A new beginning for local government in Northern Ireland
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INDEX

04 Cover Story:
A new beginning for local government in Northern Ireland

04 President’s Message

09 Discharge Consents: a cause for concern?

12 Areas of Special Scientific Interest

15 Reassessing the use of expert witnesses in the Court

23 President welcomes newly admitted solicitors

26 A Master’s Voice

35 Obituary – Barry Finlay

48 Abstracts from the Court

51 Library Update – Personal Injury & Child Abuse

LAW SOCIETY NOTICE

Applications under Regulation 8(3) or 8(5) of the Solicitors Admission and Training Regulations 1988

Applications under Regulation 8(3)

Following the recommendations of the Education Review carried out by the Society, the alternative route to train and qualify as a solicitor under Regulation 8(3) of the Solicitors Admissions and Training Regulations 1988 has been discontinued. The alternative route to training under Regulation 8(5) is not affected by this.
The Minister of Justice has announced that a number of actions are planned by his Department to reduce legal aid spend. These will see him bring forward in coming weeks various proposals which will be consulted upon in relation to reducing the scope of civil legal aid to include reform of funding for personal injury claims, the management of private family law cases, ancillary relief claims and consideration of changes to means testing. The Society will continue to strongly oppose further attacks on the justice system.

However, there is already a consultation ongoing in relation to the rationalisation of the Court Estate which goes to the very heart of access to justice. The proposal to close eight Courthouses would see the overall number in operation reduce by 55% since 2013.

A micro economy develops around a Court building, providing bustle and footfall to its urban location.

Should we care?

Some would argue that a Courthouse is nothing but a mere building, the contents of which could be placed in any location. Is this true?

Social and civic stability flow, allowing and supporting the prosperity of people and business.

The local Courthouse provides other benefits over and above public service for the most disadvantaged. It is a centre for the accumulation of knowledge of both people and place, central to good and proper administration of justice.

It services all citizens including the business community and thus supports both growth and investment. A micro economy develops around a Court building, providing bustle and footfall to its urban location.

The courthouse also adds to a sense of relevance and pride in a town, as well as being the visual representation of the operation of law within the community.

Closing courthouses may produce minimal savings from the budget of the Department but switching off the lights in Lisburn, Ards, Ballymena, Limavady, Armagh, Magherafelt, Strabane and Enniskillen will have consequences. The Courthouses which remain will be open for all; like the Ritz Hotel.

The network of solicitors, a properly administered legal aid fund and Courthouses that can be conveniently reached, are all parts of the structure which make access to justice a practical reality.

Social and civic stability flow, allowing and supporting the prosperity of people and business.

The administration of justice fulfils two primary functions:

1. a remedy to every wrong for the individual, and
2. a check and balance on the exercise of power by the Executive.

Social and civic stability flow, allowing and supporting the prosperity of people and business. Neither the economy nor our political system can mature without a functioning, credible justice system; the core values of which are independence of the judiciary and access to justice.

The measure by which we assess access to justice is the ability of the most vulnerable and disadvantaged to obtain advice and representation.

In many respects this standard may ignore those in society who do not meet a financial threshold but who have little wherewithal to pursue legal remedy. Nevertheless, if impecuniosity excluded redress, those in society already disadvantaged would be doubly so.

The Department of Justice’s consultation on courthouse closures can be accessed at http://www.courtsni.gov.uk/en-GB/Publications/Public_Consultation/Documents/Consultation%20on%20proposals%20for%20the%20rationalisation%20of%20the%20Court%20Estate/Final%20Consultation%20Document%20Rationalisarion%20of%20the%20Court%20Estate%20updated.pdf.
A new beginning for local government in Northern Ireland

Introduction

11 new Councils came into being on 1 April 2015, replacing the 26 Councils which previously exercised local government functions in Northern Ireland. These changes have been preceded by a 10 month transition period during which the new Councils have operated in shadow form to agree on 2015/16 rates, to approve business and financial plans, to appoint senior staff and to design new organisational and service delivery structures. Together with the expected benefits of DoE-funded ‘capacity building and training’ for staff and Councillors, it is hoped that this transition period has facilitated a smooth transfer of business and minimised disruption for those who interact with local government.

Nonetheless, the reforms herald a new beginning for the local government of Northern Ireland and represent a significant recalibration of municipal power. For this reason, it is in the interests of solicitors to become familiar with the new dispensation. This article sets out some key features of the new regime, beginning with an overview of the boundary changes introduced. That section is followed by an outline of the new powers transferred from central to local government. A summary of the new community planning framework is then provided, before the ‘general power of competence’ now enjoyed by the 11 new Councils is explained. Some detail about new governance arrangements is then set out. Finally, the democratic implications of the reforms are briefly considered by way of conclusion.

Boundaries

The Local Government (Boundaries) Order (NI) 2012 gives effect to modifications to the recommendations made under the Local Government Act (NI) 1972 by the Local Government Boundaries Commissioner in relation to the boundaries and names of the Districts into which Northern Ireland is divided for the purposes of local government (and also in relation to the number, boundaries and names of the Wards into which each of those Districts is to be sub-divided). Those Districts, old and new, are set out in the adjacent table/map.

Most of the new Councils simply subsume two or more of the previous Council boundaries within a single, larger boundary. However, two substantial modifications were agreed in respect of the boundary between the Belfast District and the new Lisburn & Castlereagh District. These changes, at Ballyhanwood and Galwally, were based on economic, logistical and commercial considerations set out in a Statement of Reasons by the Local Government Boundaries Commissioner.

Boundary changes may have particular significance for criminal practitioners given that Policing District boundaries simultaneously changed from 8 to 11 in order to align with the new Council boundaries. The 11 new Policing Districts are supported by an ‘Area’ coordinating tier covering Belfast and Northern and Southern parts of Northern Ireland. The Areas provide additional resources to help deal with local priorities and emerging threat, risk and harm issues. They also have the ability to manage and move resources across District boundaries in response to daily needs. While the front facing District and Area Command structure was in place for 1 April, there will be an ongoing transition process which is likely to run until 1 October.
New powers

In addition to being geographically larger, the new Councils carry out a number of functions previously delivered by Executive Departments of the Northern Ireland Assembly. Off-street parking (excluding Park and Ride amenities), local economic development programmes and initiatives, local tourism (including business support), inter alia, all fall within the powers of the new Councils.

Local development planning, control and enforcement powers were also transferred to the new Councils on 1 April. This has had a consequence for the current arrangements relating to the issue of Property Certificates – see inset.

In 2016, the new Councils will also assume responsibility for urban regeneration and community development.

Community planning

Under Part 10 of the Local Government Act (NI) 2014 (the 2014 Act) the new Councils have a duty to initiate, maintain, facilitate and participate in community planning for their respective Districts. The legislation facilitates better integration of Councils with Departments, statutory bodies and other relevant agencies and sectors, in order to support collaborative work on community plans for promoting the economic, social and environmental well-being of their areas. As a result, the new Councils are able to strongly influence how and where community services are provided.

Local solicitors’ practices may wish to engage with their new Councils in this connection. Under Section 73(2)(d) of the 2014 Act, the views of ‘representatives of persons carrying on businesses in the District’ must be taken into account by the Councils and their community planning partners. This may represent a valuable opportunity for members to influence community planning in their areas.

General power of competence

Part 11 of the 2014 Act delineates a ‘general power of competence’ enjoyed by the new Councils, similar to that provided for in England & Wales by the Localism Act 2011. It is a broad competence that enables a Council to act with similar freedom to an individual with full capacity, unless there are legal restrictions to prevent it from doing so. The aim of the general power is to provide Councils with the ability to act in their own interests and to develop innovative approaches to addressing the economic, social and environmental problems in their areas.

Governance

The 2014 Act also provides for a new range of permitted governance arrangements in order to ensure fair and transparent decision-making at the local government level.

Some notable new provisions include: the sharing of Council positions of responsibility across political parties and independents, the establishment of a ‘Partnership Panel’ to discuss matters of mutual interest (consisting of Executive Ministers, Councillors and members of the Northern Ireland Local Government Association), the introduction of a new ethical standards framework which includes a mandatory code of conduct for Councillors and others involved in Council business, the attachment of a duty onto Councils that requires them to secure continuous improvement in the exercise of their functions and which must be evidenced by way of annual reporting, and the provision of greater public access to meetings and documents to be considered at meetings of both Councils and their committees (albeit certain information is exempted).

Conclusion

The local government reforms discussed herein show some of the ways through which government power has been decentralised across Northern Ireland as of 1 April. This devolution is an opportunity for local community stakeholders to exercise influence over their democratic representatives and for those democratic representatives to respond more flexibly to the ‘needs, desires and ambitions’ of their Districts. There can be no doubt that the legal community will form an important part of that dialogue.

In addition to these exciting new democratic opportunities, the changed loci of State powers which the reforms implement calls for renewed public scrutiny of locally elected representatives. It must always be remembered that the recipients of new powers remain subject to the rule of law, and that they must be held to account for the new responsibilities with which those powers are charged in order to ensure that the democratic hopes they embody are realised.

New arrangements for Property Certificates post 1 April 2015

The responsibility for the majority of planning powers, including the power to issue Property Certificates, transferred from the Department of the Environment to Councils on 1 April 2015. Post transfer, Fermanagh and Omagh District Council now deliver the Property Certificate function as a shared service for all 11 Councils. This has resulted in some new admin arrangements for the service.

Contact details

Property Certificate services continue to be delivered from County Buildings, Enniskillen. Contact details for the Enniskillen office are:
Regional Property Certificate Unit
County Buildings
15 East Bridge Street
Enniskillen BT74 7BW
Tel: 0300 303 1777
Email: pcnl@fermanaghomagh.com

Forms

The Property Certificate form, PCS, has changed from 1 April 2015. The new application form is downloadable from www.planningni.gov.uk

Payment

From 1 April 2015, cheques or postal orders made out to ‘DoE General Account’ are no longer acceptable. Any cheques or postal orders for Property Certificate services after this date should be addressed to “Fermanagh and Omagh Council”.

1 http://www.doeni.gov.uk/index/local_government/local_government_reform/reform_maps.htm

We are grateful to Conor McCormick, Research Intern at the Law Society, for this article.
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The Indictable Cases pilot, which aims to speed up the progress of indictable cases, was launched on 2 January 2015 in the Division of Ards.

The pilot was designed at the behest of the Criminal Justice Delivery Group, which is chaired by the Minister of Justice, in response to a report into delay in Crown Court cases commissioned by the Lord Chief Justice and produced by Criminal Justice Inspection Northern Ireland. The report found that while there were issues at each stage in criminal proceedings, the majority of delay in the system occurred during the investigation and case preparation stages.

The pilot project, which is being led by the Department of Justice, is implementing a number of changes to how cases are investigated and cases prepared. This includes the greater use of pre-interview disclosure to the defence by the police, a case outline (summarising evidence currently available and likely to become available) to facilitate early engagement between the prosecution and the defence to discuss the anticipated plea and a new statement at police interview stage highlighting to suspects the potential benefits of entering a plea at the earliest opportunity.

The new process will also involve improved investigative pathways, with clearer file standards and effective supervision and earlier prosecutorial advice to the police in relation to matters such as charging.

Other features of the pilot include more timely and proportionate use of forensic and other evidence and, for contested cases, earlier discussions between parties with a view to narrowing the issues.

A series of information and awareness sessions with key stakeholders took place during November and December 2014. An event held on 2 December in Newtownards Court House for local practitioners operating in the pilot area, was well attended and highlighted a number of issues from the perspective of the legal profession.

The pilot will run for a period of 12 months and, if successful, will be rolled-out to other court areas and to the magistrates’ courts. Further presentations by members of the Project Board will be provided in advance of any roll-out to other areas.

In the interim, any enquiries about the pilot can be directed to Iris Lovell at the Department of Justice, who can be contacted by telephone on 028 9016 9507 or by email at Iris.Lovell@dojni.x.gsi.gov.uk.

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Discharge Consents: a cause for concern?

In this article Steven Cockcroft of Johns Elliot Solicitors, Belfast, raises some issues with regard to Discharge Consents from domestic dwellings.

Under Article 7 of the Water (NI) Order 1999 (as amended by the Water and Sewerage Services (NI) Order 2006) it is necessary to obtain the consent of the Department of the Environment to make a discharge of effluent from a single domestic dwelling (or commercial premises) into an underground stratum or a waterway. Failure to do so is an offence under the legislation.

This requirement is retrospective in that it applies to all proposed and existing discharges regardless of when such discharges commenced.

The Water Management Unit of the Northern Ireland Environment Agency (NIEA) (an agency within the Department of the Environment) is responsible under the Water Order for promoting the conservation of water resources and the cleanliness of water in underground strata and waterways. All applications for discharge consents and transfer of existing consents are processed by the Water Management Unit.

Schedule 1 of the Water Order governs the application process for discharge consents. Paragraph 1 of the Schedule states that applications shall be made on a form provided for the purpose by the Department of the Environment.

In 2011 the Water Management Unit completed a review of how applications for single domestic dwelling consents had been handled and as a result redesigned the application process with effect from 30 January 2012. This followed the issue of a new policy document by NIEA after a twelve week consultation period. The policy document is called “Restructuring and revision of application process and fees for discharge consent under the Water (Northern Ireland) Order 1999 for single domestic dwellings October 2011”, and can be accessed on the NIEA website.

Since 30 January 2012 the application form for a discharge consent from a single domestic dwelling has been a Form WO2 which again can be downloaded from the NIEA website. The completed Form WO2 must include two maps. First, a location map outlining the site of the dwelling to which the discharge consent shall apply. The second map is a site plan which must show the location of the sewage treatment system (ie septic tank or packaged water treatment plant) and the sub-surface irrigation system (ie soakaway) or the route to a waterway (if the discharge is to a waterway), the effluent discharge point and the effluent sampling point (for proposed discharges).

It is also necessary to include an Irish Grid Reference for the discharge point on the application form. For discharge to an underground stratum, the discharge point is taken as the starting point of the soakaway. For discharge to a waterway, it is taken to be the point where the discharge enters the waterway.

On page 9 of NIEA policy document it states that a failure to: (i) install the sewage treatment system in the manner described in the application for new systems or, in the case of existing systems, to accurately describe the conditions on site; and/or (ii) maintain the sewage treatment system as per the conditions of the discharge consent shall be considered an offence under the Water Order. It also states that if the Department deems such non-compliance has occurred, the discharge consent “may be declared invalid”.

Part K of the Form WO2 requires the applicant for a discharge consent to sign a declaration, which includes a note stating that, should the Department discover that any false or misleading information has been provided on the application, any consent issued “shall be invalid”.

NIEA policy and Form WO2 appear therefore to draw a distinction between providing misleading information on the application, in which cases the discharge consent is invalid (ie null and void); and failing to install or maintain a sewage treatment system in the approved location (or breaching other consent conditions) in which case a discharge consent may be declared invalid (ie voidable).

