A perfect holiday... but what are you bringing back?
President’s Message

I have often wondered how the late Alistair Cook managed to produce his “Letter from America” for the BBC week after week, year after year, for almost sixty years. I listened to those broadcasts on and off since I was a child and it never ceased to amaze me the way he could start off with one subject and then, with the aid of various links and connections, end up talking about something completely different. It all flowed so effortlessly and he made it all sound so easy. How do you think he might have dealt with, for example, Access to Justice?

“I was recently touring in the west of England and found myself in Bristol, with its grand merchants’ houses built close to the port, but not close enough to be affected by its sounds and smells, but particularly the smells. Bristol, in those days a bustling and prosperous hive of maritime activity but now virtually inaccessible to all but the smallest of commercial vessels, was once one of Britain’s principal sea ports. Its merchants derived the wealth with which they built their fine houses from shipping various commodities on the infamous triangular trade route. Manufactured goods were shipped from Bristol to Africa where they were traded for slaves, who were then sold in the Americas. The ships then returned to Bristol with cargoes of tobacco, cotton, etc. from the Colonies.

“But the days of slavery were already numbered and in Britain campaigns were being mounted to bring about its abolition. The anti-slavery lobby in the House of Commons was spearheaded by Fox and Wilberforce but it was the impassioned speeches by Lord Grenville in the House of Lords that finally won the day. He argued that the trade was “...contrary to the principles of justice, humanity and sound policy...”. However, the Slave Trade Act of 1807 was ineffective in putting paid to the barbarous practice and it was not until the passing of the Slavery Abolition Act in 1833.

“Meanwhile, back in the USA, the southern states were becoming increasingly dependent upon their principal product, cotton, and also upon slavery as its means of production. The predominantly industrial northern states had consigned slavery to the history books because of the plentiful supply of immigrant labour from Europe, most of whom were fleeing from oppression and famine and thus were not inclined to swap one form of enslavement for another. The whole thing came to a head in the Civil War once the southern states seceded from the Union.

“Slavery may have been abolished in the United States as a result of the Civil War but it did not greatly alter the attitudes of many of the white population in the deep south. It took another hundred years and the emergence of fearless crusaders like Martin Luther King and the birth of the Civil Rights movement to throw off the shackles of segregation and discrimination. The demand for civil rights became universal but particularly in Northern Ireland, that tiny western province of the United Kingdom with a population just over half that of Greater Manchester. Unfortunately, for reasons far too complex for me to explain, the clamour for civil rights rapidly evolved into a shooting war which dragged on with a steady loss of life and destruction of property for almost thirty years. The civil rights of the entire population became subjugated to the wills of those with other agendas for the duration of the conflict.

“Ulster has had a significance in the world order which is quite disproportionate to its size and names like Harry Ferguson, who revolutionised the agricultural industry, immediately spring to mind. In America, Ulster’s Diaspora not only provided many of the revolutionaries who were responsible for the birth of the nation but also the seed-bed of a whole series of US Presidents. Which is one reason, I suppose, in addition to the need to keep the Irish vote happy, why recent Presidents and in particular Bill Clinton, have taken such an interest in an issue which, in the global scale of things, is really very small beer.

“By and by the factions involved in Ulster’s conflict came to the conclusion that enough was enough. It was a long gestation period and not an easy birth but the Belfast Agreement that finally emerged in 1998 was facilitated by Bill Clinton, Bertie Aherne, Tony Blair and other individuals and bodies too numerous to mention. Many of the terms of that agreement were difficult for a lot of people to accept but there was an overwhelming desire for peace and it was finally accepted by a referendum held in May of that year.

“One of the products of the Agreement was the establishment of a local legislative Assembly in the old Parliament buildings at Stormont, an impressive neo-classical pile attractively situated on the outskirts of Belfast. A lot of legislation had been “on the stocks” in London for some time awaiting the establishment of just such an institution and could now be brought forward in Belfast for enactment. Ironically, because the local politicians had thrown their teddy in the corner, the Stormont Assembly was suspended and a lot of legislation which should have been enacted there had to be done by way of Orders In Council in London.

“One such Order in Council was the Access to Justice (Northern Ireland) Order 2003 under which, according to the explanatory note, the Northern Ireland Legal Services Commission, “...a body with responsibility for funding civil legal services and criminal defence services...”, was set up. I really must try to find out whether the litigants in Northern Ireland are now better served than they were previously and indeed whether their lawyers are being adequately and promptly paid for their work.

“Goodbye”

There you are, from Bristol to Access to Justice in a few easy steps!

John W D Pinkerton
August 2004
At this time of year many tourists bring home micro-organisms that would have been better left at their holiday destination. Travel is associated with infections that are less common in Northern Ireland because of its lower temperatures, good public, environmental and animal health systems, and stringent legal requirements on food business owners.

The surveillance of infection and professional follow-up in many holiday destinations is poor, and information on infections acquired is often limited. When tourists return home the public health follow-up will probably fall between two jurisdictions.

Anecdotal evidence and questionnaire studies show that gastric upsets are common in travellers. Some may be serious and even fatal. Twenty European countries reported 676 cases of travel-associated Legionnaire’s disease in 2002, and 43 of these people died. Noroviruses periodically cause illness in shellfish eaters, and have caused dramatic outbreaks of highly-infectious vomiting and diarrhoea on cruise liners.

Ear and skin infections have occurred because of poor maintenance of swimming pools. The consequences of infection ruin vacations and affect the entire party that travels, not just the individuals who were ill.

A client who presents with this type of problem should have been seen promptly by a doctor whose notes and report will be vital. Once the symptoms have passed, in many cases the causative organism is no longer present in the body and laboratory tests are less likely to provide useful information regarding the source of the infection.

Where symptoms have been mild the client may not have consulted a doctor. It is always helpful to have medical verification of the history. In most cases it is also helpful to instruct an expert with experience in outbreak investigation and the surveillance of infection who may be able to provide detailed knowledge of other reports of similar infections. This data can be critical in assessing the probable cause of infection when more direct evidence can be sparse.

Not all allegations of food poisoning are well-founded. Complainants often blame the most recent meal they ate, but many infections may have been caused by something eaten up to several days earlier. Some clients are mistaken and a few may be malicious claimants.

Defence solicitors may also use evidence of good quality management systems such as Hazard Analysis Critical Control Point (HACCP) to counter allegations that a particular food was responsible for illness. If no other complaints or official notifications of illness were received concerning a batch of food eaten by 1000 people and with evidence of good process control, it is very unlikely that an individual claim against the manufacturer is valid. Experience of examining foods implicated in outbreaks has enabled the production of guidelines that are helpful in determining whether the numbers of pathogens found in a food are a credible cause of illness. Being informed about these issues, the solicitor can make best provision for the client’s case.
What evidence is required for Infections Cases?

The solicitor’s role must be to collect full and reliable information from the client as soon as possible.

**Food history.** The client should recount all the foods eaten within around three days of illness, and longer if possible. For many clients this is difficult, but infection could have been caused by a casual snack. Bacteria which produce certain toxins cause symptoms more rapidly than those which produce more serious infections, and remains of food are more likely to be available when toxins are the cause. Drinks, ice and the tamper-evident seals on water bottles may all be important. Retained packing and receipts will be helpful in tracing the batch of food eaten. Beach sand, water and animal contacts are also possible sources of infection.

An unreliable food history may result in the case coming apart on cross-examination when uncertainty or another possible source of infection is revealed. The solicitor should record a complete food history as soon as possible since doctors will have focussed on symptoms and treatment and may have paid less attention to other details that become important in the courtroom. Occasionally clients have retained samples of the implicated food. These are usually compromised by inexpert sampling practices or temperature abuse, but if they are available, laboratory examination should be commissioned as soon as possible. Certain pathogens should not be present in any food and are unlikely accidental contaminants.

Their discovery may be of some value in the case. Microbiological examination may be done through the Environmental Health Department of a Local Authority, or directly by a private microbiology laboratory. UKAS accreditation will assure laboratory quality standards.

** Symptoms** must be described in detail. Timing of onset and duration is important. Medical records will be helpful. In some cases, pre-existing medical conditions may make the plaintiff more susceptible to infection or cause more severe symptoms. Later re-examination by a specialist may be useful where there are persisting problems.

**Other parties affected.** It will considerably strengthen the client’s case if there is information about other travellers who suffered similar symptoms. Anecdotal evidence can be strengthened by witness statements. In some countries epidemiological reports may be available from the local environmental health or public health authorities. In large outbreaks, epidemiologists will sometimes be able to reach firm conclusions about the cause. Statistical evidence may assist the court in assessing the likelihood of a particular cause.

**Laboratory results.** The strongest evidence will be obtained where samples of faeces and vomitus have been investigated by a hospital laboratory. Ideally, examination of the suspect food will have been conducted and any organisms found matched to the patient’s isolates. Often this cannot be achieved because of the delay between consumption and first symptoms which renders the contaminated food unavailable. Efforts should be made to obtain the fullest information from the microbiology laboratory and public health department regarding the identification of infectious agents. For example, it is much more helpful to know that the illness was caused by Salmonella Enteritidis Phage Type 6 than simply by Salmonella. Epidemiological information exists on previous infections which in some cases may help to pinpoint a causative food with certainty.

The assistance of a microbiology expert can be particularly helpful in this area.

By acting promptly to collect facts from food history, symptoms, epidemiology and laboratory results, the solicitor can ensure that the evidence is as complete as possible, enabling the strongest case to be made.

Dr Ian Wilson is a Clinical Microbiologist specialising in food, water and environmental microbiology. He is a recognised Food Examiner, has experience in supporting litigation for the plaintiff and defendant, and has received instructions as a Single Joint Expert.

Dr Wilson can be contacted at: Northern Ireland Public Health Laboratory, Bacteriology Department, Belfast City Hospital, Lisburn Road, Belfast BT9 7AD.

Tel: 028 90263553.
Admissions Ceremonies

Copies of these photographs can be purchased by contacting Aurora Photography on 028 9092 3347
An introduction to the Criminal Justice Act 2003

Background

The Criminal Justice Act 2003 received Royal Assent on 20 November 2003. Although primarily an Act for England and Wales, a number of the Act’s Parts and provisions are extended to Northern Ireland, either directly on the face of the Act or by means of negative resolution Orders in Council. Details of the provisions extended to Northern Ireland are provided below.

Amendments to PACE


A power of arrest for the possession of cannabis is provided under the Criminal Justice (No. 2) (Northern Ireland) Order 2003. This measure came into effect on 29 January 2004.

Part II of the Criminal Justice (Northern Ireland) Order 2004 extends the remaining PACE amendments that are extended to this jurisdiction. These measures include the extension of the definition of prohibited articles, with the effect that police officers are empowered to stop and search where they have reasonable suspicion that a person is carrying articles for use in causing criminal damage and an enabling power for the immediate grant of bail from the scene of arrest (“street bail”), where there is no immediate need to deal with the arrested person at a police station. The time for which someone may be detained without charge under the authority of a superintendent is extended, from 24 to 36 hours, with provision applying to any arrestable offence. The Order also reduces police workloads by empowering them to make judgements about how to balance the need for recording property against the amount of administrative work entailed. Police powers to enable them to take fingerprints and DNA samples from a person while he is in police detention following his arrest for a recordable offence are also extended under this Part of the Order. The majority of these provisions are scheduled to come into effect in September 2004, with the “street bail” provisions being commenced later this year.

Disclosure

Part 5 of the Criminal Justice Act 2003 amends the Criminal Procedure and Investigations Act 1996 to simplify and streamline the disclosure provisions in criminal proceedings. Under the 2003 Act a single disclosure test for unused prosecution material to the defence is introduced, simplifying the current two tests that apply at the primary and secondary disclosure stages. Requirements are placed on the accused in respect of defence statements and the notices to be served, before trial, giving details of any witnesses to be called, and expert witnesses consulted. The Act also places a requirement on the judge at pre-trial hearing to alert the accused to apparent inadequacies in his defence statement, from which inferences could be drawn, makes provision for the judge to give the jury a copy of the defence statement and imposes a continuing duty on prosecutors to disclose unused material. The Act also adds to the list of defence disclosure failures which may give rise to adverse inferences and removes the leave requirement for making comment in respect of some of these. Finally, provision is made for the Secretary of State to prepare a code of practice for police interviews of defence witnesses. The bulk of provisions in Part 5 are scheduled to commence in April 2005.

Trials on indictment without a jury

Part 7 of the Act extends directly to Northern Ireland and sets out the circumstances in which a trial on indictment in the Crown Court must, or may, be heard by a judge sitting alone without a jury. These are in cases of serious or complex fraud (section 43) and where there is danger of jury tampering (section 44). Before making an order to this effect under section 43, the court must be satisfied that the length or complexity (or both) of the trial would be so burdensome on the jury that it would be in the interests of justice to conduct the trial without a jury. Such an order must be made with the approval of the Lord Chief Justice or a judge nominated by him. The Act sets out the procedure for applications and makes further provisions about such trials, in respect of the discharge of juries in cases of jury tampering, appeals, procedures and rules of court. Section 50 sets out how this Part is to be applied to Northern Ireland and specifies that the provisions of Part 7 do not apply to trials to which section 75 of the Terrorism Act 2000 applies. Part 7 is scheduled to come into effect in April 2005.

Live links

Part 8 of the Act relates to live links. These provisions are extended to Northern Ireland through Part III of the Criminal Justice (Northern Ireland) Order 2004. The Order grants powers for courts to hear evidence by way of a live television link from outside the court building. Currently witnesses are generally required to attend the court in person however live links can be used in limited cases, such as with young, disabled, vulnerable or intimidated witnesses. The Order extends live link provision to any witness other than the defendant, where it is in the interests of efficiency or effectiveness to hear that witness’s evidence by way of a live link. Again, commencement of these provisions is scheduled for April 2005.

Prosecution appeals

The Criminal Justice (Northern Ireland) Order 2004 extends the
provisions of Part 9 of the Act to Northern Ireland. Part IV of the Order provides for prosecutors to have the opportunity to challenge a judicial ruling which either directly or effectively ends their hearing. This right of appeal is against two categories of ruling by a Crown Court judge. These are:

- A ruling that has the effect of terminating the trial, made at either a pre-trial hearing or during the trial, at any time up until the start of the judge’s summing up; and
- An evidentiary ruling or series of rulings, made in certain trials for qualifying offences. This right of appeal is limited to those rulings that significantly weaken the prosecution case and may only be exercised up to the opening of the defence case.

Under these provisions, leave to appeal must be obtained from either the judge or the Court of Appeal. The judge is to decide whether the appeal follows an expedited route, where the trial is adjourned pending the conclusion of the appeal, or a non-expedited route, where any jury that has been empanelled may be discharged. The Order also makes provision for reporting restrictions. Again, these provisions are scheduled to commence in April 2005.

Retrial for serious offences

Part 10 of the Act reforms the rule against “double jeopardy” and sets out the circumstances and procedures under which a person may be retried for an offence, even though they have already been acquitted. The relevant offences are listed in Schedule 5 to the Act and all involve serious offences which in the main carry a maximum sentence of life imprisonment. The Court of Appeal can only make an order to quash an acquittal and order a retrial if it is satisfied that there is both new and compelling evidence and that it is in the interests of justice. The Part also makes provisions in respect of reporting restrictions, the authorisation of police investigations by the DPP and procedures for urgent investigative steps where the police need to act urgently, as well as provisions relating to the arrest, charge, bail and custody of the accused. Section 96 applies the provisions of this Part, subject to certain modifications, to Northern Ireland. Commencement dates have not yet been established for Part 10.

