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Our New President

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Attracta Wilson
Law Society President 2004/2005

When you listen to Attracta Wilson’s clearly enunciated accent you are aware that she hails from a more softly spoken part of the island. Originally from Charlestown, County Mayo, she attended University College Galway, graduating with a BA in 1978 and an LLB in 1980. She qualified as a solicitor in the Republic of Ireland in 1982 having served a period of apprenticeship with Charles Kelly of Douglas Kelly & Son in Swinford, County Mayo.

“When I qualified I was lucky enough to be offered a job by Charles and I thoroughly enjoyed country practice during the following five years. I enjoyed the variety of work general practice offered and Douglas Kelly & Son was a great office to work in.”

During her time in Mayo Attracta became involved with the Mayo Solicitors’ Bar Association and became its Secretary in 1986. She also tutored at Blackhall Place, the Dublin equivalent of the Institute of Professional Legal Studies - an activity she continued for a number of years following her move to Northern Ireland in 1987.

In 1987 Attracta married James, an Armoy man practising as a veterinary surgeon in Lisburn.

“Those were the days before reciprocal arrangements were in place and to qualify in Northern Ireland I had to study for the Law Society exams and serve a period of apprenticeship.

During her time at McCartan Turkington Breen, Attracta worked mainly on the commercial side and found city practice very different from rural West of Ireland practice.

“It was nonetheless very enjoyable and challenging. The team at McCartan Turkington Breen were very busy and hard-working but always had time to give you a steer if needed and their advice was always worth listening to. I had an excellent apprenticeship with Bernard Turkington whose advice I have sought and relied upon to good effect down through the years. I cannot speak highly enough of Damien Breen who gave me an excellent grounding in conveyancing the Northern Ireland way. Sadly he passed away at the beginning of this year. He was a great solicitor and a true gentleman.”

At the end of 1989 Attracta moved from private practice to the public sector and the office now known as the Departmental Solicitor’s Office.

“Life in the public sector is very different to private practice. It gives you the opportunity to enjoy law without the stresses and strains associated with private practice. It offers a breadth of interesting and challenging work and contrary to popular opinion is in fact very busy.”

Attracta worked for a significant period of time in Employment Law but now specialises in EU law. Recently she was appointed a part-time Chair of Industrial Tribunals.

1991 and 1993 represented major milestones in Attracta and James’ life when Charles and Sarah were born.

“Children grow up very quickly and one of the big advantages of a public sector career are the family-friendly policies.”
Since 1997 Attracta has worked part-time hours to coincide with the children’s school hours.

“I appreciate that life in the private sector does not lend itself as readily to family-friendly arrangements. Nonetheless, the number of women in the profession is increasing annually. This year, of the 95 solicitor places at IPLS, 62 places have been taken by women and the profession must adapt to allow these women to continue making their very significant and worthwhile contribution to the law whilst combining it with their role of carers, not only of young children but often of elderly parents and in-laws.”

Attracta joined the Law Society as a co-optee in 1996 and during her time on Council has served on the European and External Relations Committee (whose Chair she became in 2000), the Human Rights Committee, the Education Committee (which she chaired for a number of years), the General Purposes and Finance Committee, the Client Complaints Committee and, more recently, the Policy Co-ordinating Committee. She has also chaired the CPD Working Party, is a Member of the Council of Legal Education, a Member of the Board of SLS and a past Member of the Advocacy Working Party.

When asked what she wanted to achieve during her year as President, Attracta reflected on the serious challenges facing the profession at the moment and recognises that there is a lot of hard work to be done.

By way of example, Attracta refers to a series of discussions which are ongoing with the Northern Ireland Court Service in connection with remuneration rates for criminal legal aid. This type of issue is one which goes to the very heart of the General Practice network operating in Northern Ireland. Many of the smaller practices rely heavily on legal aid and it is essential that this hard work continues.

A Review of Legal Services is imminent and plans are ongoing for a proposed development of Law Society House. This is currently in such a state that refurbishment is out of the question and ongoing repairs are representing a huge cost to the Society and are wasteful of Society funds. With these issues alone, Attracta recognises that the year ahead will not be easy.

She is, however, determined to do her best, is committed to working hard and looks forward to working with the dedicated and talented team on Council, with the Senior Vice-President, John Pinkerton, the Junior Vice-President, Rory McShane and the professional and administrative staff at Law Society House led by the Chief Executive John Bailie.
Practising Certificate Reminder

By the time you read this, you should have received the Application Form (PCR1) to facilitate the renewal of your Practising Certificate. This year the renewal forms have been issued slightly earlier than usual. This should have two benefits. First it means that practitioners should have more advance notice to allow the form to be completed in the run-up to Christmas. Secondly it means that there should be no excuse for not returning the form on time. The covering letter which accompanied the PCR1 emphasised the importance of correct completion and timely return of the form to the Society. You are reminded again that all forms must be returned not later than 5th January 2005.

As regards correct completion, please bear in mind:

[A] the responsibility for proper completion and return of the form lies with the individual applicant solicitor (i.e. not the firm or employer);

[B] the application must bear the personal signature of the applicant, and be both signed and dated;

[C] the application must be accompanied by the correct remittance. By way of reminder, the Practising Certificate Fee for 2005/2006 is £780.00. The prescribed Compensation Fund contribution applicable to the applicant is also calculated and shown on the PCR1. For 2005/2006 the relevant full-contribution is £950.00 (payable by solicitors with more than six Practising Certificates since admission); the half-contribution is £475.00 (payable by solicitors receiving their fourth, fifth or sixth Practising Certificate), and a Nil contribution is levied in accordance with the relevant statutory provisions on solicitors receiving their first, second or third Practising Certificate following admission.

[D] For solicitors in private practice the Practising Certificate Application Form must be accompanied by the correct and original Professional Indemnity Insurance Certificate. It is common for the Form to arrive with the Society with no Insurance Certificate, with a photocopy of an Insurance Certificate, or with the wrong Insurance Certificate. In respect of each solicitor a Schedule will have been provided by the Society broker (MARSH) which clearly identifies itself in these terms: “(NB: This schedule should be forwarded to the Law Society as evidence of insurance)”.

The Society is appreciative of your co-operation and attention in all these respects.

J.W. BAILE
Registrar

The New Presidential Team

Left to Right;
Rory McShane (Junior Vice-President); Attracta Wilson, President and John Pinkerton (Senior Vice-President).

THE MAYO CONNECTION

The Writ has learned that some fine tuning is taking place as regards a price package for next year’s Conference which will be held on 25th and 26th March 2005. According to an insider the event promises to be ‘awesome’!

The new President’s team are putting the final touches to booking forms which will shortly appear with this magazine.

STOP PRESS!!

Due to unprecedented interest shown at the recent Law Society Dinner the President’s Conference team has pulled out all the stops and brochures for Ashford Castle 2005 have been released with this issue.

As the price package is so competitive, members are urged to send in completed booking forms right away to avoid disappointment.
Marie Anderson, Assistant Information Commissioner for Northern Ireland, reminds the legal profession of the new statutory right that will change the way the public sector works and explains the impact of this right on the private sector.

**THE RIGHT TO KNOW**

The Freedom of Information Act 2000 (the Act) was passed in November 2000. However, the statutory right of individuals to access recorded information ‘held’ by public authorities covered by the Act will not come fully into force until 1 January 2005. Lawyers should be aware of this important new statutory right and how it may impact on their work and their clients’ business interests.

The right of access is provided for in section 1 of the Act.

‘... (1) any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.’

The right is conferred on ‘any person’ and is a right to ‘any’ recorded information. Person in this context can be an individual, a solicitors’ firm, a pressure group or a company. A request can come from any part of the world to a public authority or publicly owned company covered by the Act. By virtue of section 10, an authority must respond promptly and in any event not later than 20 working days following the date of receipt of the request.

The right applies to information recorded in any form which would include paper documents, e-mails, CCTV footage and audio tapes. Requesters may express a preference for communication of the information by way of provision of a permanent copy, a digest or summary of the information or alternatively an opportunity for inspection. Experience in other jurisdictions tells us that information requests can range from the salary and expenses of public servants, to the tender price in a government contract. Draft regulations relating specifically to access to environmental information have recently been laid before Parliament. From January 2005, the Environmental Regulations and the Data Protection and Freedom of Information Acts will operate to ensure a comprehensive access to information regime.

**AN UNFETTERED RIGHT TO KNOW?**

Although the section 1 right is very broad, its scope is narrowed by the operation of some 23 exemptions. There are two basic categories of exemption:-

(a) Absolute

(b) Qualified

Absolute exemptions include personal information (section 40 of the Act), information in confidence (section 41) and statutory prohibitions on disclosure (section 44). When information falls under an absolute exemption, the public authority need not supply the information and there is no requirement to consider the public interest.

Qualified exemptions differ and even if the information falls within an exemption, the ‘public interest’ test must still be applied. The public interest test is to be found at section 2 of the Act.

‘... (2)(b) In all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information’

The test involves a public authority in weighing up the harm that disclosure might cause against the public interest in disclosure. A number of ‘public interest’ factors have been identified by the Information Commissioner in its awareness guidance. Generally the public interest is served where access to the information would further such matters as the understanding of, and participation in the debate of issues of the day, accountability in the spending of public money and matters affecting public health and safety.

**WHOSE INFORMATION?**

The Act only applies to information ‘held’ by certain public sector bodies. There is extensive coverage in the public sector. In excess of 100,000 public authorities must meet the Act’s requirements, regardless of size or remit. For instance, even GP...
surgeries and nursery schools are covered by the Act.

The definition of a public authority is to be found at section 3 of the Act. A public authority includes any government department (including a Northern Ireland Department), local authorities and NDPBs. If you are advising a public sector client you should carefully examine Part VII of Schedule I which contains an additional list of Northern Ireland public authorities, such as the Supreme Court Rules Committee and the Equality and Human Rights Commissions. If you act for a public authority which is not currently designated, you should be aware that the Secretary of State has power to designate public authorities which fulfil certain conditions. This power is provided for at section 5. In addition, publicly owned companies, as defined by section 6, are also covered by the Act. If you are in any doubt as to whether or not a body falls under the Act, you should contact the office of the Information Commissioner for advice and guidance. The DCA will be able to advise on bodies destined for future designation.

There are two Codes of Practice to assist public authorities with their duties under the Act. These are known as the Access Code (section 45) and the Records Management Code (section 46) and can be found on the Department for Constitutional Affairs website at www.foi.gov.uk. The Codes provide essential practical guidance on handling requests for information (the section 45 Code) and records management (section 46 Code).

WHAT ABOUT THE PRIVATE SECTOR?
The private sector cannot ignore this legislation as it will impact significantly on those who do business with the public sector, in particular in the area of public sector procurement. Take the example of a contractor (your client) who successfully tenders for a contract. The contractor will retain information relating to that contract. In such instances the definition of ‘held’ at section 3(2) of the Act is of relevance. Information will be held by a public authority if –

‘… (a) It is held by a public authority, otherwise than on behalf of another person, or
(b) It is held by another person on behalf of the authority.’

Where a public authority has information in its possession or where it has been provided by another public authority with the information, it ‘holds’ that information. The public authority having contracted with your client, will therefore hold information about your client. This might include information that your client regards as being confidential or commercially sensitive.

There is guidance on the meaning of ‘held’ available on our website together with guidance relating to information held in confidence, trade secrets and information the release of which would prejudice commercial interests. This should be carefully considered.

WHY DO PRACTITIONERS NEED TO KNOW ABOUT THE ACT?
Whether or not your client base is in the public or private sector, you may be called upon to advise a client about the status of information relating to your client and held by a public authority which is the subject of a section 1 request. You may need to advise your client on the exemptions under the Act and the legal consequences of releasing that information into the public domain or indeed failing to do so. The actual decision as to whether there should be a disclosure of the information will rest with the public authority receiving the request. That public authority has to weigh up its duties under the Act against any duty of confidence owed to the contractor. In the event that a public authority seeks advice as to the status of the information at the date a request is made, such advice must be given promptly so that the public authority can meet the statutory deadline.

A corporate client or indeed any individual who is refusal official information, may from January 2005 invoke the section 1 right to access that information regardless of how they intend to use that information. The Act is motive blind and is available regardless of the intent of the person requesting.

If you are negotiating with the public sector on behalf of a corporate client, you may wish to consider the following aspects of Freedom of Information –

• What information relating to the contract is truly confidential in the legal sense?
• Can the confidential information be identified in a schedule to the contract?
• Would your client’s commercial interests be prejudiced by the release of such information?
• To what extent would that prejudice be real?
• If the public interest test were to be applied, where might the balance lie?
• What procedures has he in place for search and retrieval of any information held on behalf of a public authority?

You may wish to ask your client to carry out a risk assessment in relation to the information he suspects might cause most damage to his business. Having carried out the assessment, beware of over drafting restrictive confidentiality clauses. A point to note is that whilst it might be useful to consider the status of information at the time that a contract is concluded, the test of confidence or prejudice to commercial interests is applied at the time the request is made.

ENFORCING THE ACT
Where a request is refused, the individual or indeed his solicitor on his behalf may appeal to the public authority through its own internal complaints procedure.

Where no such appeal mechanism exists, there is a right to make application to the Information Commissioner for a decision under section 50 of the Act. The Commissioner is obliged to make a decision in all but a few significant circumstances. These are:-

(a) Failure to exhaust an internal complaints procedure.
(b) The application is delayed.
(c) The application is frivolous and vexatious.
(d) The application is withdrawn.
A decision of the Information Commissioner is legally binding. In addition to the statutory duty to make a decision, the Information Commissioner has power to issue a number of formal notices requiring the public authority to take steps or provide information.

