Asbestos
the Legal Legacy

CAUTION
Asbestos Containing Material (ACM)
Cancer and lung disease hazard
Do not disturb without proper training and equipment

DANGER
BLUE ASBESTOS
DO NOT INHALE DUST

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President’s Message

In my President’s Message in the last edition of the Writ, I wrote about the desirability of being able to communicate in a modern European language. At the risk of being boring I would like to stay with the subject of communications, if I may.

We all like to receive good news, particularly when it is most needed and least expected. For example, a letter from a firm of solicitors in Broken Thong, Queensland explaining that they are trying to trace the living relatives of one Archibald Smith, deceased, and that their researches have turned up your name. They go on to say that Mr Smith, who passed away peacefully in his sleep aged 104 after a long and active life as the proprietor of a particularly profitable emerald mine died intestate, unmarried and without issue him surviving. By this time your blood pressure is almost into the red. But it is only after you have agonised over whether you could actually handle a 60 foot Ocean Princess or whether you would have to settle for something slightly more modest that the realisation hits you that you may not indeed be the only, or even the closest, relative that dear old Uncle Archie (as he is now fondly referred to) may have.

My late father used to relate the story of a young and inexperienced captain bringing his very minor class ship to anchor in Alexandria harbour within sight of the flagship of the Commander-in-Chief, Mediterranean Fleet. The manoeuvre was a complete shambles but eventually he got the anchor down and the ship squared away. No sooner had he done this when a signal was flashed from C-in-C Fleet which simply said “good”. The young captain was pleased, if somewhat surprised, to have received such praise from the Admiral himself, considering what a dog’s breakfast the manoeuvre had been. His pleasure was short-lived however, because five minutes later he received a further signal from the C-in-C which said “Reference my last message, add “God”.

The point of these stories for us all, of course, is to emphasise not only the value of good, clear and unambiguous communication skills but also the disappointments, pitfalls and misunderstandings which can all too easily flow from well-intentioned but incomplete messaging.

The ability to communicate is one which we all have to a greater or lesser degree. Solicitors are professional communicators, whether we think of ourselves as that or not. We use both the written and the spoken word all the time to communicate our thoughts and ideas, our deeds and documents, our instructions to each other, our clients, the courts and so on. It is our bread and butter and without that ability an expertise in the law would be wholly pointless. Some of us are very good at it but not necessarily in all respects. Some solicitors can write brilliant letters and produce the most exquisitely crafted deeds but put them in front of a judge and they will be about as much use as an ashtray on a motorbike. On the other hand there are those who are quite exceptionally articulate before a judge but when it comes to the written word they are quite appalling. Our admiration and aspirations should lie towards those who are fluent in both the written and the spoken word and we are very fortunate that there is, indeed, a fair number of that category within our membership.

Effective communication is, of course, not just about being able to speak or write clearly and intelligently. It is also about being able to establish lines of communication either on a one to one or a one to many basis. The Writ, like any other in-house journal, is an example of a communications conduit for passing information from the centre out to the membership. It also provides a medium for the circulation of information between and within the membership. One of the principal functions of the editor is to put together all the relevant information he has to hand in an attractive and readable journal to ensure that the solicitors in Northern Ireland are kept informed of what is happening in the legal world and elsewhere. I think you will agree that we are making some good progress in that regard with the Writ in its new format, being produced, incidentally, at no extra cost to the Society. There is still work to be done and I hope that our plans to improve the Writ further will become apparent over the next few months, particularly as regards communicating the work being done week-in and week-out by the Society. At the same time, of course, it can be frustrating when practitioners say things like “Why has the profession not been told about……?” Or “I never knew about…….” when an article or even a series of articles has already been published in the Writ about that very topic.

To those who perhaps are indifferent to the Writ I would pose the following questions:

- What would you be prepared to do by way of content?
- What would you be prepared to do by way of book reviews, articles, commentaries, letters to the editor, photographs or whatever to enhance the journal and thus benefit the rest of the profession?

Communication is a two-way thing after all, and the greater the feedback we get from the membership, the more interesting, informative and readable will the Writ be. There is a wealth of talent out there just itching to get into print and I would add my plea to that of John Bailie’s (Would the next John Grisham please stand up? Writ Feb/Mar 2004) and ask you to add a little bit more to your already crowded schedule and give some thought as to how you might enrich our own in-house journal.

“Life”, in the immortal words of Tom Lehrer, “is like a sewer. What you get out of it depends upon what you put into it”.

John W D Pinkerton
June 2004
New regulations on asbestos in force from 21 May 2004 pinpoint the importance of asbestos management as a key regulatory issue for business in relation to all non-domestic properties.

Every year in Northern Ireland there are between 80 and 90 asbestos-related deaths, half of which are due to mesothelioma. Many of these deaths are due to exposures which occurred many years ago, probably in the shipbuilding or thermal insulation industries. However, research carried out in recent years in the UK has indicated that at least 25% of those people dying from asbestos-related diseases had worked in the construction or building industries.

Although it is now illegal to use any form of asbestos in the construction or refurbishment of any premises, much of what was used in the past still remains in place. Asbestos-containing materials (ACMs) may be present if the building was constructed or refurbished before blue and brown asbestos were banned in 1985. In some cases, such as asbestos cement, were used until 1999. The legacy of past building techniques presents a potential danger to all those involved in building, renovation and maintenance work for a considerable number of years to come.

The good news is that as long as asbestos is in good condition and is not being or going to be disturbed or damaged there is no risk.

However if it is disturbed or damaged it can become a danger to health, because asbestos fibres are released in the air and people can breathe them in.

This new legislation is therefore necessary in order to control exposure to asbestos dust of maintenance and other workers who are required to disturb asbestos-containing materials during normal building maintenance work, e.g. plumbers, electricians and carpenters. It also aims to safeguard people who work in buildings in which asbestos materials were used in the construction of the building.

By virtue of Regulation 4 of the Control of Asbestos at Work Regulations (NI) 2003 (SR2003 No.33), if you own, occupy, manage or have responsibility for non-domestic premises which may contain asbestos you have either:

- a legal duty to identify and manage asbestos-containing materials in the property and ensure that that information about the location and condition of the materials is passed on to those likely to disturb them or
- a duty to co-operate with whoever manages that risk

Who is affected?

The new liability is imposed on:

- Every person who has, by virtue of any contract or tenancy, an obligation of any extent in relation to the maintenance or repair of non-domestic premises or the means of access to or from them;
- Where there is no such contract or tenancy in place in relation to any part of non-domestic premises, every person who has to any extent control of that part or means of access to or from it.

Liability will therefore be an issue for all non-domestic property owners and occupiers, landlords, property managing agents, tenants and licensees and of course virtually all employers.

Various pieces of legal documentation may therefore have to be considered to determine who the duty holder is – in most cases it will be the lease or tenancy agreement, but it may also be necessary to review managing agreements and title deeds.

Single occupiers under fully repairing and insuring leases will generally be the duty holder and therefore responsible for compliance with the Regulations. Owners are likely to have few responsibilities in respect of these buildings. However, individual leases may state otherwise. There may be unusual maintenance arrangements in respect of the building e.g. the owner retains maintenance responsibility for the roof or an external facade.

In multi-let properties, the owner will usually retain control of the common parts, the exterior and the structure, while the tenants will be responsible for the internal maintenance of the premises they occupy. In this situation, each tenant would have to identify all accessible ACMs and assess their condition in the area of the premises he is responsible for. The owner would have to do likewise for the remainder of the premises and
forward all the relevant information to the tenants. It may well be however, that in order to achieve clarity in cases such as this, an owner will consider taking control of ensuring that all parties fulfil their obligations in respect of the Regulations. He would then carry out the assessment for the whole building and provide the tenants with the information. A joint plan would need to be proposed and implemented. The Regulations state that where there are a number of duty holders they must co-operate with each other.

Investors, developers, lenders and companies acquiring other businesses will need to be aware of the Regulations and be vigilant in their dealings to avoid acquiring asbestos liabilities, be they civil claims or remedial costs.

What are “non-domestic premises”? These Regulations are made under the provisions of the Health & Safety at Work (NI) Order 1978 (the 1978 Order) which states that “domestic premises” means “premises occupied as a private dwelling (including any garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling) and ‘non-domestic premises’ shall be construed accordingly.”

The Regulations are therefore likely to apply to shared communal areas of domestic premises (such as entrance halls, stairways, lift shafts, yards, outhouses, boilerhouses and corridors in a block of flats)

What is required of duty holders? The new duty requires those who have responsibility for maintenance activity in non domestic premises to assess whether there is any asbestos in their premises and depending on its condition either remove it or manage it, making sure that maintenance activities carried out subsequently do not expose workers to any avoidable risks. Those responsible must record the conclusions of this assessment and draw up a written plan which sets out the measures to be taken to manage the asbestos materials and must ensure that information on the location and condition of these materials is given to anyone such as maintenance contractors who are likely to disturb it.

The Regulations require the duty holder to take the following actions:
- To take reasonable steps to find materials likely to contain asbestos and assess their condition;
- To presume that materials contain asbestos unless there is strong evidence that they do not;
- To make and keep an up to date record of the location and condition of these asbestos-containing materials;
- To assess the risk of the likelihood of anyone being exposed to fibres from these materials;
- To prepare and implement a plan to manage those risks
– if the asbestos is in good condition and is not likely to be damaged or disturbed, it is usually safer to leave it in place and manage it
– if it is in poor condition or is likely to be damaged or disturbed, the dutyholder must decide whether it should be repaired, sealed, enclosed or removed
- if in any doubt, specialist advice should be sought;
- To provide information on the location and condition of the material to anyone who is likely to disturb it – this would include the emergency services;
- To monitor the condition of the material left in place and to review the assessment of risk periodically

Who should carry out any survey required? A survey should be undertaken by a competent individual or by a suitably qualified surveying company. Details of firms providing asbestos services in Northern Ireland can be found in Yellow Pages. Checks should be made to ensure that the surveyor (and if necessary the asbestos removal co-ordinator) has the appropriate specialised experience with accreditation or certification. The survey will identify what type of ACMs are present and where they are. There are two further stages to

What is Asbestos?

Asbestos is a mineral fibre used in more than 3,000 different construction materials and manufactured products. It is commonly found in heating system insulation, decorative spray-on ceiling treatments, vinyl flooring and a variety of other materials.

All types of asbestos tend to break into very tiny fibres. Some individual fibres may be up to 700 times smaller than a human hair, so small that once released into the air, they may stay suspended there for hours or even days.

Asbestos fibres are also virtually indestructible. They are resistant to chemicals and heat, and they are very stable in the environment. They do not evaporate into the air or dissolve in water, and they are not broken down over time. An uncontrolled disturbance of any asbestos-containing material in any concentration may be dangerous to health.

Effects of Asbestos

Exposure to asbestos dust can give rise to three main malignant diseases:

- Asbestosis, which is a disease, resulting in the lungs becoming stiff and scarred causing shortage of breath. It is very disabling and can be fatal.
- Lung cancer, which usually leads to death.
- Mesothelioma, which is a cancer of the lining of the lungs. It is almost exclusively associated with exposure to blue and brown asbestos fibres and is always fatal as there is no cure.
consider before a risk assessment can be fully developed – what condition are the ACMs in and are they being disturbed or likely to be disturbed?

**Who will bear the cost?**

Regulation 4 provides that where there is more than one duty holder, the relative contribution of each towards complying will be determined by the nature and extent of the maintenance and repair obligations owed by that person. In all instances where lease covenants are considered, the liability and recoverability of expenditure will depend upon the precise wording of the lease.

Most modern leases contain provision for the landlord to recover the cost of complying with statutory requirements. These Regulations include the costs of inspecting the building and assessing and managing the risks identified. If remedial works are required in order to manage the risk properly such as encapsulation or removal of the asbestos, these costs would also be recoverable. However any remedial works carried out must be those reasonably necessary to achieve compliance, not those which exceed the statutory obligation imposed on the landlord.

The mere presence of asbestos in a building does not in itself represent a breach of a repairing covenant or a covenant to comply with statute. If a remedy sought by a landlord is not appropriate to the condition of the asbestos, the cost of the works might not be recoverable from the tenants either as dilapidation or sevice charge liability.

**Who will enforce the Regulations?**

They will be enforced by inspectors from both the HSENI and the District Councils.

A person who contravenes the Regulations is guilty of an offence under Article 31 of the 1978 Order and is liable, on summary conviction, to a fine not exceeding the statutory maximum (currently £5000) or, on conviction on indictment, to an unlimited fine.

**Where can further information on the Regulations be obtained?**

A new Approved Code of Practice “The management of asbestos in non-domestic premises” L127 has been produced to support these Regulations. A new guidance booklet “A comprehensive guide to managing asbestos” has also been produced and practical information on how to survey buildings for asbestos-containing materials is contained in MDHS 100 “Surveying, sampling and assessment of asbestos containing materials.”

All of the above are available from The Stationery Office, 16 Arthur Street, Belfast, BT1 4GD.

The Health & Safety Executive for Northern Ireland also operate an Information and Advice Helpline on 0800 0320 121.

**Practice Points**

**Rented Property**

Where a lease of non domestic premises places repairing obligations on a tenant, the landlord should ensure that the tenant is aware of his duty to manage asbestos under Regulation 4 and satisfy himself that the tenant has taken whatever steps are necessary to fulfill this duty.

If the repairing obligation under the lease falls on the landlord, he should carry out the necessary survey. The lease should be checked to ascertain the terms of entry and whether survey costs are recoverable under the service charge.

A balance may need to be struck in complying with the obligations under the Regulations to remove/encapsulate asbestos and any potential breach of the covenant for quiet enjoyment, since substantial interference with a tenant’s business could result in a claim for loss of profit. New leases or tenancy agreements of such premises should be clearly drafted to prevent potentially costly disputes over who is the ‘dutyholder’.

**Disposal/Acquisition of Non Domestic Premises**

On selling such property, a vendor should make available to the prospective purchaser all relevant information (including asbestos surveys) relating to asbestos on the premises.

When acquiring such property, a purchaser should seek all relevant information concerning asbestos, including copies of any asbestos survey.

The Society is currently finalising a set of Pre-Contract Enquiries for use in Commercial Property transactions. In the section dealing with the physical condition of the property, there will be specific questions relating to the provisions of the 2003 Regulations. See next month’s Writ for further details.
An Introduction to the Justice (Northern Ireland) Act 2004

The Justice (Northern Ireland) Act 2004 received Royal Assent on 13 May 2004. Its purpose is to continue the process of change and improvement in the criminal justice system in Northern Ireland, stemming from the Criminal Justice Review, published in March 2000.

The Act is the latest milestone in the change process which has seen the Justice (Northern Ireland) Act 2002 (c.26), the Joint Declaration (published by the British and Irish Governments on 1 May 2003) and the updated Implementation Plan for the Criminal Justice Review, which was published on 18 June 2003.

In all, the Act contains 23 sections and 4 Schedules and makes provision for the nine commitments contained in the Joint Declaration, as well as making several further provisions in relation to bail, the transfer of prisoners, court security and other matters. Details of the provisions are outlined below.

