THIS MONTH:
AGE DISCRIMINATION AND RETIREMENT - THE NEW LAW
Established since 1998, Brightwater is the country's leading management recruiter. With offices in Belfast, Dublin and Cork, Brightwater employs 90 staff, has enjoyed double-digit growth every year and will turnover €15 million this year - and this is just the beginning.

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For further information go to www.brightwater.ie and explore “Careers at Brightwater”, you may be surprised at what you find. Alternatively, please contact Bernadette Cox on 028 90 325 325 or Mike Shoebridge on 00 353 1 662 1000 or email: prc@brightwater.ie
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Relocation Postponed

The timescale for relocation of the Society to permit the redevelopment of Law Society House has been modified. It is expected that this will not take place before the end of October.

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

Once an exact date for the relocation has been confirmed, this will be advised to members. Updated information will also be posted on the Society’s website.

CHECK IT OUT AT www.lawsoc-ni.org

Writ readers can access back issues of the magazine as far back as April 2000 at www.lawsoc-ni.org - follow Publications link

You can also find details on the website about:
- Libero database
- Latest CPD courses
- Employment opportunities
- Forthcoming events

Copy deadline for September Edition: Monday 4 September 2006
Age discrimination and retirement - the new law

On 13 June 2006 the final Employment Equal (Age) Regulations (NI) 2006 were published. These Regulations will come into force on 1 October 2006 and will make it unlawful to discriminate against a person on grounds of age.

As changes cannot be made overnight, organisations will now need to review how they will outlaw age discrimination in the workplace. One of the key areas of change involves how employers handle retirement. As transitional provisions will apply to those retiring employees in the period 1 October 2006 to 31 March 2007, companies may need to take action now to ensure compliance with the Regulations. In this article, Michelle McGinley, focuses on retirement and considers the transitional provisions.

RETIREMENT AGES

The Regulations set a national default retirement age of 65 which permits employers to retire employees (or set a retirement age in the company above 65) without it being unlawful age discrimination.

The government intend to review the default age in 2011 and rumblings suggest that it may be removed. The default age is not an obligatory age and employers can choose to set a higher one, or have none at all. Retirement ages below 65 will be unlawful, unless objectively justified. In practice, it will be extremely difficult to justify a lower retirement age.

FAIR TREATMENT

In order to retire a person fairly it must occur at the default retirement age (65) or on, or after, the company's normal retirement age (NRA). The NRA is defined “as the age which the employer requires employees in the same position to the employee to retire”.

Additionally, the employer must give the employee written notice of both the intended date of retirement (IDR) and the right to request to continue working beyond their retirement. In order to benefit from the presumption that retirement is the reason for the employment ending, this notice must be given at least six months (but not more than 12 months) before the IDR. This is called standard notification. There is an ongoing duty on the employer to give this notice up to the fourteenth day before the IDR. If fall-back (and not standard) notice is given, then the employer does not benefit from the presumption that retirement is the reason for the employment ending. The employee can pursue a claim for failure to give standard notice and receive up to eight weeks’ pay which is capped at the weekly limit (currently £290).

REQUEST TO CONTINUE WORKING

If the employer has given standard notice, then the employee can file a request to continue working anytime between six and three months before the IDR. If the employer has given fall-back notice, the employee can make a last minute request (ie any time before his employment ends) and the employer will have to consider it. The employment will continue until the employer has considered the request and provided a written decision.

To be valid the employee's request must be made at the appropriate time (see above) and in the appropriate format. This means it must be in writing and state that it is made under “Paragraph 5 of Schedule 5 of the Regulations.” The employee must also propose that the employment continues: indefinitely; for a stated period or; until a stated date. If the employer has failed to give written notice of the IDR it must state the date the employee believes is the IDR. There is no requirement to consider an invalid request.

DUTY TO CONSIDER

Schedule 5 of the NI Regulations (Schedule 6 of GB Regulations) sets out the “duty to consider” procedure which in summary involves: holding a meeting; giving a written dated decision; offering an appeal; holding an appeal meeting; giving a written dated appeal decision.

The meetings must be held within a reasonable period unless the request is agreed or both sides agree that the employment should continue indefinitely. A modified right to be accompanied by a fellow worker applies to the meetings. The employer must confirm the decision in writing and, if the request is accepted, must state this and for how long the employment will continue. If the request is refused, then the written decision must confirm that fact and that the employee will retire with the date of retirement. Unless the employee's request is agreed in its entirety, the employer must offer an appeal.

REFUSING REQUESTS & PROVIDING REASONS

The “duty to consider procedure” is a procedural duty only and there is no obligation on the employer to provide a reason if the request is refused. The ACAS guidance...
Instead, the transitional provisions will apply to retirements taking place in the transitional period. The basic rule for these retirements is that the employer must provide the longer of their contractual or statutory notice to expire on their IDR. The employee will also need to be advised of his/her right to request to continue working. When this needs to be done will depend on the date that the employer sends out the notice advising of their intention to retire that employee.

**FAIR RETIREMENT**

- A fair retirement is one:
  - that takes effect on or after the default retirement age (or on or after the employer’s NRA if there is one) and;
  - where the employer has given the employee written notification of the intended retirement date (IDR) and their right to request continuing to work.
- Written notification must be given at least six months (not more than 12) before the IDR.
- Employer has followed duty to consider procedure.
- Only applies where reason for dismissal is retirement.

**REMEDIES**

If the above procedure is complied with then the employer will avoid claims for unlawful age discrimination and automatic/unfair dismissal arising out of retirement. However, if the employee’s employment continues past the NRA, employees are not precluded from pursuing claims for unlawful age discrimination completely. For example they could claim direct discrimination arising out of less favourable contractual terms and conditions, unlawful age harassment and/or victimisation.

Michelle McGinley is an Employment Solicitor with EEF (NI) who regularly advises and represents organisations in employment matters.

See also Library Update at page 43
News in Brief

**NI ECONOMY FOURTH BEST IN UK**

A quarterly UK Economic Outlook prepared by PwC shows that Northern Ireland is now the fourth best performing of the UK's 12 regional economies and predicts that it will remain in the top five this year, growing by around 2.1%. An estimated 20,000 new construction jobs have been created in the last decade and Northern Ireland is virtually the only UK region reporting continued retail growth.

**SUPREME COURT RULES AGAINST GUANTANAMO TRIBUNALS**

The US Supreme Court has ruled that the Bush administration does not have the authority to try terrorism suspects by military tribunal. By a 4-3 decision the court stated that the administration had violated the Geneva Convention and the US military code of justice by ordering a military tribunal to prosecute a former driver for Osama bin Laden.

The Supreme Court also rejected the argument that the congressional authorization to declare war gave the President "a sweeping mandate" to establish military commissions whenever necessary.

**NEW PLANNING CHIEF COMMISSIONER**

The Secretary of State has appointed Mrs Maire Campbell as Chief Commissioner to the Planning and Water Appeals Commissions.

Mrs Campbell is a chartered planner and a solicitor. She is a member of the Royal Town Planning Institute, has a BA (Hons) Degree in Civic Geography from Queen's University, Belfast and a Postgraduate Masters Degree in Civic Design from the University of Liverpool. She has held a number of positions in the Planning Appeals Commission since 1985 and has been Deputy Chief Commissioner since 1999.

**HOUSE OF LORDS DELIVERS ADOPTION JUDGMENT**

The House of Lords has recently given judgment in a Northern Irish adoption law case.

In Down Lisburn Health and Social Services Trust & another (Respondents) v H & another (Appellants) (Northern Ireland) (2006) UKHL 36, the Law Lords (Baroness Hale dissenting) dismissed the appeal by the parents of a young girl against the decision to free her for adoption without their consent. The parents argued that it was in their daughter's best interest to remain in contact but the judge in first instance did not make an order to this effect. The Court of Appeal (Sheil LJ dissenting) had affirmed the order of the lower court.

**PPS PUBLISHES FIRST ANNUAL REPORT**

The Public Prosecution Service has published its first Annual Report, providing an overview of its work and records the progress made in developing the new service since its inception on 13 June 2005. The Report notes that the original target date for full implementation of the PPS was end 2006. However, the implementation of the Service has been delayed by difficulties in the procurement of suitable regional accommodation and the project will now extend into 2007.

A copy of the Report can be downloaded from the PPS website at www.ppsni.gov.uk

**CHANGES AT CML**

Derek Wilson, the head of mortgages at Ulster Bank, has been appointed the new chairman of the Council of Mortgage Lenders (NI). He replaces Dan Corr of Nationwide Building Society. Derek Wilson has identified the declining numbers of first-time buyers and the costs of entering home-ownership as the key challenges in Northern Ireland.

The CML has also issued new research on Housing and Mortgage Market developments in Northern Ireland. The article provides an overview of how the economy has performed recently and how that has affected the housing market, comparing with developments in the UK overall and the Republic of Ireland. To view the full article, see www.cml.org.uk/cml/filegrab/1082006NI.pdf?ref=4873

**NI CRIME STATISTICS**

In the Commentary on Crime Statistics recently published by the NIO, the number of offences recorded by the police fell by 8% in the period 2004/2005 to 118,124. This is the lowest level of crime recorded in Northern Ireland since 1998/99.

Property crime accounted for 69% of total recorded crime in 2004/2005, while violent crime accounted for 28%. Decreases in recorded crime were reported for robbery, burglary, fraud and forgery, theft, offences against the state, sexual offences and criminal damage.

The number of notifiable offences cleared by the police in this period decreased by 5% on 2003/2004, although the proportion of recorded crime cleared increased marginally.

**VICTIMS & SURVIVORS**

The Office of the First Minister and Deputy First Minister (OFMDFM) has published for consultation a draft Victims & Survivors (NI) Order 2006.

It is proposed that the Order will establish the post of Commissioner for Victims & Survivors to be appointed by the First Minister and Deputy First Minister acting jointly (Secretary of State under direct rule). The proposal sets out the aims and functions that the Commissioner will have and it also provides that OFMDFM (with the approval of the Department of Finance & Personnel) may pay grants for the purpose of assisting victims and survivors. The consultation documents can be viewed at www.victimsni.gov.uk

**SLS SIGNS UP TO CODE OF GOOD PRACTICE**

SLS Legal Publications (NI) is the third UK legal publisher to have signed up to the Code of Practice for Publishers drawn up by BIALL (the British and Irish Association of Law Librarians).

The Code is based on six major principles of good business practice of legal publishers. These include truthful and clear advertising, electronic products, costs, fair dealing, customer satisfaction and product quality.
Litigation in the Commercial Court

<table>
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<th>When:</th>
<th>Friday 6 October 2006, 1.30pm - 4.30pm</th>
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<tr>
<td>Where:</td>
<td>Holiday Inn, Ormeau Avenue, Belfast</td>
</tr>
<tr>
<td>Cost:</td>
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</tr>
<tr>
<td>CPD Allocation:</td>
<td>3 hours</td>
</tr>
</tbody>
</table>

This afternoon seminar will consider key issues in Commercial Court litigation. The seminar will comprise three sections, with Mr Justice Coghlin kindly agreeing to participate as our keynote speaker in part one along with Gareth Jones (C & H Jeffrey, Solicitors). Both will consider the practice and procedure of the Commercial Court from their differing perspectives.

In part two, presentations from a Forensic Accountant (Jeremy Harbinson of Harbinson Mulholland) and a Chartered Quantity Surveyor (Ferguson Bell LLM FRICS FCIArb MAE) will cover the issues surrounding the use of expert witnesses in the Commercial Court. Brian Speers (Carnson Morrow Graham, Solicitors) and Alva Brangam QC will bring the seminar to a close with a presentation on Mediation and Alternative Dispute Resolution.

If you are interested in attending the seminar, please complete the booking form below and return to The CPD Co-ordinator at Law Society House, 98 Victoria Street, Belfast, BT1 3JZ, along with a cheque for £90 (made payable to "Law Society of Northern Ireland").
Did you see?

In the June edition of *The Writ* we carried details of two Practice Notes which have been issued by the Master (High Court).

These relate to proposed changes in practice from September 2006 on the operation of the Queen's Bench Summons Court and with regard to good practice in remittal applications. Civil litigation practitioners should ensure that they are fully acquainted with the provisions of both these Notes.

For example, a defendant's solicitor issuing a remittal summons without allowing the plaintiff a reasonable time to update its medical and financial loss evidence could be denied the costs of the application even though the remittal application is successful. Similarly, a plaintiff failing to respond to the defendant's correspondence, or responding in an unhelpful manner, may be denied costs when he successfully defends the application to remit. In particular, a plaintiff who has refused to comply with good practice and applies to adjourn the summons in order to update the medical or financial loss evidence, may not only be denied costs when successful, but required to pay costs thrown away due to adjournment.

Legal Chairmen of the Police Appeals Tribunal

The Lord Chief Justice is seeking candidates for inclusion in a list of chairmen for the Police Appeals Tribunal.

To be eligible for inclusion in the list a person must be a barrister or solicitor of at least 7 years’ standing.

The tribunal, which is provided for in the RUC (Appeals) Regulations 2000, considers appeals by police officers who have been dismissed, required to resign or reduced in rank by the Police Service following a police disciplinary hearing. The tribunal comprises three or four members depending on the rank of the officer bringing the appeal. The Chairman must be a lawyer appointed from a list of persons nominated by the Lord Chief Justice.

A per diem rate is paid to a chairman.

Further information about this position may be obtained by contacting Rosemary Hanna at the address below, telephoning (028) 9072 4628 or e-mailing rosemaryhanna@courtsni.gov.uk

Applications are invited from suitably qualified persons regardless of political opinion, religious belief, race, age, gender, sexual orientation, marital status, whether or not they have a disability and whether or not they have dependants.

Completed application forms MUST be received in the Lord Chief Justice’s Office, Royal Courts of Justice, Chichester Street, Belfast BT1 3JF by 4.00pm on Friday 29 September.

ALL APPLICATIONS WILL BE CONSIDERED STRICTLY ON THE BASIS OF MERIT
Developments at the Industrial Court

The Industrial Court has recently redesigned and updated its website, which can be viewed at www.industrialcourt.gov.uk

The Industrial Court is a Tribunal Non-Departmental Public Body with statutory powers. It was originally set up in 1919 to provide arbitration in industrial disputes and it still carries out this voluntary arbitration role. However, its main function is now to adjudicate on applications relating to statutory recognition and derecognition of trade unions for collective bargaining purposes, where such recognition or derecognition cannot be agreed voluntarily.

In addition, the Court has a statutory power in relation to determining disputes between trade unions and employers over the disclosure of information for collective bargaining purposes, in disposing of claims and complaints regarding the establishment and operation of European Works Councils and dealing with complaints under the Information and Consultation of Employees Regulations (NI) 2005.

The Court consists of a Chairman, a Deputy Chairman, four members experienced as representatives of employers and six members experienced as representatives of workers. The Court is supported by a Secretariat.

