New County Court Costs Revealed

The Law Society has received notice of the outcome of the review of county court costs undertaken by the County Court Rules Committee. The review, which began with the issue of a Consultation Paper as long ago as April 2001 has resulted in the making of the County Court (Amendment No 2) Rules (Northern Ireland) 2002 [SR 412/2002]. These are stated to have been made by the Rules Committee on 13th June 2002 and allowed by the Lord Chancellor on 30th December 2002.

The effect of the Rules is to amend the principal 1981 Rules to make a number of changes to the scale costs for solicitors and counsel prescribed at Appendix 2 to the 1981 Rules. These changes include:

- A reduction in the number of bands of costs for proceedings commenced by ordinary civil bill and an increase in the amount of costs payable;
- An increase in costs payable in respect of travelling and for drafting a reply to notice for further particulars;
- To otherwise increase costs by 4.3%;
- The introduction of discretionary costs for drafting a notice for particulars;
- Combining in one part the costs for title and equity suits reducing the number of bands of costs;
- Provision for enhancing costs by one third in certain complex cases; and
- Other minor or consequential changes

The new Rules come into operation on 3rd March 2003. The Northern Ireland Court Service has advised that “there is no provision in the Rules limiting their application to proceedings commenced on or after 3 March 2003.”

Commenting on the publication of the new Rules, the Chief Executive of the Society, John Bailie, said: “Obviously we welcome the fact that we know the outcome of this process at long last. The changes made to the Rules appear to go beyond an uprating exercise, and clearly we will wish to make a proper assessment of the effect and implications of what has been done.”

The Society understands that a final print of the Rules is available from HMSO, and online at: www.hmso.gov.uk/legis or www.northernireland-legislation.hmso.gov.uk/sr

Client Counselling Competition

Two IPLS trainees proved they were a force to be reckoned with when they won the Northern Ireland regional final of the client counselling competition on the 11 December 2002 held in Law Society House in Belfast.

The two apprentices, Stephen Mearns, of Murphy & O’Rawe Solicitors and Gerard McLoughlin of Sheridan & Leonard Solicitors won against a formidable team from Queens University Belfast, coached by Heather Conway. The panel of judges comprised Attracta Wilson, Peter Campbell and David Gaston and the part of the client was played by local actress Laine Megaw.

The contestants are marked on their ability to establish a rapport with the client, obtain relevant information and offer practical guidance and correct legal advice.

Stephen and Gerard’s regional success has won them a place in the Louis M Brown International Client Counselling Competition and will see them flying off to Durban in South Africa to represent Northern Ireland in April 2003. While there, they will pit their skills against top legal trainees from over 15 countries.

While a donation from the Law Society will help them on their way there still remains a great deal of fund raising to be done, so any donations however small will be greatly appreciated.

Kate McKnight, Lecturer, IPLS

The Client Care course set up by Mrs Ruth Craig at IPLS tries to simulate a solicitor-client exchange using amongst other things role-play and video. The idea is that trainees build up key transferable skills such as effective listening, communication and empathy with the client, as well as being able to identify the non-legal aspects for the client. It certainly appears to have been a success, as Stephen and Gerard will have a lot to live up to, with last year’s team of Stephen McKeown and Ciaran Maguire being runners up in the International Competition and the 2001 team of Anita Hanna and Paddy McGrath carrying off the winners trophy.

Kate McKnight, Lecturer, IPLS
WEB WATCH

‘Broadband has landed’ according to the commercials. But by no means everywhere in Northern Ireland it would seem. A campaign beginning here this month intends to change this by encouraging more Internet users to express both an interest and a commitment to purchasing the new technology. But first what exactly is it? And why do practitioners fortunate enough to have it already rate it so highly? Broadband, very simply, is a fast connection to the Internet that is always ‘on’. You don’t need to dial up every time you want to view a website or collect your emails. The extra bandwidth means that large case files, images, videos, music tracks and animations download much more quickly. Because it is always on it does mean that your office system is more vulnerable to attack through the Internet. This is because hackers have ample time to work out ways into your office system rather than the three minutes it may take you to check your email each morning and afternoon. This risk is easily contained by the installation of a firewall. They are relatively inexpensive. Indeed a simple one to install and rated highly by many IT experts is free to download at Zonelabs.com

A wave of newer technologies has made Broadband available to smaller organisations and consumers. One of these technologies is ADSL. ADSL transforms an existing telephone wire into a high-speed digital line capable of carrying data at up to 40 times the speed of a conventional modem. Because ADSL runs over your existing phone line, there is no need to pay to have an extra line put in. In most cases you will not even have to change your telephone number. Access to all BT Select Services will still be available, including Call Waiting, Call Return and Caller Display.

BT’s plan is to roll out Broadband availability with reference to registered interest in the service. Throughout the UK there are a number of so-called trigger areas which will be considered for conversion to BroadBand once a certain number have registered their interest in the new technology. The figure is between 200-500. In Northern Ireland there are at least 10 of these trigger areas including the exchanges at Antrim, Armagh and Strabane. It is possible to find out online whether Broadband is already available to you or your firm and if not, to register your interest. You can also check to see how many others in your area have done the same.

“Broadband has landed” is a great marketing slogan but so is “We’re not there yet but we’re getting there” while “Broadband for All” would appear best of all.

barryphillips@myfastmail.com

For links to the facilities mentioned above and other information on Broad Band in NI you may wish to go to: www.legal-island.com/whatson.htm

To advertise in the Writ

please contact Karen Irwin at:

Citigate NI
Citigate House
157-159 High Street
Holywood
BT18 9HU

Tel: 028 9039 5502
Fax: 028 9039 5600
Email: karen.irwin@citigate-ni.co.uk

‘Broadband has landed’ according to the commercials. But by no means everywhere in Northern Ireland it would seem. A campaign beginning here this month intends to change this by encouraging more Internet users to express both an interest and a commitment to purchasing the new technology. But first what exactly is it? And why do practitioners fortunate enough to have it already rate it so highly? Broadband, very simply, is a fast connection to the Internet that is always ‘on’. You don’t need to dial up every time you want to view a website or collect your emails. The extra bandwidth means that large case files, images, videos, music tracks and animations download much more quickly. Because it is always on it does mean that your office system is more vulnerable to attack through the Internet. This is because hackers have ample time to work out ways into your office system rather than the three minutes it may take you to check your email each morning and afternoon. This risk is easily contained by the installation of a firewall. They are relatively inexpensive. Indeed a simple one to install and rated highly by many IT experts is free to download at Zonelabs.com
County Court Judges’ Crown Committee

We reproduce below the text of a letter received by the President from the Recorder of Belfast.

Crown Court Workload and Case Management

The County Court Judges’ Crown Committee has been considering the state of the Crown Court business dealt with by county court judges at the various Crown courts across the Province in the light of increasing workloads in some areas and difficulties in bringing cases to trial in some respects.

As a result a number of steps are being put in place by the county court judges to deal with their cases, and as these may have implications for the arrangements for the preparation of cases for trial and briefing of counsel I thought it would be helpful to you to know in advance what it is we propose to do.

As you will be aware, the Lord Chief Justice has directed that the target within which a case should be arraigned is to be six weeks from committal, with the target for trial being within a further 12 weeks. Whilst the great majority of cases are being listed for arraignment within this 6 week period, there can be difficulties on occasion. Arrangements are now being made to list cases for arraignment not later than 4 weeks from committal, so that if the arraignment has to be adjourned for some good reason it can, if at all possible, still be held within the 6 week target date.