The issue became further confused when the first condition of discharge consents granted by the Water Management Unit following the introduction of the new application process stated that if a sewage treatment system had not been accurately described in the application, such consents “shall be considered null and void”.

This would have obvious potential implications for the sale of a dwelling with the benefit of a discharge consent. If the sewage treatment system has not been installed in accordance with the application, the terms of the discharge consent suggest that it would be null and void, rather than voidable. This would appear to leave little or no room for discussion with NIEA about varying the location of a treatment
system or conditions of the consent if it has been incorrectly installed. This could result in a purchaser having to make a fresh application for a discharge consent if it was subsequently discovered that a vendor’s consent was void. It would be impossible to know if a particular consent was void (or voidable) without a detailed inspection of the sewage treatment and sub-surface irrigation systems to establish if they complied with the conditions of the consent.

The new wording on discharge consents seemed to mark a change in policy from the NIEA. Prior to the introduction of the new application process it was stated in a covering letter accompanying issued discharge consents that the consequences of not installing sewage treatment systems in the approved locations meant that the Department of the Environment “could revoke the consent”.

NIEA explained its rationale on the basis that a consent authorises discharge from a specific location identified on the map attached to the consent. Assessment of consent applications and the potential suitability of a sewage treatment system depend on a number of site specific factors. NIEA will require a level of treatment according to local environmental conditions which are specified on the consent. A discharge from an alternative location would not be permitted by the discharge consent and would therefore constitute an unauthorised discharge in breach of Article 7 of the Water Order. The installation of a treatment system which does not afford the appropriate level of environmental protection required in accordance with the conditions of a discharge consent would breach the terms of the consent.

The inconsistency in the wording between NIEA policy and the discharge consents issued under the new application process has been acknowledged by NIEA in correspondence with the Society’s Conveyancing and Property Committee. NIEA agreed to amend the wording of the first condition in future consents to use the term “voidable” as opposed to “null and void”.

The use of the term “voidable” on discharge consents would appear to be more in keeping with the Department’s powers under Schedule 1 of the Water Order. The previous wording stating that a consent “could be revoked” is most analogous with the legislation.

Paragraph 5 of the Schedule gives the Department the power to review discharge consents and the conditions to which such consents are subject. Following the review of a discharge consent, the Department can serve notice on a consent holder revoking the consent or making modifications to the conditions of a consent. This suggests that consents are “voidable” ie they would only become “null and void” following revocation by the Department. This would perhaps provide a degree of comfort for the holder of a consent as, if it was discovered that a sewage treatment system had not been accurately described or identified in the application, NIEA could subsequently modify the conditions of a consent as opposed to simply revoking it. It also suggests that a consent could be relied upon as long as it had not been revoked by the Department. Although, it is suggested that it would be advisable to have a purchaser of a dwelling inspect the discharge consent and associated maps to ensure that they represent the position on the ground.

It is worth noting that under Paragraph 7, the holder of a discharge consent can apply to the Department for variation of a consent which could prove useful if any issues with a consent were to arise. There is also a right of appeal in respect of discharge consents under Article 13 of the Water Order. If the NIEA modifies the conditions of a consent, revokes consent or refuses an application to vary a consent, there is a 28 day period to make an appeal to the Water Appeals Commission for Northern Ireland.

In addition to the issues discussed above, it should be noted that there are other implications of making an unauthorised discharge and/or contravening the conditions of a consent. The Water Order provides that such offences are liable on summary conviction to imprisonment for a term not exceeding three months or a fine (up to a maximum of £20,000.00). In the case of conviction on indictment the maximum term of imprisonment is two years and/or a fine.

NIEA’s decision to change the terminology used in respect of discharge consents has unfortunately created a degree of uncertainty. This is in a large part due to the inconsistency between NIEA policy and the new wording on discharge consents. Now that the inconsistency has been acknowledged, it is suggested that the use of the word “voidable” on future discharge consents is synonymous with the statement that consents “could be revoked” under the previous application process. It would therefore seem to be the case that the position will now essentially remain unchanged under the new application process although, the term “revocable” as opposed to “voidable” would be more reflective of the terminology used in the legislation.

**Practical issues for vendors/purchasers**

It is suggested in sales or purchases involving dwellings serviced by sewage treatment systems that careful consideration is given to consent to discharges. It is not enough simply for practitioners to ensure that a consent has been issued in such cases.

Purchasers should be made aware of consents to discharge and the responsibilities and obligations they impose. It is recommended that they are provided with the consent to discharge and asked to confirm that the consent maps accurately reflect the location of the sewage treatment and sub-surface irrigation systems on the ground. It is also suggested that purchasers have the systems surveyed to ensure that they comply with the conditions of the consent to discharge. This would help safeguard against potential issues resulting in the voidability of the consent.

If the sewage treatment and/or sub-surface irrigation systems fall outside of the boundaries of the site of the dwelling, it is important to ensure that appropriate rights have been granted by the owner of the adjoining property. Again, any mapped rights should correctly identify the location of the systems in accordance with the consent maps and it should be ensured that they accurately reflect the position on the ground.
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Areas of Special Scientific Interest

The Department of Environment (DoE) is responsible for designating special areas for protection as an effective way of ensuring our wildlife and natural landscapes retain their individual characteristics. It is a cornerstone of our strategy for conserving biodiversity in Northern Ireland. The sites are known as Areas of Special Scientific Interest (ASSI) and are formally designated under the Environment (Northern Ireland) Order 2002 as amended by the Wildlife and Natural Environment Act (Northern Ireland) 2011.

These sites should represent the best examples of natural and semi-natural ecosystems as well as a range of earth science features and are protected and managed in order to conserve their special features.

ASSIs are afforded legal protection against specified operations or activities that could be damaging to the ASSI scientific features. DoE has a statutory duty to protect ASSIs and considers any damage to be a serious matter. Furthermore, Article 32 of The Environment (Northern Ireland) Order 2002 (“the 2002 Order”) prohibits owners or occupiers of areas of land declared as ASSIs to carry out any operations specified in such declaration, without prior written notice having been given to and written consent obtained from DoE. It is a criminal offence to contravene this provision without reasonable excuse and a person guilty of such offence is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine (Article 46(1) of the 2002 Order).

It is therefore essential that all owners are aware of these designations if their land is within an ASSI. The Wildlife and Natural Environment Act (Northern Ireland) 2011 amended the 2002 Order by inserting an Article which places a legal obligation on an owner to inform DoE of any change in their interest of the land within an ASSI.

Solicitors have a key role to play in ensuring that if their clients own land within an ASSI and then dispose of their interest, or become aware that it is occupied by an additional or different occupier, they must inform DoE or may be liable to prosecution if they fail to do so.

We are grateful to Dr Sara McGuckin, Assistant Director, Northern Ireland Environment Agency of the Department of Environment, for this article.

The relevant legislation is as follows:

**Notification of change of owner or occupier**

32. After Article 46 of the Environment Order insert -

46A. (1) This Article applies where the owner of land included in an ASSI -

(a) disposes of an interest in the land; or

(b) becomes aware that it is occupied by an additional or a different occupier.

(2) If this Article applies, the owner shall send a notice to the Department before the end of the period of 28 days beginning with the date on which he disposed of the interest or became aware of the change in occupation.

(3) The notice is to specify the land concerned and -

(a) in a case falling within paragraph (1) (a), the date on which the owner disposed of the interest in the land, and the name and address of the person to whom he disposed of the interest; or

(b) in a case falling within paragraph (1) (b), the date on which the change of occupation took place (or, if the owner does not know the exact date, an indication of when to the best of the owner’s knowledge it took place), and; as far as the owner knows them, the name and address of the additional or different occupier.

(4) A person who fails without reasonable excuse to comply with the requirements of this Article is guilty of an offence and is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(5) For the purposes of paragraph (1), an owner “disposes of” an interest in land if he disposes of it by way of sale, exchange or lease, or by way of the creation of any easement, right or privilege or in any other way except by way of mortgage.
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In this article Trevor Long, Chief Enforcement Officer at the Enforcement of Judgments Office, highlights certain changes affecting the working arrangements at the Office.

"As Chief Enforcement Officer I am constantly examining how our procedures and structures operate with the objective of managing our work as effectively as possible.

Our On-Line Case Tracking facility was introduced in 2004 and since then has been upgraded to include provision for the viewing of enforcement means reports, enforcement notices and orders as well as viewing the case balances on related judgment debts. The most recent upgrade means that the facility has become a truly interacted service in which you have access to the most up-to-date information about a case.

One of the business benefits of Case Tracking was to eradicate the need for written enquiries regarding the ‘present position’ of your cases, for example, case balances, history of payments, types of enforcement orders issued, confirmation of service of enforcement orders as well as viewing enforcement means reports.

Such activity is extremely resource intensive both for solicitors and the Office. As you can imagine, the volume of this correspondence is very high and if we can reduce it, the efficiency gained will enable us to dedicate more resources to casework and actual enforcement activity thereby making further improvements to business processing turnaround times.

In order to expedite this process and confirm the case tracking facility as the primary means to make case enquiries, I will be consulting with major users, in the coming weeks, to explore ways by which we can reduce the volume of routine correspondence which is preventing my teams from progressing cases as quickly as we would hope.

The proposal would mean that the EJO would no longer answer queries relating to the following:

- asking for a case balance, the balance on a related judgment or if payments have been made on the case;
- asking if a specific enforcement notice or order has issued;
- asking for a copy of the latest enforcement means report;
- asking for a contact number for an enforcement officer who has charge of an enforcement file; and
- asking if a specific enforcement order has been served.

I realise this represents a major change in our business relationship and will require changes in your case management procedures, but I am convinced that it will speed up the enforcement process by ensuring my staff dedicate their efforts to processing enforcement casework.

The Office will continue to respond to enquiries made by telephone and we will be making efforts to ensure that calls are handled as effectively as possible. I will keep you informed of any changes to our procedures.

I should emphasise however that any changes will not affect your right to lodge complaints regarding the service or performance of the office through the normal complaints process.

If you have any comments or views on this proposal I would be delighted to hear from you and meet with you to discuss the matter more fully."
Reassessing the use of expert witnesses in the court

The recent Department of Justice consultation on the use of expert witnesses in Northern Ireland set out to examine ‘value for money’ in appointment, remuneration and practice. Expert witness John McGlinchey of Forensic Engineering Solutions, examines the issues.

The Department of Justice consultation followed on from the Access to Justice Review, September 2011 and was a direct response to that report’s recommendation “that the Department of Justice allocates a dedicated resource to the development and implementation of a strategy for securing expert witness evidence for the courts on a basis that secures value for money, consulting with stakeholders as appropriate.” This was in specific regard to expert witnesses in the justice system in Northern Ireland, who are funded from the legal aid budget and was part of the wider legal aid reform programme flowing from the Access to Justice Review.

In essence, the consultation document sought to address the retention of expert witnesses in legal aid cases, the payment for such expert services and the appropriateness of the single joint expert framework. The establishment of an official register and the use of technology to assist in expert witness were also addressed in the consultation.

The single expert witness issue

The Department’s consultation document discussed the difficulties of managing cases where multiple expert witnesses are called and examined the argument for the court appointment of a single expert witness. Clearly this was a discussion around controlling costs, balanced around fair access to justice for all parties.

The concept of the hybrid species known as the Single Joint Expert arose from the 1996 Access to Justice Report by Lord Woolf, wherein he recommended that a case should concentrate on ‘key issues’, not every issue, although who is to decide which issues are key and which are secondary?

The Single Joint Expert is agreed between the parties and appointed with the agreement of the court. The expert is answerable to the court but can be cross-examined by both parties. However, this does not prevent one party or another having an advisory expert to hand to direct the cross-examining questions, which somewhat defeats the intended purpose.

In the wake of the Woolf Report, Northern Ireland conducted a Review of the Civil Justice System in 2000, commonly known as the Campbell Report. In respect of Single Joint Experts, paragraph 119 (5) stated:

“The use of single experts should not be encouraged…The Group remains opposed to single court appointed experts…Moreover, the Group is aware of the risk that some or all of the parties would feel that their case might not be adequately presented by an imposed expert, and considers that the dissatisfaction to which this could give rise is not in the interests of justice… the Group is also concerned that wealthy parties would retain an independent expert, regardless of the unrecoverable cost, in order to undermine the evidence of the single expert…”

These were all very real and rational considerations that have not diminished with the passage of time. In criminal cases it is my opinion that the appointment of a single joint expert would be highly detrimental to proceedings for a number of reasons. Firstly, in the case of road traffic fatalities, the PSNI call on the services of the Forensic Science Laboratory, as they do in many other criminal cases. So the prosecution already has an expert to hand that most definitely will not be accepted by the defence. Of import, Townley and Ede (Townley L; Ede R: Forensic Practice in Criminal Cases; The Law Society) stated the following:

“RCCJ Research Study No. 11, HMSO) found that reports written on behalf of the prosecution could be highly selective documents in which the uncertainties and limitations of forensic science evidence are not always revealed. Selectivity was also encouraged by a belief that it is for the defence to draw out the limitations of prosecution evidence – an example of the way in which scientists adopt an adversarial approach. There were instances where the prosecution scientist simply stated his/her findings without any attempt to highlight their deficiencies or draw appropriate inferences from them. A report may, as a result, have been misinterpreted as providing much stronger evidence of the defendant’s involvement than it actually did…The reason for the low level of defence forensic activity may be the perception that the prosecution case may be difficult to challenge…”

Thus, even an official report has castigated the reports obtained by the prosecution in criminal cases as being biased. Why then would anyone buy into the concept of a single joint expert in such circumstances? It is simply not a realistic concept from any angle.

The question of reimbursement

When it comes to the issue of payment it is important to contextualise the debate within Northern Ireland. From a forensic engineering perspective perhaps the obvious starting point is what is referred to
as the General Authority on Expert Witness Fees.

The earliest Authority that I have on file is from 29 September 1988 but from memory there was an earlier one from 1984 which was the first such document. That document was reached as an agreement between the Association of Forensic Engineers of Northern Ireland and the Law Society and was intended to harmonise the fees charged across normally encountered civil cases by agreeing an acceptable hourly rate. It is important that I stress that this was acceptable at that time. In 1988 the agreed hourly rate for ‘qualified engineers’ was £28.50.

Once adopted the General Authority agreement was never abandoned and the restrictive hourly structure remains in place to this day, in contrast to the rest of the UK and Ireland. Furthermore, the hourly rate in 2003 was set at £57.75 is still being applied more than a decade later. This low rate is recognised in the Consultative Document at paragraph 1.8 wherein it is acknowledged that “the cost thresholds published in these General Authorities are relatively low…”. At the time of writing I am not aware of any reputable engineer agreeing to work for these rates. The effect of this is that cheaper, less qualified and less experienced experts are coming in behind, which is not in the interests of justice at any level.

