the development of a profession-wide policy. In England and Wales, the Law Society carries out annual research which provides information to facilitate the monitoring of the position of women within the profession. In contrast, no such research has ever been undertaken by the Law Society of Northern Ireland. Gathering such information on a regular basis is vital in order to formulate policies for change. The Law Society should take a proactive approach and encourage the implementation of an equal opportunities policy by its members. Putting such a policy into practice, by changing attitudes in the profession - toward pregnancy and family responsibilities, toward sexual harassment, toward women's role in the profession, and changing work practices - is essential if equality of opportunity is to be provided for both women and men solicitors.



Practitioners may be aware of the public debate which surrounded the passage of the Immigration and Asylum Act through Westminster late last year. The Act, which builds upon and amends earlier legislation such as the 1971 Immigration Act, makes a number of fundamental changes to the system of immigration control in the United Kingdom and to the legal framework for challenging immigration decisions. This article summarises the main areas affected by the Act and examines in more detail the implications for practitioners conducting immigration appeals in Northern Ireland.

General Provisions

The main changes brought about by the Act are as follows:

Asylum claimants awaiting decisions from the Home Office no longer receive cash benefits. A new Home Office agency now allocates accommodation on a "no-choice" basis and support is provided by way of vouchers for essential needs such as food and clothing (in force from 3rd April 2000);

New civil penalties for lorry drivers and other carriers bringing clandestine entrants into the UK (already in force);

Automatic bail hearings before a magistrate for individuals detained under immigration legislation after one week and one month and the introduction of a presumption of bail (likely to be brought into force in Spring 2001);

New rules for the contracting and management of immigration detention centres (to come into force in Spring 2001);

A new system for the regulation of immigration advisers. All advisers (other than members of professional bodies such as the Law Society or Bar) must be registered with a new Immigration Services Commissioner unless granted exemption (due to be implemented in October 2000);

New powers for immigration officers to enter premises, search and arrest people suspected of immigration offences, and to

The Immigration and Asylum Act 1999

use reasonable force to carry out their duties.

Effect on immigration appeals

Part 4 of the Act makes a number of changes to the asylum and immigration appeals process with the aim of putting in place a "one stop" comprehensive appeal against refusals in immigration cases. This part of the Act is expected to come into effect in October 2000. Individuals currently have statutory rights of appeal against, for example, refusals of a visa abroad (other than visit visas), refusals of leave to enter (in limited circumstances), refusals of extensions of stay, refusals of asylum, and deportation. First instance appeals in Northern Ireland are operated from the Immigration Appellate Authority (IAA) offices in Glasgow, and an immigration adjudicator travels to Belfast for two to three days each month to hear cases. Where an appeal is dismissed, the appellant may apply for leave to appeal on a point of law to the Immigration Appeal Tribunal (IAT) in Glasgow. If leave is granted, the appellant's legal representatives must travel to Glasgow for the appeal hearing. In the event that the IAT dismisses the appeal, a further appeal on a point of law (with leave) lies to the Court of Appeal in Northern Ireland.

The Act retains the current appeal structure, but makes a number of important changes to the ambit of the statutory appeal rights. The most important of these are:

Introduction of a free-standing right of appeal on the grounds that the decision breaches the ECHR;

Removal of the right of appeal against deportation where someone has overstayed his/her leave to remain, except where it is claimed that deportation would breach the 1951 Refugee Convention or the ECHR;

Introduction of a right of appeal against refusal of a visa to visit a family member;

Abolition of the "White List" of countries designated in asylum cases as offering no serious risk of persecution;

Introduction of a new fine on appellants and their representatives when appeals to the IAT are judged to have "no merits";

Ends appeal rights in asylum cases where the Home Office judges that the application was made in order to delay removal from the UK.

In addition to changes in the grounds on which an appeal may be brought, the Act has a number of implications for the practical operation of appeals. Practitioners are likely to find that appeals, particularly against refusal of asylum, are likely to come to hearing much more quickly than in the past. As part of the new support package, the government undertook to reduce the waiting time for the determination of asylum claims to six months from start to finish: four months to initial decision and two months to determination of an appeal. Whilst these targets may be regarded with some scepticism, there will clearly be considerable pressure on the IAA to determine appeals promptly. Legal representatives will find themselves subject to severe time constraints in preparing appeals for hearing, particularly if expert or medical evidence is required. Secondly, representatives will now have to complete a "one-stop" statement setting out each of the grounds (such as asylum, ECHR, compassionate circumstances) upon which the appellant proposes to rely before the case proceeds to appeal, in order that the Home Office may give full consideration to each of these, and that they may all be considered at one appeal hearing.