Evidence

Part 11 of the Act provides for greater admissibility of evidence of bad character and hearsay at criminal proceedings. The equivalent provisions for this jurisdiction are provided under the Criminal Justice (Evidence) (Northern Ireland) Order 2004.

Part II of the Order deals with evidence of bad character. Currently the prosecution is generally prevented from producing evidence in a trial of a defendant’s previous misconduct. The Order provides comprehensive rules for the admissibility of bad character evidence in respect of both witnesses and defendants. Accordingly, existing common law rules are abolished and other statute law substantially repealed.

Part III of the Order relates to the admissibility of hearsay evidence in criminal proceedings. The provisions simplify the law and provide greater certainty as to the circumstances when such evidence will be admitted. The main provisions remove the old common law rule against the admissibility of hearsay evidence and provide that such evidence will be admissible, provided certain safeguards are met. The Order also makes provisions in respect of other types of evidence. Whilst the bulk of these provisions should be commenced in April 2005, Article 41 (Use of documents to refresh memory) should come into effect in September 2004.

Sentencing and Miscellaneous

A number of the provisions in Parts 12 (Sentencing) and 13 (Miscellaneous) of the Act extend to Northern Ireland. In particular Part 12 increases penalties for drug related offences (section 284) and for causing death or grievous bodily injury by dangerous driving or by careless driving when impaired (section 285).

Section 292 also introduces minimum custodial sentences for unauthorised possession of certain types of firearm. Part 13 makes miscellaneous provisions, including powers to extend the period of detention without charge of suspected terrorists for up to a total of 14 days (section 306) and for reporting restrictions for preparatory hearings in long or complex cases in Northern Ireland (section 311). Part 13 also makes several provisions in respect of investigations by, and appeals following reference by, the Criminal Cases Review Commission. (sections 314, 315 and 317).

With the exception of section 311, most of these provisions have already come into force. Sections 314, 315 and 317 are to commence on 1 September 2004. Commencement dates have not yet been set for the remaining provisions of Parts 12 and 13.

The full texts of the Criminal Justice Act 2003, its Explanatory Notes and the related Orders in Council may be found on the HMSO website [http://www.hmso.gov.uk].

We are grateful to Julie Wilson of the Northern Ireland Office for this article.
REMINDER
NEW ARRANGEMENTS FOR REVIEWING CROWN COURT CASES FROM SEPTEMBER 2004

The Lord Chief Justice’s Office has notified the Society that the new pro-forma “Trial Status Report” which is to be introduced from the beginning of the new legal term on a pilot basis for all Crown Court cases (see The Writ – June 2004 at p23) is now available on the Court Service website at www.courtsni.gov.uk - see “Trial Status Report – Pilot Scheme” on list of “Quick Links”.

The Lord Chief Justice has also indicated that he intends to review the effectiveness of this scheme in early 2005 after it has had a reasonable period to settle in.

Accordingly if practitioners, during the early stages of its operation, experience any particular difficulties or problems with the scheme, either in the way the form is to be completed or in the way the review hearings are being conducted, the Society would be grateful to hear from them – please contact Peter O’Brien, Secretary to the Criminal Law Committee.

The Guidance Notes which have been issued to assist with completion of the form are set out below.

Trial Status Report – Notes for Guidance

Purpose
1. The Lord Chief Justice, following discussion with colleagues, the NI Court Service, the Law Society, Bar Council, Director of Public Prosecutions and Legal Services Commission, has introduced a new pro-forma to identify, and enable early resolution, of any pre-trial issues and to assist the process of meeting the date for trial. The aim is to deal with any difficulties as early as possible after committal to reduce any delay in the processing of criminal trials. It has been recognised that this is in the interests not only of the defendant but of victims and witnesses too. This form is designed to assist the process without eroding the rights of the defendants or the interests of justice.

2. One form will be issued for each defendant. Initially at least the court will copy the front page from the form to the defence solicitor to put him on notice of the form.

3. The date for arraignment will be inserted into the form. This will be around 4 to 4½ weeks from committal. The existing practice whereby the Crown Court, where appropriate¹, notifies the parties in advance of the arraignment of the proposed trial date is not affected and will continue.

Detail
3. The Trial Status Report will be issued to the DPP representative to pass to prosecution counsel at, or shortly after, committal in a Crown case at High Court or County Court level. The Report will give the dates for completion and the date and venue for arraignment.

4. The prosecution counsel will be expected to complete the form within 10 working days and then to pass it to the defence solicitor who will brief defence counsel to complete it and consult the prosecution counsel in 12 working days. The form should then be returned to:
   • for Belfast cases, scheduled cases and cases at High Court level
   Belfast Crown Court
   Laganside
   45 Oxford Street
   Belfast BT1 3LL
   - e-mail – belfastcrowncourt@courtsni.gov.uk
   - telephone – 9072 4554
   - fax – 9024 2078
   • for all other cases the local Court Office (the details will be indicated on the front of the form).

5. It should be copied by the defence (to avoid delay), to the prosecution counsel and the solicitor of any other defendant.

6. If the form is going to be late then the Court Office should be notified so that it can inform the relevant judge.

The Form
7. This is split into four sections:
   (i) for court office use, giving details of
   the case and date for completion and arraignment,
   (ii) for the prosecution to complete,
   (iii) for the defence to complete,
   (iv) for both prosecution and defence to complete.

8. It is recognised that there may be questions that cannot be answered in the interests of justice. It is not intended, for instance, to force disclosure of an unheard ex parte without notice application or difficulties with a reluctant witness. It is also recognised that the form may not cover, for example, all evidence; that the defence position may change on seeing certain material; or that additional evidence might become available to the prosecution which could not be readily anticipated at the time the form was completed.

9. Counsel is asked to use his or her best endeavours to complete the form. If he or she has doubts about the form he or she should contact Andy Boyd at Laganside for advice. (Telephone number (028) 9072 4554).

10. Those completing the form are asked to consider carefully issues around disclosure and expert reports which are recognised as causing difficulties in the listing of cases for trial.

11. If extra space is needed to answer a question then a separate sheet may be annexed to the form.

¹ Usually in County Court judge Crown cases
CASE STATUS REVIEW

Committal hearing

Relevant Crown office to issue a letter to parties giving the date for trial, if appropriate. (These will normally be given for County Court judge cases pre-arrainement but not for High Court cases until arraignment).

Court clerk inserts target dates in pro-forma for arraignment/case status review hearing and issues it with the guidance to the DPP representative for Prosecution counsel and copied to defence solicitor. Copy kept on court file.

Prosecution sections of the form completed within 10 working days of committal and sent to defence solicitor for defence counsel

Defence counsel to complete defence sections within 12 working days and to speak to prosecution counsel about trial dates and to return the form to the court office at the address set out in the front page of the form. It should be copied by the defence to prosecution counsel and any solicitor acting for another defendant.

Arraignment/Case status review hearing

Papers complete

Need for pre-trial hearing?

Yes

Arranged, issues addressed and trial date confirmed

No

Trial date confirmed

Papers incomplete or no papers

New date for arraignment / case status review hearing 1 week later

Either

Papers complete

Or

Papers incomplete or no papers

1 These include return dates and the date for arraignment, which will be about 4 1/2 weeks after committal.
2 Leading counsel.
3 While a hearing will take place, arraignment will not occur until the form is available.
4 Within 18 weeks from committal.
Sections of Justice (NI) Act 2004 now in force


By virtue of the Justice (NI) Act 2004 (Commencement) Order 2004 [SR2004 No 267] a number of provisions of the Act came into operation on 14th July 2004. The following changes will be of particular interest to criminal law practitioners:-

**Bail**

Section 11 (bail under section 67 of the Terrorism Act 2000) together with Schedule 2 (bail under Terrorism Act 2000) and

Section 12 (bail to which Part II of the Criminal Justice (NI) Order 2003 applies).

These two sections tighten and align the powers of enforcement of bail conditions by placing additional requirements on persons granted bail and also give the police additional powers to monitor and ensure compliance with bail conditions.

**Transfer of prisoners**

Section 13 provides for the transfer of prisoners from Northern Ireland to another part of the UK in the interests of maintaining security or good order in prisons in Northern Ireland.

**Driving while disqualified**

Section 15 makes driving whilst disqualified an arrestable offence under the Police and Criminal Evidence (NI) Order 1989.

The Order also brings into operation from 14th July 2004: -

Section 9 substituting references to the Juvenile Justice Board with references to the Youth Justice Agency

Section 14 amending section 103 of the Terrorism Act 2000

Section 17 granting the right to a barrister to enter into contract for the provision of his services

Section 18 certain repeals referred to in Schedule 4 of the Act.

Firearms controls – new draft guidance

The Northern Ireland Office has published for consultation Guidance on firearms controls.

The firearms legislation has recently undergone a comprehensive review which resulted in the making of the Firearms (Northern Ireland) Order 2004 in March. The new legislation is due to be commenced in October 2004 in line with the implementation of the PSNI’s new firearms licensing computer system and other administrative arrangements.

The Government made it known during the course of the review that it intended to provide comprehensive guidance on the new legislation. This does not presently exist and it should prove to be of benefit to shooting enthusiasts and everyone else with a legitimate interest in firearms.

The Government’s intention is to have the Guidance available at the same time as the legislation is commenced.

The Guidance can be accessed at www.nio.gov.uk/pdf/draftfirearmscontrol.pdf and comments can be sent by email to fe@nics.gov.uk or in writing to the following address: -

Northern Ireland Office, Firearms & Explosives Branch, Block B, Castle Buildings, Stormont, BT4 3SG.

The closing date for responses is Friday, 10 September 2004.

Transfer of women prisoners and detainees

On 21st June 2004 the Northern Ireland Prison Service transferred 15 female prisoners from Mourne House, Maghaberry to Hydebank Wood and 5 male immigration detainees from Mourne House to Maghaberry’s facility in Belfast. Two female immigration detainees were transferred from Mourne House to Hydebank Wood.

The intention to relocate female prisoners and immigration detainees follows public consultation, the outcome of which was announced on 23 April 2004.

Mourne House will now form part of the Service’s emergency accommodation but will not routinely hold any prisoners.

An order designating Ash House (one of the five residential houses at Hydebank) as a prison and renaming it Hydebank Wood came into effect on 18 June 2004. Hydebank Wood Young Offenders Centre will now become Hydebank Wood Young Offenders Centre and Prison.
Draft Criminal Justice (No.2) (NI) Order 2004

A draft Criminal Justice (No.2)(NI) Order 2004 has been laid in Parliament. The key features of the draft legislation are as follows:-

Hate Crime

Where on conviction, an offence involves hostility based on religion, race, disability or sexual orientation, the Court must take this into account when sentencing. The Court's sentencing powers - mainly in relation to specified crimes of violence and which are often connected with "hate crime" - are also proposed for increase.

For example, offences of "grievous bodily harm", "assault occasioning actual bodily harm" and "putting someone in fear of violence" will increase from 5 to 7 years imprisonment; and criminal damage will increase from 10 to 14 years imprisonment. Common assault will have a maximum penalty of two years imprisonment, a fine, or both.

The legislation will cover attacks on both people and property.

Road Traffic Offences

Two new offences will be created:

(1) the offence of aggravated vehicle-taking (which would involve taking a vehicle without consent, which is then driven dangerously, or causes an accident which results in injury, damage to property, or damage to the vehicle) with a penalty of up to five years imprisonment, a fine, or both; and

(2) the more serious offence of causing death or grievous bodily injury by the new offence of aggravated vehicle taking (the taking of a vehicle without consent, but which is then driven in a manner which causes an accident in which someone is killed or suffers grievous bodily harm). The maximum penalty for this offence will be up to fourteen years imprisonment, a fine, or both.

The proposals also increase the maximum penalty for dangerous driving from two to five years imprisonment.

The draft Order and the Explanatory Memorandum is available on www.hmso.gov.uk/si/si2004/draft/20049153.htm

CRIME STATISTICS REPORT

The Northern Ireland Office has published a statistical report entitled 'A Commentary on Northern Ireland Crime Statistics 2003'.

The Commentary is a compendium publication of information on crime and criminal justice in Northern Ireland, covering five main areas:- recorded crime, offences cleared by the police, court proceedings, sentencing and prison population and receptions. It is a National Statistics publication which can be downloaded from www.nio.gov.uk/pdf/commentaryni/part1.pdf

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Pictured from left to right: Patrick Oliver (AFP Consulting), Brian Adgey (Brangam Bagnall & Co), George Brangam (Brangam Bagnall & Co) and Iona Milton-Jones (AFP Consulting)
ANTI-MONEY LAUNDERING – 1st September 2004
This seminar features information on how the money laundering regulations (MLR2003) will affect your practice. The seminar covers: money laundering strategies, the legislation, responsibilities of the nominated officer, Suspicious Transactions Reports, protected disclosure and statutory immunity, record keeping and internal reporting procedures, ethical issues.

RISK MANAGEMENT – 15th September 2004
What is the probability of a risk occurring in your firm and what would be the consequence of that risk - for you, your clients, or your practice? Using techniques for risk modelling it is possible to profile potential risks and the likely consequences - crucial for your practice to maintain an appropriate risk management strategy.

LIMITING LIABILITY – 6th October 2004
This seminar will give you the opportunity to gain insight on key issues surrounding limiting liabilities, focusing on how to minimise your firm’s and your own individual exposure.

BUSINESS DEVELOPMENT STAGE 1 – 20th October 2004
(Maximising profits from existing clients)
It is becoming increasingly important to positively differentiate your practice from its competitors. Proactive business development can provide real competitive advantage. This seminar will help you to manage existing client relationships in order to attract additional business and to develop systems that will effectively manage and monitor business development activity.

COMPLAINTS HANDLING – 3rd November 2004
Learn how to profit from complaints. Research shows that 97% of complainants will return to do business or make recommendations to your firm if their complaint has been handled properly. This 3 hour CPD seminar covers the necessary steps for implementing an effective complaints handling programme in your firm.

The cost of replacing clients can be 5 times higher than looking after the ones you already have, so it makes sense to put strategies in place for client retention.

BUSINESS DEVELOPMENT STAGE 2 – 17th November 2004
(New client development)
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❑ COMPLAINTS HANDLING - 3rd November 2004
❑ BUSINESS DEVELOPMENT STAGE 2 - 17th November 2004
❑ CLIENT CARE - 1st December 2004
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Annual Lecture Series 2004

Please note that the undernoted lecture (originally scheduled for Thursday 29th April 2004) has been re-scheduled for 9 September 2004.

John Beattie and Ann Williams
‘Capital Taxes on assets based in the Republic of Ireland - Why Irish Capital Taxes could cause unwelcome liabilities, even for those who may have a good UK Tax Strategy’
Thursday 9th September 2004

Paul Kerr
‘Taxation – an Update’
Thursday 7th October 2004

H A Yeates FRCS
‘The Facts and Myths of Whiplash’
Tuesday 2nd November 2004

Tony McGleenan
‘Human Rights Law in Practice; An analysis of recent NI Jurisprudence – the up to date position’
Thursday 4th November 2004

Joe Rice
‘Presenting Cases in Magistrates Courts’
Thursday 2nd December 2004

HM Coroner John L Leckey LL.M.
‘Coronial Law and Practice Update’
Thursday 9th December 2004

All seminars will take place at Law Society House. Coffee and sandwiches will be available from 12.30pm and the talks will start at 1.00pm.

The cost of all lunchtime seminars is £10 for BSA members and £20 for others.

BSA Handbook

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

The Handbook, amongst other useful matters, contains a handy guide to High Court, County Court, Conveyancing and Non-contentious Probate matter costs. It also contains the CPD lecture programme for 2004.

A must for every practitioner’s desk or briefcase
Attention Litigation Lawyers!