All members of the Court are appointed by the Department for Employment and Learning after consulting the Labour Relations Agency. Determinations are made by panels of three Court members appointed by the Chairman and consisting of either the Chairman himself or the Deputy Chairman, one member whose experience is as a representative of employers and one member whose experience is as a representative of workers.

The full text of decisions and declarations from the Industrial Court from 2001 are available to download from the site.

STOP PRESS:

INDUSTRIAL COURT DECISIONS ARE NOW INCLUDED IN THE LIBRARY’S LIBERO DATABASE; www.lawsoc-ni.org

New statutory duty to protect disabled people

Disabled people will be provided with extra protection following the introduction of a new statutory duty.

The new duty, which commences on 1 January 2007, is intended to help significantly in delivering equality for people with disabilities in their dealings with public authorities by requiring them to consider what they can do to promote positive attitudes towards disabled people and encouraging their participation in public life.

The government’s view is that the public sector can make a real difference to the lives of disabled people, by leading the way in ensuring fair treatment for disabled people by improving outcomes from their own services and by setting the standard for other sectors to match.

The new duty will require public authorities to produce and submit to the Equality Commission for Northern Ireland Disability Action Plans which must show how they propose to fulfil the requirements of the duty. Action Plans must be submitted to the Commission no later than 6 months after 1 January 2007.

The new duty is one of a series of measures introduced by the Disability Discrimination (NI) Order 2006 which brought the whole range of public activities under the legislation for the first time. The remaining provisions of the Order are expected to be phased in over the next 12 months.

A consultation process (which runs until 25 September 2005) has also been issued by the OFM/DFM to allow for Regulations to be made to protect disabled people when joining private clubs, renting premises and dealing with public authorities, whatever the activity. The document can be accessed on the website of the OFM/DFM at www.ofmdfmni.gov.uk/equality

The public sector can make a real difference to the lives of disabled people
Concerns have been expressed to the Society by members of the profession about the tax implications of an amendment made to accounting practice and how it affects firms of solicitors. The amendment was issued in November 2003 and until recently there was uncertainty in the accountancy world and disagreement among taxation experts on the proper advice to be given to solicitors.

In contracts to provide services, the point in time during the progress of the work at which revenue should be recognised for taxation purposes is dealt with by Financial Reporting Standard 5 (FRS 5). However, the gradual recognition of revenue was not rigidly defined and in practice inconsistencies arose and the amendment - known as "Application Note G" - was introduced to assist in the interpretation of FRS 5. The result of the amendment is that work which is not completed must now be valued at full selling price and included in the firm's calculation of profit for taxation purposes. This leads to a one-off increase in the amount of tax payable to the Inland Revenue.

As the implications of the amendment became known, there were predictions that solicitors would have problems in providing for the increased tax liability. There was disagreement among experts about whether or not the amendment did bring about change and the absence of consensus for a period after November 2003 made it difficult for accountants to give unchallenged guidance to their clients. The position has recently been clarified and up to date guidance issued by the Institute of Chartered Accountants in England and Wales is available online at http://www.icaew.co.uk/index.cfm?route=139726.

The amendment to FRS 5 can now be regarded as part of general accounting practice and it is accepted as such by the accountancy profession and the Inland Revenue. The Revenue will expect solicitors to take on board the effect of the amendment and it may query individual firms as to how the preparation of their accounts reflects this. The worst position to adopt would be to ignore the amendment - this could be regarded as tax evasion.

An additional matter for agreement amongst partners is when this increase in work in progress may be withdrawn by the partners, whether interest should be earned on the amount involved and for those partnerships with a lockstep progression in their profit-sharing arrangements whether it should be divided equally or in the same proportions as the lockstep for the year of introduction. There are further problems to be determined where a partner has retired in the year prior to or in the year during which the change is introduced.

The Society's advice is that all solicitors, whether sole practitioners or partners, should discuss this question as a matter of urgency with their accountants and take steps to ensure that accounts are prepared with the amendment in mind. Following lobbying by the professional bodies, the Finance Act 2006 has introduced a form of relief to allow the increased tax liability to be spread over a period of up to six years - solicitors should consult their accountants about this. Firms with efficient cash flow planning and which deliver bills regularly will be in a better position to manage the problem.

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**Legal Studies for Legal Assistants**

The School of Law at Queen’s University, in conjunction with SLS Legal Publications (SLS), runs an introductory course in legal skills for those who work with law but who do not have a legal qualification. The course is aimed primarily at legal secretaries and solicitors’ clerks although it would be of interest to anyone whose work has a legal dimension. Taught by a small group of lecturers from the Law School, the course aims to clarify core legal principles and enhance the legal knowledge and experience participants have gained through their work. The course will run from September 2006 to May 2007 culminating in a small graduation ceremony. It involves one weekly two-hour class held on Tuesdays from 5-7pm and it runs for twenty-four weeks with Christmas and Easter breaks. The classes are informal in nature and students will be required to complete a number of assessment exercises. The course is divided into six parts:

- The Legal System
- The Criminal Justice System
- Contract Law and Tort
- The Legal System
- Family Law and Inheritance
- Aspects of Commercial Law
- Property, Land and Conveyancing
- Legal Studies for Legal Assistants

For further information and an application form please contact:

SLS Legal Publications (NI)
School of Law
Queen’s University Belfast
Belfast BT7 1NN

Tel: 028 9097 5224
Fax: 028 9032 6308
DX: 4330 NR Belfast 34

We look forward to meeting you in September!
SOLICITOR OFFER

SYNDICATED ACCESS TO KEY ONLINE PRODUCTS

The Law Society library has successfully negotiated with LexisNexis Butterworths to bring a unique offer to firms in Northern Ireland.

LexisNexis Butterworths are offering their top selling online products at reduced rates - firms of 3+ fee earners or less are invited to join a syndicate of users and receive access to online products at a single user rate.

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<th>Number of users</th>
<th>All England Law Reports (£)</th>
<th>Encyclopedia of Forms and Precedents (£)</th>
<th>Halsbury Laws (£)</th>
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<th>Company and commercial online (£)</th>
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*Deals are also available for larger firms who wish to subscribe to any of the above products.

Onsite training is available for all firms who take up this offer – similarly free trials can be arranged on any of the products on a 2-week basis.

Contact Heather Semple, Head of Library and Information Services, for further details of any of the products available.
BluePrint Appointments is a market leader in legal recruitment. Our consultants are valued by both candidates and clients for their market knowledge, honest advice and ability to deliver results. Our reputation has been built on the professional confidential service offered to candidates and clients.

Corporate/Commercial Solicitor
Our client, a dynamic and forward thinking Belfast City firm are seeking a Corporate/Commercial Solicitor to join their expanding team. You will be 0-3 years PQE and a committed professional who will generate fees and establish a solid client base.

Ref: JO280076

Conveyancing Solicitor
An established firm in Armagh are seeking a Conveyancing Solicitor to join their team. With a background in Conveyancing you will have the ability to work on your own caseload with minimum supervision, be enthusiastic and have good interpersonal skills and be computer literate.

Ref: JO277591

Matrimonial Solicitor
Our client, based in North Belfast is seeking a Matrimonial Solicitor. Advocates of all levels of PQE will be considered, but the key personal criteria for the position will be willingness to adopt and contribute to the firm’s collegiate and supportive culture, its warm and friendly atmosphere and its dedication to excellent client service levels.

Ref: JO279901

Legal Executive
Our client, based in County Fermanagh is seeking a Law Graduate who would like to work as a Legal Executive. You will be expected to work on a variety of NI legal matters but principally be involved in Conveyancing, Probate and County Court/High Court work. The ideal candidate must be methodical, astute and have good attention to detail.

Ref: JO278730

Commercial Property Solicitor
A Commercial Property Solicitor is required for this growing Belfast city firm. Ideally you will be 0-3 years PQE, ambitious and have the ability to build on an existing client base. An exciting opportunity to join a firm who will offer career progression and an attractive package.

Ref: JO280077

For more details on these and other interesting opportunities contact Fionnuala or Katherine on 028 9032 3333 or e-mail legal@blueprintappointments.com
Following on from this year’s successful conference in Prague, next year’s European destination will be Barcelona. Flights have been arranged direct from Belfast with Jet2 and the Conference will be based in the five star Ritz – Carlton Hotel Arts.

Why Barcelona?
Barcelona is a vibrant city full of history, culture, fashionable bars and restaurants and great shopping – one of the world’s top conference destinations.

Why Hotel Arts?
Hotel Arts is a unique five star hotel located on the sea front a short stroll away from Las Ramblas and the famous shopping areas of Passeig de Gracia.

The hotel is renowned for its magnificent situation and service. Each room offers spectacular views over the Mediterranean or the sweep of the city’s skyline.

It also offers excellent facilities such as the Six Senses Spa, an open-air swimming pool, the innovative cuisine of two Michelin star chef Sergi Arola, and an aficionado-pleasing bodega style restaurant.

Why go to Conference?
Exciting programme of conference events including:
- Welcome Reception in the garden terrace of the Hotel Arts,
- Gala Dinner,
- ‘Dine - around’ programme featuring some of the best of Barcelona’s ‘hip’ restaurants,
- Gaudi city tour,
- golf,
- time for everyone to enjoy this great sightseeing city at leisure.

Business session focused on developing your practice
Opportunity to network with business contacts, colleagues and friends (old and new)
CPD points for attendance at business session
Tax deductible

Where do I sign up?
Booking details will appear in the Writ in due course, so watch out for these and also check out the Society website (www.lawsoc-ni.org) which will be regularly updated with the latest information on the Conference.
**New PSNI camera system**

The PSNI has introduced a new Speed Enforcement Camera System (SPECS) in Newry.

The cameras (the first of their kind to be installed in Northern Ireland), are placed on the A1 dual carriageway between Sheepbridge and Newry and also between the Cloghue roundabout and the border.

The cameras are set onto the yellow poles that are currently placed alongside the two locations on this road. There is 2.2 miles between the two cameras situated between the Sheepbridge and the Mourne Country roundabout and there are 1.8 miles between the Cloghue roundabout and the border.

SPECS deploys digital safety cameras in pairs to monitor drivers' average speeds between two fixed points, which means that motorists are urged to drive within the speed limit throughout this route. The cameras do not flash and all the data is digitally stored so that there is no need for film. As vehicles pass between the cameras they are digitally recorded. The time it takes for the vehicle to travel between both points is used to calculate the average speed. If a vehicle exceeds the speed threshold, a speeding violation record is automatically generated. Warning signs will be in place to advise road users that they will be entering an average speed zone.

Police have also announced that there are plans in place to introduce the SPECS cameras to the A2 between Holywood and Bangor later in the year.

The cameras do not flash and all the data is digitally stored so that there is no need for film.
Proposals to reform Diplock Courts

The Government has launched a consultation on proposals to replace Diplock Courts. This system of non-jury trials was established after a Commission chaired by Lord Diplock reported in December 1972 that the jury system as a means of trying terrorist crime here was under strain and in danger of breaking down. It highlighted the danger of perverse acquittals because of partisan jurors and intimidation of jurors.

The Diplock system is due to be repealed by 31 July 2007 as part of the Government’s security normalisation programme announced on 1 August last year. At that time Ministers committed to look urgently at what might be required to ensure there could be fair trials in paramilitary-type trials in the future.

The consultation on the replacement arrangements is being carried out by the Northern Ireland Office, the Attorney General’s Office and the Department of Constitutional Affairs. All three Departments state that they acknowledge the invaluable role that jurors undertake.

The consultation paper also includes the views of the Independent Reviewer of Terrorism Legislation, Lord Carlile, whose views were sought earlier this year on whether the time was right for a return to jury trial in all cases.

Launching the consultation, the Secretary of State, Peter Hain said: “Government has always been clear that we want to return to jury trial for all cases as soon as is possible. These proposals will be a significant step towards that goal. However, whilst the security situation has changed dramatically, not least in the last year, the Government believes that some special arrangements remain necessary for a small number of cases in which jury intimidation may continue to be a factor.”

The consultation proposes reforms to the jury system and a return to the presumption for jury trial, but with non-jury trial still available for exceptional cases. The Director of Public Prosecutions will be able to certify that a case should be tried without a jury if it meets a defined statutory test.

Other proposals include:
- routine criminal record checks to identify disqualified jurors;
- restricting access to personal juror information and the introduction of guidelines on jury checks;
- abolishing peremptory challenge;
- restricting the exercise by the Crown of its right to stand-by; and
- other jury protection measures.

The consultation paper, which can be accessed at http://www.nio.gov.uk/replacement_arrangements_for_the_diplock_court_system__a_consultation_paper.pdf closes on 5 October 2006. Anyone interested in contributing to a response to the proposals should contact Peter O’Brien, Secretary to the Criminal Law Committee.

Criminal Justice Inspectorate reports on Social Security Agency

An inspection by the Criminal Justice Inspectorate (CJI) of the Social Security Agency’s benefit fraud investigation unit has shown that it could make better use of available resources, information and intelligence to tackle benefit fraud.

The Social Security Agency (SSA) gives high priority to tackling fraud, yet inspectors from CJI found that currently only one in ten cases of suspected fraud lead to a formal caution, administrative penalty or prosecution – though four out of ten lead to some adjustment and possibly repayment of benefit.

Launching the report, Kit Chivers, Chief Inspector of Criminal Justice, said: “The SSA’s Benefit Investigation Service (BIS) could make more effective use of the wealth of information and intelligence it has access to and its specially trained investigators could use this material to prioritise their activities and help make a greater impact in reducing benefit fraud.”

Mr Chivers added that such action would support the commitment shown by the SSA to address benefit fraud through the launch of its high profile publicity campaign ‘Benefit Fraud - It’s a real rip off’ in March 2005.

The CJI inspection, which started in September 2005, showed a need for better communication between BIS and other areas of the SSA.

“The inspection team found that while staff within the SSA were aware of the benefit fraud investigation unit, it was often viewed as a separate arm of the organisation and providing BIS with valuable information to help identify suspected fraudulent activity tended to be given a lower priority than other work,” said the Chief Inspector.

He continued: “The inspection report has recommended that greater efforts be made to better integrate BIS within the SSA so members of staff working in other parts of the agency such as benefit offices, have a greater understanding of the role played by BIS and how they can actively contribute and support the unit’s work to reduce benefit fraud.”
The Proceeds of Crime Act 2002 created the Assets Recovery Agency (ARA) and provided new powers to recover the proceeds of unlawful activity. These powers also extend to civilian financial investigators of law enforcement authorities who have been accredited by the ARA.

The Social Security Agency has been successful in its first case under the Act to confiscate assets gained through benefit fraud. At Craigavon Crown Court, the Agency was recently granted a Confiscation Order to the value of £22,261 against a woman from Dunmurry.

The woman had been convicted at Lisburn Magistrate’s Court on 26 January 2006 of falsely claiming benefits as a single parent whilst living with her husband who was in full-time employment.