In addition, before arraignment the parties will be notified by the listing officer of the proposed trial date so that both sides can consider before the arraignment all matters which might affect the proposed trial date, such as witness availability or expert reports which are outstanding.

At the arraignment the judge will then ask the parties whether they are ready for trial on the proposed date. If either party indicates that this is not the position, then, if it is necessary to put back the trial date, the matter will then be listed for another date selected to ensure, if at all possible, that the trial can start within the 18 week target from committal. The matter may, if necessary, be listed again in advance of the proposed trial date when outstanding matters addressed, or the state of readiness reviewed.

These procedures have been in use in a number of Crown Courts for some time and are now being adopted in all areas to ensure that cases proceed to trial as expeditiously as possible. As you will appreciate, it will be essential for counsel who has been briefed for the trial to be present at the arraignment and to ensure that he or she is fully instructed on all matters that may affect the ability of the case going to trial on the proposed trial date.

Arrangements have also been made to enable peripatetic judges to sit with the assigned judges in each division so that two courts can run at the same time. This is to deal with substantial numbers of cases in Londonderry, Craigavon and Ards in particular. It may also be necessary to make an additional judge available in Belfast in the New Year in view of the increase in the number of cases returned for trial in recent months. This may involve three county court judges sitting to do Crown work at the same time on some occasions next Term.

I appreciate that the pre-trial progress of cases is often affected by matters that are, or may appear to be, the responsibility of the prosecution rather than the defence, and so I am writing to the Director of Public Prosecutions in similar terms.

His Honour Judge Hart QC
Presiding Judge of the County Courts

George J Irwin (Assessors) Ltd

76a Tullyard Road, Belfast BT27 5JN
Tel: 028 9082 6060 Fax: 028 9082 6655
Email: info@motorassessors.com

- Accident Damage Assessment
- Condition Report
- Vehicle Valuation
- Consultancy
- Depreciation due to accident repairs

Members of the Institute of the Motor Industry and Institute of Automotive Engineer Assessors
The following EPLANI events are being organised in the next few months and will be advertised in a future issue of the Writ:

2 April 2003 – New Environmental (Northern Ireland) Order 2002
Law Society House, Victoria Street, Belfast

This half-day seminar will examine the three parts of the Order namely the changes to Waste, Air and Nature Conservation. This will be of interest to all, particularly those dealing and working with environmental legislation on a daily basis. A sandwich lunch will be provided at 1.15 pm with the seminar starting at 2.00 pm sharp, finishing at 4.00 pm.

(This seminar carries 2 hours CPD)

Review of the Planning Appeals Commission (date to be confirmed)

This talk will discuss the role of the Planning Appeals Commission (‘PAC’) and reflect on its work over the past thirty years.

(This seminar carries 2 hours CPD)
A common cause for notifications being made against a solicitor’s professional indemnity insurance is when joint instruction is given. That is when a client is being advised either by another professional – for example, an accountant or surveyor – or when two different departments within a firm are advising on separate issues. Indeed, the definition can also apply when a practice has overseas and departments in different countries which are acting for the same client on the same project.

Although it may seem unfair, often all parties concerned will be held partly responsible if one party is negligent when working on joint projects.

When working in conjunction with either another professional firm or another department or office within the solicitor’s practice, it is important to establish proper working guidelines at the outset. Clear parameters need to be drawn so that each party knows exactly which job is being embarked on and by which team.

It is important that regular meetings are held between all parties to ensure that everyone knows exactly what the other party is doing and what progress has already been made. All too often the professionals are dependent on the client for information as to how other areas of work are progressing. This is caused by the fact that the client, while having numerous meetings with each party, will most probably be seeing all parties separately. This can lead to many problems, mainly because, more often than not, the client does not fully understand what each party is doing or has already completed. It is far better to arrange meetings, whenever possible, for all parties and the client together, this way everyone knows what the other is doing and also what stage the work is currently at.

Diary dates and deadlines form another area which tends to be a big cause of problems when work is split between teams, offices or professions. It is imperative that all parties are fully aware of deadlines and important dates with regard to the work being undertaken. Often different deadlines impact on the other areas of work, and the fact that another party forgot to inform you that a deadline had been brought forward may not be enough to stave off a claim of negligence.

The simplest way to work with other parties, teams or offices is to ensure you have solid risk management procedures in place. If all key dates are noted, actions completed by due dates, all files are kept fully up to date and regular meetings are held, then the chance of your practice being held partly responsible if another party is negligent, will be minimal.

This column was prepared by the Alexander Forbes Professions risk management team.
BRITISH COUNCIL VISIT DINNER

BELFAST CASTLE – Wednesday 19th February 2003

The annual visit from European students to Northern Ireland for a week long study tour will take place in February next year. The NIYSA will be hosting a dinner at Belfast Castle on Wednesday 19th February 2003. 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 event is one of the highlights in our social calendar.

If you are interested in attending, please contact:

Catherine Calvert
Samuel D Crawford & Co.
105-109 Victoria Street
Belfast     BT1 4PD
Tel: 028 9059 5300

NORTHERN IRELAND YOUNG SOLICITORS’ ASSOCIATION PRESENTS A LUNCHTIME SEMINAR ON:

CONTAMINATED LAND FOR CONVEYancers – HOW NOT TO PANIC?

Speaker: Neil Faris of Cleaver Fulton Rankin Solicitors
Date: Friday 14th February 2003
Time: 1pm - 2pm (tea, coffee and sandwiches from 12.30 pm)
Venue: Law Society House, Victoria Street, Belfast
Cost: £10 for members of the NIYSA* and £20 for non-members.

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

Cheques and Booking Forms to NIYSA c/o Nuala Sheeran, Mills Selig, 21 Arthur Street, Belfast BT1 4GA. Fax to 028 9023 1956. E-mail to nuala.sheeran@nilaw.com

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

BOOKING FORM

Name__________________________________________________________
Firm________________________________________________________________
Address__________________________________________________________
__________________________________________________________
Email__________________________________________________________
Tel__________________________________________________________
Number of persons attending_______________________________________
I enclose remittance of £____________________________________________

NIYSA MEMBERS’ DATABASE

The NIYSA is presently compiling a database of its members’ e-mail addresses. We propose to e-mail members about upcoming NIYSA CPD lectures/seminars and events. If you wish to be notified of these, please contact Catherine Calvert at Samuel D. Crawford & Co. Solicitors, 105-109 Victoria Street, Belfast BT1 4PD with your e-mail address. Tel: 028 9059 5300
catherine@sdcrawford.co.uk
DON'T LEAVE RISK MANAGEMENT TO CHANCE!

Why Risk Management & Why now?
Operational risk arises out of the way in which the day-to-day work of any business is performed.
If the work is carried out properly, risk will be minimised. If not, complaints and claims will arise and losses will occur.
With today clients more demanding than ever before - wanting a better, quicker and cheaper service than ever before and prepared to complain when they don't get it, Risk Management should be at the top of the profession's agenda.
Good Risk Management procedures can result in reductions and cost-savings in Professional Indemnity premiums.

CPD Risk Management Seminar
Spend 3 hours at this seminar and find out the key points that you and your firm need to know about Risk Management including:
◆ A definition of Risk Management and how the principles apply to every law firm and legal department.
◆ A framework for Risk Management that is compliant with the Lexcel standard but which is equally valid for non-Lexcel firms and legal departments.
◆ How the framework for Risk Management may be applied to your firm.
◆ How to introduce robust systems for Risk Management without damaging the entrepreneurial spirit of individuals.

The seminar will cover the Risk Management requirements of Lexcel and is also equally valid for non-Lexcel practitioners who want to know more about how to proactively manage their exposure to risk without adding huge administrative costs.

