

Modernising Stamp Duty

The Government has announced a major reform of the stamp duty regime on UK land and buildings and the Inland Revenue is currently engaged in detailed discussions with the Law Societies and others about how the revised regime will work. If you are a practitioner involved in conveyancing, you should be aware of the changes which will be introduced towards the end of 2003 on current plans.

Why modernise stamp duty?

The Inland Revenue has identified three core objectives for modernising stamp duty:

- **fairness:** the Government is concerned about the increasing extent to which stamp duty is being avoided. It believes that the use of artificial arrangements to avoid stamp duty on commercial property transactions is unfair to the compliant majority, particularly small businesses acquiring premises and individuals purchasing their own homes,
- **e-business:** to create a regime which supports the Government's e-business agenda, and in particular the introduction of electronic conveyancing systems which will make the house-buying process simpler, quicker and more efficient, and
- **modernisation:** to create a legal framework for stamp duty in line with more modern taxes, providing a level playing field

and creating a charge that is based more on the substance of transactions.

What will it mean in practice?

A complete re-write of stamp duty legislation will be introduced in Finance Bill 2003 and the new legislation and administration will take effect from late 2003 under current plans. There are also likely to be further changes to the administration of stamp duty to be aligned with the introduction of e-conveyancing systems which are being planned in England and Wales, Scotland and Northern Ireland for introduction from 2005 onwards. Since e-conveyancing is unlikely to be introduced in Northern Ireland until around 2010, we concentrate here on the changes which will come into force late next year.

The key changes are summarised below and these are:

- scope of the charge
- notification and payment requirements
- post transaction enforcement

1. Scope of the charge

- The revised charge will be limited to transactions involving land and buildings in the UK.
- Stamp duty will no longer be a tax on documents but will be a tax on the substance of the transaction transferring interest in UK land and property. In practice conveyances will remain the bulk of liable transactions but

it will also mean, for example that the charge will extend to transfers of substantial interests in entities (such as companies) owning mainly UK land.

- Other types of assets, such as receivables will be removed from the scope of stamp duty. This means that extra care will need to be taken to ensure all potential transactions have been considered for liability.
- The revised charge will clarify that liability for stamp duty will usually fall on the purchaser or lessee.

2. Notification and payment

- Notification and charge will crystallise either when payment (including non-cash consideration) is made in satisfaction of a contract or other agreement to transfer an interest in land, or when such a contract or agreement is acted on. Rules will be introduced to ensure that payment of a deposit on the exchange of contracts for a house purchase will not trigger the charge before completion.
- It will no longer be necessary to send the documents required at present to the stamp office for stamping. Instead, Inland Revenue is considering the idea of a standard notification form which, together with payment, will replace current arrangements.

Continued on page 2...

CONTENTS

ADR Committee Update	p2	Web Watch.	p6	Remuneration Committee	p14
President's Message	p4	Risk Management	p9	Trustee Act (NI) 2001	p18

Continued from front cover...

3. Post-transaction enforcement

The framework for modernised stamp duty will be suitable for a transaction-based tax, backed up by appropriate enforcement rules covering record-keeping, enquiries, interest, penalties and appeals. Inland Revenue will have a 'window of opportunity' in which to enquire into transactions to ensure that stamp duty has been properly accounted for. The Law Society of Northern Ireland is involved in consultative discussions on the enquiry process.

Lease duty

The Government is also reviewing the duty on the grant of new leases so that the charge corresponds more closely to a stamp duty charge on a transfer of property of a similar value.

Ensuring modernised stamp duty works for Northern Ireland

Inland Revenue has established a consultative process to engage stakeholders in the development of the proposals outlined here. The Law Society of Northern Ireland is participating in that process, along with other agencies such as Land Registers of Northern Ireland and the Valuation of Land Agency.

Further information

The Inland Revenue has created a website for Modernising Stamp Duty where it will publish details of developments of the revised regime as they emerge. You can find it at:
<http://www.inlandrevenue.gov.uk/so/modern.htm>

ADR Committee update



Pictured are (left to right) Mr David Gaston, Solicitor Mediator; Mr Justice Shiel; Professor John Feerick; Mr Alan Hewitt, President Law Society of Northern Ireland; Professor Jacqueline Nolan-Haley; Mr Brian H Speers, Chair ADR Committee and Mr Justice Coghlin.

At the end of June Law Society House was the venue for a presentation by distinguished ADR practitioners and academics from New York. Those solicitors and barristers who had completed the Law Society's ADR training course, together with Mr Justice Shiel and Mr Justice Coghlin, a representative from Court Service and other interested parties were in attendance to hear Professor Jacqueline Nolan-Haley and Professor John Feerick give a New York perspective on ADR developments in the USA. There has been a significant growth in ADR in the States with many cases being directed to ADR by the Courts. Lawyers were not excluded from the ADR processes – indeed most ADR arrangements took place with legal representatives assisting their clients reach the best settlement possible.

Recent developments in the UK including the Cowl and Dunnett cases, where the Court of Appeal gave significant encouragement to lawyers to advise on the suitability of cases for ADR (and followed this with cost

sanctions in cases where ADR was unreasonably refused), suggest that ADR will increase in Northern Ireland as well. This will receive further encouragement when the proposed pilot scheme in the Commercial and Clinical Negligence Lists commences. In the meantime three classes of lawyers have not completed the ADR training course. The last class comprised two Senior Counsel, three other barristers and seven solicitors and completed just prior to the Professor Nolan-Haley seminar. The next course will take place in early spring 2003 and those wishing to express an interest should contact Miriam Dudley of SLS at Queen's University, Belfast. As before places are limited and will be allocated on a first come first served basis. The Dispute Resolution Scheme of the Law Society has recently received several enquiries concerning ADR and maintains a panel of those – both solicitors and barristers – who have taken an approved training course and who have complied with the other requirements for panel admission.

Brian H Speers, Chair ADR Committee

The Insolvency (Amendment) Rules (Northern Ireland) 2002

The above rules came into force on 31st May 2002.

These rules amend the Insolvency Rules (Northern Ireland) 1991 (SR 1991 No 364) ("the 1991 Rules") in the light of Council Regulations (EC) No 1346/2000 of 29th May 2000 on insolvency proceedings, OJ No L160 30.06.00 p1 (the "EC Regulation") which came into force on 31st May 2002.

The EC Regulation aims to provide for the efficient and effective functioning of cross-border insolvency proceedings in the European Union.

The main amendments to the 1991 Rules are –

- to provide procedures for the conversion of company and individual voluntary arrangements and administration into winding up for companies and bankruptcy for individuals on the application of a liquidator appointed in another EU member State ("a member State liquidator") in main proceedings ("member state liquidator" and "main proceedings" are defined by new definitions by reference to the EC Regulation inserted into the 1991 Rules);
- to note particular rules in the 1991 Rules to which the right of a member State liquidator to participate in proceedings on the same basis as a creditor is relevant, for example, entitlement to vote under Rules 2.25 (administration), 4.073 (winding up) and 6.090 (bankruptcy);
- to provide, under the 1991 Rules, for giving notice of insolvency proceedings, and to give notice of various steps taken in such proceedings, to member State liquidators;
- to provide, under the 1991 Rules, for the right of a member State liquidator appointed in main proceedings or a temporary liquidator to be able to apply for

the appointment of a provisional liquidator of a company or an interim receiver of an individual ("temporary administrator" is defined by a new definition by reference to the EC Regulation inserted into the 1991 Rules);

- to provide a procedure allowing a liquidator of a company being wound up voluntarily under Part V of the Insolvency (Northern Ireland) Order 1989 to apply to court (using a newly prescribed form) for the confirmation of the proceedings, such confirmation being a pre-requisite for recognition of a voluntary winding up in other member States under the EC Regulation;
- to remove conflicts between the EC Regulation and the Rules, for example, in new Rule 6.113(3) in relation to the rights in rem (secured rights) of creditors where the secured assets are in other member States;
- to make provision with regard to voting at creditors' meeting and proving for dividends in insolvency proceedings where the EC Regulation applies; and
- to provide revised forms, among other forms, for petitions and orders which require petitioners and the court to consider the applicability of the EC Regulation to the proceedings in question.

ADVERTISEMENT

LEGAL ACCOUNTING AND CASE MANAGEMENT SYSTEMS

AlphaLAW™

GAIN IN: PRODUCTIVITY PROFITABILITY MANAGEMENT CONTROL and CLIENT SERVICES

- In excess of 200 local practices use the AlphaLAW™ systems.
- Systems to match every size of practice.
- Complete integrated systems.
- Initial and on-going costs affordable.

*To discuss your requirements or arrange a demonstration, at your office, please call us.

tel. 028 9045 6700
e-mail info@amsystems.org
web. www.amsystems-alpha law.com

amsystems

President's Message

The profession has been the subject of some less than complimentary coverage in the media recently in relation to complaints by two victims of the Omagh bombing about the manner in which the inspection of their scars was carried out for compensation purposes. In some of the newspapers there was something akin to a feeding frenzy with headlines such as "Lawyer court public's low esteem" (Belfast Telegraph).

Apparently reacting to this coverage, the Under-Secretary of State, Des Browne MP, announced that he had appointed Professor Desmond Greer of the School of Law at Queen's University to undertake a review of current practices operated in criminal injuries cases. He said that the purpose of the review would be two fold: first, to establish the particular circumstances surrounding the cases of Rosemary Ingram and Mary Ellis and, secondly, to evaluate the process and make recommendations as to how it might be improved.

Much might be said about this. It would be inappropriate, of course, for the Society to comment at this stage on the particular cases. However, it is important to point out that:

- (a) in the vast majority of cases, inspection of injuries is undertaken on the advice of the claimants' legal representatives, and it is never undertaken without the consent of the claimant;
- (b) the inspections have considerable value in leading to the earlier settlement of cases, to the benefit of the claimant and also avoiding the necessity of a court appearance;
- (c) the profession's experience of our practice in Northern Ireland indicates that inspection of injuries will often lead to increased offers, and sometimes greatly increased offers, to the benefit of the injured party.

In the meantime, until Professor Greer's review has been carried out, the Under-Secretary of State has directed that the established practice be discontinued where the inspection would involve removal of clothing. It does seem extraordinary that under this directive some claimants who may be prepared to proceed with inspections of their injuries, to help them have their claims settled on

advantageous terms, are unable to do so owing to what appears to be a knee jerk reaction.

The Society has welcomed Professor Greer's review, in that it should allow the present procedures to be examined properly in a reasoned and informed way. It is important that it be completed as quickly as possible and we shall, of course, co-operate fully to that end. We would be happy with any sensible improvements to the procedures, and it is ironic to note that, in our representations to Government on the reform of the criminal injuries compensation scheme, we consistently said that what should be done was to look at ways in which the present process could be improved. We made suggestions as to how this could be achieved, all of them rejected by Northern Ireland Office. We hope that when Professor Greer has had the benefit of the comments of the profession, a balanced report will emerge which the NIO, for once, will actually pay some attention to. Reverting to the Belfast Telegraph article, its writer stated that a survey had suggested that "as a general rule people do not think terribly highly of the legal profession". It might be gently pointed out to her that in nearly all surveys of the public asking them how they rate different professions and occupations, journalists consistently come close to the bottom of the scale in esteem. Conversely, in any objective surveys which we have seen, the great majority of clients in Northern Ireland have expressed themselves to be happy with the services which they have received from their own solicitor. Indeed, according to the Bloomfield Report statistics, in criminal injuries cases only 3% of claimants under the old system considered that their lawyers could have done better. However, why bother with facts when you have an editor's deadline to meet and a few good knockabout lines?

As I write we have just received the written judgment of the Recorder of Belfast, His Honour Judge Hart QC, in the "guidelines" cases under the Children Order (NI) 1995. This seems to establish a way forward for family law practitioners to apply to the Court for



a certificate under Article 3 of the 1981 Regulations with some confidence that they will consequently receive reasonable remuneration. A practice direction is to issue to deal with the procedure to be adopted by the parties and the Court in respect of costs orders, which may well have appeared by the time this article is published. It is very encouraging that Judge Hart has recognised that, given the number of cases which may be involved, the application should be dealt with in a structured fashion and that there is no objection to the Court dealing with them on paper in the first instance, the counsel and solicitor concerned being given an opportunity to make further, and if necessary, oral representations if the judge were minded, in any individual case, to refuse to make an Order under Article 3.