Looking at the situation today, it is clear that the agreements made under the General Authority back in the 1980s are no longer relevant. The narrow definition of an expert established then bears little relevance to the range and scope of expert witness used in the court today and the problem with fixed fees is that they do not recognise the diversity that exists. Thus, a single fixed hourly rate has become anachronistic. To attempt to homogenise experts in terms of an hourly rate is to enhance some and disenfranchise others.

Having said that, given the historical background and precedent, and the administrative difficulties of calculating appropriate fees on a case by case basis, harmonisation with England and Wales in respect of an hourly rate would probably be acceptable to most Northern Ireland based experts.

In England and Wales the remuneration of expert witnesses is governed by the Civil Legal Aid (Remuneration) (Amendment) 2013, with fees ranging from £32 per hour (eg for a translator) to £171 per hour (eg for a neurosurgeon). The rates reflect some 62 areas of expertise and the average hourly remuneration is in the region of £109.

Additional considerations

The consultation also examined the possibility of producing a register of expert witnesses. To my mind, merely maintaining a register of people willing to undertake certain work is meaningless without some independent verification of their credentials, which would make the compilation of such a register a formidable task. The UK Government-led Registration of Forensic Practitioners has proved a failure in this regard.

There does, however, appear to be merit in making greater use of information technology in hearing expert witness testimony. In Northern Ireland we have one High Court, several Crown Court venues and several County Court venues. We have a small, finite number of regular experts who, on numerous occasions, have demands placed upon them to attend to different courts in different geographical locations on the same day. An imaginative use of IT could easily overcome this difficulty, as face-to-face communication across technology is now readily available.

It is, however, worth accounting for the fact that how a witness acts in the witness box can significantly impact on how they might be perceived in terms of credibility. With this in mind it is my opinion that IT could be used more effectively in the civil courts than in the criminal ones, where a personal appearance would be preferable.

John McGlinchey is a forensic engineer with significant experience as an expert witness. He is qualified in forensic engineering science, collision investigation, forensic ballistics, impact trauma biomechanics and driver behaviour, including drink and drug driving and human performance and error.
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The Annual Dinner of the Law Society was held at the Titanic Building Belfast on 5 December 2014. Just under 200 members and their guests attended including 35 newly admitted solicitors.

Speeches were delivered by Society President, Arleen Elliott, G. Bernard Turkington, Society Past President and Aimee Miller on behalf of the newly admitted solicitors.
Society President, Arleen Elliott. Guest speaker, Bernard Turkington. MC for the evening, Society Senior Vice President, Richard Palmer.

Eilish O’Brien; Peter O’Brien and Maxine Hunter. Elizabeth Birrel of Stewart Title; Society President, Arleen Elliott; Grace McQueen of Stewart Title and Society Chief Executive, Alan Hunter.

Society President, Arleen Elliott, joined by her mother, father and brothers Neill and Gavin and their wives Lucy and Katie. Mr Justice Burgess and Society President, Arleen Elliott.

Timothy Rankin; Alastair Rankin and Conor Houston. Oonagh Monaghan; Siobhan Kearney; Maeve Corrigan and Rachel Leathem.
The Institute of Professional Legal Studies (IPLS) at Queen’s University invites registrations from solicitors, barristers and members of the Judiciary wishing to attend a Mediation Training Course in Autumn 2015.

The IPLS mediation course offers training in civil and commercial mediation and comprises 40+ hours including training, private study, lectures, practical exercises, reflective learning and group study over an eight week period. The course includes assessment feedback to all participants. This is the longest established lawyer’s mediation training course in Northern Ireland.

The course will run for eight evenings between 6.00pm and 8.45pm at IPLS Lennoxvale, Belfast. There will also be an all day Saturday programme. The exact dates will be advised to all those expressing an interest in attending.

The course comprises 40+ hours including training, private study, lectures, practical exercises, reflective learning and group study over an eight week period. The course includes assessment feedback to all participants.

The course will take the well-established format, which has proved so successful in the past. Those who have taken part in previous courses have found the course to be excellent preparation for acting as a Mediator, for representing clients involved in mediation and for advising clients about mediation. They have also indicated that the course was of great interest, value and enjoyment. Attendance at the course will allow an application to be made for inclusion on the Dispute Resolution Service mediator’s panel. Participation and completion of the course is accepted as approved training for purposes of the Dispute Resolution Service and the Bar Mediation panel.

The course is delivered by experienced local practitioners:-

- Brian Speers, Solicitor, Mediator, past President of the Law Society and a visiting Professor of Dispute Resolution at the Graduate School, University of Ulster, Magee.

- David Gaston, Solicitor, Mediator, former partner in Gaston Graham and a CEDR accredited mediator.

- Alva Brangam QC who in addition to practice at the Bar is a CEDR accredited mediator, a Member of the Mediators Institute of Ireland and the Academy of Experts.

Additional local legal practitioner mediators (solicitors and barristers) support the formal lectures and tutorial input.

The nature of the course means that the maximum numbers attending is restricted and anyone interested is asked to apply immediately to take up the final remaining places. The course is open to solicitors and barristers with five years’ post qualification experience and to members of the Judiciary. The cost will be £1,950.00 per person. This compares extremely favourably with mediation training course fees offered by other providers.

If you wish to take up a place please contact Mrs Amanda Elliott, Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY. Tel. No. 028 9097 6521 or a.elliott@qub.ac.uk

Comments from previous participants on the course attest to the quality and value of the course

"Having participated in many CPD courses, I certainly feel that this has been the most beneficial and without doubt the most enjoyable."

"I enjoyed the course immensely and considered it to be well structured and provided real value for money."

"I thoroughly enjoyed the course and could not recommend it more highly."

"The course was extremely well taught, well thought out and presented. The course tutors and guest speakers spoke authoritatively on the subject and their enthusiasm was infectious."
Needing a meeting room in Belfast?

There are three meeting rooms on offer on the fourth floor of Law Society House, each varying in size and named after Baronies in Northern Ireland.

The **Dunluce, Lecale** and **Liberties** rooms are all available to members to use for a reasonable charge, at a competitive rate. A range of external catering options is also available to meet your particular requirements.

The **Dunluce Room** can comfortably seat up to 16 people and offers integrated IT facilities including plasma television for on-screen presentations, video conferencing, teleconferencing, conference call facilities, Skype and webcam and free wi-fi.

It provides members with the perfect environment for private consultations or the hosting of seminars.

The **Liberties** and **Lecale** rooms both offer quality accommodation for consultations and meetings for up to 10 people.

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(Applicable to solicitors, groups, associations and firms)

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For a confidential chat about all legal opportunities speak to Patrick McDonald at Hays Legal on 02890 446911, email: patrick.mcdonald@hays.com and/or connect with me on LinkedIn.

hays.co.uk/legal
The President of the Law Society, Arleen Elliott, welcomed over 100 newly admitted solicitors to the profession during the Society’s Admission Ceremony at the Whitla Hall at Queen’s University in Belfast on Wednesday 4 March 2015. As part of the ceremony, the Registrar of Solicitors, Alan Hunter, presented the newly admitted solicitors to the Society’s President and to the Lord Chief Justice for Northern Ireland, Sir Declan Morgan. Special prizes were awarded to Louise Breen for excellence in the Solicitors’ Accounts Course and Fiona Elizabeth Sturgess who was awarded the Thomasena McKinney Prize.

From left: The Lord Chief Justice for Northern Ireland, Sir Declan Morgan; Society President, Arleen Elliott and the Registrar of Solicitors and Chief Executive of the Society, Alan Hunter.

Society President, Arleen Elliott presents Louise Breen with an Awards Certificate for excellence in the Solicitors’ Accounts Course

Society President, Arleen Elliott presents Fiona Sturgess with the Thomasena McKinney Prize
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The following article is a reprint of an article used in previous years but which still accurately extols the benefits of having an apprentice.

At this time of year the scramble for places in the Institute and the Graduate School at Magee - and hence for places in solicitors' offices reaches fever pitch. Those of us who have more years behind us than before us in the profession have perhaps forgotten the anguish and stress experienced by young idealistic law graduates who have struggled to overcome many obstacles to put themselves on the brink of a career in the law only to find that the greatest obstacle of all is, to a large extent, outside their control. I refer of course to the lottery of finding a "Master".

At a time when solicitors' practices are facing strong competition, a downturn in some areas of work, particularly conveyancing, a curtailment of legal aid, increased costs, there is an understandable temptation to dismiss out of hand the prospect of taking on an apprentice with the attendant extra costs this will entail.

My opening remarks are not a prologue to an argument that we, as a profession, have a moral obligation to ensure that those graduates who make it through the "lottery" are given a solid education. Those graduates will, in turn, become an asset to their firm and, most importantly, to the legal profession as a whole.

1. Long term planning
How many times do we hear the complaint from our colleagues that they cannot get assistant solicitors? This is a common complaint particularly in the provincial towns. I am always amazed at this. It seems to me that the employment of an apprentice gives the employer the option, two years down the line, to employ a solicitor who has been trained in the methods and ethos of the firm. An apprentice given good training, respect and good working conditions will invariably reciprocate with loyalty.

2. Development and growth
When we look at how our firms are to grow and increase fee income how many of us take into account the positive potential of an apprentice and later (if kept on) a young solicitor? Most of them have a wide circle of friends, some of them have many useful contacts and all of them will bring in varying amounts of work through these friends and contacts. Apart from this it's quite astounding, in my experience, how in a very short period of time, they develop their own contacts and build up their own portfolio of clients. Often they do this from the crumbs thrown from their Master's table whilst at the same time being available to deal with all that "loss leader" work which increasingly lands on all our desks.

3. A breath of fresh air
Don't forget that these students have all done their law degrees more recently than you. Whilst in your employment they are attending lectures on all aspect of law, practice and procedure. Whilst they may not have your experience most of them are likely to know more about recent changes in the law than you do. You can learn from them. Furthermore it is likely they can assess the law faster than you through their natural use of modern technology.

4. You think you cannot afford an Apprentice?
"It's not just the wages you have to pay during those first four months – it's the fact that they haven't a clue what they are doing."

This is by far the most common complaint about the current system and on the surface would appear to be a justifiable one.

This is in my view not so. On the contrary you have on your hands a highly motivated individual who has worked extremely hard to get to this stage (often at great expense). That person will almost certainly be computer literate and, whether male or female, will have excellent typing skills. He/she will not need a secretary. You will be amazed at how quickly he/she will tune in to the working environment. As a rule apprentices have no hang ups or bad habits (the only bad habits they will pick up will be from you). They are extremely willing to turn their hands to anything and, without exploiting them, you will be able to extract from them a tremendous amount of work and at the same time give them that insight into the reality of private practice which will be invaluable to them when they attend the Institute or Graduate School for the first time.

If you have used them properly you will be very disappointed to see them go to their vocational trainer in January and delighted when they turn up on your doorstep every Monday of term. Their shock and bewilderment of having to work during the two summers they are with you will only be matched by your delight at being able to solve some of your holiday dilemmas and having a few more days off than usual yourself. Adopt the correct approach and you will find that you have an employee worth every penny of his/her wages.

5. Generally
Firms can only grow through the introduction of young talent. Properly nurtured that talent will reflect your own standards. Properly treated that talent will stay with you. You will have little turnover of professional staff. Clients like continuity. A sensible approach to the employment of apprentices will provide that continuity. Sole practitioners and small firms wrongly believe that they cannot afford apprentices. I believe, on the contrary, that they can be their salvation. Often the best time to take an apprentice is when you think you do not need one.

6. And finally
Whether or not we have a moral obligation to ensure that those who have worked hard to qualify find placements can be debated elsewhere. I contend that you have an obligation to yourself and to your firm to give serious consideration to the employment of an apprentice. In the longer term failure to do so may be your loss and someone else's gain.

Gerry O'Hare, Senior Partner
J G O’Hare & Company Solicitors
Call for Masters

The Society each year draws up a list of members who are qualified and willing to act as Masters. This list will be provided on request to students who are seeking apprenticeships.

If you have –

1. practised as a solicitor for at least 7 years, and
2. been a principal for at least 3 years, and
3. are willing to act as a master for the 2 year term commencing September 2015 and
4. can provide a suitable training environment for an apprentice please complete the form below and return it to the Admissions Officer at the Society.

The relevant criteria are set out in the Solicitors Admission and Training (Qualification of Masters) Regulations 1988 as amended by the Solicitors Admission and Training (Qualification of Masters) (Amendment) Regulations 1992.

The minimum wage for apprentices starting in September 2015 has been revised as follows:

(a) the Law Society’s recommended wage shall be the greater of £250.10 per week or the relevant UK national minimum hourly rate which shall not be less than £6.50 per hour (£6.70 per hour from 1 October 2015).

(b) During the Institute/Graduate School term, when the apprentice is in his/her Master’s office each Monday, a minimum wage of one-fifth of the prescribed rate set out at (a) above.

Masters are reminded of their obligations under the apprenticeship contract and also under the national minimum wage legislation regarding payment of apprentices.

I confirm that I am interested in acting as a Master as and from September 2015 and am willing for my name to be added to a list of potential masters and circulated to students seeking apprenticeships.

Name of intending Master................................................................................................................................................

Name of firm......................................................................................................................................................................

Contact name and details of the person to whom application should be made (if different from Master)

Is there a closing date for your recruitment process? (If so, please specify)

Would you prefer to receive applications from prospective applicants by:

CV by email [ ]

CV by post [ ]

Law Society Application Form [ ]

Firm’s own recruitment procedure (please detail)..............................................................................................................

Date.............................................................................................................................................................................

Please return the completed form to:
Admissions Officer, Law Society of Northern Ireland, Law Society House, 96 Victoria Street, Belfast BT1 3GN
or DX422 NR BELFAST 1.
Or scan and email to: admissions@lawsoc-ni.org
Four Jurisdictions meeting held in Belfast

Law Society House was the venue for a meeting of the Law Societies of the Four Jurisdictions, attended by the Presidential and Chief Executive Teams of the Law Societies of England and Wales, Scotland, Northern Ireland and the Republic of Ireland. This is a regular meeting held to discuss issues affecting the solicitor branch of the legal profession in these islands and to explore areas of mutual interest. The President, Arleen Elliott, Junior Vice President, John Guerin and Chief Executive, Alan Hunter, were in attendance at the meeting.

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Members are reminded of their legal obligations under the Companies Act 2006 and other regulations with regard to the display of required information at places of business, websites and business correspondence. The effect of this is to distinguish clearly or show the name of each individual, partner or director who has responsibility for the business and its liabilities. It is not possible to exhaustively state the relevant law relating to trading disclosures within this note but it does highlight the key obligations for solicitors’ practices.

**Companies**

In the case of a solicitors’ practice which is a company, the registered name must be included on a range of business information and documentation including business letters, cheques, invoices and other demands for payment, receipts and letters of credit and also its website. A company’s registered name must also be positioned at the relevant premises so that it can be seen easily by any visitor.