Just £100 + VAT per delegate
3 Hour CPD Seminar
Wednesday 26th February 2003
at The Law Society - Belfast
2pm – 5pm
Presented by Jane Ridley
Managing Partner
The Ridley Partnership
Refreshments & Delegate Notes included
3 CPD points available

For more information about The Ridley Partnership, visit www.theridleypartnership.co.uk

TO RESERVE A PLACE FAX THIS FORM NOW TO 01833 621150

I wish to reserve _________________ place(s)

☐ Wednesday 26th February 2003 – Belfast
☐ I am unable to attend the event but would like to find out more about Risk Management.
☐ I am unable to attend the event but would like to find out more about Lexcel Accreditation.

Firm: __________________________________________
Tel: ____________________________________________
Email: __________________________________________

Please list the names of those attending:

BLOCK CAPITALS

Name: ________________________________
Position: ____________________________

Name: ________________________________
Position: ____________________________

Name: ________________________________
Position: ____________________________

Please return this form by 19th February 2003. We will contact you to confirm your place(s) and details of the venue.

If you prefer you may send this form by post to:
The Ridley Partnership, The Coach House, Barningham Park, Richmond, North Yorkshire, DL11 7DW or telephone 01833 621130 for more details.
Seminar Programme

Following on the success of last year’s Continuing Professional Development seminar programme, the BSA intends to run a full and varied programme of seminars over the course of this year. A brochure detailing the seminar programme will be distributed to all solicitors with the annual BSA subscription renewal flyer.

The intended programme for the first six months of the year is detailed below. We have endeavoured to provide seminars on a variety of topics over a range of disciplines. We also intend to hold two half-day seminars on client care and practice management issues, one in June and one in September although the exact details have not yet been finalised. Details of upcoming seminars will be published in the Writ each month and we would advise that you keep an eye out for any changes to the seminar arrangements.

With regard to the Land Registry seminars to be held on 27th February and 10th March at Law Society House, please note that there is only one fee for this seminar as it is open to all members of the Law Society (solicitors and trainee solicitors). A similar single combined seminar will be presented by the Land Registry at the following locations: Ballymena, Derry, Enniskillen and Omagh on dates and at venues soon to be advised by the Law Society to all practitioners in Counties Antrim, Fermanagh, Londonderry and Tyrone. This information will also be published on the Law Society’s website at www.lawsoc-ni.org.

DERMATITIS – WHAT IS IT?
By Dr Clifford McMillan FRCP
At Law Society House
On Thursday 17th April 2003

“LOUSY LEASES”
By Rowan White of Arthur Cox Solicitors
At Law Society House
On Friday 9th May 2003

LIBRARY SERVICES
By Heather Semple of Law Society, Law Library
At Law Society House
On Thursday 12th June 2003

RECENT DEVELOPMENTS IN ADR
By David Gaston and Brian Speers
At Law Society House
On Thursday 19th June 2003

Coffee and sandwiches will be available from 12.30 p.m. and the talks will start at 1.00 p.m.

The cost of all lunchtime seminars is £10.00 for BSA members and £20.00 for others. The cost of each Land Registry seminar is £10.00 for each seminar.

Anticipate that there will be a high demand for places at the Belfast seminars and we would therefore suggest that you should endeavour to attend your local venue. Given that Compulsory First Registration is being extended to the rest of Northern Ireland in 2003 this should serve as a timely reminder to the profession that training is available.

In an effort to avoid the end of year panic for CPD points that some of you experienced at the end of 2002, we are giving you advance notice of the seminars which will be available this year so that you can plan ahead and get out early in the year and start clocking up those CPD points!

LAND REGISTRY PROCEDURES
Joint seminar arranged by the Law Society and the Belfast Solicitors’ Association in conjunction with the Land Registry
In two parts on:
1) Thursday 27th February 2003 and 2) Monday 10th March 2003
Both at Law Society House
Part one will cover: Transfers of whole and/part, New Developments, Charges, Mergers and the Ground Rent Scheme.
Part two will cover: Compulsory First Registration, common mistakes in the Land Registry and Registry of Deeds and Land Web Direct Scheme.

TRIAL ADVOCACY
By Mr Tony Caher of Campbell & Caher Solicitors
At Law Society House
On 13th March 2003

WILLS UPDATE: THE EFFECT OF THE TRUSTEE ACT (NI) 2001 ON DRAFTING WILLS
By Mr Alastair Rankin
At Law Society House
On Friday 28th March 2003

RECENT DECISIONS BY ECHR
By Brice Dickson
At Law Society House
On Thursday 10th April 2003

Library Services
By Heather Semple of Law Society, Law Library
At Law Society House
On Thursday 12th June 2003

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The BSA website can be found at: www.belfast-solicitors-association.org

BSA On-Line
The BSA website can be found at: www.belfast-solicitors-association.org
Equality for Solicitors’

The Civil Justice Council in England and Wales, following lengthy consultation with liability insurers and other interested groups, has published an agreed scale for fixed costs in road traffic claims which settle for £10,000 or less before the issue of court proceedings, to come into effect in the Spring.

Provisional agreement was reached as follows:-

£800 for all cases settled above £1,000.
plus a sum equal to 20% of damages paid up to £5,000.
plus a sum equal to 15% of damages paid between £5,000 and £10,000.

By way of example, this would lead to costs payable as follows:-

<table>
<thead>
<tr>
<th>Damages (2/3 scale up to £5,000.00)</th>
<th>Costs</th>
<th>NI Plaintiff’s pre-issue costs</th>
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</thead>
<tbody>
<tr>
<td>£1,000</td>
<td>£1,000</td>
<td>£281</td>
</tr>
<tr>
<td>£2,000</td>
<td>£1,200</td>
<td>£449</td>
</tr>
<tr>
<td>£3,000</td>
<td>£1,400</td>
<td>£617</td>
</tr>
<tr>
<td>£4,000</td>
<td>£1,600</td>
<td>£757</td>
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<tr>
<td>£5,000</td>
<td>£1,800</td>
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<td>£6,000</td>
<td>£1,950</td>
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<td>£7,000</td>
<td>£2,100</td>
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<td>£1267</td>
</tr>
<tr>
<td>£9,000</td>
<td>£2,400</td>
<td>£1349</td>
</tr>
<tr>
<td>£10,000</td>
<td>£2,550</td>
<td>£1422</td>
</tr>
</tbody>
</table>

According to the research, the fixed fee figure is arguably slightly less than the average amounts currently being paid in England and Wales.

Should Northern Ireland Solicitors not expect the same treatment from the Lord Chancellor’s Department as that afforded to our English counterparts?

HEART TRUST FUND
(ROYAL VICTORIA HOSPITAL)

The main object of this established and registered charity is the support and furtherance of the vitally important treatment, both medical and surgical, provided for patients in the Cardiology Centre in the Royal Victoria Hospital Belfast, and the equally important work of research into heart disease carried on there. The charity is authorised to use its fund to provide that support, or achieve that furtherance when, (but only when) public funds are not available, or are insufficient, for the purpose.

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

The administration of the charity is small and compact and the trustees are careful to ensure that its cost is minimal. As a result donors and testators can be assured that the substantial benefit of their gifts and bequests will go directly to advance the causes of the charity.

Further details about this charity and its work will gladly be supplied by the Secretary, The Heart Trust Fund (Royal Victoria Hospital), 9B Castle Street, Comber, Co. Down BT23 5DY. Tel: (028) 9187 3899.

