Access all areas
Reform agenda at the NILSC
News in Brief

**MORTGAGE SWITCH**

Consumers are more likely to switch their mortgage than any other financial product, according to a new index published by the National Consumer Council. Switching of mortgages has risen by 158% since 2000, compared to an average of 52% for all products and services according to the index.

The index, which looks at six different markets, found that customers in all markets were more likely to switch suppliers than they were 5 years ago. Banking was the most stagnant market, with a mere 7% of customers switching and account switching up only 17%.

**INTERNATIONAL CHILD ABDUCTION**

Guidance material outlining the purpose and operation of the Hague Convention and the European Convention with regard to international child abduction is available on the NI Court Service website (www.courtsni.gov.uk – see Quick Links - Child Abduction). The Court Service is the Central Authority for Northern Ireland. The material includes countries covered by the Conventions and offers advice to parents. It also briefly covers non-Convention cases and contains advice relating to preventing abduction.

**PROTECTION INSURANCE**

The Office of Fair Trading (OFT) is to carry out an in-depth study of the market for payment protection insurance after listing a series of concerns, including the size of the market, product complexity, limited understanding by consumers and the way products are sold.

The OFT believes that, while consumers may shop around for credit, they are less likely to do so for payment protection insurance.

**NON-NATURAL DEATHS IN PRISON**

The NI Prison Service has published the findings of an independent review into six non-natural deaths in prison custody in Northern Ireland from 2002-2004.

One of the key factors identified has been a fundamental weakness in the deployment, management and support of staff delivering health services and a lack of central health co-ordination in terms of delivering a modern health service within prisons in Northern Ireland.

The review contains 30 recommendations which have been accepted by the Prison Service. An action plan setting out how the Service plans to implement these recommendations accompanies the review. Both documents are downloadable from www.niprisonservice.gov.uk

**ECJ RULES IN FAVOUR OF AIR PASSENGERS**

The validity of EU legislation on air passengers’ rights has been confirmed by the European Court of Justice. The legislation, which came into force on 17 February 2005, is intended to ensure that air passengers are treated fairly and compensated in the event of denied boarding, flight cancellation or long delays.

The ruling backs the European Commission in its efforts to ensure that the Regulation is properly implemented by airlines and national authorities. It follows an application for judicial review that was first submitted by the International Air Transport Association, the European Low Fares Airline Association and Hapag-Lloyd Express, to the English High Court.

**NEW ABTA CODE OF PRACTICE**

The Association of British Travel Agents (ABTA) Approved Code of Practice has recently been launched by the Office of Fair Trading (OFT). It will guarantee that consumers receive a high standard of customer service where they see the OFT/ABTA Approved code logo.

The OFT only approves codes that are effective in safeguarding and promoting consumer interests beyond the legal minimum. The main benefits for consumers dealing with ABTA members include:

- access to low cost dispute resolution via arbitration should things go wrong
- a disciplinary committee to deal with members who do not deliver the standards required by the Code
- a set of model terms and conditions.

**DROP IN HUMAN RIGHTS ACT CASES**

Statistics published by legal information provider Sweet & Maxwell show that in the UK the number of reported cases making use of HRA arguments fell from 453 in 2004 to 398 last year. The introduction of the legislation in October 2000 saw the number of human rights cases rocket from 143 to 457 in 2001, peaking at 587 in 2003.

However, lawyers say this decline is not necessarily down to fewer instances of cases where the HRA is applicable, but rather an integration of the Act into other laws.
The Reform of Civil Legal Aid in Northern Ireland

INTRODUCTION

The NI Legal Services Commission (the Commission) was established under the Access to Justice (NI) Order 2003. The Commission is tasked with ensuring that, within the resources made available to it, people in Northern Ireland will have access to civil legal services that meet their needs and, where they are involved in criminal investigations, that they have access to criminal defence services. The Commission’s objective is to make the justice system in Northern Ireland fair, accessible and affordable for all, and to help promote social inclusion.

The Commission is committed to regular and open communication with key stakeholders about its plans for reform and will consult extensively on proposals to introduce change to established systems and processes. In order to improve and regularise communication, the Commission undertook a series of meetings with Solicitor Associations around NI recently. During these, the need to balance proposals for the reform of civil legal aid with an awareness of the important role played by legal aid in the operation of the justice system was reinforced.

The Commission is cognisant of its responsibility in ensuring that legal aid plays a constructive part in family, criminal and civil justice proceedings, supporting crucial processes not undermining them. The reform of legal aid is intended to better fulfill that responsibility than current application and processing systems have allowed. The Commission is aware of and appreciates the frustration experienced by legal professionals through inefficiencies of legal aid processes, adding to the already difficult and at times hazardous role of providing justice, fairly and accessibly, to those that need it. The Commission is also aware that in order to successfully take forward the reform of legal aid in NI, confidence of the legal profession in the Commission’s ability to deliver reform must be created. The Commission is committed to working with the legal profession through the changing environment that lies ahead.

The objective is to make the justice system in Northern Ireland fair, accessible and affordable for all...

The purpose of this paper is to share with legal practitioners the Commission’s thinking about the reform of legal aid in NI. It is written at this time to ensure that practitioners can begin to consider what implications the reform of legal aid has for their practice and also to consider adjustments that might need to be made in order to work in the legal aid environment of the future.

EFFIC AcTIVENESS AND EFFICIENCY

In papers published recently1 2 members of the Commission set out the backdrop against which the reform of civil legal aid is taking place. When considering the changes that have taken place in England and Wales and in Scotland, it is apparent that NI lags significantly behind.

It was noted by the Legal Aid Advisory Committee3 that not only did the Legal Aid Department consistently fail to meet performance targets, but also it could offer no explanation about trends in increasing costs at a time when civil legal aid applications were decreasing. The Commission is clear that the reform of legal aid does not only mean working within a capped budget, but also ensuring that performance targets once set are achieved and that trends in civil legal aid expenditure are predicted and controlled. The Commission is currently establishing internal control systems that will meet the quality standards within ISO 9001 in order that we can be assured that our own systems are operating effectively as we turn our attention to the effectiveness of legally aided services and the efficiency with which they are delivered.

The reforms that are being taken forward by the Commission will be outlined under the following headings: Managing Civil Costs; Quality; Access to Legal Aid; Legal Need, Services and the Development of Social Welfare Alternatives; and Fundamental Legal Aid Review.

MANAGING CIVIL COSTS

In addition to taking steps to improve the efficiency of current internal service delivery systems, the Commission has begun the process of examining options that will facilitate the control of expenditure on civil legal aid. In England and Wales, civil legal aid has not been available in cases involving money damages since 2000.

The removal of the availability in England and Wales of civil legal aid for money damages cases also removed...
an administrative burden from the LSC E/W, freeing up resources to be concentrated elsewhere. This is an important factor for consideration at a time when the Commission is scrutinising the efficiency of its own internal operations. However, the Commission is well aware that the operation of Conditional Free Arrangements in England and Wales has been at the very least problematic.

Notwithstanding this, the role of civil legal aid in money damages cases is currently being examined through a detailed Options Appraisal that is being prepared by Prof. John Peysner, Nottingham University. The Appraisal considers solutions in other jurisdictions to the question of Civil Legal Aid spend on money damages cases and presents a number of options with associated strengths and weaknesses. The Commission has ensured that the views of the Law Society, the Bar, the Association of Personal Injury Lawyers, and members of the Insurance Lobby have been canvassed in preliminary consultations. The Commission will engage in pre-consultation before the end of the summer 2006 on the main options identified by this work.

The other strategy for managing civil costs that is being pursued by the Commission concerns the setting of fixed fees and prompt payment of fees in civil cases. In undertaking the task of setting fees in civil cases, the Commission is adopting a similar approach to that of the NI Court Service in setting composite fees in criminal cases. The Commission is currently collating historical data on payments across the range of civil business into civil non-family, civil children and family and criminal. The historical data will be used along with other comparators to benchmark a new set of fees for cases going forward beginning with children and family cases.

The Commission will work with the Law Society and the Bar Council towards the establishment of mechanisms for engagement with the Profession to facilitate the kind of discussion and consultation that will precede the ratification of a fees methodology and the setting of fees in civil cases. It is establishing Protocols with both arms of the profession to ensure continuing and regular communication of information and developments between all parties.

The Commission is committed to modernising and improving the legal aid environment of the future for all participants.

QUALITY

The Access to Justice Order provides the legislative underpinnings for the establishment of a Registration Scheme for service providers wishing to offer legal services at public expense. A Code of Practice to be prepared by the Commission will determine eligibility for registration with the Commission. The Commission will also establish quality standards that must be evidenced by service providers. In its development of a quality approach, the Commission will work closely with key stakeholders, acknowledging the substantial progress already made by solicitors in private practice and service providers in voluntary sector organisations in the development of and adherence to standards. Current good practice within a standards framework, it is hoped, will form a baseline for the development of an accreditation process.

The Commission intends to consult with key stakeholders as to whether the preferred model of service provision is as at present, one of ‘application-based’/compliance, a contracting approach or a mixed economy involving both models as appropriate.

The Commission is currently inserting questions about its own services into the NI Court Service User Survey. It is also developing a relationship with Skills for Justice, licensed as the Sector Skills Council for the Justice Sector in April 2004.

ACCESS TO LEGAL AID

The Commission aims to ensure access to justice for those who most need it and has therefore been concerned that access to civil legal aid appears to be reducing, evidenced by a decrease in the number of cases brought through civil legal aid. The Commission has begun an investigation of financial eligibility levels and intends simplifying the financial eligibility test. This is being carried forward through a research project which will analyse eligibility criteria and apply the analysis to the NI Family Resources Survey to establish the proportion of the NI population which are enabled to access current legal assistance on the basis of current eligibility criteria, and in particular the coverage of Section 75 Groups by the current scheme. Modelling of alternative approaches to eligibility criteria will be undertaken to identify potential improvement in the access of priority groups to publicly funded legal assistance.

Continued on page 38
CPD reminder

The CPD monitoring process has now begun in earnest, and we are pleased with the rate of return of 2005 CPD Record Cards, with 90% received to date. However, that still leaves 10% of cards still to be returned. It is compulsory for every solicitor who currently holds a Practising Certificate to complete 15 hours of CPD each year and to send his or her completed Record Card to the Society. For those of you who have not yet returned your card, please send it in as soon as possible. If you have misplaced your Record Card, please contact Eleanor McCabe for a replacement.

The completed Record Cards should be sent to the Law Society with all relevant sections completed, and the front cover should be signed and dated. If you have any queries about completing the card, or about CPD in general, please contact Eleanor on 028 9023 1614 or via e-mail at eleanor.mccabe@lawsoc-ni.org

Data Protection Act reminder

The Society has been receiving enquiries from solicitors about notification under the Data Protection Act 1988. Notification is a process of registering details of the firm with the Information Commissioner’s Office in Cheshire. The fee is £35 and VAT is not payable.

The Information Commissioner has written to firms who have not yet notified. Any firm which processes personal data has a duty to notify and it is the view of the Information Commissioner that it will be extremely difficult for any solicitor’s firm to prove that it can escape the duty to notify. The Durant case in the Court of Appeal in England has clarified the extent of the application of the Act to manual filing systems with the effect that even a firm without any computers almost certainly comes within the legislation.

Failure to notify is a criminal offence – in an earlier edition of “The Writ” the case of a firm in Bristol was mentioned, in which a fine of £3500 (plus costs) was imposed by the Magistrate for failure to notify. Notification can be done online and the web site of the Information Commissioner has full details of how to do this. Payment, however has to be made by post to the Cheshire office.

Some solicitors were concerned about rogue “data protection” groups who requested larger sums from firms to process notification for them. Notification costs only £35 and is payable only to the Cheshire office – it should not be sent to any other address or to any DX or box number. If, therefore, you receive a letter from the office in Cheshire – or if you have yet to notify- you should take the necessary action now.

The address for payment is Notification Department, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

The telephone number for further assistance is 01625 545700 and the web site is www.informationcommissioner.gov.uk

Did you see?

Did you see the Information Pack recently issued by the Society to all firms in relation to the new advertising regulations which make a number of changes to the forms and methods of attracting clients and the solicitation of clients?


The Pack also contains some Guidance Notes to assist in understanding and complying with the new Regulations.

A hard copy of the Pack is available from the Library – a copy can also be downloaded from the member’s section of the Society’s website at www.lawsoc-ni.org.
Corporate/Commercial Solicitor

Our client, one of Ireland's leading law firms, with over 200 lawyers is seeking a Corporate Commercial Solicitor with at least 2 yrs PQE. The Corporate and Commercial Group is the largest in the firm and will give you the opportunity to advise on highly complex commercial transactions. This is a great opportunity for proactive, creative and ambitious individuals.

Ref: JO267764

Commercial Conveyancing Solicitor

Our client, an established law firm is seeking an English qualified solicitor to join its small team. You will be involved with high quality Commercial Property transactions and a small amount of residential work. Operating in a culture where people feel valued and rewarded for their contribution.

Ref: JO267658

Newly Qualified General Solicitor

Our Client, an established Law Firm in the heart of Belfast City, is seeking a Junior Solicitor to join their expanding team. You will be Newly Qualified +, enthusiastic and ambitious. A fantastic opportunity to join a rapidly growing firm and work in a relaxed & friendly atmosphere. Very competitive salary offered.

Ref: JO267659

Conveyancing Solicitor

Based in the City Centre our Client, is seeking a dynamic and motivated Conveyancing Solicitor to join their team. With a minimum of 3 years PQE you will deal mainly with residential conveyancing as well as some probate and matrimonial work. A brilliant opportunity for an ambitious individual to join a well established Belfast firm with great prospects.

Ref: JO268350

Paralegal/Law Graduate

Our Client, an international company based in Armagh is seeking a Paralegal/Law Graduate to join their commercial department. You will be responsible for co-ordinating and negotiating commercial contracts, liaising with external advisors, along with other duties. You will ideally have a knowledge of commercial/ technical agreements and must be computer literate. A fantastic opportunity to work for a global company with great benefits and a very competitive salary.

Ref: JO268206

For more details on these and other interesting opportunities contact Fionnuala or Katherine on 028 9032 3333 or e-mail legal@blueprintappointments.com
Financial Management Workshop for Legal Practices

Date: 26 April 2006
Time: 9.30am - 4.30pm (lunch provided)
Venue: The Mount Conference Centre, Belfast
CPD hours: 6
Cost: £150

In a busy office environment with a hundred and one things demanding your attention the financial function and the management of the practice can be overlooked. However these functions are the lifeblood of the organisation, are critical to its continuation and demand attention.