In addition, the following information shall be stated on its business letters, order forms (whether in hard copy, electronic or any other forms) and websites:

- its registered office.
- any location at which it keeps its records available for inspection.
- any location at which it carries on business.

There is no need to list the names of directors in business letters. If, however, a company’s business letter includes the name of a director of that company, other than in the text or as a signatory, the letter must disclose the name of every director of that company.

**limited liability partnerships**

The trading disclosure requirements for limited liability partnerships are largely the same as those set out above in relation to companies. In addition, the following information must also be stated on its business letters, order forms (whether in hard copy, electronic or any other forms) and websites:

- where in the UK it is registered.
- in the case of a limited liability partnership whose name ends with the abbreviation “llp” or “LLP”, the fact that it is a limited liability partnership.

The name of all members of a practice that is a limited liability partnership must be disclosed in all business letters that include any member’s name (other than in the text or as a signatory). This requirement does not, however, apply to a document issued by a limited liability partnership with more than 20 members if:

- the limited liability partnership maintains a list of all its members’ names at its principal place of business.
- the document states (in legible characters) the address of the limited liability partnership’s principal place of business and that the list of the members’ names is open to inspection at that place.

**Partnerships**

In the case of a partnership practice, the name of each member of the partnership and address for service of each must be stated on:

- business letters.
- written orders for goods and services to be supplied to the business.
- invoices and receipts issued in the course of business.
- written demands for payment arising in the course of business.
- premises where the business is carried on and to which customers and suppliers have access.

The Society is concerned to note that the required information is not always displayed correctly on members’ stationery and websites. Practitioners are reminded of their obligations under legislation and the general law, with which they are expected to comply. It should be noted that failure to comply with a requirement of the legislative requirements constitutes a criminal offence and renders those in default (including officers in the case of a body corporate) liable to a fine. Those wishing to show the names of qualified assistant solicitors must ensure that they are clearly designated as such and distinguished from the names of the partners/directors.

Members are also reminded of the provisions of the Solicitors’ (Advertising, Public Relations and Marketing) Practice Regulations 1997 (as amended) - see www.lawsoc-ni.org.
A Right To Privacy in a Digital Age?

The Society’s President, Arleen Elliott, welcomed more than 80 solicitors to Law Society House for a lecture entitled ‘A Right to Privacy in a Digital Age?’

The event coincided with European Lawyers’ Day and International Human Rights Day, which were marked throughout Europe and beyond with events on digital issues.

In a thought-provoking presentation, Clare Bates from Carson McDowell outlined how recent developments and revelations by whistleblowers have identified concerning inroads to the fundamental right to privacy, the impact which this has on individuals and the particular impact for the lawyer-client relationship. Clare highlighted important reported and pending cases and considered the challenges which the new technologies have created when protecting data protection rights.

From left: Arleen Elliott, Society President; Clare Bates, Carson McDowell and Michael Robinson, Society CCBE representative.

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Accredited Mediator
Baby Aoife steals the show at launch of charity partnership

TinyLife is the Society’s chosen charity of the year for 2015. Based in Carryduff, the local premature baby charity provides services and support throughout Northern and is dedicated to reducing premature birth, illness, disability and death in babies. It is funded entirely by charitable donations.

Launching the new charity partnership at TinyLife’s headquarters, the President of the Law Society, Arleen Elliott, said:

“I am delighted that the Society will be working with TinyLife and I hope that through our efforts we can help increase awareness of the charity and also raise funds to assist the invaluable work and support it provides."

Alison McNulty, Chief Executive of TinyLife, said:

“We are grateful to the Law Society for choosing TinyLife as its charity of the year and we look forward to working with it throughout 2015 on a number of exciting fundraising initiatives."

Law Society Choir concert raises £2,500 for TinyLife

On a dark and cold night in December more than 300 members of the legal profession came together at First Presbyterian Church in Rosemary Street, Belfast, for the annual Pro Bono Concert of nine lessons and carols.

Amongst those who gave readings at the event were Society President, Arleen Elliott, the First Lieutenant, Fionnuala Jay-O’Boyle, Lady Adrienne Morgan, the former Lord Mayor of Belfast, Nicola Mallon, Naomi Long MP, Cathy McKay, our Deputy Secretary, Paul Dougan, Chairman of the Belfast Solicitors’ Association, Jack Anderson, Sports Law Lecturer at Queen’s University and Jeremy Harbinson of Harbinson Mulholland Accountants.

The concert and a traditional Christmas Party in the Ivory Restaurant raised approximately £2500 for TinyLife, the President’s chosen charity of the year.
Society raises £20,000 for NI Hospice

Senior Vice President, Richard Palmer, presented Ellen Hillen from NI Hospice with a cheque for £20,000 which was raised by the Society through a number of events and activities during 2014.

NI Hospice had been chosen by the Society for its ongoing work with thousands of terminally ill patients. The funds raised will contribute to a new Somerton House which is urgently needed to help those suffering from cancer and their families. The Society was delighted to lend its support to raise much needed funds for the construction of the new building.

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- All interpreters are fully vetted.
- Diversity NI Ltd is the first language company in Northern Ireland to achieve ISO 9001:2008.
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- Diversity NI works with the National Register for Public Service Interpreters in order to achieve higher standards for Public Service Interpreters in Northern Ireland.
- We can train and provide your bilingual staff with a relevant qualification
IPLS runners-up in National Mediation Competition

Congratulations to the team which recently represented the Institute of Professional Legal Studies in the UK’s National Mediation Competition. Aided by Barbara Jemphrey, Senior Lecturer at the IPLS, Steven Adams from Pinsent Masons, Niamh Hargan of Carson McDowell, Paul Eastwood of Tughans and Christopher Owens of Wilson Nesbitt were runners-up in the competition which involved 20 Universities and Law Schools.

From left: Steven Adams, Pinsent Masons; Niamh Hargan, Carson McDowell; Paul Eastwood, Tughans and Christopher Owens, Wilson Nesbitt.

Magee students prove to be top of the class

Maeve Morrison and Carlann Knox from the Graduate School of Professional Legal Studies at Magee University were the winners of the regional heat of the Client Consultation Competition held at Law Society House.

The annual competition included teams from the University of Ulster (Jordanstown and Magee campuses), Queen’s University, the Institute of Professional Legal Studies and the Graduate School of Professional Legal Studies.

After several hours and following a very close competition with one point separating the first and second teams, the winning team was announced.

Both Maeve and Carlann from the winning team represented Northern Ireland in the international finals of The Louis M Brown and Forrest S Mosten International Client Consultation Competition which was held in University of Nebraska, USA in April 2015.

From left: David Gaston (judging panel); Maeve Morrison and Carlann Knox from the GSPLE and actress Laine Megaw.
Freedom and Choice in Pensions Reform

Neil Linton, Manager within Wealth Management at BDO Northern Ireland, gives us his pension outlook: Bright spells however beware the occasional thunderstorms!

As we start a new tax year there is a new framework for UK Registered Pension Schemes.

These are the most radical changes to pensions for almost a century and have been drip fed out over the last 9 months. Whilst we still await some fine detail especially around annuity death benefits treatment, generally the changes have been widely welcomed.

A number of key restrictions to pensions in retirement have been swept away with significant new flexibility as the Government goes on a charm offensive.

The changes began in March 2014 with the announcement which shelved the complex rules around the maximum income which could be extracted from Pension Schemes. This flexibility was extremely welcome against a backdrop of low gilt yields which was impacting income.

However this was nothing compared to the statement on the 29 September which swept away (from April 2015) the inequitable 55% tax charge on death for those under 75 drawing income from pension schemes.

Finally, we had the Autumn Statement on December 3 which tied up some further loose ends and confirmed the Pension Commencement Lump Sum is here to stay under the current administration and the threat of abolition of higher rate tax relief on pension contributions seems to have abated for the moment.

A welcome development in the Statement was that from April 2015, beneficiaries of individuals who die under the age of 75 with a Joint Life or Guaranteed Term Annuity will be able to receive any further payments from such plans tax free. The tax rules will also be changed to allow Joint Life annuities to be passed on to any beneficiary.

From April 2015 post age 75 death benefits offer the same flexibility although death benefits are taxable. In either scenario beneficiaries can receive a pension or lump sum within the terms of the contract.

Taking all these changes into account, we have a pension regime which provides a dynamic tax wrapper which is extremely tax efficient in the accumulation phase, maximises flexibility in the income phase and is also now a very important wealth preservation vehicle for future generations.

Careful planning, however, needs to taken with the latter to avoid any occasional thunderstorms.

The downside to all these positive changes is the maximum which can be accumulated within a UK Registered Pension Scheme has been progressively reduced from £1.8m to £1.25m.

Pensions are becoming a significant electoral battleground as Ed Miliband has announced in the last few days a Labour election pledge to cut this amount even further to £1m coupled with a restriction on higher rate tax relief on pension savings.

This strategy is designed to assist with Labour’s funding options for tuition fees.

For High Net Worth Individuals, an accumulated pot of £1m is probably insufficient to generate the level of income required to sustain their pre-retirement lifestyle.

For someone aged 55 now, there is a 50% chance, actuarially speaking, they will live beyond age 90. Therefore longevity risk needs to be taken into account in any future pension and estate planning.

Also we need to factor in the political risk of a future administration tinkering with the pension rules yet again. This “tinkering risk” should not be discounted as the Government has made changes to pensions every year since the introduction of so called “Pension Simplification” in 2006.

WHAT ARE THE ALTERNATIVES?

A number of solutions already exist in the market which provide certainty and remove this risk. Looking at these issues an area which needs to be factored in to the retirement equation is Qualifying Non UK Pension Schemes (QNUPS).

This provides an opportunity for a High Net Worth individual to make adequate retirement provision outside of the Registered Pension Scheme environment.

Whilst there is no tax relief on contributions going in, a structure can be created which provides for an extremely flexible investment strategy and tax efficient extraction of retirement funds.

An added bonus for QNUPS is that for IHT purposes the benefits are treated in exactly the same way as UK registered pension schemes and are outside the estate from day one.

These are exciting times and change brings with it lots of planning opportunities. Usually the words “Exciting” and “Pensions” don’t really go together but the landscape has fundamentally changed and clients more than ever need guidance.

The pension changes will affect almost everyone going forward, so whether you are saving currently for your retirement, thinking about doing so or approaching your planned retirement age, the need for comprehensive regulated advice has never been greater.

The increased flexibility at retirement is welcomed and does remove a historically perceived disadvantage of pension saving, however, this will in turn lead to retirement choices becoming more complex in the future.

In the words of Harold McMillan in 1957 from a retirement planning perspective “We have never had it so good.”

Now is the time to review retirement planning options before the landscape changes yet again.

The opportunity to provide a tax efficient income in retirement which can be passed down through the generations is something which requires careful planning. However, beware the outcome of the recent General Election.

Neil Linton is part of the Wealth Management Department of BDO NI and has over 14 years experience in advising members of the legal profession and their clients.

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Obituary – Barry Finlay 1955 - 2014

“An accomplished solicitor and a kind, generous and approachable man...”
“A fine lawyer, a true professional and the ultimate gentleman....”
“The legal fraternity has lost a great, kind, professional and very amiable colleague....”
“I’d only met him a couple of times......the type of fellow to leave an impression on you in just those couple of meetings....”
“He was unfailingly warm, friendly and patient ....and we all knew he had our best interests at heart....”
“He always spoke with wisdom, honed by his many years of experience and was always fun to be with.....in short, he was one of the good guys....”
“He always had the interests of the profession close to his heart and he was approachable and interested in helping us all....”
“A kind and honourable man....”

These comments represent just a tiny selection from the many messages of condolence and tribute prompted when the profession lost one of its most prominent and influential members of recent years in the sudden and untimely death on 31 August 2014 of Barry Finlay, a Past President of the Law Society.

I had the pleasure and privilege to know and work with Barry for more than 30 years and to count him as a close friend but the large attendance at his funeral service was a testament to the high regard in which he was held by all who knew him and the large representation in the congregation from all branches of the legal profession was a tribute to his unstinting work in recent years in the profession generally and the Law Society in particular.

Barry had his early education at Annadale Grammar School and then studied Law at Queen’s University, Belfast, graduating on 6 July 1977. During his time at University, his instincts for using his time productively were already well honed. He enjoyed the rigour of intellectual activity as a student – and indeed in his future legal career – but equally he always enjoyed the challenge of hard physical activity and he spent several summer vacations in the building trade working for a property developer who was refurbishing a number of large homes on Cromwell Road in Belfast.

After graduating with his law degree, Barry and his contemporaries were the first to undergo their professional training as solicitors in the new Institute of Professional Legal Studies and after a year’s study there to attain his Certificate in Professional Legal Studies, he was admitted to the Roll of Solicitors on 25 July 1978. Barry joined J Murland & Co Solicitors in Downpatrick, initially under the guidance of the late George Wheeler but also under the significant influence of the firm’s then long-standing Senior Partner, Jack McRobert – both of whom Barry held in the highest regard and was often to speak of fondly in later years.

Barry soon began to demonstrate his significant abilities as a solicitor. He’d already completed all the exams and was developing his experience and skill under the guidance of Jack and George but significantly his personal characteristics...
were beginning to mark him out as special. His warmth of personality and interest in people were traits which his colleagues and clients liked and admired and which were to be central to everything he did in his personal and professional life.

But no-one simply just knew or was acquainted with Barry Finlay. No, as far as Barry was concerned, if he knew you, he counted you as his friend and once you were a friend of Barry’s so you would always remain, for he fell out with no-one.

Whatever someone’s background, religion, political opinion, profession or trade (or none), whatever their age or station in life, Barry regarded all to be equally deserving of his friendship and of his time and interest. His clients had the benefit of his sound advice, his knowledge and application of the law. But, more than that, they knew that they were dealing with a man who cared about them, and was interested in them.

Barry became a Partner in the practice in 1983 and a driving force in its development in the years to come, combining his range of skills as a solicitor with an innate soundness of business judgment and an appetite for hard work. When Jack McRobert died, Barry became the Senior Partner of Murlands in 1998 and continued to oversee its development, carefully nurturing, encouraging and guiding his younger colleagues not only in his own firm but throughout the profession. Many solicitors, young and some not so young, can recount instances of Barry’s sound advice and encouragement to them. He often commented upon the importance of having an “antennae for danger” (a very “Barry” phrase) – by which he meant the need to always be aware and look ahead to avoid potential pitfalls – and he willingly helped his professional colleagues to do just that.

When approached for help or guidance on a problem case – or even in some personal crisis or difficulty - he could always be relied upon not only for wise counsel but also for encouragement. And he had a great talent for seeing the way ahead, maintaining perspective and keeping problems in proportion. As the beneficiary of his advice would thank him and turn to leave, his encouraging parting comment would invariably be - “remember, this too will pass”.