A spokesperson for the Agency said: “This is the first case which the Agency has taken to a confiscation hearing and we are delighted with the result. It sends out the important message that crime does not pay. Benefit fraud costs £28m per year in Northern Ireland. “Through the application of the Proceeds of Crime Act, people who commit benefit fraud can be stripped of the assets which they have illegally gained. Our Fraud Investigation Unit has further similar cases in the pipeline. We will also continue to work in partnership with the Assets Recovery Agency.”

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Ref: 25578

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

The Government has published a wide ranging consultation paper on reforming the law on sexual offences. The consultation paper "Reforming the law on Sexual Offences in Northern Ireland" is currently available for viewing on the NIO website at www.nio.gov.uk. It is planned to introduce legislation next year. The main proposals are:

- a redefined offence of rape to include oral intercourse and to apply in a gender neutral context.
- a new offence of sexual assault by penetration with the same maximum penalty as rape to deal with those extremely serious assaults which involve non penile penetration.
- consent to be given the same statutory definition here as in England and Wales of ‘agrees by choice and has the freedom and capacity to make that choice’, with a list of rebuttable and conclusive presumptions.
- any sexual activity with a child under the age of 13 to be charged as a non consensual offence (ie rape or sexual assault) without the need to raise consent as an issue.
- an offence of sexual activity with a child to replace the offence of unlawful carnal knowledge with a girl under the age of 17. This offence would apply to all sexual activity, not just sexual intercourse and would be gender neutral, applying to both boys and girls. It is proposed to make the offence apply to sexual activity by those over 18 with girls and boys under the age of 16, which is a change to the current law which protects those under 17. Such a change would bring the law into alignment with England and Wales.
- the addition of more offences from the Sexual Offences Act 2003 which seek to protect those who are vulnerable as a result of a mental disorder.
- changes to allow the criminal law to recognise the extent of sexual abuse which takes place within the wider family structures found in today’s society. The offences that are being proposed – all from the Sexual Offences Act – cover sexual activity with a child family member under the age of 18 and extend the family relationships to include, for example, adoptive relations, foster parents, step-parents and siblings, and other persons who live in the same household and regularly care for the child.
- all gender specific offences will be gender neutralized and any remaining provisions which discriminate between gender or sexual orientation will be repealed. The new modernized body of law will be designed to capture all sexual offences in a non-discriminatory way.

Views are also sought on how the criminal law should react to incidences of sexual activity between those under 18 and those under 16 (assuming that this lower age is accepted as the new ‘age of consent’), or 17 as it is now. The new offence in England and Wales applies to all sexual activity (touching, kissing) with those under 16, is gender neutral (so both parties are criminalized) and carries a five year maximum sentence. Also, in Northern Ireland (not in England and Wales), it is a criminal offence not to report to the police the commission of an arrestable offence (ie one which carries a sentence of five years or more). The paper seeks views on an alternative.

The consultation closes on 13 October 2006

MLRO Law Sector Seminar

The Serious Organised Crime Agency is commencing sector specific Seminars for Money Laundering Reporting Officers

These quarterly seminars will provide an opportunity for practitioners to engage in effective two way dialogue with those responsible for administering the SARs regime.

- Hear about the changes being made to the SARs regime and how they affect you
- Find out how you can improve the quality of your reporting
- Learn how SARs are used in the fight against crime
- Get an insight into threats to your sector

The first seminar for colleagues working within the Law sector will be held in central London on Wednesday 25 October 2006 from 2.00 to 4.00pm

If you would like a place please complete the registration details. Please note that places are limited and applications will be considered on a first come first served basis.

REGISTRATION DETAILS

If you wish to attend the MLRO law sector seminar being held on Wednesday 25 October 2006, please email the following details to fiudialogue@soca.x.gsi.gov.uk by 6 October 2006

Name
Role
Organisation
Address
Telephone Number
e-mail

Please note below any issue which you would wish to be addressed during the seminar
Attention all conveyancers

New CML Lenders’ requirements for new-build homes in Northern Ireland

On 1 September 2006, the Council of Mortgage Lenders (CML) will introduce an initiative in Northern Ireland with the aim of reducing the risk of consumers moving into new homes that have not been satisfactorily completed.

The CML is the representative trade association for mortgage lenders in the UK. Its 154 members are banks and building societies which together represent 98% of UK residential mortgage lending.

This article gives the background to the initiative and sets out the way forward.

BACKGROUND

A few years ago, the CML became aware that many borrowers purchasing newly built homes in England and Wales were moving in before the properties were satisfactorily complete. The end result was often months of misery for the borrowers as they endeavoured to negotiate with builders to correct the (sometimes dangerous) defects.

Where a new-build property has the benefit of a new home warranty (such as the NHBC, Zurich and Premier Guarantee warranties) it receives a "pre-handover" inspection to identify any outstanding works that need to be completed. After this, it is "finalled", meaning it is classified as satisfactorily complete.

The main problem was that, quite often, the sale of the property had already reached legal completion (and the new owners had moved in) before the property had been "finalled" and in some cases even before the pre-handover inspection.

Following a robust campaign by the Evening Standard (supported by the then Housing Minister, Lord Falconer), the CML was asked to review the position on behalf of mortgage lenders. As a result, the CML introduced an initiative in April 2003 designed to reduce the risk of borrowers moving into unfinished properties in England and Wales. The initiative was a major success and there were calls for it to be introduced across the UK. The initiative was introduced in Scotland in August 2004, and has been welcomed by consumer bodies, such as the Scottish Consumer Council.

Following consultation with key stakeholders, including the Construction Employers Federation, the Law Society and NHBC, the CML is now introducing the initiative in Northern Ireland.

THE CML INITIATIVE

Under the CML initiative, lenders will not release the mortgage funds for a new-build purchase unless the buyer’s solicitor has received confirmation, in the form of a cover note, that the property has passed its pre-handover inspection. In practice, the new home warranty provider will give the cover note to the buyer immediately after the property passes inspection. The builder or the builder’s solicitor will then pass the cover note to the buyer’s solicitor (a faxed copy of the cover note would be acceptable). The borrower’s solicitor will not be permitted to request the mortgage funds without having first received the cover note. There will be no need for the lender to see the cover note.

This revised approach will apply to all transactions involving new properties being built or converted in accordance with a new home warranty where acceptance of the contract occurs after 1 September 2006. It will not apply to self-build schemes or where the construction or conversion of a new property is supervised by a professional consultant without a new home warranty.

BUILDERS WILL NEED TO:

- Ensure that the property is completed to the required standard before applying for the final inspection by the new home warranty provider;

- Ensure that the cover note is immediately supplied to the purchaser’s solicitor;

- Bear in mind when formulating the completion date in the Agreement for Sale that the purchaser’s solicitor will be unable to submit the Certificate of Title to the lender until the solicitor has received the cover note and that the lender will have a minimum notice period of five working days (in some cases longer) for the release of mortgage funds after receipt of the Certificate of Title.
Way forward on Liquor Reform

Following the close of consultation on possible changes to the Licensing (NI) Order 1996 and the Registration of Clubs (NI) Order 1996, the Social Development Minister David Hanson MP has set out his plans in a written statement to Parliament for the reform of the law on the sale and supply of alcohol in Northern Ireland.

There will be a staged approach to the implementation of the reforms. The first could take effect by Christmas 2007.

New, more effective enforcement measures, including immediate temporary closure powers for the police and a penalty points system for breaches of the legislation will be introduced. There will be a modest extension of current opening hours for licensed premises and registered clubs creating scope for opening up to 2am from Monday to Saturday. Sunday opening hours will remain unchanged as will opening hours for off-licences. Extensions beyond 2am may be granted for special circumstances/major events.

There will be more flexibility to allow children in certified licensed premises and registered clubs when accompanied by an adult. The financial controls and accounts formats for registered clubs will be revoked in favour of best practice guidance.

More fundamental changes are expected to take place following the Review of Public Administration which is due for completion by 2009.

In relation to the proposals to abolish the surrender requirement and transfer licensing responsibilities to district councils, the Minister said: "I have listened to the views of local politicians and parts of the licensed trade about the implications of the abolition of surrender. In response to their concerns, I will commission an assessment of the business impact of abolition before making any further decision on the way forward.

"With regard to the transfer to local councils, I intend that the introduction of this aspect of the legislation, along with some of the other proposals that depend on the new system being operational, be taken in a second round of legislation."

The Review of Public Administration is due for completion in 2009 and the target date for making legislation to transfer responsibility for licensing from courts to district councils and for the introduction of new licensing objectives will be linked to this. This tranche of legislation will also see the abolition of the existing categories of licence and, subject to an impact assessment, the surrender provision. The final decisions on this will hopefully be taken by a devolved Assembly, should it be successfully restored.”

Proposed new Planning Policy for retail development

The Department for Regional Development has published for public consultation Draft Planning Policy Statement (PPS 5) - Retailing, Town Centres and Commercial Developments along with its accompanying draft Equality Impact Assessment and an Environmental Report. The proposed Planning Policy Statement, which will be a material consideration for the Planning Service in determining planning applications for all retailing developments, will ultimately replace PPS 5 Retailing & Town Centres published by the DOE in 1996.

Draft PPS 5 sets out the main planning policies for retail development in cities, towns, other centres, settlements and rural areas throughout Northern Ireland. The policy addresses a number of key issues including sustaining and enhancing town centres, the promotion of sustainability, accessible locations, quality of design and offering consumer choice.

To redress the balance between out of town and town centre shopping and to assist in contributing to vitality and viability of town centres, the proposed PPS 5 will promote the town centre as the first choice for the location of commercial leisure developments.

The consultation period ends on 3 November 2006. Copies of the documents are downloadable from www.drndi.gov.uk/shapingourfuture
C complaints against airlines triple

The Air Transport Users Council (AUC) has published its Annual Report for 2005/6. It includes a review of the first full year during which air passengers have enjoyed new rights under EC Regulation 261/2004 on denied boarding, cancellations and delays. The Regulation came into force in the EU on February 17 2005, giving passengers new rights when subject to a flight disruption on a flight on any airline from a EU country or on a flight into a EU country on a EU airline.

The Regulation has led to a significant increase in complaints to the Council as passengers seek to exert their new rights. The AUC received 6094 written complaints in 2005/6, compared to 2204 in 2004/5.

AUC chairman Tina Tiejen, commenting on the complaints numbers, said:

“We know from discussions with airlines that – for the most part – they have worked hard to ensure that passengers receive their entitlements under the new Regulation. However, the main message coming out of our complaints work appears to be that company policy is still not consistently applied at ground level.

“We urge airline management to do more to ensure that passengers do receive these entitlements as a matter of course. In the meantime, we will continue to monitor the complaints we receive under the Regulation over the year ahead. And, where appropriate, we will continue to pass on details of possible breaches of the Regulation to the enforcement body in the UK, the Civil Aviation Authority.”

Py e and the G rand C hamber

Some of those following the ongoing Pye saga have been asking me if I am going to participate in the hearing of the appeal. Others have been enquiring as to just who or what is “The Grand Chamber” and why there appears to be more than one European Court. The answer to the first question is, regrettably, not at the moment – no invitation has yet been forthcoming from any source. As regards the second issue, I shall attempt to clarify the position in this short article.

The current European Court of Human Rights (the ECtHR) was brought into being on 1 November 1998. It replaced the two former bodies - being the European Commission of Human Rights and the previous Court of Human Rights.

The ECtHR consists of a number of judges equal to the number of Council of Europe member states. According to the ECtHR website this number is now forty-five (Monaco is vacant). There are also four subordinate “Sections”, each of which consists of a geographic and gender-balanced selection of justices. Each Section has a Chamber. Pye was heard by a Section IV Chamber, comprising seven judges.

The Section Chamber may decide by a majority vote, which is what happened in Pye, where the three dissenting judges were entitled to append to the judgment a separate opinion.

The Grand Chamber comprises seventeen judges. It consists of the President, Vice-Presidents and Section Presidents, in addition to a rotating selection of justices from one of two balanced groups. The selection of judges alternates between the groups every nine months.

Within three months of delivery of the judgment of a Section Chamber, any party may request that the case be referred to the Grand Chamber if it raises a serious question of interpretation or application or a serious issue of general importance. Such requests are examined by a Grand Chamber panel of five judges composed of the President of the Court, the Section Presidents, with the exception of the Section President who presides over the Section to which the Chamber that gave judgment belongs, and another judge selected by rotation from judges who were not members of the original Chamber.

As the Grand Chamber panel has accepted the request in Pye, the Grand Chamber will render its decision on the case in the form of a judgment. The Grand Chamber may also decide by a majority vote and its judgments are final and binding on the respondent States concerned.

Responsibility for supervising the execution of judgments lies with the Committee of Ministers of the Council of Europe. The Committee of Ministers verifies whether States, in respect of which a violation of the Convention is found, have taken adequate remedial measures to comply with the specific or general obligations arising out of the ECtHR’s judgments.

I have not heard of any local bodies taking any steps to make representations to the Grand Chamber as an interested party. For your information the Rules of Procedure are set out at http://www.echr.coe.int/NR/rdonlyres/D1EB31A8-4194-436E-987E-65ACB864B54F/0/RulesOfCourt.pdf. and rule 44, in particular.

We are grateful to EJ David McBrien LLB, LLM, Barrister-at-law of the Inn of Court of Northern Ireland and of the King’s Inn, Dublin for this article.
Banking Law Seminar

The Institute of Professional Legal Studies is offering a Seminar on Banking Law.

**Speakers:** Mr Stephen Gowdy, LLB Solicitor and Mr Alistair Devlin BL

**When:** Thursday, 19 October 2006

**Time:** 6.00p.m. – 8.30p.m.

**Venue:** Institute of Professional Legal Studies, 10 Lennoxvale, Belfast

**Cost:** £100

Topics to include:
- Banker Customer Relationship
- Contents of a typical bank guarantee
- The Etridge case and the defences available to a guarantor.

2½ CPD hours are awarded for attendance at this Seminar.

Booking form and cheques, made payable to QUEEN’S UNIVERSITY BELFAST, should be sent to Mrs Joan Playfair, Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY. **Closing Date for applications: Friday, 13 October 2006**

Banking Law Seminar - Booking Form

Name:

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Address:

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New charity laws proposed

Following public consultation carried out in 2005, proposals for legislation to create a Charities Commission and Register of Charities in Northern Ireland have been issued by the Department for Social Development.

At present there are three distinct charity law regimes in the UK, each with their own legislation and administrative systems. The main differences are that at present England and Wales has a charity commission and a fully operational compulsory register of charities while Scotland has recently established a charity regulator and a register. In the Republic of Ireland new draft legislation to set up a regulator and a register has been published. Northern Ireland does not have a charity commission or a register. Tax relief for charities is an excepted matter, dealt with by the Revenue & Customs on a UK-wide basis.

