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You can also find details on the website about:

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Copy deadline for Summer ‘10 Edition: Wednesday 21 July 2010

Extended Library Opening Hours - now open until 6.30pm on Thursdays.

Until the start of the Summer Recess, members will have access to the Law Society Library until 6.30pm on Thursday evenings. Please note that the Library will be staffed during this time.
New book celebrates history of Law Society

Senior members of the judiciary and the legal profession were among guests at the launch of a new book entitled ‘The Law Society of Northern Ireland - a History’ which took place at Law Society House on Tuesday 9 March 2010.

Written by Alan Hewitt, former Senior Partner in L’Estrange and Brett, Solicitors, Belfast and a past President of the Society, it has taken over two years to complete. During that period, Alan undertook extensive research, which involved reviewing some 150 years of archive materials.

The book presents an authoritative account of the history of the Society from its birth in 1922 in the turbulent circumstances of the partition of Ireland, through the inter-war years, the Second World War, the ‘Troubles’ and the momentous changes and initiatives of the last thirty years. It also includes a prologue dealing with the development of the profession from the earliest times and a chapter about the Northern Law Club, founded in 1861.

The history chronicles the events which have defined and shaped the Society as well as providing an insight into the very significant contribution which the Society and its members have made to legal, social and economic life, both in Northern Ireland and further afield. It charts the great numerical growth of the profession, particularly in the last thirty years, including the very significant increase in the number of women solicitors, and the Society’s role in the promotion of legal education, legal aid and the promotion of legal publications, as well as the many initiatives taken by the Society in the interests of the public and profession alike. There are accounts of the building of the new Law Society House, opened last year, and of the effects of the recent recession.

The book also includes cameos of some the great characters and sporting heroes of the profession, including the legendary Blair Mayne, a founder member of the SAS and later Secretary of the Law Society, as well as British and Irish Lions rugby players, and famous figures from Gaelic sport, hockey and golf who have been members of the profession.

Speaking at the launch of the book, Norville Connolly, President of the Law Society commented:

“Alan’s hard work and experience is very evident in this book, which has the just the right balance of history, humour and insight.

It is an important historical record, not only for members of the Law Society of Northern Ireland but for anyone who has an interest in the legal profession and history in general”.

All profits from the book will be donated to the Solicitors’ Benevolent Association.

The Writ caught up recently with the author for an interview about the book.

Why did you decide to write this history of the Society?
In 2002, in the euphoria of having completed my year as President of the Society and handed over the cares of office to Joe Donnelly, I was foolish enough to suggest that a history of our Society should be written; a very good history of the Law Society of Ireland had just been published and I felt that it was a pity that the history of our own Society had not been recorded. However, although I did some preliminary work, it was not until my retirement from practice in October 2007 that I was able to give the project the attention it deserved.

What materials did you have access to?
Fortunately, there was a pretty good archive of basic materials. The minutes of almost all the Council and committee meetings of the Society from its foundation in 1922 to the present time had been preserved, and there were also the minutes of meetings of the Northern Law Club. As well as the minutes of both Societies, I also had the LSNI’s annual reports, its various journals and magazines over the years, the annual Legal Aid reports, the annual reports of the Lay Observer and other materials. The publications of the Irish Legal History Society were also useful, and many colleagues in the profession were extremely helpful.

What was the Northern Law Club?
It was a club founded in 1861 by solicitors in the North of Ireland, mainly from Belfast and Counties Antrim and Down, to promote the
interests of the profession in the North – at that
time the profession in the whole of Ireland was
governed from Dublin. It changed its name in
1876 to the Northern Law Society. Although it
had no regulatory powers, it was important for
many reasons, not least that the first Council
of the present Society, when it was founded
in 1922, was drawn, virtually en bloc, from the
committee of the Northern Law Society.

Were there any surprises?
Yes. I hadn’t realised, for example, just
how close the Society came to voluntarily
surrendering its Royal Charter in 1933 when
the negotiations with the Government about
accommodation for the Society in the new
Royal Courts of Justice broke down. The
situation was rescued mainly by the efforts of
J C Taylor, the President at the time. He more
or less bypassed all other politicians and went
straight to the Prime Minister, Lord Craigavon,
with whom he had at least four meetings,
resulting in extremely satisfactory arrangements
for the Society.

What was Blair Mayne’s involvement with
the Society?
Blair Mayne qualified as a solicitor in 1938 and
joined the Belfast firm of George L MacLaine &
Co. At the outbreak of the Second World War,
he, like many members of the profession, joined
the armed forces. In 1941 he was recruited to
join what became the SAS and was involved
in spectacular action in the desert war in North
Africa and in the key arenas of war throughout
western Europe. As a result of his war time
activities, he was awarded four DSOs, a Legion
d’Honneur and a Croix de Guerre. It is still a
source of controversy that he did not receive
the Victoria Cross.

In 1946, the post of Secretary of the Law
Society became vacant and Mayne was
appointed. Despite his colourful reputation, he
was a very effective Secretary of the Society
until his premature death in a road accident
in 1955. It would be fair to say that you can
probably safely discount at least two thirds of
what you have ever heard or read about him
as pure fiction or wild exaggeration, but having
done that the facts that remain are still quite
astonishing.

What about more recent history?
As I moved on, I discovered that A J P Taylor,
the historian, was absolutely right when
he said that “recent history is thicker”. For
example, the 1970s were years of extraordinary
development. Fundamental changes for
solitors were effected by the Solicitors Order
(NI) 1976, which very quickly became the basis
of new disciplinary and accounting procedures,
the Compensation Fund, the Master Policy, the
new office of Lay Observer and much else. The
Institute of Professional Legal Studies opened
in 1977. Solicitors became eligible for some
judicial appointments which had been barred
to them before. The Royal Commission on
Legal Services took reams of evidence and duly
reported. The EEC, as it was then, began to
affect lawyers here in many practical ways. SLS,
which was to revolutionise legal publications for
local lawyers, was established with major input
from the Society. And at the end of the decade,
the Society prepared to purchase the old W H
Alexander motor showroom in Victoria Street to
create the original Law Society House.

All of these events took place against the
background of the appalling strife which we
rather euphemistically call “The Troubles”. As
I have said in the book, the legal profession
in Northern Ireland reflects the community it
serves and naturally represents a broad range
of political and religious views, and there have
been times when the cohesion of the Society
has been severely tested, but thankfully it has
survived all of them intact. This is a great tribute
to the work of many dedicated solicitors from all
sections of the community.

What other significant changes have there
been?
The book also records the great sea change
in the gender balance of the profession and
the increasing number of judicial appointments
from the ranks of solicitors. It is very gratifying
that the profession has currently provided the
presiding judges of both the County Court and
the Magistrates Court.

The years from 1987 to 2005 saw a remarkable
spate of initiatives on the part of the Society,

From left: Lord Justice Campbell; Alan Hewitt; Norville Connolly, President and Rory McShane.
including the establishment of the financial services company, our joint ventures in Brussels with the other UK Law Societies, the promotion of mediation and the Home Charter, and also the advent of the annual advanced advocacy course, our quality assurance scheme, Lexcel, CPD, the practice advisory panel, the Lawcare helpline and the formation of several new special interest groups.

What about Government intervention?
Despite this plethora of initiatives on the part of the Society, the appetite of Government for interfering with the professions remained unsated. There was a short respite after the Royal Commission in the Seventies and Lord Mackay’s Green Papers at the end of the Eighties but in the early years of this century we had the rise of that bewildering institution, the Financial Services Authority. We also had the Office of Fair Trading’s campaigns, the Lord Chancellor’s Department’s papers and more. Given the undisguised bias against the profession of a good deal of this, it was almost a relief when, after the 2005 consultation paper, “The Regulation of Legal Services in Northern Ireland”, Professor Sir George Bain’s Review Group was appointed. The Society and others responded urgently to the consultation paper in the fairly short period of time allowed. After a great deal of work and, very commendably, the Bain Group produced its report on time in October 2006. The report clearly recognised that in the context of legal services, as in other ways, Northern Ireland and England are not at all alike and that any changes here should be carefully tailored to our own situation. We still await the consequent legislation.

What are your hopes for the book?
I hope that this book will be a document of record for the future (including some of the fascinating photographs which we unearthed), and that it will demonstrate that the profession and the Society have a great deal to be proud of. I also hope that, in the current recession, which is making professional life so difficult, it will serve as a reminder that throughout its history the Society and its members have encountered all sorts of problems and have coped with them magnificently. And to quote John Gordon in his foreword: “I also hope that it will encourage and inspire many of our members, particularly recently qualified solicitors, to engage with the Society’s activities and to become part of tomorrow’s chapters of its history”.

An order form for ‘The Law Society of Northern Ireland - A History’ is included as an insert in this issue. Purchases can also be made directly from the Law Society Library (cost £21 if collected, or £24 to include postage and packing).
Chief Executive’s Update

Devolution of policing and justice to the Northern Ireland Assembly occurred on 12 April 2010.

This will make a significant change to the way in which we interface with Government on the issues which affect solicitors on the ground.

The major and most significant difference is of course that we shall interface with the Minister of Justice, David Ford MLA, and the new Department of Justice and not the Lord Chancellor.

For some time now the Society has been working hard to ensure that upon devolution of policing and justice, the Society is well placed to best argue the case on behalf of members and their clients.

The Society has already, on a number of occasions, had the opportunity to discuss matters on the Society’s agenda with the new Minister of Justice, David Ford, and also each of the Justice spokespeople for the other parties.

The Society has also met with the First and Deputy First Ministers and other Ministers in the Executive.

Northern Ireland has its own particular legal culture and our practices and procedures, while similar in many respects to those in England and Wales, also have their own unique distinctions. There are many instances also where the same rules are applied in a slightly different way. It is not possible therefore to directly read across from England and Wales to Northern Ireland policy developments, legislation and rules of procedure etc which while they might automatically make sense in England and Wales do not necessarily do so in this jurisdiction.

The Society has been pressing the case with the political establishment at the Executive and Assembly that it is no longer appropriate to look to models developed in England and Wales and apply them directly in Northern Ireland.

In particular, the proposed legal aid rates in respect of Crown Court cases are based on procedures which are somewhat different to those in England and Wales and therefore do not reflect all the work which solicitors do in criminal cases in this jurisdiction. This is but one example of why we look to the new Department and Minister for Justice to develop proposals which are appropriate and proportionate to Northern Ireland.

In terms of the economy generally, we have been meeting with the banks and we shall report the outcome of those meetings to the Justice Minister so that he has a full understanding of the practical challenges being faced by members on a day to day basis, the implications for cash flow and the longer term implications.

Access to justice and access to a local solicitor of choice are strong foundations of this community and we shall continue to emphasise the need for and benefits of the network of solicitors’ firms which has served this community so well in the past and shall do in the future.

The Society will be meeting the new Minister for Justice soon. We are also meeting the chairman and deputy chairman of the new Justice Committee which shall oversee the work of the Justice Minister and Justice Department. The Committee meets on a weekly basis and we shall attend to present the interests of our clients and our members.

Northern Ireland benefits from 528 solicitors’ firms in 74 geographical locations. This means that the local client base has access to a local solicitor and a solicitor of their choice. Solicitors provide an invaluable service to their clients across a wide spectrum of issues.

You will see elsewhere in this edition of The Writ a report on some of the work which we have been doing in relation to providing responses to proposals emanating from government. The Society is taking its rightful place as an authoritative voice on justice issues. Given the work already done much progress has already been made.

On other fronts, the President and I have convened in June a series of engagements throughout Northern Ireland to meet with our members and exchange views. We shall set out also some of the work that the Society has been taking forward and discuss future challenges. I look forward to meeting with you again at those events.

Alan Hunter

“For some time now the Society has been working hard to ensure that upon devolution of policing and justice, the Society is well placed to best argue the case on behalf of members and their clients.”

From left: Prof Sir Desmond Rea Former Chairman, Northern Ireland Policing Board, Barry Turley ASITIS Consulting, Alban Maginness MLA, Prof John Jackson Professor of Criminal Law - UCD, David Ford MLA (now Minister of Justice), Alan Hunter, Chief Executive of the Law Society, Liz Cuddy Chief Executive, Extern who were keynote speakers at the ASITIS seminar on the devolution of Policing & Justice held in March 2010
News in Brief

**ADVICE ON CONDUCTING EMPLOYMENT INVESTIGATIONS**

The Labour Relations Agency has issued a new advisory guide entitled “Advice on Conducting Employment Investigations.” It is designed primarily for medium-sized organisations in Northern Ireland but the core principles apply as much to small and micro-employers as well as multi-nationals.

It takes a 5W approach to employment investigations - Why? What? Who? When? and Where? Guided by court decisions, its main focus is to ensure that employers get an employment investigation right whilst being fair and reasonable to all those involved in the process.

The publication can be downloaded from the Publications section of the LRA’s website at www.lra.org.uk

**JUDICIAL ROLE PLAY**

The Judicial Appointments Commission in England & Wales (JAC (E&W)) has launched an online video of the type of role play exercise their candidates may be asked to undertake during the selection exercises for some judicial posts.

JAC (E&W) hopes that by providing online access to this film, the process of applying for judicial office will be demystified and more people will be encouraged to apply for future vacancies.

The candidate in the film is played by an actor, in the role of a Recorder sitting at a fictitious County Court. Professional actors play the other main roles, as they do in a real selection exercise.

Whilst this role play is designed to help applicants understand the selection and assessment exercises undertaken by JAC (E&W), it is worth nothing that the Northern Ireland Judicial Appointments Commission has also used role play as part of the assessment process for a recent vacancy (County Court Judge) and continues to develop their own guidance in relation to this new and effective assessment tool.

To view the film, and for full details of how the role play is used as part of JAC’s (E&W) assessment process, please go to http://www.judicialappointments.gov.uk/selection-process/136.htm

**HIGH HEDGES**

Legislation designed to help people adversely affected by high hedges near their property has been introduced to the Northern Ireland Assembly by the Department of the Environment.

The Bill will empower local councils to act in disputes over loss of light to a domestic property due to a neighbouring high hedge.

The Bill will apply to lines of two or more evergreen or semi-evergreen trees and will introduce a system similar to that which has been operating successfully in England and Wales since 2005.

* See also Library Update Page 48

**NON JURY TRIALS**

The Director of Public Prosecutions issued 13 certificates for non-jury trials during the 12 month period from 1 August 2008 to 31 July 2009, down from 29 the previous year.

There will be a comprehensive review of the non-jury trial system, including a full public consultation, before it next falls to be renewed in July 2011.

**LISTED BUILDINGS**

The Northern Ireland Environment Agency (NIEA) has launched a 12-week public consultation on the criteria used to list buildings, aimed at improving public understanding of the listing process. The consultation, which closes on 5 July 2010, is downloadable from www.ni-environment.gov.uk/built-home/protection/listed_buildings_p/criteria_for_listing.consultation

NIEA protects listed historic buildings in Northern Ireland because they are of special architectural or historic interest. Decisions on which parts of our heritage fall into this category can often be controversial and it is important that clear guidance is available.

There are approximately 8,500 listed buildings in Northern Ireland, less than two per cent of all buildings.

**NEW PARADES LEGISLATION**

The Office of the OFM/DFM has commenced a public consultation on the draft Public Assemblies, Parades and Protests Bill (Northern Ireland). The draft legislation contains proposals for a new framework for the handling of public assemblies including parades and protests.

The public consultation runs until 14 July 2010. The consultation document can be found at http://www.nidirect.gov.uk/featured-consultation/

**VACANT DISTRICT COUNCIL SEATS**

District council seats that become vacant during a council term will now be filled by party nomination or substitution under legislation recently brought into force by the Government.

Previously, vacancies on local councils could be filled using the “co-option” procedure. However, if one or more councillors objected to a co-option, a by-election would be required to fill the vacancy.

The change in the law means that the Chief Electoral Officer will now ask the party to which the vacant member belonged at the time of their election to nominate a replacement, or, in the case where the seat was held by an independent councillor it can be filled from a list of substitutes provided by that member.
Refuse to mediate - pay more in costs?

The cost issues in a recent and high profile disputed Will case (Dr Christine Gill v RSPCA [2009] EWHC B34 Civ.) have recently been determined. The Court observed that “despite the Claimant’s repeated attempts to resolve her dispute with the Third Defendant (RSPCA) by mediation” the RSPCA “remained resolute in its opposition thereto”. As a consequence, the Court ordered that the RSPCA should pay Dr Gill costs on the indemnity basis.

Although also of interest as a disputed will case, the case has attracted attention from those with an interest in mediation as a means of resolving disputes.

The hearing took place in Leeds and concerned the Wills of John and Joyce Gill who owned Potto Carr Farm near Northallerton, Yorkshire. The Gills’ had one daughter, Christine, who earned her PhD and embarked on an academic career lecturing at Leeds University. She was the only child of her parents and unsurprisingly expected to inherit her parents’ 287 acre family farm. She helped out on the farm over a long period of time and after her father died, she cared for her mother. Indeed, Dr Christine Gill and her husband moved to live on an adjacent farm property so that the care of the farm and care of her parents could be more satisfactorily achieved. She even reduced the amount of teaching she carried out so that she could continue to assist on the farm. In 1993 John and Joyce made mirror Wills leaving everything to the survivor and thereafter nothing to their only daughter Christine but rather everything to the RSPCA. Six years after signing the Will, John died. His widow Joyce survived him by seven years and then she also died in 2006.

