Workplace Conflict Resolution
- there must be an easier way

see pages 4-6
President’s Message

Many Presidents before me have adopted a theme for their presidential year and people have enquired in the past few months about my aspirations for the year ahead.

I have resisted the inclination to commit myself to a theme simply because the year ahead promises to be so busy and challenging that I am fearful of falling short of the mark in terms of delivery. I find it difficult to identify any single issue as the most challenging in terms of its likely implications for the profession.

There are major strategic issues which are multi-dimensional and require to be viewed from short and longer term perspectives. To mention briefly only three obvious examples:

Firstly, on Access to Justice there is a need to grapple with the immediate and very real problems associated with legal aid delays, bureaucracy and cashflow, on all of which some progress has been made. We also need to build a sensible working relationship with the Legal Services Commission and we will need to have a strategic grasp of longer term reform issues.

Secondly on risk management, we need to continue to do what we do well, yet seek always to question and improve. Effective risk management is a genuine “win-win” for clients and for solicitors both individually and collectively as we seek to maintain and improve the reputation of our profession for competence and integrity.

Thirdly we need to meet the challenge of asking as well as answering serious questions about the future regulation of the legal profession, whether in the shorter term in response to recommendations of the former Lay Observer or the longer by reference to developments in England and Wales (Clementi) or at European level.

All of these are major themes which will occupy the attention of the Society over the next few months and years. However as the Presidential year progresses, I realise that important issues arise cyclically and are of perennial importance to the well-being of the profession. One such issue is recruitment of new talent. Shortly after publication of this Writ you can expect to receive numerous applications from students seeking apprenticeships.

539 candidates sat the entrance exam for the Institute of Professional Legal Studies in December. Of these, 95 will be offered places on the solicitors’ course subject to having a master on or before the 22nd August 2005.

In the less recent past securing a master was the easy part. No longer so. Last year 8 students lost their Institute places because they couldn’t find a master. The previous year the number was 5. 1 student failed in her efforts to find a master in 2 consecutive years.

The 95 solicitor places were ultimately filled by moving onto the waiting list, but it is nonetheless a matter of grave concern that a number of young people who worked hard to obtain their degrees, in many cases incurring substantial debt, who attained the penultimate goal of a place at IPLS only to fail at the final hurdle in not finding a master.

Gerry O’Hare reminded us last year of the many good reasons for taking an apprentice (see Article in the June 2004 edition of “The Writ”). As a master himself, he spoke of highly motivated, computer literate, hard working young people. He acknowledged the benefits of “growing your own”, particularly at a time when many practices encounter difficulties in recruiting young solicitors.

The entrance exam results will issue on 16th March and shortly afterwards the letters seeking apprenticeships will arrive. When you are faced with voluminous correspondence in an already busy office with competing pressures, the understandable inclination may be to aim for the bin. However, may I please ask that you resist that temptation, bearing in mind that none of us would ever have qualified as solicitors had somebody not been willing to take us on as their apprentice. I appreciate that it is not possible for a variety of reasons for every solicitor to take an apprentice and I respect that. However, even if you are not in the market for an apprentice, please treat the letters with some consideration.

If a request is received and you are unable to offer an apprenticeship please let the student know. It will eliminate false hopes and enable that person to explore other options efficiently.

If you have a vacancy please set up an interview as soon as possible and let the applicant know the outcome as soon as possible.

The President would like to thank Joe Donnelly, Chair of the Access to Justice Committee and Janet Paterson of Camelot for their help in organising the event, Eamonn McCann and David Neely of the Spring and Airblade, the musicians who took part and members of the profession and the public who attended or made donations.

cheque presented to Anne Holland of the British Red Cross.

The President would like to thank Joe Donnelly, Chair of the Access to Justice Committee and Janet Paterson of Camelot for their help in organising the event, Eamonn McCann and David Neely of the Spring and Airblade, the musicians who took part and members of the profession and the public who attended or made donations.

Law Society Support for Tsunami Victims

President of the Law Society of Northern Ireland, Attracta Wilson, was appalled by news reports of the Tsunami and its effects on South East Asia.

The Society’s Council shared her views and in conjunction with Northern Bank the Society held a ‘Top ‘6 you flop’ night at the prestigious new Spring and Airblade nightclub on Friday 21st January.

Music was provided by Liam Barr, Tracey Diamond (both lawyers) and local bands Legal Tender, the Paul Harden Band and Big Wheel.

Although the event was organised at very short notice, the turnout was tremendous and with help from the Camelot Foundation £11,000.00 was raised for the DEC Tsunami Earthquake Appeal and an

Attracta Wilson, Law Society President 2004/2005

Donnelly look on
New Laws for Resolving Disputes in the Workplace

In April 2005 new laws will be introduced in Northern Ireland through the implementation of certain provisions of the Employment (Northern Ireland) Order 2003 and the Employment (Northern Ireland) Order 2003 (Dispute Resolution) Regulations (Northern Ireland) 2004. Among other things, the new laws set out statutory procedures which lay down minimum standards for handling dismissals, discipline and grievance matters. These procedures will apply to all employers and employees.

The procedures are being introduced primarily to encourage employers and employees to attempt to resolve employment disputes within the workplace. Failure to comply with the procedures, where these are applicable, can lead to sanctions which would include findings of automatically unfair dismissal, increases and reductions in Industrial Tribunal awards of up to 50% and refusals by tribunals to accept certain applications.

The main features of the new laws affecting employers and employees are:

- Minimum standard procedures for handling dismissal, discipline and grievances at work.
- Preventing certain tribunal claims being lodged unless an employee has first raised a grievance internally.
- It is the duty of the employer to fully inform their staff of the procedures they must follow. This may be done through an initial offer letter, or by way of a written statement of employment particulars or contract of employment. Existing staff may be informed by verbal briefings, memo/e-mail or poster campaigns.

DISMISSAL AND DISCIPLINARY PROCEDURES

There are two procedures that can be initiated in the event of a dismissal or disciplinary matter: the standard procedure (3-step process) and the modified procedure (2-step process). Standard Dismissal and Disciplinary Procedure

The standard dismissal and disciplinary procedure generally applies to:

- All dismissals except some collective or constructive dismissals, some gross misconduct dismissals and dismissals where the employment cannot continue for a reason beyond anyone’s control.
- All disciplinary action except oral and written warnings and suspension on full pay.

In brief, the statutory dismissal and disciplinary procedure is as follows:

1. The employer must send the employee a written explanation of the alleged misconduct that led to their dismissal – including the evidence for this decision. The employee’s right of appeal should be informed in this communication.
2. If the employee wishes to appeal, they must inform the employer. The employee should then be invited to a meeting to discuss the appeal and after that meeting the employee should be informed of the employer’s final decision.
3. If the employee fails to follow the procedure:
   - The dismissal becomes automatically unfair (where the employee has the right to claim unfair dismissal)
   - A mandatory minimum of 4 week’s pay is awarded to the employee
   - Any additional compensation may be increased up to 50%

Modified Dismissal and Disciplinary Procedure

This procedure applies in relation to a dismissal where an employer dismisses an employee by reason of his/her conduct without notice, the dismissal occurs at the time the employer became aware of the conduct or immediately thereafter, the employer was entitled in the circumstances to dismiss the employee by reason of his/her conduct.

1. The employer must invite the employee to a meeting to discuss the issue and after the meeting the employee should be informed of the decision and given the right to appeal.
2. If the employee wishes to appeal, they must inform the employer. The employee should then be invited to a second meeting to discuss the appeal and after that meeting the employee should be informed of the employer’s final decision.
3. If the employee fails to follow the procedure:
   - The employee has the right to choose to be accompanied at both meetings by either a colleague or a trade union official
   - If the employee or person accompanying them is disabled, the employer must take this into account and make reasonable provision to ensure they can participate fully.

The main features of the new laws affecting employers and employees are:

- The employee has the right to be accompanied by another person at both meetings by either a colleague or a trade union official.
- The employee or person accompanying them is disabled, the employer must take this into account and make reasonable provision to ensure they can participate fully.

Penalties

The new dismissal and disciplinary procedures are law and must, subject to some exceptions, be followed. If a dispute reaches tribunal and one of the parties has not followed the appropriate procedures in full, the following penalties can be imposed by a tribunal:

- The dismissal becomes automatically unfair (where the employee has the right to claim unfair dismissal)
- A mandatory minimum of 4 week’s pay is awarded to the employee
- Any additional compensation may be increased up to 50%

If the employee fails to follow the procedure:

- The employee has the right to be accompanied by another person at both meetings by either a colleague or a trade union official.
- The employee or person accompanying them is disabled, the employer must take this into account and make reasonable provision to ensure they can participate fully.

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- The employee or person accompanying them is disabled, the employer must take this into account and make reasonable provision to ensure they can participate fully.

STATUTORY GRIEVANCE PROCEDURES

Grievances are concerns, problems or complaints that employees raise with their employers and grievance procedures are used by employers to deal with employees’ grievances. Grievance procedures help employers to deal with grievances fairly, consistently and speedily. Employers are required by law to specify, through written statements of employment particulars, a person to whom an employee can apply for the purpose of seeking redress of any grievance relating to his/her employment, how the employee should make such applications and any further steps in this process which are available to the employee.

The main features of the new laws affecting employers and employees are:

- Employers are required by law to specify, through written statements of employment particulars, a person to whom an employee can apply for the purpose of seeking redress of any grievance relating to his/her employment, how the employee should make such applications and any further steps in this process which are available to the employee.

For the purposes of the standard statutory procedure a grievance is defined as ‘a complaint by an employee about action which his/her employer has taken or is contemplating taking in relation to him/her’. The standard statutory procedure applies in relation to any grievance about action by an employer that could form the basis of a complaint [or could do so if the action took place] by an employee to a tribunal under certain jurisdictions set out in the 2003 Order. These jurisdictions include, among others, complaints concerning unlawful discrimination on certain grounds and unlawful deductions from wages.

In brief the grievance procedure is as follows:

1. The employee must send a written explanation of the grievance in writing to the employer.
2. The employer must invite the employee to a meeting to discuss the issue (both parties should take all reasonable steps to attend). After the meeting, the employer must inform the employee of their decision and offer them the right of appeal.

The main features of the new laws affecting employers and employees are:

- The employee must send a written explanation of the grievance in writing to the employer.
- The employer must invite the employee to a meeting to discuss the issue (both parties should take all reasonable steps to attend). After the meeting, the employer must inform the employee of their decision and offer them the right of appeal.

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The main features of the new laws affecting employers and employees are:

- The employee must send a written explanation of the grievance in writing to the employer.
- The employer must invite the employee to a meeting to discuss the issue (both parties should take all reasonable steps to attend). After the meeting, the employer must inform the employee of their decision and offer them the right of appeal.
3. If the employee does wish to appeal they must inform the employer.

The employer must invite the employee to a second meeting to discuss the appeal. After the appeal meeting the employer must inform the employee of their final decision.

This procedure is intended to allow employers and employees to resolve matters as quickly and amicably as possible. In most cases, the procedure will be used when an employee is aggrieved about an action an employer has taken relating to them, that does not generally involve their conduct or capability e.g. actions giving rise to constructive dismissal or where an employee feels that they have been unlawfully discriminated against. The procedure will also apply if an employee wishes to complain about action taken by colleagues. In the vast majority of cases, if the employee doesn’t at least start the grievance procedure, they will be unable to take a tribunal claim.

**Modified Grievance Procedure**

The standard grievance procedure will apply in all cases, whether the employee is still in employment or not. A shorter (modified) procedure can be used where the employee has left the employment:

- If the employee is no longer in the employment;
- If the employee or person accompanying them is disabled, the employer must take this into account and make reason provision to ensure they can participate fully.

**Penalties**

The new grievance procedures are law and must, subject to some exceptions, be followed. If a dispute reaches tribunal and one of the parties has not followed the steps in full, they will face penalties in most cases.

If the employer fails to follow the procedure:

- Any award made to the employee may be increased by up to 50%.

If the employee fails to follow the procedure:

- Any award made may be reduced by up to 50%.

It should also be noted that, in most cases, if an employee wishes to take a grievance to a tribunal they must wait 28 days after they have written their grievance letter. If this has not happened, they will usually not be able to make a tribunal claim.

**What Now?**

Employers should review their existing dismissal, disciplinary and grievance procedures to ensure that they meet the minimum standards. If there are no dispute resolution procedures in place then their procedures which at least comply with the minimum standards should be introduced. The Labour Relations Agency can assist in reviewing or introducing dispute resolution procedures. For further information contact the Agency (for contact details see below).

To raise awareness of the new laws the Agency is running a series of seminars on the new Statutory Dismissal, Discipline and Grievance Procedures in both its Head and Regional offices. Full details can be obtained by visiting the Agency’s website at www.lra.org.uk. In addition the Agency can provide information and advice on an individual basis through its Enquiry Point - Telephone 028 9032 1442.

**Witness Statements in Industrial Tribunals Guidance issued by Bar Council**

Further to the introduction of Witness Statements in Industrial Tribunals, the Bar Council has advised the Society that following a review by its Professional Conduct Committee of the application of Rule 14.13 of the Bar Code of Conduct it has issued the following Guidance to its members.

**Rule 14.13 provides as follows:**

“A Barrister may not take a formal or signed statement from a prospective witness in any proceedings or be present when such a statement is taken and this Rule applies whether or not the barrister has been briefed in those proceedings…”

Apart from the fact that Tribunals now order Witness Statements as a matter of course, such statements have been required for some years in Children Cases, whether under Children (NI) Order 1995 or the Adoption (NI) Order 1967. In adoption cases the evidence is by way of affidavit rather than witness statement but for all practical purposes the effect is the same.

Given that in Children Cases, the Taxing Master allows fees to Counsel for drafting statements:

(i) It is important to maintain a clear distinction between the role of the solicitor which is to provide instructions and draft statements and the role of the barrister which should be to settle statements.

(ii) It is very doubtful that this distinction is in fact reflected in current practice.
Phased Implementation for Employment Relations (NI) Order 2004

This Order essentially implements changes which were identified as necessary from the review of the 1999 Order of the same name which, amongst other things, introduced new statutory recognition and de-recognition procedures for trade unions, gave protection to individuals from detrimental treatment on the grounds of trade union membership, brought in new family-related rights, the right of accompaniment, new provisions on the law on industrial action, and so on.

The Employment Relations (NI) Order 2004 is being implemented in stages and will address issues such as union recognition, the law relating to industrial action, rights of trade union members, workers, and employees, the Certification Officer and a variety of amendments.