This is, of course, a short term remedy. Legislation will be required to deal with the root problem. However, it is hoped that those family law practitioners who have been suffering considerably from the situation which has prevailed since the Thompsons case will soon have their cash flow restored. The other main cash flow problem for the profession has, of course, been caused by the serious fall off in legal aid payments. I have detailed in letters to the profession the steps which have been taken so far to try to improve this situation, but we are acutely aware that the position is still not at all satisfactory. The Society will continue to keep in close touch with practitioners and the authorities and to do all it can to have an acceptable rate of payment implemented as soon as possible.

As I write work is continuing on the detail of an Interim Payment Scheme directed in the first instance to the

backlog of unassessed non-standard Crown Court cases. We are attempting to secure that a payment can be made at the maximum level for which audit clearance can be obtained, and in a way which allows payments to be made in all cases without compromising the ability of the Legal Aid Department to make the regular monthly payment. Progress on this will be reported as required.

Finally, we publish in this issue an article about the liability of "innocent" partners for the acts or defaults of another partner in the same firm. Unfortunately, this is no mere academic consideration: we have had too many cases in recent years where practices ran into serious difficulties owing to one partner's default. As the article clearly shows, it is not enough for the other partners to say "we didn't know". In this context, the answer to the question "Am I my brother's keeper?" is "Yes".

ADVERTISEMENT

Republic of Ireland Agents

All legal work undertaken
on an agency basis

All communications to
clients through instructing
solicitors

Consultations in Northern
Ireland if required

Contact:

Seamus Connolly
S.C. Connolly & Co.
Solicitors

Bank Building *or* Arran House
Hill Street 35/36 Arran Quay
Newry Dublin 7
County Down
Tel: (01693) 65311 Tel:(003531) 8725622
Fax: (01693) 62096 Fax:(003531) 8725404

ADVERTISEMENT

Housing Executive – SPED (Conveyancing Panel) 2003 – 2005

Introduction

The Executive regularly renews its external Solicitors Panels. As a result, there currently are vacancies on the two member SPED (Conveyancing) Panel.

This Panel meets all the Executive's requirements for external solicitors in respect of the conveyancing necessary in respect of the purchase or sale of dwellings bought under the Executive's Scheme for the Purchase of Evacuated Dwellings (SPED).

Eligibility Criteria

A firm will be eligible for appointment to the Panel if it satisfies all of the following eligibility criteria:

- A. The firm's principal or one of the principals must have been in practice as a principal on his/her own account for at least 3 years.
- B. At least two solicitors must be working in the firm (including any employed solicitor).
- C. The firm must be willing to designate a solicitor in the firm who will be primarily responsible for actually carrying out Panel work.
- D. The designated solicitor must have carried out conveyancing as a predominant (more than 50%) part of his/her workload for at least one year (or for periods in aggregate amounting to one year).
- E. Another solicitor in the firm must have carried out conveyancing as a substantial (more than 25%) part of his/her workload for at least one year (or for periods in aggregate amounting to one year).

Duration of Panel

Membership of the Panel will be for a period of three years.

Selection Procedure

Any firm willing to be considered for appointment may obtain a Questionnaire and details of the selection criteria, by writing to the SPED Panel Co-ordinator, Land & Property Services, 3rd Floor, The Housing Centre, 2 Adelaide Street, Belfast, BT2 8PB.

Completed Questionnaires must be returned to arrive with the Co-ordinator at the above address not later than 4.00 pm on Friday, 25th October 2002. No acknowledgements will be sent.

WEB WATCH

The summer witnessed a number of new web sites from the legal community in Northern Ireland. One of the best came from McIvor Farrell Solicitors in Belfast. Their site follows a basic format which works well. It is bright and easy to navigate and contains a good set of photographs which help to personalize the visitors' experience without causing them to wait too long to enter the virtual office. Impressive.

So too is the web site from Thompsons Solicitors in Newtownards and not because it is all singing and all dancing. Its greatest feature is its simplicity, following a minimalist approach to web design and content that allows visitors to get straight to the information they are looking for.

Another law firm based in Newtownards to launch itself into cyberspace recently is Russells the Solicitors. This site does much to strengthen further the corporate image of the firm with a colour scheme and design that is both pleasant and impressive to the eye. It also contains facilities for the visitor to make that all important first contact with the firm via an on-line enquiry form.



barryjphillips@hotmail.com

Perhaps surprisingly a majority of law firms in Northern Ireland have still to take the plunge into cyberspace. One explanation commonly cited for the reluctance to get a web site, is the cost in terms of both time and money. Web site design is undoubtedly labour intensive and many reputable designers have an entry level fee of several thousand pounds – well in excess of the reach of many small legal practices. Donegal based Peninsula Computer Consultants (www.inishowen.biz) claim to have addressed both issues by offering to produce and host up to four web pages from one of twelve standard designs within 28 days. The fee of less than £200 also includes a domain name.

Law Society members choosing this option might just have a web site in time to enter the competition organized by Legal-Island and Opsis Case Management Software to find the site that merits the accolade "Best legal web site in Northern Ireland". The panel of judges for the competition includes an impressive array of notables in the field of legal information and IT, such as Belfast Telegraph Digital, Legal Technology Insider, as well as the Law Society's Heather Semple. The judging criteria has been deliberately set to ensure that all firms in the province, large and small, have a chance of winning so the number of entries is expected to be high.

All sites reviewed above are listed at www.legal-island.com/solicitors.htm together with an entry form for the competition.

ADVERTISEMENT

Employability Assessment in Personal Injury Claims

A New Service for Litigation Lawyers



Ann Marie McMullan C.Psychol.
Chartered Occupational Psychologist

Occupational Psychology Services (N.I.)
49 Balmoral Avenue Belfast BT9 6NX
Tel: (028) 9028 0555

The British Psychological Society Regulates
Chartered Psychologists (C. Psychol.)

ADVERTISEMENT

Republic of Ireland Agents

We are willing to act as agents
in most legal matters.

Our offices are close to Courts,
Government Buildings and
Commercial Centre.

Fee splitting by arrangement.

Hughes & Liddy Solicitors

2 Upper Fitzwilliam Street
Dublin 2

Tel: (00 3531) 6766763
or (00 3531) 6789701
Fax: (00 3531) 6766702

ADVERTISEMENT

BUILDING PROFITS THROUGH IMPROVED CLIENT CARE SEMINAR

How to Increase Repeat Business and Build Client Loyalty

Keeping clients happy and building client loyalty is now a key factor in competitiveness. With more competition and increased choice for clients it has never been more important for firms to provide excellence in client care.

Research indicates that it is five times more costly to get business from a new client than it is to get more business from an existing client so it pays to look after those clients you've already got.

Presented by Jane Ridley of The Ridley Partnership, an accomplished presenter and Managing Partner of The Ridley Partnership – the law management practice with a renowned reputation for its attention to client care, you will learn:

- ◆ How to focus the firm from top to bottom on the client
- ◆ How the service leaders do it
- ◆ How to design your firm's systems to meet client needs
- ◆ How to profit from client complaints

3 hour CPD seminar

The Law Society – Belfast

Thursday 17 October

2.00pm – 5.00pm

**£100 + VAT
per delegate**



For more information about The Ridley Partnership, visit www.theridleypartnership.co.uk

TO RESERVE A PLACE FAX THIS FORM NOW TO 01833 621150

Client Care Seminar

I wish to reserve _____ place(s) at the seminar on Thursday 17 October – Belfast

- I am unable to attend the event, however I would like to find out more about:
- Business Development & Marketing
 - Developing the firm's strategy for competitive advantage
 - Implementing Lexcel
 - Implementing a Risk Management Programme

Firm: _____

Tel: _____

Email: _____

Please list the names of those attending:
BLOCK CAPITALS

Name: _____

Position: _____

Name: _____

Position: _____

Name: _____

Position: _____

Please return this form by 10th October 2002. We will contact you to confirm your place(s) and details of the venue

If you prefer you may send this form by post to:

The Ridley Partnership, The Coach House, Barningham Park, Richmond, North Yorkshire, DL11 7DW
or telephone 01833 621130 for more details

BELFAST SOLICITORS**ASSOCIATION**

High Court Costs – Update

A delegation of the Association met with representatives of the Insurers in April and May of this year but it was not possible to reach agreement in relation to a guide to High Court costs.

Since those meetings, the Association has received a detailed analysis of 36 cases which proceeded to taxation and which were either settled before hearing or were adjudicated on by the Taxing Master. These cases confirm that the average increase in costs allowed on taxation or agreed prior to taxation was 49.6% over and above the insurer's so called "scale" and 22.46% over and above the current Belfast Solicitors' Association Guide.

Significantly, in not one case were costs taxed at a level lower than the insurers so called "scale".

The Association is currently working on a revised Guide and a more detailed article in relation to the information referred to above, will appear in the Writ shortly. In the interim, once again members are encouraged to time record all files and proceed to taxation where appropriate. It is the Association's experience that many insurers routinely do not adhere to the insurer's "scale" but are reluctant to advertise this fact.

Residential Conveyancing Fees

Members may not be aware that the Office of Care and Protection will, normally approve a fee of 1.5% of the consideration of the sale value of a patient's property. Higher fees may be charged in appropriate circumstances but only with the prior approval of the court.

Whilst it is recognised that some additional work will be necessary in such a sale members should perhaps bear this percentage in mind when providing estimates in domestic conveyancing work.

Recent Developments in Clinical Negligence

by
Mr. Patrick Mullarkey of Campbell Fitzpatrick Solicitors
at
1.00pm on Thursday 24th October 2002 Law Society House.
This will qualify for One hours CPD.
Sandwiches and coffee will be available from 12.30pm.
Cost is £20.00 or £10.00 for members of the BSA.

ADVERTISEMENT

BLUEPRINT LEGAL APPOINTMENTS

Matrimonial Solicitor

Part-time, Belfast, 2 years + PQE, hours flexible, £Neg

Assistant Litigation Solicitor

East Belfast, 1-2 years PQE, £Neg

Assistant Litigation or Conveyancing Solicitor

L/Derry area, 2 years + PQE, £Neg

Assistant Commercial Conveyancing Solicitor

Cork, 2 years + PQE, £Neg

Conveyancing Locum Solicitor

L/Derry, 2 month contract, immediate start

For details call Judy or Orla at
Blueprint Legal Appointments on 028 9032 3333
or email legal@blueprintappointments.com

143 - 147 Victoria Street, Belfast, BT1 4PE.

BSA On-Line

The BSA website can be found at:

www.belfast-solicitors-association.org

BluePrint 
Appointments

Risk Management

ADVICE



Store or Shred

Post-Enron risk managers need to be fully aware of the need to be able accurately and efficiently to store and to retrieve client documentation long after a case is closed.

Partnerships should also carefully consider how long to store records. The period is generally limited to 15 years, except in cases of fraud or deliberate concealment.

However, this still means that a practice may have to provide documentary evidence to defend itself against any potential claim for up to 15 years after the file is closed. Are you confident that you firm could produce documents from a file closed in 1987? If there is a claim made against your firm and the claimant can provide documentary evidence, there has to be a distinct possibility the claim will succeed if you are unable to provide documents to contradict the claim.

Partners responsible for risk management should also carefully consider what constitutes a document and how they will ensure that records are properly maintained. For example, take a voicemail message left by a client. Five years later, the client produces a record of the message he left and claims that inaction by

his solicitor caused him financial loss. If the practice has no system for monitoring voicemail messages – or ensuring that there is a documentary record of an action taken as a result of such a message – there is a good chance the client will win the claim, because the firm is unable to refute his allegation.

