The Law Society of Northern Ireland has launched a new mediation and conciliation initiative as an alternative to litigation and as a preliminary means of solving primarily business disputes.

The service was formerly inaugurated by Mr Justice Coghlin, who is responsible for the commercial division of the High Court in Belfast, and Mr Brian Currin, the South African lawyer who is an international expert in mediation. The event took place at Law Society House in Victoria Street in Belfast at lunchtime on Wednesday 13 March 2002.

Known as Alternative Dispute Resolution (ADR), the techniques have developed primarily in the United States and are increasingly spreading to other parts of the world.

Sue Bryson, Deputy Secretary of the Law Society, said, “As the benefits of Alternative Dispute Resolution are becoming more recognised, many professional bodies like the Law Society are introducing mediation services.

“The advantages of mediation are a process conducted by neutral professionally trained experts in confidence and without the publicity associated with court proceedings; it can be much faster; it can save huge costs in litigation and finally the relationships between disputing parties can be more readily maintained intact.

“For those who think ADR might be the way to go in a dispute, seek the advice of a solicitor on the possibilities. You may not be able to avoid going to court, but it is always worth looking at other choices.”
Arthur Shevlin, who died on 13 January 2002 aged 50 years, was a doyen amongst conveyancing lawyers.

Arthur attended St. Mary's Grammar School, Belfast and graduated from Queens University in 1974. He was apprenticed to Tony Allen in the firm of George McIldowie & Sons where he obtained his classical training in conveyancing. He took the only Special Certificate in his year, a year that saw no medals being awarded. He worked for McIldowies for some years before moving to Travers & Co., James McGovern & Co. and ultimately Thompsons McClure.

He was a veteran of the 1980 Law Society trip to Hong Kong, Bangkok and the Gulf of Siam where he was one of the first foreigners to visit China when the borders were opened. After badly burning his feet while sunbathing on Pattaya Beach he arrived back in Belfast in a wheelchair, the only casualty of the campaign. For some time afterwards he had to gingerly make his way to his office in Cornmarket wearing carpet slippers.

Arthur’s first love was conveyancing, in which discipline he was an acknowledged expert and over the years he gladly gave assistance to colleagues who had problems with complex titles and/or drafting deeds. For this alone he will be sadly missed.

Arthur did not enjoy great health having been diagnosed as diabetic when he was thirteen. He suffered kidney failure in the late seventies and underwent dialysis for some years. Despite this he continued to be at his desk on a daily basis. Having experienced the boredom of undergoing dialysis for hours on end, without alleviation, he devised a Heath Robinson method of relaying videos to all of his fellow patients in the dialysis ward. He benefited from a kidney transplant in 1992, being rushed from Westport where he had been on a short golfing holiday.

Arthur enjoyed life to the full. His favourite past-time aside from work, was sport. He played five-a-side football with solicitor colleagues and was also a regular golfer in the Law Society Annual Outing. However, his greatest love was cricket, which he played in his younger years and which he supported fervently from his armchair in later life.

In December 2001 he was thrilled to join with his niece and god daughter, Clare, when she attended the Law Society Dinner as a newly admitted solicitor.

Despite having undergone major heart surgery two years ago he continued to put in a full week’s work and indeed was at his desk until 5.30 on Friday before his death. In the words of a colleague, the large number of lawyers at his funeral illustrated the affection with which he was held in the profession.

Arthur was a bachelor and is survived by his brothers Eddie and Paul and his sisters, Betty and Rita.
March 2002


Notice Containing a Direction under Article 8 of the Al-Qa’ida and Taliban (United Nations Measures) Order 2001 (S.I. 2002/111)

1. On 16th January 2002, the United Nations Security Council adopted resolution 1390 (2002). As from 25th January 2002, effect has been given in the United Kingdom to this resolution by the Al-Qa’ida and Taliban (United Nations Measures) Order 2002 (SI 2002/111), hereafter “the 2002 Order”. The 2002 Order was made by her Majesty by Order in Council in exercise of the powers conferred on Her by section 1 of the United Nations Act 1946 (c. 45)

2. In exercise of their powers under article 8 of the 2002 Order, the Treasury (through the Bank of England acting as the Treasury’s agent) hereby direct all relevant institutions that any funds which they hold for or on behalf of any of the persons listed in Annex 1 hereto must not be made available to any person except under the authority of a licence granted by the Treasury. This direction is to have effect until revoked by further notice given by the Treasury.

3. Where a relevant institution holds funds for or on behalf of any of the persons listed in Annex 1, it must without delay send a copy of this notice to the person for whom, or on whose behalf, they are held.

4. A person who contravenes the direction given under paragraph 2, or who fails to comply with the requirement in paragraph 3 is guilty of a criminal offence under the 2002 Order.

5. In this notice “funds”, and “relevant institution” have the meaning given by the 2002 Order.

6. Enquiries concerning any matter contained in this notice are to be addressed to the Bank of England. Threadneedle Street, London, EC2R 8AH and marked for the attention of the Financial Sanctions Unit (FSU). Enquiries may also be made at sanctions.unit@bankofengland.co.uk on 020 7601 4309 (fax) or by telephone (020 7601 4768/5811/ 4783).

Annex 1

The Al - Qua’ida and Taliban (United Nations Measures) Order 2002

Entities

1. Al-Haramain Islamic Foundation, Bosnia Herzegovina
2. Al-Haramain Islamic Foundation, Somalia

For help with personal injury claims in England & Wales contact:

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(Admitted NI 1978)
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NEWS FROM THE BRUSSELS OFFICE

Money Laundering Directive

The CCBE (Council of Bars and Law Societies of the European Union) has published Action Points on the implementation of the Money Laundering Directive, highlighting the particular areas in the Directive where Member States would have a discretion on how to implement certain provisions of the Directive.

Among the discretions highlighted by the CCBE are:

• Whether to exclude lawyers’ from making reports in certain specific circumstances
• Whether lawyers should be prohibited from informing their clients that such reports have been made to the authorities
• Whether any information on suspected money laundering sent to the authorities for the purpose of combating money laundering should be used for the purpose and not for other purposes

The CCBE advises its member bar and law societies on how each discretion should be exercised by national governments to ensure a harmonised and fair implementation of the Directive.

European Community Patent

The European Commission had published its proposal for a regulation on the European Community Patent, creating a unitary industrial property right. The Community patent will co-exist with national and European patent systems, thus giving inventors the choice of patent protection that would be most beneficial to their particular product.

There has been a subsequent Commission proposal on the protection of patents for inventions using software, seeking to protect those who develop new computer-implemented inventions.

Compensation to Victims of Crime

The CCBE has produced a response to the European Commission Green Paper on improving the systems of compensation to crime victims in the EU. The Green Paper called for the drawing up of minimum standards on the protection of victims of crime and their access to justice and their right to compensation for damages. It also proposed the creation of common rules of procedures for state compensation for cross-border victims.

Further details or copies of any of these documents can be obtained from the library.
WEB WATCH

The Internet has now become a primary communication and research tool for many law firms in Northern Ireland. This comes as no surprise for its benefits are clear to all. Through the search engine Google it is now possible to search over 2 billion web pages in just a few seconds, as well as every contribution made to thousands of newsgroups going back to 1981. To date, there have been over 700 million of these. Email has now become the standard method of document transfer for many organisations and its ability to provide fast and inexpensive access to all other Internet users is unrivalled. There are now an estimated 450 million individuals with an email address and the number continues to grow.

