Reflections from the Bench
Presiding Judge Brownlie outlines steps taken in the Civil Court during the pandemic

What you can’t learn at the Institute
John Bailie reflects on the formative influence of his first boss

Curbing rights and freedoms in times of public emergencies
Les Allamby, Chief Commissioner, NIHRC
Welcome to the autumn edition of the eWit, the theme of which is “Adapting to the New Normal.” Even a cursory glance at the list of contents for this issue will demonstrate how much things have changed in recent months or currently remain in a state of flux. Who would have guessed this time last year, that just twelve months on, they would be scouring through an electronic version of the WIT containing articles on the topic of great immediacy such as “Business Recovery Measures?” Which of us would have imagined that we would need a piece on “Sightlink for Clients?” Who had even heard of Sightlink back in those distant days of 2019? I suspect that, if at that time I had come across an article entitled “Sightlink and remote hearings” or something along the lines of “Access to public emergencies” I would never have thought it was written in the context of a public emergency which had suddenly engulfed almost the entire population of the globe. So much has changed so radically in such a short space of time.

Some of the changes we are experiencing will be short-lived, most, I suspect, will not. The requirement for the recovery measures I have mentioned should gradually reduce and ultimately disappear as our workloads increase and our ability to process them improves. The extension of time given this year for trainees to register with the Society was a necessary measure to accommodate them and their potential masters but it was temporary in nature and is unlikely to be repeated.

The mantra “Build Back Better” has become well-known and, although perhaps a little cliché, it does neatly encapsulate an objective for which we should all be aiming. It is very much to the forefront of the Society’s thinking. Let me give just a few examples. Online CPD, which the Society has expanded successfully will continue once the pandemic has abated. Online applications for practising certificates are being introduced for the first time in 2021 and the explosion in the use and popularity of video-conferencing has resulted in the Society taking a conscious decision to equip the new meeting room suite which we propose to develop at Law Society House with high specification audio-visual technology.

Increased use of technology has also permeated the way in which the Society conducts its day-to-day business. Perhaps the most significant changes that all Council and Committee meetings are currently being conducted by video-conference. The level of attendance has increased noticeably as members’ time commitment is limited to the duration of the meeting itself. Time which would otherwise be lost to travel now allows for more productive meetings. We have also made other changes. A further survey is about to be launched and a similar or even better response is vitally important to add authority to the Society’s voice in the many discussions which lie ahead. The modest amount of time required to complete the survey is therefore a good investment and I urge you all to ensure that your firms do respond.

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Looking beyond the Society itself, it is clear that many other changes made in response to the pandemic will outlast it. NICTS is currently developing a strategy on modernising the courts and tribunals system and digitalisation is an important element of that strategy. The Society has been invited to contribute to this work and will be emphasising the importance of grasping this unique opportunity to re-examine and re-evaluate the way in which courts and tribunal functions are carried out. If this opportunity is missed, sadly, the new normal will look remarkably similar to the old normal so far as court users are concerned.

Members are likely to encounter permanent change in other areas too. The Probate Office, which introduced very welcome measures to assist practitioners with the practical difficulties they were experiencing as a result of the pandemic, is piloting online applications. The land registry has for some time been planning to introduce a new IT system with enhanced functionality. The Society will be working hard to ensure that both projects fully recognise the needs of practitioners and their clients in these important areas of practice.

One significant feature of the Society’s activities during the lockdown period was the Members’ Survey in May 2020. The response rate, at around 66%, was remarkable and the information gleaned from it has been of real value to the Society in its dealings with government departments and agencies. A further survey is about to be launched and a similar or even better response is vitally important to add authority to the Society’s voice in the many discussions which lie ahead. The modest amount of time required to complete the survey is therefore a good investment and I urge you all to ensure that your firms do respond.

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Ann McMahon
Head of Contentious Business

The Law Society has lodged a Response to the Call for Evidence by the Independent Review of Administrative Law.

In its response the Society raised concerns that the review appeared to apply to UK-wide issues but took cognisance only of England and Wales without consideration of the implications for devolved administrations, especially as justice and administrative law are devolved matters for Northern Ireland. Northern Ireland is a society in transition from conflict, with unique constitutional and power-sharing arrangements therefore respect for the rule of law in Northern Ireland is central to ensuring public confidence in the government. The periodic collapse of power sharing arrangements in Northern Ireland since the Good Friday Agreement in 1998 and the instability of governing arrangements reinforces the need to provide adequate protections for citizens to seek remedies. During the collapse of the Northern Ireland Assembly in January 2017, citizens turned to the courts to put focus on policy and procedure and without this there could not have been progress or matters of importance in this society – most notably compensation for victims of historical institutional abuse and the pension scheme for victims of the troubles.

The Society stated that without judicial review there would be lack of accountability and a lack of redress which would impact on wider access to justice matters. It is the Society’s view that any attempt to remove areas or categories, or to reduce the scope of judicial review through codification, would result in inconsistencies, and would contribute towards a reduction of rights for individuals.

The Society considers that limiting judicial review, including, for example, making it difficult to access legal aid, and other attempts to frustrate the use of judicial review, are unacceptable and worrying. The Society believes that there should be no concerns that frivolous or vexatious cases are allowed to progress through the court system and accumulate costs, as there is a natural filter at the ‘leave’ stage in a judicial review application which effectively identifies such cases.

Available statistics provided by Northern Ireland Courts and Tribunals Service do not show that there has been an abuse of judicial review in this jurisdiction. Furthermore, there is no evidence to suggest any fundamental difficulties or shortcomings in the current judicial review process. Rather than eroding or curtailing the powers of individuals to gain access to fundamental rights or attempting to limit the role of the independent judiciary in exercising their scrutiny functions, the Society believes that the current judicial review system should be protected, strengthened and made more accessible.

To view the full Response lodged by the Society, please access this link:

Law Society Response

Independent Review of Administrative Law

The discussions thereat helped inform the Society’s response which had a particular focus on how any changes might affect this jurisdiction.

The Society agrees that judicial review is an essential feature of the justice system across the United Kingdom and is a fundamental mechanism for individuals, organisations, NGOs, businesses and others to challenge decisions and actions of public bodies to ensure that they have acted in accordance with public authorities.

To inform the response, the Law Society formed a small Working Group of practitioners in the field chaired by Peter Maddison, and invited a leading academic to join them. The Group then organised a workshop chaired by a Lord Justice of Appeal, bringing together a range of interests from private practice, the public sector and third sector organisations. The discussions thereat helped inform the Society’s response which had a particular focus on how any changes might affect this jurisdiction.

Mull and Cherry (2019) UKSC 41. The Society is concerned that the agenda of Government is to limit the powers of the court to review administrative decisions in order to shield it from scrutiny. It is notable that there is no reference to the Human Rights Act within the terms of reference, which is surprising, as it is difficult to consider grounds for judicial review and issues of justiciability without reference to human rights.

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To view the full Response lodged by the Society, please access this link:
Business Support Measures for Members (continued)

5. Health & Wellbeing

The Society will publish a health and wellbeing toolkit for Members.

The intention is to raise awareness of mental health within the solicitor profession and reduce the stigma around mental health issues. It will provide practical information to enable Members to manage their own personal wellbeing and that of their staff. There will be guidance for members on how to take a more proactive approach on wellbeing issues within their offices.

6. Member Firms Survey

The Society undertook a comprehensive Survey of Member firms in May this year. The results of the first survey played a major part in informing the Society’s response to the pandemic.

A further survey will be carried out next week. This will allow the Society to monitor the ongoing position with firms, taking into account the impact of the extended Furlough scheme.

7. Library and Information Service

(i) Library Services

All fees for library services will continue to be waived until June 2021.

(ii) Society Publications

Fees for the commercial Journals will be re-instated in 2021 and prices held at current subscription rates.

8. Regulatory Matters

A lighter touch regulatory regime by both Professional Conduct and Client Complaints Departments was implemented in the immediate aftermath of the global pandemic and will continue for 2021.

A three-month extension for delivery of statutory Reporting Accountants’ reports will continue while the Professional Conduct Department will undertake an enhanced programme of desk-based reviews pending the resumption of on-site inspections.

Since April I have been dealing, where possible, with interlocutory proceedings and men’s approvals and petitions on the papers apart from scarce cases which I have dealt with in court. I also listed for in-person hearings those cases which fell into the ‘urgent category’ such as applications for injunctions both in terms of harassment proceedings and also in relation to housing anti-social behaviour cases. There was a significant increase in these cases as many of the anti-social behaviour allegations included breach of Covid-19 legislation. These cases involved in-person and SightLink hearings. Initially there was a moratorium on eviction cases beyond the ordinary rent but as of the 30th August this was lifted in most cases involving private and social housing. These cases are now proceeding in person and by way of hybrid hearings.

Additionally, as from April I was also able to list reviews in Ancillary Relief applications. These were normally by SightLink but, if requested, in-person to give directions, approve settlements and to make Orders in preparation for full hearings which commenced in August.

In early August I resumed in-person and hybrid hearings in Civil Bill proceedings, albeit in reduced numbers whilst adhering to the Courts & Tribunal Service’s social distancing precautions and to the protocols issued by the Lord Chief Justice. New policies have been implemented to ensure that courtrooms are regularly cleaned to include cleaning the witness box after a witness has given evidence. I am pleased that my assigned Court, Court 4 at Laganside, has recently undergone an updated risk assessment which, with the introduction of Perspex screens, can now safely accommodate 12 people. This has enabled the listing of cases with increased numbers. I do, however, encourage solicitors to make the appropriate arrangements to have witnesses available outside of the Court precincts to be contacted when required. I am acutely aware of how important it is to list Civil Bills far hearing, not just in the administration of justice to clear the backlog but also because it focuses the minds of the parties and their legal representatives to narrow the issues or indeed resolve cases, where possible.

I also actively encourage the use of hybrid hearings which means that we can accommodate witnesses giving evidence in court, where appropriate, and also by way of Sightlink. In my experience this has proven to work well especially with expert and vulnerable witnesses. This procedure has permitted cases to be listed which would otherwise have had to be adjourned.

Solicitors are required to let the Court Office know how witnesses wish to give evidence in this article Presiding District Judge Brownlie outlines the steps and opportunities which have been taken to manage a Civil Court during the pandemic.

