This Month:

James Cooper
President
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For more details on these and other interesting opportunities contact Fionnuala or Katherine on 028 9032 3333 or e-mail legal@blueprintappointments.com
Relocation Update

The timescale for relocation of the Society to permit the redevelopment of Law Society House has been changed. It is expected that this will not take place until the New Year.

In the interim all existing facilities at Law Society House remain available to members with the exception of The Law Club.

Once an exact date for the relocation has been confirmed, this will be advised to members. Updated information will also be posted on the Society’s website.
The new President of the Society, James Cooper from Enniskillen, takes over the mantle from Rory McShane with a firm agenda to build on the achievements of one of most challenging years in the Society’s history.

His message to the profession is definitely “work in progress” as he believes the issues arising from the Bain Report, despite its unanimous acceptance that this jurisdiction should be treated differently from England & Wales, still pose immense problems for the profession. “I am determined to continue the intensive interface the Society has had with the various interested parties so that we ultimately can agree with government a revised regulatory regime that is proportionate, open and transparent but remains within the stewardship of the Society. Significant changes in regulation, particularly complaints handling, are inevitable but I am confident a “light touch” outcome can be achieved in the coming months.”

James Cooper comes to the job after 30 years of practice in his home town and now as a principal in a thriving provincial practice, Cooper Wilkinson, Solicitors, Enniskillen. His family has an intensely legal background, his grandfather, James Cooper, having established the practice almost 100 years ago. His wife Margaret is also a solicitor (although now specialising as a Tribunal Chairman) and his daughter Katie is a solicitor in Belfast. His youngest child, daughter Julie, is at the London College of Law, whilst Simon, his son, is a commercial estate agent in Belfast and Dublin.

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Both studied Law at Queen’s and qualified by the traditional apprenticeship method of being in the office in the morning and attending Law Society lectures in Belfast in the afternoon. “Although that regime might not be entirely practical to today’s more intense environment, I remain convinced that it produced the best grounding possible for fledgling solicitors. The education of future solicitors is something which we always keep under review,” says Cooper, who emerged from the then apprenticeship exams sharing a gold medal with former Society President, Margaret Elliott.

Like his immediate predecessor, James Cooper from an early stage in his career became heavily involved in politics, culminating in his Chairmanship of the Ulster Unionist Party for five years and an extraordinarily narrow defeat (escape?) from becoming a Westminster MP in the hotly disputed contest for the Fermanagh and South Tyrone seat in 2001. “I firmly believe that my involvement in politics, which was based on a continuing conviction that we have more to unite us than divide us, was a positive and forward looking contribution which hopefully an ultimate political solution will vindicate.” I think it is no coincidence that in other jurisdictions, albeit with arguably less...
contentious societies, lawyers commonly play a significant and “value added” role with government, using their particular skills of objective analysis and argument to find consensus solutions which are not divisive but instead unifying.

In his new role, James Cooper considers it vital that the Society’s communications with its members should be greatly improved and modernised. He says that there is no reason why we should not plan for every member to receive information on a regular basis by “e-mail”. In the same way as our legal practices must be based on the latest consumer orientated technology, he believes that each individual solicitor needs to embrace changed working practices and modern office environments if they are to keep abreast of the increasingly challenging demands of the private client.

Away from the office and the Law Society, the new President is a passionate rugby supporter, having played for Enniskillen and then became the Club President. He is also a long suffering supporter of Tottenham Hotspur, an occasional golfer and enjoys motor boating on the Erne/Shannon system. He regards his (sadly now neglected) participation in the Fermanagh Choral Society not only as a hugely diverting experience but also as an opportunity to support a genuine cross community organisation, literally singing from the same music sheet.

“I am looking forward immensely to what I hope is a very positive year for the Society but which will require considerable commitment from the Council and Committee co-optees to deal with the many challenges that are racing towards us.

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[Image of people working on a computer]
**News in Brief**

- **SMOKE BAN DATE ANNOUNCED**
  Further to the Smoking (NI) Order 2006 having completed its parliamentary process, the Health Minister has announced that the smoke-free legislation will come into effect on 30 April 2007.

  This means that smoking will no longer be permitted in enclosed public places and work places across Northern Ireland, including bars and restaurants.

  It is understood that in advance of the legislation coming into effect, advice and guidance will be provided to the public and businesses.

- **NEW LIFER UNIT OPENED**
  A new supervision unit for life sentenced prisoners which can accommodate 42 inmates has officially been opened on the former site of the women’s prison at Maghaberry.

  Located in Mourne House, the Unit will accommodate prisoners who are within seven years of reaching their tariff. It is designed as a stepping stone to Martin House, a low supervision unit on the same site, which was opened last year to prepare inmates for the pre-release unit.

- **CONSTRUCTION SITE SAFETY WARNING**
  The chances of being killed on a construction site here are three times greater than in GB. This is the stark warning issued by Health & Safety Executive for Northern Ireland to coincide with an intensive inspection campaign focused on construction sites across Northern Ireland and aimed at reducing the unacceptable number of fatal and serious injuries still occurring in the construction industry.

  In 2005 seven workers here lost their lives while working on construction sites. Already this year four construction workers have lost their lives as a result of workplace accidents. More than half of the serious accidents are due to falls when working at heights.

- **SDLT NEWSLETTERS**
  Special issues of SDLT Practitioners’ News - Issue 13 focusing on the new SDLT5 electronic certificate and Issue 14 covering further enhancements being made to the Stamp Taxes Online service - have recently been published.

  Both newsletters are now available on the HMRC website at http://www.hmrc.gov.uk/so/newsletter-index.htm.

- **AGE DISCRIMINATION GUIDES**

  The Age Regulations prohibit unjustified direct and indirect age discrimination and harassment and victimisation on grounds of age in employment and vocational training. They apply to individuals in work or seeking work or access to training, to all employers and all providers of vocational training (including further and higher education institutions).

- **NIHRC REVIEW**
  The Human Rights Commission has published the second edition of its magazine - NIHRC review - which is available from its website at www.nihrc.org - follow Magazine Ink.

  This edition focuses on the proposed Bill of Rights for Northern Ireland with keynote articles from Justice Albie Sachs from the South African Constitutional Court and leading academics. The views of the NGO community are represented by the Human Rights Consortium.

  The Commission’s lead researcher on immigration and race issues, Dr Nazia Latif, also provides an update on the Commission’s work in these fields.

- **REPORT ON PUBLIC APPOINTMENTS**
  The Tenth Annual Report on Public Appointments in Northern Ireland has been published. The Report is in two volumes. Volume 1 provides information on the public appointments process and reports on progress during 2005/2006. Volume 2 lists those individuals who held public appointments in Northern Ireland at 31 March 2006 and the bodies on which they served.

  Copies of both volumes are available from www.ofmdfmni.gov.uk/public-appointments.

- **TRANSFER OF RESPONSIBILITY FOR PARKING ENFORCEMENT**
  Responsibility for on street parking enforcement transferred from the PSNI to the Department for Regional Development with effect from 30 October 2006.

  NCP has been appointed by the Department to manage its car parks and to enforce parking and waiting restrictions. They will be deploying around 110 traffic attendants to deal with enforcement. An information leaflet is available at http://www.roadsni.gov.uk/Parking/index.htm.

  The new traffic attendants will only enforce parking and waiting restrictions. They will not have any responsibility for directing traffic as Traffic Wardens did in the past. Responsibility for traffic directions remains with the PSNI.

- **VALUATION TRIBUNAL**
  The offices of President and Member of the Northern Ireland Valuation Tribunal have been added to:-

  (a) the list of judicial offices in Schedule 1 of the Justice (NI) Act 2002 to which appointments are subject to selection by the Northern Ireland Judicial Appointments Commission; and

  (b) the list of judicial office holders in Schedule 6 required to take the judicial oath.

  The Northern Ireland Valuation Tribunal is established by a.36A of and Schedule 9B to the Rates (NI) Order 1977 as amended by a.29 of and Schedule 1 to the Rates (Amendment) (NI) Order 2006.
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The Annual Council Dinner took place at Belfast City Hall on Friday 27 October 2006. The following is an extract from the speech delivered by President Rory McShane.

"The main agenda for my year in office was established when the government announced a Review of Legal Services in Northern Ireland. We knew government meant business when it appointed a Committee under the Chairmanship of Sir George Bain, former Vice Chancellor of Queens University Belfast, to examine what is sometimes referred to as the "legal services market" in Northern Ireland. The government published a consultative paper and the Law Society responded to that paper and engaged positively with Sir George Bain and his Committee.*

The Law Society is conscious of the fact that whatever comes out of Sir George's review, the status quo is not an option. We recognise that there will be reform of the existing system. We are aware that Sir George headed a Review Committee which was widely representative of all relevant interests in Northern Ireland, including the consumer and small business interests as well as economists and legal academics. We know that we must look closely at what is proposed and must be prepared to give serious consideration to the Review Committee proposals. I undertake, on behalf of the Council of the Society, to engage positively with government on implementing an agreed reform agenda.

In his report on Legal Services in England & Wales, Sir David Clementi stated that: "Research shows that complaints arise as much from poor business service as from poor legal service. If certain lawyers continue to reject the notion that they are in business, such complaints will continue until they are indeed out of business." I agree entirely with these sentiments. Practitioners in Northern Ireland must look to the business and commercial realities of the market in which we operate in Northern Ireland. I predict that the next five years will see enormous developments in the profession in Northern Ireland and we must be ready for change. The network of local solicitors’ firms which has existed and served Northern Ireland well for many years will continue to exist but I believe that mergers and synergies must develop for the benefit of the profession and above all the public which we serve.

At present there is great hope that after the St Andrews’ Agreement between the two Governments, a new devolved administration in Northern Ireland can be achieved. The Law Society is keen to develop working relationships with all the political parties and in the coming months we hope to have bilateral discussions with each of the parties and to discuss with them topics of mutual interest and the report of the Bain Committee on Legal Services when published.

In the public debate between the political parties, there is much mention of the Rule of Law. I suspect that like so many other phrases in Northern Ireland, the Rule of Law may be taken by different people to mean different things. To lawyers, however, it has a very important principle at its core. It is about the separation of powers. In a free society you must have an independent legal profession not beholden to government dictat or to outside influence. The Law Society is tasked with defending this important principle. Another important principle of the Rule of Law is an independent and impartial judiciary without which there is no Rule of Law.

The judiciary and the legal profession of Northern Ireland has served this community well throughout our troubled past and we must never forget those who have given their lives in the service of the Rule of Law including three solicitors, Rosemary Nelson, Patrick Finucane and Rory T O’Kelly, a barrister and law lecturer Edgar Graham and members of the judiciary including Lord Justice Gibson and his wife, Martin McBrinney, Billy Doyle, Rory Conaghan, William Staunton, John Donaldson, an apprentice Solicitor and Mary Travers, daughter of Tom Travers.

Unfortunately we have recently seen examples in the media and indeed in Parliament in the United Kingdom, of unfair criticism of and attempts to influence the judiciary by whipping up populist sentiment, especially on sentencing. Comment is vital in a free society but inaccurate reporting or partial reporting of decisions is not in the interests of a free society."

* Since the Annual Dinner, the Bain Report on the Review of Legal Services in Northern Ireland has been published. For a summary of the Report’s recommendations see pages 10-13 post.
The Bain Report

The Report by the Legal Services Review Group (the Bain Review) entitled “Legal Services in Northern Ireland: Complaints, Regulation, Competition” was published on 23 November 2006. The full text of the Report may be accessed via the DFP website (www.dfpni.gov.uk) or direct at the following web link: http://www.dfpni.gov.uk/index/law-and-regulation/review-of-legal-services.htm

We set out below the Report’s Executive Summary together with the 42 recommendations. In its immediate response, the Society confirmed that the recommendations would be considered with the profession and noted that:

1. at the outset of this review process the Society was concerned that reform in this area should be genuinely tailored to the interests of consumers in this jurisdiction. The report has met this concern by recognising clearly that Northern Ireland is different.

2. the Review Group found that Northern Ireland has a strong and robust legal profession that has provided a good service to consumers, offering choice and access to justice but it is not perfect.

3. throughout the review process, the Society has accepted the need for reform of aspects of the regulatory model to take account of modern consumer expectations and perceptions. It remains committed to a regulatory model, which is effective, accountable, efficient, proportionate, consistent, accessible and client-focussed.

4. the Review Group recognised what they described as ‘the many strengths of the existing system,’ including the extent to which the solicitors’ profession to date has discharged its regulatory obligations responsibly.

5. the Report also identifies weaknesses in the system and proposes reform (for example, an improved model of complaints handling). The process of addressing those weaknesses will be demanding and challenging for the profession.

The Society has committed to engage constructively with Government to bring forward an agreed reform agenda, based on the Report.

The relevant Government Minister (David Hanson MP) responded to publication of the Report by promising that he will consider the recommendations carefully and seek views from interested parties. He signalled an intention to respond “in the early part of 2007” subject to continuing discussions on the return of a devolved administration in March 2007. The Government aspiration is that the way forward will ultimately be determined by a devolved administration.

The Society intends to continue to work on these issues, beginning with a more detailed examination and evaluation of the recommendations and their implications. A process of further consultation with the profession will take place through local associations. In addition, and in the mean time, any Society member wishing to express views on the Report, its conclusions and recommendations should write or e-mail to the Chief Executive at jwbailie@lawsoc-ni.org

EXECUTIVE SUMMARY
CHAPTER 1:
INTRODUCTION

1. The Legal Services Review Group was established by the Government to report to the Minister of Finance and Personnel with recommendations relating to the current regulation of the legal professions in Northern Ireland. It brought together representatives of lawyers and consumers as well as academics.

2. We examined the existing regulatory framework in the context of the Clementi report and the subsequent White Paper in England And Wales. Twenty-two consultation responses received by the Department of Finance and Personnel informed our thinking, with oral evidence and regional meetings providing further assistance to us. Similar reviews in Scotland and the Republic of Ireland also aided our deliberations.