“To mediate or not to mediate”

How to answer this question?
A consideration of the important issues arising from the Court of Appeal in England in the case of Halsey v Milton Keynes General NHS Trust.

By Brian H Speers, Solicitor, Mediator Chair Law Society ADR Committee

Many practitioners will have been encouraged by our High Court in recent months to take steps to resolve their cases. Sometimes the judges will ask if the parties have considered mediation. If parties reject mediation the representatives may be asked to explain why.

In a judgement delivered on 11th May 2004 in the case Halsey v Milton Keynes NHS Trust 2004 WECA (Civ) 576 (“Halsey”) the Court of Appeal, while providing general encouragement for the use of ADR, clarified the circumstances where a party might reasonably argue that mediation was not appropriate to use in a particular case. These circumstances will be considered below. It is a measure of the importance attached to this case that the Court asked for submissions from the Law Society of England and Wales, and the ADR Group.

Of particular importance to legal practitioners is that the Court of Appeal stated that lawyers, at least in England and Wales, have a professional duty to consider with their clients whether their disputes are suitable for mediation. It would seem likely that the Courts in Northern Ireland will follow the line adopted by the Court of Appeal in England.

Legal Duty to Consider Mediation

Lord Justice Dyson said in his judgement (para 11) in Halsey:- “All members of the legal profession who conduct litigation should now routinely consider with their clients whether their disputes are suitable for ADR.”

The clear implication is that legal advisers may be at risk of a professional negligence claim if they do not consider with their client whether mediation or some other form of ADR is appropriate.

I would suggest that in order to consider whether a dispute is suitable for ADR the legal adviser should have:-

1. knowledge of the possible alternatives to litigation and
2. awareness of the process of mediation and
3. capacity to assess whether or not the features of a particular case made it suitable for mediation.

As with all legal advice lawyers should only advise on ADR and mediation when they have the requisite knowledge to give a balanced, informed and up to date opinion.

The Court of Appeal provided important clarification that the Court had no role to compel parties to mediate. The Court stated:-

“the Court’s role is to encourage not to compel. The form of encouragement may be robust.”

It will be noted later that where a Court does “encourage” parties to mediate that in itself is a significant factor in determining whether a refusal is reasonable.

Refusing to Mediate

The particular matter which Halsey considered was whether a party who refused to mediate and is then successful in the litigation should be ordered to pay costs. Earlier cases such as Dunnett v Railtrack (2002 1WLR 2434) and Leicester Circuits Ltd v Coates Brothers plc (2002 EWCA Civ 290) seemed to suggest that successful parties who had refused mediation would, nonetheless, be liable to pay costs of the litigation. The only basis for refusing seemed to be the test established by Mr Justice Lightman in the case of Hurst v Leeming (2001 EWHC 1051 Ch). In that case it was stated that:-

“if mediation can have no real prospect of success a party may…refuse to proceed to mediation on this ground”. The judge continued:

“But refusal is a high risk course to take for if the Court finds that there was a real prospect, the party refusing to proceed to mediation may….be severely penalised”.

In Halsey while agreeing that many cases were suitable for mediation, such as commercial claims, clinical negligence cases, family disputes and accident compensation claims, the Court of Appeal acknowledged that judges should not force parties to mediate. The Court felt that to do so would be counter-productive and likely to damage the process and status of mediation. The judgement stated that a Court should not compel a party to mediation who remains “intransigently opposed”.

While it is welcome that there is clarification that the role and power of the Court is to “encourage” as opposed to “order” parties to mediate their disputes there was considerable judicial encouragement given for the benefits of mediation.

At the same time the Court of Appeal recognised that “ADR processes do not offer a panacea and can have disadvantages as well as advantages; they may not be appropriate for every case.”

The Halsey case, however, is perhaps most important because it identifies a list of factors that will be relevant in determining whether a party has unreasonably refused ADR. If a party has unreasonably refused then adverse costs consequences are likely to follow.

Halsey – the Facts

The claim was brought by Mrs Halsey under the Fatal Accidents Act 1976 (as amended) in respect of the death of her husband at the Milton Keynes General Hospital. At the time of his death Mr Halsey was 83 years of age.
The claim alleged negligent treatment while he was a patient in the hospital. Mrs Halsey's lawyers made a number of offers to mediate the claim. All suggestions of mediation were rejected by the Hospital Trust. The hospital considered that there was no merit in the case. At trial the Court agreed that there was no negligence and dismissed the claim. The lawyers for Mrs Halsey then argued that there should be no order for costs as the Hospital Trust had refused to mediate.

The judge at first instance found that the Trust should not be deprived of its costs. The Court of Appeal agreed with the Trust and stated: “In our view, the claimant has come nowhere near showing that the Trust acted unreasonably in refusing to agree to a mediation.”

Earlier in the judgement the Court of Appeal had set out a list of matters which would be relevant in deciding if a party was unreasonable in refusing to mediate. If a party did unreasonably refuse then the Court confirmed that adverse cost consequences could follow.

What litigation lawyers and other legal advisers will have to consider in each case is the list of factors described by the Court of Appeal which are relevant in determining whether a party would be reasonable in refusing a mediation. What may become known as the Halsey criteria are:

- The nature of the dispute – some cases such as those involved fraud, or requiring injunctive relief, or where interpretation or a binding precedent is required, do not lend themselves to ADR. It should be noted that the Court observed that “most cases are not by their very nature unsuitable for ADR”.
- The merits of the case – the Court stated “the fact that a party reasonably believes that he has a watertight case may well be sufficient justification for a refusal to mediate”.
- Attempts to settle by other means – the fact that settlement offers have already been made may be a relevant factor. However, the Court of Appeal observed “mediation often succeeds where previous attempts to settle have failed”.
- Whether the costs of mediation would be disproportionately high – this would be particularly relevant if the sums in issue are comparatively small.
- Delay – if mediation is suggested late in the proceedings the effect of accepting may delay the trial and this may be a factor in deciding if a refusal to mediate was reasonable.
- Whether mediation has a reasonable prospect of success – the Court concluded that the burden was on the unsuccessful party to establish that there was a reasonable prospect of the mediation succeeding.
- Whether the Court has encouraged mediation – the stronger the Court’s encouragement “the easier it will be for the unsuccessful party to discharge the burden of showing that the successful party’s refusal was unreasonable”.
- Public bodies – these criteria applied to public bodies and the Court downplayed the significance of the so called “government pledge” given in 2001.

Concluding Observations

The Halsey decision has provided valuable support for mediation and strikes a balance between compelling parties to mediate – which is indicated was inappropriate – while at the same time confirming the merits of mediation and establishing detailed and challenging criteria for when it may be considered reasonable to refuse to mediate. Particularly where the Court itself has encouraged mediation it will be a very bold decision to advise that mediation should be refused. In all litigation lawyers will have to consider with their clients whether ADR may be appropriate and if so which method of ADR may be appropriate and in their consideration will have to apply the Halsey criteria.

Law Society Dispute Resolution Service

The Law Society Dispute Resolution Service can assist in the provision of mediators for disputes. A further training course in conjunction with SLS will commence on 15th September 2004. This training course will inform those attending of the cases suitable for mediation, will explain the mediation process and will acquaint participants with the role of mediator. Further details and application form can be found at page 38.
Court Service has issued its Business Plan for the period April 2004 to March 2005. It states that it intends to pursue its corporate aim of “serving the community through the Administration of Justice”, under four key themes, each with a number of objectives and performance milestones. These four themes are Reform, Modernisation, Responsiveness and Empowerment.

Details are printed below in respect of the first two which will be of particular interest to practitioners. The full text can be downloaded from www.courtsni.gov.uk

**REFORM**

(i) **Objective:** To promote confidence in the Criminal Justice System  
**Performance Milestones:**
- To enact court rules to introduce Anti-Social Behaviour Orders by August 2004.
- To enact court rules to give effect to the Criminal Justice Act 2003 by March 2005.
- To appoint Lay Magistrates by April 2005.
- To bring cases involving 17-year olds into the Youth Court by April 2005.
- To establish the Judicial Appointments Commission for Northern Ireland by June 2005.

(ii) **Objective:** To reform the Office of Lord Chancellor in Northern Ireland  
**Performance Milestones:**
- To deliver the Northern Ireland part of the Constitutional Reform Bill by March 2005.
- To transfer the Lord Chancellor’s judiciary related functions to the Lord Chief Justice by October 2005.

(iii) **Objective:** To promote a modern and efficient Civil Justice System  
**Performance Milestones:**
- To establish by November 2004 an inter-departmental working group to modernise the delivery of administrative justice in Northern Ireland.
- To establish a Northern Ireland Civil Justice Council by December 2004.
- To develop an implementation plan for the Campbell Committee proposals by March 2005.

(iv) **Objective:** To modernise the Coroners Service  
**Performance Milestones:**
- To publish by October 2004 proposals to modernise the Coroners Service.
- To report to Ministers by January 2005 on the reform of death certification and the Coroners Service.

**(ii)** Objective: To improve Corporate Governance  
**Performance Milestones:**
- To have in place Business Continuity Plans by September 2004.
- To have in place a new audit and risk management structure by March 2005.

**(iv)** Objective: To improve the management of funds in court  
**Performance Milestones:**
- To establish the specification for the procurement of stockbroker services by December 2004.
- To produce a revised Investment Strategy and administrative structure for the management of funds in court by March 2005.

**MODERNISATION**

(i) **Objective:** To modernise the way we deliver our business  
**Performance Milestones:**
- To establish a Modernisation Board by July 2004.
- To deliver the Integrated Court Operations System (ICOS) civil module by November 2004.
- To publish a Modernisation Strategy by March 2005.
- To meet all Causeway Programme objectives during this period.

(ii) **Objective:** To improve value for money in service delivery  
**Performance Milestones:**
- To publish a consultation document on civil fee policy by December 2004.
- To achieve a 5% efficiency gain in the delivery of civil court business by March 2005.

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Practice Note No 9
Certificates of Readiness

1. The Belfast Solicitor’s Association has sought advice as to what a plaintiff’s solicitor has to do to check that all interlocutory matters are dealt with before serving a Certificate of Readiness under Order 8 Rule 3 of the County Court Rules. Following consultation with The Council of HM County Court Judges and the County Court Liaison Committee this Practice Note is being issued to the profession in response to that request in an effort to provide guidance for practitioners.

2. The obligation to lodge a Certificate of Readiness under Order 8 Rule 3(1) of the County Court Rules arises in two situations. The first is where the judge directs under Order 8 Rule 3(2) that the case be set down for hearing in default of a Certificate of Readiness being lodged within six months from the filing of the notice of intention to defend. The second is where a Certificate of Readiness is lodged in the normal way by the plaintiff’s solicitor under Order 8 Rule 3(1).

3. In the first situation, that is where the judge directs that the case be set down for hearing and fixes a date for the hearing, by virtue of the

4. Certificate of Readiness must be lodged within 14 days. In those circumstances the date for hearing will have been fixed by the judge to allow any remaining steps that are required (including, where necessary, interlocutory applications) to be completed. Where a judge has set the matter down the plaintiff’s solicitor is not entitled to delay serving the Certificate of Readiness because there may still be outstanding interlocutory issues. A failure to lodge a Certificate of Readiness within 14 days may result in the case being dismissed without prejudice.

5. In the second, and more usual, situation where the plaintiff’s solicitor believes the case is ready for hearing a Certificate of Readiness complying with Form 43 is lodged. Form 43 requires the plaintiff or plaintiff’s solicitor to certify “(1) that to the knowledge of the plaintiff;
   a) there are no remaining interlocutory issues between the parties;
   b) and that these proceedings are ready for hearing;...”

6. Whilst it is not possible to identify in advance every type of issue that might be relevant, nevertheless there are a number of situations that arise in practice which have a bearing on either or both of these questions.
   • The plaintiff has not replied to the defendant’s notice of particulars.
   • The plaintiff is aware that a further medical examination has been, or will have to be arranged, either on behalf of the plaintiff or on behalf of the defendant, and serving a Certificate of Readiness may result in the case being set down for hearing before the date of the medical examination. This often results in an application for an adjournment because in many divisions on receipt of a Certificate of Readiness the case will be listed for a date in advance of any date on which it is possible to arrange a further medical examination. The judge may strike out the Certificate of Readiness in such cases, and the fee is thereby forfeited and the hearing date vacated.
   • The plaintiff has not served any, or the most recent, medical evidence on the defendant yet sends the Certificate of Readiness with the medical evidence and/or the replies to the notice for particulars. This deprives the defendant of the opportunity to consider the evidence and respond as appropriate.
   • The plaintiff serves the Certificate of Readiness before replying to the defendant’s solicitor’s request for disclosure of the plaintiff’s medical notes and records and/or a request for the identify of the plaintiff’s general practitioner to enable such an application to be brought.
   • The defendant’s solicitors indicate that they wish to join a third or subsequent party out of time.
   • Discovery is still outstanding from the defendant
   • The defendant’s solicitors ignore requests for inspection.

These are the most common problems that arise in practice. Where the plaintiff’s solicitor is at fault, they can arise because the Certificate of Readiness is served before the counsel has directed proofs (if counsel is to be instructed), and may result in a successful application being made by the defendant’s solicitors to strike out the Certificate of Readiness on the basis that they have not had adequate time to respond to the plaintiff’s case. On the other hand, the plaintiff’s solicitor is not infrequently faced with the dilemma created by failure of the defendant’s solicitor to indicate whether the defendant is ready for trial once the plaintiff has served all of his evidence. In such circumstances how can the plaintiff’s solicitor decide whether both sides are ready for trial?

7. A plaintiff’s solicitor is not obliged to, and should not, wait for a lengthy period before lodging a Certificate of Readiness if the defendant’s solicitor has had a reasonable period of time to consider and respond to the plaintiff’s case. The plaintiff’s solicitor is entitled to serve a Certificate of Readiness once it appears that all reasonable steps have been taken by both sides to prepare the case for hearing. This decision can only be made in the light of a common sense evaluation of all the matters known to, or reasonably anticipated by, the plaintiff’s solicitor. It is not always possible for the plaintiff’s solicitor to anticipate what steps the defendant might wish to take on receipt of the plaintiff’s evidence, or otherwise prepare for trial. The prudent course for the plaintiff’s solicitor to adopt when he or she feels that the case is now ready for hearing is therefore to write an open letter to the defendant’s solicitors saying that as the plaintiff considers the case is now ready for hearing a Certificate of Readiness will be served within 14 days of the date of the letter unless the defendant’s solicitor objects within that time, and, if the defendant contends that it is not ready for hearing, gives a satisfactory reason why the Certificate of Readiness should not be lodged.

8. If the defendant’s solicitor does not reply within that period, or the plaintiff’s solicitor considers that the defendant’s solicitor’s objection to the Certificate of Readiness being served is unreasonable, the plaintiff’s solicitor should lodge the Certificate of Readiness and leave the defendant to move to strike it out, so that the court can decide whether the case should be set down or not.
Justice Oversight Commissioner, Lord Clyde, has released his second report on the progress which has been made in implementing the 293 recommendations of the Criminal Justice Review.

Presenting the report to representatives of justice and voluntary organisations, Lord Clyde, gave an overview of progress in the period December 2003 to June 2004. He said, “There are some areas for concern. In particular, there is a concern regarding the sufficiency of resources, and secondly a continuing concern about the time taken for the processing of criminal cases. As I noted in my First Report, the avoidance of delay is one of the prime essentials for an effective and efficient criminal justice system. Public confidence in the system is enhanced when cases are determined speedily and efficiently”.