Since the explosion of the Covid-19 pandemic in March, our courts have turned to short and long-term solutions to ensure, where practicable, continuous access to our justice system. Whilst initially many of our court houses had to close to prevent the spread of Covid-19, we have rapidly adapted our operations as we seek to establish a new norm. This has necessitated a significant increase in the investment and role of technology in the justice system in Northern Ireland. The use of technology has played a positive role in enabling cases to be dealt with where they may not otherwise have done. That said, the effectiveness of remote hearings depends on a range of factors, including having the appropriate platform, hardware and internet connection.

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Solicitors are required to let the Court Office know how witnesses wish to give evidence
and, where possible, remotely, but also to identify witnesses who will give evidence in court.

With regard to Small Claims proceedings, I have, since March, given directions and Orders in those cases which have been urgent such as where a decree has been issued in default and the judgment has created hardship to individuals or companies. Many of these applications have been heard remotely even where both parties have been unrepresented.

As the Presiding District Judge I have had, throughout the pandemic, the benefit of weekly (remote) meetings with the Lord Chief Justice and the other Presiding Judges. I have found this extremely helpful and reassuring as the emergency developed. This was done to seek to ensure a cohesive approach whilst benefiting from the experiences of others. Additionally, through the Judges Council for Northern Ireland, the Judicial Studies Board for Northern Ireland and the European Network for Councils of the Judiciary we have benefitted from the experiences of jurisdictions throughout the UK, other common law jurisdictions and the European Union.

I have no doubt that some judges, myself included, have traditionally been either reluctant or frightened to embrace technology. Since April it has been demonstrated that, when required to do so, we have adapted remarkably well to the new ways of working. How will this impact in the aftermath of the pandemic?

In my view, while remote hearings may not become the ‘new norm’ post Covid-19, I believe and hope they are here to stay. They have established themselves as a useful tool in preliminary applications, contested interlocutory proceedings and trials without evidence where both sides are legally represented. It is likely to reduce time and costs of travelling to and attending court.

The LCJ has issued various guidance notes and Protocols governing the conduct of remote hearings, the most recent of which was published last week. I note that there is also a very helpful practical guide to remote hearings in the summer issue of the Writ and that a version specific to the County Court was issued on 21st October 2020.

My sincere thanks to all those solicitors who, through their professionalism, have assisted in the largely seamless transfer of work to the remote model in Court 4.


Northern Ireland Chest Heart & Stroke

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In this article Tony Caher, a partner in Campbell and Caher, outlines his firm’s rapid transition to Cloud technology following the onset of the pandemic and the ensuing benefits for his practice.

Having spent 42 years in the profession, a certain smug complacency had been embedded in my attitude to legal practice. Our firm was small (four solicitors) relatively successful and very very busy. Nothing had to be changed. Dictation, ably managed by an army of support staff, was king, emails and letters were sent and received by secretaries and much of my time was spent travelling to Court buildings, travelling to consultations and meetings and waiting in common areas. All data was sent and received by post and handovers between qualified staff. The cost, in terms of replacing all computers, acquiring new monitors, training and the hard decisions to reduce the size of support staff was considerable. We had to ensure that our (new) IT providers were reliable and, thankfully, that turned out to be the case.

The Company that provided us with the Cloud system (LEAP) charged a licence fee to each individual’s case. The cost, in terms of replacing all computers, acquiring new monitors, training and the hard decisions to reduce the size of support staff was considerable. Each firm can determine what files can be locked or secured so that only certain individuals within the firm may access them.

Dispensing with a requirement to leave the desk, search out a file and spend time locating the necessary information to respond to queries from clients, other professionals or institutions. It is all there on screen at one’s fingertips.

The integrated legal accounts package ensures that solicitors and secretarial staff are not obliged to make time-consuming checks and enquiries from the Accounts Department as to the up to date ledger balances. All accounts and transactions are visible to staff but posting and editing are restricted to particular individuals, such as a bookkeeper.

The migration of the old legal software/accounts package was carried out seamlessly. It also encouraged us to purge dormant accounts/matters that were clogging up the system. The Accounts package which came alongside the Cloud permitted day to day nominal expenditure management including a live feed to the office bank account. Bank reconciliations were performed digitally almost eliminating the requirement for paper bank statements. VAT returns are now submitted effortlessly from the desktop to the HMRC portal.

We found the Company’s online support and live chat feature extremely helpful when faced with novel technical difficulties and even simple accessibility queries. The User Guide Articles from the community forum and the full expert training package were, and remain, invaluable.

Practice Managers and Directors/Partners can benefit from the Comprehensive Management Reporting feature whereby individual performances can be evaluated with helpful graphic displays. Overall income and expenditure are clearly defined and targets, financial strengths/weaknesses can be identified in a timely manner.

Despite the Company operating mainly in GB, we have been provided with an impressive library of precedents peculiar to the Northern Irish jurisdiction. These precedents can be populated with all relevant information at the touch of a button. Such frequently used documents can be incorporated into a precedents library and produced on our own specific letterhead and pre-printed stationary.

The Cloud fulfills the mission of Microsoft Outlook for seamless email and calendar/diary entries.

My High street firm, depending as it does, on high volume cases, easy access to clients faced a bleak, and potentially disastrous, future. The enforced absence of support staff, closed premises and the necessity of remote out of office work practices left our firm with no alternative but to acquire and embrace, at very short notice cloud technology. That was all achieved within a two-month time frame with a further month of training and replacement of computer hardware required to operate the new system. Everyone in the office, solicitors and support staff, had to have their own portal to permit access to the majority of files and, for the solicitors, to the accounting information relating to each individual’s case. The cost, in terms of replacing all computers, acquiring new monitors, training and the hard decisions to reduce the size of support staff was considerable. We had to ensure that our (new) IT providers were reliable and, thankfully, that turned out to be the case.

The Company that provided us with the Cloud system (LEAP) charged a licence fee to each terminal user on a monthly basis making the transition during a period of reduced fee income manageable and of considerable assistance to our cashflow. There was, for us, no initial upront fee. The new Cloud system within a very short time transformed our firm in the most dramatic way and left us in a position whereby in the event of another serious lockdown we could manage to operate to an acceptable level.

The ability to review, consider and update every single file at any time and from any location in the world (subject to internet availability).

The requirement to haul massive files to Courts, home and on vacation has gone. All data is held in a dedicated location in the Cloud and can be accessed by phone, ipad or laptop.

Access to all data is totally secure with each licensee possessing an exclusive password and secure log in procedures.

Not everything about the Cloud system as installed is positive, however. It is not compatible, in our experience with LAMS, CSJ and ICOS. It requires discipline, patience, and time to open a file for each matter and then scan every piece of correspondence to that matter. It is still conceptually difficult to commit to be almost paperless and dispense with paper files. One has to develop new patterns of behaviour for file management, particularly in complex matters. Diary discipline is essential. Creating your own precedents can be frustrating and installing data at the outset before action is taken also requires patience and tenacity. Finally, we have to update skills and it regularly to maximise the benefit of the Cloud.

Having said that ALL of us in the Practice solicitors and support staff are appreciative of the Cloud system. It is demonstrating considerable cash savings already in terms of reduced support staff requirements, stationery and postage, both commercially and Royal Mail. The fee earners’ time is spent more profitably and productively and managing a file himself/herself and calendar/diary entries.

Creating your own precedents can be frustrating and installing data at the outset before action is taken also requires patience and tenacity. Finally, we have to update skills and it regularly to maximise the benefit of the Cloud.

Covid-19 is the worst societal event in the lifetime of us all but it has forced us to adopt the new technology. Survival of the network of independent legal practitioners will depend on how quickly all of us embrace and adopt to the new Cloud. This 43rd year is going to be no other.
In this article, Jonathan McKeown, Chairman, JMK Solicitors, outlines the changes across his practice brought about by the pandemic, and in particular the changes to flexible working practices.

I am not sure if all of the people who I have employed would agree that I didn’t follow that instruction. As the owner of any business you will see things from an entirely different perspective to the employees. What might seem to me as reasonable terms and conditions of employment, or a reasonable expression of dissatisfaction about an outcome of a transaction, is viewed through a different prism by the person on the receiving end.

Above all the fears and worries that employees have, the greatest is about whether they will be paid at the end of the month. Something that they may think will be at risk should they be treated like attack dogs - ‘keep them hungry and give them a good kicking from time-to-time’.

Rather than recalling and terminating the retention, as I suspect most solicitors are minded to do, I urge an engagement with the client to understand the underlying issue. I can genuinely say that not once in my nearly 20 years has the client ever been actually as irate as us at it first seemed.

One of my partners is truly excellent at this and no matter what the level of aggression from the other person is, she always gives a warm smile and says ‘and tell me about why that is’.

There is usually something else going on in the client’s life that was the real cause of the raised concerns. Taking a little time to work through the issue with kindness and patience usually ends up with the discovery of what that was. And the client-solicitor relationship is improved as the client unburdens their woes.

It is difficult to remain empathetic when we ourselves are wound up about something. Even pre-Covid what was not to get ourselves in a spin about?

Trump, Boris, Brexit, RHI, climate change, all of our staff have the capability, through our HR department regularly telephoning their own or those with additional caring responsibilities. Anyone who has devised a BC/DR Plan will know that you consider what would happen in various situations and what you would do about it. What isn’t usually thought about is what happens when all of those scenarios happen at the same time and happen to the entire world at the same time.

If the plan deals with what happens if our Newry office is out of action by suggesting that solicitors can be utilised, that’s of no use when both are offline?

As far as our infrastructure and business planning are concerned, Covid-19 has been relatively easy going.

The biggest problem has been the parts of the system that are out of our control, the standard of broadband and telecommunications equipment provided by the national suppliers that faced massive pressure from the entire country having to work from home at the same time.

The psychological impact on our staff of not having the easy, random social interactions that come from being in our co-workers’ physical presence is what we now see is the biggest future risk to the firm.

During lockdown we instigated a process of our HR department regularly telephoning those we thought might need extra support, especially newer staff, those living on their own or those with additional caring responsibilities.

We reminded everyone of the benefits available under our employee health insurance scheme to give access to medical treatments and counselling.

We sent a mixture of emails, video messages, whatsapp updates and Zoom meetings to keep staff informed on the progress of the business throughout the lockdown. We tried not to be sensationalist giving the bad news quickly and matter-of-fact.

We cancelled all social events including the Summer and Christmas party, any and all discretionary spending has been shelved, there’s no prospect of parties or bonuses any time soon.

We did make some charitable donations as we recognised that our ability to raise funds for our chosen beneficiaries this year would be hampered.

As a firm we generally have little to no complaints but during Covid-19 this spiked during May with an unusually frequent series of expressions of dissatisfaction arising then and whilst we’ve ‘flattened the curve’ they now still arise more than we would expect.