The RSPCA believed that in law they had a duty to secure bequests for the benefit of the charity and went about that task in an energetic way. Indeed, in order to preserve the asset pending the outcome of Dr Christine Gill’s claim, it was necessary for her to take out an injunction to prevent the farm being sold.

The Court’s analysis of issues such as undue influence and proprietary estoppel is of general interest. However, the issue of particular interest to this article is the judicial comment concerning the failure by the RSPCA to engage in mediation – and the consequences for the RSPCA of what was deemed to have been an unreasonable refusal to mediate.

The case was heard in England and Wales. Some caution must therefore be expressed given that England and Wales has adopted the Woolf Civil Justice reforms and has in place litigation protocols and Civil Procedure Rules that are not on all fours with procedures in Northern Ireland. However, in the High Court in Northern Ireland there are various Protocols and Practice Directions affecting clinical negligence claims, commercial actions and inheritance claims to which reference will be made later.

Before considering the comments of the Judge in the Gill case it is important to be reminded of previous cases in England involving mediation and costs awards. In Cowl –v- Plymouth City Council [2001] EWCA 1935, Lord Chief Justice Woolf gave a very clear endorsement of the merits of mediation and the importance of endeavouring to resolve disputes. Among the observations of Lord Woolf were:

- “insufficient attention is paid to the paramount importance of avoiding litigation whenever possible”.
- “…parties must be … conscious of the contribution alternative dispute resolution can make to resolving disputes which both meets the needs of the parties and the public and saves time expense and stress”.
- “Without the need for the vast costs which must have been incurred in this case …the parties should have been able to come to a sensible conclusion as to how to dispose the issues which divided them. If they could not do this without help, then an independent mediator should have been recruited to assist…..Today sufficient should be known about alternative dispute resolution to make the failure to adopt it, in particular where public money is concerned, indefensible”.

In Hurst –v- Leeming [2001] EWHC 1051 Ch, Mr Justice Lightman said:

(Where there is) “any unjustified failure to give proper attention to the opportunities afforded by mediation, and in particular where mediation affords a realistic prospect of resolution of the dispute, there must be anticipated as a real possibility that adverse consequences may be attracted”.

This case was closely followed by a somewhat notorious case – Dunnett v Railtrack [2002] 2 All ER 850. In this case although Railtrack were legally successful in the sense that they “won” their case, they were not awarded costs because they had refused to mediate particularly when the Court had suggested that mediation should be considered. Lord Justice Brooke observed:

" It is hoped that any publicity (of the judgment) will draw attention of lawyers … to the possibility that if they turn down out of hand the chance of alternative dispute resolution when suggested by the Court, as happened on this occasion, they may have to face uncomfortable costs consequences”.

In a different context – a conference dealing with the victims of medical accident (AvMA Conference July 2003) – Mr Justice Lightman observed:

“Mediation is not a universal panacea: it has limitations and is not always applicable. But where it is available in my view no sane or conscientious litigators or party will lightly reject it, if he fairly weighs up the alternative, namely litigation, and any adviser who does so invites a claim in negligence against him”.

By this stage, in mid 2003, some Judges and lawyers were becoming concerned at the apparent tendency for Courts to penalise parties for not engaging in mediation. In Ceresa (UK) Ltd. –v- Burden Group plc [2003] EWHC 1805 QB, a somewhat different tone was struck. Judge Reid QC observed:

“Mediation is not a universal panacea: it has limitations and is not always applicable. But where it is available in my view no sane or conscientious litigators or party will lightly reject it, if he fairly weighs up the alternative, namely litigation, and any adviser who does so invites a claim in negligence against him”.

“It is possible that a failure to engage in the mediation process may have adverse costs consequences for a successful party. It is not by any means inevitable”. 
"So long as parties are showing a genuine and constructive willingness to resolve the issues between them, it does not seem to me that a party will automatically be penalised because that party has not gone along with a particular form of ADR proposed by the other side”.

This divergence of judicial views were, it was hoped, to put to rest in the important and noteworthy case of Halsey –v- Milton Keynes General NHS Trust [2004] EWCA Civ 576.

In Halsey a number of interested parties were invited by the Court of Appeal to make submissions in addition to the submissions made on behalf of the protagonists in the case. In a previous addition of the Writ (July/August 2004) a summary of the Halsey case was provided. In that article it was noted that the English Court of Appeal laid down some tests or principles to which a Judge should have regard in deciding whether or not there should be a costs implication for a party who did not participate in mediation. The Court also observed:

“* All members of the legal profession who conduct litigation should now routinely consider with their clients whether their disputes are suitable for ADR. But we reiterate that the court’s role is to encourage not compel. ‘The form of encouragement may be robust’*.

Since the Halsey case there have been articles written and some debate as to whether or not those principles were overly restrictive and overly discouraging of parties to mediate. However, the principle was clearly established that in appropriate circumstances where a party refused to mediate they would run the risks of having an adverse costs order against them notwithstanding that they may have been successful in the case – in other words costs would not necessarily follow the event.

In and around the same period of the cases considered above, some important Practice Directions and Protocols in the Northern Ireland High Court were published. The Commercial Court Practice Direction No. 1/2000 was amended on 7th October 2002 and includes the following:

“the Court is anxious to encourage serious attempts by the parties to enter into productive negotiations with a view to achieving a mutually satisfactory resolution of the litigation or, at the very least, identification and reduction of the disputed issues at an early stage of the proceedings”.

“Consistent with the aim of the commercial list set out at the commencement of this Practice Direction the Commercial List Judge may draw the attention of the parties … to the existence of alternative means by which a case or a specific issue/ issues therein may be resolved including, in particular, a suitable form of Alternative Dispute Resolution. In appropriate cases the Commercial List Judge may require the parties to justify a decision not to resort to an appropriate form of dispute resolution”.

In 2006, dealing with inheritance and provision for family and dependants claims, the Chancery Division published a Pre-Action Protocol for the Resolution of Claims under the Inheritance (Provision for Family and Dependants) Act, 1979. Among the aims of the Protocol was:

“* To encourage the resolution of disputes without recourse to hostile litigation*.

S. 7 discussed negotiations and mediation and s. 7.02 states:

“Mediation may assist in achieving a compromise, particularly in relation to disputes between family members. A failure to mediate will often risk substantially increased costs and this can be reflected in the eventual disposal by the court”.

More recently on 27 February 2009 in dealing with claims for clinical negligence Mr Justice Gillen published a Pre Action Protocol for Clinical Negligence Litigation effective from April 2009 which stated:

“* The parties should consider whether some form of alternative dispute resolution procedure would be more suitable than litigation and if so consider which form to adopt. Both the plaintiff and the defendant may be required by the court to produce evidence that alternative means of resolving their dispute have been considered. This is likely to involve production to the court of the standard mediation correspondence…. Different forms of alternative dispute resolution are available and a mediation service is provided by the Law Society of Northern Ireland. Generally the courts take the view that litigation should be a last resort…*”.

It can be seen that these Practice Directions and Protocols reflect the Northern Ireland judiciary's recognition of the desirability of resolution of claims and how parties should use the Courts only as a “last resort”. While not yet having in place formal rule changes it could be argued that in the light of these Practice Directions and Protocols, the Courts in Northern Ireland would be unlikely to decide differently to the cases in England and Wales when asked to consider costs sanctions in cases where a party has unreasonably refused to mediate. It might also be asked why, if there exist such Protocols and Practice Directions, are not more cases “encouraged” towards mediation?

So what happened in the Christine Gill –v- RSPCA case? The Court heard that Dr Christine Gill’s parents were somewhat unusual. Her father was described as a domineering and determined man with an explosive character. Her mother was submissive and an obsessive compulsive and suffered from panic attacks and agoraphobia. The Court found that there had been undue influence by Christine’s father on Christine’s mother not to provide properly for Christine. In addition, the Court held that Dr Christine Gill could rely on proprietary estoppel in that she had relied and acted upon to her detriment on assurances from her mother as to her expectations concerning inheriting the family farm.

Having “won” her case Dr Gill requested that the Court order the RSPCA to pay her costs on an indemnity basis. Her legal team (Mishcon de Reya) argued that the RSPCA had been so unreasonable in their approach to attempted resolution that their behaviour justified an award of costs on the indemnity basis.
The RSPCA had indicated in writing that they would not mediate and rejected offers to mediate made during a somewhat stop start preliminary process to the trial proper. The Judge (James Allen QC sitting as a Deputy High Court Judge) observed that it was:

“quite apparent that the [RSPCA] was unwilling to adopt the ADR procedure proposed by the Claimant”.

The Judge continued by observing that he found the attitude and stance adopted by the RSPCA was:

“inconsistent with the Court’s expectation of a willingness to participate in a well established procedure [mediation] which is proven to result in improved quality of settlements and an increased incident of settlements”.

The Judge added that the RSPCA displayed an attitude to mediation:

“which was somewhat unreasonable, out of step with the expectation of the Court and the underlying spirit of the modern procedure thereof”.

He therefore ordered that the RSPCA should bear Dr Gill’s costs of the proprietary estoppel claim on the indemnity basis and that, in addition, they should bear costs in relation to the undue influence claim from a particular point after the issue of proceedings again on an indemnity basis. It is reported that the costs were in the region of £1,300,000.

Mark Keenan of Mischon de Reya was quoted in the Times as saying “parties who are not prepared to participate in recognised methods of alternative dispute resolution such as mediation will, like the RSPCA, be punished in costs.”

It is the experience of the Dispute Resolution Service of the Law Society of Northern Ireland that many cases which parties approach perhaps with an unpromising expectation of resolution, can and are resolved during mediation. What the Court of Appeal in England and Wales in the Halsey case called “robust” encouragement can result in parties participating in a process which saves time, expense and stress for the parties. Moreover not to engage in a resolution process could be argued to be contrary to the Court’s expectations.

The contested Will dispute involving Christine Gill and the RSPCA should serve as further encouragement to practitioners to seek methods of resolving disputes. The framework for the judiciary to provide “robust encouragement” as envisaged by Halsey surely exists within existing Practice Directions and Protocols as referred to above. It is hoped therefore that there can be a renewed interest in mediation and an increase in the number of cases referred to the Dispute Resolution Service of the Law Society.

We are grateful to Brian H Speers of Carson Morrow Graham, Solicitors, Belfast, for this article. Brian is an experienced Mediator and a member of the Society’s Dispute Resolution Service.

Law Society Dispute Resolution Service

What’s the Dispute Resolution Service (DRS)?
The DRS is a Society service for members and their clients which is in its eighth year of operation. It comprises a panel of locally based solicitors and barristers trained and accredited in the use of mediation techniques for resolving disputes which solicitors handle on behalf of their clients. All members of the panel are covered by professional indemnity insurance.

What type of disputes does it deal with?
Any type of dispute (commercial, litigation, family, conveyancing and so on – there is really no limit) can be referred at any stage for mediation and the procedure is straightforward.

How do you refer a case to the DRS?
If the parties agree to attempt mediation, a registration form and standard form mediation agreements can be obtained on request from the Society.

A mediator acceptable to the parties will be appointed and the mediator will contact them about where and when the mediation should be held. The new premises at Law Society House are an ideal location for a mediation.

Does mediation work?
Experience gained from statistics of mediations carried out locally confirms the clear findings of other jurisdictions, that there is a high rate of success and satisfaction with mediation and that even where agreement is not reached, the process often results in a clarification of the issues for the parties leading to settlement later on.

Further details
Practitioners who want further details should contact the Society and request an information pack which contains the necessary mediation documents. These are also available from the Society’s web page at www.lawsoc-ni.org.

For further information about the DRS please contact
Kevin Delaney - telephone 028 9023 1614 or e-mail him at kevin.delaney@lawsoc-ni.org

We are grateful to Brian H Speers of Carson Morrow Graham, Solicitors, Belfast, for this article. Brian is an experienced Mediator and a member of the Society’s Dispute Resolution Service.
This is the second in a series of articles to be presented in The Writ to assist in understanding the new sentences and measures that have been put in place through the Criminal Justice (Northern Ireland) Order 2008.

Introduction

Electronic monitoring (EM) has been available in Northern Ireland since 1 April 2009 to support the monitoring of curfews ordered by the courts or prisons. Under the Criminal Justice (NI) Order 2008, a curfew with an EM requirement can be set as a condition of bail, community sentence or post-custody licence.

Curfews can help to impose structure and discipline on an individual’s daily routine, break patterns of offending behaviour and allow participation in work, education or training. EM provides a robust system for the enforcement of curfews and can promote public confidence by enhancing the supervision of individuals in the community. It is also worth noting that EM is not a satellite tracking system. EM is only used in Northern Ireland to monitor an individual’s compliance with their curfew.

G4S delivers the EM service in Northern Ireland on behalf of the criminal justice system and was awarded the contract following a public tendering process. G4S has extensive experience of delivering EM across the world and uses EM technology that is well tried and tested.

Since its introduction last year, EM has been widely used with over 550 EM orders directed by the courts in its first year of operation. The vast majority of EM requirements have been attached to bail curfews (approximately 97%) and approximately 16% were ordered for juveniles (under 18 years old).

How does EM work?

EM works using an electronic tag and a Home Monitoring Unit (HMU). The tag is about the size and appearance of a sports watch, is fitted to the person’s ankle and must be worn at all times. It is lightweight, shockproof, water resistant and robust so that it won’t restrict normal daily activities including swimming and playing sport.

The HMU is installed at the individual’s curfew address and the tag communicates with the HMU which relays this information to the G4S Monitoring Centre. If the individual wearing the tag is absent during their curfew period, the signal is broken, and an alert is sent to the G4S Monitoring Centre. An alert is also sent if there is any interference with the HMU or tag, if the HMU is moved or unplugged or if the tag is removed.

When a curfew violation registers at the G4S Monitoring Centre, a member of G4S staff will check that the equipment is functioning correctly. If the violation is confirmed, the appropriate supervising agency will be notified within agreed timescales. If the person is on bail, the PSNI will be informed that a breach of bail has taken place. The Probation Board and Youth Justice Agency are responsible for cases under their supervision.

What happens next will be decided on a case by case basis - this may be immediate arrest, a summons to court, a warning letter, a meeting with the person on tag or recall to prison depending on the type of curfew, the seriousness of the circumstances and the risk to the public.

Who can be given an EM requirement?

The court or prison decides if an individual (who must be aged 10 years or older) is suitable for an EM requirement on a case by case basis, and with guidance from the PSNI, Probation Board or Youth Justice Agency where appropriate. EM requirements must last for a minimum of 14 days and the curfew period can be between 2-12 hours on any one day. Where necessary, the curfew period can be tailored to meet specific requirements when, for example, an individual needs to attend an evening class.
An EM requirement can only be ordered if the individual being tagged has an electricity supply at their curfew address. However, a fixed telephone line is not required as the technology uses a mobile signal. Individuals may be monitored from different addresses on different days to meet the curfew requirements imposed by the court.

Further information

This is a brief overview of EM but further information is available from [www.sentencingreformni.gov.uk](http://www.sentencingreformni.gov.uk). This website also includes information on all of the sentencing reforms within the Criminal Justice (NI) Order 2008. The EM Project Team in the Department of Justice can also be contacted on jsd.em@dojni.x.gsi.gov.uk or 028 9052 7506 and the G4S Area Operations Manager for EM in Northern Ireland can be contacted on 0845 300 3450.

Fact sheets on the topics covered are available from the Society’s Library.
The Institute of Professional Legal Studies, in conjunction with Forensic Science Northern Ireland, is offering a four session course in Forensic Investigation.

The course will cover the following topics:

- Forensic DNA Profiling
- Firearms and Ballistics
- Physical Methods (Paint, Glass, Fingerprints, Footwear)
- Biology (Body fluids)
- ADT (Alcohol, Drugs and Toxology)

The course will be held at the Institute of Professional Legal Studies and at the Forensic Science N.I. Laboratories on the following dates:-

- 20 September: IPLS, 10 Lennoxvale Belfast
- 11 October: Forensic Science NI Laboratories, Carrickfergus
- 1 November: Forensic Science NI Laboratories, Carrickfergus
- 15 November: Forensic Science NI Laboratories, Carrickfergus

**Time:** 9.30am – 1.00pm

**Cost:** £350

**Successful completion of the course will lead to a Certificate in Forensic Investigation**

Applications will be taken on a first-come first-served basis.

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 27 AUGUST 2010**
The Society’s President, Norville Connolly, joined the Chairman of the Society’s Litigation Action Group, Rory McShane and members of local Solicitors’ Associations at the launch of the Society’s new RTA Claims Advice Service and Solicitor’s Card in March 2010.

This initiative is aimed at supporting firms to ensure that their clients contact them immediately following a road traffic accident. The Society has developed a series of client communications for firms (downloadable from the Members’ Services Section of the Society’s website – www.lawsoc-ni.org) which will inform their existing clients of the potential risks of availing of the services of a claims management company as well as updating them on the new service being offered.