In this workshop we will look at all aspects of the financial function including cash control, managing work in progress, practice financing, succession and partnership change, fraud risk management, funding statutory debts and the financial appraisal of partners and staff. Gabriel Greene of Goldblatt McGuigan will take you through the issues by way of case studies and workshops empowering you with the knowledge to avoid the pitfalls.

If you would like to attend please complete and return the booking form below to Eleanor McCabe at Law Society House, 98 Victoria Street, Belfast, BT1 3JZ along with a cheque (made payable to Law Society of Northern Ireland)
Bank changes to crossing on cheques

The Society has received the following letter from the Northern Ireland Bankers’ Association, advising of forthcoming change to crossings on cheques issued by the member banks of the Association. The letter states:

“In order to offer a better degree of protection for our customers who issue cheques, and to bring Northern Ireland into line with banking practices throughout the rest of the UK, the member banks have agreed to introduce the “account payee only” crossing on all cheques.

The practical effects of the changes are that all cheques presented in lodgements at bank counters may only be lodged to the account of the named payee. Businesses and other organisations or individuals who currently accept cheques which are payable to someone else will be unable to accept and lodge cheques where they bear the “account payee only” crossing.

The “account payee only” crossing affords protection to both the drawer and the payee of cheques. The changes being introduced will increase the security of cheques and reduce financial crime.

The member banks are planning to introduce this change over the coming months and all cheque books issued by the banks after Spring 2006 will have the “account payee only” crossing pre-printed on the cheques.

It is our intention to issue a press release shortly to advise the public of forthcoming changes. Customers of the four banks will be informed directly of the changes over the next few months by their bank.”

And when the Pye was opened...

STOP PRESS

In the case of Pye v UK, the UK government has made application for leave to appeal to the Grand Chamber of the European Court of Human Rights. It will be heard by a panel of five judges. It is understood that it may be three to six months before this application is heard.

There is still no word of judgment in the House of Lords case of Price (see the January Writ at page 24). However readers may be interested in knowing of the English Court of Appeal decision in Tower Hamlets London Borough Council v Barrett [2005] EWCA Civ 923 (albeit prior to the decision of the European Court), where the issue concerned the acquisition of a possessory title prior to the commencement of the Human Rights Act and prior to the commencement of the English Land Registration Act 2002. The Court of Appeal held that it was not legitimate to invoke section 3 of the Human Rights Act 1998 Act in such a case on the basis that statutory deprivation was effected before the section came into force. Neuberger LJ observed:

“That has obvious logic, because otherwise one would be invoking the Convention in 2004 or 2005 to deprive persons (in this case, the Barretts) of property which they had acquired before the Convention was brought into English law. If it were otherwise, the Barretts could argue with obvious force that their Article 1 rights were infringed by the subsequent deprivation of property they had already acquired by 12 years’ adverse possession, namely the beneficial ownership of the freehold of the area.”

This is, therefore, very persuasive authority against the 1998 Act having any retrospective effect on cases within this jurisdiction.

We are grateful to E.J. David McBrien LLB, LLM, Barrister-at-law of the Inn of Court of Northern Ireland and of the King’s Inns, Dublin for this note.
Land Registers celebrates awards first for NI

Land Registers of Northern Ireland (LRNI) has achieved success at the e-Government National Awards - a first for the public sector here and the only organisation outside England to do so.

LRNI was Highly Commended in the ‘Central e-Government excellence: take-up’ category for its Landweb programme. This scheme has transformed LRNI services from a paper intensive, inefficient process to using streamlined electronic systems, as well as offering a new online service for solicitors.

The e-Government National Awards are a yardstick for UK excellence and innovation in e-Government, recognising best services which improve the way Government works for and with citizens and businesses. Winners in the 11 categories were chosen from 249 nominations from across local councils, central government departments and other public sector organisations.

Patricia Montgomery, Chief Executive of LRNI, explained: “It’s wonderful to be officially recognised at these Awards, and particularly satisfactory to be flying the flag for Northern Ireland.”

“The Landweb programme really has transformed the way we work and the service we provide - in fact, our online access service for searching the registry records now accounts for over 95% of all transactions. The benefits of these improvements have also had a very positive impact on our relationship with customers. 600 external organisations now use Landweb. This is an increase of over 30% on customer numbers in 2004. Our website, Landweb Direct regularly receives over ½ million hits per month and is the site most regularly used by the legal profession in Northern Ireland.”

If any member of the profession wishes to obtain further information about Landweb or Landweb Direct they should contact the LRNI Customer Information Manager Brigid McAlinden on 02890251760 or e mail her at brigid.mcalinden@lrni.gov.uk.

Land Registers are also prepared to arrange training on Landweb for members of the profession or their administrative staff. Training can be arranged in Lincoln Building or at a convenient venue. In the past training has been successfully arranged through the Local Associations. Anyone wishing to avail of this training opportunity should contact Mrs McAlinden.

Particular improvements to LRNI’s service include:

- Around 80% of conveyancing solicitors in Northern Ireland now use the Landweb Direct online service.
- Paper records (including maps and folios) going back more than 100 years converted into electronic format and documents archived.
- Introduction of technology to improve management processes, including Electronic Records Management.
- Rationalising back office processes to focus on service provision.
- Improved turnaround times for all transactions leading to a speedier conveyancing process for the public who buy and sell property.
Housing Bulletin published

The Northern Ireland Housing Bulletin, including sales of new houses and apartments during the period July to September 2005, has been published by the Department for Social Development. Some of its key findings with year-on comparisons include:

- The average selling price of NHBC-registered new houses sold during the quarter was £134,000, an increase of £18,000 (15.5%) on the same quarter in 2004.
- The average selling price of NHBC-registered new houses ranged from £105,100 in Strabane District Council to £215,900 in North Down District Council according to provisional figures.
- The average intended selling price of NHBC-registered flats and maisonettes was £118,000, £17,000 (16.8%) higher than the quarter ending September 2004.
- Detached houses represented 29% of all NHBC intended housing starts. The total number of NHBC starts recorded for this quarter (2,322) represented a decrease of 11.4% on the same quarter in 2004.
- Of the new dwellings actually started, 98.5% (3,592) were commissioned by the private sector. Total number of starts increased from 3,384 for the quarter ending September 2004, to 3,646 for the quarter ending September 2005.
- Belfast was the district council with the greatest number of new housing starts, namely 535. This represents an increase of 17.8%, in the district council, on the same period last year.
- A total of 4,993 households presented as homeless to the Housing Executive with ‘Sharing Breakdown or Family Dispute’ being the most common reason cited.

The bulletin is available on the Department for Social Development’s website at http://www.dsdni.gov.uk/index/stats_and_research.htm
The interest rate on Inheritance Tax (IHT) has been reduced to 3 per cent with effect from 6th September 2005.

Following the coming into force of the Civil Partnership Act on 5th December 2005, transfers of value between civil partners are exempt from IHT. Very broadly, the rules on IHT that previously applied to married couples are extended to civil partners. Return Forms have been revised to reflect the change but HMRC will continue to accept returns on the existing forms.

As from 9 January 2006 all estates where form IHT200 is completed are initially being handled by HMRC Capital Taxes in Nottingham. This means that when applying for a grant from the Probate Registries in Belfast or Londonderry, you should now send the IHT200, supporting papers (and payment, if due) to:

HMRC Capital Taxes
Ferrers House
PO Box 38
Castle Meadow Road
Nottingham
NG2 1BB
DX 701201 Nottingham 4

Once initial processing has been completed, the cases will be allocated to caseworkers across all three IHT offices as now.

For the avoidance of doubt, this change only applies to estates where Form IHT200 is required - all application for grants for excepted estates should continue to be sent to the appropriate Probate Registry.

With effect from 31st January 2006 all payments made in respect of IHT calculations issued by the Belfast office should be sent to Nottingham Cashiers (electronic transfers should use the Bank of England 10-00-00 / 23430303). All other correspondence and adjustments to the estate should be notified to Belfast.

Practitioners are reminded that where an estate qualifies as an excepted estate the correct return is IHT205 rather than IHT200 and as the Excepted Estates Regulations contain an automatic clearance procedure, clearance applications on IHT30 are not appropriate. HMRC has also said that, contrary to press reports, information on excepted estates is used only to monitor the operation of the regulations, not to gather data about estates so that assets can be traced through to the estate of a surviving spouse (or civil partner).

Where the Direct Payments Scheme is being used, HMRC would much prefer practitioners to telephone its helpline (0845 30 20 900) to obtain a reference over the phone. Applications can however still be made by post. D20 has been changed so that it doubles as the form to obtain the reference and make the application to the bank. D21 has been made obsolete.
It is often said that the years pass more quickly the older you get. So where did 2005 go? How many of us stood, with minutes to go before the New Year begins, asking “what happened this year”? Not many we are guessing - so it’s probably a good time to pause here to consider: what exactly happened during 2005 in the Northern Irish legal community?

2005 has shown that it is still a candidate-driven market, with firms in all locations, of all shapes and sizes, seeking to find that most special individual from a very limited number of candidates. It seems that almost all disciplines are suffering from the same shortage of quality individuals.

The result is that Lawyers are becoming increasingly sophisticated in how they manage their careers. They ask more questions about the legal market, want far more information about firms they may be interested in and of course want a more personalised and seamless recruitment service - put simply, they have become more discerning.

Consequently at PRG we have tailored our approach to recruitment and have found that those clients and candidates who work most closely with us; sharing their plans, key objectives and priorities etc, receive a service that exceeds their expectations. For example PRG recently saved a client vast amounts of time and money by closely listening to and meeting their needs. Before their consultation with PRG the client believed they needed 2 new Solicitors to join their Firm. However, PRG helped the client to recruit the perfect candidate who was able to cover 2 functions within the Firm, eliminating the need for the 2nd solicitor.

From January 2005 all solicitors in Northern Ireland are subject to the Compulsory Professional Development Scheme (CPD) whereby they are encouraged to take responsibility for their own development and learning. In response, PRG are running a series of seminars to help you gain these extra CPD points essential for your career progression. Please contact us for more information on this, or any other recruitment matters.

So what should we expect in 2006? We may see an increase in Recruitment and Law firms working together as partners. Based on past performance it seems that when Recruitment and Law firms work together the results they achieve are significantly better than those achieved from the arms length relationship they had in past years.

“It is still a candidate-driven market, with firms seeking to find that most special individual.”

Orla Stewart, Managing Consultant
PRG LawSearch, 02890 314 644 or email orlastewart@prglawsearch.com
In-house Conveyancing Solicitor

Co Tyrone
An exciting opportunity has arisen with a Property Development company in Co Tyrone. Our client wishes to recruit a Conveyancing Solicitor with at least 2 years’ PQE. You will act on behalf of vendors, purchasers and lenders on all incoming and on-going residential conveyances from beginning to completion and will also be responsible for dealing with building developments on behalf of the builder and liaising with the land owner. Flexibility on working hours considered. Ref: 3739

General Conveyancing Solicitor

Belfast
A superb opportunity has arisen to join a well established and rapidly expanding firm of Solicitors. You will have a plentiful caseload and will concentrate mainly on residential conveyancing with some commercial conveyancing. Suit 2 years’ + PQE. Ref: 3734

Commercial Property Solicitor

Belfast
Our client has become one of the leading Litigation/Commercial Law Firms in Northern Ireland. This firm has considerably expanded its Commercial Property Practice and is well known for acting on behalf of a number of leading property developers in Northern Ireland. The firm’s expertise in this field extends to providing advice and legal services on all aspects of commercial property and property developments, including office buildings, shopping centres and housing developments. With a superb client base this is a fantastic opportunity for an ambitious solicitor to join a lucrative firm. Suit 3 years’ + PQE. Ref: 3682

Commercial Litigation Solicitor

Belfast
Our client is one of the leading Commercial Law Firms in Northern Ireland and is amongst the largest of the Northern Ireland Law Firms. Great emphasis is placed on building relationships with clients, getting to know their businesses and objectives. This firm of Solicitors has a client base of local, national and international businesses, banks, government authorities and entrepreneurs. Our client represents a number of leading insurers and commercial litigators where the firm deals with such matters as building contract disputes and breach of contract which includes arbitration, mediation and Alternative Dispute Resolution (ADR) and the involvement of the Commercial Court. Suit 2 years’ + PQE. Ref: 3395

Conveyancing Solicitor

Co Antrim
Friendly general practice in the suburbs of Belfast wishes to recruit an enthusiastic Solicitor with experience in residential conveyancing. This is a superb opportunity for an ambitious Solicitor who wishes to join a progressive firm where career advancement is encouraged. Suit 2 years’ + PQE. Ref: 3699

In-house Private Client/Family Business Lawyer

Belfast
Superb opportunity has arisen to join a successful organisation’s Corporate Legal Services Division. You should have good drafting skills and a good working knowledge of NI/UK company/commercial law and should have experience of drafting wills, shareholder and partnership agreements, and have an understanding and appreciation of the operation of trusts. While not essential, knowledge of IHT planning would be an advantage. Suit 4 years’ + PQE. Ref: 3666

Litigation Solicitor

Belfast
Our client is a highly regarded practice in Belfast. Their Litigation team advises a wide range of clients including a variety of major insurers, transport companies and commercial and private clients. Due to an increased workload they wish to recruit a Defence Litigator with a desire to succeed. Suit 1-2 years’ PQE. Ref: 3614

In-house Corporate/Commercial Lawyer

Belfast
Our client has an excellent opportunity for a Corporate/Commercial Lawyer to join its Belfast office. You will have good drafting skills and a good working knowledge of NI/UK company/commercial law and should have experience of working on large scale corporate/commercial assignments in a corporate orientated firm. Suit 4 years’ + PQE. Ref: 3271

In-house Solicitor

North West
Our client, a large bluechip US company, wishes to recruit a Solicitor to provide legal advice to several business units and functions of the company and in administrative matters relating to personnel, property leasing, etc. You will negotiate and draft documentation for various company transactions and provide research, factual information, counsel, and guidance on legal questions or issues; you will also assist in the preparation of cases for litigation, reviewing complex documents relating to transactions in which the company is to participate. Some domestic travel will be involved in this role. Suit Qualified Solicitor or Barrister with 2-4 years’ PQE. Ref: 3744

For more details please call Orla Stewart in the strictest of confidence at PRG LawSearch on 02890 314 644 or email orlastewart@prglawsearch.com

OFFICES IN BELFAST, GLASGOW AND EDINBURGH

Call us today on 02890 314 644, 0141 331 9380 or 0131 240 0790 www.prgrecruitment.com

Professional Recruitment Group Limited, trading as PRG, acts as both an Employment Business and an Employment Agency
A Wine and Cheese Evening to celebrate the inaugural meeting of the Northern Ireland Commercial Property Lawyers Association will be held on Thursday 23rd March 2006 at 5.30 pm - 7.30pm at Law Society House, 98 Victoria Street, Belfast BT1 3JZ

The Guest Speaker will be Mr Justice Weir who will give a keynote speech.