Where a public authority has failed to comply with information, enforcement or so much of a decision notice as requires steps to be taken, the Commissioner and not the individual may bring the matter to Court. By virtue of section 54(3) of the Act, the Court may inquire into the matter and after hearing any witness on behalf of the authority and any statement in their defence, the Court may deal with the matter as a contempt of court. The appropriate penalty in such circumstances is a fine. There is also likely to be damage to the reputation of any public authority found by the Court to be in contempt. The Commissioner’s enforcement powers under the Act are considerable and include a power to prosecute persons who alter, deface or destroy any record with intent to prevent disclosure.

Whether your client base is in the public or private sectors, consideration should be given to this important new law.

Although the Act is aimed at changing public sector culture, the world of business is unlikely to escape its impact.

Legal Opportunities

Brightwater is a leader in the Recruitment Market. Our success has been based upon our level of expertise and professional service. Our specialist legal division recruits professionals into practice and in-house roles from Partner to Para Legal level.

We guarantee a full confidential service to our candidates, identifying suitable career opportunities with genuine prospects.

**Corporate Solicitor**

£25,000 - £29,000

Established city centre firm requires a Senior Corporate Solicitor with extensive experience in MBO’s along with excellent business acumen. The ideal candidate will be capable of working on their own initiative as well as part of a team. Ref: 14502

**Property Lawyer**

£22,000 - £26,000

Highly regarded NI law firm require a Solicitor for their North West office. Qualified to work both North and South and experience in commercial and residential across both jurisdictions. Excellent opportunity for the right candidate. Ref: 13369

**Commercial Conveyancer**

£22,000 - £26,000

Existing opportunity for an experienced Commercial Property Conveyancer. At least 2 years with a specialism in commercial property is required to join this young dynamic city centre practice helping to build upon their ongoing success and reputation. Ref: 15106

**Conveyancing Solicitor**

£22,000 - £26,000

Established legal firm based in North Down area require an experienced Residential Conveyancing Solicitor. Ideal candidate will have a minimum of 5 years PQE and experience in new developments, probate and trusts. Ref: 11083

**Legal Secretary**

£12,000 - £16,000

Belfast city centre firm requires a Legal Secretary with a minimum of 4 years experience. Role involves working within a young dynamic team support environment. Ref: 14559

For further information on these roles and other opportunities, please contact Sarah Baird for a confidential discussion on 028 90 325 325 or email your CV in the strictest of confidence to s.baird@brightwaterNI.com
By virtue of the Solicitors Training (Continuing Professional Development) Regulations 2004 all solicitors on the roll who have a practising certificate are required to undertake a scheme of continuing professional development from January 2005.

The scheme approved by Council replicates the terms of the existing scheme which has applied to those qualified since 1992. The detailed provisions of the scheme can be found at the start of the 2005 CPD Record Card booklet which will be distributed shortly.

A copy of the 2004 Regulations and the scheme can also be downloaded from the Society's website at www.lawsoc-ni.org.

We set out below a number of questions and answers, dealing with some of the issues arising from the implementation of the scheme.

Q: All solicitors holding a practising certificate will be subject to the Solicitors’ Training (Continuing Professional Development) Regulations 2004 from January 2005 onwards. What does this mean in practice?
A: All solicitors holding a practising certificate will be obliged to undertake 15 hours CPD in each practice year. A minimum of 10 hours is required to be in group study, of which 3 hours must be devoted to client care and practice management and up to 5 hours can be by way of private study.

Q: What is meant by group study?
A: This means study in a group of 3 or more which lasts for a minimum of 1 hour on each occasion. It may be provided by different organisations including but not limited to the Law Society, local associations, special interest groups, SLS, educational establishments or professional providers and consist of workshops, seminars, lectures or tutorials. It may be organised in house by individual firms. Group study may take place in or outside Northern Ireland and is not required to be in groups comprised solely of solicitors.

Q: I tutor at IPLS and sometimes deliver training to my local association. Has this any relevance to CPD?
A: Solicitors involved in tutoring, lecturing or otherwise delivering training may count actual presentation time towards their annual CPD requirement.

Q: I have retired from full time practice but work as a consultant two days a week. Am I subject to the regulations?
A: If you work 200 hours or less during the practice year then you are exempt from the regulations. If you work part-time for more than 200 hours in the practice year, you must undertake a minimum of 7.5 hours CPD per annum.

Q: I am currently on maternity leave and do not expect to be back in practice during the first few months of 2005. Will I be obliged to complete a full year’s CPD?
A: No. A solicitor taking maternity leave in a practice year who works more than 200 hours during the year must complete a minimum of 7.5 hours CPD per annum.

Q: My area of practice requires ongoing research and I spend quite a lot of time reading articles etc in an effort to keep my knowledge and experience up to date. Is this of any assistance?
A: Yes. Time spent undertaking research, reading periodicals, articles or legal publications does count towards private study.

Q: Three hours group study must be devoted to client care and practice management. What constitutes client care and practice management?
A: Practice management and client care will be interpreted broadly. Practice management may include personal development, time and stress management, training on objective setting and performance appraisal. Client care may include any study which addresses the efficient provision of professional services. Routine staff meetings or partners meetings will not be considered as either practice management or client care.
GMA Management Consultants
would like to take this opportunity to congratulate our clients

Tara Walsh Co.
McNaulty & Co.*

on the successful completion of their ISO 9001:2000 (*Lexcel)
Assessments by

SGS YARSLEY ICS Ltd

As Ireland’s leading Quality Consultants
for the Public and Private Legal Sector, we provide consultation on:

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Computerised Case Management

Listed below are some of the companies we have assisted and their respective assessments

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For a free consultation/quotations or further information contact;

**Gary Millar at GMA**
Pinetree Lodge, 40 Tullyhubbert Road Ballygowan, Newtownards, BT23 6LZ
Tel 028 97 528427 Mobile 07831 530178 Fax 028: 97 521256
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Serving the community through the administration of justice
October 2004 saw the start of a new provision to allow the prosecution a right of appeal against the granting of bail by a magistrates’ court. Coupled with the imminent introduction of ‘street bail’ in January, these are two important changes to the bail system in Northern Ireland.

**Justice (Northern Ireland) Act 2004, Section 10: Prosecution right of appeal against grant of bail by magistrates’ court.**

Section 10 of the Justice (NI) Act 2004 came into effect on 29 October 2004 and creates a right of appeal to the High Court by a prosecutor who has concerns about the granting of bail by a magistrates’ court.

Section 10 provides that the prosecution may only appeal against the decision to grant bail where:

(a) the prosecution is conducted by or on behalf of the Director of Public Prosecutions, or on behalf of the Police Service of Northern Ireland, and

(b) where the defendant is charged with or convicted of an offence punishable by imprisonment.

This new right of appeal seeks to achieve a careful balance with the rights of the accused and accordingly several important safeguards are built in.

The key features are:

- an appeal under this section can only be brought if the prosecution made representations that bail should not be granted prior to it being granted;

- oral notice of an intention to appeal must be given to the court at the conclusion of the proceedings in which the bail was granted, and before the person concerned is released from custody;

- the person then remains in custody until the appeal is determined or otherwise disposed of;

- written notice must be then given to the court and the person concerned within two hours of the conclusion of the proceedings;

- where the prosecution fails to give such notice the appeal is deemed to have been disposed of;

- the hearing of the appeal must be commenced within 48 hours (subject to specified exceptions) of the giving of oral notice;

- the appeal is by way of rehearing and the decision of the High Court is final;

- the High Court may either remand the person in custody or grant bail subject to any conditions it thinks fit.

**Criminal Justice (Northern Ireland) Order 2004: Article 4. ‘Street Bail’**

Article 4 of the Criminal Justice (Northern Ireland) Order 2004 will commence on 1 January 2005 and replicates for Northern Ireland section 4 of the Criminal Justice Act 2003. It will implement the final amendment to the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) arising from the Criminal Justice Act 2003 by allowing police to release a person on bail at a place other than at a police station.

The arresting officer will instead provide the suspect with written notice of a set time at a later date for the suspect to attend the station to answer his bail.

The written notice must state:

- the offence for which the suspect was arrested;
- the ground on which he was arrested;
- the police station at which he is required to attend to answer bail; and
- the time and date at which he is required to attend.

Certain requirements must be satisfied before a police officer can grant ‘street bail’ to a suspect. The arresting officer:

- must be sure that the individual has provided their correct name and address;
- must be confident that the suspect fully understands the street bail process and what is subsequently expected of them; and
- must have no cause to believe that the suspect is a danger to themselves or others.

If for any reason the suspect fails to answer bail as specified in the written notice, the police may arrest the individual without a warrant.

The full texts of both the Justice (Northern Ireland) Act 2004 and the Criminal Justice (Northern Ireland) Order 2004 can be found on the HMSO website [www.hmso.gov.uk]
BELFAST SOLICITORS
ASSOCIATION

Belfast Solicitors Association

BSA DINNER DANCE

The annual BSA Dinner Dance is to be held on Saturday 22 January 2005 at the Europa Hotel, Belfast.

Drinks reception commences at 7.30pm followed by dinner at 8.30pm with dancing ‘till late with The Booze Brothers.

Tickets are £36 per person and members are asked to note that the following arrangements apply.

Bookings are on a ‘first come – first served’ basis and must be made in writing addressed to BSA Administrator, Suite 7, 58 Howard Street, Belfast BT1 6PL. Any enquiries should be made by e-mail to info@belfast-solicitors-association.org.

A reservation cannot be made unless a cheque (made payable to Belfast Solicitors’ Association) is received with the booking request.

Tables are for 10 people and any requests for vegetarian meals should be made at the time of booking.

In keeping with last year a donation from every ticket sold will be made to the Solicitors’ Benevolent Association and members are encouraged to show their support by attending. As there is always a high demand for places members are recommended to book as early as possible to avoid disappointment.

The Europa Hotel is offering an excellent preferential accommodation rate of £30 per person sharing in a twin or double room including full Irish breakfast. Room reservations should be made direct with the hotel on 028 9027 1066, requesting the preferential rate for the BSA Dinner Dance.

We look forward to seeing you there.

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

Members are advised that copies of the handout which accompanied the BSA Practice Management and Client Care Seminar, held on 18 September 2004, are available at a cost of £5.00 per handout. The seminar included the following lectures:

- Tom McGrath of Marsh on “Client Management to Avoid Claims”
- Feargal McCormack on “Client Management”
- John Horan on “Money Laundering”
- Mary Norton on “ISO/Lexcel Computerised Case Management”
- Gary Millar on “CPD On-Line”

Copies may be obtained from: The BSA Administrator, Suite 7, Merrion Business Centre, 58 Howard Street, Belfast, BT1 6PJ
The Inland Revenue (IR) has requested that we draw practitioners’ attention to the following matters:

• **Use of DX envelopes**
  Some solicitors, when sending SDLT Return forms, have been using DX envelopes and addresses in the Royal Mail system. However the Royal Mail sorting office uses an automated process which will not recognise the DX addresses, causing those envelopes to be delayed and in some cases lost completely.

  All undelivered mail goes to a centre in Belfast which at the moment has several months backlog. Because of this backlog and as part of their reorganisation of processes it is likely that in the future undeliverable mail will be destroyed. The IR are still receiving packages which have been wrongly addressed on a weekly basis from Royal Mail, some of which are many months old.

  Solicitors may use their own envelopes, if they would prefer to post returns through the Royal Mail – however they should ensure that the return is not folded as this can cause problems for the scanning process.

• **Orderline**
  As a result of the Self Assessment timetable and other known demands on the stationery orderline in St. Austell in the last two weeks in January, it is expected that call volumes will significantly increase during that period.

  In order for members not to experience delays on the orderline, it is suggested that practitioners may wish to consider ordering sufficient SDLT forms in advance of the busy period.

• **Research**
  To coincide with the first anniversary of the introduction of SDLT, the Revenue has asked its Analysis and Research team to commission some research on practitioners’ experiences and views on the new system.

  It is expected that this research will be undertaken by a series of interviews with solicitors some time in January. The interviews will be conducted by an independent Market Research firm and not by the Inland Revenue.

  As the report generated will go towards helping the Revenue refine its processes and guidance for the second year of SDLT, the Society would commend participation in the survey, if approached.

• **Charities Relief**
  Amendments provided for in the Finance Act 2004 now make it possible for charities to claim partial relief from SDLT on certain acquisitions. They ensure that when a charity makes an acquisition, provided that it intends to hold the greater part of the land or property for qualifying charitable purposes, the acquisition will initially attract full relief from SDLT.

  Notes on Acquisitions/Disposals and Charities Relief are now available at www.inlandrevenue.gov.uk/so/d_charities.htm.

• **SDLT and Nil Band Discretionary Trusts**
  New information about the interaction between SDLT and ‘Nil Rate Band Discretionary Trusts’ (NRB Trusts) has been published at www.inlandrevenue.gov.uk/so/nilband.htm.

  This note should enable taxpayers and their advisers to decide on the SDLT consequences of transactions with NRB Trusts.

  An NRB Trust is commonly established under the will of a deceased person. The typical form is a pecuniary legacy, not exceeding the nil-rate band for inheritance tax, to be held by the trustees of the NRB Trust (‘the NRB trustees’) on discretionary trusts for a specified class of beneficiaries.

  The residue of the estate, often including the matrimonial home, commonly passes to the surviving spouse, although it may pass to residuary trustees.