To support the new Claims Advice Service, the Society has developed a Solicitor’s Card which will provide firms with the opportunity to produce a branded wallet-sized card, detailing the solicitor’s or firm’s contact details on one side and on the reverse guidance on what to do if involved in a car accident.

The Society has committed to pay the initial setup cost for the design and application for each firm’s contact details to be added to their own solicitor’s card (one per firm). Solicitors’ firms will then have the option to order and pay for a quantity of cards which can be distributed to their clients. For further details see the Members’ Services Section of the website - follow Claims Advice Service link.

From left: Norville Connolly, President and Rory McShane, Chairman of the Society’s Litigation Action Group
Responding to Consultations - an overview

Introduction

Over the past eighteen months the Society’s Committees have been actively engaged in the development of responses to consultations issued by Government Departments. The Society has worked hard in developing streamlined procedures to ensure our systems are able to keep up with the pace of the reform agenda being advanced by Government.

Responding to Government consultations provides an opportunity for the Society to advocate and promote the interests of our clients and those of the profession.

This article summarises the key responses which the Society and its Committees have submitted over the past eighteen months.

PACE

The Society responded to a Northern Ireland Office (NIO) consultation on proposed changes to the Policy and Criminal Evidence (Northern Ireland) Order 1989 (PACE). In its response the Society stated that the 1989 Order and Codes, both in their overall structure, and in their operational day-to-day detail, have provided a sound basis on which to balance the need for the police to investigate crime effectively, fairly and appropriately, with the rights of individuals suspected of committing criminal offences.

The Society highlighted the need for those participating in voluntary interviews at police stations to be fully informed of their right to legal advice. We welcomed proposals for increased judicial involvement in the application process for a search warrant. The Society commented extensively on a range of further proposals contained in the consultation document and would encourage practitioners involved in this area of work to consult the policy and law reform section of the Society’s website to read the full response.

Mental Health and Capacity

The Department of Health Social Services and Public Safety consulted in March 2009 on proposals for the reform of the law relating to mental health and mental capacity. This proposal largely reflects recommendations of the Bamford Review of Mental Health & Disability Learning in Northern Ireland.

The Society responded to the consultation and commented significantly on proposals to abolish the Enduring Power of Attorney (EPA) and replace it with a Lasting Power of Attorney (LPA), similar to that in place in England & Wales. The Society highlighted the widespread use and popularity of the EPA throughout Northern Ireland. Practitioners may be aware that the introduction of the LPA in England & Wales is considered to have led to soaring legal costs and complications for members of the public wishing to put in place arrangements should they become mentally incapacitated. The Society also indicated that it wished to work with the Department to avoid this situation arising in Northern Ireland.

Since then the Society has contributed to the development of the reform agenda through its membership of the Mental Health and Capacity Reference Group. The Society has continued to raise concerns regarding the proposed abolition of the EPA and has suggested a number of alternatives, which are being given consideration by the Department.

Public Procurement Process

There is some concern that the tendering process for the provision of legal services needs to provide a more even platform upon which local firms can compete with larger firms based outside the jurisdiction. This is because the criteria by which tenders are judged place an unfair emphasis upon a firm’s previous experience of advising Government on projects of similar quantum, whilst failing to take account of knowledge of local practices and legal procedures and value for money.

The Society responded to an inquiry by the Northern Ireland Assembly Committee for the Department of Finance and Personnel into the procurement process. Our response focused on practitioners’ concerns and questioned how the current arrangements fitted with Government’s objective of growing the private sector in Northern Ireland.

The Committee has subsequently issued its Report on Public Procurement Policy & Practice in Northern Ireland, upon which the Society has commented further.

Land Law

The Society responded to the NI Law Commission’s consultation on Land Law Reform. The Society was broadly in support of the proposals contained in the consultation document, though it raised a number of practical concerns regarding specific proposals.

Community Safety

The NIO consulted on their proposed community safety strategy for Northern Ireland.
The Society is currently preparing a response to the Commission’s supplementary consultation paper which contains proposed reforms of the law relating to adverse possession, ground rents and covenants after redemption.

**Planning system**

The Planning Service published wide-ranging proposals for a new streamlined planning system. The proposals would dramatically change the way members of the public are involved in and influence the planning system. The Society highlighted the need to ensure fair participation of all parties affected by development proposals. The Society cautioned against proposals which would restrict access to the Planning Appeals Commission (PAC) and which would restrict the admissibility of evidence in cases before the PAC.

**Private Rented Sector**

In March 2009, the Department for Social Development published a proposed strategy for the private rented sector. In its response as well as highlighting the role played by solicitors in advising both tenants and landlords, the Society commented upon a proposed voluntary accreditation scheme for landlords and on proposals to lengthen the length of the notice to quit required for private tenancies.

In December 2009, the Department issued a further consultation paper on a Housing Bill (Northern Ireland). This Bill contained numerous proposals relating to the regulation of Houses in Multiple Occupation and of anti-social behaviour by tenants in social housing. The Society responded highlighting the importance of private landlords seeking legal advice before letting out their properties and the need to ensure private landlords are not unduly burdened by regulations.

**European initiatives**

The Society increasingly finds that legislative initiatives emerging from the European Union have implications for both the general public and legal practitioners in Northern Ireland. As a result, the Society regularly keeps in contact with the Law Societies’ Joint Brussels Office and with the Council of Bars & Law Societies of Europe (CCBE) to discuss EU proposals and their implications for Northern Ireland. The Society, in conjunction with our sister Societies in the UK, drafted a position paper on the European e-Justice project, which proposes the greater use of IT across European legal systems.

In November 2009 the Society responded to a Ministry of Justice consultation relating to EU Commission proposals to govern cross-jurisdictional succession issues. The consultation paper asked if the UK should ‘opt in’ or ‘opt out’ of the proposed Regulation. The Society recommended that the UK ‘opt out’ of the proposals as we were concerned if implemented the proposals would create legal uncertainty. The other Law Societies in the UK adopted a similar stance and prior to Christmas Jack Straw, the Justice Secretary, issued a written statement to the House of Commons stating that the UK would ‘opt out’ of the proposals.

**A Bill of Rights for Northern Ireland**

In December 2009 the NIO issued a consultation paper on a proposed Bill of Rights for Northern Ireland. The consultation paper invited views on the rights which should be included within a Bill of Rights for Northern Ireland.

In its response the Society focused on the importance of ensuring protection for the right of an individual to consult confidentially with his /her solicitor. We further highlighted the duty of the State to ensure that lawyers are permitted to carry out their professional role freely and without hindrance.

**Legal Aid**

The Northern Ireland Legal Services Commission consulted on a proposed Northern Ireland Funding Code and associated procedures. The Society responded to the proposed Code and procedures detailing a number of concerns regarding its likely impact on access to justice. Most significantly the Society voiced concerns that proposals to restrict the availability of funding for personal injury claims would result in members of the public on low incomes being unable to pursue their legitimate claims for compensation. In its response the Society highlighted that this was neither in the interests of the public nor the Government. Discussions on this issue continue with the NILSC.

There was considerable Society input to the drafting of the Magistrates’ Court and County Court Appeals (Criminal Legal Aid) (Costs) Rules (NI) 2009 Rules which came into operation on 30 September. In relation to the recent Court Service consultation on a proposal to introduce a Graduated Fee Scheme for the remuneration of standard Crown Court cases, the Society has responded robustly opposing the proposals. The Society highlighted that the introduction of the scheme, which would result in a 57% reduction in fees payable to solicitors in standard cases, would have significant and long lasting detrimental implications for access to justice in this jurisdiction and for the network of solicitor firms who guarantee it.

**Conclusion**

Following the devolution of justice and policing powers to the Northern Ireland Assembly, the opportunity for the Society to influence policy and law reform initiatives is now greater than ever.

We must ensure that proposals emanating from Government are proportionate and that they take account of the needs and particular circumstances of this jurisdiction. The Society looks forward to this challenge and to the opportunities we will have to influence the law reform agenda. The Society’s Committees when preparing responses will continue to request the assistance of interested members via the Writ and E-former. If members wish to input in any way to current consultations or law reform initiatives, please do not hesitate to contact the Secretary of the Society’s Law Reform Committee - colin.caughey@lawsoc-ni.org
Prospective Masters for September 2010

The Society is keen to encourage members of the profession to consider becoming a Master for apprentices starting in September 2010.

If you are interested in taking on an apprentice in September 2010 or would like further information please contact Anne Devlin at the Law Society at anne.devlin@lawsoc-ni.org

NB. The closing date for apprentices to register their apprenticeship papers with the Society is 5.00pm on Monday 23 August 2010. This is the final date for registration and will not be extended.

It is the apprentice’s responsibility to ensure that the papers are lodged in time. However, we would ask prospective Masters to make decisions on recruitment well in advance of the deadline. Please avoid leaving recruitment to the last few days before the deadline.

Solicitors’ Admission & Training Regulations 1988 Regulations 8(3) and 8(5)

ATTENTION

EXPERIENCED LAW CLERKS (Reg 8(3))

PROSPECTIVE APPLICANTS WITH SPECIAL QUALIFICATION or EXPERIENCE (Reg 8(5))

CLOSING DATE FOR APPLICATIONS

The closing date this year for applications under Regulations 8(3) and 8(5) will be Friday 11 June 2010. Any person who wishes to make such application with a view to admission to the Solicitors’ Vocational Training Course at the Institute or the Graduate School commencing in January 2011 will have to lodge an application with the Society no later than 5pm on Friday 11 June 2010. It is recommended that you submit your application as early as possible.

Subject to the outcome of the Education Review, any applications received after 11 June 2010 will be considered for the next vocational training course for solicitors, which would be due to start in January 2012.

If you would like an application form, please contact Valerie Neilly at the Law Society at valerie.neilly@lawsoc-ni.org

Equality and Diversity Policy document

The Society’s Human Rights, Equality and Rule of Law Committee has developed an Equality and Diversity Policy document to provide guidance to firms who wish to ensure best practice in these areas. Whilst the guidance does not lay down regulatory obligations upon solicitors, it is, however, a statement of the actions which should be considered by practitioners to assist in complying with the law in the running of their practices.

The document provides basic information on anti-discrimination law. As equality and anti-discrimination law are constantly evolving the document cannot be taken as exhaustive and the Committee would encourage practitioners to keep up to date with developments in the law via the Equality Commission for Northern Ireland’s website www.equalityni.org

Copies of the Equality and Diversity Policy document are available in the Members’ Services Section of the Law Society’s website at: www.lawsoc-ni.org
Whether you’re attending court, conducting meetings, consulting, catching up with colleagues or just in need of some time to yourself then why not call into O’Briens Sandwich Bar?

With breakfast and lunchtime specials, bottomless coffee and tea refills with daily offers O’Briens offers you quality service to meet your needs!

Your O’Briens at Law Society House, 96 Victoria Street, Belfast

Email: catering@obriensni.co.uk
‘Realising your firm’s business potential’ is the theme of a new practice development initiative launched by the Society to support solicitors firms throughout Northern Ireland. The new initiative was launched at Law Society House in February and is part of a series of Continuing Professional Development events - the first being ‘Marketing your firm in 2010’.

Solicitors attending the first course had the opportunity to hear from a number of experts in the field of marketing and communications, including Gareth Dunlop from Ion Online Marketing, Gwynneth Cockcroft from dcp ltd and Professor Lester Manley from Manleys: The Branding House.

Speaking after the event, the Society’s Chief Executive, Alan Hunter, said:

“The Law Society has launched the new practice development initiative to help our members meet the challenges of an evolving and increasingly competitive business environment. Through this initiative we aim to raise awareness of ways to improve practice management.”

Having looked at how to target new business through the use of marketing tools, the second in this series of practically focused events was aimed at helping firms maximise the potential of existing clients.

Fiona Westwood, Scottish solicitor and management consultant, offered advice to members on how to ‘Maximise client relationships for solicitors.’ This event, held at Law Society House in April, tackled the issue of how to improve business by exploiting the potential of cross-selling services and explored the importance of developing strong customer relationships.

Continuing with the theme of improving the services offered to clients, the Practice Development Committee has launched the last of the seminars planned for the first semester.

More academic in focus, ‘The refreshers series 2010’ aims to equip solicitors with the necessary knowledge to offer a broader range of services to their existing clients.

“Through this initiative we aim to raise awareness of ways to improve practice management.”

Suitable for practitioners who have prior knowledge in the field but who do not regularly practice in that area, the refresher style courses will provide a useful recap of significant legal developments in the Magistrates Court, Criminal Practice and Civil Litigation.

The Society hopes that the above CPD events will offer the necessary support to firms striving to Realise their Business Potential and welcomes feedback from members regarding the content of the autumn programme.

Places are still available on the “Important developments in criminal practice” and “Civil Litigation - the basics” refresher courses. Please contact the CPD Coordinator CPD@lawsoc-ni.org
Forthcoming LSNI CPD events

Refresher series 2010

The Society’s Practice Development Committee is pleased to announce the next in the series of CPD events aimed at continuing to help firms grow their business.

The beginning of a new decade is an ideal time to take stock of your business and plan for the future. With this in mind, the Society’s Practice Development Committee has organised a series of “refresher” style courses for 2010 to update practitioners on important legal developments in specific areas.

The course content is designed particularly for solicitors who have some prior experience in the field but who do not practise in this area on a regular basis. The seminars will provide a useful recap of significant legal developments over the past five to seven years and aim to equip practitioners with the knowledge to diversify their business and offer a broader range of services to their clients.

Important developments in criminal practice

Monday 24 May  Lecture Suite, Law Society House, Belfast

Experienced criminal law practitioner Noel Phoenix will provide an overview of the significant developments in criminal practice addressing in particular the topics of hearsay, special measures applications, bad character, “Rooney” hearings and the definition of “public place.”

COST: £20  CPD hours: 1
TIME: 3.30-4.30pm (registration and refreshments at 3.15)

Civil Litigation- “the basics”

Friday 25 June  Lecture Suite, Law Society House, Belfast

Stephen Scott will share with attendees his vast experience in private practice at this seminar providing a basic overview of developments in the field. In particular, Stephen will look at protocols and letters of claim, “RTA” and industrial, construction and slipping accidents, contractual disputes, basic negotiation and checklists in addition to other pertinent issues.

COST: £20  CPD hours: 1.5
TIME: 3pm-4.30pm (registration and refreshments at 2.45pm)

Other forthcoming events…..

Places are still remaining on the following LSNI CPD seminars

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
<th>Time</th>
<th>Location</th>
<th>Cost</th>
<th>CPD Hours</th>
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<tr>
<td>Anti money laundering conference for Money Laundering Reporting Officers</td>
<td>Wednesday 9 June</td>
<td>1.30-5pm</td>
<td>Law Society House, Belfast</td>
<td>£70</td>
<td>3.5 CCPM</td>
</tr>
<tr>
<td>Civil evidence: practice and application</td>
<td>Friday 11 June</td>
<td>10am-1pm</td>
<td>Law Society House, Belfast</td>
<td>£60</td>
<td>3</td>
</tr>
<tr>
<td>Ensuring quality in applications for Civil Legal Aid</td>
<td>Wednesday 16 June</td>
<td>12.30-2pm</td>
<td>The Lodge Hotel, Coleraine</td>
<td>£30</td>
<td>1.5 CCPM</td>
</tr>
<tr>
<td>Risk management in difficult times</td>
<td>Tuesday 5 October</td>
<td>10-12 noon</td>
<td>Kelly’s Inn, near Ballygawley</td>
<td>£70</td>
<td>2CCPM</td>
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<td></td>
<td>Wednesday 6 October</td>
<td>2.30-4.30pm</td>
<td>Da Vinci’s Hotel, Derry</td>
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<td>10-12 noon</td>
<td>Canal Court Hotel, Newry</td>
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<td>2.30-4.30pm</td>
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CPD - some FAQs

The 2010 CPD year is now in full swing. For those of you who may have some queries about CPD, we have compiled a list of frequently asked questions, which should help you to achieve your CPD hours and complete your Record Card more easily.

1 When does the 2010 CPD year run from and to?

The 2010 CPD year runs from 6 January 2010 to 5 January 2011.

2 How do I find out about CPD events/courses?

There are a number of ways that you can keep yourself informed about CPD events. The Law Society website - www.lawsoc-ni.org - has up to date information about CPD activity.

CPD events will also be advertised in The Writ and via the E-nformer on an ongoing basis.

The Law Society produces a programme of events that is sent directly to all solicitors. This details all of the Society’s planned events. However, ad hoc events will be arranged throughout the year and solicitors can find out about these by reading E-nformer, The Writ and the website. The CPD Co-ordinator can be contacted directly to find out about CPD events.

3 How much CPD do I have to do?

Solicitors to whom the Solicitors’ Training (Continuing Professional Development) Regulations 2004 apply, have to complete 15 hours of CPD in each practice year. This can be made up of private study and group study.

4 What are the different ways I can complete my CPD?

As mentioned above, CPD can be made up of group study and private study. Group study means study in a group of three or more people, which lasts for a minimum of one hour. The study must be verifiable and it must make up 10 hours of the total 15 hours CPD. Of these 10 hours, three must be Client Care and Practice Management.

Private study means study undertaken by less than three people. A maximum of five hours’ private study can be used as CPD in each practice year. Private study can include the reading of relevant books and periodicals, audio-visual courses and correspondence courses.