E-mail messages could equally be regarded as documents. E-mails are easily deleted, eliminating any record of their receipt; equally, they can be easy to overlook if the addressee is away from the office.

Therefore, risk management procedures will need to address how partners and employees monitor, respond to and store e-mails relating to client files.

Do not forget that case records are especially important where partners have joined from other firms, and your firm could be considered a successor practice if the original partnership is no longer trading.

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



ADVERTISEMENT

Injury & Insult

Your client, severely disabled in a motor accident, unable to work now or ever again, has just won her case in the High Court, and has been awarded £100,000 in compensation. Up until now, she has been receiving Income Support, as she has fairly modest means.



Who is happy?

- You? Undoubtedly: you have brought another case to a successful conclusion and have satisfied another client.
- Your client? Almost certainly: she has been through a few years of protracted meetings and – probably – financial misery, which are now coming to an end.
- The Government? Definitely: they will claw back at least some of the benefits paid to your client over the years, and will not have to pay means-tested benefits to her in the future.

So your client, who has been receiving these benefits and using them to fund her living costs, will no longer receive them, and will have to use her hard-won funds to survive. Frustrating, isn't it?

Personal Injury Trusts

Perhaps you should suggest that she settles the funds from the claim into a Trust. Under the Income Support (General) Regulations 1987, the funds of a trust derived from a payment made in consequence of any personal injury to the claimant, the value of the trust fund and the value of the right to receive any payment under that trust are specifically disregarded from a means-test calculation.

Quite apart from the benefit issue, there are other reasons why your client should consider settling the funds into a Trust.

- There are likely to be tax advantages depending on individual circumstances. Certainly, where the funds are coming from a body that is exempt from Income Tax, there are very significant tax advantages. This might include an NHS trust, so medical negligence claims would be an obvious candidate.
- If Long Term Care is likely to be an issue in the future, funds in a Trust should be exempt from the means test.
- Funds should be protected from creditors in the event of bankruptcy.
- Depending on the Trustees, funds may be protected in the event of a divorce.

Pitfalls

- What type of trust?
- Who should be the Trustees, and, equally importantly, who should not?
- Who are the beneficiaries, now and in the future?
- Where should the Trust funds be invested and what are the tax implications?

It is clear that any lawyer acting in the field of personal injury litigation should be bringing the matter of Personal Injury Trusts to their clients' attention. It is equally evident that, because of the regulatory demarcation between legal and financial advice, that solicitors need to be very careful about how far their advice goes.

How can Open + Direct Financial Management help...

- Drafting of suitable Trust structures to accept claimants' awards for personal injury, with a view to continuing to pass DSS means tests
- Advice on investing the Trust funds for maximum tax efficiency and client protection in line with individual attitude to risk
- Advice on mitigating Inheritance Tax

This article is about investing personal injury compensation, but the fact is that law firms advising on wills, business matters, probate, elderly clients, in fact just about anything, need to be very aware of taxation and financial services matters that may affect their clients. Firms may wish to form a relationship with an Independent Financial Adviser willing to keep them informed on a proactive basis, rather than simply dealing with problems as they arise.

*David Crozier is Investment Director of Open + Direct Financial Management
Tel: 028 9095 9095 Mobile: 07968 142 532 Email: david.crozier@openanddirect.com*

ADVERTISEMENT



open + direct

Professional Indemnity Insurance Premium

During 2001 Open + Direct successfully launched the **Professional Indemnity Insurance Premium Repayment Plan** for solicitors in Northern Ireland.

This plan was introduced to enable professionals to spread the cost of their annual bill over 10, 11 or 12 months.

The Open + Direct Professional Indemnity Insurance Repayment Plan offers a range of benefits including:

- Quick + easy application process
- Choice of Repayment Terms
- Choice of monthly Repayment Date
- Amounts from £500
- Optional Payment Protection Insurance.

In addition to providing finance for the Professional Indemnity Insurance bill, Open + Direct offers a wide range of Personal Loans for a variety of purposes such as new cars, home improvements and holidays.

For more information on Open + Direct products and services, a quotation or to apply today, simply:

CALL NOW ON: 028 9026 9834
(quoting reference **SL**)

Alternatively, you can e-mail us on either:

margaret.crilly@openanddirect.com
heather.kinney@openanddirect.com

This offer is subject to status. Certain conditions may apply. Written quotations are available on request.

Open and Direct Retail Services Limited Registered office: Arnott House 12/16 Bridge Street Belfast BT1 1LU.
Registered in Northern Ireland No: NI32565

ADVERTISEMENT

“Why didn’t you
tell me?”

are words you *don't*
want to hear

Advise your client about
legal costs insurance

Indemnis operates a straightforward
application process. There are no
panel or registration fees



11 Donegall Square South,
Belfast, BT1 5JE

Tel: 028 9057 3300 Fax: 028 9057 3311

DX No: 2024 NR Belfast 2

Website: www.indemnis.com

E-mail: enquiries@indemnis.com

ADVERTISEMENT

DUBLIN AGENTS

MCERLEAN WEIR
SOLICITORS

45 Fitzwilliam Square
Dublin 2, Ireland

Tel: (353-1) 678 7777

Fax: (353-1) 678 7878

E-mail: info@mcerleanweir.com

ALL LEGAL WORK
UNDERTAKEN ON AN
AGENCY BASIS

FEE SPLITTING BY
ARRANGEMENT

CONSULTATIONS IN
NORTHERN IRELAND WHEN
REQUIRED

CONTACT

Kevin H. McErlean, Solicitor
(Also admitted N.I. 1998)



Law Centre (NI)

Winter fuel payments

As part of the recent budget, the government has given a commitment to making payments of this benefit to those entitled each year for the duration of this Parliament.

DLA – restrictions to entitlement to mobility at the lower rate

A recent change to the rules of entitlement to the lower rate of mobility component means that fear and anxiety will only give rise to entitlement to the lower rate if that fear or anxiety results from mental disablement and is such that the claimant cannot go out unaccompanied. Effective from 8 April 2002, this amendment was intended to reverse the impact of Commissioner’s Decision R (DLA) 4/2001 (the reported version of C (DLA) 823/99 and others). In this decision, it was held that the fear and anxiety could result from any disability.

Note: Before the full impact of this amendment can be measured, it will be necessary to test the issue. Law Centre (NI) therefore welcomes potential test cases in this area.

Abolition of capital rules for payments from the regulated Social Fund

Payments from the regulated Social Fund will no longer be subject to the satisfaction of capital rules. However, the rules will continue to be applied to applications to the discretionary element of the scheme.

Carers benefit reform

The government has announced changes intended to extend the current scheme of Invalid Care Allowance from October 2002. From that date, it is proposed to extend entitlement to ICA to those aged 65 or over and continued entitlement for up to eight weeks after the death of the person being cared for. The change of

name from ICA to Carers Allowance, however, will not be introduced until April 2003.

Statutory Paternity Pay

The government has announced the introduction of two weeks statutory paternity leave entitlement. From April 2003, the Income Support rules will be amended to enable fathers who are entitled to paternity leave (but who do not receive Statutory Paternity Pay) to claim Income Support. In addition, parents who receive paternity pay but who are normally low paid will also be able to top up their income with Income Support. These changes should ensure that household income does not fall below a certain guaranteed minimum – currently about £130 per week for a couple with one child where the father takes paternity leave. Such should provide some financial security sufficient to ensure that all low paid employees have the opportunity to take up their statutory right to paternity leave.

Housing Benefit and the elderly – new rules from 2003

The government has unveiled plans to reform the Housing Benefit Scheme to

“simplify support in retirement for 1.7 million pensioners” and in so doing, to help in its fight against benefit fraud. From April 2003:

- most pensioners will no longer have to report every change of circumstance as it happens. Awards will be fixed for up to five years based on the information provided at the start of the claim;
- the lower capital limit will be £6,000 with capital over this level generating a tariff income of £1 for every excess of £500;
- the savings credit, paid on top of the minimum income guarantee, will be treated more generously in determining Housing Benefit.

Hospital downrating

From October 2003, the rules will be changed so that no reductions in pensions occur until someone has been in hospital for thirteen weeks rather than the current six week period. In addition, the changes to be introduced by amendments to the State Pension Credit Bill will also apply to other benefits paid, for example, by reason of bereavement or incapacity. They will also apply to Income Support, Housing Benefit, the Minimum Income Guarantee, and the Pension Credit.

ADVERTISEMENT

OPSIS Ltd

Total Practice Management Solutions

www.opsisltd.co.uk

Save Time & Money with Ireland’s leading Suppliers of integrated Case Management Software

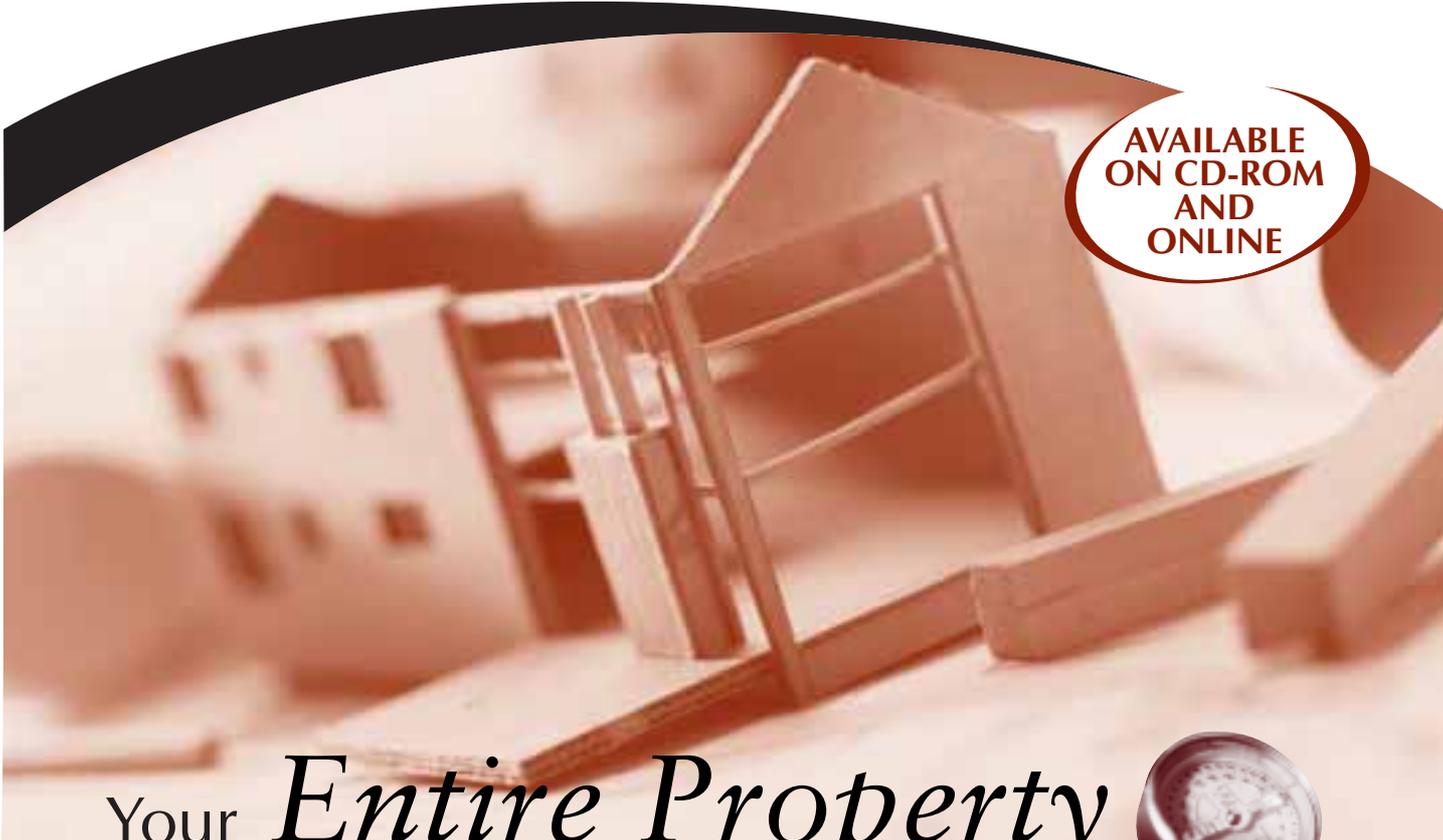


Find out more about how OPSIS can give you the Power to Focus on Practicing Law.