To assist with catering arrangements, kindly advise attendance to Paula Tohill, Law Society House Tel: 028 9023 1614 Email: paula.tohill@lawsoc-ni.org
Attention all Family Law Practitioners!

Would you like to obtain your entire CPD Client Care and Practice Management requirement at one time?

The Law Society of Northern Ireland, in association with the Institute of Professional Legal Studies and the Northern Ireland Court Service are organising events during 2006 that will allow you to do just that!

The events will take place in three locations throughout the province, making use of video-conferencing facilities at Laganside courts in Belfast and the regional courts in Dungannon and Londonderry. The seminars will provide all of the required 3 hours of Client Care and Practice Management, as well as giving practitioners an opportunity to see at first hand the technology now available to them to assist in presenting their clients’ cases in court.

Video conferencing is a tried and tested method of providing improved access to education and training to delegates in different parts of the country. Depending on the success of this pilot event, we hope that this will be the start of a number of such seminars that will enable practitioners to attend training without the inconvenience of travelling far from their office.

The first seminar being broadcast via video link is entitled “Client Care for Family Law Practitioners”. It will be held from 9.30 am - 12.45pm linked between Belfast and Londonderry and from 1.30pm - 4.45 pm linked between Belfast and Dungannon on Monday 10 April 2006 at the participating courts. The cost of the seminar will be £90 per delegate.

Topics to be covered during the seminar include LSNI Family Law Client Care Guidance, Children Order Advisory Committee Best Practice Guidance, issues surrounding domestic violence (including video) and recent developments in Court technology (including video-conferencing and tele-conferencing)

Should you wish to register for the seminar, please complete the attached application form and return with a cheque to Joan Playfair at IPLS, 10 Lennoxvale, Belfast, BT9 5BY. If you require further information on the event, please call Joan on 028 9097 5567.

Client Care for Family Law Practitioners
10 April 2006

Title: 
Name: 
Firm: 
Firm Address: 
Postcode: 
Telephone Number: 
E-mail: 
Cheque enclosed: (made payable to “Queen’s University Belfast”) 

I would like to attend the seminar on 10 April at (please tick one option):

<table>
<thead>
<tr>
<th>Morning</th>
<th>Afternoon</th>
</tr>
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<tbody>
<tr>
<td>Belfast Laganside Courthouse 9.30 am - 12.45 pm</td>
<td>1.30 pm - 4.45 pm</td>
</tr>
<tr>
<td>Londonderry Courthouse 9.30 am - 12.45 pm</td>
<td>Not available</td>
</tr>
<tr>
<td>Dungannon Courthouse Not available</td>
<td>1.30 pm - 4.45 pm</td>
</tr>
</tbody>
</table>

Please photocopy this form for additional participants
Four Jurisdictions Family Law Conference Dublin 2006

Just over 200 delegates comprising family law solicitors, barristers and members of the judiciary from Northern Ireland, Eire, Scotland and the English Northern Circuit attended the eleventh Four Jurisdictions Family Law Conference which was held in Dublin over the last weekend in January.

Further to a welcome reception on the Friday evening in the magnificent Banking Hall of the Westin Hotel on College Green, the conference took place on the Saturday in the Conference Centre at Dublin Castle.

After being welcomed to Dublin by Mr Justice Finnegan, President of the Irish High Court, the conference opened with a presentation and panel discussion on Developments in the European Union in the field of Family Law. This was followed by an address on The Civil Partnership Act 2004 and a further presentation and panel discussion on Divorce – Parents and Children – Striking the Balance. Copies of the presentations given by the Northern Irish speakers - Master Redpath, Master Wells and Margaret Ann Dinsmore QC - are available on request from the Secretary to the Family Law Committee.

On the Saturday evening, following a reception hosted by Brian Lenihan TD, the Republic’s Minister for Children, the conference came to a close with a black tie dinner held in the sumptuous surroundings of the State Apartments in Dublin Castle.

Next year’s conference is being held in Edinburgh from 26th to 28th January 2007.
A new domestic violence leaflet entitled “The law can help” was recently launched at a major two day domestic violence conference in Belfast. The theme for the Raising the Standards Conference, which was attended by over 200 delegates from all parts of the UK, the Republic of Ireland, Guernsey and the Isle of Man, was working together to prevent abuse with a focus on prevention, education and inter agency co-operation.

The leaflet sets out how the civil and criminal law can help victims of domestic violence.

An A4 size version is being distributed widely to solicitors’ offices, courts, health facilities and libraries. A small “credit card size” version is also available for members of the public to take away with them. Copies are available by contacting 90261391.

The leaflet was developed using a multi-agency approach. It complements the existing DVD “The law on your side” which was developed by North & West Belfast Domestic Violence Partnership and was partly funded by the Law Society. The DVD traces the journey of a victim from the point where she decides to seek help through leaving home and through the civil court process which provides her with the protection to return home safely with her children. A small number of copies of the DVD are available from the Society.
Taste your way around the world!
Wine tasting and appreciation with light supper featuring renowned sommelier Paul Flynn of Holywood & Donnelly at Ten Square, private dining suite, Belfast, on Friday 10 March at 7:30pm.

- fine selection of world class wines with tastings and advice on each region featured
- delicious world themed canapés carefully selected by the head chef in consultation with the sommelier to compliment the wines
- make it a special night - preferential room rates available to our guests for overnight accommodation at Ten Square (subject to availability)

Ticket price £20, includes all wines and supper.

Tickets available now but are subject to availability. Book now to avoid disappointment!

Book your tickets by contacting the BSA administrator on:
Tel/fax: 028 9058 5974
Email: info@belfast-solicitors-association.org
Post: Suite 7 Merrion Business Centre, 58 Howard Street, Belfast BT1 6PJ

All tickets must be paid in advance to secure booking.

Please make cheques payable to the Belfast Solicitors’ Association.

INTRODUCTION

The Executive’s three Land and Property Solicitors Panels meet all the requirements of its Land and Property sections in respect of the services of external solicitors. (Each Panel meets the requirements of a particular Housing Executive Land and Property outlet).

The Panels (and their membership) are as follows:

- North Panel (two members, deals with the requirements of the Derry/Londonderry outlet)
- South Panel (two members, deals with the requirements of the Craigavon outlet)
- Belfast Panel (three members, deals with the requirements of the Belfast outlet)

In addition, the members of each Panel may be required to carry out work for certain registered housing associations. (Any such work will have to be carried out on the same terms and conditions, including terms as to fee-discount, as are applicable to Executive work).

DURATION OF PANELS

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

ELIGIBILITY CRITERIA

A firm will be eligible for appointment to a Panel if it satisfies all of the following eligibility criteria:

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

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

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

D. The designated solicitor must have carried out conveyancing as a predominant (more than 50%) part of his/her workload for at least one year (or for periods in aggregate amounting to one year).

E. Another solicitor in the firm must have carried out conveyancing as a substantial (more than 25%) part of his/her workload for at least one year (or for periods in aggregate amounting to one year).
COMPANY AND COMMERCIAL LAWYERS' GROUP

LUNCHEON SEMINAR

COMPANY LAW REFORM

Date: Tuesday 7 March 2006
Speakers: Juliet Whitford and Tom Courtney (DETI Company Law Branch)
CPD Hours: 1
Cost: FREE for members and £5 for non-members
Venue: Law Society House, Victoria Street, Belfast
Time: 12.45pm

Juliet and Tom will discuss the Company Law Reform Bill which was introduced to the House of Lords on 1st November 2005 and received its second reading on 11th January 2006. It is proposed that the Bill, and future legislation under it, should extend directly to Northern Ireland.

The seminar will take place at Law Society House, Victoria Street, Belfast and will commence at 12.45 pm with coffee and sandwiches available from 12.30 pm. The cost of this CCLG luncheon seminar is FREE for members and £5.00 for non-members.

Cheques should be made payable to Company & Commercial Lawyers Group and sent to Clara Seymour, L'Estrange & Brett Solicitors, Arnott House, 12-16 Bridge Street, Belfast, BT1 1LS

Attendance at this seminar will attract one hour CPD entitlement.

ONE DAY SEMINAR

DUE DILIGENCE – IN DEPTH (Morning) and HEAVYWEIGHT COMMERCIAL CONTRACTS (Afternoon)

Date: Thursday 6 April 2006
Speaker: Keith Lewington, MA (Oxon)
CPD Hours: 6
Cost: £140 for members and £180 for non-members
Venue: Ten Square Hotel, Belfast
Time: 09.15 – 17.00 Lunch and refreshments provided.

Keith will discuss Due Diligence – in Depth in a morning session and Heavyweight Commercial Contracts in an afternoon session.

The morning session examines the purpose, content and conduct of legal due diligence exercises including questions to ask, what to report and how to manage the process.

The afternoon session looks at structuring contractual documentation and drafting heavyweight commercial provisions such as price and price adjustment, disputes, and such like.

The seminar will take place at Ten Square Hotel, 10 Donegall Square South, Belfast and will commence at 9.15am and finish at 5pm. Lunch will be provided. The cost of this CCLG seminar is £140 for CCLG members and £180 for non-members.

Cheques should be made payable to Company & Commercial Lawyers Group and sent to Clara Seymour, L'Estrange & Brett Solicitors, Arnott House, 12-16 Bridge Street, Belfast, BT1 1LS

Attendance at this seminar will attract six hour’s CPD entitlement and the level is Intermediate.

BOOKING FORM:
Company Law Reform
Name(s):
Firm:
Address:
Telephone:
E-mail:

Due Diligence – in depth / Heavyweight Commercial Contracts
Name(s):
Firm:
Address:
Telephone:
E-mail:
**BUSINESS LAW SEMINARS**

Are you interested in a Certificate in Business Law?

The Institute of Professional Legal Studies will be offering a course or individual seminars in Business Law.

Main facilitator: Peter Burbridge, MA, Cantab, Barrister-at-Law, Senior Lecturer at the University of Westminster

<table>
<thead>
<tr>
<th>Date</th>
<th>Seminar</th>
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<tbody>
<tr>
<td>Monday 27 March 2006</td>
<td><strong>Sale of Goods</strong></td>
</tr>
<tr>
<td>Monday 10 April 2006</td>
<td><strong>Marketing Agreements – Agency</strong></td>
</tr>
<tr>
<td>Monday 24 April 2006</td>
<td><strong>Distribution, franchising and competition law</strong></td>
</tr>
<tr>
<td>Monday 8 May 2006</td>
<td><strong>Intellectual property rights - 1:</strong></td>
</tr>
<tr>
<td></td>
<td><em>Introduction to the different IP rights/protection brands</em></td>
</tr>
<tr>
<td>Monday 15 May 2006</td>
<td><strong>Intellectual property rights - 2:</strong></td>
</tr>
<tr>
<td></td>
<td><em>Copyright and design rights</em></td>
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<tr>
<td>Monday 5 June 2006</td>
<td><strong>Intellectual property rights - 3:</strong></td>
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<td></td>
<td><em>Patents, know-how and technology licensing</em></td>
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<thead>
<tr>
<th>Time</th>
<th>9.30am – 1.00pm</th>
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<tbody>
<tr>
<td>Venue</td>
<td>IPLS, 10 Lennoxvale, Belfast, BT9 5BY</td>
</tr>
<tr>
<td>Cost</td>
<td>£100 per seminar / £500 for course</td>
</tr>
</tbody>
</table>

3 CPD hours are awarded for attendance at each seminar.

Successful completion of all 6 seminars will lead to Certificate in Business Law.

The Closing Date for applications is 21st March 2006

(Details of this course can also be found on the IPLS website – www.qub.ac.uk/ipls)

**PLACES ARE STRICTLY LIMITED**

Please note that it is not possible to provide refunds after the closing date. Allocation of a place at the seminars will be confirmed in writing by IPLS.

Queries should be directed to: Mrs Barbara Jemphrey, IPLS. Tel: 028 9097 5567, Email: b.jemphrey@qub.ac.uk

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**BUSINESS LAW SEMINARS**

Institute of Professional Legal Studies
Continuing Professional Development Programme

Name: ____________________________

Firm: ____________________________

Address: ____________________________

Tel. No: ____________________________

Email: ____________________________

I wish to attend the following seminars (please tick):

Seminar 1 ☐  Seminar 2 ☐  Seminar 3 ☐  Seminar 4 ☐  Seminar 5 ☐  Seminar 6 ☐  All 6 seminars ☐

and enclose remittance of:

This booking form and cheque, made payable to QUEEN’S UNIVERSITY BELFAST, should be sent to Mrs Joan Playfair, Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY.
The Annual Report of the Health & Safety Executive for Northern Ireland (HSENI), covering the period April 2004 to March 2005, records that over the five year period from 2000 to 2005 the number of injuries at work being reported has fallen from just over 4,500 to less than 3,700, representing a 20% reduction. The Report also provides a comprehensive report on the many activities undertaken by HSENI and records many of the successes and targets achieved during the year 2004/05.

Professor Peter McKie, HSENI’s Chairman, said, “This is a very significant reduction in the number of reported work-related injuries. Whilst one must always remain cautious against reading too much into statistics, I see the continuing downward trend as a clear endorsement of the innovative and challenging approach being adopted by HSENI since its establishment as the regional authority for health and safety in 1999.”

“This approach is based on three complementary strands; the provision of advice and assistance; the recognition of good practice and the relentless pursuit of those who blatantly flout the law. This has proved to be a very successful model and one which we will continue to build on into the future.”

Professor McKie added, “Credit must also be paid to the work undertaken by HSENI’s enforcement partners, the District Councils, who have supported HSENI in its drive to tackle the priority issues and have undoubtedly contributed to the improvements seen over recent years.”

HSENI’s inspectors carried out just under 6,500 inspection and investigation visits last year, up from just over 5,000 in the previous year, representing an increase of almost 30%. Whilst seven prosecutions were completed during 2004/05, the same as the previous year, the number of enforcement notices served by inspectors requiring corrections to serious health and safety contraventions increased from 288 in 2003/04 to 346 in 2004/05 - an increase of 20%.

