Where were you at 1.30 p.m. on Thursday 5th October 2000? The place to be was the Upper Bar Library, at the official launch of the Northern Ireland Lawyers Pro Bono Unit. A joint venture sponsored by the General Council of the Bar of Northern Ireland and the Law Society of Northern Ireland, the objective of the Unit is to provide free legal advice and representation in deserving cases.

Officiating at the launch, the Chair of the Management Committee, Mr Ronnie Appleton, QC outlined the operation of the Scheme. The Unit has been set up as a company limited by guarantee and is registered as a charity. Advice and representation will be provided by barristers and solicitors who have volunteered to join the Scheme Panel and can provide a full range of legal services.

“The cases most likely to meet the criteria of the Pro Bono Unit will be appeals, applications for leave to appeal, judicial review applications, tribunal hearings and advisory work. Cases that raise a specific issue of principle or test cases will be particularly welcomed”.

Commending the joint venture the Lord Chief Justice drew attention to the well-established tradition of a pro bono service which has always formed part of the lawyers’ ethos in Northern Ireland. “There is an old jibe that a professional is a person who never does anything except for money. But the reverse is the truth. I have always regarded it as an essential part of the professional obligation of all lawyers - part payment of their debt to their profession - that they were prepared to obtain justice for people in need, regardless of the prospects of receiving payment. It would have been easy to consign that notion to history. Instead the professions have taken the bold step of formalising the scheme, at the same time encouraging new generations of lawyers to give of a broad range of expertise for the good of the community”.

In his address, John Meehan, the President of the Law Society of Northern Ireland commented on the extent to which solicitors have been providing free legal services to the public on a daily basis:

“Pro Bono work is a feature of the solicitors’ profession which has always had a particularly close connection with the community it serves, whether in the delivery of legal services as such, or by individual solicitors giving their time over to community and charitable organisations. Out of some 500 firms in the province more than 100 in a matter of weeks registered their willingness to participate in this new initiative, and the number continues to grow. I am extremely proud of that, and all that being so, why then is a Pro Bono Unit such good news? Quite simply, it will be there to address need in an organised way, in a better targeted way and through a closer partnership between the Bar, the Law Society and the not-for-profit sector. Solicitors are committed to make a real and distinctive contribution to the serious issue of unmet need in Northern Ireland with regard to access to justice”.

Any solicitor wishing to register for participation in the Scheme may do so by writing to the Chief Executive at the Law Society of Northern Ireland. Further information about the Scheme may be obtained by contacting the Scheme Co-ordinator at P O Box 414, Royal Courts of Justice, Chichester Street, Belfast BT1 3JP, or by telephone 028 9056 2385.
Society Launches the Workbook

Law Society House was buzzing on the 10th of October with the chatter of keen first year apprentices. They were gathered together with a smattering of crusty old masters for the launch of the Apprenticeship Workbook. This initiative, which was borrowed from the Law Society of Ireland, (who were very generous in allowing us to ‘steal’ their idea) was some two years coming to fruition and was very much the baby of the present Senior Vice-President, Mrs. Catherine Dixon. The book is designed to provide a focus during the early months of apprenticeship when masters and apprentices may be unsure of what the apprentice should be doing in the office.

The workbook, written by Sarah Witchell and co-produced by the Law Society of Northern Ireland and the Institute of Professional Legal Studies, has eleven units covering subject matters ranging from Ethics to Family Law. It is intended to be used as an interactive learning tool and will be especially relevant for apprentices during their first four months in-office. Apprentices who have worked their way through the book should be equipped with the knowledge necessary to embark on their professional training course at the IPLS.

As the Apprenticeship Workbook is a new initiative the Society would welcome any feedback on the book and its use from both masters and apprentices.

WARNING! STOLEN CHEQUES

We understand that some solicitors’ practices have recently had the unpleasant experience of having cheques stolen from their Client account cheque books, completed, and subsequently presented for payment. Apparently, the cheques were stolen by clients or persons pretending to be clients.

Ensure that all your cheque books are kept safely at all times—while any cheque book is vulnerable, Client account cheques are particularly so, as paying banks may feel they have no difficulty in making a payment against a cheque drawn on a client account.

STOP PRESS!

Council at its meeting on 6th September 2000 unanimously agreed to accept the recommendation of the CPD Working Party that a scheme of Continuing Professional Development should be introduced on a compulsory basis. Further information on the time scale of the introduction of the Scheme and details of the Scheme itself will be provided in future editions of the Writ.
Many a firm has come to regret employing a Solicitor who has subsequently proved to be inadequate, inept or even dishonest. In many cases, this could have been avoided if the firm had in place proper procedures relating to recruitment of qualified staff.

When confronted by the resignation of an assistant Solicitor, the automatic reaction of many firms is to panic. Who is going to do the work? How quickly can we employ someone? The panic is replaced by an overwhelming sense of relief when an appointment is made. But just who have you employed and what do you know about them? Has the firm taken on someone who is going to cost them dear?

The following points should be considered in the employment process.

When requesting a reference consider what needs to be asked of the former employers. Was the solicitor responsible for any complaints or claims during the period of employment, if so how many? What type of work did he or she do? What was the standard of their work? How long was he or she employed for? As part of the interview process, ask to see the solicitor’s practising certificate. There have been instances of people being employed by firms who were in fact not qualified.

Find out if the solicitor has ever been the subject of disciplinary proceedings, and if so, the result. Ascertain the solicitor’s full employment history, how many firms he or she worked for, and the reasons for leaving those firms.

Consider the need to address health history, and whether a medical may be needed.

Once the solicitor has joined the firm there should be a probationary period during which a senior member of staff monitors his or her work to ensure that the standard of work is satisfactory and the firm’s working practices are being adhered to.

This should include monitoring of post (including e-mails), communication skills (interviewing techniques), and the standard of advice being given to clients.

At the end of the probationary period there should be an appraisal of the solicitor’s work over that period. Problems or shortcomings should be identified or addressed, both by the new solicitor and the employer.

Such procedures will take time and cost money, but they could also save your practice from multiple claims and increased insurance premiums.

This article appeared in the Gazette 97/31 3 August 2000 and is reproduced here with the kind permission of the Editor.
Representing Clients in Mediation
An Essential new Professional Skill.

Marcus Stone examines the new professional skills required for practice in this field.

A solicitor’s function in representing clients in mediation is best described as ‘mediation advocacy’ to distinguish it from forensic advocacy. The differences will become apparent in the course of this article.

New Skills and old skills
Use of new skills in mediation does not imply devaluation of the traditional ones, for example, legal judgement, exercising powers of analysis, skills in oral presentation, drafting written pleadings and negotiating terms of settlement in litigation. Most lawyers develop these skills as a result of personal aptitude and experience in practice, rather than by any formal training.

Most of these skills can be a powerful contribution to competence in mediation advocacy. Some legal judgement and advice to clients will be required in mediation from the outset until final settlement. But the use of traditional skills is not enough. In mediation, something more is required. Certainly, experienced solicitors who have not mastered mediation advocacy may achieve satisfactory settlements for their clients. They would, however, be much more effective and could achieve much better outcomes if they had the required competence in the new forum of mediation.

