THIS MONTH:

Law Society Annual Conference in Barcelona
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Relocation, Relocation

Copy deadline for May Edition: Friday 18 May 2007
The Annual Conference of the Law Society took place in Barcelona this year between Thursday 22 March and Sunday 25 March. Over 220 delegates and guests travelled to the Catalan capital. Two conference attendees have kindly agreed to put pen to paper – Belfast solicitor Joe Rice, a veteran of Law Society conferences gives his reminiscences of a great weekend whilst Fermanagh solicitor Christopher McGettigan, who was attending his first conference provides us with a somewhat “tongue in cheek” report.

Almost four hundred years to the day after the Flight of the Earls in 1607, over two hundred delegates were delighted to attend this conference in Spain, particularly after last year’s successful Prague conference. If only the Earls in 1607 had had the gracious financial assistance of our sponsors - First Trust Private Banking, Royal & Sun Alliance, Bell Lawrie Investment Managers and Marsh - the history of Ulster might have taken a different course.

Barcelona is a wonderfully vibrant city to visit and despite my own linguistic shortcomings, is friendly and welcoming. Acclaimed as the capital of modernism, it hides many surprises in its streets, with hundreds of architectural treasures just waiting to be discovered.

We were allowed as much time as possible to explore the splendours of the city and to enjoy Las Ramblas, the most famous shopping area lined with cafes, bars, shops, hotels as well as artists selling paintings and improvised acrobatics, all designed to entertain and to tease money from idle passers-by.

The Welcome Reception on the first evening at our sumptuous Hotel Arts near the blue Mediterranean provided an opportunity for unwinding and for old friendships to be rekindled. Friends and colleagues from Coleraine, Derry, Ballymena, Ballynahinch, Enniskillen, Newry, Portadown, Bangor and Ballycastle mingled with ease and burning issues of law (and life) were discussed with great gusto.

Thanks to the foresight of that golfing veteran and galloping gourmet, Viv Harty, we dined that night in a restaurant called “Agua” with its sea-and-sky blue décor and imaginative seafood dishes. Then, bravely resisting the allure of the Casino, we returned to the hotel where a rousing music session led by Messrs. Pinkerton, McLaughlin and Phoenix was in full swing. It had been a long day but the melodious Jellicle Cats were out in force, with several candidates for the role of Old Deuteronomy and the wee small hours were passed painlessly.

On Friday morning we skipped the pre-booked City Tours and using the excellent public transport system, moved between the wonders of the Sagrada Familia, Guell Park and the beautiful Gothic Quarter, with its authentic alley and courtyards of medieval inspiration. Antoni Gaudi is the dominating architect and artist inseparable from the popular image of Barcelona, both visionary and iconoclast.

It was during the course of this most enjoyable morning that Joan and I ran into another visionary, plain ol’ John Smyth of the Bar who reminisced about Manchester United’s most famous victory over Bayern Munich in Camp Nou and his part in it. Later after an indulgent visit to the Six Senses Spa in the Hotel Arts, we were delighted to be treated by the Barcelona Bar Association to an evening reception in the lavish setting of the “Patidre Colomlomes” before retiring with friends for our evening meal in a City Centre restaurant called “Notti”. Here we were able to savour the delights of creative Catalan cuisine which even Viv agreed had some limited virtue. This was all prearranged by Gemma Smyth, Michelle Edgar and Claire O’Mahoney - all distinguished Ards solicitors and acclaimed gourmands.

The conference session on Saturday morning focused on Client Wealth Management and the difficult issues of partnership, succession and retirement.

Friends and colleagues mingled with ease and burning issues of law (and life) were discussed with great gusto.

The excellent contributions from our Scottish colleague, Graeme McKinstry from John Lilly and Jeremy Stewart of First Trust Private Banking, as well as from Stephen Williams of Brewin Dolphin, were thoughtfully received. On that sunny spring morning in Spain not a dark cloud could be found on the horizon of at least one Northern Ireland solicitor. The three CPD points were joyfully banked for some rainy day.
That afternoon was kept free for the Museo Picasso and the Fundación Joan Miró and oddly it was at this stage my traditional view of Lent was beginning to slowly transform. For years I never doubted that the occasional self-denial was a credible practice but could it really be true that the good will of an all-loving God must be earned through deprivation.

In a nutshell, I had a life-changing meeting with Barry Finlay, Demot Bowes, Peter Dornan, Paddy Barr and Adam Curry late that afternoon, all experts in canon law and they explained that my view of Lent was theologically unsound and should be jettisoned immediately. With a spring in my step (and after a swim and sauna), I changed for the Gala Dinner on that final evening. Barcelona oberta al mar was now open to more than the sea. Freddie Mercury and Montserrat Caballé were in the background on the music centre, gloriously belting out “Barcelona” for all they were worth. The Dinner was followed by the best musical performances of the trip, with a tapestry of guitar, banjo and the gentle voices of the temperate Northern Ireland Young Solicitors’ Group led by Emma Hunt and Toby McMurray. We were joined at one stage by Phillip Cocu and Patrick Kluivert, both footballers with PSV Eindhoven, who were overjoyed to be photographed with Paddy Barr from Bangor Swifts and conveyed to Paddy the good news that despite his absence, the Swifts had won two-nil that afternoon.

On that sunny spring morning in Spain not a dark cloud could be found on the horizon of at least one Northern Ireland solicitor. The three CPD points were joyfully banked for some rainy day.

The irony was completely lost on everyone as we suddenly remembered that the clocks were to go forward one hour that very morning.

The first preamble to the Treaty of Rome states the determination of the signatories “to lay the foundations of an ever closer union among the peoples of Europe”. Certainly the Law Society Conference succeeded admirably in this regard. Friends were made with delegates from Scotland, England and Wales and the Republic of Ireland and many Russian and Spanish friendships blossomed.

All those on the conference are indebted to our diligent President and his wife, James and Margaret Cooper, to Norville Connolly who meticulously organised the Conference but was unable to attend and to whom we wish a speedy recovery, ably supported and guided by maestro Rory McShane, Clair Balmer of CBPR and the event management team from Ovation.

On the Sunday morning there was time for a visit to Camp Nou, the home of the legendary soccer team, Barça and for a seafront promenade in the Port Olympic, before being spirited away to the airport and home. The unifying slogan of Barça supporters, all over the world is - More than a Club - a bit like our own Law Society.

A memorable conference for everyone involved and as for next year, will it be Bundoran or Berlin? Watch this space.

Joe Rice
Hola. Bienvenido a Barcelona. There are five districts in Barcelona not counting the suburbs. The Gothic district with the Roman walls, the Cathedral de Santa Eulalia... oh never mind all that, go see it for yourself, and I'll go straight to the good bits.

The Gala Dinner had to be the highlight of the trip with our eloquent and articulate and sometimes funny, President Mr J C, encouraging his troops and bolstering the future of our great profession. I would just like to add that the measure of his leadership was of course the calibre of people who choose to follow him.

The fish course seemed to be a big hit with everybody, as did the endless wine and champagne fountain. Thank you sponsors. Many new friendships were forged and as the proverb goes, Russian friendship does not run sour and when in Rome... And Mr Donal Fee will be auctioning photographs, so this is the last chance to buy them back before the auction begins (you know who you are!).

We had a wonderful lecture by Graeme McKinstry on partnerships and entry and retirement into practice, which seemed to unsettle the more senior delegates. They were valuing “goodwill” long into the small hours. A poll was ultimately taken by the more senior delegates as to how many associate solicitors worked in each firm, with their conclusion about one in four.

Barcelona is a beautiful city and admittedly not everyone visited its delights, not before midday anyhow. The accommodation was magnificent, five star of course. I casually mentioned at reception that I might have been a little disappointed with the decor of my room, only to return and find a Spanish version of Laurence Llewelyn-Bowen up to his elbows in paint and telling me of the importance of soft furnishings and how they humanise and feminise all interiors and how they really do turn a soulless box into a happy room; a house into a home. (In fairness I must credit Fintan Canavan for part of that anecdote but also myself for remembering it at 3am and in particular for improving on it).

Not that the hotel was cheap. I made a complaint to the receptionist who said “Si, sir I feel your pain, that will be 80 euro por favor”. (Again I must thank Mr Aubrey Murray for that one. Not an original idea in here people!).

The Conference Business Session appeared surprisingly to have a full turn out given that it started at 9.30am on a Saturday morning. Some people should be particularly impressed with themselves. Again you know who you are! We all walked away with a valuable piece of information “never choose simple words where complex ones will prove reasonably practicable”.

Overall the Conference was a fantastic experience strongly recommended. All delegates were on fine form and I would particularly extend my thanks and support on behalf of all delegates to Mr James Cooper, a fellow Fermanagh Solicitor and congratulate him on his hard work and commitment to the Law Society. We would also thank the Barcelona Law Society for their warm welcome and God bless our sponsors.

Oh aye there were CPD points. Bonus! Did I mention our sponsors?

Adios

Christopher McGettigan
Get the Edge...
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Law Reform Advisory Committee Final Report

The LRAC has published its report for the period from 1 January 2005 to 31 March 2007. This is its last report before the establishment of a Law Commission for Northern Ireland.

The report lists all the past reports produced by the Committee since it was established in 1989, together with an explanation of those reports and a description of the government’s response thereto.

The current work programme is also listed, together with a progress statement of work to date which LRAC envisages could be taken on by either the new Law Commission or relevant government departments.

Increase in the Number of Births

Provisional birth statistics released by the Northern Ireland Statistics and Research Agency (NISRA) show that the number of births registered in 2006 was 23,300 - 1,000 more births than in 2005 and the fourth annual increase from the record low of 21,400 births in 2002.

The figures indicate a number of reasons for the increasing number of births. A NISRA spokesperson said: “Last year the number of babies born in Northern Ireland continued to rise from the record low number in 2002. Part of this increase relates to more women in their thirties having children. In addition more women are moving to Northern Ireland to live and then having children here.”

However, the number of births in 2006 is still well below the corresponding level of the mid-1980s, when over 27,000 births were registered annually.

Agency Merger

As part of the Review of Public Administration, a new Driver & Vehicle Agency (DVA) has been created.

The Driver & Vehicle Testing Agency (DVTA) and Driver Vehicle Licensing Northern Ireland (DVJNI) have merged to establish a single driver, vehicle and operator licensing and testing organisation. DVA will enable greater sharing of data to assist with enforcement and compliance which will improve the contribution to the Department of the Environment’s road safety objectives.

The new DVA will provide the opportunity to review administrative support structures to producing efficiencies in running costs.

Child Protection Consultation

The Northern Ireland Prison Service has issued for consultation three inter-linking documents which set out a comprehensive Child Protection Policy for the Service. The policy is designed to promote the welfare of all children who have reason to be in a custodial setting in Northern Ireland, be they as an inmate or as a visitor and safeguard them from harm.

The three documents set out the Child Protection Policy and Procedures for: • Hydebank Wood Prison and Young Offenders’ Centre • Children visiting Prison Establishments in Northern Ireland • Managing visits to, and communication with, those prisoners who present a risk to children

Personal Injury: An Uneven Playing Field

The European Parliament has discussed a resolution recommending that the European Commission take action regarding cross-border disputes involving certain personal injury claims. The initiative calls for a set of rules to overcome the inequalities that can stem from the differences throughout the EU in relation to limitation periods.