Commenting on the above figures, Professor McKie said “These statistics demonstrate clearly that HSENI can by no stretch of the imagination be described as ‘a toothless watchdog’. Whilst we will certainly assist and encourage those employers who want to improve their health and safety management, our inspectors will use their considerable enforcement powers whenever appropriate to ensure that others less willing are not allowed to escape their legal duties to protect their workers.”

Copies of the Report can be accessed via HSENI’s website at www.hseni.gov.uk

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**The Essentials of Using and Drafting Trusts**

2 Half-day Seminars in association with Higgins Insurance & Investments on 3rd and 25th May at the Ulster Reform Club 10.00 – 13.00

Due to high demand, we have pleasure in presenting two courses designed to educate and refresh all the knowledge needed for Trust practitioners, from two of the country’s top speakers.

1. Trusts and Beyond –
   John Woolley LLB FCII FTII
   This seminar will cover all technical detail needed in dealing with Trusts and when to use them:
   - Why use a Trust?
   - The benefits of Trusts in tax planning
   - Types of Trust and their taxation
   - Suitable Trustee Investments
   John regularly contributes articles on tax planning to various journals as well as making guest attendances as a speaker at various financial services and tax conferences.

2. Drafting Trusts –
   Sheena Grattan LLB
   Sheena will add the legal aspects of Trust use and the drafting of Trusts.
   - Basics of Drafting Trusts
   - Potential Problems and Pitfalls
   - Recitals
   - Precedents and clauses

Sheena is a practising barrister, Lecturer and the author of Succession Law in Northern Ireland, the Trustee Act INI 1958, and, with James Kessler QC, Drafting Trusts and Will Trusts in Northern Ireland.

These seminars provide 3 hours CPD each and are available for the combined price of £175, or £95 individually. To reserve a place, please contact Martin Catherwood on 028 9083 1115 or email martincatherwood@cjhiggins.co.uk Places are allocated on a first come first serve basis, and demand is expected to be high.
The Control of Noise at Work Regulations (NI) 2006
S.R. 2006 NO. 1

These Regulations come into operation on 6th April 2006. They will revoke and replace the current Noise at Work Regulations (NI) 1990 (S.R. 1990 No. 147), which came into operation on 11th June 1990. They will implement, for Northern Ireland, Directive 2003/10/EC of the European Parliament and of the Council on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise).

The Regulations impose duties on employers and on self-employed persons to protect both employees who may be exposed to risk from exposure to noise at work and other persons at work who might be affected by that work. The main changes from the current Regulations are the reduction by 5 decibels of the exposure levels at which action has to be taken, the introduction of a new exposure limit value and a specific requirement on health surveillance.

The Regulations provide for transitional periods for the commencement of their operation as follows:

• for the music and entertainment sectors only they shall not come into operation until 6th April 2008. However, the Noise at Work Regulations (NI) 1990 will continue to apply until that date; and

• where they apply to the master and crew of a seagoing ship, regulation 6(4) (application of the exposure limit values only) shall not come into operation until 6th February 2011.

Further information/guidance on noise can be found at www.hse.gov.uk/noise/index.htm and www.hse.gov.uk/pubns/noisindx.htm.

Republic of Ireland Agents

We are willing to act as agents in most legal matters.

Our offices are close to Courts, Government Buildings and Commercial Centre.

Fee splitting by arrangement.

Hughes & Liddy Solicitors

2 Upper Fitzwilliam Street
Dublin 2
Tel: (00 3531) 6766763
or (00 3531) 6789701
Fax: (00 3531) 6766702
EMPLOYMENT LAWYERS’ GROUP
(NI)

Sec.  John O’Neill, Thompsons McClure Solicitors, 171 Victoria Street, Belfast
E-mail: JohnO’Neill@thompsons.law.co.uk
Chairperson  Mary Lewis BL
Hon. Treasurer  Alana Jones

www.legal-island.com/elg.htm

LUNCHEON SEMINAR

Preparing Pension Loss Reports for Tribunals

Speaker: Nicola Niblock, ASM Horwath
Date: Friday 24 March 2006
Time: 1pm (tea coffee and sandwiches from 12.30pm)
Venue: Law Society House, Victoria Street, Belfast
Cost: Members £5, Non-members £10.

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

Booking forms and cheques, payable to The Employment Lawyers’ Group (NI), should be sent to our Treasurer, Ms Alana Jones, Napier & Sons, Solicitors, 1-9 Castle Arcade, High Street, Belfast BT1 5DE

BOOKING FORM

Name
Firm
Address

I enclose remittance of £
Speers & Associates & B W Group
Afternoon Seminar 6th April 2006

“Happy New Year”- the first day of the fiscal tax year to ensure your clients save tax

Speers & Associates in association with B W Group are hosting this seminar on managing client wealth and expectations.

Concentrating on all the issues of property ownership, Pre-Owned Asset Taxation, business succession, exit strategies and mitigating liability without loss of control.

It is especially targeted at experienced and newly qualified Solicitors involved in Probate, Estate Planning, Will Drafting, Commercial advice, Business Property and taxation advice or acting in the capacity as trustees.

Topics covered will be:
- Taxation of trusts
- Pre-Owned Assets – past and future liabilities
- Effective Inheritance Tax planning
- Retaining control of assets
- Residential property transfer by parents to children
- Mitigating CGT on business property
- Gift & Loan arrangements that actually work
- Alternative solutions to the “seven year exemption”
- Solutions for the asset rich but cash poor that cannot avail of traditional tax mitigation strategies.
- Leaving the UK – non-residency planning
- Domicile planning

The seminar will highlight potential negligence claims areas and offer innovative solutions.

BOOKING FORM
TO reserve a place on the seminar please copy and fax to 028 9185 9995

I/we wish to secure _______________ places (Cost per delegate £50)
Venue: The Law Society, Belfast
Seminar time: 2.00pm - 4.30pm
*Qualifies for 2.5 Hours CPD

Name:

Practice:

Telephone:

Email:

Alternatively please email: mail@speersandassociates.co.uk
Registered Office: Speers & Associates, 5 Chatsworth, Bangor, Co Down, BT19 7WA
The main advantage of formally designating someone as risk manager is that there is a named and accountable person whose task is to consider the risks to the firm and how to avoid them. This person can, but need not be, one of the partners, but whoever it is, the person chosen must have sufficient seniority to command the respect of the lawyers in the firm. Without a risk manager the risk management activities get relegated to the bottom of the pile and lurk in the hinterland of guilt, inducing things that never get done.

What activities will the risk manager undertake?

- The risk manager will be undertaking the analysis of risk and reporting on this to the partnership.
- This will involve collating information on risk from departments and from activities that affect the firm as a whole, such as IT or accounting systems or office procedures.
- Staff awareness of risk and its impact on the firm’s commercial success or otherwise will be within this remit, with training and the dissemination of information about risk.
- It will be the risk manager’s responsibility to draft policies and procedures to avoid risk, prepared in conjunction with supervisors and departments.
- Risk managers need to support supervisors and departmental heads in the implementation of the risk policies and procedures and to ensure that proper credit is given for good implementation.
- Success or otherwise needs to be monitored so that improvements can be made if necessary. This means collecting data through discussion with staff, file reviews and complaints and claims records – and then analysing the data. An annual risk review is advisable to consider revisions to be made and new risks on the horizon.

Firms will need to get used to formal risk management but over time the manager will acquire expertise in analysing risk, formulating risk avoidance procedures and dealing with problems when they arise. Risk awareness will become a skill that enables a firm to shift from a reactive and intuitive approach to risk, to an analysed and controlled risk policy.

This column was prepared by AFP Consulting, a division of Alexander Forbes Risk Services UK Ltd and first appeared in The Gazette, the journal of the Law Society of England and Wales, 101/24 17 June 2004
Northern Ireland Young Solicitors’ Association

NORTHERN IRELAND YOUNG SOLICITORS’ ASSOCIATION
IN ASSOCIATION WITH BRIGHTWATER RECRUITMENT AND FIRST TRUST BANK

ANNUAL CONFERENCE & MID-SUMMER BALL 2006

Ten Square, Belfast
Friday 16th June
Saturday 17th June
June 16th – June 18th 2006
Welcome and drinks reception
10.00 am – 1.00 pm: Practice Management seminar and light lunch. Seminar to include speakers from the Law Society of Northern Ireland, Marsh Indemnity Insurers, Brightwater Recruitment and Moore Stephens Chartered Accountants. Full details of topics to follow on the NIYSA website and next edition of the Writ.

Saturday afternoon activities to be confirmed

Saturday 17th June 7.30 pm – Drinks Reception Mid-Summer Ball in the Porcelain Room, Ten Square, Belfast
Accommodation, which is not included in the registration fees, may be available at Ten Square. When booking please quote NIYSA as a preferential rate has been arranged.

REGISTRATION FORM

Please note: Your name and organisation will appear on your badge as you have specified below. A separate form should be completed for each delegate attending.

DELEGATE DETAILS

Title: Name: Surname: Firm/Organisation: Contact Address: Telephone: Fax: Email:

Please tick the appropriate box(es) below:

☑ I will require vegetarian food
☑ I have other dietary requirements and would like to be contacted
☑ I have specific needs in relation to sight, mobility, hearing etc and would like to be contacted

The following fees exclude travel, accommodation and expenses etc. Please confirm which elements you wish to register for by ticking the relevant box below. Your booking will be confirmed by means of an acknowledgement letter that will be emailed to you once your registration has been processed and payment cleared (if paid in advance).

☑ I wish to attend the whole Annual Conference (Fri-Sun) @ £75.00 inc. VAT
☑ I wish to attend the Practice Management Seminar on Saturday 17th June only @ £60.00 inc. VAT
☑ I wish to attend the Friday night drinks reception only
☑ I wish to attend the Mid-Summer Ball only @ £35.00 inc. VAT
☑ I wish to attend the Friday night party and Mid-Summer Ball only @ £35.00 inc. VAT
☑ I enclose a bankers draft/cheque (drawn on a UK bank) made payable to Northern Ireland Young Solicitors Association

Cancellation Policy: Should you wish to cancel please advise Kiera Lee in writing as soon as possible. Payment must be in advance. No payments will be accepted on the day.

Please return this form as soon as possible to: Kiera Lee, NIYSA Secretary, Mills Selig Solicitors, 21 Arthur Street, Belfast, BT1 4GA. E-mail: kiera.lee@nilaw.com Tel: 028 9024 3678
TABLE QUIZ 2006

DATE:    Thursday, 9 March 2006
TIME:    Drinks Reception 6.30pm with quiz starting promptly at 7.00pm
VENUE:   Europa Hotel, Belfast.
ENTRANCE FEE: £40 per table of five

Cheques and Booking Forms to
NIYSA
c/o Aleric Turtle,
Carson McDowell Solicitors,
Murray House, Murray Street, Belfast
E Mail: aleric.turtle@carson-mcdowell.com

All proceeds to go to CLIC Sargent Cancer Care for Children

BOOKING FORM (TEAMS OF FIVE)

1. (Captain)
   Name:
   Firm:
   Contact No:

2. Name:
   Firm:

3. Name:
   Firm:

4. Name:
   Firm:

5. Name:
   Firm:

E-MAIL ADDRESS:

I ENCLOSE REMITTANCE OF: £40.00

NORTHERN IRELAND YOUNG SOLICITORS’ ASSOCIATION
IN CONJUNCTION WITH THE FIRST TRUST BANK
PRESENT A LUNCHTIME LECTURE ON:

“A WHISTLE STOP TOUR OF THE FREEDOM OF INFORMATION ACT (2000)”

The Freedom of Information Act (2000) came into force on 1 January 2005. Under this Act, anybody may request information from a public authority that has functions in England, Wales and/or Northern Ireland. The Act provides opportunities for access to information that previously may have been difficult or impossible to obtain. However, the Act also opens up areas previously held sacrosanct by lawyers. This lunchtime seminar will give attendees an insight into the impact of the Act and associated legislation including the Data Protection Act and the Environmental Regulations.

SPEAKER:  Mr Stephen McCartney, Operations and Policy Manager of the Freedom Of Information Office in Northern Ireland

DATE:    Monday 10th April 2006
TIME:    1pm- 2pm (tea, coffee and sandwiches from 12.30 pm)
VENUE:   Law Society House, Victoria Street, Belfast
COST:    £10 for members of the NIYSA* and £20 for non-members. * All Solicitors aged 36 or under are automatically members of the NIYSA.

Attendance at this Seminar will provide 1 hour’s CPD entitlement.

Cheques and Booking Forms to NIYSA c/o Toby McMurray,
Tughans Solicitors, Marlborough House, 30 Victoria Street,
Belfast, BT1 3GS; E-mail to Toby.McMurray@tughans.com

BOOKING FORM - Lunchtime lecture - The Freedom of Information Act

NAME
FIRM
ADDRESS
E-MAIL ADDRESS
TEL
NUMBER OF PERSONS ATTENDING
I ENCLOSE REMITTANCE OF £
Solicitor Advocacy - Reflections

It is a sobering thought on entering 2006 that the Advocacy Working Party is celebrating its seventh anniversary and that we are preparing the programme for the seventh Advanced Advocacy Course. The details are set out in the loose application form which is inserted in this edition of the Writ. You should read the leaflet carefully and remember to apply for the Advanced Advocacy Course in good time or, ensure that at least one member of your firm/organisation registers.

The benefits flowing from Solicitor Advocacy are so obvious that they hardly warrant repeating here. One seldom hears a negative attitude to Solicitor Advocacy expressed from within our own profession anymore. As a result of the annual Advanced Advocacy Course the Society has satisfied the Lord Chancellor’s Department and the Lord Chief Justice that our members are fit and proper people to appear as Advocates before the Court. That is the one achievement that all within the Society and the Advocacy Working Party in particular, regard with no little sense of pride. The appearance of Solicitor Advocates in Crown Courts, County Courts, Tribunals and even in the High Court itself has not caused the sky to fall nor the ground to open. Relations with our colleagues in the Bar and the reception given to our members by the Judiciary at all levels are generally positive. The progress of the Solicitors profession in the field of Advocacy is reflected in the growing number of our members elevated to the Bench and the opening of the grant of the award of Queens Counsel to Solicitors. The record of Solicitor members of the County Court Bench makes it inevitable that Solicitor Judges will, sooner rather than later, be elevated to the High Court.