In the wider profession Barry was also to play significant roles. In February 1998 he was co-opted to the Council of the Law Society of Northern Ireland as a constituency representative for the Eastern Circuit, attending his first Council meeting on 21 February 2001. Throughout the next 13 years, until his sudden death on 31 August 2014, he was to continue to serve the solicitors’ profession diligently in his work in the Society, serving on, and subsequently chairing, many of its sub-committees. All of his work in the Society was marked by his good humour and cheerfulness – often in challenging circumstances. None more so than when he became President of the Society on 26 November 2008 at a time of great economic uncertainty and difficulty in Northern Ireland and elsewhere. Throughout his year in office he represented the profession with great humour and competence at home and abroad and did much to enhance the standing of the Northern Ireland solicitors’ profession around the world.

We will no longer be able to turn to him for such guidance but his work and influence is undoubtedly a legacy which will endure for many years to come both in the Society and throughout the profession.

During those busy years in Murlands and the Law Society, Barry was also a member of the Northern Ireland Medico-Legal Society and served for more than 20 years
as one of Her Majesty's Coroners. He was also a member of the Chartered Institute of Arbitrators. Along the way he was appointed a Notary Public on 21 October 1986 and was enrolled as a solicitor in the Republic of Ireland on 21 October 1997 and later in England and Wales on 15 June 2009.

Most of Barry’s work was “non-contentious” business. If ever a man was made for non-contentious work it was Barry Finlay – for he hadn’t a contentious bone in his body. His attitude to his work – as to everything in life – was to achieve the common goal of completing the transaction and along the way to conduct himself and his clients’ business in a harmonious and co-operative manner.

Following Barry’s sudden death, his family and close colleagues were inundated with messages of consolation and support from clients and professional colleagues from near and far. A common thread throughout was reference to Barry’s integrity, professionalism, common sense, tact and wisdom. Many of us can testify to those qualities - but the word that was most frequently employed about him was “friend”.

Barry’s personal and social life mirrored his professional life in its diversity and abundance. To say he took a keen interest in many things would be a gross understatement. Barry took a keen interest in everything and everyone from rugby with Ballynahinch, Ulster, Ireland and the Lions, through boating and yachting to sports cars and latterly vintage tractors. For some years he was even an enthusiastic bee-keeper – which may have been his only ultimately unsuccessful venture!

In all of these things Barry enjoyed the company of others. He was a great conversationalist and raconteur. There were few subjects of conversation that did not interest him and that always made him excellent company in every situation. For many, there will be fond memories of many such occasions now to be cherished.

Barry loved to travel – another significant understatement. He also loved to help and encourage others to travel. To casually mention within his earshot that you were thinking of taking a weekend away somewhere was to invite from him a lengthy list of potential destinations complete with sightseeing and restaurant recommendations, advice on flight schedules, best prices for car hire and, most importantly in Barry’s opinion, the least expensive options for airport transfers. This would inevitably be followed up soon after by an email from him containing the results of his internet research conducted on your behalf complete with price quotations and later by the loan of a selection of travel guides and maps from his extensive collection.

On returning from any of his own trips he would regale his listeners with tales of where he had been and, especially of people he had met – all of whom were now to be counted amongst his friends. If he hadn’t been a solicitor, Barry could have carved out a very comfortable living in the mode of Alan Whicker or Michael Palin!

Best of all, Barry loved it if he could combine his travel with his other interests. For example, tours with Ballynahinch and Dromore rugby clubs, trips down-under with the British & Irish Lions, attendances at Law Society conferences in Europe and further afield. At the time of his death he had been looking forward to visiting Ethiopia (one of the few countries he hadn’t previously visited) under the auspices of Habitat for Humanity to work on building houses for those less fortunate than himself.

Barry had a strong moral compass and strong sense of justice, of fairness and of right and wrong which he exhibited in all aspects of his life. So, for him, the Ethiopia trip would have been a “jackpot 3-in-1” of travel, physical labour and helping others.

Barry had spoken of his “retirement” plans as he approached his 60th birthday. To Barry however, retirement meant something very different to what most of us would understand as retirement. He would talk about cutting down to perhaps three days a week in the office – and then in the very next breath outline his various options for filling the other two days. So it was clear that any “retirement” was going to be nothing more than a change of emphasis with little sign of any slackening of activity. But as we mourn his passing, we can take some measure of comfort in knowing that his sudden death didn’t cause him to miss out on the things normally associated with retirement – for he had pursued those throughout his life and in doing so brought immense pleasure to himself and to those around him.

In Barry’s sudden passing all of us in the profession have lost a loyal and trusted colleague who could unfailingly be relied upon for support, encouragement, advice and guidance in any situation whether personal or professional.

Barry was a fine solicitor and a widely travelled person who lived and enjoyed a full and enriching life that we all wish had not been cut short so suddenly. But to all who knew him in whatever way – his family, business partners, employees, professional colleagues, clients, neighbours, fellow members of churches, clubs, societies and organisations - to all, first, foremost and above all, he was a friend.

He will be missed more than any words can possibly express but, for all who were acquainted with him, it has been - and will forever be – the greatest of privileges to have been counted as - a “Friend of Barry”.

Alan Reid.
TinyLife is Northern Ireland’s premature and sick baby charity, dedicated to reducing illness, disability and death in babies born here.

The charity (formally known as NIMBA) was initially set up in 1988 by health professionals and concerned parents to fund research into the causes of premature birth. As time moved on, it became apparent that alongside invaluable research, families desperately needed both practical and emotional support to cope following the premature birth of their baby.

Last year, there were seven babies born prematurely every single day here – staggering statistics for our wee country.

Premature babies are born and can survive from as early as 24 weeks. Typically, babies born this early will weigh as little as 1lb. However, the smallest baby TinyLife has supported in recent years weighed just 14oz and is currently the smallest surviving baby in Ireland.

Babies born before term can suffer from a range of health problems. Breathing and feeding problems are commonplace as their lungs are not yet mature enough to cope with the outside world. However, those born before 32 weeks are susceptible to more serious medical conditions such as chronic lung disease, Retinopathy of Prematurity (a potentially blinding eye disorder that affects premature infants weighing less than 3lbs) and cerebral palsy.

TinyLife works with neonatal units across Northern Ireland where many of babies spend prolonged time in intensive and special care, some for as long as six months. It is a difficult time for parents, who spend every second willing their baby to survive, all whilst coming to terms with medical complications and the prospect of long-term health problems. It is hard for families who already have children at home and often, due to infection control in hospitals, siblings, grandparents and extended family members cannot meet the baby until discharge. Coupled with the financial constraints, the pressures really do mount up.

TinyLife offers a wide range of services which includes:
- Hospital based support (delivered by trained family support officers)
- Home based volunteer programme (delivered by trained family support volunteers)
- Breast pump loan service
- Continued medical research
- Parent support groups
- Baby massage and baby yoga
- Multi-sensory room service
- Baby physio gym (currently being piloted in Northern Trust area)

We receive limited government funding and rely heavily on the generosity of the general public and local businesses as well as a calendar of regional events organised by our fundraising team so that we can continue to maintain our wide range of services.

Sadly, there isn’t always a happy ending for the families that we support, which reminds us of the devastating effects of premature birth.

Our Story

We were only married a few months when we lost our first baby at 11 weeks and we were devastated. The following year we lost our second baby at seven weeks.

The next year, we were extremely excited to be told that we were expecting twins but I went into premature labour and at 19 weeks, our baby son Jack was born asleep, three weeks later at nearly 22 weeks, our second son, Joshua was born. Joshua only lived for two hours which gave us time as a mummy and daddy to tell him all the things we would never get the chance to say. We fitted a lifetime of love into those few precious hours. Joshua passed away peacefully in my arms.

We said goodbye to our beautiful sons and buried them together in the church graveyard where we had been married. It was the hardest day of our life.

Just a year later, we found out that I was pregnant again with twins but at 22 weeks tragedy struck, I was in premature labour again.

I begged the doctors to save our babies, I couldn’t bear to bury any more children.

Fortunately, the hospital were able to stop my labour until 27 weeks when further complications set in and I had to have an emergency ‘C’ section to save both the babies and me. I became a mummy again to Scott and Jamie, weighing 2lb 9oz and 2lb 5oz respectively.
They were immediately put into incubators and taken to the Royal Jubilee’s Special Care Baby Unit.

Seeing our babies for the first time was frightening; they were unbelievably small and fragile and we were told to prepare for the worst. The boys had numerous medical conditions. On Christmas Eve, just 10 days after their early arrival, both boys had to have the first of many blood transfusions.

Scott had a secondary bleed in the left ventricle of his brain and had to endure frequent MRI scans, he had reflux of both kidneys, a heart murmur and required an operation at just nine weeks old to reposition his appendix. Jamie had a severe heart murmur which required immediate medical attention, an umbilical hernia and later developed reflux. Both babies also received an MRI scan to indicate if there were symptoms of cerebral palsy.

Having a premature baby is an uphill struggle and in our case, the struggle was multiplied by two. It changes your life forever. We never knew what to expect from one day to the next. As one twin got better, the other got worse. Motherhood wasn’t how I had expected it to be. I wasn’t able to hold my babies, change their nappies, do the things that mums of full term babies take for granted. I had to watch on helplessly as the nurses did everything for the boys.

After a month, the boys were well enough to be transferred to Craigavon Area Hospital. It was a huge milestone for us all. It was at this point that TinyLife came into our lives. I was so thankful to meet one of their family support officers, Janice and for the first time, I felt less alone. She organised a breast pump so that I could express milk for my babies which made me finally feel like I was doing something useful for them. She answered many of our questions and brought us books to educate ourselves on premature babies and their complex needs. She was only ever a phone call away.

After a total of 78 days in hospital, we were finally able to bring our boys home and begin life as a proper family. Janice arranged for a fully trained family support volunteer to meet us and throughout the next 18 months, our volunteer Ally, became a rock to our little family. She came every week for three hours and helped me to make food for the babies, she attended hospital appointments with me, played with the boys and lastly, but most importantly, she listened and gave great hugs.

The boys are now happy and healthy and approaching their 8th birthday. I can never explain just how much TinyLife’s support meant to us as a family. The practical and emotional support that we received got us through a very traumatic time. TinyLife became our lifeline when we needed them most.

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Law Centre (NI) - pregnancy and the right to reside

Carla Rogers, social security legal adviser at Law Centre (NI), discusses the implications of a European case on pregnant EEA migrant workers’ entitlement to social security benefits, and suggests that further test cases clarifying the issues may be gainfully argued.

On 19 June 2014 the Court of Justice of the European Union handed down the landmark ruling in the Jessy St Prix case. This concerned the position of EEA nationals who stopped work due to the late stages of pregnancy and having a baby in general, and their entitlement to Income Support in particular.

Residence rules for Income Support

Income Support is a means tested benefit paid to people who fall within certain specific groups, for example people who are sick or disabled, carers and certain people looking after young children. Women who are in the later stages of pregnancy and/or who have recently given birth could be eligible for this benefit as long as they meet the domestic conditions of entitlement.

As with most other benefits, Income Support has residence and presence conditions attached to its conditions of entitlement. To receive Income Support, you must establish that you are habitually resident and have a right to reside (as well as meeting the other domestic conditions of entitlement).

British and Irish nationals automatically satisfy the right to reside requirement for Income Support. Therefore the right to reside requirement mainly affects other EEA nationals.

Impact on pregnant EEA nationals before the St Prix judgement

Before the judgement in St Prix, pregnant EEA nationals found themselves in a very difficult position. Firstly, they would no longer be eligible to receive Jobseeker’s Allowance under domestic regulations once they were within six weeks of childbirth as they are treated as having limited capability for work and, therefore, no longer viewed as available for work. Secondly, by virtue of having to give up work, or give up looking for work, because of the late stages of pregnancy they were no longer classed as workers and therefore lost their right to reside for Income Support purposes. In both cases, the woman also could lose entitlement to Housing Benefit and potentially face financial destitution.

Comparable British or Irish nationals are not affected in the same way and would be able to claim Income Support and Housing Benefit assuming that they met the other conditions. The right to reside condition therefore had a discriminatory affect against other EEA nationals who were pregnant or just had a baby.

Some EEA national women, who were not in receipt of Maternity Allowance or Statutory Maternity Pay, (and did not have an alternative right to reside), found themselves in a very difficult situation. They would have no source of income during the final stages of pregnancy and early stages of childbirth until they became eligible for Jobseeker’s Allowance again or commenced work.

Contradictions with legislation protecting women in pregnancy

The situation was stranger still when you considered that other EU legislation, specifically Directive 2004/38/EC, provided for special protection for women who are pregnant and have babies when calculating permanent residence. Article 16(3) of this Directive provides that continuity of residence is not affected by a temporary loss of a right of residence for a maximum period of twelve consecutive months for reasons related to pregnancy and childbirth.

In addition, Article 7(3) of that Directive identifies the situations in which an EEA national who gives up work will nonetheless retain the status of a worker and thus retain a right to reside. Pregnancy is not listed but a person who gives up work temporarily because of illness or accident would be protected as he or she is in a specifically identified category. This left the situation, pre St Prix, even more anomalous.

The St Prix case

Ms St Prix is a French national who came to work in the UK in 2006. She initially worked as a teaching assistant for eleven months then began studying at university when she became pregnant. She later withdrew from her university course and registered with an employment agency who found her work in nursery schools. When she was six months pregnant she stopped working because the work was too strenuous for her. She was unable to find more suitable work and, being within eleven weeks of the birth of her baby, she made a claim to Income Support. Her claim was refused on the basis that she did not have a right to reside as she had lost her status of a worker. She went back to work within three months of the birth of her baby.

Ms St Prix appealed the decision and the case went all the way to the Supreme Court who referred questions to the Court of Justice of the European Union (CJEU). The Supreme Court asked, in particular, whether a woman who gives up work because of the late stages of pregnancy and child birth retains worker status under EU law.

The EU’s highest Court answered in the affirmative. In particular, it ruled that Article 45 of the Treaty on the Functioning of the European Union “must be interpreted as meaning that a woman who gives up work, or seeking work, because of the physical constraints of the late stages of pregnancy and the aftermath of child birth retains the
status of ‘worker’ within the meaning of that article, provided she returns to work or finds another job within a reasonable period after the birth of her child.”

The CJEU noted that “A Union citizen would be deterred from exercising her right to freedom of movement if in the event that she was pregnant in the host state and gave up work as a result, if only for a short period, she risked losing her status as a worker in that state”. The case is now referred back to the Supreme Court.

**Implications of the case for pregnant EEA nationals**

The Department for Work and Pensions (DWP) issued guidance to decision makers in the aftermath of the St Prix judgement. Unsurprisingly, DWP has taken a restrictive interpretation of the judgement. The guidance states that an award of Income Support can only be made up to 26 weeks in such cases, starting eleven weeks before expected date of birth and ending fifteen weeks after the birth.

