Where there's a will...
News in Brief

- EVIDENCE BY TORTURE VETOED
In the case of A & Others v Secretary of State for the Home Department, the House of Lords has ruled that evidence obtained from abroad by torture cannot be used against terrorist suspects in UK courts.

- DOMESTIC VIOLENCE HELPLINE
The local 24 hour Domestic Violence Helpline (0800 9171414) is celebrating its tenth anniversary. Since its extension in 2005 as a free phone service available to all victims of domestic violence and further to follow up media campaigns, calls from male victims, people in same sex relationships and women living in rural areas has increased.

The Helpline is managed by the Women’s Aid Federation on behalf of the Department of Social Development and the DHSS&PS. Women's Aid Federation on behalf of the Helpline is managed by the areas has increased.

- C-U-IN-COURT
Magistrates’ courts across England and Wales could soon text fine evaders demanding they pay up, after the initiative was successfully used in the Midlands recently.

- REFORM OF CORRUPTION LAW
The draft Corruption Bill is a routine extension in 2005 as a free phone Helpline (0800 9171414) is celebrating the local 24 hour Domestic Violence service available to all victims of car theft.

- BELFAST SAFEST CITY FOR DRIVERS
Bellast is the safest city in the UK for accidents according to a recent survey carried out by Endsleigh Insurance. The results show that Belfast drivers are over 45% less likely than the company’s national average to make a motor accident claim. Bellast was also ranked seventh in the top ten safest cities for theft. London, Birmingham and Manchester are the top three most dangerous cities for accidents and Leeds, Bristol and Manchester the most dangerous for car theft.

- HOUSING EXECUTIVE RENTS INCREASED
A rent increase of 2.7% will be applied to NIHE properties from April 2006 and will add approximately £1.23 to the weekly rent, bringing the average rent to £246.81, excluding rates.

More than 75% of Housing Executive tenants receive Housing Benefit to pay some or all of their rent. However, the Department of Social Development is conscious that there are some tenants, particularly older people with small occupational pensions, who do not qualify for Housing Benefit. The Housing Executive has been asked to ensure that people living on the margins are not missing out on important benefit entitlement.

The Review will encompass a wide range of our regulatory activities. Particular attention is being paid to complaints handling. However other areas to be covered include discipline, rule making, the entry of students to the profession and CPD, the removal of reserved areas of work, alternative business structures and the permitting of external investment by non-lawyers.

In England and Wales this will result in a major dismantling of the Law Society as previously known. All of that Society’s regulatory functions will be completely removed from the Society and transferred to an over-arching super-regulator – the Legal Services Board. For some, there might be a temptation to say to that – good riddance, no loss. However the reality is that the profession will pay for all of this.

Complaints handling in England and Wales will be in the hands of a new body called The Office for Legal Complaints. The White Paper makes it clear that funding of the OLC should come in part from a general levy on the profession and in part as a payment from those against whom complaints are made (the polluter pays principle). Government will make no contribution to the costs of a body established by it, allegedly sets out to protect. We need to say to that – good riddance, no loss. However the reality is that the profession will pay for all of this.
We must be prepared to look at ourselves and in the manner in which we run our practices in the interests of our clients. The interests of consumers is not a new agenda item for solicitors. Sir David Clementi stated in his final report to Government on the review of legal services, and I quote “Research shows that complaints arise as much from poor business advice as from poor legal advice. If certain lawyers continue to reject the notion that they are in business, such complaints will continue until they are indeed out of business.” In this regard I agree with Sir David Clementi. A legal service in today’s world must be run like a business. All practices need a business plan - failing to plan is planning to fail. You need regular management meetings, management information, modern IT systems, case management systems, systems to prevent statute barred actions, an internal complaints procedure, growth and profitability strategies. You need to bring a business ethic to your practice. I strongly advise those who have not already done so to seek ISO and/or Lexcel accreditation. The Law Society will do all in its power to protect the network of local solicitors’ firms but we must equally do all in our power to modernise, and increase efficiency. Standing still is not an option.

CPD
The Society has recently appointed Eleanor McCabe as a new full-time CPD administrator. Her responsibility is to administer the CPD programme. She has two tasks. One, to monitor CPD returns but more importantly to organize and provide CPD events for the profession both centrally and for local solicitors’ associations. CPD will be linked to our insurance experience. We have identified those areas where we are most at risk. Conveyancing provides 42% of all claims against our insurance companies. Statute barred claims are the next highest.
CPD will therefore be made relevant to the clear needs of the profession and I intend that the development of CPD will be given a high priority during my year in office.

Nominated Charity

Lawyers are often accused of being self-interested. We are accused of being fat cats and of looking after ourselves and not others. This is, of course, an unfair image and Attracta Wilson, during her year as President, did much to debunk that image. For the first time ever the Law Society nominated a Charity. Thanks to your support and generosity and the efforts of Attracta, Joe Donnelly and others, the Law Society raised over £20,000.00 for CLIC Sergeant Cancer, a charity supporting the needs of children with cancer.

This year I have decided to follow Attracta’s example and am nominating Macmillan Cancer Care as my Charity for 2006.

Newly Qualified Solicitors.

I wish to congratulate all newly qualified solicitors. You should be proud of your considerable achievement. You have each gone through the examination system, A Levels, Degree, Institute of Professional Legal Studies and now you have your qualification. The end of compulsory exams has arrived.

Credit is due to you, your parents and families who will have sustained and supported you throughout your years of study.

I, of course recognise the significant contribution made by your Masters in the legal firms where you have qualified and the Society is grateful to those who take on and train young lawyers.

My advice to you is that you should value your qualifications, your independence as a lawyer and you should not allow yourself to be compromised in any way. But above all you should value your worth and you should charge accordingly. Enjoy the profession. If you commit to it and to the needs of your clients you will find it very enjoyable and very fulfilling.”

The New Presidential Team

Left to Right: James Cooper (Junior Vice-President), Rory McShane, President and Attracta Wilson (Senior Vice-President)

Where there's a will

Probate claims have never produced significant frequency under the Master Policy. Over the past 10 years there have been 93 claims producing an incurred position of £2,469,902. The average cost of a probate claim is £26,558.

The potential for a very large loss to occur however has always been present and one issue that has been the cause of some concern has been the increase in land values, especially land which has been zoned for development.

For example this can result in a small provincial practice or sole practitioner having a client who has a few acres of farmland valued between £40,000 - £50,000. However, in the event of the land being zoned for development, the value can increase significantly and could become worth many millions of pounds.

What can this mean for an insured firm?

The most obvious point of concern is the potential value of a claim should it be alleged the solicitor has been negligent or in breach of the duty owed either to his client or the beneficiaries under the will. It is of the utmost importance that firms bear in mind that the limit of indemnity under the Master Policy is £2million. Unless the firm has arranged for additional insurance beyond this amount they will be without cover in respect of damages and third party costs that exceed the £2million limit of indemnity.

There is also quite clearly, a lot more at stake. If the estate previously had only a small value then on balance the likelihood of a dispute or potential dispute being taken forward was much less likely. Conversely, if the value of the estate runs to millions of pounds, then it is much more likely that those disaffected persons will wish to take advantage of the situation and look to the solicitor for some form of redress.

What can firms do to protect themselves from a potentially catastrophic probate claim?

Firstly, it is essential they review their limits of indemnity and if necessary they should arrange additional cover.

Secondly, they should review their procedures on how they manage probate clients, preferably setting out what services they are providing by way of a detailed letter of retainer.

It should be borne in mind that the majority of claims under the Master Policy, not just those relating to probate, do not arise from a solicitor’s ignorance of the law, but are caused as a consequence of poor practice management.

Ensure therefore that you maintain a full and proper file that includes comprehensive attendance notes, which should be signed and dated. Follow up meetings or attendances upon your client with a letter to them setting out the detail of your discussion and
any consequences that may flow from decisions that your client may have made. Ensure your advice is clear and unambiguous.

If you are not dealing with certain matters such as tax planning, make sure you have confirmed this in writing with the client, preferably in your retainer letter.

Panel Solicitor’s Viewpoint

Sandra Crawford, a Partner in McKinty & Wright comments:

I agree entirely that the value of these cases is set to continue to rise with the increase in property values, so too the risk of litigation which to a significant extent depends on whether there is family wealth worth litigating over.

Following the decisions of Ross v- Caunters 1979 All ER 580 and White v-Jones 1995 1 All ER 691, the days when wills and probate could be regarded as low risk areas of a solicitor’s practice are gone. In the latter case the House of Lords held that where a solicitor accepted instructions to draw up a will and as a result of his negligence an intended beneficiary with the under the will was reasonably foreseeably deprived of his inheritance, the solicitor was liable for such loss.

Whilst the courts have adopted a commonsense approach to subsequent claims brought by beneficiaries, it is clear that solicitors need to effectively manage the risk of will drafting if they are to stand a reasonable chance of successfully defending a professional negligence claim.

I consider here various cases from the perspective of risk management in will drafting. It is not possible to highlight all of the problems that may occur in relation to the preparation of wills. In particular I will not consider the areas of soundness of the testator’s mind or questions of undue influence, important though they are.

Avoid Delay

In White v-Jones following a quarrel with his daughters, the testator executed a will cutting them out of his estate. A reconciliation ensued and the testator instructed his solicitors to prepare a new will including gifts to each of his daughters. Some 2 months passed before the solicitor made arrangements to visit the testator with the draft will. The testator died 3 days before this appointment. A successful claim was brought by the daughters against the solicitors.

Some 2 months passed before the solicitor made arrangements to visit the testator with the draft will. The testator died 3 days before this appointment.

Issue a Letter of Retainer

There is no hard and fast rule regarding the time in which a will should be executed following receipt of instructions. A period of between 5 and 7 working days is mentioned by various commentators and cases, but the question obviously has to be determined in accordance with the prevailing circumstances. In X v- Woollcombe Yonge (a firm) 2001 Lloyds Law Reports 272, the Court emphasized that the appropriate timetable to apply was a question of judgment for the solicitor rather than the judgment of the court. It is not the application of any abstract period and it stressed that the timeframe must inevitably depend on the individual circumstances in each case. Hooper v-Fynmores (a firm) 2001 demonstrates that it is incumbent on the draftsman to satisfy himself that any delay in executing a will (in this instance due to the cancellation of an appointment by the solicitor) would not be disadvantageous to the beneficiary. As well as addressing an appropriate and agreed timetable and recording it in writing, it would be prudent to keep attendance notes of cancelled appointments and to similarly record attempts to obtain instructions. In Atkins v-Dunn & Baker (a firm) 2004 WTLR 447 the Court of Appeal held that a solicitor who had sent a draft will to the testator had no duty to chase the client up. This is a case which turned largely on its own facts and cannot be viewed as a general authority that reminders are unnecessary. If a client does not provide instructions, ensure that all reminders are in writing and clearly explain to the client the consequences of their failure to execute and that the onus rests with them to take the next step.