The Internet is delivering so much data to the office that the complaint is now one of information overload. Just a few years ago managers would moan that they never had enough information available to them before taking an important decision. Lawyers now have access to huge amounts of legal information on the Internet which comes to them via the web or by subscription to email lists.

This year’s seminar “Law Firms getting the Most from the Internet” contains a review of many new developments relating to the Internet for the legal profession. Heather Semple of the Law Society Library will be examining two new facilities specific to Northern Ireland that look set to revolutionise the way legal materials will be stored and accessed. Other speakers will be looking at a range of new developments as well as providing essential tips relating to use of the Internet, how to care for your PC or laptop and work remotely. A not-to-be missed event if ever there was one. Details are available: www.legal-island.com

barryjphillips@hotmail.com

Admissions Ceremony

The Admissions Ceremonies which took place on 5th March, 7th March and 11th March are pictured here. If you would like to purchase any of the photographs, please contact G.L. Photography on Tel: (028) 9074 4934.
BSA and NIYSA Seminar Programme

April
Recent Developments in Alternative Dispute Resolution (ADR)
At Law Society House on Friday 19th April from 12.30pm to 2.00pm
By Mr David Gaston of Gaston Graham Solicitors & Mr Brian Speers of Carnson Morrow Graham Solicitors
1 hour CPD

May
Whiplash Injuries
At Law Society House on a date to be confirmed from 12.30pm to 2.00pm
1 hour CPD

June
Occupational Stress Claims
At Law Society House Thursday 20th June from 12.30pm to 2.00pm
By Mr David Ringland QC
1 hour CPD

The cost of each lecture will be £10.00 for members of BSA and NIYSA and £20.00 for non-members.

A light lunch is available from 12.30pm onwards, included in this price.

Booking Form

Name ____________________________ Firm ________________________________
Tel ________________________________
Lecture(s) ________________________________
Enclosure ________________________________
Suggestions for further lectures ________________________________

Booking forms and cheques should be sent to BSA c/o Karen Henebry of Cleaver Fulton & Rankin, 50 Bedford Street, Belfast

BSA Practice Management and Client Care Seminar

At the Wellington Park Hotel on Saturday 28th September 2002.

9.00-9.30 Registration and coffee
9.30-10.30 Risk Management and how to avoid the Pitfalls.
By Mr Tom McGrath of Marsh (UK) Ltd.
10.30-11.15 Complaint Handling Procedures
By Mr Gary Millar
11.15-11.30 Coffee
11.30-12.30 Cost Effective Practice Management
By Jeremy Harbinson of Harbinson Mulholland

Attendance at this seminar will qualify for 3 hours CPD.

Booking Form for Practice Management seminar

Name ____________________________
Firm ________________________________
Tel ________________________________
Enclosure ________________________________
Taxing Times

The members of the Association have been following with great interest the ongoing dispute with the insurers as to the acceptance of the current Guide to High Court costs and in particular the amounts which have been allowed on taxation. To date all but a very few cases have achieved more costs than the appropriate point on the revised Guide and all taxations have resulted in costs in excess of the Insurers’ Scale. The Committee is awaiting up to date figures from the costs drawer concerned and hopes to publish further figures in the next edition of the Writ.

However, as Mr Justice Girvan remarked in his decision in Galway v Galway “…the taxation process is cumbersonse, time-consuming and expensive”, to which can be added the comment that there are far too few cost drawers in Northern Ireland, all of whom appear to be labouring under substantial backlogs. Few solicitors have the expertise necessary to draw their own bills. The need to maintain a reasonable cash flow is such that many firms cannot forgo all costs for the time necessary to process a bill through the taxation procedure and may be tempted to settle in return for early payment for less costs than can be achieved on taxation. This could be cured by the greater use by defendants of interim payments but many insurers are reluctant to make such payments and it therefore seems apposite to remind members of the entitlement to interest on costs in High Court actions.

Order 42 Rule 9 (1) of the Rules of the Supreme Court (Northern Ireland) 1980 as amended provides:

“Every judgment for the payment of money shall carry interest at the rate specified in the judgment from the time judgment was given or from such other time as the Court may direct.”

Rule 9 (2) provides that if the judgement is silent as to the rate it shall be (currently) 8% and Rule 1 provides that “judgement” includes order, decision or direction.

A direction for costs is an integral part of any judgement and attracts interest as does any other part of the judgement. Indeed it can be said that a judgement which provides some relief other than damages but with costs is, part at least, a judgement for the payment of money. Where for example a plaintiff’s action was dismissed with costs, the defendants were entitled to interest on those costs (Ashworth v English Card Clothing (No 2) [1904] 1 Ch 704)

Interest on costs runs from the date of judgement and not the date of taxation (Hunt v RM Douglas (Roofing) Ltd [1988] 3 All ER 823). This is known as “the incipitur rule” as opposed to the “allocatur rule” which provides for interest to run from the date of taxation. It is worthwhile quoting one of the Lord Justice Ackner’s reasons for accepting an incipitur rule:

“Moreover, the incipitur rule provides a further stimulus for payments to be made on account on costs and disbursements prior to taxation, for costs to be more readily agreed and for taxation when necessary to be expedited, all of which are desirable developments. Barristers solicitors and expert witnesses should not be expected to finance their client’s litigation until it is completed and the taxing master’s certificate obtained. If interest is not payable on costs between judgement and the date of taxation, there is an incentive to delay payment, delay disbursements and taxation.”

In practice interest will be calculated on the amount determined by taxation but from the date of judgement.

“Costs” are defined by section 46 of the Interpretation Act (Northern Ireland) 1954 as including “…fees, charges, disbursements, expenses or remuneration” and interest on costs is not therefore limited to the solicitor’s own professional charges. Where the solicitor has paid the disbursement he is entitled to the interest payable in respect of it but where he has not paid, such as counsel’s fee, any interest should be passed on to the person entitled to the disbursement (see the comments of Lord Ackner in Hunt).

The Committee very strongly recommends therefore that when a defendant will not pay costs in accordance with the Guide, he should be asked to make an interim payment without prejudice to either party to the outcome of taxation. If he refuses to do so, he should be put on notice that interest will be sought following taxation by separate proceedings if necessary.

We would give one word of warning. The entitlement to interest is pursuant to a judgment. A settlement by way of terms endorsed on counsel’s brief or a Tomlin order will not give rise to an enforceable entitlement to costs or to interest. The order made by the Court in such cases is generally only one staying the proceedings and before the entitlement to interest arises the terms of the settlement will have to be made an Order of the Court for there to be an order for costs. Members should bear this in mind when settling cases.

TAKE NOTICE that on Thursday 16th May 2002 at 1.30 p.m., or as soon thereafter as sport may commence, the Belfast Solicitors’ Association will be moved to hold its Annual Golf Outing at Malone Golf Club, Upper Malone, Belfast.

The cost per person is £45.00 (£35.00 green fee, £8.00 meal and £2.00 subscription - Malone Golf Club members and persons not wishing to take the meal should adjust their payment accordingly). All members of the Association and their visitors will be welcome and you are invited to complete the Form and return it as soon as possible. The prizes will be for the main competition for members with official handicaps, together with second and third prizes; a visitor’s prize and runner-up; and a special competition for non-handicapped members. The special competition is for the best gross score for the first eleven holes and all other competitions will be scored using the Stableford Points System on full handicap allocation (subject to a maximum handicap of 24).