  Where the personal representatives discharge the pecuniary legacy by payment of the specified sum to the trustees no Stamp Duty Land Tax issue arises. However in many cases the personal representatives satisfy the legacy otherwise than by payment of the specified sum. It is in these cases that a SDLT liability may arise on the transfer of the matrimonial home or other land to the surviving spouse or residuary trustees.
Q. I am currently the joint owner of 2 properties (Property A & B) with my brother. We are planning on transferring ‘Property A’ to myself and ‘Property B’ to my brother. Is there any SDLT payable?

A. Where land that has been held by two or more people jointly is partitioned or divided, then the share of that land held by the purchaser immediately before the partition does not comprise chargeable consideration. See the example at www.inlandrevenue.gov.uk/manuals/sdltmanuals/SDLTM04030a.

Q. Who is liable for making a land transaction return and paying the SDLT?

A. The purchaser is responsible for making a land transaction return and paying the SDLT within 30 days of the effective date of the transaction. If the purchaser is not an individual special rules apply. See the above web address at SDLTM30200+.

If purchasers are acting jointly they are jointly and severally liable for the tax although it can be fully discharged by any one of them. See SDLTM31600.

When a partnership acquires an interest all partners at the effective date and any person who becomes a partner after the effective date are responsible partners in relation to the transaction. See SDLTM33000+.

Where trustees of a settlement are liable to make a payment of tax or any associated payment including interest or penalties, such payment may be made by any one or more of the responsible trustees. Responsible trustees are those who are trustees at the effective date of the transaction and anyone who becomes a trustee subsequently. See SDLTM31700+.

Q. I am purchasing a piece of land and building a property on it. Is SDLT payable on the purchase price of the land?

A. The whole or part of the consideration for a land transaction may involve a purchaser carrying out works of construction, improvement or repair of a building or other structure. Such works do not comprise chargeable consideration if the works are carried out after the effective date on which the land is acquired or to be acquired by the purchaser under the transaction the works are to be carried out on any other land held by the purchaser or a person connected with him it is not a condition of the transaction that the vendor carries them out on the purchaser’s behalf.

In all other cases works carried out represent consideration calculated on the basis of their open market value. In situations where notification by SDLT1 is required both at substantial performance and upon completion by virtue of s44(8) of the Finance Act 2003 then if condition one is met at first notification then it is taken as met for the second notification as well by virtue of Schedule4 paragraph 10(2) of the 2003 Act.

The SDLT manual gives guidance on how open market value is to be calculated. There is an example at www.inlandrevenue.gov.uk/manuals/sdltmanual/SDLTM04060a.

Q. As a tenant I pay ground rent and services reserved as rent. Should I include payment for services when calculating the SDLT due on my lease?

A. Certain usual obligations and any payment made under those obligations for the grant of a lease are not chargeable consideration. These are any undertaking by the tenant to repair, maintain or insure the demised premises any undertaking by the tenant to pay any amount in respect of services, repairs, maintenance or insurance or the landlord’s costs of management any other obligation undertaken by the tenant that is not such as to affect the rent that a tenant would be prepared to pay in the open market any guarantee of the payment of rent or the performance of any other obligation of the tenant under the lease any penal rent, or increased rent in the nature of a penal rent, payable in respect of the breach of any obligation of the tenant under the lease.

Where a lease is transferred, either by landlord or tenant, the assumption or release of such an obligation is also not chargeable consideration.

Q. I am purchasing 2 properties from the same Vendor. Are these transactions linked?

A. Linked transaction are those which form part of a single scheme, arrangement or series of transactions between the same vendor and purchaser or, in either case, persons.
connected with them. Section 839 of the Income and Corporation Taxes Act 1988 defines when parties are connected.

If a vendor, for example, advertises a house with gardens for sale and the purchase is structured in such a way that the husband buys the house and his wife buys the gardens, these will be regarded as linked transactions.

The rate of tax will be determined by the sum of the chargeable considerations paid for both house and gardens.

It is a question of fact whether the transactions are linked. A purchaser will need to make a full examination of all the circumstances leading to the transactions before completing their land transaction return.

Just because two transactions are between the same purchaser and seller does not necessarily mean they are linked. The transactions will be linked however if they are part of the same deal.

What if two transactions are documented separately? The form in which the transactions are documented will not determine whether they are linked or not. For example, documenting transactions with separate contracts will not prevent them being linked if the transactions are under arrangements which indicate they are part of a single deal.

What does “series of transactions” mean? Series of transactions means something more than that one transaction following the other. There must be something else to connect the transactions.

It would however be a question of fact whether purchases are totally unrelated. In particular, the purchaser needs to consider whether the fact that the first transaction had happened had affected the terms of the second transaction.

Where successive transactions are linked, for example, the grant of an option and its exercise, extra tax can be due for the first transaction.

Any extra tax is payable at the same time as tax is payable on the second transaction. See section 81 of the Finance Act 2003.

Linked transactions with the same effective date can be reported as a single notifiable transaction using a single land transaction return. This is at the discretion of the purchaser.

Where this is done, the transactions will be treated as a single transaction and all the purchasers, if more than one will be treated as joint purchasers.

For further information on Stamp Duty Land Tax, please go to the SDLT Manual http://www.inlandrevenue.gov.uk/manuals/sdltmanual/index.htm>
RECENT DEVELOPMENTS AT THE PLANNING SERVICE

INCREASED CUSTOMER DEMAND
The Planning Service has announced action to be taken to tackle the unprecedented increase in planning applications.

This will involve the immediate freeing up of as many resources as possible in other areas of the Agency to focus on the planning applications work. The aim is to reduce current pressures and get processing times and service back to acceptable levels. The 33,000 planning applications submitted last year represented a 20% increase over the previous 12 months, and this year's projected 43,000 applications will mean a further 30% increase. Processing times have inevitably suffered as workloads have risen well in excess of forecast.

It is envisaged that the temporary reallocation of applications work to staff in other areas of the Agency will initially be for a period of 6 months and will have a knock on effect on emerging area plans. Other area plans such as Ards and Down, and Magherafelt will be protected, as will the Draft Belfast Metropolitan Area Plan and work on the Craigavon town centre boundary. Some projects under the umbrella of Modernising Planning Processes – a major 3-year service improvement initiative will also be rescheduled to free up resources.

DEVELOPMENT PLANS

These Regulations amend the Planning (Development Plan) Regulations 1991 which prescribe the procedure to be followed in connection with the making, alteration, repeal and replacement of development plans.

These amending Regulations increase the time period within which persons may make written objection to a draft development plan from six to eight weeks.

The Regulations also provide for the notification and public display of objections and the invitation of representations about those objections (also known as “counter objections”). They also make provision for the consideration of both objections to a draft development plan and of representations about those objections at a Public Local Inquiry.

NEW USE CLASSES ORDER
The Planning (Use Classes) Order (Northern Ireland) 2004 (SR2004 No.458) came into operation on 29th November 2004. It groups in ‘use classes’ certain uses of buildings or other land and provides that changes between uses in the same class do not therefore require planning permission.

The new Use Classes Order is one of the results of the ongoing programme of Modernising Planning Processes (MPP). MPP recommended that a Review of the Use Classes Order should be carried out, including a public consultation. The main issue raised in that consultation was the conversion of dwelling houses to houses in multiple occupation using the Use Classes Order and without going through the planning application process.

The new Use Classes Order includes these changes:

• house in multiple occupation is more closely defined and it is stipulated that no class in the Order includes a HMO, therefore a change of use to a HMO will require planning permission;

• research and development activities which do not have an adverse impact upon the environment are moved from the Light Industrial Class to the Business Class – this means that property used for offices can be used for research and development and vice versa without needing permission;

• Call centres are included in the Business Class for the first time;

• Community Centres are included for the first time, as are ‘After School Facilities’ for the care of school children over the age of four while their parents are at work. These new uses have been included in the same Class as medical or health services.

The Schedule to the Order has been restructured into four parts to make it more user friendly and easier to navigate, i.e.

Part A – Shopping and Financial and Professional Services;

Part B – Industrial and Business Uses;

Part C – Residential Uses; and

Part D - Community, Recreation and Culture.

A Planning (General Development) (Amendment) Order 2004 (SR2004 No.459) has also been made which makes consequential amendments to the Planning (General Development) Order (NI) 1993 where there are permitted development rights approving change of use between use classes, subject to conditions.
The Northern Ireland Court Service has published statistics for writs and originating summonses issued during the third quarter of 2004 in respect of mortgages in the Chancery Division of the Northern Ireland High Court. The statistics cover both Northern Ireland Housing Executive and private (e.g. banks and building societies) mortgages and relate to both domestic and commercial properties.

During the first nine months of this year, proceedings in 1672 cases were issued. Last year saw a 23% increase in actions over the previous year. In the first quarter of this year they were up 22% and in the second 32%.

While the figures for the third quarter of this year show possession actions were down 3% on the same period last year, the total number of actions for the first nine months of this year are higher than over the corresponding period in any of the previous five years.

Figures on mortgage possession actions are published on a quarterly basis. The publication date for the figures covering the fourth quarter of 2004 will be 26th January 2005.

As part of its ongoing modernisation programme to improve efficiency and turn-around times for customers, the Land Registry has recently implemented the first stage of its new Document Image Process and Intake Service (DIPIS).

From 19th October 2004, all DoW (Dealing of the Whole) cases received by the Registry have been scanned onto the Land Web system. This is the first stage of DIPIS and future stages will see other dealing types (eg Transfers of Part, First Registrations etc) also processed in this matter.

In order to facilitate the process, it would be of considerable assistance to the Registry if practitioners were to comply with the following requests:

1. Use the prescribed Form 100A which can be downloaded from the Library section of the Registry’s website at www.lrni.gov.uk
2. Ensure that the Form 100A is completed accurately.
3. Ensure that any photocopied images are of a high quality.
4. Ensure that text on all documents is in typescript or block capitals.
5. Maps should have the North/South compass indicated thereon. Any map enlargements should also include this.
6. As applications will be taken apart prior to scanning, it would be helpful if the use of staples for binding documents is kept to a minimum.

Any queries concerning this service should be directed to the following LRNI staff:
John Herron Tel 028 9025 1509
Colin Kirkpatrick Tel 028 9025 1670
The Home Charter Committee asks “What’s the problem?”

The Home Charter Committee cannot understand why so many purchasers’ solicitors persist in the use of pre-printed Special Conditions, which frequently have no relevance to the property they are purchasing. They have asked that the following article which was published in The Writ of March 1996 and republished in the September 2003 edition be drawn to your attention yet again.

They are not minded to recommend any departure from the General Conditions of Sale as currently in use. The Monitoring Officer has been asked to report back on the use of such forms as the Committee feels that they are contrary to the spirit of the Home Charter Scheme.

In an attempt to understand the needs of the profession, the Committee would welcome any comments as to what is trying to be achieved by the use of pre-printed Special Conditions.

**CONDITIONS OF SALE**

The aim of the draughtsmen of the new Conditions of Sale was to create a document which would be acceptable in most situations without amendment. Their intention was that the Special Conditions should be just that – special.

Bearing this in mind it becomes easier to understand a degree of concern that special, prepared conditions to be attached as a matter of course, are beginning to appear. It is of even greater concern that some of these prepared conditions replicate some of the material which is already there.

If advice is being given that a purchaser’s solicitor should make amendments on every occasion for the benefit of the purchaser it seems to follow that a vendor’s solicitor must advise the vendor to reject those amendments.

Such a sequence of events would represent a return to the cycle of offer, counter offer and counter counter offer which the draughtsmen wished to bury for good and all.

In practical terms it could well be said that, under the old regime, there were few true contracts for the sale of domestic property. If there were, it is doubtful if any of the parties, or their solicitors, could have defined precisely what the terms of those contracts were. The aim of the draughtsmen was to achieve a simple and defined position of which both parties were fully aware.

The nature of some of the changes which are being suggested is also a cause for concern. The aim has been to get an established contract with well defined terms at an early date. Part of that process has been to provide for the delivery, with the title, of the usual Property Certificates giving information about the property. A duty has been imposed on the vendor to disclose this information, together with all the other information a purchaser might reasonably discover in the ordinary way. A cut off date of formation of the contract has been applied.

This is in line with the overall policy. It has been argued that this represents a departure from the previously prevailing practice of having the completion date as a cut off date. In truth this was never the position. As a matter of practice contracts were made conditional upon clear Property Certificates being obtained. Once those Property Certificates were obtained, whatever date that might be, the purchaser’s solicitor stopped worrying about them and was entitled to. The condition in the contract had been fulfilled. Clear Property Certificates had arrived. The cut off date was not the date of completion but the date the Property Certificates arrived. If, and it did happen occasionally, a vendor was in a position to offer up to date Property Certificates the purchaser’s solicitor did not put in the usual clause about Property Certificates at all. The factual position was accepted. That is what the new Conditions seek to have the purchaser’s solicitor do now. To do otherwise is to reintroduce the element of uncertainty which the Committee has been at pains to avoid.

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Pictured from left to right are James Turner (O’Reilly Stewart), Iona Milton-Jones and Patrick Oliver (AFP Consulting), Brian Stewart, Stuart Gilmore and Janet McMillan (O’Reilly Stewart).
The Department of Health, Social Services and Public Safety, has published a statistical bulletin, providing information on the educational achievements, economic activity, age, gender, religion and other characteristics of 206 young people (106 boys and 100 girls), aged 16 and over, who left the care of Northern Ireland Health and Social Services Trusts during the year ending 31 March 2003.

The publication is available online at www.dhsspsni.gov.uk/foi/Statistical_Surveys.asp

SUMMARY
Some of the key findings included:

- Over a quarter of these care leavers had spent 10 years or more in care.

- Almost half came from the Eastern Board area.