Launching the consultation paper on the Charities (NI) Order 2006, the Minister for Social Development, David Hanson, said that the proposed new legislation would change the way that government supports charities and would require them to demonstrate to the public that they are well managed. The Minister said: "I believe the overwhelming majority of charities in Northern Ireland are well managed. But I believe that it is important to ensure that the proposed legislation strengthens the charity sector and protects it from potential abuse by those who have previously seen the lack of a Charity Commission in Northern Ireland as providing a soft touch. It is important that the public can be confident that when they donate to a charity that it is well run and that their money is going to that charitable cause."

The consultation document on the new legislation seeks views on possible changes to the system of charities legislation and administration in Northern Ireland which would:

- provide statutory definitions of "charity" and "charitable purpose".
- establish a Charity Commission of Northern Ireland and create a Charity Tribunal to hear appeals against some types of decision made by the Commission.
- introduce a Northern Ireland Register of Charities.
- empower the Commission to institute inquiries into any aspect of the work of a particular charity and call for disclosure of documents and information.
- require Northern Ireland charities to produce accounts to a specified standard and make them available to the public.
- make it easier for charities to dispose of land.
- make it easier for small charities to amalgamate or wind themselves up.
- establish new arrangements to control public collections through a system of licences and permits which any body wanting to collect money or goods would have to obtain.

Copies of the consultation document and details of how to respond thereto are available at www.dsdni.gov.uk/vcu. The closing date for receipt of comments is 13 October 2006. Thereafter the DSD will seek to present their proposed legislation to Parliament in late autumn. The legislation should be in place by late spring of 2007.

Consultation on Regulations and Statutory Guidance for Part III of the Waste and Contaminated Land (NI) Order 1997

The Department of the Environment has issued a consultation paper entitled "Implementation of Part III of the Waste and Contaminated Land (NI) Order 1997".

This paper includes draft Regulations, associated statutory guidance and a Partial Regulatory Impact Assessment.

The proposed Regulations contain detailed provisions regarding the operation of the Contaminated Land regime. These Regulations mirror the existing GB Regulations (introduced via Part IIA of the Environment Protection Act 1990) and have been modified to take account of the different legislative and regulatory structures in Northern Ireland.

Part III of the 1997 Order permits the Department to produce guidance which, for certain Articles, district councils must take account of. This guidance provides district councils with detailed procedures and advice for implementing the regime.

It should be noted that this consultation is issued on the basis that the regime will only be implemented when the necessary resources have been secured.

Comments are invited on any aspect of the draft regulations, draft guidance and the Partial Regulatory Impact Assessment.

A copy of the consultation paper and how to respond to it can be accessed electronically through the following website: www.doeni.gov.uk/epd. Comments should arrive not later than 11 October 2006.
The treatment of overseas same-sex relationship under the Civil Partnership Act 2004

**Introduction**

The Civil Partnership Act 2004 ("the Act") came into force in Northern Ireland on 5 December 2005. Since then over 50 civil partnerships have been formed here and we are aware of almost 40 notices in the pipeline. In an earlier article for The Writ, the Office of Law Reform provided a general overview of the Act (issue 168 October 2005). That article mentioned briefly Part 5 of the Act, which deals with the formation and recognition of same-sex relationships formed and/or dissolved overseas. In this article we explain in more detail the provisions of the Act dealing with the law in Northern Ireland and how it treats overseas same-sex relationships formed both before and after 5 December 2005.

**A new regime**

Part 5 of the Civil Partnership Act 2004 creates new rules of private international law for the recognition of the formation and dissolution of same-sex relationships formed overseas and the general treatment of those relationships within UK law. Some of the provisions are, however, based on existing rules which may be familiar to practitioners.

**Registration at British consulates and registration by members of the armed forces serving overseas**

Part 5 deals with several different circumstances in which same-sex relationships formed overseas will be recognised in Northern Ireland and in the other jurisdictions of the United Kingdom.

Firstly, section 210 deals with the registration of two people as civil partners at British consulates in prescribed territories or countries outside the UK.1

Secondly, section 211 deals with civil partnership registration outside the UK where one of the couple is a member of the armed forces serving in a country or territory which has been prescribed by an Order in Council made under the Act.1

In relation to civil partnerships formed at British consulates and civil partnerships formed by members of the armed forces the law approximates to the existing rules dealing with marriages formed overseas in corresponding situations.2

**Other same-sex relationships formed overseas**

Part 5 of the Act also deals with the treatment of overseas same-sex relationships formed under the domestic law of a territory or country outside the UK. These overseas relationships may be termed as "registered partnerships", "civil unions", "same-sex marriages" or "domestic partnerships". Part 5 creates a new system of private international law rules governing the recognition of overseas same-sex relationships which differs from the existing law on the recognition of marriages formed abroad.

The general rule is that these relationships are recognised for UK legal purposes as if they had been formed on 5 December 2005 even though under their domestic law they were formed earlier, for example in 2003 under Dutch law.

The Act separates overseas same-sex relationships into two categories:

1. "Specified relationships" which are given automatic recognition in the UK. Schedule 20 to the Act lists those countries or territories whose domestic same-sex relationship legislation is recognised, for example, same-sex relationships formed in Belgium, Sweden and certain States of the USA such as Vermont.3

2. Other overseas relationships not listed in Schedule 20 to the Act. For these relationships a decision has to be made in each case whether the relationship satisfies the general conditions set out in section 214 of the Act. The general conditions are:

- each of the parties must have been free to enter into the relationship; that is neither can still be lawfully married or be party to an existing same-sex relationship.
- the relationship must be intended to be of indeterminate duration.
- the effect of entering into the relationship must be that the parties are either treated under the relevant domestic law as a couple or married.
- both parties to the relationship must be of the same sex.

In addition to meeting these general conditions, a prior rule of recognition set out in section 215 provides that two people will be treated as being civil partners as a result of having formed an overseas relationship only if they had capacity to enter into the relationship and the necessary formal requirements to ensure the validity of the relationship under the relevant law had been met.

**Recognition of overseas relationships formed or dissolved before 5 December 2005**

The result of the application of these rules is that an overseas relationship formed before 5 December 2005 will only be recognised in UK as having existed from that date. For limited purposes only, however, the Act does treat such relationships formed before 5 December 2005 as having been validly formed before that date and UK law will recognise the existence and duration of those relationships.

Section 215(5) of the Act provides that an overseas relationship formed or dissolved prior to 5 December 2005 can be treated as a civil partnership in the UK in relation to (a)
Practice note: If you are a lawyer or a non-lawyer working in the field of law, it is important to keep up with the latest developments in the law. This is particularly important when it comes to private international law, which can be complex and ever-changing. One of the most significant recent developments is the Civil Partnership Act 2004, which allows same-sex couples to enter into a civil partnership in England and Wales. However, it is important to note that this act does not apply to Northern Ireland, and therefore, the relevant provisions of Northern Ireland law specified in this Order are:

- certain provisions of the Insolvency (NI) Order 1989 relating to bankruptcy.
- Schedule 1 to the Children (NI) Order 1995 dealing with maintenance for children.
- provisions of the Marriage (NI) Order 2003 relating to the giving of notice of intention to marry.
- provisions of the Civil Partnership Act 2004 relating to the giving of notice to form a civil partnership in Northern Ireland.
- the treatment of wills made prior to 5 December 2005 by a person who has formed an overseas same-sex relationship entitled to recognition in Northern from that date.

The practical effect of this disapplication of the general rule in these circumstances is that courts in Northern Ireland may entertain applications from parties to an overseas relationship which was formed or dissolved before 5 December 2005.

The treatment of wills

In relation to the treatment of overseas same-sex relationships we would wish to draw specific attention to a difference between the law in Northern Ireland and the law in England and Wales. There is a general rule of law under Article 13A of the Wills and Administration Proceedings (NI) Order 1994 that a will made prior to the formation of a civil partnership is revoked upon the formation of that civil partnership unless the will is expressed to be made in contemplation of the specific civil partnership ("the revocation rule", familiar to practitioners in the context of marriage). However, the 2005 Order referred to above provides that a will made before the formation of a recognised overseas relationship prior to 5 December 2005 will be treated under Northern Ireland law as regards the recognition of overseas same-sex relationships formed either before or after 5 December 2005. Comparable cases in the matrimonial field rarely occur. However, practitioners should be aware that the Civil Partnership Act 2004 creates new rules of private international law.

As regards overseas same-sex relationships treated as civil partnerships from 5 December 2005, the effect of this rule would mean that any will made by a person who formed an overseas relationship at any time prior to 5 December would be regarded as revoked as from 5 December. However, the 2005 Order referred to above provides that a will made before the formation of a recognised overseas relationship prior to 5 December 2005 will be treated under Northern Ireland law as a valid will. The revocation rule will not apply to that will. However, a will made after the formation of an overseas relationship, but prior to 5 December 2005, will be caught by the revocation rule.

The position is different in England and Wales where any will made prior to 5 December 2005 by a person who had formed an overseas relationship which is recognised in England and Wales from that date as a civil partnership has been saved under the subordinate legislation made by the Department for Constitutional Affairs.

Conclusion

It is unlikely that many practitioners will come across cases involving the application of these new rules of private international law as regards the recognition of overseas same-sex relationships formed either before or after 5 December 2005. Comparable cases in the matrimonial field rarely occur. However, practitioners should be aware that the Civil Partnership Act 2004 creates new rules of private international law.

We are grateful to the Office of Law Reform for this article.
New law gives more flexibility to carers and parents

Working families will soon enjoy greater flexibility to manage their professional and private lives.

The Work and Families (NI) Order 2006, which was passed at Westminster on 19 July 2006, gives new parents enhanced maternity, paternity and adoption leave rights.

The new legislation will introduce the following rights from April 2007:

• nine months’ Statutory Maternity Pay, Statutory Adoption Pay and Maternity Allowance, with the ambition to increase this to a year’s paid leave by 2010.

• a new right to an additional period of maternity leave for fathers. This will be introduced at the time Statutory Maternity Pay, Adoption Pay and Maternity Allowance is increased to 12 months. This will enable them to benefit from leave and statutory pay if the mother returns to work after six months but before the end of her maternity leave period.

• the introduction of ‘Keeping in Touch’ days so that, where employees and employers agree, a woman on maternity leave can go into work for a few days without losing her right to maternity leave or a week’s statutory pay.

• carers will benefit from a new right to request flexible working.

Under the new legislation businesses will benefit from:

• measures to help them better manage the administration of Statutory Maternity Pay, Statutory Paternity Pay and Statutory Adoption Pay.

• a two month notice period for women changing their return to work dates from maternity leave. This will allow employees and employers to plan more effectively for return to work.

• clarity that employers can make reasonable contact with their employees on maternity leave to help them with planning and easing the mother’s return to work.

Consultation on Regulations introducing maternity and adoption leave, pay measures and the right to request flexible working as a result of this Order closed on 30 June 2006. The final Regulations will be published shortly.

The Order also introduces a power to increase workers’ holiday entitlement.

The Department for Employment and Learning plans to undertake public consultation on this over the coming weeks.

Further details on the Work and Families package, including details of public consultation, can be found at www.delni.gov.uk/workandfamilies

Practice Direction No 4 of 2006

Wearing of wigs and gowns in the Family Division and Family Care Centres

As from 5 September 2006 barristers appearing in proceedings in the Family Division and Family Care Centres under the Children (Northern Ireland) Order 1995, the Adoption (Northern Ireland) Order 1987 and the Hague Convention on the Civil Aspects of International Child Abduction will not be required to wear wigs or gowns unless, by reason of the exceptional nature of the case, the judge in charge of the proceedings otherwise directs. In view of the nature of these proceedings, members of the Bar are encouraged not to wear wigs and gowns. Judges will not robe unless, exceptionally, the nature of the proceedings requires them to do so.

11 May 2006
Lord Chief Justice
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Reputable country Practice wish to recruit an experienced Conveyancing Solicitor. The suitable candidate will be of senior level as the individual will be expected to supervise the Conveyancing Department. This is an excellent opportunity for career development. Ref: 4211

### Commercial Solicitor

Co Fermanagh  
up to £45k plus 20% in bonus  

This large, successful company has an excellent opportunity to join their Commercial Property division. The role will involve drafting documents and contracts relating to commercial aspects of deals, negotiating with clients and other professionals to secure the desired objectives, researching documents and case history to ensure the accuracy of advice and procedure. You will supervise the implementation of agreements and act on behalf of the company in formal legal issues. In return the Company will offer a competitive basic salary along with an attractive performance based bonus scheme Ref: 4323

### Conveyancing Solicitor

3 yrs + PQE  
Co Armagh  
up to £45k  

Our client is a prestigious firm of Solicitors, and due to their busy work load, are seeking a Solicitor of a relatively senior level to specialise in Residential Conveyancing; knowledge of Commercial Conveyancing is also required. This is a superb opportunity for an ambitious Solicitor to join a firm where long-term opportunities exist. Ref: 4220

### Matrimonial Solicitor

4 yrs + PQE  
North West  
up to £45k  

Superb opportunity has arisen to join a highly successful and prestigious practice. The suitable candidate will have at least 4 yrs PQE in Matrimonial law. Opportunities exist for career advancement and flexible working hours may be possible. Ref: 4246

### Matrimonial Solicitor

2 yrs + PQE  
Co Tyrone  
up to £40k  

Well known firm of Solicitors wishes to recruit an experienced Matrimonial Solicitor to join their busy sub office. This is an excellent opportunity to join a friendly firm where career advancement is encouraged. Ref: 4360

### Matrimonial & Conveyancing Solicitor

Co Armagh  
up to £35k  

Well known firm wishes to recruit an experienced Solicitor with expertise in both Matrimonial and Conveyancing. Probate experience advantageous. This is a fantastic opportunity to join a dynamic firm where career advancement is encouraged and flexible working hours are offered. Ref: 4310

### Litigation Solicitor

2 yrs + PQE  
Belfast  
up to £32k  

Our client is one of Northern Ireland’s top Commercial and Property Practices. They currently have a vacancy within their Litigation department and the position will involve dealing with a busy plaintiff litigation case load ie; road traffic accidents and some insurance work. This is an excellent opportunity to join a dynamic firm. Ref: 4167

### Litigation Solicitor

1 yr + PQE  
Belfast  
up to £30k  

Long established firm has an excellent opportunity to join their prestigious practice. The ideal candidate will have Litigation and Employment law experience. This is an excellent opportunity to join a busy and friendly firm. Ref: 4289

### Conveyancing Solicitor

2 - 3 yrs PQE  
South Belfast  
up to £28k  

Well known prestigious Practice wishes to recruit a candidate with expertise in Residential Conveyancing to work in their head office. Suit candidates with 2 - 3 yrs + PQE. Ref: 4166

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To discuss any of these roles further please call Orla Stewart at prglawsearch on 02890 314 644 or email orlastewart@prglawsearch.com

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Building your Practice through Networking

Following our hugely successful March workshops we are delighted to confirm a date for the next in our series, in September 2006.

March attendees said they “found all topics covered very interesting……(gaining) practical tips that would really benefit (them) in (their) daily roles”.