This article provides an outline only of the impact of the 1999 Act. Many of its provisions are as yet unelaborated, and their full impact will become known only when the various regulations envisaged by the Act (such as the appeals procedure rules) are drafted. The Act contains many provisions of undoubted benefit to applicants, such as automatic bail hearings and ECHR appeal rights, but also makes a number of substantive changes which are of less benefit (and in many cases, punitive) to applicants. Whilst the Act may appear to be of limited relevance to anyone other than specialist legal advisers, it should be noted that the volume of work in this area is rapidly increasing, and that practitioners wishing to develop their skills in immigration law would be well-advised to take a closer look at this important piece of legislation.

*Vicky Tennant
Legal Officer
Law Centre (NI)*

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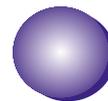
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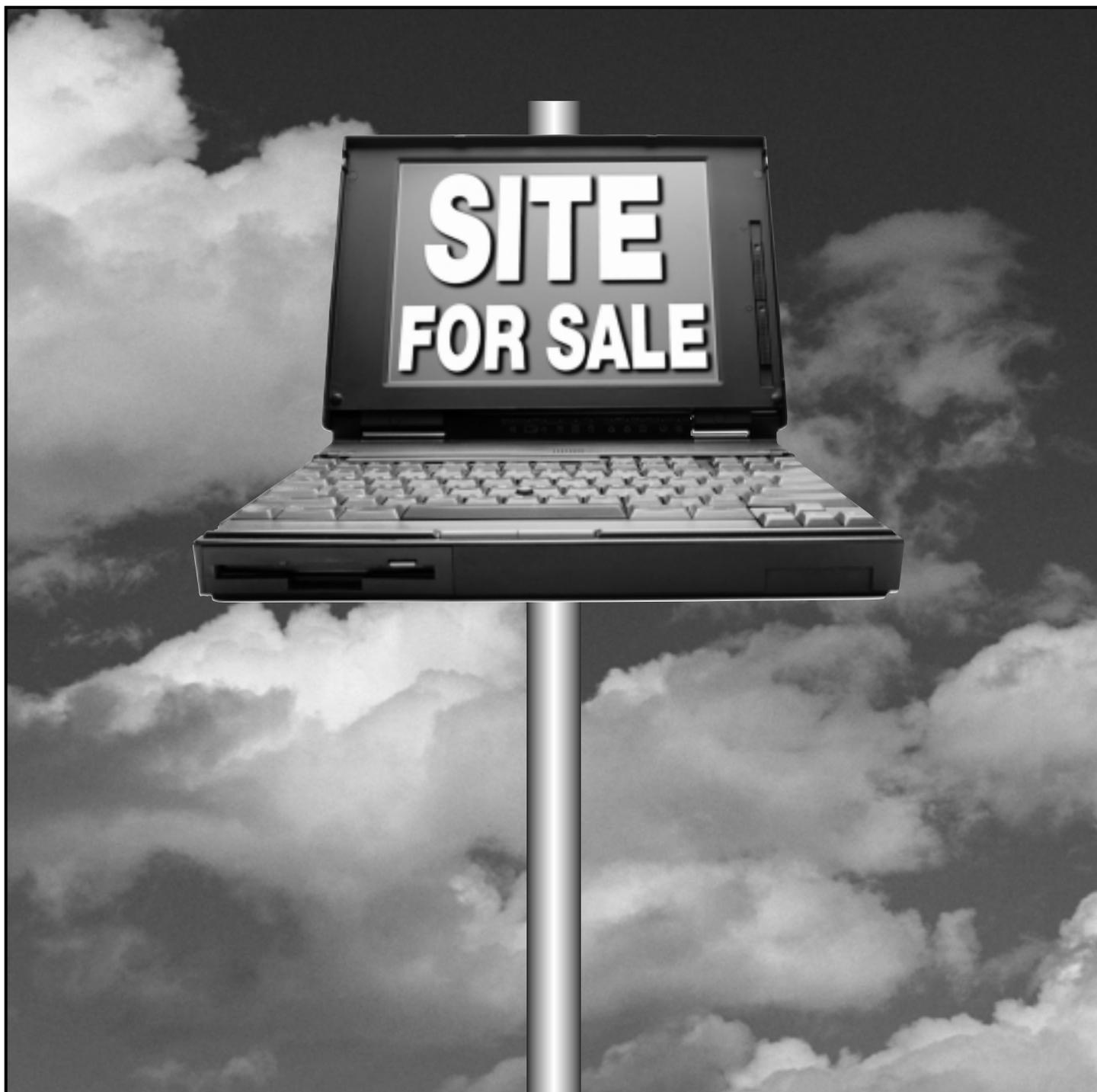
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Debt Collection Practices

The Society has been advised of a formal Note issued by the Office of Fair Trading earlier this year. The full text of the Note is reproduced below.