On December 26th 2004 the following aspects of the Employment Relations (NI) Order 2004 came into effect:

Article 12 – Extension of protection against detriment for union membership etc

Article 13 – Detriment for use of union services or refusal of inducement

Article 14 – Inducements relating to union memberships or activities

Article 15 – Dismissal for use of union services or refusal of inducement

Article 18 – Right to be accompanied (clarification and extension)

Schedule 2 Amendments

covering a variety of Articles from the Employment Rights (NI) Order 1996, the Industrial Tribunals (NI) Order 1996, the Employment Relations (NI) Order 1999 and other repeals.

The remainder of the Employment Relations (NI) Order 2004 is to be phased in by April 2005.

Consultation Opens on Reform of Criminal Records Disclosure

A consultation paper outlining plans to reform and improve the system for disclosing criminal records as part of the employment decision making process has been issued by the Northern Ireland Office.

“Safer Recruitment in Northern Ireland” details the Government’s proposals for the implementation of Part 5 of the Police Act 1997. Launching the document, the Security Minister, Ian Pearson said, “The proposals in this document represent the best way forward for Northern Ireland. It is important that the public make their views known during the consultation process.”

“The Government wants to create a more effective framework for the disclosure of criminal and police records, one which is efficient and accessible and in which customers can have confidence. We will also take this opportunity to bring our systems into line with those in the UK in order to ensure co-operation in future on a national level.”

Part 5 of the Police Act 1997 provides a statutory framework for the disclosure of criminal and police records, one which is efficient and accessible and in which customers can have confidence. We will also take this opportunity to bring our systems into line with those in the UK in order to ensure co-operation in future on a national level.

N.B. This course provides 24 hours of CPD training (including 3 hours client care), (formal approval pending)

There will be a presentation of certificates on 26 October.

N.B. This course provides 24 hours of CPD training (including 3 hours client care), (formal approval pending)

Cost: £765.00 (includes course materials, evening refreshments and lunch on the Saturday)

The closing date for responses is 11 May 2005.

To advertise in the Writ...

If you wish to advertise in the Writ please contact Karen Irwin for rates, specification and copy deadlines at:

Citigate NI Public Affairs Ltd,
128a High Street, Holywood BT18 9HWTel: 028 9042 8899Fax: 028 9042 8877Email: karen.irwin@citigate.co.uk

Actuaries

Pensions advice on divorce
Valuation of life and reversionary interests
Valuation of loss of pension rights arising from injury or loss of office
Assessment of complaints about financial advice/pensions
Corporate pensions advice and trusteeship

Contact:
Ian Conlon or Brian Spence
on 028 9041 2000
Alternatively, email:
ian_conlon@spenceandpartners.co.uk

Alternative Dispute Resolution and Mediation Training Course

Wednesday 14 September – 26 October 2005
at the Institute of Professional Legal Studies, 10 Lennoxvale, Malone Road, Belfast

SLS in conjunction with the Law Society is pleased to announce the eighth repeat of this very successful course which provides training in advanced negotiation, dispute resolution and mediation.

The course is delivered by experienced mediators and skills trainers led by Brian Speers (Carson Morrow Graham), David Gaston (Gaston Graham) and Alva Brangam QC and will combine lectures with experiential role play and analysis. Response to this course has been immensely enthusiastic and those who have taken part to date have found the course to be of great interest, value and enjoyment.

The course is open to both solicitors and barristers but numbers are limited to 15. The course will run for 7 evenings (14, 21, 28 September, 5, 12 and 19 October at IPLS from 6.00-9.00pm).

There is also an all day Saturday programme on 22 October from 10am–4.00pm which it is essential to attend. It is expected that people will be committed to attend the complete programme.

There will be a presentation of certificates on 26 October.

N.B. This course provides 24 hours of CPD training (including 3 hours client care), (formal approval pending)

Cost: £765.00 (includes course materials, evening refreshments and lunch on the Saturday)

Please contact SLS for an application form.
Tel: 028 9097 5224
Fax: 028 9032 6308
JUDICIAL RETIREMENT
After almost 24 years of service on the bench, His Honour Judge Curran QC has retired from his post as County Court Judge with effect from 15th February 2005.

SITE FOR SUPREME COURT CHOSEN
Middlesex Guildhall which is in Parliament Square, facing the Houses of Parliament has been chosen as the DCA’s preferred location for the new Supreme Court. The Lord Chancellor stated that the Supreme Court would not be established until the building was ready for operation. The estimated cost of setting up the court at Middlesex Guildhall is estimated at £30 million. The first court sitting is not expected until 2008.

REVISED GUIDE TO EQUALITY DUTIES LAUNCHED
The Equality Commission has launched revised guidance to implementing the equality duties placed on public authorities by section 75 of the Northern Ireland Act 1998. New features include greater clarity on the importance of early consultation and a section which sets out how people can complain about breaches in equality schemes. The guidance can be downloaded from www.equalityni.org

LOCAL GOVERNMENT ELECTIONS
An Order in Council has been laid to move the date of local elections in Northern Ireland on a permanent basis from the second Thursday in May to the first Thursday in May. This will mean that the local election due on Wednesday 18th May 2005 will now take place on Thursday 5th May.

CHANGES AT ENGLISH FAMILY DIVISION
Following the announcement of the retirement of Dame Elizabeth Butler Stocks as President of the Family Division of the High Court of England & Wales with effect from 6th April 2005, a new management team is to head up the family courts there. The appointments are Lord Justice Potter as the new President of the Family Division and Lord Justice Thorpe to the new post of Deputy Head of Family Justice and Head of International Family Law.

NO PASSPORTS FOR GUANTANAMO PAIR
The government has written to two of the British men freed from Guantanamo Bay telling them they will not be allowed passports in light of evidence gathered against them by the United States. The government is implementing the rarely used Royal Prerogative in order to withdraw the men’s passports. It is only the thirteenth time the power has been used since 1947 – the last time was in 1976.

NINE FOLD JUMP IN STAMP DUTY IN LAST DECADE
There has been a nine-fold increase in the amount paid in residential stamp duty since 1993, according to figures released by the Halifax. The research revealed that in 1993/94 the total raised was £465 million compared to an estimated £4300 million in the current tax year. The survey also showed that the average first time buyer in the UK now pays £131,024 for their home, compared to £45,249 in 1993.

NORTHERN AREA PLAN
The Planning Service has moved to end uncertainty over the publication of the Northern Area Plan. The new Northern Plan comprises the Ballymoney, Coleraine, Limavady and Moyle District Council areas and geographically is the second largest Area Plan in Northern Ireland. The aim is to publish by no later than the end of May a draft plan which will be open to public objection and comment for a period of eight weeks.

WHAT IS TO REPLACE THE 11+?
The Department of Education has published a consultation document inviting comments on new admission arrangements for post primary schools, which could be used after 2005 when the existing Transfer Test will no longer apply. The deadline for responses to the consultation is 30th June 2005. A response booklet has been provided so that responses can be given in a structured way. The full text of the document and the response booklet can be accessed on the Department’s website at: www.deni.gov.uk

RE-APPOINTMENT OF CHAIRMAN OF LABOUR RELATIONS AGENCY
Mr Patrick McCartan has been re-appointed as part-time Chairman of the Labour Relations Agency. The appointment is for a period of three years, commencing 1 February 2005.

NEW HUMAN RIGHTS EDUCATION GUIDE
A major resource on human rights education has been launched by the Northern Ireland Human Rights Commission. The new guide “The Bill of Rights in Schools: A Resource for Post Primary Schools” will support teachers in exploring human rights issues as part of the curriculum in secondary schools. A copy is obtainable from www.nihrc.org

ADDITION TO COURT SERVICE WEBSITE
The Court Service website has a new addition – Education Online. The section is designed for teachers and students at both primary and secondary level to learn about what happens in the courtroom.

LEGAL-ISLAND’S NEW WEB SITE FOR 2005
On 27 January of this year at the Crowne Plaza Hotel, Dungannon Legal-Island launched its new web site for 2005. The event which was attended by over 80 delegates marked the re-launch of what has now become one of the most visited legal web sites in the island of Ireland.

Twelve months in planning and development the site now contains a host of features likely to be of interest to the practitioner in Northern Ireland. These include:

- Listing of Law Firms with a Web Site
- Latest Legal Vacancies
- Employment Law Email Service
- Industrial Tribunal Decisions for NI
- Legal Seminars and Conferences
- Discounts for Online Bookings

In 2004 Legal-Island won the prestigious Lawnet’s Best use of internet award. This year assisted by a new web site the company expects to be able to offer even more online to practitioners.

Thanks you to Legal-Island’s Sponsoring Companies this year.

These include:

For further information: T: 028 9446 3888 F: 028 9446 3518
Problems Around SDLT - What's Happening?

Since the introduction of SDLT over 15 months ago, the Society has been approached by an increasing number of practitioners, expressing concern about the operation and development of the new SDLT tax regime.

Problems have arisen in the following areas:

1. Unfair penalties – penalties have been imposed in cases where no tax is due and owing at the date a correct return has been received by the Inland Revenue (IR). Furthermore where tax is payable and paid within the 30 day limit, penalties have been levied where a SDLT8 requisition has been raised and this is not answered within the 30 day limit.

2. Unwarranted requisitions – the IR estimate that there is a rejection rate of returns of 30-35%, causing requisitions to be sent to both taxpayer and solicitor. A number of these requisitions have been raised because the IR’s scanner has been unable to read a postcode or if there is a typographical error.

3. Lack of clarity – the SDLT provisions are contained in numerous sources, in some cases conflicting. Guidance is still being produced some considerable time after the implementation of the Finance Acts 2003 and 2004.

4. Absence of a helpful accessible enquiry line – practitioners regularly complain about enquiry lines being constantly engaged. Waiting times of upwards on 30 minutes have been advised.

As these problems are not unique to Northern Ireland, the Society has over the last number of months been working with representatives of the Law Society of England & Wales and the Law Society of Scotland in pressing the IR for remedial action to be taken to address these difficulties.

Minister Spellar said: “We are concerned that some of the long term directions for the future growth of Northern Ireland, set out in the Regional Development Strategy, are being compromised by decisions based on development plans drawn up before the new Strategy was agreed.”

The Ministers explained that new development plans, unlike their predecessors, must be in general conformity with the Regional Development Strategy, published in 2001. The Strategy sets out new directions to achieve a range of positive outcomes for Northern Ireland, i.e. to accommodate balanced development in a sustainable manner, to strengthen competitiveness and economic growth, to achieve greater social inclusion and to protect and enhance the physical, natural and man-made assets of the region.

Decisions made under the provisions of older plans, pre-dating the Regional Strategy and made less relevant by the passing of time, could however undermine the achievement of these outcomes.

The Ministers’ Joint Statement is entitled ‘Development Plans and Implementation of the Regional Development Strategy’. It clarifies the weight that should be accorded, in making planning decisions, to the provisions of an emerging development plan drawn up within the context of the new directions set out in the Regional Development Strategy for Northern Ireland (RDS) and other prevailing regional planning policy.

In so doing the Statement expands on the circumstances when it is appropriate to refuse planning permission on the grounds of prematurity.

The Joint Statement can be accessed at the Planning Service website: www.planningni.gov.uk and at the DRI website www.dris.gov.uk/shapingourfuture

AGENTS

REPUBLIC OF IRELAND AGENTS

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DX 10910 Fitzwilliam.
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Fax: (353) 6619912
E-Mail: law@lavellecoleman.ie

Willing to undertake agency work on behalf of Solicitors in Northern Ireland

Contact: Marc Fitzgibbon (Partner)

Too Loud is not Allowed

A new Noise Awareness Campaign has been launched by DOE’s Environment and Heritage Service. It aims to inform noisy neighbours that “Too Loud is Not Allowed”.

It is estimated that one in four people in the UK suffer noise disturbance from neighbours. Last year, more than 8,000 complaints were made to district councils in Northern Ireland about noise pollution and the fear is that a great many more people are suffering in silence. The majority of the complaints concerned noise from loud music and television, parties and barking dogs.

This new campaign is designed to raise awareness about what can be done if a noise problem arises.

Richard Rogers, Chief Executive of EHS, said: “Noise nuisance is for many people a serious issue that causes severe distress. Unfortunately, many people are unaware of what to do if they are affected by excessive noise disturbance. I am therefore very pleased that EHS has commissioned a noise awareness campaign for Northern Ireland.

The campaign aims to let people know that if the noise is too loud, you’re allowed to complain. Noisy neighbours should also remember that if it’s too loud, then it’s not allowed and you risk action being taken by your local council.”

In Northern Ireland, district councils are responsible for the investigation of noise nuisances and have statutory powers to issue notices and prosecute offenders.

The Northern Ireland Housing Bulletin, which includes information on sales of new houses and apartments during the period July to September 2004, has been published by the Department for Social Development.

Some of its key findings with year-on-year comparisons include:

• The average selling price of NHBC-registered new houses sold during the quarter was £116,000, an increase of £7,000 (6.4%) on the same quarter in 2003.

• The average selling price of NHBC-registered new houses ranged from £34,900 in Strabane District Council to £159,300 in North Down District Council according to provisional figures.

• Of the new dwellings actually started, 95% (3,215) were commissioned by the private sector. Total number of starts decreased from 3,460 for the quarter ending September 2003, to 3,383 for the quarter ending September 2004.

• Belfast was the District Council with the greatest number of new housing starts, namely 454. This represents an increase of 201.7% on the same period last year.

A total of 4,415 households presented as homeless to the Housing Executive with ‘Sharing Breakdown or Family Dispute’ being the most common reason cited.
Royal Courts of Justice - Front of House Update

The range of functions transferred to the RCJ Front of House has evolved simultaneously with the rollout of the new Integrated Court Operations System (ICOS) in the High Court.

Key services have been delegated to Front of House from:-
- Queens Bench Division (5 July 2004)
- Chancery Division (15 November 2004)
- Probate Office (29 November 2004)
- Matrimonial Office (10 January 2005)

The Wardship and Adoption ICOS module was introduced on 7 February 2005. However given the nature and sensitivity of business in this area, it was deemed inappropriate to delegate any functions to Front of House. Accordingly procedures for lodging documentation in the Wardship and Adoption Office will not be affected but the RCJ will continue to monitor and review this position.

