Inside this issue:

The Role of the Life Sentence Review Commissioners

Changes to House Sales Scheme ............... page 9
Child Trust Fund -------------------------- page 19
New Costs Regime for Industrial Tribunals .. page 25
The Role of the Life Sentence Review Commissioners

Until recently, the decision as to how long a person sentenced to life imprisonment or detention during the Secretary of State’s pleasure should be detained in custody was made by the Government. Since the passing of the Life Sentences (Northern Ireland) Order 2001 this job has been handed over to the courts and a new body, the Life Sentence Review Commissioners.

The Order provided for the finding, by the court imposing the sentence, of the period of imprisonment or detention to be served by the prisoner to satisfy the requirements of retribution and deterrence. This period is colloquially called “the tariff.” Furthermore, the Order provides for the retrospective fixing of tariffs in the cases of lifers sentenced but not released on licence prior to the Order coming into effect.

However, a prisoner whose tariff expires is not necessarily released. Before this happens, a panel of three Life Sentence Review Commissioners must decide that it is no longer necessary for the protection of the public from serious harm that the prisoner should continue to be confined.

There are 25 Life Sentence Review Commissioners. They fall into three groups of roughly the same size – those who are legally qualified; those who are psychiatrists or psychologists; and those who have experience in other fields (for example, probation and social work). Although appointed by the Secretary of State and funded by the Northern Ireland Office, the Commissioners are totally independent of Government. We meet quarterly to discuss issues of mutual interest and make policy decisions. We seek to make our procedures as transparent as possible. We have devised and documented detailed guidance notes for the prisoners, designed to ensure that they and their advisors fully understand how the cases will be dealt with.

Whenever the case of a prisoner whose tariff has expired or is just about to expire has been referred to the Life Sentence Review Commissioners by the Secretary of State and I have appointed the panel, the Prison Service, acting on behalf of the Secretary of State, will furnish the panel and the prisoner with detailed information on the prisoner including reports from a prison governor, a psychologist and a probation officer. Each of these report writers gives their opinion on whether or not it would be safe to release the prisoner. The prisoner is entitled to legal representation and an oral hearing before the panel (conducted in private) at which the report writers may be questioned and witnesses may be called on the prisoner’s behalf.

In essence, the panel’s role is to make a risk assessment. If it directs the prisoner’s release, the Secretary of State must comply. Furthermore, only conditions which have been recommended by the Commissioners may be included in the prisoner’s licence.

The task of deciding whether it is safe to direct the release of a life sentence prisoner and those detained during the Secretary of State’s pleasure, is probably the most important function conferred on the Life Sentence Review Commissioners by the Life Sentences Order. But there are others. For example, when a life sentence prisoner who has been released on licence has been recalled to prison, the case must be referred to the Life Sentence Review Commissioners and it is a panel of the Commissioners – not the Government – which decides whether or not the prisoner must remain in custody. Again, if the Secretary of State is considering releasing a prisoner on compassionate grounds the Commissioners must be consulted. Furthermore, the Secretary of State can refer any matter relating to the release or recall of life prisoners to the Commissioners for advice. On foot of this power, the Government has indicated that about three years prior to the expiration of each prisoner’s tariff, it intends to refer the case to the Life Sentence Review Commissioners particularly for advice as to how the risk posed by the prisoner might most effectively be addressed prior to the tariff expiring.

The Life Sentence Order requires the Commissioners to “have regard to the desirability of securing the rehabilitation of life prisoners.” We recognise the importance of this objective. Not only is it highly desirable that a person who had completed a lengthy period of imprisonment should be encouraged and equipped to lead a worthwhile and constructive life in the community but also the cost to the tax payer of incarcerating life prisoners in Northern Ireland is extremely high.

In order to aid rehabilitation we intend to use all means available to us including making appropriate pre-tariff expiry recommendations and setting effective licence conditions. Moreover, whenever we think it appropriate to do so, we will make spontaneous representations to the Secretary of State aimed at ensuring that everything that can be reasonably done to achieve this end is done.

But the primary goal of the new system remains the same as the old – the securing of public safety. While it is only right that the decision to keep people in prison after their punishment had been completed should be determined
Independently of the State and only after affording the prisoner a full opportunity to be heard, the Commissioners recognise that it is vital that the community be protected against the possibility of re-offending by people who have committed grave crimes. Although, perhaps surprisingly, the risk assessment is not as scientific as some might think, we have done – and will continue to do – all that we possibly can do to make our assessments as accurate as possible and to ensure that those prisoners whose release we direct will thereafter pose no significant threat to the community.

**DETAILS OF THE TWENTY-FIVE COMMISSIONERS**

**Chairman**
Mr. Peter Smith QC is an eminent barrister with over 30 years experience at the Bar in Northern Ireland. He was appointed as a Deputy Judge in the High Court of Northern Ireland in 2002 and has been a Judge of the Courts of Appeal of Jersey & Guernsey since 1996. Between 1998-1999 he was a member of the Independent Commission on Policing.

**Commissioners from a Legal Background**
Ms Teresa Doherty, a self employed barrister, is a member of the Lord Chancellor’s Advisory Committee on Appointment of JPs and a part-time Chairman of the Social Security Appeals Tribunal. She has previously held the positions of Principal Magistrate and National Supreme Court Judge for the Judicial and Legal Commission of Papua New Guinea.

Mrs. Anne Fenton, a solicitor, is Director of the Institute of Professional Legal Studies at Queen’s University, Belfast. She is a part-time Chairman of the Mental Health Review Tribunal and has previously held appointments as part-time Chairman to both the Child Support and Disability Appeal Tribunals.

Mr. Brian Garrett is a self employed legal consultant and Deputy County Court Judge. He is Chairman of the Northern Ireland Teachers Salary and Conditions of Service Committee and a Chairman of the Social Security Appeals Tribunals. He has previously held appointments as Deputy Chairman for the Northern Ireland Independent Commission for Police Complaints and was a member of the Standing Advisory Commission on Human Rights.

Mr John Leckey is HM Coroner for Greater Belfast. He previously served for a period of 5 years as a Commissioner of the Criminal Cases Review Commission investigating alleged miscarriages of justice.

Mr Donal McFerran is a solicitor and Deputy County Court Judge. He is a legal member of the Mental Health Review Tribunal, holds a number of other General Medical Council appointments and is Secretary to the Solicitors Disciplinary Tribunal. He is also a Sentence Review Commissioner.

Ms Clodach McGrory is a self employed barrister who holds appointments as a Sentence Review Commissioner and legal member of the Social Security Appeals Tribunal. She is also a member of the Irish Human Rights Commission.

Mr Derek Rodgers has been a County Court Judge since 1997 and previously served as a District Judge for a period of 8 years. He is a member of the Legal Advisory Committee of the Church of Ireland and holds positions with a number of voluntary organisations.

**Commissioners from a Psychiatry and Psychology Background**
Dr Ruth Elliott, Dr Ronald Galloway, Dr Adrian Grounds, Professor Peter Hepper, Dr Damien McCullagh, Dr Oliver Shanks

**Commissioners from a Criminological Background**
Professor John Jackson, Professor Andrew Sanders

**Commissioners from a Rehabilitative Background**
Mrs Mary Gilpin, Mr. Stephen Murphy, Mrs Elaine Peel

**Commissioners from Other Backgrounds**
Mr Thomas Craig, Dr Duncan Morrow, Dr Patrick McGrath, Mrs Elsbeth Rea, Professor Herbert Wallace

The Life Sentence Review Commissioners address is 5th Floor Windsor House, 9-15 Bedford Street, BELFAST BT2 7SR. Phone: 028 9054 9424 Fax: 028 9054 9427 www.lsrcni.org.uk
Chairs and Secretaries of local solicitors’ associations attended a symposium on 30th September 2004 at Tullylagan House, Cookstown where they heard from Joe Donnelly, Senior Vice President that in accordance with Law Society policy all solicitors in Northern Ireland will become subject to the compulsory Continuing Professional Development scheme from January 2005.

Each solicitor will shortly receive a Record Card containing full details of the Scheme and its application. Of the 15 hours CPD to be taken in each practice year, 10 must be in group study (3 of these 10 hours must be devoted to client care and practice management) and 5 may be made up by way of private study.

The Society’s preference for local affordable and relevant CPD delivered by way of events and speakers organised by the associations was re-iterated by Attracta Wilson, Chair of Education who pointed out that solicitors will have primary control over and responsibility for their own CPD.

Reference was made by the Senior Vice President to the Society’s decision to appoint a CPD co-ordinator and to the use of the Society’s web site as a means of advertising CPD events. Miriam Dudley of SLS gave a short presentation referring to the most popular topics and the upcoming SLS programme. Miriam indicated SLS would be pleased to assist associations with events and speakers.

Contributions were also made by Brian Speers, Chair of the ADR Committee and by Martin Mallon, Chairman of Belfast Solicitors’ Association.

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**INTRODUCTION OF CPD FOR ALL SOLICITORS FROM JANUARY 2005**

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**From left to right - Adam Spence, Marion Scott, Brian Speers, Miriam Dudley and Martin Mallon**

**From left to right - Mary Murnaghan, Nigel Broderick, Janice Spence, Stephen Wilson and Linda Heenan**

**From left to right - Joe Donnelly, Senior Vice President, Charles McElhone, Comgall G McNally and Ann Hanna**

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The Annual Council Dinner took place on Friday 8th October 2004. Reproduced below is an extract from the speech delivered by the President.

“Across the water the Clementi Review of legal services continues to occupy centre stage and no doubt, sooner or later, some bright spark will suggest that his recommendations should be applied here. I am ready to listen to any suggestions as to how things can be improved in an appropriate and affordable manner. However, I have to be convinced first that the existing system is fundamentally flawed, which it patently is not, and that any such changes will benefit our clients and ourselves. Anyone who has taken the trouble to read Professor Mageean’s reports as Lay Observer will see that whilst we do have complaints against solicitors, the current system of complaints handling and regulation is both appropriate and adequate. We do not need change just for the sake of it, particularly if it adds a further charge to our ever increasing overheads.