We ‘lost’ a couple of clients to other firms who promised them they could get them offers in their cases quicker than we could, in situations where the claims were, in our opinion, nowhere near ready for negotiation.

This all pointed to an area of concern for us and additional training on the empathy I mentioned above.

Anyone who has devised a BC/DR Plan will know that you consider what would happen in various situations and what you would do about it. What isn’t usually thought about is what happens when all of those scenarios happen at the same time and happen to the entire world at the same time.

We arranged an information event with some of the medical consultants that we instruct to provide staff with first hand knowledge of what those frontline workers are facing and what they are seeing and expect to see in terms of the mental health affects of the crisis on the public.

Society has been rocked, people are scared and they are living through that in the supposedly safe environment of their own homes. They do not know if they will have a job or be able to pay their bills and keep a roof over their head. They need to feel secure – it’s the first couple of runs on the famous ‘Moholy’s Hierarchy of Human Needs’ – in order to properly live.

As business owners and solicitors we have to keep remembering that it’s not Post Traumatic Stress that our staff and our clients have - it’s Current Traumatic Stress.

Anything that causes hassle and inconvenience risks tipping people over the edge into a state of chaos. One that will take time and effort to come back from.

We have launched our new client App in recent weeks aimed at further improving the lines of communication between us and those we are helping and it has had a great initial response. Hopefully cutting down on the need for clients to keep paperwork around to remind themselves of appointments or how to get in touch or to check the current position of their case.

We have taken pressure off our solicitors with what we think is probably a unique action in relation to emails. All external emails are now sent to a central address for sorting and allocating to files.

This has multiple advantages, solicitors are interrupted less by the constant ping of new mail, there is less risk that an email will not be allocated to a file, there are no distractions with non-work related junk mail being reviewed.

This all serves to improve productivity and the enhancement of the client experience.

When all of that comes together it has the overall effect of smoothing out the ups and downs and the stresses of our working day. When we remember to be understanding and caring towards others and their struggles we walk in their shoes and it’s a much more rewarding experience.

Life is already making people hungry and giving them a kicking - the last thing they need is to get that from their employer!
Adapting to the New Normal – the Probate Office

In this article Master Hardstaff (Chancery Master, High Court) outlines the work of the Probate Office in dealing with the challenges it faced this year during the pandemic.

I wish to use this article to strike an upbeat note. This is not a time to be overly critical. The Profession, the Court staff, the Masters and judges are all experiencing unprecedented challenges in managing and processing matters so as best to maintain an effective administration of justice. Probate work is no exception to this.

At the start of the first lockdown staff capacity in the Probate Office was severely hit and for a few weeks the normal processing of grants dried to a trickle. During that period however, High Court management along with the Lord Chief Justice’s Office and myself and the Chancery judge worked to put in place interim measures designed to ensure that an increasing volume of work could be undertaken by the staff available. The office staff have been relocated to the old Coroner’s Court room in Laganside House to provide greater room for social distancing. I need not rehearse the various guidance that have been issued nor the more flexible arrangements allowed by me to enable staff to process the issue of grants, but I believe that they have been effective.

Since mid-March 2395 grants have been issued by the Office up to mid-October. The Probate Office is now dealing with an application within approximately four weeks of it being received. Whilst unfortunately a significant number of applications are still returned under query, the Checklist introduced earlier in the year has had a positive effect on reducing the number of errors and omissions. Please bear in mind that if your papers are returned under query, when corrected and put back in the system, they will have lost their place in the queue so to speak. This is perhaps a little unfair, but the working arrangements of the office are such that they cannot nuance the running order for the day to accommodate re-lodged papers. Clearly an incentive, if one were needed, to get it right first time round. Happily, however, it seems obvious to me that solicitors have become much more used to the interim measures and that the rate of return is steadily reducing.

Statements of Truth have provided a sensible way to establish the evidential base required to issue a Grant as opposed to the need for a sworn oath or affidavit. The rules remain, however, unchanged and therefore affidavit sworn evidence is still the preferred basis upon which to proceed. Indeed, in the area of non-contentious applications by wills, amendments, grants, Article 5 applications for leave to appoint and so forth. I would hope that I can once again increase the level and turnaround of such applications. I am dealing with most non-contentious applications and papers. Many matters can in effect be dealt with by an ex parte basis as the burdens related should generally be non-contentious.

I am a great believer in speaking to people. The telephone is a remarkable piece of technology for maintaining social distance. It should be used more often. An increasing number of the profession have direct access now to my mobile phone. I can live with that as it has not been abused. It seems equally the profession is now getting used to being frequently called directly from Master Hardstaff. Andrew Kirkpatrick, Head of Policy and Engagement at the Law Society, may have been tempted to block my number! Thanks are indeed due to Andrew for coordinating the ebb and flow of information.

Mark Borland, solicitor, took to the airwaves over the course of the Summer. It was very brave of him I thought. I must commend his efforts on the Radio Consumer Programme “On Your Behalf”. He spoke eloquently on behalf of the profession and its efforts to provide a comprehensive service to clients in these extremely difficult times. He also spoke up for the Probate Office which I very much welcomed. He did his very best to address issues raised by members of the public often to do with personal applications. He rightly steered away from the temptation to simply get it out there that a solicitor should always be used in the administration of an estate. He did however very effectively communicate the reasons why often an estate administration which appears simple is not and the very considerable benefits of taking legal advice. The matter of personal applications has been particularly challenging for the Office. At the start of the first lockdown personal applications were stopped. This was on the basis of public health advice concerning social distancing measures. Personal interviews simply couldn’t take place. This drew a great deal of criticism from members of the public and from some of our local politicians on their constituents’ behalf. Our approach was to accentuate the positive. We emphasised that we were working on robust reform to the personal application process which would ensure that there was only minimal personal contact required at the end of the process. There is now a significant number of personal applications being dealt with in a speedy and effective way. I say that knowing that it may draw some comment from some solicitors. Times have changed. However, whilst the law allows for personal applications they must not be treated disadvantageously as against solicitors’ applications. Equally I am satisfied that solicitors’ applications are not being treated disadvantageously because of personal applications. So, the two must rub along together as always.

Work continues in respect of the proposed online Probate arrangements. Indeed, many of the lessons learned through this crisis have been useful in their application to that project. It is likely Statements of Truth will become the norm in any online arrangements. Robust verification of identity, so as to avoid fraud, is being incorporated into the proposed system. The online system should considerably eliminate the need to return applications under query. You simply won’t be able to progress to the next stage of the application until you have completed the preceding step correctly.

I understand that some difficulties may have arisen in respect of returned BHT421s from HMRC. This is undoubtedly due to staffing arrangements with HMRC during the crisis. However, I am informed that HMRC is consistently looking at ways of improving its processing of these matters not least because of the implications for tax revenue raising.

In concluding what I think has been a pretty positive school report I would simply ask you to bear in mind that the office staff are doing their very best. They are dedicated people who are proud of their work. Their turnaround times compare extremely favourably with the rest of the United Kingdom and the Irish Republic. Please bear in mind, however, that they are all individuals, perhaps coping with all sorts of personal challenges at this time of crisis which they do their best to leave at the door when coming into work. To assist them the profession can continue to ensure that it rigorously checks applications before they come in. Please also bear in mind that anything is likely to amount to a query about the law should be immediately directed towards me by way of a written request rather than be wasted in putting back and forth correspondence with staff members. I want to intervene where appropriate so as to speed matters up. If something is urgent please make that clear when lodging. So however bear in mind that a request for priority or urgency does not of itself rectify a bad application.

That said I think we can all as lawyers be modestly satisfied with the efforts which we all have made to ensure that the administration of estates in Northern Ireland has continued with as little disruption as possible.
WORKING AS THE REGISTRAR OF TITLES DURING CORONAVIRUS

Christine Farrell, LLB, LLM

It will come as no surprise to those reading this article that Covid-19 and lockdown has posed Land Registry with one of its greatest challenges in its entire history.

Despite business continuity plans had been put in place by Land & Property Services, no one could have prepared for the dramatic and extraordinary events that arose on 23rd March 2020 and thereafter.

On lockdown, the Land Registries in the British Isles were not declared as essential services. Indeed the LandWeb system, which was implemented in 2004, was specifically designed to support a paper-based process. Applications lodged in the Registry are received and dated by our post section. Our IT supplier for the speed at which they were opened the office at the start of April with no traffic on the roads was eerie, as was walking through a deserted city centre. It felt very surreal, as if you were playing a part in a post-apocalyptic film. Over a number of days and I applaud them for their fortitude during this pandemic.

With declining Covid numbers at the end of April, I took the decision to re-open Land Registry with the approval of the LPS Management Board and the Department of Finance. A significant piece of work was conducted with our premiers team to ensure the safety of Lanyon Plaza for staff. One way systems were introduced, hand sanitiser stations erected, additional cleaners employed and desk space generously distanced in an effort to protect staff. A Covid champion was appointed to encourage staff to follow the protocols put in place and to assist in any Covid-related concerns or queries.

To effectively implement the temporary measures, it became apparent that the outstanding post had to be logged on to enable the registers to be updated. A small team of volunteers, including myself (accompanied by a stack of hand sanitisers and latex gloves) opened the office at the start of April to enable this work to be carried out. The experience of travelling from home to Belfast with no traffic on the roads was eerie, as was walking through a deserted city centre. It felt very surreal, as if you were playing a part in a post-apocalyptic film. Over a number of days and I applaud them for their fortitude during this pandemic.

The main lesson learnt from the challenges of Covid has clearly been the need for us all to embrace digital change. Our current IT system, LandWeb, has served us well, but it is now over 18 years old. Work is well underway for its replacement. Solicitors have recently engaged in workshops to enable us to gain an understanding of what functions the legal profession would like to see in a new solution. I welcome this valuable input and appreciate the engagement and the time spent by solicitors in this exercise. It is hoped that within the next several years a system will be implemented that will bring Land Registry into a more digital age and will bring quicker turnaround times and improvements to the customer journey.

In concluding this article, the news of a potential vaccine has just broken, bringing a ray of light to the end of a long dark tunnel. Seemingly in the months to come the mantra, “Keep your distance, wash your hands and wear face coverings,” will gradually fade in to the distance as we enter a new world post Covid. I expect and hope people will have learnt to be kinder, more tolerant, patient and respectful of each other in this new world!