However, Law Centre (NI) is of the opinion that the judgement of the CJEU is not as restrictive as the guidance might suggest. We would suggest that the ‘reasonable period’ could be interpreted as extending up to 39 weeks in line with statutory maternity leave and maternity allowance and possibly longer in some situations.

The DWP interpretation seems to offer no possible extension of the fifteen week period where the “specific circumstances” of the case might require as considered by the CJEU and is therefore potentially open to challenge.

The judgement is also important in that the CJEU stressed that Article 7 (3) of the Directive is not an exhaustive list of the circumstances in which an EEA national worker, who is no longer in employment, can nevertheless retain worker status.

This leaves the door open for possible further extension of the right. The Court acknowledged that if the right was not extended in cases such as St Prix, women could be deterred from exercising their fundamental right to free movement. This is because in the event of becoming pregnant in the host member state and being forced to give up employment or seeking employment they would lose worker status and eligibility for benefits.

**Law Centre cases**

Law Centre (NI) has recently represented in some cases on this issue.

In one case, within weeks of the decision being issued, we were successful in convincing the Department that a Lithuanian national benefited from the judgement. Our client had been working for less than twelve months before losing her job. She registered as unemployed with the Jobs and Benefits office and claimed Jobseeker’s Allowance. She had retained her worker status as she had been in genuine and effective work and was thus a qualified person under the Directive and domestic Regulations. The Tribunal accepted the applicability of the St Prix judgement, overturned the decision and ordered that all money be backdated.

It will be interesting to see how case law develops around the judgement and in particular what constitutes a reasonable period.

Law Centre (NI) welcomes referrals on the issue. Contact our advice line, Monday to Friday, 9.30am to 1pm, 028 9024 4401.

**Changes to residence rules for claiming benefits**

The Law Centre has updated its popular briefing explaining the timeline of changes to habitual residence and residence requirements for claiming benefits, which affect both migrants and UK nationals.

This briefing is of particular interest to advisers and organisations working with migrants, or with UK residents moving back to the UK after a period of residence abroad. It was originally published in August 2014 but some aspects of the changes are now better known.

Read the updated briefing here: [http://www.lawcentreni.org/Publications/Law%20Centre%20Information%20Briefings/Habitual-residence-and-right-to-reside-requirements-January-2015-update.pdf](http://www.lawcentreni.org/Publications/Law%20Centre%20Information%20Briefings/Habitual-residence-and-right-to-reside-requirements-January-2015-update.pdf) or request a copy from the Law Centre’s Communications Unit: catherine.couvert@lawcentreni.org or phone 028 9024 4401.

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1 Jessy Saint Prix v Department for Work and Pensions C-507/12
2 ibid paragraph 46
3 ibid paragraph 44
4 ibid paragraph 42
5 Memo DMG 25/14
6 Ibid paragraph 6
Bank of Scotland plc held to account

The Northern Ireland High Court has recently handed down judgement in test cases concerning the mortgage arrear practices of Bank of Scotland plc – see Bank of Scotland plc v Rea & Others [2014] NI Master 11.

The judgement is critical of Bank of Scotland plc and the lender is held to account over poor practice in dealing with borrowers’ mortgage arrears.

These were joined test cases brought in order to address a widespread practice.

Curious rise in monthly instalments

The cases all involved claims for possession by Bank of Scotland plc of the family home following the accrual of mortgage arrears. Housing Rights Service provides representation to borrowers facing possession proceedings and in 2013 a pattern was identified of unexplained increases to the contractual monthly instalments of Bank of Scotland plc customers. In some cases the contractual monthly instalments had increased by hundreds of pounds, despite there being no rise in the banks interest rates.

Following further investigation it appeared that the Bank of Scotland had been capitalising the borrowers’ mortgage arrears by adding the arrears to the outstanding mortgage balance, without the borrowers’ consent. This resulted in an increased mortgage instalment, so that in effect the customers were paying off the arrears but were not aware of this, nor aware as to how much was being paid to address the arrears. Significantly the bank continued to proceed with legal action to seek possession of the properties and sought additional payments towards the arrears in order to prevent the loss of their home.

Following identification of this issue the Chancery Court regularly refused to grant Orders in such cases, and three test cases were agreed upon to address the issues raised. The cases were variously a claim for possession by the Bank, an application for a stay of enforcement of a possession order, and an application to enforce a suspended order. In two of the cases there had been regular and significant payments being made on the account.

Practice questioned by Chancery Master

Master Ellison noted that all three cases raised a point of some importance.

- Whether the lender may consolidate (capitalise) arrears with the effect of increasing the contractual monthly instalment to spread those arrears over the remaining term of the mortgage, and also; rely on the arrears so consolidated as outstanding arrears for the purpose of possession proceedings.

As Bank of Scotland plc did not accept that the manner in which the mortgage accounts were restructured amounted to capitalisation, it was necessary for the court to also address the issue as to whether the practice was in fact capitalisation.

Difficulties faced by affected borrowers

The defendants argued that the practice adopted by Bank of Scotland plc was unfair because it prevented them from making a payment proposal to the court to repay the arrears. Ultimately this prevented the court from exercising its discretion to defer possession.

Section 36 of the Administration of Justice Act 1970 and section 8 of the Administration of Justice 1973 provide the court with discretion to adjourn proceedings or make a suspended order for possession on terms that the defendants pay the arrears within a defined period of time that the court regards as reasonable. The practice of Bank of Scotland plc and lack of clarity in respect of the account figures appeared to compromise this discretion.

The practice further compromised the affordability of payments to arrears, as the Bank was seeking a much higher payment than was necessary to address the arrears.

As noted by Master Ellison:

“The defendants….contend that, for reasons I shall explain, the practice is an unconscionable one because it prevents them from putting a proposal to repay the arrears to the court and prevents the court from exercising, or exercising properly, its discretion to defer discretion.” (para 4)

Furthermore:

“The position of the defendants is that they do not understand how these provisions could have allowed the plaintiff on the one hand to revise their monthly instalments to include contributions towards outstanding arrears and on the other hand to claim in proceedings for possession that those arrears remain overdue, given that the plaintiff itself has arranged for them to be repaid by way of monthly instalments over the remainder of the mortgage term.” (para 19)

Good capitalisation or bad capitalisation?

The Bank argued that they could still rely on consolidated arrears for the purpose of possession proceedings, and contended that consolidated arrears were not extinguished because the Bank had taken the step of consolidation unilaterally. The Bank stated that their practice of adding the arrears to the monthly instalment was in fact a duty under their mortgage contract, and that as the arrears had not been extinguished on their accounting system then this did not equate to capitalisation.

However within his judgement Master Ellison refers at length to previous case law and the regulatory framework derived from the Financial Conduct Authority. He is unequivocal in his assessment that the lender’s practice of restructuring mortgage accounts so that arrears are included within a revised monthly instalment is capitalisation.
Master Ellison conveyed his view that:

"Consolidation is an objective fact; the arrears are either consolidated by being absorbed into increased contractual monthly instalments or they are not." (para 24)

Furthermore the court states:

"Where, as in the present cases, the plaintiff consolidates unilaterally, without any attempt to secure the borrowers agreement and without any assessment of affordability, that is extremely "poor" capitalisation according to the definition and criteria of the Financial Conduct Authority." (para 54)

**Court criticises practice of ‘double billing’**

Following the finding of the court that the practice adopted by Bank of Scotland plc was indeed capitalisation, it was subsequently necessary to consider whether the lender was in a position to continue to rely on these arrears for the purpose of possession proceedings.

On dealing with this point the court observed that the lender was acting inconsistently with the legislation, namely section 36 of the Administration of Justice Act 1970 and section 8 of the Administration of Justice Act 1973. The court highlighted the fact that lenders cannot evade or contract out of the exercise of the court's discretion to defer possession under the legislation.

The court has stated that the capitalisation of the arrears in essence resulted in these arrears being extinguished, and as such it should not be permissible to rely on such arrears to ground possession proceedings.

The court was critical of the lenders actions in this regard:

"The plaintiff’s reliance on extinguished arrears may fairly be described as double–billing. Unilateral consolidation with double billing creates very real problems for borrowers, their advisers and the court. To the extent at least of the double billing, it is unconscionable." (para 57)

Although it is noted that additional arrears may have accrued in some instances subsequent to the unilateral capitalisation, the lender was unable to provide adequate evidence to make such arrears identifiable.

The court found that the practice of Bank of Scotland distorted the borrowers’ perception of affordability and made it impossible for the court to define or ascertain the period within which any payment proposal would clear the arrears.

Master Ellison noted his view:

"The plaintiff is, as it where, having its cake and eating it. There may not be fraud involved, but I would certainly not regard this as fair accounting. The plaintiff’s stance is one of extremely select subjectivity. It has somehow turned a tool of forbearance into its opposite." (para 51)

In concluding his judgment Master Ellison stated that the plaintiff ‘may face an uphill struggle’ to obtain orders for possession unless it provides affidavit evidence confirming:

a) any future consolidation of arrears will be in compliance with “good capitalisation” as defined by the Financial Conduct Authority, and

b) discloses all past consolidations and all past double billing events.

c) the true arrears and confirmation they are not relying upon pre–consolidation arrears.

**Summary**

The court has found that Bank of Scotland were adopting a practice of double billing and non-consensual capitalisation which was in conflict with the requirements of the Financial Conduct Authority. This practice was unfair as it evidently prevented borrowers from making payment proposals to the court to repay their arrears.

Clarity and transparency are essential during possession proceedings, otherwise very real problems can be created for borrowers, their advisers and the court. However the court has stated that the handling of accounts by Bank of Scotland in these instances, created ‘a mist of incomprehension, confusion and self-contradiction.’

The law provides protection to borrowers in that it affords the court discretion to stop possession action when a borrower can put forward a payment arrangement. However the actions of Bank of Scotland distorted this discretion. It is our view that this practice unfettered would undoubtedly have resulted in many borrowers unnecessarily losing their home.

Bank of Scotland Plc had initially lodged an appeal against this decision. However it withdrew its appeal against the judgement on 8 December 2014.

It remains to be seen at this time whether this is a practice that was unique to Bank of Scotland plc and whether the principles of the case may have application outside of Northern Ireland.
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**Belfast Solicitors’ Association**
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Email - info@belfast-solicitors-association.org

Follow us on Twitter / LinkedIn / Our Website for all upcoming CPD and Social Events Please also check that you are receiving BSA emails
BSA membership 2015

It is that time of year again when the Committee invite you, our members, to renew your Belfast Solicitors’ Association membership and to thank you for your support during the last 12 months.

For those who have never been members, we would encourage you to consider joining the BSA, the largest local solicitors’ association in Northern Ireland.

In the forthcoming year the Committee intends to significantly ramp up its representative commitment: and to continue to engage with the regulatory bodies, government and others for the benefit of the membership. However, to be truly representative and to have the strongest possible voice – we need your support and your membership.

Why join the Belfast Solicitors’ Association?

1. Collegiality

We are a collegiate profession. It is what distinguishes us from others. Membership of the BSA is open to those solicitors practising in the Belfast and Greater Belfast area with Associate membership for those outside the Greater Belfast area.

2. Social functions

We continue to organise social events throughout the year. For example on 20 February The Right Honourable the Lord Kerr of Tonaghmore delivered a lecture to celebrate the 800th anniversary of Magna Carta; the annual Golf Day at Malone Golf Club takes place on 21 May; our gala dinner will be held at Crumlin Road Gaol on 6 June; and a special judicial Question Time event is arranged for the autumn, to name but a few.

3. CPD training

We have another comprehensive, affordable and accredited CPD programme for the year ahead. These lectures are presented by local speakers, practitioners and members of the judiciary. Please go to our website and download the programme. Non-members may also attend but at the non-member rate.

4. CPD season ticket

New to 2015 a CPD season ticket is available to members for just £150. A season ticket holder can access all our scheduled CPD events for just £150. This is incredible value for money – and is exclusive to BSA members.

5. Costs reckoner

An updated costs reckoner summarising the various costs scales and fees for all court tiers will be provided to BSA members. In the forthcoming year we intend to conduct a review of the High Court costs guide to include recommended uplifts for medical and professional negligence, commercial and construction and other complex actions. We will actively seek the views of our members during this consultation exercise.

6. Charitable opportunities

This year our nominated charity is Helping Hand, the charity for the Royal Belfast Hospital for Sick Children. We want to raise £30,000 for Helping Hand this year. We have a designated JustGiving page in which you can make your donation; and we encourage you to donate and fundraise during the year for this very worthy cause.

To quote from Theodore Roosevelt’s famous “Citizenship in a Republic” speech, the Committee of the Belfast Solicitors’ Association wants to be “the men (and women) in the Arena”; and we look forward to your support.

Belfast Solicitors’ Association is delighted to announce Paul Dougan as the appointed Chair of the Association for 2014/2015. Paul is a Solicitor with John J Rice & Co. His experience can be found in criminal defence work, inquest representation and judicial review, amongst other areas. A diligent committee member since 2009, Paul was previously the Chair of the CPD Sub Committee before becoming an Office bearer in 2012.
Book Review

Review of “The Law of Property in Northern Ireland”
By Catherine Turner, Lauren Quinn & Richard Shields

This is a rare but welcome event, a new Northern Ireland text on Property law. It is only occasionally over the last 30-40 years that a publication on this particular area has been published. I still only have a small handful of local books to flick through seeking an answer to some obscure point which has been raised by a fellow colleague.

The opening acknowledgement of “Law of Property in Northern Ireland” refers to the book being aimed, first and foremost, at Undergraduate Students. The layout of the book is very similar to a standard text book with a useful table of cases, legislation and a basic glossary.

Also the first few chapters cover areas previously covered in much more detail in larger volumes of text books on Irish Land Law. However the content is written in a clear concise style that makes it easy to read and understand. This is no easy feat given the complexity of the subject.

There is also, refreshingly, references to the last report of the Northern Ireland Law Commission and its proposals for change and modernisation (which sadly seems to have fallen on deaf ears by our local Assembly).

Also of interest is reference to the Land Law Reform which have taken place in England & Wales (as long ago as 1925) and more recently in the Republic of Ireland. It does make for an interesting comparison and clearly highlights how much our Land Law has fallen behind and needs to be modernised.

The section on the Words of Limitation clearly highlights our current difficulties if incorrect wording is used particularly in a conveyance. It still amazes me that Northern Ireland remains the only jurisdiction where the correct words of limitation must still be used. Many conveyancing practitioners have been caught out by the narrowness of this interpretation and this section in this text clearly explains the problems and solutions.

Another notable positive of this book is the use of simple examples to explain a point. This is backed up by relevant references to decisions from both old and up to date cases.