5 Do I have to do five hours private study?

No. Private study is intended to make gaining the required CPD hours easier and more flexible. If you complete more than the required 10 hours of group study, private study can be used to make up the remainder of the 15 hours. If you complete more than 15 hours of group study, no private study is required.

6 What is client care and practice management?

Client Care and Practice Management is broadly interpreted. Practice Management includes training that will assist you as a solicitor in running your practice more effectively as a modern business manager. A wide variety of courses related to this will be acceptable including, for example, money laundering, legal research training, risk management, training for recognised quality standards and so on. Client care is similar and includes any training that addresses the efficient provision of professional services to the client. Mediation and Collaborative Law training are examples of Client care. If you would like clarification on types of training, contact the CPD Co-ordinator at the Society.

7 I work in a public sector organisation or in-house legal team. Even though I am not in private practice do I still have to complete the three hours of Client Care and Practice Management?

Yes you are still required to complete the three hours’ CCPM. This element of your CPD can be broadly interpreted and includes “softer skills” which can be as much an asset in the public sector as within a private practice. Any training which improves your ability to work more efficiently and effectively within your current role can be counted as “Client Care and Practice Management” including training in IT, Stress Management, Time Management, Career enhancing skills etc.

8 I am involved in tutoring/lecturing. Can I use this as CPD?

Yes. Solicitors involved in tutoring, lecturing or other training delivery may count the actual presentation time as CPD. However, if the training is repeated, the repeat time cannot be counted. Solicitors who deliver training can claim up to a maximum of 4 hours private study for the preparation of the training.

9 I write books/articles that are published. Does this count towards my CPD?

Yes. A solicitor who writes books/articles for publication can claim this as part of their private study. This includes articles written by members for inclusion in The Writ. Depending on the length of the publication and the preparatory time spent thereon, the time claimed may be up to 7.5 hours of the total CPD requirement for the particular practice year. Submission of articles of topical interest are welcomed by the Society. Please contact wnt@lawsoc- ni.org.

10 Is the reading I do for a workshop/seminar considered to be CPD?

Yes. The time taken to read material that is received before or during a training session can be claimed as private study.

11 My firm has arranged some in-house training. Is this CPD?

Yes. Training which has been organised internally in an organisation can be counted towards CPD, as long as it is genuinely educational in nature. However, it is important that when claiming this type of training that you...
give adequate details on the content, so that the Society can verify that it is acceptable. Records of the content of the training and who attended and facilitated it should be kept, so that the Society can check these details.

12. Does the CPD scheme recognise any specific training courses as satisfying all CPD requirements in any particular year?

Yes. Three training courses, which are provided and administered by the Society, have now been given recognition. These are Mediation, Advanced Advocacy (and the Advocacy Refresher Course) and Children Order Panel Accreditation. A solicitor who successfully completes one or more of these courses, will have fully satisfied the CPD requirements for that particular practice year.

13. I have completed all the required CPD hours. Should I wait until January before sending my record card to the Society?

No. As soon as you have completed the required hours, you should send your signed record card to the Society. As well as getting it out of the way for you, receiving the record cards on a steady and consistent basis eases the administrative burden on the Society.

14. Do I have to send evidence of the CPD courses I have attended to the Society?

No. Due to the large number of CPD Record Cards the Society receives, it is important that solicitors do not send supplementary CPD information with their Record Cards. Solicitors should, however, keep records of all CPD activity in case they are required to produce this as evidence to the Society at a later stage. Evidence of CPD activity should be kept for one full year after the end of the practice year in question. Solicitors should also keep a copy of the Record Card that they submit to the Society for their own information.

15. I completed more than 15 hours’ CPD last year. Can I carry these extra hours over and claim them this year?

No. It is not permitted to carry forward extra hours from a previous year. In the same way, solicitors are not permitted to ‘make up’ deficit hours in the CPD year. 15 hours of CPD must be completed each practice year.

16. Does the Society keep records of previous years’ compliance and non-compliance?

Yes. The Society carries out checks to ensure compliance, and enters the information into a database. This allows the Society to easily check through previous years’ records to monitor compliance and non-compliance, and to see if disciplinary action is necessary in certain cases. The record cards are also retained in archives for one full year.

17. Do part-time solicitors have to undertake CPD?

Solicitors working 200 hours or less in any year are totally exempt from CPD requirements for that year. Part-time solicitors who work more than 200 hours in a year must complete 7.5 hours’ CPD. The 7.5 hours should consist of at least five hours’ group study of which 1.5 hours must be devoted to Client Care and Practice Management. A maximum of 2.5 hours of private study can make up the total to 7.5 hours.

18. I am totally exempt from doing CPD. Why did I get a card?

A card is issued to every solicitor on the Roll who holds a Practising Certificate for that year, whether or not an exemption has been granted. Even if you are totally exempt for any reason, you should complete the section of the card (top of page 4) that deals with exemptions and return the card to the Society. This enables the Society to keep the records up to date.

19. Is it possible to reduce my period of restricted practice?

Yes. Any solicitor who wishes to reduce their restricted practice period from three to two years must be able to prove to the Society that they have completed a total of 45 CPD hours over the two-year post admission period. When this has been done, the request must be put in writing to the Society.

20. I have misplaced my CPD Record Card. What do I do?

A replacement CPD Record Card can be obtained by contacting the CPD Co-ordinator at the Society. There will be a £10 administration charge for a replacement booklet.

21. Can Masters attend CPD courses free of charge?

Masters who took on a new, first year apprentice in September 2009 are eligible to claim up to a maximum of 15 hours free CPD. This applies to Law Society events only. It only applies to the 2010 CPD year. Please indicate when booking that you are a Master who has taken on an apprentice in September 2009. Some Law Society events may be excluded.

22. I am a member of a Law Society Committee. Can I claim attendance at meetings as CPD?

Members of Law Society Committees may claim up to a maximum of six hours’ CPD for attending Law Society Committee meetings. This applies to Council Members and co-optees. Provided you attend such a meeting for at least one hour, you will be entitled to claim half an hour of CPD. Attendance at Law Society Council meetings cannot be claimed.

If your question has not been answered, please contact the CPD Co-ordinator at the Law Society on 028 9023 1614 or at cpd@lawsoc-ni.org
COAC Best Practice Guidance

Children Order Advisory Committee
Best Practice Guidance
2nd ed 2010

The completely updated and greatly expanded text of the COAC Best Practice Guidance has been published by SLS Legal Publications on behalf of COAC and is now available on-line free of charge at www.sls.qub.ac.uk

It was launched at an extremely popular CPD event which was attended by 340 judges, solicitors, barristers, social workers, guardians and many others at the Stormont Hotel on 22 April. Mr Justice Weir, as Head of the Family Division and Chair of COAC, acknowledged the exceptional generosity of SLS in publishing the Guidance and making it available on-line without cost to all those who wish to access it. SLS sees this as an important contribution towards access to justice for children in Northern Ireland.

This Guidance will be an invaluable reference source for all those whose task is to work within and understand the framework of the Children Order. The aim of the publication is to provide guidance and direction to ensure consistency of practice in all Children Order cases and thereby reduce delay. The group drawing up this Guidance has been representative of the entire spectrum of professionals involved in the child care system and has striven to adopt the inter-disciplinary approach to children's cases to which COAC is wedded.

The Guidance covers case management in private and public law cases, appeals, adjournments, discovery, use of experts, role of Counsel, role of Guardians ad Litem, family group conferencing and family mediation. It contains numerous guides, checklists, flowcharts and draft template letters for use in Children Order cases.

It is hoped that the new on-line format will allow the material to be updated on a regular basis. Huge thanks are due to all who worked on the updating and re-writing under the able direction of Master Hilary Wells and the editor Rosy Ryan BL.

We are grateful to Miriam Dudley of SLS for this note.

Feeling the Pinch?

Many lawyers are struggling, and suffering the effects of the credit crunch just as much as their clients.

If you need support and help through this difficult and stressful time, LawCare is here to listen.

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Health Support and Advice for Lawyers
The Human Rights Act

10 years of The Human Rights Act – its impact on practice

2010 is the 10th anniversary of the Human Rights Act coming into force in the United Kingdom. It is also the 30th anniversary of SLS Legal Publications, and so we are organising a special SLS Anniversary Conference in association with the Bar Council of Northern Ireland and also the Law Society of Northern Ireland to mark both these anniversaries.

Date: Friday 8 October 2010
Time: 1.30pm to 6.00pm (lunch served from 12.30)
Place: Belfast Waterfront Studio
CPD Allocation: 4 hours
Speakers:
- Lord Kerr of Tonaghmore, UK Supreme Court: Rabinder Singh QC,
- Matrix Chambers: Mr Justice Donal O’Donnell,
- Supreme Court of Ireland: Mr Justice McCloskey,
- Court of Judicature of Northern Ireland: Fiona Murphy, Bhatt Murphy Solicitors

Booking forms will be available shortly but please remember to put this date in your diary.
The Act makes a number of important amendments to existing legislation, particularly in the area of homelessness and, most significantly, introduces a new County Court homelessness appeals procedure.

**Homelessness strategy**

**S. 1** of the Act amends a. 6 of the Housing (NI) Order 1988 to require the Housing Executive to develop and publish a homelessness strategy every five years. The first strategy has to be published within 12 months of the commencement of the Act.

A homelessness strategy is defined as a strategy for:

(a) Preventing homelessness in Northern Ireland

(b) Securing that sufficient accommodation is and will be available for people in Northern Ireland who are or may become homeless

(c) Securing the satisfactory provision of advice and assistance for people in Northern Ireland -
   (i) who are or may become homeless
   (ii) who have been homeless and need advice and assistance to prevent them becoming homeless again

The Act specifies that the homelessness strategy shall be taken into account by a number of statutory bodies in the exercise of their functions including the Housing Executive, Health & Social Care Trusts and the Secretary of State (in relation to any function exercisable in connection with prisons in Northern Ireland).

**Advice on homelessness**

**S. 2** of the Act requires the Housing Executive to ensure the availability of free advice on homelessness and its prevention to anyone in Northern Ireland who requires it.

**Review and appeals of homelessness decisions**

**S. 5** introduces one of the most significant changes to the homelessness legislation for many years.

At present, an applicant who is unhappy with a Housing Executive decision on their homelessness application can appeal the decision through the Housing Executive’s two stage internal appeal procedure. There is no legislative basis for this appeals procedure. At present, once the internal process is complete, the only possibility of legal challenge is Judicial Review.

**S. 5** amends a. 11 of the 1988 Order enabling an applicant who is unhappy with their homelessness decision to appeal to the County Court on a point of law.

Under a. 11A an applicant has the right to request a review of a decision made by the Housing Executive as to:

(a) Eligibility for assistance

(b) What duty is owed to the applicant under a. 10, (duties to persons found to be homeless), and 11, (duties to persons found to be threatened with homelessness)

(c) Suitability of accommodation offered to the applicant in discharge of the Executives duties under either of those Articles.

An application for review must be requested within 28 days, unless the time is extended by the Housing Executive.

Under a. 11C if an applicant who has requested a review is unhappy with outcome of the review, or is not notified of the outcome within the prescribed time, they may appeal to the county court on any point of law arising from the outcome of the review, or the original decision as the case may be.
An appeal must be brought within 28 days of the applicant being notified of the review decision or the date on which they should have been notified. The court may give leave for an appeal to be brought outside the 28 day period if satisfied there was a good reason for the delay.

On appeal, the court may make such order confirming, quashing or varying the decision as it thinks fit; unlike under the previous system whereby in a judicial review the court could only refer the matter back to the Housing Executive to be reconsidered.

Eligibility for housing assistance

Under current legislation, the Housing Executive may decide an applicant is ineligible for assistance in the case of certain “persons from abroad” and persons who are guilty of “unacceptable behaviour”.

S. 3 amends a. 7A (5) of the 1988 Order so that the words “an applicant” are replaced by “a person”; meaning that the eligibility test can be applied at any stage up to the allocation of housing.

S. 3 also provides that the Housing Executive must notify a person who has been found ineligible in writing giving full reasons for the decision.

Abandonment of introductory tenancies

Under existing legislation the Housing Executive and registered Housing Associations may take possession of a property which has been abandoned by a secure tenant. However, there is no similar provision in the case of an introductory tenancy.

S. 9 of the Act amends a. 9 of the Housing (NI) Order 2003 to enable the possession of properties which are subject to introductory tenancies in specified circumstances.

The tenant has six months to appeal the termination of his/her tenancy under this Article.

Anti social behaviour policies and procedures

S. 10 amends a. 27 of the 2003 Order to require the Housing Executive to publish:

(a) Its policy in relation to anti social behaviour, and

(b) Its procedures for dealing with occurrences of anti social behaviour.

The Order does not extend the same duties to registered Housing Associations, although it is understood that the Department for Social Development may require a housing association to publish its anti social behaviour policies and procedures under their existing provisions.

Definition of HMO

S. 14 amends the definition of “family” in the context of House in Multiple Occupation in the Housing (NI) Order 1992 so that the members of an extended family ie uncle, aunt, nephew and niece living under the same roof are recognised as a single unit and, therefore, will not come within the remit of HMO regulation.

Further information

Housing Rights Service will be providing training on the new Housing Amendment Act in the autumn. This will qualify for CPD hours. To register your interest in attending email Geraldine@housingrights.org.uk or telephone 028 9024 5640.

For a copy of the Act go to www.opsi.gov.uk.

Housing Rights Service has also published a Fact File on the Act which is available to download for free from www.housingrights.org.uk.

If you are interested in becoming a member of Housing Rights Service please go to our website or contact us on 028 9024 5640.
The legal aspects of ‘spot listing’

Introduction

A fine building which is not listed but which is perceived as being of architectural or historical interest is suddenly threatened with demolition or alteration – these are the circumstances where the Department of the Environment may ‘spot list’ a building and serve a Building Preservation Notice (BPN) to give temporary protection.

These powers are implemented within the Department by the Northern Ireland Environmental Agency (NIEA). In this article I intend to explore the legislation and the procedures required to implement it. I will also look at some of the buildings that have been saved by spot-listing in Northern Ireland, and circumstances where compensation may arise.

To summarise, a BPN – (‘spot listing’ as it is known) – may be served by NIEA in respect of a non listed building perceived as being of architectural or historic interest, the effect of which Notice is to give the building a temporary listed status lasting for six months, during which time the NIEA decides whether or not to confirm the building’s listed status. This is essentially an emergency power which has to be used carefully because of the possibility of compensation should listing not be confirmed.

Legislation

The legislation for Northern Ireland is contained in The Planning (Amendment) (Northern Ireland) Order 2003 (NI 8)) – a. 25 (inserted after a. 42 of the principal Order). It will be noted that the criteria is that the building is ‘of special architectural or historic interest’ and is ‘in danger of demolition or alteration’. At that stage a BPN is served by the NIEA which shall come into force as soon as it has been served on both the owner and occupier of the building to which it relates, and shall remain in force for six months. While the BPN is in force it shall have effect in relation to the building as if it were a listed building. This is an emergency measure and the BPN remains in force for six months but shall cease if the NIEA

Venue of Little Donegal Street

a) lists the building or,

b) notifies the owner and the occupier of the building in writing that it does not intend to so list the building.

Temporary listing in urgent cases

There are provisions in a. 42B that if it appears to the NIEA to be urgent that a BPN should come into force instead of serving the notice on the owner and occupier it may itself fix the notice conspicuously to some object on the building. This is obviously a valuable power in special circumstances.

Procedure

If a BPN is considered likely, further research is urgently undertaken by Departmental architects and historians to satisfy the statutory criteria in advance of presenting a final recommendation to the Director of Built Heritage. The Director may determine to consult other Departmental colleagues or, in certain circumstances, the Minister, before proceeding with the issue of such a notice. Action often has to be taken speedily where a building is at risk.

Examples of ‘spot listing’ in Northern Ireland

Since the introduction of legislation in 2003, the majority have resulted in the building subsequently becoming listed. The following examples illustrate some of these case histories.

1. 115 The Rock Road, Armagh, dating from prior to 1835, is an increasingly rare example of a two storey, lobby entry, vernacular house and attached outbuildings in an unspoiled rural setting. The building had been threatened with demolition as part of a planning application which proposed to remove the building and replace it View of Little Donegal Street with a new dwelling and garage. A BPN was issued and the building subsequently listed.

2. 15-17 Ballyneill Road, Ballyronan, Magherafelt is a good example of an inter-war police station, neo-Georgian style, which has been converted to a private residence. Despite the change of function it remained virtually unaltered externally, with all essential elements attached, thus retaining its original character. The building had been threatened with demolition as part of a planning application which proposed to remove the building and replace it with townhouses and apartments. A BPN was served and the building subsequently listed.

3. 50-52 Plantation Road, Lisburn is a mid-18th century house and former mill-owner’s dwelling.

The premises had been advertised for sale, the site having been described as having potential for eighteen apartments. A BPN was served and the NIEA had an opportunity to evaluate the buildings. After detailed consideration, it was eventually decided to list no 52 but not no 50.