The Services section of the Court Service website has been developed to include an RCJ Front of House Section. This page contains lists for the information and convenience of court users, specifying the scope of documentation and functions, identified as suitable for delegation to Front of House, and can be accessed via the following link:

www.courtsni.gov.uk/en-GB/Services/RCJ-Front-of-House/

Facilities at the Front of House have been enhanced to include a secure drop zone offering customers a fast and efficient deposit facility. An express lane introduced on 15 November 2004 facilitates users with fewer documents - this lane also serves as a document collection point.

The Court Service encourages customers to keep it informed of their experiences of this service, good and bad. Comments cards and registers are available at the Front of House office and staff remain happy to discuss any issues, concerns and / or suggestions for improvement.

A customer survey questionnaire will be issued during April 2005 to evaluate service standards at the Front of House and ensure that they meet the needs and expectations of customers.

New Guidance on Insurance for Businesses

New guidance offering practical advice to businesses on purchasing insurance cover has been produced by the local Department of Enterprise, Trade and Investment, in conjunction with the Association of British Insurers (ABI), the British Insurance Brokers Association (BIBA) and the Federation of Small Businesses. The guidance is designed to help businesses minimise costs when purchasing insurance cover. It also explains what businesses can do to minimise potential claims frequency or exposure.

Welcoming the Guidance, the Enterprise Minister Mr Barry Gardiner MP said: “It is imperative businesses retain competitiveness by keeping their costs at a minimum. This leaflet is aimed at the busy manager or business owner and offers practical advice on purchasing insurance cover and contains a list of useful contacts. The guidance will shortly be sent to every business in Northern Ireland and will also be available electronically on a variety of websites.”

Nick Starling, Director of General Insurance, Association of British Insurers, added: “The insurance industry is pleased to support this initiative. ABI is committed to helping all firms have the widest possible access to liability insurance markets. Our ‘Making the Market Work’ scheme continues to raise awareness among employer trade groups of the need for sound, practical risk management.”
**Changing CPD Requirements**

"All solicitors in Northern Ireland become subject to the compulsory Continuing Professional Development scheme from January 2005. Of the 15 hours CPD to be taken in each practice year, 10 must be in group study of 3 or more hours, must be devoted to client care/practice management and 8 may be made up by way of private study."

The Law Society of Northern Ireland

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**2005 CPD Seminar Programme**

**CPD:** All seminars qualify for 3 hours CPD

**Seminar times:** 2.00pm-5.00pm

**Venues:**
- Belfast - venue to be confirmed
- Londonderry - Everglades Hotel

**Cost per seminar:** £125 + VAT per delegate

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**ANTI-MONEY LAUNDERING**

Londonderry - 19 April, Belfast - 20 April

This seminar features information on how the money laundering regulations (MLR2003) affect your practice. The seminar covers: money laundering strategies, the legislation, responsibilities of the nominated officer, Suspicious Transaction Reports, protected disclosure and statutory immunity, record keeping and internal reporting procedures, as well as ethical issues.

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**RISK MANAGEMENT**

Londonderry - 18 October, Belfast - 19 October

What is the probability of a risk occurring in your firm and what would be the consequences of that risk - for you, your clients, or your practice? Using techniques for risk modelling it is possible to profile potential risks and the likely consequences - crucial for your practice to develop and maintain an appropriate risk management strategy.

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**BUSINESS DEVELOPMENT, STAGE 2**

Londonderry - 8 November, Belfast - 9 November

New client development. A good client base is of fundamental importance when managing a successful law firm. Not only is it essential to ensure that your firm has a strategy to determine who you want your clients to be, and how to attract them in the most appropriate way, but it is critical that your clients are then profitable for your firm.

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**COMPLAINTS HANDLING**

Londonderry - 22 November, Belfast - 23 November

Learn how to profit from complaints. Research shows that 97% of complainants will return to do business or make recommendations to your firm if their complaint has been handled properly. The cost of replacing clients can be five times higher than looking after the ones you already have, so it makes sense to put strategies in place for client retention.

This seminar covers the necessary steps for implementing an effective complaints handling programme in your firm.

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**PRACTICE MANAGEMENT**

Londonderry - 21 June, Belfast - 22 June

All practices benefit from good practice management. Adopting management structures and best practice to ensure a quality management programme in your practice.

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**BUSINESS DEVELOPMENT, STAGE 1**

Londonderry - 11 October, Belfast - 12 October

Maximising profits from existing clients. It is becoming increasingly important to positively differentiate your practice from its competitors. Proactive business development can provide real competitive advantage. This seminar will help you to manage existing client relationships in order to attract additional business and to develop systems that will effectively manage and monitor business development activity.

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**CLIENT CARE**

Londonderry - 17 May, Belfast - 18 May

Building profits through improved client care. Learn how to increase repeat business, build client loyalty and keep clients happy - a key factor in competitiveness. It has never been more important for practices to provide excellence in client care.

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**ANTI-MONEY LAUNDERING**

Londonderry - 20 September, Belfast - 21 September

See April Anti-Money Laundering seminar information.

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For further information

To find out more about our business and how we can help meet your training needs: Tel 0845 600 2729, Email afpconsulting@aforbes.co.uk, Website www.afpconsulting.co.uk

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**AFP Consulting** is a Division of Alexander Forbes Risk Services UK Limited, which is authorised and regulated by the Financial Services Authority. A Lloyds Broker
Disability Discrimination Case Settled

Abbey National plc has agreed to alter the terms of their insurance policies and review their procedures as part of a settlement in a disability discrimination case involving the provision of critical illness insurance cover. The company also paid a disabled man involved £1000 plus costs.

The case, which was supported by District Councils to discriminate against councillors with disabilities in carrying out their official business, and it will also strengthen existing rights in relation to the renting of premises and publishing discriminatory advertisements. Furthermore, the draft legislation will ensure that, with some exceptions, functions of public bodies, not already covered by the Disability Discrimination Act 1995, are brought within its scope. The public consultation period runs until 28 March 2005.

The document can also be accessed on the website of the Office of the First Minister and Deputy First Minister at www.ofmdfmni.gov.uk

A Disability Discrimination Bill for Great Britain is currently going through Parliament at Westminster. In March 2004, the Minister, John Spellar MP, announced that similar legislation to the Great Britain Bill would be brought forward in Northern Ireland by Order in Council to ensure that people with a disability here would enjoy the same legal protection as their counterparts in Great Britain.

The Bill and draft Order, when enacted, will implement a number of recommendations of the Disability Rights Task Force which was set up in 1997, to consider the state of disability rights law in the United Kingdom.

Due Diligence - Infinity and Beyond

A recent English case highlights some important points that should be borne in mind when drafting agreements, reviewing due diligence and considering the disclosure process.

Infiniteland v Artisan Contracting Ltd. and Artisan (UK) Plc; heard in the English High Court, has highlighted the importance of the interaction between the disclosure process, the drafting of a share purchase agreement and the ability of a purchaser to bring a claim for breach of warranty.

Practitioners would be wise not to underestimate the importance of this case. As a result of (a) the wording of certain clauses in the share purchase agreement, (b) the manner in which the financial due diligence process was conducted, and (c) the purchaser’s failure to comply with time limits set out in the share purchase agreement, the purchaser failed both in its attempt to claim on foot of the warranties and to enforce a price variation clause – even though the trial judge found that the vendors had not unfairly disclosed to the purchaser the matter that was at the core of the purchaser’s claim.

Facts of the case

The case arose from the sale by Artisan Contracting Ltd. of a number of companies, including Bickerton Construction Ltd., to Infiniteland Ltd. Soon after the sale, Bickerton’s business failed and it was placed in voluntary liquidation.

At some point prior to the sale, Artisan had injected the sum of £1,081,000 into Bickerton. Infiniteland argued that Artisan was in breach of the first warranty by virtue of the £1,081,000 not having been separately shown in the profit and loss account.

Park J noted that the agreement was entered into on 24 May 2001 and was due to complete on 6 June 2001. Artisan had warranted that the warranties set out in schedule 3 ‘are true and accurate and will continue to be true until completion. ’ Park J then went on to point out, while there were draft accounts on 5 May 2001, there were no audited accounts (although there were audited accounts at the completion date). Artisan argued that because there were no audited accounts at the time of the contract, Infiniteland could not have relied on the accounting warranties and the agreement did not give an operative warranty.

Park J accepted this argument. As a result, the accounting warranties were not fairly disclosed to the purchaser and the professional team advising the purchaser knew all about it. As a result, Infiniteland claimed damages for misrepresentation and breach of warranty. Artisan counter-claimed for the deferred consideration payable under the share purchase agreement, which Infiniteland had withheld.

Statutory accounts

Bickerton’s accounts were drawn up to 31 March 2001, being a few months before the sale. The profit and loss account showed a turnover of £20,048,593 and a cost of sales of £18,440,556, giving a gross profit of £2,507,677. What the profit and loss account did not show, and what the notes did not explain, was that the figure for cost of sales had been reduced by the £1,081,000 injection.

Infiniteland had instructed its accountant to carry out financial due diligence on the target, and its accountant had full and free access to the books and records of Bickerton. One of the questions made was in relation to the £1,081,000. In evidence, the accountant confirmed he had received a full explanation from Bickerton and he understood the nature of the credit and how it affected the accounts. He did not pass on the information to Infiniteland as he believed Infiniteland’s financial advisor had already discussed the point with Artisan.

Share purchase agreement

The agreement comprised 83 pages and was supported by an 11-page disclosure letter. In brief, two of the warranties that were key to the case provided that:

- ‘The audited accounts of the company give a true and fair view of the assets and liabilities of the company at 31 March’ and
- ‘The warranties are true and accurate in all respects and... will continue to be so up to and including completion.’

Infiniteland argued that Artisan was in breach of the first warranty by virtue of the £1,081,000 not having been separately shown in the profit and loss account.

Park J referred to the 1997 case of New Hearts Ltd v Cosmopolitan Investments Ltd., where it was held that neither (a) reference to a source of information in a complex document which a diligent enquirer might find the relevant information nor (b) an invitation to the purchasers and their representatives to which warranties have been given can be considered fair disclosure.

Consultation Launched on Proposed Draft Disability Discrimination Legislation

The Office of the First Minister and Deputy First Minister has launched a consultation on a proposal for a draft Disability Discrimination (Northern Ireland) Order.

Based on figures obtained from the 2001 census, it is estimated that there are around 330,000 disabled people in Northern Ireland. The Consultation Paper states that the proposed draft Order is a significant piece of legislation for people with disabilities which will make a wide range of amendments to the Disability Discrimination Act 1995 to ensure that disabled people are treated fairly in a lot more ways.

The draft Order will make it unlawful for Councils to discriminate against councillors with disabilities in carrying out their official business, and it will also strengthen existing rights in relation to the renting of premises and publishing discriminatory advertisements. Furthermore, the draft legislation will ensure that, with some exceptions, functions of public bodies, not already covered by the Disability Discrimination Act 1995, are brought within its scope. The public consultation period runs until 28 March 2005.

The document can also be accessed on the website of the Office of the First Minister and Deputy First Minister at www.ofmdfmni.gov.uk

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The Bill and draft Order, when enacted, will implement a number of recommendations of the Disability Rights Task Force which was set up in 1997, to consider the state of disability rights law in the United Kingdom.

Further information on the Disability Discrimination Act is available on the Equality Commission’s website at www.equalityni.gov.uk

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The disclosure letter provided that ‘in the year ended 31 March 2001, a management charge paid by Bickerton was reversed’. Park J felt that this sentence did not succeed in accurately disclosing the £1,081,000 injection. Artisan argued that because the disclosure letter disclosed ‘all matters from the documents and written information supplied by you to your reporting accountants’ and because documents supplied to Infiniteland’s accountants contained information about the £1,081,000, sufficient disclosure had been made. Park J dismissed this argument on the same grounds:

in his view, the disclosures did not match the standard laid down in the New Hearts case.

Actual knowledge

As Park J found that the relevant disclosure did not fully, clearly and accurately disclose the matter to which it related, Artisan could have been held to be in breach of the third warranty set out above. However, the agreement included a clause that provided that ‘the rights and remedies of the buyer in respect of any breach of the warranties shall not be affected by any investigation made by it on its behalf into the affairs if any target companies (except to the extent that such investigation gives the buyer actual knowledge of the relevant facts and circumstances)’.

The wording in bold turned out to be crucial. Park J held that it was clear that Infiniteland’s accountants knew about the £1,081,000 and therefore knew that insofar as the account gave the impression of a trading profit of £596,609, this impression was misleading.

Price adjustment

Infiniteland claimed that certain contracts had been overvalued and, as a result, it was entitled to recover under the price adjustment provisions of the agreement and that the deferred consideration should be reduced accordingly.

Park J noted that the agreement set out a detailed procedure for operating the price adjustment, whereby Infiniteland was required to calculate the net asset value before 1 September 2001. Infiniteland had failed to produce the net asset value calculation by the due date (notwithstanding that time was of the essence).

Artisan argued that Infiniteland could not now through court proceedings claim a price adjustment, as the agreement laid down its own procedure and Infiniteland had failed to follow those procedures. Park J agreed with this argument and held that Infiniteland could not raise before the court issues it should have raised in the manner provided for under the agreement. In making his decision, Park J noted that the value prescribed in the agreement was to have particular characteristics, which meant that it was even less suitable for the value to be replaced by a judge.

Misrepresentation

Infiniteland claimed that, in a conversation between the parties, it had been indicated that the companies were making pre-tax profits of about £500,000 a year. On the evidence presented, Park J felt that it was not clear whether this referred to past profits, the current accounting period or was a general reference with an eye to future profits.

Park J noted that for a misrepresentation to be actionable, it has to be a misrepresentation as to fact and it was difficult to categorise a prediction of how things will turn out in the future as a representation of fact. In addition, he stated that for a cause of action in misrepresentation to exist, the claimant must have relied on the representation. Given that financial due diligence had taken place, he felt it was not credible that Infiniteland had exchanged contracts in reliance on impressions obtained as a result of a ‘short conversation over coffee in a hotel’. Furthermore, the agreement provided that ‘the purchaser has entered into this agreement on the basis of and in reliance upon the warranties, the purchaser acknowledges that it has not been induced to enter into this agreement by any representation or warranty other than the warranties’. Park J made a point of noting that Infiniteland had committed itself to a contract that contained this provision and, as such, was estopped from asserting that the facts recorded in the agreement were not true.

Implications

It is clear that the Infiniteland case addresses some very important points, which should be borne in mind when drafting agreements, reviewing due diligence and in considering the disclosure process.

