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...
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

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.


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 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 prerequisite 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.

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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 injured party.

(a)...
(b)...

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”.

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 Thompasons 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.

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.

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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:
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or telephone 01833 621130 for more details.
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.
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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 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.

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.

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.

This article first appeared in ‘The Gazette’, the journal of the Law Society of England and Wales, 99/21 3 May 2002 and is reproduced here with the kind permission of the editor.
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
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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.
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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>
<thead>
<tr>
<th>Size of firm</th>
<th>Sole principal</th>
<th>2 - 4 partners</th>
<th>5 or more partners</th>
<th>All firms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belfast</td>
<td>16</td>
<td>37</td>
<td>10</td>
<td>63</td>
</tr>
<tr>
<td>West of Bann</td>
<td>19</td>
<td>15</td>
<td>1</td>
<td>35</td>
</tr>
<tr>
<td>East of Bann</td>
<td>24</td>
<td>27</td>
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<td>52</td>
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<tr>
<td></td>
<td>59</td>
<td>79</td>
<td>12</td>
<td>150</td>
</tr>
</tbody>
</table>

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.
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.
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: __________________________

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 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 _ of the trust fund (since increased to _ ) 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 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.
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.
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.
APPONITMENT – 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
THE ENVIRONMENTAL AND PLANNING LAW ASSOCIATION FOR NORTHERN IRELAND

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)

<table>
<thead>
<tr>
<th>Event</th>
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<th>Non-Members</th>
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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

<table>
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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, Solicitors, 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’ website. 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 assessor. (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 Fennemore and John McQuater, Head of litigation at Atherton Godfrey).

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Chairperson: Orla Murray
Hon. Treasurer: Orlagh O’Neill

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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

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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

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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:
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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.
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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
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
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


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

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

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