The Judiciary

Sections 1 to 5 provide for a Judicial Appointments Commission for Northern Ireland to be established prior to the devolution of responsibility for criminal justice matters. These sections also make provision to apply the time limits on membership which currently apply to lay members of the Commission to judicial members of the Commission.

Under section 3 the Commission is required to engage in a programme of action aimed at securing a judiciary in Northern Ireland that is reflective of the community.

Provision is also made for the composition of the Commission itself, taken as a whole, to be reflective of the community.

Bail

Sections 10 to 12 and Schedule 2 make provisions in relation to bail. Section 10 creates a prosecution right of appeal against the granting of bail by the magistrates’ court.

The granting of bail may only be appealed if a person is charged with, or convicted of, an offence punishable by imprisonment.

Consultation with the Lord Chief Justice (or the most senior Lord Justice of Appeal), will make recommendations to the Prime Minister prior to him making recommendations to Her Majesty The Queen. The Lord Chief Justice will be consulted on any recommendation made by a tribunal set up under Section 8 of the Justice (NI) Act 2002 regarding the removal or suspension of a judge.

Prosecutors

Section 6 places a duty on the Director of Public Prosecutions for Northern Ireland to refer any matter to the Police Ombudsman for Northern Ireland in which it is suspected that a police officer may have committed a criminal offence or in the course of an investigation behaved in a manner that would justify disciplinary proceedings.

Section 7 creates an offence of seeking to influence a prosecutor with the intention of perverting the course of justice.

Criminal Justice Organisations

Section 8 provides that specified organisations in Northern Ireland should, in carrying out their functions, have regard to human rights guidance published by the Attorney General for Northern Ireland. Section 9 substitutes references in other legislation to the “Juvenile Justice Board” for references to the “Youth Justice Agency” which was established on 1 April 2003.
Sections 11 and 12 and Schedule 2 amend bail provisions in respect of both scheduled cases (under section 67 of the Terrorism Act 2000) and non-scheduled cases (under the Criminal Justice (Northern Ireland) Order 2003), bringing them into alignment.

The Act creates a duty to surrender to custody whilst on bail along with associated offences and penalties for failure to comply. Penalties for absconding or non-compliance with conditions are a maximum of three years imprisonment, a fine or both when tried on indictment; a maximum of 12 months imprisonment, a fine or both when tried summarily. The duty to surrender to custody is extended to absconding while released on bail.

**Prisons**

Section 13 follows the Review of Safety at HMP Maghaberry (August 2003), which concluded that the separation of prisoners by paramilitary affiliation was necessary in the interests of safety. Section 13 provides for the transfer of prisoners from Northern Ireland to another part of the United Kingdom in the interests of maintaining security or good order in prisons in Northern Ireland.

Section 14 amends section 103 of the Terrorism Act 2000 to afford a greater level of protection to those working in the Northern Ireland Prison Service. Section 103 of the 2000 Act makes it an offence to collect, record or possess information about certain categories of people, including “full-time employees of the prison service”. Section 14 of the Justice (Northern Ireland) Act 2004 removes the distinction between full and part-time workers and ensures that those who work in the prison service, but are employed by other government departments are also protected by the offence.

**Arrest without Warrant**

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

**Court Security**

Section 16 inserts Schedule 3 which builds on provisions made in the 2002 Act in relation to court security with particular regard to court security officers and new powers in relation to seizure and retention of goods.

**Barristers**

Section 17 abolishes any rule of law which prevents a barrister from entering into a contract for the provision of his services. This provision brings Northern Ireland into line with the arrangements that are in place in England and Wales.

**Commencement**

The provisions of the Act may be commenced by Order made by the Secretary of State. Work is in hand to commence the provisions relating to the Judicial Appointments Commission, the Attorney General's human rights guidance, bail and arrest for driving whilst disqualified. These are likely to be commenced shortly. Sections 4 and 5 providing for the appointment of a Judicial Appointments Commission will not be commenced until the devolution of criminal justice matters. Other provisions will be commenced at the earliest opportunity.

We are grateful to David Hughes and Julie Wilson of the Northern Ireland Office for this article.
When should an SDLT1 form be submitted?

Following the introduction of Stamp Duty Land Tax (SDLT) on 1 December 2003, the new SDLT1 form replacing the Particulars Delivered form needs to be submitted to notify transactions liable to SDLT.

SDLT forms need to be completed for all transactions, including those below the threshold amounts and where Disadvantaged Area Relief (DAR) is being claimed.

PLEASE NOTE that the Land Registers (Northern Ireland) will not accept self certificate forms submitted to notify any such transaction other than those listed below.

Transactions where no Land Transaction Return is required:

- Transfer or conveyance of a freehold interest in land for no chargeable consideration
- Transfer or assignment of a leasehold interest in land for no chargeable consideration
- Grant of a lease where there is no premium and no rent of any monetary value (a rent of ‘one peppercorn if demanded’ is a rent of no monetary value)
- Grant of a lease where all the following are satisfied:
  i) the term of the lease is less than seven years, and
  ii) the amount of any premium is not such as to attract a charge to SDLT at a rate of 1% or more (ignoring the availability of any relief)
  iii) the amount of any rent is not such as to attract a charge to SDLT at a rate of 1% or higher (ignoring the availability of any relief)
- Land Transactions involving the acquisition of lesser or minor interests in land, such as easements, where the consideration does not attract a charge to SDLT at a rate of 1% or higher (ignoring the availability of any relief). Thresholds: residential £60,000, non-residential £150,000.
- Land transactions exempt from SDLT under Schedule 3 Paragraphs 3 and 4 Finance Act 2003. (Transactions in connection with divorce and variation of testamentary dispositions)

For further information, please contact the Revenue enquiry line on 0845 6030135 or visit the website at http://www.inlandrevenue.gov.uk/so/sdlt_index.htm

Disadvantaged Area Relief

The Inland Revenue has published an updated Statement of Practice (SP1/2004) by way of guidance for those claiming exemption from Stamp Duty Land Tax in respect of property in designated areas (“Disadvantaged Area Relief”).

In most cases there will be no difficulty in establishing whether or not a property is “residential”. The Statement however sets out in some detail the Stamp Office’s approach to borderline cases and gives guidance on the practical application of the legislation.

A copy can be downloaded from www.inlandrevenue.gov.uk/so/sp1_2004.htm

New Regulations on Rent Books

A new style rent book for private tenants has been introduced as part of new regulations for landlords and tenants contained in the Rent Book Regulations (Northern Ireland) 2004 SR2004 No.192 which came into force on 1st June 2004.

All private landlords in Northern Ireland have had a legal obligation to provide their tenants with a rent book since 1978. The new rent books, as prescribed by the Order, must contain information on the terms of the tenancy, the basic legal rights of all private tenants and other information depending on the legal status of the tenancy concerned.

All private tenants must be provided with a rent book by their landlord, free of charge. Tenants must make this available to the landlord or agent for updating. The Housing (NI) Order 2003 gives district councils the power to enforce these Regulations and take legal action where the Rent Book Regulations are not being complied with. A landlord or agent who fails to comply with the Regulations is guilty of an offence if rent for the tenancy is demanded or received. On conviction, the courts can impose a fine of up to £500.

The Department has produced an information leaflet that provides further information on the Regulations. The full text of the Regulations and templates for rent books can be downloaded from the Department’s website, www.dsdni.gov.uk/housing/private-rented-sector.asp

The private rented sector has seen considerable growth in recent years and now represents 7.6% of all housing. There are around 50000 private tenancies in Northern Ireland.
Housing Bulletin published

The Northern Ireland Housing Bulletin, including sales of new houses and apartments during the period October to December 2003 has been published by the Department for Social Development.

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

- The average selling price of NHBC-registered new houses sold during the quarter was £109,000, an increase of £10,000 (10.1%) on the same quarter in 2002.
- The average selling price of NHBC-registered new houses ranged from £73,900 in Strabane District Council to £179,200 in North Down District Council according to provisional figures.
- The average intended selling price of NHBC registered flats and maisonettes was £100,000, £4,000 (4.2%) higher than the quarter ending December 2002.
- Detached houses represented 35% of all NHBC intended housing starts. The total number of NHBC starts recorded for this quarter (2,033) represented a decrease of 16.9% on the same quarter in 2002.
- Of the new dwellings actually started, 96.5% (2,692) were commissioned by the private sector. Total number of starts increased from 2,095 for the quarter ending December 2002, to 2,790 for the quarter ending December 2003.
- Belfast was the district council with the greatest number of new housing starts, namely 188. This represents an increase of 58.0% on the same period last year.

Legal Appointments

**Conveyancing Locum, Belfast, 4 month contract.**
Large public sector body wish to recruit an experienced Solicitor with expertise in General Conveyancing. Ideal candidates will have at least 1 yrs PQE. Excellent opportunity to gain public sector knowledge.

**General Solicitor, North West.**
Excellent opportunity has arisen to join a highly successful general firm. The emphasis of the role will be on General Litigation with an element of Conveyancing to be included. Suit 1-5 yrs PQE.

**Senior Litigation Solicitor, Belfast, £neg.**
Reputable practice seek a Lawyer with excellence in General Litigation. Knowledge of Construction Litigation preferred. Opportunity of career advancement. Suit 3-7 yrs PQE.

**General Solicitor, Co Armagh, £17k-28k.**
Superb opportunity has arisen to join an expanding & busy practice. The ideal candidate must be client focussed and should have experience in Conveyancing and/or Litigation. Suit Newly Qualified - 4 yrs PQE.

For more details contact Orla or Brona at BluePrint Legal Appointments on 028 9032 3333 or email legal@blueprintappointments.com
You may be aware that the “Modernising Planning Processes” Consultation Paper, published by Planning Service in February 2002, proposed the development of an “e-planning” solution that will re-engineer the planning process, allowing electronic submission of and payment of applications, electronic consultation and public access to Statutory Planning Register details. It is proposed to provide unprecedented, convenient access to planning information for the community with considerable efficiency gains in the planning application process.

Use of ICT

A central pillar of the “Modernising Planning Processes Implementation Plan”, published by Planning Service on 3rd February 2003, is a radical review of the use of Information and Communications Technology (ICT) in the planning process and the Agency plans to procure and implement a comprehensive, new ePlanning solution by the end of 2005 to underpin the challenging business objectives outlined in the plan. The key elements of the solution will be:

- an Internet “portal” that will enable customers to submit, pay for and track the progress of planning applications on-line;
- the provision of the existing paper-based Statutory Planning Register in electronic format on the website;
- facilities to enable e-consultation with statutory consultees, amenity groups, neighbours and local District Councils;
- facilities to enable the public, or any interested party, to search for applications, to comment electronically on proposed developments and to view all relevant information (e.g. planning policies, development plan policies, design guides, guidance listings, statutory charges, etc) relevant to an identified area.

The Planning Service has a formal ongoing consultation process with central and local government and other interested parties – including the Law Society – who will eventually use the system. A major briefing session was held in the Hilton Hotel on Friday 18 June at which Hewlett Packard the preferred supplier heading a consortium with BIC Systems and ERSI (Ireland), attended to explain progress to date and to get feedback from the consultees.

Information about Planning Applications On Line

The latest Planning Service initiative in modernising and reforming planning processes is the publication of local District Council Schedules and lists of valid planning applications on its website. Council Schedules served on the website refer to Council Meetings from 11th May 2004 onward. The list of valid planning applications refers to those applications advertised in the week ending 21st May 2004 onward.

Ian Maye, Director of Corporate Services said “The Planning Service receives over 33,000 planning applications per year now in Northern Ireland and the figure continues to grow. The provision of information about these planning applications via our website is a vital element of our plans to streamline the planning process. Citizens, agents and everyone with an interest in the planning process can now use the Planning Service website to get information on planning applications entering the planning process.”

Hierarchy of Planning Documents

A new leaflet – also available on the website – has been issued answering questions about what documents and other matters the Planning Service considers when making planning decisions. The leaflet seeks to promote greater public awareness of all matters which need to be considered when planning applications are being assessed, as well as providing a better overall understanding of the decision making process.

It contains advice about the hierarchy of documents which inform the planning process, from the high level Regional Development Strategy for Northern Ireland, to local design guides. It gives information on a range of other considerations such as human rights legislation which may need to be taken into account when assessing building schemes. The Planning Service website can be found at www.planningni.gov.uk
The last review of fees took place in September 1999. The Bar Council has considered the present scale and has decided to suggest the following “going rate” for fees in personal injuries actions to come into effect from 1 April 2004. The “going rate” suggested is intended to satisfy the principle for assessment of fees set out in *Simpson Motor Sales (London) Limited -v- Hendon Corporation (1964)* 3 All ER 833. The scale is intended to take into account the comments of Carswell LJ in the case of *Boyd -v- Ellison* (unreported) in June 1995 and to avoid controversy over fees and lengthy and unnecessary delays while fees are taxed.

**NOTES FOR GUIDANCE**

1. The scale applies to personal injuries actions only. It does not apply to personal injury claims resulting from medical or other professional negligence, respiratory claims or claims against the security forces other than road traffic, employer’s or occupiers’ liability claims. The fees set out are for Senior Counsel acting with a Junior. If Junior Counsel acts without a Senior Counsel he should mark 5/6th of the scale fee.

2. The scale does not include any sum in respect of a consultation fee. Where a consultation is held Counsel should mark the fee separately and confirm that the consultation has taken place.

3. The scale does not apply to cases of exceptional complexity or involving a substantial compromise. In such cases, the fee should reflect the value of the case overall or the difficulties and work involved. When marking fees Counsel should add a written note explaining why a fee different from the scale has been marked. This is in accordance with the decisions in *McMahon -v- Donaldson* (1969) NI 145 at 163 and *Carr -v- Poots*.

4. In any case where contributory negligence is pleaded (other than where it relates to the failure to use a seatbelt) it shall be treated as a denial case for the purposes of marking fees.

5. Fees should be marked on the basis of the total monies to be paid whether by settlement or by judgement. This would include therefore all monies such as special damage or CRU benefits.

6. The fees in columns 1 and 2 apply once the case appears in the four-week warning list for the first time.

7. Generally the scale fee should be marked in cases lasting less than three days. Counsel may reassess the brief fee if the case lasts three days or more. The scale fee is a brief fee only and the refreshers should be marked separately.

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**Financial Services Authority**

**Raising Money from your Home**

A copy of the Financial Services Authority (FSA) Factsheet on Equity Release Schemes is enclosed with this edition of The Writ. We have been asked by the FSA to make you aware of this publication which you should find useful and of interest.
The Proceeds of Crime Act 2002 has added to the level of care and enquiry now expected of the reasonably competent solicitor. This Article which concludes our present series looks at (a) knowing the source of client funds (b) the role of the Money Laundering Reporting Officer (MLRO)

KNOWING THE SOURCE OF CLIENT FUNDS

What checks should be made on client funding?

You should find out how your client intends financing the transaction at the earliest possible stage. Any complications should be identified and resolved before matters proceed. This will save embarrassing delays at a later stage or will allow you to decline to act for the client before any time is wasted or expenses incurred.