...
Since its establishment in 1943 the BSA has often had to adapt to changing times and developments in wider society and 2020 has been no exception. The year got off to a good start with a full CPD Programme underway and an updated Costs Beckoner produced and circulated to our members. On 10th of March we staged a successful table quiz in the Emlyn Inn raising over a thousand pounds for Action Cancer, for many of those who attended this was to be their last large scale gathering before lockdown came into affect a few days later. As time went on it became clear that we often had to adapt to changing times and during the pandemic times many firms and individuals will be struggling both financially and psychologically and we would like to take this opportunity to thank the Law Society for their support in this regard. The BSA Committee continue to meet on behalf of our members in in regard to the issues which they raise on an ongoing basis. We understand that during these difficult times many firms and individuals will be struggling both financially and psychologically and we would like to take this opportunity to thank the Law Society for their support in this regard. The BSA Committee conduct regular engagement with the Law Society and recently met with the President and Chief Executive to discuss various issues raised by members including progress on the resumption of Court work and suggestions as to how best to achieve it, financial support from the Law Society, the increase in the professional indemnity insurance premium, progress on setting the litigation discount rate and problems encountered by members complying with the new practice directions around Covid-19.

The BSA committee continued to meet remotely throughout lockdown to formulate a way forward and discuss the various issues that were facing our Members. We took the decision to re-schedule our main group activities for 2021 and our re-started CPD programme will be delivered remotely in a manner compliant with Law Society requirements. Updates have been made to our website and social media, both of which we hope will prove to be invaluable tools for our members as we continue through these challenging times. We understand that Covid-19 is pushing law firms worldwide to rapidly function in new ways and it is being tested as never before. As firms and individuals alike juggle a range of challenges such as a changing workload, healthcare challenges, childcare issues and new-tangled case management systems, the BSA is proud to partner with Advanced who are market leading case management providers and who have guided individual firms and provided strong support throughout lockdown.

Our organisation was originally set up ‘to ensure the provision of ethical and efficient legal services to the community’ and ‘to promote the welfare and interests of the legal profession in general’. These founding principles have come to the forefront of our minds since March and we have continued to advocate on behalf of our members in relation to the issues which they raise on an ongoing basis. We understand that during these difficult times many firms and individuals will be struggling both financially and psychologically and we would like to take this opportunity to thank the Law Society for their support in this regard. The BSA Committee conduct regular engagement with the Law Society and recently met with the President and Chief Executive to discuss various issues raised by members including progress on the resumption of Court work and suggestions as to how best to achieve it, financial support from the Law Society, the increase in the professional indemnity insurance premium, progress on setting the litigation discount rate and problems encountered by members complying with the new practice directions around Covid-19.

We would also like to take this opportunity to mention our chosen charity, Action Cancer, who would usually at this time of year be presented with a substantial cheque as part of our fundraising efforts. Covid-19 has meant fundraising for all charities is difficult and whilst fundraising may be halted, cancer sees no barriers. Cancer is a disease which most people will be affected by either directly or indirectly in their lifetime. Action Cancer is Northern Ireland’s leading, local charity, passionate about delivering on its Mission of “Saving Lives and Supporting People”. At a time in which there is a massive amount of pressure being put on our NHS, Action Cancer is the only charity in the UK and Ireland providing high demand lifesaving breast screenings to younger women aged 40 to 49. All of the services provided by the charity are free of charge to the end user. This year already over 1,000 women have been screened for breast cancer, with a further 1,000 women booked for before Christmas. As Christmas approaches and the air of uncertainty with Covid-19 continues to linger, we would encourage the profession to donate to this worthwhile charity to help them, help us and ease the pressure on the NHS. You can do this online at http://www.actioncancer.org/Donate/Make-a-Donation

As our AGM approaches on Friday 27th November 2020, we would like to invite members of the profession to attend virtually. The Committee will seek approval of its extension of the appointment of Ciaran Maguire for a second one year term, as Chair of Belfast Solicitors’ Association. We would also like to invite proactive new members who wish to join the committee. If you wish to join or simply attend the AGM online, please complete registration by contacting our secretary Anne Maguire@belfast-solicitors-association.org and you will be sent a link and access to the meeting.

Stay safe and we’ll look forward to better times ahead!
Completion Protocol

This is an entirely new document and is intended to govern the behaviour of both the vendor’s and purchaser’s solicitors at completion. The purpose of the Protocol is to remove some of the undertakings from the standard completion letter which may have been inappropriate as undertakings and place them in the Protocol. Some of the main provisions are;

• A vendor’s solicitor’s commitment to inform the vendor and their agent that funds have been received and keys should be released and vacant possession provided. This removes the previous undertakings in relation to the authorisation to release keys and provide vacant possession. It deals with the concerns that strictly speaking neither of those undertakings were in the solicitor’s control so it ensures that the solicitor does what they are able to do to but no more.

• A vendor’s solicitor’s commitment providing for reasonable assistance to the purchaser’s solicitor to facilitate the completion of registration at Land Registry.

• A purchaser’s solicitor’s commitment to provide the vendor’s solicitor with the engrossed deed in sufficient time prior to completion. This will enable the vendor’s solicitor to have it executed in advance of completion so that they are actually in a position to validly give an undertaking at completion to furnish the executed deed.

Completion Letter

As a result of the new Completion Protocol, the Completion Letter has been amended to remove a number of undertakings. The remaining undertakings are those in relation to the deed, the other original documents of title and the discharge of mortgages and charges.

Building Control Completion Certificates

From 1st January 2021, it will become a requirement that the Building Control Completion Certificate is provided before completion for new build properties. Generally the procedures for building developments have been updated and have been amended from being recommended to being required in all cases.
Talk to us about your Life in the Law

Elizabeth Rimmer, CEO, LawCare

Life in the law can be rewarding and enjoyable, but it can also be very challenging at times. We receive hundreds of contacts every year at LawCare from lawyers and support staff who feel overwhelmed, stressed, anxious and burnt out. They tell us about their heavy workloads, demanding bosses and clients, insecurity in the office, not feeling good enough, and their fear of making a mistake. Although there has been research done in other countries, notably America and Australia, we have little data from the British Isles on how the culture and practice of law affects wellbeing. What is it about working in the law that can affect wellbeing? Are lawyers more at risk of psychological health than other professions? And how will the issues created by a global pandemic, a lack of routine and support structure, no separation between home and work, too much time or not enough time alone, a lack of supervision, feed into this?

We want to understand more about the impact of work culture and working practices on the wellbeing of legal professionals and we’ve teamed up with leading academics in the field to develop the ground-breaking Life in the Law research study.

Life in the Law is the biggest ever research study into the wellbeing of legal professionals in the UK, Ireland, Channel Islands and Isle of Man. This is a cross-profession, cross-jurisdiction piece of research that seeks to understand the day to day realities of life in the law. We’re looking at issues such as workload, working environment, supervision and support, workplace well-being and support and culture. The research study uses three academic research scales for burn-out, psychological safety and autonomy. Anyone working in the legal industry, including support staff, can complete the online questionnaire anonymously and the results will form the basis of an academic paper and will be announced next year. The data will help LawCare to improve the support available to legal professionals and drive long lasting change in legal workplaces so that people working in the law can thrive.

In the meantime, if you’re finding things difficult, we’re here to listen. We provide emotional support to all legal professionals and support staff. You can call our confidential helpline on 0800 279 6888, email us at support@lawcare.org.uk or access webchat and other resources at www.lawcare.org.uk

Lifelinehow.org.uk is open until December 31st

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Curbing rights and freedoms in times of public emergencies

Les Allamby
Chief Commissioner, Northern Ireland Human Rights Commission

Governments in London, Belfast and Dublin have taken unparalleled powers and sweeping measures unheard of in peace times. Curtailed freedoms, we have long taken for granted include to move freely, attend workplaces, see our families and friends, open and run our own businesses and attend social and civic activities. This article explores what human rights has to say in the face of such restrictions and outlines how international and domestic human rights standards provide a framework for dealing with a public health emergency and outlines some of the work being undertaken during the pandemic.

The application of Human Rights standards

Human rights do not take a back seat during emergencies. For civil and political rights including freedom of thought, conscience and religion, a set of human rights principles have been developed on when limitations can be applied during an emergency. The ‘Sirosca Principles on the Limitations and Derogation Provisions in the International Covenant on Civil and Political Rights’ (‘ICPR’) were produced by the American Association of the International Commission of Jurists in 1984. It sets out clear parameters for restrictions on freedom covering the ICPR, including that limitations must be prescribed in law, with adequate safeguards and effective remedies, not be arbitrary or unreasonable and legal rules should be clear and accessible to everyone. The measures, including their severity, nature and scope shall be only those strictly necessary to deal with the emergency and proportionate to the threat posed. The restrictions should also be for no longer than required. In the case of a public health emergency due regard shall be given to the international standards of the World Health Organization. Certain rights cannot be derogated from even in a time of an emergency for example, the right to life, freedom from torture, cruel and inhuman treatment, freedom from medical or scientific experimentation without free consent, freedom from slavery and freedom of thought, conscience and religion.

It is arguable whether the plethora of current regulations to deal with the fluid circumstances do render the law accessible even to lawyers. Moreover, there is a lively political and public debate about the necessity and proportionality for the measures taken and whether the most recent ‘circuit breaker’ provisions should either be more localized or less draconian.

The Sirosca principles are not binding in domestic law. Nonetheless, the ICPR and other international treaties may be relevant in domestic law in certain circumstances. Lord Hughes identified three ways in the Supreme Court decision 5G and others v Secretary of State for Work and Pensions (2015) UKSC 76 para 137. First, if the construction of UK legislation is in doubt, a court should generally construe the law on the basis of honouring international obligations. Secondly, international treaty obligations may guide the development of common law. Thirdly, (in the case of the UN Convention on the Rights of the Child) (UNCRC) it may be relevant in law to the extent that it fails to the court to apply the European Convention on Human Rights (ECHR) via the Human Rights Act. The European Court of Human Rights (ECHR) has sometimes accepted that the ECHR can be interpreted in its own case law in line with international human rights treaties.

The ECHR, has, of course, been incorporated into domestic law through the Human Rights Act and a number of the Sirosca principles apply equally to the ECHR which is justiciable domestically. The Convention has absolute rights (the right to life, freedom from torture, inhuman and degrading treatment) while other rights such as the right to private and family life under Article 8 of the Convention is a qualified right. In the case of the right to private and family life there shall be no interference with the right except in accordance with the law, where necessary in a democratic society and in specific circumstances which include public safety, protection of health and the protection of the rights and freedom of others.