“Tesco Law” seems to have gone a bit quiet lately but once again Clementi’s final recommendations will bring it all bubbling up to the surface. I am already on record as saying that I believe that the client base in Northern Ireland is very well served by the extensive network of small independent firms of solicitors with access to an independent Bar. If anyone thinks that the public are going to be better off either in terms of cost or of convenience by having legal services provided by a centrally located multi-national company then they are deluding themselves. Unfortunately there is a tendency on the part of some to confuse “big and shiny” with “benefit”. There is a very real danger, in my view, of the playing field being tilted in favour of the plc or llp legal services providers. The losers will be the profession but more significantly, the clients. It is very easy to say that we should be looking outside our own box at ways to increase our productivity in order to be able to compete with the providers of shrink-wrapped legal services. The reality is somewhat different when you consider the disparity in capitalisation.

What then of the future of the profession? Where will we be in 5, 10 or 20 years from now? It is well nigh impossible to guess given the government’s attitude to the legal profession and to the legal process. They want to open the profession up and let every Tom, Dick or Harry be a provider of legal services yet they are the greatest bunch of control freaks ever. They purport to extol the rule of law and uphold its core values yet they have managed to blow away the cardinal value of confidentiality with the introduction of the money laundering measures.

Far be it for me to be a prophet of doom. We must have faith and we do have faith. There will continue to be a legal profession and we will continue to serve our clients to the best of our ability.”
Lunchtime Seminar

Update on Disability Discrimination

Speaker: Francis O’Reilly BL
Date: Friday 26 November 2004
Time: 1pm (tea coffee and sandwiches from 12.30pm)
Venue: Law Society House, Victoria Street, Belfast
Cost: Members £5, Non-members £10.

Attendance at this seminar will provide one hour’s CPD entitlement

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

Social Development Minister, John Spellar, MP, has recently announced new arrangements which:

- permit housing association tenants to buy their own homes
- amend the current statutory house sales scheme for social housing tenants

Extension of right to buy
Until now, housing association tenants did not enjoy a statutory right to buy their homes. While some housing associations have been operating a voluntary sales scheme, a number had opted out.

The Minister said: “The house sales scheme has been successful in giving many people the opportunity to buy their homes. However, the statutory scheme only applied to Housing Executive tenants and I wanted to extend the opportunity to buy their homes to housing association tenants.”

Changes to statutory sales scheme
The Minister indicated that he was also amending the house sales scheme.

“The main reason for these changes is to ensure that the policy of selling social houses does not impact adversely on the supply of affordable housing both for those in urgent need of social housing and for potential first time buyers. In this regard, I am particularly concerned that speculative landlords are now emerging as purchasers of many former social houses when these are put on the market, thus reducing the potential for such properties to offer an affordable housing option for first time buyers.”

In May 2004, the Department for Social Development issued a consultation document outlining proposals to amend the terms under which houses are offered for sale:

- Qualifying period for discount - extended from 2 to 5 years
- Calculation of discount - changed from 32% after 2 years and rising by 1% per year to a maximum of 60% - to 20% after 5 years and rising by 2% per year to a maximum of 60%
- Maximum discount - cap reduced from £34,000 to £24,000
- Historic cost rule - extended from 8 to 10 years
- Repayment of discount - repayment period in event of a resale extended from three to five years
- Buy back option - buy back period extended from five to 10 years and extend option to all social landlords and not just the original social landlord.
- Anti social behaviour - applications from tenants under investigation suspended until investigations are complete.

The Minister added that the majority of those who responded were in favour of the changes. These changes will apply to all applications to purchase NIHE or housing association properties made after 18 May 2004.
The Home Charter Committee is aware that solicitors are having problems in establishing accurate redemption figures for “chequebook” mortgages. These are becoming increasingly common and are a type of “all monies” mortgage linked to a current or chequebook account.

The redemption figure is susceptible not only to loans other than the mortgage, but to movements on the chequebook account. In particular, cheques may be written or outstanding cheques presented after the provision of the redemption figure.

Although lending institutions may be prepared to allow a continuing overdraft facility, (in particular if a further mortgage is to be taken out with that lending institution) such facility is likely to be limited.

Redemption letters from lending institutions are caveated to allow them to apply completion monies to the non-mortgage accounts in priority to redeeming the mortgage. This obviously has adverse implications for the obtaining of Vacates and the provision of clear title to the purchaser.

Care must be taken to obtain the client’s clear instruction as to their outstanding liabilities, including outstanding cheques on client accounts. Clients should be advised to keep within any overdraft limits permitted by the lending institution over and above the “all monies” facility.

The Society is aware that some solicitors or firms “front” for colleagues who are not “panel” members for one or more financial institutions.

We understand that whilst the “fronter” indicates to the Bank or Building Society concerned that they are acting for borrowers/purchasers in order to obtain the Title Deeds, the work is carried out by a firm of solicitors not on the panel and without the knowledge of the lending institution.

Whilst the first firm is no doubt acting in the spirit of professional solidarity and with a degree of altruism to a colleague, this fails to address the reason why the other solicitor is not on a particular panel. It is frequently the case that the second solicitor has been removed from the panel. Irrespective of the reason for non-membership, the first solicitor is leaving themselves open to liability, and as far as the financial institution is concerned they are responsible for the carriage of the transaction and will be deemed to have responsibility for the Report on Title, and have responsibility for the proper Stamping and Registration of Title; protection of the institution’s interests; and the return of the Title Deeds.

All these are achievable only by very close supervision of the colleague or taking responsibility yourself. Depending on the indications which have been given to the financial institution in the first instance, it may well be that one or the other of the solicitors concerned could be accused of misrepresentation. Subsequently should a claim arise in respect of alleged professional negligence, cover may not be afforded under the terms of your professional indemnity insurance.

There is no real answer to the problem other than to refuse to “front” for colleagues. The only viable alternative is to do the mortgage work yourself and to charge an appropriate fee. Any alternative course of action or arrangements can only but imperil your practice. Sadly, a significant number of solicitors are removed from panels – for the good reason that their work has not been up to standard.
The Landlords Association of Northern Ireland has been granted leave to seek a judicial review of the Houses in Multiple Occupation (HMO) Registration Scheme (see The Writ – July/August 2004). The Landlords Association had argued that the terms of the scheme were unreasonable and forced landlords in university areas to act as a ‘secondary police force’. An adjournment has been granted to fix a date for hearing in November.

The Landlords Association contended that the provisions of the scheme meant that landlords are required to take responsibility for the behaviour of guests as well as tenants when outside the property.

The Housing Executive stated that the proposals to control behaviour were entirely justified and proportionate.

Houses in Multiple Occupation Registration Scheme Challenged

The Department for Social Development has published for consultation draft legislation entitled “The Unauthorised Encampments (Northern Ireland) Order 2004” accompanied by an Explanatory Memorandum.

Unauthorised camping in Northern Ireland has been a cause of complaint from both the public and elected representatives. It has given rise to concerns about environmental and public health issues as well as traffic hazards, and depending on location, the effect on the trade of local businesses. At present, there is no specific Northern Ireland legislation to control unauthorised encampments.

The draft Order will give the police the power to remove trespassers who intend residing on land, together with their vehicles and other property. The provisions of the draft Order are similar to those already in existence in Great Britain.

Copies of the proposal for the draft Order and the Memorandum may be downloaded from www.dsdni.gov.uk

Housing Statistics 2003-04

Recent trends in housing are revealed in ‘Northern Ireland Housing Statistics 2003-04’, a report published by the Department for Social Development.

Some of its key findings include:

1. There were approximately 679,200 dwellings in Northern Ireland at 31 March 2004, a rise of 6,000 (1%) on March 2003.

2. Owner-occupied dwellings accounted for 494,200, i.e. 77.1% of total occupied stock (641,400).

3. 9,502 residential planning applications were granted, an increase of 4.6% on 2002-03.

4. 13,811 new dwellings were started during 2003-04, of which 92% were commissioned by the private sector.

5. 17,150 households presented as homeless, a rise of 4.4% on 2002-03.

6. Total number of Northern Ireland Housing Executive tenancies decreased from 102,834 at March 2003, to stand at 96,507 at 31 March 2004.

7. The number of dwellings sold by Northern Ireland Housing Executive decreased by 6.3% from the previous year, to 5,770 for 2003-04.

8. 2,077 actions for mortgage possession were recorded for 2003-04, an increase of 25.5% from the previous year.

9. The average price of new National House Building Council-registered houses sold during 2003-04, was £108,000 (provisional), an increase of 10%.
Solicitors are good at estimating risk when it comes to their clients’ affairs, but generally bad at the analysis necessary to judge the risks that arise out of the operation of their own businesses.

Newly qualified solicitors do not embark on their careers with the view that they are entering into a risky business – but the insurance industry might take a different view. Operational risk arrives on the doorstep of firms in a variety of forms. A useful typology is to divide risk into four areas; clients, work, staff and processes.

First and foremost, there is the risk from clients themselves. Will they pay for the services? Are they going to bring problems with them such as potential money laundering or damage to the firm’s reputation through association? Have they understood the service that you are going to provide and the limits that you have set? Secondly, there is the work. All work carries risk and a firm needs to be able to determine which parts carry higher risk than others. This can be a generic category such as property transactions, or a specific part of a process such as giving advice on tax in a matrimonial case.

Staff are also a risk. There is the basic need to have properly trained staff competent to carry out the work. As important, is the risk that arises from poorly supervised and under-supported staff. Solicitors’ firms are knowledge-based service providers and the quality of that service rests in the quality of the ‘knowledge workers’, that is, the lawyers in the firm.

Finally, there are the processes and procedures in the firm. Unless the staff are supported by well managed and consistently applied procedures that are clear to everyone, there will be risks of overlooked matters or confusion about lines of responsibility which rapidly lead to complaints and claims.

All risk management policies should provide for the analysis of these four categories of risk and include the measures that the firm and staff intend to take to reduce the risk.

But policies alone are not enough to ensure a reduction in risk. Firms that approach risk management on the basis that it is uncompetitive will not apply risk management policies, however good the principles embodied in their paperwork.

Typically, this will be firms that appoint risk managers at a lower salary scale than the fee-earning solicitors and then undermine their credibility with the operational team by stigmatising them as uncommercial.

Risk management has to be led from the top and a consistent message delivered to staff that it matters. The cost to the firm of complaints and claims in increased premiums and excesses make it a commercial necessity. When you add the loss of reputation that comes from a notorious case then it may be the difference between survival and extinction of a firm.

This column was prepared by AFP Consulting, a Division of Alexander Forbes Risk Services UK Ltd.
PRISONER OMBUDSMAN FOR NORTHERN IRELAND AND REVISED PRISONER COMPLAINTS PROCEDURE

Prisons Minister, Ian Pearson MP, has announced the completion of the consultation exercise on proposals to appoint a Prisoner Ombudsman for Northern Ireland and introduce a revised prisoner complaints procedure.