“BSA GOLF OUTING”
Thursday 16th May 2002

Name: ____________________________________________

Contact address: ___________________________________

__________________________                        Telephone: ______________________

Subscription attached: £ __________

*(payable to Belfast Solicitors’ Association)*

Please indicate against the names the prizes to be played for - Members/visitors/members special.

Return to: Richard Palmer of Peden & Reid, 22 Callender Street, Belfast, BT1 5BU

DX 389NR BELFAST

Telephone: 028 9032 5617

Fax: 028 9024 7343

E-mail: peden-reid@dnet.co.uk
The BSA wishes to highlight a disturbing anomaly in the Rules which is currently being exploited by certain insurance companies, Allianz Cornhill and Zurich Commercial in particular, to the detriment of Plaintiffs.

These insurers are refusing to pay full county court scale costs to solicitors in minor settlements and in many cases are refusing to pay any fee for counsel. In these instances these insurers have only been prepared to pay 2/3rd solicitors costs.

It is the Association’s view that minor settlements should attract full scale costs for plaintiff’s solicitors. Minor Plaintiffs must be adequately protected and solicitors need to receive fair and reasonable remuneration for the work involved.

Members who have faced similar problems recovering their costs from insurers are asked to voice their concerns to any member of the committee.

We have raised the important issues with the County Court Rules Committee and have asked them to take urgent steps to rectify the situation.

This represents the latest attack by certain insurers on solicitor’s fees. If members intend to enter negotiations with either of these insurers, before the issue of proceedings, it is strongly recommended that they obtain an assurance in advance that full costs will be paid.

Law Reform Advisory Committee for Northern Ireland

The Law Reform Advisory Committee has published its report on ‘Deeds and Escrows’ following its recent discussion paper on the topic.

Copies are available from the Stationery Office, priced £12.00. Please refer any enquiries to the Secretary of the Committee, Miss Clare Irvine, at 5 Linenhall Street, Belfast, BT2 8AA.

Tel: 028 9054 2900
Email: clare.irvine@dfpni.gov.uk

Law Reform Advisory Committee for Northern Ireland

The Law Reform Advisory Committee has published its report on ‘Limitation of Actions’ following the report on this topic that was issued by the Law Commission of England and Wales in July 2001 (Law Com. No. 270).

Copies are available from the Stationery Office, priced £10.00. Please refer any enquiries to the Secretary of the Committee, Miss Clare Irvine, at 5 Linenhall Street, Belfast, BT2 8AA.

Tel: 028 9054 2900.
Email: clare.irvine@dfpni.gov.uk

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Mobile: 07831 530178
Fax: 028 9752 1256
NIYSA and SYS Joint Conference
8-10th March 2002

Faith Legg House, which is just outside Waterford city, was a most impressive venue for this year's joint conference. There was a large attendance with delegates from London, Belgium, France as well as from the host Societies.

On Friday night the Societies hosted a dinner for their guests in Waterford Castle. After dinner, our former Chairman Tracey Diamond started off the entertainment with a few songs and so the evening continued until the early hours.

The serious part of the weekend began on Saturday morning. Lectures on Bullying in the Workplace, Discovery and Tax and Property Transactions, were informative and well presented. The highlight for the Northern Ireland delegates was Neil Faris' lecture on UK Human Rights which was humorous and elucidative. The lectures had the added benefit of attracting CPD hours!

Saturday afternoon provided the sporting amongst us with a chance to go for a round of golf - there was even a prize! Alternatively there were the more relaxing facilities to enjoy - the steam room, sauna and spa. Glad rags were then donned for a fantastic ball. Dancing carried on until the DJ was forced to stop at 4 a.m.

Next day it was time to make the return journey - the festivities over but with next year to think about! Our thanks go to all our guests and to all the NIYSA members who travelled to Waterford to the Conference.

British Council Dinner - 20th February 2002

On 20th February 2002 the NIYSA had the pleasure of hosting dinner at Belfast Castle for a delegation of 37 Young European Lawyers visiting Northern Ireland for a week study tour organised by the British Council. Delegates had earlier spent the afternoon at City Centre Solicitors' offices.
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On Wednesday 22nd May 2002 12.30pm - 2.00pm
in Law Society House, Belfast

COST £10.00 (to include coffee and sandwiches)

Booking Form

Name and address of Firm

Name of Delegate(s)

Tel No:

Fax No:

E-mail:

Booking forms to be returned to: Suzanne Bryson, Deputy Secretary, Law Society House, 98 Victoria Street Belfast,
BT1 3JZ, DX 422NR BELFAST 1
Tel: 028 9023 1614 Fax: 028 9023 2606 Email: info@lawsoc-ni.org

We are pleased to announce our

Mid Summer’s Ball

Friday 7 June 2002

Tickets £35

Ramada Hotel, Shaw’s Bridge, Belfast

Drinks reception 7.30pm

Cheques and table plans of 10 to Catherine Calvert, SD Crawford & Co Tel: 028 9059 5300 (No reservation confirmed until cheque received)
Rooms are also available at the Ramada at £59.95 per room (including breakfast and based on two people sharing). The NIYS will be holding a ballot at the Ball with proceeds going to the Solicitors’ Benevolent Fund. If any solicitor’s firm would like to donate a prize could they please contact Catherine Calvert.
Egg on your face?

A professional negligence claim can cause considerable stress. It is even worse when the distress is compounded by acute embarrassment. Imagine yourself in the following situations:

Blushing Bride
After acting for Mary in connection with her divorce, you are invited to her second wedding reception. It is just as you are reaching for your glass of champagne that the awful truth dawns on you. You failed to apply for your decree nisi to be made absolute.

Explain to the client what is meant by decree nisi and absolute, tell them the appropriate timescales, and always obtain their instructions. Diarise the dates, and make sure that you react to them.

Conversation piece.
To become the centre of attention in the pub, you start telling the group about some lurid allegations that have been made against one of your clients. Your friends frantically try to warn you, but it is too late... the client is sitting behind you open mouthed!

The duty of confidentiality is fundamental to the relationship of the solicitor and client. ‘This duty is owed by all members of your staff. Never discuss a client’s affairs in public.’

Blotted copybook
One of your more awkward clients is on the phone for the third time today. You are making an attendance note. Your inner thought about the client should stay just there in your inner thoughts. Comments like ‘this client is mad’ never sound too good when they are being read out in court, for example by counsel for the claimant in a negligence action, which the client brings against you.

Never commit to writing anything that you would not be comfortable hearing read out in court. If you are asked to forward a file to another firm of solicitors, check which items must be handed over, and those which you are entitled to retain.

Counsel of despair
Tom had a good working relationship with his secretary, who understood exactly what he wanted with minimum instruction. He dictated: ‘Counsel has made some hand written amendments to the claim particulars, please do a fresh set and do the necessary with the Court and get them served.’

Tom’s secretary was taken ill, so a junior helped him to clear her backlog. The junior typed counsel’s amendments, with his observation, ‘we may as well plead this, although I doubt we stand any chance.’ The error was not picked up before service.

Always check letters and enclosures carefully. If you are out of the office, consider whether your post should be signed in your absence, or held for you pending return.

This article first appeared in ‘The Lawyer’ 98/47 6 December 2001 and is reproduced here with the kind permission of the editor.
Overpayments of Social Security Benefits

There are a number of ways that a person might be paid too much benefit by the DSD or Tax Credit office. The rules on overpayments specify whether the benefit must be repaid and if so by whom. This article provides a brief outline of the legislative framework on overpayments.