Further, case law has tended to examine the legality of any restrictions by considering whether a limitation has a legitimate aim, corresponds to a pressing social need and is necessary and proportionate. On proportionality, this has often involved assessing whether there is a rational connection between the public policy objective being pursued and the means deployed by the government to achieve that objective. In addition, the ECHR has looked at whether a fair balance has been struck between the demands of the general community and the protection of an individual’s fundamental right. So how does this play out in practice and what has the Commission done to ensure rights are protected?

The work of the Commission

The dilemma facing legal advisers and the enforcement of Convention rights in the pandemic can be crystallized in one example, namely, the right to visit loved ones in residential care homes. The Department of Health has issued guidance and revised it on a number of occasions as the pandemic has unfolded. The latest version ‘Covid-19 Regional Principles for Visiting Care Settings’ was published on September 25 2020. It references Article 8 (the right to ‘family and Private Life’) outlining that blanket visiting bans are contrary to the rights of patients and families and that a failure to adopt an individual approach will breach the Convention. Nonetheless, the guidance sets out parameters based on the level of surge, which vary from only end of life visits and alternatives such as ‘virtual visiting’ only in cases of high surge, to two people accommodated with social distancing where there is a low surge and outdoor and virtual visiting used wherever possible.

The Commission has received complaints about undue restrictions on visits for example, virtual visiting not being sufficient to visit a parent with dementia alongside concerns about prevention of infection being spread in care homes housing family members. In practice, the former has generated more work than the latter. Applying Article 8 as a qualified right to protect health has invariably led to advising individuals to negotiate with care home management to achieve the best possible solution rather than launching a legal action attacking the guidance or its application. Save where the guidance is being interpreted in a Wednesbury unreasonable way a legal challenge is unlikely to succeed and, in any event, would take some time to work its way through the courts. Elsewhere, legal challenges have had more impact, for example, the decision to resume inspections of care homes by the RQIA was almost certainly influenced by an imminent High Court hearing.

The Commission has sought to make an impact through a number of means. In April 2020 the Department of Health announced its intention to introduce regulations to dilute statutory duties when reviewing and supporting look after children including in foster care, residential and secure care settings. Alongside the Children’s Commissioner, Children’s Law Centre, Voice of Young People in Care and the British Association of Social Workers among others the Commission was able to significantly ameliorate the original proposals including the length of their application and through the NI Assembly’s Health committee ensure effective reporting and monitoring of the use of the new powers. In contrast, the Department of Education made far less attempt to engage when diluting statutory requirements around timescales for assessments – an issue under legal challenge where the Commission was able to compare and contrast the two different Departmental approaches for the solicitor taking the case.

A number of Select committees have undertaken inquiries into the Government’s handling of the pandemic including the joint Select committee on Human Rights and the Women and Equalities committee and the Commission contributed to both inquiries. Dealing with groups who have fallen through the cracks and ensuring effective support for example, people in the UK under the ‘No Recourse to Public Funds’ immigration rules who have lost their income due to the pandemic and effective oversight and accountability for the Test, Track and Contact arrangements under the Stop Covid-19 app have exercised the Commission through advice on these issues has largely gone unheeded.

In looking ahead, to a time when Northern Ireland comes out of the pandemic the question of how the recovery of the economy will be managed and paid for will loom large. This will inevitably engage human rights which has increasingly embraced issues of poverty and taxation both in terms of ensuring corporations pay taxes in full and the need for governments to implement genuinely progressive tax regimes. The work of Philip Alston and others in the post of UN Special Rapporteur on Extreme Poverty have addressed this matter. In July 2020 the inquiry select committee has launched an inquiry into ‘Tax after Coronavirus’ and the Commission contributed to the inquiry. The issue of whether Northern Ireland should have tax varying powers and if so, how should it use them is a potential matter for the new Fiscal Council to look at drawing on the experience from Scotland.

Human rights issues remain in play throughout the pandemic both in terms of legal challenges and the need to adhere to the wider framework of safeguards created through international human rights standards. The Commission will continue to be vigilant and welcomes issues being brought to our attention by the profession.

Please note
The Commission’s new address is 4th Floor 19-21 Alfred Street Belfast BT2 8ED Tel: 028 90 243987 Website: www.nihrc.org

Case review

Re JR118’s Application for Judicial Review

Ashton McKernan, Trainee Solicitor, Brentnall Legal

The issue surrounding the extension of Non-Molestation Orders has been clarified by the High Court in the judicial review case of JR118’s Application in a case brought by Brentnall Legal Limited.

Background

We were instructed by AS to bring Non-Molestation Order proceedings against her ex-partner, P. The allegations made by AS against P were of sexual violence and prolonged coercive conduct. P had been arrested for the rape of AS and released on police bail pending further investigation.

An ex-parte Non-Molestation Order was granted by District Judge Bagnall on 30th April 2020 and given a return date of 27th May 2020. It was confirmed with the PSNI that P had been served with the Order however there had been no contest by P or by any legal representative on his behalf by 26th May 2020 and so the relevant Covid FCI1 Form was lodged with the Court advising the same and seeking a four week adjournment with the Order extended on a without prejudice basis to allow P to seek legal advice and/or present to defend the application. An email was then sent from the court office advising that whilst P had been served with the Order, he had not been served with the summons. The email further advised that District Judge Mclean had advised that AS could make a further application if there were any further incidents. We were then advised that this was due to the legislation not providing for extensions. Three steps were then taken: an appeal to the Family Care Centre was lodged, an application was made to the District Judge to state a case to the Court of Appeal and judicial review proceedings were initiated. Given the urgency in the matter, O’Hara J agreed that judicial review was the preferred option.

The agreed question for the Court was whether Article 24 of the Family Homes and Domestic Violence (NI) Order 1998 allowed for a Non-Molestation Order to be varied by extending the date to which it has effect.

Submissions

It was agreed between the parties that there was no material difference between the law in Northern Ireland and the law in England and Wales. It was submitted on behalf of AS that the Practice Guidance of Sir James Munby issued on 18th January 2021 specifically provided for circumstances in which an ex-parte Non-Molestation Order could be varied by extending the duration of the Order.

Mr Lavery QC on behalf of AS submitted that the purpose of a Non-Molestation Order was to protect vulnerable people and therefore there is no justification for restricting the meaning of the word varied in Article 24(1). In fact, it would make no logical sense to allow every other part of an Order to be varied but the date, especially when read in conjunction with Rule 13 of the Domestic Proceedings Rules (NI) 1996 and the relevant form FR to ‘extend vary or discharge’. Further, it was submitted that given the various and wide-ranging reasons for the adjournment of cases, the court must be regarded as having the power to extend the ex-parte Order.

It was submitted by Ms McMahon on behalf of the Respondent that the legislation makes a clear distinction between Occupation Orders and Non-Molestation Orders. It was highlighted that the legislation has provisions for the length of time Occupation Orders can be made and extended for and that the power to extend Occupation Orders is not derived from Article 24 but instead by specific provisions within the legislation. It was further submitted that support for this stance was derived from the earlier Domestic Proceedings (NI) Order 1980 which would indicate that a new interim order would be made rather than an existing Order be extended.

Ms Rice for notice party, it submitted that the approach taken by the District judge on 27th May 2020 was the correct one.

Judgment

O’Hara J disagreed with the District Judge and held that he could see no logic or basis for confining the word varied in Article 24 to exclude the variation of the date to which the Order has effect. He further drew a distinction between Occupation Orders and Non-Molestation Orders stating that the duration of an Occupation Order is curtailed by the legislation due to the fact that such an Order interferes with one’s property rights whereas there is no right to molest someone.

O’Hara J further agreed that the District Judge’s interpretation did not fit with the wording of Rule 13 or Form FR or the guidance issued in England and Wales which confirmed his view that the District Judge’s interpretation was incorrect.

It was held that on the papers before the District judge on 27th May 2020, that AS was a woman who needed protection and the law should be interpreted to allow consideration of what needed to be done to protect her.

O’Hara J gave the following guidance in relation to the extension of ex parte Non-Molestation Orders:

- If an extension of an ex-parte Non-Molestation Order is sought, then the Article 23 risk of significant harm may apply. However, if the respondent has been served that may not be the case.
- If an extension of an inter partes Non-Molestation Order is sought, then the relevant test will be that under Article 20(5).
- In either of the above, the Court should consider whether the Order should be extended and for how long. In doing so, the Court will ask itself two questions:
  1. What has happened in the period since the Non-Molestation Order was made, and
  2. What is the overall context of the application.

It was stated that in the present case, the allegations of a prolonged period of coercive criminal conduct might in itself be enough to persuade the Court to extend the Order. This approach would allow the respondent to present his answer to the allegations while ensuring the protection of the applicant.

O’Hara J, declared that Article 24 of the Family Homes and Domestic Violence (NI) Order 1998 empowers a court to vary a Non-Molestation Order by extending the date to which it has effect.

The judgment can be found at [In the matter of an application by JR118 for judicial review [2020] NIQB 54].
Irish Rule of Law International’s work continues apace supported by the legal professions in Northern Ireland

Aonghus Kelly, Executive Director, IRLI

Irish Rule of Law International is a project-oriented, non-profit rule of law initiative established and overseen by the four legal professional organisations from the island of Ireland. Originally founded in 2007, the organisation has collaborated with academics, judges, legal practitioners, policymakers, and civil society around the world to advance collective knowledge of the relationship between rule of law, democracy, sustained economic development and human rights.

Irish Rule of Law International’s (IRLI) work has continued apace since the last time we reported to The Writ in the Winter edition of 2018, via the former President of the Law Society of Northern Ireland, Norville Connolly. Since then over 60 detained persons have received legal services with the support of lawyers from across the island of Ireland in one of the poorest countries in the world, Malawi. We record our thanks to the Society of Northern Ireland, Norville Connolly.

Working with our local partners, we ensured each woman was released on bail from prison. All had been held for periods between six months and four years without a trial. While each infanticide case is different, there tends to be common themes: abandonment, poverty, social stigma, loneliness, and fear of authority. In addition, each woman is dependent on overstretched legal aid lawyers and with little possibility of a trial in the near future.

IRLI also works to ensure that children held in police custody or prison are brought to appear before the Child Justice Court ("CJC") rather than remaining in police cells or brought to adult prisons. In the last year, 186 children have appeared before the CJC in the capital, Lilongwe, and IRLI provided support in all of those bail applications; 167 were granted bail, 19 children were placed into our Child Diversion Programme, diverting children who come in conflict with the law away from the formal criminal justice system and into the community instead.