3. This process helped us to achieve a unanimous report, which contains forty-two recommendations relating to regulation, complaints-handling and competition, which we believe should provide a framework that is well suited to the needs of consumers and the professions in Northern Ireland.

CHAPTER 2:
THE NORTHERN IRELAND SYSTEM

4. We examined the existing legal system in Northern Ireland. We found legal professions that are different from those in England and Wales but similar to those in Scotland and the Republic of Ireland, with a general practice model of approximately 500 solicitors’ firms spread around Northern Ireland combined with an independent referral Bar Library in Belfast, where about 560 barristers practise as sole traders.

5. We also found a system that is largely self-regulating, with only the solicitors’ profession being subject to oversight from the Lay Observer in relation to complaints-handling and from the Lord Chief Justice for Northern Ireland for some other matters. The Northern Ireland Bar is not currently subject to any form of statutory external oversight.

6. In terms of competition, associations between barristers are not permitted, nor are associations between barristers and solicitors. Other alternative business structures are similarly prohibited, as is the external ownership of law firms.

CHAPTER 3:
REGULATION

7. We divided our work into four main categories. The first of these was general regulation: those aspects of the work of the
professional bodies that are more internal in nature, including entry to the profession, rule making and codes of conduct. We examined the Clementi model and looked at approaches taken in other jurisdictions, as well as examining the views of consultees.

8. We found that the legal professions have discharged their regulatory functions in a reasonable manner. The regulatory failure in England and Wales has not occurred in Northern Ireland. Nor is there the regulatory maze in Northern Ireland that Clementi encountered in England and Wales. Hence simply to apply Clementi’s proposals to Northern Ireland would not be appropriate; they need modification to produce best practice in this jurisdiction.

9. We believe that the professions themselves should continue to discharge regulatory responsibilities but subject to enhanced oversight arrangements, and, where it adds value, increased lay participation. Oversight should be applied to both solicitors and barristers by a Legal Services Oversight Commissioner helped by advice from the Lord Chief Justice for Northern Ireland.

CHAPTER 4:
COMPLAINTS HANDLING

10. We consider that the most public aspect of regulation, complaints handling, requires the most wide-ranging reform. Although we found that the professional bodies have generally discharged their responsibilities in this area fairly, we identified a number of areas where the system requires to be strengthened in the public and consumer interest. Given the relatively few complaints made about lawyers in Northern Ireland, we believe that they should continue to administer complaints handling but subject to several important changes.

11. We consider that lay participation should be increased so that all complaints are heard by a majority of non-lawyers, including a lay chair. We believe this change will provide the necessary openness and transparency required to give consumers the confidence to make a complaint when they have received poor service.

12. Increased lay participation should be coupled with strengthened oversight, with the Legal Services Oversight Commissioner having wide-ranging powers, including an auditing function and the ability to set and monitor targets. The proposed system should be more accessible and more accountable than before and complaints committees should be functionally separate from their professional bodies. The eligibility to make a complaint should also be considerably widened.

13. Compensation awards should give consumers effective and adequate redress, including a simplified process for pursuing a claim for professional negligence for smaller value cases. We set our limits lower than those proposed elsewhere in these islands; at £3,500 for misconduct and poor service, and £3,500 for professional negligence. We consider these figures to be more suited for Northern Ireland and believe they will avoid many of the potential dangers that other jurisdictions may face with higher compensation limits.

CHAPTER 5:
OVERSIGHT

14. At the heart of our proposals lie the benefits that enhanced and effectively discharged oversight will add to the regulatory function. Although oversight currently exists in relation to the complaints-handling function of the Law Society, it is insufficient at present to meet the needs of consumers. The proposed Legal Services Oversight Commissioner should have a variety of powers to ensure that the professional bodies of both solicitors and barristers carry out their functions in a transparent and proper way that is in the public interest and in the best interests of consumers.

15. The Legal Services Oversight Commissioner’s main powers should relate to the complaints-handling process, with audit powers combined with those for monitoring the system and setting new targets. These should be supported by enforcement powers, including the power to impose financial penalties. The Commissioner should also have an important role to play in other aspects of regulation, such as ensuring that proper and targeted consultation is carried out by the professional bodies in discharging those responsibilities.

16. We consider that the office of the Legal Services Oversight Commissioner should be proportionate to the needs of the consumer in this jurisdiction. The office should be funded by the professions themselves, with the polluter pays principle being part of the funding arrangements for the new body.

CHAPTER 6:
COMPETITION: ALTERNATIVE BUSINESS STRUCTURES

17. We believe that competition is in the best interests of the consumer and hence to be welcomed. We found that it exists in Northern Ireland, with a general practice model of solicitors’ practices providing advice to consumers throughout Northern Ireland, supported by an independent Bar Library from which about 560 barristers compete with each other to provide advocacy services to clients.

. We were impressed by the existing model that gives anyone in any part of Northern Ireland the chance to obtain advice on any matter from the top barristers in Belfast. While we considered the alternative models being proposed in England and Wales – Legal Disciplinary Practices and Multi-Disciplinary Practices – we believe that allowing such models in Northern Ireland would not have the desired effect of increasing competition.
Indeed, we consider that they could actually reduce it. We accordingly leave the existing restrictions on such parties as they are. We also concluded that allowing external ownership of legal firms could carry with it unwanted problems, and we recommend no change to this restriction for Northern Ireland.

CHAPTER 7: COMPETITION: OTHER ASPECTS

19. We consider that the theory of allowing licensed conveyancers to set up in Northern Ireland would not be matched with the practice. Thus we have not recommended the removal of the statutory bar on them.

20. But we have suggested relaxations, subject to certain caveats, to both the rules relating to the direct access of a barrister for advice, and to the rights of audience of solicitor advocates in the higher courts. Both should lead to enhanced competition in the legal services market.

CHAPTER 8: CONCLUSION

21. We consider that our proposals should improve the regulation of lawyers, with increased lay participation and enhanced oversight permitting greater openness and transparency to underpin the good work already done by the professional bodies in Northern Ireland. The copper-bottomed complaints-handling system should be more suited to ensuring that the needs and demands of consumers are met in the future.

22. Our recommendations were unanimously agreed by representatives not just from the legal professions on the Review Group, but also from those who represent the voices of the voluntary sector, the business sector and the consumer. We believe that these proposals should be effective and proportionate for Northern Ireland and should place the consumer in at least as good a position as those in other parts of these islands but without the high costs and complex structures that have been recommended in these areas.

LIST OF RECOMMENDATIONS

REGULATION

1. The legal professions should continue to discharge regulatory functions, subject to more effective and transparent oversight by an independent Legal Services Oversight Commissioner.

2. Lay persons should have an increased involvement in relation to general regulatory matters.

3. The professional bodies should undertake greater and targeted consultation on rules they intend to make.

4. The Legal Services Oversight Commissioner should have an audit function in relation to professional rules.

5. The Lord Chief Justice should have an advisory role in relation to professional rules.

6. The regulatory and representative functions of the professional bodies need not be separated for general aspects of regulation but should be for complaints handling (see Recommendations 9 and 10).

COMPLAINTS

7. The responsibility for complaints handling should be retained by the professions, subject to the following recommendations that will copper bottom the procedures to ensure best practice and to enhance the rights of consumers.

8. Lay people should be in a majority on all complaints committees and these should be chaired by a lay person.

9. Responsibility for the complaints-handling function should transfer from the Bar Council to the Benchers to achieve functional separation between regulation and representation.


11. The Solicitors’ Disciplinary Tribunal should continue to perform its current range of functions, and should continue to be chaired by a legal professional but with a lay majority.

12. A new disciplinary committee of the Bar should be established, should be chaired by a legal professional, should have a lay majority, should deal with serious conduct issues at first instance and should act as an appeal forum for all other conduct complaints.

13. Appropriate induction and training should be given to lay members appointed to sit on complaints committees.

14. The Legal Services Oversight Commissioner should have the power to audit the induction and training given to lay members appointed to sit on complaints committees.

15. The appointment of lay persons to complaints committees should follow the Nolan principles, including public advertisement and recruitment processes and should be subject to the scrutiny of the Legal Services Oversight Commissioner.

16. Eligibility to make a complaint should be open to anyone and be subject to oversight from the Legal Services Oversight Commissioner.

17. All solicitors’ firms should have a formal complaints procedure in place that is made known to all clients and prospective clients.

18. Complaints committees should have the power to award compensation, with a limit set at £3,500 for service and
conduct complaints that do not fall into the category of professional negligence.

19. For those matters in which professional negligence is identified, the clients complaints committee should have the power to award compensation, with a limit set at £3,500. The complaints committee should be assisted in determining the value and nature of the case by adjudicators appointed from a panel of legal experts by the Legal Services Oversight Commissioner.

20. The Legal Services Oversight Commissioner should have the power to monitor the payment limits of the client complaints committee and make recommendations to the appropriate authority when change is considered necessary.

OVERSIGHT

21. Revised oversight arrangements should be put in place, with a new office entitled the Legal Services Oversight Commissioner.

22. The Legal Services Oversight Commissioner should have the power to audit individual complaints files.

23. The Legal Services Oversight Commissioner should have the power to monitor and set targets for the complaints-handling duties of both professional bodies. Where targets are not agreed, or are not met, the Legal Services Oversight Commissioner should have the power to impose an appropriate penalty.

24. The Legal Services Oversight Commissioner should be responsible for selecting lay persons from the available pool of lay representatives to hear specific cases.

25. The Legal Services Oversight Commissioner should assist in promoting the accessibility of the complaints-handling system by producing an action plan and making recommendations on this matter to the professional bodies.

26. The Legal Services Oversight Commissioner should be able to offer advice on the other regulatory functions of the professional bodies, including their rule-making powers. Should the advice of the Legal Services Oversight Commissioner be ignored, the Commissioner should have the power to refer the matter to the government for appropriate consideration.

27. The Legal Services Oversight Commissioner should have the power to consult with interested stakeholders on any aspect of regulation.

28. The Legal Services Oversight Commissioner should have a duty to produce a report, laid before Parliament, which is accessible and user friendly to lay persons.

29. The Legal Services Oversight Commissioner should be an individual supported by a small staff, the exact size of which should be determined using the usual methods employed by government.

30. The Legal Services Oversight Commissioner should have sufficient resources to ensure that consumers in Northern Ireland are afforded an effective level of oversight to protect them.

31. The professions should fund the office of the Legal Services Oversight Commissioner through a two-part levy. A general levy should be applied to all practitioners on a proportionate basis, and a specific levy should be applied on all practitioners who have been found guilty of poor service or misconduct.

32. The Legal Services Oversight Commissioner should liaise with the professional bodies regarding the exact nature and amount of the levies.

33. The appointment of the Legal Services Oversight Commissioner should follow normal public service recruitment procedures, with an appointment panel consisting of a chair provided by the Civil Service Commissioners, an independent lay assessor and a member nominated by the Lord Chief Justice.

COMPETITION: ALTERNATIVE BUSINESS STRUCTURES

34. The professional bodies should take appropriate steps to ensure that professional standards are meaningful and more accessible to consumers.

35. The prohibition on barristers forming associations with other barristers should remain.

36. The prohibition preventing the creation of Legal Disciplinary Practices should remain.

37. The prohibition preventing the creation of Multi-Disciplinary Practices should remain.

38. The prohibition preventing the external ownership of a law firm should remain.

COMPETITION: OTHER ASPECTS

39. The current restriction on licensed conveyancers operating in Northern Ireland should remain.

40. The Bar Council should consider widening the existing Direct Professional Access Scheme to allow members of the general public to access barristers directly for advice.

41. The Government should consider amending the Judicature (NI) Act 1978 to allow solicitor advocates to appear, subject to certain conditions, in the higher courts.

42. The Bar Council should consider its current rules relating to the rights of audience of employed barristers.
Practising Certificate reminder

By the time you read this you should have received the Application Form (PCR1) to facilitate the renewal of your Practising Certificate. The covering letter which accompanied the PCR1 emphasised the importance of correct completion and timely return of the form to the Society. You are reminded again that all forms must be returned not later than 5 January 2007.

As regards correct completion, please bear in mind:

1. the responsibility for proper completion and return of the form lies with the individual applicant solicitor (ie not the firm or employer).
2. the application must be accompanied by the correct remittance. By way of reminder, the Practising Certificate Fee for 2007/2008 is £830. The prescribed Compensation Fund contribution applicable to the applicant is also calculated and shown on the PCR1. For 2007/2008 the relevant full-contribution is £950 (payable by solicitors with more than six Practising Certificates since admission); the half-contribution is £475 (payable by solicitors receiving their fourth, fifth or sixth Practising Certificate) and a nil contribution is levied in accordance with the relevant statutory provisions on solicitors receiving their first, second or third Practising Certificate following admission.
3. the application must bear the personal signature of the applicant and be both signed and dated.
4. For solicitors in private practice the Practising Certificate Application Form must be accompanied by the correct and original Professional Indemnity Insurance Certificate. It is common for the Form to arrive with the Society with no Insurance Certificate, with a photocopy of an Insurance Certificate, or with the wrong Insurance Certificate. In respect of each solicitor, a Schedule will have been provided by the Society broker (MARSH) which clearly identifies itself in these terms: “(NB: This schedule should be forwarded to the Law Society as evidence of insurance)”.

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

J W BAILIE
Registrar

CPD reminder

As we enter the Christmas party season, CPD is probably the last thing on most people’s minds. However, the CPD year is once again coming to an end and this is a reminder for those who have not yet completed and sent their Record Card to the Society.

It is compulsory for every solicitor who currently holds a Practising Certificate to complete 15 hours of CPD and to send his or her completed Record Card to the Society. There are some exceptions to this, such as those solicitors who will have worked less than 200 hours by the end of the year, or those who are retiring before the end of 2006. Other exemptions are given on page 3 of the purple 2006 CPD Record Card.

The completed Record Cards should be sent to the Society with all relevant sections filled in. We would ask that you do not include certificates of attendance at events as this generates a huge amount of paper to be stored within the Society. However, each solicitor should retain these attendance records on file until the end of 2007.