The chapter on “The Extent of Property” I felt was particularly interesting. This is an area of property law often overlooked and seldom covered in any property text. I was particularly impressed by the excellent summary on the very relevant area that continually causes difficulties in every day conveyancing, that of defining what is a “Fixture” and what is a “Fitting”. The summary of the relevant case law and the land mark case of Botham –v- TSB Bank in this area is particularly good.

I can envisage myself referring to this in the future if there is a dispute over whether an item is a fixture or a fitting.

I have never been one to fully understand the complexities of “Law and Equity”. I feel students and those like myself who never got to grips with this area will benefit from the way this chapter on the most difficult of subjects attempts to introduce the key concepts of Equity that is relevant to Land Law. It is a short succinct chapter outlining the common maxims and explaining their implications in the context of property.

After the dryness of the chapter on Equity there is a much easier and straight forward series of chapters on registration and Land Law in the historical context. Again in the latter chapter I particularly liked the reference to the English 1925 legislation.

I am always surprised how often in conveyancing transactions there is an element of adverse possession. What also surprises me is how often fellow practitioners fail to remember the fundamental general principles of the Doctrine. The chapter in this book is particularly good on this subject as it clearly explains the principles of dispossession, possession and that the position must be adverse. Other aspects including the period of time, stopping time running and the difference between registered and unregistered lands is very well covered.

As it is such a relevant topic I felt it should take up two chapters. The second chapter attempts to tackle more recent developments and gives a good summary of the decision in Pye –v- Graham on the conflict with this concept and Article 1 of the Protocol 1 to the European Convention on Human Rights. As with a number of the chapters the text provides interesting information as to the position in England & Wales and the difference in our jurisdiction.

This theme continues in the following chapters on Leases, Licences and Proprietary Estoppel. But although the text makes comment on the position in different jurisdictions, it does clearly state what the Land Law is in these areas in our jurisdiction. On the chapter on Leases there is particular reference to a Deasy’s Act of 1860 which is still now extremely relevant to our Leasehold Law. As I stated earlier there is a distinct lack of up to date conveyancing texts that deal with new and developing areas of property law. The authors don’t shirk on covering proprietary estoppels and the effect that the Property (NI) Order 1997 had on freehold covenants.

The consistency in the text continues with an equally good chapter on Incorporeal Hereditaments. Similar to the chapter on Adverse Possession, all the main constituents are covered in sufficient detail which will assist both a student and an experienced practitioner. For the latter part of the book it will help in reaffirming to the practitioner the necessary requirements for different rights required either by grant or by prescription.

Similarly the latter chapters on Ownership, Mortgages and the Law relating to Wills are up to date, helpful and practical for the student and the more senior practitioner. Since the recession has produced a considerable volume of significant decisions from the Courts there is some excellent commentary on recent Northern Ireland decisions particularly in the area of mortgages.

In conclusion I feel this is an excellent addition to a small number of texts we have available to us and I would whole heartedly recommend this not only to students but to solicitors and barristers, who have an interest and regularly practise in Property law.

We are grateful to Simon Murray of Murray Kelly Moore, Solicitors, Bangor for this review.
Do or die deadlines

Douglas Adams (author of Hitchhiker’s Guide to the Galaxy) once said:

‘I love deadlines. I like the whooshing sound they make as they fly by’.

Sadly, not all of us can have the relaxed attitude to deadlines that this late comic genius did. In the legal profession, a missed deadline or time limit can result in major problems for a client in being unable to pursue a claim and the potential for a costs award against you, plus a possible negligence claim. For all lawyers, and particularly those working in litigation, deadlines are crucial and a fact of everyday life. They can therefore, not unexpectedly, also be a tremendous source of stress.

It is a fact of life that prolonged stress can lead to clinical depression. Depression is exhibited by symptoms that include an inability to concentrate, a lack of motivation or interest in anything, sleeplessness, overwhelming apathy and a sense of hopelessness. Depressed lawyers may make it in to work, but will not open the post – may even hide it, hoping that if they ignore it, it will go away. They will shuffle papers around, may even tap at the computer for a while, but will not get any productive work done. Depression and deadlines don’t mix. If you, or a colleague, seem to be suffering from any of these symptoms – including indifference to matters which might be regarded as urgent – this is too important to be ignored. See your GP immediately.

Whilst depression can be cured, stress related depression is best avoided in the first place. If deadlines are a major contributory factor to the pressure and anxiety you face, then learning to deal with them and to manage time well can avert problems later.

- Recognise that deadlines are necessary and that they bring order and allow you to plan ahead.

- Especially if you have multiple deadlines, keep a calendar (virtual or real) with the deadlines clearly marked and put it where you can see it. You could also use this to plan your work towards these deadlines.

- Find out in advance what extensions and allowances are available, how important the deadline really is, and where possible, make a ‘plan B’ just in case you are unable to make the deadline despite your best efforts. Hopefully you will never need it but knowing that you do have a contingency plan could help to alleviate the stress.

- Establish exactly what needs to be accomplished by the deadline.

- Break up all that needs to be done into smaller tasks and focus on them in turn, setting ‘micro-deadlines’ for each if this helps. Focus on these plateaus rather than the whole looming mountain, and reward yourself each time you achieve something.

- Don’t procrastinate or put everything off until the last minute – if something goes wrong or something else crops up, you won’t have time to deal with the essentials to meet the deadline.

- Don’t be afraid to ask for help, either from a colleague or a superior, or to delegate parts of the work where appropriate.

- When planning towards the deadline, build in a little extra time to allow for unexpected setbacks or things which crop up.

- Prioritise carefully, thinking about how urgent and important each task is.

- Make a task list. Be realistic when listing the tasks you need to do each day and take satisfaction in crossing off tasks as you do them.

Deadlines can cause stress but they are a necessary part of the legal profession and good client service. Learning to deal with them and work with them is an important part of being the best lawyer you can be.

If you still find that you are not managing to keep up, then LawCare’s free and confidential helpline is available to you, 365 days a year:

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From the Courts - abstracts of some recent case law

CRIMINAL LAW

R V JOHN EDWARD HUGH HOLMES, ALAN VICTOR WILTON AND CHANEL WILTON

Sentencing. - manslaughter. - first defendant pleaded guilty to the manslaughter of the deceased; second defendant pleaded guilty to doing an act which had a tendency to pervert the course of justice and the third defendant has pleaded guilty to aiding and abetting that act of the second defendant (her father). - whether significant risk of serious harm to others. - aggravating and mitigating factors. - HELD that the first defendant be sentenced to 6 years imprisonment, 3 of which are to be custodial and that a suspended 3-month sentence imposed 1 month ago be activated consecutively to the custodial element; second defendant sentenced to 9 months’ imprisonment and third defendant has a conditional discharge imposed for a period of 12 months.

CROWN COURT
26 NOVEMBER 2014
WEIR J

R V JAMES HUTCHINSON

Appeal by the appellant against his conviction by a unanimous jury on 40 counts including rape, attempted buggery and indecent assault on a female child. - historic sexual abuse against 2 sisters. - whether the trial judge failed to provide the jury with a sufficiently careful direction on possible collusion in circumstances where there had been considerable delay in reporting the allegations, earlier complaints were attempted to be made to the police but not pursued. - whether the trial judge failed to adequately direct the jury on evidence raising a possibility of innocent contamination. - cross-admissible evidence. - collusion. - credibility of complainants. - HELD that verdict correct.

COURT OF APPEAL
18 NOVEMBER 2014
COGHLIN LJ, GILLEN LJ, DEENY J

R V JAMES ALEXANDER SMITH AND PETER GREER

Appellants were jointly committed for trial on counts of murder, attempted murder, possession of a shotgun with intent to endanger life and possession of a handgun with intent to endanger life. - jury returned unanimous verdicts of guilty on all counts in respect of each appellant and both were sentenced to life imprisonment for murder. - first defendant’s life sentence tariff fixed at 21 years and the second defendant’s fixed at 20 years. - appeal against conviction on the one ground that the Crown counsel had invited the jury to identify the appellants in the dock and having done so, the trial judge in his charge to the jury should have issued a warning to the jury about the approach it should take to such evidence and what weight, if any, it should give it. - appeal against evidence. - whether the judge erred in giving the Lucas direction in the case. - whether the trial judge erred in his directions in relation to adverse inferences to be drawn from the appellant’s failure to give evidence.

- HELD appeals dismissed.

COURT OF APPEAL
25 NOVEMBER 2014
GIRVAN LCJ, COGHLIN LJ, GILLEN LJ

EDUCATION

IN THE MATTER OF AN APPLICATION BY AMANDA HARPER AND REBECCA LOUDEN (A MINOR) ACTING BY JANICE LOUDEN, HER MOTHER AND NEXT FRIEND FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

Applicants challenge the decision of the Minister for Education to approve the Development Proposal proposing the amalgamation of Newtownbreda High School (“NB”) and Knockbreda High School (“KB”) by the closure of both schools and the opening of a new school. - whether the child’s mother can prove either consent or acquiescence by the father in the opening of KB. - whether the Minister failed to give due weight to the overwhelming opposition to the proposal to amalgamate that was expressed in the consultation process. - whether the Minister failed or failed adequately to have regard to the independent evidence that, in the majority of cases, the educational performance of schools is adversely affected by amalgamation. - whether the Minister (and the submission to the Minister) failed to provide a reasoned explanation as to how the proposed amalgamation would benefit NB. - whether the decision of the Minister was Wednesbury unreasonable. - HELD that application be dismissed.

HIGH COURT
25 JUNE 2014
TREACY J

FAMILY LAW

BELFAST HEALTH AND SOCIAL CARE TRUST V R AND C

Application by Trust before the Court to dispense with parental consent to permit two children to be freed for adoption pursuant to a summons issued under a.18 Adoption (NI) Order 1987. - whether parents are withholding their consent unreasonably. - test of reasonableness. - a.8 ECHR rights. - HELD that the consent of parents are dispensed with and both boys are freed for adoption.

COUNTY COURT
5 DECEMBER 2014
PHILPOTT HHJ

IN THE MATTER OF L (A CHILD) IN THE MATTER OF THE CHILD ABDUCTION AND CUSTODY ACT 1985; W V C

Plaintiff is the father of the child, who is Australian, and the defendant is the child’s mother, who is from Northern Ireland. - mother, father and child returned to Northern Ireland for a holiday and stayed in this jurisdiction with the child while the father returned to Australia. - father now seeks an order that the child’s detention in Northern Ireland has been wrongful and in breach of the father’s custody rights and seeks an order for the child’s return. - whether the child’s mother can prove either consent or acquiescence by the father in the
**IN THE MATTER OF Q (A CHILD); J V G**

Plaintiff is Canadian and the father of Q who is three years old. – defendant is the child’s mother and is from Northern Ireland. – mother and child returned to this jurisdiction and have stayed ever since. – father now seeks an order that Q’s removal to and retention in Northern Ireland is unlawful and in breach of his custody rights and an order that the child be returned to Canada. – father’s excessive use of and/or addiction to drugs and alcohol. – whether the father had acquiesced to the child’s return to Northern Ireland. – whether grave risk of physical or psychological harm to the child. – whether the court should exercise discretion. - HELD that acquiescence has not been proved by the mother. – Q is at grave risk of physical or psychological harm or of being placed in an intolerable situation if his return to Canada is ordered. - the Court exercises its discretion against the father and application dismissed

**HIGH COURT**

22 DECEMBER 2014

**O’HARA J**

**FIREARMS**

**IN THE MATTER OF AN APPLICATION BY GMJ FOR JUDICIAL REVIEW AND IN THE MATTER OF AN APPLICATION BY THE MINISTER OF JUSTICE DATED 4 APRIL 2013**

Applicant was granted leave to challenge the decision of the Minister of Justice to refuse the applicant’s appeal against the decision of the Chief Constable of the PSNI revoking the applicant’s Firearm Certificate (FAC). - applicant is a part-time security guard keenly involved in country sports. - PSNI had conducted an investigation into the suitability of the applicant holding an FAC given his diagnosis of epilepsy. - whether there had been a genuine mistake on the part of the applicant in not declaring epilepsy on an application to vary his FAC. - whether the decision was procedurally unfair in that the applicant had never seen the anonymous letter which acted as the catalyst for the PSNI investigation into the applicant’s fitness to hold a FAC. - whether the Minister had acted irrationally. - whether breach of the applicant’s Article 1 First Protocol Rights and/or discrimination under s. 21B of the Disability Discrimination Act 1995. - HELD that application for judicial review of the decision of the Minister of Justice is rejected

**HIGH COURT**

23 DECEMBER 2014

**HORNER J**

**INSOLVENCY**

**PAUL BROWNE V DAVID MAVROUDIS**

Petitioning debtor (PD) presented a petition to the Court in which he seeks his own bankruptcy. – PD, apart from one small historic debt, does not have any other debts or assets in this jurisdiction and his insolvency lies in commercial property investment activities conducted by him in the Republic of Ireland. – his liabilities amount to several million euro. – whether Northern Ireland is now the PD’s Centre of Main Interests (COMI). – whether the Court has international jurisdiction under the Regulation 1346/2000 to make the bankruptcy order sought by the PD. – forum shopping. – requirement and scrutiny of COMI. – HELD that on the facts of the case the PD’s COMI does not lie in the jurisdiction of the court on the grounds of either professional domicile or habitual residence, bankruptcy order refused and petition dismissed

**HIGH COURT**

20 OCTOBER 2014

**KELLY M**

**JUDICIAL REVIEW**

**IN THE MATTER OF AN APPLICATION BY JOHN MCDAlID FOR JUDICIAL REVIEW**

Appellant seeks to judicially review the decision of the Master whereby she refused to grant the relief sought by the applicant. – applicant also seeks leave to judicially review the decision of another High Court Judge. – whether the applicant was applying for judicial review because of procedural errors and mistakes and not the merits of the decision. - HELD that the Court has no jurisdiction to judicially review the decision of another High Court Judge, and that the application for leave to judicially review the decision of the Master must fail since it does not succeed in overcoming the modest threshold necessary in judicial review applications for a number of grounds. - appellant will have opportunity to make his arguments in any appeal hearing before the Chancery Judge

**HIGH COURT**

24 SEPTEMBER 2014

**HORNER J**

**IN THE MATTER OF AN APPLICATIAON BY JR65 FOR JUDICIAL REVIEW AND IN THE MATTER OF DECISIONS OF THE DEPARTMENT OF HEALTH AND MINISTER FOR HEALTH, SOCIAL SERVICES AND PUBLIC SAFETY**

Lifetime ban on blood donations by gay men who have had sex with men. - applicant seeks leave to adduce further evidence in support
From the Courts -
abstracts of some recent case law

REAL PROPERTY

DEANE BELFORD AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JOHN DALE RAYMOND SANDFORD DECEASED V IVAN GLASS AS PERSONAL REPRESENTATIVE OF THE ESTATE OF WILLIAM ROBERT JACOB SANDFORD DECEASED