1. The Office of Fair Trading has received complaints regarding so-called 'look alike' letters, and debt collection charges. The purpose of this note is to outline the Director General's views on such practices, in relation to his licensing responsibilities under the Consumer Credit Act 1974.

'Look Alike' Letters

2. These are documents issued by or on behalf of a creditor or debt collection agency which resemble a court summons or other official document, or are intended to lead the debtor to believe that they come from or have the authority of a court. The Office has also received complaints regarding documents which it is alleged contain false or misleading information intended to coerce the debtor into paying.

3. The Office wishes to remind creditors and debt collection agencies that the issue of such documents may constitute a criminal offence under the County Courts Act 1984 and/or the Administration of Justice Act 1970. This would be relevant to questions of fitness to hold a licence under the Consumer Credit Act, whether or not it resulted in prosecution.

4. Furthermore, any practice which is liable or intended to mislead the debtor - whether as to the origin or authority of any document or as to any other material matter - is likely to be regarded by the Office as deceitful or oppressive or otherwise unfair or improper within the meaning of section 25(2)(d) of the

Consumer Credit Act, and therefore relevant to the question of fitness to hold a licence. That applies whether the practice is unlawful or not. Under section 25(2), the fitness of a licensee can be brought into question by the actions of any of its employees, agents or associates, and section 25(3) defines 'associate' for these purposes as including a business associate.

5. Section 136 of the County Courts Act makes it an offence to deliver or cause to be delivered to any person any document which was not issued under the authority of a county court but which, by reason of its form or contents or both, has the appearance of having been issued under such an authority. Section 135 of the Act makes it an offence to deliver or cause to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of a county court, knowing it to be false, or to act or profess to act under any false colour or pretence of the process or authority of a county court.

6. Section 40(1)(d) of the Administration of Justice Act provides that a person commits an offence if, with the object of coercing another person to pay money claimed as a debt due under a contract, he utters a document falsely represented by him to have some official character or purporting to have some official character which he knows it has not. Section 40(1)(c) provides that he commits an offence if, with that object, he falsely represents himself to be authorised in some official capacity to claim or enforce payment.

7. Section 40 of the Administration of Justice Act also provides for certain other offences in respect of the harassment of debtors, and section 1 of

the Malicious Communications Act 1900 provides for an offence in respect of sending letters which convey a threat or false information with intent to cause distress or anxiety.

8. A document may be in breach of the County Courts Act and/or the Administration of Justice Act even if it does not exactly resemble a court summons or other official document. Firms must take care to ensure that their documents do not, by reason of their form or contents or both, appear to have been issued by or under the authority of a court or other official body. They must also take care to ensure the accuracy of all statements contained in letters and other documents to consumers. All such statements must be capable of being substantiated in the event of a complaint. Documents must not mislead as to the nature of the processes involved or the likelihood of legal proceedings.

9. If a firm is in any doubt as to whether the issue of a letter or other document would be likely to breach any of the above provisions, or to be regarded by the Office as an unfair business practice, they should consider taking legal advice on the point. Their trade association, or local trading standards department, may also be able to offer advice.

Debt Collection Charges

10. In the Office's view, there is no legal basis for a creditor (or a debt collection agency acting on the creditor's behalf) to claim collection costs from a debtor in the absence of express contractual provision in the agreement between the debtor and the creditor. If there is no such provision, then collection charges cannot be demanded as a debt due under the agreement. If an

Footnote

The statutory references above should be read as references to the equivalent of the Northern Ireland provisions. See, in particular, Article 123 of the County Courts (Northern Ireland) Order 1981; Article 42 of the Judgments Enforcement (Northern Ireland) Order 1981; Article 3 of the Malicious Communications (Northern Ireland) Order 1988.

agency claims an entitlement to recover charges pursuant to a separate agreement with the debtor, there must be a binding contact to this effect, with legal consideration (i.e. benefit) provided to the debtor. A letter served on the debtor merely informing him that he is liable to pay certain charges is not in the Office's view such an agreement, regardless of whether it is signed by the debtor.

11. The above applies to all credit agreements, whether regulated or not, although for regulated consumer credit agreements there is an additional reason why costs might not be recoverable. The Consumer Credit (Agreements) Regulations 1983 require inclusion in the credit agreement of an indication of any charges payable on default. If this is not included, the agreement is not properly executed, and so will not be enforceable against the debtor without a court order.

12. It is the responsibility of creditors and debt collection agencies to ensure that they do not recover collection charges in the absence of an express contractual provision entitling them to do so. Furthermore, debtors should not be led or allowed to believe that they are legally liable to pay such charges where this is not the case. Failure to act in accordance with these principles is likely to be regarded by the Office as an unfair or improper business practice within section 25(2)(d) of the Consumer Credit Act and thus relevant to the issue of fitness to hold a consumer credit licence.