- There was no improvement in the proportion of care leavers gaining GCSEs. Slightly over one in 10 of these young people (11%), had obtained at least five GCSEs at grades A*-C. This was almost double the corresponding figure for young people leaving care in England (6%), but less than a fifth of the proportion of all Northern Ireland school leavers (59%), achieving these grades.

- Over two-fifths (42%), of these young people, left care with at least one GCSE or GNVQ, slightly lower than the figure for care leavers in England (44%), and less than half the proportion of all Northern Ireland school leavers (94%), obtaining these qualifications.

- Half of all care leavers (51%), left care with no qualifications. This is similar to figures for care leavers, of the same age, in England (54%), and for care leavers aged 16-17 in Scotland (60%). However, it is 10 times higher than the figure for school leavers in Northern Ireland, of whom only 5% left with no qualifications in 2002/03.

- At least 30% of care leavers, whose economic activity was known, were unemployed at the time of the survey. This compares to 5% of all school leavers in Northern Ireland in 2001/02.  

1 Figures not available for 2002/03.

CHILDREN LEAVING CARE - 2002/2003

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FOURTH WORLD CONGRESS ON FAMILY LAW AND CHILDREN’S RIGHTS
Cape Town, South Africa, 20-23 March 2005 Cape Town International Convention Centre

The United Nations Convention on the Rights of the Child came into force in September 1990, under the terms of Article 49 of UNCROC. It is now the most ratified of all UN Human Rights Conventions. Its 15th anniversary will be marked in 2005.

The 4th World Congress, in 2005, will evaluate the progress and achievements relating to the Convention on its anniversary and will explore the challenges ahead in securing rights for children in the 21st century. The Congress will reflect on whether UNCROC addresses the correct issues in the light of concerns with nationalism, identity and globalisation, or whether new approaches to protecting children’s rights are needed.

The Congress will address this theme through the following sub-themes:

1. The effect of the UN Convention on rights and lives of children in relation to specific issues, such as children in war, refugee children, the rights of indigenous children, HIV/AIDS and religious and cultural freedoms.
2. The effects of the Convention in specific countries, regions or cultural contexts.
3. Exploring the implications of the Convention for legal practice and legal process, such as the child’s right to participate in proceedings, post separation financial security and child-focused practices.
4. Examining issues of enforcement of Convention provisions through UN processes, domestic enforcement of international norms and political processes.

Further details can be obtained from www.lawrights.asn.au
Application forms can be obtained from Peter O’Brien, Secretary of the Society’s Family Law Committee.
CHILD AND FAMILY LAW CPD COURSE

THIS COURSE IS AIMED AT ALL LEGAL PRACTITIONERS AS AN UPDATING COURSE. IT IS AIMED AT ALL MEMBERS OF THE LEGAL PROFESSION WHO ARE PRACTISING IN THIS FIELD. THE COURSE WILL COMPRISE TWO EVENING SESSIONS AS FOLLOWS:-

SESSION 1
- PUBLIC LAW PROCEEDINGS FROM CARE ORDER TO ADOPTION
- THE JUDICIAL PERSPECTIVE

FACILITATED BY:  FIONA BAGNALL RM
SIOBHAN O’HAGAN BL

SESSION 2
- INSTRUCTING THE EXPERT WITNESS
- THE ROLES AND DUTIES OF THE EXPERT WITNESS

FACILITATED BY:  DR ALICE SWANN
GILLIAN MCGAUGHEY BL

DR ALICE SWANN IS AN INDEPENDENT MEDICAL SPECIALIST WITH EXTENSIVE EXPERIENCE IN CHILD ABUSE, NEGLECT AND INVESTIGATIVE INTERVIEWING OF CHILDREN. SHE IS AN EXPERIENCED WITNESS APPEARING IN COURT.

WHEN:  TUESDAY, 25TH JANUARY 2005 AND TUESDAY, 8TH FEBRUARY 2005
TIME:  6.00PM – 9.00PM.
VENUE:  INSTITUTE OF PROFESSIONAL LEGAL STUDIES, 10 LENNOXVALE, BELFAST, BT9 5BY
COST:  FULL COURSE FEE £130, AND EITHER SEMINAR £75.

THIS COURSE ATTRACTS 3 HOURS LAW SOCIETY OF NORTHERN IRELAND C.P.D. POINTS PER SESSION.

BOOKING FORM AND CHEQUES, MADE PAYABLE TO QUEEN’S UNIVERSITY BELFAST, SHOULD BE SENT TO MRS JOAN PLAYFAIR, INSTITUTE OF PROFESSIONAL LEGAL STUDIES, 10 LENNOXVALE, BELFAST, BT9 5BY.

Closing Date for applications:  TUESDAY, 12TH JANUARY 2005

CHILD AND FAMILY LAW CPD COURSE
BOOKING FORM

I AM INTERESTED IN ATTENDING:  SESSION 1  □  SESSION 2  □

NAME:
FIRM:
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The Professional Ethics and Guidance Committee feels it necessary to remind solicitors of the following regulations:

- **REGULATION 2(vi), which reads:**
  “client’s money” shall mean money held or received by a solicitor on account of a person for whom he is acting in relation to the holding or receipt of such money either as a solicitor, or in connection with his practice as a solicitor, as agent, bailee, stakeholder or in any other capacity, including monies received by the solicitor for the disbursement of professional fees and outlays including without prejudice to the generality of the foregoing, Counsel’s fees, professional fees and witnesses expenses; provided that the expression “client’s money” shall not include –
  
  (a) money held or received on account of the trustees of a trust of which the solicitor is a solicitor-trustee; or
  
  (b) money to which the only person entitled is the solicitor himself or, in the case of a firm of solicitors, one or more of the partners in the firm;

- **REGULATION 5, which reads:**
  Where a solicitor holds or receives a cheque or draft which includes client’s money or trust money of one or more trusts –
  
  (a) he may where practicable split such cheque or draft and, if he does so, he shall deal with each part thereof as if he had received a separate cheque or draft in respect of that part; or
  
  (b) if he does not split the cheque or draft, he shall, if any part thereof consists of client’s money, and may, in any other case, pay the cheque or draft into a client account.

- **REGULATION 8(1)(a), which reads:**
  There may be drawn from a client account –
  
  (a) in the case of client’s money –
    
    (i) money properly required for a payment to that client or to any other person on behalf of that client as permitted by these regulations or to the solicitor as permitted by these regulations;
    
    (ii) money properly required for or towards payment of a debt due to the solicitor from the client or in reimbursement of money expended by the solicitor on behalf of the client;
    
    (iii) money properly required for or towards payment of the solicitor’s costs where there has been delivered to the client a bill of costs; and
    
    (iv) money which is thereby transferred into another client account.

**NOTE**
To ensure protection of client funds at all times, the Committee has directed the Society’s Monitoring Officers to note any breach of the above Regulations.

In particular, it will not be regarded as satisfactory to pay mixed client/own monies cheques into office account, even if disbursements to a third party are made immediately. Any receipt containing client’s money must be lodged to the client account.

Any non-client monies, or money to which the solicitor is otherwise properly entitled, may then be transferred from client to office account.

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**Solicitors’ Accounts Regulations 1998**

**What is ‘Client’s Money’?**
The Northern Ireland Court Service has recently published a guide to the current procedures used in Northern Ireland for the selection of candidates for judicial appointments, up to and including the High Court, except the appointment of Justices of the Peace or Juvenile Court Lay Panel members/Lay Magistrates.

The Lord Chancellor, on whose behalf the Northern Ireland Court Service operates these policies and procedures believes that the nature of the process by which individuals are appointed to judicial office should be open to public scrutiny and therefore wishes to make available as much information as possible about the appointments system.

The guide contains details about policy principles and considerations, the role of the Judicial Appointments Unit, the Commissioner for Judicial Appointments for NI and the appointment procedure itself.

A copy may be downloaded from the Court Service website at www.courtsni.gov.uk.

The research is being conducted by Dermot Feenan, University of Ulster School of Law, on behalf of the Commissioner for Judicial Appointments for Northern Ireland. It will lead to recommendations on the appointments process.

Anyone who may have mislaid the questionnaire or any firm which may inadvertently have instructed an ineligible colleague to complete the questionnaire may obtain a fresh questionnaire from Dermot Feenan, tel. 028-9036 6374, or e-mail: d.feenan@ulster.ac.uk.

Any solicitor who has not yet completed the questionnaire on gender and judicial office which was sent on November 5 to a sample of solicitors eligible for judicial office in Northern Ireland is asked to return and complete the questionnaire to the researcher.
Jacqui Loughrey, social security legal adviser at Law Centre (NI), outlines a recent Social Security Commissioner’s decision which removes an unfair disadvantage for people liable to pay rent for two homes for health reasons.

SOCIAL SECURITY COMMISSIONER’S DECISION CH4546/02
Liability to pay rent on two homes – Entitlement to Housing Benefit (issued on 29 October 2003 and applicable in Northern Ireland)

In this decision, a GB Commissioner provided an interpretation of the relationship between regulations 5 and 7 of the Housing Benefit (General) regulations 1987 when applied to cases involving the issue of dual liability.

Regulation 5 of the Housing Benefit (General) regulations 1987 prescribes the circumstances in which a person is or is not treated as occupying a dwelling as her/his home.

Regulation 7 of the same regulations sets out the circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling.

While the general rule is that a person can normally only be treated as occupying one dwelling as her/his home, in certain exceptional circumstances, a person can, for a short period, be treated as occupying two homes. For example, Regulation 5(5)(d) states, ‘where a person is liable to make payments on two dwellings, he shall be treated as occupying both dwellings where a person has moved in to a new dwelling occupied as the home for a period not exceeding four benefit weeks if he could not reasonably have avoided liability in respect of the two dwellings’.

This provision would apply where, for example, a disabled person living in unsuitable accommodation is offered a new home designed to suit her/his needs provided s/he moves immediately. As similar accommodation is unlikely to become available for some time, the tenancy is accepted. As a result, rent has to be paid concurrently for the unserved period of notice on the former home and on the new one.

Commissioner Jacobs’ interpretation means that Regulation 5 should be considered without reference to deeming provisions of Regulation 7. Because a person has an actual liability on both dwellings such as that of the person in the example cited, s/he can be treated as occupying the two dwellings for her/his home and Housing Benefit for both can be considered for up to a maximum period of four weeks. Similarly, where a person goes into residential care permanently, the unserved notice on her/his former home can equally be covered by Housing Benefit for up to a maximum of four benefit weeks, although s/he will not get Housing Benefit to cover residential care fees.

Where liability on two dwellings is a relevant consideration in a case, it is important to remember that the liability must be one that, if not met, would mean the person would lose her/his right to occupy the dwelling.

The four week maximum period must start from the date on which the liability for two rents begins.

It only applies in cases in which the person concerned has a liability to make payments on the property. It does not apply where a person is not liable, eg where s/he is in hospital or prison.

Immigration

Buster Cox of the Law Centre’s immigration unit has good news for asylum seekers with children.

The Immigration & Nationality Directorate (IND) recently amended the ‘family amnesty’ or one-off exercise announced in October 2003. The changes are such that it is likely that many more families who are presently unlawfully in the UK could be entitled to remain indefinitely in the UK. However, it is important to note that anyone who believes that s/he might come within the amnesty has to apply before 31 December 2004.

Originally, the IND announced that indefinite leave to remain in the UK would be granted to asylum seekers (and their dependants) who:

- claimed asylum before 2 October 2000 (regardless of whether the claim is pending or refused and regardless of the outcome of the appeal); and
- had a dependant who was aged under eighteen in the UK on 2 October 2000 and was still a dependant in the UK on 24 October 2003; and
- have no criminal convictions; and
- had not been granted leave to remain.

However, under the amended policy, indefinite leave to remain in the UK should be granted to asylum seekers (and their dependants) who:

- claimed asylum before 2 October 2000 (regardless of whether the claim is pending or refused and regardless of the outcome of the appeal or whether limited leave to enter the UK was granted); and
(i) have a dependant aged under eighteen in the UK on 24 October 2003; or
(ii) have an only or youngest child who turned eighteen after 2 October 2000 but before 24 October 2003; and
• have no criminal convictions.

An application to be considered under the policy has to be made, before 31 December 2004, to: Group B, Asylum Policy Unit, AAPD, Immigration Nationality Department, Lunar House, 40 Wellesley Road, Croydon, CR9 2BY. The full details of the policy can be found at: www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis/one-off_exercise_to.html

For advice and assistance in relation to the above announcement contact:

Law Centre (NI)
Central Office
124 Donegall Street, Belfast BT1 2GY
Telephone 028 9024 4401

Western Area Office
9 Clarendon Street, Derry BT48 7EP
Telephone 028 7126 2433

Chinese Welfare Association
133 University Street, Belfast BT7 1HP
Telephone 028 9028 8277

The Institute of Professional Legal Studies will be offering a Seminar on The Business Tenancies (N.I.) Order 1996 facilitated by the following:

FACILITATOR: Rosemary Carson (Carson & McDowell)
WHEN: Monday, 21st March 2005
TIME: 9.30a.m. – 1.00p.m.
VENUE: Institute of Professional Legal Studies, 10 Lennoxvale, Belfast
COST: £100

3 CPD hours are awarded for attendance at this Seminar.

Booking form and cheques, made payable to Queen’s University Belfast, should be sent to: Mrs Joan Playfair, Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY.

Closing Date for applications: Friday, 11th March 2005

THE BUSINESS TENANCIES ORDER BOOKING FORM

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Commercial Conveyancing Course
Are you interested in Commercial Conveyancing?