“As for the substance of this Second Report, I would mention two highlights which distinguish the last six months. The first is the continued rolling out of the new Prosecution Service, with the second stage of the pilot scheme commencing in Fermanagh and Tyrone in April 2004, and along with all of that the rolling out of the Youth Conferencing Scheme in tandem with the Prosecution Service. The second highlight has been the passing of the Justice (Northern Ireland) Act 2004 which among other things opens the way for the establishment of the Judicial Appointments Commission next year.”

He also indicated that impressive progress had been made in other areas, such as the creation of the Community Safety Partnerships. There had also been good work undertaken on a basis of cross-border activity despite the absence of the signing of the ministerial agreement.

Lord Clyde also reported that his team had started a succession of visits to the courts in Northern Ireland, to ascertain progress on a variety of recommendations, which relate to the facilities and practice of the courts. This allowed them to see the extent to which a variety of recommendations have been implemented.

He stressed the importance of the criminal justice system, for the public. “Obviously members of the public become involved as witnesses or victims in the judicial process but the scope of the reforms with which I am concerned carries the public participation far beyond such obvious involvement.

“The public have judicial responsibilities, as members of a jury, or as lay magistrates under the arrangements currently being promoted. The views of the public are sought not only by consultation on proposals for reform, but through such bodies as the court user groups which seek to secure a more efficient working of the local court.”

Lord Clyde also disclosed that plans for a new Law Commission for Northern Ireland may have to be scaled back. Plans for it had been inhibited through lack of funding and it would be the autumn before it was known if funding was available to establish a commission on the scale which had previously been thought appropriate.

Lord Clyde’s reports, together with further details on the Justice Oversight Commission are available on the Justice Oversight Commission website www.justiceoversight.com.

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Lord Clyde’s reports, together with further details on the Justice Oversight Commission are available on the Justice Oversight Commission website www.justiceoversight.com.
NIYSA would like to invite its members to a half day Practice Management Seminar on Friday 15 October 2004 at 1.00 pm in Law Society House followed by an early evening reception with limited free bar, jazz band and nibbles at Altos Café, Fountain Street, Belfast.

Practice Management Seminar Programme
1.00pm - 1.30pm  Registration, sandwiches, tea and coffee
1.30pm - 2.15pm  ‘Perils and Pitfalls of Practice’ by Suzanne Bryson, Deputy Secretary of the Law Society of Northern Ireland
2.15 pm - 3.00 pm  ‘The Importance of the Financial Function to a Successful Legal Practice’ by Gabriel Greene of Goldblatt McGuigan
3.00pm - 3.15pm  Tea and coffee
3.15pm - 4.00pm  ‘Money Laundering – A Banker’s View’ by Mark Ellesmere of First Trust Bank
4.00pm - 4.45pm  ‘Partnership: What to do?’ by Patrick Oliver of AFP Consulting

The cost is £40.00 for NIYSA members and £60.00 for others.

All Solicitors aged 36 or under automatically members of NIYSA.

All delegates at this seminar are invited to a reception at Altos Café, Fountain Street, Belfast at 5.00pm for drinks and nibbles with live jazz band.

Attendance at this seminar will qualify for 3 hours’ Practice Management CPD

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NORTHERN IRELAND YOUNG SOLICITORS’ ASSOCIATION PRESENTS A LUNCHEON LECTURE ON:

FAMILY LAW - RECENT MESSAGES FROM EUROPE

Speaker: Ms Siobhan O’Hagan BL

Date:  Tuesday 28th September 2004

Time:  1pm- 2pm (tea, coffee and sandwiches from 12.30 pm)

Venue: Law Society House, Victoria Street, Belfast

Cost: £10 for members of the NIYSA* and £20 for non-members.

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

Cheques and Booking Forms to NIYSA c/o Emma Hunt, Mills Selig Solicitors, 21 Arthur Street, Belfast BT1 4GA Fax to 028 9024 3878. E-mail to emma.hunt@nilaw.com

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Practitioners acting for clients who are landlords or tenants of houses which are let for multiple occupation should note that the Housing Executive (in accordance with its obligations under the Housing (Northern Ireland) Order 2003) has put in place, with effect from 1st May 2004, a compulsory Statutory Registration Scheme for Houses in Multiple Occupation (HMOs).

Background
The Scheme’s introduction followed an extensive consultation process during which 50 government, statutory and representative bodies together with individual landlords and residents responded with widely diverse comments.

The Statutory Registration Scheme itself was drafted with the objectives of ensuring that safe and well managed HMO accommodation is available for the 40,000 individuals who occupy close to 10,000 properties in this sector of the housing market.

What constitutes a House in Multiple Occupation?
The original definition of a HMO was contained in Article 75 of the Housing (Northern Ireland) Order 1992. Through case law (Barnes v Sheffield Council), the scope of the term had become restricted. The original definition is now substituted by Article 143 of the Housing (Northern Ireland) Order 2003 which came into effect on the 1st January 2004. It provides that a HMO is:

“A house occupied by more than 2 qualifying persons, being persons who are not all members of the same family”.

“Qualifying persons” means persons whose only or principal residence is the house in multiple occupation, and for that purpose a person undertaking a full time course of further or higher education who resides during term time in a house shall, during the period of that person’s residence, be regarded as residing there as his/her only principal residence.

A person’s family is defined as that person’s grandparent, parent, child or grandchild, brother or sister, spouse or persons living together as husband and wife. (A person’s family includes stepchildren and relationships of the half-blood are treated as relationships of whole blood).

This amended definition allows the Housing Executive to initiate appropriate statutory action against student type accommodation which fails to comply with the adopted HMO standards. Previously, due to the mode of living and tenancy agreement drawn up between landlords and tenants, many student properties fell outside of the definition contained within the 1992 Order.

Standards Required
At the launch of the Statutory Registration Scheme the Chief Executive of the Housing Executive, Mr Paddy McIntyre said,

“Private Sector tenants have the right to live in property that is of a decent standard with up to date fire safety measures. Inclusion in the Register demonstrates that the property is safe and should help people to make informed choices on where to live. This Scheme will become a hallmark of quality in the private rented sector and registered properties will have been judged to comply with the highest standards to protect the health and safety of occupants.”

Apart from fire safety, other standards relate to kitchen, toilet and washing facilities.
Implementation

The registration scheme specifies those properties which are required to register initially, and defines the person required to ensure compliance with the provisions of the scheme, known as “the specified person”. The Housing Executive will continue to specify properties for registration on a rolling programme over the coming years.

Compliance

The Statutory Registration Scheme took effect on 1st May 2004. Consequently owners or managers of those HMO properties which are specified to register are required to comply with all of the provisions of the scheme by the dates shown in the registration scheme document.

Control provisions within the scheme also enable the Housing Executive to refuse an application for first registration or a renewal or variation of registration, on the grounds that the “person having control of the house” or the person intended to be the “person managing the house” is not a “fit and proper person”.

Non-compliance with the scheme’s provisions will lead to penalties being imposed such as fines, and may also result in the property in question being no longer permitted to operate as a HMO.

Anti-social behaviour

The registration scheme also requires landlords to do what is reasonably practicable to prevent nuisance or anti-social behaviour on the part of tenants of registered properties. The Explanatory Notes which accompany the provisions of the Scheme give examples of the type of reasonably practicable steps that a landlord might take to prevent or reduce such behaviour. The following will be of particular relevance to practitioners acting for landlords of HMO properties:

- The inclusion of clauses relating to behaviour in the written tenancy agreement, to set the parameters and boundaries for behaviour at the outset. It is then possible for the manager to consider eviction on grounds of breach of the tenancy agreement should problem behaviour arise;
- The inclusion of clauses in the tenancy agreement whereby the tenant agrees to keep the garden and curtilage of the house free from refuse and litter, except where properly is stored pending disposal;
- The inclusion of clauses in the tenancy agreement relating to the proper use of bins and other means of disposal of refuse and litter.

Practitioners should also note that HMO landlords now have the power to obtain injunctions against anti-social behaviour under Statutory Rule 2003 No.409, "Injunctions Against Anti-Social Behaviour (Prescribed Premises) Regulations (NI) 2003" which prescribes accommodation for the purposes of Article 26(2)(d) of Housing (NI) Order 2003.


We are grateful to Kevin Bloomfield of the NIHE for his assistance with the preparation of this article.

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Ending of “Light Touch”
Circumstances in which an SDLT 8 letter will be issued

The Inland Revenue made an announcement in November 2003 about special ‘Light Touch’ administrative arrangements. These arrangements were brought in to help the transition to Stamp Duty Land Tax introduced on 1 December 2003.

During the ‘Light Touch’ period their objective was to process SDLT 1 forms and issue certificates even where returns had been filled in unsatisfactorily or contained errors and omissions. Letters were sent out with certificates explaining where the form had been filled in incorrectly so that the practitioner was aware of the correct procedure.

With ‘Light Touch’ being phased out from 19 July 2004 any incomplete or incorrect SDLT forms may automatically generate an SDLT 8 letter.

The SDLT 8 will indicate which items of information are missing or unclear so that the practitioners or clients can provide the information on the returned form. A certificate will not be provided unless the correct or missing information is provided. The issue of an SDLT 8 means that the SDLT 1 will remain on the system to be completed when the SDLT 8 is returned. Unlike the SDLT 1, the SDLT 8 does not need to be signed by the purchaser.

Where this happens it is important to remember the 30 day period triggered by the effective date of the transaction will still be running and the SDLT 8 should be returned as soon as possible so that penalties do not become applicable.

Practitioners or clients may fax through completed SDLT 8’s to the office shown at the top of the form. Fax numbers can be obtained from the Enquiry Line on 0845 6030135 or via the Revenue’s website at http://www.inlandrevenue.gov.uk/so/contact_details.htm

Following the issue of an SDLT 8 letter, the Revenue will also be able to accept certain minor amendments and queries to a previously submitted SDLT1 over the phone. In other instances, the query can only be dealt with by the return to them of the SDLT 8. A list of the types of enquiries that can be answered over the phone by their staff and those that will require the submission of an SDLT 8 is as follows:

**Queries That Can be Answered Over the Telephone**

| Q5.2 | Restrictions, covenants or conditions |
| Q27 | Certificate for each property |
| Q29 | Local Authority number |
| Q32.2 | Area of land |
| Q40.3 | Agents address missing |
| Q50 | NINO missing |
| Q55 | Is purchaser acting as a trustee |
| Q69 | Is the (Second) purchaser acting as a trustee |
| Q70 | Supplementary returns not enclosed |

**Queries that will need an SDLT8 returned**

| Q1 | Type of property |
| Q2 | Description of transaction |
| Q3 | Interest transferred or created |
| Q4 | Effective date of Transaction |
| Q7.1 | Exchange/Part Exchange of land |
| Q9.1 | Relief claimed |
| Q9.2 | Relief type |
| Q9.3 | Charity registered number |
| Q9.4 | Amount remaining chargeable |
| Q10 | What is the total consideration in moneys worth including and VAT actually payable for the transaction notified |
| Q12 | What form does the consideration take |
| Q13.1 | Is the transaction linked to any others |
| Q13.2 | If not answered and 13.1 yes |
| Q16 | Type of lease |
| Q17 | Start date as specified in lease |
| Q18 | End date as specified in lease |
| Q28.3 | Address or situation of land |
| Q36 | Vendor (1) Surname or Company Name |
| Q38.3 | Vendor (1) address |
| Q46 | Vendor (2) Surname or Company Name |
| Q48.4 | Vendor (2) address |
| Q52 | Purchaser (1) Surname/Company Name |
| Q54.4 | Purchaser (1) address |
| Q57 | Are the purchaser and vendor connected |
| Q57 | Address to send certificate to |
| Q58 | Authorised agent |
| Q59 | Agents address |
| Q61.3 | Purchaser (2) surname or company name |
| Q66 | Purchaser (2) address |
| Q71 | Declaration - the purchaser(s) must sign the return |
Government has recently unveiled plans to change the law relating to three separate areas of corporate legislation. The Department of Enterprise, Trade and Investment has announced proposals:

- to modernise company law in Northern Ireland
- to reform the legal framework for personal and corporate insolvency and
- to extend the law relating to directors disqualification

MODERNISATION OF COMPANY LAW IN NORTHERN IRELAND

Enterprise Minister, Barry Gardiner, has issued for consultation a paper entitled ‘Flexibility and Accessibility’. Mr Gardiner said: “Company law is fundamental to the effective operation of our economy. We need to cut out ‘red tape’. We need to make the law more accessible to private companies which, after all, represent the vast majority of registered and trading bodies.

“We also need to maintain company law consistent with Great Britain and in harmony with Europe. It is more efficient for businesses, their representative bodies and professional advisers to operate within consistent codes.

“These proposals represent a major programme of consolidation and reform of company law. The end result will be a modern, simplified and more accessible framework, which will reduce the regulatory and administrative burden for the vast majority of companies.”

The proposals in “Flexibility and Accessibility” are designed to make company law more accessible to all users. At present, company law is contained mainly in primary legislation.

New powers are proposed to enable future changes by secondary or subordinate legislation. A power to “restate” the existing law in subordinate legislation will make it simpler to understand for all users. A power to “reform” or amend the law is also proposed. However, in both cases, proposals would be introduced in a manner, which would retain processes for full consultation on, and parliamentary scrutiny of, the changes.

A second paper outlining the Current Company Law Legislation Programme has been issued for information. It describes provisions contained in the Companies (Audit, Investigations and Community Enterprise) Bill, which are designed to restore investor confidence, following high profile corporate failures. The proposals strengthen the regulatory regime of the accountancy and audit professions and are aimed mainly at public and large private companies. Other legislative initiatives emanate from Europe and are required to implement various Regulations and Directives dealing with International Accounting Standards, Fair Value and other matters.

The period for comments runs until 29 October 2004. The ‘Flexibility and Accessibility’ paper can be accessed on the DETI website at www.companiesregistry.detini.gov.uk

REFORM OF INSOLVENCY LAW

A draft Order in Council has been published which aims to reform the legal framework for personal and corporate insolvency.

The publication of the draft Order follows a consultation carried out in 2003 on proposals to modernise the insolvency system. The main provisions of the proposed legislation are:

- the reduction of the normal bankruptcy period for individuals,
- the imposition of continuing restrictions on culpable bankrupts,
- allowing the removal of outdated statutory restrictions on bankrupts,
- the abolition of the right to appoint an administrative receiver except in special cases.

- the streamlining of the administrative procedure and the abolition of Crown preference (through which the Crown is entitled to receive payment in priority to other creditors).

A copy of the draft Order and accompanying Explanatory Memorandum is available on the Insolvency Service website at www.insolvencyservice.detini.gov.uk

The consultation period on the draft Order will run until 29 October 2004. It is planned to take forward the legislation in 2005.

DIRECTORS DISQUALIFICATION

Proposals have been published to extend Northern Ireland legislation covering the basis on which company directors may be disqualified.

A spokesperson for DETI’s Insolvency Service explained: “The aim is to protect the public by ensuring that the means exist to enable directors whose companies have been in breach of competition law to be disqualified.”

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

These proposals will bring Northern Ireland legislation into line with that in Great Britain where similar provisions were introduced by the Enterprise Act 2002.

DETI will be consulting simultaneously on the proposed changes and the associated draft legislation. A copy of the Consultation Document, draft Order in Council and accompanying Explanatory Memorandum are available on www.insolvencyservice.detini.gov.uk

Responses are due by 29 October 2004.
The Department of Finance & Personnel has launched two separate consultations on proposals relating to the rating system.

(1) HARDSHIP RATE RELIEF FOR BUSINESSES

A Consultation Paper has been issued proposing a Hardship Rate Relief Scheme to help business ratepayers. On 1 March 2004, Ian Pearson MP, the Minister with responsibility for Finance, announced in Parliament that the draft Rates (Amendment) (Northern Ireland) Order would be amended to include an enabling power to introduce a hardship rate relief scheme by Regulations. This announcement followed an extensive public consultation on the Order that began in October 2003.