Any monies due to be paid to you by the client should be sourced to a UK bank account in the client’s own name, wherever possible. You may wish to consider placing a copy of the client’s cheque in the file as part of your file records.

What if the funds are not drawn on the client’s own bank account?

Extra enquiries are needed if the funds are provided in cash, Bank Drafts or third party cheques.

BE ALERT TO LAST MINUTE CHANGES TO THE SOURCE OF FUNDS – THIS IS A COMMON PLOY USED BY MONEY LAUNDERERS.

Identity checks should also be carried out on any third party who is funding the transaction.

Is it ever safe to accept cash?

Yes – if you are told at the start about cash being used by the client and you have made reasonable enquiries about the source. You should record the explanations and your reasons for being satisfied in the particular circumstances.

Be particularly aware of the tax evasion risks if asked by clients to accept cash in any significant amounts.

What else should I be looking out for as suspicious circumstances?

In the case of new clients, remember the basic requirement to know your client’s financial position. Other business interests, property ownership etc are all important i.e. more than just the specific business being brought to you. This will allow you to gauge what is normal/suspicious for each individual client.

WARNING SIGNS

- an address c/o of a third party
- mobile phone line as only contact
- no contact address
- evasive answers or a failure to answer your questions
- delays in producing funds and/or switching the source of funds i.e. producing a Bank Draft instead of a personal cheque
- being instructed in work outside your normal range of services
- being asked to hold substantial funds without a clear purpose
- being asked to issue the client funds for a different purpose such as buying expensive cars, boats or other luxury items which do not need a solicitor to be involved in the normal course of business

Any other advice about what constitutes a suspicious transaction which should be reported to the MLRO?

You should always take time to look at the big picture as far as your clients are concerned. In taking on new work or a new client it is best practice to get adequate background notes of income sources – employment, businesses or investment vehicles. Carrying out these checks will help you to understand your client’s needs and type of legal/financial services which are likely to be required.

If the new client has an established business, you should check as to other solicitors who are retained by him. All these enquiries are meant to help you to understand your client and his legal needs. It will allow you to advise him properly.

Detailed enquiries, made at the early stages, may provide the answers to concerns which develop at a later stage. If you have any cause for concern, review the file and discuss it with your MLRO. Information about foreign jurisdictions with high-risk assessments as identified by the Financial Action Task Force can be found on www1.oecd.org/fatf/

THE ROLE OF THE MLRO

What are the responsibilities of a MLRO?

If you have accepted responsibilities for implementing your firm’s anti-money laundering policies, you should ensure that you have an adequate set of procedures to meet your policy objectives.

1. Training and Management Issues

- What type of training do you have in place?
- Which of your partners and employees have been trained?
- Do you know how sound their grasp of the task is?
- Do you train new employees?
- What about refresher/update courses?
- Do you share the answers to these questions with the partnership?
- Have you got clear lines for reporting and following up?
- Do you have the right support and resources to cover this challenge?
2. Monitoring Performance
   - Do you have a list of suspicious transaction reports?
   - If you have no reports, is this a worry? (see training)
   - When setting up a new branch or creating a new department have you considered the risk of money laundering in this area and given training?
   - If you have overseas connections and clients, do they feature in FATF lists of Non-Co-operative Countries and Territories?

3. Reporting
   - Do you have access to the NCIS reporting forms and guidance – see www.ncis.gov.uk
   - Do you summarise your position and report to the partnership annually?
   - Do you know how to reach a safe decision on a suspicious transaction report?
   - Remember to follow up for permission to proceed in all urgent cases.

If you are not comfortable with any of these questions and your response to them, you should address them now. Money laundering problems are entering a new phase and the benefits of conducting a thorough review and regular update of your policies and systems cannot be emphasised enough.

**What should an Annual Report refer to?**

Because of the significant risks associated with poor Anti-Money Laundering procedures, it is appropriate for the MLRO to make a formal report to the partnership on at least an annual basis.

The report should confirm the following points:

1. The MLRO responsible during the period and any changes during the period of the Report and who acted as deputy during holiday/illness.

2. Training programme. This should cover:
   - Induction training for all new staff dealing with clients
   - Confirmation that all personnel have been updated for:
     - Any changes to professional rules; and
     - Any new Money Laundering Regulations or legislation and that they have confirmed in writing that training has been given
   - List of employees still to be retrained
   - How to source funds
   - Completing fact find
   - Knowing how to ID client
   - Identifying MLRO
   - Source of funds
   - Confirm that retraining has been given for all failures or List of employees still to be retrained

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**NOTE:** The Society’s Monitoring Officers are unable to deal with any money laundering queries which practitioners may have. These should be directed by the firm’s MLRO to Peter O’Brien at Law Society House who can provide general advice on the law. However practitioners should recognise that the Society or its officers cannot reach decisions as to whether a report should be made to NCIS – this must be a matter for each MLRO.

3. Analysis on an anonymous basis of suspicious reports and the action taken on the cases. The Report should indicate by type of business/department/partner source how many reports were submitted to the MLRO. It should also include the number of NCIS disclosures and any problems arising from these circumstances resulting in changes to internal procedures.

4. Report on systems

   **Table:**
   - Result on file checks
   - Result on employee checks
   - Re-training arrangements for employees

   **NB:** If you have overseas connections.

**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 90975224
Fax: 028 90326308
DX: 4330 NR Belfast 34

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- Business development and marketing
- Anti-money laundering

Group Anti-Money Laundering Training In Your Area

Is your practice prepared for the changes to the Money Laundering Regulations?

AFP Consulting is able to provide CPD group Anti-Money Laundering training by a recognised UK expert in your area, offering you the chance to get together with other local firms at a venue of your choice. Not only will you be given the chance to spread the costs between all attending firms, but the session times will be arranged to suit you thus keeping any disruption to your working day to a minimum.

Training will meet all of the requirements of Anti-Money Laundering regulations and will be provided for both solicitors and support staff as a CPD event.

To enquire about training, or to receive a copy of our brochure, please contact us:

Tel: 0845 600 2729
Email: afpconsulting@aforbes.co.uk
or visit our website at: www.afpconsulting.co.uk.

Please see adjacent page for details of our forthcoming CPD seminar programme.
2004 CPD SEMINAR PROGRAMME FOR NORTHERN IRELAND

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

CLIENT CARE – 1st December 2004
Building profits through improved client care. Learn how to increase repeat business, build client loyalty and keep clients happy - a key factor in competitiveness. It has never been more important for practices to provide excellence in client care.

PRACTICE MANAGEMENT – 8th December 2004
All practices benefit from good practice management. Adopting management structures and best practice to ensure a quality service is the key to future success. This seminar will provide valuable insights into quality management for those considering introducing a quality management programme into their practice.

TO RESERVE A PLACE ON ANY CPD SEMINAR, PLEASE COPY & FAX THIS FORM TO 0845 080 4542 OR VISIT OUR WEB SITE AT www.afpconsulting.co.uk

I wish to reserve _______ place(s) at the following seminars
Qualifies for 3 hours CPD
All seminar times: 2.00pm - 5.00pm
Cost per seminar: £100.00 + VAT per delegate

❑ ANTI-MONEY LAUNDERING - 1st September 2004,
❑ RISK MANAGEMENT - 15th September 2004,
❑ LIMITING LIABILITY - 6th October 2004,
❑ BUSINESS DEVELOPMENT STAGE 1 - 20th October 2004,
❑ COMPLAINTS HANDLING - 3rd November 2004
❑ BUSINESS DEVELOPMENT STAGE 2 - 17th November 2004,
❑ CLIENT CARE - 1st December 2004,
❑ PRACTICE MANAGEMENT - 8th December 2004,

All seminars will be held at The Law Society, Belfast

Alternatively, you can copy and post this form to:
AFP Consulting, 40 Linenhall Street, Belfast BT2 8BA
or call: 0845 600 2729
or email: afpconsulting@aforsbes.co.uk

Please list the names of those attending in BLOCK CAPITALS

Name:
Position:

Name:
Position:

Name:
Position:

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

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BSA Golf Outing at Malone

20th May 2004

A wonderful day’s golf was had by all at the recent outing at Malone. Conditions were favourable with great weather, course in its usual impeccable condition and with 63 participants, one of the largest attendances ever. All this and more with a splendid meal and drinks in the convivial atmosphere of the Club House!

Viv Harty carried off the 1st Prize and Cup with 41 points (winning on the better back 9). John Gibbons came a close second also with 41 points and Stephen Andress was third with 36 points. Orla Mallon was the winner of the Ladies’ prize and Peter Welch (escapee from the profession!) won the visitors’ prize with a score of 38 points. The BSA would like to thank its sponsors Mary Norton of SGS Yarsley and Gary Millar of GMA Management Consultants for their usual very generous sponsorship and also extends its thanks to Malone Golf Club for its professional and courteous service. Thanks also to the participants for their support and we look forward to seeing everyone again next year!

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From left: Martin Mallon (Chairman BSA), Viv Harty (1st Prize), Mary Norton of SGS Yarsley (Sponsor) and Gary Millar of GMA Management Consultants (Sponsor).

Above, from left: Kevin Craig, Shaun McKeown, Dave McCloy, Chris Ross.

Above, from left: Billy Reid, Gerry Davey, Pat Eastwood, Philip Aldworth.

Above, from left: Cormac Fitzpatrick, Orla Mallon, John Guerin, Peter Campbell.
PRACTICE MANAGEMENT AND CLIENT CARE HALF DAY SEMINAR

At the Wellington Park Hotel on Saturday 18 September 2004

9.00 am - 9.30 am  Registration and coffee
9.30 am - 10.10 am  “ISO/Lexcel Computerised Case Management”
                    By Gary Millar of GSM Management Consultants
10.10 am -10.45 am  “Client Management to Avoid Claims”
                    By Tom McGrath of Marsh
10.45 am -11.00 am  Coffee
11.00 am -11.45 am  “Client Management”
                    By Fergal McCormick, accountant
11.45 am -12.30 am  “Money Laundering”
                    By John Horan of Harbinson Mulholland

The cost is £60.00 for BSA members or £90.00 for others.

Attendance at this lecture will qualify for three hours CPD

BOOKING FORM

Name ____________________________
Firm ____________________________
Address ____________________________

DX NO ____________________________
Telephone ____________________________

Does CPD apply to you? YES / NO

Please make cheques payable to Belfast Solicitors Association
I enclose a cheque in the sum of £______________

Please complete the form and return it to Briege Williams, BSA Administrator, Suite 7 Merrion Business Centre, 58 Howard Street, Belfast, BT1 6PJ.

BSA On-Line

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

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 Court’
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.

Cheques payable to the BSA, c/o The Administrator, BSA, Suite 7, Merrion Business Centre, 58 Howard Street, Belfast BT1 6PJ.
On 1 May 2004 the European Union (EU) expanded from fifteen to 25 members. The new member states are Poland, Slovakia, Lithuania, Hungary, Estonia, Slovenia, Czech Republic, Latvia, Cyprus and Malta. The EU now has a combined population of 455 million. Despite earlier indications that in the United Kingdom and Ireland there would be no restrictions for citizens of the new accession states, measures have now been brought in to limit the right to claim social security benefits and require work permits. This article by Peter Fitzmaurice concerns the employment and immigration provisions of the new measures.

From 1 May 2004, nationals of the two island members, Cyprus and Malta, will have the same immigration rights as other EU nationals. Nationals of the other eight countries, Poland, Slovakia, Lithuania, Hungary, Estonia, Slovenia, Czech Republic, Latvia, will have the right to enter and take up work. As Cyprus and Malta are exempt from the new arrangements, the term A8 has been used to signify the other eight accession states listed above. Nationals of Cyprus and Malta will be treated in the same way as nationals of other European Economic Area states.

New statutory provisions

The European Union (Accessions) Act 2003 has already come into force. The subsequent regulations, Accession (Immigration and Worker Registration) Regulations 2004 came into force on 1 May 2004.1

New immigration and employment scheme for A8 nationals

The Accession Regulations derogate during the accession period2 from Article 39 of the EC Treaty and Article 1 to 6 of the Regulation (EEC) No.1612/68 on the freedom of movement for workers within the Community and Council and Community Directive (EEC) No. 68/360 on the abolition of the restrictions on movement and residence within the community for workers of member states and their families:

• apply the Immigration (European Economic Area) Regulations 2000 (‘EEA Regs’) to A8 nationals;

• exclude A8 nationals who are ‘required to register’ from some of those rights. This is done to allow means-tested benefits to be refused to some nationals.

Accession nationals will be allowed to enter the UK to look for and to take up employment or self-employment. Many A8 nationals will be required to register their employment within a month of starting work. Unlike other EU nationals, these A8 nationals will lose their right to reside if they become unemployed within the first twelve months of employment. In addition, they also have more limited rights of family reunion. While employed they will have the same rights to benefits as other EU nationals (including tax credits, Housing Benefit, Child Benefit, disability benefits and contributory benefits).

A8 nationals who are not required to register

Some A8 nationals are not required to register under the regulations. This means that they have the same residence and benefit rights as other EU nationals. An A8 national is exempt if s/he:

• had leave to enter or remain in the UK on 30 April 2004 with no restriction on employment (eg exceptional leave, leave as a spouse and indefinite leave); or

• had leave to enter or remain in the UK on 30 April 2004 with a restriction on employment and had been legally working in the UK without interruption up to 30 April 2004 (eg a student or work permit holder); or

• worked legally in the UK for a period of at least twelve months ending after 30 April 2004 without interruption; or

• has dual nationality and is also a national of the UK, (except an A8 state) or Switzerland (EEA states are the EU states of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, UK plus Iceland, Norway and Lichtenstein);

• is a family member of an EEA national (except of an A8 state) who is in the UK. Family member means spouse and dependent children, plus, if the EEA national is a worker, children or
grandchildren under 21 or dependent on the worker’s spouse as well as dependent parents, grandparents and great grandchildren of either the EEA national or her/his spouse. Other dependent relatives who live under the same roof may also qualify:

- is a national of an accession state who is economically self sufficient, a self-employed person (including a person who has ceased self-employment) or a recipient of services. As a result, the self-employed will not have to register unless they wish to become employees.

A8 nationals who are not required to register and do not have indefinite leave to remain should be advised to apply to the Home Office on or after 1 May 2004 for a residence permit as proof of their right to reside. This is done on Form EEC1 in the same way as for other EU nationals. No fee is payable and the application form EEC1 can be found at http://www.ind.homeoffice.gov.uk/default.asp?pageId=114

An employer can employ an A8 national without registration if, within the first month of employment, the employer keeps a copy of ‘a document that appears to establish that the worker’ is not required to register. No guidance has yet been issued to employers explaining when an A8 national is not required to register.

What counts as work and working legally?

The regulations define ‘worker’ according to the meaning of Article 39 of the EC Treaty (formerly Article 48) and work and working are to be construed accordingly. The work must be undertaken for an employer (not self-employment). The European Court of Justice has given ‘work’ a very broad interpretation:

- part-time employment is ‘work’ even if it produces an income lower than a recognised minimum income. The only requirement is that the employment be an ‘effective and genuine’ activity and not ‘on such a small scale as to be regarded as purely marginal and ancillary’.3
- it is irrelevant that the income from the employment is so low that the worker must claim social assistance benefits.4

Under the new UK rules, a person is working legally before 1 May 2004 only if:

- s/he had leave to enter/remain and worked in accordance with any condition attached to that leave; or
- s/he had an EU right to reside in the UK.