4. Templepatrick Railway Station is one of several distinctive station buildings designed by the engineer/architect John Lanyon in the 1870s. As well as decorative polychromatic brickwork and timber detailing, it displays an imaginative approach to the difficulties presented by a steep site. A BPN was served and the building was subsequently listed.
5. ‘Frames’, 2-14 Little Donegall Street, Belfast is an Edwardian warehouse constructed in the early twentieth century, and is one of Belfast’s best surviving example of commercial premises of the time. The building had been threatened with demolition as part of a planning application which proposed to remove the building and replace it with a new development. A BPN was served and the building was subsequently listed.

6. Vernacular house near Kinawley, Co. Fermanagh is a very old building which is indicated on the Ordnance Survey for 1830 but is likely to be very much older. While the outside of the structure is not of particular interest, the interior has a number of special features, possibly early eighteenth or even seventeenth century. A BPN was served and HBC recommended that a decision be made before the six-month period expired. The building has now been listed.

7. The Coastguard House and Cottages, Portrush comprise a late-Victorian coastguard station which has retained much of its original form and appearance. In June 2009 a BPN was issued protecting the Station as the boundary and integrity of the site had been threatened. Part of the garden is owned by a developer, who was proposing a car park on the site. In September 2009 the buildings were listed by NIEA, following a review of their architectural and historic interest.

8. No 2, Station Road, Sydenham, Belfast was a good example of an Arts and Crafts half-timber house, albeit with rather idiosyncratic internal detailing. A BPN was served on 16 July 2008.

This is a curious case in that it was decided following representations by the developer that the premises did not meet the legislative test for protection by listing. The BPN was due to expire on 16 January 2009 and the following day the premises were demolished.

### Enforcement proceedings

Market yard, Main Street, Fivemiletown is a significant case. A recent example of enforcement proceedings resulting from non-compliance with a BPN occurred in relation to buildings that formed part of a Market Yard in Fivemiletown. The yard was constructed c. 1840 – as well as of local interest it was of architectural significance. In February 2008 a BPN was served by NIEA on the owner, as well as being fixed to the door of the premises. The building was subsequently demolished, despite the legislation providing that while the BPN is in force it shall have the effect in relation to the building as if it were a listed building. Enforcement matters are for the Planning Service Divisional Office, and after consideration of the evidence a decision was taken to prosecute both the owner and the demolition contractor.

At Dungannon Court on 9 November 2009 both defendants pleaded guilty. The Judge in his summing up criticised the action of both defendants in that they disregarded the protection afforded by the BPN and rushed to demolish these important buildings before the planning system had been able to process the planning application current at the time.

The Judge considered the defendants actions to be so serious that he indicated he was considering a custodial sentence for the owner and would reconvene the case on 8 February 2010 after considering a Pre-Sentence Report. He said he would sentence both defendants at the same time.

The Judge can impose a jail sentence of up to six months; a fine of up to £30,000 or both for each defendant. The Judge praised NIEA staff for their actions.

I believe this is a very significant case in that the Court is clearly indicating that those who destroy buildings subject to a BPN will be dealt with severely and may face a prison sentence!

### Compensation

The NIEA must exercise considerable caution when considering whether or not to issue a BPN

- which is essentially an emergency power, because of the possibilities of compensation should it not be confirmed by a full listing of the premises.
In the Planning Order 2003 referred to above there are provisions for compensation as follows:

Compensation for loss or damage caused by service of building preservation notice

- 67a – (1) This Article applies where a building preservation notice ceases to have effect without the building having been included in a list compiled by the Department under a. 42 of the Planning Order.

- (2) Any person who at the time when the notice was served had an estate in the building shall, on making a claim to the Department within the prescribed time and in the prescribed manner, be entitled to be paid compensation by the Department in respect of any loss or damage directly attributable to the effect of the notice.

- (3) The loss or damage in respect of which compensation is payable under paragraph (2) shall include a sum payable in respect of any breach of contract caused by the necessity of discontinuing or countermanding any works to the building on account of the building preservation notice being in force with respect to it.

It will be noted that the Planning (Claim for Compensation) Regulations (Northern Ireland) 2006 came into effect on 3 July 2006 and provide that a claim for compensation shall be made in writing within six months from the date on which the BPN ceases to have effect.

I understand to date there has been no claim for compensation in Northern Ireland under the above legislation. However the possibility has always to be carefully considered. Probably the most likely circumstance would be if a building had been ‘spot listed’ where Planning Consent had already been granted, and perhaps demolition/building was about to commence. In these circumstances it would be necessary to show in accordance with a. 67, a ‘breach of contract caused by the necessity of discontinuing or countermanding any works to the building on account of the building preservation notice’.

To my knowledge, there has been no reported case in England where a claim for compensation has been pursued, and I am told that there are no cases where monies have been paid.

Research has revealed a number of cases where a BPN was being considered, and these are of particular interest in revealing the way the issues are approached. Of particular significance is a report of 5 March 2009 by the South Area Development Control Sub-Committee in relation to Trimley.

St. Mary Railway Station, near Felixstowe, where the Head of Planning Services set out his reasons for considering the building to be of special architectural and historic merit. The paragraph dealing with ‘Risk Assessment’ is of particular interest for those involved in the subject.

Conclusion

The use of a BPN is a useful tool in terms of protecting historic buildings threatened with demolition or alteration. The Notice gives NIEA some time to evaluate whether the building is of special architectural or historical interest, and is of particular value where it is necessary to act speedily. I have described a number of buildings in Northern Ireland which might have been demolished, but have been saved by the speedy and effective use of ‘spot listing’ by NIEA, to whom all those interested in conservation should be grateful.

We are grateful to Stratton Mills for this article which has also appeared in the Report of the Historic Buildings Council for Northern Ireland 2007-2010. Photographs are reproduced with the kind permission of the NI Environment Agency.
In response to a query raised at a recent meeting of the Chancery Division Liaison Committee, and at the request of the Chancery Judge, it was agreed that it would be helpful to clarify what the Probate Office looks for when checking applications and associated paperwork. Hopefully, it will prove useful for practitioners to be made aware of the most common problems in order to reduce the number of ‘rejected’ applications and thus reduce delays in the Probate process. This would produce a positive outcome for all, first and foremost in expediting the issue of grants to applicants and in reducing work for practitioners and the office.

Inheritance Tax Forms

The most common issue encountered is the tax form being incorrectly completed or in the wrong version. As per Master Ellison’s Points in Practice (1st Re-issue) dated 8 October 2007, (see http://www.courtsni.gov.uk/NI/rdonlyres/91FCCAA7-7401-4F08-A5E3-EBB69DDE16B/0/j_j_PN42007.htm) queries about IHT liability and forms must not be directed to the Probate Office. The Office merely acts as a forwarding agent to the Revenue once the Grant of Representation has issued. Office staff are not trained in the proper completion of the forms but will check several details to ensure that the form passes certain criteria.

Checks completed by Office staff include ensuring that the Return of Estate Information form is the correct version i.e IHT205 for deaths before 1 September 2006 and IHT (2006) for deaths after this date. The Office will check that questions 2-10 are fully answered (these are mandatory and enable the Office to pass the application as an excepted estate). The Office will check that the form is signed by and includes the applicant’s details on the last page. Also, that the summary on the last page, which details the gross and net estate passing under the will or by intestacy, is correct according to the body of the form (a common error here being to include joint assets).

Where an IHT account (form IHT 400) has been submitted to the Revenue prior to the lodging of the application, the Office requires only the summary (IHT421) form. This must bear a certification from the Revenue and will be retained on the Grant file.

Intestacy cases

In intestacy cases the most common problem is that the entitlement is incomplete or incorrect. The Office will use Aiken’s Probate Practice Notes* as a guide to the correct wording to “clear off” those of a higher class than the applicant. As a general rule, where the entitlement paragraph mirrors the wording in Aiken, the Office would rarely have cause to return the oath for amendment.

Value of the estate

The gross and net values of the estate and how they are entered on the oath is also an area that causes a number of oath documents to be returned. The issues here vary - the most common being figures being omitted completely, figures inserted including joint assets and the Inheritance Tax threshold figure inserted as gross value. The Office will always compare the gross and net estate values with those in boxes A and K on the IHT 205 tax form or boxes 3 and 5 on the #HT421.

Civil Partnership averments

An area which still causes some confusion is the insertion of averments in relation to civil partnership. Master Ellison’s Practice Guidance Note dated 5 January 2007 deals with this topic. (downloadable from http://www.courtsni.gov.uk/NI/rdonlyres/982F2CFD-6513-4425-A618-455EFE33D058/0/j_j_PN012007.htm).

In cases where a will is being proved, the Office will look for the wording that the testator “did not intermarry or form a civil partnership with any person after the making of the will”. In intestacy cases the Office will look for the oath to confirm, in express terms, that the deceased was not survived by a civil partner. There are a number of forms of words which are acceptable and these are detailed in the Master’s Practice Guidance Note.

It would be helpful for practitioners who draw up oaths on their pcs to insert the civil partnership averment on their templates. The Office would not return any oath where the averment was included but not needed.

Correct names and addresses

A perennial cause of applications being returned is the need to query either names or addresses. Discrepancies between names in documents will be queried if there is no clarification contained within the papers. The Office can include a number of variations of name on the Grant (also known as, otherwise known as etc…) and the primary aim is to issue a Grant that passes the scrutiny of any financial institution to which it is presented.

Wills

Lastly, and also covered in the Master’s “Points in Practice” Practice Guidance Note (at paragraph 20), are issues concerning wills. Where there are paperclip marks, staple holes, punch holes or similar on the original will the Office will require an explanation. If these are present, a short explanation either in the covering letter with the application or in a short affidavit will enable the application to be progressed. The letter or affidavit must confirm that nothing of a testamentary nature was attached to the will.

Any amendments to the will that have not been intitiated by the testator/testatrix and the witnesses or have been recorded in the attestation clause will also require an affidavit of attesting witness confirming any amendment was made prior to the execution of the will.

It is hoped these brief comments will better advise practitioners and will reduce the number of applications being returned by the Probate Office.

* Aiken’s Probate Practice Notes are available for purchase from the Law Society’s Library at a cost of £30 (exclusive of postage and packing).
Discriminating against depression and recovery

At LawCare we are faced daily with lawyers in crisis. Stress at work may have led to mental illness, most commonly depression, many have turned to alcohol for solace and developed a dangerous addiction. We provide the necessary support, information, advice and referral and with the help of our volunteers, we guide the caller through the process of recovery. It is immensely rewarding to receive that call or letter which tells us that the suffering lawyer is fully recovered and eager to take a full role in the profession once more.

Unfortunately more and more former LawCare clients are finding that their history of mental illness and/or addiction becomes a barrier to employment. Despite the fact that anti-discrimination legislation makes it illegal to discriminate on the grounds of mental health, 47% of people with past mental health problems report that they have experienced discrimination and difficulty getting a job because of it.

In a 1998 survey, 200 personnel managers were asked to assess the employment prospects of two (fictional) job applicants. The applications were identical except that one applicant had diabetes, and one had recovered from depression. The applicant who had recovered from depression was seen as “significantly less employable” than the applicant who had diabetes. Statistics bear this out. 33% of people with long-term health problems such as diabetes and MS are in employment, and only 13% of those with mental health problems.

Employers are naturally wary of what they do not know or understand. In today’s competitive and strictly regulated profession, they need to be certain that their staff are reliable and competent. A better understanding of certain health issues on their part could benefit hundreds of lawyers who find themselves regarded with suspicion because of past problems. Those suffering from, or recently recovered from, depression or other mental illnesses need to be treated with fairness and understanding, and given every opportunity to rebuild their lives and careers.

Some pointers for employers:

- Many people associate mental illness with a tendency to be violent and dangerous – in reality the most violent and dangerous section of society are young men who drink to excess regularly.
- The main symptoms of depression are lethargy, an inability to concentrate and lack of motivation. If a previously depressed lawyer is recovered enough to feel that he wants to work, then he is probably well able to do so.
- Work – if not too stressful – is beneficial to recovery for most forms of mental illness. Being flexible regarding hours and the type of work undertaken can help enormously.
- As lawyers, partners are in no position to make a medical diagnosis or to speculate about the effects of the illness on their employees or potential employees. Asking staff to have a medical is the most practical way to assess their state of health.
- Ask for LawCare’s free publication “Back to the beehive”, which contains a wealth of helpful information about helping a stressed or depressed colleague back into the workplace.

Some pointers for employees:

- If you are fully recovered, don’t mention your past mental health problem unless you are specifically asked. After all, do you tell your interviewer that you had a dose of flu two years ago?
- If you are asked, make sure the potential employer is aware of all of the facts about the illness. Give him a leaflet if you can. A recent survey showed that 30% of people don’t know the difference between mental illness and mental disability – despite the fact that one in four people will experience mental illness in any given year.

The story is similar for alcohol abuse. Christina* is a LawCare client who is in recovery from alcohol addiction. After contacting LawCare for help four years ago she has successfully detoxified and has been attending AA daily for some time. She is enthusiastic and determined in her recovery, and confident about her future. Unfortunately, a job offer with a small firm was suddenly withdrawn when she told them about her former problems with alcohol.

The Senior Partner defended his change of heart by explaining that even Alcoholics Anonymous says: “Once an alcoholic, always an alcoholic.” “That may well be true,” Christina countered, “but it doesn’t mean I’ll be drinking. Surely the strength of character I’ve shown in beating my addiction must count for something.”

Christina’s potential employer is by no means unique in being wary of alcoholism and unsure about the facts but in reality those who have admitted and addressed their problem are far less of a risk than those who attempt to hide their growing addiction. There are many lawyers who take extended lunch breaks at the pub, keep a bottle of whisky in their desk drawer, and who present a tremendous potential liability to a firm, yet so often colleagues merely joke that he “enjoys a tipple” and ignore the situation. In reality a drinking lawyer is far more dangerous to a firm than one who has recognised and addressed his or her alcohol abuse.

A study in Oregon in the USA followed 55 alcoholic lawyers. In the five years prior to seeking help for their problem, these lawyers had 83 malpractice claims filed against them – an annual rate of 30%. In the five years following recovery this fell to 21 claims, or 8%. Interestingly, this was lower than for the general population of lawyers. The overall current malpractice rate in the state is 13.5%.

Alcoholism is an illness which is both difficult to define, and difficult for the addicted lawyer to recognise. No one wants to admit that they are an alcoholic, and many people will clutch at straws as
they deny the problem—"I don't drink spirits", "I only drink at weekends". As a general rule, if alcohol is causing problems in your career, family or social life and yet you cannot change your behaviour, then you have an alcohol problem.

The prevalence of denial is evidenced in the fact that 45% of calls to LawCare about alcohol problems are secondary referrals—that is, they come from a colleague or family member rather than the impaired lawyer. This compares with 15% of other cases. An alcoholic who has recognised and acknowledged his or her problem is a rare beast. Employers wary of offering a position to a recovered alcoholic should bear in mind that they could easily and unknowingly then offer it to a drinking alcoholic instead with far more serious consequences. Heavy drinkers rarely advertise the fact on their CV.

LawCare’s document, “An alcoholic in the firm”, includes a sample office policy statement and partnership agreement which make it clear that alcohol does not mix with the practice of law. There is much to be said for operating a “dry” office, and making staff aware that it is not appropriate for them to drink during their lunch break or at any time when their performance at work might be compromised.

If partners are faced with a potential employee who is in recovery from alcohol addiction, there are questions which can be asked in the interview which should establish the level of recovery.

• Ask how long the candidate has been sober. Obviously the longer the better. If it is less than a year, you might consider offering them a temporary contract instead.
• Ask what steps the candidate is taking to maintain his or her recovery e.g. if they recovered through AA, are they still attending meetings and how often?
• Arrange for the company medical to include a liver function test. This will show whether a candidate is a habitually heavy drinker even if they have not had a drink for several days. In recovery the liver starts to heal itself, so the results of this test can also confirm the sobriety of a previously addicted applicant. However, bear in mind that some prescription drugs and even genetic make-up, can also result in high GGT levels in the liver, so it is not necessarily conclusive.
• Remember that the candidate who has addressed and overcome their addiction has shown considerable strength and bravery, especially in an environment where socialising invariably means alcohol. Their former problems with alcohol do not have any bearing on their ability to do their job, but their determination and courage do.

Contact details for LawCare can be found on page 24.
The Institute of Professional Legal Studies, in conjunction with the College of Law London, is offering a six session course in Company Law.

The course will use a number of interactive case studies and drafting exercises.

### Monday Corporate Drafting
- **4 October 2010**
- **9.30 – 4.00pm**
- The aim is to improve awareness of market practice in the context of drafting and amending corporate documents, including Share Purchase Agreements and Confidentiality Agreements. There will also be an analysis of Case Law and Blue Sky Drafting.

### Monday Due Diligence
- **1 November 2010**
- **9.30 – 12.30pm**
- Its purpose and scope
- Review of Corporate Information
- Review of Material Agreements

### 1.30 – 4.00pm
- **Warranties/Indemnities/Disclosure**
  - The function of Warranties
  - The difference between Warranties and Indemnities
  - The relationship between Warranties and Disclosure letter

### Monday Completion
- **29 November 2010**
- **9.30 – 12.30pm**
- Preparing Board Minutes and Resolutions
- Handling Completion

### Time:
- 9.30am – 4.00pm

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

### Cost:
- £550 for the complete course
- £100 for each half day session

Successful completion of the course will lead to a Certificate in Company Law.