“...must take the consequences”

per Denning LJ in Griffiths v- Evans (1953) 1WLR 1424. There should be a clear written understanding as to what the solicitor is retained to do and not to do. In Gray v- Blus Mortun (1999) PNLR 882 the testator made a “home made” will replacing an earlier will drawn

BluePrint Appointments is a market leader in legal recruitment. Our consultants are valued by both candidates and clients for their market knowledge, honest advice and ability to deliver results. Our reputation has been built on the professional & confidential service offered to candidates & clients.

Commercial Property Solicitor 3 yrs PQE
Our client, an established city law firm is seeking a Commercial Property Solicitor. With a solid background working for a good firm you will be keen to continue specializing in Commercial Property. Discover a workplace that is a true hive of activity and opportunity. ref: J026689

Temp Conveyancing/Litigation Solicitor £25k+
This friendly three Partner practice based in the heart of Belfast City Centre is seeking a temporary Conveyancing/Litigation Solicitor to cover maternity leave. You will deal primarily with Conveyancing work but also have experience of dealing with Plaintiff Litigation. Operating in a culture where people feel valued and rewarded for their contribution. ref: J0262428

Conveyancing Solicitor Lisburn
Our client, a thriving law firm based in Lisburn is seeking a Conveyancing Solicitor. You will focus significantly on Domestic Conveyancing work with a small amount of Commercial work. A small friendly practice where there are outstanding opportunities for proactive and ambitious individuals. ref: J026947

Residential Conveyancing Solicitor £25k+
A fantastic opportunity has arisen at a long established firm of Solicitors. Based in the heart of Belfast, you will focus on Residential Conveyancing. Ideally you will be very professional and capable of working on your own initiative when required. Our Client is happy to consider Solicitors with 1 year PQE and above. ref: J0264371

Senior Commercial Conveyancing Solicitor £Neg
Our Client, one of the leading commercial law firms in Northern Ireland are seeking a Commercial Conveyancing Solicitor to join their thriving team. You will preferably be 6+ yrs PQE and will take on the role of Head of the Department. A superb opportunity to join a forward thinking city based firm. ref: J0269447

For more details on these and other interesting opportunities contact Fionnuala or Katherine on 028 9032 3333 or e-mail legal@blueprintappointments.com

Continued on page 37
Frozen assets to be released to fund defence costs


The primary objective of the Regulations is to provide a means by which assets restrained by proceedings under the Proceeds of Crime Act 2002 can be released in a controlled way to meet reasonable legal expenses, and to ensure that respondents who do not qualify for civil legal aid have legal representation so proceedings in civil recovery cases can progress.

Introducing the new arrangements, Bridget Prentice, Parliamentary Under Secretary of State with responsibility for legal aid said that the Regulations would achieve a balance “that will ensure that the taxpayer does not foot the bill for defendants who can afford to pay their own legal costs, while ensuring that frozen assets are not misused to fund a champagne defence.”

The Northern Ireland Court Service has published a short paper outlining the effect of the Regulations. This is downloadable from www.courtsni.gov.uk – see Publications.

New police powers to tackle drug dealers

As a result of legislative changes to the Misuse of Drugs Act 1971 applying across the whole of the UK with effect from 1st January 2006, drug dealers who sell drugs in close proximity to school premises can expect higher sentences. Also the time that police can hold a person suspected of swallowing illicit drugs has been extended from 96 hours to 192 hours, subject to court approval.

The Drugs Act 2005 (Commencement Order No 4) amends Section 4 of the 1971 Act. It stipulates the circumstances when a court is considering the serious nature of a supply of drugs offence and if at the time the offence was committed the offender was 18 years of age and over, and the following two conditions are met, then they must treat these facts as aggravating factors and this must be stated in open court. The conditions to be met are that the offence must have been committed on or in the vicinity of school premises at a relevant time and if a courier was used, s/he must be under the age of 18 years. These legislative changes impact on any reported incidents from 1 January 2006.

Subject to the agreement of the court, the Commencement Order also increases the time available to the police to increase the maximum period that a person can be held from 96 to 192 hours.

Guidelines associated with the operation of these two sections have been issued and are downloadable from www.nio.gov.uk – see NIO Publications.

The terms “school” and “school premises” are defined in Northern Ireland terms under Article 2(2) of the Education and Libraries (NI) Order 1986. It is for the Courts to determine what constitutes “in the vicinity” of a school or school premises on a case by case basis. The Guidelines provide examples, but not an exhaustive list of situations that a court may consider.

The period of extended detention, increasing from 96 to 192 hours applies to anyone over the age of 17 years charged with an offence of possession or drug supply (drug trafficking), where it is suspected that a person has swallowed illicit drugs to avoid detection. This could occur if a drug courier steps off an aeroplane from a known drug supply country or in a situation where a property is raided and they swallow the evidence. This will provide time for the police to secure the evidence.

To date the number of incidents of offenders swallowing drugs in Northern Ireland has been relatively low, compared to other parts of UK.

Revised Youth Court Guidelines published

Revised Youth Court Guidelines, taking account of recent changes to the legislation dealing with youth courts, have recently been published by Court Service. The Guidelines address the particular needs of those who appear in these courts. They outline how the youth court is set up, who is involved, the responsibilities of those involved and the statutory arrangements for the working of the court. A copy of the document is available for downloading from www.courtsni.gov.uk – see Publications.

Youth Court practitioners should also note that the recent seminar held at Law Society House on “The Changing Face of the Youth Court – Developing Legal Expertise” will be held in Newry on 22nd March and in Omagh on 24th March – see page 22 for further details.

Community based restorative justice

Recommendation 168 of the Criminal Justice Review identified that community-based restorative justice schemes could have a role to play in dealing with the type of low level criminality which concerns local communities, but that this role must be dependent on certain conditions and safeguards and conditions being in place.

Draft guidelines operationalising the review safeguards have now been drawn up. Views and comments are sought thereon both in general terms and on the specific issues identified in the foreword to the document, a copy of which is accessible from www.nio.gov.uk. The closing date for the receipt of comments is 24th February 2006.
Further reports from Criminal Justice Inspectorate

The Criminal Justice Inspectorate (CJI) has recently published two further reports:

**INSPECTION OF FORENSIC SCIENCE IN NORTHERN IRELAND**

The CJI report on Forensic Science in Northern Ireland was published in December. It contains a number of recommendations which are aimed at sustaining and strengthening the laboratory as it undertakes a programme of modernisation and change and prepares for the building of a new laboratory. This includes a review of its governance strategy, including its relationship with the Northern Ireland Office and the strengthening of its customer relationships.

The report recommends a strengthening of the laboratory’s management and scientific expertise and calls for the appointment of a change manager as well as the implementation of succession strategies. Improvements to service delivery are recommended in areas such as crime science attendance, management and use of forensic science databases, fingerprints, accreditation and the turnaround times for reports – major improvement has already been achieved in timescales for DNA analysis.

**INSPECTION OF SCIENTIFIC SUPPORT SERVICES IN THE PSNI**

An inspection of scientific support services in the PSNI was jointly undertaken by CJI and Her Majesty’s Inspectorate of Constabulary and published in December. The Inspectorate’s overall assessment was that the PSNI is providing a valuable forensic science service, though some improvements are necessary. The increasing reliance on forensic science in the investigation of crime requires an enhancement of its status and capability within the Service, including the nomination of a ‘champion’ for volume crime (e.g. theft; burglary; car crime) and improved communication and conditions of employment for civilian scientific staff such as Crime Scene Investigators.

The report recommends that an urgent review should be carried out of all critical forensic policies and that a comprehensive, corporate suite of policies is readily available to all staff. Inspectors drew particular attention to the storage, retention, management, weeding and destruction of forensic science exhibits from crime scenes.

An improved working relationship between PSNI and the Forensic Science laboratory is noted and it is recommended that more joint strategic planning should be undertaken in areas such as the submission of exhibits.

Full copies of the reports are available from www.cjini.gov.uk

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**FORM PACE 24A - HANDLING OF PACE TAPES**

Members are reminded that the PACE 24A form includes the following undertaking as to the handling of PACE tapes:

“We undertake as solicitors of the Supreme Court, that save as mentioned hereafter, following receipt from you of a copy of the tape recording of our client’s interview, we shall either retain or destroy the copy tape and any sub-copy thereof made by us. We further undertake, as aforesaid, that we shall not without your written authority release the copy tape or any sub-copy thereof to any person except to counsel instructed as aforesaid we shall obtain from such counsel a written undertaking not to make any further copy of the tape and to retain the copy tape supplied to him or her until such time as it is either destroyed or returned to us.”

If the PACE tapes are not being returned to PSNI, special care must be taken to ensure their effective destruction. In particular, tapes must be put beyond use and not disposed of in any way which permits identification of the interviewee. Furthermore the accompanying tape cover documentation should be removed and destroyed separately.

Failure to dispose of tapes effectively can lead not only to breaches of client confidentiality, but also to the identification of third parties who have been named therein.
Advance Notice:

**PACE Event at the Institute of Professional Legal Studies**

**Police and Criminal Evidence Conference**

Monday, 15th May 2006

The interrogation of suspects is considered to be one of the most crucial stages in the investigative process, therefore it is essential that it is carried out in an efficient and ethical fashion. The time a suspect spends in police custody remains the most critical of the entire criminal justice process. Suspects under investigation will look to their solicitors not only for advice, but often the very presence of the solicitor suffices to ensure that the suspect is treated properly. However the solicitor must always be ready to intervene where any breaches of the rules occur.

The new landscape that has been created by the Criminal Justice Act 2003 is fast taking shape. Many parts, including bad character evidence, are in force. April 2005 saw the implementation of the provisions on disclosure and hearsay evidence and these have provoked great concern.

The Institute of Professional Legal Studies is proposing to run a conference dedicated to the Police and Criminal Evidence legislation and its implications for advising the suspect in custody. This forthcoming PACE conference is the ideal forum to familiarise yourself with the latest developments.

The confirmed speakers include local practitioners, Tony Caher, Solicitor and Mark Mulholland, Barrister, with the keynote speaker being Anthony Edwards.

Anthony Edwards is a solicitor and Senior Partner of T.V. Edwards, London. He is a Past President of the London Criminal Courts Solicitors’ Association, a Member of the Council of Justice and a member of the Editorial Board of the Criminal Law Review. He is also a Member of the Legal Services Commission and the Sentencing Guidelines Council. His books include Advising the Suspect in the Police Station and (with Roger Ede) Criminal Defence: A Guide to Good Practice.

For further information contact Kate McKnight on 028 9097 5567 or via e-mail at k.mcknight@qub.ac.uk. An application form and more detailed information on this event will appear in future editions of The Writt.

This seminar will attract 6 hours CPD points.
LSC supports Collaborative Law pilot project

In what is the first publicly funded pilot of its kind in the UK, the Northern Ireland Legal Services Commission has agreed to pilot a Collaborative Law project with qualified and trained collaborative lawyers from the Association of Family Collaborative Lawyers, with a view to identifying the best model for delivering publicly funded Collaborative Law.