Working before 1 May 2004 while here with temporary admission (eg as an asylum seeker) is not counted as working legally, even if the person had Home Office permission to work. Breaks in employment of up to 30 days in the twelve month period are disregarded. There is no requirement that the work must be for the same employer.

Because of the broad definition of ‘work’ there can be no requirement that the person work full time. It must follow that what counts is the contractual relationship with the employer. A person should not therefore be required to register if s/he has a part-time job in which s/he has worked for twelve months preceding 1st May 2004. However it remains to be seen what approach the Home Office will adopt in these cases.

Applying for registration

A8 nationals who are required to register must do so if they are employed on or after 1 May 2004. The registration application must be made within one month of starting employment.

However, an A8 national does not have to register a particular employment if:

- the employment lasts less than one month;
- the employment is so marginal or ancillary that it does not count as ‘work’;
- s/he was legally working for that employer on 30 April 2004 and has not ceased working for that employer since; or
- s/he was given leave to enter as a seasonal agricultural worker before 1 May 2004 and works in a camp. However, such a person must register that employment if it continues past 31 December 2004.

In any event, it is always advisable for a person who has to register to do so for any employment as proof of the right to reside. The registration application must be made in writing, supported by a letter from the employer. There is a one-off fee of £50, with no exceptions. A standard form (WRS) can be used (though it is not required: the necessary details are in regulation 8 of the Accession Regs). According to the Home Office the form will be available from the Application Forms Unit (0870 2410645) and at www.workingintheuk.gov.uk. The registration application must be sent to: Work Permits (UK), Workers Registration Team, Walsall Road, Cannock, WS11 0WS.

Registration cards and certificates

On the first successful application, the Home Office will issue a registration card. This is an identity card with a passport, name and reference number. The Home Office will also issue a registration certificate, showing the details of the applicant’s employment.

A registration application must be made for each employment with a different employer (even if the person is already registered). The £50 fee is only payable for the first application. A registration certificate will be issued for each employer. The registration permits the A8 national to work for an employer in any capacity. It is not necessary to notify the Home Office of a change of employment with the same employer, nor if the employment ceases. The registration certificate expires when the A8 national ceases working for the employer (or is invalid if issued after the work ends). If the A8 national begins working for that employer again, a further registration application must be made.

There is no right of appeal from a refusal to issue a registration card or certificate. Judicial review is therefore the only legal remedy.

After twelve months, the A8 national who has held a certificate and is still...
employed will then be entitled to a residence permit under the Immigration (EEA) Regulations 2000.

Offence under the Regulations

An employer commits an offence liable to a fine not exceeding level 5 on summary conviction by employing an A8 national for more than one month, unless that national has applied for registration of that employment. However it will be a defence to prove that the employer took and retained a copy of a document which either appeared to establish that the worker did not require registration or had applied for a registration certificate.

Self-employed A8 nationals

An A8 national who has established a genuine business or profession in the UK has a right to reside under EU law. This is because A8 nationals have the same right as other EU nationals to establish themselves in any EU state: see Article 43 EC, Directive 73/148, especially Article 4. The Act of Accession does not permit states to derogate from these provisions for A8 nationals.

A8 nationals are free, from 1 May 2004, to establish themselves as self-employed in the UK. As long as the business is a genuine one, it is not necessary for it to produce an income sufficient to support the A8 national concerned.

It follows that a genuinely self-employed person is entitled to a residence permit. However, a self-employed A8 national is still subject to the same registration rules for any additional employment with an employer.

Family members

Members of the family of an EU national have rights to enter and remain in the UK and work here, with their EU family members who are exercising an EU right of free movement even if they are not EU nationals themselves. Family members of A8 nationals can benefit from these rules to a limited extent.

Where the A8 national is required to register and is employed, then s/he is entitled to be joined in the UK only by her/his spouse, their children who are aged 21 or are dependent, and dependent relatives in the ascending line. The only difference of treatment compared to other EU nationals is that these A8 nationals do not benefit from the right to bring other, more distant, relatives under Article 10(2), Regulation 1612/68. As there is no right under the Act of Accession to derogate from Article 10(2), this may be contrary to EU law.

Peter Fitzmaurice, until recently a legal adviser at the Law Centre in the areas of employment and immigration, has since joined the Irish Centre for Human Rights at NUI, Galway.

2 until 30 April 2009
3 See C53/81 Levin, paragraph 17, where one hour a week was not regarded as effective and genuine.
4 See C139/85 Kempf, paragraph 14

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It provides statistics on the size and composition of the prison population in Northern Ireland between 1994 and 2003. Key findings are as follows:

- The overall annual average prison population in Northern Ireland increased by 12% from an average of 1,026 in 2002 to an average of 1,152 in 2003.
- The total number of receptions into prison increased by 9% from 4,865 in 2002 to 5,309 in 2003.
- The overall prison population was predominantly male (99% in 2003). Males also made up 95% of all receptions into prison during 2003.
- In 2003, 54% of the average immediate custody prison population were between the ages of 17 and 29. 64% of all immediate custody prison receptions were between the ages of 17 and 29.
- In 2003, 64% of the immediate custody prisoner population were serving sentences for violent offences (violence against the person, sexual offences and robbery), 7% were serving sentences for drug offences, 7% for motoring offences and 7% for other offences.
- Prisoners with sentences of greater than one year but less than or equal to five years formed 42% of the immediate custody population in 2003; those sentenced to more than five years but less than life made up 24%; those with sentences of one year and under formed 19%. Life sentence prisoners made up 15% of the average immediate custody population in 2003.
- Northern Ireland had a rate of 70 prisoners per 100,000 population in 2003 compared to 141 in England & Wales and 129 in Scotland. The Republic of Ireland had a rate of 85 prisoners per 100,000 population. Hungary (165) had the highest rate of imprisonment per 100,000 population of the European Union countries surveyed whilst Norway (59) had the lowest rate (Figure 8).

The bulletin is available for downloading from www.nio.gov.uk/pdf/prispop22004.pdf
New Proposals to tackle Fraud

The Northern Ireland Office has announced proposals to modernise fraud law in Northern Ireland. They are being issued for consultation in parallel with consultation being carried out in England and Wales by the Home Office.

The key features of the fraud law reform proposals are:

- The creation of a general offence of fraud which can be committed in 3 different ways: by false representation, by wrongfully failing to disclose information, or by abuse of office.
- The creation of new offences of ‘obtaining services dishonestly’ and ‘possessing equipment to commit frauds’.
- The extension of the existing offence of fraudulent trading.

The Government’s proposals for change are based mainly on the Law Commission Report on Fraud, published in 2002 (Cm 5560). The consultation paper sets out the Law Commission’s proposals, some policy questions which arise and some additional issues which may merit legislative change.

The current law on fraud, aside from specialised areas such as tax fraud, is mainly comprised of eight statutory deception offences in the Theft Acts 1968 to 1996, and the common law offence of conspiracy to defraud. The current statutory offences are highly specific and fail to define what “fraud” actually means. In contrast the offence of ‘conspiracy to defraud’ is so wide that it provides little guidance on the difference between lawful and fraudulent conduct. This makes fraud cases extremely difficult for juries. Repealing the current statutory and common law offences and replacing them with a general offence of fraud will benefit juries by making fraud law easier to understand. This could prove particularly beneficial in complex and serious fraud cases.

The consultation does not cover what might be described as specialist branches of fraud - forgery and counterfeiting, false accounting, tax evasion, insider dealing, misleading market practices, benefit fraud and intellectual property offences. These will require separate consideration. Equally the law of theft is not under review at this time.


Anyone interested in contributing to a response to the proposals should contact Peter O’Brien, Secretary to the Criminal Law Committee.

Management of Prisoners attending courts

From 24th May 2004 the Northern Ireland Prison Service (NIPS) will assume responsibility from the police for the management of ALL prisoners attending Laganside Courts and for the production of prisoners into the courtroom. At present the police are responsible for prisoners attending the Magistrate’s Courts while the Prison Service have responsibility for those appearing at the Crown Court. The NIPS have outsourced the management of prisoners and a private sector provider – Maybin Support Services will become responsible for the cell area at Laganside and for the production of all prisoners into the courts.

On the coming into operation of the new arrangements, it is intended to search all persons entering the secure area at Laganside Courts. This will include legal representatives. The new searching arrangements at court will be similar to that when a legal representative visits a client in prison or Young Offenders Centre. The searches will be carried out under the provisions of the Criminal Justice and Public Order Act 1994 (section 120).


The practical application of human rights to the training of all police officers and civilian staff in the Police Service of Northern Ireland (PSNI) is the subject of a report recently published by the Northern Ireland Human Rights Commission.

The report, the fourth in a series by the Commission, examines an ambitious course on the new constitutional arrangements post-Patten delivered by the PSNI in 2002 and 2003. The Course for All, arising from a Patten recommendation, aimed to deliver a two-day training programme to every officer and member of staff in the PSNI regardless of grade or type of contract. The Commission was invited by the PSNI to look at the Course for All training materials and to observe training sessions taking place with participants at various locations across Northern Ireland.

Although this particular course was a one-off venture, and some improvements have since been made to human rights training in the PSNI, the report’s recommendations nevertheless have broader implications for the creation of a constructive human rights culture within the Police Service. The following recommendations are some of those made by the report:

- Human rights and the significance of the Human Rights Act 1998 need to become fully integrated to police training and affect attitudes and values so as to be effective.
- Training materials need to address complex issues such as sectarianism.
- The contribution of the community and of organisations with an interest in police training to the design and development of training strategies and initiatives should be prioritised.
- Trainers themselves need to receive continuous human rights training and the pool of trainers needs to be expanded to include trainers from outside the PSNI.
- Training should be subject to independent monitoring and evaluation.

ATTENTION ALL CRIMINAL LAW PRACTITIONERS

New arrangements for reviewing Crown Court Cases from September 2004

The Lord Chief Justice’s Office has notified the Society that from the beginning of the new legal term a pro-forma will be introduced on a pilot basis for all Crown Court cases. The form, which is to be completed by the prosecution and defence, is intended to assist the smooth running of cases. The Lord Chief Justice, Sir Brian Kerr, has held discussions, with a number of groups including the Law Society, Bar Council, Director of Public Prosecutions and Legal Services Commission to try to identify ways in which Crown cases can be dealt with, post-committal, more efficiently. In particular, he has been exploring how any pre-trial interlocutory matters might be highlighted so that these can be addressed well in advance of the trial date. Members will be notified of the full details at a later stage, but the essential aspects of the new scheme, to be called Case Status Review, are:

- The pilot scheme applies to High Court and County Court Crown cases.
- At committal a new pro-forma seeking to identify pre-trial issues and trial related matters is to be issued to the DPP representative to be completed by prosecution counsel.
- The form will be passed by the prosecution to the defence solicitor for completion by defence counsel.
- The pro-forma will then be returned to the court, before arraignment, and will be considered at arraignment.
- If there are pre-trial issues, perhaps over disclosure or expert evidence, a pre-trial hearing will be arranged to deal with these and to set a trial date.
- If there are no issues then a trial date will be set at arraignment.

The Lord Chief Justice emphasised in the discussions that it was recognised that, depending on the case, it may not be possible to complete all parts of the form either because of incomplete information or in the interests of justice. The Lord Chief Justice also said that he recognised that, for example, the defence position may change after completing the form because certain additional information had come to light. This was understandable – counsel were being asked to use best endeavours.

Further details, including the form and a guidance note to complete, will be available on the Northern Ireland Court Service website at www.courtsni.gov.uk from the beginning of July.
A Master’s Voice...

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

At a time when solicitors practices are facing strong competition, a down turn in some areas of work, a curtailment of legal aid, increased costs, anticipated increases to the Compensation Fund levy and the ever spiralling costs of professional indemnity insurance, there is an understandable temptation to dismiss out of hand the prospect of taking on an apprentice with the attendant extra costs this will entail.

My opening remarks are not a prologue to an argument that we, as a profession, have a moral obligation to ensure that those graduates who make it through the system should, as a matter of course, find appropriate Masters and be given a solid training. There may well be some merit in that argument but I would prefer to commend to you the real benefits that the employment of an apprentice can bring to your firm:-

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

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

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

4. You think you cannot afford an Apprentice?
“Tis not just the £200.00 per week you have to pay during those first four months – it’s the fact that they haven’t a clue what they are doing.”
This is by far the most common complaint about the current system and on the surface would appear to be a justifiable one.

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

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

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

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

Gerry O’Hare, Senior Partner J.G. O’Hare & Company Solicitors
Despite all the efforts to introduce risk management procedures throughout the profession, good risk management has far more to do with a firm’s culture and attitude to risk than with any of the systems introduced to manage that risk. Of course, risk management procedures are essential, but they are not of themselves the solution. For example, take a firm that has adopted the ideas of managing risk seriously at a partnership level and has produced a detailed office procedures manual. This book is issued to all staff with a fanfare and handed to all new employees during their induction. And what happens to it nine times out of ten? It is relegated to the bottom drawer, where it gathers dust.

The key to risk management is not the fixed procedures of themselves – especially where they are imposed from above – but the ability to make the procedures adaptable and relevant to all staff in their day-to-day work. If the culture of a firm is to improve systems and eliminate errors from the senior partner down to the junior receptionist, there is little doubt that mistakes will become a rarer phenomenon. Naturally, such a culture is easier to describe than it is to cultivate and will vary from firm to firm. However, here are some fairly straightforward ideas which will get the process started.

If you have a procedures manual, look at it critically. Often these documents are four inches thick and totally irrelevant to the majority of employees within a firm. Instead, consider breaking-down procedures on a departmental basis. If people can see relevance to their everyday work they are far more likely to comply.

Of course there must be a set of guiding principles which can be used throughout the firm and across different office locations. However, these are more likely to work if they are developed in co-operation with staff rather than imposed from above.

Consider asking the departmental heads to call a meeting of their teams and ask them to suggest ideas to reduce errors and improve systems. People are naturally far more likely to take on board procedures where they have had a direct input into creating them. It is common sense that the person answering the telephone is more likely to understand where issues arise about, say, message-taking and their solutions than responsibility for the ‘procedures manual’.

Once a department has produced ideas relevant to its own work, it may well work far more effectively for these to be set out in a two-page, pocket-sized pamphlet of ‘guiding principles’ rather than producing an expensive tome that sits unread.

Also do not forget to revisit the procedures on a regular basis, involving new staff in discussions. A regular audit and review will keep all employees aware of the importance of risk management and reduction of errors.

It is practically impossible to eliminate all errors and mistakes, but a firm which has an open and constructive culture of risk management is more likely to reduce errors and learn from its mistakes than one with a rigid and patriarchal attitude to systems and procedures.

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

It was with great anticipation and excitement four Northern Ireland Young Solicitors Association delegates touched down in Memphis, Tennessee for the 2004 ABA/Young Lawyers Division Spring National Conference in the relaxed, genial atmosphere of the Peabody Hotel, Downtown Memphis.