Finally, thanks to all those of you who have already sent in their 2006 Record Card. Receiving a percentage of the cards before the holiday period means that we can begin processing the cards much earlier.

If you have any queries about CPD, please contact Susan Duffy at the Law Society on 028 9023 1614 or via e-mail at susan.duffy@lawsoc-ni.org.

Have a wonderful Christmas and looking forward to seeing you all at the Society’s CPD events in 2007.
Public Liability Solicitors Panels 2007-2010

INTRODUCTION

The Housing Executive regularly renews its external solicitors Panels. As a result there will shortly be vacancies on each of the Executive’s Public Liability Solicitors Panels. Details of the precise geographical scope of each Panel are contained in the relevant questionnaires. (See below).

THE PANELS:

For the period 2007-2010, there will be seven Panels, which will be as follows:

Greater Belfast A Panel
Greater Belfast B Panel
Greater Belfast C Panel
Greater West Panel
South-East Panel
North County Antrim Panel
South Panel

Each of those Panels is a one-member Panel. Firms should note that the number and boundaries of each Panel have been reviewed and are not necessarily the same as previously.

Each Panel will be responsible for carrying out all the Executive’s requirements for the services of external Public Liability solicitors. In addition, Panel members may be required to carry out work for certain registered housing associations. (Any such work will have to be carried out on the same terms and conditions, including terms as to fee discount, as are applicable to the Executive).

DURATION OF PANELS

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

ELIGIBILITY CRITERIA

A firm will be eligible for an appointment to a Panel if they satisfy all of the following eligibility criteria:

1. The firm’s principal or one of the principals must have been in practice as a principal on his/her own account for at least three years.

2. At least two solicitors must be working in the firm (including any employed solicitor).

3. The firm must be willing to designate a solicitor in the firm who will be primarily responsible for actually carrying out Panel work.

4. The designated solicitor must have acted for defendants in personal injury litigation as a predominant (more than 50%) part of his/her workload for at least one year (or for periods in aggregate amounting to one year).

5. Another solicitor in the firm must have acted for defendants in personal injury litigation as a substantial (more than 25%) part of his/her workload for at least one year (or for periods in aggregate amounting to one year).

SELECTION PROCEDURE

A firm will be free to make applications in respect of one, several or all of the Panels.

A separate questionnaire must be submitted in respect of each Panel being applied for.

Any firm willing to be considered for appointment may obtain questionnaires and details of the selection criteria by writing to the Public Liability Solicitors Panels Co-ordinator, Housing & Regeneration Division, Second Floor, The Housing Centre, 2 Adelaide Street, Belfast, BT2 8PB.

Completed questionnaires must be returned to arrive with the Co-ordinator at the above address not later than 4.00 pm on Wednesday 17 January 2007.

No acknowledgements will be sent.

Consumer Credit Act 2006

Solicitors should note that with effect from 6 April 2007 anyone holding a standard Consumer Credit Licence will require to comply with new complaints handling rules pursuant to the above. These will require such business to have in place proper procedures for dealing with consumer complaints about their consumer credit activities.

As far as the Law Society is aware, no solicitors in Northern Ireland hold standard Consumer Credit Licences

As far as the Law Society is aware, no solicitors in Northern Ireland hold standard Consumer Credit Licences – rather all are covered by the Group Consumer Credit Licence held by the Society.

However, if your firm holds a standard licence you should familiarise yourself with the new regulations. You may also wish to do so in order to advise clients who may be subject to them.
On Tuesday 14 November the Client Complaints held a farewell lunch for Mr Campbell Kell following his last attendance at the Client Complaints Committee. The lunch was hosted by the President Rory McShane and attended by the Chairman, Norville Connolly, members of the Committee and Assistant Secretary, Moira Neeson.

Mr Kell was one of the original lay members of the Committee, attending his first meeting of the then Practice Committee (Complaints) on 24 July 1990, following the implementation of changes introduced by the Solicitors’ (Northern Ireland) (Amendment) Order 1989.

In the 16 years that he served on the Committee, Campbell missed only a handful of meetings and none in the last five years. The President presented Campbell with a digital camera so that he could pursue his hobby of photography and thanked him for his service. Referring to his background as an official with the trade union APEX and thereafter the GMB and his service with the Industrial Tribunals as an employee representative, the President recorded that Campbell was no stranger to lawyers and the legal process and was therefore well placed to adjudicate on the cases which came before the Committee. His experience brought a balanced and thoughtful approach over the years to the Committee's deliberations in individual cases.

Campbell's attention to detail, considered responses and his charm will be greatly missed. We wish Campbell and his family well in his retirement and thank him for his years of diligent service on the Client Complaints Committee.

Writing readers may be aware that the Law Society has an online directory of solicitors firms on the homepage of the website www.lawsoc-ni.org

Users are now able to search for contact details of firms either by the name of that firm, or by geographical location.

The second phase of this online directory is now under way. Correspondence has recently been sent to the Managing or Senior Partner of all firms requesting that they specify the categories of work undertaken by the firm according to a prepared list of business categories. This will be a valuable tool for allowing potential clients to find legal advice and assistance tailored to their particular requirements.

Please return your completed forms to Heather Semple at the Law Society library as soon as possible.
Pathology Service recommendations 'not yet achieved'

A follow-up review of Criminal Justice Inspection’s report of the State Pathologist’s Department has shown that just half of the 30 recommendations included in the original report have so far been achieved.

Speaking after the publication of the follow-up review, Northern Ireland’s Chief Inspector of Criminal Justice, Kit Chivers, said it was disappointing that progress in implementing some recommendations and actions agreed by the State Pathologist’s Department and the Northern Ireland Office (NIO) had been slow. He stated: “The key recommendation made by CJI in its original report published in June 2005 concerning the status, governance and accountability of the State Pathologist’s Department, needs immediate action.

“The relationship between the State Pathologist’s Department and the NIO also needs to be addressed as a matter of urgency as it runs the risk of damaging the quality of service delivered to the public.”

Mr Chivers also reiterated previous concerns expressed by Inspectors over the delay in completing post mortem reports.

“Improved tracking and monitoring of cases has showed there were 566 outstanding cases in July 2006 of which 179 cases were waiting more than five months. Overcoming the problem of delayed reports requires further action on a number of recommendations, including the recruitment of a new consultant pathologist and the more equitable distribution of the existing post mortem workload.”

Despite the limited progress made in connection with 15 of the 30 original recommendations, Mr Chivers said the follow-up review revealed a number of positive findings.

“The review confirmed the overall quality of the forensic pathology service was good and that the Department continues to complete most post mortem examinations within 24 hours of notification.

“We also found good progress could be reported in the preparation for the building of a new mortuary and accommodation for the State Pathologist’s Department staff on the site of the Royal Group of Hospitals and a new case management system had been fully implemented.”

Mr Chivers concluded: “While I am confident that significant progress can be made in relation to the outstanding recommendations, CJI has decided to carry out a further follow up review of the recommendations which have not been achieved in 12 months.”

Live links provisions extended

A.31 of the Criminal Justice (NI) Order 2003 (as amended by a.24 of the Criminal Justice (NI) Order 2005), has been commenced with effect from 13 November 2006. It inserts a new a.80A into the Police and Criminal Evidence (NI) Order 1989. With the court’s permission, a witness (other than the accused) who is outside the UK, may give evidence through a live link in certain criminal proceedings.

A live link is essentially an arrangement where a witness not present at the proceedings can see and hear and be seen and heard by certain persons in the court, including the magistrate or judge, jury and legal representatives. The relevant proceedings are preliminary investigations or inquiries, trials on indictment and appeals to or certain hearings before the Court of Appeal.

We are grateful to the Criminal Justice Police Division of the NIO for this note.

New third party disclosure protocol

A new protocol dealing with third party disclosure in cases involving sexual offences or serious assaults will come into effect on 8 January 2007. The judiciary may seek to encourage the parties to use it prior to then as best practice. The protocol was devised by the judiciary and takes account of comments received following a consultation exercise. Its purpose is to establish procedures whereby applications for third party disclosure can be made promptly and at an early stage of proceedings.

The protocol can be accessed via the Court Service website (www.courtsni.gov.uk). It is located in Judicial Decisions under Practice Directions.
CJINI reports on Community Safety Partnerships

A report by Criminal J ustice Inspection on Community Safety Partnerships (CSP) has recognised the dedication shown by CSP members and co-ordinators to the concept of community safety.

At present there are a total of 26 CSPs, one in each of the existing Council areas. CSPs were established following the Criminal J ustice Review 2000 and the launch of the NI Community Safety Strategy in 2003. They bring together local bodies from the statutory, voluntary and community sectors that can contribute to a reduction of crime, the fear of crime and anti-social behaviour.

The NIO Community Safety Unit funds the engagement of Community Safety Coordinators and provides assistance towards regional and local projects aimed at priorities identified in the NI Community Safety Strategy. Under local action plans developed by all CSPs, there are more than 300 community safety projects currently operating throughout Northern Ireland. These are linked with various government strategies such as Tackling Violence at Home, Reducing Alcohol and Drug Abuse, Neighbourhood Renewal, Lock Out Crime and Neighbourhood Watch.

Launching the report, Kit Chivers, Chief Inspector of Criminal J ustice in Northern Ireland, said: “CJ I’s Inspectors were impressed by the commitment displayed, especially given the fact CSPs have had to develop voluntarily and function in a vacuum.

“This situation has come about because unlike the Police Act 2000 which gave statutory effect to District Policing Partnerships (DPPs), s.72 of the J ustice (NI) Act 2002, which provides the legislative framework for the operation of CSPs, has not yet been brought into force,” he said.

The void created by the lack of a statutory basis for CSPs was the root of many of the weaknesses identified during the course of the inspection, indicated the Chief Inspector.

The inspection report also recommended the membership of CSPs’ operational and strategic tiers should be reviewed to allow for an increase in membership of those from a community background.

Looking to the future in the context of the Review of Public Administration, Mr Chivers said the report recommended that policy makers consider integrating District Policing Partnerships and Community Safety Partnerships.

“Such restructuring would lead to the establishment of one operational community safety/policing tier in each Council area,” he said.

"Disclosure Notices" provisions commenced

S. 26 and Schedule 3 of the Northern Ireland (Miscellaneous Provisions) Act 2006 have commenced with effect from 1 December 2006. The legislation extends Part 2, Chapter 1 of the Serious Organised Crime and Police Act 2005 (SOCAP) – ‘Investigatory powers of the DPP’ – to Northern Ireland. The purpose of these provisions is to provide powers of compulsion of witnesses and document production in specified investigations undertaken in Northern Ireland by police and customs and revenue officers. The powers are already in force in Great Britain.

The powers require persons considered as having information of substantial value to an organised crime or terrorism investigation, (for example members of the business community), to provide relevant material.

The Director of Public Prosecutions for Northern Ireland will be an ‘Investigating Authority’, for the purpose of the provisions, enabling him to authorise police and customs and revenue officers to issue disclosure notices.

The powers will be applied to Northern Ireland offences equivalent to those already listed in the Act for GB - typically organised crime offences such as drug trafficking, money laundering, directing terrorism, human trafficking, counterfeiting, blackmail, false accounting and fraudulent evasion of duty and VAT offences.

The Investigating Authority may apply for a warrant to enter premises and seize documents by making a complaint on oath to a lay magistrate rather than, as is the case in England and Wales, to a J ustice of the Peace.

The maximum sentence on summary conviction for failing to comply with a disclosure notice or making false or misleading statements will be six months imprisonment - the normal maximum sentence a magistrates court in Northern Ireland can impose.

Extension of these powers will bring Northern Ireland into line with the legislation already operating in England and Wales.

The introduction of these powers in Northern Ireland will strengthen the ‘tools’ available to tackle organised crime and prosecute organised criminals, including the most difficult targets.

We are grateful to the Criminal J ustice Police Division of the NIO for this note.
Making sure that crime doesn't pay

The government is proposing to introduce tough new measures to prevent convicted criminals profiting from published accounts of their crimes.

A consultation paper entitled Making sure that crime doesn’t pay (see www.nio.gov.uk – follow Public Consultations link) has been published on creating laws to allow the seizure of money paid to convicted criminals who “sell” their story to the press or seek to profit by publishing books about their crimes.

The government states that it has no desire to stop the publication of such stories but believes that it is morally reprehensible that criminals should be able to earn money by speaking about the crimes they have committed.

The consultation (which is UK wide) puts forward four proposals:

- Making receipt by and/or payment to convicted criminals of money for publications about their crimes a criminal offence.
- Introducing a new civil scheme for the recovery of profits based on the civil recovery provisions in the Proceeds of Crime Act.
- Extending the self-regulatory approach governing the press to other groups such as book publishers and film-makers.
- Doing nothing.

The consultation closes on Friday 9 February ’07.

Environmental Solicitor £Neg
Belfast * Superb opp. within prop. team Ref: 27947

Conveyancing Solicitor £25,000 - £35,000
Lisburn * Must have extensive convey. exp. Ref: 26872

Commercial Property Solicitor £25,000 + p.a
Belfast * Solid cmcl. property exp. essential Ref: 27242

PI Litigation Solicitor £22,000 - £30,000
Omagh * Experience within litigation vital Ref: 26686

Conveyancing Solicitor £Neg
Belfast * Expanding residential dept. Ref: 27306

General Practice Solicitor £20,000 - £30,000
Portadown * Family & Civil Law experience Ref: 27030

Conveyancing Solicitor £18,000 - £22,000
Belfast City Centre * Res. conveyancing Ref: 27944

General Practice Solicitor £Neg
Lurgan * Must have solid gen. prac. exp. Ref: 27950

For further information on these roles and other opportunities, please contact Nicole Dowling for a confidential discussion on 028 90 325 325 or email n.dowling@brightwaterNI.com

Journal of the LSNI
November / December 2006
New laws to help combat knife crime

The Violent Crime Reduction Act 2006 received Royal Assent on 8 November 2006. For Northern Ireland, the Act made new provisions on weapons including:

- Raising the age at which knives or items with blades or points can be purchased from 16 to 18 years of age and crossbows from 17 to 18 years of age.
- Establishing a new offence of using someone to mind a weapon.
- Reducing the threshold for a constable to exercise his power of entry and search of a school and person on school premises for weapons.
- Extending current law on minimum sentences (five years for adults and three years for 16-18 year-olds) in an additional series of offences involving firearms possession and use.
- Amending firearms law to tackle misuse of imitation firearms by making it an offence to manufacture, import or sell imitation firearms.