Feedback also suggested we have in-depth coverage of 1 topic per event - therefore our September workshop will give useful tips and hints specifically on Effective Networking.

In business it is vital to create opportunities to develop relationships with your colleagues, clients, competitors and also acquaintances in other professions. These workshops will show you how.

These workshops will help you enhance your professional image, create new business opportunities and grow your practice through maximising all your professional relationships through networking.

Early booking is recommended.

Belfast
September 14 2006, 5.30pm for 6.00pm
Wine, network, socialise 7.00pm onwards
Jury’s Inn Hotel
Fisherwick Place, Great Victoria Street, Belfast BT2 7AP

To book please contact - Orla Stewart 02890 314 644
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OFFICES IN BELFAST, EDINBURGH AND GLASGOW
Overhaul of adoption law proposed

The number of adoptions in Northern Ireland has fallen significantly from a peak in 1970 of 554 to an average of around 150 per year. 79 children were adopted from care at year-end March 2004. For children adopted during 2003/04 the average duration from care to adoption order was 3 years and 10 months.

Approximately 2,500 children are looked after by Social Services in Northern Ireland at any one time. These ‘looked after children’ are a very vulnerable group. For children who remain looked after for long periods, the future can be bleak. The life outcomes for some of these children can be extremely poor compared to their peers outside the care system. Recent figures suggest that looked after children are more likely to be:

- Suspended/expelled from school than their peers;
- Missing from school on 29 or more days;
- Leaving school with little or no qualifications;
- Cautioned or convicted in relation to a criminal offence;
- Homeless;
- In poor health;
- Unable to gain employment;
- Suffering mental health problems as young people and throughout their adulthood; and
- Victims of drug abuse, prostitution, teenage pregnancy etc.

To help address these problems, the Department of Health Social Services and Public Safety has unveiled a proposed new approach to adoption, in Northern Ireland which will put children’s needs at the heart of the process and bring about the changes needed to improve adoption services.

Speaking as he launched the consultation document, ‘Adopting the Future’, Health Minister Paul Goggins, said, “I want to make adoption work more clearly, consistently and fairly. I want to see more adopters recruited, agencies working better, and courts performing more efficiently. Above all, I want to see vulnerable children safe, in permanent families. I am confident that these reforms to adoption and permanence planning will transform the life chances of hundreds of children.

“The future role of adoption will be one where the needs of the child are placed firmly at the centre of the process, where agencies will make more use of adoption as an option to meet the needs of looked after children, and where children and families can expect the highest standards of professional advice and support.

“Where children cannot live with their birth parents, we have a shared responsibility to make sure they can enjoy the kind of loving family life most of us take for granted. Adoption has a good record in delivering stable, permanent new families for children. Research shows that children who are adopted generally make very good progress through their childhood and into adulthood.”

Key elements of ‘Adopting the Future’ include:

- New legislation which places the child at the centre of the process;
- Comprehensive standards, guidance and training for agencies to ensure efforts are maximized to achieve the best results for children;
- Introducing the principle that delay in decision-making is likely to prejudice the child’s welfare;
- Introducing statutory timetables for certain parts of the adoption process to avoid unnecessary delay at key junctures;
- Legislation requiring courts to draw up timetables in adoption proceedings and give directions to ensure that they are adhered to;
- Guidance for all those involved in adoption about the appropriateness of contact and the way in which it should be managed and reviewed. At all times, contact between the birth parent(s), siblings and the child will only take place where it is consistent with the child’s welfare;
- Options to find a family for a child through a regional system where it has not been possible to do so locally.

Introducing new eligibility criteria that will:

- Extend joint adoption to civil partners and unmarried couples (whether of different sex or same sex, living as partners in an enduring family relationship).
- Permit a partner in a step-parent situation to adopt a child without affecting the relevant birth parent’s parental responsibility;
- Require that all appropriate criminal records checks be conducted on prospective adoptive applicants;
- Require that people over 50 (or in the case of a joint application, where both are over 50) should only be eligible for assessment to adopt where;
  - they wish to adopt a child aged 3 or over; or
  - they wish to adopt a child with whom they have an existing link; or
  - they have particular skills to care for a child with specific needs or a sibling group of looked after children;
- A new legislative option, “Special Guardianship”, to provide permanence short of the legal separation involved in adoption is required.
- A requirement that agencies make arrangements for the provision of a comprehensive range of statutory adoption support services, which will continue to be available after the adoption process has been completed.
- Introducing a review mechanism for assessments, which will consist of a new independent system.
- Restrictions on bringing children into the UK should be strengthened in new legislation so as to apply to parents, guardians and relatives;
- Introducing a charge for the work carried out directly by Departmental officials for the processing of intercountry adoption casework.

‘Adopting the Future’ follows a comprehensive review of adoption carried out by the DHSSPS over a two-year period from August 2004 - June 2006. The consultation document sets out a plan to transform adoption services for all those affected by adoption. A copy of the strategy is available from www.dhsspsni.gov.uk/child_care/adoption
The Lord Chief Justice has appointed Berkeley White, Solicitor, 7 The Diamond, Ballycastle, County Antrim to be a Notary Public.

Below is a complete list of current Notaries Public in Northern Ireland, arranged primarily by geographical location followed by seniority of appointment.

Application for appointment as a Notary is governed by Order 107 of the Rules of the Supreme Court.

### GREATER BELFAST

**David William Ramsey**  
J G H Wilson  
71 Royal Avenue  
Belfast BT1 1EY  
Tel: 028 9032 2301  
Date of Appointment: 29/9/1982

**Paul Nolan**  
135A Upper Lisburn Road  
Belfast BT10 OLH  
Tel: 028 9030 1113  
Date of Appointment: 7/10/1985

**Denis George Gerard Moloney**  
Donnelly & Wall  
58-60 Upper Arthur Street  
Belfast BT1 4GP  
Tel: 028 9023 3157  
Date of Appointment: 12/8/1986

**Angus F R Creed**  
Arthur Cox NI  
Capital House  
3 Upper Queen Street  
Belfast BT1 6PU  
Tel: 028 9023 0007  
Date of Appointment: 6/9/1989

**Patricia Drinan**  
P Drinan Solicitors  
Sean McBride Industrial Estate  
5/7 Conway Street  
Belfast BT13 2DE  
Tel: 028 9023 2071  
Date of Appointment: 30/3/1990

**Sean Fox**  
Fox & Associates  
Insurance Chambers  
403 Lisburn Road  
Belfast BT9 7EW  
Tel: 028 9038 2788  
Date of Appointment: 19/12/1991

### COUNTY ANTRIM

**Hugh Lindsay Graham**  
Gaston & Graham  
73 Holywood Road  
Belfast BT4 3BA  
Tel: 028 9047 1869  
Date of Appointment: 23/7/1992

**Brigid Sarah Mary Napier**  
Napier & Sons  
1-9 Castle Arcade  
Belfast BT1 5DF  
Tel: 028 90 244602  
Date of Appointment: 26/3/1998

**Michael Flanigan**  
207 Falls Road  
Belfast BT12 6FH  
Tel: 028 9023 3309  
Date of Appointment: 19/1/2005

**J ohn Wallace Dickson Pinkerton**  
J ohn W Pinkerton & Son  
5 Linnellan Street  
Ballymoney BT53 6DP  
Tel: 028 2766 2133  
Date of Appointment: 30/3/1990

**James Lockhart Russell**  
J ames L Russell & Son  
55 High Street  
Ballymena BT43 6QT  
Tel: 028 2565 2154  
Date of Appointment: 26/2/1998

**Nicholas Fenton**  
Conn & Fenton Melvyn T Doherty  
39 Bow Street  
Lisburn BT28 1BJ  
Tel: 028 9267 2760/74321  
Date of Appointment: 9/2/2001

**Berkeley White Solicitor**  
7 The Diamond  
Ballycastle BT54 6AW  
Tel: 028 2076 8090  
Date of Appointment: 27/04/2006

### COUNTY ARMAGH

**John Maurice Warren Neill**  
Watson & Neill  
23 High Street  
Lurgan BT66 8AQ  
Tel: 028 383 25111  
Date of Appointment: 15 March 1991

**Hubert William Gilbert Nesbitt**  
Wilson Nesbitt  
33 Hamilton Road  
Bangor BT22 4LF  
Tel: 028 9127 1035  
Date of Appointment: 7/12/1984

**B arry Peter Finlay**  
J ames Murland & Co  
15 English Street  
Downpatrick BT30 6AB  
Tel: 028 4461 9980  
Date of Appointment: 21/10/1986

**Kevin J ohn Patrick Neary**  
Donnelly, Neary & Donnelly  
1 Downing Road  
Newry BT34 1ED  
Tel: 028 3026 4611  
Date of Appointment: 23/2/1996

**Robert Gerard Ferguson**  
D & E Fisher  
8 Trevor Hill  
Newry BT34 1DN  
Tel: 028 3026 1616  
Date of Appointment: 27/5/1998

**Elaine Mary Early**  
19 Castle Street  
Comber BT23 5DY  
Tel: 028 9187 1880  
Date of Appointment: 27/10/1999

**Kevin Murnaghan**  
Murnaghan & Fee  
Project House  
37 Townhill Street  
Enniskillen BT74 7BD  
Tel: 028 6632 2819  
Date of Appointment: 16/5/1998

### COUNTY DOWN

**Arnold Don McClay**  
AD McClay & Co  
1 Limavady Road  
Waterside  
Londonderry BT47 1JU  
Tel: 028 7134 5666  
Date of Appointment: 26/9/1975

**William Martin Campbell**  
Dickson & McNulty  
50 Spencer Road  
Waterside  
Londonderry BT47 1AA  
Tel: 028 7134 1864  
Date of Appointment: 29/9/1994

**Philip Adrian Kealey**  
Caldwell & Robinson  
11 Castle Street  
Londonderry BT48 6HQ  
Tel: 028 7126 1334  
Date of Appointment: 22/3/2002

### COUNTY FERMANAGH

**Kevin Murnaghan**  
Murnaghan & Fee  
Project House  
37 Townhill Street  
Enniskillen BT74 7BD  
Tel: 028 6632 2819  
Date of Appointment: 16/5/1998

**Hubert William Gilbert Nesbitt**  
Wilson Nesbitt  
33 Hamilton Road  
Bangor BT22 4LF  
Tel: 028 9127 1035  
Date of Appointment: 7/12/1984

**Barry Peter Finlay**  
J ames Murland & Co  
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Downpatrick BT30 6AB  
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Tel: 028 3026 4611  
Date of Appointment: 23/2/1996

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D & E Fisher  
8 Trevor Hill  
Newry BT34 1DN  
Tel: 028 3026 1616  
Date of Appointment: 27/5/1998

**Elaine Mary Early**  
19 Castle Street  
Comber BT23 5DY  
Tel: 028 9187 1880  
Date of Appointment: 27/10/1999

### COUNTY LONDONDERRY

**Arnold Don McClay**  
AD McClay & Co  
1 Limavady Road  
Waterside  
Londonderry BT47 1JU  
Tel: 028 7134 5666  
Date of Appointment: 26/9/1975

**William Martin Campbell**  
Dickson & McNulty  
50 Spencer Road  
Waterside  
Londonderry BT47 1AA  
Tel: 028 7134 1864  
Date of Appointment: 29/9/1994

**Philip Adrian Kealey**  
Caldwell & Robinson  
11 Castle Street  
Londonderry BT48 6HQ  
Tel: 028 7126 1334  
Date of Appointment: 22/3/2002

### COUNTY TYRONE

**Olive O’Neill**  
12 Torrent Enterprise Centre  
Donaghmore BT70 2 UD  
Tel: 028 8776 9290  
Date of Appointment: 27/10/2003
I'm pleased to report that a great night was had by about 70 BSA members and guests at our “Taste Your Way Around The World” event which was held in March. The evening had been arranged in partnership with Ten Square and Holywood & Donnelly and it was a huge success.

After a Pink Fizz reception, our sommelier and guide for the evening, well known wine expert, Paul Flynn, introduced us to some fine wines from around the world. The head chef at Porcelain prepared first class themed canapés to accompany the wines selected and to reflect the flavours of the countries and regions featured. Guests were treated to shots of gazpacho with our Rioja, foie gras with our Bordeaux and lamb and shellfish were washed down by new world wines from New Zealand and Australia, to name but a few.

Our Chair, Chris Ross, was delighted to welcome Suzanne Bryson, Deputy Secretary of the Law Society, as our special guest for the evening.

The tone of the evening was casual and we could perhaps have been accused of ignoring cultural and gastronomic appreciation in favour of ploughing through as much wine as possible in the short time available. But, hey, it was a Friday night and it was great to see so many fellow solicitors relaxed and having fun. I wish I could print some photos to accompany this article but they had to be censored. I jest of course but there were a few difficulties for some when negotiating the staircase at the hotel.

The evening was a great success and it was wonderful to see so many people there, especially the younger members of the profession. The BSA intends to host many more social events in the coming months which are open to all members at excellent rates. Please keep an eye on our website or contact me directly for any further information on up and coming events. I look forward to another wine tasting next year and hope that we see even more of our members there.

Sarah Havlin
Chair, Social Committee
(contact: Edwards & Co Solicitors
Tel: 028 9032 1863)
The annual BSA Golf Outing was held at Malone Golf Club on Thursday 18 May 2006.

The weather forecast was very poor but over 50 people took part in the competition and whilst the first few four balls had to play in torrential rain, the day thankfully brightened up.

The prize giving took place after an excellent meal in the Club House. The honour of first prize went to Paddy Kinney who had 35 points. Paul Moylan also had 35 points but Paddy Kinney scraped through to pole position with his score on the back nine.

The non-handicap prize was won by Damien Agnew and the visitor’s prize was won by Jonathan Stockton of Garwyn Loss Adjusters.

Closest to the pin at the fifteenth was won by Paddy Mullarkey and the honour of the longest drive at the eighteenth hole went to Liam McCollum QC.

Once again the event was sponsored by First Trust Private Banking and the BSA is grateful to David Allister for his continued support.

We would like to thank everybody for their support and participation and we look forward to seeing everyone again at Malone in May 2007.
The Law Society/MacMillan Charity Golf Day was held in Warrenpoint Golf Club on Friday 12 May 2006.

40 teams participated including eight Ladies’ teams. The winning team of Leonard Kelly returned a score of 99 points with the 2nd and 3rd teams scoring 96 and 95 points respectively. The winning Ladies’ team of Margaret McMahon scored 92 points despite being hampered by bad weather and heavy thunderstorms.

The prizes were sponsored by McShane & Co Solicitors, Newry and Kilkeel. An auction was held after the prize giving and raised the sum of £2180. The total amount raised for the President’s nominated charity amounted to £8028 net. Mr Gerry O’Meara on behalf of the MacMillan Charity thanked the sponsors and all who contributed to this very successful event.