A meeting of the international delegates, closely followed by a visit to the Stax Museum of American Soul Music proved the perfect welcome for all aspects of this music-imbued conference. But for those late-night revellers who found their attention drawn to the excellent live entertainment provided by ‘The Pro-Bonos’, (what these lawyers lacked in musicianship they certainly made up for with enthusiasm) Friday morning dawned all too early.

A highly informative and interesting tour of the National Civil Rights Museum made Dr Benjamin Hook’s account of Dr Martin Luther King’s life and his final moments outside that very building all the more poignant. The ever-relevant theme of equality continued in a commemoration of the 50th anniversary of the historic Brown v Board of Education decision. The ABA/Young Lawyers Division presentation of a re-enactment of the various components of the Topeka Trial, complete with lead attorneys, judges and witnesses simply could not fail to impress. In addition to the not insubstantial benefit of increased awareness and knowledge of the significance of the decision, both historically and currently, delegates had the privilege of being privy to what was a thorough tutorial on trial skills.

There is no doubt the specific instruction on how to lay the proper foundation for introducing exhibits, examine expert witnesses, use demonstrative exhibits and determine genuine hearsay was appreciated by all.

Such extensive food for thought soon required sustenance of an altogether different kind. And so to the highlight of the weekend, a gala dinner on the moonlit rooftop of the Peabody Hotel. A lack of prolonged speech making, but an abundance of equally fine food and good company made for a truly unforgettable experience.

Saturday’s lecture series maintained the high standards, delegates had now come to expect from our American counterparts. A concise lecture on how the various elements of the Young Lawyers Division combine to make up the organisation, governance, structure and programming had more than a few scurrying for notebooks and pens. The Annual Awards of Achievement Program, which followed, only served as a further reminder of the dedication of the organisation. The concluding lecture on the success of the One Lawyer One Child concept where lawyers across the nation lead in the charge to help abused and neglected children by implementing pro bono adoptions, guardianships and school-based legal clinics was nothing short of inspirational.

However it was ABA/YLD Officer Gerald Giamio’s (a.k.a Elvis) rousing rendition of ‘Jailhouse Rock’ that soon had us boarding buses for the Graceland Tour with the true spirit of rock ‘n’roll in our hearts.

But the hospitality did not end there. Mirroring the beginnings of an all too short stay in Memphis, international delegates were once again treated to a delightful reception where worldwide relations were cemented one last time. Each clutching our fitting gift (a copy of The King’s Greatest Hits, what else!) the only thing left for the NIYSA ladies to do was catch the much-lauded Memphis Pub Crawl!
On 15th June the Society was pleased to welcome the Lord Chief Justice, Sir Brian Kerr, to Law Society House. This was Sir Brian’s first visit since his appointment in January and began with a guided tour of the premises in the course of which he had an opportunity to meet and chat with most of the Society staff. This was not only a chance to ‘put names to faces’ but for the LCJ to see at first hand the hard work which underpins the day to day operation of the Society. Given his known enthusiasm for new technology it was not surprising that he took a particular interest in the computer systems which support the Society’s admission, registration and complaints-handling functions.

There followed a working lunch with the President, office-bearers and Chief Executive. The role of the Lord Chief Justice in Northern Ireland has been developing over recent years, and this is a process which is signalled to continue as the plans for constitutional reform in the UK move forward, and also as and when devolution of justice functions is effected. In this context it was particularly useful to review with the LCJ the reforms set out in the Justice [NI] Act 2004 [see Introduction to the Justice Act article in this edition] and the proposals of the Lord Chancellor for reform of the Queen’s Counsel system.

The visit concluded with the Lord Chief Justice sitting in for part of a meeting of the Society’s Family Law Committee, chaired by Catherine Dixon. This proved to be an excellent encounter, which gave Sir Brian a very positive insight into the type of practice issues handled through the Committees of the Society by so many dedicated and experienced members of the Society.

The full web-address to access the new arrangements relating to High Court bail hearings referred to in last month’s edition is www.courtsni.gov.uk/en-GB/Services/Court+Lists/High+Court+Bail+Applications

From July to September Court Service will be hosting a number of information days on the courtroom technology available at the following court houses:- Royal Courts of Justice, Laganside, Dungannon and Derry. Practitioners will be encouraged to use and test the technology and gain “hands on” experience.

Anyone interested in availing of this opportunity should contact Jim Coffey at Court Service on 90728826.
A wide-ranging outreach campaign to recruit 300 local people to the new judicial post of Lay Magistrate has been launched by the Northern Ireland Court Service.

The Criminal Justice Review had endorsed the continued involvement of lay people in the criminal justice system and recommended the creation in Northern Ireland of a new office of Law Magistrate – empowered to undertake a number of judicial functions.

These functions include: sitting with another Lay Magistrate, together with a legally qualified Resident Magistrate to adjudicate in Youth Courts and Family Proceedings Courts; hear emergency applications where only one party attends; preside alone at first hearings in special courts to remand a person to return to court at a later date; hear complaints with a view to issuing warrants and summonses; and to act as witness for various oaths and affidavits.

The Lay Magistrate’s (Eligibility) (Northern Ireland) Order 2004 prescribes the offices and occupations which present an obvious conflict of interest, where a person should not (save in exceptional circumstances) be appointed as a Lay Magistrate. Practising solicitors or barristers in Northern Ireland are disqualified from appointment, though no restrictions are placed on the eligibility of their spouses, partners or close relatives.

The Order is underscored by a policy document. The policy document explains the rationale for the inclusion of the prescribed offices and occupations listed in the Order and provides guidance in relation to other offices and occupations, where a conflict of interest may exist. Recruitment and selection will take place throughout the Summer, with initial appointments made by the end of the year. Following a comprehensive training programme, Lay Magistrates will take up their new roles in April 2005.

Further information can be obtained at www.laymagistrates.com

Approximately one thousand lawyers, judges and allied professionals from around the world will meet in March 2005 for the 4th World Congress on Family Law and Children’s Rights.

This high-profile and influential international gathering will review key emerging issues, policies and practices that impact on the administration of justice in the family law area and on the rights of children and youth.

Major themes of the Congress include a consideration of the compliance with the United Nations Convention on the Rights of the Child (UNCROC) which will celebrate its 15th anniversary, national approaches to the protection of the human dignity of children, the effectiveness of international conventions for cooperation, and family law and the impact on social change on it in areas such as international maintenance and child support, same-sex and single-parent family structures, pension plans, property division and international family law litigation.

Speakers will include some of the world’s leading experts. Details are being finalised and will be released shortly.

Issues to be addressed by these and other outstanding speakers from Great Britain, Ireland, the Americas, Europe, Asia, Australasia and Africa include: child labour, child soldiers, child prostitution, children and HIV-AIDS, the rights of children in criminal proceedings, the impact of media coverage on children’s rights issues, international abduction of children, international adoption of children, the Hague Conventions, the European Convention on Human Rights and its impact on the family, children as witnesses, parenting and shared parenting issues, and representation of children.

This Congress will further advance a unique programme of lawyers and allied professionals to assist at short notice in landmark cases involving children. The Children’s Rights Protection Network established at the last World Congress in Bath, England in 2001, now known as Children’s Rights International, is an international network of children’s rights advocates ready to travel and assist with court-based and other actions and advocacy for the protection of children and young people.

Further details can be obtained from www.lawrights.asn.au
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 Order (NI) 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 £125.00. 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:
KEVIN DELANEY
LAW SOCIETY OF NORTHERN IRELAND
LAW SOCIETY HOUSE
98 VICTORIA STREET
BELFAST BT1 3JZ
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The European Lawyer

The Chen case pending before the European Court of Justice: Opinion of the Advocate General

The European Court of Justice is expected to deliver a judgment later this year in which it will decide on the rights of residence in the United Kingdom of a Chinese mother and her daughter, who has Irish citizenship. The Chen case is of direct relevance to Northern Ireland as Catherine Zhu, the baby in question, was born in Belfast. However, this significant case is expected to clarify the legal position throughout the European Union. In a nutshell, the European Court of Justice is asked if a child who is born to third-country national in an EU member state, may derive the right to reside in another EU Member State. If yes, can her mother also derive the right to reside in that Member State? The Chen case is a classic example of a legal problem which appears on first reading to be solely domestic in nature, but which is fundamentally one of European Community law. The purpose of this article is to summarise the main points of the Opinion of the Advocate General which was delivered on 18 May 2004.

BACKGROUND TO THE CASE

Catherine Zhu was born on 16 September 2000 in Belfast. Her parents are Chinese and they both work for a company registered in the People's Republic of China. Catherine's mother, Mrs Chen, came to Belfast to give birth to Catherine because of the one-child policy adopted in China [she has a son born in China]. Catherine is an Irish national and therefore a EU citizen. She cannot acquire Chinese nationality and she did not acquire British nationality under United Kingdom legislation.

Mrs Chen and Catherine now live in Cardiff, Wales. Catherine is a recipient of medical and child-care services provided privately for payment. They applied to the Secretary of State for the Home Department for permits to reside permanently in the UK. These applications were refused. They brought an appeal to the Immigration Appellate Authority against this refusal decision. The Immigration Appellate Authority referred a number of questions to the European Court of Justice by way of the preliminary reference procedure.

In a nutshell, there are two issues arising out of the case:

(i) Is Catherine entitled to reside permanently in the United Kingdom as a recipient of services within the meaning of EU law or as an EU national who is not active but has at her disposal sufficient resources and sickness insurance within the meaning of EU law?

(ii) Does Catherine's mother have a right of residence as being a 'dependant member of the family' of the child for the purposes of the right to respect for family life upheld by Article 8 of the European Convention on Human Rights?

THE ADVOCATE GENERAL'S OPINION

- The Advocate General, Antonio Tizzano, considers that even though Mrs Chen and Catherine did not leave the United Kingdom to go to another Member State, Catherine's possession of nationality of a Member State other than the United Kingdom provides a link with EU law and therefore, EU law on right of residence applies even though Mrs Chen and Catherine did not physically cross frontiers into another Member State.

- Catherine's Right of Residence. The Advocate General considers that a minor [even a very young minor] can be vested with the right of movement and the right of residence within the European Union. He stated that Catherine is covered by adequate sickness insurance. Through her family members, she has sufficient resources to ensure that during her stay, she does not become a burden on the public finances of the host Member State. Therefore, she can claim a right of residence by virtue of two legal avenues. First, she can claim a right of residence under the EU Directive concerning rights of movement and residence for persons who are not economically active or by virtue of the provision of the EU Treaty which provides for freedom of movement and of residence as a fundamental right of citizens of the EU.

- Mrs Chen's Right of Residence. The Advocate General recalls the jurisprudence of the European Court of Justice that for the purposes of protecting the rights of minors, where children enjoy a right to reside in a host Member State, Community law allows the parent with responsibility for them, regardless of nationality to reside with them in order to facilitate the exercise of that right. According to the Advocate General, this reasoning is applicable in particular in the case of a very young child. He stated that otherwise the child would be abandoned, and this would contravene the principle of family unity. Consequently, Mrs Chen must be able to invoke a right of residence deriving from that of her young child because otherwise, the child's right would be deprived of an effectiveness.

- The Advocate General therefore recommends to the Court that the
The European Commission is preparing to unveil a EU-wide legislative proposal setting out the rules applicable between EU Member States concerning cross-border recovery of maintenance obligations (e.g. child support payable by parents not residing in the same Member State with the child). Whilst the proposal is in the early stages, it will be of particular interest to maintenance disputes where one party is living in Northern Ireland and the other in the Republic of Ireland. The purpose of the new legislation will be to harmonise the rules applicable between the EU Member States.

The Commission has prepared a discussion paper (Green Paper) on maintenance obligations which is designed to take stock of the problems relating to maintenance payments. In brief, the main areas covered in this Green Paper are as follows:

- **Court having jurisdiction:** According to the Commission, determination of the court having jurisdiction to decide whether to grant or modify maintenance is particularly problematic at international level. Courts in two different countries may regard themselves as having jurisdiction to dispose of the same case and may deliver contradictory decisions.

- **Recognition of judgments:** The situation with regard to the recognition of judgments is difficult at international level as, in view of the characteristics of certain legal systems, some decisions are not recognised or executed in other countries.

- **Applicable law:** The question as to the law to be applied by the court delivering a judgment is not currently governed by Community legislation but by conventions adopted at The Hague but ratified by only a few countries. The rights assigned by the law in different countries differ very widely. In some of them, only children qualify for support payments whereas, in others, relatives in the ascending line and brothers and sisters may request that their “near ones” be required to assist them when they are in need. The Commission is of the view that it may be necessary to lay down criteria for defining which law will be applicable to a given situation.

Alternatively, no court may accept jurisdiction.

New EU Legislation on cross-border recovery of maintenance

The European Commission held the first public hearing on cross border maintenance on 2 June 2004 and is actively seeking comments and suggestions from any interested party. In practice, the Commission may propose a Directive and/or a Regulation covering the subject matter. However, the legislation must be approved by the European Council. Therefore, the proposed legislation would not realistically come into force before the end of 2006.

**New EU Legislation on cross-border recovery of maintenance**

The European Commission is preparing to unveil a EU-wide legislative proposal setting out the rules applicable between EU Member States concerning cross-border recovery of maintenance obligations (e.g. child support payable by parents not residing in the same Member State with the child). Whilst the proposal is in the early stages, it will be of particular interest to maintenance disputes where one party is living in Northern Ireland and the other in the Republic of Ireland. The purpose of the new legislation will be to harmonise the rules applicable between the EU Member States.

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1 Case C-200/02, Man Lavette Chen and Kunqian Catherine Zhu –v- Secretary of State for the Home Department.
2 The Advocate General is a Member of the European Court of Justice but is not involved in the deliberation of the case. His role is to recommend to the Court, in complete independence, a legal solution to the case pending before it.
3 Subject to certain restrictions, anyone born within the territory of the island of Ireland, even outside the political boundaries of the Republic of Ireland, acquires Irish nationality.
4 A court or tribunal in any Member State, may, by virtue of Article 234 of the EU Treaty, refer questions on Community law to the European Court of Justice. This is referred to as a ‘preliminary reference’.
6 There is no remedy of appeal of a judgment of the European Court of Justice.
Credit Unions and Industrial and Provident Societies - New Policy Proposals

The Department of Enterprise, Trade and Investment proposes to modernise the legal framework and policy on Credit Unions and Industrial and Provident Societies in Northern Ireland in order to help encourage community enterprise and the financial inclusion of all members of the community.

An Industrial and Provident Society is a company registered under the Industrial and Provident Societies Act (Northern Ireland) 1969. Societies can either be co-operatives which benefit their members only or "benefit the community" societies which are formed to benefit individuals other than their members. There are currently 172 Industrial and Provident Societies with a total membership of some 41,000 and assets of nearly £900m. Societies range from agricultural co-operatives to housing associations. There are also currently 184 Credit Unions in Northern Ireland with approximately 370,000 members. Total assets are in the region of £500 million. 103 Credit Unions are affiliated to the Irish league of Credit Unions (ILCU), 68 to the Ulster Federation of Credit Unions (UFCU) and 13 are independent.

