This month:

Joint Law Societies Brussels Office
The legal positions.

BluePrint is one of Ireland’s leading legal recruitment specialists. Because we employ consultants with real industry experience, we can offer you the highest level of service.

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Solicitors Admission & Training Regulations 1988
Regulations 8(3) and 8(5)

ATTENTION EXPERIENCED LAW CLERKS
Closing Date for Applications - 15 August 2008

In the past there have generally only been a few applications per year under these Regulations. However in the last year these have increased significantly. In order to deal with the increased number of applications and to tie in with the admissions procedure for the Institute, the Society is streamlining the procedure. This will allow applicants under Regulations 8(3) or 8(5) to have their applications processed and where applicable appeals heard and decisions made prior to the closing date for admission to the Institute in November 2008.

The Society is therefore introducing a closing date for applications under Regulations 8(3) and 8(5). Any person who wishes to apply under Regulations 8(3) or 8(5) with a view to admission to the Solicitors’ Vocational Training Course at the Institute commencing in January 2009 will have to lodge an application with the Society no later than 5pm on Friday 15 August 2008.

Applications can be made from now until 15 August 2008. Applications will continue to be processed on receipt. You do not have to wait until August to submit your application.

Subject to the outcome of the Education Review, any applications received after 15 August 2008 will be considered for the next vocational training course for solicitors, which would be due to start in January 2010.
The Brussels office of the Law Societies

The Law Society of Northern Ireland has had an office in Brussels since January 2000 - it is a joint office which is shared with the Law Society of England & Wales and the Law Society of Scotland.

The office has recently relocated to new premises situated in the heart of the EU district, close to the Schuman area. The premises are shared with the German Federal Bar, the Austrian Federal Bar and the Bar Council of England & Wales. The Czech Bar Association also plans to move there shortly. This not only allows for the building of strong links with fellow legal professionals around Europe but also sends a strong message to the policy makers and legislators that the legal profession is engaged and active in Europe.

The opening of the new premises was marked by an official launch attended by Donald Eakin, the President of the Society, Alan Hunter, Chief Executive and by Council Member, Alistair Rankin, who is a member of the UK delegation to the CCBE (Council of the Bars and Law Societies of Europe). Whilst in Brussels they also took the opportunity to meet with the Office of the Northern Ireland Executive located there. Meetings have also been held with two of our three MEPs, with a meeting to be held with the third at a later date.

Following the visit, Donald Eakin said: “It is clear that the legal profession and the Law Society of Northern Ireland, as both representative body and regulator, needs to be engaged with the legislative and policy process at the earliest stage of policy making. We need not only to be informed but also to influence. This process is now well underway with the new Northern Ireland Assembly and now also at the heart of Europe.

“As the only part of the United Kingdom that has a border with another EU Member State, solicitors in this jurisdiction often need to refer to EU instruments relating to cross-border activity such as enforcement, debt recovery, commercial activity and new areas such as alternative dispute resolution and mediation. The Brussels office provides an essential tool in our engagement with Europe.”

What are the roles of the Brussels office?

• To monitor developments in EU law and to ensure that they are compatible with the UK legal systems - the office maintains a long list of these issues
• To promote solicitors and UK law; and
• To provide information to solicitors on EU law and developments

What services does the Brussels office provide to individual solicitors and firms?

With these roles in mind, the office provides the following services free of charge to individual solicitors and firms in Northern Ireland:

PUBLICATIONS

The Brussels Agenda
This is the office’s monthly electronic newsletter. It summarises EU developments of interest to solicitors and their clients. It covers both developments in EU law which affect professional practice and the way solicitors run their firms eg advertising, data protection and money laundering rules as well as developments in substantive law such as criminal law, company law and tax law. The Brussels Agenda is downloadable from the Society’s website at www.lawsoc-ni.org

Richard Henderson, President of the Law Society of Scotland, Andrew Holroyd, President of the Law Society of England and Wales and Donald Eakin, President of the Law Society of Northern Ireland at the official opening ceremony of the Brussels office.
Updates
The office produces a series of detailed Updates on the latest developments and prospects in subject specific areas. These are produced on a monthly or bi-monthly basis. Currently Updates are available on the following topics:

- Civil litigation
- Company law and financial services
- Consumer law
- Criminal law
- Employment law
- Environmental law
- Family law
- Intellectual Property
- Immigration and Asylum
- Taxation

European Court of Justice Update
The office produces a monthly summary of the latest EU case law relevant to practitioners.

If you are interested in subscribing to any of these e-publications, you should send an email specifying contact details and the publications you require to: brussels@lawsociety.org.uk

BRUSSELS-BASED SERVICES

Providing strategic advice on the EU and lobbying
The Brussels office can advise you on how best to represent your clients when lobbying the EU institutions and provide logistical support in arranging meetings. The office can also assist when seeking to use EU law for the benefit of clients. Assistance with the identification of EU funding opportunities is also available.

Facilities in Brussels
The office has hot-desking facilities for solicitors making the occasional business trip to Brussels. The room is equipped with a desktop PC, printer and WiFi access. In addition it can provide conferencing facilities, for meetings of up to 40 people, including video-conferencing and a library.

Offering professional opportunities and networking
Through the Law Society, the office will help to organise training for lawyers on the EU, its institutions and the areas of EU law you need to know about for your practice, as well as seminars on the latest EU developments targeted at firms.

On request, the office will organise general study visits for firms or groups to the EU institutions or tailored visits to meet the key EU officials in your field of practice. It can also help to provide contact-building opportunities at EU-related events in Brussels and the UK.

Training opportunities
The office also takes two trainee solicitors on secondment from firms either in Scotland or England & Wales every September and March for about six months. The office also takes trainees from Northern Ireland for a shorter period of time.

CONTACT DETAILS
The office is headed by Julia Bateman who is assisted by Andrew Laidlaw (Deputy Head of Office), Laura Merzari and Antonella Verde. The office is located at:

Avenue des Nerviens 85
1040 Brussels
Belgium
Tel: 0032 2743 8585
Fax: 0032 2743 8586
Email: brussels@law society.org.uk
NEW COURT OF APPEAL JUDGE APPOINTED

Her Majesty the Queen has appointed the Honourable Mr Justice Coghlin to the Court of Appeal in Northern Ireland. The judge will be sworn into office before Sir Brian Kerr, the Lord Chief Justice of Northern Ireland, on 5 September 2008. Mr Justice Coghlin will succeed Sir Anthony Campbell, who retires on 31 August 2008.

MINORS AND THE MIB

In the case of Byrne v Motor Insurers Bureau (2008) EWCA Civ 574, the English Court of Appeal has ruled that children who have been victims of hit-and-run drivers will be able to claim compensation up to the age of 21. The provision in the MIB’s Untraced Drivers Agreement 1972 which requires minor victims of untraced drivers to apply for compensation within three years of an accident has been held to be incompatible with European law. The MIB’s similar Uninsured Drivers’ Agreement contained no such restriction, with the result that the Court ruled that claimants under the Untraced Drivers’ Agreement had less favourable treatment.

PUBLIC RECORD OFFICE TO RELOCATE

Planning permission has been granted to allow for the relocation of the Public Record Office for Northern Ireland from its current home in Balmoral Avenue to a new site in the Titanic Quarter of the city.

The proposal is for full planning permission for a four storey building on a site of approximately 0.5 hectares, made up of:

- multi-purpose exhibition, display and education spaces
- public search areas
- reading rooms
- staff work spaces
- preservation laboratories
- ancillary accommodation for staff and visitors

RATING OF EMPTY HOUSES

As part of the Northern Ireland Executive’s Review of the domestic rating system, it was agreed that the rating of empty homes should be introduced as soon as possible, with the preferred level of liability 100%. This was subject to further consultation and the necessary impact assessments being undertaken.


INDEPENDENT REVIEWER APPOINTED

The Secretary of State has announced the appointment of Robert Whalley CB as the Independent Reviewer of the Justice and Security (NI) Act 2007.