IRLI’s partnership with the Malawian Police Service has included the drafting and support training courses with the judiciary regarding forced confessions. In addition, the IRLI judiciary lawyer is training a significant number of magistrates on the law relating to evidence obtained through torture and, in turn, advocating for the inadmissibility of such evidence.

A troubling development in the last year is that the death sentence has reared its head again in Malawian jurisprudence. Four death sentences have been imposed in the last year. This represents a worrying step backwards given that the death penalty had not been imposed for almost five years prior to these decisions. As a result, IRLI has begun with others to build the capacity of Legal Aid bureau advocates to defend accused persons in capital cases.

Another challenge in Malawi is that it is common for mentally ill accused persons to be held in prolonged police detention, sometimes for up to two years, without trial. However, legally accused persons can remain in pre-charged detention in police cells for a maximum period of 48 hours. IRLI was recently made aware of two men who had been held in the police cells for over five months. Our lawyers seconded to the Legal Aid Bureau, the Director of Public Prosecutions and the Malawi Police Service worked closely together to ensure the men’s cases were listed before the Court. At the court, the judge ordered that one of the accused’s charges be dismissed, while the other accused was sent for a fitness assessment and he was later discharged.

Day by day, IRLI works to build the capacity of the criminal justice institutions in Malawi and increase the respect for the rights of the accused and increase the respect for the rights of the accused.

Further information can be obtained at info@irishruleoflaw.ie

Sollicitors’ Benevolent Association Special General Meeting

Notice is hereby given that a Special General Meeting of the Solicitors’ Benevolent Association will be held remotely by video conference on Monday 21st December 2020 at 11.30 am for the purpose of considering, and if thought fit, to adopt the new Rules of the Association which have recently been approved by the Charities Regulator. You can inspect and/or download a copy of the new Rules on the Association’s website www.solicitorsbenevolentassociation.com.

You can register to attend the Special General Meeting by sending your name and email address to the secretary, Geraldine Pearse, at contact@solicitorsbenevolentassociation.com

For more information about the International Bar Association please go to https://www.ibanet.org/
European Lawyers in Lesvos (ELIL)

providing legal assistance to asylum seekers

Philip Worthington, Managing Director, European Lawyers in Lesvos (ELIL)

Philip Worthington, Managing Director of European Lawyers in Lesvos (ELIL) outlines the activities carried out by the organisation in providing legal assistance to asylum seekers in order to uphold the rule of law and protect human rights. This project is supported by the Law Society of Northern Ireland.

The Context

In March 2016, the EU-Turkey deal created a legal crisis, stranding tens of thousands of people on the Greek Aegean islands as their claims for asylum are processed. They live in camps and reception centres in dire conditions and with limited access to basic services. These facilities are almost always critically over capacity. Last year alone, 73,600 people, the vast majority of whom fled Syria, Afghanistan or Iraq, arrived in Greece after making the dangerous sea crossing in search of safety.

The asylum process is a legal one, yet on the Greek islands there is less than one lawyer for every 100 people going through the legal process. On Samos, there is just one lawyer for every 2,000 people. On Lesbos, there is just one lawyer for every 2,000 people going through the legal process. On Samos, there is just one lawyer for every 2,000 people. On Lesbos, there is just one lawyer for every 2,000 people.

Asylum seekers often have to attend without having spoken to a lawyer. The decisive asylum interview, meaning that most asylum seekers for their first instance interview. ELIL offers legal information, practical support, and tailored advice to asylum seekers at this crucial stage of the process. ELIL also helps reunite families, providing legal consultations to assist with family reunification applications under the Dublin Regulation.

ELIL also provides support to unaccompanied minors, particularly those incorrectly registered as adults. The need in this regard is great — earlier this year, there were almost 1,100 unaccompanied minors in Moria alone. ELIL is one of the largest providers of legal assistance to unaccompanied minors on Lesvos, having assisted over 650 such individuals since 2016. This work focuses on family reunification and challenging incorrect age assessments, with our team also assisting minors with asylum interview preparation where relevant.

In sum, since 2016, after four years of successful work on Lesvos, ELIL extended its operations to the Greek island of Samos, where 5,000 people live in Vathy camp, which has an official capacity of just 700. Our new project will contribute to considerably increasing the legal capacity on the island.

ELIL’s work has been made possible by the remarkable spirit of European civil lawyers which sees full-time Greek lawyers working alongside volunteer European asylum lawyers and legal assistants. Over the past four years, over 250 people from 18 European countries have volunteered with us, sharing their experience, skills and knowledge.

Along with in-person assistance, in recent months our volunteer lawyers from across Europe have also begun to provide consultations remotely from home, ensuring that we are able to support as many people as possible despite lockdown restrictions and challenges to legal access.

An Enduring Need

Over the past four years, ELIL has provided legal assistance to over 11,000 people. Our work demonstrates how important access to legal assistance can be for refugees. Of those we have assisted, 74.5% have granted asylum (compared to an average of 45.5% in Greece), meaning they are given protection and do not have to return to face war, violence or persecution in their home country. We have also helped over 1,200 people, including 300 unaccompanied minors, be reunited with family members elsewhere in Europe.

The past year has brought many challenges that have eroded legal access still further, from the devastating fire that destroyed Moria camp on Lesvos, including our offices, to the Covid-19 outbreaks on both Samos and Lesbos and the increasingly strict asylum framework in Greece. In this context, guaranteeing meaningful access to legal support is more important than ever.

We are extremely grateful for the Law Society of Northern Ireland’s support over the past four years. For further information and to support ELIL, please visit www.elil.eu
It must be remembered that no local politician exercised power in Northern Ireland between 1974 and 1999 and so the city council was for much of David’s time the major centre for political debate in the absence of a Stormont parliament. David and his wife Fionnuala brought to the Lord Mayoralty inclusiveness, tolerance, generosity and style. The contrast was all the greater as the Troubles were still at their height. The Minister for Justice has said that David was ‘a beacon of liberalism in the darkest of times.’

David’s courage deserves recognition. This is not only in the physical sense – the Alliance party headquarters was bombed and its leader, fellow solicitor Oliver Napier, had a police bodyguard. There was a by-election in 1982 in South Belfast because the previous MP was murdered by the IRA. David stood and was runner-up.

When the British and Irish governments entered into the Anglo-Irish agreement in 1985 some councils including Belfast refused to strike a rate or discharge their officers. This led to considerable hardship for ordinary people. David’s soundness as a lawyer is demonstrated by his opinion that these strikes could be challenged successfully in the courts as unlawful but also his moral courage, because he brought the proceedings personally and would have paid to the council’s legal costs if he had lost. Nor can his proceedings have been popular with all of his professional clients: in the event he won in the High Court before Hutton J. later Lord Hutton. That decision was upheld in our Court of Appeal – and David got his costs!

When politics ended for David with the Good Friday Agreement. He fought five successful public elections – not just as public man and philanthropist but as a respected lawyer, good humourous companion and a warm and generous host. He was a good shot and enjoyed his days out with two syndicates.

He derived huge enjoyment from the family home in Donegal. He is survived by his widow, Fionnuala, Vice Lord Lieutenant of County Down, five children, Babary, John, Patrick, Julius and Dominic and by two grand-daughters.

As the editorial in the Belfast Telegraph said, we are all the poorer for his passing.

Donnell Deeny

THE INDUSTRIAL TRIBUNALS AND THE FAIR EMPLOYMENT TRIBUNAL

PRESIDENTIAL DIRECTION ISSUED UNDER REGULATION 14 OF THE INDUSTRIAL TRIBUNALS AND FAIR EMPLOYMENT TRIBUNAL (CONSTITUTION AND RULES OF PROCEDURE) REGULATIONS (NORTHERN IRELAND) 2020 AND PRESIDENTIAL GUIDANCE ISSUED UNDER RULE 8 OF THE INDUSTRIAL TRIBUNALS AND FAIR EMPLOYMENT TRIBUNAL RULES OF PROCEDURE 2020

APPLICATIONS FOR EXTENSION OF TIME FOR PRESENTING A RESPONSE

Rule 18 provides:

Applications for extension of time for presenting response

18. — (1) An application for an extension of time for presenting a response shall—
(a) be presented in writing;
(b) be copied to the claimant;
(c) set out the reason why the extension is sought;
(d) except where the time limit has not yet expired, be accompanied by a draft of the response which the respondent wishes to present or an explanation of why that is not possible; and
(e) if the respondent wishes to request a hearing, include that request.

(2) The claimant may within 7 days of receipt of the application give reasons in writing explaining why the application is opposed.

(3) An employment judge may determine the application without a hearing.

(4) If the decision is to refuse an extension, any prior rejection of the response shall stand. If the decision is to allow an extension, any judgment issued under rule 19 shall be set aside.

Rule 89 provides:

Correspondence with the tribunal: copying to other parties

89. Where a party sends a communication to the tribunal (except an application for an order requiring a person to attend a hearing under rule 18(1)(ii)) such party shall send a copy to all other parties and state that it has done so (by use of “cc” or otherwise) including the date and means of delivery. The tribunal may take a departure from this rule where it considers it in the interests of justice to do so.

CLAIMANTS AND RESPONDENTS SHOULD NOTE THE FOLLOWING which arise from the above Rules:

1. Respondents are required to follow rule 18(1) in full when making an application for an extension of time for presenting a response to a claim. The application should be sent to the tribunal by email, where possible.

2. In accordance with rule 18(2), if a claimant wishes to oppose that application, the claimant’s written reasons for opposing the application must be sent to the tribunal office within 7 days of the claimant receiving the respondent’s application. The claimant’s written reasons should be sent to the tribunal office by email, where possible.

3. The tribunal office’s email address is: mail@employmenttribunalsni.org

4. Although rule 18(2) does not state that the claimant should copy their reasons for opposing the respondent’s application for an extension of time to the respondent, claimants are directed to copy their written reasons for opposing the application to the respondent, at the same time as sending them to the tribunal, in accordance with the requirements of rule 89.

5. A respondent’s application for an extension of time cannot be considered until either:
(i) the expiry of 7 days from the date on which the claimant received a copy of the application for an extension of time;
(ii) the date on which the tribunal receives the claimant’s written reasons for opposing the application for an extension of time, if earlier.

Accordingly, the date on which an application for an extension of time can be considered may fall outside the 28 day time limit for presenting a response.