Practitioners should note, in particular:

• Infiniteland’s failure in enforcing the accounting warranties and the price adjustment provisions
• The implications ‘actual knowledge’ has in defeating warranting claims
• A purchaser being deemed to have the knowledge of its agents – even if this knowledge is not passed on to the purchaser
• What constitutes a fair disclosure and the reluctance of the court to accept vague and ambiguous disclosures, and
• The risk involved in relying on oral representations.

This article, by Sean Ryan of Dublin law firm O’Donnell Sweeney, was reproduced with the permission of the Law Society of Ireland.

Private Enforcement of Competition Law

The European Commission is considering the issue of private enforcement of EC competition law.

The Commission considers that private enforcement is capable of compensating, deterring and more generally ensuring efficient and effective enforcement of competition rules.

The UK Joint Competition Law Working Party which comprises, solicitors, advocates and barristers from all three UK jurisdictions will be submitting comments to feed into the Commission’s preparation of a Green Paper and is looking for information from firms as to the amount of cases firms are already dealing with (whether this is litigation in courts, informal settlements, arbitration, mediation and so on) so that it can give the Commission a true picture of the level of activity in this field.

Further details and a questionnaire can be accessed from the Society’s website at www.lawsoc-ni.org

New Corporate Law Orders Laid

Two draft Orders in Council made by the Department of Enterprise, Trade and Investment have been laid at Westminster.

Draft Insolvency Order

The main changes to be brought about by the proposed Order are as follows:-

- **Personal insolvency**
  - For individuals who are bankrupt, earlier discharge
  - For bankrupts whose conduct has been culpable, continuing restrictions
  - Power to remove outdated statutory restrictions on bankrupts.

- **Corporate insolvency**
  - Abolition of the right to appoint an administrative receiver, except in special cases. Administrative receivership is a procedure whereby the holder of a charge can appoint an administrative receiver to realise a company’s assets to pay the charge-holder’s debt. It does not involve unsecured creditors.
  - Streamlining of company administration. Administration is a rescue procedure which was introduced in 1991 with the aim of encouraging the continuation of an insolvent company’s business as a going concern wherever possible and therefore protecting jobs. The procedure was not taken up at the levels anticipated.
  - Crown preference, whereby the Inland Revenue and Customs and Excise are entitled to receive payment in priority to other creditors, will also be abolished in all insolvencies.

Draft Company Directors Disqualification (Amendment) Order

The purpose of the Order is to put in place means whereby directors whose companies have been in breach of competition law and whose conduct makes them unfit to be involved in the management of a company can be disqualified.

Competition law is designed to ensure that prices in the market place are arrived at through fair competition and not as a result of suppliers colluding to set a price higher than that which would result from the operation of normal market forces.

The Order will bring the law in Northern Ireland into line with that in Great Britain, where similar provisions were introduced by the Enterprise Act 2002.

It is intended that both Orders will be made at a meeting of the Privy Council to take place on 22nd March 2005 and that they will be brought into operation as soon as associated subordinate legislation can be made.

A copy of both draft Orders and an accompanying explanatory memorandum is available on www.insolvencyservice.detini.gov.uk.
Northern Ireland Young Solicitors’ Association

MIDSUMMER’S BALL

Friday 24th June 2005
Tickets £35.00

At The Exclusive And Historic 18th Century Venue
CLANDEBOYE COURT YARD, CLANDEBOYE ESTATE, BANGOR

DRINKS RECEPTION: 7.30pm
DINNER IN BANQUETING HALL AND LIVE BAND

Places for this year’s event are limited to 140 guests. Interested parties should complete the booking form below.

Cheques are to be made payable to the NIYSA

Cheques, booking forms and table plans of 10 to be sent to Claire Reid c/o Mills Selig Solicitors, 21 Arthur Street, Belfast, BT1 4GA Telephone: 028 9024 3878
(No reservation confirmed until cheque received).

Coaches for the return journey to Belfast may be provided, subject to level of interest. Each party should confirm on booking form below if they require places on the coach.

BOOKING FORM
NAME
FIRM
ADDRESS
E-MAIL ADDRESS
TEL

I ENCLOSE REMITTANCE OF £
I REQUIRE/DO NOT REQUIRE A PLACE ON A RETURN COACH TO BELFAST

NORTHERN IRELAND YOUNG SOLICITORS’ ASSOCIATION
PRESENTS A LUNCHTIME LECTURE ON:
WHAT LITIGATION LAWYERS

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NORTHERN IRELAND YOUNG SOLICITORS’ ASSOCIATION
PRESENTS A LUNCHTIME LECTURE ON:
PLANNING YOUR CLIENT’S FUTURE

A seminar to include advice on Inheritance Tax, Long Term Care, Pension Reform and Trustee Investment.

SPEAKER: Mr Jaime Steele of Richard Schwartz Partnership

DATE: Friday 15th April 2005
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:
Darren Toombs,
Carson McDowell,
Murray House,
Murray Street,
Belfast
BT1 6DN
E-mail to darren.toombs@carson-mcdowell.com

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

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New NIYSA Website
Visit the new NIYSA website at www.niysa.com to view events, seminars and register your details.

Please contact Emma Duffy at info@niysa.com if you would like to advertise on our site.

Easter Disco
IN CONJUNCTION WITH FIRST TRUST BANK
McCracken’s Bar
(formerly O’Neills) 4 Joy’s Entry, Belfast
THURSDAY
24TH MARCH 2005
9.00PM-LATE

In association with
Firearms (NI) Order 2004 now in Force


Anyone applying for a firearms certificate after 1st February or who wants to renew an existing firearms certificate is subject to the provisions of the new legislation.

At present there are 79,000 firearm certificate holders in Northern Ireland with a total of 144,000 weapons. Approximately 90,000 of these are shotguns, many held by people in the rural community and rarely used.

The new legislation was prepared following a detailed review of Northern Ireland’s firearms legislation, principally the Firearms (NI) Order 1981. The review also examined the proposals for the reform of firearms controls contained in Lord Cullen’s report on his inquiry into the fatal shooting at Dunblane Primary School on March 13, 1996. The 2004 Order includes provisions to improve public safety and where possible introduces simpler regulatory regimes for police and shooting enthusiasts.

Some of the main changes include:
- An increase in the duration of firearms certificates from three to five years and replacement of the present system of renewal with a more rigorous one of ongoing grants. An individual applying for a firearm certificate or a re-grant of an existing one will have to supply the names of two referees who will be required to complete a questionnaire about the person’s suitability to hold a firearm. An applicant will have to give his/her consent to allow police access to medical records, if appropriate.
- De-certification of low powered air guns of one-joule muzzle energy or less and deactivated firearms;
- A period of supervised shooting for first time certificate holders and those existing certificate holders seeking to acquire a firearm of a significantly different type from one already held;
- Provision for the borrowing of shotguns and estate rifles;
- Provision for paintball guns to be used without the need for a firearm certificate;
- Provision for transactions involving the exchange of one shotgun for another to be carried out by firearms dealers, provided police are informed within 48 hours;
- Provision for the PSNI’s civilian support staff to play a greater role in the firearms licensing administration.

Comprehensive guidance which clearly explains the law on firearms controls and the policies and administrative arrangements for implementing it has been produced to accompany the new legislation.

PSNI has stated that during the first few months of this new process, there may be unavoidable delays due to the way in which applications will have to be handled and as new computer systems are introduced.

A copy of the guidance can be downloaded from the Northern Ireland Office website www.nio.gov.uk or may be obtained from: Firearms & Explosives Branch, PSNI, 42 Montgomery Road, Belfast Tel: 028 9065 0222

Criminal Legal Aid Applications

To assist the Court Offices in issuing correctly addressed Criminal Legal Aid Certificates and the Legal Services Commission in making payments please insert the following on all Criminal Legal Aid application forms:
1. The name of the individual Solicitor making the application.
2. The name and address of the firm.
Kay Hegarty,
Chief Clerk Division of Antrim.
Previous Convictions to be used as Evidence

The Criminal Justice Act 2003 made a series of important changes to the law in an effort to ensure that criminal trials are run more effectively and to reduce the scope for abuse of the system. One of the aspects which it revised was in relation to rules of evidence to allow a defendant’s previous convictions to be disclosed to the court where relevant. These reasons are in Part 11 of the Act and are known as the ‘bad character’ provisions. The aim of this change in the law is to ensure that all possible evidence is available to the court to enable it to reach a just verdict.

These provisions were extended to Northern Ireland by way of the Criminal Justice (Evidence) (NI) Order 2004 and are due to be commenced in the next few months. The NI has issued for comment a draft Criminal Justice (Evidence) (NI) Order 2004 (Categories of Offences) Order 2005 which will prescribe the first categories of offences which may be classified as ‘similar’.

‘Bad Character’

The ‘bad character’ provisions will enable the court to hear about a defendant’s previous convictions and other misconduct, where these are relevant to the case. Their use is also subject to their value (in terms of throwing new light on the case) being greater than the risk that such evidence may duly prejudice the trial. In other words, the court should only hear about a defendant’s previous convictions if it is not likely to result in an unfair trial. The decision as to whether previous convictions should be disclosed lies with the judge in the case.

As part of the new legislation, the Secretary of State may prescribe categories of offences which are of the same type for use as an indicator that a defendant has a previous conviction for an offence in the same category and therefore should not be admitted.

The Categories

The categories contained in the Order cover areas of offending that are of particular concern.

Theft: the offences contained in the order are related directly to an interference with property or the taking of property that belongs to others.

Sexual offences against persons under the age of 17: the offences in this category cover any sexual activity committed in relation to children and young people under the legal age of consent.

The absence of categories for other types of offences do not prevent previous convictions of other types from being admitted if they demonstrate a propensity to commit a certain type of offence. Further guidance categories may be introduced at a later date.

The closing date for the consultation is Friday 29th April 2005.

Lord Clyde, the Justice Oversight Commissioner, releasing his Third Report on the progress which has been made in implementing the 293 recommendations of the Criminal Justice Review, has stated that progress has been “steady and successful”, especially in establishing a new prosecution service and setting up a new system for appointing judges.

The Public Prosecution Service, which is due to be fully operational next year, is being rolled out through pilot schemes.

A new Judicial Appointments Commission is due to take over the recruitment of judges later this year and lay magistrates will begin operating in lower courts in a matter of months.

The former Law Lord commented, “I can say that on a broad view the last six months has seen a further continuation of steady progress. It remains essential that progress on all fronts continues to be made with all due expedition. Perhaps the most significant achievement in the period of this report has been the establishment of the Office of the Chief Inspector. This matter has been and will in the future prove to be one of the more important of the recommendations. Now that the work of the Chief Inspector has got fully underway, there is a permanent full-time monitoring of the criminal justice system in accordance with the relevant recommendations which should provide a continuing safeguard of its effectiveness and efficiency. This will also allow a smooth transition between my work on the oversight of the achieving of the recommendations and the ongoing monitoring of the whole system in the future.”

“I welcome the continued willingness to implement recommendations in advance of devolution where appropriate and commend the useful initiative to use the current Constitutional Reform Bill to accelerate some measures which might otherwise have had to await devolution.”

In the course of the report a few areas of concern and of delay are noted. These include concern about the slow progress being made in the areas of community restorative justice and of cross-border co-operation.

He also noted that the financial position which had been of anxiety earlier in the year has been clarified during this latest period and plans can now be more confidently made, regarding in particular, the long awaited Law Commission.


Lord Clyde Justice Oversight Commissioner
Terrorism Act 2000 (Continuance of Part VII) Order 2005

This Statutory Instrument provides for the renewal up to and including 18th February 2006 of the temporary provisions contained in Part VII of the Terrorism Act 2000 which relate to Northern Ireland only, with the exception of the following provisions:

(a) section 100, which has not been brought into force;
(b) sections 67(3) and (4), 70 and 71, which by virtue of this Order ceased to have effect on 19th February 2006;
(c) section 76;
(d) section 97(1) and (2);
(e) section 97(3);
(f) paragraph 36 of Schedule 4; and
(g) paragraph 19 to 21 of Schedule 5

The removal of section 67(3), which provides a judge with a discretion to grant bail in scheduled cases unless certain circumstances exist, was recommended by Lord Carile of Berriew QC, the Independent Reviewer of the Terrorism Act 2000. Section 67(4) sets out the matters to which a judge shall have regard when exercising his discretion under section 67(3). The lapse of section 67(4) is consequential upon the lapse of section 67(3).

In 2004 the Northern Ireland Office conducted a short technical consultation exercise with interested groups which included the Law Society. This exercise confirmed that the effect of letting section 67(3) lapse would be negligible. Sections 70 and 71 of the Act will also cease to have effect.

Human Rights Commission Settles Case Against Government

The Northern Ireland Human Rights Commission (HRC) has settled its case against the Secretary of State on seeking access to the Juvenile Justice Centre in Rathgael, Bangor. The parties have now reached a settlement that allows the Commission access to the Centre by 1st May 2005.

The Commission had sought a judicial review of the decision by the Northern Ireland Office not to grant access rights to the Centre. The HRC wants to check whether the recommendations contained in its report ‘In Our Care: Promoting the Rights of Children in Custody’, published in March 2002, are being properly implemented. The report made a number of disturbing findings regarding the treatment of young offenders in the juvenile justice system.

Judicial Appointments

- His Honour Judge Anthony Hart QC has been appointed to be a Judge of the High Court of Justice in Northern Ireland. Judge Hart was sworn in before Sir Brian Kerr the Lord Chief Justice of Northern Ireland on 6th January 2005.
- Master Charles Redpath has been appointed as Master (High Court). He will have responsibility for matrimonial and ancillary relief matters. Master Redpath was sworn in on 10th January 2005.

Legal Appointments

2x Locum Solicitor, Belfast, 3-6 months contract. Large Public Sector Bodies wish to recruit an experienced Litigator with at least 2 yrs + PQE. This is an excellent opportunity to develop your expertise in a Government Organisation.

General Conveyancing Solicitor, Co Armagh. Prestigious practice wish to recruit a dedicated Solicitor with expertise in both Commercial & Residential Conveyancing. Excellent career prospects. Suits 2 yrs + PQE

Litigation Solicitor, East Belfast. Well known practice seek a Litigator who will be focusing on Personal Injury cases. Superb opportunity to join a constantly expanding firm with an excellent client base. Superb salary and benefits package. Suits 3 yrs + PQE.

Conveyancing Solicitor, Belfast. Excellent opportunity has arisen to join a large established practice. The ideal candidate will have strong knowledge in Residential Conveyancing. Expertise in Commercial Conveyancing desirable. Suits 1-10 yrs PQE.