There are now one hundred and fifty of our members certified Solicitor Advocates. In the criminal field the progress has been marked by the enactment of the Legal Aid for Crown Court Proceedings (Costs) Rules (NI) 2005 which provides for proper remuneration on a par with Counsel for those who can demonstrate expertise and competence in the Crown Court. There have been several trials conducted by Solicitor Advocates over the last year and it is common place to see Solicitors enter pleas and make applications covering many areas of law in Crown Courts throughout Northern Ireland.

The Industrial Tribunals have provided an opportunity for members with expertise in the fields of employment and discrimination law to make their mark and provide parties in that forum with a choice of Advocate. That is particularly important in a forum where costs generally do not follow the event and funding is a paramount concern.

County Courts are yet another forum where Solicitor Advocates, certified or otherwise, practise regularly and where the enhanced/Advocacy fee ensures that the additional skill and effort required in presenting the case without Counsel is remunerated appropriately.

At a time when morale among the profession is low with members complaining of reduced margins, loss of client loyalty, the strict regulatory regime and crippling overheads, the opportunity to introduce Solicitor Advocacy into a firm is a positive development. It enables firms to increase areas of practice, enhance fee earning potential, widen the client base to include individuals and organisations who wish to deal with the one practitioner from beginning to end of a case and raise professional self-esteem and confidence among Solicitors.

It is not all positive however. We must still ensure that Solicitor Advocacy is not equated with avarice nor perceived to be exploiting regimes of fixed/scale fees. Section 106 of the Judicial Act (NI) 1978 remains on the Statute Book and acts as a disincentive to practitioners who wish to appear in the High Court. Some members of the public are still unaware that trained experienced Solicitor Advocates do not offer a second class service and further education in that regard must be made.

The Council and the Society in general are united in promoting Solicitor Advocacy. The tide is not for turning. Make sure you and your firm are not washed away in the ebb of that tide of practice development. Sign up this year for the Advanced Advocacy Course. By the way you should appreciate that by doing so you will obtain the full annual quota of CPD hours from this one course.

Tony Caher
CPD Training Programme
March - June 2006

If you would like to reserve a place at any of the events below, please complete the attached booking form. For further information about programme content, contact Eleanor at 028 9023 1614 or via e-mail at eleanor.mccabe@lawsoc-ni.org.

<table>
<thead>
<tr>
<th>Date</th>
<th>Title</th>
<th>Venue</th>
<th>Cost</th>
<th>Time</th>
<th>CPD hours Allocation</th>
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<tbody>
<tr>
<td>2 March</td>
<td>Freedom of Information - Friend or Foe?</td>
<td>City Hotel, Derry</td>
<td>£30</td>
<td>12.30-2.30</td>
<td>1½</td>
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<tr>
<td>22 March</td>
<td>The Changing Face of the Youth Court</td>
<td>Canal Court Hotel Newry</td>
<td>£60</td>
<td>1.30-4.30</td>
<td>2½</td>
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<td>24 March</td>
<td>The Changing Face of the Youth Court</td>
<td>Omagh College Conference Centre</td>
<td>£70</td>
<td>1.00-4.30</td>
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<tr>
<td>7 April</td>
<td>Legal Online Day</td>
<td>Law Society House</td>
<td>£30 per module or £50 for 2 or more modules - contact Heather on 028 9023 1614 for further information</td>
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<tr>
<td>25 April</td>
<td>Investigations under Part VIII of the Proceeds of Crime Act 2002</td>
<td>Law Society House</td>
<td>£30</td>
<td>3.30-4.30</td>
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<tr>
<td>26 April</td>
<td>Financial Management Workshop for Legal Practices</td>
<td>The Mount Conference Centre Belfast</td>
<td>£150</td>
<td>9.30-4.30</td>
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<tr>
<td>12 May</td>
<td>High Court Litigation - Practice &amp; Procedure</td>
<td>Hilton Hotel, Belfast</td>
<td>£90</td>
<td>1.00-4.30</td>
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<td>16 &amp; 17 June</td>
<td>Client Care and Practice Management</td>
<td>Details to be confirmed at a later date</td>
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How to Book:

Please take a copy of the booking form below for each delegate/course, complete the form and forward to Eleanor McCabe at Law Society House, 98 Victoria Street, Belfast, BT1 3JZ along with a cheque for the appropriate amount, made payable to “The Law Society of Northern Ireland”.

Title of Event: __________________________________________

Date of Event: __________________________________________

Title: __________ Name: __________________________________

Firm: __________________________________________________

Firm Address: ____________________________________________ Postcode: __________________

Telephone Number: __________________________________ E-mail: __________________

Cheque enclosed: ________ (made payable to “Law Society of Northern Ireland”)
Law Centre (NI)

IMMIGRATION - free movement of workers and the rights to bring non-EEA family members to the UK- Part 2 Chen and Zhou

This is the second part of an article by Fidelma O’Hagan and Ellen Weaver, immigration advisers at Law Centre (NI), which aims to explain the rights of European Economic Area (EEA) citizens to have their non-EEA family members live with them in the UK1. This edition defines ‘family member’, explains the decision of the European Court of Justice in the case of Chen & Zhou2 and the recent amendments to the Immigration Rules.

Who is a family member under the Immigration (European Economic Area) Regulations 2000 (the Regulations)?
The family members of an EEA national have the right to be admitted and/or to stay in the UK on the same basis as the EEA national, whether or not they are EEA nationals themselves. The definition of a family member depends on whether the EEA national is a student or not.

If the EEA national is a student, ‘family members’ are defined as:
- her/his spouse/civil partner; and
- her/his dependent children (of any age).

If the EEA national is any other ‘qualified person’, for example, a worker3, family members include:
- her/his spouse;
- her/his children and grandchildren up to the age of 21 or over 21 if dependent;
- her/his dependent parents, grandparents, great-grandparents.

It is important to note that the definition of ‘dependence’ may be emotional, financial and/or practical4. Other relatives may also qualify depending on the circumstances and lawyers should be creative in these applications. In considering these cases, the Home Office must give effect to the broad scope of family rights provided for under Community law which must be interpreted purposively. As such, it is possible to be successful although the non-EEA national may not come within the above definitions. For example, Law Centre (NI) has succeeded in an application for documentation on behalf of a young woman despite the fact that the Home Office failed to recognise the adoption order in the UK.

There is no provision in the Regulations for unmarried partners to be treated as family members, but the Home Office has confirmed that unmarried partners who have been living together for two years will be admitted on the same basis as they are currently admitted under the immigration rules. This includes heterosexual as well as homosexual couples. The case of Rigo v Secretary of State for the Home Department argues that partners should be recognised as family members within the Regulations. It has been referred to the ECJ by the Asylum and Immigration Tribunal on this point.

Spouses/civil partners remain entitled under the EEA Regulations irrespective of separation, and this can be important, for example in instances of violence within a marriage which necessitates separation. However, divorce ends the entitlement of a spouse/civil partner in the EEA Regulations5, unless s/he qualifies under the Baumbast ruling (see below). Unmarried partners cease to have EEA rights upon separation.

In Baumbast, the ECJ held that an EU citizen child of non-EU citizen parents had the right to have her/his parents with her/him in the member state in order to finish her/his education; failure to allow this deprives the child’s right of residence of any useful effect under Community law.6

Where the EEA national dies before the Home Office issues her/him with documents confirming that s/he has settlement in the UK, the non EEA widow(er), surviving partner or other family member retains EEA rights if:
- the EEA national resided continuously in the United Kingdom for at least two years before her/his death; or
- the death resulted from an accident at work or an occupational disease; or
- the surviving spouse had been a UK national until marriage to the deceased.

The facts and decision in Chen & Zhou
Mrs Chen and her husband are Chinese nationals who both worked for a Chinese company, of which he was a director and majority shareholder. This work involved frequent travel to the EU and particularly the UK. Mrs Chen gave birth to a daughter Catherine Zhou, in Belfast in September 2000. Catherine has Irish citizenship by dint of her birth in Northern Ireland (prior to the restrictions on entitlement to Irish citizenship by birth in Ireland which came into effect on 1 January 2005). Mrs Chen then moved to Wales with her daughter and submitted an application to the Home Office for an EEA residence document for herself and EEA residence permit for Catherine. Mrs Chen and Catherine held private health insurance and made no claims on UK social security and health services.
It was argued that Catherine was a qualified person:

- as a recipient of childcare and medical services and therefore within the meaning of EU Directive 73/148; and/or
- that Catherine was a self sufficient person within the meaning of Directive 90/364; and/or
- that Catherine had a direct right to reside in the UK as an Irish citizen under Article 18 of the Treaty of Rome.

Mrs Chen claimed a right to a residence document:

- as a dependent member of Catherine’s family; and/or
- as Catherine’s primary carer; and/or
- under Article 8 of the European Convention on Human Rights - right to family life.

The Home Office refused to issue the permit and document. Mrs Chen appealed against this decision. On appeal, the immigration adjudicator referred the case to the European Court of Justice, which held that:

- the fact that Catherine had not exercised free movement outside of the UK did not deprive her of EU rights to free movement and residence;
- Catherine’s age was of no relevance to her right of free movement under EU law as an Irish citizen;
- the right of residence of persons receiving services must be for the same period of time as the receipt of services, therefore, Catherine could not be a ‘recipient of services’ because she was receiving childcare for an indefinite period and medical services for a temporary period;
- a person is self sufficient if s/he has the necessary resources to avoid being a burden on the social system of the host country, even if these resources are provided for her/him by another person. The principles of freedom of movement must be interpreted broadly and no requirement can be justified as to the origin of the resources which make a person self sufficient;
- it was of no consequence to the case that Mrs Chen had come to Northern Ireland to give birth for the specific purpose of her child acquiring Irish citizenship;
- Mrs Chen could not be defined as a ‘dependent relative of Catherine in the ascending line’;
- ‘...a refusal to allow the parent, whether a national of a Member State or a national of a non-Member Country, who is the carer of a child to whom Article 18 EC and Directive 90/364 a right of residence, to reside with that child in the host Member State would deprive the child’s right of residence of any useful effect. ...The child is entitled to be accompanied by the person who is his or her primary carer...’

Amendments to the immigration rules

The Home Office sought to implement the decision in Chen & Zhou by making changes to the Immigration Rules in 2005. These changes exclude people who are employed from the definition of ‘self sufficient’ persons for EEA purposes. Experts in EU law consider that this restriction is not justified by the ECJ judgement and is, therefore, challengeable.

It is not yet clear who will benefit from the decision of Chen & Zhou. Unfortunately, it is not possible to predict accurately how the law will develop in this field. People who are employed may wish to make applications to the Home Office and, if refused, lodge appeals. This is a complex area of law with very strict deadlines for appealing and it is advised that specialist advice should be sought prior to lodging applications.

Law Centre (NI) is currently challenging a decision by the Home Office to refuse to issue documents on the basis that the non-national parent is working. The applicant will benefit from the expert opinion of the AIRE Centre as a witness before the Asylum and Immigration Appeal Tribunal. We will seek to argue that, according to Chen & Zhou, the non-national parent of the EEA citizen child is self-sufficient as a self employed worker and therefore, to give proper effect to the rights of the child, the parents must be allowed to accompany the child in the UK. It is hoped that the tribunal will agree that the recent amendment to the immigration rules does not implement the decision in Chen & Zhou, and that to exclude people who are employed from the definition of ‘self sufficient’ persons for EEA purposes is unlawful.

Footnotes:

1. see The Writ November/December 2005 pages 34-35 for part 1 of this article.
2. Case C-200/02 [2004]
3. See The Writ November/December 2005 page 34 for a definition of ‘qualified person’
4. Case 316/85
5. Case 267/83
6. Case C-413/99
SOCIAL SECURITY FOR LAWYERS
A Law Centre (NI) course

Attracts 5 CPD hours for solicitors

This practical course focuses on key social security issues that affect the daily work of solicitors.

The course will cover the savings rules affecting means-tested benefits and how personal injury awards, maintenance claims and other financial settlements affect benefits.

It will look at how social security and personal social services legislation and case law apply to questions of property when a person goes into nursing or residential care.

It will also consider how the social security system deals with shared childcare arrangements.

When?
Belfast: 24 March 2006
Derry: 30 March 2006

How much?
Members statutory/private: £125
Non-members statutory/private: £200

For an application form, contact our Training Department, Law Centre (NI)
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Textphone: 028 9023 9938
Email: patricia.morgan@lawcentreni.org
THE CHANGING FACE OF THE YOUTH COURT

Developing Legal Expertise
- New diversionary measures
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The Changing Face of the Youth Court

Please tick which venue you would like to attend:

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22 March 2006
1.30pm - 4.30pm 2.5 CPD hours
£60 per delegate

Omagh College Conference Centre
24 March 2006
1.00pm - 4.30pm 3 CPD hours
£70 per delegate

Title: __________ Name: __________________________________________________________________
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Firm Address: ___________________________________________________________________________
Postcode: __________________________
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Cheque enclosed: ________ (made payable to “Law Society of Northern Ireland”)
Driving course alternative to court appearance

The Police Service of Northern Ireland has launched the Northern Ireland Driver Improvement Scheme. Motorists who meet the relevant criteria will be offered a Driver Improvement Course as an alternative to a court prosecution.

The relevant criteria are as follows:

- There must be evidence of Careless or Inconsiderate Driving sufficient to sustain a prosecution under Article 12 of the Road Traffic (NI) Order 1995
- There is no requirement that the alleged offender must admit the offence
- No other offences, such as No Insurance, is revealed
- The motorist has not, within the previous three years, attended a Driver Improvement Course
- The driver is the holder of a full current licence or possesses a Certificate of Competence to Drive
- If the potential prosecution arises out of a Road Traffic Collision (RTC) no party to the RTC was seriously or fatally injured.
- The driver is prepared to pay the course fee (this condition is a matter between the service provider and the individual. The police will not enter into negotiations regarding an individual’s ability to pay).

Each course lasts one-and-a-half days and will cost the motorist £135. Driving Services Ltd, based in Cheshire, has won the tender to provide the course at a number of non-police centres across Northern Ireland.

In those areas where the Public Prosecution Service make the decision on prosecution, the PPS will decide whether the motorist should be referred to Driving Services Ltd with a view to the offer of a Driver Improvement Course. In all other areas, this decision will be made by the Police Criminal Justice Manager.

It is expected that the offer will be made within a period of six weeks from the date of the incident.

Where a driver refuses the offer of a Driver Improvement Course, or accepts the offer but does not attend the course, or attends the course and acts in an uncooperative or disruptive manner, then the matter will be referred back to the Police Service/Public Prosecution Service to proceed with a prosecution.