6. Any reference to a claimant or to a respondent means a reference to the claimant’s representative or the respondent’s representative, if they have a representative.

President: Eileen McBride CBE
18 October 2020

Obituaries
Applications for Practising Certificate
Year commencing 6th January 2021

There are important new arrangements which will apply to Practising Certificate Applications for 2021 (Practice Year beginning 6th January 2021).

At this time of year members would usually receive a hard copy Application Form for a Practising Certificate for the incoming year. This will not be happening this year as the process will be administered using a new online Application Form.

The new platform will be activated in week commencing 16 November 2020 and will be accessible from the Members’ Section of the Society’s website. The Society will be sending all members an e-communication notifying them when the system has gone live and providing guidance on what they need to do.

Please ensure that you and colleagues are fully acquainted with these changes.

Please note that in order to use the new online application process, it is essential that you can access the Members’ Section of the Society’s website.

You should test your login details to the Members’ Section as soon as possible - https://www.lawsoc-ni.org/member-login.aspx?ReturnUrl=/

If you are unable to gain access, you should immediately email records@lawsoc-ni.org to ensure that the necessary steps can be taken to facilitate access.

This is an exciting new development which will streamline the application process. Please give it your full support.

Editor’s Invite

We are keen to welcome contributions, and suggestions for contributions from our members for the Writ Ezine. Our next edition, which is due out in the New Year, will be looking at the impact of BREXIT on firms, and will profile the experiences of a number of firms.

We also welcome feedback on any articles we carry, and are happy to develop a “Letters to the Editor” column.

If you would like to contribute to this topic, or provide an article on any other topic, please contact the Editor, Heather Semple (heather.semple@lawsoc-ni.org)

Are you attending a remote Court hearing and not sure what it will involve?

If so the guidance below may answer your questions

This guidance has been prepared by the Society for solicitors to pass on to their clients. It aims to answer questions for clients as they prepare for a remote or hybrid hearing.

As a result of coronavirus, the court system has had to adapt arrangements to comply with public health guidance.

Many courts will operate on a remote basis whereby you will participate in your case from a venue outside of the court building using a smartphone, laptop or other device. Some cases will take place with some participants attending in the courtroom and others joining by a link to a video screen.

1. What is a remote hearing?

A remote hearing is one which is held without the people involved coming to court. Rather they join the hearing by telephone or by a video link using a phone, laptop or other device. The judge may join the hearing from a court building, although not necessarily. Although all those involved in a case may be joining from different locations, apart from the fact that people are not in the same building, a remote hearing is exactly the same as a hearing where the parties come to court in person and the process is broadly the same. The court has all the same powers and will expect people to treat it just as seriously as a ‘normal’ hearing.

2. What is a hybrid hearing?

A hybrid hearing is a mixture of a remote hearing and a normal face to face hearing. This means that some of the people involved attend the court in person, and some of them join the hearing remotely by video link or phone. A hybrid hearing might happen if one person can’t physically get to court or if the courtroom isn’t big enough for everybody to fit in whilst being socially distanced.

3. What will happen if I am participating remotely in a hearing?

When court hearings take place in person in a court building, they do not always start on time because judges often allow parties and their lawyers some time to discuss things before coming into the courtroom. Remote hearings almost always start on time. It’s really important that any discussions you or your lawyer want to have with the others involved in the case take place before the start time for the hearing, and that you are ready and waiting at the time the hearing is listed.

It will take a few minutes for everyone to join the hearing. It is a normal offshore, and a contempt of court for you to record the hearing without permission. So make sure the judge is aware of this function on your device (except when you are actually talking, so that background noise does not stop people hearing what is being said). It will help to look for the mute function on your device before the hearing, or at the start, so you know how to switch yourself on to mute and back again when you need to speak.

Judges can and do hear evidence from witnesses at remote hearings, and can make final court orders. It will be up to the judge in your case to decide whether it is fair and suitable for a particular hearing to be dealt with remotely and, if not, what the alternative arrangements are. You should tell the court about any difficulties that affect you which they might not otherwise know about.
4. How do I join a remote hearing?  
You will be sent joining instructions before the hearing, either by the court or by the lawyer who is organising the connection. Ensure you have downloaded any software needed to connect to the court. If the hearing is a telephone hearing, this will usually be arranged by the court and they will call you so that you can take part. It is important that you make sure the court has your up-to-date phone number and that you are ready to answer the call when it comes. The court might call from a withheld number (‘No Caller ID’). If you have your phone set to ‘Withhold number’, make sure that this is turned off so you do not miss the call.

Make sure your phone or device is fully charged or connected to power so that it does not run out of battery during the hearing – video calls can use up the battery quickly. If the court is unable to connect to you during the hearing, it may carry on without you.

If the hearing continues for any length of time ensure you can connect to a power source if the battery begins to drain.

5. Will it cost me anything to join?  
It will not usually cost you anything to join a remote hearing. You will need to have a good phone connection for a phone hearing, and a good WiFi internet connection for a video hearing. If you live somewhere with poor phone signal but have WiFi, check if you can switch your phone to ‘WiFi calling’ so you can connect by phone through your WiFi. If you are relying on 3G or 4G data to take part in a phone signal but have WiFi, check if you can get a good WiFi internet connection for a video hearing for a phone hearing, and  

6. Can I have someone with me during the remote hearing?  
If your hearing is public (most civil cases) there is no restriction on who can be present with you. However, most family cases are not heard in public. They are heard in private.

If your hearing is private you should be on your own unless the judge gives you permission for someone else to be with you. Discuss this option with your solicitor or in advance so that the court can be notified. Anyone who does attend a hearing to support you should remain silent throughout.

9. What if I need to speak privately with my lawyer or supporter during the hearing?  
If you have a lawyer or supporter, you could discuss with them the best way of communicating during a remote hearing. Normally you could whisper to your lawyer in the courtroom, but in a remote hearing you could use WhatsApp, email, or a separate video link or phone call to communicate privately as things happen. This arrangement should be set up by your solicitor before the hearing starts.

10. What if I want a face to face hearing?  
If you think your case needs to be held face to face for any reason you should raise this with your solicitor as soon as possible. Your solicitor will raise this with the judge so that a decision can be made on whether it would be appropriate or not.

If you have a disability that makes a remote hearing impractical or unsuitable, or if you need an adjustment to be made so that you can participate, your solicitor should contact the court, explaining the difficulty and what might help to make things work better for you.

11. What if something goes wrong?  
It is important that you understand what is happening during the hearing, so if you are struggling to see, hear or follow, you should let the judge know at the time. You can do this by speaking, putting your hand up or (on some platforms) pressing a button to raise a ‘virtual’ hand. Remember that, on some platforms, the judge might not be able to see everyone’s face at the same time so if your hand does not attract their attention you may need to interrupt. You could say ‘I’m sorry to interrupt but I can’t hear’. If there is background noise, the judge may ask everyone who is not speaking to mute their microphones.

Sometimes people get cut off from a hearing part way through. Usually the people left behind will get a notification telling them you have gone, so they will either try and re-join you or wait for you to dial back in. It is a good idea to keep your joining instructions to hand throughout the hearing so that you know where to find them if this happens.

The following timeline has been established for the application and selection process.

Week commencing 11th January 2021 -  
Application forms will be issued by e-mail to all Solicitors who registered their interest with the Panel Administrator.

Friday 12th February 2021 @ 4pm -  
Deadline for submission of completed applications by e-mail to una.doherty@nigala.hscni.net. Application forms returned via post should be sent to:  
FAO Una Doherty, NIGALA, 5th Floor Centre House, 79 Chichester Street, Belfast BT1 4JE

You must allow postage time for applications sent via post.

Monday 15th February – Friday 26th February 2021 -  
Review of application forms and select successful applicants. This will be undertaken jointly by NIGALA and a representative from the Law Society.

Week commencing 1st March 2021 -  
Successful applicants will be notified and provided with details of the governance requirement for going live on the NIGALA Panel by 31st March.

April 2021 -  
Welcome and introduction session. Schedule of joint training.
Managing Partners must look beyond COVID and use technology to wire in real change

"Leadership is action, not position."
Donald McGannon (US Broadcasting Industry Executive)

We all sometimes overlook the most basic business principles, including that technology exists to make people’s lives easier. Overlooking the obvious is understandable when uncertainty is all around us, but effective leaders can shape the future as well as manage the present. In the world of IT, Managing Partners don’t have to be technical, they need to create an environment where technical experts can improve the working lives of those in the firm.

Take the current fluid situation about whether staff should work from home or the office. The big issue isn’t how does everyone get set up at home again for Lockdown 2.0 - that’s a tactical challenge. The issue is how can your firm leverage the opportunities of remote working for those who want/need it, to provide a better employee experience. The firms that have modern software installed are ahead of those that don’t in making this a reality.

Technology and software are the enablers of remote working. COVID has been the unwanted experiment that shows law firms can support the remote working model. The eventual winners will be the firms that hire in flexible working. The work or home option can be a positive choice, depending on the changeable demands of work and family life. The key is in making sure it works for the business as well as for the staff.

**Having dealt with where people work, what about how they work?**

Fluctuating demand for services across different departments in a firm is a predictable consequence of uncertainty. Micromanagement can help with the day-to-day challenge, but is not always practical or desirable. Case management built into modern software systems provides a more robust, longer-term response to this challenge. Matters can be run end-to-end, using a single platform with everything in one place, with guidance, supervision and compliance checks built in.

- **In busy scenarios:** A solicitor focuses on the elements that need most care and attention with administrative tasks automated, leaving more time to take on more cases. The system generates prompts, reminders and messages to keep the case progressing.
- **In quieter scenarios:** Case management substitutes for repetitive tasks and administrative duties, allowing fewer staff to deliver the same or greater level of service.

Returning to the theme of leadership, the examples above illustrate the efficiency gains that can be made. But people will make it happen. Firms that adopt these working practices will undoubtedly have happier and more motivated staff if micromanagement can be avoided and, in turn, a more efficient and productive business.

Deborah Edwards,
COO, Insight Legal

**ADVERTORIAL**

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Returning to the theme of leadership, the examples above illustrate the efficiency gains that can be made. But people will make it happen. Firms that adopt these working practices will undoubtedly have happier and more motivated staff if micromanagement can be avoided and, in turn, a more efficient and productive business.