Annexed to the resolution is a draft Regulation which sets out a general limitation period of four years with more detailed provisions set out in relation to: commencement of time running; interruption; and defence based on the expiry of limitation period. The European Commission, which has the sole right of initiative in this area, will now have to decide whether to bring this forward as a legislative proposal.

New Scheme to Support Victims of Hate Crime

A new pilot scheme is providing practical help to those affected by hate crime. Project HIPA (Hate Incidents Practical Actions) provides home and personal security measures for victims who have been the target of hate crime. The Scheme will be available 24 hours a day to provide support and reassurance to victims.

All hate incidents must be reported to the police to be eligible for support under the scheme. It is available to owner-occupiers and tenants in privately rented and Housing Executive properties. It is being piloted for nine months and will then be evaluated.

To report a hate incident and access the scheme victims must contact their local PSNI station on 0845 600 8000 and ask for the Hate Incident and Minority Liaison Officer.

Further advice and information about the scheme is available from the local PSNI Hate Incident and Minority Liaison Officer, local Community Safety Partnership Co-ordinator or NIHE local District Office.

Independent Case Examiner Report

The final Report of the Independent Case Examiner for the Social Security Agency and the Child Support Agency (covering the period 1 April 2006 to 28 February 2007) has recently been published.

The Examiner, Jodi Berg, reported that she had only received 24 complaint referrals about the Social Security Agency, 13 of which were accepted. Only a small number of the complaints were upheld. She praised the Agency for the way it responds to customer complaints, which is reflected in the few referrals to the ICE.

Mrs Berg also reported that she had received 93 complaints about the Northern Ireland Child Support Agency during the reporting period. She accepted 49 complaints for immediate action but gave the Agency a chance to resolve others if it had not had this previously. The Case Examiner’s office successfully resolved most complaints and this demonstrated that the Agency could do more itself to settle complaints so that people did not find it necessary to approach their MPs, Assembly Members or ICE.
Introduction

In 2005 I was kindly asked by the Law Society to provide a brief overview of the reform of legal aid that was, at that stage, a proposal to reform legal aid rather than a concrete view of what was actually going to happen. As the Commission progresses towards the full implementation of the Access to Justice (NI) Order 2003 in the Autumn of 2008, I thought that this was a good time to provide an update on what is being taken forward and to begin to set down markers for further communication, much of which will lead to training that will be aimed at preparing legal aid practitioners for the reforms. In this article, I propose taking each area of reform and providing an update on the current developments. I should also add that I have asked my officials within the Commission to provide further inputs to the Writ that will flesh out the information I am providing here in forthcoming editions.

The Northern Ireland Funding Code

The NI Funding Code (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.

The Code is underpinned by findings from the Legal Need Survey, current patterns of legal aid coverage and relevant Government policy. It is designed to address local need drawing on lessons from the approaches taken elsewhere in the UK.

We have already undertaken two consultations on the Code. The first in Spring 2006 when the Commission produced an exposure paper that reflected our early thoughts on what the Code should look like and the elements it was likely to contain.

The Code is underpinned by findings from the Legal Need Survey, current patterns of legal aid coverage and relevant Government policy.

We received 13 responses to this initial consultation that helped in the drafting of the second consultation paper that was issued in November 2006. That second consultation received 13 responses that have helped the Commission to understand in more detail issues and concerns of practitioners, for example, that the Code might well increase bureaucracy. However, it will also improve consistency and increase transparency around the granting of legal aid.

In addition to consulting on the Code Criteria, a number of areas of supporting guidance have been consulted upon and these can continue to be found on the Commission’s web site. An Equality Impact Assessment of the proposed Code was conducted and has been consulted upon. The feedback on this has been helpful and encouraging. The benefits of the Code in terms of facilitating access to justice and targeting social need have been readily acknowledged by the Equality Commission and providers of legal services in the voluntary sector.

I want to say a few words about a related issue and that is the development of an alternative scheme for the funding of money damages cases. As I said earlier, you will hear more details of all of these reforms in forthcoming editions but I want to bring you as up to date as I can on this matter because it is of such concern to the legal profession. I know this because the responses from legal professionals to the Funding Code consultations were dominated by concern about the future of this area of legal aid. The Commission is giving serious consideration to feedback from the consultation on the Code and will be looking again at some of the issues raised by consultees.

The future of legal aid in money damages cases

In my previous paper, I advised you that the role of civil legal aid in money damages cases was being examined through a detailed Options Appraisal prepared by Prof. John Peysner, now of Lincoln University. The Appraisal did consider solutions in other jurisdictions to the question of Civil Legal Aid spend on money damages cases and presented a number of options with associated strengths and weaknesses.

The Commission ensured that the views of Law Society, the Bar, the Association of Personal Injury Lawyers, and members of the Insurance Lobby were canvassed in preliminary consultations in a series of meetings during 2006. I have taken this...
We are moving into a period when funding will be reduced and we will have to live within our means. The answer to this question, apart from the policy differential that would develop with England and Wales, is that I am continually lobbied about strengthening and extending legal aid provision to areas such as domestic violence, mental health, employment tribunals. The only argument for not extending legal aid provision in these areas, because the need is clearly there and they deserve more funding, is that the Commission simply cannot afford to.

We are moving into a period when funding will be reduced and we will have to live within our means. We will be forced by budgetary constraints to make choices - this situation is no different to other publicly funded bodies such as health and education where choices about waiting lists and education provision are continually being made. However, what this will mean for the Commission is that every penny we receive from the public purse will have to be made to work for the areas identified as priorities in the NI Funding Code. While some respondents to the Code suggested that money damages cases should become a priority, there was no convincing argument mounted that would persuade me to recommend that the Lord Chancellor alter the priorities as they currently stand.

Having said all of that, I have continually stated my personal commitment to ensuring that NI is not exposed to the problems that can arise when legal aid is withdrawn from money damages cases. I am very encouraged by the work of Professor Peysner and KPMG who are undertaking the financial and economic appraisal. I intend that a summary of this will appear in the Writ in the very near future and in the meantime the Commission will continue to hold limited consultations in order to develop a proposal that will find favour with the profession and protect public support for this area in the future. I am also hoping that the establishment of an alternative fund could extend the scope of legal aid providing funding for areas of unmet legal need mentioned earlier.

**Financial eligibility and statutory charge**

Having written about the merits test and money damages, let me now turn to the means test for legal aid and what the Commission is doing to reform this area.

As you know decision-making on applications for legal aid can be prolonged because of the time it takes to assess the financial eligibility of the legal aid applicant. This issue causes problems for you and for the Commission. This is because in a significant number of cases legal aid is granted on an emergency basis that is later found to have required applicants are aware that legal aid is not free and they will have to make contributions or that they are not financially eligible at all. In such situations the Commission will try to recover legal aid payments from the applicant. There is a long standing debt recovery issue within the Commission and it is important that action is taken to address this. We are tackling it in a number of ways and you will certainly be hearing more about this in forthcoming months.

Firstly we are intending to introduce a simplified financial eligibility test. We have been doing a lot of work on this and believe that we have identified a test that will maintain the current pattern of financial eligibility but will be much simpler to administer. Secondly, we are also looking at where eligibility testing is being carried out and will want to be in a position to reassure the Lord Chancellor that the current system is the one most suitable for the task.

An issue that is related to this in terms of the debt owed to the Commission is that of Statutory Charge. It is important that practitioners appreciate we will be making changes to the operation of the Charge and we have started this piece of work by examining the current exemptions to find out why the Charge is applied so differently in NI compared to England and Wales.

**It is important that practitioners appreciate we will be making changes to the operation of the Charge**

When I first came to the Commission, I was amazed that there was so little revenue generated by this area and can see no argument for not applying the Charge in cases where generous divorce settlements are received by the legally aided partner who does not (in the current system) have to repay their legal aid. I can tell you that the first follow-up article to this paper deals with Statutory Charge and will provide the detail of the work we are taking forward. So watch this space!

**Fees and quality**

I am sure many of you will be aware that the Commission has made the reform of fees...
for Children Order cases a priority. We were successful in agreeing a remedial settlement to the backlog of Article 3 cases dating back to 1998 and have provided a proposal to NI Court Service that will facilitate payment of cases bearing an Article 3 Certificate from June 2005 onwards.

We are continuing to examine Children Order Fees and other fees paid through civil legal aid with a view to reforming fees where the introduction of a standard fee would bring predictability and control to that area of the budget. As we introduce standard fees, we are conscious that the Commission will require less information about activity in a case before the fee is paid. What we will be moving towards though is developing a system whereby the Commission can still be assured that legal aid work is of a sufficiently high standard. The introduction of the Registration Scheme and of Quality, Compliance and Peer Review are all areas under development. A Registration Working Group chaired jointly by Joe Donnelly and Fiona Donnelly both solicitors in private practice and members of the Commission Board has been established to take forward this important development.

We are also planning to map the provision of legal services by solicitors in private practice. This work will be carried out in partnership with the Department for Social Development and will begin with the issue of a questionnaire to solicitors. I would encourage you to complete this questionnaire as the information from this survey will provide the foundation for the Registration Scheme and practitioners wishing to provide legally aided legal services in the future will have to be registered with the Commission.

I do not propose to say anything more about Registration as this will be very much taken forward in partnership with the Law Society and again I am confident that the mistakes made elsewhere will not be repeated in NI thanks to the sensible approach of the Law Society to this matter. When I mention standards one thing I have learned since becoming Chair of the NI Legal Services Commission is the important role played by the voluntary sector in the provision of legal advice and assistance and the high standards that are demanded by funders of this sector.

### Community legal services

The Commission is committed to the development of a mixed model of legal services provision and that means funding providers in the voluntary sector as well as those in the private sector. It is this spirit of partnership between the private and voluntary sector that the Commission would hope that Community Legal Services will create a seamless network of quality, value for money services so that an individual seeking information, advice or help about legal issues will be directed to the most effective source.

A consultation paper will be issued before the summer setting out the Commission’s early thinking on this issue. We are very clear that the development of Community Legal Services provides an opportunity for practitioners in private practice to consider other ways of working.

We intend that Community Legal Services will develop through the establishment of a number of pilot projects funded on a 3 year basis to either continue the provision of existing services or to test out new ways of working. Community Legal Services will be managed on a contractual basis and all contracts will be awarded through the compulsory competitive tendering process which means the award of a contract will be a competitive but transparent process. The first area to be piloted in this way was the provision of Asylum and Immigration Advice and Representation. The Law Centre (NI) was successful in winning the contract although the Commission was encouraged by interest shown from solicitors in private practice to the tender.

### Conclusion

As you can see, since my last article was published in the Writ, the Commission has been busily taking forward the reform of legal aid. We have achieved a lot, but there is still a lot to do and we are well aware that legal aid can only be successfully reformed if we work closely with practitioners who after all are those working at the ‘coal face’. It is crucial that you are well informed about the proposed changes. A useful source of information is the Commission’s website at www.nilsc.org.uk which contains a great deal of valuable information particularly under the publications section.

As I said earlier this article is intended to provide an overview of the reforms we are engaged in. There will be a more detailed paper on each area in forthcoming months beginning next month with Statutory Charge.

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. As I said before 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. I am certain that only regular and open communication with providers and their representative bodies will assist in this process.