On appeal from the County Court family dispute concerning family dispute concerning the title to a small piece of ground referred to as "The Stump" which is unregistered and of little monetary value and contains a listed tower. - whether one of the brothers had established a possessory title to the Stump which cannot now be defeated by the other brother's paper title by reason of more than 12 years adverse possession. - whether the disclosure of the father's will altered the nature of the possession. - HELD that appeal dismissed HIGH COURT 22 DECEMBER 2014 MORGAN LCJ

SOLICITORS

IN THE MATTER OF AN APPLICATION BY KYLE JONES FOR JUDICIAL REVIEW

Challenge to decisions of the PSNI to firstly to open and read a letter from the applicant to his solicitor; and secondly to refuse to provide an undertaking that further communications between the applicant and his solicitor would not be opened and read. - applicant was an ex-police officer who was dismissed from the police following allegations relating to drugs. - applicant was arrested for armed robbery, imprisoned and released on bail. - while in prison he drew up a list containing personal details of police officers which was provided to police officers by a fellow inmate of the applicant. - applicant arrested for possessing/collecting information likely to be of use to terrorists contrary to s.103 (a) Terrorism Act 2000. - following a search of his house a sealed letter to his solicitor written by the applicant was seized. - whether privileged material which should be returned to the applicant immediately or opened by the PSNI on the suspicion of containing more details of PSNI officers. - applicant seeks a declaration that the decision made by the PSNI to open and read a private letter from the applicant to his solicitor was unlawful; a declaration that the decision of the PSNI to refuse to provide an undertaking that no further items of correspondence protected by legal professional privilege would be opened was unlawful; an order of certiorari to quash the decision and an order of Mandamus requiring the PSNI to reconsider the position. - whether the decisions were in breach of the applicant’s common law right to privileged communication with his solicitor. - whether the decisions were in breach of the applicant’s a.6 and 8 ECHR rights. - whether the decisions were irrational and unfair in the circumstances. - whether the applicant had a legitimate expectation that the letter would not be opened by the PSNI. - whether breach of common law right to legal professional privilege. - legal professional privilege and the iniquity exception. - HELD that the removal of the applicant’s right to legal professional privilege was based on mere suspicion and without any accompanying safeguards and with an absence of process. - application allowed HIGH COURT 25 FEBRUARY 2014 TREACY J

of the apparent bias ground of challenge. - whether the impugned decision was infected by apparent bias. - applicant seeks leave to adduce fresh evidence, namely comments made by the respondent Minister to the Northern Ireland Assembly and a BBC news article reporting comments made by the Minister in his capacity as a DUP MLA. - relevance of further evidence. - whether a fair-minded and informed observer would conclude that there was a real possibility that the Minister was biased. – HELD that the test for apparent bias has been met and the impugned decision is infected with apparent bias HIGH COURT 8 JANUARY 2015 TREACY J

PRODUCT SAFETY

ATTORNEY GENERAL FOR NORTHERN IRELAND AND BELFAST CITY COUNCIL V ASHLEY JAMES CAMPBELL, INFERNAL PUBLISHING LIMITED, A PERSON KNOWN AS AIDEN KERR, IAN BROWN, SUSAN BRADSHAW, SOHO BOOKSHOP AND THE OWNER/OCUPPIER OF, OR ANY PERSON INVOLVED IN A BUSINESS OR ENTERPRISE AT 31-33 GRESHAM STREET, BELFAST

Application by the Attorney General for an injunction restraining certain named parties and also two other categories of persons from selling what the plaintiffs contend to be dangerous products. - products are not unlawful nor prohibited under the Misuse of Drugs Act but were deemed harmful following forensic investigation of the drugs. - strongly arguable case that these are dangerous products and the defendants have been involved in the distribution of these products. - whether unlawful since they were not prohibited by the Misuse of Drugs Act. - whether public nuisance. - obligations of distributors under the General Public Safety Regulations. - HELD that injunction granted HIGH COURT 13 NOVEMBER 2014 DEENY J
Personal Injury and Child Abuse

“...child abuse can include physical harm and neglect, social harm, sexual abuse and emotional harm. .....letters from victims of child abuse also addressed a broader range of potentially harmful actions such as bullying, the deliberate subjection of children to danger, and lack of concern for children’s rights.”

Legislation

Limitation (Northern Ireland) Order 1989

Articles

The Rotherham question (discusses where the victims of Rotherham should seek compensation)
Scorer: 2014 164 NLJ 9

Personal injury: the blame game (whether organisations can be vicariously liable for sexual misconduct by their employees where there is a sufficiently “close connection” between the employment and the acts complained of)
Scorer: 2013 163 NLJ 39

Personal injury: Handle with kid gloves (the law in relation to children who sue their parents)
Platt: 2011 161 NLJ 762

Personal injury: In the confessional (examines the legal principles behind the child abuse scandal in the Catholic Church)
2011 161 NLJ 1618-1620

Personal injury: A lottery for litigants? (discusses with reference to numerous cases the actual limitation period)
Jefferson: 2009 159 NLJ 379

Limitation, vicarious liability and historic actions for abuse: a changing legal landscape (reviews case law illustrating the developments in the law relating to claims of historic child sex abuse by assailants exploiting positions of trust derived from their employment or other form of work capacity)
Burton: 2013 JPI Law. 2, 95-126

Opening old wounds (discusses historical abuse cases)
O’Sullivan: 2010 160 NLJ 763

JXL v Britton: personal injury - damages – children (considers the Queen’s Bench Division judgment in JXL v Britton on the damages to be awarded to two sisters who, at the ages of seven and 10-11 years respectively, had been raped by the defendant. Assesses the account to be taken of: (1) the long-term psychiatric harm suffered by both claimants; (2) their distress, humiliation and the lengthy delay in seeing their complaints vindicated; and (3) their loss of earnings and medical treatment costs.)
Fulbrook, J. 2014 4 JPIL C234-C237

Cases

Lister and others v Hesley Hall Limited
2001 UKHL 22

A v Hoare and other appeals
Limitation of action – trespass to the person – period of limitation – extension – actions alleging sexual offences – claimants bringing actions after more than six years – whether claims subject to six-year limitation period – whether claims statute-barred – whether court should exercise discretion to extend time limits
[2008] UKHL 6; [2008] All ER (D) 251 (Jan)

AB and others v Nugent Care Society; R v Wirral Metropolitan Borough Council
Limitation of action – trespass to the person – period of limitation – extension – actions alleging sexual offences – claimants bringing actions in damages long after events – judges exercising discretion to disapply limitation period in majority of cases – whether judges erring in exercising discretion
[2009] EWCA Civ 827

Maga (by his Litigation Friend, the Official Solicitor to the Senior Courts) v Trustees of the Birmingham Archdiocese of the Roman Catholic Church
Vicarious liability – employer and employee – act outside scope of employment – defendant church’s assistant priest sexually abusing claimant for several months in 1976 – whether church vicariously liable for priest’s acts - limitation of action – when time begins to run – actions in tort – claimant commencing claim for damages arising from alleged sexual abuse when he was a boy by defendant church’s assistant priest – whether claimant of ‘unsound mind’ – whether claim time barred
2010 EWCA Civ 256
JXL v Britton

Damages totalling £131,674 and £232,360 were awarded to two sisters who had suffered rape as children, resulting in psychiatric damage falling within the moderately severe bracket in the Judicial College Guidelines. In addition to general and special damages, aggravated damages were awarded for distress and humiliation, including the fact that no investigation had taken place for more than 20 years after the offences.

[2014] EWHC 2571 (QB);

Above cases and journal articles are available from the library. Please ask a member of staff for details.

NI Cases

AC and BC v The Board and Trustees of Cabin Hill School

Damages for psychiatric injury. - plaintiffs are parents of boy who was allegedly the victim of sexual assault by prefect fellow boarder. - damages for personal injuries, loss, breach of contract and misrepresentation. - nervous shock - whether plaintiffs are primary or secondary victims. - foreseeability. - matters to be tried as a preliminary issue are whether plaintiffs have valid claim in law and whether proceedings are statute barred. - HELD that plaintiffs should be permitted to take their case to trial and proceedings are not statute barred [2005] NIOB 45

Above cases are available free of charge from the Libero database via the Law Society website.

Books


Missing Wills

Re: William Brennan
Address: Brookfields Nursing Home, Magherafelt
Previous Address: 59 Tirgarvil Road, Upperlands, Maghera
Date of Death: 2 August 2014
Would any person having knowledge of the whereabouts of a Will made by the above named deceased, please contact:
John J McNally & Co Solicitors
2 Monemore Road Magherafelt BT45 6AD
Tel: 028 7953 1537

Re: Annie Coates Miller (deceased)
Late of: 48 Demesne Road, Holywood, County Down BT18 9NB
Date of Birth: 25 March 1932
Date of Death: 17 September 2014
Would any person having knowledge of a Will made by the above named deceased please contact:
Pamela Charters Millar McCall Wylie LLP Solicitors Eastleigh House 396 Upper Newtownards Road Belfast BT4 3EY Email: pamela.charters@mmwlegal.com

Re: Margaret Barron Stitt (deceased)
Late of: 70a Drumadoon Drive, Dundonald, Belfast BT16 2LZ
Date of Death: 6 August 2014
Would any person having custody of or information as to the whereabouts of a Will for the above named deceased, please contact:
Margarita Sloane Donaldson McConnell & Co Solicitors Castle Chambers 1 Castle Street Lisburn BT27 4SR

Re: Elizabeth Duffy (deceased)
Late of: Ard Mhacha Nursing Home, Armagh BT61 8AR
Date of Death: 14 November 2014
Would any person having any knowledge of the whereabouts of a Will for the above named deceased extraordinarily known as “Betty” please contact the undersigned as soon as possible:
The Elliott Trainor Partnership Solicitors 3 Downshire Road Newry County Down BT34 1EE Tel: 028 3026 8116 Fax: 028 3026 9208 Email: info@etpsolicitors.com

Re: John McCourt
Late of: 311 Rathmore Gardens, Antrim BT41 1JQ
Date of Death: 17 August 2014
Would any person having any knowledge of the whereabouts of a Will made by the above named deceased please contact the undersigned as soon as possible:
O’Hare Solicitors St George’s Buildings 37-41 High Street Belfast BT1 2AB Tel: 028 9023 4800 Fax: 028 9024 3391 Email: Andrea@oharesolicitors.com

Re: John Fisher
Late of: 14 Ballymartin Village, Ballymartin, Newry
Formerly of: “The Greyhounds”, Well Road, Warrenpoint
Date of Death: 10 December 2014
Would any person having knowledge of the whereabouts of any Will made by the above named deceased, please contact the undersigned as soon as possible:
Fiona Wallace Carson McDowell Solicitors Murray House 4 Murray Street Belfast BT1 6DN Tel: 028 9024 4951 Email: fiona.wallace@carson-mcdowell.com

Re: Margaret Elizabeth (Beryl) Williamson
Late of: Manor Lodge Care Home, 5 The Manor, Black’s Lane, Belfast BT10 0PL
Formerly of: 1 Rathcool Street, Lisburn Road, Belfast BT9 7GA
Date of Death: 31 October 2014
Would any person having any knowledge of the whereabouts of a Will made by the above named, please contact the undersigned as soon as possible:
James G Rice James G Rice & Co 33 Church Street Ballynahinch County Down BT24 8AF Tel: 028 9756 2726/9756 2626 Email: legal@jamesgrice.co.uk

Re: Anne Patricia Hogan (deceased)
Late of: 199 Upper Lisburn Road, Finaghy, Belfast BT10 0LL
Date of Death: 14 December 2014
Would any person having any knowledge of the whereabouts of a Will made by the above named deceased, please contact:
Brian Weston Fisher & Fisher Solicitors 165 Sandy Row Belfast BT12 5ET Tel: 028 9024 7050 Fax: 028 9043 8980 Email: belfast.office@fisherandfisher.co.uk

Re: Edward Bate
Late of: 86 Ravenswood Park, Belfast BT5 7PU
Would any person having any knowledge of the whereabouts of a Will made by the above named, please contact the undersigned as soon as possible:
James G Rice James G Rice & Co 33 Church Street Ballynahinch County Down BT24 8AF Tel: 028 9756 2726/9756 2626 Email: legal@jamesgrice.co.uk

Re: Sheila Monica Jackson (deceased)
Late of: 5 Knockmarloch Park, Belfast BT4 2LD
Date of Death: 6 September 2014
Would any person having knowledge of the whereabouts of a Will for the above named deceased, please contact:
Michael Andress & Company Solicitors 961 Upper Newtownards Road Dundonald Belfast BT16 1RL
Classifieds

Re: Stewart Alexander Murray (deceased)
Late of: 50 Glenvarlock Street, Belfast BT5 5GS
Previously of: 7 Durness Walk, Belfast BT16 2NH
Date of Death: 6 January 2015
Would any person having any knowledge of the whereabouts of any Will made by the above named deceased, please contact: Joseph F McCollum & Company Solicitors 52 Regent Street Newtownards Co Down BT23 4LP Tel: 028 9181 3142 Fax: 028 9181 2499 Email: ciara@josephmccollum.co.uk

Re: Ralph Kennington Binney
Late of: 101 Upper Lisburn Road, Belfast Formerly of: 92 Tullybrannigan Road, Newcastle, County Down
Date of Death: 11 March 2015
Would any persons having any knowledge of the Last Will and Testament of the above named kindly contact: Laura Bradley Haugheys Solicitors 138 Upper Lisburn Road Belfast BT10 0BE Tel: 028 9043 1222 Fax: 028 9061 2511

Re: Patrick Convery
Late of: 32 Culnady Road, Upperlands, Maghera, County Londonderry BT46 5TN
Date of Death: 10 August 2008
Would any persons having knowledge of the whereabouts of the Will for the above named deceased please contact: O’Hare Solicitors 37-41 High Street Belfast BT1 2AB Tel: 028 9023 4800 Fax: 028 9024 3391

Missing Title Deeds

Re: Margaret Elizabeth (Beryl) Williamson (deceased)
Premises: 1 Rathcool Street, Lisburn Road, Belfast BT9 7GA
Date of Death: 31 October 2014
Would any person having any knowledge of the whereabouts of the Documents of Title for these premises, please contact the undersigned as soon as possible: James G Rice James G Rice & Co Solicitors 33 Church Street Ballynahinch County Down BT24 8AF Tel: 028 9756 2726/9756 2626 Email: legal@jamesgrice.co.uk

Re: Hazel Grove
Premises: 31 Hawthorden Road, Belfast BT4 3JU
Date of Death: 14 December 2014
Would any person having knowledge of the whereabouts of the Documents of Title in respect of the above premises, please contact: McLernon Moynagh Solicitors 144 High Street Holywood County Down BT18 9HS Tel: 028 9042 2038 Fax: 028 9042 5292
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