For more details please contact Orla or Gemma in confidence on 028 9032 3333 or email legal@blueprintappointments.com

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For more details please contact Orla or Gemma in confidence on 028 9032 3333 or email legal@blueprintappointments.com
Court Witness Service Seeks Volunteers

Victim Support is an independent charity providing free, confidential support and practical help for all victims of crime.

Its work includes services for prosecution witnesses in the Crown and Magistrates Courts and the organisation is asking people with a legal background to become involved as Courts’ Witness Volunteers.

Fiona Greene, Victim Support’s Policy Manager explains:

‘Without volunteers our Courts’ Witness service cannot function properly. We need new volunteers to develop and strengthen the service and feel that future, current or retired members of the legal profession can contribute to – and benefit from - this type of volunteering’.

Why is the Courts’ Witness Service Needed?

Victim Support has found that witnesses tend to be in fear and awe of the Courts. Most forget their rights and worry about ruining the trial, while intimidation or fear of reprisal can make witnesses want to withdraw.

What do Courts’ Witness Volunteers do?

After training, they ensure that prosecution witnesses receive reassurance and help.

Volunteers organise Pre-Trial Visits, providing information on Court procedures and layout. They explain procedures, provide a safe waiting area and keep witnesses informed and calm.

They identify and react to special needs by, for example, involving family and friends, identifying health issues or finding out if a specific religious text is required for the oaths. They tell the prosecution which witnesses are attending, update them on issues that arise and work with the officer in charge of the case.

Volunteers can accompany witnesses into Court and often prepare them for the case outcome, by supporting them after giving evidence or after the verdict.

Having a skilled, neutral person to deal with these issues – without prejudicing the case - makes so much difference.

Do volunteers need special qualities?

Volunteers must be over 18, can come from any background and need the ability to empathise and be non-judgemental, but it is clear that people with experience of the Courts and criminal justice system have much to offer - and gain.

Retired legal professionals bring career and life experience, while law students gain invaluable exposure to Court procedures and personalities.

How much time is involved?

Volunteers, who receive expenses, are needed for one full day per week. Most work a set day or days, or a weekly rota and Victim Support tries to meet individual circumstances.

To find out more contact:

Fiona Greene, Victim Support Head Office Tel: 028 9024 4039
Magistrates Court Witness Service
Jenny Groves Tel: 028 9032 3232
belfastmcws@victimsupportni.org.uk
Crown Court Witness Service
Lisa Garvey Tel: 028 9023 2523
lisa.garvey@victimsupportni.org.uk

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Youth Conferencing - One Year On

The Youth Conference Service has been in existence for over a year and is now established in the Youth Court covering the Greater Belfast area and throughout the County Court Division of Fermanagh and Tyrone. In May 2005, it will extend to the County Court Division of Newry and Armagh with a full roll out across the rest of Northern Ireland planned for 2006.

To raise awareness and with a view to improving the service provided, an event was held in Law Society House on Thursday 10th February 2005 to hear views from solicitors in the Belfast area. The event was attended by over 25 solicitors, most of whom have dealings with Belfast Youth Court.

Alice Chapman, Director of Youth Conference Service, gave a presentation outlining the recent Interim Evaluation Report on the Youth Conference Service carried out by Queens University. (Copies can be downloaded from www.youthconferenceserviceni.gov.uk

Some of the main points arising from the evaluation report are:

- 78% of young offenders were satisfied with the conference process
- 98% of offenders said they would recommend a conference to other offenders
- 62% participation by victims
- 78% of all conference plans contained some degree of reparation/restitution to the victim
- the concept of punishment did not as a general rule feature highly in plans, with only 8% including any punitive element
- most offenders will complete their action plans quicker than other disposals

Following the presentation, there was a question and answer session which generated some lively debate. The panel to answer questions comprised Alice Chapman (Director, YCS), Raymond Kitson (DPP) and Aileen McMenamin (Legal Services Commission).

One problem identified was the low attendance rate of solicitors at youth conferences. The Youth Conference Service has since taken a policy decision to ensure that solicitors are better informed of when conferences are taking place. It was also accepted that a significant change will take place after 1st April 2005 when 17 year olds will be brought within the jurisdiction of the Youth Court.

Another concern raised related to difficulty in accessing legal aid for diversionary or court ordered conferences and legal aid FAQs. If anyone would like to receive the Information Pack, please contact the Youth Conference Service on 028 9031 6418.

The Youth Conference Service hopes to hold more awareness raising sessions later in the year but for explanatory material on Youth Conferencing and more up-to-date information, you should access the website at www.youthconferenceserviceni.gov.uk or contact the Youth Conference Service on 028 9031 6418.

At the event an Information Pack was distributed which contained general information on the Youth Conference Service, how to access legal aid for diversionary or court ordered conferences and legal aid FAQs. If anyone would like to receive the Information Pack, please contact the Youth Conference Service on 028 9031 6418.

The seminar will focus on The Criminal Justice (Evidence) (Northern Ireland) Order 2004. This legislation introduces significant changes to the law of evidence in Northern Ireland, specifically in the areas of character evidence; hearsay and the previous statements of a witness.

The speakers will examine the changes in detail and assess the implications for practitioners in Northern Ireland. The seminar will be an invaluable opportunity for legal practitioners in the criminal courts to familiarise themselves with this important piece of legislation.

3 CPD hours are awarded for attendance at this course.

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.

The Closing Date for applications is Monday 4th April 2005
(Details of this course can also be found on the IQLS website – www.qub.ac.uk/ipls)
We are in an era of rapid change. We no longer have the luxury of conducting our "business as usual". We are required to work faster and smarter to compete in a market where there is an irrevocable trend towards sorting the efficient from the inefficient.

Recent changes in the Master Policy reflect this trend, with the introduction of double excesses and loadings. Those firms with a poor claims history now face considerable financial penalties and this could ultimately affect their ability to continue practising. This is a daunting prospect. However, it serves to highlight the importance of having in place robust risk management procedures that form an integral part of your overall business planning. You will be required to spend much time and effort on these issues if you are to avoid the financial penalties that flow as a consequence of professional indemnity claims against your practice.

In conjunction with the Law Society we are committed to providing practical risk management advice and information that is best suited to meet the specific needs of the Northern Ireland legal profession.

A recent statistical review of claims made under the Master Policy reveals fairly predictable results. Conveyancing and statute barred claims have historically occurred at a high frequency and it should be noted that many of the claims for breach of undertaking are directly related to conveyancing transactions.

In relation to private conveyancing a fairly typical claim may arise when a client’s matrimonial home is used as security against a loan from a lending institution. Such loans are invariably used to raise finance for a business venture or to cover the party’s indebtedness.

At some point the borrower defaults on the loan, the lending institution commences repossession proceedings and remarkably the spouse of the defaulting borrower claims they did not receive independent legal advice. The attention of the parties in dispute is then focused upon the solicitor.

1. He will need to explain the nature of the documents and the practical consequences these will have for the wife if she signs them. She could lose her home if her husband’s business does not prosper. Her home may be her only substantial asset, as well as the family’s home. She could be made bankrupt.

2. He will need to point out the seriousness of the risks involved. The wife should be told the purpose of the new facility, the amount and principal terms of the new facility, and that the bank might increase the amount of the facility, or change its terms, or grant a new facility, without reference to her. She should be told the amount of her liability under her guarantee. The solicitor should discuss the wife’s financial means, including her understanding the value of the property being charged. The solicitor should discuss whether the wife or her husband has any other assets out of which repayment could be made if the husband’s business should fail. These matters are relevant to the seriousness of the risks involved.

3. The solicitor will need to state clearly that the wife has a choice. She should be asked whether she is content that the solicitor should write to the bank confirming he has explained to her the nature of the documents and the practical implications they may have for her, or whether, for instance, she would prefer him to negotiate with the bank on the terms of the transaction.

Matters for negotiation could include the sequence in which the various securities will be called upon or a specific or lower limit to her liabilities.

The solicitor should not give any information to the bank without the wife’s authority.

The solicitor’s discussion with the wife should take place at a face-to-face meeting, in the absence of the husband.

At paragraph 66 Lord Bingham states inter alia “I have set out the core minimum in some detail, because the quality of the legal advice is the most disturbing feature of some of the present appeals. The perfunctory nature of the advice may well be largely due to a failure by some solicitors to understand what is required in these cases.”

The obligation placed upon solicitors in these circumstances is considerable. Lord Bingham makes it clear in his judgement that the above issues are the minimum requirements placed upon a solicitor.

It is essential solicitors continually review their procedures to ensure they are constantly acting in the best interests of their clients and in accordance with best practice. Hopefully at the same time efforts can be made to ensure proper remuneration is received for conveyancing services to reflect the undoubtedly expertise solicitors bring to transactions that Lord Bingham referred to as “of great social and economic importance.”

The information contained in this article provides only a general overview of subjects covered and 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.
New Chairman of BSA

The current Chairman for 2004/2005 is Gavin Patterson, who was elected to the office at the Annual General Meeting of the Association, which was held on Thursday 25th November 2004.

Gavin Brian Patterson was born in Belfast and educated in Bangor before attending The Queen’s University of Belfast, first as an undergraduate reading law and then as a trainee at the Institute of Professional Legal Studies.

He was admitted as a solicitor in Northern Ireland in 1990 and in England and Wales the following year and, throughout his career, has not only always practised in Belfast but has in fact never left BT1. Having spent several years with F J Orr & Co he joined (what was then) Hoffman & Company in October 2003, subsequently becoming a partner in November 2004, in the new firm of Hoffman Patterson Solicitors.

He lives in Belfast and is married to Jennifer, also a practising solicitor, and has two children, George and Phoebe. He joined the committee of the BSA in 1998 and became Honorary Secretary in December 2003, having briefly served as Honorary Treasurer and for rather longer as Chair of the Social Sub-Committee, in particular being responsible for the organisation of the Association’s Dinner Dance. His interests outside the profession include badminton, wine tasting and music.

BSA Yearbook

Further to the recent publication of the BSA Yearbook, members are advised that further copies may be purchased from the BSA Administrator, Suite 7, Merrion Business Centre, 58 Howard Street, Belfast BT1 6FU, at a cost of £10.00 per copy.

The Yearbook, amongst other useful matters, contains a handy guide to High Court, County Court, Conveyancing and Non-contentious Probate matter costs. It also contains the CPD lecture programme for 2005. A must for every practitioner’s desk or briefcase!

Stamp Duty Land Tax

Are you experiencing any problems with the new system? Forms being returned when they have been correctly filled in? Penalties being levied as a result? If so, the BSA wish to hear from you. Please forward your complaints to the BSA Administrator, Suite 7, 2nd Floor, Merrion Business Centre, 58 Howard Street, Belfast, BT1 6FU. E-mail: info@belfast-solicitors-association.org.

CPD-BSA Lecture Series 2005

Further to the List of BSA lectures recently published, a half day Seminar on Client Care and Practice Management will take place on Saturday 24th September 2005 at the Wellington Park Hotel, Belfast.

Details of topics and speakers will be published in forthcoming issues of “The Wel” and on the BSA website: www.belfast-solicitors-association.org.

Golfers… please note!

Advance notice is given of the annual BSA Golf Outing which will take place on Thursday, 19th May 2005 at Malone Golf Club. Full details will follow but in the meantime, mark your diaries!
Exempt Professional Firms - Insurance Mediation Activities Financial Services Regulations 2004

Despite assertions from some solicitors that they did not undertake insurance mediation business, the amount of enquiries received by the Society from both member firms and insurance companies as to the status of solicitors’ firms in Northern Ireland for the purposes of undertaking such activities tends to suggest otherwise.

These enquiries relate mainly to the “exempt professional firm” status of solicitors in Northern Ireland for the purposes of the above Regulations and whether or not they are included in the Financial Service Agency’s (FSA) Register.

With the coming into operation of the Insurance Mediation Directive (IMD) the Society took the view that all Northern Ireland firms had potential for carrying on insurance mediation activities and as such should be included in the FSA’s Register.

We provided information to the FSA to all it to include details of all member firms therein.

The following extracts from the Guidance issued with the Solicitor’s Financial Services Regulations 2004 in October 2004 sets out the position of the Financial Services Register and exempt professional firms:-

“We are grateful the Government has agreed to implement regulation of solicitors and other professional firms undertaking insurance mediation activities by extending the existing Part XX regime under Financial Services and Markets Act 2000 (FSMA). That is the regime which currently operates to allow the Society as a Designated Professional Body (DPB) to regulate solicitors in Northern Ireland (subject to oversight by the FSA) in relation to business which would otherwise be directly regulated by the FSA provided that such activities are limited in scope and form an integral part of their core professional services for insurance and provided they arise out of or are complementary to those professional services. As such, Northern Ireland solicitors are exempt professional firms (EPFs).

The FSA Register

The FSA is obliged, as a Designated Professional Body, to provide the FSA with the information it needs to maintain the register relating to Exempt Professional Firms within its membership. This is our responsibility and Regulation 14.2 sets out the information which each firm is required to give the Society before the commencement of the Regulations. Unless otherwise informed, it shall be assumed that sole practitioners are the responsible persons for IMD work within their practice. Where changes occur in a firm’s circumstances or arrangements within the Society should be informed immediately as we are required to provide updated information to the FSA on a regular basis.

If a firm does not provide the information to the Society we will not be in a position to provide same to the FSA and this firm’s name will not appear on the IMD Register. If such firm proposes to carry on insurance mediation activity, they are likely to be breaching the general prohibition within the FSMA and committing a criminal offence under Section 23 thereof. A firm must therefore ensure that it is included in the FSA Register before undertaking any insurance mediation activity.

Exempt Professional Firms may not carry on regulated activities which relate to a contract of insurance in reliance on the Part XX exemption unless the Exempt Professional Firm is included in the record of unauthorised persons carrying on insurance mediation activity to be maintained by the FSA under Article 93 of the Regulated Activities Order.

The Register can be accessed using your firm’s name or its Law Society firm reference number, which is available upon request. You are reminded that the newly regulated insurance mediation activities are:-

- Dealing as an agent in Contracts of Insurance;
- Arranging or making arrangements with a view to a person entering into a Contract of Insurance;
- Assisting in the administration and performance of a Contract of Insurance;
- Advising on the merits of buying or selling a Contract of Insurance.
- Government has decided that Exempt Professional Firms (EPFs) can advise on and recommend both commercial and retail non-investment Contracts of Insurance. This is in contrast to the more limited scope under which you can give advice in investment business; and
- Agreeing to carry on any of the above activities.

