THE WRIT

THE JOURNAL OF THE LAW SOCIETY OF NORTHERN IRELAND

ISSUE 206 | JANUARY/ MARCH 2011

THIS MONTH

Launch of Multi-Unit Development Discussion Paper and Information Leaflet
Integrating title insurance into your practice will:

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NEW COVER

The Society is delighted to announce that Café Carberry will be providing the catering at the Law Society House café as of Monday 28 March 2011. Ursula and Raymond Carberry owners of the Café Carberry chain are already well known to many members offering catering at the High Court and across the road from Law Society House. Their arrival will complement the new café refit and will provide members with a new café experience.
Launch of Multi-Unit Development Discussion Paper and Information Leaflet


The Discussion Paper was prepared by the Society’s Multi-Unit Development Working Group - a group of conveyancing practitioners chaired by Council Member Elizabeth McCaffrey. The Working Group has given detailed consideration to the issue of multi-unit developments for over a year and felt it important to produce a paper providing a summary of the issues.

The Report is informed by the responses of practitioners to a Society questionnaire on the topic of multi-unit developments. The Discussion Paper summarises comparative research undertaken by the Working Group, considering legislative initiatives undertaken in England & Wales and the Republic of Ireland, where a Multi-Unit Development Bill was recently passed into law. Problems encountered by those living in a multi-unit development are discussed in detail and the issues which lead to the problems arising are analysed.

The issue of multi-unit developments, their upkeep and maintenance is a complicated matter involving a range of stakeholders including solicitors, estate agents, managing agents, developers and unit owners themselves. As such, the Society’s Discussion Paper does not arrive at conclusions or recommendations. Instead it has flagged up a number of key issues which require further reflection and consideration by all stakeholders.

Key issues requiring further consideration include:

- Whether the current standard legal arrangements are appropriate
- Whether developers should be under a statutory obligation to vest ownership of the common areas in a management company
- Whether more can be done to encourage unit owners to stay informed and involved in the management and maintenance of the development where they live
- Whether adequate provision is being made for the collection and investment of a sinking fund
- Whether there is a need for statutory regulation of managing agents.

In considering these issues, the Society will maintain contact with all key stakeholders. In preparing the document the Society met with a number of managing agents and was pleased to have a number of managing agents in attendance at the launch event.

The Northern Ireland Law Commission is currently undertaking a detailed review of the law relating to multi unit developments. The Commission is preparing a consultation paper on this topic which will be the subject of a full public consultation. The consultation paper will discuss the existing legal framework, problems in practice, and options for reform. To further inform itself of the practical issues affecting unit owners, the Commission is currently seeking the views of those living in apartments and management companies established to manage apartment blocks. The Society was pleased to have Mr. Justice McCloskey, Chairman of the Law Commission, in attendance at the launch event, and looks forward to engaging with the Commission in the near future.

The Minister for Finance & Personnel, Mr Sammy Wilson MP MLA spoke at the launch event. Welcoming the publication of the Discussion Paper, Minister Wilson said:

“As an elected representative I am acutely aware of the difficulties many residents of multi-unit developments can face. Those residents have raised concerns about the operation of management companies, a lack of security, failure to insure properties and to maintain communal areas in these developments. People who purchased their properties in the hope of turning those properties into a warm and secure home often face a daily battle to keep that dream on track. Many of these purchasers are first-time buyers who have had to pursue the apartment option because the cost of a house was beyond their reach.”
“If we are to address the issues, all of the key players must recognise and accept their roles from the developers right through to the purchasers themselves. I congratulate the Law Society on the production of its discussion paper and I look forward to its continued support and assistance as we take this important strand of work forward.”

In addition to the Discussion Paper, the Society published an information leaflet for individuals contemplating living in an apartment. The leaflet, entitled ‘Buying and Living in an Apartment’ contains practical advice for those contemplating purchasing an apartment. This includes information on how apartment blocks are managed, the responsibilities of apartment owners including the paying of a service charge and key information to gather before agreeing to purchase an apartment.

Much of the information and advice contained in the leaflet will be provided to prospective purchasers by their solicitor as a matter of course. However, the Society felt it important to produce a leaflet which solicitors could provide to their clients for them to take away and consider.

Brian Speers, President of the Society, who also spoke at the launch event, commented:

“The Law Society is delighted to launch our information leaflet which we believe will go some way to providing those contemplating purchasing an apartment with practical guidance and advice.

“We hope that our Discussion Paper will provide the basis on which a wider discussion can be held on an issue which is affecting many home owners throughout Northern Ireland.”

Copies of the Discussion Paper and information leaflet are available from the Society’s website. In addition, practices may wish to order copies of the information leaflet from the Society. If your practice wishes to do so, please contact Paul O’Connor at paul.oconnor@lawsoc-ni.org for further details.
In April 1980 the Minister of State, Hugh Rossi (under the ‘direct rule’ arrangements) appointed a Land Law Working Group to examine the Survey’s Recommendations, such examination to be a preliminary to the preparation, in consultation with the legal profession and other interests of such further proposals for legislation as might be appropriate. The members of the Land Law Working Group were Professor JCW Wylie, JW Russell, Solicitor, Professor H Wallace, PJ Tweedale, Barrister and Director of Law Reform and PJ Grant CBE, Barrister, Office of Legislative Counsel.

The Working Group published an Interim Report in 1983 on Ground Rents and some consultation papers and then completed its work by the publication in 1990 of its three volumes of law reform proposals. These encompassed: ground rents, the general law of property, the freehold ownership of flats and other interdependent buildings, the law of landlord and tenant and the law of succession on death. Their Report also includes draft legislation in each of these areas.

However, despite some amending legislation, the bulk of the Working Party’s recommendations did not reach the statute book. The reasons for that are perhaps many and various and would merit detailed academic and professional scrutiny and reflection.

In any event, the further and final (we trust) attempt at land law reform was initiated by the then Office of Law Reform of the Department of Finance and Personnel in the mid 2000s and the Project was then referred to the Northern Ireland Law Commission (‘the Commission’) by the Department in 2007 on the inception of the Commission.