This is a new statutory post created as part of the government’s normalisation commitments and combines the work previously carried out by Lord Carlile, who annually reviewed terrorist legislation and Jim McDonald, reviewer of complaints against the military.

The overall aim of the Independent Reviewer will be, in accordance with the Act, to make detailed enquiries of people who use sections 21 to 32 of the Act, or are affected by it, review the procedures adopted by the General Office Commanding NI for receiving, investigating and responding to complaints, and to report annually to the Secretary of State.

The reviewer shall conduct a review as soon as is reasonably practicable after 31 July 2008, and each subsequent 31 July.

ABA ADOPTS DEATH PENALTY RESOLUTION

The Human Rights Council of the American Bar Association has passed a Resolution calling for an end to the death penalty worldwide. The Resolution also recommends that all countries should take steps towards abolishing the death penalty and that those countries currently retaining the penalty should progressively restrict its imposition according to international standards.

COMPENSATION OF £70,000 IN FIRST AGE DISCRIMINATION CASE

The applicant in Northern Ireland’s first age discrimination case says he is “delighted” to accept £70,000. Assisted by the Equality Commission in taking the case, Terence McCoy won his landmark decision against Belfast timber firm James McGregor Ltd.

The Tribunal drew an inference of discrimination from the use in the recruitment advertisement of the phrase “youthful enthusiasm”.

NEW ASSISTANT INFORMATION COMMISSIONER FOR NORTHERN IRELAND

Mr Aubrey McCrory has been appointed to the position of Assistant Commissioner for the Information Commissioner’s Office (ICO) in Northern Ireland.

Mr McCrory has previously worked in improvement and regulatory roles covering central and local government, and private sector consultancy. Before joining the ICO, he was Deputy Director of the Section 75 Statutory Duty Team at the Equality Commission for Northern Ireland, with specific responsibility for the statutory equality duties. The role involved managing aspects of the Commission’s work regarding equality schemes, policy formulation and complaint handling.

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

Increasing participation in the criminal justice system

The Northern Ireland Court Service is seeking views on potentially significant changes to the law in respect of jury service in Northern Ireland. The proposals are designed to widen the jury pool in order that juries can be more truly representative of society in Northern Ireland, thereby improving confidence in the justice system as a whole.

They come on foot of the Justice and Security (NI) Act 2007 which ended the Diplock court system and made reforms to the jury system that were designed to achieve greater anonymity for jurors and promote greater randomness in jury selection. Specifically, the Act created an offence prohibiting the unlawful disclosure of juror information, and also abolished the defence right of peremptory challenge (the right to challenge up to 12 jurors without giving reason) and imposed significant restrictions on the prosecution right of stand-by (the right to challenge a juror without giving reason). During the consultation on this Act, the Government gave a commitment to consult at a later date on proposals to widen the jury pool.

It is now proposed that, by and large, no-one should automatically be ineligible or excusable from jury service simply because of his or her job, unless there is good reason.

Ineligibility for jury service

Under the Juries (NI) Order 1996 (“the 1996 Order”), the following categories of person are presently ineligible for jury service:

- persons concerned with the administration of justice (including members of the judiciary, members of the legal profession, public prosecutors, prison officers, probation officers, police officers and staff and court staff)
- the Forces
- persons suffering from a mental disorder
- and persons unable to understand English

In general, it is intended to change the present legislation so that all these categories of person – with the exception of those with a mental disorder and those without sufficient understanding of the English language – will become eligible. However, specific consultation questions are asked as to whether public prosecutors, PSNI officers and staff and members of the judiciary should be eligible to sit on juries, and whether it would be helpful to have a further consultation exercise on the specific issue of persons with a mental disorder and those unable to understand English.

Excusable from jury service

Under the 1996 Order, the following categories of person are excusable as of right from jury service:

- police and fire officers
- members, officers and servants of the Northern Ireland Assembly
- members of the Scottish Parliament
- members of the Scottish Executive
- Junior Scottish Ministers
- MEPs
- public officials (including senior civil servants)
- clergy
- professions (including teachers, doctors, dentists, nurses, vets and pharmacists)
- and persons aged between 66 and 70 years.

Under the proposals, all of these categories would cease to be excusable as of right. Specific consultation questions are asked as to whether persons aged between 66 and 70 should be eligible for jury service, and whether the upper age limit of 70 should be extended.

Under the proposed new system, persons summoned for jury service would be able to apply to the Juries Officer for discretionary deferral or excusal. Juries Officers would assess each case individually, but sympathetically, fairly and consistently against criteria which would form part of published guidelines. Draft guidelines are included in the consultation document.

Disqualification from jury service

Under the 1996 Order, persons with a criminal record who have received particular types of sentence are disqualified from jury service. The consultation paper also asks whether the periods of disqualification from jury service should be revised so as to correspond with the rehabilitation periods under the Rehabilitation of Offenders (NI) Order 1978. It also asks whether persons convicted of certain types of offence should be precluded from serving on the jury in the trial of a similar offence.

A full copy of the consultation document is available on the NI Court Service website www.courtsni.gov.uk

The consultation closes on 4 September 2008.

The current system of specifying categories of people as disqualified or excusable as of right from jury service would therefore be replaced, with some exceptions, by a system of discretionary deferral or excusal. Under the new system, any person called for jury service could apply to have his or her service deferred or excused and all such applications would be assessed fairly and consistently against published criteria and guidelines.
The Society of Trust and Estate Practitioners Northern Ireland Branch

would like to invite you to their

October Seminar
Wednesday 1st October 2008

‘Non-Domicile & Cross Border Drafting Issues’
Richard Frimston TEP, Russell-Cooke LLP
Jonathan Spring-Rice, Towry Law

The Stormont Hotel
587 Upper Newtownards Road
Belfast BT4 3LP

Registration and Coffee 2.00pm
Seminar 2.30–4.30pm

The seminar qualifies for 2 hours CPD

Conference Registration Form – STEP Northern Ireland Seminar – 1st October 2008
(please fax back to 020 7838 4886 or post to STEP Conferences, 26 Grosvenor Gardens, London SW1W 0GT)

Surname: __________________________________________
First name(s): ______________________________________
Organisation: _______________________________________
Address: ___________________________________________

Email: ______________________________________________

Payment: ☐ I am a STEP member
Conference @ £50.00 per delegate
☐ I am not a STEP member
Conference @ £75.00 per delegate

Cheques should be crossed and made payable to ‘STEP Conferences’

Cheque enclosed £__________________

Card number ____________________________
Expire date _____________________________
☐ VISA ☐ Mastercard
Stamp Duty Land and Tax Update

BUDGET CHANGES TO NOTIFICATION REQUIREMENTS

Following on from the announcement of changes in the Stamp Duty Land Tax (SDLT) notification thresholds in Budget 2008, the various Land Registries and HM Revenue & Customs (HMRC) have agreed to produce this note which conveys to a wide audience of those involved in land transactions may find helpful in explaining how these changes will work in practice.

Budget 2008 announced changes in requirements for notification of land transactions to HMRC. These changes have effect for transactions with an effective date on and after 12 March 2008.

The changes raise the threshold for notification of non-leasehold transactions involving major interests in land from a chargeable consideration of £1,000 to £40,000. The changes also affect transactions involving leases for a term of seven years or more, which will now only have to be notified where any chargeable consideration other than rent is equal to or more than £40,000 or where any rent is equal to or more than £1,000.

As a result of these changes it is no longer necessary to complete either form SDLT 1 Land Transaction Return or form SDLT 60 Self certificate if the transaction is below the new notification threshold.

It is hoped that the new notification system will be much simpler and easier to understand for customers.

Some people have asked whether there are any circumstances in which a certificate that no SDLT is due (form SDLT 60) is now required. HMRC has confirmed that there are no circumstances in which an SDLT 60 is required in order for documents to be registered. Indeed, the current Finance Bill legislates to remove all reference to this form.