The first phase is a pre pilot scheme which commenced in January 2006, running between the months of January and June 2006. The pre pilot will be evaluated to determine the success of the Collaborative Law model. A sample of ten cases will be assessed during that time. Practitioners are advised that should a suitable case become available in their practice during these months, the process will be as follows:

1. Use the Green Form Scheme to identify and promote Collaborative Law up to and including to the point where a Participation Agreement is signed.

2. Once the Participation Agreement has been signed, an application for a full certificate should be made on the usual A2 forms with the accompanying CLA4 and enclosing a copy of the Participation Agreement. This application should be clearly marked as being a Collaborative Law Application and should be sent to the Legal Services Commission, marked for the attention of Eamonn Broderick.

The Legal Aid Assessment Office in Asylum Road,

3. Londonderry, will process applications promptly within a week to facilitate Collaborative Solicitors to effectively engage in the collaborative process.

4. Once the application has passed the merits and finance tests and a civil legal aid certificate has been granted, a payment of one third of the total fee (£500) will be made to the Collaborative Lawyer. The collaborative process can then take place.

5. If collaboration fails and the parties find alternative solicitors, practitioners will be entitled to keep the first payment.

6. If collaboration succeeds, submission of the Matrimonial Agreement will trigger another payment of two thirds of the total fee.

Practitioners should note that the totality of the payment for the finalisation of the Matrimonial Agreement during the period of the pre-pilot scheme is £1,500 ie £500 on award of a certificate and a further £1,000 after a Matrimonial Agreement has been reached and submitted. Representations have already been made to the Legal Services Commission with regard to the amount of extra fees and costs which will be required for the solicitor to process a divorce in the County Court and have the Matrimonial Agreement made an Order of the Court.

The process is being evaluated by an independent body. It is hoped that the outcome will encourage the Legal Services Commission to move forward with the collaborative process. With regard to future negotiations on the quantum of payment, it will be vitally important for all practitioners involved in the pre-pilot scheme to take a careful note of times involved, as this will be crucial in our negotiation with Legal Services in relation to the fee payable for the actual pilot scheme which hopefully will commence in the second half of 2006.

Details of all trained collaborative lawyers are now included on the website www.afriendlydivorce.co.uk

There is also a site reserved for members only so that practising collaborative lawyers can exchange news, views and ideas and seek assistance from others who have undertaken training.

Based in Belfast, Carson McDowell offers outstanding opportunities for career development in a rapidly evolving field. Salary will be commensurate with background, experience and potential to fulfil the challenge.

To apply:

Please forward your CV and covering letter for the attention of Michelle McBride, Carson McDowell, Murray House, Murray Street, Belfast BT1 1DN.

Applications should be received no later than Friday 17th February 2006

TAKE YOUR LEGAL CAREER TO THE TOP

Join the property specialist team declared ‘excellent’ by Chambers Guide to the Legal Profession 2005. The Commercial Property Department is a key area within Carson McDowell, one of Northern Ireland’s leading law firms providing wide-ranging legal expertise for clients throughout Northern Ireland and beyond.

Having received a substantial increase in instructions from new and established clients, we’re now responding to the challenge by making a number of senior appointments within our Commercial Property Department. Candidates should be academically strong, qualified at least 3 years, with an active interest in property law. Commercial experience, though highly desirable, is not essential.

Based in Belfast, Carson McDowell offers outstanding opportunities for career development in a rapidly evolving field. Salary will be commensurate with background, experience and potential to fulfil the challenge.

To apply:

Please forward your CV and covering letter for the attention of Michelle McBride, Carson McDowell, Murray House, Murray Street, Belfast BT1 1DN.

Applications should be received no later than Friday 17th February 2006
Child Contact Centre opens in Armagh

A new service aimed at supporting separated families in arranging contact with children has been launched in Armagh.

Armagh Child Contact Centre will be held at Crozier Hall in the grounds of St Mark’s Col Church. It will open from 10am to 12 noon on the first three Saturdays of each month, providing a safe comfortable environment where non-resident parents can interact with their children. It will accept families where no significant risk to the child or those around the child has been identified. The Centre is part of a national framework of similar centres and operates under guidance from the NACCC – National Association of Child Contact Centres.

Referrals to the centre are made by social workers, solicitors and by parents. For those wishing to obtain a copy of the Centre’s “Guidelines for Referrers”, more information on its service or to discuss a potential referral, please telephone the Centre Co-ordinator on 07914959377.

On the page opposite we list details of the membership of the NI network of Child Contact Centres.

It will open on the first three Saturdays of each month, providing a safe comfortable environment where non-resident parents can interact with their children.
Commercial Property Solicitor

Belfast

Our client is one of the leading commercial law firms in Northern Ireland. With a client base of local, national and international businesses and entrepreneurs, their main areas of expertise are commercial litigation and commercial property. They are currently seeking an experienced Commercial Property Solicitor with at least 5 years’ PQE to build and develop an existing client base. Ref: 3457.

General Solicitor

Co Down

A superb opportunity has arisen with a dynamic, progressive and expanding practice recognised as a leading firm which provides legal services to business and private clients throughout Northern Ireland. Our client wishes to recruit an experienced Solicitor with a strong knowledge in both conveyancing and litigation. With four offices across Northern Ireland this busy practice offers plenty of potential to an ambitious Solicitor Ref: 3555.

Conveyancing Solicitor

Co Tyrone

Well respected country practice which has offered a professional service to their clients for over 20 years wishes to recruit a Solicitor with expertise in residential conveyancing to carry on a busy work load and develop new business. Matrimonial knowledge would be beneficial. Opportunity for career advancement. Ref: 3574.

Criminal Law Solicitor

Belfast

Client focused firm has a vacancy for an Assistant Solicitor with Crown Court experience. Fantastic opportunity to work in a firm with an excellent client base. This role would suit 1 year + PQE. Ref: 5986.

Litigation Solicitor

Belfast

Our client is one of the most highly regarded Solicitors’ practice in Belfast. Their litigation team advises a wide range of clients including a variety of major insurers, transport companies and commercial and private clients. Due to increased work load they wish to recruit an experienced Defence Litigator with a desire to succeed. This role would suit 1-2 years’ PQE. Ref: 3614.

Conveyancing Solicitor

Belfast

Expanding firm with two offices in the Belfast area wish to recruit an experienced Solicitor; residential conveyancing and commercial experience would be beneficial. This is an excellent opportunity to join a dynamic, young firm which offers both career opportunities and an excellent benefits package. Ref: 2873.

Newly Qualified Solicitor

Belfast

Our client, a growing medium sized practice which offers a broad range of legal services to their clients, is seeking a Newly Qualified Solicitor keen on pursuing a career within a general practice. The main areas are litigation and conveyancing. This is an ideal opportunity for a candidate who would like to progress within a Solicitors’ office. Ref: 3603.

Conveyancing Legal Executive

East Belfast

Busy, prestigious practice with a superb reputation have a vacancy for a legal executive with expertise in residential conveyancing. Law degree not essential! Suit 3 years’ + experience of handling own conveyance files. Ref: 3596.

Preparing for Associateship Management Training Seminars for Assistant Solicitors

As your career progresses, the ongoing development of your core legal knowledge is a given, but what about your management skills?

In the modern workplace they are equally valued and must be developed in partnership with other skill sets.

We at PRG appreciate this and would like to invite Solicitors between 1 and 5 years PQE to our seminars to be held in Belfast. They are free of charge with complimentary refreshments.

The seminars will be presented by Catherine Bowie Training Services. Catherine has been training in the field for the past 8 years and has a wealth of experience. Her specific areas of expertise are in Client Care and Interpersonal Skills and her client base includes: 4 of the top 10 Scottish Law Firms, leading firms in other professions, major Corporate Blue Chips and large Public Sector bodies.

To book please contact - Orla Stewart 02890 314644 orlastewart@prglawsearch.com
CPD Training Programme
March - June 2006

The Law Society of Northern Ireland is pleased to announce the launch of its CPD training programme for the first half of 2006, providing accessible, affordable and relevant training and education to solicitors throughout Northern Ireland. The events in the programme vary from short afternoon sessions to two day residential courses, and cover a wide range of topics.

If you would like to reserve a place at one of the events below, please complete the attached booking form, or if you require further information, contact Eleanor at 028 9023 1614 or via e-mail at eleanor.mccabe@lawsoc-ni.org.

Alternatively, access course information and download a booking form from our website at www.lawsoc-ni.org.

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<td>22 March</td>
<td>Freedom of Information – Friend or Foe</td>
<td>City Hotel, Derry</td>
<td>£30</td>
<td>12.30 - 2.30</td>
<td>1½</td>
</tr>
<tr>
<td>23 March</td>
<td>The Changing Face of the Youth Court</td>
<td>Canal Court Hotel Newry</td>
<td>£60</td>
<td>1.00 - 4.30</td>
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<tr>
<td>24 March</td>
<td>The Changing Face of the Youth Court</td>
<td>Omagh College</td>
<td>£70</td>
<td>12.30 – 4.30</td>
<td>3</td>
</tr>
<tr>
<td>10 April</td>
<td>Client Care for Family Practitioners</td>
<td>Laganside Court Belfast</td>
<td>£90</td>
<td>9.30 - 12.45</td>
<td>3</td>
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<tr>
<td>10 April</td>
<td>Client Care for Family Practitioners</td>
<td>Laganside Court Belfast</td>
<td>£90</td>
<td>1.30 – 4.45</td>
<td>3</td>
</tr>
<tr>
<td>12 May</td>
<td>High Court – Recent Developments in Litigation</td>
<td>Law Society House Belfast</td>
<td>£90</td>
<td>1.00 – 4.30</td>
<td>3</td>
</tr>
<tr>
<td>16 &amp; 17 June</td>
<td>Client Care and Practice Management (two day residential)</td>
<td>Details to be confirmed at a later date</td>
<td></td>
<td>10 +</td>
<td></td>
</tr>
<tr>
<td>14 June</td>
<td>An Insolvency Update for Corporate and Commercial Lawyers</td>
<td>Laganside Court Belfast (videoconference)</td>
<td>£90</td>
<td>1.30 – 4.45</td>
<td>3</td>
</tr>
</tbody>
</table>

We also ran two all-day seminars on the following topics:
- Preparing for the Deal – Due Diligence presented by Ian Coulter of Tughans Solicitors
- Tax Warranties and Covenant – What Every Lawyer Should Know presented by Janele Jones of Ernst & Young
- Freedom of Information – V isions presented by Ian Coulter of Tughans Solicitors
- Limited Liability Partnership presented by Stephen Cross of Cleaver Fulton Rankin

We ran two all-day seminars on the following topics:
- Joint Ventures – Practical Pointers presented by Paul Waddell
- Small Business Sales – What The Text Books Don’t Tell You presented by Keith Lawton

The Group was established primarily to promote the interests of solicitors working in Northern Ireland practising in the field of company and commercial law. Our aspiration was to deliver two half day seminars per annum along with a number of lunchtime seminars on relevant topics. We are happy to report that we achieved our goal by providing 4 lunchtime seminars covering the following topics:

The Group was delighted at the high attendance at all of the events which we believe is testament to the demand for relevant, convenient and cost effective training events. In 2006 we hope to continue the programme of lunchtime seminars and all-day seminars and to organise some social events to show that we are not "all work and no play!"