The Commission’s team for the Project was headed by Sarah Witchell, Solicitor and she was assisted by Diane Drennan, Solicitor and Leigh McDowell, Solicitor (on secondment from the Departmental Solicitors Office). Professor JCW Wylie acted as consultant to the Project, including drafting the proposed Bills which accompany our Report. Thus Professor Wylie has now completed over four decades of dedicated work for reform of Northern Ireland’s land law!

We are grateful to everyone who has worked on the Project, to the Law Society of Northern Ireland and its various Council and Committee members and to many other members of the profession who have generously assisted us throughout the Project. We are also very grateful to the Land & Property Services Agency who funded two of the legal posts within the Project and to the Land Registry for all their other support and assistance throughout the Project.

In a Note following this article Sarah Witchell gives a brief outline of the elements of the proposals of our Report. In the remaining portion of this Article I just wish to reflect on the law reform process and to encourage solicitors to participate in the full in the next important stages of the law reform process.

We believe our proposals are thorough and radical.

They are thorough because of all the detailed research work and consultation carried out by the Project Team assisted by Professor Wylie over the four year period of the Project within the Commission.

They are radical because, as Sarah Witchell indicates, what is proposed is no less than the introduction of a modern framework of land law for Northern Ireland. Thus we propose the abolition of the concept of feudal tenure and also the abolition of the doctrines of estates in land. We propose a straightforward concept of ownership to align the law with public perception.

Space precludes detailed consideration of those proposals or of the many other radical parts of our Report. I would encourage solicitors to obtain and consider our Report which as Sarah Witchell indicates is
We believe that we have achieved this through giving due protection to the adjoining owners of land to carry out necessary works, while between making it feasible for a developer of ground rent to fair compensation, while not imposing onerous and compulsory compensation provisions on ground rent payers.

I would also draw attention to our proposals that the period when law reform was proposed the ‘direct rule’ system of government and administration in Northern Ireland prevailed.

But now we have established devolution and are marking the elections in May which denote the end of a full term for the Northern Ireland Assembly.

It would be my personal view our land law reform proposals represent radical reform which could espouse widespread cross-party and cross-community support. But politicians will rightly look to the legal profession for at least views as to the merits of the proposed reforms, given the inevitable technical detail involved.

It is, also in my personal view, very welcome that the Law Society is energetically engaging with the institutions of devolution, the Assembly and the Executive at Stormont.

But I also submit that individual solicitors have no less a role to play. If you read and consider our Report, and if you consider that our proposals merit support then it is open to you to encourage support for them with any political interests with whom you are in contact and with Members of the Assembly and Ministers of the Executive whom you may meet in any capacity.

I appreciate that this is a new function for most of us, used only to the procedures and processes of direct rule, but it seems to me entirely legitimate for all solicitors to play a full part in engagement with our new devolved institutions in the public interest of the promotion of law reform, for once and for all, of Northern Ireland’s land law.

The way forward?

In one sense of course the publication of our Report marks but the end of the beginning of the law reform process. It is for others now to take the task forward and I very much welcome the ongoing and active interest that the Law Society is taking in this.

While one may speculate as to the reasons of previous failure to achieve any comprehensive reform, certainly one factor must have been that for most the period when law reform was proposed the ‘direct rule’ system of

available on line from our website www.nilawcommission.gov.uk and there are some paper copies currently available if you wish to make contact with us. (contact details below)

I would just draw attention to our proposals for the automatic redemption of small ground rents (£10 or less) on an appointed day. I would invite readers to consider the detail of that and of the accompanying compensation provisions for ground rent holders. We include provisions also to extend at a later date abolition to larger rents. There is a balance to be struck between the various interests: as widespread abolition as possible, the rights of ground rent holders to fair compensation, while not imposing onerous and compulsory compensation provisions on ground rent payers.

Northern Ireland Law Commission Report on Land Law


The Report contains draft legislation to implement the recommendation that the Commission is making to Government. The draft legislation comprises two Bills. The first is the Land Law Reform Bill (NI) which is a substantial piece of legislation, and contains provisions for the introduction of a modern framework of land law for Northern Ireland. The second is the Ground Rents (Amendment) Bill (NI) which extends the current ground rent redemption scheme. The Report also contains Explanatory Notes relating to both Bills.

The primary aim of the proposals in general is to modernise and simplify land law, removing anomalies, inconsistencies and unnecessary complications where they exist. As a result the Commission hopes that land law will be more comprehensible to everyone and the process of the transfer of property will become more transparent.

In summary, the Commission believes that this systematic rationalisation of both legislation and the general law is necessary and it is recommending to Government that the legislation should be implemented in full.

The Report is available in full at www.nilawcommission.gov.uk

Sarah Witchell
Law Society Annual Dinner 2010
Culloden Hotel, Cultra

From left: Alan Hunter, Chief Executive; Arlene Foster MLA, Minister for Enterprise, Trade & Investment; Dame Joan Harbison; Brian Speers, President and Norville Connolly, Senior Vice President.

From left: Alan Reid; Sarah Reid and John O’Prey.

From left: Joy Scott; Neil Fans and Alastair Rankin.

From left: Emma Cooper; Margaret Cooper; James Cooper and Julie Cooper.

President Brian Speers with solicitors and colleagues from CMG Solicitors.
Winners of the Solicitor Recognition Awards announced

The winners of the Law Society of Northern Ireland’s Solicitor Recognition Awards were announced at the Society’s Annual Dinner at the Culloden Hotel in Holywood. The Awards were launched last year with the approval of the Council of the Law Society to recognise and to acknowledge the considerable work, service and abilities of solicitors throughout Northern Ireland.

Among the winners this year was solicitor, Comgall McNally, who at 86 years of age, received a standing ovation on receiving his award for his contribution to the solicitor profession.

Other winners included Naomi Gaston from Cleaver Fulton Rankin Solicitors who won the Junior Solicitor award and Paul Shevlin from Thompsons McClure Solicitors who won the Senior Solicitor award and Gary Rocks who received a commendation.

The awards were presented by the Society’s President Brian Speers, Norville Connolly and Dame Joan Harbison CBE.