The changes raise the threshold for major interests in residential property has risen from £1,000 to £40,000. Second, there is now a threshold for mixed and non-residential property, where none previously existed.

HMRC and the Land Registries will be working together over the coming months to update published guidance and will be happy to advise on any queries you might have.

DEALING WITH MISSING UTRNs

HMRC no longer offers the priority fax service as a means of dealing with missing UTRNs. To keep up a high level of service for everyone, it is asking customers whose returns are not on the system to send either a copy of the original return or a new one to Netherton.

This is only relevant to customers who use paper returns. It is not relevant to customers who file online using the HMRC product or commercial software products.

BARCODE COUNTDOWN – LESS THAN FOUR MONTHS TO GO

If you file SDLT returns using a CD ROM or 2D barcode please be aware SDLT returns filed by CD ROM or on 2D barcoded forms will not be accepted after 1 November 2008. You should therefore plan your move to online filing now!
Advance Notice

NORTHERN IRELAND
LAW COMMISSION
FIRST ANNUAL
CONFERENCE

LAND
LAW
REFORM
PROJECT

Friday 3 October 2008
Waterfront Hall, Belfast
9.00am to 1.00pm

TIME TO GET REAL?
A NEW LEASE OF LIFE FOR LAND LAW

The time is ripe for the modernisation and reform of land law in Northern Ireland. We invite you to join us, Professor John Wylie, Sarah Witchell and other speakers in charting the way forward. This will be an opportunity for us to inform you of our proposals for change which are of direct relevance to all property lawyers.

This event will qualify for 3 hours CPD
Further details and an application form will appear in the next edition of The Writ.
Full of the joys of spring? What joys??

With light nights, flowers in bloom and the summer holidays on the horizon, June is usually a month for optimism. For some people, however, the dark chill of winter is not something that lifts with the start of lengthening days.

Indeed for those unfortunate enough to suffer from prolonged stress, or depression, the joys of spring can deepen their sense of isolation, hopelessness and despair. Those little things that lift most hearts can have the opposite effect on those who are struggling with stressful/depressive aspects in their life.

The onset of summer can bring its own strains. The approach of holidays and the seemingly constant interruption of Bank Holidays, means that work can pile up at the same time as pressure increases to comply with deadlines and make suitable arrangements for the break.

At home, older children will be facing the trauma of exam time and for parents who are busy dealing with their own pressures, it can be difficult to find the time to stop and think about what their children are going through. Younger children may also have more activities, demanding more commitments from parents in ferrying them around, thus placing an even greater premium on already very limited spare time.

**Something deeper**

Depression, however, is not the same thing as feeling down or having that “Monday morning” feeling. It is an illness, just as heart disease and diabetes are illnesses and indeed is one which one in five people will suffer at some time in their life.

Although as many as one in twenty workers suffer from some sort of depressive illness, 75% of them try to hide their depression from employers, line managers and colleagues - such is the perceived social stigma.

Unfortunately, more and more employees are finding that their history of mental illness and/or addiction becomes a barrier to employment. Despite the fact that it is illegal to discriminate on the grounds of mental health, 47% of people with past mental health problems report that they have experienced discrimination and difficulty getting a job because of it.

In a recent survey, 200 managers were asked to assess the employment prospects of two (fictional) job applicants. The applications were identical except that one applicant had diabetes and one had recovered from depression. The applicant who had recovered from depression was seen as “significantly less employable” than the applicant who had diabetes. Statistics bear this out. 33% of people with long term health problems such as diabetes and MS are in employment, against only 13% of those with mental health problems.

Employers are naturally wary of what they do not know or understand. In today’s competitive and strictly regulated profession, they need to be certain that their staff are reliable and competent. A better understanding of certain health issues on their part could benefit hundreds of lawyers who find themselves regarded with suspicion because of past problems. Those suffering from, or recently recovered from, depression or other mental illnesses need to be treated with fairness and understanding and given every opportunity to rebuild their lives and careers.

**What should I look out for?**

- Absenteeism
- Falling productivity
- Indecision
- Bad decisions
- Poor morale and uncharacteristic lack of cooperation
- Complaints of aches, pains or tiredness on a regular basis
- Disruptive, interfering or domineering behaviour
- Alcohol or drug abuse

These are just some of the indicators. Encourage those concerned to seek help initially from their GP. Modern anti-depressant drugs are very effective especially if used in conjunction with counselling.

**Depression can be successfully treated in more than eighty percent of cases.**

It has widely been accepted for a number of years that unacknowledged or untreated stress, depression and addictive illnesses are significant factors in disciplinary matters, negligence claims and claims on the Compensation Fund. Such conditions destroy careers, affect the image of the profession and lead to misery for the affected lawyers and their families, not to mention the problems created for their professional colleagues and clients.

LawCare offers health support and advice to solicitors, their families and colleagues suffering problems which are interfering with or have the potential to interfere with work performance and/or family life.

The freephone helpline is entirely confident and is available by calling 0800 279 6869 9am - 7.30pm Monday to Friday and 10am - 4pm weekends and Bank Holidays.

Callers to the helpline can be put in touch with professional counsellors or treatment centres and provided with written information about their impairment. There is also a network of lawyer volunteers who have recovered from such problems and are available to befriend and support suffering lawyers.

A secondary purpose is to inform and educate the legal profession generally on the causes and consequences of such problems and how to seek help for themselves and their colleagues. Consequently free* CPD accredited seminars are available dealing with stress recognition and management, to help prevent the problems caused by disillusioned staff. For details about these, email: admin@lawcare.org.uk.

For more information visit www.lawcare.org.uk

*We do ask that our expenses be paid and some organisations choose to make a donation.*
You can make a difference

Since 2003 volunteers (ranging from 153 in number to 358) have travelled each year in November to Cape Town to take part in a charity building blitz called the “Niall Mellon Township Trust”.

The aim of the “Niall Mellon Township Trust” is to help families out of poverty who currently live in tin hut dwellings by building for them a decent place to live.

The aim this year is to build 300 houses together with a community centre and a community garden in one week. This provides the people with self-respect and hope of a better life.

This week of work will help to transform an entire community as it will see many of the residents move from small tin shacks into houses built with bricks and mortar with facilities that we take for granted in our society such as sanitation facilities, electricity and windows (yes, windows!).

Each volunteer (many of whom are self-employed and therefore forego their own salary for the period of the building blitz) is required to raise 5000 euro in order to participate on the trip and this needs to be achieved by 31 July 2008.

I would be grateful if you could support my husband, Kevin, who is hoping to make this worthwhile trip for this very worthy cause in November 2008 and dig deep to secure his place on the team travelling to Cape Town.

Cheques should be made payable to “Niall Mellon Township Trust” and forwarded to me, Dominica Thornton, at the Legal Services Department, Belfast City Council, Adelaide Exchange, 24-26 Adelaide Street, Belfast. BT2 8GD

I thank you for your anticipated support.
To shred or not to shred...

Confidential documents containing names and mortgage details of Leeds Building Society customers were recently found in Belfast City Centre, highlighting the need for organisations to better protect personal information. In this article Marie Anderson of McManus Kearney Solicitors, clarifies the security provisions of the Data Protection Act 1998 and urges practitioners to take a risk based approach to protecting client data.

Information security

The Leeds story is the latest in a string of security failures by large organisations that hold vast amounts of consumer information. In November 2007, HMRC lost two unencrypted discs containing the names, addresses and bank details of all child benefit claimants in the UK, including some 250,000 Northern Ireland families. Such was the public outcry and the impact on the reputation of that government department, that the Chairman resigned.

When a set of London chambers was burgled, a barrister’s laptop containing confidential witness statements relating to the Billy Wright enquiry was stolen. Identity theft is a serious outcome of data loss but it is the disclosure of witness information that can have life threatening consequences as highlighted by the Information Commissioner in his ‘What price privacy report?’. The reported theft just before Christmas 2007 of a NIACAB laptop from an employee’s car, highlights the need for clear rules for staff. This has serious implications for home workers. Solicitors should not assume they are immune from such risks. They hold client and employee data and often fail to keep or dispose of it securely, risking reputational damage by ignoring data protection rules.