The essential difference between forensic advocacy and mediation advocacy consists of the contrast of objectives.

In a court a lawyer seeks to win a contest. He questions witnesses to elicit evidence supporting the facts which his client asserts. On that basis he presents arguments designed to show that, in law, his client is right and the other party is wrong. The objective is a favourable adjudication.

While this is the theory of litigation, in practice what happens is somewhat different. Around ninety per cent of actions never reach any stage of adjudication. They are settled, often at the doors of the court. If this is contemplated from the outset, the way in which the case is conducted in court really becomes a form of persuasive negotiation. Whether the case proceeds to adjudication or is settled however, the goal is to win a contest.

In mediation, on the other hand, the aim is to achieve a mutually beneficial outcome by means of co-operation and creative problem solving. The objective is a voluntary agreement which satisfies the interests of both parties. While a mediation dispute may start as a conflict between two parties, the process is designed to transform this into a harmonious search for solution by the parties and the mediator. There will be no decision at all about who was right and who was wrong - although naturally a party’s view about this may colour negotiating attitudes.

This concept must dominate the process. The mediation advocate’s function before and throughout a mediation hearing is, with his client’s collaboration, to work with the mediator and the other party to that end. How this is done at each stage will be outlined in the rest of this article.

Explaining mediation to clients
When a solicitor is first consulted about a dispute, attempting to negotiate a settlement is often the first step. If this fails and litigation is contemplated, it is submitted that it is a solicitor’s professional duty to explain the option of mediation properly to his client. Although negotiations may fail, this is no bar to successful mediation, because of its special features.

Even where a solicitor is capable of the transition from an adversarial goal to the mediation approach he has still to convey this to his client, clearly and effectively. This will become less difficult as the practice of mediation and awareness of its merits increase. In giving this explanation, the widely known drawbacks of litigation may be emphasised and the advantages of mediation should be made clear. The main appeal should be to the client’s real interests, not his position in law, although that is a factor for consideration. The undesirability of delay, risk and high costs are potent arguments.

Decision to mediate
While explaining the option of mediation to a client is a duty, the decision to refer the dispute to mediation is not. That is a matter for professional judgement. But a solicitor should only reject the option of mediation with the agreement of a properly informed client.

A decision to mediate will depend on the suitability of the dispute for mediation, the solicitor’s advice about the prospects of litigation, and the attitudes of the parties.

Almost any dispute is capable of being referred to mediation. The main exceptions are usually where a party requires some legal declaration of right or a precedent or a legal remedy, e.g., an interdict or where there is a policy of seeking judicial decision of a dispute with consequent publicity, for its deterrent effect. Most commercial or delictual disputes, however, do not exhibit these features. Disputes involving substantial value or technical complexities are frequently mediated successfully with immense savings in cost to the parties.

Advising the client about the prospects of the alternative of litigation needs no special comment here - except that it should be realistic and should take into account the attendant disadvantages of litigation.

The main determining factor, however, is whether both parties genuinely wish to try to resolve the dispute by means of mediation. Overwhelming optimism is unnecessary. All that is needed for the process to work is a sincere attempt, albeit with reservations. Without this, a mediation may simply degenerate into an argument. The hardest task in mediation is to get both parties to the table. Once that has been done there is a high probability of success.

Arranging the mediation
Once a decision has been taken to refer
the dispute to mediation, parties must agree on the appointment of a completely neutral, qualified mediator, his/her fee and expenses, and on a venue, date and time. Mediations can be arranged within a few weeks and usually last for one day. These arrangements are embodied in an Agreement to Mediate - usually in a standard form. Various mediation agencies or individual mediators can progress all these matters.

**Written Submission to the mediator.**

A week or two before the mediation parties must send the mediator, and exchange, written submissions stating their positions. There is no prescribed format or content for these submissions. They should be concise, clear and objective statements of a party’s position in as diplomatic a form as possible, with a view to co-operation. Nothing which is unnecessarily provocative should be included. The purpose of the submissions is simply to set put the issues as seen by each party. They are not designed to prove anything so only documents which are essential for comprehension of the dispute should be attached. It would be premature to include any proposals or suggestions for settlement at this stage.

Preparing for mediation, unlike a proof, is really planning for negotiation. Due to limitations of space, only salient points can be discussed here. Preparation should begin at the time of deciding to mediate as a co-operative effort between the solicitor and the client. The aim should be to overcome obstructive feelings and misunderstandings and to focus on the client’s real interests rather than his legal rights. There should be a determined attempt to predict these aspects of the other party’s case. A preliminary investigation of options for mutual gain which would satisfy each party should be undertaken. The client should be prepared to play an active part in the process but in co-ordination with his solicitor.

**Representing clients in Private Sessions**

In the private sessions the mediator interviews each side separately in total confidence. The mediator will only disclose to the other party anything that he/she is expressly authorised to disclose. This confidentiality combined with the mediator’s neutrality and the fact that the whole process is conducted without prejudice to a party’s rights, creates a safe forum for frank disclosures.

What usually develops in alternating private sessions is a productive psychological pattern of activities facilitated by the mediator’s range of techniques. The role of the representatives is to co-operate in this process. A detailed account of the methods used by mediators and by trained representatives in mediation cannot be given here but a brief description of the above psychological pattern will suffice for insight into what take place.

The first step is to remove obstacles such as feelings of hostility by allowing them free expression and diverting the discussion in a constructive direction. Misunderstandings can be cleared up by permitted communications between the party’s rights and bargaining from fixed positions.

The aim is that a party will depart from the rigid position which he asserted at the outset and which can not be reconciled with that of the opponent. He will be encouraged to disclose this underlying concerns and real interests. Mutual understanding of each other’s real interests will be developed, leading to a degree of trust and co-operation. These interests can often be reconciled by ‘dovetailing’ them, or better, by joint and innovative problem solving which leads to mutual gain (win-win). More specifically, the parties invent options for mutual gain, evaluate them and agree to the terms which meet their interests and end the dispute.

A representative who understands this process can do a great deal from the time when he is first consulted, to accelerate and enhance the progress of a mediation.

**Final Joint Session - Agreeing Settlement**

Once the mediator is satisfied, by shuttling between parties, that they are in agreement on the terms of settlement, a final joint session will be convened where these terms are embodied in a written document.

Although mediation is voluntary the intention is that it should result in a legally binding written agreement, this being a task for traditional legal skill.

Sometimes, where some contingency must be satisfied at a later date, before an outcome can become binding, a mediation may be concluded by a non-binding aide-memoir setting out the terms to which the parties have agreed.

**Acquiring the skills of mediation advocacy**

Clearly, representing clients in mediation demands a major shift in perception from the traditional adversarial approach to disputes. With due respect for traditional skills, the best way to acquire those of mediation advocacy is by means of intensive two-day workshop. This represents a small investment in time for acquiring competency in a new and highly successful form of dispute resolution.

*This article first appeared in the Journal of the Law Society of Scotland, July 2000 and is reproduced here with their kind permission.*

Marcus Stone, a former Sheriff, is author of Representing Clients in Mediation - A New Professional Skill, Butterworths, London 1998 and Principal of The Mediation Bureau, Mediators and Trainers, Edinburgh.
**EUROPEAN STUDY TRIP 2001**

**WEDNESDAY 7TH - FRIDAY 9TH FEBRUARY 2001**

The study trip will be organised by and based at the UK Law Societies Joint Brussels office, with accommodation on a bed and breakfast basis in the European Institute for Irish Affairs at Louvaine.