Announcing details of the new legislation, the Criminal Justice Minister, David Hanson MP, said: “This new law sends out a clear message that the government is determined to confront knife crime in Northern Ireland. It is important that it is made more difficult to purchase knives in Northern Ireland and this law will also introduce other measures such as making it illegal to use someone to mind a weapon.

“It is important to build on the success of the recent knife amnesty and I can confirm that a second amnesty will begin on 20 November. Almost 900 potentially lethal items were removed from the streets of Northern Ireland during the first amnesty and I would again call on everyone to use this opportunity to dispose of any knives in a secure and safe way.”

The government is now planning for the commencement of these new powers.
Victims of domestic violence are more confident in coming forward to report crimes against them, according to the Criminal Justice Minister, David Hanson.

One year on from the launch of the government’s ‘Tackling Violence at Home’ strategy the Minister said that this had helped reinforce the fact that domestic violence is a crime and is not acceptable in any circumstances.

Paying tribute to those working with victims of domestic violence, the Minister said: “I am very encouraged by the excellent work that has taken place over the past year since the launch of the ‘Tackling Violence at Home’ strategy. The many initiatives undertaken over the past year, such as the further development of the 24 Hour Domestic Violence Helpline, have brought the issue of domestic violence more into the open and have helped raise standards of service for victims. The number of callers to the helpline has increased by over 18% since 2003/04. This has been a major improvement in services to victims of domestic violence. The clear message that domestic violence is a crime and is not acceptable in any circumstances is making an impact.”

He continued: “We cannot be complacent and more needs to be done but the fact that there has been an increase in the reporting of this type of crime in the last year sends a clear signal that victims of domestic violence are more confident in coming forward. We must build upon this work to encourage more and more victims to seek help. We also need to continue to improve protection and support services for victims and their children.

“The good progress to date has been achieved by all the agencies working together in partnership and we must continue this work if we are to make a real impact on this problem which affects people right across society.”

The 24-Hour-Freephone Domestic Violence Helpline is open to anyone affected by domestic violence – the number is 0800 917 1414.

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Mr Justice Gillen has requested the Society to publish the following letter:

Dear Colleague: I am pleased to advise you that the above project, commissioned by the Children Order Advisory Committee (COAC) and sponsored by DHSSPS, is being conducted by Dr Emma Larkin and Dr Dominic McSherry of The Institute of Child Care Research (ICCR), Queen’s University Belfast.

The COAC Best Practice Guide for Children Order proceedings is intended to guide practitioners and experts and to promote efficiency, effectiveness and economy in the management of Children Order cases.

It is essential that the Best Practice Guidance is an up to date, useful and relevant resource. The COAC Best Practice Guidance Standing Committee is currently undertaking a periodic review of the Guidance in order to ensure that it reflects changing times and new developments in practice and procedure.

In order to achieve this we need to find out from the professionals who use it in their day to day work how it can best be improved.

As Chairman of COAC, I particularly welcome this project which will assist us in our task of ensuring that the Guidance is optimally useful for practitioners. This project aims to establish:

- the extent to which the Guidance is being used as a reference tool.
- practitioners’ views and experiences regarding the perceived usefulness of the Guidance.
- the impact of the Guidance on Children Order proceedings.
- practitioners’ suggestions for potential amendments and/or additions to the Guidance.

It is the ICCR project team’s intention to carry out an electronic survey which they hope to have completed by 5 January 2007. I would urge all practitioners involved in Children Order Proceedings to complete this survey and return it promptly as it is essential that as many professionals as possible have an opportunity to input into the review process.

To access this survey directly please refer to the following link, complete the questionnaire and press SUBMIT. If you are willing to participate in a brief follow-up telephone interview please indicate this on the form - http://www.qub.ac.uk/home/Surveys/rbpg/

I hope, and indeed, would encourage you to engage with the ICCT project team in taking forward this work for the benefit of the spectrum of professionals involved in Children Order proceedings and particularly for the children and families they work with.

Yours sincerely

Mr Justice Gillen
Chairman of the Children Order Advisory Committee
16 November 2006
Commercial Property Solicitor
Belfast City Centre
Up to £42k
Well known commercial firm of solicitors with a superb client base and excellent reputation have an exciting opportunity to join their busy firm. You will have considerable residential and commercial conveyancing experience. Ref: 5030

Company Commercial Solicitor
South Down
£Neg
Large privately owned manufacturing facility wishes to recruit an experienced Company/Commercial Solicitor. You will have considerable experience in this area, preferably in-house experience and employment law experience. This is an exciting opportunity to join a professional company. Ref: 4974

Property Solicitor
Belfast
£Neg
Our client is one of Northern Ireland’s largest commercial law firms who pride themselves on providing a professional service to their clients at all times. They currently wish to recruit a Solicitor with experience in European and intellectual property law. This is a superb opportunity to join one of Northern Ireland’s most successful practices. Ref: 2814

Matrimonial Solicitor
South Belfast
Up to £40k
Our client, based in the suburbs of Belfast, has an excellent reputation as being a professional and friendly medium sized practice. They currently wish to recruit a like minded individual with experience in matrimonial law. Conveyancing experience is desirable. This position offers exciting career opportunities for the right person. Ref: 4988

Conveyancing Solicitor
Co Armagh
Up to £29k + bonuses
Due to our client’s increased work load an exciting opportunity has arisen to join their medium sized friendly practice just 25 minutes from Belfast. This busy firm requires an individual with expertise in residential conveyancing. Excellent benefits package on offer. Ref: 4772

Conveyancing & Matrimonial Solicitor
Co Armagh
Up to £30k
Reputable firm of solicitors wishes to recruit an ambitious individual with experience in both conveyancing and matrimonial law. This is a superb opportunity for an individual who would like to learn from a highly successful team and grow within a prestigious firm. Ref: 4310

Conveyancing Solicitor
Belfast City Centre
Up to £31k
Fantastic opportunity has arisen to join a well respected firm. Due to our clients increased work load they require a Solicitor with experience in residential conveyancing. Ref: 4281

Conveyancing Solicitor
South Belfast
Up to £28k
Expanding firm of solicitors has an excellent opportunity for an Assistant Solicitor to join their team. You will not only have knowledge in conveyancing but also determination and enthusiasm. This is a superb opportunity to join a growing and busy firm. Ref: 4166

Conveyancing Solicitor
Co Armagh
£Neg
Our client, a progressive and prestigious practice with offices in Northern Ireland and The Republic of Ireland, have a vacancy within their conveyancing department. This is an exciting opportunity for an ambitious Solicitor to join their busy team. Conveyancing experience is essential. Ref: 4998

Senior Litigation Solicitor
Belfast
Up to £42k
Our client is one of Northern Ireland’s leading commercial law firms and currently has a vacancy within their litigation department. You will be advising and representing a range of clients including insurance companies, public bodies and companies in relation to professional indemnity, employer’s liability, public liability and product liability. Career advancement encouraged. Ref: 4907

Litigation & Criminal Solicitor
Co Armagh
Up to £35k
Our client wishes to recruit an individual who can concentrate on court work. You will have experience in litigation and crime to include advocacy and pace calls. This is an excellent opportunity to join a busy and expanding firm. Ref: 4877

Litigation & Matrimonial Solicitor
South Down
Up to £30k
Excellent opportunity has arisen to join a reputable, busy country practice. Specialising in both litigation and matrimonial law the suitable individual will be expected to have considerable expertise in this area in order to take on a busy work load. Candidates seeking flexible working hours will also be considered. Ref: 3267

Litigation Solicitor
Belfast City Centre
£Neg
Our client, one of Ireland’s leading law firms, currently has an opportunity for a Litigation Solicitor. You will have experience in personal injury defence and commercial litigation for insurers/self insured companies in the areas of employer’s liability, road traffic and public liability. Experience in transport law desirable. This is a superb opportunity to join a highly successful practice. Excellent salary and benefits package on offer for the right candidate. Ref: 4826

Assistant Solicitor
North Down
Up to £21k
Superb opportunity has arisen to join a well known and professional firm of solicitors just 20 minutes outside of Belfast. This is an ideal position for a Solicitor who enjoys litigation and who would like to develop their skills in this area. Ref: 4940

For more details call Orla Milligan at prglawsearch on 02890 314 644 or email orlamilligan@prglawsearch.com

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Work and family rights

Further to new Regulations (see SR 2006 Nos. 372 – 374) which came into operation on 1 October for mothers-to-be and adopters whose child is expected to be born or placed for adoption on or after 1 April 2007, guidance has been prepared to help employees and employers better understand their changed rights and responsibilities.

ER 16 Maternity rights - A guide for employers and employees

This booklet now comes in two versions - one setting out the existing rights for mothers whose expected week of childbirth falls before 1 April 2007 and one setting out the rights which apply where the EWC falls on or after 1 April. Both versions can be accessed from the link below. http://www.delni.gov.uk/index/publications/pubs-employment-rights/erbooklets/er16-maternity-rights-a-guide-for-employers-and-employees.htm

Summary of working parents’ rights

There is a page on the Department for Employment & Learning’s web-site summarising ‘family-friendly’ rights and giving links to some useful online tools and guidance. It also contains a useful table which sets out how the new rights differ from the old. http://www.delni.gov.uk/index/er/workandfamilies/er-existing-rights-for-working-parents.htm

ER 35 Adoptive parents - A guide for employers and employees

This booklet also now comes in two versions - the first deals with the existing rights and the second with the rights applying where a child is placed for adoption on or after 1 April 2007. The booklet also contains guidance on adoptions from overseas. www.delni.gov.uk/index/publications/pubs-employment-rights/erbooklets/adoptive-parents-a-guide-for-employers-and-employees.htm

Work and families update bulletin


Pregnancy and work leaflet

This is a short and succinct ‘what-you-need-to-know’ guide for employees and employers on the new maternity rights.


Library booksale

Earlier this year the Law Society library held a booksale in order to raise funds for the President’s nominated Charity, MacMillan Cancer Support and the Solicitors’ Benevolent Fund.

The booksale was very successful and raised a total of £1,145 for both charities.

Library staff are now organising another extensive book sale, offering nearly new editions of core legal library texts at knock-down prices. Look out for details in the next editions of the Writ and on the Society’s website. Given the demand for titles in the previous booksale, it is advisable to put your order in early!
These Rules, which come into operation on 5 January 2007, amend the Rules of the Supreme Court (NI) 1980 (“the principal Rules”), in consequence of:

- the Damages Act 1996 (c.48) (as amended by section 100 of the Courts Act 2003 (c.39)).

These Rules also amend the list of securities in which the Accountant General may invest money by direction of the Court and make a minor amendment to procedure in commercial cases.

Rule 2 amends the Arrangement of Orders at the beginning of the principal Rules by revising the entry to Order 37 and omitting references to the repealed Trade Marks Act 1938 and the Trade Marks (Amendment) Act 1984.

Rule 3 amends Order 29 of the principal Rules by inserting a new rule 10A which provides that the Court may make an order making the continuation of an alleged infringement of an intellectual property right subject to guarantees and that where the Court grants a remedy before the issue of a writ or summons, the remedy shall only be granted on terms providing for the issue of the writ or summons.

Rule 4 amends Order 37 of the principal Rules by inserting a new Part III, which makes provision about the exercise of the Court’s powers under s.2(1) of the Damages Act 1996 (as substituted by s.100 of the Courts Act 2003) to order that all or part of an award of damages for future pecuniary loss in relation to personal injury may take the form of periodical payments.

Rule 5 amends Order 72 of the principal Rules to provide that on commencement of proceedings in a commercial action the plaintiff’s solicitor shall request the Registrar in charge of the Commercial List to enter that action in the Commercial List.

Rule 6 amends Order 80 of the principal Rules by designating a list of securities in which the Accountant General may invest money paid into the High Court by direction of that Court under Order 80, rule 10 of the principal Rules. The Accountant General has the power to invest in such securities under s.81(a)(iii) of the Judicature (NI) Act 1978.

Rule 7 amends Order 90 of the principal rules in consequence of Council Regulation (EC) No. 2201/2003 of 27 November 2003 (“Brussels IIa Regulation”) and the Child Abduction and Custody Act 1985 (Jersey) Order 2006 (SI 2006/1917). The principal Rules are amended to make provision for relevant information to be included in an originating summons in cases where the Brussels IIa Regulation applies. Provision is also made for the registration of decisions made under s.16 of the Child Abduction and Custody Act 1985 and for the transmission of documents and the stay and transfer of proceedings between courts in Northern Ireland and Jersey.

Rules 8 and 9 amend Order 93 and 100 respectively of the principal Rules to omit references to the Trade Marks Act 1938 and to provide that a defendant is to bear the cost of orders for forfeiture and destruction. The Court is given power to order the dissemination of judgments at the expense of the defendant.

Rule 10 amends Order 104 to omit reference to a repealed provision of the Patents Act 1977, and to make provision for the dissemination of judgments at the expense of a defendant.
The Compensation Recovery Unit Northern Ireland (CRU) is in the process of making significant changes to the way it does its business and a Project has been set up to deliver new functionality in two phases.

The current scheme for recovering Health Services Charges is on target to change on 29 January 2007 when the Recovery of Health Services Charges (NI) Order 2006 comes into operation. This will extend the scope of the scheme to cover all types of accident and compensators who are not “authorised insurers”, or are otherwise exempt from being charged, will no longer be exempt. It will also introduce recovery of ambulance charges and allow for contributory negligence to be taken into account when calculating the amount of charges due.