The security principle

All data controllers (organisations processing personal data) must comply with the eight data protection principles as outlined in Schedule 1 of the Data Protection Act 1998 (the DPA). The DPA regulates the processing of personal data which is defined in s 1. There are also special provisions applying to ‘sensitive’ personal information which includes health and conviction data (s 2).

Both types of information are protected by the seventh data protection principle (the security principle). This requires controllers to implement appropriate security measures to protect against unlawful or unauthorised use or disclosure, and accidental loss, destruction or damage to personal information.

Most practices hold sensitive personal data such as health or criminal records. How can they decide what steps are appropriate to protect against theft or accidental loss? Some guidance can be found in Schedule 2 of the DPA:

Having regard to the state of technical development and the cost of implementing any measures, the measures must ensure a level of security appropriate to -

(a) The harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage as are mentioned in the seventh principle and

(b) the nature of the data to be protected

The seventh principle contains an inbuilt ‘proportionality’ test. The more sensitive the data the greater the levels of protection required. Security experts often refer to this as ‘layers’ of security. For instance, personal injury firms must consider the impact which the loss of health records containing sensitive personal details might have on a client and need to take extra care. Legal aid practices frequently hold personal financial details such as client bank statements or benefit records. These are confidential documents and must be treated accordingly.

The first step

Appoint a data protection officer for your practice. They should conduct an information audit to assess what personal information is held, how sensitive it is and the format it is held in. Firms must consider potential damage or distress caused to a client or member of staff if their information was lost or stolen. The sensitivity of the information held will dictate the level of security. Personal injury lawyers especially will need to concentrate on any potential threat to the information and the vulnerabilities of existing security measures.

Commercial practices hold publicly available personal information, for example the names and address of directors are held in the Companies Registry. Security measures for such firms should focus on the protection of office premises, computer security and any business continuity issues arising from a security breach.

The second step - a risk assessment

Government departments and large corporations hold vast databases of personal information and often deploy the latest technologies to protect that data. Many Northern Ireland practices are small and lack such resources. However, they also need to be aware of the risks arising from failure to implement basic data protection procedures. Any risk assessment should take account of the following:

- Do you hold any sensitive information?
- In what format do you hold this information?
- How sensitive is it? For instance, would loss put an individual or his family at risk?
- Have there been any security breaches and if so, has remedial action been taken?
- Where are your main security weaknesses? (premises, staff, computer security etc)
- How effective are your current security measures to deal with these?
- Are your data processors complying with the seventh principle?
**The third step - a security action plan**

Having completed the risk assessment, the firm should prioritise those areas of maximum risk and identify appropriate actions to deal with each. Action plans vary according to the problems identified but key to information is staff training. This is often overlooked. The HMRC incident was a typical human error story - staff asked to post computer discs to the NAO. They never arrived. For sole practitioners, investing in training is not feasible but there are interactive training DVDs available to order free of charge from the Information Commissioner’s Office. In the small to medium sized firm, action plans may focus on dealing with computer and laptop security. A government and business sponsored website www.getsafeonline.org will provide essential security tips.

**Conclusion**

Leeds Building Society denied that the records found contained personal data within the meaning of section 1 of the DPA, claiming that the information insufficiently identified individual customers. The definition of personal data is under further consideration by the House of Lords in a case involving the identifiability of leukaemia sufferers in a small geographical area. The case is on appeal from the Scottish Court of Session’s judgement upholding a decision of the Scottish Information Commissioner on disclosure of this data. Regardless of its legal status, this was ‘confidential’ information and ought to have been disposed of securely in accordance with the Building Society’s confidential waste policy. While your firm may not have such a policy, the Leeds story illustrates the need for such policies and of course at the very least a shredder!

Marie Anderson is the former Assistant Information Commissioner for Northern Ireland and is now Head of Information Law at McManus Kearney Solicitors, Belfast.

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**Considering Streamlining? Share accommodation!**

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

For a single monthly licence fee enjoy the following benefits:
- A licence to occupy the workstation(s) for as long as you want
- Business rates
- Electricity
- Heating/ air conditioning
- Telephone infrastructure
- Furniture/ filing
- Insurance (including contents)
- Incoming calls/ reception
- Incoming DX/ post allocation
- Property repairs/ reinstatement
- Security
- Cleaning/ Refuse disposal
- Health & safety compliance

Additional services available on a per use basis:
- Outgoing telephone calls
- Broadband/ range of IT services
- Car parking
- Outsourced expert file processing
- Solicitors accounts service
- Cheque lodgement
- Shared secretarial services
- Personnel/ payroll
- Outgoing post/ DX collection
- Interview rooms
- Conference room
- Strongroom Storage
- Additional filing storage

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1 Published by the Information Commissioners Office May 2006, available at www.ico.gov.uk
2 A data processor is defined as any person other than an employee of the data controller, who processes personal data on their behalf (for example a waste disposal firm or tracing agent).
3 National Audit Office
4 www.ico.gov.uk
5 Personal data is data which relate to a living individual who can be identified – (a) from those data; or
(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller
6 CSA v Scottish Information Commissioner (on appeal from the Court of Session [2006] CSIH 58),
Limits on awards for employment rights payments increased

The Employment Rights (Increase of Limits) Order (NI) 2008 (SR2008 No.47) has increased, from 2 March 2008, the limits applying to certain awards of industrial tribunals and other amounts payable under employment legislation, as specified in the Schedule to the Order.

In this Order -
(a) “the 1995 Order” means the Trade Union and Labour Relations (NI) Order 1995
(b) “the 1996 Order” means the Employment Rights (NI) Order 1996 and
(c) “the 1999 Order” means the Employment Relations (NI) Order 1999.

TABLE OF INCREASE OF LIMITS

<table>
<thead>
<tr>
<th>Relevant statutory provision</th>
<th>Subject of provision</th>
<th>Old Limit</th>
<th>New Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Article 40(8) of the 1995 Order</td>
<td>Minimum amount of compensation awarded by the industrial tribunal where individual expelled from union in contravention of Article 38 of the 1995 Order and where, when the application is made, the applicant has not been re-admitted to the union.</td>
<td>£6,600</td>
<td>£6,900</td>
</tr>
<tr>
<td>2. Article 23(1) of the 1996 Order</td>
<td>Maximum amount of ‘a week’s pay’ for the purpose of calculating basic or additional award of compensation for unfair dismissal or redundancy payment.</td>
<td>£310</td>
<td>£330</td>
</tr>
<tr>
<td>3. Article 63(1) of the 1996 Order</td>
<td>Limit on amount of guarantee payment payable to an employee in respect of any day.</td>
<td>£19.60</td>
<td>£20.40</td>
</tr>
<tr>
<td>4. Article 154(1) of the 1996 Order</td>
<td>Minimum amount of basic award of compensation where dismissal is unfair by virtue of Article 132(1)(a) and (b), 132A(d), 133(1), 134 or 136(1) of the 1996 Order.</td>
<td>£4,200</td>
<td>£4,400</td>
</tr>
<tr>
<td>5. Article 158(1) of the 1996 Order</td>
<td>Limit on amount of compensatory award for unfair dismissal.</td>
<td>£60,600</td>
<td>£63,000</td>
</tr>
<tr>
<td>6. Article 231(1) of the 1996 Order</td>
<td>Limits on amount in respect of any one week payable to an employee in respect of debt to which Part XIV of the 1996 Order applies and which is referable to a period of time.</td>
<td>£310</td>
<td>£330</td>
</tr>
<tr>
<td>7. Article 77E(3) of the 1996 Order</td>
<td>Amount of award for unlawful inducement relating to union membership or activities, or for unlawful inducement relating to collective bargaining</td>
<td>£2700</td>
<td>£2900</td>
</tr>
</tbody>
</table>

The increases apply where the event giving rise to the entitlement to compensation or other payments occurred on or after 2 March 2008. Limits previously in operation under the Employment Rights (Increase of Limits) Order (Northern Ireland) 2007 (SR2007 No. 22) are preserved by a 4 of the Order in relation to cases where the relevant event was before that date.
Guidance Notes on the completion of Civil Legal Aid application forms

The Northern Ireland Legal Services Commission (NILSC) has posted updated ‘Guidance Notes for Solicitors’ on their website www.nilsc.org - please follow the Publications link. These replace the ‘Guidance Notes for Solicitors’ first posted on 19 October 2005. The updated Guidance Notes provide invaluable information for those within solicitors’ firms who have the responsibility for the completion of Civil Legal Aid application forms.