He said: “Having completed the consultation we can now move forward to appoint the Prisoner Ombudsman through the usual public appointment procedures and begin to revise the existing complaints procedure. John Steele recommended consideration of a Prisoner Ombudsman when he conducted his review of staff and prisoner safety in Maghaberry last year. I hope that all those involved in the welfare of prisoners recognise this as a major step forward that provides added assurance on the treatment of prisoners and provides prison staff with added protection against vexatious complaints.”

Role of Prisoner Ombudsman:
The Prisoner Ombudsman will consider any eligible complaint referred by a prisoner, or former prisoner, regarding his or her treatment in prison and, if he or she considers it appropriate, to make recommendations concerning that complaint to the Director General of NIPS. The appointment to the position of Ombudsman will conform to the principles set out by the Office of the Commissioner for Public Appointments.

Eligible complaints:
The Prisoner Ombudsman will consider complaints referred to him or her within the time allowed by a prisoner, or former prisoner, who had exhausted the internal complaints process. It will be for the Ombudsman to determine the eligibility of any complaint referred to him or her. In doing so it will be open to the Ombudsman to seek further information from the prisoner, former prisoner, or from NIPS. Where the Ombudsman decides that a complaint is ineligible, he or she will advise the prisoner in writing. If the Ombudsman considers that a complaint is vexatious, it will require no further action. Full details of the revised proposals can be accessed at www.niprisonservice.gov.uk

DRIVING DISQUALIFICATIONS FOLLOW YOU HOME

From 11th October, driving disqualifications imposed, either in Great Britain or Northern Ireland, will be recognised throughout the United Kingdom. Previously such disqualifications were recognised only in the jurisdiction under which they were imposed.

The DOE Driver and Vehicle Licensing Northern Ireland (DVLNI) has joined forces with the Driver and Vehicle Licensing Agency (DVLA) to ensure the ‘mutual recognition’ of penalties. This means that a driver disqualified from driving in Northern Ireland is now automatically disqualified from driving in Great Britain and vice versa, regardless of which licence he holds.

DVLNI will have the right to endorse driving licences issued by DVLA in GB and DVLA will be able to endorse licences issued by DVLNI. This will be made possible by the issue of a Counterpart, for endorsement purposes, by the relevant licensing authority where the penalty points are being imposed. This will mean that NI and GB driving licences holders will be able to agree to accept fixed penalties, including penalty points, anywhere in the UK. Penalty Points awarded in NI or GB will apply only in that jurisdiction.

Brendan Magee, Chief Executive of DVLNI said: “Under the new system, a Northern Ireland driver who commits a driving offence in Great Britain can now agree to accept a fixed penalty and penalty points, instead of having to appear in court. The same applies to a GB driver offending here. The law also sets out that a driver can either hold a NI or a GB driving licence, but not both. These changes will also mean that a Northern Ireland driver may have his Northern Ireland licence withdrawn in Great Britain, either on medical grounds or during a new driver’s probationary period, if six or more penalty points have been incurred.”

ADVANCE NOTICE

Seminar on
The Criminal Justice Act 2003 and its implications for Northern Ireland
at
The Institute of Professional Legal Studies
10 Lennoxvale
Belfast BT9 5BY
Date: MARCH 2005
Speakers: Professor Sean Doran and Professor John Jackson
DEATH IN HOSPITALS

The Northern Ireland Human Rights Commission has published a paper on the human rights issues associated with investigating deaths in hospital. Whilst the paper sits within broader research being carried out by the Commission into how deaths are investigated in Northern Ireland, the Commission recognises that health care has not yet benefited from the level of debate which has proven so worthwhile in other contexts of death investigation. The Commission hopes that this report will act as a catalyst for further detailed public debate which will inform its future work on this area.

"Investigating Deaths in Hospital" was written on behalf of the Commission by Professor Tony McGleenan, who is a practising barrister and professor of law at the University of Ulster. The report looks at the principles arising from a range of decisions by the European Court of Human Rights (some specifically in respect of deaths in healthcare facilities) and concludes that effective systems to comply with Article 2 of the European Convention on Human Rights – the right to life – are not adequately in place in Northern Ireland.

Professor McGleenan highlights current failings in the system for investigating deaths in hospitals, including the following:
- there is no automatic requirement for an investigation into a death in hospital;
- internal reviews carried out by Health and Social Services Trusts are insufficiently independent and thorough;
- there is no mandatory requirement to report a death during or after surgery to the coroner; and
- the coroner does not have the power to make a recommendation to prevent a recurrence of the circumstances which caused the death.

The report considers improvements that might be made to our current death investigation systems, such as an independent review of each death in hospital with access to all patient notes and records.

Welcoming publication, Professor Brice Dickson, Chief Commissioner, said: "The Northern Ireland Human Rights Commission is monitoring decisions of the European Court of Human Rights relating to deaths in the health care system. The implementation of Article 2 procedures in the investigation of such deaths is a topic on which further discussion is needed. We hope through this report, to stimulate informed debate on the future practice and procedure in this area of law, which is due for considerable change."

A copy of the report can be downloaded from www.nihrc.org.

COURT INSPECTIONS

A key recommendation of the Criminal Justice Review was the creation of an independent Criminal Justice Inspectorate responsible for ensuring the inspection of all aspects of the criminal justice system other than the courts.

In parallel with this, the Lord Chancellor agreed that public inspection arrangements should be established for the Northern Ireland Court Service. HM Magistrates’ Courts Service Inspectorate (MCSI) for England and Wales agreed to undertake this role. MCSI’s programme of five linked inspections commenced in January 2004 and will cover all aspects of customer service in the Court Service.

They will be inspecting all the courthouses in Northern Ireland between March and December 2004. They will then write a formal report about these inspections which will be published in March 2005.

They report on:
- what facilities the court buildings provide and how easy it is for all kinds of people to use them
- how well people are treated at court
- whether people have the right of information to understand and take part in court hearings

A copy of their findings in relation to their inspection of the services offered at Belfast Combined Courts (Laganside and Old Townhall Buildings), the Enforcement of Judgments Office and the courthouses at Derry, Limavady, Magherafelt, Antrim, Ballymena, Coleraine and Larne is available from www.mcsi.gov.uk - see “Reports and publications”.

CJSNI GUIDE

The Northern Ireland Office has launched a laypersons’ Guide to the Criminal Justice system in Northern Ireland (CJSNI). The Guide which is in clear and jargon free language has been published on the CJSNI website (www.cjsni.gov.uk).

The NIO has also advised that it is developing a specific guide for victims and witnesses.
After consultation with the Chancery Division Liaison Committee, Master Redpath has indicated that he will be willing to measure costs in relation to straightforward bankruptcy petitions from 1st October 2004. The costs will be measured only in respect of dismissed petitions. Order 62 Rule 13 of the Rules of the Supreme Court refers.

The measured figure will be in the line with the figure presently awarded in straightforward cases by the Taxing Master.

In relation to Crown petitions a figure of £350.00 will be allowed for preparation and the first hearing before the Master together with the usual outlays being:

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<tbody>
<tr>
<td>Stamp on Petition</td>
<td>£95.00</td>
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<tr>
<td>Swearing Truth of Petition</td>
<td>£7.00</td>
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<tr>
<td>Swearing Proof of Service</td>
<td>£5.00</td>
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<tr>
<td>Service of the Statutory Demand</td>
<td>£20.00</td>
</tr>
<tr>
<td>Service of Petition</td>
<td>£20.00</td>
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Total £497.00 together with the relevant VAT.

For non-Crown cases a figure of £550.00 will be allowed together with VAT thereon and the relevant outlays.

In both types of case:-

- £45.00 will be allowed for each straightforward adjournment together with VAT and
- £40.00 will be allowed as an enhanced service fee if the court is of the view that service has been obstructed.

Master Redpath has indicated that he will review the level of costs on an annual basis with the Taxing Master.

Practitioners wishing to avail of measurement of costs will have to serve with the Petition a Notice to Debtor in the following form.

### BANKRUPTCY – MEASUREMENT OF COSTS

In the event of this petition being dismissed by the Court the petitioning creditor will make an application for costs. If you do not object the Bankruptcy Master will be asked to measure the costs, if the case is straightforward, in the following sums:

1. If the petitioning creditor is a Crown agency or Department the costs will be measured at £350.00 plus VAT for professional fees and the following outlays:

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</tr>
<tr>
<td>Service of Petition</td>
<td>£20.00</td>
</tr>
</tbody>
</table>

Total £497.00 together with the relevant VAT.

2. If the petitioning creditor has no connection with the Crown then the costs will be measured in the sum of £550.00 plus VAT and the following outlays:

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<tbody>
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<td>Service of Petition</td>
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Total £697.00 together with the relevant VAT.

In both types of case:-

- £45.00 will be allowed for each straightforward adjournment together with VAT and
- £40.00 will be allowed as an enhanced service fee if the court is of the view that service has been obstructed.

Please note that costs do not have to be paid prior to the petition being heard and dismissed.

If you do not agree with the figures that are suggested you have the right to agree either an alternative sum in costs or to have the costs taxed by the Taxing Master. This is a procedure whereby another Master looks at the Bill of Costs to decide whether or not it is fair. If, however, you get the costs taxed there will be additional expenses involved, which you will have to pay if your taxation is not successful. These additional expenses which are paid to the Taxing Office, are in the region of £220.00.

If you have an objection to costs being measured upon dismissal of the petition you must signify your objection to the Bankruptcy Office either by appearing personally or in writing prior to the hearing of the petition.

### NOTICE TO DEBTOR

In the event of this petition being dismissed by the Court the petitioning creditor will make an application for costs. If you do not object the Bankruptcy Master will be asked to measure the costs, if the case is straightforward, in the following sums:

1. If the petitioning creditor is a Crown agency or Department the costs will be measured at £350.00 plus VAT for professional fees and the following outlays:

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<tr>
<td>Stamp on Petition</td>
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<tr>
<td>Service of Petition</td>
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Total £497.00 together with the relevant VAT.

2. If the petitioning creditor has no connection with the Crown then the costs will be measured in the sum of £550.00 plus VAT and the following outlays:

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<tr>
<td>Stamp on Petition</td>
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<td>Service of Petition</td>
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</tbody>
</table>

Total £697.00 together with the relevant VAT.