The Institute of Professional Legal Studies will be offering a 4 week course in Commercial Conveyancing.

Main Facilitator: Mr Ian Huddleston – L’Estrange & Brett
(supported by members of the Institute staff)

Issues covered in the course include Site Assembly, Building Contracts, Analysis of a Commercial Lease, Finance, and Business Tenancies.

WHEN: Monday, 24th January 2005
Monday, 7th February 2005
Monday, 21st February 2005
Monday, 7th March 2005

TIME: 9.30a.m. – 1.00p.m.

VENUE: Institute of Professional Legal Studies, 10 Lennoxvale, Belfast

COST: £600

Successful completion of the course will lead to a Certificate in Commercial Conveyancing from IPLS.

This course attracts 12 hours CPD.

Booking form and cheques, made payable to Queen’s University Belfast, should be sent to Mrs Joan Playfair, Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY.

Closing Date for applications: Tuesday, 4th January 2005
APPLICATIONS WILL BE TAKEN ON A FIRST-COME FIRST-SERVED BASIS
(Places are limited to 30 people)

This course is designed primarily for those who have relatively little practice experience in Commercial Conveyancing.

COMMERCIAL CONVEYANCING COURSE
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The long-awaited Chen judgment was delivered by the European Court of Justice on 19 October 2004. For the first time, the European Court was asked to decide on the rights of residence in the United Kingdom of a Chinese mother and her daughter who has Irish citizenship. The Court held that EU law confers a right of residence on both mother and daughter.

This article summarises the key points of the judgment.

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

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

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

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

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

JUDGMENT OF THE EUROPEAN COURT OF JUSTICE

Catherine's right of residence
The Court pointed out that the EU Member States may require nationals of another Member State who wish to reside in their territory to have, for themselves, and for the members of their family, sickness insurance and sufficient resources. This ensures that that during this period of residence, they do not become a burden on the social assistance scheme of the host Member State. The Court found that Catherine had both sickness insurance and sufficient resources provided by her mother such that she would not become a burden on the United Kingdom social assistance scheme. The fact that Catherine, a young child, does not possess the necessary resources herself, is irrelevant.

Mrs Chen's right of residence
The European Court held that to refuse Mrs Chen a right to reside with her daughter in the United Kingdom would render her daughter's right of residence totally ineffective. The Court stated, 'It is clear that enjoyment by a young child of a right of residence necessarily implies that the child is entitled to be accompanied by the person who is his or her primary carer and accordingly, that the carer must be in a position to reside with the child in the host Member State for the duration of such residence.'

Clearly, therefore, both mother and daughter are entitled to reside in the United Kingdom. Although the law in the Republic of Ireland is undergoing change with regard to the automatic right to Irish citizenship, it is clear that the judgment of the European Court will have important repercussions. However, the judgment does not entitle a child and primary carer with an automatic right of residence. A person seeking to rely on the judgment will have to prove that he or she has sufficient resources and sickness insurance such that he or she will not be a burden on the Member State. This may prove to be a significant stumbling block.

FIONNUALA CONNOLLY BL

1 Case C-200/02, Man Lavette Chen and Kunqian Catherine Zhu –v- Secretary of State for the Home Department
2 Subject to certain restrictions, anyone born within the territory of the island of Ireland, even outside the political boundaries of the Republic of Ireland, acquires Irish nationality.
3 A court or tribunal in any Member State, may, by virtue of Article 234 of the EC Treaty, refer questions on Community law to the European Court of Justice. This is referred to as a 'preliminary reference'.

THE ‘CHEN’ JUDGMENT: RIGHTS OF RESIDENCE IN THE EU
Three individuals whose cases were supported by the Northern Ireland Human Rights Commission have won their challenges against the Secretary of State’s refusal to give them protection against threats to their lives.

In the High Court on 27 October Mr Justice Weatherup upheld an application from Mr William Frazer, who is closely associated with the victims’ group Families Acting for Innocent Relatives. Mr Frazer had been refused protection despite police advice that he was under “significant” threat. In police terms this meant that, on the basis of recent general intelligence or the overall security and political climate, Mr Frazer was a likely priority target. The judge held that because the Secretary of State had refused protection to Mr Frazer on the ground that the threat against him was not “imminent”, this was a breach of Article 2 of the European Convention on Human Rights, which requires states to protect people’s right to life when they are at “real and immediate risk”.

In a second case decided on the same day by the same judge, it was held that Ann and Francis Brolly, both of whom are Sinn Féin councillors on Limavady District Council, had also been wrongly refused protection. The police had advised that there was the potential for Mr and Mrs Brolly being singled out for attack and that the level of threat was “moderate”. Again Mr Justice Weatherup held that the Secretary of State had been wrong to conclude that such a level of threat could not amount to a “real and immediate risk” for the purposes of the European Convention.

Commenting on these two court victories the Chief Commissioner of the Human Rights Commission, Brice Dickson, said:

I am pleased that the government’s system for granting protection has been shown to be flawed. The Commission has long been of the view that the system was not being applied in a way that fully complied with the European Convention. I believe that by funding these two cases to a successful conclusion the Commission has contributed significantly to the better protection of human rights in Northern Ireland.

The victories do not mean that Mr Frazer and Mr and Mrs Brolly will now automatically be granted protection. The Secretary of State will have to reconsider their applications in the light of the judge’s findings.

The Northern Ireland Human Rights Commission has recently presented before Parliament its Fifth Annual Report (covering the period April 2003 to March 2004).

The report sets out the Commission’s activities during the year, describing its work on casework, legislation, policy development, education, investigations and research as well as progress on a Bill of Rights for Northern Ireland.

In its report the Commission provides an overview of developments in human rights standards in Northern Ireland and identifies seven key areas about which it has serious concerns. These areas include allegations of collusion, paramilitary violence, systems for preventing and investigating deaths, policing and prisons issues, the Bill of Rights and the failure of Government to provide effective support to the Commission.

The Chief Commissioner, Professor Brice Dickson, said:

“Recent coverage of our work on protecting the rights of female prisoners highlights the importance of having a strong, independent body promoting human rights in Northern Ireland. I am pleased with the progress we have made this year in developing a culture of human rights, however there remains a number of concerns which we hope can be addressed by Government and local political parties.

“For example, we believe the British Government should do more to fully investigate allegations of collusion and to ensure that law enforcement agencies do not assist the activities of terrorist organisations. The Government should also reform the inquest system and respond to recommendations increasing the powers of the Commission. We also believe that paramilitary violence should be more widely condemned across the community and local politicians should re-energise their efforts to develop a comprehensive Bill of rights.”

The Report can be downloaded from the Commission’s website at www.nihrc.org.
In early April 2005 the Information and Consultation Regulations (Northern Ireland) 2005 will implement a European Directive which establishes new minimum standards for workplace communication and dialogue between employer and employees.

The Regulations provide for the rights of employees to be informed and consulted about issues relating to the organisation they work for. The types of “issues” that employees are entitled to be informed and consulted upon are detailed in the Regulations.

The Regulations are to be implemented in stages and will apply:

- to undertakings with 150+ employees from April 2005
- to undertakings with 100+ employees from April 2007
- to undertakings with 50+ employees from April 2008

The Agency and the Department for Employment and Learning (DEL) have published a summary advisory guide on the Information and Consultation provisions. Copies can be downloaded from DEL’s website at www.deli.gov.uk/docs/pdf/ACF622.pdf


The Labour Relations Agency will be running seminars on the Information and Consultation Regulations as well as providing information and facilitating organisations who wish to introduce or develop information and consultation arrangements.

Further information can be obtained from the Labour Relations Agency – telephone 90321442 or by e-mail at info@lra.org.uk
POWERS OF LOCAL GOVERNMENT AUDITORS TO BE STRENGTHENED

The Department of the Environment (DoE) has published a Consultation Document with an explanatory memorandum and draft Order in Council, designed to improve the legislative and regulatory framework for Northern Ireland local government.

The proposals are mainly about local government audit and involve extending the powers of local government auditors, consolidating existing Northern Ireland audit provisions and updating them in line with best practice.

The draft Order will also enable DoE to vary, by subordinate legislation rather than primary legislation, the amounts district councils can spend on special purposes in their areas and enable DoE to make subordinate legislation conferring on district councils the power to provide indemnities to their members and officers.

The proposals also provide district councils with new powers to regulate cosmetic piercing and semi-permanent skin-colouring businesses and carry out emergency planning. It is proposed to allow district councils to retain receipts they receive from fixed penalties that are levied for littering and dog fouling.

A copy of the Consultation Document is available on www.doeni.gov.uk/lgd/consultations.

The consultation period will run until 10 January 2005.

CHANGING FACE OF PARKING ENFORCEMENT

The Department for Regional Development (DRD) has announced that the processing of parking enforcement will be carried out by the Department and the operation of parking enforcement will be through a specialist contractor, when the responsibility transfers from the PSNI to DRD in 2006.

The PSNI has indicated that it intends to withdraw from the enforcement of on-street parking restrictions to focus on areas of greater policing priority, including road safety.

Subject to the necessary legislation and funding arrangements being in place, DRD plans to change the status of parking infringements from criminal offences, enforced by the PSNI, through the Traffic Warden Service, to civil offences, that will be enforced by specially trained traffic attendants, employed by a specialist contractor, under the responsibility of the Department.

The changes to introduce decriminalised parking enforcement (DPE) will bring Northern Ireland into line with arrangements in other parts of the United Kingdom, where DPE was introduced in the early 90's.
**NORTHERN IRELAND YOUNG SOLICITORS’ ASSOCIATION**

**and**

**ENVIRONMENTAL & PLANNING LAW ASSOCIATION FOR NORTHERN IRELAND**

**PRESENTS A LUNCHTIME LECTURE ON:**

**UNDERSTANDING THE PLANNING SYSTEM**

**SPEAKER:** Bill Morrison, Director of Planning, Ostick and Williams

**DATE:** Tuesday 25th January 2005

**TIME:** 1pm-2pm

(tea, coffee and sandwiches from 12.30pm)

**VENUE:** Law Society House, Victoria Street, Belfast

**COST:** £10 for members of either NIYSA or EPLANI and £20 for non-members.

Attendance at this Seminar will provide one hour’s CPD entitlement.

Cheques and Booking Forms to NIYSA

c/o Emma Hunt, Mills Selig Solicitors, 21 Arthur Street,
Belfast BT1 4GA.
Fax to 028 9031 5221.
E-mail to: emma.hunt@nilaw.com.

*All Solicitors aged 36 or under are automatically members of NIYSA.*

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**NORTHERN IRELAND YOUNG SOLICITORS’ ASSOCIATION**

**PRESENTS A LUNCHTIME LECTURE ON:**

**WHAT LITIGATION LAWYERS NEED TO KNOW ABOUT MEDIATION**

**SPEAKER:** Mr Brian Speers

**DATE:** Friday 25th February 2005

**TIME:** 1pm-2pm

(tea, coffee and sandwiches from 12.30 pm)

**VENUE:** Law Society House, Victoria Street, Belfast

**COST:** £10 for members of the NIYSA* and £20 for non-members.

Attendance at this Seminar will provide one hour’s CPD entitlement.

Cheques and Booking Forms to NIYSA c/o Barbara Johnston c/o Hewitt Gilpin, Thomas House, 14-16 James Street South, Belfast, BT2 7GA.
Tel: 028 9057 3573
E-mail to: bjohnston@hewittandgilpin.co.uk

*All Solicitors aged 36 or under are automatically members of NIYSA.*

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The NIYSRA has pleasure in inviting its members to attend our annual conference, which will take place in Kilkenny this year. We are hosting the conference jointly with the Society of Young Solicitors of Ireland (SYS) and the European Young Bar Association (EYBA). We are confident that the 2005 conference will be particularly special with a busy programme of seminar sessions and social functions.

The venue for the conference is the exclusive Mount Juliet Conrad hotel set within 1500 acres of beautiful gardens in County Kilkenny. It is located 75 miles south of Dublin and is easily reached by car or train.

The basic cost of the weekend is £200.00, per person, to include registration fee and the cost of accommodation (on the basis of two persons sharing a room). Travel is not included.

The first thirty places will be available at the substantially subsidised price of £150

CPD hours available.

More information on Mount Juliet at www.mountjuliet.ie

Detailed agenda and more information to follow on NIYSRA website: www.niysa.com

Book now to ensure you benefit from the reduced rate!

Cheques and Booking Forms to:
NIYSRA, c/o Emma Duffy, Almac Sciences, Almac House  
20 Seagoe Industrial Estate, Craigavon BT63 5QD
E-Mail: vicechair@niysa.com

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Tuesday 16th November marked an important day in the annals of the Law Society, and for the family friends and colleagues of the late Billy Cumming. On that day the Council of the Society paid tribute to the memory of a distinguished Past President, a fine lawyer and a respected colleague.

Billy Cumming was one of the best-known solicitors in the jurisdiction. Practising in Ballymena as the principal in the firm established by his father, Samuel, Billy developed a formidable reputation as an expert conveyancer. It seemed somehow a wholly natural progression when he followed his family tradition by joining the Society Council, serving for many years with no time off for good behaviour and was still making a vital contribution to his chosen profession up to the time of his untimely death in April 2002.

His involvement in the Society included service as President. When he took office in November 1976 he was again following in the footsteps of his father.

All who remember that time recall the distinction with which he deployed his many talents in leading the profession with courage and conviction.

There are many solicitors, young and not so young, both within North Antrim and further afield who have reason to remember Billy with affection and respect. So when the proposal to mark his memory was first mooted within the Society by Brian Walker there was an immediate unanimous and positive response. In discussion between Joe Donnelly with Billy’s wife, Irene and son Nicholas, it was eventually agreed that a fitting memorial would be the purchase of a painting by the Society to be dedicated to Billy and which would be placed on display in Law Society House.