Work of Defence Solicitors on behalf of insurance companies is not included in the regulated area. Firms are likely to carry on a number of activities which fall within the definition of insurance mediation, including introducing, arranging and advising on the following types of insurance – after-the-event legal expenses insurance, defective title indemnity insurance, buildings insurance, term assurance, missing beneficiary indemnity insurance and unoccupied property insurance.

The Society’s reporting Accountants and Home Charter monitors are aware of the contents of the 2004 Regulations and will be requiring sight of documentation arising from compliance with Regulation 15.1 of the Regulations and such other proofs as are necessary to ensure compliance with the Regulations as a whole.

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Supreme Court of Judicature of Northern Ireland Offices of the Supreme Court

Pursuant to Order 64, rule 5(1) of the Rules of the Supreme Court (Northern Ireland) 1980, the offices of the Supreme Court will be closed to the public on the following days until Christmas 2005:

- St Patrick’s Day Holiday Thursday 17th March
- Good Friday Friday 25th March
- Easter Monday Monday 28th March
- Easter Tuesday Tuesday 29th March
- Early May Bank Holiday Monday 2nd May
- Spring Bank Holiday Monday 30th May
- July Bank Holiday Tuesday 12th July
- July Privilege Holiday Wednesday 13th July
- August Bank Holiday Monday 29th August

A notice setting out the Christmas and New Year closures will issue at a later date.

Simon Rogers Principal Private Secretary to the Lord Chief Justice
28th January 2005
No one likes to think too much about the possibility of death or incapacity, but unfortunately they are realities which need to be addressed by practitioners and in particular sole practitioners. Although the Solicitors’ (NI) Order 1976 allows the Society to intervene in a solicitor’s practice after a period of time in circumstances where a solicitor dies intestate or has been absent from his practice through illness, this is a cumbersome procedure and does not take immediate account of the ongoing interests of clients.

We would therefore remind sole practitioners to have testamentary arrangements in place whereby a solicitor is immediately appointed by the Executors to run the practice or alternatively where one of the Executors is a solicitor. In the case of illness we suggest that solicitors have a “best friends” agreement with another firm to take over and carry on the practice in the event of serious illness or incapacity for their practice, as solicitors have continuing responsibility irrespective of these circumstances. It would also seem sensible that sole practitioners enter into such arrangements with a larger firm with the staff resources to absorb additional work in the event of an emergency.

Partnerships are not totally free of the need for contingency planning and are reminded of the necessity for partners’ insurance.

Succession Planning - Have You Thought About it?

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The Institute of Legal Cashiers & Administrators Presents a One-Day training course on

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As many solicitors as possible should arrange for their bookkeeping staff to attend.

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LL.B. Hons (QUB) Solicitor (Admitted NI 1978)

Tel: 0117 9227740
Fax: 0117 9250202
johnwhitcroft@onetel.com
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WEDNESDAY 30TH MARCH 2005

Editor: John Bailie.
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The views expressed are not necessarily those of the Law Society of Northern Ireland.
ATTENTION ALL NEW PRINCIPALS!

SOLICITORS TRAINING (PRACTICE MANAGEMENT COURSE) REGULATIONS 1995

The above Regulations (reproduced below) apply to any solicitor becoming a principal for the first time after 30th August 1995. For such solicitor it will be compulsory to attend a Practice Management Course. The solicitor in question can attend at any time up to 6 months after becoming a principal or alternatively up to 12 months before becoming a principal.

Anyone who wishes to attend the next available course should fill in the form provided and return same to:
Mrs. Blackstock, The Law Society, Law Society House, 98 Victoria Street, Belfast, BT1 3JZ.

I wish to attend the next available Practice Management Course.

NAME
ADDRESS

TELEPHONE DATE

STATUS (i.e. principal or assistant and if applicable date became principal)

The Regulations read as follows:

SOLICITORS TRAINING (PRACTICE MANAGEMENT COURSE) REGULATIONS 1995

The Council of the Law Society of Northern Ireland in exercise of its power under Article 6 and Article 74(1) of the Solicitors (Northern Ireland) Order 1976 as amended by the Solicitors (Amendment) (Northern Ireland) Order 1989 and all powers enabling it in that behalf and with the concurrence of the Lord Chief Justice of Northern Ireland hereby makes the following Regulations.

1. These Regulations may be cited as the Solicitors Training (Practice Management Course) Regulations 1995 and shall come into force on the 30th day of August 1995.

2. (i) The Interpretation Act (Northern Ireland) 1954 shall apply to the interpretation of these Regulations as it applies to a statutory instrument.

(ii) In these Regulations the following expressions shall have the following meanings respectively:

"the Order" means the Solicitors (Northern Ireland) Order 1976 as amended by the Solicitors (Amendment) (Northern Ireland) Order 1989.

"the Council" means the Council of the Law Society of Northern Ireland.

"solicitor" means a solicitor of the Supreme Court.

"Practice Management Course" means a course of practical training in the management of a solicitor's practice, the duration, form and content of which shall be prescribed by the Council from time to time.

"principal" means a solicitor who is a sole practitioner or is a partner in a firm of two or more solicitors.

"practice" means the business of a sole practitioner or a firm of two or more solicitors.

3. A solicitor who becomes a principal for the first time shall, within a period not exceeding 6 months after the date on which he becomes such, be obliged to attend a Practice Management Course unless he has attended a Practice Management Course within the twelve months preceding that date.

4. Breach of these Regulations may be treated as professional misconduct for the purpose of Article 44 of the Order.

5. The Council shall have the power to waive any of the provisions of these Regulations in any particular circumstances or case.

Contact:
Dr W A McIlmoyle
W Alan McIlmoyle and Associates
Animal Nutrition and Agricultural Consultants
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In the second part of an article on caseload developments on matters of leave, Mark Reid, employment legal advisor at Law Centre (NI), examines 2004 caseload changes which develop the law relating to maternity leave, parental leave and provisions for time off for dependants are examined. The first part, on sick leave and annual leave, was published in the last issue of the Wnt.

**MATERNITY LEAVE**

Below is a summary of rights relating to maternity leave and pay.

The new provisions governing maternity leave have been in force for almost one and a half years. Historic issues which were unclear under the old maternity regime continued to cause problems under the new rules. The cases below go some way to clearing up some of the difficulties, for instance concerning the relationship between maternity leave and annual leave, and whether pay rises should be taken into account in calculating maternity pay. There is also a cautionary warning of the risks involved in treating employees off on maternity leave less favourably for instance by not notifying them about job opportunities.

### Annual leave falling during maternity leave

**The case of Merino Gomez v. Continental Industrias Del Caucho SA**

(European Court of Justice) 2004 IRLR 407

Examined the relationship between maternity leave and annual leave. The ECU held that a woman must be able to take paid annual leave other than during a period of maternity leave. This is the position even where collective agreements between an employer and workers’ representatives fixes the timing of annual leave for a whole workforce to coincide with an individual worker’s maternity leave.

How this will be possible in practice if maternity leave spans two leave years and an annual leave has not been taken will be interesting in view of the fact that annual leave must normally be taken in the leave year in which it is due unless the employer agrees otherwise.

### Pay rises during maternity leave

**Statutory maternity pay (SMP)** is payable by an employer for 26 weeks to qualifying employees at two rates; a higher earnings related rate and a lower rate. The higher earnings related rate is calculated by working out average earnings during a ‘relevant period’ of eight weeks.

SMP is normally payable at 90% of assessed gross average earnings from this ‘relevant period’ for the first six weeks of maternity leave. The lower rate is normally payable at a flat rate of £102.80 per week (or 90% of average earnings if this is lower) for the remaining 20 weeks.

### TIME DUTY/RIGHT

<table>
<thead>
<tr>
<th>TIME</th>
<th>DUTY/RIGHT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Baby still born after 24 weeks of pregnancy.</td>
<td>Right to maternity leave.</td>
</tr>
<tr>
<td>Baby born alive at any time.</td>
<td>Right to commence maternity leave.</td>
</tr>
<tr>
<td>By the fifteenth week before EWC [Expected Week of Childbirth].</td>
<td>Employer must provide notice of intention to take maternity leave (in writing if requested). If baby born early notice must be given as soon as is reasonably practicable.</td>
</tr>
<tr>
<td>If by the fifteenth week before EWC the employee:</td>
<td>Employee entitled to Statutory Maternity Pay (SMP).</td>
</tr>
<tr>
<td>• is still employed;</td>
<td></td>
</tr>
<tr>
<td>• has had 26 weeks continuous service;</td>
<td></td>
</tr>
<tr>
<td>• has given medical evidence at least 28 days before leave and pay is to start (or as soon as reasonably practicable if birth is early);</td>
<td></td>
</tr>
<tr>
<td>• has stopped working for any reason thereafter;</td>
<td></td>
</tr>
<tr>
<td>28 days after receiving employee’s notice of intention to take maternity leave.</td>
<td>Employer must give notice confirming date s/he expects maternity leave to end.</td>
</tr>
<tr>
<td>If employee is absent from work during four weeks before EWC.</td>
<td>Maternity leave automatically triggered – but only if absence is ‘pregnancy related’.</td>
</tr>
<tr>
<td>When employee gives birth.</td>
<td>Must go on maternity leave for two weeks.</td>
</tr>
<tr>
<td>If employee wants to return to work before end of maternity leave.</td>
<td>Must give 28 days notice – employer can postpone if don’t.</td>
</tr>
<tr>
<td>End of maternity leave.</td>
<td>Employee can return to work without giving any notice.</td>
</tr>
</tbody>
</table>

As a result of a previous ECJ decision, *Gilleppes v. Northern Health and Social Services Board*, C-342/93 [1996] IRLR 214 ECJ, Regulation 21 (7) of the Statutory Maternity Pay (General) Regulations (NI) 1987 was amended to state:

“Our a case where a woman receives a back-dated pay increase which includes a sum in respect of a relevant pay period, normal weekly earnings shall be calculated as if such sum was paid in that relevant period even though received after that period.”

This meant pay rises were only included in the earnings related amount of SMP if they were backdated to the eight week relevant calculation period. However in *Alabaster v. Woolwich plc and Secretary of State for Social Security C-147/02* 2004 IRLR 486, the ECJ confirmed that any pay increases from the beginning of the eight week reference period to the end of maternity leave should now be reflected in the first (earnings related) six weeks of SMP. This is the position even if the pay rise is not backdated to the relevant eight week period.

### Failing to notify an employee of job opportunities during maternity leave

A failure to keep an employee advised of developments during maternity leave can amount to a detriment under Article 70C of the Employment Rights (NI) Order 1996. Likewise in certain circumstances the failure may be a breach of the implied term of trust and confidence which could entitle an employee to resign and claim constructive dismissal.

In *Visa International Service Association v. Paul* [2004] IRLR 442, the EAT upheld a finding that an employer had fundamentally breached the implied term of mutual trust and confidence, entitling an employee to claim constructive dismissal, by failing to notify her, while she was on maternity leave, of a vacancy for which she would have applied had she been aware of it. The fact that the employee was not shortlisted for the post was not deemed relevant as such a claim was not dependent on her losing the chance of successfully applying for the post.

### PARENTAL LEAVE

To be entitled to parental leave, an employee must have been continuously employed for one year and be absent from work for the purposes of caring for the child who s/he has parental responsibility for. Parental leave must normally be taken on or before a child’s fifth birthday unless the child is in receipt of DLA in which case parental leave can be taken up until the child’s eighteenth birthday.

### Length of leave

An employee is normally entitled to thirteen weeks [eighteen weeks if the child is entitled to DLA] unpaid leave in respect of any individual child. If an employee does not have provision in her/his contract which provides entitlement to be absent from work for the purpose of caring for a child which operates by reference to or incorporates a collective or workforce agreement, default provisions found in the Maternity and Parental Leave etc Regulations 1999 (‘the 1999 Regulations’) will apply.

Under the default provisions, no more than four weeks leave in respect of an individual child can be taken in any one year.

### Notice requirements

In the absence of appropriate provisions in a collective or binding workforce agreement, to exercise entitlement to parental leave the employee, under the default provisions, must comply with certain evidential requirements and give the employer sufficient notice of the period of leave s/he proposes to take. The notice must normally be given to the employer at least 21 days before the date on which leave is to begin.

An employer normally has power to postpone leave in certain circumstances.

### Blooms of leave

**South Central Trains Ltd v Rodway**

**Contributions and Benefits (NI) Act 1992** defines the ‘relevant period’ as the eight week period immediately preceding the fourteenth week before the expected week of childbirth.

Annual leave must normally be taken in the leave year in which it is due.

## Recent developments regarding leave - part 2

Mark Reid

Adviser at Law Centre (NI), examines 2004 caselaw changes which develop the law relating to maternity leave, parental leave and provisions for time off for dependants are examined. The first part, on sick leave and annual leave, was published in the last issue of the Wnt.
The manner in which costs are to be determined and paid. Those provisions will be held on dates and venues to be confirmed.

Aid for Crown Court Proceedings (Costs) Rules (NI) 2005 are likely to come into operation in early April 2005.

The closing date for full tender submission will be 4.00 pm on Friday 22 April 2005.

Subject to Ministerial approval, the Legal Aid for Crown Court Proceedings (Costs) Rules (NI) 2005 are likely to come into operation in early April 2005.

These Rules prescribe the Crown Court remuneration for solicitors and counsel assigned under Articles 29 or 30(2) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.

The main body of the Rules deals with the manner in which costs are to be determined and paid. Those provisions draw to a large extent on the Legal Aid in Criminal Proceedings (Costs) Rules (Northern Ireland) 1992, which relate to criminal representation provided under Part III of the 1981 Order, and which are being superseded by these Rules as insofar as they prescribe the remuneration payable for proceedings in the Crown Court.

Schedule 1 deals with the standard fees which shall be payable for most cases in the Crown Court. Initial determinations in such cases will be undertaken by the Board.

A firm will be eligible for appointment to the Panel if they satisfy all of the following criteria:

1. At least two solicitors (admitted to the Roll of Solicitors in Northern Ireland) must be working in the Firm (including any employed solicitors).
2. One of those solicitors must have acted for defendants in personal injury litigation, including employer’s liability claims (both High Court and County Court) as a predominant (more than 50%) part of his/her workload for at least five years (or for periods in aggregate, amounting to five years). That solicitor must be nominated as the “Designated Solicitor” for the purposes of the Panel.
3. Another solicitor in the firm must have acted for defendants in personal injury litigation including employer’s liability claims (both High Court and County Court) as a substantial (more than 25%) part of his/her workload for at least three years (or for periods in aggregate amounting to three years).
4. 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 five years.