In both types of case:-

- £45.00 will be allowed for each straightforward adjournment together with VAT and
- £40.00 will be allowed as an enhanced service fee if the court is of the view that service has been obstructed.

Please note that costs do not have to be paid prior to the petition being heard and dismissed.

If you do not agree with the figures that are suggested you have the right to agree either an alternative sum in costs or to have the costs taxed by the Taxing Master. This is a procedure whereby another Master looks at the Bill of Costs to decide whether or not it is fair. If, however, you get the costs taxed there will be additional expenses involved, which you will have to pay if your taxation is not successful. These additional expenses which are paid to the Taxing Office, are in the region of £220.00.

If you have an objection to costs being measured upon dismissal of the petition you must signify your objection to the Bankruptcy Office either by appearing personally or in writing prior to the hearing of the petition.
HIGH COURT COSTS

It has come the BSA’s attention that the insurers have issued a new High Court “Scale” effective from 1st September 2004. We would like to advise members that although we now have had sight (albeit unofficially) of this scale we were not invited to, nor did we participate in, any discussions with the Insurers in relation to the scale. We have not been asked to agree the scale. We would advise that in relation to the last two BSA Guides we had invited the insurers on the first occasion to engage the services of their own professional Law Coster so that a Guide could be drawn up based on sound facts and empirical evidence. This offer was refused. In relation to the last BSA Guide the Insurers were asked if they wished to enter mediation so that an agreed scale could be produced which would ultimately have had the approval of both the Insurers and the BSA. Again this offer was refused.

It appears to us that the Insurers’ new “scale” tries to undermine the present BSA Guide. The damages bands are slightly different and the stages of payment are also different. References have been made by the insurers to differences between disease cases, contested cases and liability admitted cases and also to motor and non-motor cases. It appears to the BSA that the scale has been produced by the Insurers firstly to entice solicitors into early settlement and secondly to undermine the current BSA Guide. We would reiterate that the BSA Guide has been produced professionally on the evidence of numerous taxations and with the input, knowledge and experience of a professional Law Coster. The insurers so-called “scale” makes no effort to refer to nor reflect any such knowledge or evidence. No mention is given of the basis on which the scale was complied and who, if anyone, was consulted. In the absence of any indication to the contrary, it can only be presumed that members of our profession were not consulted about the level of fees.

Our Guide is simply what it says - a Guide - and we do not and have never intended to enforce it on our profession. The Insurers’ scale is called a scale as we believe they wish to give the impression that it carries the same force as the correctly named County Court Scale. IT DOES NOT. They have threatened that if solicitors try to pick and choose whether or not they will accept the Insurers Scale in particular cases that the scale would not apply to those solicitors in other cases in the future.

We would also like to point out that the BSA Guide was arrived at using the relevant and appropriate hourly rates applicable at that time. The Law Society published an article in the May edition of the Writ referring to the fact that their research produced an hourly rate considered to be £87.00 per hour. This is an increase of 14.5% on the £76.00 previously allowed by the Taxing Master. The BSA will be reconsidering their present Guide from 1st January 2005 and will be publishing further articles in due course. We would reiterate that it is the responsibility of every single solicitor to ensure that they receive adequate remuneration. We certainly do not adhere to the policy that the Insurers or any other third party should dictate to or influence fair and reasonable remuneration for our profession.

We respect the fact that ultimately the Taxing Master decides the level of remuneration and therefore the BSA Guide has and always will be based on evidence of the hourly rate and the taxation results.

The proper remuneration of our profession is not an interest of insurance companies. Far from it, on the contrary the interest of the insurance companies is served by paying as little as possible to our profession.

Why else would they now propose to pay less for interlocutories and days in Court etc. than is already the accepted figure of the Taxing Master?

We would therefore continue to urge our members to keep accurate time records on their files, refuse to deal with Insurers on the basis of their so-called “scale” and where appropriate seek costs on the BSA guide or in the alternative, in suitable cases, proceed to taxation to secure proper remuneration for the work done. We are informed that the results of taxation have in no case upheld the Insurers’ Guide.

BSA On-Line

The BSA website can be found at: www.belfast-solicitors-association.org
Annual Lecture Series 2004

Joe Rice
‘Presenting Cases in Magistrates Courts’
Thursday 2nd December 2004

HM Coroner John L Leckey LL.M.
‘Coronial Law and Practice Update’
Thursday 9th December 2004

All seminars will take place at Law Society House. Coffee and sandwiches will be available from 12.30pm and the talks will start at 1.00pm.

The cost of all lunchtime seminars is £10 for BSA members and £20 for others.

Cheques payable to the BSA, c/o The Administrator, BSA, Suite 7, Merrion Business Centre, 58 Howard Street, Belfast BT1 6PJ.

BSA Annual General Meeting

The AGM of the BSA will be held on Thursday 25th November 2004 from 1pm to 2pm.

The venue is Law Society House and coffee and sandwiches will be served.

The support of our membership would be greatly appreciated.

DATE FOR YOUR DIARY

22

The annual BSA Dinner Dance will be held on Saturday 22 January 2005 at the Europa Hotel, Belfast. Full details are on the BSA Website at www.belfast-solicitors-association.org and will be published in the next issue.

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

The seminar included the following lectures:

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

Copies may be obtained from:
The BSA Administrator, Suite 7, Merrion Business Centre, 58 Howard Street, Belfast, BT1 6PJ

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www.northernmri.com
GENDER EQUALITY STRATEGY

Government has launched a consultation document seeking views on a proposed Gender Equality Strategy which seeks to tackle inequalities between men and women, (including boys and girls), where that inequality relates to their gender, marital or relationship status, and whether or not they have dependants or caring responsibilities. It is proposed that the strategy will also seek to focus on the needs of trans-gendered people. The strategy will focus on promoting gender equality throughout the work of the Northern Ireland Departments. It will build upon their activities under Section 75 of the Northern Ireland Act 1998, and will provide a framework under which they can systematically tackle gender inequalities and give a wider picture of what they are doing to promote gender equality. The strategy and its subsequent action plan will better enable Northern Ireland to contribute to a number of international treaties and agreements on which the UK reports. In particular, the key action areas in the draft strategy reflect the areas of concern in the International Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the Beijing Platform for Action (1995). The consultation process will run until 28 February 2005. Copies of the consultation document can be accessed on the website of the Office of the First Minister and the Deputy First Minister at www.genderequalityni.gov.uk.

BELFAST SOLICITORS WIN ANTI-AGEISM AWARD

Northern Ireland has an ageing population, with indications that by 2010, nearly 40% of the working population will be over 45. Government has agreed, in line with EU requirements, to introduce anti-age discrimination legislation by the end of 2006. To assist employers in preparing for this legislation, the Northern Ireland Department of Enterprise, Trade and Investment is spearheading an Age Positive campaign to encourage employers to make decisions about recruitment, training and retention that do not discriminate against someone because of their age. The campaign also promotes the benefits of employing a mixed-age workforce that includes older and younger people.

The Belfast firm of Comerton & Hill, Solicitors, has become the first law firm in Northern Ireland to win the Age Positive's campaign's seal of approval. The company are the most recent addition to the prestigious ranks of over 100 Age Positive Employer Champions across the UK, and has been praised by the campaign for its commitment to ending ageism in the workplace.

Chair of Age Positive Northern Ireland, Bryan Johnston, said he was delighted to certify Comerton & Hill as Employer Champions. He added, “The Age Positive campaign is all about emphasising the business benefits of age diversity and Employer Champions play a key role in this, through leading the way in best practice. Other local law firms should take stock of the policies which have secured Comerton & Hill Employer Champion status and realise that you don’t have to be a big business to use best practice.”

Dan Fitzpatrick, partner at Comerton & Hill, said his firm was ready to embrace the changing demographics. He commented, “We are well aware of the benefits of employing a mixed age workforce, and of what more mature employees bring to the job. We have found that an age diverse workforce brings us the best of both worlds in terms of our staffing. The traditional notions about older people are rapidly changing. I have found my older staff to be dedicated and enthusiastic, responding well to every new challenge they have been faced with.”

More information on Age Positive is available from www.agepositive.gov.uk

A copy of the voluntary Code of Practice, "Age Diversity at Work – A practical guide for business" may be obtained by telephoning 028 9051 7256.
CHILD TRUST FUND

In the next few months, the Inland Revenue will be publicising the Child Trust Fund through a variety of means including direct mail to parents, a dedicated website (November) and a high profile advertising campaign (January and February).

What is it?
- The Child Trust Fund (CTF) is a new savings and investment account for children. It is designed to give children a financial head start in life and to help teach them the value of saving.

Who will receive a CTF account?
- Children born on or after 1st September 2002 are eligible if child benefit has been awarded for them, they live in the UK and are not subject to immigration restrictions.

How will it work?
- Once a child benefit award has been made and eligibility for the CTF accepted, a voucher for the initial Government starting payment of £250 will be sent to the child benefit claimant, who will usually be the parent.
- A person with parental responsibility for the child can then use the voucher to open a CTF account for that child with any financial provider authorised by the Inland Revenue to offer CTF accounts.
- An additional amount of £250 will be paid into the CTF accounts of children in families eligible for full Child Tax Credit (CTC) with household income at or below the CTC income threshold (currently £13,480). This amount will be paid direct into CTF accounts once CTC awards have been finalised after the end of a tax year.
- Parents will receive an information pack giving them details of what they need to consider and do, and information will be available on a dedicated website and from the CTF helpline.
- If an account is not opened before the voucher expires at the end of 12 months, the Inland Revenue will open a stakeholder CTF account for that child (see below for more information about stakeholder CTF accounts).
- Family and friends can contribute up to £1,200 a year in total into a child’s CTF account.
- Neither the parent nor the child will pay tax on money earned in the account.
- The account and the money in it belong to the child, although it is managed by a person with parental responsibility until the child is 16. When children reach 16 they will manage their own CTF accounts.
- Money saved in the account is locked in and cannot be withdrawn until the child reaches 18. Then there will be no restriction on how the child uses the money in their CTF account.
- Special arrangements are in place to ensure looked after children get a CTF account.
- Special arrangements are also in place for early access to the money in a CTF account for terminally ill children.

What types of accounts are available?
- There will be a range of CTF accounts to suit everyone’s needs, including savings accounts, accounts that invest in shares and stakeholder accounts (which invest in shares and for which the Government has made certain rules to manage the risks). All providers will offer or make available a stakeholder CTF account.
- Parents will be able to find out about the different types of accounts from their information pack, on the website, or from financial providers authorised by the Inland Revenue to offer CTF accounts.