Deborah Edwards,
COO, Insight Legal

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From the High Court and Court of Appeal – abstracts of some recent case law

ADMINISTRATION OF JUSTICE
Margaret Dack v Ministry of Defence
Appeal by the plaintiff in relation to an order of the Master staying the plaintiff’s proceedings for negligence until the defendant has established that Northern Ireland is not the natural or appropriate forum and that there is another available forum which is clearly or distinctly more appropriate than the Northern Ireland – forum non-conveniens – HELD that appeal allowed and stay removed on proceedings in Northern Ireland
HIGH COURT 8 FEBRUARY 2016 BURGESS J

IN THE MATTER OF AN APPLICATION BY FINE POINT FILMS AND TREVOR BIRNEY FOR JUDICIAL REVIEW
Inquiries in which the police can use the ex parte procedure contained in the Police and Criminal Evidence (NI) Order 1989 to obtain a search warrant in respect of journalistic material – applicants, who are journalists, seek order quashing warrants authorising the search of homes and business premises – whether ex parte hearing fair – Judge was not advised that a 10 ECHR rights were engaged nor was he advised that a warrant such as the one sought could only be justified by an overriding requirement in the public interest – HELD that hearing fell short of the standard required to ensure the hearing was fair and warrant quashed
HIGH COURT 10 JULY 2020 MORGAN LCJ, TREACY LJ, KEEGAN J

R v Shaun McCauskey
Appeal against verdict and sentence – appellant convicted of wounding – whether the Court is competent to decide all aspects of the appeal and to exercise all of its powers notwithstanding the absence of any decision on leave to appeal by a single judge under s.4 Criminal Appeal (NI) Act 1980 – application for extension of time of appeal – HELD that appeal is devoid of merit and refused
COURT OF APPEAL 18 AUGUST 2020 MORGAN LCJ, MCCCASEY LJ

Criminal Law
R v Richard Samuel Hazel
Appeal against conviction and sentence – application convicted of 14 counts of indecent assault on a male and was sentenced to two years in custody and two years on probation – whether to extend time as regards the application for leave to appeal against conviction – whether the period of time for the allowance of the applicant’s grounds of appeal – whether the verdict is safe – creditability of the applicant’s evidence – whether a Makpango or care warning ought to have been included by the judge in his charge to the jury – whether the judge ought to have directed the jury in relation to bad character evidence – HELD that conviction safe, extended time to appeal refused and application to amend the notice of appeal refused
COURT OF APPEAL 10 AUGUST 2020 STEPHENS LJ, TREACY LJ, MCCCASEY LJ

Eflexid Limited v M&M Contractors (Europe) Limited
Constrution dispute – application to enforce an adjudication award determining that the plantiff subcontractor should pay the main contractor (“defendant”) a sum of money and adjudicator agreed in respect of various disputes arising out of a subcontract entered into between the defendant and plantiff – whether the adjudicator was entitled to make the award he did – stoodstill agreement – estoppel by representation – improperly – HELD that the adjudicator erred and was not entitled to award any sum on account for work to be carried out since the contract did not permit the recovery of prospectiv costs on account – Court ordered that a reduced sum be paid by the plaintiff
2 DECEMBER 2019 HORNER J

QMAC Construction Limited v Northern Ireland Housing Executive
Plaintiff has made two applications to enforce two awards by way of summary judgment made by an adjudicator – whether the adjudicator had erred in his calculation of interest and/or the award of interest constituted a penalty – current financial position of the defendant – HELD that plaintiff is entitled to summary judgment with a stay of execution directed
HIGH COURT 9 APRIL 2020 HORNER J

Damages
Ian Maurice Magee v Kenneth and Jocelyn Stewart
Plaintiff was injured while at work on the farm of the defendant and was diagnosed with Motor Neurone Disease – whether the defendant’s are liable to pay damages in respect of the accident and whether any damages payable by the defendants should be reduced by the contributory negligence of the plaintiff – whether witnesses were expected to give evidence – HELD that the plaintiff’s claim in common law negligence against the defendants has been made out and damages will be reduced by 25% for contributory negligence on the part of the plaintiff
IN THE MATTER OF AN APPLICATION BY STEPHEN HILLAND FOR JUDICIAL REVIEW
Applicant received two consecutive prison sentences and was released on licence – Dependent of justice revealed the licence on the basis that the risk of harm to the public had increased significantly – statutory scheme under the Criminal Justice (NI) Order 2008 (“the Order”) – consideration of the recall provisons by the Northern Ireland Courts – test applied by the Department of Justice – difference of treatment under the order between a Determinate Sentence (“SSC”) and an Extended Conditional Sentence (“ECS”) – whether this difference is a breach of a.5 and a.15 ECHR – HELD that the Court concludes that for the purposes of this application DCS prisoners are not in an analogous situation to ECS and ECS prisoners, and if they were then there is no additional difference in treatment is justified – application for judicial review refused
HIGH COURT 16 JULY 2020 KEEGAN J

IN THE MATTER OF O.J. and R.J. (Minors) (Freezing for Adoption: Jurisdiction: Brussels IIR: Vienna Convention)
Preliminary issue of jurisdiction in the context of an application to free three children for adoption – applicability of Article 15 of Brussels IIR (“the Regulation”) – whether Northern Ireland should retain jurisdiction in relation to the case given that the parents of the children are Slovakian – whether the Regulation applies to freezing for adoption proceedings – grounding of jurisdiction – requirement that the commencement of the Vienna Convention on Consular Relations – HELD that the Regulation does not apply to an application to free a child for adoption, that the court has jurisdiction to hear the freezing application and that it is appropriate to notify the Slovakian authorities in respect of the Vienna Convention
HIGH COURT 18 MARCH 2020 COLTON J

IN THE MATTER OF AN APPLICATION BY OMAAR ISMAIL
Appeal against refusal of application for asylum – whether the Secretary of State satisfied the requirements of the anomuas statut test in respect of the evaluation of the facts – HELD that an order of certamen made quashing the impugned decision of the Secretary of State and matter referred back for reconsideration by a different decision-maker
HIGH COURT 7 OCTOBER 2019 COLTON J

IN THE MATTER OF AN APPLICATION BY RYAN TAYLOR FOR JUDICIAL REVIEW
Ruling in relation to interim relief based on delays in determining a claim for judicial review – procedural challenges posed by Covid-19 and relevant legal principles in relation to interim relief in public law cases – interim relief in judicial review of benefits
HIGH COURT 22 JUNE 2020 FRIEDMAN J

IN THE MATTER OF A CHILD KIM
(Order or No Order: Article 2(5)
Applicant mother applies for a residence order and an order defining contact in relation to a child who is 5 years old – court must consider making an order unless making a no order in the best interest of the child – HELD that a residence order is made in favour of the mother and an order made defining contact arrangements
HIGH COURT 20 JULY 2020 O’NARA J

IN THE MATTER OF DW AND MEG (Minors) (Appeal: Practice and Procedure: Obligations Post Case Order) – Appeal against decision of Family Care Centre Judge – whether the trial judge was wrong in all the circumstances of the case in finding the threshold criteria and approving a care plan for permanent adoption via the stage at the proceedings – HELD that the Family Care Centre Judge was not wrong and appeal failed and past care planning routes summarised
HIGH COURT 26 JUNE 2020 KEEGAN J

IN THE MATTER OF ORLA and MARTIN (2) (Shared Parenting: Breakdown) – Applicants in the final phase of a shared parenting order – whether an order may be made terminating the order – HELD that the Court may make an order to terminate a shared parenting order
HIGH COURT 12 JULY 2020 KEEGAN J

IMMIGRATION
IN THE MATTER OF AN APPLICATION BY LORRAINE COX FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
Applicant is challenging the legislative requirement that claimants who apply for Universal Credit (“UC”) and Personal Independence Payment (“PIP”) on grounds of terminal illness must demonstrate that death can reasonably be expected within six months – whether this is incompatible with the applicant’s a 14 ECHR rights – applicant was diagnosed with Motor Neurone Disease – whether the Special Rules on Terminal Illness (“SRT”) are discriminatory from the perspective of an individual who has been diagnosed as suffering from a terminal illness but it is not possible for a clinican to state that the reasonable expectation is that the individual will be dead within 6 months either because it is impossible to estimate life expectancy or because life expectancy is greater than 6 months – applicant refused PIP and was reassessed with reduced limited capacity for work and work-related activity – applicant seeks declarations that these decisions are incompatible with a 14 ECHR – whether the circumstances fall within the ambit of more than one Convention right – HELD that leave granted and the applicant was granted leave to pursue judicial review in the Court of Appeal
HIGH COURT 7 JULY 2020 MCGAUGHDEN J

JUDICIAL REVIEW
IN THE MATTER OF AN APPLICATION BY YVONNE BURGESS FOR LEAVE TO SEEK JUDICIAL REVIEW
Ruling in relation to interim relief based on delays in determining a claim for judicial review – procedural challenges posed by Covid-19 and relevant legal principles in relation to interim relief in public law cases – interim relief in judicial review of benefits
HIGH COURT 22 JUNE 2020 FRIEDMAN J

NEGLIGENCE
Hugh Burgess v John Burgess
Plaintiff claims damages sustained a result of the negligence, breach of contract and misrepresentation of the defendant in or about his performance of settlement terms arising out of a High Court action – parties are brothers who were required to enter into terms of a settlement – one brother failed to do so within the required time resulting in a bankruptcy order being made against the brother who had met his terms of the settlement – terms of the settlement agreement which the settlement has not bestowed on the plaintiff any contractual right to enforce proceedings against the defendant
HIGH COURT 11 MAY 2020 MCGUINNESS J

SOCIAL SECURITY
IN THE MATTER OF AN APPLICATION BY LORRAINE COX FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
Applicant is challenging the legislative requirement that claimants who apply for Universal Credit (“UC”) and Personal Independence Payment (“PIP”) on grounds of terminal illness must demonstrate that death can reasonably be expected within six months – whether this is incompatible with the applicant’s a 14 ECHR rights – applicant was diagnosed with Motor Neurone Disease – whether the Special Rules on Terminal Illness (“SRT”) are discriminatory from the perspective of an individual who has been diagnosed as suffering from a terminal illness but it is not possible for a clinican to state that the reasonable expectation is that the individual will be dead within 6 months either because it is impossible to estimate life expectancy or because life expectancy is greater than 6 months – applicant refused PIP and was reassessed with reduced limited capacity for work and work-related activity – applicant seeks declarations that these decisions are incompatible with a 14 ECHR – whether the circumstances fall within the ambit of more than one Convention right – HELD that leave granted and the applicant was granted leave to pursue judicial review in the Court of Appeal
HIGH COURT 7 JULY 2020 MCGAUGHDEN J
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