Travel will be by direct “Sabena” Belfast-Brussels flight departing early Wednesday morning and returning either late Friday or on Sunday.

The approximate cost will be £630.00 (or £510.00*) to include travel; accommodations; the course itself and 3 lunches to which MEPs amongst others will be invited

£630.00 - Wednesday 7th returning late Friday 9th - *£510.00 - Wednesday 7th returning Sunday 11th - apex flights taking in a Saturday night are cheaper).

The cost does not include evening meals during the week or any weekend meals and daily train fares between Louvaine and Brussels. Dinner and daily travel arrangements have been left flexible to allow participants to either stay in Brussels or to enjoy the university town ambience of Louvaine. There is a regular “commuter” train service between Louvaine and Brussels with a journey time of approximately 35 minutes.

The aims of the Brussels study visit are to enable solicitors to:

Learn (more) about the European Union, its institutions and how European policies affect solicitors and their clients;
Visit the European institutions, e.g. the parliament and the court of justice and see them working;
Meet officials working for the European institutions, MEPs; UK government officials, solicitors and other professionals based in Brussels and to hear first hand from them about the EU, how the institutions work and the latest policy developments; and sample Brussels life and some of its well known restaurants!

The programme will include, for example, talks on the European Court of Human Rights’, using EC law to protect your clients interests;
latest developments in EC employment law and policy; the work of the justice and home affairs task force; the role and work of the Parliament; the role of the UK government in EU policy in law making; regional structural funding available in Northern Ireland; recent developments in environmental law and policy; the role of the commission’s legal service.

As numbers on the trip are limited to 12, please reserve your place by completing and returning the form below to the deputy secretary.

---

**European Study Trip - Joint Office, Brussels, February 2001**

I would like to attend the European Study Trip 2001. ☐

Name ____________________________________________

Firm ______________________________________________

Position __________________________________________

Address __________________________________________

____________________________________________________________________

Tel __________________________________________ Fax ______________________

E-mail __________________________________________

Length of stay __________________________________

Preferred travel _________________________________

Please return to: The Deputy Secretary, Law Society of Northern Ireland, Law Society House, 98 Victoria Street, Belfast BT1 3JZ.
Annual General Meeting

Members are advised that the AGM of the association will be held on Thursday 16th November 2000 at 1.00 p.m. at the Lecture Theatre, Law Society House, Victoria Street, Belfast.

Coffee and sandwiches will be available from 12.30 p.m.

Before the formal business of the meeting Mr Brice Dickson has kindly agreed to deliver a short talk on ‘The Human Rights Act in Northern Ireland’.

Anyone interested in serving on the Committee of the Association should contact any of the under noted Office Bearers as soon as possible.

Chairman: Richard Palmer / Peden & Reid Solrs. (9032 5617)
Honorary Secretary: Steven Millar / Culbert Martin Solrs. (9032 5508)
Honorary Treasurer: Stephen Andress / Agnew Andress Higginson Solrs. (9024 3040)

BSA NIYSA Joint Lecture

Venue: Law Society House
Date: Friday 24th November 2000
Time: 1.00 PM (Coffee & Tea from 12.30 pm)
Topic: ‘Building Surveys for Residential and Commercial Property Transactions’
Speaker: Michael Johnston Partner at Watts & Partners, Belfast.
Fee: £10.00
Contact: If you would like to attend, please complete and return the slip opposite to Mr. William Cross c/o Cleaver Fulton Rankin Solrs. 50 Bedford Street, Belfast (028 9024 3141)

Wine Tasting

The Association has arranged a wine tasting evening in conjunction with Direct Wine Shipments on Thursday 16th November 2000 at 8.00 p.m. at the premises of Direct Wine Shipments, 5-7 Corporation Square, Belfast.

The cost is £5 per person and numbers are strictly limited.

The wines that will be available for tasting have been selected with the festive period in mind and will be available for purchase at a reduced price on the evening.

Anyone wishing to attend should forward their details together with payment to Steven Millar, Honorary Secretary, Culbert & Martin, Solicitors, Scottish Provident Buildings, 7 Donegall Square West, Belfast. DX 498 NR BELFAST.

For any further information please contact Valerie Hamilton at Culbert & Martin, Solicitors on Telephone. 9032 5508

‘Building Surveys for Residential and Commercial Property Transactions’

I wish to attend the above lecture and enclose cheque for £

Name ________________________________
Firm ________________________________
Address ________________________________
London Young Solicitors Group

Millennium

International Weekend 28 September – 1 October 2000

Four NIYSA Committee members, Maureen Bell, Nuala Sheeran, Paddy Oliver and John Bell, attended the recent LYSG’s millennium International Weekend, arranged to coincide with the traditional Opening of the Legal Year on the 29th September. The event was hosted by the London Young Solicitor’s Group, and supported by the National Young Solicitors Group, the International Committee of the Law Society, the European Young Bar Association, Young Barristers Committee of the Bar Council and Herbert Smyth.

Around 200 guests attended travelling from all over Europe, North America and the Far East to attend the educational & social events arranged.

After registration on Friday, delegates attended a lunch reception in the Attlee Room in the House of Lords hosted by Mr. Trevor Good, Chairman of the LYSG and were later given an official tour of the Houses of Parliament together with a presentation on the history of the two Houses. That evening delegates were treated to a dinner & cabaret at the Law Society, & were later joined by a number of guests to the opening ceremony.

On Saturday afternoon lectures took place on board a river boat on the Thames given by Jonathan Gavaghan, Chairman of the Young Bar Committee, on the English Legal System and Jane Swann, Vice-Chair of LYSG, on the implications of the Human Rights Act 1998. Saturday evening was a more formal affair with dinner in Simpsons-on-the-Strand.

At the last meeting on Sunday everyone agreed that the weekend had been a great success in terms of its international flavour, packed schedule & new contacts made by all. In particular great interest was expressed by other delegates in our forthcoming Conference planned to take place jointly with the Liverpool Young Solicitors Group & hopefully also the EYBA, in Liverpool 25th – 27th May 2001.

NIYSA Annual Conference

We are pleased to announce that our Conference for 2001 will be taking place in conjunction with the Liverpool Young Solicitors Group in Liverpool, Friday 25th May – Sunday 27th May 2001.

Although our Conference Agenda has yet to be finalized it is anticipated that it will run as follows:

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<th>Date</th>
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<tr>
<td>Friday 25th May</td>
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<td>Welcome and Registration</td>
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<td>Social Event</td>
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<td>Saturday 26th May</td>
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<td>Black Tie Ball</td>
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<td>Sunday 27th May</td>
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<td>City Tour</td>
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<td>Brunch and Goodbyes</td>
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We hope to keep costs in line with previous years at approximately £140.00 per delegate including travel (based on two persons per room) by availing of reduced air fares through early booking.

Accordingly all those wishing to attend should complete and return the attached Booking Form together with a deposit cheque in the sum of £40.00 made payable “NIYSA” no later than Thursday 21st December 2000.