Section 69 of the Social Security Administration (NI) Act 1992 provides that overpayments of benefit shall be recoverable where the Department can establish that:

a) any person
b) whether fraudulently or otherwise

c) misrepresented, or
d) failed to disclose
e) a material fact
f) and this resulted in an overpayment of benefit for any period (causation).

Advisers should note that the Department bears the onus of proving on the balance of probabilities the facts which justify the recovery of the overpayment.

a) Any person

Overpayments can be recovered from any person who has failed to disclose or misrepresented a material fact in circumstances where disclosure was to be reasonably expected. In R(SB) 21/82 recovery was sought from the claimant’s wife, and in R(SB) 23/83 from the claimant’s personal representative. In CG065/1989 recovery was sought from two solicitors who acted for the claimant.

Case law confirms that recovery from the estate of a deceased person is possible.

b) Whether fraudulently or otherwise

The Department does not have to prove any fraudulent intent. Innocent misrepresentations and non-fraudulent failure to disclose can give rise to recoverable overpayments.

c) Misrepresented

Misrepresentations may be oral or written or may even arise from conduct such as cashing a giro-cheque. As innocent misrepresentations are covered, no explanation will be relevant. Written misrepresentations may however be qualified by oral statements made by the claimant at the relevant time or by information in another format that was before the decision maker at the relevant time. Silence may amount to a misrepresentation where, if asked, the claimant deliberately decides to say nothing on a matter known to be material.

d) Failure to disclose

This has been defined as “non-disclosure in circumstances where disclosure was reasonably to be expected.” R(SB) 21/82.

In C2/01-02(JSA) Commissioner Brown emphasises that the test is an objective one of whether a reasonable person would have realised disclosure was required. The Department will firstly have to show that the person knew the material fact.

Advisers should note that any person claiming benefit, either in her/his own right or on behalf of another person, has a statutory duty to notify the Department of any changes of circumstances that he/she might reasonably be expected to know might affect entitlement to or receipt of benefit. Despite the advent of computerised data systems and data sharing within the Department, claimants should notify any relevant changes of circumstances in writing to the particular office handling the benefit and not rely on internal notification procedures eg where a person fails an Incapacity Benefit Credits appeal s/he may need to notify Income Support Branch, if this benefit has been claimed pending appeal.

e) Material fact

A material fact is one which was relevant to the determination that benefit was payable.

f) Causation

There must be a clear causal connection between the misrepresentation or failure to disclose and the overpayment. In C2/01-02(JSA), Commissioner Brown decided that an overpayment of benefit was not caused by the claimant’s misrepresentation that he was not a student and had not just finished a course of education because, if he had stated this, the Department would simply have confirmed the end date of the course and paid benefit. It would not have checked whether he had failed any exams and intended to do resits, which would have precluded him from claiming JSA. The claimant’s misrepresentation had therefore not caused the overpayment.

If it can be shown that the Department did receive the relevant information internally, but did not act on it, then it may also be possible to argue that the chain of causation has been broken. Likewise if information on a claim form is so inconsistent or ambiguous as to prompt further enquiry by the Department, if enquiries are not made the overpayment may not be recoverable.

Conclusion

If it is determined that a recoverable overpayment has occurred, it is possible to appeal to an appeal tribunal and subsequently on a point of law to the social security commissioner, the Court of Appeal and House of Lords. No repayments should be made until any appeals are exhausted. If appeals are unsuccessful it is possible to ask the Department to exercise its discretion not to recover the overpayment, setting out all the circumstances of the case. Law Centre (NI) recently successfully judicially reviewed a refusal to waive recovery and welcomes referral of cases on this issue as we are anxious to test the Department’s policy on the issue.

When all other avenues of challenge have been exhausted, it is important to remember that the rate of repayment of any overpayment may be the subject of negotiations.

Patricia Carty, Law Centre (NI)
Alistair Sim looks at the risk management issues for practitioners flowing from the decision in Etridge. The contribution of Ken Swinton, University of Abertay, Dundee, in commenting on a draft of this article is gratefully acknowledged.

The case of Royal Bank of Scotland v Etridge (House of Lords, 11 October 2001) has once again highlighted the problems arising from a transaction in which a wife had agreed to grant a security to lender over here share of the matrimonial home in order that her husband (or the husband’s company) could obtain further finance. While the case is generally referred to as Etridge, there were a number of different cases heard at appeal. Following attempts by the banks to enforce the charges, the wives argued that they had singed the charges under the undue influence of their husbands.

Much of the discussion in Etridge focused on the alleged deficiencies in the quality of legal advice given to the wives.

The content of the advice from the solicitor will be dependent on the circumstances of the case, but Lord Nicholls suggested a ‘core minimum’ of advice:
- Explain to the spouse the nature of the documents
- Advise the spouse as to the implications of signature in practice: in particular the fact that the spouse could lose his/her home in the event of the business underperforming - the spouse could, of course, ultimately face bankruptcy
- Point out to the spouse the seriousness of the risks involved
- Advise the spouse as to the reason for the new lending, the amount of the further lending and its principal terms
- Advise the spouse that the lender might increase the amount of the lending, change the terms of even grant a further facility without an intimation to him/her. In terms of the Mortgage Code, lenders should no longer seek an unlimited guarantee from a cautioner/cautioner. Solicitors should therefore be aware that now an attempt to seek an unlimited guarantee should be seen as unusual
- Tell the spouse the amount of his/her liability
- Discuss with the spouse his/her finances and the valuation of the property
- Check whether there are may other assets which could be used to pay off the borrowings, in the event of the business failing
- Advise the spouse that he/she has a choice - this will most likely require to proceed upon a discussion of the current levels of indebtedness
- Seek the spouse’s confirmation that he/she wishes to proceed - solicitor should confirm that spouse is happy for confirmation to be given to the bank or whether he/she wishes the solicitor to negotiate the terms of the transaction

Such a discussion with the spouse should take place at a face-to-face meeting in the absence of the borrowing spouse. In addition, in Lord Nicholls’ words, “It goes without saying that the solicitor’s explanations should be couched in suitably non-technical language. It also goes without saying that the solicitor’s task is an important one. It is not a formality.”

Risk management action points

Their Lordships have given their own risk management guidelines within the speeches in Etridge. Practitioners should familiarise themselves with those guidelines but should also be aware that:
- Each subsequent case will turn on its own - the risk management must be proportionate to the facts. Etridge does not provide a tick box checklist to complete protection against a claim.

b There are a number of additional risk management points that flow from the principal ones reviewed in Etridge, such as:
- The information that may have to be given to the spouse could involve financial advice - care should be taken that the solicitor has the necessary expertise to advise
- It may prove necessary to ask the lender to disclose financial information about the debtor’s finances to the proposed guarantor/cautioner. Again here the Mortgage Code makes clear that this may be required and a waiver of confidentiality may be needed by the lender but equally by the agent where he has knowledge of the debtor’s financial affairs. This may often mean not completing the advice in a single visit. The more pressure put on a solicitor to complete the matter quickly, the greater the potential risk.
- If the point of the exercise is to ensure there is adequate separate legal advice given to the spouse, the spouse should effectively be treated as an entirely separate and distinct client, rather than a ‘consensual add-on’ to the husband’s file. Lord Nicholls did not require separate advice for spouses and considered that in many cases the husband’s agent would be best placed to advise the wife, being familiar with the business and the family circumstances.