Call now to receive a new OPSIS brochure

Email: sales@opsisltd.co.uk Tel: 9033 3344

ADVERTISEMENT



AVAILABLE
ON CD-ROM
AND
ONLINE

Your *Entire Property
Law library*
at the touch of a button!



Searching instantly across a wide range of sources, **Butterworths Irish Property Law Service** is an essential tool for anyone dealing in this complicated area of law. Updated regularly and covering all aspects of Irish property law, this extensive electronic service is both fast and reliable. Featuring commentary from leading professionals, legislation, case law and precedents this service is a must!

Butterworths Irish Property Law Service includes:

- Laffoy: *Irish Conveyancing Precedents*
- Wylie: *Landlord and Tenant Law*
- Wylie: *Irish Land Law*
- Conway: *Co-ownership of Land, Partition Actions and Remedies*
- Wylie: *Irish Conveyancing Law*
- Farrell: *Irish Law of Specific Performance*
- Wylie: *Casebook on Equity and Trusts*
- *Butterworths Irish Annotated Statutes* (Wylie):
Conveyancing Law
- Monthly Bulletin by Professor John Wylie (includes detailed summaries of cases and Practice Notes).

Butterworths Irish Property Law Service is the only property law electronic service in Ireland or Northern Ireland – from the publishers with the highest quality texts on the area.

For more information on this unrivalled service, or for a no obligation trial, please telephone Gerry McCallion, on **028 9077 1254**

Product Code: IPLD

Format: Online or CD-ROM

Price: On application



Butterworths
A Member of the LexisNexis Group



Remuneration Committee

Costs Survey of Solicitors Practice

The current hourly rate allowable on taxation has its roots in the decision of Donaldson-v-EHSSB (1997) NI 232. Since that case the hourly rate each year has been increased on an inflationary basis by the Taxing Master. The Remuneration Committee of the Law Society of Northern Ireland was concerned that this methodology was unlikely to establish a true reflection of the actual cost of time in solicitors practice's. As a result it commissioned Professor McCutcheon of Heriot-Watt University to conduct a confidential survey of solicitors to establish the type and level of overheads incurred by legal firms in Northern Ireland. This information was then collated by Professor McCutcheon and he prepared an hourly rate calculation to be incorporated within a report the profession.

The 2001 Survey of Solicitors Practice's in Northern Ireland reaffirms that the existing hourly rate allowable on taxation is inadequate to meet the needs of solicitors practice's in this jurisdiction. It is empirical evidence that the cost of providing legal services to our clients continues to increase and that the hourly rate used as a basis of taxation has failed to keep pace. The 2001 Survey provides us with a snap shot of the actual cost of time in our practices. It is not an aspirational figure, it is a graphic demonstration of the hourly rate that is currently required to enable legal firms to break even. It is a figure which firms across Northern Ireland must achieve simply to maintain the services they now provide, notwithstanding the exigencies of practice today. It does not allow for further investment in staff, training, information technology or specialisms, areas which, amongst others, the profession must develop to maintain and improve the legal services offered to the public.

Based on the survey evidence there is a compelling case that the hourly rate should in fact exceed that shown by Professor McCutcheon and fall more closely in line with, for example, the hourly rates currently being achieved in analogous areas in England and Wales.

Those of you who took part in the survey itself will have received an individualised report on a confidential basis directly from Professor McCutcheon. It will set out for you the actual hourly rate that your firm needs to achieve at different levels of fee earner in order to break even. We promised when conducting the survey that we would make the general findings of the survey better known to the profession. This we now do. The survey provides more than an analysis of the hourly rate that is required. It also provides some very interesting information regarding the composition and structure of our firms. The results of the survey have been analysed by

Mr Andrew Otterburn, a management consultant who has worked closely with Professor McCutcheon in the past in preparing reports on similar surveys carried out on behalf of the Law Society of Scotland on a regular basis over the last 20 years.

He has provided a series of 3 articles, the first of which follows, to provide an outline of the findings of the survey. I have no doubt that through the course of the three articles you will find much of interest and assistance to you in the management of your practice. The Remuneration Committee commend them to you.

The 2001 Survey of Solicitors' Practices in Northern Ireland - Part One*

Last autumn 150 firms - 30% of all practices in Northern Ireland, took part in the Society's first Survey of Solicitors' Practices. This is the first of three articles that use the data gathered to calculate financial benchmarks that can be used to

compare and assess financial performance.

In the Survey, the 150 firms that participated were categorised according to three geographical locations and by size, as summarised in table 1:

Table 1 - Size and location of participating firms

	Size of firm			
	Sole principal	2 - 4 partners	5 or more partners	All firms
Belfast	16	37	10	63
West of Bann	19	15	1	35
East of Bann	24	27	1	52
	59	79	12	150

Notes:

- 1 Firms are classified by size according to the number of *equity* partners
- 2 "East of Bann" excludes the city of Belfast

The questionnaire the participants completed was based on their latest accounts and was sent in confidence to Professor McCutcheon of Heriot Watt University. The Society did not see the questionnaires.

Why worry about how you are doing?

50% of solicitors' practices in Northern Ireland have a sole principal, and many of the remainder are relatively small firms. The average number of equity partners in the 150 firms that participated is just 2.2.

It is sometimes difficult, especially for smaller firms to see how they can benefit from benchmarking themselves against other firms. What difference will it make? The same question can be posed of practice management in general and the need, for example, for monthly or quarterly management accounts. Will the firms do anything different? Will they become more profitable?

The answer in many cases is that it will not actually make much difference. There are limits to the hours fee-earners can work and the fees they can charge, and the partners will have a reasonable feel for who is doing what in their firm.

Others realise that there are different ways of running a firm and that one of the problems of partnership is the lack of any published financial information that gives you an indication of how you are actually doing relative to others. You can listen to the bravado at court or can see the offices or cars of your competitors, but neither can be relied on as a true indication of how other firms are doing. Yet some firms will be doing much better than others. They will often be undertaking similar work, yet for some reason their partners earn more money.

One of the purposes of the Law Society Survey was to establish benchmarks of financial performance with a view to enabling individual practices to identify where they were doing better, or not as well, as others.

Staff levels and "gearing"

One of the first areas of difference between firms is their structure in terms of numbers of fee-earners in addition to the equity partners, and

their level of support staff - secretaries, accounts staff and receptionists.

Generally, the more profitable firms tend to have relatively high "gearing" - that is the number of other fee-earners per equity partner. If, for example, a firm with two equity partners has one other fee-earner, it has a gearing of 0.5. If it has four other fee-earners, it has a gearing of 2.

Chart one indicates a wide range both between size groups and within each size group, with gearing increasing with size of firm. A quarter of sole principals have no other fee earners, and a quarter of all other

firms have a gearing of under 0.5. By contrast, a quarter of the larger firms, with more than five partners, have more than two other fee-earners per equity partner.

Note: In each chart we show the median and the upper and lower quartiles. The median is the middle value in the range and is not influenced by the magnitude of the extremes values (as the average is). The lower and upper quartiles indicate the range of values. 25% of firms are below the lower quartile, and 25% of firms are above the upper quartile.

Chart 1 - Number of other fee-earners per equity partner

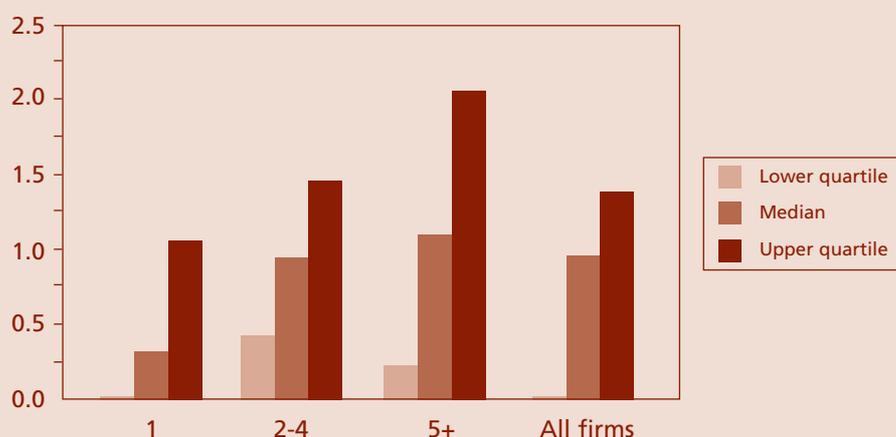


Chart 2 - Number of other fee-earners per equity partner

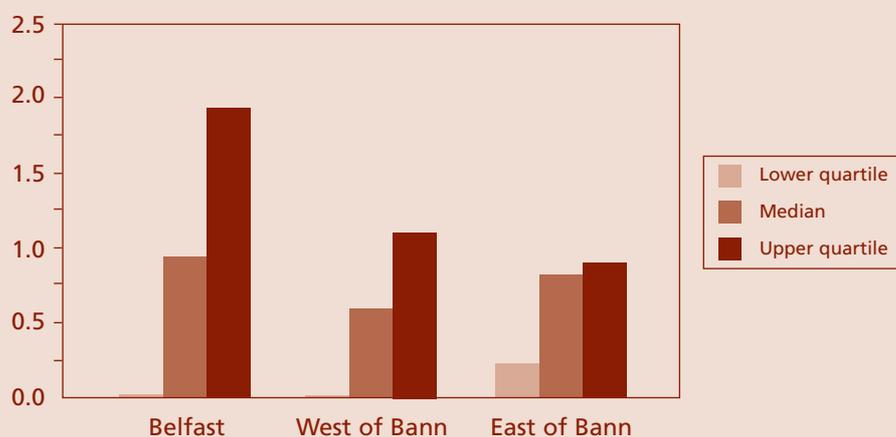


Chart 3 - Support staff per fee-earner

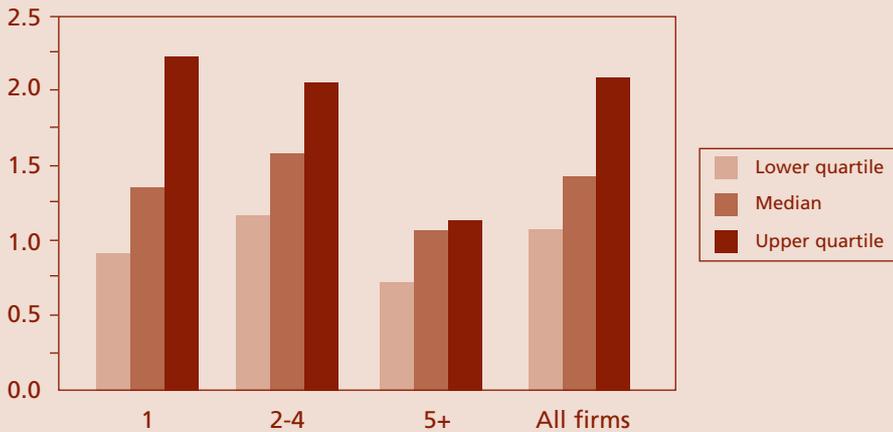


Chart two indicates a similar range, with a quarter of Belfast firms having no fee-earners other than the equity partners, and a quarter having 2 or more other fee-earners per equity partner.

Chart three illustrates the numbers of support staff per fee-earner, and indicates an overall median of 1.1. Behind this lies a wide variation once again, especially amongst sole principals, where this ranges from under one member of support staff for a quarter of firms, to over 2.

There is of course no "correct" level. It will depend on the type of work undertaken and the firm's use of IT. Firms with large criminal practices, for example, typically have lower support staff levels than those undertaking civil work.