Further details and tender forms are available on request and on payment of a deposit of £100.00 (refundable on receipt of a valid tender) from The Chief Executive, North Eastern Education and Library Board, County Hall, 182 Gaolgown Road, Ballymena, BT42 1HN. Cheques should be made payable to North Eastern Education and Library Board and crossed “not negotiable.”

The closing date for full tender submission will be 4.00 pm on Friday 22 April 2005. The Board does not bind itself to accept the lowest or any tender.

James Smyth Russell 1922-2004

James Smyth Russell, one of Ballymena’s best known lawyers, has died aged 82.

He was born in Ballymena on 8th May 1922, the third of six children. His academic career started at the Boys’ Model, and from there to Ballymena Academy, where he distinguished himself not only academically but also on the rugby field. He was made captain of all teams from the Medallion to the First XV. In his final year he received the Fullerton Award and became the first head boy of Ballymena Academy.

After leaving school he studied law at Queen’s University Belfast and, following pupillage with his brother George, qualified and took over the law practice of his late uncle, Samuel E. Russell, in Royal Avenue, Belfast.

In addition to running his general practice, he was appointed solicitor to Belfast Rural District Council. He was also appointed a Parliamentary Agent and as such had the key responsibility for the formation of the new town of Newtownabbey. In 1971 he returned to Ballymena and the family legal practice which his father, the late James L. Russell had founded. He continued in business with his brother George (and latterly his nephew James) until his retirement.

He was well known in Presbyterian Church circles. While in Belfast he became an Officer in the Boys’ Brigade at Faiservick Presbyterian Church and was Sunday School Superintendent at Whitehouse. He was ordained an Elder in Whitehouse Presbyterian Church in 1958 and subsequently Stormont Presbyterian, and latterly of First Ballymena, his home congregation where he served as an Elder till his death.

A freemason for most of his life, he was actively involved in numerous charitable events.

During his time in Whitehouse, he was a founder member of Carrickfergus Round Table and in his retirement he was a keen member of Ballymena Probus Club. He also had a wide range of interests including gardening, photography and ornithology and was a past Chairman of Ballymena Field Club.

He was a devoted husband and friend to his wife Joan for 52 years and is survived by her and their three children Gail, Zoe and Stephen and eight grandchildren.
Views sought on Charity Law proposals

A public consultation exercise to seek views on proposed changes to the existing laws governing charities in Northern Ireland, has been launched by the Department for Social Development.

The main proposals are as follows:-

CLARITY
- A new definition of charities for Northern Ireland, based on that proposed for England and Wales, with the addition of the promotion of peace, and the promotion of good community relations.
- All charities should demonstrate public benefit.
- A test of public benefit will be introduced.

TRANSPARENCY
- There should be a Northern Ireland Register of Charities and all Northern Ireland charities should be registered.

ACCOUNTABILITY
- There should be a Northern Ireland Charity Commission.

COMPLIANCE
- All Northern Ireland registered charities should be regulated to seek to ensure that they are well-run and deserving of public support.
- Certain persons should be disqualified from being charity trustees.
- Charities should be required to produce accounts in specified forms, supply them to the Department, and make them available to the public on request.

GOVERNANCE
- A new type of organisation, the Charitable Incorporated Organisation, should be introduced.

THE ADMINISTRATION OF CHARITIES
- The limits within which small charities can alter their purposes, amalgamate, or expend their capital without undue formality should be relaxed.
- In most cases, charities should be allowed to dispose of property without applying to the Department for a power to do so.
- Only one statutory notice should be required in connection with schemes made by the Department, and it may be dispensed with in certain cases.
- The Department should not automatically scrutinise all Wills containing charitable bequests.
- The limit of £50,000 on the Department’s powers to make schemes to change charities’ purposes, and to apply property given for mixed purposes to charitable purposes, should be removed. Similarly, the limit of £2,500 on the Department’s power to make schemes to deal with misdescribed charitable bequests should be removed.
- A test of public benefit will be introduced.
- The present systems for licensing street and house-to-house collections should be replaced with a new system covering all public charitable collections.
- The Attorney-General’s role in relation to charities should not be altered.

The closing date for receipt of comments is 20 May 2005. Comments and requests for a copy of the document should be sent to:

Department for Social Development
Voluntary & Community Unit
3rd Floor, Lighthouse Building
Gasworks Business Park
Belfast BT7 2JB

Tel: (028) 9082 9414

E-mail: denis.cathcart@dsdni.gov.uk
Website: www.dsdni.gov.uk/voluntary-act/voluntary-activity.asp

Four Jurisdictions Family Law Conference 2005

Members of the family judiciary together with over 50 local family law practitioners attended the tenth anniversary Four Jurisdictions Family Law Conference held in Nice at the beginning of February. Next year’s conference will take place in Dublin.
**Gender Recognition Act**

Transsexual people have a condition referred to as gender dysphoria or gender identity disorder. It is a medical condition acknowledged by the Chief Medical Officers across the UK. Transsexual people live in the gender with which they identify and this identity (male or female) will be different from the gender assigned to them at birth and which is recorded on their birth certificates. The Gender Recognition Act 2004 remedies this situation and allows transsexual people who have taken decisive steps to live fully and permanently in their acquired gender to apply for legal recognition of that gender. The Act comes into operation on 4th April 2005 and applies to Northern Ireland and the rest of the UK.

The Act establishes the Gender Recognition Panel with the power to assess applications from transsexual people seeking legal recognition in their acquired gender. The Panel, which is based in Leicester, will assess first applications in April 2005. It is expected that most applications will be determined without the need for an oral hearing.

Applicants will have to provide evidence supporting their applications in accordance with prescribed legal and medical criteria. They will need to satisfy the Panel that they: (1) have or have had gender dysphoria; (2) have lived in the acquired gender for two years prior to the application; (3) intend to live permanently in the acquired gender.

The evidence that applicants are required to provide must include, among other things:

- two reports from registered medical practitioners, one of whom must be practising in the field of gender dysphoria
- alternatively, a report from a registered medical practitioner and a report from a chartered psychologist practising in the field of gender dysphoria
- a sworn statement from the transsexual person declaring that he or she has lived in the acquired gender for the past two years and intends to do so until death

The medical reports must:

1. be provided by a registered medical practitioner or a chartered psychologist,
2. contain details of a diagnosis of gender dysphoria,
3. contain details of the treatment the applicant has undergone, or is undergoing or has planned for the purpose of modifying sexual characteristics.

Medical proformas will be provided for applicant’s medical practitioners or chartered psychologists to complete if they so wish. Alternatively, medical practitioners or chartered psychologists may prefer to give their patient copies of their notes and/or letters about their case.

It will be at the medical practitioners or chartered psychologists’ discretion as to whether they choose to charge their patient for the medical reports.

Once the applicant has received a full Gender Recognition Certificate, that person will be treated in law for all purposes as being a person of the acquired gender.

Applicants who are married are not entitled to a full Gender Recognition Certificate. Instead, those applicants who are married and meet the requirements of the Act will be entitled to an interim Gender Recognition Certificate. This interim Gender Recognition Certificate will enable the applicant, or the person to whom they are married, to seek a nullity order under the Matrimonial Causes (Northern Ireland) Order 1978.

For enquiries about the Gender Recognition Panel and applying for Gender Recognition go to [www grp gov uk](http://www grp gov uk).

Alternatively the Panel can be contacted by e-mail at grrp enquiries dlca gsi gov uk, or by phone on 0845 355 5155 or write to P O Box 6887, Leicester, LE1 6ZK.

**Public Appointments**

**NEW GUIDE PUBLISHED**

The Office of the First Minister and Deputy First Minister has published an information booklet entitled ‘Make Your Mark - A Guide to Public Appointments in Northern Ireland’.

The Guide aims to help raise awareness of the process for making appointments to public bodies and explains the different types of public bodies currently in existence, and how the appointments process works in practice.

The Guide will be of particular assistance to those people who are interested in serving on the Board of a public body and are unsure how to go about it.

Full details are available on the Internet at www ofnmni gov uk /publicappointments or from the Central Appointments Unit, Tel: 028 9052 8193.

During the last year the Office of the Commissioner (OCPANI) has:

- (a) revised its Code of Practice;
- (b) developed a NI website;
- (c) started the process to transfer responsibility for the recruitment and administration of Independent Assessors, from government departments to the Office;
- (d) established a short term working group to examine the issue of diversity and public appointments.

The OCPANI annual report contains a range of statistics and other information about public appointments, including details of complaints and the results of this year’s audit of departmental appointments’ processes.

A copy of the report is on the OCPANI website at www ocpani gov uk.

**COMMISSIONER FOR PUBLIC APPOINTMENTS FOR NORTHERN IRELAND PUBLISHES NINTH REPORT**

Dame Rennie Fritchie, the Commissioner for Public Appointments for Northern Ireland, has published her Ninth Report, which covers appointments made during April 2003 to March 2004.

The Commissioner’s role here is to monitor, regulate, advise and report on departmental appointments procedures for Executive Non-Departmental Public Bodies (ENDPBs) and HPSS bodies. In addition, the Commissioner has a statutory duty to investigate and deal with complaints.

Notice is hereby given that the one hundred and forty-first annual general meeting of the SOLICITORS’ BENEVOLENT ASSOCIATION will be held at the law society, Blackhall place, dublin 7 on monday 18th april 2005 at 12.30 p.m.

- to consider the annual report and accounts for the year ended 30th november 2004.
- to elect directors.
- to deal with other matters appropriate to a general meeting.

**SOLICITORS’ BENEVOLENT ASSOCIATION**

NOTICE IS HEREBY GIVEN that the One Hundred and Forty-First Annual General Meeting of the SOLICITORS’ BENEVOLENT ASSOCIATION will be held at the Law Society, Blackhall Place, Dublin 7 on Monday 18th April 2005 at 12.30 p.m.

- To consider the Annual Report and Accounts for the year ended 30th November 2004.
- To elect Directors.
- To deal with other matters appropriate to a General Meeting.
Pension Credit Online

A new service introduced by the Social Security Agency allows older people to work out how much better off they could be with Pension Credit.

Pension Credit tops up any money coming in to a pensioner’s household to a minimum level set by the Government. It also rewards pensioners for having certain types of income and savings. It replaced Minimum Income Guarantee (Income Support for people aged 60 and over). People may qualify for Pension Credit if they are aged 60 or over.

If a person is aged 60 or over but has a partner under 60, they may still qualify.

The new service, using 21st century internet technology, enables older people to calculate their Pension Credit online. All customers need to do is to log on to the Agency’s website (www.ssani.gov.uk) click on the Pension Credit icon and from there go to the calculator.

Completing a few simple questions allows them to estimate the amount of Pension Credit they could qualify for.

Encouraging older people to use the new service, Social Security Agency’s Minister of State, John Spellar, said: “More than 90,000 households in Northern Ireland are already better off because of Pension Credit. This is an impressive figure but there are more people who could and should benefit from this additional money.”

A claim to Pension Credit can be made by calling the freephone on 08081006165 or a claim form can also be downloaded from www.ssani.gov.uk

Draft Higher Education (NI) Order 2005

The Department for Employment and Learning has announced that the draft Higher Education (NI) Order 2005 has been laid at Westminster. Subject to the passage of the legislation, it is anticipated that provisions in the Order will come into effect in September 2006. Specifically, the provisions in the Order are aimed at:

• Requiring providers of higher education courses, charging variable fees above the basic rate, to have a plan (access agreement) approved by the Department for Employment and Learning, and to abide by that plan;
• Establishing an independent panel, to consider appeals by institutions whose plans are not approved;
• Introducing a requirement, that student support organisations share information;
• Allowing students taking a gap year in 2005/06, to pay fees at the rate that would have been in place had they started their course in 2005.

The Draft Order is accompanied by an Explanatory Memorandum, which sets out and explains the Draft Order’s provisions.

Copies of the Explanatory Memorandum and the Draft Order are available in electronic form at www.delni.gov.uk

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A complete list of decisions is available on the Law Society website.

**IN THE MATTER OF AN APPLICATION BY E A BAIRD (NEWTOWARDS) LIMITED FOR JUDICIAL REVIEW**

Pharmacies. - applications for licences. - criteria used to determine which applications should be granted. - first past the post rule. - Application dismissed

QUEEN'S BENCH DIVISION 19 JANUARY 2005 WEATHERUP, J

**CHIEF INSPECTOR SHIELDS V DEVENNEY, HAROLD**

Appeal by way of case stated from a decision of a resident magistrate. - prosecutions. - limitation of time. - Magistrates Court. - HELD that the decision of the Resolution to stay the proceedings cannot be upheld and must be quashed

COURT OF APPEAL 21 JANUARY 2005 KERR, LCJ

**CLARKE, ROBIN THOMAS V BOYD, GARY AND ALLIANZ CORPORATE IRELAND PLC**

Plaintiff set damages against the defendant for personal injuries, loss and damages allegedly sustained by him arising out of his negligent driving, whether plaintiff should have pursued criminal injury claim first. - HELD that the plaintiff is entitled to first pursue to a conclusion his remedy against the defendants and meanwhile to leave in abeyance any potential for recovery under his criminal injury application

QUEEN'S BENCH DIVISION 4 FEBRUARY 2005 WEIR, J

**IN THE MATTER OF AN APPLICATION BY THE LOGAN RODGERS PARTNERSHIP FOR JUDICIAL REVIEW AND IN THE MATTER OF A DECISION BY THE PRISON SERVICE OF NORTHERN IRELAND**

Defendant pleaded guilty to the offences of hijacking contrary to S.2(1)(a) of the Criminal Jurisdiction Act 1975 and carrying a firearm with criminal intent contrary to Art. 19(1) of the Firearms (NI) Order 1961. - Defendant sentenced to 4 years imprisonment and 18 months probation

CROWN COURT 14 DECEMBER 2004 WEIR, J

**R V O'NEILL, DESMOND MARTIN**

Defendant pleaded guilty to endeavouring to conceal a birth contrary to s.90 of the Offences Against the Person Act 1961, and that having delivered a child, she endeavoured to conceal the birth by secretly disposing of the dead body of the child. - Defendant given 2 year probation order