(Registered Charity No. XN52409)
Belfast Solicitors Association
Annual Subscription Notice

Membership of the Association is open to those Solicitors practising in the Greater Belfast area and subscription notices will shortly be sent out to individual solicitors. However in the interim those Solicitors wishing to join or renew membership may do so now by completing and returning the form below to the Association’s Honorary Treasurer, Mr Frank MacElhatton (details set out below).

Annual Subscriptions for 2003 have been fixed as follows :-
~ £7.00 for any Solicitor enrolled on or after 1st January 1999
~ £15.00 for any Solicitor enrolled prior to 1st January 1999
~ Corporate membership is available for a £100.00 for eight members, and thereafter £10.00 per person. Thus a nine person corporate membership would cost £110.00 etc.
~ Associate membership is open to any Pupil Solicitor at a Subscription of £7.00

I/We enclose £___________ for my/our 2003 subscription(s)
(Please make all cheques payable to “The Belfast Solicitors’ Association”)

Name ___________________________ Name ___________________________
Firm ___________________________ Firm ___________________________
Address __________________________ Address __________________________

Email ___________________________ Email ___________________________

Name ___________________________ Name ___________________________
Firm ___________________________ Firm ___________________________
Address __________________________ Address __________________________

Email ___________________________ Email ___________________________

Name ___________________________ Name ___________________________
Firm ___________________________ Firm ___________________________
Address __________________________ Address __________________________

Email ___________________________ Email ___________________________

OR

We wish to have corporate membership of the following person :-

Firm ___________________________ Name (& Email) ___________________________
Address __________________________ Name (& Email) ___________________________

Email ___________________________ Name (& Email) ___________________________
Name (& Email) __________________________ Name (& Email) ___________________________
Name (& Email) __________________________ Name (& Email) ___________________________
Name (& Email) __________________________ Name (& Email) ___________________________

Please forward all subscriptions to :-Frank MacElhatton, Honorary Treasurer, Belfast Solicitors’ Association C/o MacElhatton & Co, 58 Andersonstown Road, Belfast, BT11 9AN. DX 2940 NR Andersonstown.
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Email: sales@opsisltd.co.uk  Tel: 9033 3344
FOCUS ON RISK MANAGEMENT

St. Paul International Insurance is a leading professional indemnity insurer. The company is one of the principal insurers of law firms in the United Kingdom, offering indemnity cover through a joint venture with the Law Society of England and Wales.

As sponsors of the 2003 annual conference of the Law Society of Northern Ireland, key members of The St. Paul’s team will be addressing a full session of the conference on Saturday 15 March on insurance and risk management issues facing solicitors today with Tom McGrath from Marsh UK chairing the Session.

Speakers will include Product Manager Jonathan Davies, one of the UK’s pre-eminent underwriters of law firms. Jonathan will explain what insurers look for when assessing risks, and will examine what lessons Northern Irish solicitors can learn from recent changes in the market for solicitors’ indemnity in England and Wales.

Over the last three years The St. Paul has established the UK’s largest team of lawyers devoted exclusively to the provision of risk management advice to law firms. Risk managers Olivia Burren and Tim Prior – both solicitors with extensive experience of private practice and indemnity insurance – will look at how lawyers make mistakes, analysing common causes of negligence claims and explaining the steps you can take to prevent them happening in the first place.

This session will provide solicitors with invaluable guidance on improving service standards, benefiting your clients, your reputation and your bottom line.

Tom McGrath is Regional Director of Marsh UK Ltd and Deputy Chairman of Marsh Ireland Ltd. By Examination he is a Fellow of the Chartered Insurance Institute and the Institute of Administrative Management, and in addition holds the City & Guilds of London Institute Further Education Teachers Certificate.

Tom has specialised in Professional Indemnity Insurance for 35 years and in particular the causes of Professional Indemnity claims. He lectures, frequently, to professional bodies such as Institute of Chartered Accountants, Royal Society of Ulster Architects, Royal Institute of Chartered Surveyors, The Law Society of Northern Ireland and the Law Society of Ireland, and has also participated in two CCBE Conferences. Tom tries to bring a realistic approach to claims avoidance. He was a visiting lecturer at the College of Business Studies and was Chairman of the College from 1985-1991. He is the newly appointed Chairman of the Northern Ireland Tourist Board.

Jonathan Davies – Product Manager

Jonathan Davies is the manager of The St. Paul’s Solicitors’ Professional Indemnity account. After achieving his BSc (Hons) in Banking & International Finance, he joined The St. Paul in 1993 as a member of the R&D Unit to establish a Professional Indemnity capability. He became Senior Underwriter in 1998 covering product and broker development, and staff technical training. In 2000 he was heavily involved in the negotiation and establishing of The St. Paul’s joint venture with The Law Society of England and Wales to provide indemnity cover to their members before taking over management of the account in 2001.

Olivia Burren - Risk Manager

Olivia Burren was admitted as a solicitor in 1988 and worked in private practice in the East Midlands until 1995, when she joined the Office for the Supervision of Solicitors as a caseworker. In 1997 she moved to Solicitors Indemnity Fund as a claims handler and began doing risk management work. She joined The St Paul in 2000 as a Risk Manager. Olivia has lectured extensively on risk management and has also written articles appearing in the legal press, including the weekly risk management column in the Law Society’s Gazette.

Tim Prior – Risk Manager

Tim Prior is a solicitor and an Associate of the Institute of Risk Management. He has 13 years’ experience of solicitors’ professional negligence. Qualifying as a solicitor in 1986, he worked in private practice in the South West. He left private practice in 1989 to join the Solicitors Indemnity Fund, where he worked first as a claims handler then as a manager. He joined St. Paul International Insurance in 2000 and became an Associate of the Institute of Risk Management in 2001. For the last five years Tim has been lecturing on risk management. He also written articles for the weekly risk management column in the Law Society’s Gazette.

Session Chairman Tom McGrath

10.00am Master Policy

Things I have seen, places I have been

Jonathan Davies

10:30am Insuring Solicitors – an Underwriter’s Perspective

Tim Prior

10:50am Some General Principles of Risk Management

11.05am Tea and Coffee

11:20am Starting Off on the Right Foot: Assessing Risk, Allocating Resources and Spotting ‘Clients from Hell’

Olivia Burren

11:50am Keeping Cases on Track: Avoiding Delay, Communicating Clearly and Supervising Files

Tim Prior

12.20pm Closing the File: Dealing with Unfinished Business and Keeping your Client Satisfied

Olivia Burren

12:40pm Questions and Discussion - End of Conference Session and Lunch
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* Legally trained Underwriters
* Bespoke Policies when required
* Emergency Helpline

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The Legal Aid in Criminal Proceedings (Costs) (Amendment) Rules (Northern Ireland) 2002 (SR No 376)

The above-named Statutory Rule, came into operation on 30 December 2002.

The purpose of the Legal Aid in Criminal Proceedings (Costs) (Amendment) Rules (NI) 2002 (SR No 376) is to amend the Legal Aid in Criminal Proceedings (Costs) Rules (NI) 1992 (SR No 314) so as to alter the date after which certain work may be remunerated at discretionary instead of prescribed rates from 31 December 2002 to 31 December 2003.

Dear Editor


I would advise the citation on the Legal Aid Certificate has arisen due to a computer error within the Department which has been rectified.

I would like to take this opportunity to reassure your readers that, whilst the Department is aware of many imminent changes, it has not been appraised of any immediate plans by the Labour Government to reinstate the Death Penalty.

I shall, of course, keep your readers advised of any future developments.

Yours faithfully

G Andrew Carnson
Chairman, Legal Aid Committee

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PROTECTING MIGRANT WORKERS

In the second part of a study written in collaboration with Maura Hutchinson on the issues surrounding migrant workers, Peter Fitzmaurice examines some of the relevant employment issues.