The course is an alternative to prosecution only for careless driving offences where a driver’s mistake rather than intent or dangerousness has led to a collision. It is designed to correct poor driving behaviour arising from errors of judgement without the need to bring the case to court. Evidence of recklessness or deliberate action will result in a prosecution.

The consequences of a collision could in theory be disregarded once the offender’s error has been corrected but in the public interest the course should not be offered where serious injury or death has been caused.

If a person’s driving falls far below the standard of driving which would be exercised by a reasonable, prudent, competent driver then a charge of Dangerous Driving under Article 10 of the Road Traffic (NI) Order 1995 should follow.

There is no legislative requirement for the introduction of a Driver Improvement Scheme. Such schemes are considered to be good practice, as an alternative to a prosecution, to improve driving behaviour and thereby reduce the level of death and injuries on our roads.

Announcing the introduction of the Scheme, Superintendent Brian Kee, Head of the Police Service’s Road Policing Development Branch, said: “The Driver Improvement Scheme is all about making Northern Ireland’s roads safer. We want to reduce the number of people killed and seriously injured. It works on the principle that it must be in the public interest to put a fault right rather than punish. This is not a soft option. Drivers opting for the improvement course will have to pay the £135 fee and attend a one-and-a-half day course. Those who don’t can have their day in court. We are seeking to improve driving behaviour and the attitude of motorists whose driving has fallen short of the standard which would normally be exercised by reasonable, prudent and competent drivers.”
Proceeds of Crime Act 2002 - Part VIII

Further to previous training provided by the Society in relation to the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003, the Society has organised a seminar on the specific provisions of Part VIII of the Act. By means of a hypothetical case study, the investigatory powers under POCA available to the authorities in civil recovery investigations will be explored and consideration given to a number of practical issues relating thereto to include the operation of privilege and funding arrangements. This seminar will take place at Law Society House on Tuesday 25th April 2006 – for Booking Form see page 29.

As previously advised, Peter O’Brien at Law Society House, who as Assistant Secretary of Policy and Law Reform, has responsibility for the Society’s Practice Committees, is available to provide general advice to practitioners in relation to the operation of the law relating to money laundering. The Society’s officers cannot of course make decisions as to whether an individual solicitor in the particular circumstances of a case should disclose matters to NCIS or not - that must be a matter for each solicitor.

Forthcoming local publication on POCA - views required

In an effort to ensure that a forthcoming local publication on the application of the money laundering and confiscation provisions of the Proceeds of Crime Act 2002 addresses practical issues and concerns, practitioners are invited (anonymously or otherwise) to submit to the PO Box identified below, any particular problematic issues which they have recently encountered in the context of the particular legislation, and in respect of which they would welcome further guidance or clarification.

Given the purpose of the exercise it is not proposed to enter into any correspondence directly, or to acknowledge any correspondence received.

Those interested should reply to
PO Box 163
c/o Burnside PR Ltd, 128a High Street
Holywood, Co Down BT18 9HW

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Litigation reports prepared on all aspects of agricultural/horticultural production, livestock and handling, including personal injury and loss adjustment, by an experienced Expert Witness, checked and listed in the Sweet & Maxwell Directory of Expert Witnesses 2006, is a Member of the British Institute of Agricultural Consultants and a trained Mediator on agricultural problems.

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McIlmoyle & Associates
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20 Young Street, Lisburn, BT27 5EB

Tel: (028) 9266 1766
Fax: (028 9266 1128
Email: info@mcilmoyleassociates.co.uk
Website: www.mcilmoyleassociates.co.uk
The Institute of Professional Legal Studies

Police and Criminal Evidence Conference

Monday, 15th May 2006

The Institute of Professional Legal Studies is hosting a conference dedicated to the Police and Criminal Evidence legislation and its implications for advising the suspect in custody. This PACE conference is the ideal forum to familiarise yourself with the latest developments. The interrogation of suspects is considered to be one of the most crucial stages in the investigative process; therefore it is essential that it is carried out in an efficient and ethical fashion.

The confirmed speakers include local practitioners, Tony Caher, Solicitor, Brian Archer, Solicitor and Mark Mulholland, Barrister, with the keynote speaker being Anthony Edwards, Solicitor and Senior Partner of T.V. Edwards, London. His books include Advising the Suspect in the Police Station and (with Roger Ede) Criminal Defence: A Guide to Good Practice.

Time: 9.30a.m. – 5.00p.m.
Venue: Institute of Professional Legal Studies, 10 Lennoxvale, Belfast.
Cost: £130

9.30 Registration & Coffee

Changes in police station advice caused by the Criminal Justice Act 2003
Anthony Edwards

The experience of the local Solicitor
Tony Caher

Advising the suspect - the approach to disclosure and choice of action
Anthony Edwards

PACE & the client with learning difficulties/mental disorders and children
Brian Archer

PACE Interviews
Anthony Edwards

The exclusion of admissions under PACE.
The development of case law in Northern Ireland.
Mark Mulholland BL

17.00 Close

Items in italics will attract 3 Client Care CPD Hours
The full day Conference will attract 6 CPD Hours

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, 5th May 2006
(Details of this conference can also be found on the IPLS website – www.qub.ac.uk/ipls)

Please note that it is not possible to provide refunds after the closing date.

Police and Criminal Evidence Conference

Monday, 15th May 2006

Name:

Firm:

Address:

Tel. No:

I enclose remittance of £
Legal Aid in unsuccessful applications for leave to appeal against conviction

The Northern Ireland Court of Appeal has recently issued some guidance in relation to the granting of legal aid in cases involving an unsuccessful application for leave to appeal against conviction.

In the case of R v Martin Heaney (2005) NICA 53 following the applicant's abandonment of his appeal against conviction for murder, junior counsel for the applicant sought a legal aid certificate in respect of work undertaken by the legal representatives of the applicant in preparation of the application for leave to appeal. Counsel's submissions that there was considerable merit in the applicant's application for leave to appeal were not accepted by the Court of Appeal.

Giving the judgment of the Court, the Lord Chief Justice said:

"The issue for us now is whether we should accede to an application that the legal representation that the applicant has received to date in respect of what appears to be a worthless appeal should be paid for from public funds. Counsel has told us that a great deal of work was undertaken by the applicant's new legal team and I do not doubt that this is so. But it should be clearly understood that the industry of legal representatives will not warrant the grant of legal aid for an application for leave to appeal which should not have been made.

"It is well known that the public funds available for legal aid are not limitless. This court, in common with other courts whose duty it is to certify that legal aid should be made available, has a duty to ensure that those cases that are without merit are not publicly funded. One of course has sympathy with counsel and solicitors who expend considerable efforts in the preparation of cases for which, ultimately, no payment will be made but it would be quite wrong to certify for legal aid in cases where the appeal is futile.

"We wish to make it clear, therefore, that the grant of legal aid in unsuccessful applications for leave to appeal against conviction can no longer be regarded as automatic. Where such an application is abandoned, as a general rule, legal aid will not be certified unless it can be demonstrated that there are exceptional circumstances justifying this course. Since we have not previously had the opportunity to make this clear, we will, not without considerable hesitation, certify for legal aid in this case but we hope that today's guidance will be considered carefully by practitioners in this court for the future".

The full text of the judgement can be downloaded free of charge from the Libero database on the member's section of the Society's website: - www.lawsoc-ni.org

Violent and sex offender database launched

A new database which allows the police to improve monitoring and management of sex and violent offenders has been launched by the PSNI.

The Violent Offender and Sex Offender Register (ViSOR) will connect police to a national computer network and allow officers to share information on offenders with partner agencies.

Previously police and other agencies had relied on local databases to record details of offenders. This has hindered them sharing and accessing information.

ViSOR will play a vital role nationally in keeping tabs on violent and sex offenders. It will mean that a body of information and intelligence on such offenders can be easily and swiftly logged on a UK-wide database for all police forces to share and have access to.

It also means that anyone who is on the register can be managed by police and partner agencies in whatever part of the UK they locate to. About 300 officers have been trained to use the database and a back record conversion has involved incorporating information and intelligence and grading it before inputting it to ViSOR.

Launching the ViSOR database at Garnerville Police College in Belfast, Assistant Chief Constable for Criminal Justice Department, Judith Gillespie, said:

"Criminal justice agencies appreciate the significance of compiling and, even more importantly, sharing information about violent and sex offenders. The Bichard Inquiry into the handling of Ian Huntley in the Soham murders case has given added impetus to the need for criminal justice agencies, in particular the police, to be able to share information.

"In this first stage, only sex offenders will be placed on the database. Violent offenders will be put on the system when the necessary legislation is in place. We would also hope that partner agencies in Northern Ireland will become connected to ViSOR.

"Whilst initially ViSOR will primarily be used as a tool to manage sex offenders, the intelligence held on the system can be used for the prevention and detection of crime which should lead to increased community safety and public confidence."
The Reform of Civil Legal Aid in Northern Ireland

Continued from page 4

In terms of the merits of cases brought to the Commission, a Funding Code is currently being developed that will be central to Commission plans to refocus legal aid, targeting resources to those most in need. The Code will replace the existing ‘merits test’ for civil legal aid with a new flexible set of rules to determine which individual cases should receive funding, based on clear priorities and criteria. It will also determine the levels of service which will be available under civil legal aid.

The NI Funding Code will be underpinned by findings from the Legal Need Survey, current patterns of coverage and relevant Government policy. The Funding Code will be designed to address local need drawing on lessons from the approaches taken elsewhere in the UK, and will be the critical umbrella under which the new approach to civil legal services will become available by late 2007.

The Commission identified the absence of research into legal need in NI as a gap that had to be filled before work on other reforms could commence. A literature review was commissioned - this confirmed the absence of local research and provided a number of options to assessing legal need in Northern Ireland. The key recommendation, subsequently endorsed by the Commission, was that the NI Omnibus Survey represented the most cost-effective approach to taking forward a legal needs research programme.

The relationship the Commission develops and maintains with legal service providers is crucial to achieving the kind of changes that will bring legal aid in NI up to a position where it will be envied by other parts of the UK.

The Commission has also identified the need for additional qualitative studies to complement this study and ensure adequate coverage of the justiciable problems of all Section 75 groups, such as ethnic minorities and children and young people.

The findings from the Legal Need Survey will be reported by the Commission during 2006, including at a joint international conference to be held in Belfast in April 2006 with the Scottish Legal Aid Board and the LSRC on Legal Need.

Mapping those legal services currently available in Northern Ireland is a further Commission priority. The first stage of a project to map legal services has been completed. Ultimately this project will enable a gap analysis to be completed in terms of the availability of current services against identified need. It will also direct the development of pilot projects to extend access to justice to meet identified gaps.

The Commission intends to explore innovatory approaches to the delivery of legal assistance and will commission pilot studies of such approaches from providers of services in all sectors. These will be informed by results from the Legal Need and Mapping Legal Services studies, and initial areas will focus on promoting social inclusion through improved access to justice, and alternative approaches to dispute resolution. In this vein, the development of a Collaborative Law pilot project is currently being piloted in association with the Law Society.

The Commission sees the development of partnerships with the voluntary sector as providing important conduits for alternatives to the legal process and strengthening existing provision.

The Commission is also examining new areas or approaches to the delivery of
legal services such as Mediation and Telephone Advice and Assistance.

**FUNDAMENTAL LEGAL AID REVIEW**

The long-term future of the legal aid system and how best to provide publicly-funded legal services to those who need them was the focus of the Fundamental Legal Aid Review (FLAR) initiated in England and Wales, and extended to Northern Ireland. FLAR addressed a number of issues about legal aid against a backdrop of increasing costs that included:

- how legal aid can provide services which meet the needs of society.
- how it can be best used to help people improve their lives and prevent social exclusion.
- how legal processes and innovative ways of delivering legal services can be developed to ensure the best use of taxpayers’ money.

The Review in NI was carried out by the Northern Ireland Court Service working closely with the Legal Services Commission. The projects undertaken through FLAR were all aimed at improving the effectiveness and efficiency of legal aid delivery in NI. They included:- Statutory Charge and Debt Recovery, Social Welfare Alternate Channels Phase 1 (Mapping Legal Services), Expert Witnesses, Jurisdictional Changes and Rights of Audience and Representation of Parties.

The final report from FLAR in Northern Ireland will shortly be available and will record how work that was initiated under FLAR will be taken forward and will be embedded in the Commission’s reform agenda to deliver civil legal services by late 2007.

**CONCLUSION**

The Commission is well aware that before it begins to focus on the performance of service providers it must first ensure that legal aid payments to the profession are made on the basis of an agreed set of fees and are not subject to inexplicable delay. While this objective is being pursued a parallel process is also being taken forward, and that is the reform of civil legal aid in preparation for full implementation of the Access to Justice Order.

The time-lag, compared to other parts of the UK, of reforming legal aid presents both a challenge in terms of the scale of the reform agenda, and an opportunity to learn lessons from other jurisdictions. The Commission is on record as wishing to provide ‘NI solutions to NI problems’. This can only be achieved through joint working with service providers and their professional bodies.

The Commission is committed to modernising and improving the legal aid environment of the future for all participants, service providers as well as service users. The relationship the Commission develops and maintains with legal service providers is crucial to achieving the kind of changes that will bring legal aid in NI up to a position where it will be envied by other parts of the UK. It is believed that regular and open communication with providers and their professional bodies will assist in this process.

**FOOTNOTES**

3. Lord Chancellor’s Department, NI Court Service, Legal Aid Annual Report, 2002-2003, Foreword By the Chairman of the Lord Chancellor’s Advisory Committee on Legal Aid in NI, p 82.
6. NI Court Service (2004) Fundamental Legal Aid Review, Interim Report to HM Treasury, ‘Over the period(1993-2003) the number of certificates granted in respect of civil matters has fallen by almost 25% from 14,505 to 11,102. Total expenditure, adjusted to allow for inflation, has increased by 129% from £4.0m to £10.8m. The average cost per case, adjusted to allow for inflation, has risen by 25%’.
8. Section 75, NI Act 1998 places a statutory duty on public authorities to have due regard to promote equality among 9 specified groups such as:- persons of different racial group, persons with a disability and persons without, persons with dependants and without.
9. Lord Chancellor’s Department, NI Court Service, Legal Aid Annual Report, 2000-2001, Foreword By the Chairman of the Lord Chancellor’s Advisory Committee on Legal Aid in NI, p 58.
Criminal Justice Review recommendations on course

Lord Clyde, Justice Oversight Commissioner for Northern Ireland has released his fifth and penultimate report on the progress which has been made in implementing the 294 recommendations of the Criminal Justice Review.