Demand for our Belfast Conference in March 2000, (attended by over 380 delegates), greatly exceeded available places and so early booking is advised, places will be allocated on a first come first served basis.

(Details of our finalized programme and fee will appear in The Writ in early course.)

Booking Form


(Please complete in type or block letters)

Name ___________________________ Firm Name ________________

Address ______________________________________________________

Cost (approx £140.00) __________________________

Tel (inc code) __________________________ Fax __________________________

E-mail __________________________

I will be sharing with __________________________

I wish to book for the NIYSA Annual Conference. I prefer a double/twin room (Please circle your preference). I accept that all payments are non-refundable and that my booking is subject to availability and to written confirmation by the Organisers. The remaining balance shall be payable by me to the NIYSA on request. I shall be responsible directly to the Hotel for any incurred room tab on check out.

Note* We regret that we cannot accept bookings at the Conference Hotel for single rooms or single nights. All bookings must be made through NIYSA.

*Bookings cannot be accepted after Thursday 21st December 2000

Signed __________________________ Date ________________

Please return completed booking form and £40.00 deposit cheque in an envelope marked "NIYSA Conference" to:

Maureen Bell, Vice Chairman, NIYSA, c/o Bigger & Strahan Solicitors, Sinclair House, 89 Royal Avenue, Belfast, BT1 1EX.
MAJOR INDUSTRIAL ACCIDENTS DIRECTIVE

Ireland is being taken to the European Court of Justice for failing to introduce a Directive aimed at preventing such accidents. The Directive, known as "Seveso II", after the major Italian chemical factory disaster, provides for land use, planning and public information in respect of dangerous establishments.

BLOCKADES AND BRUSSELS

The blockade of ports by fishermen and the closure of oil supplies depots by lorry drivers have caused the Commission to operate its procedure of urgently communicating the precise scope of the problem to Member States and asking for national action. The principle of subsidiarity in respect of such action was established in a 1997 ECJ Case in which the ECJ held that not only must Governments not block free movement themselves, but they are also responsible for taking measures to ensure others do not do so in their territory. Failure in this respect by Member States then often leads to a prolonged Court action before the ECJ.

POLICE QUOTA SYSTEM CHALLENGE

A Unionist MLA has insisted that if the UK Government presses ahead to use recruitment quotas the process may be challenged if necessary before the European Court of Human Rights as incompatible with Convention Rights.

GOLDEN SHARES

The European Commission has complained that the use by the UK of “Golden Shares” on privatisation is in breach of EC provision for freedom of establishment and free movement of capital. The complaint regarding BAA is not alone as the Commission is also proceeding against France, Belgium and Spain in respect of similar devices.

HUMAN RIGHTS LAW IN IRELAND

The Irish Government have agreed the outline of draft legislation to incorporate the European Convention on Human Rights. The Government indicates the measures should ensure at least an equivalent level of protection for Human Rights as pertains in Northern Ireland. The draft apparently takes an "interpretative incorporation" approach to the Convention as opposed to direct incorporation. This is intended to ensure that discretion could not be taken away from the Irish Parliament but remains in the hands of the judiciary.

TOBACCO BAN ACTION

The UK Government is to bring forward legislation banning tobacco advertising following a ECJ ruling declaring the UK wide ban unlawful. The European Commission is also expected to bring forth new legislation to ban the advertising. The Health Commissioner indicated despite the ruling that the EU had power to legislate on restrictions on tobacco promotion. The challenge was on the grounds that the Directive was essentially a health measure rather than one to facilitate the single market.

ROAD TOLLS LEVY COULD RISE BY 21% FOLLOWING RULING

In a judgment affecting both the UK and Ireland, the ECJ has held that toll roads and bridges should be regarded as a "service" and are therefore subject to VAT. The judgment, however, exempted toll roads or bridges run by public authorities. As a result, motorists using the East or West link toll bridges in Dublin or the Deptford Tunnel and Skye or Severn Bridges in the UK may have a more expensive crossing.

SUSTAINABILITY

Property’s Friend or Foe?

A one day conference organised by

The Royal Institution of Chartered Surveyors in Northern Ireland

Keynote address by Frank McDonald, Environmental Editor of the Irish Times

Thursday 9th November 2000

at the King’s Hall Conference Centre, Balmoral, Belfast

Cost : RICS members £80 (£68.08+VAT)
Non members £100 (£85.11 + VAT)

For a booking form or further information call RICS 9032 2877 or email ricsni@rics.org.uk
EMPLOYMENT LAWYERS’ GROUP
(NI)

Hon. Sec. Eamonn McArdle, Bar Library, Royal Courts of Justice, Chichester Street
Voice Mail: (028) 9056 2282
Fax: (028) 90231850
E-mail: eamonn.mcardle@ireland.com

Website: www.legal-island.com/elg.htm

Lunchtime Seminar

Public Interest Disclosure (NI) Order 1999
aka “The Whistle Blowers Charter”

Speaker: Deborah Annetts (Deputy Director of the charity Public Concern at Work)
We are delighted to have Deborah Annetts of PCW deliver this month’s talk. Members may be aware of the Fernandes case in GB decided in June of this year when the applicant was awarded £293,000 for dismissal following a ‘protected disclosure’. PCW was involved in that case and is very active in this field generally. The talk should therefore be of great interest to advisors of employers and employees alike.

Date: Friday 1 December 2000
Time: 1pm (coffee and sandwiches served from 12.30pm)
Venue: The Council Chamber, Law Society House, Victoria Street, Belfast
Cost: Members £3.00 per talk
Non-Members £6.00 per talk

Booking forms and cheques should be sent to:- Orla Murray - Departmental Solicitors Office, Victoria Hall, May Street, Belfast
Note - Further talks are planned on disability discrimination and stress injury at work. Watch the Writ for details.

Booking Form

Name _____________________________
Firm _______________________________
Address __________________________

I enclose remittance of £ __________

Membership Renewal

Membership renewals for 2000-01 are now due. Please send your membership subscriptions (£10 per member per year) to the treasurer, Orla Murray, at the address above.

Membership Form

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

Name _____________________________
Address ____________________________
Telephone No: (work) __________________ E-mail __________________
Paying for Residential Care

Treatment of the home

The issue of paying for residential care and in particular what will happen to their home upon entering residential care causes concern to a great many people. At present in Northern Ireland, residential care provided outside the hospital setting is not free of charge to all. Articles 36 and 99 of the Health and Personal Social Services (Northern Ireland) Order 1972 place a duty on trusts to charge for residential care (Articles 36 and 99). Once it has been established that a person requires residential care, a financial assessment must be carried out, in accordance with the Health and Personal Social Services (Assessment of Resources) Regulations 1993 as amended (HPSS’93 Regs), to determine the level of contribution if any which s/he must make towards the cost of her/his care. The financial assessment looks at the person’s income and capital. The HPSS’93 Regs contain fixed capital limits which must be applied in assessing an individual’s eligibility for assistance with fees. If a person has capital in excess of £16,000 s/he will not receive any assistance with the fees. If s/he has capital of between £10,000 and £16,000 then s/he will be deemed to have a tariff income from that capital and may receive assistance with fees depending on the level of her/his income. If the person has capital of £10,000 or less then, provided her/his income is within the income limits, s/he will be able to retain that £10,000 and have her/his residential care fees paid in full. Capital is not defined in the HPSS’93 Regs or the legislation but guidance issued by the Department of Health Social Services and Public Safety provides some examples of capital and the community care legal advisers at the Law Centre can provide further assistance on this point if necessary.