A reception and simple dedication ceremony was then organised.

The Council was delighted to welcome Irene and Nicholas as guests of honour and it was gratifying that so many of Billy’s colleagues, particularly from his home town, were able to be present. The President, speaking at the reception, recalled the lengthy and congenial working relationships between the Cumming family firm and that of his own family. The event drew to a close with Nicholas responding on behalf of his mother and wider family circle.

The painting (Evening Light, Connemara) is by Dutch born artist, Joop Smits who now lives in Cork. It will be placed on display in Law Society House.

This unpretentious and dignified event seemed a particularly appropriate way to remember and honour this distinguished man of the law.
REFERENCE BY ATTORNEY GENERAL FOR NORTHERN IRELAND (NO 7 OF 2004) (GARY EDWARD HOLMES)
Robbery. - sentencing. - whether sentence imposed was unduly lenient. - HELD that while sentence imposed was unduly lenient, it would not be appropriate to alter the sentence in the present case
COURT OF APPEAL
12 NOVEMBER 2004
JUDGE KERR, LCJ

IN THE MATTER OF AN APPLICATION BY JOHN BOYLE FOR JUDICIAL REVIEW OF THE DECISION OF THE DIRECTOR OF PUBLIC PROSECUTIONS
Judicial review. - non-prosecution decision. - challenge to lack of reasons. - policy of DPP on giving reasons. - whether breach of the policy. - whether Art 3 of ECHR engaged. - application dismissed
QUEEN’S BENCH DIVISION
29 SEPTEMBER 2004
GIRVAN, J

IN THE MATTER OF AN APPLICATION BY CIARAN JAMES CUNNINGHAM FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
Application for leave to apply for judicial review of a prison governor’s adjudication of 25 June 2004 whereby prisoner was found guilty of being abusive to senior officer. - HELD that no error of law was found in the approach adopted by the prison governor. - application dismissed
QUEEN’S BENCH DIVISION
24 SEPTEMBER 2004
GIRVAN, J

DONNELLY, TONY AND FRANCES V JIMMY DOYLE
Real property. - title. - right of way. - adverse possession. - abandonment. - appeal as to the ownership of a laneway leading to the plaintiffs’ house. - HELD that the plaintiffs owned the totality of the laneway and the defendant had a right of way across the laneway
QUEEN’S BENCH DIVISION
8 OCTOBER 2004
SHEIL, J

FAMILY PLANNING ASSOCIATION FOR NORTHERN IRELAND V MINISTER FOR HEALTH SOCIAL SERVICES AND PUBLIC SAFETY AND SPUC NI, ARCHBISHOP SEAN BRADY AND THE NORTHERN BISHOPS, PRECIOUS LIFE AND LIFE (NI) (INTERVENERS)
Appeal from decision of Kerr J of 7 July 2003 whereby he dismissed application for judicial review. - whether advice and guidance should be issued to women and clinicians in Northern Ireland on the availability and provision of termination of pregnancy services. - to investigate whether women in NI are receiving satisfactory services in respect of actual or potential terminations. - to make or secure the making of arrangements necessary to ensure that women in NI receive satisfactory services in respect of actual or potential terminations of pregnancy in NI. - HELD that the appeal should be allowed and declaratory relief granted
COURT OF APPEAL
8 OCTOBER 2004
CAMPBELL, LJ
NICHOLSON, LJ
SHEIL, LJ

IN THE MATTER OF APPLICATIONS BY WILLIAM FRAZER FOR JUDICIAL REVIEW
Application for judicial review of a decision of the Secretary of State for Northern Ireland refusing the applicant admission to the Key Persons Protection Scheme. - judicial review of decisions of the Secretary of State rejecting an appeal from 2 decisions of the Chief Constable of the PSNI refusing a variation of the applicant’s firearms certificate and then revoking the firearms certificate. - HELD that the decision of the Secretary of State in relation to protection outwith the scheme must be quashed, but the applicant’s grounds of challenge to the refusal of a personal protection weapon and the revocation of his firearms certificate are rejected
QUEEN’S BENCH DIVISION
27 OCTOBER 2004
WEATHERUP, J

FAMILY PLANNING ASSOCIATION FOR NORTHERN IRELAND V MINISTER FOR HEALTH SOCIAL SERVICES AND PUBLIC SAFETY AND SPUC NI, ARCHBISHOP SEAN BRADY AND THE NORTHERN BISHOPS, PRECIOUS LIFE AND LIFE (NI) (INTERVENERS)
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QUEEN’S BENCH DIVISION
27 OCTOBER 2004
WEATHERUP, J

IN THE MATTER OF J AND S (SUPERVISION ORDER OR A CARE ORDER)
Application by a Health and Social Services Trust for a supervision order or care order. - whether the threshold criteria pursuant to Art 50(2) Children (Northern Ireland) Order 1995 have been satisfied. - legal principles governing the choice of Care or Supervision Orders. - HELD that the appropriate order to be made should be a supervision order
FAMILY DIVISION
11 OCTOBER 2004
GILLEN, J
IN THE MATTER OF AN APPLICATION BY J LP
Adoptive mother appeals against decision of Weatherup J of 16 March 2004 whereby he ordered that a grandmother should have direct contact with her natural granddaughter following her adoption. - whether direct contact should be ordered where the adoptive parent objects. - Appeal dismissed
COURT OF APPEAL
30 SEPTEMBER 2004
KERR, LCJ

IN THE MATTER OF AN APPLICATION BY N (A MINOR) BY C HIS FATHER AND NEXT FRIEND FOR JUDICIAL REVIEW
Special educational needs. - dyslexia. - applicant seeks leave under RSA O 53 r.6 (2) to amend the relief sought under earlier application made on 13 August 2004 and grounds upon which it should be granted. - HELD that leave to amend should be granted
QUEEN'S BENCH DIVISION
7 OCTOBER 2004
GILLEN, J

R V CLIFFORD GEORGE MCKEOWN
Applicant appealed conviction for possession of firearms and ammunition with intent, and possession of articles for a purpose connected with terrorism. - whether failure of prosecution to disclose certain materials on the grounds of public interest gave rise to unfairness in trial and constituted a breach of Art.6 ECHR. - allegations of entrapment. - Appeal dismissed
COURT OF APPEAL
28 OCTOBER 2004
KERR, LCJ

R V GAVIN DAVID MCCARTAN
Solicitors. - money laundering. - application for leave to appeal six month imprisonment sentence imposed by Higgins J for failure to disclose information contrary to Art.44 Proceeds of Crime (NI) Order 1996 and using a false instrument contrary to S.3 Forgery and Counterfeiting Act 1981. - whether applicant was gullible rather than malign. - HELD that the appeal be allowed and the minimum term varied to 18 years
COURT OF APPEAL
22 OCTOBER 2004
KERR, LCJ

IN THE MATTER OF AN APPLICATION BY N (A MINOR) BY C HIS FATHER AND NEXT FRIEND FOR JUDICIAL REVIEW
Appeal against the judgment of Weatherup J of 19 December 2003 dismissing application for judicial review of decision by an Appropriate Authority under Legal Aid and Criminal Proceedings (Costs) Rules 1992. - whether Appropriate Authority determined percentage reduction from profit costs. - whether Appropriate Authority had taken relevant considerations of good reason into account. - whether decision unreasonable and disproportionate. - whether reasonable opportunity to show cause. - HELD that the Authority’s decision must be quashed and the appeal allowed. - matter to be considered by a differently constituted appropriate authority
COURT OF APPEAL
11 OCTOBER 2004
KERR, LCJ

IN THE MATTER OF AN APPLICATION BY MICHAEL MCKEVITT FOR JUDICIAL REVIEW OF A DECISION BY THE NORTHERN IRELAND LEGAL SERVICES COMMISSION ON 22 DECEMBER 2003
Judicial review. - legal aid. - discharge of legal aid certificate. - whether procedure followed fair. - legality of the decision to discharge. - whether reasons severable. - dominant reason. - fair trial. - equality of aims. - ECHR article 6. - HELD that the dominant reasons for the decision in the present case were good in law and the application for judicial review is dismissed
QUEEN'S BENCH DIVISION
12 NOVEMBER 2004
GIRVAN, J

IN THE MATTER OF AN APPLICATION BY MISBEHAVIN' LIMITED FOR JUDICIAL REVIEW, AND IN THE MATTER OF AN APPLICATION BY IAN BROWN FOR JUDICIAL REVIEW
Licensing of sex establishments under Art.4 Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985. - challenges to decisions of Belfast City Council and North Down Borough Council to refuse licenses for premises. - Applications dismissed
QUEEN'S BENCH DIVISION
24 SEPTEMBER 2004
WEATHERUP, J

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW BY E ON BEHALF OF S (A MINOR) OF DECISIONS OF THE NORTH EASTERN EDUCATION AND LIBRARY BOARD MADE ON 17 OCTOBER 2000 AND 10 JANUARY 2001
Schools. - transport. - application to challenge the legality of a Department of Education circular which sets out the policy of the Department in relation to the provision of transport cost to school children. - whether Department policy is discriminatory by giving Catholic parents
an advantage compared with non-Catholics. - Application dismissed

QUEEN’S BENCH DIVISION
1 OCTOBER 2004
GIRVAN, J

IN THE MATTER OF AN APPLICATION BY MARIE LOUISE THOMPSON FOR JUDICIAL REVIEW
Judicial review. - non-prosecution of soldiers in fatal shooting. - whether decision bad in law. - challenge to lack of reasons. - policy of DPP is giving reasons. - whether breach of policy. - whether DPP should have ordered fresh investigation. - Application dismissed
QUEENS' BENCH DIVISION
29 SEPTEMBER 2004
GIRVAN, J

IN THE MATTER OF AN APPLICATION BY W FOR JUDICIAL REVIEW
Application for judicial review of the decisions of the Secretary of State for Northern Ireland and the Chief Constable of the Police Service for Northern Ireland in relation to the provision of home protection measures for the applicant. - key persons protection scheme. - HELD that the decision of the Secretary of State should be quashed
QUEEN'S BENCH DIVISION
27 OCTOBER 2004
WEATHERUP, J

WARKE, JAMES ALEXANDER V BRITISH TELECOMMUNICATION PLC
Negligence. - plaintiff fell off a ladder in the course of his employment. - HELD that the plaintiff has established a breach of Reg 8(1) of the Provision of Use of Work Equipment (NI) Regulations 1993. - Damages awarded less 50% for contributory negligence
QUEEN'S BENCH DIVISION
24 SEPTEMBER 2004
MORGAN, J

TRIBUNAL DECISIONS

BRADFORD, ANN MARIE V LEATHAM, LINDA
INDUSTRIAL TRIBUNAL, 22 SEPTEMBER 2004, 297/04IT
Applicant claimed constructive dismissal. - A disagreement arose between the applicant and the respondent concerning the loan of a book. - The applicant has difficulties with her mental health. - Tribunal decided applicant was not constructively dismissed.

HEATLEY, DAVID V ABBEY PRINTING SERVICE LTD AND DEPARTMENT FOR EMPLOYMENT AND LEARNING REDUNDANCY PAYMENTS SERVICE INDUSTRIAL TRIBUNAL, 11 AUGUST 2004, 3941/03IT
Applicant claimed notice and redundancy pay. - Applicant had previously been a director of company but later became an employee. - Claim for notice pay was withdrawn and tribunal ordered first respondent to pay £3,120.

HILL, VICTORIA V JOE TURNER
3 FEBRUARY 2004, 789/03IT, INDUSTRIAL TRIBUNAL
Applicant claimed unlawful deduction from wages. - Respondent did not appear and was not represented. - Applicant commenced employment on 10 February 2003 and was dismissed on 20 February 2003 and was not paid wages. - Tribunal ordered respondent to pay £504 in respect of unlawful deduction of wages in contravention of Article 45 of the Employment Rights (Northern Ireland) Order 1996.

HUENESTEIN, TEUNIS V FERN COMPUTER SERVICES LTD
1266/03IT, 8 MARCH 2004, INDUSTRIAL TRIBUNAL
Applicant claimed unfair dismissal. - Whether applicant was an employee of the respondent. - Applicant provided computer consultancy services in the Caribbean on behalf of the respondent. - The applicant later came to work in Northern Ireland and was paid by respondents on issue of an invoice. - Tribunal considered the tests as set out in the case of Montgomery v Johnson Underwood and decided applicant was an independent sub-contractor not an employee. - Tribunal did not have jurisdiction and dismissed claim.

IBRAHIM, HASSAN V TULLYMORE HOUSE LTD
2528/03IT, 5 AUGUST 2004, INDUSTRIAL TRIBUNAL
Applicant complained of breach of contract in respect of a bonus entitlement. - During the course of the hearing evidence emerged concerning illegality of contract. - Applicant had requested that he was paid £75 a week in cash in order to gain advantage of State Benefits. - Respondent agreed to this to facilitate applicant. - Tribunal decided they did not have jurisdiction to deal with claim on grounds of illegality of contract and dismissed complaint.

JONES, NEIL ALAN V ROBERTS, LIEUTENANT COLONEL AND MINISTRY OF DEFENCE INDUSTRIAL TRIBUNAL, 27 AUGUST 2004, 162/03IT
Decision on a preliminary issue. - Applicant employed as an army chef and complained of unfair dismissal. - Tribunal decided it did not have jurisdiction having regard to Articles 236, 237 and Schedule 2 Part 2 Paragraph 12 of Employment Rights (Northern Ireland) Order 1996.