### NOTE:

The Society’s Access to Justice Committee reviews considers and advises the Society’s Council on all matters of policy and practice in connection with legal aid and other publicly-funded legal services together with all matters arising out of the implementation of the Access to Justice (NI) Order 2003. The Committee is currently chaired by Donald Eakin, the Junior Vice-President. If practitioners have any queries to raise or comments to make with regard to access to justice matters, please do not hesitate to contact the Secretary to the Committee at peter.obrien@lawsoc-ni.org
Boundaries, Adverse Possession and Rights of Way

by Gary Webber - Barrister

Tuesday 5 June 2007 from 2pm – 5pm
at Edinburgh Suite, Europa Hotel, Belfast

Gary Webber is the author of Business Premises: Possession and Lease Renewal, 3rd Edition and co-author of Residential Possession Proceedings 7th Edition (Sweet & Maxwell). He is an editor of The Landlord & Tenant Review and of The White Book. He now practises as a mediator (accredited by the ADR Group), runs training courses in various areas of property law and sits as a Deputy District Judge. He also maintains “the Property Law” website. He is an associate member of chambers of 33 Bedford Row.

CPD: 3 hours

The cost will be £60 for members and £75 for non-members. To register please send your cheque payable to the Northern Ireland Commercial Property Lawyers’ Association to Brenda Doris at the address shown below.

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For more details on these and other interesting opportunities contact Katherine on 028 9032 3333 or e-mail legal@blueprintappointments.com
The Institute of Professional Legal Studies is offering a Seminar providing an update in Residential Conveyancing presented by:

**Speakers:** Charles O’Neill, Solicitor, NICOHA and Ruth Craig, IPLS

**When:** 11 June 2007

**Time:** 9.30 – 4.30p.m.

**Venue:** Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY

**Cost:** £150

This Seminar is targeted at practitioners who wish to refresh their general understanding of Residential Conveyancing and will be dealing primarily with major changes since 2000. These will include:

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6 CPD hours are awarded for attendance at this Seminar of which 1 hour will be for Client Care/Practice Management.

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, 1 June 2007
This two part article provides an overview of what are perhaps the most important features of litigation in the Commercial Court from a solicitor's perspective. In Part One, Gareth Jones considers the relevant provision in the Rules of the Supreme Court (Order 72) and the two Practice Directions issued in the Commercial Court namely Practice Direction No 1 of 2000 (which is the general practice direction of the Commercial Court) together with its amendment of 7 October 2002, and also Practice Direction No 6 of 2002 on the subject of Expert Evidence. In Part Two, which will be carried in the next edition of The Journal of the LSNI, he will focus on Review Hearings (which serve as the milestones for the solicitor in the progress of a commercial case) and on the topic of discovery of documents in cases in the Commercial Court.

**RSC Order 72**

It is important to be aware that all relevant provisions of the Rules of the Supreme Court apply also to actions in the Commercial List but subject to the provisions of Order 72 which will take precedence (Order 72 Rule 1(1)).

Order 72 Rule 1 (2) confirms that commercial actions “shall include any cause relating to business or commercial transactions and without prejudice to the generality of the foregoing words, any cause relating to contracts for works of building or engineering construction, contracts of engagement of architects, engineers or quantity surveyors, the sale of goods, insurance, banking, the export or import of merchandise, shipping and other mercantile matters, agency, bailment, carriage of goods and such other causes as the Commercial J udge may think fit to enter in the Commercial List.”

The list of examples is not exhaustive - cases which commonly appear in the Commercial List will include professional indemnity claims against solicitors and accountants.

The Commercial List is not a separate Division within the High Court - rather it is a List of Actions within the Queen’s Bench Division. One judge is nominated as the Commercial J udge. Mr Justice McLaughlin has recently become the J udge responsible for the Commercial List, replacing Mr Justice Coghlin.

The Commercial List is not a separate Division within the High Court - rather it is a List of Actions within the Queen’s Bench Division.

Rule 2 (1) of Order 72 provides that the Commercial List shall consist of such commercial actions as the Commercial J udge shall direct to be entered in that list, having regard to the amounts involved or the issues concerned in those actions. This would appear to be an over-arching power for the Commercial J udge to have an action included in the Commercial List. However, the usual route into the Commercial List is for the solicitor for one of the parties, usually the plaintiff's solicitor, to make a request for the case to be included in the Commercial List.

Rule 3 as recently amended with effect from 8 J anuary 2007 by The Rules of the Supreme Court (NI) (Amendment No 3) 2006 provides that on the commencement of proceedings in a commercial action the plaintiff's solicitor shall request the Registrar in charge of the Commercial List to have the action entered in the Commercial List. Sub-paragraph 2 of that Rule states that any party to a commercial action may at any stage of the proceedings request the Registrar to have the action entered in the Commercial List.

This change to Rule 72 should prevent solicitors from choosing the most advantageous time in the prosecution or defence of a commercial claim for inclusion in the Commercial List and thereby deferring the commencement of the application of Order 72 and judicial involvement in case management and progression of the claim.

An application to have a case included in the Commercial List is simply a matter of the solicitor writing to the Registrar of the Commercial List requesting inclusion and stating briefly the subject matter of the claim, attaching a copy of the Writ of Summons and any other Pleadings and Notices and identifying the representatives of any other parties. The Registrar will then refer that request to the Commercial J udge for his decision which will then be notified to the parties’ representatives by letter with confirmation of the initial Review Hearing date, general directions in accordance with the General Practice Direction No 1 of 2000, as amended, and a copy of the Practice Direction in relation to Expert Evidence.

Order 72 Rule 4 requires the parties to provide a copy of any pleading to the Registrar within two days of service and including any List of Documents served. Rule 5 confirms the general practice that it is the Commercial J udge who will hear interlocutory applications.

Although the Review Hearings and any interlocutory applications are generally heard by the Commercial J udge, these may be heard by another High Court J udge. Indeed other High Court J udges may sit as trial judges in commercial actions.
Whilst reference will made later to the Practice Direction dealing with expert evidence, it is worth noting that the disclosure of expert evidence is dealt with in Rule 9 of Order 72. The important point to note for those not familiar with practice in the Commercial Court is that, unlike other actions in the Queen’s Bench Division, no expert evidence may be adduced unless it is contained within an expert’s report and disclosed to the other parties.

It should be borne in mind, of course, that Order 38 RSC also applies to commercial actions. The solicitor must be alert to the obligation to comply with Order 38 and disclose to the other party copies of any photographs, plans, diagrams etc. upon which it is intended to rely in evidence. Many of those are obviously included in Appendices to the experts’ reports. However, that is not always the case.

It is important to appreciate the significance of the effect of Rule 9 of Order 72 as non-compliance could result in a restriction on what evidence can be given at the hearing by your expert. Rule 9 (6) provides that evidence cannot be given by an expert other than is included in that expert’s report, except in relation to new matters arising at the trial unless with consent of the other parties or by leave of the Court.

**Practice Direction No 1/2000**  
(as amended 7 October 2002)

Although the main body of this Practice Direction, its supplemental amendment of 2002, and the Expert Evidence Practice Direction, are issued to the parties’ solicitors by the Commercial List Office following entry in the List, these Practice Directions may also be accessed on-line on the Court Service web site, www.courtsni.gov.uk - click on Supreme Court and then Commercial List.

Practice Direction 1/2000 sets out the procedural steps and timetable for preparation of an action by dealing with discovery of documents, Notices for Particulars and Replies, Interrogatories and Answers, disclosure of expert evidence, meetings of experts, fixing the hearing date, negotiations and alternative dispute resolution. The Practice Direction then goes on to specify the times for delivery to the Court Office by the plaintiff’s solicitor of the trial papers known as Bundles A and B.

The Practice Direction specifically provides that the Commercial Judge may draw the attention of the parties to a suitable form of alternative dispute resolution.

When received from the Court Office, the paragraphs relating to discovery of documents, Notices for Particulars and Replies, and Interrogatories and Answers will all have dates for compliance inserted. Presumably, when the practice evolves of plaintiff’s solicitors applying for entry of a commercial action in the List at commencement, this initial communication from the Court Office will also include timetabled directions in respect of service of the Statement of Claim, Defence and any Counterclaim and Defence to Counterclaim.

The Practice Direction specifically provides that the Commercial Judge may draw the attention of the parties to a suitable form of alternative dispute resolution. That has been the approach adopted by the Commercial Judge to date. If the legal representatives indicate an unwillingness to engage in mediation, they are expected to set out the justification for that stance. It would be fair to say there is a substantial degree of scepticism concerning mediation among the legal profession. My own experience, both representing clients at mediation and sitting as a mediator, is that it can result in a resolution of a commercial dispute on terms which are more attractive to the parties than what might have been achieved at Court, or in negotiations at the door of the Court.

The Practice Direction requires the plaintiff’s solicitor to lodge the Trial Papers with the Registrar - Bundle A to be lodged not later than 14 days before trial and Bundle B not later than 7 days before trial. The contents of both bundles are specified in the Practice Direction as is the requirement that they should be legible and arranged chronologically in a ring binder or lever arch file.

The preparation of the court bundles is a considerable burden for practitioners and not only for the plaintiff’s solicitor who is primarily responsible. The documents comprised within the bundles should be agreed upon between the solicitors and a level of co-operation is required. In addition the solicitors require input from their barristers. Although it is often tempting to delay commencement of work to prepare the bundles, it really is sensible to have completed much of the preparatory work for the bundles well in advance of the 14 and 7 day minimum time limits imposed in the Practice Direction. Obviously in some cases the burden is considerably less, but it is fair to say that in most commercial cases the preparation of the bundles poses a significant logistical and time consuming exercise and should be planned for by considering what the issues are and what documents need to be selected for inclusion in the bundles. There may be a temptation to gamble on the probability that most actions do not run. However, experience has taught that any conclusion of negotiations is often very close to, if not on, the eve of the trial and by that stage the
Court officials will have been in touch if the bundles have not been delivered.

It is also worthwhile trying to agree that production costs can be apportioned between the parties. The plaintiff’s solicitor is not obliged to do more than lodge the bundles with the Court Office in order to comply with the Practice Direction. However, if the plaintiff’s solicitors’ office is producing the bundle for the Court Office, it makes sense that they also, by agreement, provide the other parties’ solicitors with the number of copies of the bundles they require.

The general Practice Direction was amended by addition to set out guidelines in relation to requests for extension of time and amendments to Directions. The guidelines represent good practice and commonsense. The guidelines include the statement that they have been devised with a view to avoiding unnecessary expense and wasting court time and that practitioners should be aware that breach may result in the imposition of a wasted costs order in appropriate cases.

Aside from the sanction of a wasted costs order, it is simply not a pleasant experience to have to explain to the Court at a Review Hearing why certain directed matters have not been attended to and why the parties’ representatives have been put to the trouble of attending that morning when nothing constructive has been achieved to advance the action and attendance was a waste of the court’s and the professionals’ time.


Following discussion at the Commercial Court Liaison Group, amendments have recently been made to Practice Direction No. 6/2002. The amendments do not signal any fundamental change in the approach of the Commercial Court to the subject of expert evidence but flesh out the existing provisions of the Practice Direction, making it somewhat more comprehensive but not as detailed and prescriptive as that applying in England and Wales under the Civil Justice Council’s Protocol for the Instruction of Experts to Give Evidence in Civil Claims. It was introduced in England and Wales following approval by the Master of the Rolls in June 2005. The English provisions of course exist in an environment of detailed Civil Procedure Rules which we do not have in this jurisdiction and arguably make the delivery of civil justice in the context of commercial actions a little more complex than is necessary.