It is hoped that the CRU computer system will be able to communicate electronically from 31 March 2007 with compensators who:

- use Electronic Data Interchange (EDI); or
- use the electronic functionality provided by the Claims Underwriting Exchange (CUE(PI)) database.

Work has been ongoing on the Project to take these changes forward and it will be:

- issuing a question and answer brief in December 2006 to explain the changes coming into force in January 2007; and
- making contact with compensators who use electronic links to discuss enabling those links from 31 March 2007. This will be via IDSL for CUE users and direct for EDI users.

Any queries on these changes should be directed to the project team:

Lynne Gibson (Project Manager) – telephone 028 9054 5811
Stewart Malcolm 028 9054 5838
Geraldine McErlane 028 9054 5858

Any queries regarding the changes to the Recovery of Health Services Charges legislation should be directed to:

Stephen Popplestone
Department of Health, Social Services and Public Safety
Finance Policy and Accountability Unit
Room D3.7
Castle Buildings
Belfast BT4 3SQ
Tel: 028 9076 5694

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**Sittings and Vacations of the Court of Appeal and the High Court: 2007-2008**

**Order 64 of the Rules of the Supreme Court (NI) 1980**

**Michelmas Term**
Wednesday 5 September 2007 to Friday 21 December 2007

**Halloween Recess**
Monday 29 October 2007 to Friday 2 November 2007 inclusive

**Christmas Recess**
Monday 24 December 2007 to Friday 4 January 2007 inclusive

**Hilary Term**
Monday 7 January 2008 to Friday 14 March 2008

**Easter Recess**
Monday 17 March 2008 to Friday 28 March 2008 inclusive

**Trinity Term**
Monday 31 March 2008 to Monday 30 June 2008

**Long Vacation**
Tuesday 1 July 2008 to Thursday 4 September 2008 inclusive
Success of "Litigation in the Commercial Court" Conference

The recent Law Society Conference “Litigation in the Commercial Court” held at the Holiday Inn, Belfast on 27 October was a huge success, with over 120 practitioners attending from all over Northern Ireland.

Under the chairmanship of James Cooper, the afternoon commenced with a comprehensive review of key issues for practitioners in the Commercial Court presented by Mr Justice Coghlin and Gareth Jones of C&H Jefferson, Solicitors.

This was followed by an interesting joint presentation on a number of issues concerning the use of expert witnesses in the Commercial Court given by Forensic Accountant, Jeremy Harbinson of Harbinson Mulholland and Chartered Quantity Surveyor, Ferguson Bell.

The feedback from delegates about all aspects of the afternoon was very positive.

The conference was brought to a close with an overview of the role of Mediation and Alternative Dispute Resolution given by Brian Speers of Carnson Morrow Graham, Solicitors and Alva Brangam QC.

The feedback from delegates about all aspects of the afternoon was very positive. The Society is currently preparing a varied programme of CPD events for the first half of 2007 - further details in the next edition of The Writ.

NOTE: Mr Justice Coghlin highlighted concerns about considerable delay in the listing and disposal of commercial actions due to their not always being included in the Commercial List. Practitioners should note that as indicated by the Judge, the Rules of the Supreme Court (NI) (Amendment No.3) 2006 (which come into operation on 5 January 2007) will provide at Rule 5 for an amendment of Order 72 of the principal Rules to provide that on commencement of proceedings in a commercial action the plaintiff’s solicitor shall request the Registrar in charge of the Commercial List to enter that action in the Commercial List.
Twenty five years ago, at the height of the conflict, Lord Gardiner QC chaired a cross community conference at Queen’s University on the theme of the administration of justice. The conference led to the creation of the Committee on the Administration of Justice (CAJ) and this year the organisation celebrates a quarter century of working for the civil liberties and human rights of everyone in Northern Ireland.

At the 1981 conference, participants recognised that “the danger to the law and its administration remains constant and constantly changing” and that “if a new difficulty or abuse arises it can very quickly lead to a violent response.” They considered that governmental enquiries were too slow and often lacked credibility, so they determined “an independent non-governmental Enquiry with broad based membership in constant session establishing over a period of time a record of thorough investigation and careful reports might improve the present situation considerably.”

Early records of the organisation are incomplete but regular meetings were held in the next few years and reports were published regarding emergency legislation, police complaints and minority rights. As with most organisations, however, it was with the appointment of staff in July 1985, that the work took on more momentum and visibility. In the first decade the emphasis was on traditional civil and political rights - with reports and inquiries into prisons, policing and the operation of emergency laws. Lobbying efforts were targeted at Direct Rule Ministers, parliamentary committees and the education of public opinion.

By the early 90s, however, three distinct developments had an impact that, in hindsight, were quite dramatic.

The first development was a global one - the ending of the Cold War. Human rights activists around the world started to return to the founding principles of the Universal Declaration of Human Rights (UDHR), Negotiated in the wake of World War II, the UDHR had intended no distinction between civil and political rights on the one hand and economic social and cultural rights on the other. The UDHR talks of freedom of opinion, freedom from torture, rights to housing, education and social security and asserts the inter-dependence of all these aspects of human well-being.

Unfortunately, hardly was the ink dry on the Declaration, when the Cold War made it impossible for people to agree about how to put it into practice. The ‘west’ argued the primacy of civil and political rights - people should have the right to freely elect their government and leave elected politicians to decide how best, or if, to give effect to economic, social and cultural rights. The ‘east’ argued that civil and political rights were nugatory - only supported by western states since they required inaction and minimal resourcing, what people really needed was universal housing, healthcare and education.

Only with the ending of the Cold War could reason – rather than political posturing - prevail. Human rights activists worldwide began to emphasise the inter-dependence of civil, political economic, social and cultural rights. CAJ was no exception.

A second distinct trend - also international - was the growth in number, importance and influence of international human rights scrutiny mechanisms. Groups like CAJ were now able to bring an international spotlight to bear on domestic human rights abuses. Thus, in the early 90s, pressure on the UK government by the UN Committee Against Torture and its European counterpart, led to an immediate decrease in complaints of ill-treatment by prisoners. A few years later the UN committee that works on racism, embarrassed the government into extending long-standing British race discrimination legislation to Northern Ireland. CAJ and others had worked for years on these issues but regional and international interventions proved much more effective. The same was true when CAJ successfully took cases to the European Court.

In addition to its efficacy, external human rights scrutiny lends greater legitimacy and credibility to local efforts. It is difficult enough to defend human rights at the best of times but in the midst of violent conflict, it is difficult and unpopular. The European Court of Human Rights was able to say – without fear of official contradiction - that ‘even’ IRA operatives out on an operation are human beings who have a right to life. The Court determined that armed opponents should be arrested if at all possible and that the state should plan operations accordingly. Local groups making such an argument can be too easily dismissed as (at best) naïve do-gooders or (at worst) protagonists in the conflict.

For all these reasons CAJ gave increasing importance to involving international and regional actors. From the outset CAJ had not taken a position on the constitutional status, arguing that whoever was responsible for the jurisdiction must comply with international human rights standards. So, an increase in international human rights scrutiny was very positive.
The third trend was much more localised. CAJ started to develop a more strategic approach to its work and this proved extremely important as the human rights environment within which the organisation worked began to change radically. As society moved from conflict to peace, the focus on legally entrenched human rights protections, on human rights compliant criminal justice and policing systems and on equality for all, created an agenda that would both address the legacy of the past and develop standards for a better future. The Council of Europe recognised CAJ’s contribution to mainstreaming human rights in the peace process by awarding it their Human Rights Prize in 1998 and the work since the millennium has been to try and embed the gains made.

In its 25 years CAJ has published over fifty major reports; organised dozens of seminars and conferences; hosted numerous visits to Northern Ireland by eminent personalities and local human rights activists from all five continents; intervened in the courts domestically and at the European level; taken up many individual cases of human rights victims; and made hundreds of policy submissions to domestic, regional and international bodies. Output, however, is one thing - what actual outcomes have been secured?

CAJ believes that it played a role in moving human rights centre-stage in Northern Ireland. The cases successfully taken to Europe vindicated the right to life, even in times of serious violent conflict; years of constructively critiquing criminal justice and policing contributed to new institutions now replete with human rights safeguards; and perhaps most importantly of all, CAJ contributed to creating a much wider ownership of the rights agenda. In 1981 conference participants were aware that they were launching a campaign in very contentious waters. Now Northern Ireland has specialised public agencies to promote human rights and equality; it has legal obligations with which all public authorities must comply in the promotion of equality and observance of human rights; and it has an array of groups that now self-describe as human rights organisations. Whether people work on racism, with a women’s group, with young people, on regeneration in loyalist and republican areas, they frequently rely on the language and concepts of human rights. In the long term, widespread public commitment to human rights is the surest possible defence against abuses.

So can CAJ celebrate its anniversary and shut up shop? Well no, it does not think so. There is more to be done and very importantly, the gains already made can be all too easily lost. Look at the situation in Britain, in the Republic, and the United States - all societies that consider themselves mature democracies. The “war on terror” has cut a swathe through long cherished freedoms, re-opened long dead debates about what constitutes torture, and in what circumstances is it permissible? Our basic liberties are being challenged not only by those engaged in terror tactics but also by those charged with defending us against attack.

CAJ believes that an independent human rights watchdog will always be needed: please join us or support us in our efforts - info@caj.org.uk or visit our website - www.caj.org.uk.
Consultation on Guidance on the definition of disability

Revised draft Guidance on the definition of disability has been published for consultation.

Launching the consultation document seeking views on proposed revised Guidance, the Equality Minister, David Hanson, MP said: "The current Guidance which is used by the courts and tribunals was published in 1996 following the introduction of the 1995 Disability Discrimination Act (DDA). Since then there have been many important changes to the legislation increasing the number of people covered by the DDA.

"The recent Disability Discrimination (NI) Order 2006 will extend coverage to people with HIV, cancer and MS and remove the requirement for a mental illness to be 'clinically well-recognised'. We now need to update the Guidance to reflect these and other advances."

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The revised Guidance also takes account of concerns that some people with disabilities, particularly in the area of mental illness, find it difficult to demonstrate how they meet the definition of a disabled person under the DDA. It also widens the number of practical examples to clarify how certain disabilities, such as Lupus and autistic spectrum disorders, are covered.

The Minister urged people to take the time to respond to the consultation and said: "I want to ensure the new Guidance meets the needs of those using it and properly reflects the legislation as it stands.

"I welcome the views of disabled people, their representatives, the legal profession, businesses and any other individual or organisation affected who wishes to comment both on the structure and format of this important publication."

The consultation process runs until 15 January 2007. The document can be accessed on the website of the Office of the First Minister and deputy First Minister at www.ofmdfmni.gov.uk/equality.
Companies Bill

The Companies Bill, which aims to simplify and improve company law, received Royal Assent on 8 November 2006.

Once the new Act becomes operational, the existing Northern Ireland law, the Companies (NI) Order 1986, and its associated rules and regulations will fall.

The new UK wide Companies Act will be a piece of primary legislation that once brought into force will apply directly to companies. In order to achieve this, a number of provisions will need to be set out in secondary legislation. It is also recognised that, once accomplished, some time needs to be allowed for the business community to gear up to using the new law. The intention therefore is to commence all parts of the new Companies Act by October 2008.

The Department of Enterprise, Trade and Investment states that early in 2007 the business community will be consulted regarding plans for implementation of the legislation. The Department will also continue to work with the business community in Northern Ireland to ensure widespread and effective communication of the Act's provisions so that all parties fully understand the new measures and are in a position to take advantage of the benefits.

More information may be obtained from the DTI's website http://www.dti.gov.uk/

Consultation on Residents' Parking scheme

A public consultation exercise on draft policy for the implementation of Residents’ Parking schemes in Northern Ireland has been announced by Roads Service.

Residents’ parking schemes are common place in England, Scotland and Wales. There are no residents’ parking schemes in Northern Ireland.

Roads Service took powers in the Road Traffic Regulation (NI) Order 1997 to permit the introduction of Residents’ Parking schemes in Northern Ireland. However, schemes can only work with effective enforcement. The PSNI, due to other priorities and lack of resources, were not in a position to commit to providing enforcement support. As a result no schemes have been implemented here to date.

On 30 October 2006 Roads Service assumed responsibility for the enforcement of parking restrictions. This means that Roads Service will be in a position to introduce Residents’ Parking schemes. The draft policy sets out how Roads Service proposes to implement such schemes.

In essence a residents’ parking scheme is an area where only vehicles with a valid permit can park during the hours the scheme is in operation. It aims to discourage vehicles from outside the area, (such as commuter traffic), from parking within residential streets. It will be signed to indicate where the scheme applies and while different areas have different needs, it will in general be considered where there is a significant parking problem in an area. Roads Service will also consider schemes that have been suggested by the public or by their representatives.

Roads Service will consult with residents and businesses in the area to assess the level of interest in having a residents’ parking scheme introduced. A scheme will not be pursued unless two thirds of local residents support it.

The draft policy consultation document outlines the requirements for allowing schemes to proceed as well as detailing how schemes are to be implemented.

A frequently asked questions section is included in the policy document which can be downloaded from www.roadsni.gov.uk/consultation/consultation.htm

The consultation period will run until Friday 9 February 2007.
Redemption of "All Monies" mortgages

The Home Charter Committee has recently sought Counsel's opinion in relation to the implications for solicitors of "All Monies" mortgages and in particular:

(i) The reliance which a solicitor can place upon a quoted redemption figure from a financial institution; and

(ii) The extent to which financial institutions are stopped from requiring monies over and above that quoted figure.

The principal difficulty for solicitors in terms of re-mortgages is the requirement which is frequently insisted upon by the financial institution intending to grant the re-mortgage, that the mortgagor's solicitor give an undertaking to effect their security as first mortgage and deliver the Title Deeds to them. Obviously those solicitors need to be in a position to rely on quoted figures; to be able to redeem mortgages; to give security either for re-mortgages or clear title to purchasers.