The updated Guidance Notes provide invaluable information for those responsibility for the completion of Civil Legal Aid application forms.

NILSC would ask that these updated Guidance Notes be referred to upon completion of the Civil Legal Aid application forms as the quality of the information provided in the application form has an impact on the service provided by the NILSC.

As part of the development of a Registration Scheme for Solicitors wishing to be paid through legal aid in Northern Ireland, the Commission will be organising seminars which will be available for all those within solicitors’ firms responsible for the completion of Civil Legal Aid application forms. NILSC will be inviting you and your staff to attend the seminars at the Commission during the forthcoming months.
Legal Advice and Assistance (Amendment) Regulations (NI) 2008
SR 2008 No.106

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

Legal Advice and Assistance (Financial Conditions) Regulations (NI) 2008
SR 2008 No. 107

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

(a) increase the upper income limit to make legal advice and assistance available to those with disposable income of not more than £223 a week (instead of £215)

(b) increase the lower income limit below which legal advice and assistance is available without payment of a contribution to £95 a week (instead of £91)

No changes are made to the capital limits.

Legal Aid (Financial Conditions) Regulations (NI) 2008
SR 2008 No. 108

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

(a) increase the upper income limit to make legal aid available to those with disposable incomes of not more than £9,348 (instead of £9,138) or, in connection with proceedings involving a personal injury, £10,316 (instead of £10,074)

(b) increase the lower income below which legal aid is available without payment of a contribution to £3,156 (instead of £3,085)

No changes are made to the capital limits.

The above Regulations came into operation on 7 April 2008.
Suboptimal equilibrium

For many years as part of our CPD training events organised in conjunction with the Law Society of Northern Ireland, we have continually made the point that a solicitor’s practice was first and foremost a business. This highlights the need for all firms to not only provide quality legal advice, but also to ensure they have effective management processes embedded within their practice. This is essential to mitigate against the ever increasing risks to which those who provide legal services are faced.

One consequence of a firm’s failure to balance the provision of legal advice against effective business management, is the potential exposure to fraud or dishonesty. Unfortunately, claims involving fraud or dishonesty have been a regular feature on the Master Policy claims experience since 1998 (source Marsh Ltd). The effect of such a claim against a firm can be devastating and result in potentially significant financial penalties as well as loss of reputation. It is possible a firm will not survive post a claim in respect of fraud. Taking these issues into consideration it is clear all firms should have in place adequate systems and procedures to protect against fraud.

With virtually daily press coverage on issues such as mortgage fraud, it is perhaps timely to review the types of fraud experienced under the Master Policy and what precautions can be taken to protect firms from such a claim.

The main types of fraud experienced under the Master Policy are as follows, although an individual claim may involve one or more of these categories:

- Partner fraud
- Employee fraud
- Client fraud

**Partner fraud**

This has manifested itself in a variety of guises. Some of the largest fraud claims have been in respect of conveyancing matters where a partner gets involved with the “jam tomorrow” client. This enables them to infiltrate a firm with the promise of substantial future work.

Such a client also tends to have domineering and or charming characteristics and falls to pay fees in time or at all.

Unfortunately, experience dictates that unless this type of client is robustly managed he can wreak havoc within a practice. Either through coercion or persuasion, he will actively encourage a solicitor to participate in multiple mortgage frauds. This can involve failing to properly apply a mortgage advance, giving undertakings in circumstances where they clearly cannot be complied with and generally ignoring the client’s dishonest dealings.

**It is possible a firm will not survive post a claim in respect of fraud. All firms should have in place adequate systems and procedures to protect against fraud.**

As with most frauds the outcome is inevitable. The lenders, vendors and purchasers who have unwittingly been the subject of mortgage fraud will eventually realise what has occurred and seek redress from the solicitors.

Other types of partner fraud include preparing entirely false bills of costs or to have bills encompass items of outlay that were not incurred. This has been particularly prevalent in probate matters where the solicitor has simply taken funds from the estate being administered, although it has also occurred in simple conveyancing transactions where deposits have been misappropriated.

It is also the case that solicitors in personal injury actions have dishonestly exaggerated the level of settlement and used the excess funds for their own personal gain.

Finally, under this heading a cautionary note must be sounded in respect of any solicitor involved in his own conveyance. In one instance a solicitor gave an undertaking on behalf of the firm in the re-mortgage of his home. Unfortunately, he did not comply with the undertaking by using the available funds to discharge the first mortgage. Instead these were taken by the solicitor for his own personal gain.

**Employee fraud**

It is certainly a sobering if not traumatic experience for a firm to discover an employee has dishonestly taken funds. It should be borne in mind that the Master Policy only deals with the loss of client’s money and any loss to the firm in respect of their own funds is a separate matter.

Within this category we tend to find that the employee in question has established a position of trust. They use this position to become an integral and valued part of the firm where they may be looked upon as a provider of a specialist service. As a consequence of this, opportunities are created by the employee whereby what normally might be considered as good business practice are scaled down or ignored. They in turn take advantage of this situation, by stealing potentially from both the client and office account. Employees who have produced such claims are bookkeepers and assistant solicitors.

With regards to bookkeepers, they have typically held a position of trust within the firm and have used this to their advantage by forging cheques and making drawings in their own favour from both the office and client accounts.
In relation to assistant solicitors it is common cause for them to have provided a specialist service within the practice. They may even have been recruited specifically for such a purpose. As a consequence, they can be very much left to manage their business segment without adequate controls and as a consequence the opportunity for fraud is created and unfortunately on some occasions acted upon.

Employees and or assistant solicitors may also regard themselves as being poorly remunerated. At the same time they may have access to significant client funds and use their position to steal such funds. They then rationalise their actions, believing they have not participated in a criminal act. Situations also arise where an assistant solicitor may be dishonest but receive no monetary benefit as a consequence of such dishonesty. This is normally as a result of difficulties managing their workload or their inability to deal with a particular file. These problems can manifest themselves with lies being told to the client or in some occasions money being used inappropriately to momentarily satisfy the client while efforts are made by the solicitor to fix the unfixable. This only compounds the dishonesty and the degree of the underlying problem.

On a further cautionary note this scenario also arises with regards to partners.

**Client fraud**

This is an important issue and firms clearly need to bear in mind potential breaches of the Solicitors’ Accounts Regulations as well as the Money Laundering Regulations. Both of these issues are outside the scope of this article save for this brief reference.

Constant headlines such as “Lawyers not doing enough to prevent mortgage fraud” (LSEW Gazette 07/02/2008) highlight that client fraud is a reality and firms must be on guard to prevent themselves where possible from becoming embroiled with clients who are involved in suspect dealings that might lead to allegations of fraud or dishonesty.

From the Master Policy insurers’ perspective, client fraud arises in a variety of forms and in many instances there is no direct evidence of complicity on the part of the solicitor although on most occasions their performance will fall far short of what might be expected of a reasonably competent solicitor.