An important step, once an expert is to be instructed, is to check whether that expert already has a copy of the Practice Direction and if not, then to provide it.

It is essential that the solicitor and counsel have identified whether there is an issue which actually requires expert evidence, whether in relation to liability, quantum or some technical matter. Previous experience or recommendations from colleagues or counsel are the best methods to identify a suitable expert. However sometimes the area of expertise will be one about which you and your colleagues have no experience. There are, of course, registers of expert witnesses and various professional bodies maintain registers of members who are prepared to provide expert evidence. In such circumstances, it is worth making contact with a number of potential suitable experts before making your selection. The Practice Direction also covers issues such as agreement of fees, time scale for production of the report and the expert’s availability to attend for experts’ meetings, consultations and court.

The guiding principle for a solicitor is to ensure you are in a position to comprehensively address the court on the issue of expert evidence at Review Hearings. You therefore need to be prepared to inform the Judge at the initial Review whether you anticipate the need for expert evidence, the aspect of the case that requires the retention of an expert and whether some expert evidence could be provided by a jointly instructed expert. Perhaps the most frequent situation where a joint expert is instructed is where there are a number of defending parties and a joint expert is instructed to report on a quantum issue. However, a single joint expert appointed by all parties might be appropriate for example to report on a scientific test.

Turning to the matter of how to instruct an expert once one is selected, it is important to ensure that the expert is familiar with the Practice Direction. The letter of instruction should also confirm what has been agreed regarding the issues upon which the expert is to report, the time scale within which the report is to be prepared and any agreed fee rates.

It should go without saying that you should obtain your client’s informed authority for instruction of the expert. When briefing an expert with documents it should be borne in mind that experts are required to identify in their reports any documents upon which their opinion is based. Therefore you should be circumspect about providing an expert with legally privileged documents, especially your letters of advice to your client and communications to and from counsel unless you make it perfectly clear that the expert is not being provided with these documents in order to inform his opinion but only by way of identifying the issues. Caution should also be exercised when considering whether to provide an expert with attendance notes or statements which are legally privileged. The expert should, of course, be provided with any relevant discoverable documents and the pleadings.

The court directed meeting of the experts provides an opportunity for discussion of opinions and production of a statement of matters which are agreed in evidence and matters which are not agreed and the reasons for any difference of opinions. When writing to your expert about the joint experts’
meeting, it is always worthwhile including a reminder that the meeting must be minuted and the minutes produced and signed at the meeting. This is something which will always be asked for at the Review Hearing following the date of the joint experts’ meeting.

The effectiveness of your expert in preparing a report and in what can be achieved at the court directed joint meeting will be influenced by preparatory meetings you have with your expert. Ideally you should have an initial face-to-face meeting with your expert to discuss the issues and a further meeting following receipt of your expert’s draft report to discuss the report.

You should also make a decision whether your client should attend that meeting or whether you should have a separate meeting with your client in advance to canvass the client’s views and comments on the expert’s draft report. A further meeting with your expert should be scheduled following mutual disclosure of the experts’ reports to discuss the evidence of the other party’s expert and prepare for the joint meeting of the experts. It may also be appropriate to have your counsel attend to meet the expert.

If, following review of the other expert’s report by your expert and attendance at the joint meeting, your expert wishes to alter his opinion on any of the issues or feels a new issue has been raised which needs to be addressed, then that must be the subject of a supplementary report or amendment to the report. The need for this should be brought to the Court’s attention at the earliest opportunity to avoid objections by the Court or the other parties. It is important to remember that under Order 72 RSC an expert cannot give evidence about a matter that has not been addressed in his report.

Finally, it should be remembered that the Practice Direction and indeed the Court Rules only apply to Expert Evidence. Therefore there is nothing to prevent you seeking an opinion from an expert and not using that opinion in evidence. That may be appropriate where you require such input in order to be able to advise your client with regard to its approach to the claim and possibly negotiations or payment into court. Where an expert is retained on that basis and you decide you do wish to have him give evidence, then his initial opinion report will become subject to identification and disclosure by him in his subsequent report prepared in compliance with the Practice Direction.

Gareth Jones who is a partner in the firm of C & Jefferson, Belfast, is a member of the Society’s Contentious Business Committee and one of the Society’s nominees to the Commercial Court Liaison Committee.
Community Interest Company format now available in Northern Ireland

A new type of limited liability company, a Community Interest Company, has been introduced, following the implementation of new legislation here. The Companies Act 2006 has changed the company law regime in Northern Ireland and ensures that changes to the law, including deregulation, will be implemented here at the same time as in other parts of the UK. One of the early provisions in the Act, introduced on 6 April 2007, extends Community Interest Companies to Northern Ireland.

The legislation enables the establishment of Community Interest Companies (CICs) which are designed specifically for those wishing to operate for the benefit of the community rather than for the benefit of the owners.

The CIC complements existing legal forms for social enterprise, such as the Company Limited by Guarantee or Shares and the Industrial & Provident Society. Since the introduction of legislation in Great Britain in 2004 around 850 companies have registered as Community Interest Companies in a wide range of areas, from childcare and social housing to renewable energy and fair trade.

CICs are easy to set up, with all the flexibility and certainty of the company form but with some special features to ensure they are working for the benefit of the community. Key features include:

- a statutory “lock” on the assets and profits of CICs
- a “community interest test” which companies must pass in order to be registered
- an annual report explaining how their activities have benefited the community and how they are involving their stakeholders
- a CIC regulator responsible for ensuring that CICs comply with their legal requirements

For more information on Community Interest Companies, practitioners can visit the CIC regulator website at www.cicregulator.gov.uk. Information on how to register a CIC in Northern Ireland can be found on the Companies Registry website at www.detini.gov.uk – follow Companies Registry link.

Legal Opportunities

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<td>Corporate/Commercial Solicitor</td>
<td>£50,000+</td>
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<tr>
<td>Progressive firm is seeking a senior lawyer to join their excellent commercial team. Opportunity for progression. Must have experience managing own deals. Ref: 29995</td>
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<tr>
<td>Excellent Commercial Solicitor</td>
<td>£35,000 - £43,000</td>
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<td>Excellent city centre firm seek an experienced corporate solicitor to join their reputable team. MBO/acquisitions &amp; business sales with experience in a similar role. Ref: 9664</td>
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<td>Banking Solicitor</td>
<td>£30,000 - £40,000</td>
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<td>Our client, a leading city centre firm, is looking to recruit a banking solicitor. The role includes security work and associated regulatory issues. Would suit an in-house or banking candidate with a proven background. Ref: 20481</td>
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<tr>
<td>PPP/PFI Solicitor</td>
<td>£30,000 - £40,000</td>
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<td>Top city centre firm is seeking an experienced projects solicitor. Responsibilities include drafting, reviewing &amp; negotiating concession agreements, sub contracts and related documentation. Ref: 29833</td>
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<td>Commercial Conveyancing Solicitor</td>
<td>£30,000 - £35,000</td>
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<td>Well-known city centre firm are seeking a commercial property solicitor. Experience in both English and Scottish based transactions a distinct advantage. Ref: 9664</td>
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<tr>
<td>Conveyancing Solicitor</td>
<td>£25,000 - £35,000</td>
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<td>Busy conveyancing team in a long established Portadown firm have a vacancy for a business focused solicitor with experience managing own caseload. Ref: 21238</td>
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<tr>
<td>Conveyancing Solicitor</td>
<td>£20,000 - £30,000</td>
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<tr>
<td>Belfast firm seek an experienced domestic conveyancing solicitor to join their busy property team. Experience managing high volume caseload essential. Ref: 28178</td>
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<tr>
<td>General Practice Solicitor</td>
<td>£18,000 - £21,000</td>
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<tr>
<td>Belfast firm seeks a solicitor with experience in general practice &amp; property work. This role involves dealing with general conveyancing &amp; remortgaging cases. Ref: 24164</td>
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For further information on legal opportunities, please contact Ronan Savage for a confidential discussion on 028 90 325 325 or email rsavage@brightwaterNI.com
The Institute of Professional Legal Studies is offering an Update on Trusts Seminar.

**Speakers:** Denise McBride BL and William Gowdy, Barrister

**When:** 18 June 2007

**Time:** 6.00pm – 9.00pm

**Venue:** Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY

**Cost:** £100

**Topics to include:**
- Resulting & Constructive Trusts & Proprietary Estoppel
- Trusts & Inheritance Tax (to include reforms introduced in the Finance Act 2006)

3 CPD hours are awarded for attendance at this Seminar.

Booking form and cheques, made payable to QUEEN’S UNIVERSITY BELFAST, should be sent to Mrs Joan Playfair, Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY.

Closing Date for applications: Monday, 11 June 2007
### Demystifying Solicitors’ Accounts

**Tuesday 12 June and Wednesday 20 June 6.30pm - 8.00pm in the Canada Room at Queen's University Belfast (refreshments served from 6pm)**

**Speakers:**
- Dr Ann-Marie Ward: Lecturer in Accounting: School of Management, QUB
- Gabriel Greene: Partner, Goldblatt McGuigan

**12 June: Session 1:** The Format of Solicitors’ Accounts: demystifying the terminology eg gross/net profit: direct/indirect costs/overheads: assets/liabilities: partners’ current and capital accounts: goodwill: revaluations. Accounting to ensure equity amongst partners: partner salaries v employee salaries: interest adjustments: realisation accounts: partner loan accounts.

**20 June: Session 2:** The Solicitors’ Accounts Regulations: client accounts: succession planning: hourly rate and scale fees. The finance of work in progress and the accounting of work in progress: definition: hidden costs and cash flow implications: why work in progress is now considered to be revenue: tax implications.

3 hours total Client Care and Practice Management CPD allocation.

Cost: £100 for both sessions or £60 per session.

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### Booking Form - Demystifying Solicitors’ Accounts

Please reserve place(s) on 12 and/or 20 June in the Canada Room at Queen's University. If you can only attend one session please specify which date.

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Applications for adjournment - clarification by the Court of Appeal

In two recent cases, the Northern Ireland Court of Appeal has clarified the approach to be taken by the courts in this jurisdiction in relation to applications for adjournment in criminal matters.

In the first case Re DPP’s application [2007] NIQB 3, the Lord Chief Justice delivering the judgement of the Court said:

“[10] In Attorney General’s reference (No 3 of 1999) [2001] 2 AC 91, 118, in what has become a well known passage, Lord Steyn described the various interests at stake in criminal proceedings as follows:

‘The purpose of the criminal law is to permit everyone to go about their daily lives without fear of harm to person or property. And it is in the interests of everyone that serious crime should be effectively investigated and prosecuted. There must be fairness to all sides. In a criminal case this requires the court to consider a triangulation of interests. It involves taking into account the position of the accused, the victim and his or her family, and the public.’

[11] All judges and magistrates need to keep this range of interests closely in mind whatever may be the decision as to the disposal of proceedings that they are called on to make. A conclusion, for instance, whether to accede to an application for an adjournment or whether to dismiss charges because of the absence of witnesses cannot properly be reached unless each of these interests (insofar as it may impinge on the decision) is taken into account and accorded appropriate weight.”