Details to follow in forthcoming editions of the Wint.

The remaining committee members are:
- Sarah Burrows, John McKee & Son
- Nigel Hamilton, Morrow Wells
- Barbara Jemphrey, PLG
- Olive O’Neill, Solicitor
- Neasa Quigley, Tughans Solicitors
- Andrew Talbot, Cleaver Fulton Rankin
- Mark Thompson, Arthur Cox
- Leanne Whaley, Carson McDowell

To renew membership or enrol as a new member, please complete the attached form. The membership fee remains at £20.00 and considerable discount is given to members for any seminars run by the Group. Please complete the attached form and return with membership fee to Claire Seymour, L'Estrange & Brett.

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MEMBERSHIP FORM
I enclose a cheque for £20.00 made payable to "The Company and Commercial Lawyers’ Group.

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Firm: ________________________________
Address: ________________________________
Telephone (Work): ________________________________
E-mail: ________________________________

Postcode: ________________________________
Cheque enclosed: (made payable to “Law Society of Northern Ireland”)
**Pye in the sky**

One hopes that the UK will appeal the decision in *Pye v United Kingdom* to the Grand Chamber of the European Court of Human Rights. The request, however, must be made within 3 months from the date of the judgment of the seven judge Chamber. It will be considered by a panel of five judges, and only accepted:

- if the case raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto, or a serious issue of general importance.

If an appeal is not brought, then the issues set out in my last case-note (see Vol No. 169) will have to be addressed by both the courts and the legislature.

Pending clarification of whether or not an appeal would be brought, I would, however, draw attention to three issues that have been raised in recent weeks, namely:

- declarations of incompatibility;
- what the courts are to do when faced with a decision of the European Court such as *Pye*;
- whether Pye applies to those adverse possession cases where the 12 year time limit ran prior to the commencement of the Human Rights Act 1998.

It must be remembered that both the Land Registration Act (NI) 1970 and the Limitation (NI) Order 1989 are not pieces of primary legislation. They are both subordinate legislation in accordance with section 21(1) of the Human Rights Act 1998. Thus if the relevant provisions cannot be interpreted in a way compatible with the Human Rights Convention, and if the primary legislation does not prevent removal of the incompatibility, then the Court has power to declare the relevant provisions unlawful and to strike them down - see Re King (2002) NIC 48 and Re Quinn, a bankrupt (2003) NICH 9.

In *Price v Leeds City Council* (2005) EWCA Civ 289 the English Court of Appeal held that where a House of Lords decision conflicts with a subsequent decision of the European Court of Human Rights in relation to the ECHR, inferior courts are bound by stare decisis to follow the decision of the House of Lords. Not surprisingly, an appeal was brought against the decision to the House of Lords. It was heard in December 2005 and judgment is awaited.

As regards pre-HRA running of time, most commentators seem to take the view that the ECHR is inapplicable. However, an interesting development in statutory interpretation has appeared in the English Court of Appeal decision in *Commissioner of Police for the Metropolis v Hurst* (2005) EWCA Civ 890. The issue involved the resumption of an inquest in respect of a death, which had occurred prior to the commencement of the 1998 Act.

Although the House of Lords had held in *Re McKerr* (2004) UKHL 12 that the obligations imposed by the 1998 Act did not apply to deaths occurring prior to the commencement of the 1998 Act, the Court of Appeal managed to distinguish the decision by holding, inter alia, that even before the 1998 Act came into force the coroner, when exercising his discretion whether to resume an inquest, had to take into account the UK’s international obligations.

The House of Lords had not held that in no case could section 3 of the 1998 Act be applied to circumstances existing before the implementation of the 1998 Act. There were very strong reasons of public policy, as well as reasons relating to the UK’s obligations under the Convention, why a limited retrospective interpretation should take place. Thus the domestic legislation had to be construed not only in the light of the 1998 Act but also to give effect to the UK’s international obligations. It remains to be seen whether or not this case will also go to the House of Lords.

All in all, we appear to still be in a “wait and see” mode. I understand that applications for both first registration and section 53 applications in the Land Registry are being put “on hold” for the time being.

We are grateful to E.J. David McBrien LLB, LLM, Barrister-at-law of the Inn of Court of Northern Ireland and of the King’s Inns, Dublin for this article.

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**Success of Conveyancing Conference**

The recent series of Conveyancing Conferences were attended by over 550 solicitors at venues in Belfast, Limavady and Armagh. Mr Justice Morgan who chaired the Belfast session was most praiseworthy of the event itself and the quality of the lectures given.

It is clear from the feedback which we have received that Society members want quality CPD and they prefer it to be provided by the Society at a reasonable price and with any profit earned going back into the Society.

It is hoped that a similar type event for conveyancing practitioners will be held in late 2006.

---

**STEPHEN DONAGHY**

**AUTOMOTIVE CONSULTING ENGINEER**

**LAVELLE COLEMAN SOLICITORS**

**51/52 Fitzwilliam Square, Dublin 2, Ireland**

**DX 109010 Fitzwilliam.**

**Tel:** (353) 6619912

**Fax:** (353) 6619912

**E-mail:** law@lavellecoleman.ie

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**Animal Nutrition & Agricultural Consultants**

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**Tel:** (028) 9266 1766

**Fax:** (028) 9266 1128

**Email:** info@mcilmoyleassociates.co.uk

**Website:** www.mcilmoyleassociates.co.uk

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Work in progress - Tax update

The Chancellor announced in his Pre-Budget Report on 5th December 2005 that solicitor firms and many other service businesses will be able to spread, over periods of up to six years, the tax liability arising from a recent amendment made to existing accounting principles known as UITF 40.

UITF 40 was issued in March 2005 and it changed the way that service providers account for revenue and work in progress. Research had shown that the tax bills of many firms could be increased by up to 100% because UITF 40 now requires them to recognise income before an invoice has been issued to the client. In other words, the firm would have to pay tax for work in progress before it was completed and before the client had paid for the services performed. There were fears that some smaller firms, especially those doing legal aid work, might be vulnerable.

In his Pre-Budget Report the Chancellor said that the Government will legislate in the Finance Bill 2006 to allow most businesses affected by UITF 40 to spread the extra tax charges over three years, and up to six years in more serious cases. Details of the relief scheme will not be known until the legislation is introduced. All firms would be well advised to raise the matter with their accountants now so as to be fully prepared to meet the situation.

Risk Management

Personal Injury Claims – Republic of Ireland

Personal injury actions outside this jurisdiction have always given rise to a significant number of claims against the Master Policy for Professional Indemnity Insurance. These arise normally because of failure to appreciate procedural and legislative differences in other jurisdictions – most notably time limits. The coming into operation of the Personal Injuries Assessment Board (PIAB) in the Republic of Ireland, pursuant to the operation of the Personal Injuries Assessment Board (PIAB) in the Republic of Ireland, pursuant to the Personal Injuries Assessment Board Act 2003 has changed a system which hitherto was similar to that existing in Northern Ireland.

Section 50 of the PIAB Act freezes the period of limitation for the time being on the date of receipt of an application by the PIAB and ending 6 months after the date on which PIAB issues an authorisation or waiver in respect of the claim.

However, section 3 of the PIAB Act specifically excludes medical/clinical negligence actions from the scope of PIAB. They continue with a 2-year limitation period.

The net effect is that the PIAB Act effectively extends the limitation period for ordinary personal injury/accident claims by approximately 18 months. Victims of medical or clinical error are subject to a shorter limitation period.

Further complications include the necessity under section 10 of the Civil Liability and Court Act 2004 to commence personal injury actions by a personal injury summons – a long form Statement of Claim containing a considerable amount of detail. Some of this detail may not be readily available within the two year limitation period.

If you are involved either directly or through agents in medical/clinical negligence cases in the Republic of Ireland, beware! Even if you instruct agents, liability will in all probability rest with you.
IN THE HIGH COURT OF JUSTICE
IN NORTHERN IRELAND

Practice Guidance Note (Probate)
Oath to apply for grants for representation/Inheritance Tax Certificates

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

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

‘To the best of my (our) knowledge, information and belief the gross estate passing under the grant does not exceed £……. [the IHT threshold] and the net estate does not exceed £…… [the net estate figure as it appears in form IHT 205 (or where the deceased died domiciled outside the United Kingdom, form IHT 207) but rounded to the nearest £1,000] and this is not the case in which an Inland Revenue Account is required to be delivered.’

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

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

(3) For estates which are not excepted estates:

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

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

Guidance Note

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

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

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

Over £23,000 raised for Solicitors’ Benevolent Association

Almost 500 copies of the Second Edition of Arthur Moir’s Land Registration Manual have been sold. As with the First Edition, the author has directed that any profit from the publication should be donated to the benefit of the Solicitors’ Benevolent Association. This most generous offer has resulted in the magnificent sum of £23,440 being recently presented to the Association.

The directors of the Association are drawn from the 32 counties and John Gordon (Napier & Sons), Caroline Boston (John Boston & Co) and Colin Haddick (Russells) are the Northern Directors.

Accepting the cheque on behalf of the Association, John Gordon said, “This is one of the largest single donations ever received and the Association wishes to acknowledge the extraordinary generosity of the author Arthur Moir and the invaluable assistance of the Law Society of Northern Ireland in raising this sum.

“The Association relies on the support of our members to bridge the gap between our regular income and expenditure but also, very importantly to keep us in touch with people in need in all areas. This enables us to carry out the task of considering cases and providing benefits and advice to those in need. To cover the ever greater demands on the Association, additional subscribers are more than welcome as of course, are legacies and the proceeds of any fund-raising event, large or small. Subscriptions and donations will be received by any Director or anonymously by the Law Society.”

A small number of copies of the Manual are still available from the Society at a cost of £50 – an Order Form is downloadable from the Society’s website www.lawsoc-ni.org
Risk Management

Conducting Initial Interviews

This column has often emphasised the importance of getting the creation of the retainer right. Do this and the risk profile of a matter will immediately be reduced. Get it wrong and it will most likely be the start of the downward spiral to a claim.

A key aspect of this is the initial client interview at the start of the transaction. The objective is to obtain all relevant information from the client to enable the solicitor to advise appropriately so that the client may make an informed decision as to what he wishes to do, and then instruct the solicitor accordingly.

At too often the initial letter of claim sent to a solicitor alleging negligence states that ‘had our clients been aware of these facts, they would not have instructed you in the manner that they did.’

Interviewing clients requires a considerable degree of skill, much of which is acquired through experience. Young fee earners need training in this area before seeing clients on their own. An effective way of learning is to sit in an area before seeing clients on their own. Young fee earners need training in this area before seeing clients on their own. An effective way of learning is to sit in the manner that they did’.

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It is crucial that the fee-earner obtains all the relevant facts, as a failure to obtain complete instructions at the outset merely increases the chance of a misunderstanding between the fee-earner and the clients at a later date.

When taking instructions, it is easy to get side-tracked into complex issues affecting the client and to overlook requesting basic information. This is where a standard checklist of questions may assist.