KANE, WILLIAM JAMES V TESCO DISTRIBUTION
3895/03IT, 21 MAY 2004, INDUSTRIAL TRIBUNAL
Applicant complained of unfair dismissal. - Applicant refused to carry out a lawful order and was suspended. - After an investigation the applicant was dismissed. - Proper procedure for raising grievances was not followed. - Tribunal found that procedure was fair and dismissed application.
KENNEDY, WILLIAM V HUMPHREY, JA
T/A HUMPHREY AGRICULTURE AND
NICOBRAND LIMITED
INDUSTRIAL TRIBUNAL, 2 APRIL 2004,
3483/01IT
Decision on application for review of
decision of 17 September 2003. - Earlier
decision rules the applicant had not been
unfairly or constructively dismissed. -
Tribunal refuses application for review

Kinney, Arthur v Complete
Homecare Limited
3966/03IT, 21 May 2004, Industrial
Tribunal
The applicant claimed for redundancy
pay and pay in lieu of notice. - Respondent failed to appear. - Applicant was employed as a plasterer from September 1998 to May 2003. - Tribunal decided that applicant was dismissed by reason of redundancy and this was in breach of his employment contract. - Respondent ordered to pay £2482.04.

Lavery, John v Complete
Homecare Limited
Industrial Tribunal, 1 September
2004, 4517/03IT
Applicant claimed for Redundancy Pay,
Holiday Pay and no notice of
termination. - Applicant did not receive
any written confirmation of any
dismissal. - Respondent has ceased
trading. Tribunal found applicant's
complaints well-founded and awarded
£30820.09

Lewis, Robert v Rafferty, John
T/A City Construction Services
Industrial Tribunal, 22
September 2004, 1768/03IT
Applicant claimed unfair dismissal. -
Applicant left employment as a result of
dispute over holiday pay. - Tribunal found
applicant not unfairly dismissed but
stated he was entitled to four weeks
holiday pay.

Mann, Michael v Crossgar
Poultry Limited
Industrial Tribunal, 17 May 2004,
4559/03IT
Applicant claimed unfair dismissal. -
Applicant had lodged a grievance
complaint concerning bullying,
harassment and stress. - He asked to be
accompanied to interview by a trade
union official. - This request was denied.
- Tribunal found applicant was unfairly
discharged and found respondent's
conduct unreasonable. - Tribunal awarded compensation of £7554 and costs of £1000 to applicant.

MCateer, Lee v Vetro-Seal (NI)
Limited
Industrial Tribunal, 14
September 2004, 2449/03IT
Applicant claimed unfair dismissal and
statutory redundancy under Article
183(2)(a) Employment Rights (Northern
Ireland) Order 1996. - Applicant had
been laid off but was later asked to
return by respondent. - Tribunal
dismissed claims.

MCateer, Alan v Finlay
Communications Limited
228/02IT, 24 August 2004,
Industrial Tribunal
Applicant claimed for unfair dismissal. -
Applicant was employed as a satellite
engineer, three complaints were made by
customers and after an investigation
applicant was found to have sold goods
not provided by the respondent. -
Tribunal found that applicant was
unfairly dismissed but had by his own
behaviour contributed to his dismissal. -
Respondent ordered to pay compensation of £6707.33.

Mcloughlin, Andrew v Adria
Limited
425/02FET, 9th February 2004,
Fair Employment Tribunal
Applicant subjected to sectarian
harassment - He suffered from a
depressive illness and was prescribed
anti-depressants - Applicant depended
on his mother to arrange his affairs
during this period and she did not seek
help from a solicitor until after the
statutory time limit due to pressures in
her own life and as she was worried
about the welfare of her son - Tribunal
took all of these circumstances into
consideration and decided to extend the
time limit.

Moore, John Shaw v the Board
of Trustees of the National
Museums and Galleries of
Northern Ireland
Industrial Tribunal, 16 March
2004, 1179/01IT
Applicant complained of unfair dismissal
and breach of contract. - Applicant was
employed as Head of Administration on
a two year fixed term contract with
possible extension. - Applicant claimed
he was selected for redundancy because
of a disciplinary investigation. - Breach of
contract claim was withdrawn. - Tribunal
dismissed claim of unfair dismissal.

Nugent, Anne v Ag O'Neill
Limited
1149/03IT, 2 March 2004,
Industrial Tribunal
Applicant claimed for unfair dismissal. -
Applicant was employed as an office
administrator and in 2002 the
respondent agreed that the applicant
could work a four day week but still
receive the same weekly wage. - In
March 2003 respondent told applicant
that she must resume a five day week
and applicant refused. - Tribunal
decided that applicant was unfairly dismissed
counter to Article 126 of the
Employment Rights Order 1996 and
titled to compensation of £9675.

Scott, Jonathan v Brooks Group (UK)
Limited, T/A Brooks
Cookstown
02505/01, 2004, Industrial
Tribunal
Applicant complained he had been
subjected to disability discrimination,
breach of contract, unfair dismissal and
wrongful dismissal. - Applicant suffered
from Type 1 diabetes. - He was employed
as a forklift operator from August 2000
to April 2001. - During his employment
the applicant suffered a number of
diabetic episodes and respondent became
worried about public safety. -
Respondents requested that applicant see
the company doctor, applicant refused
and left the premises. - Tribunal
decided that applicant was not unfairly neither
dismissed nor dismissed in breach of his
contract. - Respondent had made
reasonable adjustments to accommodate
disability as per Section 6 of the Disability
Discrimination Act 1995 and did not discriminate against applicant.

STEWART, DAVID V NATIONAL AUSTRALIA EUROPE GROUP LIMITED
54/02IT, 16 SEPTEMBER 2004, INDUSTRIAL TRIBUNAL
Applicant claimed he was discriminated on the grounds of his sex. - Applicant had been employed by company since 1973 and applied for position as Asset Structuring Manager. - Applicant was a Grade 7 manager but the post was awarded to a Grade 6 female manager. - Interviewers did not follow bank’s recruitment and selection policy. - Applicant was distressed by his failure to be selected and the way in which he heard. - Tribunal decided applicant was discriminated against contrary to provisions of the Sex Discrimination (Northern Ireland) Order 1976 and awarded him £12,355.

TRUESDALE, SHARON V JOHN GILLAN AND HARRY CLARKE & CO (ANTRIM) LTD AND INSURANCE SERVICES (NI) LTD
INDUSTRIAL TRIBUNAL, 21 MAY 2004, 413/02IT
Applicant claimed unfair dismissal and racial and sexual discrimination. - Tribunal found that applicant did not have sufficient continuity of employment and presented scant evidence for discrimination claims. - Tribunal dismissed all applications.

WALKER, KAREN LESLIE V DUNDEE AUTOS LTD AND DUNDEE, KENNETH H
INDUSTRIAL TRIBUNAL, 18 MAY 2004, 8916/03IT
Applicant alleged she was dismissed without notice as a result of redundancy. - Respondents failed to attend. - Tribunal decided applicant’s dismissal was in breach of contract and awarded compensation of £2,119.68 under Working Time Regulations (Northern Ireland) 1998.

All decisions are available in full text and free of charge from the Libero database

A full list of recent abstracted decisions is now available on our website
RECENT MAGISTRATES’ COURT RULES

The Magistrates’ Courts (Amendment No.3) Rules (Northern Ireland) 2004 SR2004 No.433

These Rules which came into operation on 7th October 2004 amend the Magistrates’ Courts Rules (NI) 1984 (“the principal Rules”) to take account of Section 10 of the Justice (NI) Act 2004 (“the 2004 Act”).

Rule 2(1) inserts new Rule 161A into the principal Rules which prescribes the procedures which apply to an appeal under section 10 of the 2004 Act by the prosecution against the grant of bail by a magistrates’ court. New Rule 161A provides that –

• oral notice of the appeal shall be given to the clerk of the court and to the person concerned at the conclusion of the proceedings in which the bail was granted;
• the court shall remand in custody the person concerned until the appeal is determined or otherwise disposed of;
• written notice of appeal shall be served on the clerk of petty sessions and the person concerned within two hours of the oral notice being given; and
• where the prosecution fails to serve the written notice of appeal, or subsequently abandons that appeal, the clerk of the petty sessions shall direct the release of the person concerned on bail as granted by the court.

Rule 2(2) amends Schedule 1 to the principal Rules by;

• inserting after Form 10B, the new Form 10C in the Schedule to these Rules; and
• inserting after Form 91E, the new Forms 91F to 91I in the Schedule to these Rules.

The Magistrates’ Courts (Betting, Gaming, Lotteries and Amusements) (No.2) (Amendment) Rules (NI) 2004 SR2004 No.450

These Rules which came into operation on 20th October 2004 are made in consequence of the Betting and Gaming (NI) Order 2004 which amends the Betting, Gaming, Lotteries and Amusements (NI) Order 1985 to provide that applications for the grant of a bookmaking office licence shall be made to a county court instead of a court of summary jurisdiction.

The Rules amend the Magistrates’ Courts (Betting, Gaming, Lotteries and Amusements) Rules (NI) 1987 to revoke or amend those rules and forms which prescribe the procedure for an application to a court of summary jurisdiction for the grant of a bookmaking office licence.

The Magistrates’ Courts (Licensing) (Amendment) Rules (NI) 2004 SR 2004 No. 451

These Rules which came into operation on 20th October 2004 are made in consequence of the Licensing (Indoor Arenas) (NI) Order 2004 which amends the Licensing (NI) Order 1996 to:

- add an indoor arena to the types of premises for which a court may grant a licence for the retail sale of intoxicating liquor; and
- provide for a new type of application to a court of summary jurisdiction to attach, vary or remove conditions in respect of a licence for an indoor arena during its currency.

The Rules amend the Magistrates’ Court (Licensing) Rules (NI) 1997 to, in particular prescribe the procedure for an application to attach, vary or remove conditions in respect of a licence for an indoor arena.

COUNTY COURT (AMENDMENT NO.2) RULES (NORTHERN IRELAND) SR 2004 NO. 463

The above Rules which were made on 3rd November 2004, amend the County Court Rules (Northern Ireland) 1981 (“the principal Rules”) to make provision relating to –

• special measures under Part II of the Criminal Evidence (Northern Ireland) Order 1999 (“the 1999 Order”);
• applications under section 46 of the Youth and Criminal Evidence Act 1999 (“the 1999 Act”) for reporting directions and excepting directions;
• service of United Kingdom processes abroad under the Crime (International Co-operation) Act.
• applications for the grant of bookmaking office licences and liquor licences for indoor arenas.
Northern Ireland Court Service

APPOINTMENT – MASTER (HIGH COURT): CHANCERY DIVISION

The Lord Chancellor invites applications for appointment as Master (High Court). The Master (High Court) will be assigned to the Chancery Division of the Supreme Court and will have responsibility for bankruptcy and companies’ work. The Master (High Court) will also be expected to assist the other Masters as required. It is possible that where workload or other business needs require this, the Master (High Court) may be reassigned to another Division of the Supreme Court either permanently or for a fixed period of time.

Eligibility
To be eligible for appointment a person must be:
(i) a member of the Bar of Northern Ireland of at least seven years’ standing; or
(ii) a solicitor of the Supreme Court of Judicature of Northern Ireland of at least seven years’ standing.

The statutory retirement age is 70 and the Lord Chancellor will expect a reasonable period of service before retirement.

Remuneration
The current salary for a Master is £90,760 per annum. A non-contributory pension scheme is available in respect of this post. Five years service is required in order to be eligible for a pension under the scheme.

Candidates will be appointed following an assessment and selection process, which may include shortlisting and will include an interview. All candidates will be required to submit an application form. Where it is necessary to shortlist candidates for interview, only those candidates who appear to best meet the stated criteria for each competence will be called for interview. It is therefore important that application forms reflect how and to what extent a candidate meets the specified criteria and competences. It is intended to hold the interviews for this post at the start of March.

The Lord Chancellor will recommend for appointment a candidate who appears to him to be best qualified regardless of ethnic origin, gender, marital status, sexual orientation, political affiliation, religion, disability (except where the disability prevents the fulfilment of the physical requirements of the post), age (subject to the statutory age limit and reasonable period of service) or whether or not the candidate has dependants.

The Lord Chancellor is committed to equality of opportunity in the appointments process for all those who are eligible for judicial office.

How to Apply
Further information relating to this appointment can be found on the Northern Ireland Court Service website, www.courtsni.gov.uk or by telephoning 02890 728764. An application form together with supplementary information is available from:
Mrs Cheryl Dunlop, Judicial Appointments Unit, Northern Ireland Court Service, Headline Building, 10-14 Victoria Street, Belfast BT1 3GG (DX 527 NR, Belfast 1)
Or email judicialappointments@courtsni.gov.uk
Completed forms MUST be returned to arrive at the above address not later than 4.00pm on 21 January 2005.
Recommended Reading -

The Anti-social Behaviour (Northern Ireland) Order 2004

**Legislation**

**Anti-social Behaviour (Northern Ireland) Order 2004**
This Order provides for the making of an anti-social behaviour order against a person by a magistrates' court on application by a relevant authority or by the court by or before which the person is convicted of a criminal offence. Breach of such an order is a criminal offence under Article 7. Article 8 provides for restrictions on reporting proceedings for such orders against children.

www.northernireland-legislation.hmso.gov.uk/si/si2004/20041988.htm

**The Anti-social Behaviour (2004 Order) (Commencement No. 1) Order (Northern Ireland) 2004**
This Commencement Order brings into operation, other than Article 6, the Anti-social Behaviour (Northern Ireland) Order 2004 on 25th August 2004


**The Magistrates' Courts (Anti-social Behaviour Orders) Rules (Northern Ireland) 2004**
These Rules prescribe the procedure for applications under the Anti-social Behaviour (Northern Ireland) Order 2004 ("the 2004 Order") relating to anti-social behaviour orders; interim anti-social behaviour orders; and anti-social behaviour orders made on conviction in criminal proceedings.