In the second case Re DPP’s application [2007] NIQB 10, the Court of Appeal went on to endorse a useful checklist of matters to be taken into account by magistrates in deciding whether to grant an adjournment as referred to in a recent decision of the Divisional Court in England & Wales in the case of Crown Prosecution Service v Pickton [2006] EWHC 1108 (Admin). These are:

a) A decision on whether to adjourn is a decision within the discretion of the trial court. An appellate court will interfere only if very clear grounds for doing so are shown.

b) Magistrates should pay great attention to the need for expedition in the prosecution of criminal proceedings; delays are scandalous; they bring the law into disrepute; summary justice should be speedy justice; an application for an adjournment should be rigorously scrutinised.

c) Where an adjournment is sought by the prosecution, magistrates must consider both the interest of the defendant in getting the matter dealt with, and the interest of the public that criminal charges should be adjudicated upon and the guilty convicted as well as the innocent acquitted. With a more serious charge the public interest that there be a trial will carry greater weight.

d) Where an adjournment is sought by the accused, the magistrates must consider whether, if it is not granted, he will be able fully to present his defence and if he will not be fully able to do so, the degree to which his ability to do so is compromised.

e) In considering the competing interests of the parties the magistrate should examine the likely consequences of the proposed adjournment, in particular its likely length and the need to decide the facts while recollections are fresh.

f) The reason that the adjournment is required should be examined and, if it arises through the fault of the party asking for the adjournment, that is a factor against granting the adjournment, carrying weight in accordance with the gravity of the fault. If that party was not at fault, that may favour an adjournment. Likewise if the party opposing the adjournment has been at fault, that will favour an adjournment.

g) The magistrates should take appropriate account of the history of the case and whether there have been earlier adjournments and at whose request and why.

h) Lastly, of course the factors to be considered cannot be comprehensively stated but depend upon the particular circumstances of each case and they will often overlap. The court's duty is to do justice between the parties in the circumstances as they have arisen.

Reiterating the learned judge’s warning at h) that it is impossible to devise an exhaustive set of rules to be applied to every case and that the particular features of the individual case must be reflected in the decision to be taken, the Lord Chief Justice said that the Court of Appeal wished to make it clear that the essential triangulation of interests which had been identified by Lord Steyn in Attorney General’s reference (No 3 of 1999) and which underlie all these considerations should always be taken into account. Thus, the impact on the accused of a decision to grant an adjournment must not be given undue weight at the expense of the victim and vice versa. And regard must always be had to the overarching interest of the public in the enforcement of the criminal law.

The full text of both judgements is available on the Law Society Library Libero database at www.lawsoc-ni.org
Solicitor
Edinburgh
£35k
Are you looking to progress your career within one of Scotland's premier Commercial firms? Then look no further. Our client is now seeking to recruit an experienced solicitor to join its dynamic and expanding Commercial Property department. Based in Edinburgh, you will be involved in the highest class of investment and development deals on the English Property side as well as providing support to the firm's substantial Corporate department. This is an excellent opportunity to be part of a friendly team within a very supportive environment. Above average salary and benefits package on offer to the successful candidate.

For more details please call Rosemary Fitzpatrick on 0141 331 9385 or email rosemary@prglawsearch.com

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Our client's successful and highly regarded Corporate Tax Practice is headed by one of the UK's leading Tax Practitioners. Due to growth and development this firm are looking ideally for a lawyer with Corporate Tax experience - particularly deal experience - or one with Property Tax experience, to join the team. We would also be very interested in hearing from an accountant interested in such a role.

Please contact Paul Steven on 0131 240 0793 or 07946 821 462 for more information, or send your CV to paulsteven@prgexecutivesearch.com

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Our high profile client, has an experienced and proven team of lawyers with a wide range of public and private sector clients. These clients include many public companies, institutional lenders and investors who come from within the United Kingdom, the Republic of Ireland and elsewhere around the world. Reporting to the Group senior partner, you will be an experienced Probate solicitor who is ambitious and will have the ability to manage a busy caseload of existing clients day to day. It is imperative that applicants have Probate and Estate Planning experience. Ref 5903

Employment Law Solicitor
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Ref 5963

Commercial Solicitor
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Ref 5841

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Our client has a first class reputation for the quality of the work and advice provided in all aspects of Commercial Property and the firm has been involved in many of the most significant property transactions in Northern Ireland in recent years. Their clients include major property developers, retailers, funders, private and institutional investors both in the UK and Ireland. Their Commercial Property department includes partners and associates qualified in England, Scotland as well as Northern Ireland. They currently wish to expand their team and wish to recruit an experienced Commercial Property solicitor with experience in Property Development and Leasing, Planning, Landlord and Tenant and Commercial Housing Developments etc. This is an excellent opportunity for an ambitious solicitor to join a firm with a superb reputation.

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Our client is recognised as a leader in the field of Criminal Law and Administrative/Public Law. They provide a full range of legal services including Personal Injury, Litigation, Defamation, Professional Negligence, Matrimonial Law, Commercial/Business Advice, and Conveyancing. They currently wish to appoint a new member of their team to work closely with the existing Family Department. This is an exciting opportunity for an ambitious solicitor.

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Our client is looking for lawyers with intellectual agility as well as a sense of humour, palpable enthusiasm and charisma. These are significant opportunities with transparent prospects that will see you work in one of the City's most dynamic and enterprising offices. To discuss this unique position and to discuss relocation opportunities please call now. Ref 5456

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The Changing Face of the Youth Court – Developing Legal Expertise

As a result of the implementation of many of the recommendations of the Criminal Justice Review, there have been considerable changes to the operation of the Youth Justice System in recent years. Developments of particular significance to Youth Court practitioners include:

- **Youth Court remit extended to 17 year olds.**
- **Emphasis on restorative justice principles.**
- **Creation of new diversionary mechanisms.**
- **Youth Conferencing - now extended to cover all of Northern Ireland.**
- **Availability of Community Service and Reparation Orders.**
- **Availability of improved bail and remand facilities.**

This seminar has been developed to raise awareness among Youth Court practitioners about these changes. Speakers from the Public Prosecution Service, Youth Justice Agency and the Judiciary will provide an overview of recent developments in the remit, procedure and practice of the Youth Court system.

The Criminal Justice Review recommended that legal practitioners should enhance their expertise in handling juvenile cases and their awareness of the human rights instruments and jurisprudence as they relate to juveniles. A senior law lecturer in human rights will speak on this topic.

Participants will receive a comprehensive resource pack with relevant course notes and supplementary information. All courses will run from 1.30pm - 4.30pm and will cost £90.

The seminars will take place at the following venues:

<table>
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<tr>
<th>Venue</th>
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<tr>
<td>Marine Court Hotel, Bangor</td>
<td>Fri 18 May 2007</td>
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<tr>
<td>Ramada Da Vinci's, Derry</td>
<td>Wed 23 May 2007</td>
</tr>
<tr>
<td>Adair Arms Hotel, Ballymena</td>
<td>Fri 25 May 2007</td>
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The Changing Face of the Youth Court – Developing Legal Expertise

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With the introduction of the Police and Criminal Evidence (Amendment) (NI) Order 2007 on 1 March 2007, this timely conference provided practitioners with an invaluable introduction to the new legislation.

We were delighted for the second year to have as the keynote speaker Anthony Edwards of T V Edwards & Co Solicitors, London.

The foundations of the course were carefully laid by local solicitor Tony Caher who presented a comprehensive guide to the legislative changes introduced by the 2007 Order.

Anthony Edwards, drawing from his extensive experience of PACE in England, provided practitioners with a thorough and insightful view of the practical issues raised by the legislation. In his address he considered both the revised and new codes of practice and their implications for solicitors.

His dynamic approach and engaging style generated an enthusiastic forum which enabled practitioners to explore the workings of this new legislation.

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Judicial Review: An Overview and Recent Developments

Book launch and seminar

Tuesday 5 June 6.30pm - 8.30pm in the Canada Room at Queen's University Belfast (refreshments served from 6pm)

Speakers: John Larkin QC and David Scoffield BL. Chaired by The Hon Mr Justice Weatherup

To mark the publication of their new Practitioners’ Guide to Judicial Review (published by SLS Legal Publications), two of the leading practitioners in this constantly developing field will provide an overview of judicial review and examine all recent developments of interest to both solicitors and barristers.

All those attending the seminar will be able to purchase the new book at half price.

2 hours CPD allocation

Cost: £65

Booking Form - Judicial Review: An Overview and Recent Developments

Please reserve place(s) on 5 June in the Canada Room at Queen's University Belfast

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These Rules amend the Rules of the Supreme Court (NI) 1980 ("the principal Rules") so as to:

- make a number of amendments consequential to the Civil Partnership Act 2004 (c33)
- transfer probate business from the Family Division to the Chancery Division and make a small number of consequential amendments
- update a number of references to merchant shipping legislation, which has been repealed and consolidated in the Merchant Shipping Act 1995 (c21)
- provide for taxation of solicitor’s professional costs as a single item under the short form procedure
- provide for proceedings against or concerning the International Oil Pollution Compensation Supplementary Fund 2003
- make a minor amendment in respect of giving evidence by video link
- make a number of amendments in relation to the procedure for applications for statutory review and appeals under the Nationality, Immigration and Asylum Act 2002 (c41), as amended by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c19) and the Immigration, Asylum and Nationality Act 2006 (c13); and
- prescribe the procedure for applications to the High Court under the European Public Limited-Liability Company Regulations (NI) 2004 (SR 2004 No 417) and the European Cooperative Society (Involvement of Employees) Regulations 2006 (SI 2006/2059).
These Rules regulate the exercise of rights of appeal to the Northern Ireland Valuation Tribunal ("the Tribunal") and prescribe the practice and procedure in relation to proceedings before the Tribunal.

The Rules regulate appeals under the following provisions of the Rates (NI) Order 1977:

- A. 13(3) which enables a person to appeal against a determination of the Department of Finance and Personnel ("the Department") as to the effective date of an alteration made in a valuation list;
- A. 54 which enables a person to appeal against a valuation decision of the Commissioner of Valuation for Northern Ireland; and
- A. 31A(12B) which enables a person to appeal to the Tribunal against the result of a review by the Department of a decision that a person is not entitled to a rate rebate for a property with a special facility for a person with a disability.

By virtue of the Rates (Appeals) Regulations (NI) 2007 (SR 2007 No 150) the Northern Ireland Valuation Tribunal has jurisdiction in relation to appeals under arts. 13(3) and 54 of the 1977 Order relating to:

(a) domestic property; and
(b) the non-domestic element of property used both for domestic and non-domestic purposes where:
   (i) the net annual value of the non-domestic element of the property does not exceed £12,500; and
   (ii) the appellant has, at the same time, made an appeal to the Tribunal in relation to the domestic element of the property.

The Rules also regulate appeals under regulation 12(1) of the Rate Relief (Education, Training and Leaving Care) Regulations (NI) 2007 (SR 2007 No 148) which provides for an appeal to the Tribunal against the result of a review by the Department of a decision that a person is not entitled to exemption from rates under those Regulations.
New legislation provides flexibility for carers and working parents

From April 2007 employees who are new parents or who have caring responsibilities for an adult benefit from changes to the law.