Applications will be taken on a first-come first-served basis (Places are limited to 25 people)

**Closing Date for applications:** **WEDNESDAY 1 SEPTEMBER 2010**

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.

Certificate in Company Law

**Name:**

**Firm:**

**Address:**

**Email Address:**

**Tel. No:**  ____________ I enclose remittance of £ ________
Migrants and medical treatment

Patricia Southern, community care legal adviser at Law Centre (NI), explains health services duties towards migrants.

People coming from outside the UK to live in Northern Ireland on a permanent or temporary basis often encounter difficulty when trying to obtain medical treatment. In this article, we will examine their rights to access health care. A full briefing on this subject can be found on the Law Centre’s website at www.lawcentreni.org.

Regulations provide that people who are ‘ordinarily resident’ here are exempt from charges for National Health Service treatment. Entitlement to free treatment is not, therefore, determined by nationality or whether a patient has paid national insurance contributions. Services forming part of the National Health Service (including the services of a GP) are available free of charge to people who are ordinarily resident, people who are lawfully resident and, in a more restricted fashion, to people who are ‘visitors’.

PEOPLE WHO ARE ORDINARILY RESIDENT

Departmental Guidance describes as ordinarily resident someone who is ‘lawfully living in Northern Ireland voluntarily and for a settled purpose as part of the regular order of his/her life for the time being.’ Deciding whether someone is ordinarily resident will depend on the facts as they apply at the time in each individual case.

- Asylum seekers and refugees
  People who have been granted refugee status or those who are in the process of applying for refugee status (asylum seekers) are ‘ordinarily resident’ and are therefore entitled to have free medical care and treatment under the National Health Service.

- Failed asylum seekers
  Asylum seekers who have exhausted the appeals process and been refused refugee status but continue to live here are no longer regarded as ordinarily resident and may not be entitled to free health care.

- Migrant workers
  Migrants working here either in an employed or self-employed capacity are ordinarily resident unless their period of residence is intended to be for less than six months. Six months is a guideline only.

- Cross border workers
  Persons living in the Republic of Ireland and working in Northern Ireland who travel home daily or on a regular basis (e.g. at week-ends) are entitled under European law to the full range of health services here on the same basis as residents.

Dependants of cross border workers are not entitled to the full range of health services.

- Students
  Migrant students are considered ordinarily resident if their course of study is substantially funded by the UK government or is of at least six months duration.

PEOPLE WHO ARE NOT ‘ORDINARILY RESIDENT’: VISITORS

A visitor is someone who is not ordinarily resident although some visitors may become ordinarily resident. Visitors’ entitlement to free health services is more restricted than that of people who are ‘ordinarily resident’. Visitors include the following groups of people.

- Visitors from a non EEA country that has a reciprocal agreement with the UK
  There are a number of non-European countries with reciprocal healthcare arrangements with the UK. Eligible residents of these countries are entitled to ‘immediately necessary’ treatment for conditions arising or becoming acutely worsened during a temporary visit to Northern Ireland. It includes cases where treatment is needed to prevent a pre-existing condition increasing in severity. It does not include routine monitoring of an existing condition such as diabetes. The arrangements do not cover situations where people come here, without an explicit referral, in order to access treatment.

- Visitors from a country which is a signatory to the European Social Charter and / or the European Convention on Social and Medical Assistance (ECSMA)
  There are a number of countries which, although they do not have reciprocal health care agreements with the United Kingdom, have signed the European Social Charter and/or the European Convention on Social and Medical Assistance. People from these countries, such as Turkey, should not be charged for treatment for which the need arose during their visit here if they are unable to pay.

- Workers and students carrying Form E128
  Workers and students from EEA member states (and members of their family who accompany them) who are here temporarily and who carry form E128 are entitled to ‘necessary’ treatment for any condition. Their entitlement is not restricted to treatment that is immediately required. They can receive full health care on the same terms as people who are ordinarily resident.

If a student from an EEA country does not carry a form E128, s/he will still be entitled to full health care services if her/his course of study is substantially funded by the UK government or is of at least six months duration.
PEOPLE WHO ARE LAWFULLY RESIDENT

People who have resided lawfully in the UK for not less than one year immediately preceding the time when the services are provided should not be charged for health services under the NHS. They are entitled to health services to the same extent as those who are ordinarily resident here.

It should be noted that in R (YA) v Secretary of State for Health it was held that failed asylum seekers cannot be considered exempt from charges by having resided lawfully in the UK for one year prior to treatment as they do not have the necessary ‘leave to enter’ in order to reside lawfully in the UK.

The term ‘residing lawfully’ is not defined in the legislation/regulations and has yet to be interpreted in common law. However, the European Convention on Social and Medical Assistance deems residence lawful where a person has a legally required permit or permission to reside in the country. Temporary absences of not more than three months are disregarded.

Documents required

- **Ordinarily resident**
  People who are ordinarily resident can apply for and should receive a medical card from the Central Services Agency.

- **Asylum seekers**
  An asylum seeker who has not applied for or whose application for a medical card has not been processed should have a Form 1S96 containing her/his personal details and photograph and date of application for asylum. This is issued following the first screening interview.

- **European nationals**
  European nationals should have a European Health Insurance Card (EHIC).

- **Others**
  A passport, residence permit, identity card or social security card.

NO RECOURSE TO PUBLIC FUNDS

Overseas visitors are not prevented from accessing free NHS treatment because of this stamp on their passport. ‘No recourse to public funds’ does not apply to NHS services or treatment.

GP SERVICES

It is a matter for each individual GP whether to accept a person who is ordinarily resident or a visitor as a health service patient on her/his list unless the patient is specifically assigned to her/him by the Central Services Agency. Anyone, including a visitor, may apply to the Central Services Agency for assignment to a doctor’s list. A refusal to accept an applicant, where the GP’s list is not closed, must be reasonable. Grounds will not be reasonable if they relate to the applicant’s race, gender, social class, marital status, age, religion, political opinion, sexual orientation, appearance, disability, medical condition or whether or not the applicant has dependants. The GP must, within fourteen days of her/his decision, notify the applicant in writing of the refusal and the reason for it.

EMERGENCY TREATMENT – ALWAYS EXEMPT FROM CHARGES

Everyone in Northern Ireland, whether ordinarily resident or a visitor, regardless of nationality and immigration status, is entitled to emergency or immediately required treatment free of charge at a hospital accident and emergency department and at a GP surgery unless and until the patient is accepted as an in-patient. Emergency treatment is any treatment which the clinician considers to be immediately required owing to an accident or other emergency and which does not exceed fourteen days.

TREATMENT WHICH IS NOT EXEMPT

Where there is no exemption from charge, ‘immediately necessary’ treatment should be provided regardless of the patient’s ability to pay. Charges can be recovered later.

CHALLENGING DECISIONS RELATING TO THE PROVISION OF HEALTH SERVICES

Decisions by public bodies including trusts may be challenged by way of Judicial Review in the High Court.

1  Provision of Health Services to Persons not “Ordinarily Resident” Regulations (Northern Ireland) 2005.
2  Circular HSS(PCD)10/2000 (Departmental Guidance).
3  See full list in Briefing – www.lawcentreni.org
4  See full list in Briefing – www.lawcentreni.org
5  EWCA Civ 225 [2009]
House Building in Brazil

Having (almost) achieved my three years’ PQE stage, I have decided to set myself more of a physical and mental challenge before I move on to the higher echelons of the legal profession. I have recently been accepted onto a volunteer programme with SERVE. On 13 July 2010 I am setting off, with 19 other volunteers from throughout Ireland, for Brazil for four weeks to take part in a construction project.

I am extremely grateful to the partners and staff at Napier & Sons who have already given me enormous support and allowed me to take such a substantial period of leave in one block.

The main aim of the Brazil 2010 project is to help build 25 houses and a number of water cisterns in disadvantaged communities in Parnaiba in the North East of the country. The team will be working with builders from these communities, who will oversee the project, and alongside families who, having been chosen by a community group prior to our arrival, will be given the new homes.

An average house in the area costs approximately €3,000 to build. The group has been set a fundraising target of the entire cost of the house building programme, €75,000.

As a member of the NIYSA committee I organised this year’s Easter Disco in Ollie’s Nightclub. The Committee kindly agreed to the proceeds being donated to the Brazil project. Through the disco, which took place on 1 April, I raised approximately £1,600 and I would like to thank all of you who attended. I hope you will all agree that it was a fantastic evening.

By the time of going to print, a team of my very supportive/fit/fantastic friends will also (I sincerely hope) have successfully completed the Belfast Marathon relay on 3 May.

If you would like to support my fundraising campaign I would be delighted to receive donations which can be sent directly to me at

Napier & Sons,
1-9 Castle Arcade,
High Street, Belfast BT1 5DF.

Alternatively you can make a donation online through the charity webpage I set up for the marathon by logging onto: http://www.mycharity.ie/event/maria_mccloskeys_event/.

For further information on the charity or the project itself you can log onto www.serve.ie or contact me at Napier & Sons on 028 9024 4602.

Thank you sincerely in advance for your support.

Maria

Legal eagles for a day

Students from Ballyclare High School became ‘legal eagles’ for a day at Laganside Court House Belfast in March after taking part in a special mock trial.

More than 30 students took part in the trial which had been organised by Ballyclare High School under the direction of Carrickfergus solicitor, Donna Thompson. The event was supported by the Law Society. In attendance was the Children’s Commissioner, Patricia Lewsley as well as Her Honour Judge Patricia Smyth who oversaw the trial.

Speaking at the event, Brian Speers, Junior Vice President, congratulated the students and the teaching staff on their hard work and dedication. He also paid tribute to Donna Thompson for her considerable work in making the day such a success.

From left: Junior Vice President, Brian Speers; Patricia Lewsley, Children’s Commissioner; Teaching staff of Ballyclare High School and Donna Thompson.
NIYSA are pleased to announce the

2010 Mid-Summer Ball

Date: Saturday 26 June 2010
Time: Champagne Reception 7.30pm
Jazz Band
Dinner 8.00pm
Live Band
Live Band The Untouchables

Venue: Queen’s University Great Hall
Cost: Tickets £30

Join us for the highlight of the NIYSA social calendar – our annual dinner dance in Queen’s University’s magnificent Great Hall. Places are limited so please book early.

Cheques, bookings forms and tables of 10 to be sent to:
Michael Graham, NIYSA
c/o Cleaver Fulton Rankin, 50 Bedford Street, BELFAST BT2 7FW
DX: 421 NR BELFAST 1 Tel. 028 9024 3141
or contact your Institute NIYSA representative
(No reservations will be confirmed until payment is received)

Booking Form:

Title ________________________
Name ________________________
Firm/Organisation ________________________
Contact Address ________________________

Telephone ________________________
Fax ________________________
E-mail ________________________

I will require vegetarian food. [ ] (please tick if appropriate)
I have other dietary requirements and would like to be contacted. [ ]
I have specific needs in relation to sight, mobility, hearing, etc. and would like to be contacted. [ ]
I enclose banker’s draft/cheque (drawn on a UK bank) for £ ________________________
Made payable to ‘Northern Ireland Young Solicitors’ Association’

Please return this form as soon as possible to:
Michael Graham
NIYSA c/o Cleaver Fulton Rankin, 50 Bedford Street, BELFAST BT2 7FW
DX: 421 NR BELFAST 1
Date:  Friday 4 June 2010
Time:  1.00pm – 2.00 pm (Registration and refreshments provided from 12.30pm)
Venue: Law Society House, Victoria Street, Belfast
Cost:  £10 for members of the NIYSA* and £20 for non-members.

Court Practice and Etiquette – Master’s Court
Speaker: Master Fiona Kelly

Dress for Success – Appropriate Attire for Court
Speaker: Ms Alma McManus, Clothesology

Attendance at this Seminar will provide one hour CPD entitlement.

Cheques and Booking Forms to NIYSA c/o
Maria McCloskey, Napier & Sons Solicitors, 1/9 Castle Arcade, High Street, Belfast, BT1 5DF.
E-mail: mariamccloskey@napiers.com

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

NIYSA Lunchtime Lecture Booking Form

NAME
FIRM
ADDRESS
E-MAIL ADDRESS
TEL
NUMBER OF PERSONS ATTENDING
I ENCLOSE REMITTANCE OF £
The BSA Committee would like to remind you that the following seminars are taking place at The Law Society of Northern Ireland, Law Society House, Victoria Street, Belfast with tea/coffee and sandwiches being served.

### BSA CPD Seminars

<table>
<thead>
<tr>
<th>Date</th>
<th>CPD Points</th>
<th>Topic</th>
<th>Speaker</th>
<th>Time</th>
<th>Fee</th>
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<tbody>
<tr>
<td>3.6.10</td>
<td>1 Hour</td>
<td>Repossession Procedure under Order 88</td>
<td>Master Ellison</td>
<td>1.00 – 2.00pm</td>
<td>£20 Members £40 Non-members</td>
</tr>
<tr>
<td>17.6.10</td>
<td>1 Hour</td>
<td>Personal Injury and Clinical Negligence in Catastrophic Cases</td>
<td>Toby Alcock, Towry Law</td>
<td>1.00 – 2.00pm</td>
<td>£20 Members £40 Non-members</td>
</tr>
<tr>
<td>16.9.10</td>
<td>1 Hour</td>
<td>Sports Law</td>
<td>Jack Anderson, Queen’s University, Belfast</td>
<td>1.00 – 2.00pm</td>
<td>£20 Members £40 Non-members</td>
</tr>
<tr>
<td>24.9.10</td>
<td>3 Hours</td>
<td>Practice Management Seminar</td>
<td>Speakers to be confirmed</td>
<td>2.00 – 5.00pm</td>
<td>£70 Members £100 Non-members</td>
</tr>
<tr>
<td>7.10.10</td>
<td>1 Hour</td>
<td>Immigration Law and Procedure</td>
<td>Fionnuala Connolly BL</td>
<td>1.00 – 2.00pm</td>
<td>£20 Members £40 Non-members</td>
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</tbody>
</table>

**Bookings can be made through the**
BSA Office at Merrion Business Centre, 58 Howard Street, Belfast BT1 6PJ
or alternatively on-line at [www.belfast-solicitors-association.org](http://www.belfast-solicitors-association.org)
Ulster Junior Gaelic Football

Report on the game
It was a crisp clear day in West Belfast. The sun was glaring low in the sky, an easterly wind blew hard and the Belfast Solicitors’ (BSGAA), under the stewardship of Gary Rocks of Mills Selig, their founder and Chairman and their management team of Charlie Sweeney and Hugh Tohill, prepared for their first appearance in the Ulster Interfirms’ Final in this, their first season in the Ulster Interfirms’ Championship.

The BSGAA under the lead of their Captain, Eamon O’Connor of John J Rice and in the presence of their Honorary President, Sean O’Neill, a former solicitor, who himself is a GAA legend, readied themselves for battle but knew not what was ahead. Anxiety and nervousness aside, the BSGAA were prepared to do themselves and the Law Society of Northern Ireland, proud.

The game started slowly for the BSGAA. The easterly wind they were playing into meant that they had to exert great effort in working the ball into the forwards. The BSGAA had a good share of possession but nerves and the occasion seemed to affect them as simple errors were made and many scoring opportunities were missed - time after time. McAneer & Rushe did not have the same problem as they took their chances and ran in at half time 0.10 to 0.02 up.

Half time appeared to suggest that the BSGAA were out of their depth in their first foray in the Interfirms’ competition but after a stern talking to by the management led by Hugh Tohill and Charlie Sweeney and words of encouragement by John Finucane, a different team appeared in the second half. The wind that prevailed in the first half had now died down, the low sun that was blinding in the first half had risen higher but despite this the BSGAA took control of the game and clawed the score back to 0.12 to 0.09 during a period of answered scores.

There were three points in it and with less than 10 minutes to go a goal chance presented itself to the BSGAA and with only the keeper to beat the opportunity to level the match was unsuccessful. This missed opportunity capped a dominant spell for the BSGAA during which they looked like they were set to finish the game on top but the missed opportunity only served to spur M&R on and as they awoke from their enforced slumber they scored a further two points to finish off the game. Time was not the friend of the BSGAA and despite their determined efforts they could not reduce the deficit and so with the shrill of the final whistle their adventure ended.

It was a good spirited game save for the occasional fracas which was to be expected considering an All Ireland semi-final place was at stake and the experience gained by the BSGAA will only stand them in good stead for next year’s Competition. The BSGAA may have lost the final but along the way the many solicitors, from many competing firms in and around the Greater Belfast Area of which the BSGAA is comprised, have found a common interest and arising out of such a professional and social camaraderie.

The BSGAA committee would like to thank the committee of St Paul’s GAC and Aidan Donnelly of Murlands for arranging the pitch and after match facilities. The BSGAA would like to especially thank Bogart Menswear, Data Dispatch, the Law Society of NI, Sean O’Neill, Hugh Tohill, Charlie Sweeney and each member of the BSGAA for their support and assistance to date in helping mould the Society into what it is today and for contributing to its continual evolution. Special thanks also to the Ulster GAA Council which provided invaluable assistance in the creation of the Society.