During the parliamentary stages of the Order in early 2004 there was broad support for the introduction of a hardship rate relief scheme. The proposed scheme is intended to allow Government to respond in a practical and timely way to the needs of businesses facing difficulty for reasons beyond normal commercial risk.

It will not be a replacement for industrial de-rating, but it will allow Government to be more responsive and flexible in targeting support at individual businesses where and when it is most needed.

Article 8 of the Rates (Amendment) (Northern Ireland) Order 2004 sets out the four broad principles relating to hardship rate relief:

1. The relief is to be granted only in respect of rates payable on non-domestic property;
2. The relief is to be ‘discretionary’;
3. The circumstances that give rise to a request from a ratepayer for hardship relief have to be ‘exceptional’; and
4. The relief may be given only where a ratepayer would otherwise suffer ‘hardship’.

There are several key issues associated with these broad principles on which final decisions have yet to be taken. These are set out in the Consultation Paper and responses thereto will inform the preparation of the Regulations.

The Department requests that any comments on these issues should be submitted to the Department by 17 September 2004.

The consultation documentation is available on the Internet at: www.nics.gov.uk/ratingpolicy

It is intended that the regulations will come into operation on 1st April 2005.

(2) REFORM OF DOMESTIC RATING SYSTEM

The Government has published a policy paper on the reform of the domestic rating system. The domestic sector was last re-valued nearly 30 years ago and is considered to be riddled with anomalies and inequities.

Launching the document, the Finance Minister Ian Pearson said that a new domestic rating system, due to come into effect from April 2007, will mean households in Northern Ireland will pay rates on a fairer basis.

Under the new arrangements, domestic rate bills in Northern Ireland will be calculated on the basis of each property’s assessed capital value rather than a banded system. This builds on the decision announced in 2002, in light of the outcomes of the consultation exercise carried out at that time, to change the basis of valuation from rental to capital values. The Minister also announced that regular revaluations will be carried out to ensure that the new system is up-to-date and reflects changes in the property market. In addition, a new appeal process will be established for householders unhappy with their property valuation.

Commenting on the redistributive impact of the proposals, Mr Pearson said: “It is likely that there will be some significant shifts in rate bills, particularly at the top end of the market. It is only fair that those who can afford to pay do pay a fairer share as soon as possible, but there is also a need to manage the transition effectively. I have therefore decided that transitional arrangements will be
introduced to assist those who may experience significant increases in their rate bill. These arrangements will be finalised when the revaluation exercise is completed and published well in advance of April 2007 when the first rate bills under the new system will be issued."

On the issue of rate reliefs he stated "It is critically important that we provide a safety net for those who can least afford to pay. Blanket reliefs, however, are not the answer. Instead, I am proposing to introduce a rate relief scheme that will provide targeted assistance to those ratepayers on low incomes who are just beyond the reach of the housing benefit system.

“The new system will also cater for people with a disability who qualify for Disabled Person’s Allowance. New applicants will receive a standard 25% reduction in their rate bill to ensure they are not disadvantaged because of modifications made to their home.”

The Minister also expressed the Government’s desire that future decisions on rating reform would be taken forward by a restored Executive and Assembly. This will be taken into account in the legislation required to implement the Government’s reforms.

Commenting on the Government’s decision not to introduce the rating of vacant domestic property, the Minister said: “While, as I have indicated previously, I think that it is right in principle that vacant property should be rated, the cost of extending it to the domestic sector would be excessive when compared with the revenue likely to be raised. Unlike the position in the non-domestic sector, the rating of vacant domestic property would be an inefficient measure and therefore I do not intend to introduce it at this stage. However, provision will also be made for an enabling power that would allow a future Executive to introduce it at a later date if circumstances were to change.”

The Minister also stated that the reform of the domestic rating system will need to take account of the outcomes of the ongoing Review of Public Administration in Northern Ireland and the Balance of Funding Review in England.

Concluding the announcement, the Minister said: “There will now be a 16 week consultation period during which I hope as many interested parties as possible will consider the proposals and comment on them.

The detailed analysis underpinning the proposals is contained in the policy paper. A shorter summary paper is also available. An explanatory leaflet will be issued to householders in September.” The detail contained within the Policy paper is subject to consultation, concluding on 12 November 2004.

Both the main policy paper, summary document and final EQIA are available on the Rating policy website: www.nics.gov.uk/ratingpolicy/
Children Order Panel !!!

Solicitors wishing to be accredited to the Children Order Panel are invited to apply for membership on or before Friday 10th September 2004.

To summarise the requirements, you are eligible to apply for membership if you: -

(i) are in private practice;
(ii) have three years post-qualification experience;
(iii) can demonstrate relevant experience and knowledge gained by representing parents, grandparents or other parties in both public and private law proceedings under the Children (NI) Order 1995 or under the Children Act 1989 (if appropriate);
(iv) can demonstrate attendance at courses and seminars etc as required;
(v) can give an undertaking in the form required;
(vi) agree to provide references as required;
(vii) authorise the Law Society to use the Pre-Employment Consultancy Service (PECS) to confirm the accuracy and completeness of the information provided.

Application forms are available from the Society on request and completed forms should be returned with a fee of £200.00. When you have submitted the application you will be required to attend a 2-day training session which has been provisionally arranged for 11th & 12th October 2004. You will then be asked to complete a case study on a question which relates to working with children. You will also be asked to attend an interview before the Accreditation Board.

When you are accepted as a member of the Children Order Panel by the Accreditation Board, you will be notified in writing and your name will be added to the Society’s Children Order Panel membership list. This is passed on to the Guardian Ad Litem Agency for inclusion on the Panel of Solicitors who can be instructed to act for children.

Membership of the Panel will last for a period of two years from 1st January 2005. During that time you must attend courses and training as required. After two years you can apply for re-accreditation which involves completing a questionnaire and giving details of your experience and updated training.

PLEASE SUBMIT YOUR WRITTEN APPLICATION TO:
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LAW SOCIETY HOUSE
98 VICTORIA STREET
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DX422NR BELFAST 1

TEL: 90231614 FAX: 90232606
E-MAIL kdelaney@lawsoc-ni.org
Allocation of Family Proceedings

Family law practitioners should note that the undermentioned Rules are in force from 6th September 2004.

1. THE CHILDREN (ALLOCATION OF PROCEEDINGS) (AMENDMENT) ORDER (NORTHERN IRELAND) 2004 (SR 2004 NO.310)

This Order amends the Children (Allocation of Proceedings) Order (Northern Ireland) 1996:-

- to provide in certain circumstances for the transfer of specified proceedings from one family proceedings court to another family proceedings court. The circumstances for such a transfer are where

  (a) having regard to the principle set out in Article 3(2) of Children (NI) Order 1995 the transferring court considers that the transfer is in the interests of the child –

    (i) because it is likely to significantly accelerate the determination of the proceedings,

    (ii) because it would be appropriate for those proceedings to be heard together with other family proceedings which are pending in the receiving court, or,

    (iii) for some other reason, and

- the receiving court consents to the transfer.

- to specify Dungannon County Court as a Family Care Centre; and

- to make other minor amendments.

2. THE DECLARATIONS OF PARENTAGE (ALLOCATION OF PROCEEDINGS) (AMENDMENT) ORDER (NORTHERN IRELAND) 2004 (SR 2004 NO. 311)

This Order amends the Declarations of Parentage (Allocation of Proceedings) Order (Northern Ireland) 2002:-

- to provide in certain circumstances for the transfer of proceedings under Article 318 of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 from one family proceedings court to another family proceedings court;

- to specify Dungannon County Court as a Family Care Centre; and

- to designate the juvenile court for the petty sessions district of East Tyrone as a family proceedings court, in place of the juvenile court for the petty sessions district in Omagh.

Review of Child Protection Vetting Arrangements

Both the Secretary of State for Northern Ireland and the Commissioner for Children and Young People have welcomed the publication of the report of Sir Michael Bichard’s inquiry into the tragic events at Soham in August 2002.

In March of this year the Commissioner was asked by the Secretary of State to undertake a review into child protection vetting procedures in Northern Ireland. It was agreed at that time that Sir Michael’s report would inform the review.

The Commissioner has announced that the chair of the review will be Ruth Lavery who was formerly a senior lecturer in the School of Law at QUB, specialising in Family Law.

The Commissioner will in coming months unveil details of how children, young people, parents and organisations can help inform the chairperson’s recommendations for improving practice.

One of the first tasks facing the review will be to benchmark practice in terms of vetting those who work with children against the standards proposed by Sir Michael Bichard.

“The Mayo Connection”

Junior Vice President Attracta Wilson is believed to have secured a hotel of top international standing in her native county for next year’s (05) conference.

It is rumoured that she has negotiated the prime Easter weekend slot at the venue down to standard conference prices.

Members are urged to “watch this space” as annual conference attendance has gone from strength to strength in recent years.
Fourth Report of Children Order Advisory Committee

The Fourth Report of the Children Order Advisory Committee (COAC) has been published. It focuses on the work of the Committee in monitoring the operation of the Children Order in the courts and presents an overall view together with statistical information and commentary during the period April 2002 until March 2003.

This period saw the completion of three major pieces of work namely a report on delay in the court process, a report on best practice in Children Order cases and a report on separate representation for children in public and private law cases. The first two reports have since been published and the third is being distributed as a basis for further consideration before receiving the imprimatur of the Committee.

In addition to these three major pieces of work the Committee through its sub-Committees has examined on an ongoing basis a breadth of issues falling within its terms of reference to include domestic violence, contact centres, mediation, secure accommodation, inter-country co-operation and multi-disciplinary literature.

COAC also considered a number of disparate issues emphasising the multi-disciplinary approach it considers vital to the implementation of its remit. It states that it has taken a close interest in the experience of CAFCASS in England and its possible application to Northern Ireland, child care developments on a broad canvas throughout Northern Ireland, the development of mediation, the training of social workers and the growing recognition of information technology as an aid in its work e.g. introduction of telephone and video conferencing in the court process.


GENERAL DENTAL COUNCIL

Director of Appeals

The General Dental Council is the body which regulates dentistry in the United Kingdom. One of the Council’s functions is to determine appeals by dentists against decisions not to allow them entry to one or more of the Specialist Lists (which show expertise in distinctive branches of dentistry). The Council is seeking to appoint a new Director of Appeals to chair the panels of 3 (Director of Appeals plus 2 dentists) which hear these appeals. All appeals are heard at the Council’s offices in London W1.

The main functions of the Director of Appeals are to ensure the impartiality of the appeal system and to ensure that appeals are determined promptly. The commitment required is likely to be 5 – 10 days per year, plus the same number of days’ reading time. Reading and hearing days are paid at the daily rate set for Recorders by the Dept for Constitutional Affairs.

The primary qualification is that the Director of Appeals shall be a barrister, advocate or solicitor of at least 10 years’ standing; but candidates should in addition have not less than 5 years’ experience of chairing statutory tribunals or acting in a similar judicial capacity. Good organisational/managerial skills will be a distinct advantage. Applicants must be aged 68 or under at the time of appointment.

An application form for appointment as the Director of Appeals should be requested in writing from Tom Peplow at the General Dental Council, 37 Wimpole Street, London W1G 8DQ; or by fax on 020 7224 3294; by email to tpeplow@gdc-uk.org or by calling 020 7887 3835. The closing date for the return of completed application forms is 15 October 2004.

The General Dental Council is committed to promoting and developing equality and diversity in all its work. Applications from all sections of the community are welcomed.

Legal Assessors

The General Dental Council is the body which regulates dentistry in the United Kingdom. The Council appoints Legal Assessors to sit with its fitness to practise committees to advise on questions of law and procedure in proceedings before them, in accordance with paragraph 5 of Schedule 3 to the Dentists Act 1984. The Council is seeking to appoint a new Director of Appeals to chair the panels of 3 (Director of Appeals plus 2 dentists) which hear these appeals. All appeals are heard at the Council’s offices in London W1.

Legal Assessors may not involve themselves in any proceedings before the Council’s fitness to practise committees, nor in appeals against decisions by those committees. Applicants must be aged 65 or under at the time of appointment.

Legal Assessors may be asked to sit for half days, single days or sessions of between 2 and 10 days. All cases are heard at the Council’s offices in London W1. Hearing days are paid at the daily rate set for Recorders by the Department for Constitutional Affairs; with additional reading fees as appropriate.

The primary qualification is that a Legal Assessor shall be a barrister, advocate or solicitor of at least 10 years’ standing; but candidates should in addition be able to demonstrate not less than 5 years’ practice of criminal law. Previous service as a Legal Assessor, Chair of a Tribunal, or Recorder will be a distinct advantage.

An application form for appointment as a Legal Assessor should be requested in writing from Tom Peplow at The General Dental Council, 37 Wimpole Street, London W1G 8DQ; or by fax on 020 7224 3294; by email to tpeplow@gdc-uk.org or by calling 020 7887 3835. The closing date for the return of completed application forms is 15 October 2004.

The General Dental Council is committed to promoting and developing equality and diversity in all its work. Applications from all sections of the community are welcomed.
Retainer Letters

Retainer letters are also known as letters of engagement and probably one of the most important documents in a solicitor’s defence against a claim of negligence. They are, if properly written and comprehensive, fair proof that the solicitor has done the work as promised. Below we have outlined what should be set out in a retainer letter, which will hopefully vindicate you, should you be hit with an unfair claim of negligence.

Cost is one of the main underlying reasons for negligence claims being brought against a solicitor. You should always be realistic when you quote costs in the retainer letter, and it is better to overestimate than underestimate what the end, or monthly, fee will be. If you cannot estimate a price due to the fact that the work is too complicated to assess, then this fact should be outlined within the retainer letter, along with a proper breakdown of costs which will and could be incurred.

Timing is another big cause of negligence claims. As with costs, our best advice here is to be completely practical. Do not promise your client that you can do a job in two months just because that is what the client wants to hear. If the job will take three months at the most, then the retainer letter should stipulate that, in your opinion, the work undertaken will take ‘at least three months’.

The client’s instructions, and your interpretation of them, should also be set out in the retainer letter. You need to list everything you believe you will be undertaking on behalf of your clients, and also, just as importantly, any areas which you will not be working on. It is often the case that the solicitor, following an initial meeting with the client, will think the client has instructed him fully. However, often the client has not stipulated exactly what he wants doing and will assume alternative areas of the law are also being covered. For example, if tax is not your area of expertise when you are drafting a will, let the client know in the retainer letter you will not be covering any tax issues in the work you are undertaking.

Legalese should also be avoided as much as possible in the retainer letter. The majority of clients will not understand the language of the law and therefore, can easily misconstrue what is being set out in the retainer letter, especially in the case of what work is being undertaken. It is the lawyer’s responsibility to ensure the client fully understands everything set out in the retainer letter.

The retainer letter should be as comprehensive as possible and written in simple language. Should a claim be brought against you and your practice for negligence, then your retainer letter will make up a key part of the defence, and as such needs to be carefully considered.

This column was prepared by the Alexander Forbes Professions risk management team.

Les Allamby examines new restrictions in social security entitlements which, although primarily aimed at workers from the European Union accession states, affect all social security claimants.

On May 2004, the European Union expanded from fifteen to 25 member states when the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia, Cyprus and Malta joined the European Union.

The Accession Treaty allows member states to restrict the right of accession country nationals (except those from Cyprus or Malta) to freedom of movement as workers for a transitional period of up to seven years.

The UK government has modified arrangements for eight of the ten accession states (the A8) by setting up a registration scheme requiring accession state nationals to register for employment within a month of starting work.