A key part of the new package of measures is an extension of the right to request flexible working arrangements. Currently, this right is only available to employees who have a child under the age of six, or 18 if disabled. The new legislation sees the right extended to people who look after an adult, such as their partner, a near relative or someone who lives with them. The right to request flexible working for carers came into operation on 6 April 2007.

Also under the new legislation, working mothers and adoptive parents receive an increase in paid maternity or adoption leave, from 26 weeks to 39 weeks. Employers will benefit too from a package of measures designed to make it easier for them to manage the absence of a member of staff on maternity or adoption leave.

The extension to the paid maternity and adoption leave period applies to employees whose babies are due, or where a child is expected to be placed with them for adoption, on or after 1 April 2007. The Government’s intention is to increase this to 12 months by the end of the current Parliament. New ‘Keeping in Touch’ days have also been introduced which will allow mothers, in agreement with their employer, to go into work for up to 10 days during their maternity leave.

“A key part of the new package of measures is an extension of the right to request flexible working arrangements.”

These rights are part of a package of family friendly measures introduced in the Work and Families (NI) Order 2006. It also includes a new right to an additional period of paternity leave for fathers, which is due to be introduced alongside the extension of Statutory Maternity Pay, Adoption Pay and Maternity Allowance to 12 months at a later date. This will enable fathers to benefit from leave and statutory pay if the mother returns to work after six months but before the end of her maternity leave period.

In addition to the benefits already mentioned, under the new Work and Families legislation businesses will also benefit from:

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

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

Further details on the new rights, on the consultation process and on the wider package of measures for working families are available from the Department for Employment and Learning’s website at www.delni.gov.uk/work.

LawCare, the charity providing support and advice to the legal profession across the UK, has revealed in its most recent Annual Report that the number of lawyers seeking confidential help regarding stress, depression, alcoholism and other problems, grew by more than 20% in 2006.

Hilary Tilby, Chief Executive of LawCare, said the rise was due to several factors, including the ‘growing cultural acceptability of acknowledging you have a problem’. The charity’s clients ranged from trainees to partners and from sole practitioners to the large firms in the City of London.

Some 67% of the initial 424 helpline calls received in 2006 related to stress or depression. Ms Tilby said: “The bulk of these calls were made by women, who generally find it easier to share and talk about problems. In contrast, twice as many men – mainly more than 11 years qualified – as women, asked for help with alcohol issues.”

Last year was the fourth consecutive year that LawCare has seen a 20% or more rise in calls.

LawCare provides free confidential advice and support on any health issue.

Telephone 0800 279 6869.
According to new research published by the Information Commissioner’s Office (ICO), four out of five public authorities have a positive attitude towards the Freedom of Information Act two years after its introduction.

Eighty three per cent of public authorities believe the Act has helped create a culture of greater openness in the public sector and 59% of respondents agreed that freedom of information had reduced unnecessary secrecy. Over half of public authorities questioned said that since the Act was introduced they now publish more information as a matter of course. However, a third of respondents felt their organisation would release less information under the Act if permitted to charge for consideration time.

Deputy Commissioner, Graham Smith, said: “Our research shows that the majority of public authorities are recognising the benefits of the Freedom of Information Act in increasing openness and improving public trust. I am encouraged that more information is routinely being released into the public domain which would otherwise remain secret.”

Three quarters of respondents said they had received requests for information under the Act. Information regarding decisions made by public authorities and statistics about organisations were the most requested pieces of information. According to the research requests for personal information about staff was the most common reason for refusing disclosure under the Act. One-third of public authorities turned down requests for commercially sensitive information.

The findings are part of a survey carried out among 564 public authorities across England, Wales and Northern Ireland as part of a review of the first two years of the Act.

Are we living in a Surveillance Society?

Data Protection/Freedom of Information/RIPA Seminar

The Institute of Professional Legal Studies is offering a Seminar on surveillance law and what it means to the practitioner in Northern Ireland.

**Speaker:** Marie Anderson
Assistant Information Commissioner for Northern Ireland

**When:** 13 June 2007
**Time:** 2.00 – 5.00p.m.
**Venue:** Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY
**Cost:** £100

**Topics to include:**
- Surveillance Law in Northern Ireland
- Advising clients on their rights under the Information Acts
- Evidence, Data Protection and RIPA, the implications for Criminal Practitioners.

3 CPD hours are awarded for attendance at this Seminar.

Booking form and cheques, made payable to QUEEN’S UNIVERSITY BELFAST, should be sent to Mrs Joan Playfair, Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY.

**Closing Date for applications:** Wednesday, 6 June 2007

Freedom of Information Seminar - Booking Form

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McCartan Turkington Breen Solicitors in Belfast has recently welcomed aboard three new partners to the firm. Ernie Telford (seated), the Senior Partner at the firm is pictured with (from left) Colin Mitchell, a specialist in Litigation and Licensing, along with Derek Kane, who specialises in Lending and Commercial Property and Michael Black, a specialist in Employment Law and HR Consultancy.

Arthur Cox Northern Ireland has appointed Andrew McCluggage as a partner in the firm.

Andrew joins as a partner in the Banking Department and Arthur Cox’s all-Ireland PFI/PPP Team. He qualified from the University of Southampton and trained at Norton Rose, a City of London firm before returning to Northern Ireland in 2004 to head up the Banking and PFI/PPP Department at Tughans Solicitors in Belfast. Since joining Arthur Cox Andrew has been involved in the implementation and financing of a large number of the PFI Projects to have come to the market in Northern Ireland in recent times. He has also worked on a wide variety of banking transactions including corporate, property and acquisition financings and has vast experience of cross border issues.

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**Topics covered will be:**
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- Gift & Loan arrangements that actually work
- Effective alternative solutions to the “seven year exemption”
- Solutions for the asset rich but cash poor that cannot avail of traditional tax mitigation strategies.
- Implications on leaving the UK - Non residency planning

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

**Booking form**

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I / we wish to secure □ places  
**Cost:** £50 per delegate  
**Venue:** The Reform Club, Belfast  
**Time:** 2.00pm – 4.30pm  
*Qualifies for 2.5 Hours CPD

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Alternatively please email: steven.speers@speersandassociates.co.uk

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Apprentice solicitor, Eoin Campbell, participated in this year’s Belfast Marathon. Below he sets out how readers can help him raise money for Southern Area Hospice Services.

“On Bank Holiday Monday 7 May 2007, I completed the marathon distance of 26.2 miles for the first time. It was an extremely physical challenge but after five months of training I’m delighted that I was fit to go the distance. I was running in order to raise money for the Southern Area Hospice Services.

Based at St John’s House in Newry, Southern Area Hospice Services (SAHS) provide support and care to people within the Southern Health Board Area (ie Newry & Mourne, Armagh and Dungannon, Craigavon & Banbridge and North Louth), who are suffering from Cancer, Multiple Sclerosis, Motor Neurone Disease and other terminal illnesses. The aim of the Hospice is to provide the best quality of life for patients and their families. All services are provided free of charge and the SAHS rely heavily on voluntary donations to continue providing this special care.

All sponsorship that I receive will go directly to Southern Area Hospice Services. This Charity is of particular personal significance to me as my mother Kathy was a patient of the Hospice for a time before she died in May of last year. The marathon took place less than a week before the first anniversary of her death. I hope to raise as much money as is possible in memory of my mum on behalf of this worthy cause. The importance of the support that SAHS provide to patients and their families cannot be stressed enough. All and any sponsorship will be very much appreciated.

If you are able to support me, please forward a cheque, made payable to ‘Southern Area Hospice Services’, to myself at Patrick J Cole Solicitor, 12 Duke Street, Warrenpoint, County Down BT34 3JY.

Many thanks, in advance, for all your donations and support!”

Legal Studies for Legal Assistants

The School of Law at Queen’s University, in conjunction with SLS Legal Publications (SLS), runs an introductory course in legal skills for those who work with law but who do not have a legal qualification.

The course is aimed primarily at legal secretaries and solicitors’ clerks although it would be of interest to anyone whose work has a legal dimension. Taught by a small group of lecturers from the Law School, the course aims to clarify core legal principles and enhance the legal knowledge and experience participants have gained through their work.

The course will run from September 2007 to May 2008 culminating in a small graduation ceremony. It involves one weekly two-hour class held on Tuesdays from 5-7 pm and it runs for twenty-four weeks with Christmas and Easter breaks.

The classes are informal in nature and students will be required to complete a number of assessment exercises. The course is divided into six parts:

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

For further information and an application form please contact:

SLS Legal Publications (NI)
Lansdowne House
50 Malone Road
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Fax: 028 9066 7733
DX: 4330 NR Belfast 34

We look forward to meeting you in September!
A Comprehensive Legislative Framework

Laura Niwa, policy officer at Law Centre (NI), reviews the proposed changes to mental health legislation as recommended by The Bamford Review of Mental Health and Learning Disability in its final draft report ‘A Comprehensive Legislative Framework’.

The Comprehensive Legislative Framework (the Framework) proposes significant change to mental health law, which is largely welcome. This article outlines some of those key changes and outlines Law Centre (NI)’s preliminary thoughts on some of the specific proposals, highlighting those areas that warrant particular attention.

Key aspects of the Framework

The Framework proposes that any new mental health legislation in Northern Ireland should be based on four overarching principles which recognise and support the dignity of the person: respect for autonomy, justice, benefit and least harm. The proposed move to autonomy-based legislation and the empowerment of service users to make decisions regarding their treatment and care is welcome.

No specific capacity legislation exists in Northern Ireland, although it has already been enacted in the rest of the United Kingdom, in the Adults with Incapacity (Scotland) Act 2000 and the Mental Capacity Act 2005. Law Centre (NI) support the proposals for capacity-based legislation and would welcome a single comprehensive legislative framework, which adopts a common approach to issues relating to the care, treatment and detention of people with a mental health problem, rather than two separate pieces of legislation as has been the case in Great Britain.

A broad application of the Framework is proposed, in recognition of the practical reality that many situations involve a combination of health and welfare elements and the legislation must apply to decisions in respect of all health and welfare needs. The Framework adopts a ‘best interests’ test for any decision or action on behalf of a person with impaired decision-making capacity. The ‘best interests’ test can be paternalistic in tone, which is at odds with the principles of the proposed reforms. Consideration, therefore, should be given to the use of a ‘benefit’ test as this is more in keeping with the autonomy principle within the framework.

The Review recommends that the current test for detention, ‘failure to so detain him would create a substantial risk of serious physical harm to himself or to other persons’, is replaced with a new test that ‘failure to assess would create a significant risk to the health, safety or welfare of the person or to the safety of others.’ The 1997 Convention on Human Rights and Biomedicine states that a person with a mental disorder may be compulsorily treated only where a failure to treat would result in serious harm to the person’s health. A move away from international standards in relation to harm to self is concerning as any legislative framework for Northern Ireland should reflect international best practice.

Also of concern are the proposals for a two-tiered approach to the assessment of risk and the application of a lower threshold test for people with mental health problems who are ‘known’ to have impaired decision-making capacity. Considerable caution must be taken regarding the introduction of differing tests in relation to compulsory assessment.