Notwithstanding solicitors must take cognisance of potential or actual conflicts of interests. Spouse should effectively be treated as an entirely separate and distinct client
- Additionally, it may be prudent to have a separate meeting with the spouse, rather than a rushed discussion whilst the husband is sent out of the room. This physical separation of dealings may reinforce the message of Etridge but was not seen as
essential in the case.

- As with any other client, make sure the message has been delivered clearly. It may be up to the solicitor to manage the client’s expectations upwards: ie making sure they know they are not just signing ‘a bit of paper’ but are committing themselves to a course of action with potentially huge ramifications. Spouses will often regard the entire process as a huge imposition on their time for nothing more than legal ‘form-filling’. Solicitors will, however, have to reconcile these requirements with the fact that there may be no real alternative for the spouse. The whole family finances may be intricately bound up with the transaction and without the security the family business may fail, along with the only source of income.

- Make sure there are adequate records on file regarding the advice given to the client and the instructions to proceed.

- Although not an essential element in Lord Nicholls’ formulation, make sure that the advice is followed up by letter and is actually received by the spouse. In Broadway v Clydesdale Bank collected from the solicitor’s office and it was claimed that it had never been seen by the wife. If necessary, get a copy signed and returned for the file. There will only be one person in the firing line if the lender is unable to enforce a security through an Etridge/Smith claim!

The information in this page is (a) intended to provide guidance on matters of practical risk management and not on issues of law and (b) is necessarily of a generalised nature. It is not specific to any practice or to any individual and should not be relied on as stating the correct legal position. Alistair Sim is Associate Director in the Professional Liabilities Division at Marsh UK Ltd. Reproduced by kind permission of The Journal of the Law Society of Scotland, December 2001, Volume 46, No 12.

Northern Ireland Office
Appointment of Life Sentence Review Commissioners

Under the provisions of the Life Sentences (NI) Order 2001, the Secretary of State is required to appoint Life Sentence Review Commissioners. Commissioners will assess the suitability of life sentence prisoners for release, making recommendations and directions as appropriate. In so doing Commissioners will make a vital contribution to ensuring the safe and successful reintegration of life prisoners into the community.

The Secretary of State wishes to ensure both professional and lay representation amongst the group of Commissioners and applications are being invited from individuals from a range of backgrounds. The legislation stipulates certain professional requirements which include that, as far as is reasonably practicable, at least one of the Commissioners should be:-

(a) a person who holds or has held judicial office in any part of the United Kingdom; or
(b) a person who is:-
   (i) a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 10 years’ standing;
   (ii) an advocate or solicitor in Scotland of at least 10 years’ standing; or
   (iii) a person who has a ten year general qualification within the meaning of section 71 of the Court and Legal Services Act 1990.

An information pack for applicants provides full details of the competences and requirements of the posts.

Terms of Appointment and Remuneration

It is expected that the Secretary of State will appoint around 15 Life Sentence Review Commissioners, one of whom will be appointed as Chairman of the Commissioners. Appointments will be for a period of five years (renewable) and may require a time commitment of between 20 - 30 days per year (some of which is preparation time which may be undertaken during evenings or weekends). The time commitment for Chairman of the Commissioners may, at least initially, be in the region of 40 days per year. Commissioners will be based in Belfast with some travel required to prison establishments (official transport can be arranged).

Remuneration per diem (pro-rata):
Chairman of Commissioners - £440
Commissioners - £275 (£350 when panel chair)

Applications and Further Information

An application form and information pack can be obtained by writing to Legislation Branch, Room 308, Dundonald House, Upper Newtownards Road, Belfast BT4 3SU or by telephoning 028 9052 5155. Information about the appointments may also be found on the Northern Ireland Office Website http://www.nio.gov.uk from 9 April 2002.

Completed applications must arrive before 5.00pm on 8 May 2002.

The Northern Ireland Office is committed to equality of opportunity and welcomes applications from suitably qualified persons irrespective of religion, gender, disability, race, political opinion, age, marital status, sexual orientation or whether or not they have dependants.
Northern Ireland Prison Service Notice

Review of Prisoner Parcels (Proposed changes to the system from 1 April 2002)

AIM
To end the present system of parcel delivery by visitors and replace this system by other means (see below), so as not to disadvantage prisoners.

WHY CHANGE THE PRESENT SYSTEM
There are 3 main reasons for the proposed change:

a. To reduce the pressure on families with little resources (as advised by voluntary family charities and other interest groups) to provide their loved ones with the best whilst in prison.
b. To reduce the means by which drugs can be smuggled into prisons.
c. To reduce the present practice of staff having to handle fruit and foodstuffs during the searching procedures which may in the future not meet environmental regulations.

WHAT DO PARCELS ACTUALLY CONSIST OF
Parcels can be broken down into 7 district categories -

a. Toiletries
b. Fruit, foodstuffs and tobacco
c. Additional foodstuffs (female prisoners)
d. Electrical goods
e. Clothing
f. Newspapers/magazines/books and games

g. Special holiday parcels (cake at Christmas etc)

TOILETRIES
At present a selection of toiletries can be purchased from the prison tuck shops. It is proposed to extend this range by:-

a. having a survey undertaken of the present parcels to determine what are the common toiletries sent in by parcels and increasing the availability of these via the tuck shop.
b. Requests by prisoners for certain products to be available from the tuck shops and where there is sufficient demand to provide them for sale.
c. Ensuring that the different needs for females are taken into accounts.

FRUIT, FOODSTUFFS & TOBACCO

FRUIT
Rather than fruit being sent in as part of a parcel, this requirement will be available as part of the prisoners’ multi choice menu. A selection of fruits will be available on a daily basis and prisoners will simply tick off their requirements on the multi choice menu. There will be no cost to the prisoner nor his visitors but the amount per week must not exceed the quantity limits set for a parcel. Fruit juice can be purchased as at present via the tuck shops.

FOODSTUFFS
The handling of foodstuffs by third parties mitigate against Health & Hygiene practices. Again a survey will be carried out to ascertain what type of foodstuffs are sent in as part of parcels and to have these available for sale in the tuck shops provided it does not contravene health & hygiene regulations.

With regard to special dietary needs these, as now, will be determined by the medical authorities.

TOBACCO
All tobacco and tobacco products presently allowed as part of parcels will be available for sale in the tuck shops, up to the allowance provided at present. To meet the extra cost an increase in Prisoners Private cash will be allowed (see below).

FOODSTUFFS AVAILABLE TO FEMALES

For historical reasons and because there were so few female prisoners, they were allowed to cook their own meals and therefore were allowed extra foodstuffs compared to male prisoners. As females no longer cook their own meals, now utilising the multi choice menu system, there is no longer a need to retain the extra food entitlement.

Under Equality legislation both male and female prisoners are treated equally. We could not justify, under hygiene regulations allowing male prisoners the same variety and quality available for female prisoners. To rationalise the differences there is no alternative but to end the greater variety to female prisoners.

With regard to special dietary needs for female prisoners, these, as now, will be determined by the medical authorities.

ELECTRICAL GOODS (APPLIES MAGILLIGAN ONLY)
At present HMP Maghaberry and HM Young Offenders Centre do not allow such items as part of prisoners parcels on security grounds. These can be purchased via the tuck shops. At HMP Magilligan prisoners do not have the choice. It is proposed to end this practice with all electrical goods such as play stations and games being available for sale via tuck shops.