BSGAA SQUAD 2009-10:
Gary Rocks, Kevin McDonnell
Eoghan McKenna, Chris McCann
Paul Sweeney, Shane Byrne
Phil Collins, Andy Morrow
Aidan Johnston, Conor Gannon
Colm McElroy, Joe Marley
Damian McElholm, Marty Durkan
Willie McSorley, Kevin Winters
Eamon O’Connor, Paddy Gillen
Brendan Foy, Nick Nolan
Fionntan Gamble, Kevin Murphy
Joe George, Ronan McCourt
Seamus O’Neill, Steven Keown
Aidan Donnelly, Mark Finegan
Kevin McAllister, Hugh Sally
John McCrudden, John Mackell
Colm McElholm, Conan O’Brien
Paul McMorris, Kevin Gallagher
John Finucane, Darach Neeson
Optique Sight and Hearing Expertise is Belfast’s only full-time, independent practice offering solutions for both eyesight and hearing impairment. It is a boutique-style practice conveniently located on the Lisburn Road in South Belfast.

With its state-of-the-art testing facilities, Optique fills a niche for those who want the best professional advice on their sight or hearing, plus the freedom to choose from the latest designs in eyewear and the finest hearing aid solutions.

OPTIQUE SIGHT
Did you know that an eye examination is advised at least every two years even if you aren’t a glasses wearer?

At Optique we offer a comprehensive eye examination – which includes as standard a retinal photo to check the health of the eyes.

We can also carry out contact lens after-care and fittings of all the most popular brands of lenses. If glasses are required, expert help is on hand to choose from cutting-edge frames and sunglasses ranges including Prada, Mont Blanc, Bulgari, Alain Mikli, Silhouette, Lulu Guinness and NEW for 2010 - Oakley. At Optique all ages and tastes are catered for and some of our frame collections are exclusive to the practice. Optique Sight also offers corporate VDU eye testing packages for employees of law practices at very favourable rates.

OPTIQUE HEARING
Only one in seven people in the UK who need help with their hearing are wearing hearing aids. Much of the resistance to addressing hearing difficulties stems from the perception that all hearing aids are ugly appendages that sit behind the ear. However, with today’s technology this could not be further from the truth. Digital instruments can now be concealed in ways which make them almost invisible, making that annoying whistling hearing aid a thing of the past.

At Optique Hearing we invest whatever time is necessary to understand the degree of hearing loss and suggest the best hearing solutions for the individual. This initial consultation is FREE-of-charge and we can also offer the patient an opportunity to hear the difference that hearing aids will make.

In addition to our dedicated hearing suite at 573 Lisburn Road, Belfast, we run regular satellite clinics in Dungannon, Newry and Ballymena so if travelling is a problem we can test at either of these three centres or indeed in the comfort of the patient’s home.

Competition

Optique Sight and Hearing Expertise is offering readers of ‘The Writ’ the opportunity to win either:

A pair of designer glasses frames* with top of the range single vision or varifocal lenses and an extensive eye examination (including digital retinal photograph).

Or

Twenty five percent off the list price of any of our hearing instruments

To enter the competition, send the answer to the question below with your contact details: name, address, email address and telephone number to info@optiquesight.com

Please state if your interest is either eyesight or hearing related.

The closing date for the competition is Friday 18th June 2010 and the first correct entry drawn after this date will win the prize.

Question: What road in Belfast is Optique Sight and Hearing Expertise located on?

*Frames to the value of £200
Selected High Court and Court of Appeal Decisions

ADMINISTRATION OF JUSTICE

AN APPLICATION FOR JUDICIAL REVIEW BY GERARD O’NEIL
Application for judicial review of decisions of the Governor of HMP Maghaberry and of the Police Service of Northern Ireland in relation to the transfer of the applicant from HMP Maghaberry where he was on remand to Musgrave Street police station for interview about another matter. - whether any application was made to amend the Orders made by the Magistrates’ Courts under s.47 remanding the applicant into the custody of the prison. - whether detention by the police was in breach of the terms of the Orders made by the Magistrates’ Courts. - whether the detention was in breach of the applicant’s right to liberty under a.5 ECHR. - whether the decision in respect of the transfer was ultra vires, unlawful and irrational. - HELD that there are no grounds for judicial review and application dismissed

HIGH COURT
18 JANUARY 2010
WEATHERUP J

CONFLICT OF LAWS

DANNY MALONE AND MICHAEL MALONE V HUGH MALONE AND EAMON MALONE
Point in proceedings when a defendant must object to the jurisdiction of the court. - defendants contend the proceedings are misplaced because they are related to a limited company registered in the Republic of Ireland. - whether the defendants are at liberty to argue that the court does not have jurisdiction to hear this appeal and the earlier summons. - HELD that the defendants are entitled to take the jurisdictional point before this court

HIGH COURT
8 MARCH 2010
DEENY J

IRISH WASTE SERVICES LIMITED V NORTHERN IRELAND WATER LIMITED, M T WASTE LIMITED, ROAD SAFETY CONTRACTS LIMITED AND R HEATRICK LIMITED
Contract. - public procurement. - action for injunctive relief against the first defendant restraining it from entering into the proposed contract for services with the successful tenderer, the second defendant. - threshold standard for service delivery was an inherent part of the tender. - date at which grounds for bringing the proceedings first arose. - HELD that the grounds of challenge first arose when the invitation to tender was published, and that the plaintiff’s delay in bringing these proceedings is fatal to their claim. - claim dismissed

HIGH COURT
9 FEBRUARY 2010
TREACY J

COSTS

IN THE MATTER OF AN APPLICATION BY CIARA PATRICIA THOMPSON FOR JUDICIAL REVIEW AND IN THE MATTER OF A DECISION OF THE DEPARTMENT OF THE ENVIRONMENT FOR NORTHERN IRELAND (PLANNING SERVICE)
Application for a protective course order so that the applicant shall not bear the respondent’s costs in these proceedings in any event. - applicant is a member of a group who took judicial review proceedings to challenge the planning permission on a number of grounds. - whether the issues raised in the application are of general public importance. - HELD that there is one issue of general public importance in the locality in which the applicant resides and that the public interest requires that the issue should be resolved. - order made that any award of costs against the applicant in respect of the hearing at first instance should not exceed £10,000

HIGH COURT
19 MARCH 2010
MORGAN LCJ

ATTORNEY GENERAL’S REFERENCE (NUMBERS 10 AND 11 OF 2009) WILLIAM VOKES AND GARY VOKES
Offenders arraigned on one count of aggravated burglary alleging the infliction of grievous bodily harm, criminal damage and assault. - whether the sentence applied was unduly lenient. - aggravating and mitigating factors. - premeditation, use or weapons, previous convictions, additional threats of fear and violence. - circumstances of the offenders. - whether adequate consideration by the trial judge. - HELD that the custodial elements of the orders departed from normal guidelines and there was no significant period of custody before the offender was released, that the custodial period was shorted than the probationary one and was not properly balanced

20 NOVEMBER 2009
COURT OF APPEAL
MORGAN LCJ, HIGGINS LJ, GIRVAN LJ
IN THE MATTER OF AN APPLICATION BY JR 27 FOR JUDICIAL REVIEW

Whether the proceedings constitute a criminal cause or matter. - application for judicial review by a litigant to whom anonymity has been granted, by virtue of his age. - applicant was arrested by the police by reason of his suspected involvement in a burglary. - he was interviewed at a police station, photographed and DNA samples and fingerprints were taken. - applicant subsequently was not prosecuted and his solicitor requested that police remove from all relevant databases specific items together with a written undertaking from the Chief Constable not to retain any of the information. - Chief Constable refused this request by virtue of the Police and Criminal Evidence (NI) Order 1989. applicant was not prosecuted and is no longer the subject of police investigation. - challenge of decision to retain samples, fingerprints and photographs. - at hearing the Judges had reached differing conclusions as to whether the case was a criminal cause or matter. - governing principles determining what constitutes a criminal cause or matter. - HELD that this is a criminal cause or matter

HIGH COURT
4 MARCH 2010
MORGAN LCJ, MCCLOSKEY J, WEATHERUP J,

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY ROBERT TORRENS KNIGHT

Application for judicial review to challenge the lawfulness of a decision of the Secretary of State suspending his licence and returning him to prison. - whether the applicant’s detention was a violation of a 5(1) ECHR in that the detention, not being judicially ordered could not be considered consistent with the lawful rule of law. - whether the suspension of the applicant’s licence was a breach of the applicant’s legitimate expectation. - whether decision was unreasonable. - exercise by the Secretary of State of his powers to suspend early release licence. - HELD that the appellant has not made out any grounds of challenge and the leave for judicial review refused

HIGH COURT
5 MARCH 2010
TREACY J

R V NIGEL JAMES BROWN AND GARY RYAN TAYLOR

Application for stay of prosecution against the second defendant on the basis there has been an abuse of process because the PPS informed him that he was not to be prosecuted, but subsequently decided he should be prosecuted. - principles to be applied in circumstances where the prosecution make an unequivocal representation to a defendant that he will not be prosecuted, and subsequently decide to prosecute him, despite there being no new evidence against him. - whether the procedure was in breach of the PPS Code for Prosecutors. - whether it justifies a stay of proceedings. - whether any material delay in proceedings which would justify a stay. - whether the defendant would be prejudiced. - HELD that none of the grounds have been made out and application refused

CROWN COURT
5 MARCH 2010
HART J

AN APPLICATION FOR JUDICIAL REVIEW BY AB

Application for judicial review to challenge the decision of Down District Council declining the applicant permission to bring a legal representative to a disciplinary hearing into allegations of misconduct. - whether the disciplinary proceedings involve a determination of the applicant’s civil rights and obligations under a. 6(1) ECHR so that legal representation is required as a measure of protection. - HELD that a. 6 ECHR is not engaged in the present case and application for judicial review dismissed

HIGH COURT
16 FEBRUARY 2010
TREACY J

R V MARK ROBERT BURCOMBE

Sentencing. - conspiracy to cause grievous bodily harm. - murder charge dropped since the defendant gave evidence against his co-accused. - aggravating and mitigating factors. - HELD that the defendant be sentenced to two years and six months imprisonment

CROWN COURT
27 JUNE 2008
HART J

R V ROBERT JOHN STEWART AND DAVID IAN STEWART

Sentencing. - murder. - confession crimes. - defendants voluntarily attended a police station to confess their parts in a murder. - defendants were not under suspicion. - both defendants also admitted to a large number of other offences which they have asked the court to take into consideration. - agreement with prosecution whereby defendants wish to gain a benefit from giving evidence to the police. - minimum term which the defendants must serve before they can be considered for release by the Parole Commission. - HELD that both defendants will serve a minimum of three years’ imprisonment before they can be considered for release

CROWN COURT
5 MARCH 2010
HART J

EMPLOYMENT

AN APPLICATION FOR JUDICIAL REVIEW BY AB

Application for judicial review to challenge the decision of Down District Council declining the applicant permission to bring a legal representative to a disciplinary hearing into allegations of misconduct. - whether the disciplinary proceedings involve a determination of the applicant’s civil rights and obligations under a. 6(1) ECHR so that legal representation is required as a measure of protection. - HELD that a. 6 ECHR is not engaged in the present case and application for judicial review dismissed

HIGH COURT
16 FEBRUARY 2010
TREACY J
EXTRADITION

KINDGOM OF SPAIN V ARTURO VILLANUEVA ARTEAGA
Appeal under s.28 Extradition Act 2003. - challenge of a decision of the Recorder of Belfast whereby the discharge of the Respondent was ordered. - Council Framework decision. - whether an order surrendering the requested person would be unlawful as it would infringe his Convention rights. - whether the European Arrest Warrant (EAW) was defective as it failed to adequately particularise how, when and where the conduct alleged against the requested person had allegedly occurred. - whether the offence specified in the EAW is an extradition offence. - whether the EAW complies with s 2(4)(c) of the Extradition Act 2003. - HELD that the particulars of the conduct alleged to constitute the offence are unacceptably vague and general and insufficiently specific and the decision of the Recorder upheld and appeal dismissed
HIGH COURT
24 FEBRUARY 2010
MCCLOSKEY J

FAMILY LAW

RE BRENO (A PSEUDONYM) (CARE PROCEEDINGS: PORTUGUESE KINSHIP PLACEMENT)
Application for a Care Order under a. 50 Children (NI) Order 1995 in respect of a child who is a Portuguese national of African descent who has been left in Northern Ireland by his mother who has returned to Portugal and whose father is in prison in Portugal. - while in the care of a friend of his mother the child suffered significant emotional and physical harm. - child in foster care. - whether there should be a kinship placement in Portugal or the child be freed for adoption in Northern Ireland. - family members and potential kinship placements. - HELD that the threshold criteria is satisfied and the child be placed in a kinship placement in Portugal with his maternal aunt after stated issues have been addressed
HIGH COURT
11 FEBRUARY 2010
STEPHENS J

INSOLVENCY

ARTHUR BOYD AS ADMINISTRATOR OF THE PRESBYTERIAN MUTUAL SOCIETY LIMITED V THOMAS ERNEST HOWIE
Application by a licensed insolvency practitioner in his capacity as the administrator of the Presbyterian Mutual Society for a determination on whether the holders of the paid up withdrawable shares in the Society are to be treated as creditors for the purposes of para 4(1) of Sch B to the Insolvency (NI) Order 1989. - permission of court sought to make a distribution of assets. - directions sought as to who the creditors of the company are. - whether the money should be distributed to the loan holders only or to members. - definition of creditors. - HELD that the members of the Society in respect of their shareholding in the Society cannot be described as creditors
HIGH COURT
12 FEBRUARY 2010
DEENY J

IMMIGRATION

IN THE MATTER OF AN APPLICATION BY A FOR LEAVE TO APPLY FOR JUDICIAL REVIEW AND IN THE MATTER OF A DECISION BY THE UNITED KINGDOM BORDER AGENCY DATED 18 JANUARY 2010
Application for an order quashing the decision of the United Kingdom Border Agency to transfer the applicant to the Detained Fast Track process while she was awaiting the outcome of her asylum claim having been previously granted temporary admission to the UK. - whether the decision was made without adequate enquiry into the applicant’s medical history in respect of her HIV infection and her current physical and mental health. - HELD that leave refused since the applicant has not acted in good faith throughout the proceedings in that her instructions to her solicitor omitted facts which might have been significant to the determination of the application
HIGH COURT
25 FEBRUARY 2010
TREACY J

MEDICINE

SUSAN COLTON V NURSING AND MIDWIFERY COUNCIL
Appeal from the decision of the Conduct and Competence Committee of the Nursing and Midwifery Council finding the appellant guilty of professional misconduct and imposing a Striking-off Order. - whether the Committee should have proceeded in the appellant’s absence and that of her legal representatives
Selected High Court and Court of Appeal Decisions

and to have made findings of fact and determinations based on those findings in those circumstances. - whether the Committee acted in breach of the appellant’s a.6 ECHR rights when it found the charges proved when it was aware that she was too unwell to participate in legal proceedings, nor had the financial means to engage legal representation. - whether the matter should have been remitted to a freshly-constituted Conduct and Competence Committee. - HELD that the Court is unable to rule on the grounds of appeal until further submissions and evidence are made from the parties

HIGH COURT
26 FEBRUARY 2010
TREACY J

MISREPRESENTATION

ODYSSEY CINEMAS LIMITED V VILLAGE THEATRES THREE LIMITED AND SHERIDAN MILLENIUM LIMITED

Landlord and tenant. - commercial property. - damages. - plaintiff claims that the defendant was guilty of misrepresentation which induced the plaintiff to enter into the underlease. - plaintiff claims that the cinemas in the Odyssey Complex had been subjected to serious, persistent and longstanding noise problems giving rise to complaints and disputes from soon after it opened, and that was not disclosed to the plaintiff. - whether the non-disclosure amounted to recklessness or negligence. - plaintiff seeks recission of the underlease as a remedy. - extent of noise problem. - nature of the representations made on behalf of the defendant to the plaintiff relevant to noise. - HELD that there was negligent misrepresentation and breach of warranty on the part of the defendant and appropriate remedy was damages awarded in lieu of recision

HIGH COURT
2 FEBRUARY 2010
DEENY J

MORTGAGES

GB FINANCE GROUP PLC V SEAMUS COLGAN AND MARY COLGAN

Application for stay of enforcement of so much of an order for possession as relates to a dwelling house. - application for possession was made pursuant to a legal charge made between the defendants and the plaintiff. - application by second defendant to have a commercial bridging loan agreement between the plaintiff and first defendant re-opened under section 140A Consumer Credit Act 1974. - discretion of court to take into account relevant matters when assessing the fairness of the relationship between the creditor and debtor. - whether the credit relationship between the creditor and debtor was unfair due to the dual rate of interest, the circumstances surrounding the provision of the bridging loan and the lack of any attempt to investigate the first defendant’s ability to repay the re-mortgage loan before the drawdown of the bridging loan. - whether the applicants can claim an unfair credit relationship since they were provided with independent legal advice. - HELD that the dual interest rate rendered the credit relationship between the creditor and debtor unfair and the terms of the bridging loan should be varied