The majority of issues relating to client fraud relate to conveyancing transactions. Save for the instances when a solicitor acts ad idem with his client in respect a fraud the main warning signs usually overlooked or ignored by a firm are:

- Failure to properly identify their client(s)
- Failing to question rapid valuation fluctuations
- Ignoring substantial direct deposit payments
- Failure to question differences between original sale price and contract price
- Acceptance of assurances from clients on the level of their debts secured against their property
- Acting for both parties where the contract does not accurately reflect the deal

It is clearly prudent for all firms to have in place suitable processes and procedures to prevent and detect fraud. The following issues highlight some of the major fraud indicators around which firms should seek to have in place robust fraud prevention/detection measures.

- Do you have a system of checks eg two signatories for a cheque?
- Monthly reconciliation of bank statements
- Do you have unsupervised accounts staff?
- Does the partnership operate in silos?
- File reviews and spot checks
- Monthly management accounts/Monthly fees expenditure
- All partners must be aware of the finances of the firm
- Robustly manage the firms financial affairs
- References for all employees
- Workflow measurement
- Working “longer hours” unsupervised
- Stress
- Hospitality registers
- Knowing your clients

This article simply touches upon the principal fraud issues from the Master Policy perspective. The intention is to raise the profile of this important business risk at a time when there is an increased focus on the performance of law firms in light of the current credit crisis with the resultant emphasis in particular on mortgage fraud.

By the very nature of those intent on perpetrated fraud they will continually invent new ways of circumventing fraud prevention measures. It is therefore incumbent upon everyone to remain vigilant and tackle this problem in a robust and businesslike manner.

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, is not intended to be taken as advice regarding any individual situation and should not be relied upon as such. Insureds should consult their insurance and legal advisors regarding specific coverage issues.

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The School of Law at Queen’s University, in conjunction with SLS Legal Publications (SLS), runs an introductory course in legal skills for those who work with law but who do not have a legal qualification. The course is aimed primarily at legal secretaries and solicitors’ clerks although it would be of interest to anyone whose work has a legal dimension. Taught by a small group of lecturers from the Law School, the course aims to clarify core legal principles and enhance the legal knowledge and experience participants have gained through their work.

The course will run from September 2008 to May 2009 culminating in a small graduation ceremony. It involves one weekly two-hour class held on Tuesdays from 5-7 pm and it runs for twenty-four weeks with Christmas and Easter breaks. The classes are informal in nature and students will be required to complete a number of assessment exercises.

The course is divided into six parts:

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

For further information and an application form please contact:

SLS Legal Publications (NI)
Lansdowne House
50 Malone Road
Belfast BT9 5BS
Tel: 028 90667711
Fax: 028 90667733
DX: 4330 NR Belfast 34

We look forward to meeting you in September!
Charities in Northern Ireland: a changing landscape?

An SLS conference on
19 November 2008
at the Belfast Waterfront

The Charities (Northern Ireland) Order 2007 is scheduled for Royal Assent during the summer and SLS is planning a major conference to inform the legal profession about the changes. Topics to be covered will include:

• the definition of a charity including the new list of charitable purposes and the public benefit test
• the establishment of a Charity Commission for Northern Ireland
• lessons to be learnt from the Charity Commission in England and Wales
• the practicalities facing charitable trustees
• advice to be given to clients who are involved with charities

Speakers will include:
Francesca Quint BL, Radcliffe Chambers, Lincolns Inn: Sheena Grattan BL: Professor Norma Dawson, Queen’s University Belfast: Adam Brett, L’Estrange and Brett.

Booking forms will be available shortly.

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• share the use of central Belfast offices with onsite client car parking
• share the use of private conference and meeting rooms

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Rights of fixed-term employees

Caroline Maguire, senior caseworker at Law Centre (NI) Western Area Office, reviews a recent judgement which reinforces case law on the rights of fixed term employees in the context of the Review of Public Administration.

The Law Centre recently won a case before the Industrial Tribunal under the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations (NI) 2002 (“the Regulations”). The Regulations prohibit an employer from treating a fixed-term employee less favourably than a comparable permanent employee, unless the employer can show objective justification for differential treatment.

The decision in Meenan v Western Health and Social Care Trust merits attention because the case arose as a result of the reorganisation of the health trusts under the Review of Public Administration. There are likely to be a significant number of fixed-term employees affected by the Review of Public Administration who could benefit as a result of the Meenan case.

The case is also of interest because it provides some clarification on two areas which can cause difficulty to anyone advising on the Regulations:

- the definition of comparator, and
- the meaning of objective justification.

BACKGROUND

My Meenan was employed on a fixed-term contract as a Clinical Networks Manager with the Western Health and Social Care Trust when in April 2007 he applied for a permanent senior manager post. At that time he had two years’ service with the Trust and his contract was due to end in April 2008. The essential criteria for the post he applied for included a requirement that at the date of application applicants be working “in a substantive post” with the Trust. Although Mr Meenan met all the other criteria he was not shortlisted for interview because he was a fixed-term employee.

Mr Meenan issued proceedings before the Industrial Tribunal claiming that the Trust had discriminated against him on the grounds of his fixed-term status. The Trust argued that any discrimination could be justified on objective grounds in that it needed to reduce compulsory redundancies among its permanent staff arising as a result of the Review of Public Administration.

CHOICE OF COMPARATOR

The first hurdle any claimant must overcome in bringing a claim of less favourable treatment under the Regulations is to identify a suitable comparator. A “comparable employee” is defined in Regulation 2 as someone who is:

1. employed by the same employer, and
2. engaged in the same or broadly similar work as the claimant having regard, where relevant, to whether they have a similar level of qualification and skills...

The comparator must work at the same establishment as the fixed-term employee (although there is scope for choosing a comparator at another establishment).

A key difference between the definition of comparator under these Regulations (and the part-time workers’ legislation) compared to the definition in other discrimination legislation is the absence of provision for a hypothetical comparator. This is a serious impediment to potential claimants under the Regulations as it means that the Regulations may not provide protection to fixed-term employees working in sectors with a high proportion of fixed-term employees. The Meenan case demonstrates other difficulties that claimants may face.

Mr Meenan identified the other candidates for the position as his chosen comparators. The Trust argued that these comparators were not appropriate because they were not doing the same or similar work as Mr Meenan (the candidates were all managers but held a diverse range of jobs in the Trust).

In a case where a claimant is alleging discrimination in relation to terms or conditions of employment it is clearly of paramount importance that the claimant compares himself to someone doing the same or similar work. However, this requirement seems less justifiable in a failure to shortlist case such as Meenan, particularly where the respondent concedes that the refusal to shortlist was solely due to the claimant’s fixed-term status. If the Trust’s argument had succeeded, there was no possibility for the Tribunal to construe a hypothetical comparator and Mr Meenan’s case would have failed. Fortunately for him however, the Tribunal rejected the Trust’s narrow interpretation of “comparable employee” and in deciding that the other candidates were appropriate comparators, stated:

“It is…too narrow a test to merely look at the comparison of what one manager was doing, in his or her current job and compare it with what another manager was doing. The true test is: did the applicants for the post perform management functions, of whatever type, for the respondent at a similar level? ”

The Tribunal also pointed to the fact that the EC Fixed-term Work Directive (99/70) defines a comparable permanent worker as “engaged in the same or similar work/occupation...” The word “occupation” is not contained in the Regulations but the Tribunal considered its inclusion in the Directive to confirm its view that the exercise of identifying comparators should not be a narrowly focused task based analysis.

OBJECTIVE JUSTIFICATION

Regulation 3(3) provides that less favourable treatment of fixed-term employees is only unlawful if it is not justified on objective grounds. This was the key issue in the Meenan case. Could the Trust’s desire to reduce compulsory redundancies among its substantive employees objectively justify its decision to bar fixed-term employees from applying for permanent posts?

The Tribunal confirmed that the principle of proportionality applied when interpreting the scope of “objective justification”. It was up to the Trust therefore to show that it had a legitimate aim and that its actions were
Mr Meenan conceded that it was legitimate for the Trust to seek to reduce compulsory redundancies among its permanent staff but challenged the proportionality of the means it had adopted to do this.