"Initial Consultation on Proposals for Modernisation of Northern Ireland Policy on Credit Unions and Industrial and Provident Societies" is available on the DETI website at www.companiesregistry.detini.gov.uk (under Consultations)

The consultation period will run until 20 August 2004 and will involve dialogue with representative bodies, Credit Union and Industrial and Provident Society members, Government Departments and other interested bodies. The comments and feedback from this first consultation will contribute to finalising new legislative proposals which will be issued for discussion later this year.

Help with Green Regulations for Small Businesses

An online resource to help small businesses in Northern Ireland understand the environmental legislation affecting their activities is now available. This free, anonymous service, www.netregs.gov.uk, will help many businesses which have a low awareness of environmental obligations.

It is estimated that smaller businesses in the UK generate about 60% of commercial waste and are responsible for as much as 80% of pollution incidents. Recent research conducted into the environmental behaviour of small businesses in Northern Ireland (SME-nvironment 2003), revealed that only 20% of respondents could name any environmental legislation. A mere 22% had heard of the Duty of Care Regulations, which apply to all businesses.

The NetRegs website which has been developed by the local Environment & Heritage Service in partnership with the UK’s other environmental regulators, provides clear, authoritative guidance on the environmental regulations governing 50 industry sectors. It also offers general advice on environmental issues such as waste, storage of materials and water and energy efficiencies, as well as information on forthcoming legislation and good practice advice that can help businesses save money. Details available at www.netregs.gov.uk

STOP PRESS

STAMP DUTY LAND TAX END OF “LIGHT TOUCH” ARRANGEMENTS

The Society has been advised by the Inland Revenue that the special administrative arrangements which were put in place in November 2003 to help smooth the transition to SDLT will come to an end from Monday 19th July 2004.

This means that from 19th July 2004:-

(a) the Revenue will only be issuing Certificates where Land Transaction Returns (LTRs) have been correctly completed. If a LTR is incorrect or not complete, a SDLT8 Form will now be issued for the missing information.

(b) if the Revenue do not receive a correctly completed LTR and payment of the SDLT within 30 days of the effective date of completion, the purchaser will receive notification that a late filing penalty of £100 has been levied. If the LTR is more than 3 months late, a £200 penalty is imposed. This will be in addition to any interest charged on late payment of SDLT.

For further information see www.inlandrevenue.gov.uk/so/news.htm or contact the Revenue helpline at 0845 6030135.

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CONSULTATION ON CHILDREN (LEAVING CARE) ACT (NI) 2002

The Department for Health, Social Services and Public Safety has issued for consultation draft Regulations and Guidance to implement the Children (Leaving Care) Act (Northern Ireland) 2002.

The Children (Leaving Care) Act provides a new legal framework for those leaving care and also for the provision of after care services. Its main purpose is to improve the life prospects of young people who are looked after by Health and Social Services Trusts, as they make the transition to independent living.

The detailed Regulations and Guidance will support the implementation of the Act which the Department plans to bring into operation from April 2005. The consultation document is available on the DHSSPS website: www.dhsspsni.gov.uk.

The consultation period ends on 20 August 2004.

Please note new telephone number for SLS Legal Publications:

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Our fax number remains unchanged.

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The Dickens view of Lawyers

Lawyers can claim to a venerable tradition of being depicted in fiction. They are present both as narrators and as dramatis personae in Chaucer’s Canterbury Tales.

Shakespeare in his later plays had a fondness for introducing justices of the peace. With the development of the novel, the trickle of representations became a torrent. There is an abundance – some might protest a superfluity – of lawyers in the novels of Henry Fielding, Jane Austen, Sheridan Le Fanu and Anthony Trollope but nowhere are so many lawyers portrayed as a motley crew with neither sense of conscience nor the rule of the law than in the novels of Charles Dickens. In the opening paragraphs of Bleak House blank legalism is the essence of London:

“London. Michaelmas term lately over, and the Lord Chancellor sitting in Lincoln’s Inn Hall... Fog everywhere.”

and he goes further:

“The one great principle of the English law is to make business for itself.”

Dickens disapproved of lawyers as a class. He classed them with most schoolmasters and others of the then local government (especially beadle) and of Victorian religion (especially self – appointed chapel ministers) as preying on society or the psyche. He approved as a class of soldiers, sailors and doctors, who are all protectors. He had a carefully constructed criticism of his society and does not use his powers of ridicule and satire irresponsibly – perhaps the true sign of great art. In turn his fictions have taken as targets for denigration the university lecturer, the librarian, the man of letters, the serious novelist, the learned societies, the social worker and of course, the lawyer.

Different types of lawyers populate Dickens’ landscapes. He had worked as an office boy with a firm of solicitors in Holborn at the age of fifteen and he knew the caricatures, the idiosyncratic judges and legal personages like the back of his hand. Whether this whole gallery of Dickensian eccentricities, each with his (or her) distinctive mannerisms, is to be found in the law today, only the reader can tell.

In Bleak House his choice of the Court of Chancery as his central symbol and most obvious theme – the minutiae of legal practice, what solicitors and barristers and the Lord Chancellor actually do and how they do it – are less relevant than the deeper idea of what the Court of Chancery symbolizes; namely, that people are born into disputes over rights and property, and vainly spend their lives seeking equity.

In this novel, the law is seen to provide industry for a whole tribe of solicitors, barristers, law stationers, (Mr. Snagsby), law writers, debt collectors, detectives (Mr Bucket) and bailiffs who all, therefore, have an interest in the system. As embodied in Tulkinghorn, the system protects the strong and it reaches through its agents to oppress whosoever might threaten the stability of the system – whether Joe the crossing sweater, or Gridley the suitor or Lady Dedlock herself. All the lawyers especially Tulkinghorn and Guppy, and their strange counterpart Krook, are marked by a slow fixed way of looking at their clients, a sinister quality that is made most cannibalistic in the lifeless Vholes.

Any proposal to reform the wasteful practices of law, the narrator tells us, meets with the objection - what is to become of Vholes? The legal case which provides the novel with its major plot, Jarndyce and Jarndyce, is based upon a real case which had begun in 1834, involved up to forty lawyers, and had incurred costs of £70,000.00 by the time Dickens was writing. As Conversation Kenge one of those counsel who had battened on Jarndyce and Jarndyce boasts, it is:

“In itself a monument of Chancery practice. In which (I would say) every difficulty, every contingency, every masterly fiction, every form of procedure known in that court, is represented over and over again.”

In Great Expectations we are introduced to Jaggers who at first seems a caricature of the bullying unscrupulous lawyer, characterized by obvious speech habits (‘Now’, ‘Very Well’) and dramatic gestures (biting and throwing his forefinger). In his London office he seems to embody the inhumanity of a legal system which puts the letter of law before the spirit of justice. Yet a more complex character emerges.

He is fascinated by criminal psychology (delighted to recognize Drummle as ‘one of the true sort’) but his constant washing of hands suggest an uneasy conscience. He is the solicitor for both Miss Havisham and Magwitch and acts nobly in his efforts for Estella. Yet he still leaves the impression that he is a prisoner of his profession and its limitations.

Like Jaggers, Wemmick with his post-office mouth and wooden features, is revealed as a split personality produced by a dehumanising profession. There is the Little Britain office (Wemmick and the Walworth (home). Wemmick, and his office self is obsessed with portable property, parodying the financial aspect of Pip’s expectations.

In Pickwick Papers, Mr Pickwick is victimized by the rascally lawyers Dodson and Fogg, by unfairly having to pay costs in an action. Lawyers are constantly displayed in a negative light, furtive in speech and
using their expertise in the law of Equity to be inequitable. In David Copperfield, the scene where Uriah Heep, compensating himself for compulsory ‘umbleness in his youth, Parade his power over the older, experienced but weak senior partner Mr Wickfield (and his daughter the angelic Agnes) is one of the most powerful images in that novel. Here too we find the young barrister Traddles, who acts as Micawber’s unpaid adviser, and who by the end of the novel has developed legal maturity to the degree required for becoming a judge, despite never really growing up. His private life with his wife Sophie resembles that of grown up children. Mr Micawber, on the other hand starts the novel as a constant visitor to a Debtors’ Prison due to his habitually unfounded financial optimism and progresses to the position of Magistrate in the New World.

All these legal characters spring from the imagination of a man who began the world as a junior clerk in the office of Ellis and Blackmore in May 1827, at a starting salary of 10/6 a week. His father John had been imprisoned for debt in 1824 and did not have the means to enrol his son as an articled clerk. Instead Dickens was a “writing clerk”, a glorified office boy whose duties would have included the copying of documents, registering wills and visiting on errands the many lawyers’ offices and courts.

In Pickwick Papers one can detect traces of his own association with Ellis and Blackmore, in his descriptions of the law clerks, particularly the salaried clerk who is dressed in dirty caricature of the fashion which expired six months ago and the middle-aged copying-clerk who is always shabby, and often drunk. This was the future that awaited him if he remained in the law. He chose not to and departed soon afterwards into the worlds of Hansard and journalism. Even if some of his legal portraits are at times sympathetic, there is no doubt that Dickens carried hatred enough for all forms of the law itself – specifically for those who are in charge of the law’s arrangements, who live by it and die by it. Peter Ackroyd in his recent biography succinctly describes Dickens’s attitude to lawyers:

“There is only one good judge in the whole of Dickens’s work, few good solicitors, and really nothing but loud-mouthed barristers.”

- Plus ça change, plus c’est la même chose.

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Data Protection Act notification and bogus agencies

Solicitors handle personal information about clients, staff, and others. Like all businesses they must comply with the Data Protection Act 1998. Marie Anderson, a local solicitor, is the Assistant Information Commissioner in Northern Ireland and oversees the implementation and enforcement of the legislation here. In this article, she writes about the notification requirements under the 1998 Act which affect solicitors firms and warns of bogus notification agencies who are active here.

THE DATA PROTECTION ACT 1998

The Data Protection Act 1998 came into force on 1st March 2000. It regulates the handling of personal information about living individuals. ‘Personal Data’ is defined in the Act as any information which identifies an individual either on its own or when combined with other information which is in the possession of or is likely to come into the possession of a ‘data controller’. In a recent judgment of Durant v FSA, the English Court of Appeal clarified the meaning of personal data in the Act. Post Durant, it is now clear that the personal information which the Act protects must relate in some way to the privacy of the individual. A client’s name and address is clearly ‘personal data’ as are his medical records. Solicitors process such information on a regular basis. Computerised records are covered by the Act but only those manual files which form part of a ‘relevant filing system’ are also covered.1

An individual, business or organisation controlling the purposes for which and the manner in which personal information may be processed is a ‘data controller’ under the Act. Processing is broad enough to cover almost every aspect of handling personal information including obtaining, holding and disclosure. Solicitors firms handle personal information relating to clients, staff and others. In most cases they will be data controllers of the personal information they process and like all controllers, they must comply with the eight Data Protection Principles set out in the Act. In essence, these are rules for good information handling. Firms must also notify their processing to the Information Commissioner’s office.

WHAT IS NOTIFICATION?

Notification is the process by which a data controller such as a solicitor advises the Information Commissioner of the details concerning their processing of ‘personal data’. The notification register is available to the public to inform them about what businesses and organisations are doing with their information. Solicitors in Northern Ireland process personal information every day in the form of client databases, medical and employee records.

EXEMPTIONS

The new notification requirements under the Act replace the old system of registration under the Data Protection Act 1984. Data controllers must now notify annually, as opposed to a three yearly registration under the old regime. Not all processing of personal data needs to be notified. If your solicitor’s office does not use a computer to process personal data you will be exempt from notification. There are exemptions for ‘not for profit organisations’ as well as for any processing which relates solely to staff administration, advertising and marketing and public relations. However, most law firms will be unable to take advantage of these exemptions because as well as their standard business processes they process personal data for the purposes of the provision of legal services.

BOGUS AGENCIES

Some firms and their clients have already received letters from various businesses claiming that they are registration agencies and asking for fees in excess of the required £35. The Information Commissioner’s office is the only body charged with the statutory duty to maintain a public register for the processing of personal data. Arising from this practice, a number of individuals have been brought to book by the Office of Fair Trading. Some bogus “data protection collectors” have been writing to businesses and charging anything from £95 plus VAT for registration services. There is no connection between the Information Commissioner’s Office and these agencies. If your office receives one of these communications, our advice is to contact the OFT or the Information Commissioner’s Office.

WHY NOTIFY?

Failure to notify is a strict liability offence which can be tried in the Magistrate’s and/or Crown Court. A person found guilty of any of these offences can be sentenced on conviction in the Magistrate’s Court to a fine not exceeding the statutory maximum of £5000, or on indictment to an unlimited fine. It is also an offence to fail to notify any change to a registered entry within 28 days, although this is not a strict liability offence and there is a due diligence defence. Having notified, firms need to renew the notification annually and care should be taken to include any new processing i.e. a new client database.

Marie Anderson, Assistant Information Commissioner for Northern Ireland.

1 Michael John Durant v Financial Services Authority [2003] EWCA Civ 1746
2 see Information Commissioner’s guidance on the case of Durant v FSA for further detail on ‘relevant filing system’
3 Office of Fair Trading, Fleetbank House, 2-6 Salisbury Square, London, EC4Y 8JX
Practice Point

In response to the Assistant Information Commissioner’s article, each firm should consider taking action to ensure compliance with legal requirements. The primary source for the law is the Data Protection Act 1998. The Durant case is the leading authority on the meaning of “personal data” in the Act and also gives guidance on whether manual filing systems are caught by the Act.

A publication giving general guidance on data protection and more specific information on notifications, exemptions and other matters, can be obtained on request from the Information Commissioner’s office locally by telephoning 028 9051 1270. The Commissioner’s website at www.informationcommissioner.gov.uk is also a very helpful source of information. Concerning bogus agencies, the website also gives details of 35 companies which are being investigated following complaints and 12 others which have been taken to court.

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

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Proposed new laws on unauthorised encampments

The Minister for Social Development, John Spellar MP has announced his intention to introduce legislation to control unauthorised encampments. Mr Spellar said: “Unauthorised encampments are set up in various parts of Northern Ireland. Very often they involve members of the Traveller Community, but there are also problems with tourists who refuse to use the facilities provided for them and with visitors attending sporting events, such as the North West 200. These encampments have long been a cause of complaint from the public and from elected representatives. Existing legislation in Northern Ireland has proved to be ineffective in dealing with this problem. I intend therefore to bring forward new laws, similar to those in Great Britain, that will allow the police to deal with this nuisance effectively. “He added that similar legislation already exists in the Republic of Ireland.

A consultation paper on the proposals was issued in September 2003 and 49 responses were received from a wide range of interests. Many of those who responded to the consultation document were concerned about the potential adverse impact of the proposals on Travellers. In particular, concerns were raised about the lack of alternative site provision for Travellers. The Minister said: “I am aware of the concerns expressed during the consultation about availability of sites for the Traveller Community. For this reason I have decided to proceed with legislation in parallel with the development of specific alternative accommodation for Travellers.”