Whilst the limit of Prisoner Private Cash spending is set at £50 per week the Governor has the discretion to allow additional expenditure exceeding this amount to meet such requirements.

CLOTHING
Clothing will remain as a parcel entitlement and will be permitted utilising the current procedures.

NEWSPAPERS/MAGAZINES/BOOKS
At present a selection of daily newspapers are provided free by the Governor for inmates. This practice will continue. However, should prisoners require special newspapers, magazines or books then he will be treated as any member of the public. Facilities will be made available for the prisoner or his family to order such items through the local newsagent close to the prison which can be left at the prison for him. Either the prisoner or his family can pay the newsagent directly.

This system presently operates at HMP Magilligan with staff in the Visitors’ Centre acting for the Prisoner.

HOLIDAY PARCELS
This has, because of Equality Legislation, become a very difficult area as we can no longer refer to Christmas or Easter or Halloween parcels. With the increasing number of other religions coming into prisons we appear to have little alternative but to end the practice.
To offset the disadvantage it is proposed:-
a. To provide an enhanced menu at holiday times;
b. To allow prisoners to be able to purchase their own Christmas cakes, Easter eggs etc via the tuck shops at holiday times.

EXTRA PRIVATE CASH TO PAY FOR PURCHASES FROM TUCK SHOPS

As outlined above all prisoners will under the new arrangements be able to purchase, via the tuck shops, those items currently allowed as part of a parcel. To ensure that the prisoner is not at a disadvantaged and having taken advice from those charities and voluntary groups associated with prisoners and their families it has been decided to increase the amount of money that they can spend weekly by £10.

A. Convicted prisoners

In the case of convicted prisoners this will mean they will have a standard wage of £14 plus £60 private cash to spend weekly. In the case of those with enhanced wages this will mean they will have an enhanced wage of £20 plus £60 private cash to spend weekly.

b. Remand prisoners

At present they are allowed unlimited private cash plus three parcels per week including £20 cash per visit. It is proposed that the private cash will remain unlimited and that the tobacco element of the parcel will be calculated in cash terms and added to the £20 cash per visit.

CHARITABLE ORGANISATIONS

Those prisoners who do not have relatives or friends receive parcels from charitable organisations. In future organisations will be allowed to leave in money for prisoners in the same manner as family and friends.

SUMMARY

The proposed changes are aimed at improving our services to prisoners. Instead of visitors carrying items such as food and fruit on long journeys to the prison, then having them searched by staff, then re-packaging them for transport to the prisoners accommodation, the visitor will simply leave extra cash with their cahier.

This will allow the prisoner greater flexibility in choosing what he wants to spend his private cash on. The tuck shops will hold a greater range of stock to ensure that the prisoner can purchase those items normally included as parcel contents.
Lunchtime Seminar

Unfair Dismissal Arbitration Scheme
An Overview from the Labour Relations Agency

Speaker: Penny Holloway, Director of Conciliation and Arbitration
        Alan Kennedy, Arbitration Secretary

Date: Friday, 10 May
Time: 1.00pm (coffee and sandwiches served from 12.30pm)
Venue: Law Society Lecture Theatre, Law Society House, Victoria Street, Belfast
Cost: Members £3, Non-members £6.

Booking forms and cheques, made payable to The Employment Lawyers’ Group (NI), should be sent to:
Ms June Turkington, Legal Directorate, Central Services Agency, 25-27 Adelaide Street, Belfast, BT2 8FH
Membership Renewal

Membership fees are now due for 2001-2002. Members are invited to renew their membership for the current year. New members are welcome. Please return the form below completed together with cheque for £10 made payable to ELG (NI) to: June Turkington, Legal Directorate, Central Services Agency, 25-27 Adelaide Street, Belfast BT2 8FH

Membership Form

I enclose cheque for £10.00 made payable to ELG (NI)

Name ___________________________ ___________________________

Address ____________________________________________________________

Telephone No: (work) ___________________________ E-mail ___________________

FAMILY LAW ACT (NORTHERN IRELAND) 2001

The Family Law Act (Northern Ireland) 2001 comes into force on 15 April 2002. The Act contains only a few, yet very significant, provisions. First it seeks to facilitate the acquisition of parental responsibility by unmarried fathers for their children. In 2000 6833 live births occurred outside marriage, representing 32% of all live births.

Where the mother and father of a child are unmarried only the mother will automatically have parental responsibility for the child. The unmarried father will have no formally legally recognised relationship with the child, although he can establish such a relationship by marrying the child’s mother or by taking other steps to acquire parental responsibility for the child under existing legislation. The effect of this Act is that an unmarried father will have parental responsibility for his children if he and the mother jointly register the child’s birth and in 2000 67% (4568) of all live births outside marriage were jointly registered.

A child’s birth can only be jointly registered by the mother and the unmarried father where they both agree to the procedure and this new provision will only apply to births registered after the Family Law Act comes into operation. Unmarried fathers of children already born and jointly registered will be advised of the availability of the existing procedures.

An ancillary measure in the Act is that a step-parent may acquire parental responsibility for the child of his or her spouse if a court so directs. Following amendments brought forward to the Bill following its Committee Stage, the Bill now also further amends the Children (NI) Order 1995 to provide that a court shall take into account the best interest of the child when it is asked to make an order conferring or removing parental responsibility from an unmarried father or step-parent.

Secondly, the Act creates a statutory presumption of paternity in two sets of circumstances; namely where a man is married to a woman at any time between the conception and birth of a child or where he has been registered as the father of the child in the Register of Births. There is already a common law presumption dealing with the paternity of a child born to a married couple. Both presumptions may be displaced on the balance of probabilities.

The Act also updates the law on the range of tests which a court may authorise to be used in order to prove or disprove the parentage of any child. By parentage. At present courts may only direct the taking and testing of blood samples. The Family Law Act now gives the courts a power to direct the taking and test of other bodily samples such as saliva or hair in order to reflect the new advance in DNA technology. Additional provisions on the accreditation of laboratories authorised to carry out the testing are contained in the Child Support, Pensions and Social Security Act (NI) 2001.

Marriage in Northern Ireland remains the norm for couples wishing to share their lives with their children. In that situation husbands and wives share parental responsibility for their children. Increasingly, however, more and more couples are choosing not to marry, at least not straightaway, yet they desire to establish a family relationship with children. The proposals in this Act do not seek to pass judgement on the different family relationship which adults choose for themselves and their children, but to ensure that, where appropriate, the interests of the child are secured by the legal recognition of the relationship with the child’s father, and others, such as step-parents, who share in the day to day care of the child.

The policy which this Act implements has been under consideration in Scotland and also England and Wales and it is likely that similar proposals will be brought forward in due course in those other jurisdictions. Traditionally, family law across the jurisdictions has been very similar with Northern Ireland law, following changes elsewhere. In this instance Northern Ireland is in the lead.
Statutory Rules of Northern Ireland

2002 No. 12
Magistrates’ Court

Magistrates’ Courts (Detention and Forfeiture of Terrorist Cash) Rules (Northern Ireland) 2002
Coming into operation 11th February 2002

These rules revoke and replace the Magistrates’ Courts (Terrorism Act 2000) Rules (Northern Ireland) 2001. They prescribe the procedure to be followed for applications to a magistrate’s court for the detention further detention, forfeiture or release of cash seized by a constable, customs officer, or immigration officer under Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 on reasonable suspicion of a connection to terrorism. They also prescribe the procedure to be followed for applications to a magistrate’s court for compensation where no forfeiture order is made. These rules prescribe the forms to be used in connection with the application and hearings

2002 No. 37
Coroners

Coming into operation 11th February 2002

These Rules amend the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 to substitute a new Rule 9 which will allow a person suspected or charged with causing death to be compellable as a witness at the inquest into the death (This had been precluded under the previous Rule 9 (2)). The new Rule 9 provides that a witness at an inquest may decline to answer any question tending to incriminate himself or his spouse.