Noting some highlights of the latest review period, Lord Clyde said, “I was glad to note the signing of the Intergovernmental Agreement between Northern Ireland and the Republic of Ireland in July 2005, enabling the formal implementation of work on cross-border matters to progress. Also, with effect from last August, 17 year-olds have been brought within the ambit of the Youth Court in line with the United Nations Convention on the Rights of the Child. September saw the introduction of the criminal justice module as part of the post primary citizenship curriculum. Furthermore, in October there was the launch of the Probation Board’s Victim Information Service.”

Lord Clyde added, “Some areas can now be seen as complete or very near completion. My team has completed its review of progress across the criminal justice system in relation to the important matter of training in human rights. From our investigations during the periods of this and earlier reports it is evident that the agencies, the legal professions and the relevant parts of the voluntary sector have now fully integrated human rights principles into their training. This is of course an area in which work will continue into the future throughout the whole system, but it is gratifying to see the progress which has now been achieved.”

“We completed a series of visits to the courts throughout NI in connection with the various recommendations which relate to the provision of facilities and to the operation of the courts. The relevant recommendations are now to a significant extent completed. We have been particularly impressed by the improvements made to the layout and operation of the youth courts at both Belfast and Londonderry.”

Lord Clyde also referred to a number of areas of delay and concern. “It has been unfortunate that complexities have arisen in the progressing of the development of the Workforce Strategy, which relates particularly to the problems of equality, and on such matters as the prosecutorial fines; the transfer of cases to the Crown Court; and the transfer of prisoners between the Republic and Northern Ireland.

In a number of other areas I have a degree of concern, albeit small, regarding future timeous progress – eg the whole area of victim support (and in particular the need for a joined up policy and wholly coherent system); the need for improved witness support; the need to remain vigilant on the continuing roll-out of the Public Prosecution Service in respect both of accommodation and staffing matters; the need for a closer collaboration between the public and voluntary sectors; and the need to ensure progress is made on community restorative justice. The agencies are fully aware of all these matters and efforts should be made to achieve real progress on these in the coming months.”

Highlighting the need to ensure that there was ongoing effective but not intrusive monitoring of the evolving criminal justice system, he stressed the role of the Chief Inspector and said, “At the end of my work there will be some recommendations which will remain outstanding; most prominently those which depend upon devolution of the criminal justice system and the continued rollout of the Public Prosecution Service and the Youth Conference Service. The Chief Inspector has a continuing and vital part to play in the improvement of standards of conduct and of efficient and effective performance and from its single and wide-ranging perspective is able to oversee the operation of the criminal justice system as a whole. In my view, the energy and activity as well as the independence of approach which the Inspector has demonstrated bodes well for the future. A refusal to accept delay in the criminal justice system and a determination to improve efficiency will, I hope, be a major ambition for the future, and the achievement of those goals should secure that universal confidence in the system which the public deserves to have.”

A copy of the fifth report is downloadable from www.justiceoversight.com
The profession we work in

Solicitors are lovely people. They are, with only a very few exceptions, kind, considerate people. They work very hard for their clients - too hard some might say, because the result is often that they neglect their businesses. They are always simply too busy on client matters to give management the time it needs. Whether it is controlling the debtors or dealing with the indemnity insurance renewal, things get left to the last minute and are then tackled in a rush. When it comes to care of their staff, they rarely do it very well - lawyers, as a rule, are not strong in people skills.

The people who work in law firms are a particular breed. LawCare’s research shows that lawyers tend to be highly intelligent, ambitious and driven people. They do not find delegation easy, believing honestly that no one else could ever do a job as well as they can. Perfectionism is the norm - the type A personality could have been written for lawyers. They see their work as a fascinating intellectual challenge and enjoy each and every new test of their mental powers that clients throw at them.

When it comes to getting work done to a high standard these qualities are of real value, but the downside is that stress levels amongst both fee earning and other staff tend to be very high.

There is also a very real tendency to take on too much work. After all, those clients, who need something doing urgently, cannot be allowed to go elsewhere. They might never come back and as few firms are as profitable today as they were ten years ago, that risk simply cannot be taken.

That slowly shrinking profitability has also created a long hours culture. Larger firms often drive their young solicitors very hard indeed, while even in smaller firms partners may frown if they see anyone leaving the office at 5.30pm.

Many lawyers are robust enough to take this in their stride, but inevitably, some are not, and end up calling LawCare for help - often stressed, frequently depressed, sometimes desperate, and usually feeling a complete failure. Our culture expects us to deal with anything and everything that our professional lives may throw at us. A hiccup may be seen as failure, not least by ourselves.

The caller will usually have endured enormous pressure for months. His or her health will most likely have been damaged and home life and work will almost certainly have suffered. The irony is that the departmental head may well be wondering whether the caller is up to the job, whilst completely failing to realise that the real problem, in fact, rests on the departmental head’s shoulders. Firms simply cannot ignore issues such as risk management. Employing stressed lawyers is a sure-fire way to wreck a good indemnity claims record and risk the reputation of the firm.

Partners are more likely to self medicate through a bottle. Most tell LawCare that they were driven to drinking to excess by stress - a stiff drink being the quickest fix to alter the mood and the easiest way to unwind after yet another really hard day. One turns to two, two to four, and the next thing they know is that they need alcohol to function - the need (not desire) to drink having taken control of their entire lives.

Lunchtime drinking may be followed by breakfast drinking, and their performance at work will deteriorate steadily. Alcohol makes things seem better in the short term, but in reality leads to dwindling productivity and mistakes. Although the drinker may believe that they are hiding their problem, frequently it will long ago have become obvious to colleagues and clients, but they are all co-operating in the conspiracy of silence that is so much easier than confronting the problem. Indeed, most of us find tackling a colleague with such a problem a daunting prospect.

An alcoholic, of course, will rarely accept that they have a problem. LawCare knows that, as a general rule, drinkers to excess will almost always be drinking between two and three times the amount they will ever admit. They will rarely acknowledge the true figure to themselves, let alone anyone else, and a complete denial that they have a problem of any kind is normal.

“I know I enjoy a drink, but of course I could stop tomorrow if I wanted to!” is usually a hollow statement that is simply untrue.

LawCare’s analysis shows that whilst it tends to be the older lawyers who have a drink problem, it is the younger lawyers who are more prone to stress. Some stress is inevitable in life, but it is when that stress turns into distress that problems develop - reduced productivity, a serious loss of self-confidence / self esteem, and a desperate loneliness, vulnerability and inadequacy. Work, already slow, will be checked time and time again, as the stressed lawyer struggles to satisfy himself or herself that everything is as it should be, resulting in even more stress as the backlog of work builds up. It is a vicious circle, characterised ultimately by the scary feeling of being out of control.

The people in your organisation are your colleagues and some may also be your friends. Taking good care of them is not only a caring, human thing to do, but also makes compelling commercial logic.

Law Care Helpline: 0800 279 6888
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For details of session content etc contact Heather Semple heather.semple@lawsoc-ni.org
To book a session contact Eleanor McCabe eleanor.mccabe@lawsoc-ni.org or use the booking form attached

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Recommended Reading

McKenzie Friends and Family Proceedings

Caselaw

McKenzie v McKenzie
A litigant in person is entitled to be accompanied in court by a friend to assist him in the conduct of his case. A husband in divorce proceedings was accompanied by a representative of his former solicitors to assist the husband in taking notes, give advice and prompt him in the examination of witnesses. The judge directed the representative to take no part in the proceedings and he withdrew.

[1970] 3 W.L.R. 472

O (Children) (Representation: McKenzie Friend), Re
 Joined cases: WR (A Child) (Representation: McKenzie Friend), Re; W (Children) (Representation: McKenzie Friend), Re
The appellant fathers (O, WR and W) appealed against orders refusing or limiting the assistance of a McKenzie friend in family proceedings in which they sought contact and residence orders in respect of their children. The three cases demonstrated the advantages of the presence of a McKenzie friend


H (A Child) (Family Proceedings: McKenzie Friend), Re
 Sub nom.: H (A Child) (McKenzie Friend: Pre Trial Determination), Re
H appealed against a decision to refuse him permission for a McKenzie friend in contested contact proceedings. H contended that he felt nervous at the prospect of the hearing without his friend present. Held, allowing the appeal, as it was clear that H had a genuine sense of vulnerability and it was important that litigants in person had the assistance they required.

 http://www.bailii.org/ew/cases/EWCA/Civ/2001/1444.html

R v Bow County Court Ex p. Pelling (No.1)
A county court judge refused to allow P, an experienced litigation friend, to assist F in chambers in private family proceedings. P earned a third of his income from acting as a litigation friend and his expertise may have tempted him to take over the running of the case, rather than acting as an assistant.


Articles

A friend in need (considers the role of McKenzie friends) Mitchell: 2005 SJ 149(34), 1040-1041

Family proceedings (reports on the Re O case as well as discussing the obligations of McKenzie friend) Bailey-Harris: 2005 Fam Law, 35(Oct), 773-774*

Care proceedings - instructing “McKenzie Friends”: disclosure of documents 2005 J P 169(27), 507*

Guidance from the President's office: McKenzie Friends 2005 Fam Law 35(May), 405-406*

McKenzie friends in family proceedings (explores the role of McKenzie friends and the level of assistance a friend is permitted to give) Reed: 2005 Fam Law, 35(Oct), 820-822*

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

New Books in the Library


A complete list of decisions is available on the Law Society Website at www.lawsoc-ni.org

PATRICK DAVID BELTON v DIRECTOR OF THE ASSETS RECOVERY AGENCY

Respondents alleged that various property together with sums of money held in receivership were recoverable property under Part 5 Proceeds of Crime Act 2002, and recovery sought under s. 243 and 266 of the Act respectively.

- interrogatories served on behalf of the respondent.
- appellant sought order under O.26 RSC compelling respondent to withdraw interrogatories on the grounds that the respondent's claim was an action constituting a penalty against the appellant and the action was to enforce a forfeiture of an estate in land.
- appellant appealed for leave to appeal on the grounds that the judge erred in holding that recovery proceedings in accordance with s. 243 of the 2002 Act do not constitute a penalty either in domestic or ECHR law.
- whether judge should have distinguished between confiscation and recovery proceedings.
- appeal dismissed

HIGH COURT
27 JANUARY 2006
NICHOLSON LJ

MAXINE DONKIN v COLETTE REID T/A THE WHISKEY HAW

Damages for personal injuries. - plaintiff claimed she was assaulted by doorman and sustained injuries.
- HELD that the doorman had deliberately headbutted the plaintiff, but that the plaintiff was guilty of contributory negligence by provoking the attack.
- damages reduced by 50% to £12,500

HIGH COURT
13 JANUARY 2006
SMITH J

EAMONN FINN (A MINOR BY HIS MOTHER AND NEXT FRIEND FRANCES FINN) v ALBERT MCKEE

Order sought under s.32(1) Administration of Justice Act 1970 and o.24 RSC (NI) 1980 requiring Belfast Education and Library Board to disclose and produce to the defendant's solicitors all medical and psychological records held in relation to M, a close relative of the plaintiff.

- application by way of appeal.
- plaintiff involved in road traffic accident and sustained serious head injuries.
- impact of injury on plaintiff's cognitive ability and behaviour.
- appeal dismissed

HIGH COURT
9 DECEMBER 2005
DEENY J

H AND C

Appeal against dismissal of appellant's application for residence order in respect of his daughter and residence order in favour of child's mother.
- whether judge had dispensed with the statutory welfare checklist and devised his own.
- whether judge considered the risk of harm to the child and effect on her education if she returned to America.
- HELD that the judge was clear, fair and correct in his original judgment and appeal dismissed

COURT OF APPEAL
15 DECEMBER 2005
KERR LCJ, NICHOLSON LJ, CAMPBELL LJ

IN THE MATTER OF AN APPLICATION BY MARKUS LEWIS FOR JUDICIAL REVIEW

Application for judicial review of Governor of HMP Magheraberry's decision to commence disciplinary proceedings against applicant.
- whether applicant breached acceptable standards of conduct under NIPS Code of Conduct and Discipline.
- whether applicant guilty of breach of confidence by appearing on television programme.
- restrictions on communications to media.
- whether Governor's decision was fair and reasonable.

HIGH COURT
13 JANUARY 2006
SMITH J

IN THE MATTER OF AN APPLICATION BY OLIVER MCALEenan FOR JUDICIAL REVIEW AND IN THE MATTER OF A DECISION OF THE DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT

Beef Special Premium Scheme. - Beef Special Premium Regulations (NI) 2001, r 9(1).
- duty to retain documents and duty to create a record.
- duty to maintain beef land register.
- whether premium payments recoverable.
- calculation of premium recoverable

HIGH COURT
24 JANUARY 2006
GIRVAN J

IN THE MATTER OF AN APPLICATION BY F P MccANN DEVELOPMENTS LIMITED AND MAGHERA PRESBYTERIAN CHURCH FOR JUDICIAL REVIEW

Application for judicial review of decisions of Planning Appeals Commission dismissing appeals against the non determination by the DOE of applications for planning permission for residential development.
- proposed sites within development limits of extant statutory plan but are excluded from development area of new draft plan.
- applications refused on grounds of prematurity since approval would be prejudice to the outcome of the planning process by predetermining decisions about scale and location of proposed development.
- whether PAC properly applied prematurity approach.
- whether proper and rational approach to issue of precedent.
- application dismissed

HIGH COURT
21 DECEMBER 2005
WEATHERUP J
JUSTIN MARTIN v NORTHERN IRELAND PRISON SERVICE
Application for judicial review of Northern Ireland Prison Service sanitation procedures at HMP Magilligan. - applicant was a serving prisoner who requests an order of mandamus requiring NIPS to stop requiring prisoners to slop out. - declaratory relief sought. - adequacy and hygiene of sluice arrangements. - procedures for unlocking prisoners at night who had toilet requirements. - whether sanitation regime was an unjustified and disproportionate interference with applicant's private life under a.8 ECHR. - HELD that declaratory relief granted that NIPS failed to respect applicant's right to respect for his private life and that NIPS will have to carry out a focussed a. 8 compliant review of its systems and operations. - no damages awarded
HIGH COURT
6 JANUARY 2005
GIRVAN J

R v RODNEY CLARKE
Application to place in evidence before the Court certain statements made by a QC while acting for defendant at earlier murder trial. - statements were made while applying for an adjournment. - whether statements prejudicial to trial. - HELD that statements be admissible as evidence
CROWN COURT
2 DECEMBER 2005
DEENY J