In response to the Ministerial announcement, the Equality Commission has raised concerns about the introduction of the new law. Dame Joan Harbison, Chief Commissioner of the Equality Commission said, “The Commission recognises and understands the issues raised by unauthorised camping sites, but is concerned with the intention to proceed with this law while adequate accommodation for Travellers has not been made available. The reality is that the proposed law will have a disproportionate impact on Travellers and, by criminalizing unauthorised camping it will reinforce the widespread social exclusion already experienced by that community. It is therefore essential that the programme of work to provide appropriate transit sites mentioned by the Minister is implemented immediately and effectively, and until that is done there is no point in moving Travellers from one unserviced, unofficial site to another.”

She added: “There is very specific legal protection for Irish Travellers in terms of the Race Relations Order and Section 75 of the Northern Ireland Act. Every public authority also has a duty to safeguard and promote the welfare of children who are in need within its area and no fair minded person would wish to see a child evicted from her home in the absence of alternative appropriate accommodation”
Appointment as (part-time) Chairman of VAT & Duties Tribunal and (part-time) Deputy Special Commissioner – (Dual Post) 2004

The Lord Chancellor and the Lord Chief Justice of Northern Ireland invite applications from suitably qualified persons to serve in the dual post of Chairman of the VAT & Duties Tribunal and Deputy Special Commissioner for Northern Ireland. This is a part-time appointment.

Eligibility

Applicants must be barristers or solicitors in Northern Ireland of at least ten years standing.

The Post

The function of a Deputy Special Commissioner is to hear and determine appeals by taxpayers against all direct taxes, in particular complex and weighty cases not dealt with by the General Commissioners. The appeals are against assessments by the Inland Revenue which include income tax, corporation tax, capital gains tax, petroleum revenue tax, windfall tax and stamp duty reserve tax. Cases may involve specialist issues concerning business sectors such as the insurance industry or the oil industry. Appeals against assessments by the Assets Recovery Agency relating to Proceeds of Crime matters may also arise.

The VAT & Duties Tribunal has jurisdiction to hear appeals from decisions of the Commissioners of Customs and Excise with respect to, for example, matters specified in section 83 of the Value Added Tax Act 1994, as amended (VAT), in the Finance Act 1994 (excise and customs duties) and in the Finance Act 2000 (Climate Change levy).

The dual appointment will be for a period of 5 years, and is renewable. The daily rate is currently £495 per day. The appointee is likely to sit for approximately 15 days per annum.

The Lord Chancellor and Lord Chief Justice are committed to equality of opportunity in the appointment process for all those who are eligible for judicial office. The Lord Chancellor and Lord Chief Justice will appoint the candidate who appears to them to be best qualified regardless of ethnic origin, gender, marital status, sexual orientation, political affiliation, religion, disability, except where the disability prevents the fulfilment of the physical requirements of the office, age (subject to the statutory age limit) or whether or not the candidate has dependants.

How to Apply

An application form, together with a job description and note of the criteria for appointment and further information for applicants is available by telephoning 028 9072 8713, by e-mailing judicialappointments@courtsni.gov.uk or by writing to:

Mrs Shirley Mallon
Judicial Appointments Unit, Northern Ireland Court Service, Headline Building, 10-14 Victoria Street, Belfast BT1 3GG (DX 527 NR, Belfast 1)

Completed forms must be returned to arrive at the above address not later than 4.00pm on Thursday 8 July 2004.

COURT SERVICE NOTICE

COUNTY COURT (AMENDMENT) RULES (NI) 2004 SR 2004 NO.216

These Rules amend the County Court Rules (Northern Ireland) 1981:

- to provide for appeals under Article 30(4)(ab) to the County Court Judge (small claims appeals) (sub-paragraph (ab) was inserted by section 74 of the Justice (Northern Ireland) Act 2002);
- to remove the requirement for notice of a payment into court to be served on the chief clerk; and
- to change the time limit for applying for a case stated from 14 to 21 days (consequent on the amendment to Article 61 (2) of the County Courts (Northern Ireland) Order 1980 by section 75 of the Justice (Northern Ireland) Act 2002);

The amendments came into operation on 31st May 2004.

LICENSING PROPOSALS FOR INDOOR ARENAS

New legislation that will allow indoor arenas to apply for a licence to sell alcohol has been laid at Westminster.

It is currently impossible for a large indoor arena to apply for a liquor licence under the Licensing (NI) Order 1996, as venues such as the Odyssey Arena were not envisaged when the current liquor licensing law was being formulated. At present the Odyssey Arena relies on the discretion of the court to grant occasional licences permitting alcohol to be sold at events. Subject to Parliamentary approval, it is expected that the Order could become law later this year.

The draft Order and an accompanying Explanatory Memorandum are obtainable from the Stationery Office Bookshop, 16 Arthur Street, Belfast, BT1 4GD. They are also available in electronic format at www.dsdni.gov.uk
Update

1. A new Code of Practice on Time Off for Trade Union Duties and Activities issued by the Labour Relations Agency came into effect on 20th May 2004.

Under Article 90 of the Industrial Relations (Northern Ireland) Order 1992 ("the 1992 Order") the Agency has a duty to provide practical guidance on the time off to be permitted by an employer:

(a) to a trade union official in accordance with Article 92 of the Employment Rights (Northern Ireland) Order 1996 ("the 1996 Order"); and

(b) to a trade union member in accordance with Article 94 of the 1996 Order.

Article 90 of the 1992 Order, as amended by the Employment (Northern Ireland) Order 2003, also provides for the Agency to issue practical guidance on time off and training for Union Learning Representatives. This Code, which replaces the Code of Practice issued by the Agency in 1993, is intended to provide such guidance.

The general purpose of the statutory provisions and the Code of Practice is to aid and improve the effectiveness of relationships between employers and trade unions. Employers and unions have a joint responsibility to ensure that agreed arrangements work to mutual advantage by specifying how reasonable time off for union duties and activities and for training will work. This may be particularly important in the case of Union Learning Representatives where the lack of such an understanding may result in duplication of functions concerning employees' training needs.

The provisions of the Code are admissible in evidence and may be taken into account in determining any question arising during industrial tribunal proceedings relating to time off for trade union duties and activities. However, failure to observe any provision of the Code does not itself render a person liable to any proceedings.

2. New information has been added to the individual conciliation page of the Agency’s website in relation to Arbitrators for the Arbitration Scheme for the Resolution of Unfair Dismissal Disputes and FAQs on the Unfair Dismissal Arbitration Scheme.

3. The first in a series of Occasional Papers is now available on the publications page of the Agency’s website. Pat Maxwell, Senior Lecturer in Law, University of Ulster, examines recent and likely future developments in employment law in Northern Ireland.

All of the above are downloadable from www.lra.org.uk

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

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

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

Further details about this charity and its work will gladly be supplied by the Secretary, The Heart Trust Fund (Royal Victoria Hospital), 98 Castle Street, Comber, Co. Down BT23 5DY. Tel: (028) 9187 3899.

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More than 30 years of Consultant Paediatric Practice – large experience medical paediatrics, accident & emergency including injuries & child protection work at Royal Belfast Hospital for Sick Children
A list of abstracted decisions is now included with the current awareness circular of recent journal articles which accompanies The Writ as an insert.

AA AND B V ULSTER COMMUNITY HOSPITALS TRUST

Application by the parents of four minor children for judicial review of a decision by an appeal panel dismissing their appeal against the respondent trust’s decision to place their minor children on the child protection register; whether there was failure to observe procedural propriety; whether the social workers whose presence was requested in advance were not present though their reports were; whether the trust failed to constitute an independent appeal panel contrary to the rules of natural justice. Application for judicial review dismissed.

2 APRIL 2004
QUEENS BENCH DIVISION
CAMPBELL LJ

ATTORNEY GENERAL’S REFERENCE NUMBER 2 OF 2004 (DANIEL JOHN O’CONNELL)

Offender convicted of eight counts of rape, one count of attempted rape and one count of indecent assault and sentenced to a custody probation order consisting of 10 years’ custody and 2 years’ probation in respect of each of the eight rape counts, 5 years imprisonment in respect of the attempted rape and 18 months imprisonment in respect of the indecent assaults, all sentences to run concurrently; whether sentence unduly lenient; whether aggravating features; whether mitigating factors; whether starting points applied should be those recommended by the Sentencing Advisory Panel. Sentence unduly lenient, order of trial judge quashed and a sentence of fourteen years’ custody and one years’ probation substituted.

30 APRIL 2004
COURT OF APPEAL
KERR LCJ

FOYLE HEALTH AND SOCIAL SERVICES TRUST V LM

Application for care orders in respect of L1 and L2, children of LM; application arising from circumstances where L2 was treated for serious injury which the trust alleges is non-accidental and is not a naturally occurring medical condition; whether standard of proof established; whether threshold criteria satisfied; whether welfare checklist satisfied; whether no order principle should be acted upon; whether care order should be made in respect of each of the children. Care order made in respect of each of the children.

1 APRIL 2004
FAMILY DIVISION
MC LAUGHLIN J

IN THE MATTER OF AN APPLICATION BY JOSEPH GRAHAM FOR JUDICIAL REVIEW

Application for judicial review of an adjudication of the applicant at HMP Maghaberry whereby he was charged and found guilty of attempted assault; whether there was breach of the “48 hour” requirement contrary to Rule 35(1) of the Prison and Young Offenders Centre Rules (Northern Ireland) 1995; whether there was breach of the “next day” requirement contrary to Rule 36(2); whether there was breach of the requirement that the applicant should have full opportunity to present his own case contrary to Rule 36(4); whether there was breach of the fair hearing requirement under Article 6 of the European Convention in that a prison adjudication involves a determination of “civil” rights. Application dismissed.

2 APRIL 2004
QUEENS BENCH DIVISION
WEATHERUP J

IN THE MATTER OF AN APPLICATION BY COLETTE HEMSWORTH FOR JUDICIAL REVIEW (NO.2)

Application for judicial review of the decision of the Legal Aid Department on an application for legal aid under the green form scheme in connection with preparatory legal work for the inquest into the death of the applicant’s husband; application attacks the decision itself and the compatibility of the green form scheme with the procedural requirements of Article 2 of the European Convention on Human Rights; whether decision of Legal Aid Department under the green form scheme was not sufficient to offer practical and effective legal representation in relation to the preparatory work for the inquest; whether the green form scheme is incompatible with Article 2. Declaration made.

26 APRIL 2004
QUEENS BENCH DIVISION
WEATHERUP J

IN THE MATTER OF K, S, AND G (REVOCATION OF FREEING ORDER)

Application by the mother of K, G and S to revoke an order freeing the children for adoption; application by Health and Social Services Trust for care orders in respect of all three children; whether work of the Trust in trying to place children and the prognosis for future placement meant revocation appropriate; whether change in circumstances and views of the former parent relevant; whether revocation appropriate for the welfare of the children; whether protection of the local authority for the children still available if revocation order granted; whether revocation conditional upon a care order being made appropriate; whether as the children are not going to be adopted the Trust should not be able to maintain and preserve such an order; whether sufficient safeguards to afford protection to children where the purpose of a freeing order has failed; whether breach of Article 8 of the European Convention on Human Rights. Freeing order revoked and care and associated orders made.

21 MAY 2004
FAMILY DIVISION
GILLEN J
R V MARTIN MAUGHAN
Appellant convicted of attempted murder contrary to Article 3(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983, of causing grievous bodily harm contrary to Section 18 of the Offences Against the Persons Act 1861, and of possession of a firearm with intent to endanger life contrary to Article 17 of the Firearms (Northern Ireland) Order 1981; whether the jury ought to have been advised or directed not to draw any adverse inference against the applicant in respect of his failure to give evidence; whether the jury’s verdict was against the weight of the evidence which almost exclusively established that the defendant could not have committed the offences alleged; whether the manner in which the Crown conducted the swearing of the jury was unfair and oppressive to the defendant and may have resulted in an unbalanced jury; whether the trial judge misdirected the jury as to the significance of evidence and as to the law. Appeal dismissed
14 MAY 2004
COURT OF APPEAL
NICHOLSON LJ

R V MCKIERNAN, PETER JOSEPH
Appeal from a confiscation order made by Judge Curran QC under Article 8 of the Proceeds of Crime (Northern Ireland) Order 1996; applicant convicted and sentenced for a number of drug offences including possession with intent to supply; prosecution applied for confiscation order; judge concluded that the appellant had benefited from the relevant criminal conduct to the extent of £361,666.34 and that the total realisable assets in respect of which a confiscation order could be made was £156,299; confiscation order made for the latter amount and appellant ordered to serve two years imprisonment consecutive to sentences imposed in default of payment; whether appellant has benefited from drug trafficking; whether assets representing the value of proceeds from drug trafficking; whether property transferred or received was a payment or reward for drug trafficking; whether expenditure made was from the proceeds of drug trafficking; whether standard of proof, on the balance of probabilities, satisfied. Appeal dismissed.
20 MAY 2004
COURT OF APPEAL
KERR LCJ

IN THE MATTER OF AN APPLICATION BY LIAM MULHERN FOR JUDICIAL REVIEW
Application by a prisoner at a young offenders centre for judicial review of the decision of the Governor to refuse access to the centre for the purposes of consultation with the applicant to a para-legal employed by the solicitors engaged by the applicant; use of passive drugs dog; para-legal afraid of dog and unable to undergo the test because of her fear of dogs; whether a fixed policy operated at the young offenders centre amounted to a fettering of discretion as to admission; whether the application of the policy to the applicant’s legal adviser was Wednesbury unreasonable; whether the requirement that the applicant’s legal adviser submit to the passive drugs dog test was a breach of Article 8 and Article 6 of the Convention and Rule 100 of the Prison Rules; whether the applicant had a legitimate expectation that his legal adviser would be admitted to a closed visit. Declaration made.
30 APRIL 2004
QUEENS BENCH DIVISION
WEATHERUP J

IN THE MATTER OF AN APPLICATION BY THOMAS JOHN PAUL TOLAN FOR JUDICIAL REVIEW
Applicant charged with criminal offences; application for judicial review in order to prevent the issue of a report to the Secretary of State by the International Monitoring Commission into the incident giving rise to the criminal offences and a declaration that it would be unlawful for the Secretary of State to lay the report before trial; whether trial would be prejudiced by the contents of the report; whether the applicant’s rights under Articles 2, 3 and 6 of the European Convention on Human Rights have been breached; Application refused.
14 MAY 2004
QUEENS BENCH DIVISION
CAMPBELL LJ

R v W C
Accused awaiting trial on a number of counts alleging indecent assault, attempted rape and buggery; prosecution case alleging child’s account was so specific that it must be true; during pre-trial discovery it came to the attention of the defence that complainant had told police that she was sexually active; defence application for leave to adduce evidence and ask questions in cross-examination in relation to the sexual behaviour of the complainant; whether case for permitting evidence about sexual relationships with persons other than the accused; whether such evidence would have any relevance; whether to exclude questioning and evidence would endanger the fairness of the trial; whether questioning should be circumscribed in the light of limited purpose for which it is sought. Leave given for limited questioning of complainant.
13 MAY 2004
COUNTY COURT
WEIR J

TRIBUNAL DECISIONS

ARMSTRONG, DIANE V SPORTS COUNCIL FOR NORTHERN IRELAND
INDUSTRIAL TRIBUNAL, 29 APRIL 2003, 3241/01IT
Applicant claimed unlawful dismissal and sex discrimination. - Applicant had a career break of two years, requested career break to be extended for another two years. - Sports Council refused this request, reasons given were overriding business considerations. - Applicant complained of delay in appeal procedure and refused to return to employment, contract was terminated and applicant deemed to have resigned. - Tribunal found it was fair dismissal and applicant was not discriminated against on the ground of her sex. - Application dismissed.