2002 No. 15
Supreme Court, Northern Ireland Procedure

The Rules of the Supreme Court (Northern Ireland) (Amendment) 2002
Coming into Operation 15th February 2002

These Rules amend the Rules of the Supreme Court (Northern Ireland) 1980 so as-
(a) to amend Order 116 in consequence of the Terrorism Act 2000 and the Anti-terrorism Act 2000 and the Anti-terrorism, Crime and Security Act 2001. In particular Order 116 is amended to:
- substitute any reference to the Prevention of Terrorism (Temporary Provisions) Act 1989 with appropriate reference under the terrorism Act 2000;
- provide for the procedure to be followed in relation to applications for an order under paragraph 40 of the Schedule 4 to the terrorism Act 2000; and
- take account of the extended circumstances in which a prosecutor may apply to the High Court for a restraint order, by providing that such an application may be made where a criminal investigation has been started in Northern Ireland with regard to a suspected offence under any sections 15-18 of the 2000 Act;
(b) to amend Order 121 to provide for the Crown to be given notice where the High Court or Court of Appeal is considering the compatibility of subordinate legislation with Convention rights under the Human Rights Act 1998.

Following the retirement of Mr John Clery RM, the Lord Chancellor has made the following assignments in accordance with section 9 (5) of the Magistrates’ Court Act (Northern Ireland) 1964:-

CP McRandal RM - Petty Sessions District of Belfast and Newtownabbey
BP McElholm RM - Petty Sessions Districts of Fermanagh and Omagh
JI Meehan RM - Petty Sessions District of Strabane

These assignments are effective from 4th Feb 2002.
**Statutory Rules of Northern Ireland**

**Legal Aid and Advice**

Legal Aid (Financial Conditions) Regulations (Northern Ireland) 2002

Coming into operation 8th April 2002

These regulations amend the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 so as to:

(a) increase the upper income limit to make legal aid available to those with disposable income of not more than £189 a week (instead of £186);

(b) increase the lower income limit below which legal aid is available without payment of a contribution of £79.

No changes are made to the capital limits.

**Legal Aid and Advice**

Legal Advice and Assistance (Amendment) Regulations (Northern Ireland) 2002

Coming into operation 8th April 2002

These Regulations amend the Legal Advice and Assistance Regulations (Northern Ireland) 1981 so as to substitute a new scale of contributions payable for legal advice and assistance under article 7 (2) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.

**Correction**

Please note that in Issue 131 January Writ the second paragraph below was omitted from the Extra-Statutory Ex Gratia Scheme for Funding of Representation at Exceptional Inquests letter:

_Paragraph read..._

31. If a solicitor or counsel is dissatisfied with the remuneration assessed by the Taxing Master will review his assessment based on the written representations.

_Paragraph should have read..._

31. If a solicitor or counsel is dissatisfied with the remuneration assessed by the Taxing Master they can submit written representation within 30 days and the Taxing Master will review his assessment based on the written representations.
NEW! NEW! NEW! NEW! NEW!

HIGH COURT, COURT OF APPEAL AND TRIBUNAL DECISIONS

The library now has its own database of all decisions and practice directions from the local tribunals, High Court and Court of Appeal. This will soon be available remotely to users via the Society’s website – further details will be contained in the Writ in due course.

We are now able to provide this new section of abstracted cases and decisions straight from the Courts and Tribunals. Until remote access is activated, full text decisions are available from the library as usual.

Dingles Builders (NI) V Brooks etc, High Court Chancery Division, (Girvan, J), 15th February 2002
Action for specific performance. – breach of warranty of authority. – leave to join third party. – whether third party claims in respect of same damage. – meaning of ‘same damage’. – Civil Liability (Contribution) Act 1978 section 1(1).

Doherty V Chief Constable of the Royal Ulster Constabulary, High Court Queen’s Bench Division, (Higgins, J), 13th February 2002
Appeal against dismissal of claim for damages for personal injuries and loss. – unlawful arrest and detention. – imprisonment in default of payment of fines. – whether execution of warrants unlawful.

Dooris V Dooris, Court of Appeal, (Higgins, J), 18th January 2002
Appeal against dismissal of undefended divorce petition on the merits by County Court. – petitioner and respondent resided at same address. – whether necessary degree of separation had been established. – definition of living apart.

Duff V Egerton, High Court Chancery Division, (Weatherup, J), 23rd January 2002
Contract and conveyance. – specific performance, damages for breach of contract or rescission. – extension of completion date. – whether constituted variation of contract. – claim for loss of possession and opportunity to develop premises

Foyle, Carlingford and Irish Lights Commission V McGillion, Court of Appeal, (Carswell, LCJ), 11th January 2002
Appeal of RM’s decision. – forfeiture of fishing boats. – unlawful fishing for salmon on River Foyle. – evidence. – standard of proof and balance of probabilities in civil cases

Hogg V McAteer, High Court Queen’s Bench Division (Commercial List), (Coghlin, J), 31st January 2002
Disclosure of privileged material between solicitor and client. – application for order to strike out affidavit. – application for order prohibiting use made of affidavit

ICS Computing LTD V Capital One Services Incorporated, High Court Queen’s Bench Division, (Weatherup, J), 11th January 2002
Application for leave to issue Writ of Summons out of the jurisdiction. – whether alleged non-payment by the defendant constitutes a breach of contract within the jurisdiction. – whether proceedings of the English courts by virtue of the Civil Jurisdiction and Judgments Act.

In the matter of an application by Mary Doherty for judicial review, High Court Queen’s Bench (Crown Side), (Kerr, J), 19th February 2002
Application for judicial review of decision of the Bloody Sunday Inquiry to allow certain police officers to give evidence from behind screens. – whether fears of witnesses of subsequent terrorist attacks are justified. – whether screening will alleviate these fears. – whether screening compromised the openness of the proceedings

In the matter of an application by Hugh Jordan for judicial review, High Court Queen’s Bench Division (Crown side), (Kerr, J), 29th January 2002
Coroners. – Inquests. – Application to challenge alleged failure of Lord Chancellor’s Department to ensure the Northern Ireland inquest system complies with article 2 of the ECHR. – removal of exemption from compellability of persons suspected of causing death of deceased. – verdicts available to inquest jury.

In the matter of an application by William McFarland for judicial review, High Court Queen’s Bench Division (Crown Side), (Kerr, J), 12th February 2002
Application for judicial review of Secretary of State’s decision not to grant compensation. – period of imprisonment served on foot of conviction for indecent assault which was subsequently quashed.

In the matter of an application by Maurice Morrow and Gregory Campbell for leave to apply for judicial review, High Court Queen’s Bench (Crown Side), (Coghlin, J), 16th January 2002
Application for judicial review. – challenge of decision of First and Deputy First Ministers to withhold Executive Committee papers from members of the Assembly who had replaced colleagues that had resigned their posts.