Be careful about giving advice or opinions based simply on initial instructions. There is sometimes a temptation to get involved in ‘client pleasing’ and give the advice that perhaps you think that client wants to hear. Manage the client’s expectations, advise what will have to be done and how long it may take before a detailed opinion may be given as to the outcome of the matter. If the instructions relate to a litigious matter, remember to undertake a cost-benefit analysis of the matter to ensure that the client is under no illusions as to how much it may cost to achieve a particular outcome.

Keep a written record of the initial interview and, if possible and appropriate, agree it with the client.

This column was prepared by AFP Consulting, a division of Alexander Forbes Risk Services UK and first appeared in The Gazette, the journal of the Law Society of England and Wales, 102/33 1 September 2005.

LSNI NOTE: Instructions which are received from a third party acting on behalf of a client should be confirmed directly with the client. Confirmation of instructions should be obtained in writing. Care should be taken where a third party is involved, irrespective of the client being present, to ensure that the client is not subject to undue influence.

Tough Love

“One of the hardest things to do, either in a personal or professional capacity, is to sit and watch as someone you care about, know and respect, becomes engaged in a self-destructive pattern of behaviour. This is usually quite obvious when the behaviour is something such as drinking too much, abusing drugs or nicotine, or bingeing on food. However, it is not quite so simple if you widen the perspective to encompass reacting stressfully to various situations over so long a period that the individual begins to suffer emotional and physical consequences as a direct result of that stress.

Such long-term stress can cause the destruction of personal relationships, excessive mood swings and irritability, loss of confidence and self esteem, lack of creativity and productivity, poor decisions, deteriorating public relations and expensive mistakes. It is emotionally demanding and negatively affects not just the individual concerned but their family, home life and workplace environment as well. From both a personal and an employment viewpoint, it can be traumatic to have to end an intimate, familial or working relationship.

Perhaps this is a valued relation, a friend, or an employee who has served well for many years? It would surely be far better to correct the problem and restore the individual concerned to a proper work/life balance?

Many people have had to look on helplessly as they watch a friend, partner, family member or colleague immerse himself/herself in destructive behaviour, apparently unaware of the damage that may be done, not only to themselves, but also to others.

Are we truly helpless? Is there nothing that we can do in these situations to help the individual see what is happening around and to them? Where do we draw the line between helping and interfering in another person’s life? Quite simply put, what can we do to help a person accept help?”

A common scenario might go as follows.

An individual is identified as suffering the consequences of stress to an unacceptable level and seems to be ignoring, or rejecting, all attempts to help or to discuss the matter. Family and work colleagues cannot cope with the side effects any longer. The idea of an intervention is raised and this may initially leave family, friends and colleagues rather apprehensive and confused. They may be ambivalent about whether to participate, some may be afraid of this person, and some may be angry about his/her behaviour. However, the importance of family and colleagues must not be underestimated, as together they form a powerful emotional lever.

A focal person would be identified as the leader of the intervention. This would most likely be the individual’s wife/husband or partner. It would be this person’s responsibility to co-ordinate the intervention, identify others who could be involved, including other family members.
and concerned parties if possible, or appropriate. This focal person will explore the possibilities and options and prepare what is going to be said. This preparation often involves several meetings and telephone calls with the others involved and may culminate in a practice session, prior to the intervention day. A comfortable, friendly and non-threatening location is imperative in conducting a successful intervention and for this reason, the workplace is unlikely to be chosen.

Interventions work best when the person concerned does not know about them in advance, but sometimes this is not possible. The risks of prior knowledge are that the person will avoid the situation, or refuse to attend, but usually, with the help of the family, this will not happen. On the day of the intervention, the person must hear from the assembled group about how valued he/she is as a father or mother, brother or sister, friend or colleague, but the individual’s best interests at heart. This kind of interfering can save lives and it is called a simple intervention. It is far preferable to the other type that many of you will have heard of i.e. crisis intervention. It is always preferable to deal with a situation before it becomes a crisis.

If you or someone you love is suffering from intolerable stress, you / they do not have to suffer alone. LawCare is there for you. Our offices are close to Courts, Government Buildings and Commercial Centre. Fee splitting by arrangement. Helpline: 0800 279 6888 9am - 7.30pm Monday to Friday and 10am - 4pm Saturday and Sunday / Bank Holidays.

**REVIEW OF GROUND RENTS ACT (NI) 2001**

The Office of Law Reform has produced a discussion paper which sets out the background to the Act and invites comment on the voluntary scheme’s operation. Copies of the paper may be obtained from the Office of Law Reform, Lancashire House, 5 Linnenhall Street, Belfast BT2 8AA, or online at www.alni.gov.uk.

Responses are requested by 28th February 2006.

**Companies Registry goes online**

Access Company Information from your Office or Home

Company information can now be accessed from office or home, with the launch of a new, quick and easy online service set up by the Department for Enterprise, Trade and Investment's Companies Registry.

**FREE COMPANY INFORMATION ONLINE**

Basic company information is available online for free and it's straightforward to access by logging on to www.companiesregistry.deni.gov.uk for access to a wealth of information such as:

- **Company details**
  - Registered office address
  - Date of incorporation
  - Current status
  - Last accounts filed
  - Last return filed
  - Principal activity
  - Number of mortgages registered

- **Mortgage Index**
  - An index of mortgage details and satisfactions for each company is also available to view online. This includes details of the charge registered and charge created dates for each mortgage in a company’s name. There is also the option to order copies of the mortgage details.

- **Disqualified Directors’ Register**
  - A database of information on persons disqualified from acting as directors of companies is also available to view online for free. The information includes the date of disqualification, disqualification type, company name and registered address.

**Purchase Documents Online**

A new comprehensive company profile is available for a fee of £1.

- **The Company Profile includes:**
  - the date of registration
  - the principal activities of the company
  - the company’s officers, in directors, secretary
  - detailed particulars of mortgages in the company’s name
  - all documents filed by the company
  - details of a company’s shareholders

**Specific company documents are available for a fee of £1 each.**

Company documents available include:

- accounts
- annual returns
- change of directors/secretary
- change in registered address
- mortgage registration
- memorandum and articles of association
- special extra resolutions
- resolution to change name

Once you have requested the information, you can pay either by credit/debit card or by setting up an online account and the information will be emailed straight to you.

Companies Registry is confident that users will find the new system beneficial and easy to use. Customers who do not have access to the internet may still use the other channels of information still available.

- **Hard copy files**
  - Files may still be ordered via the front office as before, with next-day delivery service continuing to be available.

**Contact centre**

The Registry’s telephone contact centre (0845 6048888) continues to deal with search requests and general enquires. Documents can be ordered from the contact centre for £3 each and £3 per Company Profile. However, the new online service offers a more convenient and cost effective method for customers to access information.

Just log onto www.companiesregistry.deni.gov.uk and you can access a wealth of information.
Hardship Relief Scheme for business ratepayers

The Department of Finance has announced the introduction of a Hardship Relief Scheme to help business ratepayers affected by exceptional circumstances. The measure took effect from 31st December 2005.

The purpose of Hardship Relief is to provide support for viable businesses and organisations that are affected by some form of crisis. Hardship must be caused by ‘exceptional circumstances’ and it works by removing the liability to pay business rates for the period that the business or organisation is affected.

As the Scheme is intended to cover unforeseen occurrences, it is not possible to draw up a definitive list. However, a crisis would have to result in a serious loss of trade or have a major impact on service provision. ‘Exceptional circumstances’ will usually be circumstances that are external to the business or organisation, be beyond normal business risk, unavoidable and unforeseen. The impact of strikes within a business or organisation, increased operating costs (e.g. energy, transport) and increased market competition would not be considered ‘exceptional’.

All non-domestic properties, including those occupied or owned by organisations including the voluntary sector, will be eligible for Hardship Relief, provided they satisfy certain conditions.

The Rate Collection Agency will be responsible for administering the Scheme. Applications must be supported by evidence and some form of business recovery plan will normally be required.

If an applicant is successful he will receive full relief from rates, subject to EU State Aid limitations, over the relevant period of hardship. Hardship Relief is intended to be temporary and it is expected that it should apply only for the length of time that it takes a business or organisation to recover from the exceptional circumstances.

Anyone requiring further information about the operation of Hardship Relief should contact the Rate Collection Agency on 028 9025 2505.

Policy documentation is also available on the Internet at: www.nics.gov.uk/ratingpolicy

Sexual orientation discrimination in the workplace

From 2 December 2003, it has been unlawful for employers and others to discriminate on grounds of sexual orientation in the areas of employment and vocational training.

The Equality Commission has published a guide entitled “Sexual Orientation Discrimination in Northern Ireland – the Law and Good Practice”. The guide:

- outlines in detail the responsibilities placed on employers under the sexual orientation discrimination legislation.
- gives comprehensive and practical guidance on how employers can deal effectively with sexual orientation discrimination complaints and thereby minimise the risk of time consuming and expensive litigation.
- also helps employers build an equality culture in the workplace in which all employees are treated with respect regardless of their sexual orientation.

A copy of the guide can either be downloaded from www.equalityni.org or be obtained free of charge from the Equality Commission’s Promotion and Education Division, on (028) 90 500000, or by e-mail (information@equalityni.org).

The Equality Commission can also provide free and confidential training for employers and others on sexual orientation equality. Such training can be tailored to suit the individual needs of the organisation. Further information on training is available from the Commission’s Promotion and Education Division.

Northern Ireland Young Solicitors’ Association

British Council Visit Dinner

Belfast Castle
Wednesday 15th February 2006

The annual visit from European students to Northern Ireland for a week long study tour will take place in February this year. The NYSA will be hosting a dinner at Belfast Castle on Wednesday 15th February 2006. A limited number of places will be available to our members (all solicitors under 36). All those who have attended in previous years will know that this is a lively, social occasion with good food, wine and entertainment on offer.

If you are interested in attending, tickets priced £15.00 are available from Darren Toombs c/o Carson McDowell, Murray House, Murray Street, Belfast, email d.toombs@carson-mcdowell.com

Check out the NYSA website for details about the forthcoming May Ball and Annual Conference.

www.niysa.com

Full details to follow in the next edition of “The Writ.”

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- TEL
- NUMBER OF PERSONS ATTENDING
- I ENCLOSE REMITTANCE OF £
Continued from page 8

by his solicitors. He consulted the defendant firm and sought advice as to whether the will was "legal and valid". He did not specifically ask whether it was effective to confer an absolute interest of his home and chattels to the claimant, which was his intention. The solicitor understood his instructions were confined to checking that the formalities had been complied with regarding execution. The will did not effect the testator’s intentions and on a claim by the disappointed beneficiary it was held that the solicitor should have clarified the precise scope and extent of his retainer.

The retainer defines the extent of a solicitor’s duty to a disappointed beneficiary. Such a duty can be no greater than the extent of the retainer under which he was acting for the testator. In Cancer Research Campaign -v- Ernest Brown 1998 PNLR 592 the court, by reference to the retainer, rejected a claim by residuary beneficiaries, charities, that the solicitor should have given tax advice to the testator whereby the value of their intended benefit would be enhanced. The court held that the duty of the solicitor was confined to the terms of their retainer and limited to drawing up a will so as to ensure that it was effective to provide the claimants with the benefits intended by the testator.