The Tribunal referred to the European Court of Justice’s decision in Del Cerro Alonso v Osakidetza-Servicio Vasco de Salud in which the Court gave guidance on the meaning of objective justification stating:

“... that concept requires the unequal treatment at issue to be justified by the existence of precise and concrete factors, characterising the employment condition to which it relates, in the specific context in which it occurs and on the basis of objective and transparent criteria in order to ensure that the unequal treatment in fact responds to a genuine need, is appropriate for achieving the objective pursued and is necessary for that purpose.”

The Tribunal found that the Trust had not only failed to conduct any such analysis but in fact had not addressed its mind at all to the position of fixed-term employees. It stated:

“It was as though the respondent and its HR team were either unaware of the Regulations, or somehow forgot them in the very serious employment situation in which they found themselves.”

This was fatal to the Trust’s argument that it could objectively justify its actions.

The Tribunal went on to state:

“... a blanket ban on any application for a permanent post from a fixed-term employee was not proportionate to the problem being tackled by the respondent, especially when the respondent had clearly given no proper consideration to the tension between the rights given under the Regulations, the various lengths of service of the fixed-term employees and the legitimate aspiration of the respondent to avoid redundancies”.  

COMMENT

Despite the fact that the Regulations have been in place for nearly six years there is a dearth of case-law to guide practitioners. There are important points in the Meenan case for both employee and employer representatives. Representatives seeking to enforce the rights of employees under the Regulations should be very careful in choosing appropriate comparators. Representatives advising employers who are considering a course of action which may prejudice fixed-term employees should ensure that employers fully consider the proportionality of such action. To establish a defence under the Regulations it will not be enough to simply show a legitimate aim (no matter how compelling that aim may appear). They must consider the rights of their fixed-term employees and weigh the possible detriment to them against the aim being pursued.

1 [2007] IRLR 911

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The BSA Golf Day was once again held at Malone Golf Club on the 22 May. Despite a poor forecast, the weather remained kind.

John Gordon was this year’s winner with a great score of 40 points. In second place with 34 points was John Rodgers.

Our visitors’ prize was claimed by Dan Henry with an even more impressive score of 43 points. The ladies’ prize went to Marie-Anne McVeigh with 34 points.

The longest drive competition was won by Paddy Mullarkey and nearest to the pin by Kevin Toner.

Many thanks go from the Committee to Malone Golf Club whose course was, as ever, a joy to play. The catering too was of the highest order and enjoyed by all.

In addition, the Committee would like to thank all those from the profession who supported the event and also First Trust Private Banking whose continued sponsorship is very much appreciated.

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Our ‘Gold Standard’
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## BSA annual lecture series

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<th>Topic</th>
<th>Time</th>
<th>Speaker</th>
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<td>11 September 2008</td>
<td><strong>Update on Legal Aid Applications</strong></td>
<td>1-2pm</td>
<td>Representative, Legal Services Commission</td>
<td>£20 (member) &lt;br&gt; £40 (non member)</td>
</tr>
<tr>
<td>26 September 2008</td>
<td><strong>Client Care and Practice Management Seminar</strong></td>
<td>2-5pm</td>
<td>Gary Millar, GSM Management Consultants, John Horan, Harbison Mulholland, Accountants, Tom Marsh, Marsh</td>
<td>£70 (member) &lt;br&gt; £100 (non member)</td>
</tr>
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<td>9 October 2008</td>
<td><strong>Deaths in Hospitals</strong></td>
<td></td>
<td>John Leckey, Senior Coroner</td>
<td>£20 (member) &lt;br&gt; £40 (non member)</td>
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<tr>
<td>16 October 2008</td>
<td><strong>High Court Litigation</strong></td>
<td>1-2pm</td>
<td>Cormac Fitzpatrick, Campbell Fitzpatrick Solicitors</td>
<td>£20 (member) &lt;br&gt; £40 (non member)</td>
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<tr>
<td>30 October 2008</td>
<td><strong>Details to follow</strong></td>
<td></td>
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<td>14 November 2008</td>
<td><strong>Criminal half day seminar</strong></td>
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<td>£70 (member) &lt;br&gt; £100 (non member)</td>
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<td>20 November 2008</td>
<td><strong>Contracts of Employment – terms they are a-changing</strong></td>
<td></td>
<td>John O’Neill, Thompsons McClure Solicitors</td>
<td>£20 (member) &lt;br&gt; £40 (non member)</td>
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<td>4 December 2008</td>
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</tbody>
</table>

All seminars will take place at The Edge, Laganbank Road, Belfast. Coffee and sandwiches will be available from 12.30pm and the talks will start at 1.00pm unless otherwise indicated. Cheques made payable to BSA, c/o The Administrator, Suite 7, Merrion Business Centre, 58 Howard Street, Belfast BT1 6PJ.
MARK CHRISTOPHER BRESLIN AND OTHERS v SEAMUS MCKENNA AND OTHERS

Further application by some of the defendants for an Order that the plaintiff’s claim be struck out or stayed on the basis that it is an abuse of process. - whether publicity to date should prevent the action proceeding. - whether unfair or contrary to the public interest for matters to proceed. - HELD that the application be dismissed.

HIGH COURT
25 JANUARY 2008
MORGAN J

AN APPLICATION BY ALAN CROSS FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

Application for leave to apply for judicial review of a decision of the Criminal Injuries Compensation Appeals Panel refusing to extend time for the applicant’s appeal against a refusal of compensation. - whether the respondent failed to take into account that the applicant was awaiting full disclosure of the CCTV video which was received outside the 90 day time limit. - whether the wording of the guide was misleading. - application dismissed.

HIGH COURT
18 APRIL 2008
WEATHERUP J

APPLICATION BY MARTIN O’ROURKE FOR JUDICIAL REVIEW

Application for judicial review of 2 decisions of the Secretary of State for Constitutional Affairs accepting the advices of a Selection Panel not to recommend the applicant for appointment as Queen’s Counsel. - assessment method adopted by the Selection Panel in relation to the identification of borderline candidates for interview. - respective roles of the Secretary of State and the Selection Panel. - interaction of the judicial review and the complaints. - whether there was procedural unfairness, ambiguity or irrationality. - whether there was a fettering of discretion of the Secretary of State. - application dismissed.

HIGH COURT
21 APRIL 2008
WEATHERUP J

R v JEFF COLIN LEWIS, MERVYN WILSON MOON, CHRISTOPHER FRANCIS KERR, AARON CAVANA WALLACE, CHRISTOPHER ANDREW MCLEISTER, PETER GAVIN MCMULLAN AND PAUL EDWARD DAVID HENSON

Charges of murder of Michael McIlveen, affray and criminal damage. - fixing of natural and ordinary place of trial. - whether trial should be moved to division of Antrim given a change of the law between committal and arraignment of the defendants. - whether sectarian nature of the offences could prejudice the jurors. - whether the defendants would receive a fair trial. - HELD that the natural and proper place for this case to be tried is in the Division of Antrim since the jury will be drawn from the greater part of County Antrim and not Ballymena itself, where the murder occurred. - application to vary the place of trial granted accordingly.