The United Kingdom has also amended the habitual residence test for certain social security benefits. In effect, a claimant must now be both habitually resident in Northern Ireland and also have a right to reside in the common travel area (ie the United Kingdom, Republic of Ireland, Isle of Man and the Channel Islands). In addition, the right to reside test has been introduced for Child Tax Credit and Child Benefit. The new rules are primarily aimed at nationals from the accession states although they affect all social security claimants.

The habitual residence test
A claimant is not entitled to Income Support, Income-based Jobseeker’s Allowance, Pension Credit or Housing Benefit unless s/he is habitually resident (or treated as such) in the common travel area. A claimant who does not satisfy the habitually resident test is classed as a ‘person from abroad’ and, alongside those defined as ‘subject to immigration control’, is excluded from entitlement. The habitual residence test is applied to all claimants of the benefits outlined above (but not partners or dependants) including UK citizens.

From 1 May 2004, the test has been amended so that, in order to satisfy the habitually resident test, a claimant must also have a ‘right to reside’ in the common travel area.

Certain groups are automatically treated as being exempt from the test. The groups exempt include:
- European Economic Area nationals and their dependants who are workers under EC Regulations 1612/68 or EC 1251/70;
- EEA nationals who have a right to reside in the UK under EC Directives 68/360 or 73/148. This right depends on the person being a worker.
- people who have been granted refugee status or exceptional leave to remain in the UK;
- people who have been deported, expelled or compulsorily removed from another country to the UK;
- accession nationals registered under the Home Office Scheme who are working in the UK for an authorised employer.

European Economic Area nationals are people from the 25 European Union member states plus Iceland, Lichtenstein and Norway. Switzerland is also covered even though it has not joined the EEA.

The term habitually resident has not been defined and the words must be given their ordinary and natural meaning. What has emerged from case law is that there is no definitive list of factors or time limit that determines whether or not a claimant is habitually resident in the UK. It is a question of fact to be decided by a social security decision maker or on appeal by a tribunal.

From case law it is possible to divine a number of pointers. To be habitually resident, a claimant must have a settled intention to reside. This does not necessarily have to be for a permanent period. For a claimant who has never been in the United Kingdom, this means actual residence for an appreciable period of time (see Nessa v CAO 1999) (HL). More recently, a Social Security Commissioner’s decision in Britain, CIS 4474/2003, suggested that an appreciable period will normally mean between one and three months and should not normally exceed this length of time. In effect, the longer a claimant has been in the UK, the stronger the claim will be to establish habitual residence. Other factors that will strengthen a claim include any durable ties with the United Kingdom (for example, family or friends), bringing over possessions, doing everything necessary to establish ties in advance. All relevant factors need
to be taken into account when deciding whether habitual residence has been established.

The right to reside

To satisfy the habitual residence test for Income Support, Income-based Jobseeker’s Allowance, Pension Credit, Housing Benefit, Child Tax Credit or Child Benefit after 1 May 2004, a claimant must have a right to reside in the United Kingdom. The regulations provide no statutory definition of the right to reside. Nonetheless, domestic legislation and European Community directives set out that the following groups are covered:

• UK nationals and others who have a right of abode in the UK under Section 1 of the Immigration Act 1971;
• citizens of the Republic of Ireland, Channel Islands and Isle of Man who have a right to reside under their own legislation;
• third country nationals who have a right to stay in the United Kingdom under leave to enter or remain in the United Kingdom under certain provisions of the Immigration Act 1971.

This will generally cover people whose immigration status is not subject to ‘no recourse to public funds’. For example, people granted indefinite leave to remain, exceptional leave to enter or remain, humanitarian protection or discretionary leave should all be covered.

The rights of nationals from the other EEA member states and Switzerland will depend on the economic category into which a person falls. The following have a right to reside:

• a worker for the purposes of Regulation 1612/68 or Directive 68/360;
• the self-employed who are providing a service on a commercial basis and covered by Directive 73/148;
• work seekers who have the right to move freely within the European Union to search for work for at least six months and longer providing they continue to genuinely seek work.

In addition, retired or incapacitated workers who have worked in the UK are entitled to remain if they satisfy certain conditions contained in Regulation 1251/70.

Nationals of Accession States

The Accession Treaty allows member states to derogate from Articles 1 to 6 of Regulation 1612/68 covering freedom of movement of workers. In February 2004, the government announced its intention to introduce specific arrangements to cover all the accession state countries (A8 nationals) except Malta and Cyprus.

The government has decided to introduce a new workers registration scheme for A8 nationals for the next five years. As a result, A8 nationals must register their employment within one month of taking up a job (see Peter Fitzmaurice’s article, Writ June 2004). Registration is required for a period of twelve months uninterrupted employment. Time spent working legally in the UK prior to 1 May 2004 can count towards the twelve month registration period. An A8 national who has worked legally for twelve months does not have to register.

A worker who is registered under the Home Office scheme and working for an authorized employer in the UK will be treated as having a right to reside and will be able to claim Working Tax Credit, Child Tax Credit, Child Benefit, Housing Benefit, Income Support and Pension Credit.

A8 nationals who are still required to register (ie who have worked for less than twelve months without interruption) and lose their job will no longer be treated as having a right to reside and will not be entitled to Income Support, Income-based Jobseeker’s Allowance, Housing Benefit, Child Tax Credit, Child Benefit or Pension Credit.

After registration, for twelve months, an A8 national will be entitled to the above benefits providing s/he satisfies the other conditions attached to the benefits. Family members will also have the right to the income related benefits outlined. Family members for this purpose include a spouse, children or grandchildren under 21 or dependent on the worker and also dependent parents, grandparents and great grandparents.

Work seekers from A8 countries who, if they found work, would have to register, will not be treated as having a right to reside in the UK and will not be entitled to the benefits outlined above.

A question arises as to whether the new rules are compatible with existing European Community law. The Accession Treaty does not derogate from EC Regulation 1408/71. In addition, there is no derogation from Article 7(2) of 1612/68 which entitles migrant workers to the same tax and social advantages as nationals in the host member state. As a result, an A8 national who has exercised freedom of movement as a worker may be able to rely on these provisions to establish entitlement to means tested benefits and Child Benefit. There is no requirement to have worked in a member state for at least twelve months before being able to utilise the provisions contained in Regulation 1408/71 and Article 7(2) of 1612/68.

Conclusion

The new rules have made an already difficult area of law even more complex. Advisers need to understand domestic and European law when dealing with the entitlement of European Union migrant workers to social security benefits.

Migrant workers from the new accession states face particular difficulties accessing entitlement to key benefits if they become unemployed during the first twelve months when registered for work. This is likely to lead to a number of legal challenges. The Law Centre will be happy to provide advice on migrant workers’ entitlement to social security benefits.

Tax credit briefings

The Law Centre has produced a series of briefings on tax credits, with support from the Inland Revenue. Free copies have been distributed to full and comprehensive associate members of the Law Centre. Additional copies are available at the cost of £4.95 including P&P. Order from: Publications, Law Centre (NI), 124 Donegall Street, Belfast BT1 2GY. Alternatively, look them up on the publications page of www.lawcentreni.org.
Government has announced the start of a consultation process on a Single Equality Bill for Northern Ireland. The concept of a Single Equality Bill was originally advanced in the Assembly’s First Programme for Government, which was published in 2001. This envisaged that a Single Equality Bill would harmonise existing equality and anti-discrimination legislation and embrace new aspects of the equality agenda, such as age and sexual orientation.

Speaking at the launch in Parliament Buildings of a consultation document, the Under Secretary of State, Mr John Spellar said:

“This process of consultation on a Single Equality Bill, is a very important development that will ultimately provide the people of Northern Ireland with clear and concise anti-discrimination and equality law, in one legal instrument.”

The Minister, stressing that public consultation was the key to a successful Single Equality Bill, said “This consultation document does not provide definitive proposals. No decisions on the content of the Bill will be taken in advance of the type of comprehensive and inclusive consultation process that we are embarking on today”. He paid tribute to the panel of academic and legal experts, who had provided invaluable advice and assistance to the Department, on a range of general and specific issues relating to the Bill. He also thanked the main political parties and representatives from employers and service providers organisations, the trade unions, the churches, equality interests and the Equality and Human Rights Commissions, for their invaluable contribution to the preparation of the consultation document.

Mr Spellar added: “We have come a very long way since the introduction of equal pay legislation in 1970 and we have learned a great deal along the way. The Single Equality Bill now gives us the opportunity to harness all that experience and will serve the people of Northern Ireland for many years to come.”

Welcoming the publication, Evelyn Collins, Chief Executive of the Equality Commission said, “It has always been the view of the Equality Commission that equality laws should be brought together in a single act.

Our experience of operating different legislation in five distinct equality areas has reinforced our belief that a single law will best serve equality for all, and address the interests of everyone – employers and employees, providers of services and consumers of those services.”

The consultation process will run until 12th November 2004 and copies of the consultation document are available from the Single Equality Bill Team, Office of the First Minister and Deputy First Minister, Room E.3.18, Castle Buildings, Belfast, BT4 3SR, Tel: 028 9052 3433. The document can also be accessed on the website of the Office of the First Minister and the Deputy First Minister at www.ofmdfmni.gov.uk/equality
New Teleworking Guide

Modern information and communication technologies are rapidly changing the traditional way in which people and businesses work. One such area is teleworking. The Department for Employment and Learning has recently issued guidance on telework arrangements for employers and employees.

Telework uses information technology to enable work, which could also be performed at the employer’s premises, to be carried out away from those premises, on a regular basis, usually in the worker’s home.

These arrangements have the potential to bring a wide range of benefits to both employers and employees and introduce flexibilities that can also enable employees to achieve a better work-life balance.

A spokesman for the Department said: “Teleworking can enable companies and public service organisations to modernise the way they organise their business and help employees better reconcile work and home life. The guidance published will enable management and employee representatives to draw up company specific policies on teleworking. Having policies which meet both employer and employee needs, is key to implementing telework successfully. The guidelines are designed to help both get to grips with the practical issues around implementing and managing teleworking.”

Among the issues for consideration are:
1. Contractual arrangements for distance workers;
2. Health and safety arrangements;
3. Provision of equipment and remote access;
4. Information security;
5. Expenses and allowances;
6. Personal support.

There is no definition of teleworking in UK law. Telework is voluntary for the worker and the employer concerned. It is important that both reach agreement on how they will regulate the work they do, in order to make sure that the arrangement works effectively.

A non-binding framework agreement on teleworking has been developed at European level by employer and employee organisations, as part of the Social Dialogue process.

The guidance on teleworking is accessible on the Department’s website at, http://www.delni.gov.uk/er under “publications”. Copies of the guidance are also available, free of charge, from Employment Rights Branch, Adelaide House, 39-49 Adelaide Street, Belfast, BT2 8FD.

Telephone 028 9025 7580
Facsimile 028 9025 7555.

DRAFT RULES OF PROCEDURE FOR INDUSTRIAL TRIBUNALS AND THE FAIR EMPLOYMENT TRIBUNAL

The Department for Employment and Learning (DEL) is seeking the views of interested parties on ‘Phase 2’ of its project to update the Regulations and Rules of Procedure governing Industrial Tribunals and the Fair Employment Tribunal for Northern Ireland.

The new Rules of Procedure are due to come into operation on 3rd April 2005. The original intention had been to bring these Rules into effect simultaneously with Great Britain in October 2004. However, due to the complexity of the legislation, as well as to a number of operational constraints, the Department has opted to defer their introduction by 6 months to 3rd April 2005. This move should facilitate the Rules’ smooth implementation.

The consultation document contains further information about the proposed new legislation which is designed to

• further strengthen tribunals’ ability to deal with cases justly and effectively;
• build into tribunal processes measures to encourage employers and employees, before submitting a tribunal application, to attempt to resolve employment disputes in the workplace; and
• recast the legislation in a manner that is more ‘user-friendly’, with greater clarity in the language used.

Comment is also sought on new tribunal forms.

The consultation document in addition includes preliminary Equality and Regulatory Impact Assessments, together with a questionnaire for responses.

The consultation document may be downloaded from the Consultation and Debate area of the Department’s website at www.delni.gov.uk/consultDebate/viewdetails.cfm?conID=74 or by following the link from www.delni.gov.uk/resolvingdisputes. Anyone may register to download the consultation and, in so doing, gain access to a questionnaire allowing a response to be submitted online.

The document may be made available in alternative formats upon request.

Replies to the consultation should be posted or e-mailed before the consultation’s closing date of 20th October to:

Dr Alan Scott
Employment Rights Branch
Room 203
Department for Employment and Learning
Adelaide House
39-49 Adelaide Street
BELFAST
BT2 8FD

Tel: 028 9025 7542
E-mail: Alan.Scott@delni.gov.uk
The Equality Commission is calling on everyone, including all small businesses, disabled people, qualifications bodies and lawyers, to respond to guidance outlining new employment rights for disabled people from 1st October 2004.

The Commission, in partnership with the Disability Rights Commission in Great Britain, has drawn up two draft Codes of Practice supporting changes to the employment provisions of the Disability Discrimination Act (DDA) which will be implemented in October.

The Codes of Practice produced by the Equality Commission are:
(a) DDA Code of Practice Employment and Occupation
(b) DDA Code of Practice Trade Organisations and Qualifications Bodies

The Codes take account of changes to the Disability Discrimination Act that reflect the requirements of the European Union’s Employment Framework Directive (Council Directive 2000/78/EC of 27 November 2000), which established an anti discrimination principle of equal treatment in relation to disability (as well as a number of other grounds) across all Member States.

From 1 October 2004 service providers will also have new duties under the DDA. They may have to make ‘reasonable adjustments’ to the physical features of their premises, if these features make it impossible, or unreasonably difficult, for disabled customers to gain access to goods or to make use of facilities or services on offer. This includes shops, banks, hotels, restaurants, parks, leisure centres, doctors and churches – and that’s just a few examples.

Launching the consultation Dame Joan Harbison, Chief Commissioner of the Equality Commission said, “Although disabled people have been protected from discrimination in employment since the DDA was enacted in 1996, these latest changes will provide greater protection for disabled employees. From 1st October disabled people employed by small businesses and those working as officers in the fire, police and prison services, will – for the first time – be protected by the Act. Qualifications bodies and trade organisations will also assume much broader responsibilities under the DDA.”

“The draft Codes have been produced to help people understand the major changes taking place to improve disabled people’s rights at work. One is aimed at employers, the second is aimed at Qualifications Bodies and Trade Organisations. If you will be affected by the new laws in any way and have a contribution to make, it is important that you respond to the Commission’s consultation so that we can make sure the Codes are comprehensive and workable.”

The consultation period will run to 10 September. Copies of the draft Codes of Practice are available from the Commission’s website www.equalityni.org.

The Equality Commission has also produced a range of supporting publications to help disabled people and employers to understand their rights under the DDA. These can be obtained from the Commission’s website or by contacting the Equality Commission directly at: -
7 – 9 Shaftesbury Square, Belfast BT2 7DP
Tel. 028 90 500 600 Fax. 028 90 331 544
Textphone. 028 90 500 589 Email: information@equalityni.org

ASSOCIATION VICTIMS MEDICAL ACCIDENTS:

SEMINAR on 16th September 2004
1.00 – 3.30 pm at LAW SOCIETY HOUSE

Topics:
NEGIGENCE OF GPs by Dr. Martin Shutkever and HUMAN RIGHTS IN CLINICAL NEGLIGENCE CLAIMS by John O’Hara QC

COST: £10.00 for non AVMA members
Send cheques to Paddy Mullarkey Payable to AVMA Services Ltd, at Campbell Fitzpatrick, Solicitors, 51 Adelaide Street, Belfast.
**Lunchtime Seminar**

**Dispute Resolution Procedures - Statutory Disciplinary, Dismissal & Grievance Procedures**

- **Speaker:** Peter Schofield, EEF Director of Employment & Legal Affairs, London
- **Date:** Friday 24 September 2004
- **Time:** 1pm (tea coffee and sandwiches from 12.30pm)
- **Venue:** Law Society House, Victoria Street, Belfast
- **Cost:** Members £5, Non-members £10.