Are there to be any limitations on the retainer, for example, the client is to receive advice on taxation from an accountant rather than the solicitor? Such limitations need to be explained, agreed and recorded in a letter of retainer. Any dispute between a solicitor and his client regarding a limitation on the retainer is rarely decided in favour of the solicitor where there is no written record - see Hurtingham Estates -v- Wilde Partners (1997) 1 Lloyd’s Report 525.

Any dispute between a solicitor and his client regarding a limitation on the retainer is rarely decided in favour of the solicitor where there is no written record.

Where there’s a will

Is there a clear understanding that the retainer is at an end once the will has been executed and the bill issued? In the absence of specific instructions, a solicitor retained to draft a will is not required thereafter to review the will in light of changes in the law. However, there is room for confusion, especially in circumstances where there is an ongoing relationship between the solicitor and client. A solicitor by his conduct may raise an expectation on the part of a client that such a watching brief will be maintained. Again, the terms of the retainer letter are all important.

The Court of Appeal emphasized the fact that the solicitor had prepared his attendance note with the testatrix present which note made no reference to such an intention. The attendance appeared detailed and thorough and referred to all the property owned by the testatrix. The will as drafted accorded with the solicitor’s note and was drafted within 3 hours of the interview. A few days later it was executed at the solicitor’s offices.

Ensure that instructions are obtained in relation to the whole of the entirety of the property of which the testator is entitled to dispose, Gibbons -v- Nationls (2000) PNLR 734. Check the draft against the instructions.

Take care to ensure that the client understands and agrees to the provisions of the will and confirm the advice in writing.

Does the Will Effect the Testator’s Intentions?

Have the beneficiaries been correctly named and identified? "It is the most elementary duty of the professional adviser … not only to get the name of the unincorporated association right, but also to confirm that the association is still in existence when the will is made and not to rely, as presumably this professional adviser relied, on inaccurate information furnished by the client." Brighton J in Re Recher (1972) CH.

Has the testator title to the assets in question? In Carr-Glynn v Frearsons (a firm) 1998 4 All ER 225 the defendant’s solicitor had failed to advise the testatrix about severing a joint tenancy in property she jointly owned. The claim brought by the disappointed
intended beneficiary was successful. The solicitor should have realised that the testatrix’s intention would not be effected when the property was owned by the testatrix as a joint tenant.

Whilst it may be possible to rectify wills which do not carry out the testator’s intentions in certain specified circumstances (and cases such as Walker v Medcalf, referred to above, demonstrate that disappointed beneficiaries may be required, under the duty to mitigate their losses, to bring an action for rectification), nonetheless, such proceedings would be best avoided.

**Conclusion**

As with any area of the law in which firms elect to practice they should be mindful of the potential risks to which they are exposed. Probate may not have featured significantly on their risk agenda but they choose to ignore it at their peril. If you need further convincing in this regard you should be aware “There is something about Wills which brings out the worst side of human nature. People, who under ordinary circumstances are perfectly upright and amiable, go curvy as corkscrews and foam at the mouth whenever they hear the words “I devise and bequeath” (Dorothy L Sayers, “Strong Poison”).

Gary Thompson is a Managing Director at Ulster Insurance Services Ltd. To contact Gary, please e-mail: gary.thompson@marsh.com

The information contained in this article provides only a general overview of subjects covered. It is not intended to be taken as advice regarding any individual situation and should not be relied upon as such. Insurers should consult their insurance and legal advisors regarding specific coverage issues.

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**EMPLOYMENT LAWYERS’ GROUP (NI)**

**Are the Dispute Resolution Procedures causing more disputes?**

**Speaker:** Michelle McGinley, Engineering Employers Federation (NI)

**Date:** Friday 10 February 2006

**Time:** 1pm (tea coffee and sandwiches from 12.30pm)

**Venue:** Law Society House, Victoria Street, Belfast

**Cost:** Members £5, Non-members £10.

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

Booking forms and cheques, payable to The Employment Lawyers’ Group (NI), should be sent to our Treasurer, Ms Orlagh O’Neill, Napier & Sons, Solicitors, 1-9 Castle Arcade, High Street, Belfast BT1 5DE

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**BOOKING FORM**

**Name**

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I enclose remittance of £
Attention all Family Law Practitioners!

Would you like to obtain your entire CPD Client Care and Practice Management requirement at one time?

The Law Society of Northern Ireland, in association with the Institute of Professional Legal Studies and the Northern Ireland Court Service are organising events during 2006 that will allow you to do just that!

The events will take place in three locations throughout the province, making use of video-conferencing facilities at Laganside courts in Belfast and the regional courts in Dungannon and Londonderry. The seminars will provide all of the required 3 hours of Client Care and Practice Management, as well as giving practitioners an opportunity to see at first hand the technology now available to them to assist in presenting their clients’ cases in court.

Video conferencing is a tried and tested method of providing improved access to education and training to delegates in different parts of the country. Depending on the success of this pilot event, we hope that this will be the start of a number of such seminars that will enable practitioners to attend training without the inconvenience of travelling far from their office.

The first seminar being broadcast via video link is entitled "Client Care for Family Law Practitioners”. It will be held from 9.30 am - 12.45pm linked between Belfast and Londonderry and from 1.30pm – 4.45 pm linked between Belfast and Dungannon on Monday 10 April 2006 at the participating courts. The cost of the seminar will be £90 per delegate.

Topics to be covered during the seminar include LSNFI Family Law Client Care Guidance, Children Order Advisory Committee Best Practice Guidance, issues surrounding domestic violence (including video) and recent developments in Court technology (including video-conferencing and tele-conferencing)

Should you wish to register for the seminar, please complete the attached application form and return with a cheque to Joan Playfair at conferencing and tele-conferencing

Client Care for Family Law Practitioners

Title:
Name:
Firm:
Firm Address:
Postcode:
Telephone Number:
E-mail:
Cheque enclosed: (made payable to “Queen’s University Belfast”)

I would like to attend the seminar on 10 April at (please tick one option):

<table>
<thead>
<tr>
<th>Morning</th>
<th>Afternoon</th>
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<tbody>
<tr>
<td>Belfast Laganside Courthouse</td>
<td>9.30 am – 12.45 pm</td>
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<tr>
<td>Londonderry Courthouse</td>
<td>9.30 am – 12.45 pm</td>
</tr>
<tr>
<td>Dungannon Courthouse</td>
<td>Not available</td>
</tr>
</tbody>
</table>

Please photocopy this form for additional participants.

Court Service Corporate Plan 2005 - 2008

The Northern Ireland Court Service has recently published its Corporate Plan for 2005 – 2008. It outlines the priorities for the Court Service for the next three years, and explains how it intends to achieve its key strategic aims which are:

- modernising court business;
- improving access to justice;
- promoting confidence in the justice system.

Court Service states that it recognises that in order to successfully deliver its strategic aims it will be necessary to continue to build upon its relationships with a wide range of stakeholders including the judiciary, other government departments, the legal profession, and the voluntary sector.

Modernising Court Business

Declaring that today’s court users have new and different expectations of the service provided, Court Service intends to modernise the courts in order to meet these expectations.

In order to deliver a better service to court users it shall:

- deliver an efficient court system;
- support the Judicial Appointments Commission;
- modernise the Coroners Service;
- achieve a Court Service workforce that is reflective of the community;
- work with other justice agencies in Northern Ireland to deliver a joined-up system;
- promote understanding of the role of the courts in Northern Ireland.

Promoting Confidence in the Justice System

Court Service states that it recognises the contribution the courts make to securing public confidence in the justice system.

In order to promote confidence in the justice system it shall:

- support the Legal Services Commission in Northern Ireland in modernising public funded legal services;
- modernise civil justice;
- review the civil court fee structure;
- work with other government departments to modernise the tribunal system in Northern Ireland.

The Corporate Plan is available on the internet at www.courtsni.gov.uk or in hard copy from Court Service’s Information Centre at Windsor House.

The Legal Aid (Northern Ireland) Order 2005

The above Order came into force on 15th December 2005. It provides a statutory basis for the grant of legal aid in exceptional circumstances.

The Lord Chancellor has also issued Guidance to the Legal Services Commission on the operation of the exceptional grant power together with Directions and Authorisations to fund cases under the power. The Commission has published these documents on its web-site at www.mlsc.org.uk

The current statutory basis for providing legal aid is still contained in the Legal Aid, Advice and Assistance (NI) Order 1981. The new Order amends the 1981 Order by inserting a power to grant legal aid in exceptional cases. The new power replaces a transitional exceptional grant power which was found to be ultra vires in a recent judicial review.
NEW BSA CHAIRMAN

The current Chairman for 2005/2006 is Chris Ross, who was elected to the office at the Annual General Meeting of the Association, which was held on Thursday 17 November 2005.

Chris was born in Belfast and educated at the Royal Belfast Academical Institution. He graduated from Manchester Metropolitan University in 1991 and passed his Solicitor’s Finals at Chester College of Law in 1993. He completed his training with a firm in Chester and was admitted as a Solicitor in England in 1996. He went on to join Weightmans in Liverpool, one of the largest Defendant Insurance Practices in the North West of England.

Having taken a year out to travel, Chris returned to Northern Ireland and joined John McKee & Son in 1998, becoming a partner in the Litigation Department in 2003.

Away from the office he enjoys spending his free time with his wife, Debbie and their two girls, Georgia and Ella in Portstewart, where he also enjoys running and surfing (or trying to surf).

A document scanner for the small office

Don Anderson reviews the Xerox DocuMate 262

A document scanner is used to convert a range of documents into digital records, and can be used on a large scale. They are used for digitising paper office documents into word processor or PDF files, which can then be filed on a computer and copied in seconds thereafter, and/or transferred elsewhere on a network or by email or by recording to a CD or DVD. Digital scanners are therefore a versatile method of creating digital visual media for any solicitor’s office, for recording photographs and for large volume document scanning.

It is this latter purpose, large volume document scanning, that the Xerox DocuMate 262 serves. At the outset, it must be made clear that this scanner is a sheet scanner which has a slot for inserting pages, meaning it will not scan a book page – not unless you cut it out first. For scanning a bound document, you will need a flatted scanner, which will accept documents in the same way as a photocopier.

But if you need a scanner for digitizing sheets of A4 sized material horded within your filing cabinets and bundles, and one able to scan both sides of a double sided document with each pass (duplex scanning), the Xerox DocuMate 262 will suit admirably. It is specifically aimed at desktop users, comes with a Omnipage Pro for OCR (optical character recognition) and PaperPort Professional, one of the best known document management programs.

Given the size of the box it arrives in, the first thing to notice is the small size of the machine. Its footprint is much smaller than any flatted scanner. At a pinch it can be held in one hand. The second thing you will notice, specially if your experience has hitherto been limited to flatted scanners, is the speed. The DocuMate 262 has a fifty page automatic document feeder, and it needs it. This device will take only about 46 seconds for a 25-sheet, 50-page document. If at the same time you add OCR by scanning to a searchable PDF file (which would make a lot of sense), this would only add another two and a half minutes.