13. If there is any ambiguity in the debtor-creditor agreement as to whether it covers a particular charge, or as to the permitted amount of the charge, the Office considers that this should be resolved in favour of the debtor as this is the approach likely to be adopted by a court in construing the agreement. Furthermore, even if collection charges are provided for in the credit agreement, where charges are levied which are of an unreasonable amount and/or are disproportionate to the main debt, this too may be regarded by the Office as an unfair or improper business practice within section 25(2)(d) of the Consumer Credit Act. If firms are in any doubt they should consider taking legal advice.



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Tel: 028 9024 3141 JPH/CM/10648/11

Re: Mary T Campbell, Deceased (otherwise Maura Campbell), late of 14 Bryansburn Road, Bangor, Co Down.
Would any Solicitor having knowledge of the whereabouts of a Will of the above named deceased who died on 21st April 2000, please contact Mr Paul McEvoy, Solicitor, Messrs Murphy Kerr & Co, 1 Fitzwilliam Avenue, Ormeau Road, Belfast, Tel: 028 90 491146.

Re: Connolly, John Charles, deceased late of Mullaghconnolly, Roslea, Co Fermanagh and 75 Woodview Heights, Lucan, Dublin. Would any person who is aware of a will made by the above named deceased, who died on 12/2/00, please contact Murnaghan & Fee Solicitors, 37 Townhall Street, Enniskillen, Co Fermanagh, Tel: 028 66 322819 or Fax. 028 66 323073.

Re: Edward Richardson Cowan late of Laganvale Nursing Home, 37 Laganvale Mews, Moira, and formerly of 15 Hillcourt, Hill Street, Lurgan, 41B Lime Grove, Lurgan, 30 Spelga Park, Lurgan, and 49 Anagh Coar Road, Douglas, Isle of Man. Date of Death: 9th April 2000.

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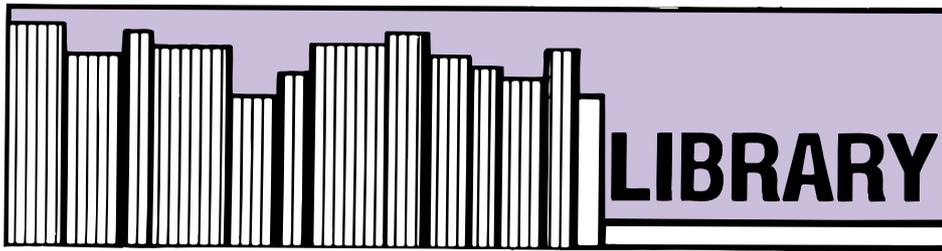
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HUMAN RIGHTS

- 1) Human Rights Act 1998
<http://www.hmso.gov.uk/acts/acts1998/19980042.htm>
 Full text of this act, which applies in Northern Ireland, may be found on Her Majesty's Stationery Office web pages. The act appears as originally passed by the UK parliament.
- 2) European Convention on Human Rights
<http://www.coe.fr/eng/legaltxt/5e.htm>
 Complete text of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4th November 1950. The text of the Convention has been amended by the various succeeding Protocols.
- 3) European Court of Human Rights
<http://www.echr.coe.int/>
 This site, which may be searched in English or French, contains some useful information on the composition and historical background of the European Court of Human Rights. There are links to pending cases, basic texts, press releases, and full texts of Court judgments and decisions. This site, while valuable, can be incredibly slow, at certain times of the day.
- 4) Committee on the Administration of Justice (CAJ)
http://ourworld.compuserve.com/homepages/comm_Admin_Justice/
 This up to date site includes press releases, the CAJ newsletter, recent key documents and the annual report. It also explains the work of the CAJ and lists membership details.
- 5) NI Human Rights Commission
<http://www.nihrc.org/>
 This site includes all press releases, speeches, articles and submissions by the Commission. It also has a section on selected acts which include, the Human Rights Act, Emergency Provisions Act and also the Bill of Rights.
- 6) Universal Declaration of Human Rights
<http://www.un.org/Overview/rights.html>
 This site contains full text of the declaration.

These site addresses are correct at time of publication.

New Books in the Library

1. Rubenstein: Discrimination; a guide to the recent case law on race and sex discrimination and equal pay. 13th ed. Eclipse Group. 2000
2. Rubenstein: Unfair dismissal; a guide to relevant case law. 18th ed. Eclipse. 2000
3. Criminal Justice Review Group: Review of the criminal justice system in Northern Ireland. The Stationery Office. 2000

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