Finally, charts four and five illustrate average fees per equity partner. This is the total fees of the firm divided by the number of equity partners, and is normally a key factor in determining profitability. So, for example, if there are two equity partners each billing £100,000 per annum and two other solicitors, each billing £75,000, the total fees of the firm are £350,000 and the fees per equity partner are £175,000. Normally, the higher the fees per equity partner the higher the profits per partner.

Once again, a wide range is indicated. Median fees per equity partner are £158,000 for the larger firms with more than five partners, yet a quarter are below £132,000 and a quarter of such firms are above £300,000.

A quarter of sole principals achieved total fees of under £71,000, and these firms are likely to achieve very low profit levels. By contrast, a quarter of sole principals achieved fees of nearly £180,000, and these firms are likely to be quite profitable.

Fees per equity partner increase broadly with size of firm, possibly because the larger firms are more likely to attract better-quality private client and commercial work. This is especially true in the cities as illustrated in chart five, which indicated that a quarter of Belfast firms generate fees per equity partner in excess of £280,000.

To summarise this first article:

- Benchmarks can help to indicate how your firm compares to others of its size and location;
- Key figures to calculate for your own firm are gross fees per equity partner and gearing - the numbers of other fee-earners in addition to each equity partner. Generally, the higher these two are, the better a firm's profit;
- Some firms utilise their support staff better than others. Some firms have too few staff but others sometimes appear to have too many. In particular, some pay low wages and recruit poor quality staff, and make poor use of IT.

The second and third of these articles will look at the survey findings regarding cost %'s and salary levels.

**John McCutcheon, until his recent retirement, was Professor of Actuarial Studies in the Department of Actuarial Mathematics and Statistics at Heriot-Watt University, Edinburgh.*

Andrew Otterburn is a management Consultant and author of "Profitability & Financial Management", published by the Law Society in London. He specialises in advising law firms on their profitability, management and future strategy. Over the last twelve years he has advised over 130 firms of solicitors.

Chart 4 - Total fee income per equity partner

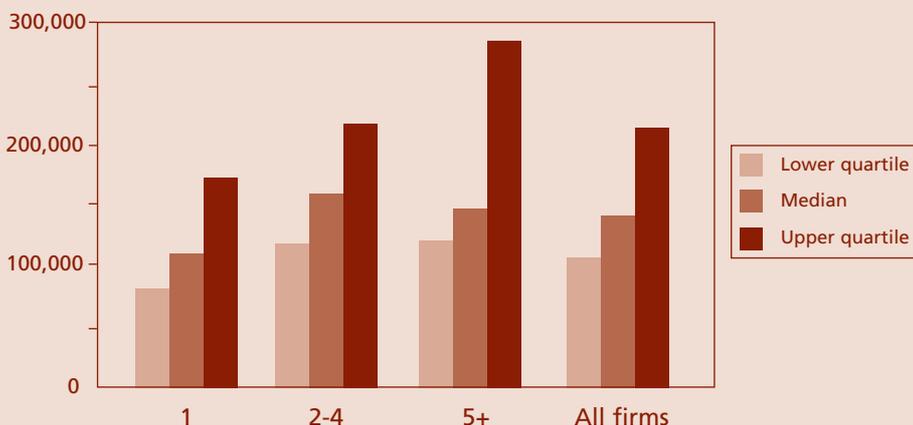
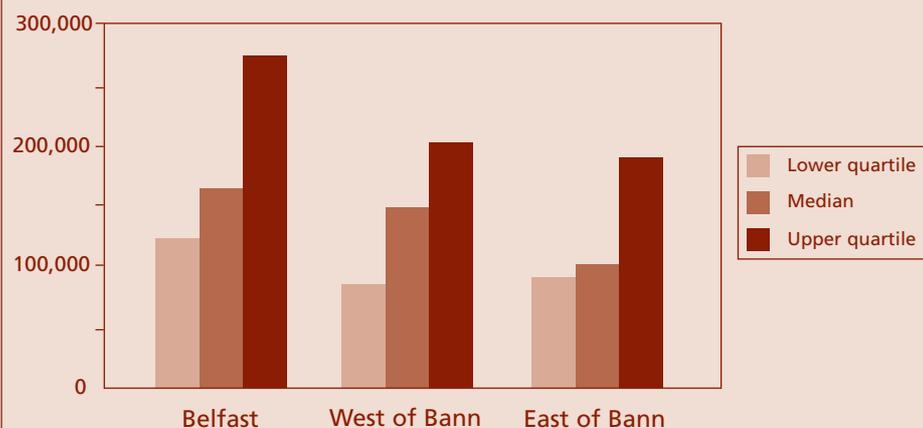


Chart 5 - Total fee income per equity partner



CHILDREN ORDER PANEL SEMINAR

UPDATE ON CURRENT DEVELOPMENTS IN NI FAMILY CASE LAW

With specific reference to children and adoption

Speaker: Gillian McGaughey BL

Venue: Law Society House, Belfast

Date: Wednesday 23rd October

Time: 6.00 p.m. – 7.30 p.m.

Cost: £25.00

Refreshments will be served from 5.30 p.m. onwards

I enclose a cheque for £_____ Please reserve _____ places
for the Update on current developments in NI Family Case Law on
Wednesday 23rd October 2002.

Name: _____

Firm: _____

Address: _____

Honorary Graduands Summer 2002

Dr Margaret Elliott CBE



We are very proud that one of our Past Presidents, Margaret Elliott of the Elliott Trainor Partnership in Newry, received an honorary degree of Doctor of Laws at the University of Ulster graduation in the Waterfront Hall on 4th July last.

Margaret Elliott founded her own legal practice in 1977 but five years later went into partnership with a cousin. In 1989 she became only the second woman, and one of the youngest solicitors, to become President of the Law Society of Northern Ireland. Margaret has held a number of directorships, including Ulsterbus, the Northern Bank, Milk Marketing Board, National Irish Bank in Dublin and Co-Operation Ireland. She was also founding Chairman of the Northern Ireland Centre in Europe.

Public appointments include membership of the Citizens' Charter Advisory Panel, Advisory Committee to the BBC, Fair Employment Commissioner, Civil Service Commissioner and Chair of the National Museums and Galleries of Northern Ireland.

She was awarded a CBE in the Birthday Honours List of 1999.

The Trustee Act (NI) 2001

The Trustee Act (NI) 2001 became effective on 29 July 2002, making a number of very significant changes to the previous law governing trusts and trustees. In this second part in a series of three articles Sheena Grattan continues her outline of the Act's main provisions.

Statutory Default Powers

The focus of last month's article was what the Trustee Act (NI) 2001 (the Act) will require of trustees. In this article attention shifts to what the Act authorises them to do - an aspect of the Act which was summarised as follows by the Lord Chancellor during the second reading of its English counterpart, the Trustee Act 2000, in the House of Lords:

"...trust law governing the powers and duties of trustees has not kept pace with the evolving social and economic role trusts now fulfil. This has become particularly clear as the conduct of investment business has changed quite fundamentally with the introduction of new technology, not least on the Stock Exchange itself. One of the results of this is that trustees who derive their authority from trust documents which make no, or no sufficient, provision for handling trustee investments are finding it increasingly difficult to satisfy their primary duty of acting in the best interests of the beneficiaries."

The new default powers which the Act confers upon trustees will be of most practical benefit to older trusts (especially charitable trusts which enjoy the privilege of perpetual duration) and trusts arising under "home-made" wills, neither of which usually include express administrative provisions.

It should be remembered, of course, that the powers conferred by the Act may be modified, extended or restricted by the terms of the trust instrument. Drafting trusts in light of the Act will be the subject of the final article in the series which will appear in next month's edition of the Writ.

Investment

The need for reform

Since regulation of investment was first

forced upon trustees in the aftermath of the bursting of the South Sea Bubble in 1720, the concept of the "authorised investment" has been characterised by low-risk securities with a strong bias in favour of government stock. The most recent incarnation, the Trustee Investment Act 1961 (which was extended to this jurisdiction by the Trustee (Amendment) Act (NI) 1962), was quite radical in its day, introducing the concept of the wider-range investment and permitting up to $\frac{1}{3}$ of the trust fund (since increased to $\frac{2}{3}$) to be invested in stocks and shares. For many years, however, it had been widely acknowledged that this statutory framework was out of date with modern economic conditions and investment practices. The changes made by the Act seek to address this criticism.

The general power of investment

The Act replaces the cumbrous and technical scheme of the 1961 Act with the "general power of investment", set out in section 3:

"S 3(1) Subject to the provisions of this Part, a trustee may make any kind of investment that he could make if he were absolutely entitled to the assets of the trust"

In particular, trustees are now permitted to invest jointly with other persons. The general power of investment does not include investments in land, except for the power to lend on mortgage. However, this prohibition is illusory as section 8 of the Act authorises trustees to purchase land for any purpose including investment. This is considered below.

Retrospective application

It should be noted that trusts created before 29 July 2002 will generally benefit from the new investment powers in that the Act provides for a retrospective application. However, the general power of investment will not apply if there is a statement excluding it in a trust document made after 2 August 1961.

Acquisition of Land

Section 8 of the Act permits trustees to

acquire land either as an investment or for occupation by a beneficiary or for any other reason. Moreover, no limitation is placed on either the type of interest which may be acquired or on the geographic location of the land. This is one of the differences between the Act and its English counterpart. The Trustee Act 2000 restricts trustees to acquiring a legal interest in land situated within the United Kingdom.

Section 8 is also of retrospective application, extending to pre-existing trusts unless the terms of the instrument excludes it operation.

Delegation

Part IV of the Act introduces a new regime for the appointment of agents, custodians and nominees by trustees.

Scope of delegation

Prior to the Act trustees could not, as a collective body, delegate their dispositive duties to distribute the trust property or their fiduciary discretions (ie powers implying a personal discretion such as the selection of trust investments or the decision whether or not to sell trust property) without express authority in the trust instrument. In view of the increasingly specialised nature of the tasks that have to be undertaken by trustees such restrictions have been seen increasingly as a serious impediment to the administration of trusts. This was especially so in relation to investment powers in that trustees could not employ a discretionary fund manager. It was clear that reform was required if the wider investment powers which it was proposed to give trustees were to be fully effective.

In brief, the Act authorises trustees of non-charitable trusts to delegate any function except one relating to the following: the distribution of trust assets; the appointment of trustees; the allocation of fees or payments between income and capital; any power to delegate to an agent or to appoint a nominee or custodian. Trustees of charitable trusts may delegate fewer functions but are permitted to delegate the management of investments.

Special provisions in relation to investment

The fact that trustees may now delegate "asset management [investment] functions" will be of huge practical significance to the efficient administration of trusts. However the Act imposes a number of requirements (in addition to the statutory duty of care) where the trustees seek to delegate this particular type of function (these obligations were not considered in last month's article only because they would have made little sense before the powers in relation to delegation had been discussed). In short, the trustees must authorise the agent by an agreement made or evidenced in writing and must prepare a policy statement which provides guidance on how the investment function is to be exercised. This policy statement should address issues such as the importance of liquidity, ethical considerations or other restrictions, the balance between income and capital and the frequency both of reviews by the agent and meetings between the agent and the trustees.

Liability of trustees for acts and omissions of agents

One of the greatest sources of confusion in the pre-Act law on delegation was the extent of a trustee's liability for the default of his or her agent. Apparently conflicting judicial decisions and difficult-to-reconcile statutory provisions (ss 24 and 31 of the Trustee Act (NI) 1958) added to the uncertainty. Nor was it entirely free from doubt precisely what responsibility a trustee had to monitor and supervise agents.

The Act now makes it clear that trustees must review the appointment of agents. Provided that the trustees have complied with the duty of care when appointing the agent and have reviewed the work of that agent the trustees will not be liable for any act or default of the agent.

Custodians and nominees

The Act also makes detailed provision in relation to nominees and custodians. In particular it should be noted that trustees must appoint a custodian to hold bearer securities unless there is an express power permitting the trustees to hold such investments themselves or there is a

trust corporation acting as a sole trustee.