CROWN COURT 21 JANUARY 2005 GILLEN, J

**R V MCQUADE, THOMAS IAN**

Application for leave to appeal conviction for murder and sentence of life imprisonment with a minimum tariff of 11 years. - whether applicant should have been found not guilty of murder but guilty of manslaughter on the grounds of diminished responsibility as defined in the Criminal Justice Act 1967. - compatibility of s.5 of the 1966 Act with Art.6 of ECtHR. - HELD that the trial judge's direction withadown from the jury the consideration of whether a psychological injury suffered by the applicant might be sufficient to amount to mental abnormality under the 1966 Act. - Appeal is allowed and the verdict on the murder charge quashed. - Retrial of the applicant ordered

COURT OF APPEAL 12 JANUARY 2005 KERR, LCJ

**R V HOPKINS, ASHLEIGH**

Defendant pleaded guilty to endeavouring to conceal a birth contrary to s.60 of the Offences Against the Person Act 1861, and that having delivered a child, she endeavoured to conceal the birth by secretly disposing of the dead body of the child. - Defendant given 2 year probation order

CROWN COURT 14 DECEMBER 2004 WEIR, J

**APPLICATION BY JOHN SWIFT FOR JUDICIAL REVIEW OF THE DECISION OF THE PRISON SERVICE OF NORTHERN IRELAND**

Application for leave to apply for judicial review, the applicant challenging a decision of the Secretary of State of 29 May revoking the applicant's firearm certificate. - Application dismissed

COURT OF APPEAL 14 JANUARY 2005 GILLEN, J

**APPLICATION BY LIAM SHANNON FOR LEAVE TO APPLY FOR JUDICIAL REVIEW, AND IN THE MATTER OF A DECISION OF THE CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND**

Defendant pleaded guilty to endeavouring to conceal a birth contrary to s.90 of the Offences Against the Person Act 1961, and that having delivered a child, she endeavoured to conceal the birth by secretly disposing of the dead body of the child. - Defendant given 2 year probation order

CROWN COURT 21 JANUARY 2005 GILLEN, J
High Court, Court of Appeal and Tribunal Decisions

BOWERS, DENNIS V SHORT BROTHERS PLC
INDUSTRIAL TRIBUNAL, 20 JULY 2004, 05049/00TUA
Whether applicant was subjected to any detriment as an individual by the respondent for the purpose of preventing or deterring him from taking part in the activities of an independent trade union - In 1996 the respondent derecognised the applicant as a trade union representative. In 1999 the applicant was elected as a trade union representative but the respondent did not recognise him - Tribunal concluded that the applicant was subjected to a detriment as an individual for the purpose of preventing him taking part in trade union activities and was ordered to pay £2,500 to the applicant.

KILLEN, KATHY V SMEK EUROPE LIMITED AND DR ROBERT CORBETT
INDUSTRIAL TRIBUNAL, 23 NOVEMBER 2004, 3980/03T
Applicant claimed respondent unfairly dismissed her from her employment - Respondent asserted that the applicant had been dismissed with notice on the grounds of redundancy - A need for redundancies on the management/non production side was identified by the company as there had been a general decline in the electronic market - No selection criteria was applied as the respondent was the only person carrying out the duties - Applicant was not offered alternative employment - Tribunal decided that the applicant was unfairly dismissed and ordered the respondents to pay £520 towards the respondent's costs for his unreasonable conduct.

SULLIVAN, JOSEPH V DEPARTMENT OF REGIONAL DEVELOPMENT
INDUSTRIAL TRIBUNAL, 2004, IT2640/02
Decision on a preliminary issue. - Whether there was a disability within the meaning of S.1 of the Disability Discrimination Act 1995 - Applicant had suffered from tennis elbow for over 12 months. - Tribunal was satisfied that the level of disability claimed by the applicant was substantiated by the clinical findings of the doctors who examined him - Tribunal ruled that the applicant did not have a disability within the meaning of S.1 DDA

FAIR EMPLOYMENT TRIBUNAL, 20 JULY 2004, 200/01FET
Applicant claimed that she was unlawfully discriminated against by the respondents on the grounds of her sex and religious affiliation - Applicant had been employed as a MLSO Grade 1 but had asked to be upgraded to Grade 2 but had been turned down - Applicant took her grievance to personnel and was upgraded - Applicant asked to go part time and while this was granted there was a change in her work patterns - Applicant also turned down for two job promotions - Applicant felt there had been a continuing pattern of discrimination - Having considered all the evidence the Tribunal found that the applicant had not proved that she was unlawfully discriminated against - Application dismissed.

HARBINSON, MARK V LAGAN TILE
FAIR EMPLOYMENT TRIBUNAL, 20 MAY 2004, 189/02T
Applicant claimed he had been unfairly dismissed and unlawfully discriminated against on the grounds of religious and political belief - Applicant described himself as a "well-known unionist with a public profile" - Applicant did not appear and was not represented - Applicant was employed as general operative in the factory yard but following complaints, he was moved to the ridge plant. - Following a down turn in sales respondent was forced to make redundancies. - Applicant received a low score when employees were assessed and therefore was selected for redundancy - Tribunal found that selection process was fair and discriminated claims of unfair dismissal and unlawful discrimination - Tribunal decided that applicant had acted unreasonably in bringing proceedings and ordered applicant to pay £500 towards costs. All decisions are available in full text and free of charge from the Libero database.

Library Update

Recommended Reading

THE COLLATERAL DIRECTIVE

Legislation


Financial Collateral Arrangements (No. 2) Regulations 2003 SI 3226

These Regulations apply in Northern Ireland.

Articles

The Collateral Directive – a new way of thinking about security
Sharp - 2004 10 November Ins Int 145-148

Implementation of the EU Directive on Financial Collateral Arrangements in the United Kingdom (describes the objectives and scope of the Directive)
Turing - 2005 JIBLR 20(2) 65-71

EU financial collateral Directive (examines the Directive in Ireland)
2004 C.L.Pract. 11(4), 101-102

Banks welcomes changes to collateral law
James - 2004 I.F.L. Rev. 23(3) 37-38

The Financial Collateral Regulations
2004 TB 61(Feb) 1-3

Library List of Monthly Articles

If you would like to receive the monthly list of articles from the library by e-mail please send your details to Denise Hanna at dhanna@lawsoc-ni.org

New Books in the Library

Copinger and Skone James on Copyright. 15th edition. Sweet & Maxwell. 2006
Burnett: Drafting and negotiating computer contracts. 2nd edition. Tottel publishing. 2005
Maher: Money laundering reporting officer's handbook. Legalease Publishing. 2004
Dowding: Dilapidations: The modern law and practice. Sweet & Maxwell. 2004
McMullan: Employment tribunal procedure: A user’s guide to tribunals and procedures. 3rd edition. LAG. 2004

Law Society Library Email: info@lawsoc-ni.org
Missing Wills

Re: Joseph Bernard Magee (deceased) 
Late of: 21 Chapel Street, Kilcough, Downpatrick, County Down
Would any person having knowledge of a Will for the above named person who died on 1 January 2004 please contact: Barbara Smyth McCordy Collins Solicitors 48 St. Patrick's Avenue Downpatrick County Down BT30 6DW Tel: 028 44 616411 028 44 612893

Re: William Spence (deceased) 
Late of: 27 Sleevocarden Park, Upper Cavehill Road, Belfast
Date of Deaths: 6 January 2005
Would anyone holding a Will for the above named deceased or having any knowledge of the whereabouts of same please contact: McAsalty & Ritchie Solicitors Cathedral Chambers 11 Talbot Street BELFAST BT1 2LD Tel: 028 9092 9988 Fax: 028 9033 1305 Email: law@mac-rit.com

Re: Francis Gerald Spence (deceased) 
Late of: 32 Whiterock Road, Belfast
Date of Deaths: 26 January 2005
Would anyone having knowledge of the whereabouts of a Will of the above named deceased please contact: Stephen Parrett & Company Solicitors 49C High Street Hollywood County Down BT18 9AB Email: tdg@caslaw.freeserve.co.uk

Missing Title

Deeds

Re: Estate of Mary Philomena Harper (deceased) 
Late of: 5 Hillside, Dublin Road, Antrim, County Antrim
Would any solicitor having knowledge of the whereabouts of a Will for the above named deceased please contact: Mr Ian McKinnon O’Rourke, McDonal, & Tweed Solicitors 37/39 Church Street Antrim County Antrim BT41 4BD Tel: 028 94 465592

Re: Gwendoline Trimble (deceased) 
Late of: 81 Hillisborough Road, Carryduff, Belfast BT8 8HT
Would anyone holding or having a Will for the above named deceased or having any knowledge of the whereabouts of the same, please contact: James Murland & Company Solicitors 15 English Street Downpatrick County Down BT30 6AP Tel: 028 4461 9980 Fax: 028 4461 3527

Folio: 2484
County: Down 
Registered Owner: Mary Wilson Lands at: Ballymoney Road, Holywood
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned solicitors.
And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.
Re: 625-627 Shore Road, Whiteabbey County Antrim BT37 0ST
Folio: 1901L
County: Tyrone
Registered Owner: Liam Patrick Doherty & Lavinja Hannah Doherty Re: 8 Willowmount Close, Omagh, County Tyrone
Would any Solicitor holding or having knowledge of the whereabouts of the Land Certificate for the above property please contact: Michael Ferguson Solicitors 1-3 Lombard Street Belfast BT1 1PB
Folio: 204
County: Down 
Registered Owner: Mr James McDowell Gabby Re: 100 Old Ballygowan Road, Comber, County Down BT23 9RX
Would any Solicitor holding or having knowledge of the whereabouts of the Land Certificate for the above property please contact: John Ross & Son Solicitors 30 Frances Street Newtownards County Down BT23 7DN Tel: 028 9181 5173
Folio: 24971
County: Antrim
Registered Owner: Northern Ireland Fire Authority Land of: Crumlin Fire Station, 32 Mill Road, County Antrim, BT29 4XL
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned solicitors.
And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.
Nelson-Singleton Solicitors 21 Gallows Street Dromore County Down BT25 1BG Tel: 028 9209 3475 Fax: 028 9209 9560
Folio: 11651
County: Armagh
Registered Owner: Annie Preston (as Limited Owner) Re: Cortamlat, Newtownhamilton, County Armagh
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio, should forthwith produce the said Certificate or communicate such information to the undermentioned solicitors.
And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.
Joe Mulholland & Co require an Assistant Solicitor for busy general practice. Experience in Criminal Matrimonial Law. Please apply in writing with CV to: Alex Spencer Joe Mulholland & Co 9-11 St Patrick’s Avenue Downpatrick Co Down BT30 6DW Tel: 02844 839065 Email: alex.spencer@joe.mulholland.co.uk
Folio: 45527
County: Down 
Registered Owner: Patrick Murphy Re: Rowan Tree Road, Dromore, Co Down
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio, should forthwith produce said Certificate or communicate such information to the undermentioned solicitors.
And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.

Re: Francis Gerald Spence (deceased) 
Late of: 32 Whiterock Road, Belfast
Date of Deaths: 26 January 2005
Would anyone having knowledge of the whereabouts of a Will of the above named deceased please contact: Stephen Parrett & Company Solicitors 49C High Street Hollywood County Down BT18 9AB Email: tdg@caslaw.freeserve.co.uk

Folio: DN 18565, DN 7823 & 23396 
County: Down 
Registered Owner: J & E Morrow Re: 8 Tony Brae, Kinnallen, Dromara
Would any Solicitor holding or having knowledge of the whereabouts of the Land Certificate for the above property please contact: Michael Ferguson Solicitors 24 Lisburn Road Belfast BT9 7ENTel: 028 9038 2030

Folio: AN 15116
County: Antrim 
Registered Owner: John Joseph Keenan and Annie Elizabeth Keenan Lands known as: 2 Grannon Way, Rathcoole, Newtownabbey, County Antrim
Take notice that any person having custody or of information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned Solicitors.

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Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned solicitors.
Solicitor required for Dungannon based practice. Knowledge of Conveyancing and Litigation required. Would suit newly qualified enthusiastic solicitor. Excellent prospects for suitable candidate. Please apply in writing with CV to Carmel O’Meare & Co. Solicitors, 32 Irish Street, Dungannon, County Tyrone BT70 1DB.

Solicitor required with 2-3 years PQE in general litigation. The candidate will be self-motivated, confident and capable of carrying a caseload immediately. Ideally, applicants will have the ability to promote and develop this area of legal practice. Apply with CV to: McCoubrey McClelland Hinds Solicitors 61 Main Street Bangor BT20 5AF Tel: 028 9127 1916

Mid-Ulster firm requires a Solicitor for general litigation. At least three years post-qualification experience preferred. Attractive salary package available to the successful candidate. Applications with CV by 22nd April 2005. Please reply to PO Box 141 c/o Citigate Northern Ireland Public Affairs Ltd 128A High Street Hollywood County Down BT18 9HW

Locum Solicitor required (June to December 2005). Litigation and Matrimonial experience necessary. Please send CV to: Peter M Thompson Thompson Mitchell Solicitors 12-14 Mandeville Street Portadown BT62 3NZ

Thomas Armstrong requires a solicitor for mainly commercial litigation work. This is a challenging position suited to someone self-motivated and able to deal with complex cases. Applications with CV to: Thomas Armstrong Thomas Armstrong Solicitors 51-53 Upper Arthur Street BELFAST BT1 4GJ Or by email to: tom.armstrong@tomarmlaw.co.uk

We require an ambitious, motivated and committed solicitor to work in our City Centre Criminal Law Department. A proven track record in Crown Court work will be an advantage. A good remuneration package is available. Apply in writing by e-mail or letter (in strictest confidence) enclosing current CV to: Frank MacElhatton Staff Partner MacElhatton & Co Solicitors 58 Andersonstown Road Belfast BT9 9AN E-Mail Address: frank@macelhatton.com MacElhatton & Co is an Equal Opportunities Employer

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Established mid-Antrim practice for sale. Mainly probate and conveyancing. Please contact Box Number 140 c/o Citigate Northern Ireland Public Affairs Ltd 128A High Street Hollywood County Down BT18 9HW

Small Belfast Suburban Solicitors Practice for sale or to merge. Established approximately 20 year’s ago with sizeable private client database. All inquiries in strictest confidence to: PO Box 142 c/o Citigate Northern Ireland Public Affairs Ltd 128A High Street Hollywood County Down BT18 9HW

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Mobile: 07831 530178  Phone: 028 97 528427  Fax: 029 97 521256  Email: garymillar@gmassociates.freeserve.co.uk