Whilst a borrower/mortgagor is entitled to know how much he is entitled to pay, the difficulty which arises out of the context of an "All Monies" mortgage is that liability often fluctuates, so that the redemption figure may change between the date on which it was provided and the date on which funds are actually available to discharge the indebtedness. It is this function, rather than the nature of the "All Monies" mortgage per se which is the source of difficulty. This effects the solicitor's ability to give undertakings, either to re-mortgagees or to purchasers.

In relation to the Society's second enquiry, Counsel was satisfied that on service of the appropriate notice, financial institutions would have difficulty in requiring monies over and above the quoted figure if the effect of that recovery would be prejudicial to the remortgagor.

The Home Charter Committee endorses the use of the following Notice as drafted by Counsel.

"To..................................................................... (Financial Institution)

We are instructed on behalf of (insert details) ["the mortgagor"]
We seek confirmation of the following:

(a) All mortgages, charges, loans or other liabilities secured by you on premises situate and known as (insert details); and
(b) Details of the redemption figure ["the stated redemption figure"] required to discharge the total indebtedness of (insert details) and secure a vacated mortgage deed in respect of the premises identified in (a) above; and
(c) Confirmation as to the exact manner in which the stated redemption figure (as determined on foot of (a) and (b) above) is calculated and furthermore the precise date which that stated redemption figure shall remain valid until ["the stated date"].

We would further ask you to note that the information provided by you, as requested above, shall be relied upon not only by the mortgagor, but also by this office and may be forwarded to another financial or lending institution for the purposes of obtaining further credit or effecting a re-mortgage.

We require your written confirmation that on provision of the monies necessary to meet the stated redemption figure on or before the stated date, that you will thereafter execute a vacated mortgage deed forthwith. If you are not prepared to confirm the stated redemption figure as being accurate and remaining valid until the stated date, then you must make that clear.

If you provide a stated redemption figure which is incorrect or insufficient to discharge the liability secured on the premises, then this notice may be relied upon by the mortgagor or by this office and you may be prevented from recovering any additional monies, which are due and owing to you and may further be required to vacate your security on the premises.

You may also be liable to this office, if as a result of our reliance on information provided by you, we sustain any loss or damage."

Of course you should not forget to exercise a degree of caution before providing an undertaking at all. The following should be borne in mind:

• Make sure that each of your replies to requisitions on title concerning mortgages specifies exactly which mortgages or charges you intend to discharge.
• Do not give unconditional undertakings without sufficient enquiry into the amount owed on prior charges – do not rely on what your client tells you.
• If your ability to comply with an undertaking depends on action to be taken by another solicitor, make sure that he or she will be able to comply, eg by obtaining an undertaking to a similar effect.
• Beware of bank "standard form" undertakings – they sometimes go beyond what is within your control. It may be necessary to amend them.
Residential Marina Development 2007

www.russellcove.com
the virtual tour

Russell Cove
designed for the ‘celebrity’ lifestyle

exclusive to ireland

Connell Quay

UK Tel: 0808 208 1112
Text Ireland to 84070

ROI: 1890 532 532
UK: 0808 234 1296
Legal Moves

Arthur Cox Northern Ireland has made the following appointments:

Rachel Penny joins the firm as an Associate to head the employment team. She was previously employed with Eversheds in London, where she acted for clients principally within the financial services and public sectors. Rachel, who studied law at Cambridge University and trained with top city law firm Linklaters, will deal with all matters of employment.

Michael King joins the firm as a Solicitor in the Litigation Department. He qualified from Queen’s University, Belfast and trained with Arthur Cox Northern Ireland (which included a period of training with its Dublin office). Since being admitted as a Solicitor in 2006, Michael has practised in the area of Litigation, advising insurance companies, medium to large enterprises and public companies.

RóisÁine Hamill joins the firm as an Assistant Solicitor. She graduated from Trinity College, Dublin and joins the Corporate Department from Matheson Ormsby Prentice, Dublin, where she worked primarily in the area of securities laws. RóisÁine practices in core corporate and company areas including mergers, acquisitions, disposals, shareholder issues and corporate reorganisations.

James Penny joins the firm as an Associate Solicitor. James was previously Head of Business Affairs at Granada/ITV Productions and qualified with one of the UK’s leading international law firms, Richards Butler. James has extensive experience in the film and television industries, having also worked at MTV Europe and Channel 4, as well as advertising, sponsorship, e-commerce, consumer protection, data protection and general intellectual property issues.

Assignment of Resident Magistrates

The Lord Chief Justice has made the following assignments in accordance with s.9(5) of the Magistrates Courts (NI) Act 1964:

Ms Henderson is assigned to the Petty Sessions District of Belfast and Newtownabbey.

Mr W G McCourt is assigned to the Petty Sessions District of Omagh.

These assignments are effective from 30 October 2006.

New in 2007!!

Watch out for the new IT column in the Writ in 2007. Starting in January with a piece on Top 10 tips to help your IT save you time and money, this column will provide regular features on topics such as digital dictation, outsourcing, anti-virus protection and much more.

Written by a variety of local IT companies, some of whom have experience in providing IT to law firms, this column will highlight the various means by which IT can be used for the maximum benefit of your practice.

If you have any other topics which you would like to see covered in the Writ, please contact:
Heather Semple:
heather.semple@lawsoc-ni.org
Peter O’Brien:
peter.obrien@lawsoc-ni.org
Laura Niwa, policy officer at Law Centre (NI), reviews the proposed changes to Incapacity Benefit in the Welfare Reform Bill and the impact these reforms may have on those with mental health issues.

The Welfare Reform Bill (the Bill) was introduced into the House of Commons in July 2006. The principle behind the Bill is to support and encourage more people in receipt of Incapacity Benefit to move into employment, if they are able to do so. Although many of the reforms are welcome, some of the provisions within the Bill may create particular problems for those claimants with mental health issues who make up approximately 40 per cent of all Incapacity Benefit claimants.

One in six people in Northern Ireland will suffer from a medically identified mental illness at any one time and research indicates that the history of sectarian violence in Northern Ireland continues to have a serious impact on the mental health of individuals. Recent research has found that almost a tenth of Northern Ireland’s working population is claiming benefits for mental health.

**EMPLOYMENT AND SUPPORT ALLOWANCE**

The proposals made within the Bill are underpinned by the new Employment and Support Allowance (ESA). This new income related allowance will replace Incapacity Benefit and Income Support paid on the grounds of incapacity for new claimants. The Bill divides claimants for the new ESA into two groups: those who are assessed as being capable of participating in work-focused interviews and activities, the Work Related Activity Group and those who are assessed as being ‘severely functionally limited’ who will not have to participate in such activities, the Support Group. It is likely that the majority of claimants will have to take part in work-focused interviews and work related activities in order to qualify for the full benefit rate.

The Bill outlines what ESA claimants will be expected to do under the new scheme. The requirements for new claimants of the ESA will be based on the Pathways to Work scheme. The main proposals are:

- claimants will be required to attend a work-focused interview with a Personal Adviser around eight weeks after they have claimed the ESA;
- most claimants in the Work Related Activity Group will attend a further five interviews (approximately one per month) focused on assisting their return to work;
- each claimant will agree to an Action Plan with their Personal Adviser, detailing the agreements made at each interview and the steps a claimant will take to assist them to return to work.

If a claimant is unable to attend an interview ‘without good cause’ then a sanction will be imposed. However, the Bill details a series of safeguard procedures that will take place before a sanction can be imposed including, contacting the claimant to remind them of the interview, offering alternative locations for meetings with a Personal Adviser and visiting claimants with a stated mental health condition if a sanction is to be imposed.

While these safeguards are welcome, the concept of compulsory participation may create significant problems for those with mental health issues given the fluctuating and, at times, unpredictable nature of some mental health problems. Claimants with mental health issues may also feel unduly pressured to sign up to Action Plans they may be unable to fulfill rather than risk a reduction in their benefit.

**PERSONAL ADVISERS**

The proposals within the Bill place a large degree of responsibility on Personal Advisers to assess whether a person is complying with their Action Plan. Personal Advisers are able to waive or defer work-focused interviews in certain circumstances.

**SANCTIONS**

Despite research by the Department of Work and Pensions, regarding the Pathway to Work pilots, which found that there is little evidence that the imposition of sanctions resulted in increasing interest in, or movement towards work, the Bill proposes a range of sanctions on those who do not fulfill their work activity obligations. The Bill outlines a 50 per cent reduction of the work-related activity component in each of the first four benefit weeks and then a 100 per cent cessation in each subsequent week, until the claimant is compliant.

It is of concern that the imposition of conditionality and sanctions as part of the new benefit scheme may have a negative effect on the relationship building between a claimant and his/her Personal Adviser, which the Pathways to Work pilot has shown is pivotal to its success. Previous Department research found that Personal Advisers “felt that allowing customers to move forwards at their own pace, and emphasising the voluntary nature of participation, were critical to gaining customer commitment and co-operation.”
Given that for many people with mental health issues non-compliance, as a result of ill health, may occur, consideration must be given to the detrimental effect the ongoing threat of income loss would have on an individual.

**PERSONAL CAPABILITY ASSESSMENT**

As part of the welfare reforms the government have also committed to an overhaul of the Personal Capability Assessment (PCA) from an incapacity based tool for determining eligibility to Incapacity Benefit to a more positive and full assessment of capability to include health related interventions to assist those with a disability to engage in work.

The PCA is the initial assessment to determine whether a claimant will be placed in the Work-Related Activity Group or the Support Group. However, proposals have also been made for the development of a further work-focused health-related assessment to explore not just functional ability but also a claimant’s approach and attitude to returning to work. The timing of this assessment, whether it should follow on from the entitlement based PCA or be a separate appointment, is yet to be determined.

Some of the proposals for the new PCA, as made by the Department for Work and Pensions, Health, Work and Wellbeing Directorate are to:

- increase the relevant areas of limitations of mental function from 4 to 15
- develop the series of descriptors within each area of mental function to parallel the assessment of physical function
- alter the scoring system for mental function (from 1 or 2 points to 6, 9 or 15 points) for each descriptor
- increase the benefit entitlement threshold for mental function from 10 to 15 points
- continue to consider the whole person and a person’s condition over time
- remove the ability to combine physical and mental function scores in order to meet the entitlement threshold
- update the self-assessment questionnaire for those with mental health issues

The Health, Work and Wellbeing Directorate has stated that in the longer term it will consider exploring development of a combined physical and mental function PCA. However, given the frequent overlap between physical and mental illness there is the need for a holistic approach to the PCA to ensure that all descriptors, physical and mental are considered rather than pigeon holing a claimant into one descriptor or another and therefore providing only a partial assessment of their capability. The new arrangements will not affect the practical reality that many individuals’ ill-health has both a physical and mental ill-health component and this needs to be recognised.

**WHERE TO NEXT**

Overall the Bill is focused on supporting more people into work and this is a welcome aim. Of people with long-term mental health issues who are economically inactive, 35 per cent would like to get back to work, as compared to 28 per cent of people with other health problems. Those with mental health issues are often keen and willing to return to work but lack the support and understanding to be able to achieve this goal.

Many of the proposals within the Bill demonstrate a greater awareness of the needs of those with mental health issues. However, further thought on the practical outworking of the Bill and the allocation of resources for appropriate training is necessary. This is to ensure that those with mental health issues are not stigmatised or penalised by a lack of understanding on the part of Personal Advisers or other professionals involved in the assessment of their ability to participate in compulsory activities.

The Bill continues to be debated by the Standing Committee and many of the draft regulations are yet to be released for consultation. Research and evidence gathering are still ongoing and the final proposals for the revision of the PCA and the development of a further work-focused health-related assessment are yet to be confirmed.
Northern Ireland Young Solicitors' Association presents

The Impact of Human Rights Law on Judicial Review Practice: Recent Developments

Date: 16 January 2007
Time: 1.00pm - 2.00pm (refreshments provided from 12.30 onwards)
Venue: The Edge, May's Meadow, Belfast - please see www.niysa.com for full details
Cost: £10 for members of the NIYSA* and £20 for non-members
Speaker: Ms Mary Higgins QC

Attendance at this lecture will provide one hour CPD entitlement.

Cheques and booking forms to NIYSA c/o Mr Toby McMurray, Tughans Solicitors, Marlborough House, 30 Victoria St, Belfast, BT1 3GG. Email: toby.mcmurray@tughans.com
*All Solicitors aged 36 or under are automatically members of the NIYSA

BOOKING FORM
The Impact of Human Rights Law on Judicial Review Practice: Recent Developments
lunchtime lecture

NAME
FIRM
ADDRESS (DX if possible)
E-MAIL ADDRESS
TELEPHONE
NUMBER OF PERSONS ATTENDING
I ENCLOSE REMITTANCE OF £
European Young Bar Association AGM and Conference

The European Young Bar Association in conjunction with the Northern Ireland Young Solicitors’ Association offer you the opportunity to attend an essential one-day Conference for Northern Irish and EU business lawyers focusing on key practice areas such as inward investment, corporate and commercial law, and recent developments in European law. The Conference is a high profile one of relevance to all lawyers in Northern Ireland and elsewhere.

The Conference will focus on the importance of European Law in law practice. It will focus on issues of strategic importance for all lawyers in Europe, helping them prepare for further market changes to come.

Topics covered in the conference may include the following:
- An overview of policy affecting lawyers across the EU
- The latest developments on cross-border investment and relocation opportunities in Northern Ireland.
- How to get the EU to work for your clients; using European law in a domestic context
- Speakers on commercial law and litigation in Northern Ireland, the UK and EU.
- Career opportunities for lawyers in Ireland and in Europe
- Opportunities to network with young lawyers from across the EU.

The Conference will take place on St. Patrick’s Weekend- Friday March 16 & Saturday March 17 2006 at the prestigious Ten Square Hotel, Belfast, with an informal welcome dinner on Friday followed by a tour of local hostleries-sampling the unique craic of “St. Pat’s”.