In the photo from left: Comgall McNally, winner of the President’s award; Gary Rocks, winner of the commendation; Dame Joan Harbison CBE; Brian Speers, President of the Law Society; Norville Connolly, Senior Vice President of the Law Society; Naomi Gaston from Cleaver Fulton Rankin Solicitors, winner of the Junior Solicitor award and Paul Shevlin from Thompsons McClure Solicitors who won the Senior Solicitors award.
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A Master’s voice

At this time of year the scramble for places in the Institute and the Graduate School at Magee - and hence for places in solicitors’ offices reaches fever pitch. Those of us who have more years behind us than before us in the profession have perhaps forgotten the anguish and stress experienced by young idealistic law graduates who have struggled to overcome many obstacles to put themselves on the brink of a career in the law only to find that the greatest obstacle of all is, to a large extent, outside their control. I refer of course to the lottery of finding a “Master”.

At a time when solicitors’ practices are facing strong competition, a down-turn in some areas of work, particularly conveyancing, a curtailment of legal aid and increased costs, there is an understandable temptation to dismiss out of hand the prospect of taking on an apprentice with the attendant extra costs this will entail.

My opening remarks are not a prologue to an argument that we, as a profession, have a moral obligation to ensure that those graduates who make it through the system should, as a matter of course, find appropriate Masters and be given a solid training. There may well be some merit in that argument but I would prefer to commend to you the real benefits that the employment of an apprentice can bring to your firm:

1. Long term planning
How many times do we hear the complaint from our colleagues that they cannot get assistant solicitors? This is a common complaint particularly in the provincial towns. I am always amazed at this. It seems to me that the employment of an apprentice gives the employer the option, two years down the line, to employ a solicitor who has been trained in the methods and ethos of the firm. An apprentice given good training, respect and good working conditions will invariably reciprocate with loyalty.

2. Development and growth
When we look at how our firms are to grow and increase fee income how many of us take into account the positive potential of an apprentice and later (if kept on) a young solicitor? Most of them have a wide circle of friends, some of them have many useful contacts and all of them will bring in varying amounts of work through these friends and contacts. Apart from this it’s quite astounding, in my experience, how in a very short period of time, they develop their own contacts and build up their own portfolio of clients. Often they do this from the crumbs thrown from their Master’s table whilst at the same time being available to deal with all that “loss leader” work which increasingly lands on all our desks.

3. A breath of fresh air
Don’t forget that these students have all done their law degrees more recently than you. Whilst in your employment they are attending lectures on all aspect of law, practice and procedure. Whilst they may not have your experience, most of them are likely to know more about recent changes in the law than you do. You can learn from them. Furthermore, it is likely they can assess the law faster than you through their natural use of modern technology.

4. You think you cannot afford an Apprentice?
“It’s not just the £240.00 per week you have to pay during those first four months – it’s the fact that they haven’t a clue what they are doing.”

This is by far the most common complaint about the current system and on the surface would appear to be a justifiable one.

This is in my view not so. On the contrary you have on your hands a highly motivated individual who has worked extremely hard to get to this stage (often at great expense). That person will almost certainly be computer literate and, whether male or female, will have excellent typing skills. He/she will not need a secretary. You will be amazed at how quickly he/she will tune in to the working environment. As a rule apprentices have no hang ups or bad habits (the only bad habits they will pick up will be from you). They are extremely willing to turn their hands to anything and, without exploiting them, you will be able to extract from them a tremendous amount of work and at the same time give them that insight into the reality of private practice which will be invaluable to them when they attend the Institute or the Graduate School for the first time.

If you have used them properly you will be very disappointed to see them go to the Institute or the Graduate School in January and delighted when they turn up on your doorstep every Monday of term. Their shock and bewilderment of having to work during the two summers they are with you will only be matched by your delight at being able to solve some of your holiday dilemmas and having a few more days off than usual yourself. Adopt the correct approach and you will find that you have an employee worth every penny of his/her wages.

5. Generally
Firms can only grow through the introduction of young talent. Properly nurtured that talent will reflect your own standards. Properly treated that talent will stay with you. You will have little turnover of professional staff. Clients like continuity. A sensible approach to the employment of apprentices will provide that continuity. Sole practitioners and small firms wrongly believe that they cannot afford apprentices. I believe, on the contrary, that they can be their salvation. Often the best time to take an apprentice is when you think you do not need one.

6. And finally
Whether or not we have a moral obligation to ensure that those who have worked hard to qualify find placements can be debated elsewhere. I contend that you have an obligation to yourself and to your firm to give serious consideration to the employment of an apprentice. In the longer term failure to do so may be your loss and someone else’s gain.

Gerry O’Hare, Senior Partner
J G O’Hare & Company Solicitors
Call for Masters

The Society each year draws up a list of members who are qualified and willing to act as Masters. This list will be provided on request to students who are seeking apprenticeships.

If you have:
1. Practised as a solicitor for at least seven years, and
2. Been a principal for at least three years, and
3. Are willing to act as a Master for the two year term commencing September 2011 and
4. Can provide a suitable training environment for an apprentice

please complete the form below and return it to the Admissions Officer at the Society.

The relevant criteria are set out in the Solicitors Admission and Training (Qualification of Masters) Regulations 1988 as amended by the Solicitors’ Admission and Training (Qualification of Masters) (Amendment) Regulations 1992.

At present the minimum wage for apprentices is as follows:
(a) For the first 16 months of the apprenticeship £240.00 per week.
(b) For the last 8 months of the apprenticeship £270.00 per week.
(c) During the Institute/Graduate School term, when the apprentice is in his/her Master’s office each Monday, a minimum wage of one-fifth of the prescribed first level rate (namely £48.00 per week).

**MASTERS 2011/2012**

I confirm that I am interested in acting as a Master as and from September 2011 and am willing for my name to be added to a list of potential masters and circulated to students seeking apprenticeships.

Name of intending Master..........................................................................................................

Name of firm...........................................................................................................................

Contact name and details of the person to whom application should be made 
(if different from Master)
...........................................................................................................................................

Would you prefer to receive applications from prospective applicants:

CV by email □
CV by post □

Firm’s own recruitment procedure (please detail)...................................................................
...........................................................................................................................................

Date ……………………………………….