There are considerable issues regarding the treatment and provision of services for people with mental health problems involved in the criminal justice system. Considerable work needs to be done to ensure that any new legislation integrates fully with the criminal justice system. Equal rights to treatment and services should be made available to people with mental health problems detained through the criminal justice system. The importance of public protection must be counterbalanced by measures to curtail the high levels of stigma and discrimination associated with mental health. Considerable care, therefore, needs to be taken when drafting provisions relating to public protection in balancing public protection and individual rights.

Law Centre (NI) welcomes the proposals to ensure that the needs of those detained for treatment are met by recommending that an obligation will be placed upon service providers to deliver the essential elements of an intervention plan. We would welcome a similar statutory duty to meet the needs of those who voluntarily seek to access services.

The Framework also takes account of proposals to address the ‘Bournewood’ issue. The Framework outlines proposals to ensure legislation appropriately deals with cases where a non-objecting person with impaired decision making capacity is deprived of his or her liberty. Urgent consideration, however, must be given to the formulation of interim protection to address this legislative gap while legislative reform occurs.

The proposals to repeal the special status accorded to ‘the nearest relative’ and the inclusion of the right to an independent advocate are welcome. These reforms will give a person with mental health issues the freedom and control to choose his/
her nominated person and the right to an independent advocate ensures that his/her voice is heard. The Framework proposes that the Regulation and Quality Improvement Authority (RQIA) may request an independent ‘second opinion specialist’ when reviewing Intervention Plans. Law Centre (NI) recommends that the individual being assessed or her/his nominated person should have the right to request and receive a second opinion when being assessed for impaired decision-making capacity and/or any interventions.

Any increase in the period of detention for compulsory assessment from fourteen days, under the Mental Health Order 1986, to 28 days as proposed in the Framework, warrants particular attention. This is a significant increase, which is inappropriate given the vulnerability of people with mental health problems and the gravity of detention as a deprivation of liberty. Proposals for the RQIA to review Intervention Plans, for those detained, at six-monthly intervals rather than yearly are encouraging. However, we still consider six months to be unduly long. Reviews that are more frequent will ensure that a patient's response to any intervention is monitored closely and that any changes in their presentation and their capacity are identified as soon as possible.

Of particular concern for Law Centre (NI) is the legal cost of attending Mental Health Review Tribunals in Northern Ireland. The cost of attending may preclude some mental health patients from engaging specialist legal advisers or from taking cases before the courts, as applications for legal aid are currently means tested. There is the need for an automatic right to legal aid to ensure that people with mental health problems can challenge detention decisions. This would bring Northern Ireland in line with England and Wales where applications for legal aid for people with mental health problems who are detained for treatment are not means tested.

Where to next?

Law Centre (NI) will continue to work on the reform of mental health legislation in Northern Ireland. We aim to track and monitor the implementation of the recommendations made within the Bamford Review. Our work will be informed and shaped by cases brought to our mental health legal service. This provides a unique and exciting opportunity for campaigning and lobbying on policy issues to be directly informed by people with mental health issues, their carers or family members.


1 ETS 164 C, 4IV, 1997
2 See The Bamford Review of Mental Health and Learning Disability, Forensic Services Report, October 2006

Bamford Review Seminar

A Comprehensive Legislative Framework was published in February (www.rmhldni.gov.uk/index/report-consultations.htm) and was the subject of a seminar jointly hosted by the Law Centre and the Bamford Review on 1 March.

Following a presentation on the main proposals for law reform in Northern Ireland by Dr Maria McGinnity of the Bamford Review Team, speakers from Scotland and England outlined lessons for Northern Ireland from the relatively recent reform of mental health law in those jurisdictions and highlighted particular issues for attention in the Northern Ireland context. Professor Phil Fennell from Cardiff Law School spoke about the importance of maintaining a balance between three agendas in the context of mental health reform: the rights agenda; the public safety agenda and the anti-stigmatisation agenda. Eileen Davie, President of the Scottish Mental Health Tribunal stressed the importance of establishing a clear principles base for new mental health legislation and shared her experience of the operation of the Scottish Tribunal’s extensive powers.
# BSA Annual Lecture Series 2007

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<th>DATE</th>
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<th>SPEAKER</th>
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<tr>
<td>24 May 2007</td>
<td>“Up-date on TUPE”</td>
<td>Peter Block, EEFNI</td>
<td>£20 Members £40 Non members</td>
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<tr>
<td>7 June 2007</td>
<td>“The Impact of the Human Rights Act on Bail Applications”</td>
<td>Sean Doran BL</td>
<td>£20 Members £40 Non members</td>
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<tr>
<td>13 September 2007</td>
<td>“Coroner’s Court Procedure”</td>
<td>Brian Sherrard, Coroner</td>
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<td>28 September 2007</td>
<td>Client Care and Practice Management Seminar</td>
<td>Hugh McGrattan, McCloskeys, Gabriel Green, Goldblatt McGuigan</td>
<td>£70 Members £100 Non members</td>
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<tr>
<td>11 October 2007</td>
<td>“Scarring in Civil Litigation”</td>
<td>Michael Brennan, FRCS</td>
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<td>25 October 2007</td>
<td>Calculating and pleading Special Loss in Civil Claims</td>
<td>Paddy Mullarkey, Campbell Fitzpatrick, Solicitors</td>
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<td>9 November 2007</td>
<td>Criminal Half Day Seminar in association with SLS</td>
<td>David Corker and Sean Doran</td>
<td>£70 Members £100 Non members</td>
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<td>22 November 2007</td>
<td>“Arthroscopy of the Upper Limb”</td>
<td>Michael Eames FRCS</td>
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<td>6 December 2007</td>
<td>Flats and Apartments - A Solicitor’s Perspective</td>
<td>John Neill, Carnson Morrow Graham Solicitors</td>
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All BSA CPD lectures will be held at The Edge, Mays Meadow, Laganbank Road, Belfast and commence at 1.00 pm with coffee and sandwiches available from 12.30 pm. Bookings can be made via the BSA website at www.belfast-solicitors-association.org or by contacting the BSA Administrator, Tel: 028 9058 5974.
The BSA Golf Outing this year has been arranged to take place at Malone Golf Club, Upper Malone Road, Belfast on Thursday 17 May 2007. The tee has been reserved between 2.00pm and 4.00pm. A meal and prize-giving ceremony will take place in the evening. The total cost will be £55.00 per player; being £45.00 for the golf, £6.50 for the meal and £3.50 subscription. Malone Golf Club members and persons not wishing to partake of the meal should adjust the payment as appropriate.

All members of the Association and their guests are most welcome and you are invited to complete the form and return it as soon as possible. This can also be done via our website www.belfast-solicitors-association.org. There will be prizes for the main competition for members with official handicaps and for visitors. There will also be a special competition for members without official handicaps. The main prizes will be decided on a Stableford point basis on a full handicap (maximum 24).

For any further information please contact Committee Member John Guerin at Campbell Fitzpatrick Solicitors 028 9032 7388, e-mail john@cfs-law.com.

BSA GOLF OUTING BOOKING FORM
Thursday 17 May 2007, 2.00pm - 4.00pm

Name: 

Contact address: 

Tel: 

E-mail: 

Please indicate against the names the prizes to be played for: 

- Members 
- Visitors 
- Members Special 

Return to BSA Administrator, Suite 7, Merrion Business Centre, 58 Howard Street, Belfast BT1 6J P
E-mail: briege@belfast-solicitors-association.org

BSA Sponsorship

Pictured at the launch of the First Trust Private Banking’s sponsorship deal with the Belfast Solicitors’ Association are from left: Joe Rice, Chairman of the BSA; Anne Donnelly, BSA Committee Member; David Allister of First Trust Private Banking and Matt Higgins, BSA Honorary Secretary. First Trust Private Banking has entered into partnership with the Belfast Solicitors’ Association in the sponsorship of, among other things, the BSA’s CPD lecture series and its social events, including the Golf Outing and Dinner Dance.
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- **Appeal Summaries** *(useful feature for lawyers)* - read expert commentaries on selected recent Appeal decisions by John Warke (former Chief Commissioner of PAC) with links to the relevant cases (available only through the Planning Online website).
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Quiz 2007

In aid of Clic Sargent Cancer Care for Children


Date: Thursday 31 May

Time: Drinks Reception commencing at 6.30pm with Quiz starting promptly at 7.00pm

Entry Fee: £30 per table (max 4 members to a team) All entry fees are payable by cheque/postal order only and should be made payable to the NIYSA.

Deadline: Completed forms, together with the entry fee should be returned no later than Monday 21st May to: NIYSA, c/o John Greer, McManus Kearney Solicitors, 4th Floor, Lesley Suites, 2-12 Montgomery Street, Belfast BT1 4NX

Entries without the appropriate fee will not be accepted. Places are at a premium and are on a first come, first served basis so early submission is advisable. Places are restricted to 30 tables.

ENTRY FORM

COMPANY

ADDRESS

TELEPHONE (WORK)

TELEPHONE (MOBILE)

TEAM (1) Captain

(2)

(3)

(4)

Contact No:
Northern Ireland Young Solicitors’ Association

Mid Summer Ball

We are pleased to announce
our Mid Summer Ball
SATURDAY 9 JUNE 2007
Tickets £35.00

at the exclusive and historic venue
THE GREAT HALL, QUB
DRINKS RECEPTION: 7.30pm
DINNER @ 8.00pm IN BANQUETING HALL
AND LIVE BAND

Places for this year’s event are extremely limited. Interested parties should complete the booking form below. Cheques are to be made payable to the NIYSA Cheques, booking forms and table plans of 10 to be sent to Darren Toombs c/o Carson McDowell Solicitors, Murray House, Murray Street, Belfast Tel: 02890 244951 (No reservation confirmed until cheque received). Or contact your Institute NIYSA Representative.

BOOKING FORM

NAME

FIRM

ADDRESS

E-MAIL ADDRESS

TELEPHONE

I ENCLOSE REMITTANCE OF £
Notice of AGM 2007-08

Please note that the Annual General Meeting of NIYSA will take place on Wednesday 27 June 2007 at 5.30pm at Mills Selig Solicitors, 21 Arthur Street, Belfast BT1 4GA.

The new Committee for 2007/2008 will be elected at the AGM and every member of the Association present at the AGM will be entitled to vote. No proxy votes will be allowed and the Chair shall issue a declaration of the results once the ballots have been counted.

Should you wish to nominate a member for a position on the NIYSA Committee please send your nomination to:

Barbara Johnston
Secretary, NIYSA
c/o Belfast Chambers
Belfast BT1 3JR
secretary@nilaw.com

The deadline for nominations will be Wednesday 13 June 2007

NOTE: All Solicitors under the age of 36 are members of NIYSA and are eligible to nominate committee members, stand as committee members and attend and vote at the AGM.
Library Update

> Smoking in the Workplace and Public Places

From Monday, 30 April 2007 it is against the law to smoke in enclosed and substantially enclosed workplaces and public places, and in certain vehicles. The introduction of this law, which has received overwhelming support across Northern Ireland, will protect workers and the public from the serious health effects of second-hand smoke.