*Attendance at this seminar will provide one hour's CPD entitlement*

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

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**Booking Form**

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I enclose remittance of £ ______________________

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**Membership**

The Employment Lawyers' Group welcomes new members. Membership fees are now due for 2004-05. Membership fee for the year is £20. Please return the form below to our Treasurer, Ms Orlagh O'Neill, at the address cited above, with cheques made payable to Employment Lawyers’ Group (NI).

**Membership Form**

I enclose cheque for £20.00 made payable to ELG (NI)

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**Website:** www.legal-island.com/elg.htm
Legal Studies for Legal Assistants

The School of Law at Queen’s, in conjunction with SLS Legal Publications (SLS), runs an introductory course in legal skills for those who work with law but who do not have a legal qualification. The course is aimed primarily at legal secretaries and solicitors’ clerks although it would be of interest to anyone whose work has a legal dimension. Taught by a small group of lecturers from the Law School, the course aims to clarify core legal principles and enhance the legal knowledge and experience participants have gained through their work. The course will run from September 2004 to May 2005 culminating in a small graduation ceremony. It involves one weekly two-hour class held on Tuesdays from 5-7 pm and it runs for twenty-four weeks with Christmas and Easter breaks. The classes are informal in nature and students will be required to complete a number of assessment exercises. The course is divided into six parts:-

- The Legal System
- Contract Law and Tort
- Criminal Law
- Family Law and Inheritance
- Aspects of Commercial Law
- Land Law and Conveyancing

For further information and an application form please contact:

SLS Legal Publications (NI)
School of Law
The Queen’s University of Belfast
Belfast BT7 1NN
Tel: 028 9097 5224 / Fax: 028 9032 6308 / DX 4330 NR BELFAST 34

We look forward to meeting you in September!

ALTERNATIVE DISPUTE RESOLUTION
and
MEDIATION TRAINING COURSE

Wednesday 15 September – 27 October 2004
at the Institute of Professional Legal Studies,
10 Lennoxvale, Malone Road, Belfast

SLS in conjunction with the Law Society is pleased to announce the seventh repeat of this very successful course which provides training in advanced negotiation, dispute resolution and mediation. The course will be delivered by experienced mediators and skills trainers led by Brian Speers (Carnson Morrow Graham), David Gaston (Gaston Graham) and Alva Brangam QC and will combine lectures with experiential role play and analysis.

Response to this course has been immensely enthusiastic and those who have taken part to date have found the course to be of great interest, value and enjoyment.

The course is open to both solicitors and barristers but numbers are limited to 15 participants.

The course will run for 6 evenings (15, 22, 29 September, 6, 13 and 20 October at IPLS from 6.00-9.00pm). There is also an all day Saturday programme on 23 October from 10am-4.00pm which it is essential to attend and it is expected that people will be committed to attend the complete programme. There will be a review of the course and presentation of certificates on 27 October.

This course provides a minimum 18 hours of CPD training and costs £725.

To reserve your place - please post, phone or fax:
SLS Legal Publications (NI), School of Law, Queen’s University,
Belfast BT7 1NN
Tel: 028 9097 5224 / Fax: 028 9032 6308 / DX 4330 NR BELFAST 34

Please reserve ___ place(s): Cost £725.00 per person

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Signature________________________________________ Date:______________
PROBATE PRACTICE COURSE for LEGAL ASSISTANTS

Course Tutor: Sheena Grattan BL, Senior Lecturer in Law, QUB

This 7 week course is designed for legal assistants, clerks or secretaries who are involved in aspects of probate practice within their offices. The emphasis will be as practical as possible, equipping participants to deal more confidently with the “routine” aspects of their work while highlighting some of the more unusual and interesting problems that can face the probate practitioner.

This course is not intended for solicitors.

Topics to be covered include:
- The will – its preparation, execution, alteration and revocation
- Entitlement under the intestacy rules
- Administration that does not require a grant
- Extracting the grant of representation
- Collection of assets, payment of debts and distribution of the estate
- Common challenges to wills

During the course participants will follow a file from the preparation and execution of the will through the taking out of the grant of probate and administration of the estate, to the ultimate distribution and the preparation of estate accounts. Participants who successfully complete the weekly assignments and attend regularly will be awarded a certificate.

Numbers will be limited to 20 and the course will run for 7 weeks from Thursday 30 September 2004 to Thursday 11 November at Queen’s University from 5–6.30 pm. The cost per person will be £295. Bookings will be taken in order of receipt.

The course has been developed by Sheena Grattan, who is a practising barrister and senior lecturer in the School of Law. She is also the author of “Succession Law in Northern Ireland” which is the recognised authority for all practitioners working in this field. Sheena herself will be taking the course and her vast experience in teaching both undergraduates and members of the legal profession will make this a very lively and interesting course.

Please contact SLS for an application form:

SLS Legal Publications (NI)
School of Law
Queen’s University Belfast
Belfast BT7 1NN
Tel: (028) 90975224
Fax: (028) 90326308
DX No: 4330 NR Belfast 34
NEW EU LAW ON ENVIRONMENTAL ASSESSMENT

Citizens in Northern Ireland will soon be able to have more influence on decisions which will affect their environment. A new piece of EU law, the Directive on Strategic Environmental Assessment (SEA), which has now been transposed by the United Kingdom into domestic law, will ensure that the environmental effects of a wide range of public plans and programmes must be assessed under improved planning procedures. The distinguishing feature of this Directive is that a member of the public may influence the decision-making process at an earlier stage than previously provided for under EU law.

Background

Prior to the SEA Directive, environmental impacts were assessed at project approval level under the Environmental Impact Assessment Directive (EIA). The actual EIA of those projects came in at stage in the decision-making when important commitments had already been made. The SEA Directive now allows citizens to influence decisions at a much earlier stage. The European Council formally adopted the SEA Directive on 5 June 2001 and it has now been transposed into national law by the United Kingdom.

The SEA Directive

The main elements of the new Directive are as follows:

- When drawing up relevant plans or programmes, public authorities will have to make an environmental report to identify, describe and assess their likely effects on the environment. Amongst the effects to be covered are those on biodiversity, fauna and flora, soil and water, climatic factors, landscape and on human health.
- A member of the public or an environmental authority may give an opinion on the environmental report, the draft plan or programme. All results are taken into account in the course of the planning procedure.
- The public is informed of the decision and the way in which it was made following adoption.
- If a decision will have effects on another EU Member State, that Member State shall be informed and may make comments which will be integrated into the national decision making process.
- The areas covered by the SEA Directive include: road building plans, local waste management, land use, agriculture, water management, tourism industry and energy.

The SEA Directive is important in two key respects. First, it lends greater transparency to the planning procedure. Second, and perhaps of greater practical effect, it gives the public a greater voice at an early stage of the decision-making process.

The areas covered by the SEA Directive include: road building plans, local waste management, land use, agriculture, water management, tourism industry and energy.

The public is informed of the decision and the way in which it was made following adoption.

If a decision will have effects on another EU Member State, that Member State shall be informed and may make comments which will be integrated into the national decision making process.

The areas covered by the SEA Directive include: road building plans, local waste management, land use, agriculture, water management, tourism industry and energy.

The European Lawyer

AGE RELATED PAYMENTS PROPOSALS LAID

New legislation that will provide for a £100 payment this year to eligible pensioner households in Northern Ireland with someone aged 70 or over has been laid at Westminster.

It is intended that the new money will be paid later this year along with the Winter Fuel Payment. This means that eligible pensioner households with someone aged 70 or over will get up to £300 (including the £200 Winter Fuel Payment) in 2004/05 and eligible pensioner households with someone aged 80 or over will get up to £400 (including the enhanced £300 Winter Fuel Payment). To qualify for the payment, people must be ordinarily resident in Northern Ireland on at least one day of the week 20-26 September 2004 and be 70 or over on or before 26 September 2004. The payment is not liable for income tax and will not affect any other social security benefits or tax credits. There is also a power in the Order so that, if circumstances warrant it, regulations can provide for future payments which may be made to people over 60, for example, in specified age groups. The draft Order which is subject to approval is obtainable from The Stationery Office Bookshop, 16 Arthur Street, Belfast, BT1 4GD. It is also available on the website of the Department for Social Development at www.dsdni.gov.uk

To advertise in the Writ

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

Citigate NI Public Affairs Ltd
128a High Street
Holywood
BT18 9HW

Tel: 028 9042 8899
Fax: 028 9042 8877
Email: karen.irwin@citigateni.co.uk
The Department for Culture, Arts and Leisure has announced the publication of a consultation document on a proposal to introduce legislation to govern safety at sports grounds in Northern Ireland. The proposed new legislation relates only to the health and safety of spectators and will not address spectator behaviour.

At present there is no specific legislation in Northern Ireland relating to spectator safety. However, this legislation is intended to bring us into line with the rest of the UK by introducing a safety certification scheme for larger sports grounds and spectator stands.

It will give powers to local District Councils to issue safety certificates, enforce the conditions of the safety certificates and, if necessary, issue prohibition notices. Valid certificates would be required not only for sporting events but also for any other public event held in the sports grounds.

The certificates would incorporate spectator viewing capacities, entry and exiting arrangements, safety management arrangements and contingency plans.

The Department also considers that there should be a body to oversee the implementation of this legislation and to ensure that the same standards are applied across Northern Ireland. It would also provide advice and guidance to all interested parties, including governing bodies of sporting organisations, clubs and the District Councils responsible for issuing the safety certificates.

The consultation period will end on 1 October 2004. The Consultation Document is available on the Department of Culture, Arts and Leisure’s website at www.dcalni.gov.uk

The United Kingdom Association of Women Judges

Get to know the acronym UKAWJ, because it stands for a new and potentially very powerful organisation, which was formed in June 2003. Out of a potential membership of about 190 the UKAWJ now has 95 members, at all levels of the judiciary and from England, Wales, Scotland and Northern Ireland. It can therefore justly claim to be a truly national organisation.

Purpose

The Association was formed and is organised for the purpose of promoting greater understanding and better resolution of legal issues facing women and issues concerning women judges, and in particular;

• To encourage co-operation and collaboration among women judges;
• To contribute to the understanding and resolution of legal issues facing women;
• To increase understanding of the broad range of social, economic, psychological and cultural factors that influence women affected by the court system;
• To increase understanding about women judges, their numbers, the process by which they are selected, the barriers which may interfere with their selection, with a view to achieving a judiciary which more accurately reflects the population it serves;
• To increase understanding of human rights law and the role of the judiciary in implementing that law to promote and protect the rights of women on an equal basis.

The UKAWJ and solicitors

Membership of the Association is, unsurprisingly, open to any person who holds or has retired from a permanent or salaried judicial post. But of more interest to women solicitors, any person who supports the objectives of the Association may be elected by the Executive Committee as a supporting member.

Indeed the Association has offered to help anyone considering applying for judicial appointment. If you would welcome an informal discussion with an UKAWJ member, which will be treated in confidence, please contact Mrs B Kelly, Resident Magistrate at Laganside Courts, 45 Oxford Street, Belfast, BT1 311.
Treatment of Commissions
Guidance for Solicitors

Solicitors are all well aware of the established principle that a solicitor must not make a secret profit or benefit from transactions on behalf of clients - this is reflected in Regulation 11 of the Solicitor's Practice Regulations 1987, which read, “a solicitor shall not, without the knowledge of or disclosure to his client, make or receive any secret profit or commission in connection with or arising out of the business of that client.”

The general principle is repeated in the Society’s Financial Services Regulations 2001 in relation to exempt professional activities as defined by the Financial Services and Markets Act 2000. However, there is a distinction between the manner in which commissions and profits arising as a result of a financial services or regulated business must be handled by the solicitor.

In relation to the former, it is satisfactory to indicate to the client that the profit or commission has been received; to show same on a Statement of Account and to set it off (if appropriate) against professional fees and outlays incurred.

In relation to the latter, the commission may only be retained if the solicitor has the clients informed consent in each set of circumstances - a blanket authority or negative consent is insufficient. If consent is not forthcoming the commission must be paid over to the client.

Following enquiries from a number of members, Senior Counsel’s Opinion has been sought in relation to:-

a) Stockbrokers’ commission - on the sale of investments and the administration of estates; and

b) Introducer’s commission for investment business - is this a commission for which the solicitor is accountable pursuant to the Financial Services arrangements or a referral fee where the general accountability principle arises?

Senior Counsel has advised that any commission or payment which arises out of a regulated activity pursuant to FSMA 2000 by a party other than a solicitor, must be accounted for in accordance with the Financial Services Regulations. This includes commissions received from stockbrokers and introducer’s commission - there is no distinction in the manner in which a referral fee and a commission should be treated.
“The Enforcement of Judgements in Northern Ireland”

By David Capper

SLS Legal Publications (NI) 2004. 303 pp. Price £60 + £1.50 p&p

Debt recovery practitioners have for a dozen years had the benefit of being able to refer to “Northern Ireland Personal Insolvency” by former Bankruptcy Master, John M Hunter. A text on the other avenue of debt recovery by way of judgment and enforcement has been sadly lacking. David Capper’s new book, “The Enforcement of Judgments in Northern Ireland” is advertised as the first comprehensive text covering judgment enforcement in this jurisdiction and certainly fits the bill. It is an academic work rather than a practical guide. It places the current law in its historical context while making proposals for change. It covers all aspects of the enforcement process, including money judgments and orders for possession of land and goods.

The book is both easy to read and informative. By the author’s own admission, it has been a lengthy project. Its publication is, however, timely in that it comes at a time when the Enforcement of Judgments Office (“EJO”) itself, under Chief Enforcement Officer Trevor Long, is implementing a “Growth & Change” Programme. The EJO has long been a target for criticism in relation to delays. However it is clear that in an effort to improve quality of service, changes have been made, such as the introduction of three Business Process Teams which take cases from start to finish and further changes are contemplated such as the introduction of online case tracking and searching.

In his introduction, the author draws a distinction between those debtors who “can’t pay” and those who “won’t pay”. He seems to indicate that insolvency proceedings are appropriate only for the former category. However, in practical terms creditors’ solicitors regularly resort to bankruptcy proceedings because of some of the inadequacies of the enforcement system, especially in the context of dealing with the self-employed. Somewhat controversially the author criticises the first come first served priority system which goes to the heart of the current legislation. He states that the diligence of one creditor in getting to the front of the queue owes as much to luck as anything else. He describes debt collection as an “unpleasant business”. Those of us who strive to make sure that Judgments are more than pieces of paper and seek to obtain payment on behalf of clients from those who seek to avoid their responsibilities would beg to differ. The current system rewards those who implement good credit control procedures and whose solicitors work with efficiency to obtain “pole position”. Instead the author favours a “fair shares” system. While the writer does not agree with the author’s conclusions, his analysis of this issue provides food for thought as do his views on interest on Judgments and mortgage possession cases among other issues.

Master Napier in the Foreword recognises that legislative adjustments are needed. The changes being made in the EJO can only be limited subject to the current legislation but the hierarchy in the Office also seem to favour new legislation. I have no hesitation in recommending this book to the profession. It is to be hoped that all of these calls for legislative change will not fall on deaf ears and that the author’s admirable work will act as a further catalyst for change. If so, David Capper may find himself invited again to produce a supplementary work.