Please return the completed form to:
Admissions Officer, Law Society of Northern Ireland, Law Society House, 96 Victoria Street, Belfast BT1 3GN or DX422 NR BELFAST 1.

Apprentice registration
2011 Institute/Graduate School Admissions Test

The Admissions Test took place on 12 February 2011, having been rescheduled from December 2010 due to the exceptionally bad weather. It is expected that Letters of Offer will be issued by the Institute/Graduate School on 19 April 2011.

The closing date for registration of apprentices with the Society will be Monday 22 August 2011.

If you wish to take on an apprentice starting in September 2011, please ensure that papers are complete and lodged with the Society before 22 August 2011. There is no provision for extension of that date.

If you wish to add your names to the Society’s List of Masters for 2011, please email the Admissions Officer at the Society at: admissions@lawsoc-ni.org

Please title the subject of your email: “List of Masters 2011”.
Collaborative divorce – redefining families instead of breaking them apart

It cannot be disputed that the rise in divorce is taking its toll on children. Unhappy children get involved in drugs, alcohol, truancy, faulty relationships and crime, and according to research are likely to develop patterns of relationship which mimic that of their parents. We see around us an increasingly fragmented familial system where relationships break up and are replaced with increasing frequency by new relationships - new siblings, new family groups which then again can shatter. Experts say the distress experienced by children whose parents are divorcing is cause for increasing concern.

What is not so well documented are the tragic and growing statistics on divorced parents who become alienated from their grown up children. Many adult children of divorce do not have any contact with one or other parent as a direct result of bitterness and emotional manipulation during divorce and separation proceedings.

Former Legal Aid Minister Lord Bach¹ has stated: “The breakdown of a family is an extremely distressing time for all involved, particularly children, which is why I am determined that courts should be the last resort. Sadly, that is currently not the case, with only one in five legal aid clients experiencing a family dispute opting for the benefits that mediation can bring.”

He urged that the better way is to try to encourage parents to focus on their children in a less acrimonious litigious and confrontational atmosphere, to reduce pressures on the courts, and avoid pressures on already overburdened Court Welfare Officers.

Collaborative practice seeks to address family breakdown, using techniques which support a respectful, non-adversarial process, whilst empowering couples to steer the process toward a mutually agreed solution that supports the integrity of family, finances and custody issues.

If you watched the Oscar-award winning movie Juno, you might recall the husband (played by Jason Bateman) saying: “We can get a collaborative divorce. I hear it’s all the rage.” He’s right. There are twenty times more collaborative professionals now than just ten years ago. And this explosion is changing how people get divorced from Canada to the Far East ².

One of the biggest advantages of collaborative divorce is that clients stay out of the courtroom. Both clients and their lawyers sign a “Participation Agreement” committing to reaching an agreement without going to court. A team approach ensures both client and both lawyers meet around a table openly discussing parties’ needs. The collaborative team can also include a divorce coach, a financial expert and a child specialist. This team based approach seeks to achieve non-litigious settlement with creative solutions that parties have worked out themselves and hence, they feel empowered.

In traditional litigation, a court often requires the matrimonial home to be sold and the assets split. In a collaborative divorce, parties may consider it practical to rent the house for a couple of years and then buy it from their partner or sell it at a later date. All options can be explored.

People enter the divorce process drowning in their emotions. There are clinical reasons for this. When we are angry or upset the blood supply to the pre-frontal cortex – the reasoning area – shuts down in order to make room for the “fight or flight response” – the result is that it is not that spouses won’t evaluate their situation properly – they can’t and can make decisions they later regret. We work with these factors and make allowances for this whilst enabling parties to be aware of their process. Often it transpires that people are upset for reasons unrelated to the actual matter which has been brought to the table.

Parties are encouraged to be in control of the process. They dictate the pace of the meetings and the settlement terms. This saves considerable time and money. Coaches and child specialists where used can give a voice to a child helping parents to understand what their children might not admit. This gives children a voice in the process which relieves much of the grief, anger and fear divorce often brings.

Most importantly, the collaborative model understands that after a divorce, they don’t stop being a family. This model seeks to redefine the family structure – knowing there is still a long future to work with; school concerts to attend; candles on birthday cakes to be blown out and someday weddings to dance at.

Collaboration isn’t paradise; people are human, meetings get stressful and parties frequently need to be allowed “time out” to de stress and de brief but we do believe that there are real benefits to be gained by this kind of practice; for us, for our clients and more importantly for their children who, after all, will be the parents of the future.

To find out more about Collaborative Law and next training in June 2011 please contact Claire Brennan on 028 9127 0313 or look at our website www.afriendlydivorce.co.uk

¹ 30th October 2009
² Talia Katz – IACP Press Release 2010

Attention all collaborative lawyers
We are offering a trained collaborative lawyer the chance to attend “Train the Trainers” meeting in San Gimignano in Italy in May 2011. Travel and accommodation up to £800 will be paid. Contact Claire Brennan as above.
New Matrimonial and Civil Partnership Practice Direction and Online Information Resource

This Practice Direction issued on 18 February 2011 sets out new arrangements for lodgement and amendment of Petitions.

The Practice Direction will take effect from 3 May 2011.

PRACTICE DIRECTION 1/2011

In the High Court of Northern Ireland
Family Division

Amendment to Matrimonial and Civil Partnership Petitions

1. From 3 May 2011 all Petitions submitted to the Matrimonial Office must be accompanied by a completed signed checklist confirming that the Petition has been checked for compliance with the guidance notes.

2. Petitions will be issued by the Office upon receipt of the Petition, accompanying documents and checklist. The Petition will not be checked by the Office at this stage.

3. The Office will check the Petition upon receipt of the certificate of readiness and should amendment of the Petition be required a Summons seeking leave to file an Amended Petition must be submitted pursuant to Rule 2.13(2) of the Family Proceedings Rules (Northern Ireland) 1996.

4. Unless the Court otherwise orders, Legal Aid will not be granted in respect of such applications, nor will they qualify for party and party or own client taxation.

Dated this 18 day of February 2011
Mr Justice Weir
Senior Judge of the Family Division

Online Information Resource

A new Matrimonial section on the NICTS website was released on 18 February 2011.