With regard to migrant workers, employment representatives need to recognise that the issues which concern migrant workers may be different from those of settled workers and that the advice that they need is specific to their situation.

Migrant workers have, inter alia, the following statutory employment rights:

• the right to be paid the minimum wage – currently £4.20 for adult workers aged 22 or over. The development rate, which applies to workers aged 18 to 21 inclusive, is £3.60 per hour. The development rate is also payable to workers aged 22 or over who are in the first six months of a new job with a new employer and receiving accredited training. However, au pairs and family workers may be excluded;

• the right not to be unlawfully discriminated against;

• the right to bring a companion to a disciplinary or grievance hearing;

• the right to working hours and holidays in line with the Working Time Regulations;

In addition, provided their status is that of an employee, they will also have the right to:

• be given statutory notice if their contract is terminated;

• a written statement of terms and conditions of employment;

• unfair dismissal and redundancy protection in line with statutory requirements; and

• maternity and parental rights.

All these rights are subject to whatever qualifying conditions apply generally.

A common issue that arises with regard to migrant workers is the issue of the contract of service being tainted with illegality. Illegality may not only taint the contract but also undermine the whole of the employment protection rights afforded to the employee by statute.

Contracts which are a fraud on the Inland Revenue cannot be relied upon to pursue claims for wrongful or unfair dismissal (Napier v National Business Agency Ltd [1951] AER264; Tomlinson v Dick Evans 'U' Drive Ltd [1978] ICR 693). A foreign employee knowingly working illegally without a work permit will not be able to complain of unfair dismissal (Sharma v Hindu Temple, IDS brief 464, p 5).

If the employee was not aware of the fact that the contract was being performed unlawfully by the employer (by, for example not deducting tax for remuneration), the employee may rely on the contract for the purposes of claiming employment protection rights (Newland v Simons and Willer (Hairdressers Ltd) [1981] ICR 521). However, ignorance of the law as opposed to the fact is no excuse (Miller vs Karlinski [1945] 62 TLR 85).

The fact that the contract is unenforceable by reason of illegality does not preclude a person employed under such a contract from bringing claims of sex (and therefore presumably race, disability or fair employment) discrimination. The reason for this is that such actions do not seek to enforce the unenforceable contract (Leighton v (1) Michael (2) Charalambous [1996] IRLR1967) unless the claim arises out of it or is inextricably bound up with a contract that causes the contract to be illegal (see Hall v Woolston Hall Leisure Ltd [2000] IRLR 578, CA in which Leighton was approved).

One particular area which is of great importance for migrant workers is the induction programme. An induction programme can give the worker information on basic employment rights, health and safety issues, grievance and disciplinary procedures and other relevant issues. It is also an opportunity for employers to demonstrate best practice.

An individual's employment rights are significantly affected by her/his status, that is whether she is employed under a contract of employment; employed under a contract for services; employed through an agency; or genuinely self-employed. Migrant workers can be particularly vulnerable to exclusion from employment rights because their employment is often through an agency.

Migrant workers have equal rights to be protected against unlawful discrimination, whether based on sex, disability, religion, political opinion, race or nationality. It is axiomatic that a representative will examine closely all the provisions of the Race Relations Order (Northern Ireland) 1997 when examining any potential legal claims arising from their employment. The Order applies in all employment situations although, as noted below, private households are currently excluded. Employers are vicariously liable for acts of race discrimination committed by their employees in the course of their employment, unless the employer can prove that reasonable steps were taken to prevent such discrimination. Where tribunals and courts find that unlawful race discrimination has occurred, they may order the employer to pay compensation to the victim. A term in a contract which purports to exclude or limit any provisions of the Order is unenforceable by any person in whose favour the term will operate.

In deciding whether a person had been discriminated against, like must be compared with like. Hence, in Dhatt vs McDonald Hamburgers Ltd [1991] ICR 238, it was not discriminatory to treat potential employees differently according to whether they were or not free to work in the United Kingdom without permission, and hence it was legitimate to require evidence of such permission only from those who are not British or EU citizens.

In relation to the scheme outlined in regard to the Asylum and Immigration Act 1996, there is a danger that, in seeking to avoid liability under the Act, employers may treat job applicants from ethnic minorities differently. This in turn creates the risk of discrimination claims. The Home Office has produced a Code of Practice which

The EAT in England and Wales has suggested that a foreign national complaining of discriminatory treatment may only be able to compare her/himself with other foreign nationals rather than with British citizens (Sheiky vs Argos Distributions Ltd [1997] 597 IDS brief 16). This is a problematic approach.

Employment rights can be affected by where an individual works. Under the Race Relations Order, except for discrimination by way of victimisation, employment in private households is specifically excluded. In addition, an employer may lawfully discriminate in the arrangements that s/he makes for selecting employees for a job where being a member of a particular racial group is a genuine occupational qualification for the job.

A failure to observe the terms and conditions in an employee's contract or job offer, whether or not these have been put in writing, amounts to a breach of contract. Workers who sign contracts when they are in another country may be told that they cannot benefit from UK employment rights. However, in a recent case in England and Wales, United Airlines v Brannigan [2001], women flight attendants who had signed their contracts in the USA but were working in the UK at the time of their pregnancy were able to rely on UK law.

Under the provisions of the Treaty of Rome, within EU member states it is unlawful to discriminate between workers from member states as regards employment, pay and other conditions of work and employment. These are additional to the rights based on UK discrimination law. In addition, where migrant workers are offered terms and conditions inferior to those of resident workers, it should be possible to pursue a discrimination claim under the Race Relations Order if the effect of the policy is to differentiate between the workers on the grounds of their racial or national origins.

A number of inquiries at the Law Centre have concerned employers deducting sums from wages at source. These are generally in two forms:

• deductions for accommodation or other board or lodging;
• deductions from a worker's pay to cover a fee or charge by a recruitment agency for finding work in Northern Ireland.

Deductions to cover accommodation and other board and lodging are not unlawful under UK law. However workers, not just employees, may not have deductions made unless required by law or where the worker has agreed in writing in advance that there should be a reduction. To be able to agree to something, the individual needs as a minimum to understand what the provision means. If a worker has been given something to sign in English and s/he is not fluent in the language, it should be possible to argue that agreement has not been given. See the case of Simoes and others v Benjys Group (2200806/01) in the Employment Tribunal of England and Wales.

Deductions to cover fees or charges by recruitment agencies are usually unlawful under UK law.

These are just a few of the employment issues which can arise in relation to migrant workers in Northern Ireland.

Peter Fitzmaurice, Law Centre (NI)

IMMIGRATION LAW UPDATE

Following on from part 1 of this article, which appeared last month, UK Work Permits has indicated that a new ‘managed migration’ scheme is due to be launched in the spring. Although details have not been finalised and no firm date has been given, this is a significant development, as it signals a significant departure from the majority of the current work permit scheme. The managed migration scheme will, for the first time, issue work permits for unskilled labour, most likely in the hospitality and food processing industries. Permits will be available on a quota basis, with a likely quota of 20,000 per scheme for the whole of the UK. It is anticipated, therefore, that these quotas will be filled within the first few days. Such permits will not be available to those already present in the UK, either legally or illegally. These permits are temporary in nature and it appears that applicants may not be accompanied by family.

CPD

Law Centre (NI) training courses attract PD points for solicitors. For further information or to obtain a training programme, contact Patricia Morgan, Assistant Director (Training and Support Services), telephone 028 9024 4401.