Where an individual falls within the capital limits for the purposes of obtaining assistance with residential care fees, the trust will look at that her/his income to determine whether or not assistance will be provided. The trust will take into account most income including pensions and social security benefits. Exact details of the income which is taken into account can be obtained from the Law Centre on request.

The home and any other land/property which the person owns does fall within the definition of capital and whether or not the value of the home is taken into account in the financial assessment depends on who is left in occupation. The value of the home is ignored if any of the following still lives there;

(a) a partner (including any person treated as a former partner for Income Support purposes because the claimant has gone into residential care);
(b) a relative who is aged 60 or over or is incapacitated;
(c) a child under 16 whom the resident is liable to maintain;
(d) a third party - the trust has a general discretion to ignore the value of the premises occupied by any “third party” where this would be reasonable in the circumstances. The trust’s discretion may be exercised, e.g. where a long-standing carer or family member under 60 continues to live in the property of the person applying after her/his admission to care.

If none of the foregoing applies and the trust does not exercise its discretion, then the value of the home will be taken into account in the financial assessment. However, the value of the home may be nominal if some other person has an interest in the home. According to HPSS’93 Regs, where the jointly owned asset is land, then an individual’s share is valued at the price her/his interest would realise if sold to a willing buyer, taking into account the likely effect on that price of any encumbrance on the land, minus 10% and the amount of any encumbrance secured solely on her/his share. The resulting value could easily be minimal, as there may be few willing buyers for a part share in a house.

If a person transfers her/his assets to some other person prior to entering residential care, then Regulation 25 of the HPSS’93 Regs provides that a person may be treated as possessing actual capital of which s/he has deprived her/himself of for the purpose of decreasing the amount that s/he may be liable to pay for residential care. (There are some exceptions to this and again the Law Centre can advise on those.) It is important to note that trusts have a discretion as to whether or not to assume notional capital and accordingly have to have regard to all relevant factors, they cannot take account of irrelevant factors and could be challenged if they act irrationally in making their decision.

The key question which determines whether this regulation should apply is that of motive. Departmental guidance states that avoiding the charge need not be the resident’s main motive but it must be a significant one. Pragmatically, the earlier the transfer, the lower the risk. But nonetheless, the legal test is one of purpose of transferring property or other assets and not timing. If asset is transferred in the 6 months before entering residential care or after entering care, the trust may effect recovery from the transferee. The Law Centre can provide further advice on this matter.

In Northern Ireland there have been few reported decisions on the scope of Regulation 25, however, two decisions on the GB equivalent of Regulation 25 are worthy of note. In Yule-v-South Lanarkshire Council, decided on 12 May 1999, the Scottish Court of Session held that the “true purpose” of any transfer of property could be determined without a specific finding having to be reached concerning the state of knowledge or intention of the resident. In the case of Robertson v Fife Council, the Court refused to find it unreasonable of the Council to hold that a woman who had transferred her home to her children two and a half years before entering residential care had deprived herself of capital for the purpose of reducing liability for care fees. They were accordingly entitled to treat the woman as having notional capital from which she could pay the fees.

Further advice and information on charging for residential care and how it affects social security benefits, savings and property can be obtained from the community care legal advisers at the Law Centre.

Noreen Brolly, solicitor, Law Centre (NI)

Further information on this topic can be found in the sections on community care of Law Centre (NI) Information Pack 2000, available to members and associate members of Law Centre (NI). For membership details, contact Publications Department, 028 9024 4401
Solicitors Criminal Bar Association

The executive of the association met recently to discuss the proposals put forward by the government on the 19/9/00 in their paper “The way ahead-legal aid reform in northern Ireland”. It is hoped by now that all member firms will have a copy of the synopsis of the paper, which has been circulated, and all comments are welcome and should be addressed to the secretary.

It was agreed at the meeting that the paper was the bones of a new system and that there was a long way to go before a definitive response could be made. It was however to be welcomed that the government accepted that “there was no support for the introduction of contracting for criminal legal aid services” and that Mr. Lock in his remarks agreed that contracting was not an option. It is hoped that this will put to bed all the recent rumours and fears that contracting and franchising would be brought in forcing firms to give up criminal law altogether. This does not mean that the association would not remain vigilant, as it was clear that these matters might still be a threat in the future.

The main principles outlined in relation to criminal legal aid were as follows:

- The abolition of the legal aid department and the introduction of a legal services commission with responsibility for criminal fees
- The budget for the commission would be capped
- The test to obtain legal aid would still be the interests of justice and importantly would still be granted by the courts
- The appropriate authority will be wound up
- There will be an introduction of standard fees for most cases with the provision of extra payment for exceptional cases approved by the commission in line with a case plan that would be monitored by the commission
- The introduction of an advocacy fee

that would be available to either solicitor or counsel (effectively payment for solicitor advocacy at a fair rate) although the fee for solicitor may be slightly less due to the early involvement of solicitors in the preparation of a case

- Registration with the commission to obtain legal aid which then involves following a code of practice and also monitoring of firms by the commission

The details of the levels of standard fees, the terms of the codes of practice, details of what criteria will be applied for exceptional cases are all to be resolved in the next year and the association have written to court service to be consulted at every stage. The government hopes that the new commission will be running from April 2002.

All comments and views are welcome and we will keep the members updated on any developments.
ACCESS TO HEALTH RECORDS - DATA PROTECTION ACT

We are grateful to the Compliance department of the Office of the Data Protection Registrar for allowing us to reproduce their “health subject access” guidance note. We hope it will assist practitioners in resolving problems with general practitioners and hospitals in relation to production of health records.

The Data Protection Act 1998 was implemented on 1 March 2000. Although there are periods of transitional relief during which certain provisions of new legislation need not be complied with, the implementation of the new legislation will have immediate impact in respect of subject access to health records. (For more information about transitional provision see ‘The Data Protection Act 1998 - An Introduction’ available at www.dataprotection.gov.uk under legal guidance of the ‘guidance and other publication’ section).

WHAT IS ‘SUBJECT ACCESS’?

The right of subject access allows the individual to gain access to personal data of which he is the subject. Typically this will involve supplying an individual with copies of records relating to him when asked to do so. For general information about the right of subject access see ‘The Data Protection Act 1998 - An Introduction’.

WHAT IS A ‘HEALTH RECORD’?

A ‘health record’ is defined in the 1998 Act as being any record which consists of information relating to the physical or mental health or condition of an individual, and has been made by or on behalf of a health professional in connection with the care of that individual. (See Appendix 1 for the definition of ‘health professional.’). The definition of ‘health record’ could apply to material held on x-ray or an MRI scan, for example. This means that when a subject access request is made, the information contained in such material must be supplied to the applicant within the fee structure described below.

It is clear, therefore, that many of the records being held by NHS Trusts, surgeries and other health care institutions will constitute ‘health records’ and will therefore fall within the scope of the 1998 Act’s subject access provisions.