All legislation is available on the Libero database via www.lawsoc-ni.org

**Articles**

Padfield: 2004 Sept C.L.R. 712-727

What is anti-social behaviour? (provides a clearer definition of anti-social behaviour)
Ramsay: 2004 Nov C.L.R. 980-925

‘ASBOs and Developing Case Law in England and Wales’ by Ian Wise, Barrister at Law (copy of a presentation given to LSNI - available from Library on request).

**Textbooks**


New Books in the Library -


Risk Management

Managing the Whole Firm's Risk

All firms develop a business culture and there is no doubt that a healthy culture can be a huge asset to a firm, making it stand out among its rivals. Indeed, a well-managed firm with a culture tuned to risk management can benefit through reduced errors, claims and circumstances.

There can unfortunately be a darker side to cultural issues. On occasions, the culture of doing business can ingrain high-risk behaviour because ‘it’s the way we’ve always done it’ or ‘it’s what the market expects’. This type of behaviour can sometimes be seen in practices where one department puts its own perceived business needs before the needs of the whole practice.

The reputation and commercial success of the whole firm is jeopardised because one department is unable or unwilling to take into account the bigger picture. The lesson is that it is not a question of blaming individual members of staff, or even individual departments; it is a matter of getting the culture right so that staff feel rewarded for their efforts when they put the firm’s interests first.

Risk management is intimately linked to a firm’s culture, not an optional extra which can be discarded when it is inconvenient or apparently uncommercial. All the aspects which make a firm a commercial success contribute to successful risk management. Good leadership gives the staff a strong sense of direction and purpose. Effective team development helps people to identify with others and a good human resources policy rewards those who make the most contribution to the whole business. The lesson is that no risk strategy can ever succeed if the firm’s culture is ignored.

This column was prepared by AFP Consulting, a Division of Alexander Forbes Risk Services UK Ltd. This article first appeared in ‘The Gazette’, the journal of the Law Society of England and Wales, 101/26 1 July 2004.
**Missing Wills**

Re: Violet Stewart (deceased)
Formerly of: 12 Cranny Lane, Portadown, Co. Armagh, BT63 5SW
Late of: Aughnacloy House, Tandragee Road, Lurgan, County Armagh BT66 8TL
Date of death: 5th October 2004
Would anyone holding a Will of the above-named deceased or having any knowledge of the whereabouts of same please contact:
Watson & Neill Solicitors
23 High Street
Lurgan
Craigavon
County Armagh   BT66 8AH
Tel: 028 3832 5111
Fax: 028 3832 7219
Email: watsonandneill@aol.com

Re: Gerard Fox (deceased)
Late of: 177 Stockman’s Lane, Belfast
Would anyone holding a Will of the above-named deceased or having any knowledge of the whereabouts of same please contact:
Roisin McKenna
Madden & Finucane
Solicitors
88 Castle Street
BELFAST BT1 1HE

Re: David Gordon (deceased)
Formerly of: Ramaket, Caledon, County Tyrone
Late of: 5 Ballyfounder Road, Portaferry, Newtownards, County Down BT22 1RE
Date of death: 2nd October 2004
Would anyone holding a Will of the above-named deceased or having any knowledge of the whereabouts of same please contact:
Ian Dawson & Co
Solicitors
13-15 Market Street
Armagh
County Armagh BT61 7QS
Tel: 028 3752 5566
Fax: 028 3752 6651

Re: Margaret Junnetta Duff, (deceased)
Late of: 6b Woodland House, Woodland Drive, Newtownabbey, Co Antrim
Date of death: 25th October 2004
Would any person having knowledge of the whereabouts of a Will of the above-named deceased, please contact:
Reavey and Company Solicitors
625-627 Shore Road Whiterabbey County Antrim BT37 0ST
Tel: 028 9085 3361
Fax: 028 9036 5031
Ref: MK/D0628001

Re: Fereidoon Behzadafshar (deceased) also known as Mr Freid Afshar
Late of: 55 Collinbridge Park, Glengormley, Newtownabbey, BT36 7SY
Would any person having knowledge of the whereabouts of a Will for the above-named deceased please contact:
Hewitt & Gilpin
Solicitors
Thomas Street
14-16 James Street South
BELFAST BT2 7GA
Tel: 028 9057 3573
Fax: 028 9057 3574
Ref: NG/NM

Re: Annie Hackett (deceased)
Late of: Springlawn Private Nursing Home, 44 Old Dromore Road, Omagh
County Tyrone
Formerly of: 15 Hillbank Fold, Omagh, County Tyrone
Date of Death: 8th October 2004
Would any person having knowledge of the whereabouts of a Will for the above-named deceased please contact:
James McNulty & Co
Solicitors
25-27 George’s Street
Omagh
County Tyrone BT78 1DE
Tel: 028 8224 2177
Fax: 028 8224 9834

**Missing Title Deeds**

Folio: 26064
County: Down
Registered Owners: Arashad Mohammad and Abdul Ghuffar Mohammad
Lands at: Cranny Lane, Bleary, Portadown
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned Solicitor.
And further take notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.
Con O’Hagan
Solicitor
13 Church Place
Lurgan
County Armagh BT66 6EY
Tel: 028 3832 4511
Fax: 028 3832 6172

Folio: DN 23544
County: Down
Registered Owners: The Most Reverend Patrick Walsh, Most Reverend Anthony Farquhar, Reverend Edward O’Donnell, Reverend Monsignor Thomas Bartley PP
Lands of: Ballyhornan, Barony of Lecale Lower and County of Down
Take notice that any person having custody of or information as to the

Will made by the above-named deceased please contact:
Tanya Jennings
Flynn & McGettrick
Solicitors
9 Clarence Street
BELFAST BT2 8DX
Tel: 028 9024 4727
Fax: 028 9023 6490
whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned Solicitor.

And further take notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.

Agnew Andress Higgins
92 High Street
BELFAST BT1 2BG

Registered Owner of a Charge:
Abbey National plc
Borrower/Registered Owners:
Darren McKnight & Rhonda McKnight
Premises: 41 Grangewood Road,
Dundonald, Belfast BT16 1GW

Any person having knowledge of the whereabouts or security of the Title Deeds for the above premises is asked to contact the undersigned Solicitors acting on behalf of Abbey National plc the registered owner of a charge within ten days from the date of this publication.

Fitzsimons Kinney Mallon Solicitors
6 John Mitchel Place
Newry
County Down BT34 2BP

Folio: 13355
County: Antrim
Registered Owner: Oliver McMullan
Lands of: Clough’s Road, Cushendall, Co. Antrim

Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned Solicitors.

And further take notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.

Campbell McKee Solicitors
Ballycastle
County Antrim BT54 6AR
Tel: 028 2076 2215

Folio: DN 42712
County: Down
Registered Owners: Robin McGuire and Eleanor McGuire
Lands at: 16 Primacy Park, Bangor, County Down

Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned Solicitor.

And further take notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.

L’Estrange & Brett Solicitors
12-16 Bridge Street
BELFAST BT1 1LS

Folio: AN 87928
County: Antrim
Registered Owners: Mr Ronald Bann
Lands at: Willow Lodge, 19 Old Road, Maghaberry, County Antrim BT28 2WL

We act on behalf of Abbey National plc, the registered owner of a Charge on Folio AN 87928 County Antrim. The Title Deeds have been mislaid or lost and anyone having knowledge of the whereabouts of Land Certificate Folio AN 87928 County Antrim registered in the name of Mr Ronald Bann, Willow Lodge, 19 Old Road, Maghaberry, County Antrim BT28 2WL, is requested to urgently contact:

Fitzsimons Kinney Mallon Solicitors
6 John Mitchel Place
Newry
County Down BT34 2BP

Re: Conor Bryson, Rory Bryson and Aisling Bryson
Premises at: 19 Dublin Road, Newry, County Down

We act on behalf of our above named clients who are the next of kin of their late parents Kenneth Barclay Bryson and Catherine Alice Bryson, both formerly of 19 Dublin Road, Newry, County Down. The original Indenture of Conveyance, Catherine Marie Toner to Kenneth Barclay Bryson and Catherine Alice Bryson dated 19th September 1991 is not present within the title documentations for the above premises held by our clients and is believed to be mislaid.

Any party having knowledge of the whereabouts or custody of the said title deed is asked to inform and contact the undersigned Solicitors:

Fitzsimons Kinney Mallon Solicitors
6 John Mitchel Place
Newry
County Down BT34 2BP
Solicitors Required

Solicitor - Administration of Estates and Estate Planning. The candidate will be self-motivated, resourceful and able to make an immediate contribution to the continued success of the Probate Department. Applicants will be 3-4 years qualified and preferably will have experience in administration of estates and drafting trust documents. This is a part-time position with an attractive remuneration package. Excellent prospects are available to the successful candidate within one of Northern Ireland’s leading Commercial Law Practices.

Application forms, together with further information, can be obtained from:
The Finance Director
Tughans
30 Victoria Street
BELFAST BT1 3GS
Tel: 028 9055 3300
E-mail: law@tughans.com
Tughans is an Equal Opportunities Employer.

McFadden Perry require solicitor for expanding litigation and Matrimonial & Family Law Division in their Bangor office. Apply with CV to:
Linda McFadden
McFadden Perry
Springhill Shopping Centre
Kileen Avenue
Bangor
County Down BT19 1ND
Tel: 028 9147 9494
Email – lmcfadden@mcfaddenperry.com

Rosemary Connolly Solicitors, Employment and Equality Law specialists, require an Employment lawyer, minimum two year’s PQE desirable. Replies enclosing full CV to:
Rosemary Connolly
Solicitors
2 The Square
Warrenpoint
County Down BT34 3JT
Or by email to:
rosemaryconnolly@solicitorsni.net

Solicitors Seeking Employment

Fixed term contract available for a solicitor in a busy general practice from end of April 2005. Experience in family law and litigation essential and experience in criminal law an advantage.

Applicants should contact:
The Personnel Partner
Harte Coyle Collins
Solicitors
55A Castle Street
BELFAST
Tel: 028 9027 8227 in writing or by email to info@hartecoylecollins.com

Solicitor required with at least two years’ PQE in civil litigation. Applications in writing enclosing CV to:
T H Conlon, Solicitors
28 College Gardens
BELFAST BT9 6BT

Solicitors Required

Solicitor required for expanding role in our commercial/conveyancing department. Minimum three year’s PQE. An attractive salary will be offered to the successful candidate. Please apply in writing with CV to:
Kieran Connolly
S C Connolly & Co Solicitors
Bank Building
Newry
County Down BT34 1AF

Lennon Toner O’Neill Solicitors, 54 English Street, Armagh, require an Assistant Solicitor for busy general practice. Experience in Litigation, Matrimonial and Criminal Law preferred. Please apply in writing with CV to:
Lennon Toner O’Neill
Solicitors
54 English Street, Armagh
County Armagh BT61 7DU
Closing date for applications: 7 January 2005

P R Hanna, Solicitors of 2nd Floor, Lesley Suites, 2-12 Montgomery Street, Belfast require a motivated and energetic Solicitor to work in the expanding Conveyancing Department of our Belfast office. Some travel to our Downpatrick office may also be required. The ideal applicant will have 1-3 year’s experience in Domestic Conveyancing and be capable of managing a full caseload promptly and efficiently. Experience of Commercial Conveyancing would be an advantage but not essential as would Wills/Probate. Applications from more experienced Solicitors interested in a part-time position would also be welcomed. Excellent working conditions and salary will be offered to the right applicant. Please apply in writing enclosing CV to:
Claire Devlin LLB
P R Hanna
Solicitors
2nd Floor, Lesley Suites
2-12 Montgomery Street
BELFAST BT1 4NX

Change of Address

Following the fire at our offices at Royal Avenue, Belfast, McCann & McCann Solicitors are now located at:-
Cathedral Terrace
19 Church Street
BELFAST BT1 1TG
Tel: 028 9029 9999
Fax: 028 9028 2812

Experienced bookkeeper available for part-time position. Fully computerised – conversant with Opcis and Alpha Law. Would be of assistance in the following areas:
- transition from manual to computerised accounts
- office management
- VAT/PAYE returns
- computer inputing
Please contact Miss Tracy Murray at 07763 346887 or 028 9085 1002

Bookkeeper Available
ADVANCE NOTICE

Seminar on  
The Criminal  
Justice Act 2003  
and its  
implications for  
Northern Ireland  
at  
The Institute of  
Professional Legal Studies  
10 Lennoxvale  
Belfast BT9 5BY  
Date: MARCH 2005  

Speakers:  
Professor Sean Doran  
and  
Professor John Jackson

Willplantax  
Gillian McClenahan ATT TEP Tax  
Trust & Estate specialist has established  
Willplantax to provide a confidential consultancy service for solicitors, accountants and financial advisers throughout the Province where help or a second opinion is required with  
- Inheritance Tax, Capital Gains Tax & Personal Tax planning & compliance  
- Drafting Tax efficient Wills, Trust Deeds & Deeds of Variation  
- Self Assessment Tax Returns for Individuals, Estates, Trusts & for Non UK Residents  
- Controllership Applications and funding for care.  

Web: www.willplantax.co.uk  
E-mail: gillian@willplantax.co.uk  
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