What are stakeholder CTF accounts?
- The Government wants to ensure everyone has access to the benefits of investing in shares.
- Charges for this account have been set at a low level.
- The account is designed to give good returns over 18 years by investing in the stock market.
- Money is not put into just one company. Instead it is invested in a number of companies in order to reduce the risk.
- Once the child is 13, money in the account starts to be moved to lower risk investments or assets.

Further information can be obtained at www.inlandrevenue.gov.uk/ctf

NO-NONSENSE GUIDE WELCOMED

A no-nonsense guide for young people on all aspects of the law in Northern Ireland, has been welcomed by the Department of Education.

The “Young Citizen’s Passport” will be distributed by the Department to all pupils at Key Stage 4 and in Years 13 and 14, at September 2004. It will also be issued each year to all Year 11 pupils. The booklet provides no-nonsense information on all aspects of the law that effects young people and is aimed at being a resource for them, not only in Citizenship classes in Key Stage 4, but as they leave school and become independent.

ATTENTION ALL FAMILY LAW PRACTITIONERS

Master Redpath has asked practitioners to note that all Ancillary Relief and Children Order callovers will now take place at 9.30 a.m.
CHILD AND FAMILY LAW CPD COURSE

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

SESSION 1

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

FACILITATED BY:  FIONA BAGNALL RM
SIOBHAN O’HAGAN BL

SESSION 2

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

FACILITATED BY:  DR ALICE SWANN
GILLIAN MCGAUGHEY BL

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

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

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

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

Closing Date for applications:  TUESDAY, 12TH JANUARY 2005

CHILD AND FAMILY LAW CPD COURSE
BOOKING FORM

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

NAME:

FIRM:

ADDRESS:

TEL. NO:

I ENCLOSÉ REMITTANCE OF £
The Meridien Hotel, Nice will be the venue for the Four Jurisdictions Family Law Conference which will be celebrating its tenth anniversary there over the weekend of Friday 4th February to Sunday 6th February 2005.

Programme
The conference will start on Friday afternoon with a discussion on alternative dispute resolution in family law. The celebrations will commence on Friday night with a welcome reception in Nice. On the Saturday, the conference chair will be Mrs Justice Catherine McGuinness. The programme which will address a number of topical, difficult and challenging issues will be presented by a distinguished panel of speakers from across all four jurisdictions, who are experts in their respective fields.

The topics to be discussed include:
- psychology and management of contact disputes
- enforcement of contact orders
- cohabitant’s financial rights
- adoption and fostering law

For the Saturday evening a Tenth Anniversary Celebration Conference Dinner will be held at the Meridien, commencing with a drinks reception. Early booking is strongly recommended and encouraged to avoid disappointment as numbers are limited. Places will be allocated on a strictly first come, first served basis with some weighting to ensure a good representation from all four jurisdictions.

The conference fee of €250 covers the Friday reception, the seminar (with sit down lunch) and dinner dance (to include the drinks reception). The cost for an accompanying person will be €100.

Accommodation
The Meridien Hotel has offered an attractive accommodation rate to delegates. To take advantage of the conference rate, delegates should book accommodation directly with the hotel using the hotel reservation form which accompanies the Conference Booking Form.

Anyone requiring a Conference Booking Form or looking further information should contact:

Peter O’Brien, Assistant Secretary
Law Society House
98 Victoria Street
BELFAST BT1 3JZ
DX 422NR BELFAST 1
Tel: 028 9023 1614
Fax: 028 9023 2606
Email: pobrien@lawsoc-ni.org
AFP Consulting - a specialist consultancy for the legal services sector

Talk to AFP Consulting and you’ll be tapping into a wealth of experience and expertise, gathered over many years of specialist work in the legal services sector. Our experts know the market inside-out and are committed to finding practical, innovative solutions based on the priorities you have in mind.

Risk Review - Helping to minimise the risk of managing your practice

Our Risk Review service is designed to provide you with invaluable information that will help you to improve risk management within your practice. This cost-effective yet concise service is designed to assist your practice:

- Appraise current risk management systems and procedures
- Identify vulnerabilities and avoidable risk exposures
- Address areas which commonly give rise to professional indemnity claims
- Identify recommendations for implementation.

Lexcel

AFP Consulting has assisted a number of practices with achieving Lexcel - the Law Society of Northern Ireland’s practice management quality mark. We are delighted that one of our clients - John J. McNally & Co Solicitors - were recently awarded the prestigious Lexcel quality mark.

For further information on AFP Consulting please call: 0845 600 2729, email: afpconsulting@aforbes.co.uk or visit our website at: www.afpconsulting.co.uk

Please see adjacent page for details of our forthcoming CPD seminar programme.
COMPLAINTS HANDLING - 3rd November 2004
Learn how to profit from complaints. Research shows that 97% of complainants will return to do business or make recommendations to your firm if their complaint has been handled properly. This 3 hour CPD seminar covers the necessary steps for implementing an effective complaints handling programme in your firm. The cost of replacing clients can be 5 times higher than looking after the ones you already have, so it makes sense to put strategies in place for client retention.

BUSINESS DEVELOPMENT STAGE 2 - 17th November 2004
(New client development)
A good client base is of fundamental importance when managing a successful law firm. Not only is it essential to ensure that your firm has developed a strategy to determine who you want your clients to be and how to attract them in the most appropriate way, but it is critical that your clients are then profitable for your firm.

CLIENT CARE - 1st December 2004
Building profits through improved client care. Learn how to increase repeat business, build client loyalty and keep clients happy - a key factor in competitiveness. It has never been more important for practices to provide excellence in client care.

PRACTICE MANAGEMENT - 8th December 2004
All practices benefit from good practice management. Adopting management structures and best practice to ensure a quality service is the key to future success. This seminar will provide valuable insights into quality management for those considering introducing a quality management programme into their practice.

TO RESERVE A PLACE ON ANY CPD SEMINAR, PLEASE COPY & FAX THIS FORM TO 0845 080 4542 OR VISIT OUR WEB SITE AT www.afpconsulting.co.uk

I wish to reserve _______ place(s) at the following seminars
Qualifies for 3 hours CPD
All seminar times: 2.00pm - 5.00pm
Cost per seminar: £100.00 + VAT per delegate

COMPLAINTS HANDLING - 3rd November 2004
BUSINESS DEVELOPMENT STAGE 2 - 17th November 2004
CLIENT CARE - 1st December 2004
PRACTICE MANAGEMENT - 8th December 2004

All seminars will be held at The Law Society, Belfast

Alternatively, you can copy and post this form to:
AFP Consulting, 40 Linenhall Street, Belfast BT2 8BA
or call: 0845 600 2729
or email: afpconsulting@aforbes.co.uk

Please list the names of those attending in BLOCK CAPITALS
Practice: __________________________
Tel: __________________________
Name: __________________________
Position: __________________________

Name: __________________________
Position: __________________________
The Data Protection Act 1998 requires every data controller who is processing personal data to notify under the Act.

The duty to notify is likely to apply to most, if not all, firms of solicitors. It is a matter for each firm to review its computerised and manual filing systems and the information held on them, in assessing whether the Act requires it to notify or whether it might benefit from the exemptions in the Act. Failure to notify is a criminal offence and the Information Commissioner is investigating businesses here and in England and Wales with a view to enforcing compliance. Prosecutions may follow.

Notification is a process whereby particulars of the data controller and a general description of what processing of personal data is taking place, are sent to the Information Commissioner who maintains a public register open to consultation by individuals.

Notification is renewable each year and details of how to do this are available from the Information Commissioner’s Office.

The fee is £35.00 and is payable not to any local office nor to any other organisation but only to the Information Commissioners Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

The Dangerous Wild Animals (Northern Ireland) Order 2004 was made on 27 July 2004 and regulates the keeping of dangerous wild animals by private individuals in Northern Ireland in order to ensure public safety and the welfare of the animals.

The main provisions of the Order will come into operation later this year when the work to set up the necessary supporting arrangements has been completed.

The legislation creates a licensing, inspection and enforcement scheme that will be administered centrally by the DOE.

The Order authorises the DOE, for a transitional period, to accept the voluntary surrender of dangerous wild animals from their existing owners where the licensing standards are unlikely to be met.

A DOE spokesperson said: “The purpose of this legislation is not to prevent people from keeping dangerous wild animals but rather to promote responsible ownership. We will be engaging specialist expert advice shortly to draw up the accommodation and welfare licensing standards that will apply. These details will be made public once the standards have been established. Details of the voluntary surrender scheme will also be published.”
Law Centre (NI)

Raising standards? The new costs regime for the industrial tribunal

Joe O’Keeffe, intern at Law Centre (NI), considers the implications for lawyers, advisers in the voluntary sector and their clients of new cost provisions for industrial tribunals.

From 4 April 2004 a new costs regime, modelled on that in operation in England and Wales since 2001, has been introduced for the industrial tribunal in Northern Ireland. The Industrial Tribunals (Constitution and Rules of Procedure) Regulations (NI) 2004 (SR 2004 No 165) make three important changes to r.14 which all practitioners should be aware of:

1. a new ground for ordering a party to pay the costs of the other party has been introduced. This is where ‘the bringing or conducting of the proceedings by a party has been misconceived’;

2. the amount that an industrial tribunal can order in summary costs has been increased from £500 to £10,000;

3. a paid representative may, once new Rules of Procedure are introduced in April 2005, be personally liable for wasted costs if s/he has conducted proceedings in an improper, unreasonable or negligent manner.

Although it is important that all advisers should be aware of these new provisions, their impact should not be over-emphasised. The Northern Ireland tribunals have yet to make rulings on the new costs provisions, so it is difficult to predict exactly how the Regulations will be interpreted in this jurisdiction. However, this article examines the English courts’ interpretation of equivalent provisions, which can give some persuasive guidance. While the provisions undoubtedly have the potential to have a dissuasive effect on potential complainants, advisers should inform clients that, in light of the cases discussed below, costs orders in industrial tribunals should still only arise in exceptional circumstances.

The English experience

A glance at the English experience in recent years is not encouraging. Employers’ representatives have been adopting an approach to costs that is perhaps better kept as the preserve of the County Court and High Court. Threats of costs applications are being routinely issued in letters before the hearing and are frequently acted upon during the proceedings – costs seem to have become a legitimate litigation tactic for the respondent, following the example of other civil disciplines.