HIGH COURT
3 MARCH 2010
ELLISON M

NEGLIGENCE

SCOTT CRAGGS (A MINOR BY HIS FATHER AND NEXT FRIEND KENNETH CRAGGS) V DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT

Negligence. - personal injuries. - whether the injuries were sustained by reason of the negligence, nuisance, breach of contract and breach of s. 2 Occupiers’ Liability Act [NI] 1957. - whether there was a defect due to erosion at steps in a forest park. - delay. - credibility. - system of inspection used by the defendant and whether weekly inspections would have made any difference to the likelihood of an accident in this instance. - HELD that the plaintiff has failed to prove his case on the balance of probabilities and is therefore dismissed

HIGH COURT
19 FEBRUARY 2010
GILLEN J

KW (A MINOR) BY LW, HIS SISTER AND NEXT FRIEND (AND FOUR OTHERS) V KENNETH BOLTON AND DW

Damages. - plaintiff (aged eight) was a rear seat passenger in his father’s private vehicle at the time of the accident who sustained head injuries. - father is the second defendant. - whether, at the time of the accident, the plaintiff was properly secured by a lap belt fitted for the exclusive use of the middle passenger in the rear seat. - whether, if the plaintiff was not so secured, this contributed to the plaintiff’s injuries. - and whether this is attributable to negligence on the part of the second defendant. - HELD that the plaintiff was unrestrained by the lap belt, that his head injury was caused by impact with the rear of the front passenger seat and that a properly secured seatbelt would have prevented the head injury, and that the second defendant did not make sufficient checks to ensure the seatbelt was secured at the outset of the journey, rendering him liable to contribute to the plaintiff’s damages of 25%

HIGH COURT
19 NOVEMBER 2009
MCCLOSKEY J
MARY BERNADETTE MAGILL AS PERSONAL REPRESENTATIVE OF THE ESTATE OF BRIAN MAGILL (DECEASED) V ROYAL GROUP OF HOSPITALS, BELFAST CITY HOSPITAL TRUST, DR PAMELA LOGUE, ULSTER INDEPENDENT CLINIC, DR JOHN COLLINS, MR THOMAS DIAMOND, DR ELLIS, PROF SPENCE

Plaintiff in all 3 cases is a personal litigant and the widow of Brian Magill who died whilst a patient at the Belfast City Hospital. - plaintiff claimed negligence and breach of contract of the defendants in and about the provision of medical and nursing care, treatment and advice for the deceased, and on her own behalf for nervous shock and damages sustained by her by reason of the same negligence and breach of contract. - clinical negligence and the standard of skill required by a doctor, nurse or consultant. - whether scans were wrongly interpreted. - whether the correct procedures were carried out. - whether symptoms of infection went undetected. - whether the deceased suffered melena. - whether the deceased should have been transferred to another hospital. - HELD that the plaintiff failed to establish that the medical and nursing staff failed to act in accordance with accepted practice and case dismissed

HIGH COURT
28 JANUARY 2010
GILLEN J

MARY BERNADETTE MAGILL AS PERSONAL REPRESENTATIVE OF THE ESTATE OF BRIAN MAGILL (DECEASED) V ROYAL GROUP OF HOSPITALS, BELFAST CITY HOSPITAL TRUST, DR PAMELA LOGUE, ULSTER INDEPENDENT CLINIC, DR JOHN COLLINS, MR THOMAS DIAMOND, DR ELLIS, PROF SPENCE

AN APPLICATION FOR JUDICIAL REVIEW
BY LOUIS MAGUIRE

Application for relief against the decision of the Northern Ireland Prison Service not to provide an assurance to the applicant that his regular prison visits would not be subject to covert surveillance. - application for declaration that the Code of Practice made pursuant to s. 71 Regulation of Investigatory Powers Act 2000 (RIPA) is incompatible with a.8 ECHR and ultra vires. - applicant serving a life sentence for murder who raised concerns about his prison visits being bugged. - whether the RIPA provides minimum safeguards. - whether Investigatory Powers Tribunal under RIPA has exclusive jurisdiction. - HELD that the court does have jurisdiction to hear the present judicial review and contention that the IPT has exclusive jurisdiction is rejected. - applicant has arguable case on all grounds

HIGH COURT
16 FEBRUARY 2010
TREACY J

SOLICITORS

AN APPLICATION FOR JUDICIAL REVIEW BY PAUL MARTIN CAMPBELL

Application by a pupil solicitor seeking leave to apply for judicial review of the decision of the police to exclude him, in the company of his master, from attending police interviews. - declaration sought that the decision was unreasonable or irrational . - whether the refusal to admit him to interviews alongside his master was contrary to law on the basis that the applicant had a legal entitlement to accompany his master in the course of his training and in the discharge of the master’s duties as a solicitor. - entitlement and policy for apprentices to attend PACE interviews. - circumstances in which a pupil solicitor, having been duly admitted to PACE interviews with his master, can thereafter be excluded in the absence of any unreasonable conduct on the part of the pupil solicitor. - HELD that leave for judicial review be granted.

HIGH COURT
25 JANUARY 2010
TREACY J

AN APPLICATION MY MCNAMEE AND MCDONNELL LLP FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

Applicants appealed against an order of court granting leave to apply for judicial review on some grounds but not on others. - appeal against a decision of the PSNI whereby it determined that an arrested person could not be afforded access to a solicitor of the applicant firm. - whether infringement of the applicant’s rights under a. 8 ECHR. - whether the decision of the PSNI provided adequate reasons. - PACE rights of clients. - whether the PSNI took irrelevant considerations into account. - whether there is an automatic right of appeal. - HELD that there is no valid appeal in existence and the applicants will have to appeal to the Court of Appeal in the first instance

HIGH COURT
25 FEBRUARY 2010
MCCLOSKEY J

SUCCESSION

A ON BEHALF OF AD AND ON HER OWN BEHALF AND C EXECUTOR OF THE ESTATE OF D DECEASED

Application brought under the Inheritance (Provision for Family and Dependants) (NI) Order 1979 by A, a mother against the estate of D, her former partner and the father of AD. - plaintiff applies for permission to proceed out of time. - discretion of the court to grant an extension of time in the administration of estates. - extent and effect of delay. - HELD that there is no valid appeal in existence and the applicants will have to appeal to the Court of Appeal

HIGH COURT
16 NOVEMBER 2009
DEENY J

PRISONS

AN APPLICATION FOR JUDICIAL REVIEW

The full text of these decisions are available on the Libero Database in the member’s section of the Law Society Website at www.lawsoc-ni.org
High Hedges

Proposed legislation designed to help people affected by high hedges bordering their domestic property was introduced in the Northern Ireland Assembly on 26 April 2010. The High Hedges Bill will allow local councils to act in disputes over loss of light to a domestic property due to a neighbouring high hedge. The Bill will apply to lines of two or more evergreen or semi-evergreen trees. This system will be similar to the one operating in England and Wales since 2005 under the Anti-social Behaviour Act 2003.

Legislation

High Hedges Bill
There is currently no legislation in place in Northern Ireland which deals with high hedge problems. The Bill will introduce a system to encourage high hedge problem issues to be resolved through neighbourly discussion or mediation, and failing that, the facility for persons alleging that they are suffering detriment due to a neighbouring evergreen/semi-evergreen high hedge to lodge a formal complaint with their local council. This legislation is virtually identical to the Anti-social Behaviour Act 2003.

To check the progress of the Bill please refer to the Northern Ireland Assembly website


Explanatory document


Anti Social Behaviour Act 2003
Part 8 of the Act deals with high hedges in England and Wales. This Part allows local authorities to cut down high hedges following a complaint that a hedge impedes access to light, views or properties.

http://www.opsi.gov.uk/acts/acts2003/ukpga_20030038_en_1

A hedge too high?
Examines the provisions of the Anti-social Behaviour Act 2003 Part 8
West: 2006 Jan L.Ex. 20-21

High hedges

High hedges - Anti-social Behaviour Act 2003
Discusses the establishment of the Leylandii Working Group and the complaints procedure and appeals.
Farm Law 2004, 95, 6-8

Northern Ireland Websites

Minister Edwin Poots introduces High Hedges legislation in the Assembly

Minister Edwin Poots outlines plans to address problem of high hedges in Northern Ireland

DOE(NI) website
This website has a useful section on environmental issues and deals specifically with high hedges. It also provides access to the now closed consultation document and also a synopsis of the responses. Please follow the links to Protect the Environment, Environment Issues and Local Environmental Issues.
http://www.doeni.gov.uk/

Articles

The following articles are based on the English legislation

Textbooks


New Books in the Library


Moore, V. A practical approach to planning law. 11th ed. Oxford University Press. 2010


Northern Ireland Law Commission.


Northern Ireland Law Commission.

Missing Wills

Re: **Russell Bell** (deceased)
Late of: 3-19 Moira Road, Drumlough House, Lisburn, County Antrim
Date of death: 9 February 2010
Would any person having knowledge of the whereabouts of any Will made by the above named deceased please contact:
Conor Downey & Co
Solicitors
3 William Street
Lurgan
BT66 6JA
Tel: 028 3831 6887
Email: lurgan@conordowney.co.uk

Re: **Leonard Andrew Verner** (deceased)
Late of: 1 Lancedean Road, Belfast

Re: **Ronald Livingston** (deceased)
Late of: 36 The Crescent, Finaghy, Belfast
Would any Solicitor having knowledge of the whereabouts of a Will executed by the above named kindly contact:
Kieran Barrett
Haughey's Solicitors
138 Upper Lisburn Road
Finaghy Crossroads
BELFAST BT10 0BE
Tel: 028 9043 1222
Fax: 028 9061 2511

Re: **Felix John (otherwise Philip) Hanratty**
Late of: 14 Seavers Road, Newry, County Down
Would anybody having knowledge of the whereabouts of a Will made by the above named deceased please contact:
Mary Doherty
McShane & Co
Solicitors
34 Hill Street
Newry
County Down BT34 3PR
Tel: 028 3026 6611
Fax: 028 3026 9492

Re: **Evelyn Artt** (deceased)
Late of: Ferrard House, 32 Station Road, Antrim BT41 2RL
Formerly of: 10 Glengormley Park, Glengormley, County Antrim BT36 7RE
Would anyone having knowledge of the whereabouts of a Will for the above named deceased please contact:
Karen Cox
Reid Black & Co
Solicitors
Six Mile Chambers
Ballyclare
County Antrim BT39 9AA
Tel: 028 9335 2221
Fax: 028 9335 2773

Re: **Kevin McGirr** (deceased)
Late of: 1 Gortmore Gardens, Omagh, County Tyrone BT78 5DZ
Date of death: 24 January 2010
Would anyone having knowledge of the whereabouts of any Will for the above named deceased contact the under mentioned solicitors:
John Quin & Company
Solicitors
14 Belmont Street
Enniskillen
County Fermanagh BT74 6AA
Tel: 028 6632 6008

Re: **Mary Cosgrove** (deceased)
Late of: 32 Slievegallion Drive, Belfast BT11 8JN
Date of death: 18 September 2009
Would any person having knowledge of the whereabouts of a Will made by the above named deceased contact:
Keown Solicitors
19 Cregagh Road
BELFAST BT6 8PX
Tel: 028 9045 6042
Fax: 028 9045 6405

Re: **Michael Hunter** (deceased) and **Rita Rose Hunter** (deceased)
Late of: 92 Tattyssallagh Road, Drumquin, County Tyrone BT78 4HR
Formerly of: 12 Castle Street, Omagh, County Tyrone BT78 1DD
Dates of Death: 26 February 2010 and 27 September 2009 respectively
Would any person having any knowledge of the whereabouts of a Will made by either of the above named deceased please contact:
John Quin & Company
Solicitors
14 Belmont Street
Enniskillen
County Fermanagh BT74 6AA
Tel: 028 6632 6008

Re: **Estate of Joseph Reynolds** (deceased)
Late of: The Bungalow, Haggardstown, Mayglass, Killinick, County Wexford
Formerly of: 38 Melrose Court, George's Street, Wexford; 56 Cois Mara, Rosetown, Rossiliare Strand, County Wexford (also previously resided in Derry, Antrim, Leitrim and Scotland)
Would any person having knowledge of the whereabouts of a Will for the above named deceased please contact:
M J O'Connor
Solicitors
Drinagh
Wexford
Tel: 00 353 53 91 22555
Fax: 00 353 53 91 24365
Email: amwalsh@mjoc.ie

Re: **Margaret Taylor** (deceased)
Late of: Arches Private Nursing Home, 144 Upper Newtownards Road, Belfast BT4 3EQ and Muckamore Abbey Hospital
Date of death: 5 May 1995
Would any person having knowledge of the whereabouts of a Will made by the above
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Registered owner: W G Mitchell (Derry) Ltd
Property at: 25/27 William Street, Londonderry

Would any person having any knowledge of the whereabouts of the Deeds and Documents of Title relating to the above mentioned premises please communicate such information to:
Ross Davidson
Arthur Cox
Solicitors
Capital House
3 Upper Queen Street
BELFAST BT1 6PU
Tel: 028 9023 0007
Fax: 028 9023 3464

Folio: 6181
County: Tyrone
Registered owner: Seamus Grimes
Property at: Old Caulfield Road, Dungannon, County Tyrone

Take notice that any person having custody of or any 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 take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.

Thompsons Solicitors
39 Frances Street
Newtowards
County Down BT23 7DW
Tel: 028 9181 1652
Fax: 028 9181 9645

Folio: 37388
County: Down
Registered owner: Eleanor Elizabeth McFarlane
Lands at: 56 Ballygrainey Road, Craigavad in the Townland of Ballydavay, Barony of Castlereagh Lower, in the County of Down

Take notice that any person having custody of or any 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 take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.

Thompsons Solicitors
39 Frances Street
Newtowards
County Down BT23 7DW
Tel: 028 9181 1652
Fax: 028 9181 9645

Folio: 15175 and 41976
County: Down
Registered owners: Alexander McFarlane and Eleanor Elizabeth McFarlane
Lands in: The Townland of Ballydavay, Barony of Castlereagh Lower in the County of Down

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

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39 Frances Street
Newtowards
County Down BT23 7DW
Tel: 028 9181 1652
Fax: 028 9181 9645

Folio: 6181
County: Tyrone
Registered owner: Seamus Grimes
Property at: Old Caulfield Road, Dungannon, County Tyrone

Take notice that any person having custody of or any 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 take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.

Thompsons Solicitors
39 Frances Street
Newtowards
County Down BT23 7DW
Tel: 028 9181 1652
Fax: 028 9181 9645
Classifieds

**Folio: 14232**
County: Antrim
Registered owner: Margaret Coyle
Take notice that any person having custody of or any 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 take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.

Tim Donnelly
Donnelly Neary & Donnelly
Solicitors
1 Downshire Road
Newry
County Down BT34 1ED
Tel: 028 3026 4611
Fax: 028 3026 7000

**Folio: 19577**
County: Down
Registered owner: Dawson Grant
Lands at: Mullabrack, Gilford
Take notice that any person having custody of or any 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 take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.

Nelson Singleton
Solicitors
21 Gallows Street
Dromore
County Down BT25 1BG
Tel: 028 9269 3475
Fax: 028 9269 9560
Ref: CD/LB/G358-5/GRANT

**Folio: AN50196L**
County: Antrim
Registered owner: Lynda Beattie
Lands and dwelling at: 123 Maritime Drive, Carrickfergus, County Antrim
Take notice that any person having custody of or any 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 take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.

Pauline Knight & Company
Solicitors
10 Wellington Park
BELFAST BT9 6DJ
Tel: 028 9050 9666
Fax: 028 9050 9669
DX: 4224NRBELFAST24

**Folio: 32776**
County: Down
Registered owner: Leo Lowry
Of: 2 Rostrevor Road, Hilltown, Newry, County Down
Take notice that any person having custody of or any 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 take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is communicated within three weeks of publication of this notice a duplicate Land Certificate may be applied for.

Emmet J Kelly & Company
Solicitors
41 Bridge Street
Banbrige
County Down BT32 3JL
Tel: 028 4062 9397
Fax: 028 4062 9397

**Folio: LY 6203**
County: Londonderry
Registered owner: Patrick Canning
Take notice that any person having custody of or any 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.

Martin King French & Ingram
Solicitors
52 Catherine Street
Limavady
County Londonderry BT49 9DB
Tel: 028 7776 2307
Fax: 028 7776 6232

Registered owner: Paul Conroy
Of: 12 Locan Street, Belfast BT12 7NE
Would any person having knowledge of the whereabouts of the deeds and documents of title relating to the above property please communicate such information of:

M Ferguson
Solicitors
249 Lisburn Road
BELFAST BT9 7EN
Tel: 028 9038 2107
Fax: 028 9038 2107
Email: info@mfergusonsolicitors.com
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BELFAST BT8 7HN

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(ROYAL VICTORIA HOSPITAL)

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

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

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

Further details about this charity and its work will gladly be supplied by the Secretary, The Heart Trust Fund (Royal Victoria Hospital), 98 Castle Street, Comber, Co. Down BT23 5DY. Tel: (028) 9187 3899.

(Registered Charity No. XN52409)  
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