AUSTIN, BRIAN V DIARMUID O’TUMA AND BOARD OF GOVERNORS OF BUNSSCOIL PHOBAL FEIRSTE
INDUSTRIAL TRIBUNAL, 4 MARCH 2004, 1510/02IT
Claim for sexual discrimination. - It was agreed by all parties and the Tribunal to remove Diarmuid O’Tuma’s name from the list of respondents. - Applicant applied for position of Vice-Principal. - Unfairly treated in selection process as other two applicants received interview
letter by hand, while he received his by post a day after the interview. - Applicant less favourably treated. - Tribunal decided applicant was discriminated on grounds of his sex and was awarded £5,000 for injury to feelings.

CLINTON, EMMA V CHIEF CONSTABLE OF ROYAL ULSTER CONSTABULARY AND CHIEF INSPECTOR CROCKARD AND CONSTABLE PARSONS
INDUSTRIAL TRIBUNAL, 2003, 3560/01IT
Applicant alleged sex discrimination by third respondent and by second respondent in handling of complaint. - Applicant claimed discrimination took the form of abusive behaviour and threatening text messages. - In light of Liversidge case first respondent not liable for alleged discriminatory acts. - Tribunal found third respondent guilty of sexual harrassment but relevant legislation in force at time did not provide a remedy. - Dismissed allegation against first and second respondents.

COYLE, PATRICK V UNIBOL LIMITED (NI), CALIFORNIA SOFTWARE CORPorATION, UNIBOL INC, UNICOMP
INDUSTRIAL TRIBUNAL, 19 MARCH 2003, 3160/01IT
Applicant seconded to work in the United States by Unibol. - Applicant alleged that the first and second named respondents failed to pay him wages for two months and in accordance with his contract of employment he left his employment. - Applicant also alleged that he was also entitled to holiday pay. - The first two respondents denied that the applicant had been constructively dismissed or was subject to breach of contract and unlawful deduction of wages and holiday pay. - Tribunal decided that applicant was not unfairly dismissed contrary to Article 126 of the Employment Rights (NI) Order 1996, but the second named respondent did make unauthorised deductions from the applicant’s wages and ordered to pay £4,823.28.

CURRY, ALAN V TULLYALLY & DISTRICT DEVELOPMENT GROUP LTD
INDUSTRIAL TRIBUNAL, 7 APRIL 2004, 2285/02IT
Applicant claimed unfair dismissal. - Applicant employed as a youth worker for a fixed period. - Serious allegation made against him and he was subsequently suspended pending an investigation. - No explanation given to applicant by respondent. - During his suspension funding was available for a youth leader during summer period. - Applicant's employment terminated. - Respondent did not act reasonably in dismissing the applicant. - Applicant denied opportunity to make any representations. - Tribunal decided applicant was unfairly dismissed but a remedies hearing should be arranged.

DEVINE, JOSEPHINE V M & D CRAWFORD
INDUSTRIAL TRIBUNAL, 23 MARCH 2004, 335/03IT
Applicant claimed unfair dismissal by way of constructive dismissal. - Employed as a sales assistant in the butchery department of the respondent’s shop. - Respondent searched the applicant’s bag in full view of staff and customers. - Applicant’s perception was that she was being accused of theft. - Tribunal satisfied that applicant gave a full account of how she was affected by the incident and therefore found that the applicant had been constructively dismissed. - Respondent paid compensation of £1316 to applicant.

DOHERTY, HM RALPH V NI FORCES & COMMUNITY SERVICE AND RYCW'S AND MINISTRY OF DEFENCE
INDUSTRIAL TRIBUNAL, 3 FEBRUARY 2004, 03150/00IT
Applicant alleged discrimination on grounds of gender and disability. - Tribunal ruled applicant’s complaint was not presented within the time limits. - It was not just and equitable to extend the time limits. - Applicant ordered to pay respondents sum of £100.

EKIN, NORMAN V UNITED HOSPITALS HEALTH & SOCIAL SERVICES TRUST
INDUSTRIAL TRIBUNAL, 1 APRIL 2004, 3254/01IT
Applicant did not receive appropriate compensatory rest periods in accordance with Regulations 10, 11, 21 and 24 of the Working Time Regulations 1998. - Applicant alleged his health had been affected by disruption to his rest entitlement. - No medical evidence produced. - Respondent operated an adhoc system of compensatory rest. - Tribunal satisfied that the adhoc arrangement provided appropriate protection to safeguard the applicants health and safety. - Application dismissed.

MIDOUKNA, ROMAULD ANDELA V ROYAL MAIL, SEAN KELLY AND JOHN DONNELLY
INDUSTRIAL TRIBUNAL, 24 JUNE 2003, 2611/01IT
Applicant suspended from his job at Royal Mail on receipt of a letter of complaint from a customer. - Applicant claimed unfair dismissal and unlawful discrimination. - During the various tribunal sittings the applicant was arrested and being held at HMP Maghaberry which caused numerous delays. - The complaints of unfair dismissal and unlawful racial discrimination were dismissed following withdrawal by the applicant. - The Tribunal determined the applicant’s conduct of the proceedings scandalous and ordered him to pay costs to the parties involved.

MCDEVY, KIERAN J V ANTHONY MCDONALD
INDUSTRIAL TRIBUNAL, 9 DECEMBER 2003, 2572/02IT
Sportswear business owned by respondent was discontinued and consequently applicant dismissed by reason of redundancy. - Applicant had completed two years continuous employment and entitled to two weeks pay by way of redundancy. - By virtue of Article 118 of the Employment Rights (Northern Ireland) Order 1996 the applicant was dismissed by reason of redundancy and therefore entitled to redundancy payment, pay in lieu of notice and outstanding holiday pay making all in the sum of £2,134.30.

TEIXERIA, PAULO AND ELIZABETH DA GAMA V ATLANCO LIMITED AND MOY PARK LIMITED
INDUSTRIAL TRIBUNAL, 5 APRIL 2004, 2230/01IT
Applicants discriminated against on the grounds of their racial origin and unlawful deductions had been made from their wages. - Employed by Atlanco for Moy Park. - Before beginning work applicants had agreed a written statement of employment in Portugal before travelling to Northern Ireland but disputed the signatures on the statement. - Tribunal dismissed the claim of unfair dismissal as the applicants failed to establish that the treatment they received was due to their racial origin. - Tribunal also dismissed the unlawful deductions from their wages as the applicants had agreed their hourly rate in escudos before taking up employment in Moy Park. - Also the terms and conditions did not allow for sick pay.
Case Review - Social Fund – Funeral Expenses Payment

In May 2004 in the case of Kerr v Department for Social Development the House of Lords dismissed an appeal by the Department in the case of a CAB client regarding his entitlement to a Social Fund Funeral Expenses payment from the Social Security Agency (SSA) which the Agency had previously refused.

Regulation 6 of the Social Fund (Maternity and Funeral Expenses) (General) Regulations (Northern Ireland) 1987 (SR1987 No 150) set out the circumstances in which a funeral expenses payment might be made under section 134(1)(a) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992. Persons in receipt of state benefits could claim a social fund payment to meet the funeral expenses of a deceased relative, but not where there was another relative in equally close contact not in receipt of benefits who could have taken responsibility for the funeral.

In this instance the CAB client was estranged from his family for over 20 years. He was not sure of their whereabouts or financial circumstances. The Police called at his house to inform him of the sudden death of his brother and he agreed to take care of the funeral arrangements. He was not sure of their whereabouts or financial circumstances. The Police called at his house to inform him of the sudden death of his brother and he agreed to take care of the funeral arrangements. As he was in receipt of benefit, and could not afford the £1172 needed to pay for the funeral, he made a claim for a funeral expenses payment from the Social Fund.

The Social Security Agency refused this payment on the basis that the client could not prove that the estranged family members were also in receipt of benefit and had insufficient capital to pay for the funeral. Bangor CAB appealed this decision on behalf of the client but an Appeal Tribunal upheld the Agency’s decision. The case was then appealed by Citizens Advice Regional Office to a Social Security Commissioner who upheld the decision of the tribunal. The matter was referred to Citizens Advice Solicitors, Elliott Duffy Garrett, to pursue an appeal to the Court of Appeal.

The Court of Appeal overturned the decision and found in favour of the CAB client. The Department appealed to the House of Lords which dismissed the appeal. The House of Lords judgement holds that it was wrong of an adjudicating Government department to require a benefit claimant to prove that he was entitled to claim the funeral expenses for a deceased brother when that Department could have ascertained the true position itself.

The House of Lords held that the Department only needed the name and date of birth to enable it to trace the National Insurance numbers of the client’s relatives, yet the Department never asked for that information. In those circumstances, the Department could not use its own failure to ask questions which would have led it to the right answer, to defeat the claim. The House of Lords judgement also held that Regulation 6(6) of the Social Fund (Maternity and Funeral Expenses) (General) Regulations (Northern Ireland) 1987 was worded as an exception, and it was for the party seeking to rely on an excepting provision to bring the case within the exception.

The judgement is highly significant to all practitioners since it provides much needed guidance on the responsibility of a claimant and the Department during the process of claiming benefit, and helps to clarify the law in this area.

CAB would be interested in hearing from other individuals who have been refused a social security benefit in similar circumstances.

The full judgement can be viewed on the Internet at the following link:
http://www.parliament.the-stationery-office.co.uk/pa/ld200304/ldjudgmt/jd040506/kerr-1.htm

Future of Committal Proceedings

As advised in last month’s edition, the Northern Ireland Office has recently launched a consultation exercise on the future of committal proceedings.

The consultation is designed to obtain views on two proposals:
- presumption of transfer with a right to elect for committal
- abolition with a defence right to make submission of no case to the Crown Court

Copies of the consultation document and a research report by Professors John Jackson and Sean Doran commissioned by Government to inform thinking on the issue can be obtained from www.cjsni.gov.uk or directly from the Criminal Justice Reform Division, Massey House, Stormont Estate, Belfast, BT4 3SX (Tel: 90527557).

The Society has set up an ad hoc group under the chairmanship of Billy McNulty of Bogue & McNulty, Solicitors to prepare a response. Anyone interested in contributing to this response should contact either Billy McNulty or Peter O’Brien at Law Society House.

The consultation will close on 31st July 2004.
Re:- Estate of Emma Theresa Clancy
Late of:- 14 Gainsborough Drive,
Belfast, BT15 3EL
Died:- 13th May 2004
Would any person having knowledge of the whereabouts of a Will for the above-named deceased, please contact:
Cleaver Fulton Rankin
50 Bedford Street
Belfast
BT2 7FW
Ref: AJR/20837.1

Re:- Winifred Campbell (deceased)
Late of:- 44 Norfolk Drive, Belfast
Died:- 11th May 2004
Would any person having the knowledge of the whereabouts of a Will or the title documents to the above property please contact:-
Paul M Graham
Solicitors
70 Andersonstown Road
Belfast
BT11 9AN
Tel: 028 9060 3223

Re:- Lucy Hird (deceased)
Late of:- 28a Rosevill Park, Lisburn,
County Antrim
Died:- December 2003
Would any person having knowledge of the whereabouts of a Will for the above-named deceased, please contact:
PO Box 130
c/o Citigate Northern Ireland Public
Affairs Ltd
128a High Street
Holywood
County Down BT18 9HW

Re:- Hans McKeown (deceased)
Late of: 3 Maymore Cottages, Toye,
Killyleagh, Co Down
Died:- 26th May 2004
Would any Solicitor having knowledge of the whereabouts of a Will in the name of the above please contact:
McMillan & Ervine
Solicitors
Campbell House
31 Main Street
Saintfield
County Down
BT24 7AB

Re:- Margaret Gilliland (deceased)
Late of:- 4 Laghey Cottages, Killyman,
Dungannon, County Tyrone
Born:- 25th November 1915
Died:- 23rd April 2004
Would any person having knowledge of the whereabouts of a Will for the above-named deceased, please contact:
Wylie & Company
Solicitors
37 Glen Road
Castlereagh
Belfast
BTS 7LT
Tel: 028 9070 9129
Fax: 028 9070 9139
Email: wylie.company@btconnect.com

Re:- Quinn, Rose Ann (deceased)
Late of:- Massereene Manor Nursing
Home, 6 Steeple Road, Antrim BT41 1AF and
Formerly of 16 Angus Street,
Springfarm, Antrim
Died:- 11th April 2004
Would any person having knowledge of the whereabouts of a Will for the above-named deceased, please contact:
Messrs Small & Marken
Solicitors
65 Church Street
Antrim
BT41 4BE
Tel: 028 9446 8000
Fax: 028 9446 5000

Re:- Joseph McCloskey (deceased)
Late of:- 41 Altahoney Road, Claudy,
County Londonderry
Born:- 30th November 1918
Died:- 18th April 2004
Would any person having knowledge of the whereabouts of a Will for the above-named deceased, please contact:
Martin King French & Ingram
Solicitors
52 Catherine Street
Limavady
BT49 9DB
Tel: 028 7776 2307
Ref: KL/GB/D257(3)

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Copy deadline for July/August Thursday 29th July 2004

Editor: John Bailie. Published by the Law Society of Northern Ireland, 98 Victoria St, Belfast, BT1 3GN The views expressed are not necessarily those of the Law Society of Northern Ireland.
Library Update

Recommended Reading - Professional Privilege

Caselaw

Three Rivers DC v Bank of England (Disclosure) (No. 4) Times March 3 2004 (Available in the library)

Articles

Paying for the privilege (examines legal professional privilege and considers the Three Rivers decision) Carter: 2003/04 Emp. L. J 46 (Dec/Jan) 12-14
The secret’s out (discusses the limit of the application of legal advice privilege and also considers the P V P case) Rhodes: 2004 Lawyer 18 (14), 23
Private bar (discusses the limitation of professional privilege in light of the Three Rivers case and also the United States of America v Philip Morris Inc case) Robins: 2004 Lawyer 18 (14), 16-17
Navigating the maze (how professional privilege has affected in-house lawyers) Bedlow: 2004 Legal Week 6 (12) 12
A privileged position (discusses whether advice given by a solicitor to a client during an enquiry could attract legal privilege) Henderson: 2004 6 (11) 14

New Books in the Library

Chitty on contracts. 29th edition. Sweet & Maxwell. 2004

Law Reform Advisory Committee for Northern Ireland. Unincorporated Associations. The Stationery Office. 2004

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The Law Society Library will be closed from Monday 12 July 2004 – Friday 23 July 2004 inclusive.

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