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President’s Golf Classic raises over £8,000 for MacMillan Cancer Relief

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WE ARE MACMILLAN CANCER SUPPORT

Friday 29th September
Get together with friends, family or colleagues and take part in the World’s Biggest Coffee Morning. It’s an easy and fun way for you to help Macmillan provide vital services to those affected by cancer.

To register, or for more information:
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Macmillan Cancer Support registered charity number 261017
Children Leaving Care

In this article Vincent Sheils reviews the legislative impact of the Children (Leaving Care) Act (NI) 2002 by looking at the amendments it makes to the Children (Northern Ireland) Order 1995 and the enhanced duties placed on health and social services trusts to meet the aftercare needs of young people who are or who have formerly been in care of the trust.

Around 200 young people aged sixteen and seventeen annually leave the homes provided for them by health and social services trusts (HHSTs). Some return to their families and others leave to set up home independently in the community. There has been growing unease since the 1980s at the vulnerability of young people leaving care to live independently in the community. Unsurprisingly, the research shows that young people in care tend to do less well at school and have fewer qualifications than children who have not been within the care system and are therefore disadvantaged.

The Children (Leaving Care) Act (Northern Ireland) 2002 (the Act) came into force in September 2005. Its purpose is to improve the life chances of young people who are looked after by HSSTs as they move towards living independently.

**THE LEGISLATION**

The Act forms the basis for improved leaving and aftercare services for care leavers. It builds on the underlying principles of the Children (Northern Ireland) Order 1995 (the Order) and amends the leaving care provisions contained in Articles 35 to 37 of the Order. The Act strengthens duties on HSSTs to provide a service to young people leaving care. Departmental Guidance issued to accompany the legislation states that the main aims of the legislation are to:

- ensure that young people do not leave care until they are ready to do so;
- improve the assessment, preparation and planning for young people leaving care;
- provide better personal support for young people after they leave care; and
- improve the financial support available to care leavers.

The Act inserts new Articles 34A to 34F and 35, 35A to 35D to the Order. These set out the powers and duties of HSSTs to prepare the young people they are looking after for the time when they cease to be looked after and to provide aftercare services. Voluntary organisations by virtue of Article 76(1)(c) and those running private children’s homes by virtue of Article 92(1)(c) of the Order are under similar duties.

**THE AMENDED PROVISIONS**

The Act amends the Order to introduce the following provisions:

- each responsible HSST has a duty to assess and meet the care and support needs of eligible, relevant and former relevant children;
- the responsible HSST has a duty to keep in touch with all its care leavers who qualify under the new arrangements;
- all eligible, relevant and former relevant children must have a pathway plan;
- all eligible, relevant and former relevant children must have a Personal Adviser;
- the responsible HSST must maintain and accommodate relevant children;
- the responsible HSST must assist a care leaver in full-time, further or higher education with vacation accommodation where required;
- the responsible HSST must assist a former relevant child with costs associated with employment to the extent that his or her welfare requires it;
- the responsible HSST must assist with the costs of education and training up to the end of the agreed programme; and
- the responsible HSST must assist a former relevant child to the extent that his or her welfare requires it, either in kind or, exceptionally, in cash.

**INTER-AGENCY CO-OPERATION**

In discharging its responsibilities, the responsible HSST will need to liaise with many other agencies, for example, with the Northern Ireland Housing Executive (NIHE), education and library boards, the careers advice service and the Social Security Agency.

The Order promotes inter-agency liaison, Article 46 of the Order gives a HSST the right to request help in the discharge of its functions under Part IV of the Order from any other trust, any education and library board, the NIHE and any other person so directed by the Department for Health, Social Services and Public Safety. Any such request is bound to be complied with if it is compatible with the other agency’s own statutory or other duties and obligations and does not unduly prejudice the discharge of any of its functions.

**WHO IS AFFECTED BY THE CHANGES?**

The Act and its supporting Regulations...
(the Children (Leaving Care) Regulations (NI) 2005) provide that the new leaving and aftercare support arrangements apply to all young people aged sixteen and over who have been looked after by a HSST for at least thirteen weeks since their fourteenth birthday. Those thirteen weeks can be continuous or made up of separate episodes of care, (Regulation 2(2) excludes short-term placements made by way of respite care) but must include a period of time after reaching the age of sixteen. The new provisions apply whether they are looked after either under a care order, or accommodated by a HSST in the exercise of its functions under Article 21 of the Children Order.

Looked after children who enter the criminal justice system will also qualify for help under the Order, as amended by the Act, so long as they meet the qualifying criteria; for example, in a situation where a young person’s care order does not lapse if he or she enters a juvenile justice centre. Regulation 3 of the Children (Leaving Care) Regulations defines an additional group of relevant children who qualify for the new support arrangements but for the fact that on reaching sixteen they are detained in a juvenile justice centre, a young offenders centre or in a hospital.

**WHO IS NOT AFFECTED?**

The Act is intended to help young people who depend on social services in place of a family. The provisions of the legislation are designed to reflect what a good parent would normally expect to provide for their children. That is why as detailed in the previous paragraph, the leaving care provisions do not apply to children who are looked after by way of respite care but who remain the responsibility of their parents or other carers.

Regulation 3(5) also stipulates that a young person who successfully returns home should cease to be a relevant child. This means that a young person must have been settled for at least six months with a person falling within Article 27(4) of the Children Order, that is, with a parent or other person with parental responsibility, or who had a residence order in respect of the young person before he or she became looked after. The provisions of Articles 35A and 35B of the Children Order continue, however, to apply to such young people.

Regulation 3(7) provides that where a return home proves to be unsuccessful and breaks down, and the young person turns again to the HSST for help before reaching the age of eighteen, he or she will revert to whatever status he or she would have had, if he or she had not returned home. For example, someone who returned home at seventeen as a relevant child and who came back to the HSST before reaching eighteen years of age would be treated as a relevant child, if the HSST was satisfied that the home relationship had broken down.

**HELP FOR THOSE NOT AFFECTED BY THE ACT**

Broadly speaking, the powers and duties of HSSTs in Articles 35and 35A to 35C of the Children Order cover all young people leaving a variety of care placements when aged sixteen or over and they will continue until each young person reaches the age of 21. There will continue to be care leavers who do not qualify for the new aftercare arrangements introduced by the Act or who return home successfully and become ineligible. This will include young people who left care before 1 September 2005. They will, however, continue to qualify under Articles 35 and 35A to 35C of the Children Order for aftercare services.

Young people who left care before 1 September 2005 will continue to qualify for advice and assistance under Articles 35 to 35C of the Children Order for aftercare services. The new duties will not apply to them, with the exception of the duty at Article 35B (5) to provide vacation accommodation, which applies to all care leavers in fulltime, further or higher education.
Practice Management half day seminar

Date: 20 October 2006
Time: 1.00pm - 5.00pm (refreshments provided and talks to commence at 1.30pm)
Venue: Europa Hotel, Belfast - please see www.niysa.com for full details
Cost: £50 for members of the NIYSA* and £70 for non-members

The seminar will include the following speakers and topics:
2. Business Risk Management - Gary Thompson, Ulster Insurance Services Limited
3. General Practice Management Issues, including a look at UITF 40 and Valuation of Work in Progress - Michael Barnett, Director and Mervyn Dolan, Senior Tax Manager, Moore Stephens Chartered Accountants
4. The Recruitment Process - Interview Techniques - Representative of Brightwater Recruitment

Attendance at this Seminar will provide three hours practice management CPD entitlement.
Cheques and Booking Forms to NIYSA c/o Darren Toombs, Carson McDowell, Murray House, Murray Street, Belfast BT1 6DN. Email: darren.toombs@carson-mcdowell.com

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

BOOKING FORM - Practice Management half day seminar

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Northern Ireland Young Solicitors' Association
New Committee 2006/2007

Chair
Emma Hunt
Mills Selig

Vice-Chair
Darren Toombs
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J ohn Greer
McManus Kearney

Secretary
Barbara Johnston
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Toby McMurray
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Committee
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Claire Reid
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Emma Duffy
Almac Sciences Limited

Richard Craig
Johnson's

Ciaran Fegan
Higgins Holywood Deazley

William Curry
Arthur Cox
(Institute of Professional Legal Studies Representative)
3 October 2006
Glasgow Royal Concert Hall

Over the past six years this Conference has attracted a considerable amount of interest from members of the legal profession and has earned an excellent reputation. Last year Scottish solicitors were joined by their counterparts from Northern Ireland and we are keen to develop this further and enhance networking opportunities.

The conference this year will feature a number of new elements including round table discussions, an interactive practical demonstration on courtroom technology and a debate on document automation.

The programme will cover a broad range of essential topics including electronic data retention and storage, the use of IT in the civil courts, data protection, risk management, electronic presentation of evidence in court, managed services, ARTL Online, IT project management, disaster recovery and many more.

The conference will be of interest to solicitors in both private practice and public sector, as well as IT managers and professionals in the legal arena. The average attendance figures for this event have been 250 delegates.

The conference will be accompanied by an exhibition showcasing latest technology products and services available within the legal market.

The cost of the conference is £141 (£120 + VAT)
Trainees & paralegals can attend at a cost of £99.88 (£85 + VAT)

Notification under the Data Protection Act 1998

The Society receives enquiries from time to time from solicitors about whether or not solicitors firms are subject to notification requirements under the Data Protection Act 1998. The short answer is that all firms must notify and failure to do so could have serious consequences.

Businesses which process personal data are liable to notify (i.e. register) under the Data Protection Act 1998 and failure to notify is a criminal offence. Processing personal data obviously includes information recorded on computers but it also extends to information held in manual filing systems. The Information Commissioner takes the view that it will be almost impossible for a solicitor’s firm to show that it does not process personal data and does not have to notify under the Act.

Prosecutions of solicitors in England have already taken place and the Information Commissioner is investigating firms in Northern Ireland who have failed to notify to date. All notifications are recorded on a computerised public register maintained by the Information Commissioner’s Office on its web site (www.informationcommissioner.gov.uk) and which any member of the public can easily inspect online free of charge to ensure you are complying with the law. If you visit the web site you will find information about data protection generally and you can get details about notification and download the application forms.

Notification can be completed online but the prescribed fee should be posted to the notification department of the Information Commissioner’s office at Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF. The payment is £35 (VAT is not payable). Notification is renewable each year.

You should not use any other agency to process your application or to make payment as many are bogus and charge higher fees and do not actually complete your notification. There is a dedicated helpline for those notifying for the first time or renewing their annual application at 01625 545740. Further assistance is available from the Belfast office at telephone 028 90511270 and fax 028 9051 1606.
In-House Solicitor

Newry £Excellent Salary

Our client, a well established multinational property organisation, has a new and exciting role. This position offers an excellent opportunity to build a profile in the international property market.

The Role

- Work as part of the legal team to assist in the coordination of all in-house legal services.
- Review and advise on residential property contracts.
- Advise the management team on property matters to include: development, investment, landlord / tenant matters and property finance.
- Review and advise on commercial contracts and leases.
- Role will involve occasional travel.
- Managing and coordinating lawyers from foreign jurisdictions.

The Person

- Qualified Solicitor with 2 - 3 years' post qualified experience.
- Extensive experience with residential conveyancing essential.
- Experience with commercial property essential.
- Corporate - sale and purchase of businesses advantageous.
- Team player with approachable and outgoing personality.
- Excellent communication skills essential.

For a confidential discussion on this role, please contact Nicole Dowling on 028 90 325 325 or email your CV in the strictest of confidence to n.dowling@brightwaterNI.com

Assignment of Resident Magistrates

Further to the appointment by the Lord Chief Justice of Mrs Fiona Bagnall as Presiding Resident Magistrate, the Lord Chief Justice has made the following assignments in accordance with Section 9(5) of the Magistrates’ Courts (NI) Act 1964:

- Mrs Fiona Bagnall is assigned to the Petty Sessions District of Belfast and Newtownabbey,
- Mr Desmond L Perry is assigned to the Petty Sessions District of Magherafelt,
- Mr Eamonn P King is assigned to the Petty Sessions District of Limavady.

These assignments were effective from 3 July 2006.

Laganside Courts, Belfast

Laganside Court building has been a non-smoking building since it opened for business in January 2002. On 4th April 2005, the Court Service introduced a non-smoking Policy in all its buildings to provide a safe working environment without risk to health for anyone using its buildings.

Because of the continuing problems with smoking in Laganside Courts, the FM Manager has informed the Court Service that smoke detectors will be fitted in various areas throughout the building. This has already taken place in some public areas and has proved to be a deterrent. A similar exercise will be carried out in the Solicitors/Barristers accommodation.

A high-pitched alarm will sound if the smoke detector is activated. The alarm will also be linked to the Consul Monitor room.
High Court, Court of Appeal and Tribunal Decisions

High Court
and Court of
Appeal decisions

AN APPLICATION BY NELSON BAILEY
FOR JUDICIAL REVIEW
Application for judicial review of the Health and Social Services Trust’s refusal of financial assistance to the applicant by way of payments for rent for temporary accommodation during the proposed adaptations to the plaintiff’s home carried out under the Disabled Facilities Grant Scheme. - responsibility of social services authority for temporary housing costs available under s.2 Chronically Sick and Disabled Persons (NI) Act 1978. - whether breach of ECHR. - HELD that declaration issued that “facilities” in s. 2(e) of the Chronically Sick and Disabled Persons (NI) Act 1978 may include the cost of temporary accommodation costs for a person who is required, in order to secure greater safety, comfort and convenience, to vacate his home during the carrying out of any works of adaptation in his home.
HIGH COURT
29 JUNE 2006
GILLEN J

IN THE MATTER OF C AND S (FREEING FOR ADOPTION APPLICATION: WITHHOLDING CONSENT)
Application by Health and Social Services Trust for order under art. 18 Adoption (NI) Order 1987 freeing 2 children for adoption without consent. - care orders already granted. - alcohol abuse and domestic violence. - whether personal circumstances of the mother have improved sufficiently to facilitate rehabilitation of children. - whether adoption in the best interests of the children. - consideration of attachment. - whether parents were sufficiently involved in the decision-making process. - HELD that application be refused at this time since Trust did not take sufficient consideration of the possibility of rehabilitation of mother.
HIGH COURT
29 JUNE 2006
GILLEN J

Originating Summons brought on behalf of the Assets Recovery Agency for a Civil Recovery Order in respect of certain property held by or on behalf of Cecil Stephen Walsh and for the appointment of Mr Alan McQuillan as trustee of such property in accordance with s.243 and s.266 of the Proceeds of Crime Act 2002. - HELD that the sums that the Agency seeks to recover represent property obtained through unlawful conduct. - Recovery Order granted in the terms of the Summons therein.
HIGH COURT
6 JULY 2006
COGHLIN J