HUMAN RIGHTS GUIDE

Law Centre (NI) has launched Rights to Progress, the first Northern Ireland guide to the Human Rights Act and European Convention on Human Rights. Les Allamby, director of the Law Centre and author of the guide, handed the first copy to Brice Dickson, Chief Commissioner of the Human Rights Commission, at the offices of the Commission. Also in attendance was Marie Abbott of the Northern Ireland Community Foundation, which funded the publication through its Social Justice Advisory Fund initiative.

Rights in Progress provides an overview of the Human Rights Act and case law from both the European Court of Human Rights and the courts in Northern Ireland and Britain. Les Allamby stated: “Knowing about the Act is essential for the day to day work of legal advisers. It not only covers high profile and contentious matters but also vital bread and butter issues such as housing, social security, employment and mental health. The guide is aimed at advisers, yet it is written in clear and straightforward language to make it accessible for anyone interested in the Convention and Human Rights Act.”

Commending the guide, Brice Dickson, said: “There have been numerous training sessions and conferences on the European Convention but to date no-one in Northern Ireland has had the resourcefulness to publish a comprehensive guide to the relevant case law. As so often in the past, Law Centre (NI) is blazing a trail in this regard.”

The guide is free to all Law Centre full and associate comprehensive members and is available to others for £9.95 from the Publications Department, Law Centre (NI), 124 Donegall Street, Belfast BT1 2GY
Email: admin.belfast@lawcentreni.org
Warning: Misleading Data Protection Demands

The Society has been alerted to the fact that solicitors in Northern Ireland are being sent misleading notices about failure to register under the Data Protection Act.

Typically these notices are in the form of official looking documents, are headed “final notice”, tell the recipients to send a cheque for £95 “in order to commence registration” with the Information Commissioner, or face a maximum of £5,000 fine. The Society is aware specifically of a business called “Data Protection Agency Services”.

We understand that the Information Commissioners Office has stressed that it has no connection with this Company, and would wish to remind firms that the statutory annual registration fee required is £35.

We understand also that the Office of Fair Trading reports receiving “hundreds” of complaints from businesses targeted by this agency or other companies with similar names. An OFT spokeswoman confirmed: “It is not unlawful in itself to provide a registration or notification service to data controllers, but other than paying the annual fee of £35, there is no charge for businesses wishing to notify for themselves.” Law firms targeted by these companies may speak to the Information Commissioners Office for clarification, or contact the OFT if they wish to complain.

All communications from the Information Commissioners Office will come from Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF. Any registration with the Commissioner should be addressed to that office and should be done by way of an official notification form at a saving of £60.
Housing Executive – Land and Property Solicitors Panels 2003 – 2006

Introduction
Currently there are vacancies on the Executive’s Land and Property Solicitors Panels. The Executive has three Land and Property outlets. There is a Land and Property Solicitors Panel in respect of each outlet. Belfast is a four member Panel while the remaining two outlets are each two member Panels. Details of the geographical scope of each outlet will be provided on request.

The three outlets are located at the following centres:-

- Belfast
- Craigavon
- Londonderry

Within the geographical scope of each Panel, that Panel’s members will be responsible for carrying out all the requirements of the Executive’s Land and Property outlet for the services of external solicitors.

Duration of Panels
Membership of Panels will be for a period of three years.

Eligibility Criteria
A firm will be eligible for appointment to a Panel if it satisfies all of the following eligibility criteria:

A. The firm’s principal or one of the principals must have been in practice as a principal on his/her own account for at least three years.
B. At least two solicitors must be working in the firm (including any employed solicitor).
C. The firm must be willing to designate a solicitor in the firm who will be primarily responsible for actually carrying out Panel work.
D. The designated solicitor must have carried out conveyancing as a predominant (more than 50%) part of his/her workload for at least one year (or for periods in aggregate amounting to one year).
E. Another solicitor in the firm must have carried out conveyancing as a substantial (more than 25%) part of his/her workload for at least one year (or for periods in aggregate amounting to one year).

Selection Procedure
Any firm willing to be considered for appointment may obtain a questionnaire and details of the selection criteria, by writing to the Land and Property Panels Co-ordinator, Land & Property Services, Housing and Regeneration Division, 3rd Floor, The Housing Centre, 2 Adelaide Street, Belfast, BT2 8PB.

A firm will not be free to make multiple Panel applications but instead it will have to choose one particular Panel in which it is interested.

Completed Questionnaires must be returned to arrive with the Co-ordinator at the above address not later than 4.00p.m. on Friday, 21st February 2003. No acknowledgements will be sent.

Compulsory First Regulation
By virtue of SR 2002 Nos 400 and 401 made on 18th December 2002, the Department of Finance & Personnel has decided that Compulsory First Registration (CFR) is to be extended to Counties Fermanagh, Londonderry and Tyrone on 1st April 2003 and to County Antrim (including Belfast) on 1st May 2003.

This decision was made without any prior consultation with or notification to the Society either by the Department or the Land Registry. Following representations made to Government in November 2001, it had been our understanding that CFR was not to be rolled out further until the chronic delays in the Land Registry had been successfully addressed. The Society is registering its serious concerns with the appropriate authorities about the failure to consult and the continuing problems with delay.

The Society has arranged with the Land Registry for a single combined training presentation on CFR and registry practice and procedure to take place on dates to be confirmed and advised shortly at the following venues:- Antrim, Derry, Enniskillen and Omagh. For practitioners in the Belfast areas, the BSA has in conjunction with the Society arranged with the Registry for a two session teaching course on these topics. For further details on this course see the BSA column in this edition of the Writ.
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Client Care Workshop

This workshop is provided jointly by the Law Society of Ireland and the Institute of Professional Legal Studies, Queen's University, Belfast.

Date: Wednesday 12 March 2003
Time: 2.30pm to 5.30pm
Venue: Lecture Theatre, Multidisciplinary Education Centre, Altnagelvin Hospital, Derry.
Fee: £60 per person

Successful practice is intrinsically linked with effective client care. How do you make sure that you are providing appropriate care for your clients?

This practical workshop will help you to assess and develop your skills in dealing with clients. It will also take you through appropriate client care practices and systems, designed to maximize your foothold in a changing market.

Participants will have an opportunity to engage in group work and role play.

All practitioners concerned with honing skills in this vital area will benefit from attendance at this workshop.

Practical issues to be explored include:

- What is client care?
- The 40% rule
- How your emotional quotient affects business?
- Maximizing a changing client base.

Providers:
Antoinette Moriarty – Law Society of Ireland
Anne Fenton and Ruth Craig – Institute of Professional Legal Studies

This course attracts Law Society of Northern Ireland C.P.D. points.

Due to the nature of this workshop places are strictly limited, so early booking is advisable.

Booking form and cheques, made payable to Queen's University Belfast, should be sent to Mrs Joan Playfair, Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY.

Closing Date for applications: Friday, 28 February 2003

MIB Agreements: the Up to Date Picture

Would everyone who attended this SLS seminar on 15 October 2002 please note that the copy of the Road Traffic (NI) Order 1981 included in the lecture notes at Section 10 and the Motor Vehicles (Third Party Risks) Regulations (NI) 1994 at Section 11 were taken from Barry Valentine's CD-ROM “All Law of Northern Ireland” and should have been acknowledged as such.

The All Law of Northern Ireland CD-ROM is available from TSO Ireland, 16 Arthur Street, Belfast BT1 4GD. Tel 028 9023 8451.

NI COURT SERVICE NOTICE


The above Order was made on 16 December 2002.