Remuneration of Trustees and Executors

Part V of the Act (ss 28-33) deals with remuneration and reimbursement of expenses.

The absence of a charging clause

Prior to the commencement of the Act a trustee or executor could only receive remuneration for services provided to the trust/estate if there was an express charging clause in the instrument or if all the beneficiaries, being sui juris, agreed to payments being made. There were a few other exceptions of very limited practical application – a trustee-solicitor could be remunerated for litigation on behalf of the trust; remuneration could be authorised by the court but this jurisdiction was exercised sparingly and remuneration would be allowed if the trust was based abroad and it was customary for trustees to receive remuneration in that jurisdiction. In short, if a solicitor omitted a charging clause he or she had the ignominy of approaching the beneficiaries/residuary legatees to seek permission that reasonable remuneration is received.

Section 29 of the Act incorporates an implied charging clause in certain circumstances. It applies only where there is no express charging clause or where the trustee is not entitled to remuneration by any statutory provision. A distinction is made between trust corporations and other trustees. A trust corporation, which is not a trustee of a charitable trust, is entitled to receive reasonable remuneration out of the trust funds for any services provided to or on behalf of the trust (including those capable of being performed by a lay trustee). In contrast any other trustee acting in a professional capacity who is not a charitable trustee or a sole trustee is entitled to receive reasonable remuneration out of the trust funds for any services provided to or on behalf of the trust (including those capable of being performed by a lay trustee) provided that each of the other trustees has agreed in writing that he or she may be remunerated for the services.

Section 29 only applies to services provided to or on behalf of the trust

after the commencement of the Act. However, it applies whenever the trust was created.

Finally it should be noted that the above provision does not extend to charitable trusts. However, it is increasingly acknowledged that charities should have the benefit of top-flight trustees notwithstanding the voluntary ethos of the sector. The vexed subject of remuneration of charitable trustees is likely to be revisited in the foreseeable future.

Interpretation given to charging clauses

There is authority (admittedly of some antiquity) that a charging clause must be construed strictly against the trustee or personal representative with the consequence that a clause authorising trustees to charge for professional services would not cover remuneration for work which a layperson could have done (*Re Chalinder and Herrington* [1907] 1 Ch 58). Section 28(2) of the Act now provides that where there is a charging clause it extends to services which a lay trustee could perform.

Nature of charging clauses

Prior to the Act a payment under a charging clause was considered for certain purposes to be a legacy of that value with the consequence that the payment failed if a partner in the firm witnessed the will. Similarly, if there were insufficient assets in the estate to meet all the liabilities payments under a charging clause abated as a pecuniary legacy.

By virtue of section 28 of the Act payments made under a charging clause will be considered as remuneration for services and not as a gift under a will so that the payment will not fail if a solicitor or his or her partner witnesses the will. This will assist in the situation where a will is to be executed off-premises. In light of the recent testamentary negligence cases a solicitor would be well-advised to ensure that he or she provides the necessary number of witnesses (especially since it is virtually impossible to get any hospital personnel to witness a will). It is now only necessary to bring one additional witness as the solicitor can act notwithstanding a charging clause in his or her favour.

continued overleaf...

Insurance

Section 37 of the Act empowers trustees to insure trust property against any risk, replacing the more limited power contained in section 19 of the Trustee Act (NI) 1958.

Appointment and Retirement of Trustees

It must be stressed that the Act does not overhaul the existing law in relation to the appointment of trustees, regarded by many as inadequate. However, it has taken the opportunity to bring Northern Ireland into line with England and Wales following changes introduced there by the Trusts of Land and Appointment of Trustees Act 1996. Sections 35 and 36 of the Act give beneficiaries (provided that they are all sui juris) the power to force the retirement of trustees and to appoint new trustees.

In the final part of this series which appears in next month's edition of the Writ, Sheena Grattan will consider how the Act will affect the drafting of wills and trusts. A list of useful further reading can be found at the end of the article in last month's Writ.

ADVERTISEMENT

**REPUBLIC OF IRELAND
AGENTS**

.....

**LAVELLE
COLEMAN**
S O L I C I T O R S

51/52 Fitzwilliam Square,
Dublin 2, Ireland
DX 109010 Fitzwilliam.

Tel: (3531) 6619826
Fax: (3531) 6614581

E-Mail: law@lavellecoleman.ie

**Willing to undertake agency
work on behalf of
Solicitors in Northern Ireland**

Contact
Marc Fitzgibbon
(Partner)

ADVERTISEMENT



NORTHERN IRELAND
**COURT
SERVICE**

ENFORCEMENT OF JUDGMENTS OFFICE

REVIEW OF SERVICES

All customers using the services of the Enforcement of Judgments Office will be aware that we have now completed the implementation phase of our new computer system. We are now ready to move to the next step of developing the technology to support the modernisation of service delivery to customers.

In addition to widening the method of delivery of our services we want to take a broader look at the quality of the service we provide. We have therefore commenced a major review of all functions and processes with the aim of developing responsive quality services. **It should be noted that this review also covers the Supreme Court Taxing Office and Supreme Court Admiralty Marshal functions which are the responsibility of the Chief Enforcement Officer.**

Obviously key to the success of this review is the creation of effective communication with customers to establish current views, inform future needs and to facilitate the action plan leading to a service that best meets requirements. For the purpose of this review we will be using a range of methods to communicate with all of our customer groups. **The first is a survey, which will issue in early September. As the results of this will advise us of our priority areas I would appreciate if you would take time to complete the questions.**

We will be issuing further information on the progress of our modernisation at regular intervals and anyone wishing to be included in our circulation list or find out more about our modernisation programme can speak to one of the Project Managers at 90724890. I am also keen to establish a network of meetings with our main customers and encourage anyone wishing to use this opportunity to contact me directly at 90724820 or alternatively Jim McManus at 90724821.

**Pauline Shepherd
Chief Enforcement Officer
Enforcement of Judgments Office
Bedford House
16-22 Bedford Street
BELFAST
BT2 7DS**

Solicitors' Disciplinary Tribunal Alert for Practitioners

An important decision of the Disciplinary Tribunal has dealt with an issue which deserves to be drawn to the attention of all members of the profession.

It was held, following the *Re Weston* decision in England, that breaches of the Solicitors' Accounts Regulations imposed strict liability upon the whole firm and not just upon the individual delinquent partner himself. The Tribunal further determined that breaches of the Practice Regulation had to be dealt with on the same basis.

However, distinct from strict liability, the culpability of the other partners had to be determined as a separate issue. There had to be a failure of normal or reasonable standards of professional conduct on their part before culpability would attach to them. That culpability could arise from, for example, the omission to have a reasonable and

effective bookkeeping system which ensures that debit balances erroneously created on Clients' No2 Account ledgers are drawn to the attention of a partner other than the partner responsible for those accounts. Another example could be failure to have a reasonable and effective rota system for opening all post (whether addressed to the firm or to individual partners) so that a letter warning the firm of a problem could not be concealed by the delinquent partner himself. Nor is it sufficient, when evidence of a problem arises, for a partner to make superficial enquiries of the fellow partner concerned and merely receive and accept his verbal assurances that there is no problem and "All is well".

Partners are jointly and severally responsible for ensuring that the firm complies with the Society's Regulations and with all statutory and other

requirements affecting the profession.

That automatically means the firm having proper monitoring and checking systems in place in respect of the operation of the practice. If warning signs appear, there is an obligation to make reasonable enquiries of the solicitor or partner concerned. Busy as practitioners already are, warning signs cannot be ignored if possible disciplinary consequences are to be avoided.

Law Reform Advisory Committee for Northern Ireland

The Law Reform Advisory Committee for Northern Ireland has published a discussion paper which looks at the law relating to unincorporated associations (clubs etc.) in Northern Ireland. The paper looks at options for reform in this areas, and addresses a number of distinct areas such as difficulties faced by unincorporated associations in holding property, taking possession of gifts, making contracts, employing staff and a club's liability towards members who are injured on club premises.

The Committee invites interested parties to comment on the discussion paper and copies can be requested in writing from:

The Secretary
Law Reform Advisory Committee
for Northern Ireland
Lancashire House
5 Linenhall Street
BELFAST
BT2 8AA

Please note that the consultation period ends of 30th November 2002.

ADVERTISEMENT

H

James Nicholson Wine Merchant Wine Tasting

The Lecture Hall
Law Society House
Thursday 14th November 2002
5.00pm-7.30pm

Entry free of charge

For further details, or to receive a copy of our latest list,
please telephone Mary Hamilton or Averil Johnston
028 4483 0091 or email shop@jnwine

James Nicholson Wine Merchant
27A Killyleagh Street
Crossgar
BT30 9DQ
www.jnwine.com

1

3

2

ADVERTISEMENT

APPOINTMENT - COUNTY COURT JUDGE



The Lord Chancellor invites applications from suitably qualified persons for consideration for appointment as **COUNTY COURT JUDGE** to fill vacancies over the next twelve months.

Qualifications

Section 103 (1) of the County Courts Act (Northern Ireland) 1959, as amended by section 18(4) of the Justice (Northern Ireland) Act 2002*, states that a person shall not be qualified to be appointed a judge unless he is:

- (i) a member of the Bar of Northern Ireland of at least ten years' standing; or
- (ii) a solicitor of the Supreme Court of at least ten years' standing.

*It is anticipated that the amendment to section 103 (1) of the County Courts Act (Northern Ireland) 1959 effected by section 18 (4) of the Justice (Northern Ireland) Act 2002 will be in force by the time this appointment is made.

Remuneration

Judicial salaries are determined in accordance with recommendations made by the Senior Salaries Review Body. County Court Judges normally fall into Judicial Salary Group 6.1 for which the salary payable is currently £102,999 per annum. However, because County Court Judges are required to carry out different duties from their counterparts elsewhere in the UK, they are currently paid at Group 5 level, for which the salary is £111,210 per annum.

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

Candidates will be appointed following an interview process which may include shortlisting. CVs will not be accepted. Where it is necessary to prepare a shortlist for interview, only those candidates who best demonstrate competence within the required criteria will be called for interview. It is therefore important that application forms should reflect how, and to what extent the criteria are met.

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).

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 Nigel Hamilton, Judicial Services Branch, Northern Ireland Court Service, Headline Building, 10-14 Victoria Street, Belfast BT1 3GG (DX 527 NR, Belfast 1)**. Completed forms **MUST** be returned to arrive at the above address not later than **4.00pm on Friday 1 November 2002**.

Home Charter Committee

Property Certificates Insurance

The Society has placed this insurance since May 1997 on the recommendation of the Home Charter Committee.

It is a means of reducing the uninsured excess which would otherwise be payable for claims under the Master Policy. The specific insurance, whilst duplicating cover under the Master Policy, reduces the excess to £500 for all claims in circumstances where these arise out of reliance on residential property certificates which are between 6 and 12 months old.

For a sole practitioner, this equates to a potential saving of £1,500 each claim, while for a five partner (or more) firm the saving is £9,500 each claim.

(The limit of indemnity under the policy is £100,000 in the aggregate per firm).

In addition, as such claims will not fall to be covered by the Master Policy, their settlement will not adversely affect a firm's claims experience, with associated potential for weighted premium contributions.

We would emphasise that the insurance is not a means of avoiding "best practice" but does provide an element of conform in the limited circumstances where completion is required urgently, the property certificate is over 6 months old and there is not time to obtain a fresh certificate.

ADVERTISEMENT

APPOINTMENT – RESIDENT MAGISTRATE



The Lord Chancellor invites applications from suitably qualified persons for consideration for appointment as **RESIDENT MAGISTRATE**. The complement of Resident Magistrates is currently under review and this scheme will be used to fill vacancies arising over the next twelve months.

Qualifications

Section 9 (1) of the Magistrates' Courts Act (Northern Ireland) 1964, as amended by section 18(6) of the Justice (Northern Ireland) Act 2002*, states that Her Majesty may, on the recommendation of the Lord Chancellor, appoint fit and proper persons to be resident magistrates, being persons who at the date of their appointments are:

- (i) members of the Bar of Northern Ireland of at least seven years' standing; or
- (ii) solicitors of the Supreme Court of at least seven years' standing.