This is an information ‘one-stop shop’ to provide users with easy access to appropriate guidance and forms including the new checklists which must accompany Petitions with effect from 3 May 2011.

Information, guidance, forms and checklists can be downloaded from the Ni Courts and Tribunals Service website www.courtsni.gov.uk

Alternatively court staff can provide you with a copy of the documents.

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Breach of undertaking – “don’t take it personally” Part II

In the second of two articles on Solicitors’ Undertakings, Stephen Gowdy of King & Gowdy Solicitors Belfast focuses on undertakings encountered in a typical conveyancing transaction.

There are two broad categories of undertakings in this context; those that are given to lending institutions, and those that are given on completion as between the solicitors themselves.

1. Undertakings to lending institutions

Undertaking given by vendor’s solicitor to lending institution for deeds.

Typically, this is an undertaking to hold deeds to order of lender and to discharge mortgage. Its performance always lies within the control of the solicitor; if it is not given, the lending institution will not lend the deeds, and that could put considerable obstacles in the way of the solicitor undertaking the transaction; it does not entail assuming any obligation for a client’s breach of contract. Thus it is an undertaking which facilitates the solicitor in the conduct of the transaction. Without it, the deeds would not be released to him, and he would be faced with the alternative of inspecting them at the lending institution’s office. It does, however, involve the commitment to pay money, namely the discharge of the mortgage if the property is sold or remortgaged. Therefore the solicitor must not proceed with the transaction if the sale price, or proceeds of a re-mortgage will not be sufficient to discharge the mortgage debt of the lending institution on behalf of which holds the deeds.

Undertaking given by purchaser’s solicitors to lending institution to use funds only for the purchase

Again, this undertaking is one which facilitates the conduct of the transaction by the solicitor. If a solicitor is not prepared to give this undertaking, the transaction can only proceed with the cumbersome procedure of a completion meeting at which the lending institution will attend to ensure the funds are applied for the purpose for which they are lent. But this undertaking can only be given if the funds are being transmitted by the lending institution direct to the solicitor, for then the solicitor will have the funds in his control, and can ensure that the money is not used for anything other than the purchase. Some banks require an undertaking in this form, but, instead of sending the funds being borrowed direct to the solicitor, allow the client to write his own cheque to draw down the loan. If there is a risk of that happening, the undertaking should not be given.

The undertaking to use the funds only for a specified purpose must be observed to the letter. Sometimes a client can try to put a solicitor under pressure to use the money for another purpose. This must be resisted. Such an undertaking is almost inevitably linked with furnishing the deeds of a new purchase (new mortgage) or paying off an old mortgage (re mortgage). If the money is used for another purpose, even if the client swears blindly that it is only for a couple of days, and the money will be made good, one of the cardinal rules is broken – the honouring of the undertaking is no longer within the sole control of the solicitor.

Undertaking given by purchaser’s solicitors to lending institution to hand over deeds.

This undertaking is required where the lending institution is furnishing the loan to the solicitors. Again, it is one which facilitates the transaction; the alternative to it is a completion meeting at which the lender would be separately represented and would advance the funds in exchange for the deeds. The corollary of this is the undertaking should not be given, at least not unequivocally, if the funds being advanced do not come into the solicitor’s control.

Before giving his undertaking to furnish the deeds, the solicitor must be certain that he will have all the deeds in his possession to allow him to fulfil the undertaking. In particular, he must be sure that the purchase deed will come into his possession. He can only have this certainty if he declines to release the purchase money unless in physical exchange for the executed purchase deed. If he sticks by that, he will not put himself at risk by giving this undertaking.

Quite often the undertaking to deliver the deeds following completion is accompanied by undertakings to pay SDLT and to register the mortgage.

The transaction can be completed conveniently without giving an undertaking to pay SDLT. There is no necessity for the solicitor to incur this obligation. Requiring such an undertaking is based on a misunderstanding of the relationship between SDLT and registration, and this stems from the misconception that the SDLT certificate which is required to effect registration is only forthcoming when SDLT is paid. This is not the case. The certificate is available upon making the return. The tax does not have to be paid to get the certificate. The tax due is not a charge on the property, but a simple debt...
due by the tax payer to the Revenue. Why should a solicitor undertake to discharge this particular item of his client’s tax bill. He would rarely give any undertaking to discharge his income tax bill.

In this situation, the solicitor is often acting for the lending institution in the mortgage transaction. His professional duty to his mortgagee client will require that he procure the necessary registration of the mortgage. An undertaking so to do is, therefore, not adding to his professional responsibility to that client. But he should not be asked to fund the costs of registration out of his own money; so such an undertaking should be made conditional upon being in funds to discharge the registration fee.

2. Completion undertakings

Undertaking to deliver vacant possession

An undertaking should never be given in these terms unless the solicitor is himself in possession, and it solely lies with him to grant or withhold possession. This would rarely be the case, and such an undertaking offends the golden rule that performance of the undertaking must be entirely within the solicitor’s control. There is no objection on these grounds to the form of undertaking suggested for Home Charter transactions that the solicitor authorise his client to hand over possession. That is entirely within the solicitor’s control. Having said that, it has to be asked what the point of such an undertaking is, because if the vendor refuses to hand over the keys, having been authorised to do so, the purchaser’s remedy lies where it always should be, in contract against the vendor.

Undertaking to hand over executed assurance

This is the most problematic of the completion undertakings. Unless the solicitor is actually holding the requisite deed, duly executed by all necessary parties, he should never give an undertaking in these terms. If he does not hold the executed deed, the performance of that undertaking is outside his control, and he is relying on the act of a third party, in this case his client, to perform it. His client may refuse to sign it; he might fall out with the purchaser over the oil in the oil tank and refuse to execute the deed. The client might die. If the solicitor has undertaken to hand over the executed deed, he will be caught by that.

All too often the request for an undertaking in these terms is accompanied by the draft/engrossed assurance which the vendor’s solicitor is seeing for the first time. If he does not hold the executed deed, the only undertaking which he can contemplate giving is to hand over the executed deed if and when it comes into his hands duly executed by the relevant parties.