All this makes harrowing reading for the potential complainant, but the Court of Appeal in England has begun to re-emphasise the unique nature of the industrial tribunal as a ‘no costs jurisdiction’ and has implicitly discouraged the use of costs as a deterrent to potential complainants. The message is that complainants should not fear an order for costs when considering taking a case to the industrial tribunal – such concerns should not frustrate a fair hearing.

In Gee v Shell (UK) Ltd (2003) IRLR 82, a case involving the old costs regime, the appellant had received a threat to apply for costs from the respondent before the hearing and had then received a costs warning from the tribunal itself during the hearing. Anxious that a substantial order for costs (going beyond the summary limit) would put her house at risk, the appellant reluctantly withdrew her claim. The Court of Appeal found that the costs warning from the tribunal had been ‘unfair and oppressive’.

The essence of the decision is an attempt to re-characterise the industrial tribunal as a unique civil jurisdiction not subject to the same tactical manoeuvres and
pressures of other civil jurisdictions. According to Scott Baker LJ: ‘This is a jurisdiction where an order for costs is very much the exception rather than the rule. Parliament had set a very high threshold for a costs order to be made.’

The invisible hand of human rights guides the proceedings of all public hearings and the industrial tribunal is no different. Scott Baker LJ tacitly recognised the potential relevance of human rights issues where the threat of costs had interfered with the due process of a case before an industrial tribunal.

‘The ultimate question is whether an applicant has been denied a fair hearing. The danger is that where a tribunal makes or presses a costs warning that is not justified or in a manner that is not justified an applicant will be deprived of a hearing at all.’

Confronted with ungrounded overtures to costs by either the respondent or the tribunal panel, practitioners should be keen to re-assert this passage and to ensure that the tribunal is fulfilling its obligations under Article 6 of the European Convention on Human Rights guaranteeing a fair trial and access to the courts.

The Court of Appeal also addressed the influence which legal representatives can have on the tribunal compared with the complainant who may not even be represented. Sedley LJ provided the guidance that: ‘Lawyers... have an obligation not to let their weight become overbearing, whether on the tribunal or on the opposing party.’

Where there is a mismatch of adversarial skill, lawyers must be reticent to control the tribunal, assert legal truths incapable of being properly tested by the other party or otherwise unnecessarily intimidate the other party, particularly with regard to costs.

In Lodwick v London Borough of Southwark (2004) EWCA Civ 306, the Court of Appeal again considered the issue of industrial tribunal costs, this time in light of the new regime. In ordering the appellant to pay £4,000 in costs to the other party, the tribunal referred both to him having raised matters which appeared to be designed to obfuscate the issues and cause delay and to the weakness of his complaints.

Giving judgment, Pill LJ restated the approach to costs orders laid down in Gee and proceeded to consider the impact of the new ‘misconceived’ ground on the making of such orders. He noted that while the tribunal in this case had referred to the ‘weakness’ of the complaints, it did not find that the proceedings were misconceived. Further, while it had referred to the delay caused by some of the matters raised by the appellant, the tribunal failed to specifically quantify such delay.

Commenting on these shortcomings in the tribunal’s reasoning, Pill LJ commented: ‘To order costs in the employment tribunal is an exceptional course of action and the reason for, and the basis of, an order should be specified clearly.’

Therefore, if an order is made for reasons which are either not made apparent or not within the circumstances strictly defined by the legislation then it is open to the representative to challenge the order.

In attempting to ascertain when the ‘misconceived’ ground will apply, complainants should be conscious that the tribunal will not simply order costs because a case has been unsuccessful. Indeed, Pill LJ recognised the dangers that a false wisdom bestowed by retrospect can have in relation to costs awards when a failed action looks ungrounded at its conclusion, despite the apparent prospect of success at its outset. ‘Misconceived’ entails more than simply a lack of success, rather it is suggested that it requires something akin to ‘frivolity’, in that it must be constructed upon rotten foundations rather than having been subject to gradual erosion during the proceedings.
Readers may be thinking at this point that a costs order will be extraordinary indeed. However, in a cautionary note for both complainants and their representatives, Pill LJ warned: ‘Nothing in this judgment may be taken as encouraging or permitting a toleration of the slack or unbusinessmanlike conduct of cases before employment tribunals.’ An indication perhaps that those presenting cases before a tribunal should always ensure that, firstly, their prima facie case is beyond reproach and, secondly, that their conduct of the proceedings is beyond reproach. If this is satisfied then orders for costs need not be an issue.

Impact on practice in Northern Ireland

If threats of costs applications in pre-hearing correspondence were to become prevalent in Northern Ireland, it is suggested that this may breach the solicitor’s professional duty by putting unwarranted pressure on a complainant to withdraw. Similar professional misconduct could be deemed to occur if ungrounded costs applications were made by a lawyer at the end of a tribunal hearing. Such applications would possibly be contrary to the spirit of the industrial tribunal and to the dicta laid down in Gee and in Lodwick.

Lawyers must, therefore, be vigilant and only seek costs where they are warranted under the legislation and should perhaps desist from referring to cost applications in pre-hearing correspondence, otherwise a complaint could quite properly be made to the relevant professional body if the adviser and complainant feel sufficiently aggrieved.

As the new costs regime is implemented in Northern Ireland, all potential parties and representatives should be conscious of the unique nature of the industrial tribunal system as a ‘no costs regime’, which should give confidence to potential complainants to pursue a case even when faced with threats from the respondent employer to seek costs.

The vast majority of cases should continue to proceed without costs ever being in issue

Where they are, it must be for a good reason and consistent with the legislation.

While advisers should explain to a client the potential for exposure to a costs order in certain circumstances, it should also be emphasised that this will be the exception rather than the rule, despite any threat of a costs application contained in pre-hearing correspondence.

It is perhaps not complainants, but lawyers, who have most to fear from the new costs regime. The power to make an order for costs against a representative personally is currently part of the new draft Rules of Procedure which are now due to come into effect on 3 April 2005. This may prompt some representatives to walk on eggshells when presenting a case. Advisers in the voluntary sector, however, should not be overly alarmed – it is specifically envisaged, according to the DEL public consultation on the Rules, that advisers who operate on a ‘not for profit’ basis will not be subject to these wasted costs orders.

This aspect of the new Regulations should, therefore, have the effect of raising the standards of case presentation before the industrial tribunal without forcing complainants, or their representatives, to abandon otherwise well-founded cases simply due to a fear of an order for costs.

STOP PRESS
CASE MANAGEMENT IN TRIBUNALS

The Office of Industrial Tribunals and the Fair Employment Tribunal has advised their proposals for new case management procedures effective from 1st November 2004. In brief these relate to:-

• No Orders for further particulars/discovery/written answers to questions shall be granted in any case on an ex parte basis. A hearing for directions, if requested, will be arranged to deal with the matter.

• Discrimination cases lodged on or before 31.12.03 are to be given priority in terms of case management.

• Where a direction is given that evidence in chief shall be given by witness statements, in discrimination cases it will require a sequential exchange of statements.

• There are new requirements and arrangements in relation to discrimination cases lodged on or after 1st November 2004.

The full text of these new case management proposals can be downloaded from the Members Section of the Society’s website at www.lawsoc-ni.org
The Northern Ireland Court Service has recently issued the following Lord Chancellor’s Directions:

No.10/04

MAGISTRATES’ COURT

LORD CHANCELLOR’S DIRECTIONS UNDER ARTICLE 11(3) OF THE MAGISTRATES’ COURTS (NORTHERN IRELAND) ORDER 1981

AMENDMENT

Schedule 2 to the Lord Chancellor’s Directions dated 24th May 1990 and published in the issue of “Northern Ireland Court Business” No.4/90 shall be amended with effect from 18th October 2004 as follows:

Page 2 : Petty Sessions District of Banbridge
Column 2 : Place and Time
Delete : Banbridge sitting at Newry
Insert : Banbridge

No.11/04

CROWN COURT

LORD CHANCELLOR’S DIRECTIONS GIVEN AFTER CONSULTATION WITH THE LORD CHIEF JUSTICE IN ACCORDANCE WITH SECTION 47(2) OF THE JUDICATURE (NORTHERN IRELAND) ACT 1978

DISTRIBUTION OF CROWN COURT BUSINESS

Schedule 2 to the Lord Chancellor’s Directions given on 16 August 1999, (as subsequently amended on 9 October 2000, 30 October 2002, 18 March 2003 and 22 September 2004) is hereby substituted to take account of changes to the list of County Court Judges eligible to try rape cases.

SCHEDULE 2
List of County Court Judges Eligible to Try Rape Cases:

His Honour Judge Curran QC
His Honour Judge Gibson QC
His Honour Judge Hart QC, Recorder of Belfast
His Honour Judge Smyth QC
His Honour Judge Burgess
His Honour Judge Markey QC
His Honour Judge McKay QC
His Honour Judge Rodgers
Her Honour Judge Philipott QC, Recorder of Londonderry
His Honour Judge McFarland
His Honour Judge Lockie
Her Honour Judge Kennedy
His Honour Judge Finnegan QC
His Honour Judge Marrinan
Further to the article in last month’s Writ on recent changes to Betting and Gaming law in Northern Ireland, the Department for Social Development has confirmed that the remaining provisions of the Betting & Gaming (NI) Order 2004 will come into operation on 6th January 2005. These are as follows:

**Article 5 (1)** which requires an application for the grant of a bookmaking office licence to be made to a county court, rather than a court of summary jurisdiction as at present.

**Schedule 2** which contains detailed amendments to the Betting, Gaming, Lotteries and Amusements (NI) Order 1985 arising as a consequence of the transfer of responsibility for the grant and provisional grant of this type of licence to the county court.

**Schedule 3** which contains transitional provisions to enable a court of summary jurisdiction to continue to deal with applications for the grant and provisional grant of those licences for which notice of application has been published and served before 6th January 2005.


The Order deals with miscellaneous matters of law reform.

Part II makes provision with respect to deeds and their execution. It clarifies the law in relation to escrows and abolishes the rule in *Pigot’s Case* and the rule in *Bain v Fothergill*.

Part III amends the law relating to family homes and domestic violence.

Part IV abolishes a number of rules of common law relating to the property of married or engaged couples.


The consultation on this proposed legislation closes on 23rd December 2004. Copies of the draft Order in Council and accompanying Explanatory Memorandum can be downloaded from www.olrni.gov.uk - see Consultations.