CROWN COURT
4 APRIL 2008
HART J

ORDE, SIR HUGH, CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND v GERARD DEVLIN

Case stated by Youth Court. - whether a person commits the offence of obstructing a police officer under s.66 (1) of the Police
(Northern Ireland) Act 1988 by refusing to give the officer his name and address after he has been cautioned and arrested for another offence. - definition of obstruction. - whether the appellant was under a legal duty to provide the constable with his name and address and whether he had a lawful reason for not doing so. - whether wilful or voluntary act. - HELD that the appellant could not be guilty of an offence under s.66 Police (Northern Ireland) Act 1998 as he was not obliged either at common law or by statute to give the constable the information he requested. - matter remitted to the Youth Court with a direction to enter an acquittal

COURT OF APPEAL
6 MAY 2008
CAMPBELL LJ

DAMAGES

DOROTHY WILSON v JAMES ANTHONY
GILROY AND MOTOR INSURERS’ BUREAU
Application pursuant to Administration of Justice Act 1970 s.32 by the third named defendant seeking disclosure and production of documents held by the Security Service. - plaintiffs seek damages against each of the defendants on the basis of their alleged involvement in the Omagh bomb. - entitlement to disclosure and production of documents in the possession, custody or power of a third party in a personal injury action. - whether the defendants right to fair trial were impaired. - HELD that the nondisclosure of material would not render the trial unfair and application dismissed

HIGH COURT
8 May 2008
MORGAN J

PLANNING AND ENVIRONMENTAL LAW

RE CENTRAL CRAIGAVON LIMITED
Application by Central Craigavon Limited to quash a decision of the Department of Environment whereby it determined that an application of reserved matters permission by the applicant was invalid and returned the application to the applicant. - applicant had made application for outline planning permission to develop lands adjacent to the shopping centre that he owned. - whether the current application was so far removed from the approved proposal that it did not fall within the ambit of the outlined permission and could not be considered a reserved matters submission. - application made for approval must be within the ambit of the outline planning permission and must be in accordance with any conditions annexed to the outlined permission and cannot be modified by the applicant. - early determination and procedural fairness. - role of the Court and the planning authorities. - HELD that the decision of the Department was lawful and application dismissed

HIGH COURT
29 APRIL 2008
GILEN J

DISCLOSURE

MARK CHRISTOPHER BRESLIN
AND OTHERS v SEAMUS
MCKENNA AND OTHERS
Ex tempore judgment. - appeal from a dismissal of applicant's application for leave to apply for judicial review. - whether the applicant is a person who can be removed to a country or territory to which there is reason to believe he will be admitted. - HELD that the evidence points to the conclusion that the applicant would be admitted and appeal dismissed

COURT OF APPEAL
KERR LCJ, CAMPBELL LJ, HIGGINS LJ

REAL PROPERTY

ODYSSEY CINEMAS LIMITED v
VILLAGE THEATRES 3 LIMITED AND
SHERIDAN MILLENNIUM LIMITED
Summary judgment sought under o.14 RSC in relation to its counterclaim against the plaintiff for rent due on foot of an underlease made between the defendant as lessor and plaintiff whereby the defendant demised the plaintiff
the premises for the long term ending at an annual rent of the amount equivalent to the superior rent fixed by the lease. - whether the plaintiff had rescinded the agreement under which the under-lease fell to be created on the ground of fraudulent misrepresentation by the defendant. - whether the plaintiff was induced to enter into an agreement and the under-lease by reason of the defendant’s fraud in failing to disclose the existence of a serious noise and vibration problem emanating from adjoining premises of which the defendant was fully aware and in providing false answers to pre-contract enquiries in that connection. - whether the plaintiff’s continuing occupation of the premises affirmed the contract and the underlease. - application for summary judgment dismissed.

HIGH COURT
2 MAY 2008
GIRVAN LJ

SHERIDAN MILLENNIUM LIMITED v
VILLAGE THEATRES 3 LIMITED
Landlord and tenant. - non-payment of rent, - proceedings issued for summary judgment in respect of payment of rent due together with interest at the contractual rate of interest and costs. - whether the defendant has a right to an equitable set-off against the amount claimed arising out of a potential liability of the defendant to meet a claim brought against it. - HELD that the defendant’s counterclaim is not closely connected with the defendant’s contractual liability to pay rent, and that the plaintiff is entitled to summary judgment on foot of its claim.

HIGH COURT
2 MAY 2008
GIRVAN LJ

SUCCESSION
IN THE ESTATE OF MAUREEN DIAMOND DECEASED, CLAIRE CAMPBELL, MICHAEL GILLEN AS PERSONAL REPRESENTATIVES OF MAUREEN DIAMOND DECEASED AND EDWARD DIAMOND AS PERSONAL REPRESENTATIVE OF THOMAS JOHN DIAMOND DECEASED
Distribution of the estate of the deceased. - directions sought as to whether the property in question was held under a tenancy in common or a joint tenancy in the absence of a deed of assent. - rights of survivorship. - HELD that at the time of the death of the testatrix she held the property with the defendant under a joint tenancy.

HIGH COURT
6 MAY 2008
TREACY J
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> Legislation

The Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2008/159
These Regulations implement in Northern Ireland Council Directive 2002/73/EC of 23 September 2002 in part. The Directive concerns the principle of equal treatment of men and women as regards access to employment, vocational training and promotion, and working conditions. These Regulations amend the 1976 Order to give full effect to the Directive in relation to the definitions of harassment and discrimination on grounds of pregnancy or maternity leave and so far as it relates to terms and conditions during maternity leave.
Came into operation on 6 April 2008
Available on the OPSI website at http://www.opsi.gov.uk/

The Sex Discrimination (NI) Order 1976 N.I.15
Also available in hard copy in the Library.


The Sex Discrimination (Amendment of Legislation) Regulations 2008/963
English equivalent of the NI Regulations
Came into operation on 6 April 2008
Available on the OPSI website at http://www.opsi.gov.uk/

> Caselaw

Equal Opportunities Commission v Secretary of State for Trade and Industry
Sub nom R. (on the application of Equal Opportunities Commission) v Secretary of State for Trade and Industry
Available on Bailii at http://www.bailii.org/

> Articles

The following articles are based on the English legislation:

Sex discrimination: whatever happened to consultation?
Discusses the Sex Discrimination Act 1975 (Amendment) Regulations 2008 and in particular whether a comparator is required when discrimination on the grounds of pregnancy or maternity leave is claimed
Kerr-Davis: 2008 Emp. L J. 90 (May), 2-4

Sex changes
Considers the effect of the new legislation on employees and also employers and highlights businesses’ lack of preparation
Malametinos: 2008 N.L.J. 158(7320), 654-655 *

Sex Discrimination Act 1975 (Amendment) Regulations 2008: an EOR guide
Provides a guide to the legislation including the liability of employers.

Hands off! (liability of employers for third-party sexual harassment)
Nicolle: 2008 NLJ, 7322, 725*

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

> Websites

Labour Relations Agency
Useful publications and a questions and answers section, as well as access to all the NI employment legislation
http://www.lra.org.uk/index.htm

Office of the First Minister and Deputy First Minister
Provides an information note on the NI Regulations
http://www.ofmdfmni.gov.uk/index.htm

> Textbooks in the Library

The library has a wide selection of employment textbooks available for reference only.

Harvey on industrial relations and employment law. Looseleaf
Tolley's employment law. Looseleaf
Missing Wills

Re: Harriet Elizabeth Patterson (deceased)
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Wilson Nesbitt
Solicitors
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Fax: 028 9127 8199

Re: Robert Jones Harvey (deceased)
Late of: 21 Tower Road, Conlig, County Down BT23 7PN

Would any person having knowledge of the whereabouts of the Will of the above named deceased please contact:

Thompsons
Solicitors
39 Frances Street
Newtownards
County Down BT23 7DW
Tel: 028 9181 1652
Fax: 028 9181 9645

Re: Albert McDowell (deceased)
Late of: 2 Knock Link, Belfast BT5 6GG
Date of Death: 6 April 2008

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Angela Phillips
Holmes & Moffitt
Solicitors
218 Knock Road
BELFAST BT5 6QD
Tel: 028 9079 9997
Fax: 028 9079 9010

Re: Patricia Margaret Dunlop (deceased)
Late of: 24 Manor Park, Killinchy Road, Comber, County Down

Formerly of: 1 Ardnave Valley Park, Comber, County Down

Date of Death: 25 August 2007

Would any person having knowledge of the whereabouts of any Will made by the above named deceased please contact:

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Stewarts Solicitors
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County Down BT23 4AB
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Fax: 028 9182 6333

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