WHAT ABOUT THE ACCESS TO HEALTH RECORDS ACT 1990?

This piece of legislation formerly gave individuals a right of access to manual health records - i.e. to the sort of non-automated records that the Data Protection Act 1984 did not apply to. However, the Access to Health Records Act 1990 has now been repealed except for the sections dealing with requests for access to records relating to the deceased. Requests for access to records relating to the deceased will continue to be made under the Access to Health Records Act 1990. However, requests for access to health records relating to living individuals, whether the records are manual or automated, will now fall within the scope of the Data Protection Act 1998’s subject access provisions and must be dealt with in the manner stipulated in that Act.

HOW MUCH CAN BE CHARGED FOR GRANTING SUBJECT ACCESS?

- A maximum fee of £10 may be charged for granting subject access to health records that are automatically processed, or that are recorded with the intention that they may be so processed. In effect, this means that only £10 may be charged for granting access to the sort of records that the Data Protection Act 1998 apply to.

- A maximum fee of £50 may be charged for granting subject access to manual records, or to a mixture of manual and automated records, where the request for subject access will be granted by supplying a copy of the information in permanent form. However, for this provision to apply the request must be made prior to 24 October 2001, after that time only the £10 maximum fee may be charged. It should be noted that there is no express provision for any fee to be charged for copying or despatching copies of records. However, the £50 chargeable fee will allow for some of the costs incurred by granting subject access to be recovered.

- No fee may be charged where the subject access request is to be complied with other than by supplying a copy of the information in a permanent form - i.e. by allowing the applicant to inspect the record. This provision only relates to requests for access to non-automated records at least some of which was made after the beginning of the period of 40 days immediately preceding the date of the request. This provision broadly replicates the provision of the Access to Health Records Act 1990 that, in effect, allows patients to look at recently created records for free.

WHAT OTHER INFORMATION DO I HAVE TO GIVE TO THE DATA SUBJECT?

- A description of the data;
- A description of the purpose/s for which the data are being or are to be processed;
- A description of the recipients or classes or recipients of the data - i.e. persons to whom the data are disclosed

The data subject must also be given;

- Any information available to the controller as to the source of the data;
- An explanation as to how any automated decision taken about the data subject has been made.
APPENDIX 1

WHO IS ‘HEALTH PROFESSIONAL’?

In the Data Protection Act 1998 “health professional” means any of the following:

a. a registered medical practitioner (a “registered medical practitioner” includes any person who is provisionally registered under section 15 or 21 of the Medical Act 1983 and is engaged in such employment as is mentioned in subsection (3) of that section)

b. a registered dentist as defined by section 53(1) of the Dentists Act 1984.

c. a registered optician as defined by section36(1) of the Opticians Act 1989

d. a registered pharmaceutical chemist as defined by section 24(1) of the Pharmacy Act 1954 or a registered person as defined by Article 2(2) of the Pharmacy (Northern Ireland) Order 1976

e. a registered nurse, midwife or health visitor

f. a registered osteopath as defined by section 41 of the Osteopaths Act 1993

g. a registered chiropractor as defined by section 43 of the Chiropractors Act 1994

h. any person who is registered as a member of a profession to which the Professions Supplementary to Medicine Act 1960 for the time being extends

i. a clinical psychologist, child psychotherapist or speech therapist

j. a music therapist employed by a health service body, and

k. a scientist employed by such a body as head of a department

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NORTHERN IRELAND COURT SERVICE

COUNTY COURTS ACT (NORTHERN IRELAND) 1959

APPOINTMENT - COUNTY COURT JUDGE

Following his decision to increase, by one, the complement of County Court Judges, the Lord Chancellor now invites applications from suitably qualified persons for consideration for appointment as COUNTY COURT JUDGE. At the Lord Chancellor’s discretion, this recruitment scheme may be used to fill other vacancies, if any should arise within the next twelve months.

QUALIFICATIONS

Section 103(1) of the County Courts Act (Northern Ireland) 1959, as amended, states that a person shall not be qualified to be appointed a judge unless he/she

(i) has practised for not less than 10 years at the Bar of Northern Ireland; or

(ii) is a solicitor who has practised for not less than 10 years as a solicitor in Northern Ireland; or

(iii) has been a Deputy County Court Judge for not less than 3 years.

The Lord Chancellor will recommend for appointment the candidate who appears to him to be best qualified regardless of ethnic origin, gender, marital status, sexual orientation, political affiliation, religion or disability (except where the disability prevents the fulfilment of the physical requirements of the post). Applicants should normally be aged between 40 and 60 years.

REMUNERATION

Salaries are determined in accordance with recommendations made by the Senior Salaries Review Body and County Court Judges normally fall into Group 6.1. The salary payable is £95,873 per annum.

However, because County Court Judges currently are required to carry out different duties from their counterparts elsewhere in the UK, they are paid at Group 5 level, for which the salary is £103,516 per annum.

A non-contributory pension scheme is available in respect of this post.

Persons wishing to be considered for appointment may obtain an application form together with supplementary information including the selection criteria for appointment to the post by writing to Mr George Richardson, Judicial Services Branch, Northern Ireland Court Service, Windsor House, 9-15 Bedford Street, Belfast BT2 7LT (DX 2005 NR, Belfast 2).

Only those candidates who appear from the information available to meet the published eligibility the selection criteria for appointment will be called for interview.

Completed forms MUST be returned to arrive at the above address not later than 12.00 noon on Tuesday 28 November 2000.
CROWN PROCEEDINGS ACT 1947
CIVIL PROCEEDINGS BY OR AGAINST NORTHERN IRELAND DEPARTMENTS

The Office of the First Minister and Deputy First Minister has published a list specifying the Northern Ireland Departments which are authorised departments for the purposes of the Crown Proceedings Act 1947, and the name and address of the person acting as Solicitor in Northern Ireland for those purposes. The text can be found in the Belfast Gazette dated 6 October 2000.

The authorised departments listed are:

- Department of Agriculture and Rural Development
- Department of Culture, Arts and Leisure
- Department of Education
- Department of Enterprise, Trade and Investment
- Department of the Environment
- Department of Finance and Personnel
- Department of Health, Social Services and Public Safety
- Department of High and Further Education, Training and Employment
- Department for Regional Development
- Department for Social Development
- Office of the First Minister and Deputy First Minister
- Commissioner of Valuation for Northern Ireland
- Registrar General of Births, Deaths and Marriages for Northern Ireland
- Director General of Electricity Supply for Northern Ireland
- Director General of Gas for Northern Ireland

The Solicitor, and address for service is:

The Solicitor
Department of Finance and Personnel
Departmental Solicitor’s Office
Centre House
79 Chichester Street
BELFAST
BT1 3JE

The practical effect of the new arrangements is to update the list of authorised Northern Ireland Departments, and to substitute the Solicitor for the Department of Finance and Personnel, in place of the Crown Solicitor, as the person who will act on their behalf in civil proceedings by or against them.

INTERVIEW OF TERRORIST SUSpects

The Chief Constable announced with effect from 1 October 2000 the closure of Strand Road Holding Centre. He indicated that the current level of threats from the activity by both dissident republican groups and loyalist groups did not yet allow the closure of the Holding Centre at Gough in Armagh. He said however, that, with immediate effect, solicitors would be allowed to be present during the interview of terrorist suspects held there.