John Forsythe
Diamond Heron

Legal Appointments

Property Solicitor, Co Derry, 1 yr contract.
Excellent opportunity has arisen to join a large public sector body. The ideal candidate should have at least 3 yrs PQE in General Conveyancing. Opportunity to go perm for the right person.

4 x Conveyancing Solicitor, Co Antrim / Co Down, £18-28K.
Reputable firms wish to recruit a dedicated Solicitor with excellence in General Conveyancing. Superb opportunity to join well known busy firms. Suits 1-7 yrs PQE.

Criminal Solicitor/Barrister, Belfast, 7mth contract.
Excellent opportunity has arisen to join a large public sector body. Experience in prosecuting and presenting cases in Magistrates court essential. Suit 1-8 yrs PQE.

Senior Conveyancing Solicitor, Co Antrim, £22-30K.
Superb opportunity has arisen to manage an expanding successful sub office. The ideal candidate will have at least 3-9 yrs PQE in both Commercial and Residential Conveyancing.

Litigation and Matrimonial Solicitor, Co Down, £21k+.
Busy client focussed practice seek a highly motivated and dedicated individual to help develop the Matrimonial & Litigation department. Suit 2yrs + PQE.

For more details contact Orla or Brona at Blueprint Legal Appointments on 028 9032 3333 or email legal@blueprintappointments.com
The International Negotiation Competition took place this year in Paris from 9-10 July. With fourteen teams of post-graduate students in vocational training from England, the United States, Australia, New Zealand, Canada, Singapore, the Republic of Ireland, India, Hong Kong and Denmark, Rosie McBurney and Lisa Casey from the Institute were in exalted company. Rosie and Lisa have just completed the Bar course and are to be called to the Bar on 6 September 2004, and from their performance in Paris — they have proven themselves possessed of daunting savoir faire to bargain their way through the most factually and legally complex cases that will come their way in practice.

The competition was held in the Centre de Recherches Historiques et Juridiques on 9 Rue Mahler, just around the corner from the Bastille. Les advocates Casey et McBurney grappled with a problem concerning the composition of a musical based on the life and loves of Auguste Rodin. As the contest progressed, the Institute team traded terms on the performing rights, billing and merchandising royalties with competing theatrical interests. This required much more than canny acumen, and — purely in the interests of legal research, of course — saw the Ulster delegation tour the Rodin museum and marvel at The Thinker, ascend to the top of the Eiffel Tower (to gasp at the delightful views of Paris by midnight), and cruise down the Seine by day. Legal eagles became culture vultures in the Musée du Louvre, with its shamelessly extravagant royal apartments, priceless sculptures by Bernini and Michelangelo, and — the coup de grâce — da Vinci’s dainty masterpiece, La Joconde: the Mona Lisa. Stopping short of storming the Bastille in July, we contented ourselves with café au lait at Les Invalides, and felt forced to eat for Ireland in the restaurants around L’École Militaire.

Defying this nocturnal hedonism, and in the best tradition of the Bar of Northern Ireland, Rosie and Lisa showed stoical joie de vivre each new day when they resumed their toiling for the artistes. Their adroitness brought them to fourth place in the first round of the competition, and first place overall in the second round. In the final round they were ceded first and second. On judgement day, the Institute team was placed fifth in the competition.

We commend Rosie and Lisa for all the work they put into such an impressive performance (ably coached by Kate McKnight), and are justifiably proud of their achievement. Everyone at Lennoxvale wishes them every success in their careers at the Bar. Bonne chance.

Pictured above from left: Kate McKnight (Coach), Rosie McBurney, Martin O’Brien (Coach) and Elizabeth Casey.

Right: Kate McKnight and Elizabeth Casey
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IN THE MATTER OF AN APPLICATION BY BW FOR JUDICIAL REVIEW
Application for judicial review of decisions of the General Officer Commanding in Northern Ireland and the Ministry of Defence discharging applicant from the Army on grounds of security. - whether the GOC has jurisdiction to authorise the discharge of the applicant. - whether discharge was carried out in accordance with Queen's Regulations. - whether procedural fairness was applied. - whether breach of human rights. - Application for judicial review dismissed
QUEEN’S BENCH DIVISION
18 JUNE 2004
WEATHERUP J

IN THE MATTER OF AN APPLICATION BY CITY HOTEL (DERRY) LIMITED FOR JUDICIAL REVIEW
Application for judicial review of a decision of the Department of Social Development relating to the development of lands owned by the Department at Foyle Street, Londonderry. - whether dispute is a public law matter or a private law issue. - whether applicant made full and frank disclosure in relation to financial position. - application for judicial review dismissed
QUEEN’S BENCH DIVISION
18 JUNE 2004
WEATHERUP J

CLANMIL HOUSING ASSOCIATION, MS D SHANKS AND MS S FEARON V MARK MADDEN
Appeal by way of case stated by an Industrial Tribunal in accordance with Order 61 of the Rules of the Supreme Court (Northern Ireland) 1980 and Article 22 of the Industrial Tribunals (Northern Ireland) Order 1996 for the opinion of the Court of Appeal. - HELD that the Industrial Tribunal erred in law by reaching decisions that no reasonable Industrial Tribunal could have reached with regard to four different questions
COURT OF APPEAL
30 JUNE 2004
NICHOLSON LJ

IN THE MATTER OF AN APPLICATION BY MARTIN CORDEN FOR JUDICIAL REVIEW
Application for judicial review of decision of a Governor at HMP Magilligan for removal from association of applicant after he failed a test by a passive drugs dog. - whether decision was in breach of applicant's human rights. - whether drugs dog was reliable. - application dismissed
QUEEN’S BENCH DIVISION
9 JULY 2004
WEATHERUP J

DEPARTMENT OF HEALTH, SOCIAL SERVICES & PERSONAL SAFETY V STELLA STACEY
 Parties involved in industrial tribunal. - Whether proposed treatment of the defendant by the plaintiff is contrary to the Equal Pay (NI) Act 1970 and relevant EC law. - plaintiff seeking injunction to restrain and prohibit defendant from using a document over which they were entitled to assert legal advice privilege. - whether defendant can rely upon legal professional privilege documents. - Plaintiff entitled to the remedy sought. - advice as to how Tribunals should deal with this situation in the future
CHANCERY DIVISION
22 JUNE 2004
MORGAN J

IN THE MATTER OF AN APPLICATION BY KIERNAN DOHERTY FOR LEAVE TO APPLY FOR JUDICIAL REVIEW AND IN THE MATTER OF A DECISION OF THE NORTHERN IRELAND PRISON SERVICE
Application for leave to apply for judicial review of a decision of the Northern Ireland Prison Service refusing the applicant’s application to transfer from prison in the Republic of Ireland to a prison in Northern Ireland. - whether prisoner’s human rights were infringed by reason of the refusal to treat him in the same way as applicants from Great Britain. - United Kingdom under no obligation to accept applicant as transferred prisoner under the Convention on the Transfer of Sentenced Prisoners. - Application refused
QUEEN’S BENCH DIVISION
24 JUNE 2006
GIRVAN J

IN THE MATTER OF AN APPLICATION BY “E” FOR JUDICIAL REVIEW
Application by the mother of one of the children affected by the “Holy Cross dispute”; applicant seeks judicial review in the form of a declaration that the Chief Constable of the Royal Ulster Constabulary and the Secretary of State for Northern Ireland failed to secure the effective implementation of the criminal law and to ensure the safe passage for her and her daughter to the Holy Cross primary school; Application for judicial review dismissed
KERR LCJ
QUEENS BENCH DIVISION
16 JUNE 2004

IN THE MATTER OF AN APPLICATION BY DAVID ANDREW GLASGOW FOR JUDICIAL REVIEW
Applicant is a police officer who stands accused of three disciplinary charges under the Police Service of Northern Ireland (Discipline and Disciplinary Appeals) Regulations 1988; at disciplinary hearing it was submitted that the applicant was entitled to rely on Article 6 of the ECHR; disciplinary board rejected the argument that Article 6 was engaged; applicant seeking to quash that decision; Application refused
QUEENS BENCH DIVISION
1 JUNE 2004
MORGAN J

IN THE MATTER OF AN APPLICATION BY JAMES KEMP FOR JUDICIAL REVIEW
Application by a prisoner at HMP Maghaberry for judicial review of a decision removing him from association. - applicant complains he was not informed of the reason for his removal. - application dismissed
QUEENS BENCH DIVISION
9 JULY 2004
WEATHERUP J

IN THE MATTER OF AN APPLICATION BY SHARON MCBURNEY FOR JUDICIAL REVIEW
Application by patient detained under the Mental Health (NI) Order 1986 for judicial review of a decision of the Mental Health Review Tribunal which dismissed her application for discharge. - whether the Tribunal
exercised procedural unfairness in the conduct of the proceedings. - whether Tribunal erred in declining to consider request for a hospital transfer. - whether Tribunal infringed Article 5 of the European Convention on Human Rights. - application dismissed
QUEEN’S BENCH DIVISION
18 JUNE 2004
WEATHERUP J

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY THE NORTHERN IRELAND COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE OF THE DECISIONS ANNOUNCED BY THE MINISTER OF STATE FOR CRIMINAL JUSTICE, JOHN SPELLAR ON 10 MAY 2004
Application to challenge minister’s decision to introduce new legislation. - anti-social behaviour orders. - whether a duty to consult. - whether a duty to consult children. - effect of the UN Convention on the Rights of Children. - whether the Commissioner for Children and Young People a victim for the purposes of the HRA. - whether the decision to introduce legislation unreasonable. - Application for leave dismissed
QUEEN’S BENCH DIVISION (CROWN SIDE)
23 JUNE 2004
GIRVAN, J

R V BAIRD
Defendant pleaded guilty to murder and sentenced to life imprisonment. - court to fix tariff, which will later be reviewed by the Life Sentence Review Commissioners. - appropriate starting point for any person sentenced to a mandatory life sentence. - Defendant sentenced to 10-year minimum period
CROWN COURT
18 JUNE 2004
MORGAN, J

R V DOYLE
Murder. - sentencing. - tariff. - determination of minimum term to be served in accordance with the provisions of Article 5 of the Life Sentences (Northern Ireland) Order 2001. - minimum term set at ten years
CROWN COURT
11 JUNE 2004
WEIR, J

R V GAULT
Application for leave to appeal conviction for murder. - whether judge misdirected the jury as to the state of mind necessary to constitute the applicant an accessory to murder. - whether applicant participated in a joint venture. - granted leave to appeal the conviction, appeal allowed and conviction quashed
COURT OF APPEAL
9 JULY 2004
KERR, LCJ

R V GRAHAM
Application for leave to appeal against conviction for murder and the tariff imposed by the judge. - whether jury’s verdict was against the weight of evidence. - HELD that application for leave to appeal against conviction is dismissed, appeal allowed and conviction quashed
COURT OF APPEAL
9 JULY 2004
KERR, LCJ

R V MAUGHAN
Application for leave to appeal against conviction re-opened after counsel for the applicant drew attention to what he said were errors of fact or misapprehensions in the judgment. - whether the trial judge failed to have sufficient regard to six evidential issues in deciding whether to withdraw the case from the jury. - Application dismissed
COURT OF APPEAL
18 JUNE 2004
KERR, LCJ

R V Z IN THE MATTER OF A REFERENCE UNDER SECTION 15 OF THE CRIMINAL APPEAL (NORTHERN IRELAND) ACT 1980
Attorney General asks Court for its opinion on whether a person commits an offence contrary to section 11(1) of the Terrorism act 2000 if he belongs or professes to belong to the Real Irish Republican Army. - History of proscription. - HELD that the Real Irish Republican Army is proscribed by virtue of section 3(1) of the Terrorism Act 2000 and Schedule 2. - HELD that a person who belongs to or professes to belong to the Real IRA commits an offence contrary to section 11(1) of the Terrorism Act 2000
COURT OF APPEAL
30 JUNE 2004
KERR, LCJ

IN THE MATTER OF AN APPLICATION BY BERNADETTE TODD FOR JUDICIAL REVIEW
Judicial review of a decision of an RM by which it is alleged that she refused to hear an emergency ex parte application for a non-molestation order. - whether there was good reason in the public interest that the application should proceed. - application dismissed
QUEEN’S BENCH DIVISION
9 JULY 2004
WEATHERUP, J

IN THE MATTER OF AN APPLICATION BY WINDSOR SECURITIES LTD FOR LEAVE TO APPLY FOR JUDICIAL REVIEW AND IN THE MATTER OF A DECISION OF THE PLANNING APPEALS COMMISSION DATED 17 DECEMBER 2003
Planning. - judicial review of Planning Appeals Commission decision, which rejected an application to vary condition 5 of planning permission granting development of retail warehouse units. - whether granting of permission would set a damaging precedent. - Commission decision quashed and appeal remitted to the Planning Appeals Commission for reconsideration
QUEEN’S BENCH DIVISION
28 JUNE 2004
GIRVAN, J

Information Sought
We are seeking information as to the identity of the Employer’s Liability Insurers of the Blackstaff Flax Spinning and Weaving Company (also known as the Blackstaff Mill), Springfield Road, Belfast, between the years of 1952 and 1956. Anyone with any information should contact: Ciaran McConnell Wilson Nesbitt Solicitors Citylink Business Park Albert Street Belfast BT12 4HB Email: ciaran@wilson-nesbitt.co.uk Tel: 028 9032 3864

Copy deadline for September
Monday 6th September 2004

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produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for. Cleaver Fulton Rankin Solicitors 50 Bedford Street BELFAST BT2 7FW

Folio: 26210
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Folio: 36145
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Folio: 1632
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Re: Alfred Bennett deceased
Late of: 36 Kirkiston Walk, Belvoir, Belfast BT7 7FF
Would any Solicitor having any knowledge of the whereabouts of title deeds of the above property, please contact:
Jennifer Turley, Sheridan & Leonard Solicitors, 19-21 High Street BELFAST BT1 2AA Tel: 028 9043 8833 Fax: 028 9023 5809

Re: 43 Dorothy Avenue, Bangor BT20 4PG
Registered owner: Kenneth Moore deceased.
Would any Solicitor holding or having knowledge of the whereabouts of the title deeds to the above property please contact:
Mr Huw Worthington, Worthingtons Solicitors, 2 Court Street, Newtownards BT23 2NX Telephone: 028 9181 1538

Missing Person
Anyone with information regarding JOHN J MOSS Solicitor formerly of 18 Arthur Street, Belfast, could they please contact:- Michael McGonigle, Solicitor McGuinness & Canavan, Solicitors 42 Great James Street, Derry Tel: 028 7128 4422 We are endeavouring to locate the whereabouts of Mr Moss or his surviving family.

Missing Will
Re: Robert John Collins (deceased)
Late of: 14 Londonderry Park, Comber, County Down, BT23 5EU
Date of death: 8 July 2004
Would anyone holding a Will of the above named deceased (also known as Roy) having any knowledge of the whereabouts of same please contact:- M D Loughrey, Solicitors 9 Portland Avenue County Antrim BT36 5EY Tel: 028 9084 8116 Fax: 028 9084 9110
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Practitioners should also note that this section will include, from time to time, details of vacancies notified to the Society with regard to judicial appointments, social security appeal tribunals, industrial tribunals etc.
Library Update

Recommended Reading - Electronic Signatures

**Legislation**
Electronic Communications Act 2000 (applies in Northern Ireland)

The Electronic Signatures Regulations 2002


**Articles**
Electronic signatures are here to stay (discusses electronic signatures and their risks)
Mason: 2004 2(10) A.B. 7-8

ePen technology and electronic signatures (considers the effect of the ePen and its impact on electronic signature legislation)

Electronic signatures: the parties in the chain

Electronic signatures explained
Mason: 2003 1(5) A.B. 12-14

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