I had trouble installing the drivers on my XP computer and in the end abandoned the supplied ones on the CD and downloaded new drivers from the web. One of the advantages of buying from a large corporation like Xerox is that the support online is usually pretty good. Such companies always ensure that the most up-to-date drivers and associated software are available for download.

You can buy faster document scanners, but not for what the Xerox DocuMate 262 costs. The nominated price is about £1300 but with little trouble, I located machines for sale on the net at about £730. Given that at that price you would be acquiring a system for computing your office documentation through the bundled software, the Xerox DocuMate 262 merits serious consideration.

For more, the Xerox Corporation is at www.xerox.com
High Court, Court of Appeal and Tribunal Decisions

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

HAMILTON v LINDSAY AND HICKS Damages for personal injuries. - action brought in trespass and negligence. - intentional physical contact occurred between first and second named defendants resulting in collision with and injury to plaintiff. - whether this contact on the part of the second named defendant was assault at law. - extent to which hostility was an ingredient in the tort of assault. - whether behaviour of second named defendant was acceptable. - HELD that first named defendant owed duty of care to people in the vicinity and was guilty of negligence and that no battery occurred by the second named defendant. - damages of €25,000 awarded
HIGH COURT 21 NOVEMBER 2005 MORGAN J

JOHN HIGGINS v MICHAEL GRIBBEN AND BREGEN GRIBBEN Appeal against order of rectification and order of specific performance of the agreement as so rectified. - defendant's counterclaim of trespass by plaintiff dismissed. - error on map attached to memorandum of sale. - interpretation and recitation of written instrument which formed part of contract which does not accord with the agreement between the parties. - HELD that all requirements for rectification exist and agreement be rectified as ordered by the trial judge. - appeal dismissed
COURT OF APPEAL 15 DECEMBER 2005 KERR LCJ, CAMPBELL LJ AND SHEIL LJ

IN THE MATTER OF AN APPLICATION BY SHADIAT IDRIS FOR LEAVE TO APPLY FOR JUDICIAL REVIEW AND IN THE MATTER OF A DECISION BY THE CHIEF IMMIGRATION OFFICER Application to challenge decision of Chief Immigration Officer that applicant was an illegal immigrant. - statutory remedies to seek release on bail not yet exhausted. - whether appropriate to bring present proceedings. - principles to be applied in cases where illegal entrant should be detained pending expulsion. - whether applicant only has to show arguable case to show Chief Immigration Officer was not justified to the high degree of probability required to conclude she was illegal immigrant by virtue of her deception on entry to UK. - applicant entered UK on visitors visa and attempted to travel to Republic of Ireland. - HELD that no arguable case made and that lack of credibility of applicant would render application likely to fail
HIGH COURT 9 DECEMBER 2005 DEENY J

GEORGE MURRAY v ROYAL COUNTY DOWN GOLF CLUB Appeal against decision that defendant golf club liable to plaintiff for personal injuries, loss and damage. - plaintiff fell on defendant's golf course. - temporary route through course had become muddy on a downhill slope. - approach to be taken on appeal against a decision on the facts. - duty of care owed by golf clubs to visitors. - whether trial judge had failed to address the issue of contributory negligence. - whether plaintiff partly to blame for the fall. - HELD that trial judge's conclusions were correct and appeal dismissed
COURT OF APPEAL 5 DECEMBER 2005 KERR LCJ, NICHOLSON LJ, GIVAN J

IN THE MATTER OF AN APPLICATION BY THE OFFICIAL SOLICITOR ON BEHALF OF N AND R FOR JUDICIAL REVIEW Application seeking relief that RM had no jurisdiction to make disclosure Orders against guardian ad litem. - application for declaration that he erred in law in exercising his discretion to order disclosure. - application for Order of Coroner to quash decision. - application for Order of Mandamus to compel RM to consider the application for disclosure according to law. - power of Family Proceedings Court to order disclosure in children cases. - applications granted
HIGH COURT 8 DECEMBER 2005 GILLEN J

R v PAUL MARK BRANFITH AND OTHERS Sentencing. - kidnaping, false imprisonment and holding to ransom. - assisting offenders to offence of blackmail by way of facilitating communications and transporting money
CROWN COURT 30 NOVEMBER 2005 WIER J

R v MARTIN HEANEY Application for legal aid in respect of work undertaken by legal representatives in preparation for appeal of murder conviction. - application abandoned. - granting of legal aid in unsuccessful and abandoned applications. - guidelines included in the judgment that the granting of legal aid in unsuccessful applications for leave to appeal conviction is no longer to be regarded as automatic. - legal aid will not be granted when applications are abandoned unless in exceptional circumstances
COURT OF APPEAL 9 DECEMBER 2005 KERR LCJ, NICHOLSON LJ, CAMPBELL LJ

IN THE MATTER OF S AND C (CARE ORDER: FREEING FOR ADOPTION) Application by Health and Social Services Trust for care order under art. 50 Children (NI) Order 1995 and freeing order for adoption under art. 50 Adoption (NI) Order 1967 without parental consent. - application for Order of Mandamus to compel RM to consider the application for adoption according to law. - power of Family Proceedings Court to order disclosure in children cases. - applications granted
HIGH COURT 14 DECEMBER 2005 GILLEN J

SOUTH AND EAST BELFAST HEALTH AND SOCIAL SERVICES TRUST v E AND C Application for care order under art. 50 Children (NI) Order 1995. - severe head injury to infant. - whether accidental or non-accidental. - standard of proof and balance of probability in civil proceedings. - conflicting medical opinion. - evidence of causation of injury. - HELD that since either or both parents were held to be possible perpetrators of the injury and were unwilling to provide information essential for the future protection of the child, the threshold of significant harm had been reached and care order granted
HIGH COURT 7 DECEMBER 2005 MCLAUGHLIN J

A TRUST v M Application for ex parte Emergency Protection Order granted whereby children may be immediately removed from their homes. - application to discharge EPO made by parents, cross-application to extend EPO made by Trust. - whether appropriate to grant leave to have application heard ex parte. - whether sufficient risk of significant harm to children to justify EPO. - in making application ex parte the Trust made no efforts to give notice to parents or their solicitors. - whether in breach of art. 6 or 8 ECHR. - EPO application heard by Lay Magistrate sitting at home with limited paperwork available to him. - no Guardian ad Litem appointed at same time as EPO granted, contrary to good practice. - children were members of the travelling community who should only be removed from their culture as a last resort - previous supervision order rather than care order granted to Trust several years earlier. - HELD that Trust failed to make its case, so application to discharge EPO granted and children directed to return to their residence pending further order
FAMILY PROCEEDINGS COURT 18 NOVEMBER 2005 MCLAUGHLIN J
High Court, Court of Appeal and Tribunal Decisions

FAIR EMPLOYMENT AND INDUSTRIAL TRIBUNAL DECISIONS

Paul Fisher, Helen Craig and Andrew John McIntyre v Shop Electric (in Administration), Department for Education and Learning and Redundancy Payments Service

Decision on a pre-hearing review. - applicants claimed redundancy payment. - whether claims were presented outside the statutory time limits for a redundancy payment. - determination of relevant date. - tribunal decided that all claims were outside the time limits 272/05IT 23 August 2005

Laurence Galbraith v Bombardier Aerospace

Applicant claimed discrimination on the ground of political opinion. - application for review outside statutory time limit. - whether it was just and equitable to extend the time limit for application to review. - tribunal decided that since the original decision came to the attention of the applicant while he was outside the UK, he would have had little time to deal with it, so it was just and equitable to extend the time limit. - decision of original tribunal subsequently confirmed 101/01FET 26 September 2005

Julie Hanna and Amy Eastwood v Redbull Company Limited

Applicants claimed unfair dismissal or in the alternative unfair selection for redundancy or further in the alternative that their contracts of employment had been breached. - respondents re-organised their business and applicants were made redundant and made to re-apply for new posts which they largely similar to their old ones. - tribunal decided that the applicants were not redundant since the need for their jobs had not diminished. - respondent company had not acted reasonably and therefore applicants had been unfairly dismissed. - respondent company ordered to pay £3,776.18 and £6,505.22 to the respective applicants 241/03FET 18 August 2005

Norman Harold Magowan v Chief Constable of the Police Service of Northern Ireland

Decision on a pre-hearing review. - applicant had two claims before the Tribunal. - whether applicant could rely on protection afforded by art 36(2) Fair Employment and Treatment Order 1998. - were complaints brought within the specified time limits. - tribunal granted leave to respondent to amend responses. - claim 46/03FET was presented in time but claim 128/03FET was dismissed as it was out of time. 46/03FET & 128/03FET, 20 October 2005

Gareth Sinnamon v Donnelly Bros (Dungannon) Ltd

Applicant claimed unfair dismissal for victimisation. - whether applicant had been dismissed either directly or constructively and whether the dismissal was fair. - dispute between claimant and his manager which resulted in the claimant walking out. - tribunal decided that the claimant had resigned and that there was no direct dismissal and that there had been no significant breach of the claimant’s contract of employment such as would justify him in terminating his employment without notice 364/05IT 17 October 2005

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If you wish to advertise in the Writ please contact Karen Irwin for rates, specification and copy deadlines at: Burnside PR Ltd, 128a High Street, Holywood BT18 9HW Tel: 028 9042 8899 Fax: 028 9042 8877 Email: karen.irwin@burnsidepr.com

PLEASE NOTE:

with effect from 1 March 2006 the cost of classified advertising for Missing Wills and Missing Land Certificates/Tite Deeds will be £25 plus VAT per insertion

Library Update

Recommended Reading

CIVIL PARTNERSHIP ACT 2004

The Civil Partnership Act 2004 became law on 9th December 2005. The legislation enables same-sex couples to obtain legal recognition of their relationships.