APPLICATION BY FRIENDS OF THE EARTH FOR JUDICIAL REVIEW
Application for judicial review of the decision of the Water Service in relation to the grant of consents for the making of agreements under arts. 17, 24 + 32 of the Water and Sewerage Services (NI) Order 1973 for connections to the sewerage system where the related waste water treatment is not compliant with the requirements of the Urban Waste Water Treatment Regulations (NI) 1995. - whether Water Service has a legal obligation to refuse new connections in those areas where the sewerage system is not compliant with the legal requirements. - whether Water Service, in deciding whether to grant consents or enter agreements for connections to the sewerage system, has failed to take into account a relevant consideration, namely whether the related waste water treatment is compliant with legal requirements. - HELD that declaration made that the Department through the Water Service has failed to take into account a relevant consideration in determining applications for consents or agreements in lieu of consents for new connections to waste water systems, that relevant consideration being whether the system is...
compliant with the requirements of the Urban Waste Treatment Regulations (NI) 1975
HIGH COURT
28 JUNE 2006
WEATHERUP J

PAULA J OHNSTON v NORTHERN IRELAND HOUSING EXECUTIVE
Damages for personal injuries sustained after the plaintiff tripped and fell. - whether entitled to contributory negligence. - plaintiff sustained a fracture dislocation of the right ankle and soft tissue injury to the right knee. - plaintiff's version of events inconsistent with the hospital notes detailing the history of the plaintiff allegedly given to the medical staff on arrival at the fracture clinic. - whether plaintiff sufficiently reliable to satisfactorily demonstrate on balance of probabilities that injury was sustained as she alleges. - claim dismissed
HIGH COURT
26 JUNE 2006
MORGAN J

IN THE MATTER OF AN APPLICATION BY MARGARET O'CONNOR FOR JUDICIAL REVIEW
Application to Court of Appeal for a direction that the Notice of Appeal in the above matter be served upon the Attorney General for England and Wales pursuant to O. 59 r.8 RSC (NI) 1980. - service on any person not to be served upon the Attorney General for England and Wales pursuant to O. 59 r.8
HIGH COURT
26 JUNE 2006
MORGAN J

R v FULTON AND OTHERS
Manslaughter and affray. - sentencing. - defendants involved to various degrees in the death of the victim who was unknown to them after a night drinking. - aggravating and mitigating circumstances
CROWN COURT
23 JUNE 2006
MORGAN J

R v MARY ELIZABETH MILLEN
Sentencing. - theft. - accused was an employee of the Ulster Bank who stole credits over a period of 2 years amounting to £326,412.01. - confiscation and compensation orders made for this amount, and defendant sentenced to 1 year and 8 months imprisonment followed by 12 months probation supervision
CROWN COURT
29 JUNE 2006
MORGAN J

R v PASCHAL JOHN MULHOLLAND
Appeal against conviction by way of referral by the Criminal Cases Review Commission in exercise of its powers under Part II Criminal Appeal Act 1995. - appellant was detained on suspicion of involvement in a gun and petrol bomb attack on an RUC patrol and convicted of the offence of membership of a proscribed organisation. - appellant claimed the confession had been obtained after mistreatment while in custody. - admission of confession evidence. - appellant was denied access to a solicitor. - whether the detention and interview of the appellant were oppressive by today's standards. - whether new evidence undermined the credibility of the case. - whether the trial was a breach of the Judges' Rules which provided that normally a child or minor or young person should be accompanied by an adult unless there were practical reasons why that could not be arranged. - importance of new evidence and medical reports. - HELD that there was a failure to abide by the requirements of the Judges' Rules and that the conviction was unsafe and therefore quashed
COURT OF APPEAL
10 JULY 2006
KERR LCJ, NICHOLSON LJ, CAMPBELL LJ

R v JAMES MURRAY, BRIAN GOODMAN AND ASHOK BRIAN KUMAR
Appeal by prosecution under art. 17 Criminal Justice (NI) Order 2004 from a decision ordering that proceedings against the defendants should be stayed. - defendants charged with dealing with dutiable goods with intent to defraud contrary to s. 170 Customs and Excise Management Act 1979. - defect in transfer proceedings to Crown Court under art. 3 Criminal Justice (Serious Fraud) (NI) Order 1988. - judge concluded that irregularities were not sufficient to warrant quashing the transfer. - whether Part IV Criminal Justice (NI) Order 2002 was validly brought into force. - retroactivity of provisions. - HELD that judge failed to consider whether a lesser remedy would have been adequate to vindicate the respondents' convention rights. - leave granted to prosecution to appeal against his ruling
COURT OF APPEAL
11 JULY 2006
KERR LCJ, NICHOLSON LJ, SHEIL LJ

R v MCCULLOUGH AND BRATNEY
Sentencing. - accused pleaded guilty to manslaughter while staying in a hostel for the homeless and under the influence of alcohol. - aggravating and mitigating factors in an unprompted but not premeditated attack following a dispute which did not initially involve the defendants. - HELD that sentences of 8 years and 7 years imprisonment be imposed on each consecutive defendant
CROWN COURT
3 JULY 2006
MORGAN J
### High Court, Court of Appeal and Tribunal Decisions

#### R v MCMASTER
Sentencing. - attempted murder and grievous bodily harm with intent. - defendant's psychiatric condition and early guilty plea. - sentence of 5 years imprisonment and 2 years probation imposed.

**CROWN COURT**
23 JUNE 2006
MORGAN J

#### R v GERARD ROBERT SMITH
Application for leave to appeal against conviction of 2 offences of indecent assault contrary to s. 52 Offences Against the Person Act 1861 and for leave to have time extended within which application might be made. - declaration of incompatibility sought under s. 4 Human Rights Act 1998.
- whether jury's verdict on the counts on which the applicant was convicted was based on a law and procedure that was inconsistent with his right to a fair trial in that the defence of consent was not available to him and that the law on the matter of consent permitted no consideration of the fact that the accused himself was a minor at the time of the alleged offences.
- application dismissed

**COURT OF APPEAL**
19 JUNE 2006
KERR LCJ, CAMPBELL LJ, SHEIL LJ

#### R v ROBERT JOHN BENSON YOUNG
Appeal against murder conviction. - whether judge found the appellant guilty to the murder against the weight of the evidence.
- whether judge misdirected himself to the test to be applied in considering whether a series of circumstances could lead to a finding of guilt. - appeal dismissed

**COURT OF APPEAL**
27 JUNE 2006
NICHOLSON LJ, CAMPBELL LJ, SHEIL LJ

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### Industrial and Fair Employment Tribunal Decisions

#### BRADLEY, LAURENCE v CONFEDERATION OF COMMUNITY GROUPS (LIMITED BY GUARANTEE)
Decision on a pre-hearing review. - claimant believed he was discriminated against on the grounds of his sex in relation to the filling of a post in the respondent's organisation.
- whether claim was presented within time limit. - respondent did not want to pursue a sex discrimination claim until he had exhausted the in-house grievance procedures.
- claimant aware of the time limit for lodging a claim. - grievance procedure took over a year to conclude.
- tribunal decided that the claim was out of time.

1296/05IT
3 MAY 2006

#### CLARKE, BRENDAN v COASTAL CONTAINER LINE LTD, DAVID TRIMBLE, MERSEY DOCKS AND HARBOUR CO LTD AND PETER J JONES
Decision on a pre-hearing review. - whether company was entitled to change the retirement age from 65 to 60 in 1997. - whether death in service was part of that change. - whether health insurance scheme was part of company pension scheme.
- tribunal concluded that company was entitled to change the retirement age from 65 to 60 subject to contractual obligations.
- death in service was part of the benefits offered under the pension scheme, as was the health insurance scheme.

1831/04IT
3 MAY 2006

#### GARVIN, STACEY JEAN v LEWIS GIBSON
Decision on a preliminary issue. - whether claimant is disqualified from right not to be unfairly dismissed by the provision of Art. 140 of the Employment Rights (Northern Ireland) Order 1996 regarding a minimum period of continuous employment. - claimant did not have the requisite one year's continuous employment and therefore the claim of unfair dismissal is dismissed.

216/05IT
13 MARCH 2006

#### GILL, WHYED v DOWN LISBURN HEALTH AND SOCIAL SERVICES TRUST
Decision on a pre-hearing review. - claimant applied for post as training manager with respondent. - applicant claimed that he was not shortlisted because of discrimination on the grounds of race, religious belief and/or political opinion and victimisation.
- respondent claimed that the claimant was not shortlisted because he had failed to complete the monitoring form which was part of the application process.
- tribunal decided that the contentions of the claimant in relation to discrimination and victimisation have little reasonable prospect of success, and made Order against the claimant requiring him to deposit £500 as a condition of being...
permitted to continue to take part in the proceedings
00543/00FET
11 APRIL 2006

GRANT, JOHN PATRICK v COLIN DOUD
Claimant brought claims of unfair dismissal, sex discrimination and breach of contract against the respondent. - respondent dismissed the applicant for economic reasons and was also prompted by a number of complaints about his behaviour and the unsatisfactory way he carried out his duties. - applicant had been employed from 16 February 2004 to 24 March 2004 and therefore did not have a sufficient qualifying period of employment and therefore the claim for unfair dismissal must be dismissed. - claim for sex discrimination and breach of contract are also dismissed
1412/04
28 APRIL 2006

HUXLEY, ROY FREDERICK v MAYBIN PROPERTY SERVICES, ANDREW MACKENZIE AND ALLEN WITHERSPoon
Claimant claimed he had been unfairly dismissed. - claimant had been dismissed from his job as a result of an altercation between himself and a fellow employee which resulted in a physical confrontation. - as a result the respondents followed proper disciplinary procedures which resulted in the dismissal of the claimant. - tribunal is satisfied that the handling of the process had been reasonable and that the claim for unfair dismissal be dismissed
964/05IT
30 MARCH 2006

KIRKWOOD, CAROL v JOEFF MccoOKE AND ICTS UK LTD
Claimant alleged sex discrimination - respondents failed to offer permanent night shifts to claimant and offered them to a male employee. - respondent did not advertise the new shift on the office notice board but telephoned the male employee at home and offered him the position. - respondent felt that as the employee was a man he would not have any family responsibilities unlike the claimant. - tribunal found that the claimant had been discriminated against on the grounds of her sex and the second named respondent is ordered to pay £4052.80
01594/02IT
19 APRIL 2006

LAVELLE, TOM v BT
Decision on preliminary issues. - claims for disability discrimination, unfair dismissal and breach of contract. - all claims presented outside the specified time limit. - whether it was just and equitable for the tribunal to consider the claim. - whether it was reasonably practicable to present claim within the specified time. - applicant was absent from work on the grounds of illness for considerable time. - consideration was given by the respondent as to whether the respondent’s medical retirement criteria were applicable in the event of a final decision being taken by the respondent to terminate the employment, but retirement on non-medical grounds was authorised by the respondent company following their decision that they could not keep the job open any longer. - claimant instituted grievance procedures with respondent company. - whether the delay in the claimant lodging proceedings with the Tribunal was as a result of mistaken belief or misunderstanding. - Tribunal decided there was no reason to exercise its discretion on limitation and that claimant’s complaints are out of time
348/05IT
4 APRIL 2006

MARTIN, OLIVER v MARY MccALLISTER T/A EVENT WINE BAR
Claimant alleges unfair dismissal, holiday pay, unlawful deduction of wages and breach of contract. - Tribunal decided that the claimant was constructively and unfairly dismissed and in entitled to the sum of £3,212 for unfair dismissal, holiday pay, unlawful deduction of wages and breach of contract
1632/05IT
13 April 2006

MCCLURKIN, DENIS NOEL v FERRYHILL FREIGHT LIMITED
Claimant alleged unfair dismissal. - claimant worked as a lorry driver for the respondent. - altercation arose between the respondent and claimant which resulted in the claimant being dismissed. - tribunal found that the respondent had taken no steps under a disciplinary procedure to deal with any alleged breach of disciplinary procedures. - tribunal found that the claimant had been unfairly dismissed and the tribunal awarded him £4130.40
1305/05IT
27 MARCH 2006

MCCULLY, SHIRLEY v PETER & GLENDA STEWART T/A DUNDONALD OLD MILL
Decision on pre-hearing review. - whether the respondent employed less than fifteen employees in September 2004. - claimant had complained of disability discrimination. - respondent contended that as he employed less than fifteen employees he was not subject to the provisions of the Disability Discrimination Act 1995. - respondent employed ten permanent staff and casual staff. - statutory definition of employee. - tribunal agreed that the respondent did employ less than fifteen employees in September 2004 and therefore can avail of the exemption. - case dismissed.
2483/04IT
23 FEBRUARY 2006

MCGOWAN, HELEN v THE EQUALITY COMMISSION FOR NORTHERN IRELAND
Claimant claimed discrimination on the grounds of her sex as she was treated less favourably than the Commission treated a man. - a male member of staff had been given line management responsibility within the legal division which afforded
him the opportunity to obtain management experience relevant to career progression. - his position should have been subject to an internal trawl. - individual grievance was raised by the claimant. - temporary position within the Commission became available which the applicant applied for but again her male colleague was successful. - tribunal found that the respondent treated the claimant less favourably than the respondent treated a man on both occasions. - respondent discriminated against the claimant on the grounds of her sex and ordered the respondent to pay £4303.18 compensation to include injury to feelings 2452/03IT; 2229/04IT 28 APRIL 2006

NESCITIT, MARIA PATRICIA v ICTS (UK) LTD
Claimant alleged she had been unfairly dismissed from her job as a security agent at Belfast International Airport. - claimant had allowed a porter through a restricted area without keeping in sight which was a breach of protocol. - respondent alleged that the claimant failed to read the protocol in a timely manner which constituted misconduct. - failure to read protocols is not listed as an offence in the respondent's disciplinary procedure. - claimant did not acknowledge her personal responsibilities in respect of the relevant act of misconduct. - dismissal was outside the range of reasonable responses. - tribunal decided that the claimant was unfairly dismissed but that she did fail to read the relevant protocol and engage with the respondent when challenged. - as a result reductions of one third are made to the compensatory award to £1,352 1880/04IT 3 APRIL 2006

RYDER, CHRISTOPHER v NORTHERN IRELAND POLICING BOARD
Decision on a pre-hearing review. - applicant claimed he was discriminated against for post of Director of Communications. - applicant was not shortlisted for interview and instituted a claim of discrimination. - claimant believed that the re-advertisement excluded him as a potential applicant and instigated a second claim. - whether the application should be allowed to proceed even though the second claim was presented outside the time limit. - whether claimant had communicated to the respondent that he intended to bring a claim. - whether the respondent was prejudiced by the late notification of the claim. - whether the respondent is estopped from prejudice by the late notification of the claim. - tribunal decided that the claimant did genuinely believe that he could link his claim in the second case with his claim already in existence in the first case and he was not disabused of this view, even after entering into correspondence with the respondent concerning it. - Tribunal ordered the right of the claimant to bring the second claim outside the time limit 337/04FET 20 JANUARY 2006