The European Young Bar Association European Committee Meeting will take place on Saturday March 17 at the same venue, and will feature speakers on developing networks for young lawyers across Europe, information on working with in-house lawyers, a round-up of news and events across Europe’s young lawyers, and guest speakers from leading EU jurisdictions. Delegate fees for the conference start at £99.00 with a Weekend Rate, including all social events, of £150.00/€225

To accompany this conference and AGM, the NIYSA have organised an exciting social calendar. The highlight of which will be a black-tie Gala Dinner with champagne reception, band and disco, being held on Saturday March 17 2006 at Ten Square. Tickets are available at £40 per person.

For more details on any of these events, please contact Teresa at Sillars & Jones Event Management on 07834 597 260 or email Teresa@sillarsandjones.com To confirm your place on any of these events, please complete and return this form to Teresa@sillarsandjones.com or post to

EYBA/NIYSA Conference
Sillars & Jones Event Management
9 Pelican Mead, Hightown, Ringwood
United Kingdom BH24 3RG

You will then receive your confirmation email together with reference numbers, EYBA terms & conditions and accommodation and venue information.

*Please note, Gala Dinner only tickets are only open to the following:
- Law Society of Northern Ireland Members
- NIYSA members

**REGISTRATION FORM**

**NAME**

**YOUNG BAR ASSOCIATION/FIRM**

**ADDRESS**

**E-MAIL ADDRESS**

**TELEPHONE**

**TICKETS REQUIRED**

(A) Conference Only - £99.00

(B) Conference, European Committee & Gala Dinner - £150.00 / 225.00 (weekend Rate)

(C) Gala Dinner - £40.00 (weekend Rate)

**DIETARY REQUIREMENTS:**

**ADDITIONAL INFORMATION:**
September heralded the return of the Law Society’s Advanced Advocacy Course for solicitors when the Institute welcomed Judge Robbie Barr, Boston attorney, Bill Hunt and Professor Paul Zwier from USA who together with local judges and tutors ensured 23 local solicitors fine-tuned their practical advocacy skills in a gruelling but rewarding course culminating in a trial in the Royal Courts of Justice.

In October the Institute welcomed 25 new Bar Trainees all of whom completed training in advisory work with various local offices of the Citizens Advice Bureau.

November saw the solicitor trainees competing in the initial internal IPLS rounds of the Louis M Brown International Client Counselling Competition. The winning team from these rounds will compete in the Law Society national competition and, if fortunate enough to be successful in that competition, will go forward to represent Northern Ireland in the finals in Australia where up to 20 other countries will be taking part.

Bar trainees, Malachy McGowan and Breige Austin, proudly represented the Institute at the Irish Times Moot competition held in Dublin.

On 16 November the staff of the Institute hosted a charity coffee morning with Pudsey Bear to raise funds for Children in Need.

In December the Institute was delighted to welcome Professor Nancy L Schultz of Graduate Law School, Chapman University, California to present two excellent workshops on Effective Communication with your Client and Updating Your Presentation Skills.
High Court, Court of Appeal and Tribunal Decisions

High Court and Court of Appeal decisions

ATTORNEY GENERAL’S REFERENCE (NUMBER 3 OF 2006)
MICHAIL JOHN GILBERT
Sentencing. - aggravated burglary, rape and indecent assault. - appeal sought by the Attorney General on the ground that the sentences were unduly lenient. - attitude of the offender to the offences and risk of further offending. - aggravating and mitigating factors. - sentencing levels in rape cases. - HELD that the original sentence was unduly lenient and should be quashed and increased from 5 to 7 years imprisonment with 3 years’ probation HIGH COURT 15 SEPTEMBER 2006 KERR LCJ

Assets Recovery Agency successfully sought an Interim Receiving Order. - whether the Court has power to order an exclusion from the Interim Receiving Order to meet the cost of instructing a forensic accountant in the present case. - legal aid certificates granted to defendants but subsequently revoked because the disposable income of the defendants exceeded the statutory limits of the legal aid scheme. - defendants challenged this decision by judicial review, but application adjourned to enable them to pursue an application for funding under Proceeds of Crime Act 2002 s.252. - restrictions on dealing with property. - whether exclusion should be considered on the basis that this is a legal expense. - whether it should be considered under s. 252(2). - definition of legal expenses. - HELD that the Court has power to make an exclusion in respect of some or all of the proposed costs of a forensic accountant HIGH COURT 11 OCTOBER 2006 MORGAN J

IN THE MATTER OF A DECISION BY GRAEML DRUMMOND FOR JUDICIAL REVIEW AND IN THE MATTER OF A DECISION OF THE SECRETARY OF STATE FOR NORTHERN IRELAND TAKEN ON 25 OCTOBER 2004 REFUSING AN APPEAL AGAINST A REVOCATION OF A FIREARM CERTIFICATE
Leave to apply for judicial review previously granted to challenge the Secretary of State’s revocation of applicant’s firearm certificate. - whether unfair, unreasonable or in breach of applicant’s legitimate expectation. - certificate revoked because police were of the opinion that the applicant was associating with members of a proscribed organisation. - application for leave to reinstate grounds relied on in the Order 53 Statement which the court had directed should be struck out. - whether in the interests of justice for the applicant to be permitted to bring back into the case the grounds which the court at an earlier stage had considered unarguable. - whether applicant could show good reason for altering the view taken at this stage. - whether in breach of art. 1 and 6 ECHR. - application dismissed HIGH COURT 22 SEPTEMBER 2006 GIRVAN J

IN THE MATTER OF AN APPLICATION BY PATRICK FLEMING AND PENNY JANE FLEMING FOR JUDICIAL REVIEW
Application for judicial review to challenge the decision of the Legal Services Commission to revoke an emergency legal aid certificate since the applicants were financially outside the scope of legal aid on the grounds of their disposable income. - applicants had had their assets frozen by the Assets Recovery Agency but were permitted weekly living expenses. - assessment of applicant’s means. - whether monies received to meet reasonable living expenses are required to be treated as income. - dealing with property under the Proceeds of Crime Act 2002. - applicants in this case were in a unique position in that they had no choice as to how their income was used and they had been directed that the income was for living as opposed to legal expenses. - HELD that the present application should be adjourned so that the application could be made to the trial judge who could decide the power and discretion of the court to pay appropriate legal expenses and costs out of the assets HIGH COURT 5 SEPTEMBER 2006 GIRVAN J
High Court, Court of Appeal and Tribunal Decisions

IN THE MATTER OF AN APPLICATION BY MARTIN HAVERN FOR JUDICIAL REVIEW
Criminal legal aid. - Magistrates’ Court. - whether in the interests of justice to award legal aid. - risk of imprisonment. - whether appropriate to defer issue to end of trial. - whether correct test applied
HIGH COURT
29 SEPTEMBER 2006
GIRVAN J

IN THE MATTER OF K AND S (THE NEED FOR EXPERT EVIDENCE; APPEAL FROM A MASTER)
Appeal against Master’s Order refusing the application of the father of 2 children to grant leave for the disclosure of documents to and examination of the children by an expert pursuant to r.4.19 and 4.24 of the Family Proceedings Rules (NI) 1996 for the hearing of an application to confine contact pursuant to a.53(3)
Children (NI) Order 1995. - children subject to application for adoption and are in care in the aftermath of allegations of non-accidental injuries allegedly caused by the parents. - application for reduction in contact. - whether insufficient weight given to the proposition that expert assessment was required in the best interests of the children. - whether delay in gaining expert evidence would be adverse to the interests of the children. - right to family life under a. 8 ECHR. - HELD that Master’s decision was correct and there was sufficient multi-disciplinary evidence before the Court to enable it to make a determination on the issue, and that the delay in obtaining an expert report would be unjustifiable. - appeal dismissed
HIGH COURT
9 OCTOBER 2006
GILLEN J

JEANETTE MCCONOMY v DOE
Damages as a result of injuries received subsequent to a fall from steps. - plaintiff suffered bruising injuries to her forehead and nose and swelling to her eyes, lacerations inside her mouth and bruising to her arms and knee. - interference with sensation and the ability to eat for approximately one month. - metal steps did not have the required level of friction to prevent slipping, although the relevant British Standard post dated the construction of the steps. - whether the accident happened in the manner described by the plaintiff. - whether the steps in the condition described a hazard for pedestrians. - whether accident happened as a result of a slip. - HELD that the plaintiff did slip on steps which were hazardous. - no contributory negligence arises and damages of £6,250 awarded
HIGH COURT
4 OCTOBER 2006
MORGAN J

R v WILLIAM J OHN LIAM BRADY
Sentencing. - defendant pleaded guilty to manslaughter of his wife by reason of provocation at the earliest opportunity. - defendant and his children had been the subject of violence and taunting from the deceased for a considerable period of time. - 4 years’ imprisonment imposed together with 18 months’ probation supervision upon release from prison
HIGH COURT
26 SEPTEMBER 2006
WEIR J

R v MARK HADDOCK, DARREN STUART MOORE, ALEXANDER THOMAS WOOD, J ASON LOUGHLIN AND WILLIAM LOUGHLIN
Assault occasioning actual bodily harm. - attempted murder. - false imprisonment. - criminal damage. - trial continued against first defendant alone. - identification evidence. - PACE Code D. - admission of bad character evidence under the Criminal Justice (Evidence) (NI) Order 2004. - credibility of victim. - attempts to secure the non-involvement of other parties. - inconsistencies of evidence and flashbacks. - HELD that defendant not guilty of attempted murder, but guilty of causing grievous bodily harm with intent, false imprisonment and arson. - sentence to follow
HIGH COURT
22 SEPTEMBER 2006
SMITH J

IN THE MATTER OF AN APPLICATION BY LIAM WARD FOR LEAVE TO APPLY FOR A JUDICIAL REVIEW
IN THE MATTER OF DECISIONS APPLY FOR A JUDICIAL REVIEW
BY LIAM WARD FOR LEAVE TO
IN THE MATTER OF AN APPLICATION
SMYTH J

R v K MCK
Application for Special Measures Direction under arts 7, 12 and 15 of the Criminal Evidence (NI) Order 1999. - rape. - complainant a former partner. - video recording and live link applications. - whether quality of evidence would be improved. - whether evidence given under special measures would inhibit such evidence being effectively tested by a party to the proceedings. - whether video evidence should be allowed in the interests of justice. - victim in fear of giving evidence and in terror of the accused. - HELD that evidence in chief should not be received by video recording, but that evidence should be given by live link
CROWN COURT
25 SEPTEMBER 2006
SMYTH J

SIE LIMITED v UNIVERSITY OF ULSTER, UNIVERSITY OF ULSTER RESEARCH PARKS (UUSRP), UUTECH LIMITED AND BARNETT, CHRIS
Contract. - whether contract was made with defendant or subsidiaries of the defendant or by the fourth defendant acting in breach of warranty of his authority to act on behalf of the first 3 defendants. - whether enforceable agreement had been reached, or was conditional on things being agreed which were never agreed. - whether parties intended to be bound on the issue of the shareholders agreement. - HELD that there was never an agreement in place and claim dismissed
HIGH COURT
22 SEPTEMBER 2006
SMITH J

IN THE MATTER OF AN APPLICATION BY LIAM WARD FOR LEAVE TO APPLY FOR A JUDICIAL REVIEW AND IN THE MATTER OF DECISIONS OF THE DEPARTMENT FOR RURAL
DEVELOPMENT DATED 16 MARCH 2006
Application to challenge the Department of Rural Development’s decision to publish the Draft Planning Policy Statement relating to development in the countryside and issue a Ministerial Statement purporting to govern the status and weight of the policies of the Statement. - Impact of the policy on the applicant’s business and employees. - whether applicant has sufficient standing to bring the application. - whether Court should order a stay of the proceedings or adjourn them since the issue is already before the Court. - HELD that applicant has a sufficient interest to bring the application and that proceedings should not be stayed
HIGH COURT
29 SEPTEMBER 2006
GIRVAN J

Industrial Tribunal Decisions

AGNEW, PETER v BOARD OF GOVERNORS OF NEWBRIDGE INTEGRATED COLLEGE AND DEPARTMENT OF EDUCATION
Unauthorised deductions from claimant’s wages. - claimant had received a salary increase and placed at point L21 on the pay scale. - all performance related increases should have been based on the L21 pay scale for the academic year 2000-2001 and L27 for the current academic year. - claimant had been paid on the wrong scale point and therefore the respondent had made a series of unauthorised deductions from claimant’s wages. - tribunal ordered the respondent to pay £7607.53 in respect of unlawful deductions for the period 1 September 2000 to 31 October 2005.
9405/03IT  16 MAY 2006

BOYD, WILLIAM J OHN v FARRANS CONSTRUCTION LIMITED
Decision on a pre-hearing review. - date of termination of employment. - claimant put on protective notice of redundancy and required to work 12 weeks notice. - employment brought to an end earlier than expected due to poor workload. - effective date of termination within the three month time limit and the tribunal has jurisdiction to hear the claim
1125/05IT  9 JUNE 2006

CAIRNS, AARON MICHAEL v FUEL PREPARATIONS INTERNATIONAL LIMITED
Whether claimant had been dismissed or had resigned. - claimant left work after a disagreement with his line manager and did not return. - respondent of the opinion that as he did not return he had left employment. - respondent did not have any policies or procedures in place to deal with the matter. - tribunal found that the claimant terminated his own contract and resigned without notice and therefore not entitled to notice pay
1548/05IT  11 AUGUST 2006

FERGUSON, CAROL v SOUTH EASTERN EDUCATION & LIBRARY BOARD
Respondent made application for costs following dismissal of unfair dismissal claim. - ground for application was that the proceedings were misconceived. - which Rules governed the awarding of costs. - whether claimant’s conduct fell within that described in the Rules. - whether claimant’s behaviour before dismissal should be taken into account. - tribunal found that unreasonable behaviour did not justify the making of a costs order. - tribunal dismissed application for costs.
1695/03/IT  28 JUNE 2006