In the matter of an application by James Michael Murphy for judicial review, High Court Queen’s Bench Division (Crown Side), (Kerr, J), 15th January 2002
Application to challenge decision of Governor of HMP Magilligan. – applicant in possession of illegal drug and using subsequent threatening behaviour. – adjournment of adjudication. – whether delay had adverse effect on applicant and his sentence.

In the matter of an application by UK Waste Management Limited for judicial review, Court of Appeal, (Carswell, LCJ), 25th January 2002
Appeal against dismissal of judicial review application. – Department refusing to grant application for planning permission on the grounds that application was premature.

In the matter of an application by...
In the matter of N, K, T and TM (requirement to dispense with parental consent under article 18 of the Adoption Order (Northern Ireland) 1987, High Court Family Division, (Gillen, J), 16th January 2002
Application by natural father for order freeing children for adoption. – mother dead. – children in long term foster care with no wish to contact father. – currently no parent, guardian or person with parental responsibility for children to consent to adoption.

In the matter of Review Publishing Limited (in administration) and in the matter of the Insolvency (Northern Ireland) Order 1989, High Court Chancery Division, (Girvan, J), 4th February 2002
Corporate Insolvency. – application by administrator seeking Order of Discharge. – whether company should subsequently be struck off companies’ register.

In the matter of the Estate of Robert Perry Moorhead deceased, and in the matter of the Inheritance (Provision for Family and Dependents) Order 1979, High Court Chancery Division, (Weatherup, J), 11th January 2002
Application of widow under article 4 of the Inheritance (Provision for Family and Dependents) Order 1979, High Court Family Division, (Weatherup, J), 11th January 2002

In the matter of the Insolvency (Northern Ireland) Order 1989, High Court Chancery Division, (Girvan, J), 14th January 2002
Company insolvency. – public examination of director. – failure to attend. – powers of court. – arrest of director. – compatibility of article 114 of Insolvency Order with article 5 ECHR.

In the matter of Monaghan V McAdams & MIB, High Court Queen’s Bench Division, (Kerr, J), 30th January 2002
Appeal against decision ordering MIB to pay plaintiff’s costs. – whether appellant could appeal only against liability or whether all issues were open to appeal.

R V D, Court of Appeal, (Carswell, LCJ), 15th February 2002
Appeal against sentence. – assault occasioning grievous bodily harm. – whether sentence excessive in view of clear criminal record and previous character. – totality principle in offences committed by a number of participants.

R V Drake, Court of Appeal, (Carswell, LCJ), 25th January 2002
Appeal against conviction and sentence. – rape and indecent assault. – whether the two counts on the indictment were improperly joined together in breach of the Crown Court Rules.

R V Walsh, Court of Appeal, (Carswell, LCJ), 11th January 2002

Re A: (Abduction: declaration of wrongful removal), High Court Family Division, (Gillen, J), 17th January 2002
Child abduction. – whether mother’s removal of child wrongful and in breach of parental responsibility and contact order.

Reference by Her Majesty’s Attorney General for Northern Ireland (No 2 of 2001), Court of Appeal, (Carswell, LCJ), 25th January 2002
Application of Attorney General to refer unduly lenient sentence. – rape, indecent assault, attempted buggery and threats to kill

Tracy V O’Dowd, High Court Queen’s Bench Division, (Higgins, J), 28th January 2002
Application to stay proceedings. – whether jurisdiction of court in Northern Ireland forum non conveniens.

Wendo PLC V Adams, High Court Chancery Division, (Girvan, J), 14th January 2002
Franchise agreements. – post termination restraints. – validity. – reasonableness of period and area of restraints. – impact of community law. – Competition Act 1998

Wright-Turner V Department of Social Development, Court of Appeal, (Carswell, LCJ), 11th January 2002
Appeal against Social Security Commissioner’s decision. – rejection of claim for invalid care allowance. – applicant studying at university. – whether in full time education.

Re SB (a child), High Court Family Division, (Weatherup, J), 1st February 2002
Application by Trust for care order. – foreign adoption not recognised in Northern Ireland. – child abuse. – child released from hospital and placed in foster care. – whether risk of significant harm.

Norbrook Laboratories V Quinn, High Court Queen’s Bench Division, (McLaughlin, J), 20th February 2002
Damages. – slander. – malicious falsehood. – defamation. – press release downloaded from Internet and distributed by defendant. – defence of justification and fair comment.

Reference by Her Majesty’s Attorney General for Northern Ireland (No 3 of 2001), Court of Appeal, (Carswell, LCJ), 30th January 2002
Indecent assault on children. – referral by Attorney General on the grounds that sentence was unduly lenient.
HUNDREDS Already have an affinity for discounted heating oil. Why not join them?

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Dungannon
County Tyrone
BT71 6BL

Sheldon & Stewart Solicitors
On the Retirement, later in the year, of his partner, Ms Alison Morgan, David Cook would like to appoint as soon as may be practicable, a solicitor to take responsibility for the firm's litigation which includes Personal Injury, Medical Negligence, Criminal Injury and Commercial Litigation.

Mr Cook hopes that this opportunity will interest an energetic and suitably qualified solicitor with whom he will be glad to discuss, in confidence, what arrangements (in relation to partnership and other matters) might be mutually convenient.

Mr Cook will deal with any expressions of interest or applications personally and in the strictest confidence. He may be contacted by telephone or in writing at:
70 Donegall Pass
Belfast
BT7 1BU
Tel: 028 9032 7691

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 Apprentice seeker, qualifying August 2002, seeks to complete apprenticeship with Belfast firm.
Please contact PO Box No. 105

In the Estate of Patrick J (Sean) Deighan deceased late of 67 Riverdale Park Drive, Belfast BT11 5DN died 15th January 2001.
And in the Estate of Mary Patricia Deighan deceased died 18th April 2001
Would any person holding an original Will for either of the above named deceased persons or having knowledge of the whereabouts of any Will please contact McCartan Turkington Breen Solicitors (Ref: G McVeigh) 88 Victoria Street, Belfast BT1 3GN
Tel: 028 9032 9801
Fax: 028 9032 0789

John Rodger O’Kane, Deceased, Late of 53 Killane Road, Limavady
Would any person or solicitor having knowledge of the whereabouts of a Will or the Title Deeds to 53 Killane Road, Limavady, please contact McKeone & Co., Solicitors, 43 Great James Street, Londonderry.

Margaret Doreen Ellis Deceased late of 11 Canberra Park, Glengormley, Newtownabbey, County Antrim.
Died - 3rd December 2001
Would any solicitor who is aware of a Will made by the above named deceased, please contact P.A. Duffy & Co, Solicitors of 183 Victoria Street, Belfast.
Tel No. : 028 9023 0688
Fax No. : 028 9032 5691

Richard Holland Deceased
Late of 160 Sugarfield Street, Shankill Road, Belfast
Date of Death: 26/2/2002
Would any person or solicitor having knowledge of the whereabouts of a Will for the above named Deceased please contact R.P. Crawford & Co. Solicitors of Ardgivna House, 517 Antrim Road, Belfast, BT15 3BW.
New Books in the Library

2) Foskett: The law and practice of compromise. 5th ed. Sweet & Maxwell. 2002

Republic of Ireland Agents

All legal work undertaken on an agency basis
All communications to instructing solicitors
Consultations in Northern Ireland if required

Contact:

Seamus Connolly
S.C. Connolly & Co. Solicitors

Ban Building or Arran House
Newry
County Down
Tel: (01693) 65311 Tel:(003531) 8725622
Fax: (01693) 62096 Fax:(003531) 8725404

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