Articles


Dismissing civil partnerships: O’Hare & Browne: 2005, NLJ 156(198) 1661*

Civil partnerships – start planning now (discusses the implications of the Act from tax and probate perspectives): Leney: 2005, NJJ 155(179) 1582-1583*

An equal partnership (discusses the likely legal position of same sex couples using a hypothetical case study): Washington: 2005, Lawyer 19(35), 28

What’s the sex got to do with it? – the ever contentious issue of succession to tenancies: Davis: 2005, Conv, Jul/Aug, 318-344


Sexual orientation: being civil at work: Linskell: 2005, Emp, L 62(Jul/Aug), 2-4

Family law (discusses various provisions of the Act in particular termination, annulment and financial provision): Rivers: 2005, LSG, 102(47), 24-25*

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

Legislation


Website

To accompany the new law, the Office of Law Reform in the Department of Finance and Personnel and the Gender Equality Unit of the Office of the First Minister and Deputy First Minister have produced guidance for Northern Ireland: http://www.olrni.gov.uk

Books available in the library

Department of Finance and Personal: Civil Partnership – what does it mean for you? 2005. Also available to download from the Department of Finance and Personal website at http://www.olrni.gov.uk

New Books in the Library


Supperstone: Judicial review. 3rd edition. Butterworths. 2005-12-14


Re: Edith Crawford Late of:
20 Fernmore Avenue, Bangor, County Down BT19 6EH
Any person having knowledge of the whereabouts of any Will or Title Deeds relating to the above named please contact:
Nicholas G Harvey
Peden & Reid Solicitors
22 Callender Street
BELFAST
BT7 5BU
Tel: 028 9032 5617
Fax: 028 9024 7343
Email: nick.harvey@pedenreid.com

Re: Norah Patricia Brady (deceased)
Previously of:
2 Glenhurst Gardens, Newtownabbey, County Antrim
Late of:
24 Lambert Park, Dundonald, County Down BT16 1LG
Date of Death:
14 October 2005
Would any person having knowledge of the whereabouts of a Will made by the above named deceased please contact:
Niall Small
Small & Marken Solicitors
65 Church Street
Antrim
County Antrim
BT41 4BE
Tel: 028 9446 8000

Re: Gavin Anthony McCrystal (deceased)
Late of:
7 Summerfield Mews, Ballymena, County Antrim
Date of Death:
28 November 2005
Would any person having knowledge of the whereabouts of any Will made by the above named deceased please contact:
Mr Archibald J McCormick
Messrs Bresslin McCormick & Company Solicitors
64 William Street
Ballymena
County Antrim
BT43 6AW
Tel: 028 2564 8479
Fax: 028 2564 8507

Re: Edith Crawford Late of:
20 Fernmore Avenue, Bangor, County Down BT19 6EH
Any person having knowledge of the whereabouts of any Will or Title Deeds relating to the above named please contact:
Nicholas G Harvey
Peden & Reid
22 Callender Street
BELFAST
BT7 5BU
Tel: 028 9032 5617
Fax: 028 9024 7343
Email: nick.harvey@pedenreid.com

Re: Michael Ferguson
Previously of:
2 Glenhurst Gardens, Newtownabbey, County Antrim
Late of:
24 Lambert Park, Dundonald, County Down BT16 1LG
Date of Death:
14 October 2005
Would any person having knowledge of the whereabouts of a Will made by the above named deceased please contact:
Niall Small
Small & Marken
65 Church Street
Antrim
County Antrim
BT41 4BE
Tel: 028 9446 8000

Edith Crawford
County: Antrim
Registered Owner:
Richard Ferguson Gallaugher and Hilda Lorraine Gallaugher
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned Solicitors.
And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.
Michael Ferguson
Solicitors
249 Lisburn Road
BELFAST BT9 7EN
Tel: 028 9038 2003
Fax: 028 9038 2107

AN 27020
County: Antrim

AN 99565L
County: Antrim
Registered Owner:
Carmel Ursula McCann
Lands of:
76 Carmel Street, Belfast, BT7 1GF
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned Solicitors.
And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.
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Solicitors
249 Lisburn Road
BELFAST BT9 7EN
Tel: 028 9038 2003
Fax: 028 9038 2107

AN 4345
County: Down

DN 4345
County: Down
Registered Owner:
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Lands of:
12 Churchview Drive, Lawrennytown, Craigavon, County Armagh
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And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.
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Solicitors
22 Market Square
Antrim
County Antrim
BT41 4DT

Fees:
18974, 19014, 18972, 19025, 19015
County: Londonderry
Registered Owner:
The Council of the Administrative County of Londonderry
Take notice that any person having custody of or information as to the whereabouts of the Land Certificates relating to the above mentioned Folios should forthwith produce said Certificates or communicate such information to the undermentioned Solicitors.
And take further notice that unless the said Land Certificates are so produced or adequate information as to their whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.
Michael Ferguson
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249 Lisburn Road
BELFAST BT9 7EN
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Fees:
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Michael Ferguson
Solicitors
249 Lisburn Road
BELFAST BT9 7EN
Tel: 028 9038 2003
Fax: 028 9038 2107

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Philip Crossley Solicitors
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BELFAST
BT6 8PX

Philip Crossley Solicitors require an Assistant Solicitor with at least two years post qualified experience in non-contentious work. Salary will reflect experience.
You must be highly organised and enjoy working on your own initiative and yet as part of a busy team.
Your satisfaction will come from giving great client service.
Applications in writing to:
Mrs J Baker
Philip Crossley Solicitors
Lynden House
19 Cregagh Road
BELFAST
BT6 8PX

Assistant Solicitor required for Belfast city centre firm, newly qualified to three years experience, mainly conveyancing work.
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BELFAST
BT1 4GJ
Or email:
tom.armstrong@tomiarmlaw.co.uk

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County Armagh
BT62 3NS
Solicitor required with experience in conveyancing essential and experience in probate preferable.

Salary shall be commensurate with experience.

Applications in strictest confidence in writing with CV to:
Margarita Sloane
Donaldson McConnell & Co
Solicitors
Castle Chambers
Castle Street
Lisburn
County Antrim
BT27 4SR
Or by e-mail to:
margarita@donaldson-mcconnell.com

R M Cullen & Son, Solicitors, 16-22 Edward Street, Portadown require two Solicitors with experience in conveyancing.

One is for a full-time post and one to cover maternity leave, commencing immediately on appointment. Please apply in writing with CV to:
R M Cullen & Son
Solicitors
16-22 Edward Street
Portadown
County Armagh
BT62 3NA

J G Haughey & Co Solicitors require a conveyancing and matrimonial solicitor with four to five years plus PQE. A candidate displaying the requisite competency in conveyancing and matrimonial but with lesser years experience would also be considered. Salary commensurate with experience and ability. Please apply in writing with CV to:
J G Haughey & Co
Solicitors
138 Upper Lisburn Road
BELFAST
BT10 0BE

Solicitor required for busy East Belfast practice. Attractive salary commensurate with experience. Please reply to:
PO Box 160
c/o Burnside PR Ltd
128a High Street
Holywood
County Down
BT18 9HW

Solicitor required for general practice in Glengormley. 2/3 plus PQE. Salary commensurate with experience and ability. Partnership opportunity available to successful applicant. Please apply in writing or telephone:
Sue Ellis
James J Macaulay
Solicitors
22 Cammoney Road
Glengormley
County Antrim
BT36 6HW
Tel: 028 9064 4926
Fax: 028 9064 4878

Fixed term contract available for a Solicitor in a busy general practice from end of February 2006. Experience in conveyancing and litigation essential and experience in judicial review procedures and criminal law an advantage. Applicants should contact:
The Personnel Partner
Harte Coyle Collins
Solicitors
55A Castle Street
BELFAST
Tel: 028 9027 8227
in writing or by e-mail to:
info@harte-coylecollins.com

Large Derry City based firm requires a Solicitor principally with expertise in Residential and Commercial Conveyancing in the Republic of Ireland. Terms and remuneration negotiable for the appropriate candidate. Please reply with Curriculum Vitae to:
PO Box 162
c/o Burnside PR Ltd
128a High Street
Holywood
County Down
BT18 9HW

Applications in strictest confidence in writing with CV to:
Margarita Sloane
Donaldson McConnell & Co
Solicitors
128a High Street
c/o Burnside PR Ltd
PO Box 160
BELFAST
BT18 9HW

Salary shall be commensurate with experience particularly in the area of Probate and with some knowledge of litigation practice.
Salary negotiable. For more detailed information please respond in writing to:
PO Box 161
c/o Burnside PR Ltd
128a High Street
Holywood
County Down
BT18 9HW

Solicitor required for general practice in Newtownards. Work of a general nature with a particular slant on commercial conveyancing, with some probate, good with a particular slant on commercial conveyancing, with some probate, good

Applications in strictest confidence in writing with CV to:
Mr Joseph McCollum
Joseph McCollum & Company
Solicitors
52 Regent Street
Newtownards
County Down
BT23 4LP

Legal Executive
 Seeking Employment

Full or part-time position sought as Legal Executive.

Location: Northern Ireland

Working background: Lecturer in Law with over seven years teaching experience in the area of Probate and with some knowledge of litigation practice.
Salary negotiable. For more detailed information please respond in writing to:
PO Box 162
c/o Burnside PR Ltd
128a High Street
Holywood
County Down
BT18 9HW

As part of our continuing modernisation programme, we have established a Civil Processing Centre. This Centre will process many aspects of County Court Civil Business for the whole of the province. Letters providing more details will be sent to all firms and an opportunity will be provided to discuss these changes at local meetings.

In order to realise the benefit of centralising civil processes, rather than using counter services at your local Court Office, please forward your documents for processing to our central point. The address is:
PO Box 882
Chichester Street
Belfast BT1 3JF

We recognise that you currently receive a high quality service from your local court office. Our aim is to provide the same high quality service from our Civil Processing Centre which will be developed to provide on-line services.

We are grateful for your co-operation with our modernisation programme. Should you have any comments or queries on the Civil Processing Centre, please contact Linda Porter on 028 9072 8920.
Abacus Professional Recruitment is a leading specialist provider of employment solutions for the Legal community throughout NI. Our dedicated, results driven team will source permanent, contract and temporary vacancies in order to provide you with the best options. As an accredited member of the Recruitment and Employment Confederation (REC), we guarantee a professional, ethical approach and complete confidentiality. A sample of some of the high calibre positions on offer are outlined below:

**FAMILY SOLICITOR** –  Ref: 648-486  
Salary: £23k to £31k  
Roles exist in Co Antrim, Co. Armagh and Greater Belfast for Solicitors with a professional Family/Matrimonial track record. Offering representation in Family and Domestic Courts, candidates will be able to defend Non Molestation and Occupation Orders and conduct contested hearings. You must demonstrate over 2+ years experience, an approachable manner and excellent client management ability.

**COMMERCIAL PROPERTY SOLICITOR** –  Ref: 641-1084  
Salary: £27k to £31k plus associated benefits  
Large firm requires a Solicitor to join their Commercial Property department. Based in Belfast City Centre, this firm offers a sound reputation in several fields. They require post qualified experience of at least 2+ years, strong fee generation potential and effective client management skills in order to sustain the reputation in such a competitive market.

**EMPLOYMENT SOLICITOR** –  Ref: 644-679  
Salary: £28k to £37k  
A prestigious Belfast City Centre practice a senior Employment Solicitor to support and lead departmental expansion. Ambitious and driven, with a professional and academic record to impress, you must demonstrate over five years experience handling standard employment files (e.g. tribunals) alongside Corporate support e.g. TUPE and pension reviews. Strong marketing and strategic drive is advantageous.

**VARIOUS CONVEYANCING ROLES** –  Ref: 006-0458  
Salary: £24k to £38k plus associated benefits  
We can offer several high calibre roles for new and post-qualified solicitors throughout NI. Our clients presently require a professional to cater for residential or commercial cases but ability to handle both is a major advantage. Possible benefit packages and future career opportunities negotiable.

More jobs are available on www.abacus-pr.com  
Contact us at Belfast 028 9031 3157 or Portadown 028 3839 3339 or Email: info@abacus-pr.com