The Chief Constable stressed that, as with all such measures, the situation would be kept under constant review. Further progress would depend on the ongoing assessment of the security threat.

REPUBLIC OF IRELAND AGENTS

---------------------------------------------

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CAPITAL TAXES OFFICE

1. NEW INLAND REVENUE ACCOUNT FOR INHERITANCE TAX (IHT)

Recently the Capital Taxes Office introduced a new Inland Revenue Account Form IHT200 which is a fairly radical departure from previous versions of the form. It is now in a format similar to that used for the self-assessment of income tax. The aim is to encourage personal representatives to provide the fullest possible information to the CTO on delivery of their account. One of the main alterations from previous practice is that the CTO is now capturing on computer all information from the account at the pre-grant stage, rather than, as previously, at the post-grant stage. This should reduce the need for the CTO to seek further information at the post-grant stage and should speed up and streamline the process of finalising the inheritance tax position in the majority of cases.

In order to facilitate this process, it would be most helpful if solicitors would note the following:

- For all deaths on or after 18th March 1986 everyone must now, please, use the new IHT200 account. It is no longer necessary to provide vouchers verifying the values of the assets and liabilities.
- Please answer all the questions on Page 2 of the IHT200.
- Please complete and enclose all the appropriate supplementary pages - those for which you have answered “Yes” on Page 2.
- Please calculate the inheritance tax and interest payable (if any) when you complete the form.
- Please complete the Form D18 “Probate Summary”.
- If there is inheritance tax payable, please forward the D18 with the IHT200, the supplementary and a cheque for payment of tax to the CTO.

- If there is no inheritance tax payable and the deceased was domiciled in the UK, please send the completed D18 to the Probate and Matrimonial Office in Belfast or to the District Probate Registry in Londonderry with the application for the grant. At the same time, please forward the IHT200 and supplementary pages to the CTO.

  Please note that it will speed the process of obtaining the grant if you follow these procedures carefully, including calculating the inheritance tax and any interest payable. The CTO is keen for solicitors to make the calculation. However they recognise that there are some cases of exceptional difficulty. In these cases the CTO will assist if the solicitor writes in to request assistance and explains the problem. If you do not do so correctly there will be a delay because the CTO will be contacting you to resolve the issue before it can process the account and receipt and return to you Form D18.

2. REDUCED INLAND REVENUE ACCOUNT FOR INHERITANCE TAX (IHT)

1. In the light of representations received from both practitioners and taxpayers, the Capital Taxes Office is introducing a change for certain IHT accounts where there is no liability to IHT. It has been agreed that where the conditions detailed below are met, the personal representatives may deliver a reduced account of the deceased’s estate.

2. The conditions are that

- the deceased was domiciled in the United Kingdom at the date of death, and
- most or all of the property passing by Will or under intestacy passes to an “exempt beneficiary” either - absolutely, or through an interest in possession trust, to the surviving spouse, who must also be domiciled in the UK, or
  - so as to immediately become the property of a charity registered in the UK, or held on trusts established in the UK for charitable purposes only, and
- the gross value of the property passing by Will or under intestacy to beneficiaries other than exempt beneficiaries together with the value of other property chargeable on death and the chargeable value of any gifts made in the seven years prior to death do not, in total, exceed the IHT threshold.

(The gross value of an asset is the value before deducting liabilities, reliefs or exemptions. The chargeable value of any gifts is the gross value of the gifts after deducting liabilities, reliefs or exemptions that are due.)

3. Other property chargeable on death includes

- joint property passing by survivorship to someone other than the deceased’s spouse (assuming that he or she was domiciled in the United Kingdom),
- settled property in which the deceased had a life interest, other than settled property which then develops to the deceased’s spouse, to a body listed in Schedule 3, or to a charity registered in the UK,
- property that the deceased had given away but in which they reserved a benefit that either continued until death or ceased within seven years of death,
- property situated outside the UK which does not devolve under the UK Will or intestacy.

4. Where the conditions in paragraph 2 are met, the requirement to deliver an account containing all appropriate reliefs or exemptions that are due.)

The reduced account

5. All the questions on page 2 of form IHT200 must still be answered and:

- if the answer to any of the questions
D1-D6 is “Yes”, the relevant supplementary page must be completed, but

- even if the answer to any of the questions D7-D16 is “Yes”, the relevant supplementary page need not be completed if all the property concerned passes to an exempt beneficiary. Similarly, details of items passing to exempt beneficiaries need not be listed on D17.

Form D18 (probate summary) must always be completed.

6. For the avoidance of doubt, where the conditions in paragraph 2 are met but a percentage or fractional share of residue is left to an exempt beneficiary, a reduced account is not appropriate and a full account must be delivered.

The values to include

7. The value of property passing by Will or under intestacy must be included in sections F & G of form IHT200. But where the property is passing to an exempt beneficiary, the personal representatives’ own estimate of the open market value of that property must be used. So, for example, they need not incur the expense of a professional valuation where they might otherwise have done so. Similarly, their own estimate of value may be given for any property included on supplementary pages D1-D6 that passes to an exempt beneficiary. Nominal values must not be used.

8. Where an estimated value is given because property passes to an exempt beneficiary, the item should not be listed in box L3 on page 8 of form IHT200 and the personal representatives do not need to report any changes in value to that property.

Changes to the estate

9. Where an estate is subsequently found not to meet the conditions under which a reduced amount may be delivered, or where an Instrument of Variation (IOV) is signed an election made so that assets that were exempt from IHT become chargeable, any supplementary pages(s) that apply to the chargeable or redirected assets must then be completed.

10. Whether or not an estimate of the open market value was included for those assets in form IHT200, a Corrective Account, signed by the personal representatives and containing the open market value of the assets concerned must also be delivered. The Corrective Account and any supplementary page(s) should be sent to CTO with the IOV and election.

11. A leaflet (IHT 19) giving the circumstances in which a reduced account may be used and which parts of the Form IHT 200 to complete is now available from the CTO. It can be found from the Revenue’s Internet Website home page.

Please note that, in addition to the IHT200, you can find most of the CTO’s booklets etc on its Internet Website at www.inlandrevenue.gov.uk/cto. If you go to the site home page, click on “leaflets and booklets” under “information and publications”. The relevant information is under either Capital Taxes Office or Inheritance Tax.

Employability Assessment in Personal Injury Claims

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THE WELFARE REFORM AND PENSIONS (1999 ORDER)
(COMMENCEMENT NO. 5) ORDER (NI) 2000 AND THE
DIVORCE ETC (PENSIONS) REGULATIONS (NI) 2000.

The above Statutory Instruments are required in consequence of the Welfare Reform and Pensions (NI) Order 1999. The Commencement Order provides for the family law related provisions of the 1999 Order to come into operation on 1 st December 2000 and the Regulations, which will also come into operation on that date, provide for the procedural arrangements in respect of pensions-related ancillary relief orders.