This will, of course, cause a difficulty for the purchaser’s solicitor who will be, or ought to be, unwilling to part with the purchase money except in exchange for an executed deed, and who, for his part, may have given an undertaking to hand over the deeds to his client’s lending institution. In this context it should be remembered that the genesis of this undertaking was purely to facilitate solicitors. It used to be the almost invariable practice for the purchaser’s solicitor to arrange a personal completion when the completion cheque or draft was handed to the vendor’s solicitor in exchange for the executed deed. But completion in this way became burdensome; the practice grew up of completing by post, and with it the requirement of an undertaking to forward the executed deed.

Nevertheless, the purchaser’s solicitor should not tender the completion money unless he knows that the deed has been executed. If completion does not take place on the completion date, the contract will be broken, and the issue will be as to who is in default.

The General Conditions of Sale provide some limited assistance. General Condition 11.1 requires the draft purchase deed to be furnished to the vendor’s solicitor ten days before the completion date, with the engrossed deed furnished within 5 days of the draft being returned by the vendor’s solicitors. The theory behind these provisions is to impose contractual obligations to ensure that the deed is executed at completion. If the purchaser, through his solicitor, complies with that general condition, the breach giving rise to the failure to complete will be that of the vendor. But if the purchaser does not comply with that provision, the breach will be that of the purchaser.

If the purchaser wants to take possession, he can only do so on paying the purchase money; if the deed is not available because of the vendor’s default, the purchase money can be placed in a joint account. If the deed is not available because of the purchaser’s solicitor’s failure to provide it in time, the purchaser’s solicitor will have to choose between taking the risk, or accepting his liability to his client for any loss the client suffers by reason of his not furnishing the deed in time. Of course, when all is said and done, the purchaser who pays for the property is nonetheless entitled to an executed deed of transfer, and there is always the requisite remedy for specific
performance if the vendor declines to execute the deed.

However, there are two gaps in the provisions of General Condition 11.1 which prevent them from achieving their objective. First, there is no contractual obligation imposed on the vendor to return the approved draft deed at any particular time; if he does not do so timeously, the purchaser will not be able to deliver the engrossment in sufficient time. Secondly, there is no mechanism, other than the non compulsory mediation referred to in General Condition 23 to resolve a dispute on the terms of the deed. There is a simple solution; the terms of the deed should be negotiated and agreed at the contract stage with a term in the contract that on completion the vendor will deliver a deed in the terms of the draft annexed to the contract duly executed, with the onus to produce the engrossment moving to the vendor. Thus, immediately there is an accepted contract, the terms of the deed will be settled, and it will be then up to the vendor to ensure that the deed is available on completion.

### Undertaking to discharge charges

This is perhaps the most dangerous undertaking of all, and is the classic illustration of the tensions between the solicitor acting for the purchaser who will want to be assured that that his client will have clear title, free of all charges, and the solicitor acting for the vendor who will not want to be saddled with paying off charges for which he does not have the funds.

If a bald undertaking is given to discharge all charges, the clear risk is that the solicitor will be liable for all the charges, no matter what, and whether the amount needed to pay them off exceeds the purchase money. Even the form of undertaking recommended for Home Charter transactions, that the vendor’s solicitor will discharge all charges of which he has or ought reasonably to have notice is risky. It means that the solicitor will be caught with all charges registered in the appropriate registry as at the date of completion, irrespective of the amount. Any solicitor who gives an undertaking to discharge charges should limit his liability to the amount of the purchase money which has come into his hands. After all, a solicitor is just that, he is not an insurer for his client, or anyone else. There is no good reason why the solicitor’s liability should extend beyond that. The purchaser always has his remedy against the vendor.

Again, this is an undertaking which has grown up to convenience solicitors, for there is really no need for it. General Condition 15.6 provides a modus operandi to deal with charges without the need to impose undertakings, and the use of on line searching facilitates it. No later than 5 days before the completion date, the vendor should supply a completion statement which should detail the charges and what is required to pay them off as at the completion date. The purchaser may then provide drafts/cheques made payable to the relevant financial institutions to pay off the charges. If this is done, there is no need for undertakings to be sought or given to discharge the charges. If the completion statement shows that the charges exceed the purchase price, then the transaction cannot proceed in any event.

### Undertaking to do all acts required by the contract

This is an undertaking which should neither be sought nor given. The solicitor is not a contracting party, and it is not his obligation to perform the contract. It is his client who is liable under the contract. If the client fails to perform his obligations under the contract, he is the one who is liable under the contract, and the other party has his remedies for any breach. The solicitor should not be saddled with performance of the contract.

In new build cases, it is not unknown for the purchaser’s solicitor to seek an undertaking from the vendor’s solicitor to furnish the building control completion certificate which the vendor contracted to provide on completion. A solicitor is neither a builder nor a Building Control Inspector. If he gives such an undertaking he can never be in a position to fulfil it.

#### Undertaking not to cash cheque until authorised

This so-called undertaking is becoming very common. It has to come with a health warning. An undertaking cannot be imposed; it must be accepted expressly or impliedly. In many cases, completion undertakings are accepted by implication by the encashment of the cheque. The trouble with this particular undertaking is that the action which it abjures is the very act which brings the undertaking into effect. Thus at the time when the solicitor would cash the cheque, the undertaking has not taken effect, and he is not bound by it. And so if a solicitor receives such a completion letter, and his client instructs him to encash the cheque, there is no impediment to his so doing. A purchaser’s solicitor who wishes to have the benefit of such an undertaking must secure it explicitly from the vendor’s solicitor before sending off the cheque.

The thrust of this paper is to try to limit the number of undertakings given and expected in conveyancing transactions. The profession should be striving to have an undertaking free completion system. It may well become imperative for it to do so. Solicitors in the neighbouring jurisdiction in the Republic of Ireland have now found themselves unable to obtain professional indemnity insurance cover for breaches of undertakings given in commercial conveyancing transactions. It is not inconceivable that as the number of claims for breach of undertaking increase, the insurers underwriting the Master Policy scheme may decide to cease cover for breach of undertaking.
President and Chief Executive attend opening of new premises of the NI Executive in Brussels

The President of the Society, Brian Speers and the Chief Executive, Alan Hunter, attended the opening of the new premises of the Northern Ireland Executive in Brussels on Thursday 9 December at the invitation of the Office of the First and Deputy First Ministers.