> Legislation

Smoking (Northern Ireland) Order 2006
The Smoking (Northern Ireland) Order 2006 which came into force on 30 April 2007 makes provision for the prohibition of smoking in enclosed public places and workplaces.
http://www.opsi.gov.uk/si/si2006/20062957.htm

Explanatory Document


All legislation is available on the Libero database via the Members section on the Law Society website at www.lawsoc-ni.org

> Websites

Department of Health, Social Services and Public Safety (Northern Ireland)
This site lists the legislation and explanatory documentation.
http://www.dhsspsni.gov.uk/index/phealth/php/health_promotion/smoking_ni_order_2006.htm

Health Promotion Agency
The Health Promotion Agency has run a campaign to encourage smokers to quit before Northern Ireland goes smokefree. The new campaign highlights sources of advice and support about the legislation.
The campaign started on Monday 8 January 2007 and includes television, radio and poster advertising. The agency has also produced information leaflets which are available on their website: www.spacetobreathe.org.uk

Belfast City Council – Smoke Free Policies
The Belfast City Council website is aimed at business owners and lists their responsibilities, along with their employees and customers, under the new law. They also outline the type of premises which will be affected by the law, as well as explaining how the law will be enforced. The smoke free policies include hotels, guesthouses, bed and breakfasts, inns, residential members’ clubs and hostels, residential homes, hospices and nursing homes and general properties.

Standard Smoke Free Policy (taken from Belfast City Council website)
http://www.belfastcity.gov.uk/smokefree/Smoke%20free%20sample%20general%20policy%20Feb%202007.pdf

In anticipation of the smoking ban, Belfast City Council had organised seminars for employers. However, if you did not attend the seminars and would like specific advice on going smoke-free or arrange for a smoke-free officer to visit your business or workplace they can be contacted on 028 9027 0428.

> Articles

Both articles are based on the English No Smoking Policy which will be in force in July. At present there are no articles written specifically for Northern Ireland.

Badger: Legal Q&A: smoking policies (How to introduce a no smoking policy and how to tackle employees taking long and frequent smoke breaks)
2007: C.J. Feb 7, 23

Dorrell: Ahead of the game 2007 (Discusses issues arising from the ban on smoking in public places)
2007: H. & S.W. 29(3), 18-19,2
new books in the library


Celebrex litigation

We have been instructed by an individual who has suffered side effects from the above medication which is a COX-2 inhibitor anti-inflammatory drug used in the treatment of arthritis and chronic pain.

If any other firms have taken similar instructions against the makers Pfizer, we would be grateful if you could contact us.

Nicola Martin
Campbell Fitzpatrick
51 Adelaide Street
BELFAST BT2 8FE
Tel: 028 9032 7388
Fax: 028 9032 7732
Email: Belfast@cfs-law.com
Missing Wills

Re: Shauna McElhone (deceased)
Late of:
5 Broagh Road, Castledawson
Formerly:
Shauna Doyle of 49 Broagh Road, Castledawson
Date of Death:
3 March 2007

We have been instructed by the next of kin to act in the administration of the above estate. Please advise us if you hold a Will or Title Documents for the above named deceased. Please reply to:
P A Duffy & Co Solicitors
27-29 Broad Street
Magherafelt
BT45 6EB
Tel: 028 7963 3433
Fax: 028 7930 1659

Re: William Martin Gregg (deceased)
Late of:
The Farm Shop, 101 Manse Road, Newtownabbey, County Antrim, BT36 6SN
Date of Death:
12 March 2007

Would any person having knowledge of the whereabouts of the Will for the above named deceased please contact:
Patterson Donnelly Solicitors
26 Balloo Avenue
Bangor BT19 7QT
Tel: 028 9127 4644
Fax: 028 9127 7300
Email: claire@pdslaw.co.uk
Ref: CD/EW/Standard

Re: Patricia McLoughlin (deceased)
Late of:
34 Daisy Hill Gardens, Newry, County Down BT35 6AD
Date of death:
4 March 2007

Would any person having knowledge of the whereabouts of the Will of the above named deceased please contact:
Margaret Elliott
The Elliott Trainor Partnership
3 Downshire Road
Newry
County Down
BT34 1ED
Tel: 028 3026 8116
Fax: 028 3026 9208
Email: margaret.elliott@elliotttrainorpartnership.co.uk
Ref: ME/PROB/MCLO 53/1

Re: Peter Gallagher (deceased)
Late of:
125 Dernawilt Road, Cortrasna, Roslea, Enniskillen, County Fermanagh
Date of Death:
19 September 2006

Would any person having knowledge of the whereabouts of the Will for the above named deceased please contact:
Bronwen Loughran-Lowe
Oliver M. Loughran & Co Solicitors
9 Holmview Terrace
Omagh
County Tyrone
BT79 0AH
Tel: 028 8224 1530
Fax: 028 8225 7897
Email: info@oliverloughran.com

Missing Title Deeds

Folio:
AN 105514L
County:
Antrim
Registered Owner:
Stephen Robert Bingham and Kim Jo-Ann McCoubrie
Land at:
25 Runnymede Drive, Belfast, BT12 6LZ

Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the under mentioned Solicitors. And further take notice that unless the said Land Certificate is 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:
Claire Donnelly
Patterson Donnelly Solicitors
26 Balloo Avenue
Bangor BT19 7QT
Tel: 028 9127 4644
Fax: 028 9127 7300
Email: claire@pdslaw.co.uk
Ref: CD/EW/Standard
<table>
<thead>
<tr>
<th>Folio:</th>
<th>County:</th>
<th>Registered Owners:</th>
</tr>
</thead>
<tbody>
<tr>
<td>AR 98514</td>
<td>Armagh</td>
<td>Eugene Campbell</td>
</tr>
<tr>
<td>Folio: AN 44006</td>
<td>County: Antrim</td>
<td>Registered Owners: Raymond Boyd &amp; Denise Boyd</td>
</tr>
<tr>
<td>Folio: 36626 &amp; 25587</td>
<td>County: Antrim</td>
<td>Folios: 15975 &amp; 15977</td>
</tr>
<tr>
<td>Folio: 3203</td>
<td>County: Armagh</td>
<td>Registered Owners: Thomas and Audrey Flanagan</td>
</tr>
<tr>
<td>Folio: AN 44006</td>
<td>County: Antrim</td>
<td>Folios: 15975 &amp; 15977</td>
</tr>
<tr>
<td>Folio: 36626 &amp; 25587</td>
<td>County: Londonderry</td>
<td>Registered Owner: Mark McGill</td>
</tr>
<tr>
<td>Folios: 36626 &amp; 25587</td>
<td>County: Antrim</td>
<td>Lands at: Seacon Road, Ballymoney, County Antrim</td>
</tr>
</tbody>
</table>

Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the under mentioned Solicitors.

And further take notice that unless the said Land Certificate is 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.

Gillen & Co
Solicitors
3 Old Kenlis Street
Banbridge
County Down BT32 3BD
Tel: 028 4062 6639
Fax: 028 4066 9564

E J Lavery & Company
Solicitors
1-3 Hightown Road
Glengormley
County Antrim BT36 7TZ

Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the under mentioned Solicitors.

And further take notice that unless the said Land Certificate is 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.

Elizabeth O’Connor
Solicitors
8 Sandy’s Street
Newry
County Down BT35 8HG

Take notice that any person having custody of or information as to the whereabouts of the Land Certificates relating to the above mentioned Folios should forthwith produce said Certificates or communicate such information to the under mentioned Solicitors.

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

Moore McKay English Solicitors
Old Brewery Court
Newtownards
County Down BT23 4AD
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22 Cammoney Road
Glengormley
County Antrim
BT36 6HW

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Lurgan
Craigavon
County Armagh
BT66 6HD

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Magennis & Creighton
Solicitors
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Newtownabbey
County Antrim
BT37 0SL
Or email: margaret@magtonlaw.co.uk

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Solicitors
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Lurgan
County Armagh
BT66 6EY
Or by email to: richard@e-mcevoy.co.uk
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Omagh
County Tyrone
BT79 0AH

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Donaldson McConnell & Co
Solicitors
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Lisburn
County Antrim
BT27 4SR

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O’Hare Solicitors
St George’s Buildings
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BELFAST
BT1 2AB
Tel: 028 9023 4800

Or email: margaret@magtonlaw.co.uk

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Dublin 2
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or (00 3531) 6789701
Fax: (00 3531) 6766702

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For a leaflet on leaving a legacy to NI Chest Heart & Stroke please phone: 028 9032 0184 or write to us at: NICHS, 21 Dublin Road, Belfast BT2 7HB. Alternatively, ask your solicitor for a leaflet.
STEWY DONAGHY
I.Eng. M.Inst. AEA, FIMI, M.SOE.

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Lawyers use ‘legalese’ because it is the language in which they have been trained and also which at times best describes the work they are undertaking. However, it is important to remember that legalese can lead to clients misunderstanding what you are doing for them, which in turn can become a cause for a claim of negligence against a practice.

Clients, more often than not, do not understand the legal system and the language it converses in. The fact is, the majority of your clients won’t even completely understand the technicalities and intricacies of the job for which they have employed your services, whether it be writing a will, buying a property or sorting out their tax issues.

Therefore, it is important, when taking on any work for a client, to explain fully in laymen’s terms exactly what you are going to do for them. You should also make sure that any retainer letters or correspondence you send to the client detailing work to be undertaken is clear and concise and free of too much legal terminology.

To avoid the wrath of such perplexed clients, keep all language simple, to the point and realistic.

Clients also need to have the likely outcome of their case fully clarified. Too much legal language can confuse clients and can result in them having different expectations. Clients want to be kept up to date with what is happening on their behalf. Again, complicated legal jargon will more often than not leave clients confused, so give them a brief update once a week or fortnight but keep it simple.

They also need a realistic timeframe in which the work will be completed, so do not bamboozle them with too much information. Give them a simple time frame and explain that if it does take longer, why this will be. It is important to realise the frustration which clients experience if they do not fully understand what is being done of their behalf. To avoid the wrath of such perplexed clients, keep all language simple, to the point and realistic.

This column was prepared by the Alexander Forbes Professions risk management team. The article first appeared in the Gazette, the journal of the Law Society of England and Wales.
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**Ref 2619: In-House Commercial Property, Belfast**
An established commercial firm requires solicitor to join new team so support UK companies. Min 2 yr PQE expected. £35k+ available.

**Ref 2556: Commercial Property Solicitors, Practice in Belfast**
Growing company on market for both an experienced Partner designate with at least 5 yrs PQE along with a solicitor with 1-3 yrs PQE. Excellent academics required and willingness to add to team welcomed.

**Ref 1894: Construction / Projects Solicitor**
Leading city firm is on the market for a solicitor with some experience in construction law. Experience of Belfast, Dublin or London would add significant premium to remuneration.

**Ref 2167: Banking Solicitor**
Solicitors with between 6 mths–3 yrs PQE could be introduced to multiple opportunities. Market keen on individuals who have managed banking, finance and projects files. Competitive salaries available.

**Ref 2306: Partner – Commercial / Corporate**
A Partner is required for a new role in an expanding law firm in the City of Belfast. The firm is open to depth of PQE but focused on personal ability to work autonomously with other colleagues and energy to significantly compete in the local and national market place.

**Ref 2442: In-House Tax Lawyer, Belfast**
Seeking a junior tax lawyer to join their large and highly successful team, this multi-national company is particularly interested in candidates with experience/training in London or other large commercial centres. Generous package inc benefits such as study support for tax exams. A rare opportunity to experience a working culture very different from private practice.

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