The Order, which follows the child Support Appeals (Jurisdiction of Courts) Order 2002 in England and Wales –
- revokes the Child Support Appeals (Jurisdiction of Courts) Order (Northern Ireland) 1993;
- provides for parentage appeals to a court of summary jurisdiction (under a new Article 22 of the Child Support (Northern Ireland) Order 1991); and
- applies with modifications, regulations 31 and 32 of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999, thereby maintaining some degree of uniformity of procedure between the appeal tribunals and the courts.

The Order came into operation on 28 January 2003 except that it shall not have effect in relation to a particular type of case until the day on which section 10 of the Child Support, Pensions and Social Security Act (NI) 2000 comes into operation for the purposes of that type of case. A final copy of the Order will be available from HMSO.
ANNUAL ABSTRACT OF DECISIONS

NI HIGH COURT, COURT OF APPEAL AND INDUSTRIAL TRIBUNALS 2002

Based on the monthly column of abstracted decisions you now see in the Writ, the library has produced a booklet with abstracts of all decisions from the above courts and tribunals for 2002.

The decisions are arranged alphabetically by plaintiff or applicant as well as by subject.

This is a unique publication, which should prove very useful to all practitioners. It costs £30, and orders should be placed with Derval McFetridge

Tel: 028 90 231614
Email: dmcfetridge@lawsoc-ni.org

Full text of any of the decisions can be emailed to you directly from the library using the library enquiry email library@lawsoc-ni.org

LAW SOCIETY (NI) LIBRARY

The Social Security Commissioners (Procedure) (Tax Credits Appeals) Regulations (Northern Ireland) 2003 [SR no 18/2003]

The above Regulations were made on 13 January 2003 and come into operation on 7 February 2003.

The Regulations, which are modelled on the corresponding Regulations in England and Wales and the Society Security Commissioners (Procedure) Regulations (Northern Ireland) 1999, set out the procedural arrangements for tax credits appeals.

In particular they:

• Establish the general powers of the Society Security Commissioners;
• Identify the various steps in the appeal process and the applicable time limits;
• Allow for the transfer of proceedings between Commissioners;
• Allow for the giving of directions and summoning of witnesses;
• Allow for certain functions to be delegated to authorised officers; and
• Set out the procedure on an application for leave to appeal from a Commissioner to the Court of Appeal on point of law

We understand that (or as 20 January) a copy of the Regulations was not available but will be available in due course.

Legal Writing Competition

The Commonwealth Lawyers’ Association (CLA) announces the launch of the triennial Commonwealth Young Lawyers’ Legal Writing Competition.

The title of the 2003 paper is:

Judicial Accountability and the Legal Profession – does the legal profession have a role?

Papers are welcome from young lawyers* qualified to practice in any Commonwealth jurisdiction and in Hong Kong. The winning author will receive full sponsorship to attend the 13th Commonwealth Law Conference in Australia in April 2003. The top five papers will be published in the CLA’s journal “The Commonwealth Lawyer”.

The winning essay will be chosen from the entrants by a distinguished panel, each of whom has some interest in and experience of the issues associated with judicial accountability from a practising, academic or campaigning perspective.

Entries, which must be typed, of no more than 2000 words and unpublished, original work should reach the Commonwealth Lawyers’ Association by 15th February 2003 with a proof of eligibility. The judges’ decision is final and no correspondence will be entered into.

Please mark your entry for the attention of:

Commonwealth Lawyers’ Association
c/o The Law Society
113 Chancery Lane, London WC2A 1PL
United Kingdom
Fax: +44 207 831 0057 Email: cl@lawsociety.org.uk

*Young Lawyers are those who were called to the bar or admitted to practise after September 1st 1998 and who are under the age of 35.
Solicitor Advocate News

2003 will see further developments in the Society's programme of increasing solicitor participation in advocacy in Courts and Tribunals. The hugely popular Advanced Advocacy Course will take place again this year for the fourth time. The format in respect of the evidence module will be changed to a series of four evening lectures to be delivered in May/June which will cover recent developments and trends in the law of evidence including topics such as human rights, vulnerable witnesses and the right to a fair trial. The advocacy module will follow the same pattern as in preceding years. The programme will take place over five days commencing 8th September 2003 in the Institute of Professional Legal Studies, Lennoxvale, Malone Road, Belfast, concluding with a mock trial to be heard in the Royal Courts of Justice before one of our High Court Judges. Once again we are delighted that the course will be delivered by the expert team from NITA in the US. The US faculty will be assisted by local tutors drawn from the bench, bar and senior solicitor practitioners. The Law Society is also delighted that the Director and staff of the Institute will continue the unique partnership in this enterprise by preparing the case files used in the exercises and providing the technical and logistical support of the Institute’s up to date equipment, premises, as well as its experienced teaching staff.

The Working Party expects demand to be high this year as the course is now open to all practitioners and successful completion will entitle the participants to the required full CPD points (with the exception of those for client care).

NITA's 2002 teaching team

Tony Caher
Chairman, LSNI Advocacy Working Party

To advertise in the Writ

please contact Karen Irwin at:

Citigate NI
Citigate House
157-159 High Street
Holywood
BT18 9HU

Tel: 028 9039 5500
Fax: 028 9039 5600
Email: karen.irwin@citigateni.co.uk

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For more details call Judy or Orla at Blueprint Legal Appointments on 028 9032 3333 or email legal@blueprintappointments.com

143 - 147 Victoria Street, Belfast, BT1 4PE.
UNREPORTED JUDGEMENTS

SJ BROCKBANK V SHANNON, WILLIAM ANTHONY
Appeal against Magistrate’s decision to allow an appeal against conviction by the respondent. - failure to provide information under the Proceeds of Crime (NI) Order 1996 on the grounds it could incriminate respondent in pending criminal proceedings. - whether ‘reasonable excuse’ not to attend interview. - HELD that respondent did not have reasonable excuse. - conviction affirmed
COURT OF APPEAL
CARSWELL LCJ
20 DECEMBER 2002

IN THE MATTER OF THE WILL OF WILLIAM CRAWFORD, DECEASED
Will. - definition of ‘her family’. - whether this includes husband as well as children. - intention of testator. - HELD that ‘her family’ retains the primary meaning of ‘children’ and does not include her husband
CHANCERY DIVISION
WEATHERUP J
20 DECEMBER 2002

IN THE MATTER OF DENNIS DONALDSON, AN APPLICANT FOR BAIL
Application for bail previously refused. - applicant charged with 2 offences under s.103 Terrorism Act. - error of fact at previous hearing. - fresh bail application brought. - HELD that applicant be granted bail, with sufficient conditions to prevent the risk of him committing further offences
QUEENS BENCH DIVISION
WEATHERUP J
20 DECEMBER 2002

IN THE MATTER OF ROBERT BROWN AND DANIEL MORTON T/A DEVENISH ENTERTAINMENT AND LEISURE COMPLEX
Administration of insolvent partnerships. - whether interest increase on default in commercial agreement constitutes a penalty
CHANCERY DIVISION
GIRVAN J
9 JANUARY 2003

IN THE MATTER OF AN APPLICATION BY COLETTE HEMSWORTH FOR JUDICIAL REVIEW
Application for judicial review of decision not to grant funding for legal services obtained in preparation for inquest into death of husband from Lord Chancellor’s extra statutory scheme. - application dismissed
QUEENS BENCH DIVISION
7 JANUARY 2003
KERR J

IN THE MATTER OF AN APPLICATION BY HUGH JORDAN FOR JUDICIAL REVIEW
Application for judicial review of DPP’s refusal to give reasons for his decision not to prosecute the police officer who caused the death of his son – HELD that the Human Rights Act was not retrospective and application dismissed.
QUEENS BENCH DIVISION
6 JANUARY 2003
KERR J