*It is anticipated that the amendment to section 9(1) of the Magistrates' Courts Act (Northern Ireland) 1964 effected by section 18 (6) of the Justice (Northern Ireland) Act 2002 will be in force by the time this appointment is made.

Remuneration

The current salary of a Resident Magistrate is £82,639. A non-contributory pension scheme is available in respect of this post.

Persons appointed to the Resident Magistracy may be expected, in the first instance, to occupy a peripatetic role. He or she may thereafter be assigned to a particular area of the province and this may require movement of residence.

Candidates will be appointed following an interview process which may include shortlisting. CVs will not be accepted. Where it is necessary to prepare a shortlist for interview, only those candidates who best demonstrate competence within the required criteria will be called for interview. It is therefore important that application forms should reflect how, and to what extent the criteria are met.

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 (subject to the physical requirements of the office).

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 Nigel Hamilton, Judicial Services Branch, Northern Ireland Court Service, Headline Building, 10-14 Victoria Street, Belfast BT1 3GG (DX 527 NR, Belfast 1).

Completed forms **MUST** be returned to arrive at the above address not later than 4.00pm on Friday 1 November 2002

A DEPARTMENT OF THE LORD CHANCELLOR

ADVERTISEMENT

REPUBLIC OF IRELAND AGENT

David M Turner & Co
Solicitors
32 Lower Abbey Street
Dublin 1
Tel: 00353 1 878-7922 -
Fax: 00353 1 872-7736

Email: info@dmtturner.ie

We are willing to act as agents in most legal matters. Our offices are located in the City Centre of Dublin near the IFSC and the Four Courts

Fee splitting by arrangement

Contact: David M Turner

Also admitted in Northern Ireland
England and Wales

ADVERTISEMENT



CROWLEY MILLAR
Solicitors

REPUBLIC OF IRELAND AGENTS

Specialists In:

- Personal Injury Litigation
- Conveyancing
- Probate
- Commercial
- Family

**ALL LEGAL WORK UNDERTAKEN
ON AN AGENCY BASIS**

FEE SPLITTING BY ARRANGEMENT

**OUR OFFICES ARE LOCATED IN
DUBLIN CITY CENTRE**

15 Lr Mount St, Dublin 2, DDE Box 140

Tel. No. (353-1) 6761100

Fax. No. (353-1) 6761630

E-Mail: law@crowleymillar.com

(PLEASE CONTACT JOHN W CARROLL
B.COMM BCL)



PROGRAMME

AUTUMN 2002

Thursday 24 October - 5.30pm - Green Room, Belfast Waterfront Hall

'A Vision of the Future'

Judena Goldring, Environmental Policy Division of the Department of the Environment for N Ireland

This talk by Judena Goldring, Director of the Environmental Policy Division, will address the challenges and obstacles faced in drafting and producing new environmental legislation. She will also provide a useful insight into what the aims and focus of the Division is for the future. This will be of interest to all, particularly those dealing and working with environmental legislation on a daily basis.

BOOKING FORM

Name of Attendee(s) & Company:

Please reserve the following number of places at the above event(s)

24 October

Members £10.00 Non-Members £15.00

Unwaged £5.00

I enclose a cheque for £ _____ as a non-refundable fee made out to the Environmental and Planning Law Association for Northern Ireland.

Please return completed Booking Form to Claire Duffy, Secretary, EPLANI, c/o Cleaver Fulton Rankin, Solicitors, 50 Bedford Street, Belfast, BT2 7FW, DX 421 NR Belfast

The Environmental and Planning Law Association for Northern Ireland

Membership Form

I/we wish to join/re-join EPLANI and enclose a cheque made out to EPLANI for the appropriate fee.

Please tick the appropriate box.

Subscription rates

Individual Membership	£20.00	<input type="checkbox"/>
Unwaged/student Membership	£10.00	<input type="checkbox"/>
Corporate Membership	£60.00	<input type="checkbox"/>

Name: _____

Firm/Organisation: _____

Address: _____

DX Address: _____

Tel: _____ Fax: _____

Email: _____

Please complete and return Membership Form to Claire Duffy, Secretary, EPLANI, c/o Cleaver Fulton Rankin, 50 Bedford Street, Belfast, BT2 7FW, DX 421 NR Belfast

ADVERTISEMENT



APIL NORTHERN IRELAND

**Guidance, information, campaigning and representation
plus specialised training for PI lawyers**

APIL membership gives you valuable support in your personal injury work and is open to all practitioners and students. We are committed to lobbying for change on the issues that are important to you, giving you a strong voice in decision making. APIL has recently been involved in both the Civil Justice Review and the review of county court scale costs, and was consulted on the viability of the Contingency Legal Aid Fund (CLAF).

APIL provides you with guidance on practice management issues, access to a comprehensive database of experts, regular local and special interest group meetings and a members' web site. As an APIL member, you will also receive newsletters with updates and analysis of legal and parliamentary developments.

APIL membership costs £170* for practitioners and £35* for students annually, and all new members receive a voucher to attend a training course for only £99* (* prices do not include VAT).

Forthcoming training and events in 2002/3

Attendance at all three events will fulfil all your Law Society requirements for CPD hours

Teamwork with your client (Belfast - 18 November 2002, venue The McCausland) - 6 Law Society CPD hours

Achieve maximum damages and high levels of client satisfaction. Look at your cases from your client's point of view and you will find your client is your best asset. (Speakers: **Suzanne Burn**, solicitor and deputy district judge and **Frances McCarthy**, APIL's past president and partner with Pattinson and Brewer).

PI update conference (Dublin - 29 November 2002, venue The Burlington) - 4.5 Law Society CPD hours

A conference being held jointly with APIL Republic of Ireland to bring you up to date on recent case law, with sessions on employers' liability and health and safety. The conference is also being followed by an optional dinner and overnight stay. (Speakers: **Nigel Tomkins**, leading personal injury practitioner, Associate Professor of Civil Litigation, the College of Law and consultant and fellow, the College of Personal Injury Law (CPIL), **Robert Martin**, executive committee member, APIL Northern Ireland and solicitor with McAteer & Co, **Colm Barry**, solicitor with John Schutte & Associates, secretary APIL Republic of Ireland and **John Hussey**, solicitor with John Hussey & Co, co-ordinator APIL Republic of Ireland).

PI management skills (Belfast - 28 February 2003, venue to be confirmed) - 6 Law Society CPD hours

This course has been specifically written for PI practitioners who are responsible for one or more fee earners or support staff. (Speakers: **Jim Palmer**, Partner with Fennemores and **John McQuater**, Head of litigation at Atherton Godfrey).

Please call us on (0115) 958 0585 or e-mail mail@apil.com to request a membership pack and further details on training and events

11 Castle Quay, Nottingham, England NG7 1FW

www.apil.com

www.cpil.net

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

Chairperson Orla Murray
Hon. Treasurer Orlagh O'Neill

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

Lunchtime Seminar

Discrimination

A review of recent case law

Speaker: Beverley Jones, partner at Jones & Cassidy, one of Northern Ireland's leading discrimination law practices
Date: 25 October 2002
Time: 1pm (tea coffee and sandwiches from 12.30pm)
Venue: Law Society House, Victoria Street, Belfast
Cost: Members £3, Non-members £6.

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

Booking Form

Name _____

Firm _____

Address _____

I enclose remittance of £ _____

Membership Renewal

Membership fees are now due for 2002-03. Fees are unchanged at £10 per annum. Members are invited to renew their membership for the forthcoming year. New members are encouraged to join. Please return the form below to our Treasurer, Ms Orlagh O'Neill, at the address cited overleaf, with cheques made payable to Employment Lawyers' Group (NI).

Membership Form

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

Name _____

Address _____

Tel (work) _____ E-mail _____

ADVERTISEMENT

Republic of Ireland Agents

HIGHLY COMPETITIVE FEE SPLITTING ARRANGEMENTS

Contact:

Ronan Haughey
M.L.WHITE SOLICITORS

43-45 MONAGHAN STREET
NEWRY, COUNTY DOWN

Tel: 028 302 68144
Fax: 028 302 60966

- All legal work undertaken on an Agency basis
- Communication via Instructing Solicitor or by alternative arrangement
- Consultations may be arranged in North/South as required

Dublin Office – 35 Molesworth
Street, Dublin 2.

ADVERTISEMENT



Hazell Carr Collins is a firm of actuaries specialising in providing expert advice to solicitors and barristers on pensions and other long-term financial issues.

With a network of consulting actuaries covering the UK, Hazell Carr Collins will be able to provide expert advice on:

- All stages of the complex process of determining the pension rights of divorcing couples
- Sharing the pensions of divorcing couples to ensure your client receives the fairest result
- The assessment of pension loss in general civil litigation matters

Fixed fees normally agreed in advance

Contact:

Brian Spence is our actuary for Northern Ireland. Brian will be happy to discuss your cases on a free informal basis at first - if you wish. Please contact Brian on 02890 412020 or email brian.spence@hazellcarr.com.

Hazell Carr Collins is a division of Hazell Carr plc which is regulated by the Financial Services Authority in the conduct of investment business.

www.pensionsadviceondivorce.com

High Court, Court of Appeal and Tribunal decisions

Clydesdale V Driver and Vehicle Testing Agency et al, Court of Appeal, (Carswell, LCJ; Campbell, LJ), 1st August 2002

Appeal by case stated from decision of industrial tribunal. – sex discrimination. – victimisation. – preliminary issue of whether applicant entitled to bring proceedings under the Sex Discrimination (NI) Order 1976 against third named respondent. – whether tribunal misdirected itself in law. – appeal allowed in part

Heatley V Davies, Court of Appeal, (Carswell, LCJ; Girvan, J; Weatherup, J), 2nd August 2002

Appeal against previous ruling that appellant's claim was barred by limitation. – medical negligence. – personal injuries. – date of knowledge. – appeal allowed

In the matter of an application by James Stewart for judicial review, High Court Queen's Bench Crown Side, (Gillen, J), 28th June 2002

Application for judicial review of decision of Planning Appeals Commission. – full planning permission given for motor factors business and development adjacent to applicant's property. – whether Commission failed to understand and apply relevant planning policy. – whether applicant's human rights breached. – application dismissed

In the matter of an application by Thompsons Solicitors and Collette Owen McAllister for judicial review, High Court Queen's Bench, (Kerr, J), 5th July 2002

Judicial review. – costs. – taxation. – legal aid. – power of District Judge to tax costs in Children Order proceedings. – HELD that County Court does not have the power to order taxation of costs in these proceedings

In the matter of an application by Colin King for judicial review, High Court Queen's Bench, (Kerr, J), 5th July 2002

Conviction. – murder and burglary. – determination of tariff period by Life Sentences Review Committee. – application that materials to be provided to the Committee should be restricted to those which existed at time of sentencing. – whether role of Secretary of State in the process is in breach of the ECHR. – application dismissed

In the matter of an application by Mark Parsons for judicial review, High Court Queen's Bench, (Kerr, J), 23rd July 2002

Employment. – appointment of police officer for PSNI. – Protestant applicant turned down since Chief Constable required to make equal appointments from both communities. – application for judicial review of decision. – declaration sought that this was incompatible with art.9 ECHR. – application dismissed

In the matter of an application by Joseph Ajewole for judicial review, High Court Queen's Bench, (Kerr, J), 9th July 2002

Application for judicial review of Immigration and Nationality Directorate that applicant and family be removed from United Kingdom. – whether valid application for leave to remain had been made. – HELD that application for removal quashed and order made accordingly

In the matter of an application by the Department of Culture Arts and Leisure for judicial review, High Court Queen's Bench, (Kerr, J), 16th July 2002

Fish culture licence to farm. – application to Department to renew licence. – objection by Angling Association. – judicial review brought to clarify position of whether Commission empowered to hold public inquiry where the application was to amend a licence

In the matter of J (Threshold criteria: parental concessions), High Court Family Division, (Gillen, J), 28th June 2002