R v STEPHEN HUGH HARTE
Defendant pleaded not guilty to possession of firearms with intent to endanger life and possession of explosive substances. - defendants applied for adjournment of the case. - whether the accused was in possession of the firearms and whether he had specific intent. - HELD that accused should be convicted of lesser offence of possession not for a lawful object contrary to s.4(1) Explosive Substances Act 1883
CROWN COURT
16 JANUARY 2006
DEENY J

R v TRACY MARY MARSHALL, RALPH PHILLIPS, RODNEY CLARKE
Ruling on the conduct of the trial of the above named persons and applications made by defence counsel relating to the effect, implementation and extent of a ruling by Mr Justice Hart in relating to the granting of anonymity to 5 Crown witnesses. - prosecution had passed addresses of witnesses to defence. - prosecution had instructed engineers to prepare a CDRom providing visual illustration of the viewpoints of the various witnesses in lighting conditions which the Crown contend were similar to those in existence at the time of the incident. - engineers and legal representatives have visited the area and had internal and external access to some or all of the houses from which the witnesses were watching. - ruling requested on the subsequent status of the ruling on anonymity and other associated issues. - whether further investigations by the legal advisers should be permitted. - HELD that it would not be fair and equitable to restrain the defence from taking further action to discover the identity of the witnesses, but that the witnesses will not be identified by name in future cross-examinations
CROWN COURT
15 SEPTEMBER 2005
DEENY J

R v JAMES ROONEY AND BRENDA SMYTH
Defendants charged under s. 329 Proceeds of Crime Act 2002 with being in possession of criminal property, money or knowing or suspecting it to represent, either in whole or in part, the proceeds of crime. - dishonestly receiving a UK passport knowing or believing it to be stolen. - whether there was evidence that the money was criminal property. - whether a reasonable jury properly directed could find the accused guilty. - mens rea. - HELD that a jury could conclude that the accused were in possession of criminal property and that the arraignment should proceed
CROWN COURT
16 JANUARY 2006
SMYTH J

R v BARRY SIMPSON
Defendant pleaded guilty to wounding with intent to do grievous bodily harm contrary to s. 18 Offences Against the Person 1861. - unprovoked attack. - sentence of four years’ imprisonment imposed with one year’s subsequent probation supervision order in place
CROWN COURT
17 JANUARY 2006
WEIR J
MARGRETTA REID v DEPARTMENT OF REGIONAL DEVELOPMENT

Damages and personal injuries. - plaintiff tripped on a kerbstone sustaining knee lacerations. - whether breach of statutory duty of DOE to maintain roads. - interpretation and application of that duty. - HELD that the exposed vertical face of the kerbstone was dangerous to pedestrians and that the DOE was in breach of duty. - £25,000 damages awarded
HIGH COURT
13 JANUARY 2006
SMYTH J

MARIA MANUELA B CARNEIRO BRANDAO v ATLanco LIMITED

Unlawful deduction of wages. - claimant alleged she was owed monies in respect of work done up to 20 November 2003 and holiday leave entitlement. - claimant failed to provide documentation to support her contention. - failure to provide any information or evidence made it impossible for the tribunal to decide if the claimant was actually due any monies. - accordingly the complaint is dismissed
286/04IT
7 November 2005

CAROL FERGUSON v SOUTH EASTERN EDUCATION & LIBRARY BOARD, J JOHN MASON, MR MCGINNITY, THE GOVERNORS OF THE GOOD SHEPHERD PRIMARY SCHOOL, POLEGLASS

Claimant alleged unfair dismissal. - claimant on sick leave due to a significant affective mood related disorder but had been attending evening classes during this period. - respondent had referred her to a doctor for a diagnosis. - doctor was of the opinion that the claimant would be unfit for work for the foreseeable future. - respondent indicated that they proposed to terminate her employment and gave her information on appealing the decision - respondent requested her to attend another independent doctor but claimant after speaking to her Union refused. - Tribunal found that respondent had followed the correct procedure and that the proposal for termination was reasonable.
1695/03IT
18 October 2005,

TOmi MANDERBACKA v FAVOURITE CHICKEN & RIBS RESTAURANT

Originating application - claimant had presented a complaint of breach of minimum wage legislation. - substantial delay in payment of what was properly due by the respondent to the claimant. - tribunal found that the conduct of respondent was unreasonable and ordered respondent to pay the claimant £279.36 costs.
3128/04IT
14 November 2005,

PATRICK MCCLOSKEY v DESSIAN PRODUCTS

Claimant alleged that he had been unfairly dismissed on the grounds of his trade union activities. - background of claimant being unhappy with the amount of repairs he carried out as part of his job which he raised with his line manager. - claimant was also deputy shop steward and involved in pay talks. - claimant had an altercation with his supervisor and refused a work instruction and was suspended on pay. - disciplinary hearing and an appeal took place but the claimant was dismissed. - Tribunal found that the reason for claimant's dismissal was his failure to carry out a reasonable work instruction given to him a number of times by the respondent. - consequences of failure to carry out a work instruction were contained in the company handbook. - tribunal also found that the claimant played a very small role in the pay talks.
- claimant was not unfairly dismissed and it was not related to his trade union activities
1293/04IT
4 October 2005,

SAMUEL JOHNSTON SHAW v QUEENS UNIVERSITY OF BELFAST

Issue for determination - whether case was presented within the specified time limit and, if not, is it just and equitable in all circumstances to consider the claim despite the fact that it is out of time.
- information conveyed to the claimant via respondent's estate manager about a change in pay structure. - before claimant could reply he suffered a heart attack and was hospitalised and also had a malignant melanoma removed. - tribunal decided it was just and equitable to consider the case despite it being out of time due to the prolonged period of sickness suffered by the claimant
832/05IT
25 November 2005

ANDREW TEMPLE v KESTREL 3D LIMITED

Claim of unfair dismissal. - claimant employed as a senior sales manager in the Scottish office of the respondent company who did not have written terms of employment. - claimant promoted to general manager and moved to the Belfast office. - claimant suspended and was informed there was a vote of no confidence in him and there was to be an investigation. - claimant not told of the basis of the investigation or the nature of the disciplinary charges against him and was dismissed without being present at the disciplinary hearing. - tribunal agreed that he had been unfairly dismissed and ordered the respondents pay £15,339.20 to the claimant
2589/04IT
3 November 2005
Re: **Colleen Suzanne Mulder** (deceased)
Late of: 93 Melduin, Dunshaughlin, County Meath and also of 6 Cardy Close, Bangor, County Down
Would any person having knowledge of the whereabouts of a Will for the above named person please contact:
Christopher Reilly
John Boston & Company
Solicitors
565 Upper Newtownards Road
BELFAST BT4 3LP
Tel: 028 9048 0460
Fax: 028 9043 9563

Re: **James Denison** (deceased)
Formerly of: 12 Skipperstone Avenue, Bangor
Would any person having knowledge of the whereabouts of the Will of the above named deceased who died on 27 June 2005 please contact:
Ms Sharon Moore
Murray McCourt Kelly
Solicitors
1 Dufferin Avenue
Bangor
County Down BT20 3AL
Tel: 028 9127 0000

Re: **Gerald Keenan** (deceased)
Late of: Bolies Road, Fivemiletown, County Tyrone and St Macartan’s Nursing Home, Clogher, County Tyrone
Date of Death: 16 February 2004
Would any person having knowledge of the whereabouts of a Will for the above named person please contact:
John Quinn
Solicitor
14 Belmore Street
Enniskillen
County Fermanagh
Tel: 028 6632 6008

Re: **James Thompson** (deceased)
Late of: 116 Altmore, Craigavon, County Armagh
Would any person holding a Will for the above named deceased or having knowledge of the whereabouts of a Will please contact:
Conor Downey & Co
Solicitors
3 William Street
Lurgan
County Armagh
Tel: 028 3831 6887

Re: **Eveline Shanks** (deceased)
Late of: Croagh Patrick Nursing and Residential Home, Donaghadee, County Down
Formerly of: Loch Cuan House, Dakota Avenue, Newtownards, County Down and previously of 44b Bristol Park, Newtownards, County Down
Date of Death: 10 January 2006
Would any person having knowledge of the whereabouts of any Will made by the above-named deceased or any person being a blood relative of the deceased please contact:
John Ross & Son
Solicitors
30 Frances Street
Newtownards
County Down BT23 7DN

Re: **James Boyle**
Late of: 3 Lough Road, Silverbridge, Newry, County Down
Would any person having knowledge of the whereabouts of any will or title deeds relating to the above named please contact:
Mrs Rosetta Hughes
Solicitor
S C Connolly & Co
Bank Building
Hill Street
Newry
County Down BT34 1AF
Tel: 028 3026 5311
Fax: 028 3026 2096

Re: **Dominic (Tommy) Borza**, Lena Angeltonia Borza, Mary Borza
All late of: 2 Main Street, Millisle, County Down and or 30 Millisle Road, Donaghadee, County Down
Would any person having knowledge of the whereabouts of any Will of the above named deceased please contact:
Stephen Scott
Stephen Scott & Company
Solicitors
45 Court Street
Newtownards
County Down BT23 7NX
Tel: 028 9182 1700
Fax: 028 9182 1332
Email: Stephen@scottlaw.co.uk

Re: **Patricia Sarah Anne Pearson (nee Grugan)** (deceased)
Late of: 14 Sedan Avenue, Omagh, County Tyrone
Date of Death: 16 October 2005
Would anyone having knowledge of the whereabouts of any Will made by the above named deceased, please contact the undernoted person by 31 March 2006.
Bronwen Loughran-Lowe
Oliver M Loughran & Company
Solicitors
Missing Title Deeds

Folio: 8183
County: Armagh
Registered Owner: Bridget Kathleen McHugh
Part of the Lands of: Clonagil, situated in the electoral division of Moybane, Barony of Fews Upper and County of 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 undermentioned Solicitor.

Folio: TY4083
County: Tyrone
Registered Owner: Kemira Agro UK Limited
Lands at: Dungannon Road, Ballygawley, 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 undermentioned Solicitor.

Folio: DN 39213L
County: Down
Registered Owner: Maura Alice McGurnaghan and Mark Anthony O’Connor
Lands of: 21 Laurelgrove Park, Knockbracken, Belfast
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned Solicitor.

Folio: AN 95316
County: Antrim
Registered Owner: Margaret Mary Brady
Lands at: 40 Ardcaoin Avenue, Belfast BT17 0UN
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned Solicitor.
And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.

Would any person having custody of or information as to the whereabouts of the Title Deeds relating to any of the above properties please contact:

Berkeley White
7 The Diamond
Ballycastle BT54 6AW
Tel: 028 2076 8090
Fax: 028 2076 8828
email: office@berkeleywhite.com

Carson McDowell
Solicitors
Murray House
Murray Street
BELFAST BT1 6DN

O’Reilly Stewart
Solicitors
O’Reilly Stewart House
114/116 Royal Avenue
BELFAST BT1 1DL
Folio: AN 41320L
County: Antrim
Registered Owner: Maria Brady
Lands of: 17 Mullaghy Road, Island Magee, County Antrim
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned Solicitor.
And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.
O'Reilly Stewart Solicitors
O'Reilly Stewart House 114/116 Royal Avenue BELFAST BT1 1DL

Folio: LY 67422
County: Londonderry
Registered Owners: D & A Dutton
Lands of: 2 Riverview Cottages, Ballykelly
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.
T P Rafferty LLB Solicitor 47a Catherine Street Limavady County Londonderry BT49 9DA

Folio: AN6107
County: Antrim
Registered Owners: John Harold Moore, Brian Moore & Julie Anne Carnell-Fanthome
Lands of: Site No 15 Girona Development, Portrush, County Antrim
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned folio should forthwith produce said Certificate or communicate such information to the undermentioned solicitors.
And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.
Murphy Irwin & Co Solicitors 18 Long Commons Coleraine County Londonderry BT52 1LH

Folio: 31067
County: Down
Registered Owner: Rev Francis Gerard Brooks; Rev Canon J ohn Kearney; Rev Garlath Cushenan; Rev Kevin Aiden Hamill and Rev Francis Brown
Lands at: Carrickmacstay, comprising 4 acres, 37 perches, in the Barony of Iveagh Upper, Upper Half
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 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.
Rosemary Connolly Solicitors 2 The Square Warrenpoint County Down BT34 3JT Tel: 028 4175 3121 Fax: 028 4175 3141
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Apply in writing to Principal:
Catherine Allison & Co Solicitors
15a Margaret Street
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Email: info@callison.ie

Conveyancing Solicitor with experience required. Salary £30,000+. Apply in confidence to:
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Doris and MacMahon
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Lennon Toner O’Neill
54 English Street
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County Armagh
BT61 7DU
Tel: 028 3752 2527
Closing date for applications: 31 March 2006

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Grangevale Group Ltd
Holmview House
2 Holmview Terrace
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County Tyrone
BT79 0AH.
For further information, applicants may contact: Roisin Rogan on 028 8225 0543

Rafferty & Boyle Solicitors, Coleraine, require an Assistant Solicitor with at least two years post qualification experience for work in general practice. Attractive salary. Please apply in writing with CV to:
Mr Paul Boyle
Rafferty & Boyle
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3 Castlerock Road
Coleraine
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Email: paul.boyle@rafferty-boyle.com

Berkeley White seek part-time (mornings) Solicitor for new Belfast sub-office. Would suit newly-qualified or more experienced Solicitor seeking a part-time role. For enquiries please call:
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Tel: 028 2076 8090
Or email to office@berkeleywhite.com. Interested parties should email their CV to the same address

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Donnelly & Kinder
Solicitors
Fourth Floor
22 Adelaide Street
BELFAST
BT2 8GD
Email: akinder@donnellykinder.com

Locum Solicitor/Legal Executive (Matrimonial) Due to maternity leave from 1 June 2006 – 1 December 2006, we are interested in receiving enquiries of interest from either a Solicitor/Legal Executive. Capability in Litigation would be an advantage. Part-time options will be considered. Reply to:
Margaret Magennis
Magennis & Creighton
Solicitors
572 Shore Road
Newtownabbey
BT37 0SL
Tel: 028 9036 5777
Email: margaret@magtonlaw.co.uk

Solicitor required for General Practice. Experience in Conveyancing and Litigation preferred but not essential. Would suit someone of 2 – 3 years PQE or other ambitious person seeking a partnership opportunity or other mutually agreed arrangement. Replies in confidence before 16 March 2006 to:
Patrick Diamond
Patrick Diamond & Co
Solicitors
47 New Street
Randalstown
County Antrim
BT41 3LA
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