The new premises were officially opened by the First Minister, Peter Robinson, Deputy First Minister, Martin McGuinness and President of the European Union, Jose Manuel Barroso, who announced that the European Union taskforce which helped deliver millions of pounds of investment to Northern Ireland is set to return next year. Also attending the official opening were MPs, MLAs and Dianne Dodds, MEP from Northern Ireland. The President and Chief Executive of the Society took the opportunity to raise with them a number of key issues of concern to members.
What you need to know about LawCare

Since 1997, LawCare has been helping members of the legal professions to face problems such as addiction, stress, depression and emotional issues. However, there are still many lawyers who are not aware of the support available, and we are often asked questions about the services we offer. This is a selection of the issues raised most frequently.

**How are you funded?**

LawCare is a registered charity funded by the 13 professional bodies for legal groupings throughout the British Isles. These include the Law Societies of England and Wales, Scotland, Northern Ireland, Ireland and the Isle of Man; the Bar Councils of England and Wales, Ireland and Northern Ireland; the Faculty of Advocates in Scotland; the Institutes for Legal Executives, Barristers Clerks and Paralegals; the National Association of Licensed Paralegals; and the Department of Justice for Judges in England and Wales and Northern Ireland.

Although we don’t make big appeals for donations, as many other charities do, we do welcome any donation, however small. A leaflet outlining why donations are needed and how they are used is available on request or from our website – www.lawcare.org.uk

**Is LawCare part of any of the professional bodies?**

No. Although it is partly funded by each of them, LawCare is entirely independent of all the professional bodies and only reports statistics to them. No personal or identifying details are ever revealed.

**Is it a counselling service?**

Callers to the LawCare helpline are provided with initial support from our staff, who all have experience of working in the legal professions, as well as training in telephone counselling skills. They can discuss problems with the callers and help them make a plan for coping or recovering from an issue.

This may include referral to a professional counsellor or another specialist service, such as a treatment centre.

**What problems can you help with – and what don’t you do?**

LawCare offers support on health and related personal issues such as stress, depression, addiction to alcohol or drugs, eating disorders and workplace bullying. However, we don’t have a magic wand to make the problem go away, can’t offer medical or legal advice, and won’t tell you how to run your practice. Neither will we dictate to you what you should do about your situation. Whilst we might well advise you to see your GP, or seek other help, our role is to help and support you as you explore your options, clarify your situation in your own mind and choose your own path to coping / recovery. With ongoing support (such as through a LawCare volunteer) we will then continue to offer you encouragement along the way, for as long as you need.

**Can anyone phone LawCare?**

Anyone, from a Judge to a paralegal, and their immediate families and their staff, are welcome to use LawCare’s service.

**Is it free?**

LawCare’s services are offered entirely free. The helpline numbers are free to call and the Well-Being Portal (accessed through our website) is also free. The stress recognition and management training we offer is free, except for expenses. However, if a caller is referred to a counsellor or treatment professional, then they will normally have to pay, though we will assist to source funds where we can if this is necessary.

**Is it confidential?**

Confidentiality is at the heart of what we do. You don’t have to give your name if you’d rather not, and the records we need to keep are stored on a secure and closed computer system accessible only to LawCare staff. We will never pass any of your details to any third party unless asked to do so by you – for example, to a LawCare volunteer or professional counsellor. All staff and volunteers sign a confidentiality agreement.

**Where do you send people for help?**

Many callers find the initial call to the helpline enough to help them put their problem into perspective and to work out a plan of action for dealing with it. Others may benefit from referral to a LawCare volunteer – a fellow lawyer who has been through a similar difficulty and can offer friendship and support. We also maintain a database of professional counsellors who have experience of working with members of the legal profession, and also keep an up-to-date list of addiction treatment centres and other resources which might benefit our helpline callers.

**Is there a limit to the number of times people can call?**

No, and many people do call back a number of times for further support and encouragement, over a long period of time. However, there is a limit to what we can achieve and a regular caller might need to consider whether they need a higher level of support than LawCare can offer – such as a mental health professional. We would usually recommend this to someone who calls often, but who does not seem to be making progress in dealing with their particular issue.

**Who do you report to?**

LawCare is overseen by a Board of Trustees who meet quarterly to monitor the charity’s operation. When requested, we will report statistics and trends to the professional bodies or legal journals and periodicals. However, we do not report to anyone regarding who has called our helpline or why unless a caller specifically requests us to do so, eg as part of disciplinary proceedings.
What other services does LawCare offer?

LawCare’s remit is twofold. Not only do we provide the helpline service for suffering lawyers, but we also try to prevent problems arising by offering free (except for expenses) CPD accredited presentations, workshops and seminars on subjects such as stress recognition and management, vicarious trauma and time management.

Why haven’t I heard of you before now?

LawCare operates on a very limited budget and advertising is expensive, so we are not able to advertise widely. However, we try to write regular articles, like this one, and to have a presence at legal conferences and events. It will take time before every legal professional knows where to turn for support, but with your help we’ll get there.

How can I get involved?

There are many ways you can help us with our work. Donations, however small, are always welcome – you can donate by debit or credit card through our website. You could distribute LawCare’s leaflets around your firm or legal department, or book one of LawCare’s presentations. If you have experience of an impairment such as stress, depression or alcoholism, then you might also consider becoming a LawCare volunteer, offering one-to-one support to helpline callers we refer to you.

How do I contact you?

Our free and confidential helpline offers support and advice 365 days a year.

0800 279 6869
Monday to Friday from 9.00 am to 7.30 pm at weekends and on UK Bank Holidays from 10.00 am to 4.00 pm

A wealth of information is also available on our website at www.lawcare.org.uk which also offers access to the LawCare Wellbeing Portal, an online tool to help you analyse, monitor and manage the stress in your life.

For administrative matters, from ordering leaflets to enquiring about becoming a volunteer, call 01268 771333 from 9.30 am to 2.30 pm Monday to Friday.