Application by Health and Social Services Trust for care order. – whether proper threshold criteria satisfied. – whether proper to make care order in light of care plan

In the matter of an application by Martin Meehan for judicial review, High Court Queen's Bench, (Kerr, J), 19th July 2002

Application to challenge actions and decisions of RUC officers concerning relay of information to him about threats made on his life in telephone calls. – whether delay of officers in responding to threats and in notification. – application dismissed

In the matter of an application by Hilary Glennon for judicial review and in the matter of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 and in the matter of a decision of Mr John Fyffe, Resident Magistrate, made on 18th February 2002, High Court Queen's Bench, (McLaughlin, J), 28th June 2002

Domestic violence. – application to quash Non-Molestation order since it did not include an exclusion zone round the applicant's home. – jurisdiction of Magistrate's Court to include exclusion order. – HELD that RM has power to order an exclusion zone to be attached to Non-Molestation Order. – application successful and case sent back to RM for reconsideration accordingly

Kerr V Department for Social Development, Court of Appeal (Carswell, LCJ), 4th July 2002

Appeal of decision of Chief Social Security Commissioner. – dismissal of claim for funeral expenses from Social Fund. – burden of proof on claimant to establish entitlement. – appeal allowed

Patterson V Davis, High Court Queen's Bench, (Sheil, J), 28th June 2002

Personal injuries. – contributory negligence. – damages. – serious shoulder and chest injuries as result of accident. – employee gratuitously

advanced sum to plaintiff while off work and expected him to repay by claim of special damages. – HELD that plaintiff is entitled to recover wages paid while off work, to be held in trust for employers

R V Roy, Court of Appeal, (Nicholson, LJ; Weatherup, J), 4th July 2002

Application for leave to appeal against sentences. – rape, false imprisonment, burglary and possession of controlled drugs. – whether sentence excessive. – application dismissed

R V Stevens, Court of Appeal, (Carswell, LCJ; Campbell, LJ; Weatherup, J), 5th July 2002

Robbery. – appeal against conviction (previously refused by single judge). – video identification evidence. – no Turnbull-type warning of risks. – whether conviction safe in the absence of warning. – application for leave to appeal dismissed

Re S (Direction hearings: contact order), High Court Family Division, (Gillen J), 28th June 2002

Appeal against Family Care Centre order reducing contact between child and parents. – contact order made in the context of a directions hearing. – court made Order without giving appellants notice that the issue was to be raised and without application by Trust. – no statement or evidence provided. – Court failed to afford parties a reasonable opportunity to make representations and failed to invite parties to comment on contact arrangements. – appeal allowed; order set aside and case remitted to Care Centre for hearing

Williams V Nortel (Northern Ireland), High Court Queen's Bench, (Coghlin, J), 13th June 2002

Health and safety. – plaintiff developed asthma. – whether asthma occupational or constitutional. – held that asthmatic condition was constitutional and judgment given for defendant

Copies of the above are available from the library

ADVERTISEMENT

S.T.E.M. Investigations

Surveillance Tracing Enquiries Matrimonial

- Accident/Disability Investigations
- Insurance Fraud/Claim Investigations
- Internal & External Fraud/theft Investigations
- Matrimonial Investigations (special offers)
- Stalking, Harrassment and Intimidation evidence gathering
- Employers' liability claims
- Credit card and vehicle recovery
- Process Servers
- Background enquiries

S.T.E.M. Investigations offers expert surveillance teams, each member having numerous years of experience in **Surveillance** (covert, foot, mobile and static), **Enquiries, Investigations and Court appearances.**

S.T.E.M Investigations

PO Box 188

Bangor

Co Down

BT19 6WY

Tel: 028 9147 9523

Mob: 07736 226681

enquiries@investigatorni.co.uk

www.steminvestigationsni.co.uk

A Member of the Association of British Investigators

ADVERTISEMENT



Computers— Networks— Imaging— Accounts— Time Recording

— Case Management— Office Management— Diary Systems—

Word Processing— Court Forms— Email— Internet Consultancy

— Training and Consultancy—

“Tie it all together with a PhiBeta system”

Complete Integrated Computer Solutions for the Legal Profession

PhiBeta

PhiBeta Business Systems Ltd

43 Rosetta Road, Belfast BT6 0LR

Telephone: 028 9049 1336 Fax: 028 9064 0753

ADVERTISEMENT

LET YOUR APPEARANCE REPRESENT QUALITY



Clarke & Dawe bespoke suits are carefully selected from our comprehensive range of fabrics, styled to your individual needs and tailored in accordance with your measurements.

For a limited period between 23rd September and 31st October tailored suits are available from £450.00. There is an abundance of cloths and linings to choose from, no one should miss this opportunity to be measured up!

Clarke & Dawe
Clothiers • Shirtmakers • Tailors

Missing Wills

Would anyone holding a will in the name of Peter James King formerly of 13 Clontigora Road, Newry, Co Down, BT35 8RD, please contact Ciaran Rafferty Solicitor of 98 Hill Street, Newry, Co Down. Telephone: 028 3026 1102. Fax: 028 3026 0757.

Beatrice Teresa Quinn deceased late of 20 Daly Park, Belleek, County Fermanagh and formerly of 77 Haslemere Avenue, Boston Manor, Hanwell, London.

Date of death – 30 May 2002. Would any person having knowledge of the whereabouts of a Will of the above named person, please contact:

John Quinn
Solicitor
14 Belmore Street
Enniskillen
Co Fermanagh
BT74 6AA
Telephone:- 028 6632 6008
Fax:- 028 6632 2592

Re Martha Beck, deceased (retired Post Mistress)

Late of 16 Ferry Street, Portaferry

Date of death 12 August 2002

Would any person having knowledge of the whereabouts of a Will of the above named person, please contact:

Macaulay Wray Solicitors
35 New Row
Coleraine
Telephone: 028 7035 2421
Fax:- 028 7035 2425

Locum Required

Locum wanted to cover maternity leave mid/end January 2003 for four months.

Contact John J Taylor Solicitors, 1 Dobbin Street, Armagh. Telephone 028 3752 5400.

Information Required

I am acting for the personal representative in the estate of a former Docker in respect of an Industrial Disease Claim.

Would any person or solicitor having information and in particular, details of the Employer Liability Insurers of Depo Limited – in dissolution (Inc: 21.12.1950 Liquidator appointed 8.8.1980), please contact Brian Wylie of Wylie & Company Solicitors, 37 Glen Road, Castlereagh, Belfast, BT5 7LT. Tel:- 028 9070 9129.

Ground Rents

We are retained by a client who is actively purchasing residential or commercial ground rents.

Please forward details to:-

Mr David Thompson
c/o Brown McConnell Clark
Chartered Surveyors
Valuers & Property Consultants
11 Rosemary Street
BELFAST
BT1 1QF
Tel:- 028 9032 0634
Fax:- 028 9024 8810

Assistant Solicitors Required

We have a vacancy for an Assistant Solicitor. The position would be suitable for a recently qualified solicitor.

Apply in writing with full CV to:-
Simmons Meglaughlin & Orr Solicitors
20 Northland Row
Dungannon
Co Tyrone
BT71 6BL

Enthusiastic Assistant Solicitor required for established practice. General workload (excepting matrimonial and criminal) with opportunity to specialise. Ideally 2-4 years PQE.

Please apply with CV in writing to:
Ms Jane Crilly
Francis Crilly Solicitors
24 Antrim Road
BELFAST
BT15 2AA

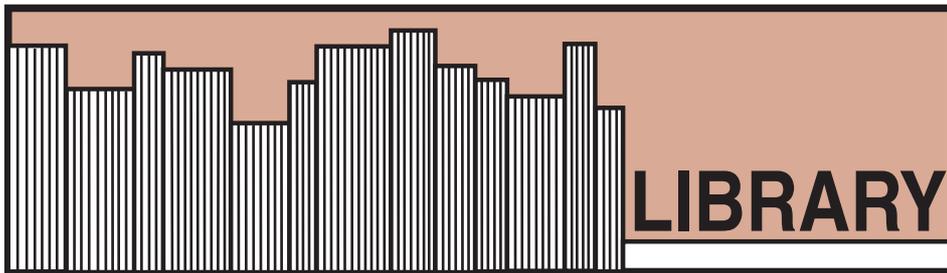
ADVERTISEMENT

Safe Document Storage

Subcontract your storage of important documents. Convenient, Secure and Cost Efficient. For £500 per annum for a three drawer filing cabinet, we offer the security and fire protection of a bank vault. Located close to Belfast City Centre.

For further details write to:
Box 103
Citigate NI,
Citigate House, 157-159 High Street,
Holwood. BT18 9HU





Recommended Reading

Late Payment of Commercial Debts (Interest) Act 1998 – an update

The Law Commission has recommended that courts should be able to award compound interest where monetary judgements are involved, arguing that the claimant has been affected by compound rates while waiting for the award and simple interest rates fail to reflect the losses suffered.

Legislation

Late Payment of Commercial Debts (Interest) Act 1998

<http://www.hmso.gov.uk/acts/acts1998/19980020.htm>

This act provides qualifying creditors with a statutory right to claim interest on qualifying debts from qualifying debtors.

Late Payment of Commercial Debts (Rate of Interest) (No. 3) Order 2002

<http://www.legislation.hmso.gov.uk/si/si2002/20021675.htm>

This Order commencing on 7 August 2002 partially implements Council Directive 2000/35 on combating late payment in commercial transactions. It allows all suppliers of contracts entered into after the date of commencement to charge 12% interest on all unpaid debts, 8% above the Bank of England base rate, unless a lower rate has been agreed.

The Late Payment of Commercial Debts Regulations 2002

<http://www.hmso.gov.uk/si/si2002/20021674.htm>

These Regulations implement Directive 2000/35/EC of the European Parliament and of the Council of 29th June 2000 on combating late payment in commercial transactions.

Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions

http://europa.eu.int/eur-lex/en/search/search_lif.html

Guide to Legislation

The DTI has published a guide entitled **A User's Guide to Late Payment Legislation** which is available from <http://www.dti.gov.uk/latepay/latepaymentguide.pdf> (as at August 7, 2002).

Articles

Credit control and the Late Payment of Commercial Debts (Interest) Act 1998. (Provisions of 1998 Act which entitles suppliers to charge statutory interest on bills from debtors which have passed agreed date of payment). Corbitt: 2002, JP 166(1), 11-12

Bringing an end to late payment. (Second phase of Act brought into force 1 November 2000 defining "small business" which contracts qualify, meaning of "substantial remedy" and provisions relating to payment of interest). Fiveash: 2000, Legal Week, 2(46), 19

Late payment directive. (Extent of problem and its effect particularly on small businesses, introduction of 1998 Act which will be extended to all businesses by 2002 and main provisions of Council Directive 2000/35 to be implemented by August 8, 2002).

Lawson: 2000, SJ 144(42), 1030-1031

New Books in Library

- 1) Christou: Boilerplate; practical clauses. 3rd ed. Sweet & Maxwell. 2002
- 2) Kessler: Drafting trusts and will trusts; a modern approach. 6th ed. Sweet & Maxwell. 2002
- 3) Chissick: Electronic commerce; law and practice. 3rd ed. Sweet & Maxwell. 2002
- 4) McMahon: Irish law of torts. 3rd ed. Butterworths. 2002
- 5) Freedman: Service charges; law and practice. Jordans. 2002

Bar Library Consultation Room Bookings

The policy regarding advance bookings for Consultation Rooms has now been changed. Previously bookings could only be made one week in advance. However, following representations from the solicitors profession, the Bar Council has now agreed that advance bookings for dates beyond one week can be made provided payment is received at time of booking.

**Copy deadline for October
Monday 7th October 2002**

Law Society Library Email:

hsemple@lawsoc-ni.org

**Published by the Law Society of
Northern Ireland
98 Victoria St. Belfast, BT1 3GN
Editor John Bailie**

*The views expressed are not
necessarily those of the Law Society
of Northern Ireland*