IN THE MATTER OF AN APPLICATION BY HUGH JORDAN FOR JUDICIAL REVIEW
Application for judicial review of DPP’s refusal to give reasons for his decision not to prosecute the police officer who caused the death of his son – HELD that the Human Rights Act was not retrospective and application dismissed.
QUEENS BENCH DIVISION
6 JANUARY 2003
KERR J

MADDEN, RHONDA, A MINOR, BY PAUL MADDEN, HER FATHER AND
IN THE MATTER OF AN APPLICATION BY COLIN MALCOLMSON FOR JUDICIAL REVIEW
Application for judicial review of decision of the NI Prison Service that applicant is not entitled to apply for home leave. - applicant a restricted prisoner and sentenced in Scotland and transferred to Northern Ireland at his own request. - release subject to Scottish laws, although subject to NI laws relating to all other purposes. - difference between Scottish and NI Early Release Date and Pre-Release Home Leave Scheme. - application dismissed
QUEENS BENCH DIVISION 6 JANUARY 2003 KERR J

IN THE MATTER OF AN APPLICATION BY JONATHAN MCKERR FOR JUDICIAL REVIEW
Application for judicial review of decision of Police Ombudsman officer and PSNI Superintendent requiring applicant to attend for interview at police station. - applicant full time reservist. - allegation that police officers had fired shots without giving authorised warning and that applicant had given false statement to the police. - all police officers required to be interviewed simultaneously. - same solicitor instructed by 2 officers. - right to legal assistance of one's choice. - application dismissed
QUEENS BENCH DIVISION 6 JANUARY 2003 KERR J

IN THE MATTER OF AN APPLICATION BY KIERAN JOSEPH MCGUINNESS FOR JUDICIAL REVIEW
Application for judicial review - death by dangerous driving. - sentenced in England and transferred to Northern Ireland at his own request. - restricted prisoner. - release subject to Scottish laws, although subject to NI laws relating to all other purposes. - difference between Scottish and NI Earliest Release Date and Pre-Release Home Leave Schemes. - application dismissed
QUEENS BENCH DIVISION 6 JANUARY 2003 KERR J

INDUSTRIAL TRIBUNALS
Lynd V Belfast Education & Library Board, NI Local Government and Department of the Environment for Northern Ireland, 10048/95SD, 7 March 2002
Applicant presented claim for sex discrimination more than 8 years outside the time limit after she became aware of a similar case proceeding to Europe. - Tribunal ruled it had no discretion to hear case and the application was dismissed
Hart V Navan at Armagh Management Limited, 3033101, 3 Sept 2002
Applicant alleged unfair dismissal. - whether employee was unfairly dismissed or was made redundant. - Tribunal ruled applicant's employment with the respondent was terminated by reason of redundancy. - applicant was entitled to compensation for redundancy payment, breach of contract, unpaid wages and holiday pay
Cupples V 4/5 Rangers and Ministry of Defence, 03398/99SD; 3399/99SD; 04374/99SD; 01208/00, 15 October 2002
Applicant alleged unfair dismissal and sex discrimination. - applicant failed to attend or to be represented at the hearing. - applicant knew written application for postponement had not been granted. - Tribunal dismissed applications
McGarrigle V Board of governors, St Breacan’s High School & CCMS, 02666/99SD, 11 September 2002
Application for a review of the decision of the Tribunal promulgated on 22 July 2002 which found applicant had been discriminated against on the grounds of his sex. - Tribunal had awarded sum for injury to feelings. - applicant wanted review of decision not to award any loss to him in terms of salary by not obtaining the post. - application dismissed
Haggan V Entwistle Automotive Limited, 3736/01, 4 July 2002
Applicant alleged he was dismissed as a result of redundancy and was owed monies for holiday pay. - respondent alleged applicant was dismissed for under performance and that all holiday entitlement was paid. - Tribunal rules applicant was dismissed by reason of redundancy. - respondent ordered to pay £466.55 to applicant in respect of holiday pay
Armstrong V Thompson, 00677/00, 5 September 2002
Applicant complained of unlawful sex discrimination. - applicant did not appear and was not represented. - Tribunal dismisses application
McKeown V The Royal Group of Hospitals and Staff Nurse Fleming, 01736/00, 29 October 2002
Applicant complained of sex discrimination. - Tribunal found the applicant had not established that she had been sexually harassed. - Tribunal dismissed application
Robinson V Finlay Communications Limited, 1049/02, 22 October 2002
Applicant alleged unfair dismissal. - Tribunal ruled there was no breach of contract by the respondent. - Application dismissed
McMullen V McClelland Salter Estate Agents, 3152/01, 11 September 2002
Applicant dismissed by respondent. - applicant alleged sex discrimination. - originating application not submitted within relevant time limit. - whether just and equitable to consider the complaint. - application dismissed

Full text decisions are available from the library
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Employers liability – race discrimination

Caselaw


Mrs Liversidge, a black police constable, brought race discrimination proceedings in August 1999, after she was informed by a colleague that other police constables described her as a “PM” (Porch Monkey). The Chief Constable of Bedfordshire Police was named as one of the respondents to the claim, on the grounds that he was vicariously liable for the acts of his constables.

On appeal to the EAT, an issue arose as to whether the Chief Constable could properly have been made liable under the Race Relations Act for an act of discrimination not perpetrated by him. Attention was drawn to the Race Relations (Amendment) Act 2000 which replaced Sec. 16 of the Race Relations Act 1976, with the stated aim of making chief officers of police vicariously liable for acts of racial discrimination by police officers.

The Court of Appeal dismissed the appeal on 24 May 2002. Leave to appeal to the House of Lords was refused.

Legislation

Race Relations Act 1976
Race Relations (Amendment) Act 2000

Articles

Race discrimination - practice and procedure - employment tribunals. (Whether Chief Constable was vicariously liable for acts of race discrimination by one police officer against another before insertion of s.76(A) into 1976 Act by s.4 of 2000 Act). Younson: Emp. Law. 2002, 94, 10-11

Chief Constable not liable. (Chief Constable was not vicariously liable for acts of race discrimination committed by one police officer against another under s.16 of 1976 Act). E.O.R. 2002, 109, 29-30

Police - Chief Constable of Bedfordshire v Liversidge (again). (Whether Chief Constable was liable for acts of race discrimination committed by his officers against other members of force under s.16 of 1976 Act). Emp. L. & L. 2002, 7(6), 24

Race discrimination: liability of Chief Constable for discrimination by police officers. (Whether EAT was right to find Chief Constable not liable in respect of discriminatory acts of one police officer against another on ground that Chief Constable was not in employment relationship with offending officer). IDS Brief 2002, 714, 5-6

Textbooks in the Library


1) Singleton: Tolleys’ data protection handbook. 2nd ed. Tolley. 2002
3) Thurston: A practitioner’s guide to trusts. 4th ed. Tolley. 2002
4) Hammond Suddards Edge: Tolleys purchase and sale of a private company’s shares. 11th ed. Tolley. 2002
5) Goff & Jones: The law of restitution. 6th ed. Sweet & Maxwell. 2002
6) Thurston: A practitioner’s guide to executorship and administration. 5th ed. Tolley. 2002
8) Cain: Claims against uninsured and untraced drivers. Sweet & Maxwell. 2002
12) Bingham’s negligence cases. 5th ed. Sweet & Maxwell. 2002
14) MacGillivray on insurance law. 10th ed. Sweet & Maxwell. 2002
15) Sutton: Russell on arbitration. 22nd ed. Sweet & Maxwell. 2002