Responses should be sent to Mr Michael Foster, Assistant Director of Law Reform, Office of Law Reform, Lancashire House, 5 Linenhall Street, Belfast, BT2 8AA.
Northern Ireland Court Service

APPOINTMENT - PART-TIME LEGAL MEMBER OF THE MENTAL HEALTH REVIEW TRIBUNAL

The Lord Chancellor invites applications for appointment as a part-time Legal Member of the Mental Health Review Tribunal. It is intended to hold the interviews mid January.

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

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

Remuneration
The current fee for a part-time Legal Member of Mental Health Review Tribunal is £296 per sitting.

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

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

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

How to Apply
Further information relating to this appointment can be found on the Northern Ireland Court Service website, or by telephoning 02890 728713.

An application form together with supplementary information is available from: Mrs Shirley Mullen, Judicial Appointments Unit, Northern Ireland Court Service, Headline Building, 10-14 Victoria Street, Belfast BT1 3GG (DX 527 NR, Belfast 1)
Or email judicialappointments@courtsni.gov.uk

Completed forms MUST be returned to arrive at the above address not later than 4.00pm on 12th November 2004.

Northern Ireland Court Service

APPOINTMENT - PRESIDENT OF INDUSTRIAL TRIBUNAL AND FAIR EMPLOYMENT TRIBUNAL

The Lord Chancellor invites applications for appointment as a President of the Industrial Tribunal and Fair Employment Tribunals. It is intended to hold the interviews at the beginning of February.

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

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

Remuneration
The current salary for the President of the Industrial Tribunal and Fair Employment Tribunals is £113,121 per annum.

A non-contributory pension scheme is available in respect of this post. Five years service is required in order to be eligible for a pension under the scheme.

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

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

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

How to Apply
Further information relating to this appointment can be found on the Northern Ireland Court Service website, or by telephoning 02890 728716.

An application form together with supplementary information is available from: Ms Nichola Bates, Judicial Appointments Unit, Northern Ireland Court Service, Headline Building, 10-14 Victoria Street, Belfast BT1 3GG (DX 527 NR, Belfast 1) or email judicialappointments@courtsni.gov.uk

Completed forms MUST be returned to the above address not later than 4.00pm on 19th November 2004.
Northern Ireland Court Service

APPOINTMENT - RESIDENT MAGISTRATE

The Lord Chancellor invites applications for appointment as a Resident Magistrate. It is intended to hold the interviews in the middle of January 2005. It is intended to make two appointments.

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

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

Remuneration
The current salary for a Resident Magistrate is £90,760 per annum.

A non-contributory pension scheme is available in respect of this post. Five years service is required in order to be eligible for a pension under the scheme.

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

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

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

How to Apply
Further information relating to this appointment can be found on the Northern Ireland Court Service website, or by telephoning 02890 728713.

An application form together with supplementary information is available from: Mrs Shirley Mallen, Judicial Appointments Unit, Northern Ireland Court Service, Headline Building, 10-14 Victoria Street, Belfast BT1 3GG (DX 527 NR, Belfast 1)
Or email judicialappointments@courtsni.gov.uk

Completed forms MUST be returned at the above address not later than 4.00pm on 19th November 2004.

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Fax: 028 9032 6308
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DX 4330 NR BELFAST 34

COMPANY AND COMMERCIAL LAWYERS GROUP

A Wine and Cheese Evening to celebrate the inaugural meeting of the Company and Commercial Lawyers Group will be held on Thursday 25th November 2004 at 5.30 pm at Law Society House, 98 Victoria Street Belfast BT1 3JZ

The Guest Speaker will be Jim McKeown, Director of Company Law at the Department of Trade, Enterprise and Investment NI who will speak on “Company Law Reform – The Way Ahead”

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Attendance at this seminar will provide one hour’s CPD entitlement.
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The main object of this established and registered charity is the support and furtherance of the vitally important treatment, both medical and surgical, provided for patients in the Cardiology Centre in the Royal Victoria Hospital Belfast, and the equally important work of research into heart disease carried on there. The charity is authorised to use its fund to provide that support, or achieve that furtherance when, (but only when) public funds are not available, or are insufficient, for the purpose.

The Royal’s splendid record in the fight against heart disease is too well known to need advertisement, and by an immediate cash gift or a legacy or bequest to this charity in your will, you can help directly to reduce the grave toll of suffering and death from this disease in Northern Ireland. The grim fact is that the incidence of coronary artery disease in Northern Ireland is one of the highest in the world.

The administration of the charity is small and compact and the trustees are careful to ensure that its cost is minimal. As a result donors and testators can be assured that the substantial benefit of their gifts and bequests will go directly to advance the causes of the charity.

Further details about this charity and its work will gladly be supplied by the Secretary, The Heart Trust Fund (Royal Victoria Hospital), 9B Castle Street, Comber, Co. Down BT23 5DY. Tel: (028) 9187 3899.

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• Aindrias O Caoimh, former judge at the Irish High Court was recently appointed Judge at the European Court of Justice in Luxembourg. The former Irish judge at the European Court of Justice, Fidelma Macken, served for just over 5 years.

• On 19th October 2004, the European Court of Justice upheld the right of residence in the United Kingdom of a Chinese mother, Mrs Chen, and her baby, Catherine who was born in Belfast and acquired Irish nationality. The European Court held that the baby was entitled under European Community law to reside in another Member State, the United Kingdom. The Court held that to refuse Mrs Chen a right to reside with her daughter in the United Kingdom would render her daughter’s right of residence totally ineffective. For Catherine to enjoy her right of residence, she must, as a young child be entitled to be accompanied by her mother who is her carer. Further comment on Chen -v- Secretary of State for the Home Department will appear in the next ‘European Lawyer’.

• The European Commission has brought a case against the United Kingdom for failing to provide the Commission with detailed plans for the disposal of radioactive waste resulting from the dismantling of the JASON nuclear reactor at the Royal Naval College in Greenwich. JASON was used for training and research purposes for the propulsion of the Royal Navy’s submarines. According to the Commission, European Community law requires Member States to provide information so as to enable it to determine whether the implementation of such a plan is liable to result in the radioactive contamination of the water, soil or airspace of another Member State. The hearing took place in Luxembourg on 12th October 2004. The United Kingdom argued that such military installations do not fall within the scope of European Community law.

• The European Commission has sent a letter of formal notice to Spain asking it to present its observations on restrictions imposed on EC nationals by the Spanish Football Federation Rules. The Spanish Football Federation refuses to grant amateur licences to non-Spanish EU nationals to allow them to take part in certain competitions. The rules specifically prohibit such players from taking part in Spanish competitions. They also impose an age limit which is not applicable to Spanish players for certain regional competitions. A petition against these rules has been lodged by the European Parliament. The European Commission considers that these rules do not comply with European Community law.

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All of the decisions below can be printed out free of charge by accessing the Law Society Libero Database.

**REFERENCE BY HER MAJESTY’S ATTORNEY GENERAL FOR NORTHERN IRELAND (NO. 6 OF 2004) (CONOR GERARD DOYLE)**

Murder. - sentencing. - tariff. - offender pleaded guilty to murder and sentenced to serve minimum term of 10 years under art.5 Life Sentences (NI) Order 2001. - whether minimum term set was unduly lenient. - HELD that the sentence is unduly lenient and the order of the trial judge is quashed and substituted with a minimum term of 15 years.

**COURT OF APPEAL**

24 SEPTEMBER 2004

KERR LCJ

**IN THE MATTER OF AN APPLICATION BY M, A MINOR BY AM HIS MOTHER AND NEXT FRIEND FOR JUDICIAL REVIEW**

Appeal by the governors of the Good Shepherd Primary School, Dunmurry from a decision of Girvan J of 4 February 2004. - Suspension of pupil - duty of procedural unfairness - whether principal followed fair procedure - whether pupil’s parents should have been consulted - whether suspension imposed as a punishment - whether principal’s decision was merely provisional - Education and Libraries (Northern Ireland) Order 1986 - Schools (Suspension and Expulsion of Pupils) Regulations (Northern Ireland) 1995. - HELD that the suspension was punitive and appeal dismissed. - all records of the suspension to be deleted.

**COURT OF APPEAL**

24 SEPTEMBER 2004

KERR, LCJ

**IN THE MATTER OF T (DECLARATION NOT TO INFORM THE BIRTH FATHER OF CHILD’S EXISTENCE)**

Application by a Health and Social Services Trust for a declaration that it is lawful for the Trust not to inform the birth father of S’s existence and a declaration that it is lawful for the Trust to place S for adoption without consulting the birth father. - whether father should be informed about adoption proceedings or whether the case constitutes exceptional circumstances. - HELD that the relief sought by the Trust should be granted on the terms of the application.

**FAMILY DIVISION**

27 APRIL 2004

GILLEYN, J

**R V POLLOCK**

Application for leave to appeal conviction for murder. - whether there was an unwarrantable interference with the randomness of jury selection. - whether jury verdict was unsafe by excluding the possibility that the applicant did not intend to kill the victim. - HELD that the verdict of the jury was unsafe. - Application for leave to appeal the conviction is granted, conviction for murder is quashed and the case to be remitted to the trial judge for sentence on the charge of manslaughter.

**COURT OF APPEAL**

24 SEPTEMBER 2004

KERR, LCJ

**IN THE MATTER OF AN APPLICATION BY MICHAEL GERARD MAGEE FOR LEAVE TO APPLY FOR JUDICIAL REVIEW AND IN THE MATTER OF A DECISION OF THE SECRETARY OF STATE FOR NORTHERN IRELAND**

Applicant challenges the decisions of the Secretary of State refusing him compensation both under s.133 of the Criminal Justice Act 1988 and under the ex gratia scheme for the compensation of people who spent time in custody following a wrongful conviction. - Court of Appeal quashed applicant’s conviction on the grounds that it was unsafe as applicant was denied access to a solicitor during interrogation. - HELD that Secretary of State was right to reject applicant’s claim for compensation, as applicant has not established that he was a victim of a miscarriage of justice attributable to any failure in the judicial process. - application dismissed.