GREENAWAY, CYRIL THOMAS NEIL v CAPPERS TRADING LTD
Decision on a pre-hearing review. - whether contentions put forward by the claimant have any prospect of success. - claimant claimed that he received a lesser rate of pay than other drivers employed by the respondent. - tribunal thought that there was little reasonable prospect of success and ordered the claimant to pay a deposit of £5000 as a condition of being permitted to take part in the proceedings
3156/04IT  31 JULY 2006

Fair Employment Decisions

BELL, YVONNE MARRIE v SOUTH & EAST BELFIST HEALTH & SOCIAL SERVICES TRUST
Claimant alleged she had suffered unlawful discrimination on the grounds of religious belief or political opinion. - given an unsatisfactory reference and subsequently not being appointed to a permanent post. - claimant did not indicate any actual comparator. - tribunal decided that the claims of religious and political discrimination be dismissed.
313/03FET  7 AUGUST 2006

SIDES, ANDREW v SPERRINS TOURISM LTD, JOHN DONAGHY, PETER MCKENNA, NUALA MCREYNOLDS AND SEAN KERR
Decision on a pre-hearing review. - claimant claimed he had been discriminated against on the grounds of religious belief and political opinion in the arrangements for recruitment and interview. - tribunal unable to conclude whether the claimant would have a reasonable prospect of success. - case can be listed for full hearing
137/05FET  3 AUGUST 2006

The full text of these decisions are available on the Library’s Libero Database at www.lawsoc-ni.org or by contacting the library
LACEY, BRIAN v UNIVERSITY OF ULSTER AND PAUL DAVIDSON
Decision on a pre-hearing review. - claimant alleged he had been subject to unlawful sexual orientation discrimination in not being short listed. - whether claim was presented within the time limit. - claimant endeavoured to deal with the situation internally in the first instance. - claimant unaware of his rights. - tribunal decided that the claimant’s claim was not presented within the specified time limit but it was still just and equitable to consider the complaint.
970/05IT 10 AUGUST 2006

MARTIN, HAZEL v DONEGALL PASS COMMUNITY FORUM
Whether claimant had suffered an unlawful deduction of wages as a result of being overpaid for three months. - respondent organisation funded by grant aid. - claimant informed by respondent of the mistake and of the need for the overpayment to be paid back by the claimant over a period of time. - tribunal decided that the claimant did not suffer unlawful deductions as the respondent had taken the necessary steps to rectify the mistake.
1160/05IT 1 AUGUST 2006

MURDOCH, CAROLINE v NORTHERN IRELAND PRISON SERVICE & DEPARTMENT OF FINANCE & PERSONNEL
Claimant claimed unfair dismissal and breach of contract. - claimant dismissed from position as prison officer without a formal disciplinary hearing and not in accordance with the Code of Conduct and Discipline and terms and conditions of her employment. - PSNI had carried out a search under the Misuse of Drugs Act 1971 for controlled drugs at a house thought to be owned by the claimant. - claimant was never charged. - respondent believed that the claimant had become a security risk and broken her relationship of trust and confidence with the respondent. - tribunal felt that there had been an absence of a thorough investigation by the respondent and that the claimant was unfairly dismissed and the respondents committed a breach of contract. - tribunal ordered the respondent to pay the claimant £58,780.00.
2505/04IT 10 AUGUST 2006

PLUNKETT, SUZANNE MARIE AND CONNIE LEE KEARNEY v LIMAVADY BOROUGH COUNCIL
Whether claimants had been unfairly dismissed. - suspicion of theft of council funds. - claimants subject to a disciplinary procedure and also covert video taping whilst working. - claimants denied a fair hearing by their employer, an opportunity to state their case and to subject the evidence to proper scrutiny. - tribunal found that the claimants were unfairly dismissed but declined to award compensation to reflect the claimant’s contributory conduct.
1935/03IT 1 AUGUST 2006

STEWART, FRANCIS v UNIVERSITY OF ULSTER
Whether respondent had made unauthorised deductions from the claimant’s wages. - issue of regrading of position. - tribunal has no jurisdiction to deal with claim while employment is continuing. - claim dismissed.
172/06IT 17 AUGUST 2006

TAGGART, ARTHUR JAMES v GRAFTON RECRUITMENT AGENCY
Unauthorised deductions from wages. - claimant worked 96.5 hours overtime on a specific project but respondent did not pay overtime to someone of claimant’s grade. - following discussions with his line manager the claimant believed he would receive financial reward for the extra hours worked. - tribunal is satisfied that the claimant worked extra hours and therefore this qualifies him for overtime payment. - tribunal orders the respondent to pay £1624.10.
1083/05IT 15 MAY 2006
Planning Policy Statements (PPS) contain policies on land-use and other planning matters and apply to the whole of Northern Ireland. They set out the main planning considerations that the Department takes into account in assessing proposals for the various forms of development.

PPSs are gradually replacing the policy provisions of the Planning Strategy for Rural Northern Ireland published in September 1993 http://www.planningni.gov.uk/AreaPlans_Policy/Strategies/PlanStratforRuralNI/pdf/PSRNI.pdf and each PPS indicates those policies of the Strategy that it is superceding.

The Regional Development Strategy for Northern Ireland 2025 (RDS) was published on 20 September 2001. Its key themes sought "to direct and manage housing growth to achieve more sustainable patterns of development in the future and to protect our environment by avoiding actions likely to cause irreversible damage."

The Department has a statutory duty laid down in a. 4 of the Strategic Planning (Northern Ireland) Order 1999, to provide policy guidance and advice on the RDS and its implementation.

> LEGISLATION

The Strategic Planning (Northern Ireland) Order 1999

This Order requires the Department for Regional Development to formulate a regional development strategy for Northern Ireland and co-ordinate its implementation.

General powers of the Department

a. 4. The Department shall -
(a) provide policy guidance and advice in relation to its regional development strategy and the implementation thereof;
(b) draw up proposals for the implementation of that strategy; http://www.opsi.gov.uk/si/si1999/19990660.htm

> PUBLICATIONS

Draft planning policy statement 14 (PPS 14) - sustainable development in the countryside - March 2006

In his statement In March 2006, the Minister, Shaun Woodward, stated that PPS 14 "proposes a presumption against new development in the countryside outside designated settlement limits with a limited number of exceptions." It is the intention of the government to implement strict controls on development in order to meet the essential needs of the rural community, in order to achieve the high standards of environmental protection demanded at national, European and international levels, and assist in the implementation of the Regional Development Strategy. The public consultation period of 12 weeks for PPS 14 ended on 9 June 2006.

All the publications listed below are available on the Department for Regional Development website at http://www.drdni.gov.uk/. J ust click on the Current Issues link.

Ministerial Statement on PPS14
Draft Planning Policy Statement 14
EQIA on PPS14
Draft EQIA on PPS14 (Executive Summary)
Draft Environmental Assessment on PPS14

> CASELAW

In the matter of an application by Liam Ward for leave to apply for a judicial review and in the matter of decisions of the Department for Rural Development dated 16 March 2006

Application to challenge the Department of Rural Development's decision to publish the Draft Planning Policy Statement relating to development in the countryside and issue a Ministerial Statement purporting to govern the status and weight of the policies of the Statement. - impact of the policy on the applicant's business and employees. - whether applicant has sufficient standing to bring the application. - whether Court should order a stay of the proceedings or adjourn them since the issue is already before the Court. - HELD that applicant has a sufficient interest to bring the application and that proceedings should not be stayed.

Girvan J 29 September 2006


> ARTICLES

PPS 14 - Saving the environment or closing down the countryside? (a brief introduction to PPS 14)
2006 agendaNI October 28

PPS 14 a balancing act for DRD? (interview with J im Hetherington, principal planning officer, DRD).
McCusker: 2006 agendaNI October 29 - 30

Both articles are available from the Law Society library.

> WEBSITES*

Department for Regional Development
http://www.drdni.gov.uk/

The Planning Service
http://www.planningni.gov.uk/

Northern Ireland Sustainable Development Homepage
http://www.doeni.gov.uk/epd/sustainable%20development.asp

DEFRA – Sustainable Development Unit

*All websites are correct at time of going to print.
Missing Wills

Re: **Reverend James Charles Wilson** (deceased)
Late of:
St Mark’s Rectory, 119 Ligoniel Road,
Belfast BT14 6DN
Date of Death: 7 September 2006
Would any person having knowledge of the whereabouts of the Will for the above named deceased please contact:
Napier & Sons
Solicitors
1/9 Castle Arcade
High Street
BELFAST BT1 5DF
Tel: 028 9024 4602
Fax: 028 9033 0330

Re: **Mary Catherine McDaid** (deceased)
Late of:
2 Groarty Road, Derry
Date of Death: 3 August 2006
Would any person having knowledge of the whereabouts of the Will of the above named deceased please contact:
Fionnuala Flanagan
Caldwell & Robinson
Solicitors
11 Castle Street
Londonderry BT48 6HQ
Tel: 028 7126 1334
Fax: 028 7137 1659

Re: **Eva Bell** (deceased)
Late of:
Altona Cottage, 74/76 Quarry Road/
Glen Road, Belfast, BT4 2NQ Or Flat 8,
Sydenham Court, 48a Sydenham Avenue,
Belfast
Would any person having knowledge of the whereabouts of a Will for the above named deceased please contact:
McKinty & Wright
Solicitors
5-7 Upper Queen Street
BELFAST BT1 6FS
Tel: 028 9024 6751
Fax: 028 9023 1432

Re: **David Clare** (deceased)
Formerly of:
51 Beechdene Gardens, Lisburn, BT28 3JH
Would any person having knowledge of the whereabouts of the missing Will for David Clare please contact:
The Official Solicitor
Royal Courts of Justice
PO Box 410
Chichester Street
BELFAST BT1 3JF
Tel: 028 9072 4722

Re: **Samuel Waddell** (deceased)
Formerly of:
45 Ballymacvea Road, Kells, Ballymena,
County Antrim, BT42 3NH
Date of Death: 1 November 2006
Would any person having knowledge of the whereabouts of the Will for the above named deceased please contact:
James L Russell & Son
Solicitors
55 High Street
Ballymena
County Antrim BT43 6DT
Tel: 028 2565 2154
Fax: 028 2564 1400
Email: law@jamesrussell.com
Our ref: JLR/JF/204P

Re: **Thomas Gourley Brown** (deceased)
Late of:
77 Imperial Street, Belfast
Date of Death: 15 October 2006
Would any person having knowledge of the whereabouts of the Will for the above named deceased please contact:
Nesbitt Solicitors
167 Upper Newtownards Road
BELFAST BT4 3HZ
Tel: 028 9047 1851
Fax: 028 9065 4411

Re: **Brian Samuel Robert Pollock** (deceased)
Late of:
54 Rochester Road, Belfast
Date of Death: 4 November 2006
Would any person having knowledge of the whereabouts of the Will for the above named deceased please contact:
Nesbitt Solicitors
109 Cregagh Road
BELFAST BT6 8PZ
Tel: 028 9045 4005

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6-7 John Mitchel Place
Hill Street
Newry
County Down BT34 2BP
Tel: 028 3026 2269
Fax: 028 3026 5660

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County: Down
Registered Owner: James McPolin
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Cameo House
41 Bridge Street
Banbridge
Co Down BT32 3JL
Tel/fax: 028 4062 9397

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BELFAST BT1 3GN

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Registered Owner: David Clare
Would any Solicitor holding or having knowledge of the whereabouts of the missing Title Deeds for David Clare please contact:
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Royal Courts of Justice
PO Box 410
Chichester Street
BELFAST BT1 3J F
Tel: 028 9072 4722

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Property: 35 Timbey Park, Belfast BT7 3BT
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BELFAST BT7 2ED

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County: Down
Registered Owner: James McPolin
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And further take notice that unless the said Land Certificates are so produced or adequate information as to their whereabouts is so communicated within three weeks of publication of this notice, duplicate Land Certificates may be applied for.

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Risk Management: File Management

A question frequently asked by solicitors is ‘should we print off e-mails and put them on the file?’

The short answer is yes. Solicitors face the problem of being halfway between a paper-based and paperless office. This often results in correspondence ending up in different locations, some of it on the file and the remainder either in an inbox or half way between the inbox and the file. Good file management dictates that all correspondence is filed in one place, in date order.

This is important for many reasons but, most notably, so that there is a central record of what has happened in relation to that particular client’s retainer and, if a colleague has to look at a file in a fee-earners absence, there is no doubt as to whether the file accurately reflects the current position. It does not matter if the file is stored in its entirely either electronically or manually, so long as it is all in one place.

Claims handlers observe that their jobs are not made any easier by the fact that often files do not accurately reflect what has, or has not happened, by reason of crucial correspondence being missing. Good housekeeping would also suggest that care is taken when filing an e-mail to ensure that unnecessary duplication of correspondence is avoided. This is especially the case when e-mails attach all previous correspondence when sent.

Another question often asked is: ‘How long should we keep our old files?’ Care needs to be taken when selecting a destruction date for a file. For the cautious firm, files will be kept for as long as it is possible to be sued, so as to ensure that, again, there is access to evidence to refute a claim. This would mean taking into account the limitation periods for a professional negligence action. Briefly, primary limitation is six years and the longstop limitation, 15 years. Consider the need to keep for an additional year to cover the situation where proceedings may be issued on the cusp of limitation and served after the expiry of the limitation date.

However, that is general advice and each file should be considered on its own merits at the end of the retainer and a destruction date decided on. Particular care needs to be taken where the client was, or is, under a disability and time has not started to run for limitation purposes.

There is helpful guidance in annex 12A of the Guide to the Professional Conduct of Solicitors 1999, eighth edition (copy available from the Law Library at Law Society of Northern Ireland). Finally, remember that some of the papers will belong to the client or third parties, and therefore the necessary consents to destroy the papers should be obtained.

This article was prepared by AFP Consulting, a division of Alexander Forbes Risk Services UK. The article first appeared in the Gazette, the journal of the Law Society of England and Wales dated 103/23 8 June 2006.
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