SIMPSON, DAVID MILLAR v DORNAN MOTORS LTD
Claimant claimed unpaid holiday pay, unlawful deductions of wages and redundancy payment owed to him following the termination of his employment. - respondent had paid the claimant by cheque all monies owed to him but the cheque bounced on two occasions. - respondent then paid part of the money but withheld the remainder as he has accidentally made an overpayment of pension contributions for a period of six months for the claimant. - tribunal found that the respondent had made unlawful deductions from the claimant's wages and also owed him redundancy pay making a total of £1926.46 1112/05FET 22 MARCH 2006

BROGAN, PATRICK v WESTERN EDUCATION AND LIBRARY BOARD
Whether complaint was presented within the specified time limit. - claimant employed as a library assistant/relief driver during the period 1985-1989. - whether there was a contractual entitlement to mobility allowance. - claimant contacted NIPSA in 2003 about the claim but did not contact WELB until 2004. - tribunal found that the claimant had not taken reasonable and appropriate steps to seek advice on the matter and that the claim is out of time 8/05FET 27 JANUARY 2006

CROSS, JUDITH v EQUALITY COMMISSION FOR NORTHERN IRELAND
Claimant not shortlisted for a deputy director position on the grounds of her sex and political opinion. - respondent claimed that the claimant did not have the required two years employment in a senior position. - appointment panel relied solely on the information supplied by the applicants on the application forms. - tribunal found that the claimant was not shortlisted as she did not meet the criteria and not for any discriminatory reason 116/02FET; 664/02FET 5 APRIL 2006

NIJ HAR, SARANJ IT K v OLIVER MCCULLOUGH, PROFESSOR B DICKSON, COLIN KNOX AND UNIVERSITY OF ULSTER
Claimant claimed unlawful discrimination on the grounds of her race, religion and political beliefs. - claimant was unsuccessful in her application for a position of research officer. - claimant performed badly at interview and did not demonstrate the skills and experience that were apparent from her CV and application form. - tribunal accepted that the interview notes were deficient but decided that the claimant was not unlawfully discriminated against on grounds of race, religion and politics 00311/98FET 2 MARCH 2006
RECOMMENDED READING:

Age discrimination and Employment

From 1 October 2006, it will be unlawful to discriminate against workers, job seekers and vocational trainees on the grounds of age. The Employment Equality (Age) Regulations (NI) 2006 will make it unlawful to discriminate on grounds of age in employment and vocational training. They prohibit direct discrimination, indirect discrimination, victimisation, instructions to discriminate and harassment.

LEGISLATION

- Employment Equality (Age) Regulations (NI) 2006 (SR 2006/261)
  http://www.opsi.gov.uk/sr/sr2006/20060261.htm#1
  Commencement: Regulations 2, 37, 38 and 39 came into operation on 14 June 2006.
  The remainder of the legislation shall come into operation on 1 October 2006

  This legislation can also be accessed on the Libero database via the members section of the Law Society website – www.lawsoc-ni.org

GUIDANCE

The Equality Commission for Northern Ireland - Draft Age Guidance Pack. The Pack will provide guidance for employers and those responsible for training, including institutions of further and higher education, on the law and good practice. It will also include guidance for individuals on their rights under the new law. The Commission has also launched a public consultation to seek views on the Draft Age Guidance Pack. The public consultation started on 3 July and will close on 11 September 2006. The Draft Age Guidance Pack has information on

- The Law and Good Practice for Employers
- The Law and Your Rights
- Age Booklet 1: Are You Ready
- Age Booklet 2: Frequently Asked Questions
- Age Booklet 3: Retirement

http://www.equalityni.org/ftp/AgeCons.html

ARTICLES

Lewis: 2006 I.R.L.B. 784 7-12
Age discrimination: Part 2 (focuses on age discrimination issues in recruitment.)
Age discrimination: Part 3 (discrimination issues in relation to pay and benefits)
Soakell: 2006 I.R.L.B. 786 5-12
Age Regulations 2006: Part 1 (reviews the key non discrimination general principles)
Rubenstein: 2006 E.O.R. 152, 15-21
Age Regulations 2006: Part 2 (discrimination in employment)
Age Regulations 2006: Part 3 (retirement and dismissal)
Rubenstein: 2006 E.O.R. 154, 21-32

BOOKS IN THE LIBRARY

The library also has a wide selection of textbooks on employment for reference.
Missing Wills

Re: Marion Steenson (deceased)
Late of: 8 Dunkeld Gardens, Belfast BT14 6NT
Formerly of: 5 Rosapenna Parade, Belfast
Date of Death: 26 February 2006

Would any person having knowledge of the whereabouts of the Will for the above named deceased please contact:
Mr Peter O’Rourke
E&L Kennedy
Solicitors
72 High Street
BELFAST BT1 2BE
Tel: 028 9023 2352

Re: Deirdre Maureen Barber (deceased)
Late of: 8 Clarehill Lane, Holywood, County Down BT18 9NL
Date of Death: 25 May 2006

Would any person having knowledge of the whereabouts of the Will for the above named deceased please contact:
Mr Michael Graham
Cleaver Fulton Rankin
Solicitors
50 Bedford Street
BELFAST BT2 7FW
Tel: 028 9024 3141
Email: m.graham@cfrlaw.co.uk

Re: George Simpson (deceased)
Formerly of: 7 Southland Dale, Belfast BT5 7LD
Late of: 6 Beechfield Court, Belfast BT5 4DY
Date of Death: 9 J une 2006

Would any person having knowledge of the whereabouts of any Will made by the above named deceased please contact:
J udith Brown
Alan M Brown
Solicitors

Re: Elizabeth Orr (deceased)
Late of: 30 Abbey Road, Millisle, County Down
Date of Death: 16 May 1988

Would anybody who has any knowledge of the original Will of the above named deceased please contact:
David Russell & Co
Solitors
66 Abbey Street
Bangor
County Down BT20 4J B
Tel: 028 9127 4020
Fax: 028 9127 4327

Estate of: Wilhelmina Burnett (deceased)
Formerly of: 117 Ballyree Drive, Bangor, County Down
Late of: Carnalea Clinic, 20 Crawfordsburn Road, Bangor, County Down
Date of Death: 31 May 2004

Would any person having knowledge of the whereabouts of a Will for the above named person please contact:
J W McNinch & Son
Solitors
5 The Square
Ballyclare
County Antrim BT43 5AJ
Tel: 028 9332 2217
Fax: 028 9335 2518

Re: Bridget Feighan (deceased)
Late of: 1 Beresford Court, Armagh
Date of Death: 8 April 2006

Would any person having knowledge of the whereabouts of the Will for the above named deceased please contact:
Lennon Toner O’Neill
Solitors
54 English Street
Armagh

County Armagh BT61 7DU
Tel: 028 3752 2022
Fax: 028 3752 8108

Re: Charlotte Winifred Black (otherwise Raza) (deceased)
Late of: 15 Ballyreagh Road, Portrush, and 9B Portrush Road, Portstewart
Formerly of: 20 Acres, Ballycastle, County Antrim
Date of Death: 1 October 2004

Would any person having knowledge of the whereabouts of the Will for the above named deceased please contact:
Samuel Cumming & Son
Solitors
39 Linenhall Street
Ballymena
County Antrim BT43 5AJ

Re: Margaret Isabel Baker (deceased)
Late of: Lisnisky Private Nursing Home, 16 Lisnisky Lane, Portadown, County Armagh
Date of Death: 3 July 2006

Would any person having knowledge of the whereabouts of any Will made by the above named deceased please contact:
Conor Downey & Co
Solicitors
Unit 8 First Floor
Legahory Centre
Craigavon BT65 5BE

Re: Denis James Boyd (deceased)
Late of: 730 Clonmeen, Craigavon, County Armagh
Date of Death: 26 April 2006

Would any person having knowledge of the whereabouts of any Will made by the above named deceased please contact:
Gus Campbell
Solitors
44-46 Carlerton Street
Portadown
Re: Estate of John Joseph McGowan (deceased)
Lands of: 26 Breda Park, Belfast BT8 6JR
Date of Death: 24 March 2006
Would any person having knowledge of the whereabouts of a Will for the above named person please contact:
Brian Deeny
Elliott Duffy Garrett
Solicitors
Royston House
34 Upper Queen Street
BELFAST BT1 6FD
Tel: 028 9024 5034
Fax: 028 9024 1337
Email: brian.deeny@edglegal.com
Ref BJD/MCGO12-1
Folios: TY 11027, TY11508, TY 11509
County: Tyrone
Registered Owner: Donald Magee, Crievelough, Brantry, Dungannon
Take notice that any person having custody of or information as to the whereabouts of the Land Certificates relating to the above mentioned Folios should forthwith produce said Certificates or communicate such information to the under mentioned Solicitors.
And further take notice that unless the said Land Certificates are so produced or adequate information as to their whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.
Carmel O’Meara & Co
Solicitors
32 Irish Street, Dungannon
County Tyrone BT70 1DB
BELFAST BT1 3LA
Tel: 028 9043 4015
Fax: 028 9043 4016
Folio: DN 9325 L Down
County: Down
Registered Owner: James Brown & Linda Brown
Registered Owner of a Charge: Abbey National plc
Address of premises: 276a Comber Road, Dundonald, Belfast BT16 1UR
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 information to the under mentioned Solicitors.
And further take notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.
Fitzsimons Kinney Mallon
Solicitors
6-7 John Mitchel Place
Newry
County Down BT34 2BP
Tel: 028 3026 2269
Fax: 028 3026 5660
Folio: 13229
County: Tyrone
Registered Owner: Eugene & Francis Kelly
Lands at: Lands at Aughafad, County Tyrone
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 under mentioned Solicitors.
And further take notice that unless the said Land Certificate is so produced or adequate information as to their whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.
W G Maginess & Son
Solicitors
68 Bow Street
Lisburn
County Antrim
Folio: 216L
County: Armagh
Registered Owner: The Ministry of Home Affairs for Northern Ireland
Lands at: Newry Road, Armagh
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 under mentioned Solicitors.
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A Chambers
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned Solicitors. And further take notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.

John McStravick
Solicitor
67 Upper English Street
Armagh
County Armagh BT61 7LA

Folio: 24920
County: Tyrone
Registered Owner: Robert Biggar
Land at: Brookend

Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned Solicitors. And further take notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.

McKervill Neilly
Solicitors
1 Broadway Avenue
Ballymena
County Antrim BT43 7AA
Tel: 028 2565 2125
Fax: 028 2465 8982

Folio: 24953
County: Tyrone
Registered Owner: John Biggar and Joseph Biggar
Land at: Killywoolaghan

Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned Solicitors. And further take notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for:

McKervill Neilly
Solicitors
1 Broadway Avenue
Ballymena
County Antrim BT43 7AA
Tel: 028 2565 2125
Fax: 028 2465 8982

Our client: Abbey National plc
Premises: 11 Woodlawn Park, Dungannon, County Tyrone BT70 1AH

Any person having knowledge of the whereabouts of Mr Patrick Conway, bricklayer, formerly of 14 Irish Street, Dungannon, County Tyrone (1969) and thereafter of 11 Woodlawn Park, Dungannon, County Tyrone BT70 1AH (1985) is requested to contact the undersigned Solicitors for Abbey National plc which requests the assistance of Mr Patrick Conway in the reconstitution of missing Title Deeds for their borrower, the purchaser from Mr Patrick Conway in 1985.

Paul Fitzsimons
Fitzsimons Kinney Mallon
Solicitors
Solicitors Required

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Lennon Toner O’Neill
Solicitors
54 English Street
Armagh
County Armagh  BT617DU
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Solicitors
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Lurgan
County Armagh  BT66 6EU
Tel: 028 3834 8150

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Solicitors
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Coleraine
County Londonderry  BT52 1AH
Closing Date: 29 September 2006

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Oliver M Loughran & Co
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or by email to: info@macelhatton.com

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Gallery & Campbell
Solicitors
48a Church Place
Lurgan
Craigavon
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Phone: 02879418181
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E-mail: oldschoolconsulting@btinternet.com

Anti-Social Behaviour Orders - ASBOS

Speaker: Mr Mark Robinson, Barrister at Law
Date: 15th September 2006
Venue: Adair Arms Hotel
1 Ballymoney Road, Ballymena
(adjacent to Ballymena Court House)

Time: Registration from 2pm - 2:30pm - Seminar begins at 2:30pm ends at 4:30pm
Cost: £85 - Attendance provides 2 hours CPD

Booking forms and cheques made payable to Old School Consulting Limited should be sent to Old School Consulting Limited, Old School House, 26 Ballymaguigan Road, Magherafelt, BT45 6LE

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Against the backdrop of the Money Laundering Regulations 2003 and the advent of the Proceeds of Crime Act 2002, here is updated advice on the subject.

The legislation means that if one of your clients is found guilty of money laundering the partner dealing with that client has to prove that he had no idea of any criminal behaviour.

Therefore, the onus is on the partner to convince his peers that he had no knowledge of any illicit dealings. The Act also stipulates that the partner will have to prove not only that he did not know that the client was laundering money, but that he had no suspicions or doubts about the client.

For a solicitor to prove that he had no knowledge or inkling of money laundering is difficult. Here are some simple checks, which all partners and lawyers should regularly carry out to keep abreast of a client's business interests and minimise potential damage.

Do a detailed check on a new client as soon as possible before agreeing to undertake any work, by:

- Making sure that you deal with real people or organisations, no aliases or fronts, and;
- Ensuring that the new business has an obvious source of funds; where does your client carry out most of its business?; High risk areas could be:
  - Offshore banking centres;
  - Countries with high levels of organised crime, drug production or terrorism, and;
  - Countries with exceptionally sophisticated financial systems.

Be aware of:

- Unusual and complex transactions;
- Unusual requests or a change in the way a client normally manages his affairs;
- Clients who do not necessarily have to use your practice as these clients might simply be trying to hide behind your good reputation, and;
- Clients who are reluctant to provide information or who are overly secretive.

Make sure everyone in the practice knows:

- What money laundering is and what to look for;
- What to do if they become suspicious, and;
- That even current clients, who have seemingly always behaved impeccably, could suddenly become involved in money laundering.

Remember you are required by the Money Laundering Regulations to have staff training: client identification and record keeping procedures in place in your practice. The Society's Accounts' Inspectors will be checking the position.

Your practice should have a nominated Money Laundering Reporting Officer (MLRO) to whom all staff can talk should they have misgivings about any client. Whoever is allocated this job needs to develop an open-door policy, so no matter how trivial the suspicions of the partner or assistant solicitor or other staff member might be, they are comfortable discussing it. The MLRO will also have to decide whether to make any necessary Suspicious Activity Report (SAR) to NCIS.

With regard to new business, if you have any apprehension about a potential client, then turn the business away. It is never worth the risk to the practice's reputation.

This article was prepared by AFP Consulting's risk management team. AFP Consulting is a division of Alexander Forbes Risk Services UK. The article first appeared in the Gazette, the journal of the Law Society of England and Wales, 100/11 20 March 2005.
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