**QUEEN’S BENCH DIVISION**

16 SEPTEMBER 2004

GIRVAN, J

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY JOHN VINCENT MCCANN, A SOLICITOR AND A MEMBER OF THE SOLICITORS’ CRIMINAL BAR ASSOCIATION AND IN THE MATTER OF THE PAYMENT OF FEES FOR A SOLICITOR’S WORK IN CRIMINAL MATTERS UNDER THE LEGAL AID, ADVICE AND ASSISTANCE (NI) ORDER 1981**

Solicitors. - remuneration. - criminal Legal Aid. - hourly rate. - whether prescribed rates set by Lord Chancellor.
each year in the Legal Aid Criminal Proceedings (Costs) Rules Northern Ireland, for work done by solicitors in criminal work are unduly low. - whether yearly increases were in line with the Retail Price Index. - HELD that the application for judicial review fails
COURT QUEEN’S BENCH DIVISION
9 SEPTEMBER 2004
GIRVAN, J

IN THE MATTER OF AN APPLICATION BY THE LAW SOCIETY OF NORTHERN IRELAND FOR JUDICIAL REVIEW AND IN THE MATTER OF A DECISION OF THE CHIEF EXECUTIVE OF THE NORTHERN IRELAND LEGAL SERVICES COMMISSION

Remuneration. - legal aid. - publicly funded scheme. - evaluation of the appropriateness of costs payable to practitioners in legal aid cases. - whether legal aid fees represented fair and reasonable remuneration. - whether Legal Aid Committee of the Law Society engaged in appropriate consultation with the Court Service. - HELD that the present judicial review application is not the procedural mechanism for dealing with this case. - Application dismissed
QUEEN’S BENCH DIVISION
9 SEPTEMBER 2004
GIRVAN, J

R V BLANEY

Appeal against conviction for manslaughter. - whether suspect under interview had a right to have his solicitor present at all times. - whether art.6 of the European Convention on Human Rights required that a legal representative be present during every police interview of a criminal suspect. - HELD that the appeal be dismissed
COURT OF APPEAL
25 AUGUST 2004
KERR, LCJ

TRIBUNALS

THOMPSON, MATTHEW V INSTALL INTERNATIONAL LIMITED
INDUSTRIAL TRIBUNAL, 6 APRIL 2004, 1450/03IT
Applicant claimed breach of contract. - Respondent was unable to pay applicant’s wages. Tribunal ordered respondent to pay £2069 in 18 arrears.

MILLS, JANICE V BOOTS THE CHEMISTS LIMITED
INDUSTRIAL TRIBUNAL, 23 APRIL 2004, 01657/03IT
Applicant complained of unfair dismissal in originating application. - Applicant claimed application outside time limits due to family problems. - Tribunal dismissed complaint.

HILL, VICTORIA V TURNER, JOE AND MONRO, LEE T/A “DRL”
INDUSTRIAL TRIBUNAL, 18 MARCH 2004, 789/03IT
Decision on application for review. - Tribunal reviewed own decision under Rule 11 of the Rules of Procedure. - Review granted and matter relisted.

O’CONNOR, WILLIAM BERNARD V YOUNGER HOMES LIMITED
FAIR EMPLOYMENT TRIBUNAL, 3 FEBRUARY 2004, 00547/00FET
Applicant claimed unfair dismissal and discrimination on grounds of religious belief. - Applicant was selected for redundancy and disputed length of his employment. - Tribunal dismissed claim of unlawful discrimination but ruled that applicant was unfairly dismissed and awarded compensation of £18,060.

JACK, WILLIAM V ROYAL COURT HOTEL
INDUSTRIAL TRIBUNAL, 7 APRIL 2004, 1195/03IT
Applicant claimed unlawful deduction of wages. - Applicant did not appear nor was he represented. - Tribunal did not have jurisdiction as applicant employed less than one year.

BAILIE, WESLEY V FIRE AUTHORITY FOR NORTHERN IRELAND
INDUSTRIAL TRIBUNAL, 23 MARCH 2004, 616/03IT
Decision on a preliminary issue. - Applicant claimed breach of Working Time Directive. - Tribunal decided claim was presented outside time limits and dismissed originating application.

RODGERS, TIM V RYOBI ALUMINIUM CASTING UK LIMITED, S GORMLEY AND J COCHRANE
FAIR EMPLOYMENT TRIBUNAL, 15 JANUARY 2004, 209/01FET
Decision on a preliminary issue. - second-named respondent dismissed because the parts of the application in respect of time were not presented to the Tribunal within the specified time limits. - application in respect of the first and third respondents to be listed for hearing before the Tribunal

DOWNEY, ROSHEEN ANN V MCCANN, NOEL AND MORTON, DANNY
INDUSTRIAL TRIBUNAL, 21 JANUARY 2004, 2490/03
Applicant claimed breach of contract and unpaid wages. - Tribunal rules in applicant’s favour and directs that a sum be paid to her in lieu of unpaid wages
Recommended Reading -

**McFarlane v McFarlane** - Divorce and Financial Provision

**Caselaw**

McFarlane v McFarlane joined with Parlour v Parlour

(Considers awards of periodical payments in a divorce settlement where one spouse earns a high income but has relatively little capital)

2004 EWCA Civ 872

www.bailii.org/ew/cases/EWCA/Civ/2004/872.html

2004 3 ALLER 921; 2004 2 FCR 657

Available from the Law Society Library

**Articles**

Divorce court's GBP 444,000 decision (discusses the Parlour case)

2004 S.B.T. &F. 17(2) 19

New deals for wives or more of the same? (discusses the implications of the case for family practitioners)

Bird: 2004 Sept Fam Law 654-659*

High maintenance

Edwards: 2004 148(28) § 836

Divorce windfall for footballers' wives

2004 154 (7137) NJ 1071*

Parlour and McFarlane: an own goal for wives?

Ribet: 2004 154 (7144) NLJ 1352-1353*

Pre-nuptials for high earners after footballer pays penalty

(contains among family lawyers that there may be an increase in pre-nuptial agreements)

2004 § 148(28) 830

(*Due to the implementation of the Copyright Directive this article must be ordered directly from the publisher)

**Books in the Library**

Miller: Family property and financial provision. Tolleys. 1993


(formerly known as Restrictive covenants under common and competition law by Simon Mehigan)

**Libero Training**

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Law Society Library Email: info@lawsoc-ni.org
Missing Wills

Re: Matilda Smyth (deceased)
Late of: 215 Ballygomartin Road, Belfast, County Antrim BT13 3NB
Date of death: 2 May 2004
Would anyone holding a Will of the above named deceased or having any knowledge of the whereabouts of same please contact:
Hewitt & Gilpin Solicitors
Thomas House
14/16 James Street South
Belfast
BT2 7GA
Tel: 028 9057 3573
Fax: 028 9057 3574
Ref: JG/FT

Re: Harriett Smith (deceased)
Late of: 1B Lemon’s Road, Portavogie, County Down
Date of death: 11 August 2004
Would anyone having knowledge of the whereabouts of a Will for the above named deceased, please contact:
Messrs Nesbitt
 Solicitors
 167 Upper Newtownards Road
 BELFAST
 BT4 3HZ

Re: Elizabeth Gertrude Duggan (deceased)
Late of: 31 Drumard Road, Knockloughrm, County Londonderry, BT45 8QA
Date of death: 5 March 2004
Would anyone having knowledge of the whereabouts of a Will for the above named deceased, please contact:
James O’Brien & Co
Solicitors
15 Broad Street
Magherafelt
County Derry
BT45 6EB
Tel: 028 7930 0577
Fax: 028 7930 0677

Re: Ralph Joseph Dunn (deceased)
Late of: 1 Cambrai Drive, Newtownabbey, County Antrim
Date of death: 20th February 2003
Would any solicitor holding a will or copy of a will for the above named deceased, please contact either:
Mr Maurice Buckley
Solicitor
10 Marguerite Close
Newcastle
County Down
Tel: 028 4372 2903
or
Mr Aidan Quinn
Solicitor
18 Thomas Street
Dungannon
County Tyrone
Tel: 028 8752 088

Re: Thomas William Woods
Late of: 7 Loughan’s Road, Aughnacloy, County Tyrone BT69 6BJ
Date of death: 27th September 2004
Would any solicitor having knowledge of the whereabouts of a Will for the above named deceased, please contact:
Messrs John Hoy Son & Murphy
Solicitors
William Street
Dungannon
BT70 1DX
Tel: 028 8772 3221
Fax: 028 8775 2288

Missing Title Deeds

Folio: 16393
County: Down
Registered Owner: Kieran Mason, Colin Mason and Gary Mason
Lands at: Crawfordsburn Road, Downpatrick
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned folio should forthwith produce said Certificate or communicate such information to the undermentioned solicitors.
And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.
McKinty & Wright
Solicitors
5-7 Upper Queen Street
BELFAST
BT1 6FS

Folio: 1957L
County: Londonderry
Registered Owner: Peninsula Securities Limited
Lands of: Ballymagorty, Barony of North West Liberties of Londonderry, and County of Londonderry.
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned folio should forthwith produce said Certificate or communicate such information to the undermentioned solicitors.
And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.
McKinty & Wright
Solicitors
5-7 Upper Queen Street
BELFAST
BT1 6FS

Re: St Patrick’s Hall, 9 Vennel Street, Glenarm, Co. Antrim
Registered owner: The Representative Church Body/The Trustees of Tickmacreevan Parish Church
Would any Solicitor holding or having knowledge of the whereabouts of the title deeds to the above property, please contact:
The Representative Church Body Legal Department, Church of Ireland House, Church Avenue, Rathmines, Dublin 6.
Tel: 00 353 1 4978422
Fax: 00 353 1 4978821
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Half-Day Seminar in association with C J Higgins

Advising the Elderly- Asset Protection & Long Term Care

Monday 29th November: 9.30am - 1.00pm at the Ulster Reform Club. Cost £60.00 per delegate (light refreshments included)

The seminar will provide definitive guidance for solicitors dealing with the elderly together with comprehensive notes, reference material, practical case studies and examples. Delegates are encouraged to bring to the course practical issues for discussion.

AGENDA

- Setting the Scene
- Overview of Long Term Care and Asset Protection
- Professional Issues & Financial Assessments
- Asset Protection – Planning & Options (including equity release)
- Asset Protection – The family home
- Effective Gifting
- CRAG Guidelines (2003) & Taxation of Pre-Owned Assets
- Practical Case Studies

Course Tutor: Jonathan Wilkey, of Gywn James, Solicitors.

Jonathan is a practicing Solicitor, Lecturer and Training Consultant specialising in the law relating to the Elderly. He lectures nationally to Solicitors, Accountants and Financial Advisers on accredited courses and regularly contributes to the media on these issues.

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