The Regulations make provision pursuant to orders, including those made after proceedings overseas, for ancillary relief in proceedings for divorce, judicial separation and nullity of marriage which relate to the pension rights of a party to the marriage. In particular, they provide for:

(a) the valuation of pension rights by the Court;
(b) notices of change of circumstance to be provided by the person responsible for the pension arrangement to the party without pension rights, or by that party to the person responsible for the pension arrangement; and
(c) the stay period during which pension sharing orders cannot take effect.
Forty-eight Solicitors from nineteen firms across the United Kingdom made their way to Northern Ireland this week for the RAC Millennium Golf Event, held at the famous Royal Portrush Golf Club.

Belfast firm C&H Jefferson, who celebrated their centenary two years ago, played host for the event having won the 1999 competition. For many of the visiting Solicitors it was their first trip to Northern Ireland.

Ian Jefferson, Senior Partner, C&H Jefferson said: “This is the first time the event has been held in Northern Ireland and we want this trip to be very special for our colleagues who have never crossed the Irish Sea before. “The RAC solicitors are fairly unique in that they cover the whole of the UK and have designated areas to work in. As there is no inter-firm rivalry, we really are a big happy family of Solicitors. We are delighted that so many Solicitors have made the trip and we hope we can welcome them back again in the future.”

Pictured watching Eddie Ryan, Director of Legal Services, RAC putting are (from left to right) Gareth Jones, C&H Jefferson Solicitors; Peter Giblin, Clarkson, Wright and Jakes Solicitors; Andrew Harris, Veitch Penney Solicitors and Ian Jefferson, C&H Jefferson Solicitors.

Pictured at the presentation of Belfast’s crest to C&H Jefferson Solicitors for their work in organising the Millennium Golf Event and bringing so many guests to Belfast are (from left to right): Eddie Ryan, Director of Legal Services, RAC; Ian Jefferson, Senior Partner, C&H Jefferson; Lady Mayoress of Belfast, Ms Sandra Armstrong; and Ken Rutherford, Partner, C&H Jefferson.
MAGISTRATES' COURTS (HUMAN RIGHTS ACT 1998) RULES (NORTHERN IRELAND) 2000

MAGISTRATES' COURTS (AMENDMENT) RULES (NORTHERN IRELAND) 2000

The above-named Rules came into operation on 2nd October 2000.

MAGISTRATES' COURTS (HUMAN RIGHTS ACT 1998) RULES (NORTHERN IRELAND) 2000

The above-named Rules prescribe the procedure to be followed when raising a Convention right in any civil proceedings in a magistrates’ court (Rule 3 and Form 1) and on any appeal to a county court (Rule 4 and Form 2).

MAGISTRATES' COURTS (AMENDMENT) RULES (NORTHERN IRELAND) 2000

The above-named rules amend the Magistrates' Courts Rules (Northern Ireland) 1984 so as to provide that any finding by a county court on appeal that a magistrates' court has infringed the appellant’s rights under Article 5 of the Convention shall be certified on the notice of appeal and recorded in the Order Book.

COUNTY COURT (AMENDMENT) RULES (NORTHERN IRELAND) 2000

The above-named Rules came into operation on 2nd October 2000.

The Rules insert a new Part VII into Order 52 of the County Court Rules (Northern Ireland) 1980 (“the principal Rules”) which prescribes the practice and procedure to be used in proceedings in a county court under the Human Rights Act 1998 (“the Act”). In summary, Order 52, Part VII:

- provides that proceedings against a public authority under section 7(1) (a) of the Act may be brought in a county court in accordance with normal procedures (Rule 23(1));
- provides that proceedings under section 7(1)(a) in respect of a judicial act may be brought in a county court only by exercising a right of appeal (Rule 23(2));
- prescribes the information which a party is required to provide where he intends to raise a Convention point in proceedings before a county court (Rule 24);
- makes provision in relation to the giving of notice to the appropriate Minister or Government Department in respect of any proceedings relating to a judicial act and for the joinder of that person or Department (Rules 25 and 26).

FAX NUMBER FOR USE BY SOLICITORS CONTACTING HMP MAGILLIGAN

The Northern Ireland Prison Service has confirmed that a dedicated fax facility for use by solicitors will be made available at Magilligan prison from 9 October 2000.

The fax number is 028 7772 0307

All faxed communications destined for the prison should use this dedicated number.

The normal rules regarding confidentiality of legal correspondence cannot be applied if legal representatives choose to communicate with their clients in this way.

Prisoners do not have access to fax facilities and they may only reply to their legal representatives by telephone or letter.
Unless the parties have agreed in writing the date or dates to be fixed for the hearing of an action and the Appeals and Lists Office has been so notified in writing, the following Practice Direction Applies.

1. **Call over before a listing Officer:**
   (a) the solicitor who has personal carriage of the action in respect of each party must attend with, where necessary, all relevant parts of the case file so as to be in a position to answer any questions which may arise as to why the said action cannot then be given a fixed date for hearing;
   
   (b) the above requirements for the personal attendance of the solicitor having carriage of the action does not apply where that solicitor has instructed a member of his staff or an agent properly briefed with all relevant information and where necessary the relevant parts of the case file, to attend the call over.

2. **Review by a Judge on referral by a listing officer**
   (a) the solicitor, who has personal carriage of the action in respect of each party must attend with all relevant parts of the case file so as to be in a position to answer any questions which may arise as to why the said action cannot then be given a fixed date for hearing;
   
   (b) the above requirement for the personal attendance of the solicitor having carriage of the action does not apply where that solicitor has instructed a member of his staff or an agent, properly briefed with all relevant information and the relevant parts of the case file, to attend the call over on review by a judge.
   
   (c) On referral to a judge for the purpose of review, counsel will only be heard in cases where the solicitor having personal carriage of the action considers that to be necessary, in which event counsel must be properly instructed and the relevant parts of the case file must be brought to court by that solicitor or a member of his staff.
The achievement of the Belfast Agreement, reached at Stormont on Good Friday 1998, is historic. However, it is widely misunderstood. It is an international agreement between the UK and Irish states, which entered into force on 2 December 1999. It is premissed upon, and promises, a transition from terrorism to democracy. The book is in five parts, including the full text of the Belfast Agreement. It is a definitive and unique work, indispensable for practising lawyers in both parts of Ireland and Great Britain.

Author: Austen Morgan is a barrister in London and Belfast. He was involved in the negotiation and implementation of the Belfast Agreement, and advises a range of clients on its constitutional meaning.

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Dear Sir,

I want to commend the Law Society and in particular its Advocacy Working Party and its Chairman, Tony Caher for organising the first Certificate in Advanced Advocacy in Northern Ireland.

I was one of the first students to benefit from this initiative in association with the National Institute of Trial Advocacy and I can thoroughly recommend to any prospective student the Advanced Evidence Course under the guidance of Professor John Jackson and Mary O’Rawe BL and the intensive professional training programme in Advanced Advocacy Skills which was held during the first week of September in the Institute of Professional Legal Studies.

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Yours Faithfully

Joe Rice.

John J Rice & Co Solicitors

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**LETTER TO EDITOR**

**SUPREME COURT OF JUDICATURE OF NORTHERN IRELAND OFFICES OF THE SUPREME COURT**

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

- Monday, 25th December 2000
- Tuesday, 2nd December 2000
- Wednesday, 27th December 2000
- Monday, 1st January 2001

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