When you make a Will, you probably think the one thing you can’t leave your loved ones is good health.

Actually, you can. Chest, heart and stroke illnesses claim over 7,500 lives a year in Northern Ireland. But a legacy from you could provide the breakthrough that makes them a thing of the past. Local research funded by NI Chest, Heart & Stroke is saving and improving people’s lives every day.

If you’re looking for the greatest gift you could leave your children and grandchildren, you don’t need to look any further.

For a leaflet on leaving a legacy to NI Chest Heart & Stroke, please phone Alison in confidence on:

028 90 266 706

Write to us at:

21 Dublin Road, Belfast, BT2 7HB

or email:

legacy@nichs.org.uk

Alternatively ask your solicitor for our legacy leaflet.
Belfast law firm, O’Reilly Stewart, has launched Connect2Law in Northern Ireland. Connect2Law is a referral and support network for law firms and the scheme started 10 years ago in England with Pannone LLP. There are now over 2000 member law firms in the UK.

Brian Stewart, Senior Partner at O’Reilly Stewart, said: “The scheme is free to join and the main aim is for member firms to retain their clients whenever they are unable to act for them. We believe that the scheme can be as successful in Northern Ireland as it has been in the rest of the UK.”

In practice, what this means is that if a member firm does not have the expertise in a particular practice area, they can refer their client to the Northern Ireland hub centre for Connect2Law - O’Reilly Stewart. O’Reilly Stewart will either act for the client or refer the client on to another Northern Ireland member firm with the appropriate expertise.

In return, the introducing firm will receive a written non-poaching agreement, together with an agreed fee-share.

David Lamont, Business Development Manager at O’Reilly Stewart, said:

“This is a fundamental aspect of the scheme. It means that member firms need never send a client away again and run the risk of losing them to another firm. The written non-poaching agreement underpins the scheme”.

“A particularly important aspect of the scheme for Northern Ireland members is that they can also refer their clients to other Connect2Law member firms in England, Scotland and Wales for business issues outside of the Northern Ireland jurisdiction.

“There are 20 other Connect2Law hub centres in the UK”, said David. “This means that, within 24 hours, we can refer clients to an appropriate firm anywhere within the UK. This will not only save member firms time and effort but they will also receive a fee-share and written non-poaching agreement from the UK firm.”

The scheme works equally well if the member firm cannot act because they are either conflicted or current workflows mean they have a capacity issue.

For further information on Connect2Law, and full details of all of the benefits, please contact David Lamont on 028 9032 1000 or david.lamont@oreillystewart.com

The Employment Lawyers’ Group NI is a network of lawyers who have an interest in employment law. We organise seminars with invited guest speakers who share their expertise. These events also provide an opportunity to network with colleagues who share interests. The ELG (NI) and/or its individual members also contribute to public consultations and research that is of relevance to employment law in Northern Ireland.

The annual fee for joining ELG (NI) for the year commencing 1 April 2011 is £15 per person. Members are entitled to a discount for all CPD events in the lunchtime seminar series.

If you wish to renew your membership or to join for the first time please make cheques payable to ‘ELG (NI)’ and forward to our Treasurer Orlagh O’Neill at Carson McDowell, Murray House, Murray Street, Belfast BT1 6DN stating the name and email address of each person who is joining.

We contact members by email so please remember to provide a current email address for each member of your firm who wishes to join.
President of Society appointed visiting Professor of Law

Brian Speers, President of the Law Society of Northern Ireland and managing partner with CMG solicitors in Belfast, has been appointed Visiting Professor to the Graduate School for Professional Legal Education at the Magee campus of the University of Ulster.

For more than a decade, Professor Speers has been widely acknowledged as pioneering the use of mediation as an alternative form of dispute resolution in Northern Ireland and abroad.

As President of the Law Society he has been focusing on encouraging solicitors to consider mediation as an alternative means to resolve disputes.

Commenting on his appointment, Professor Speers said:

"In Northern Ireland and indeed globally there is a growing awareness that mediation, in appropriate cases, presents a highly effective and cost efficient way to resolve business and personal disputes.

"It has practical applications in business, employment, family and neighbourhood disputes, offering an effective process for resolving disputes with the best possible outcome for the parties involved.

"It can meet the needs of both parties, saving time, expense and the stress associated with court proceedings and, because both sides are involved in the process and are part of the outcome, there is generally greater compliance.

"People looking for disputes to be resolved expect their advisers to present the most appropriate, cost effective and practical option – which in many cases will involve bringing cases to court.

"However, there are many different ways to resolve disputes so we need to look imaginatively at all the options and seek to come up with innovative ways to resolve issues which may involve improving dialogue and understanding between the parties.

"It is important to ensure that young people entering the solicitors’ profession are equipped with the necessary skills to mediate.

"I am therefore delighted to have been appointed to a Visiting Professorship at the University of Ulster Graduate School for Professional Legal Education and I look forward to drawing on my knowledge of mediation in helping to shape future law professionals.”

Welcoming the appointment, Dr Paul Mageean, Director of Studies of the Graduate School for Professional Legal Education, said:

"Professor Speers brings an ideal combination of qualities to the Graduate School. With his extensive experience, and unique understanding of mediation gained at every level, he will make a valuable contribution to our teaching and research."
Law Society hosts four jurisdictions meeting

Presidents and Chief Executives of the Law Societies of Northern Ireland, England & Wales, Scotland and the Republic of Ireland recently met in Belfast. The joint meeting provided an opportunity to discuss issues affecting the solicitors’ profession and ongoing work in each of the four jurisdictions.

Pictured (back row) from left:
Alan Hunter, Chief Executive of the Law Society of Northern Ireland; Des Hudson, Chief Executive of the Law Society of England and Wales; Cameron Ritchie, Vice President of the Law Society of Scotland; Jamie Millar, President of the Law Society of Scotland; Brian Speers, President of the Law Society of Northern Ireland; Donald P Binchy, Senior President of the Law Society of Ireland; Lorna Jack, Chief Executive of the Law Society of Scotland; John Costello, President of the Law Society of Ireland and Ken Murphy, Director General of the Law Society of Ireland.

Pictured (front row) from left
Linda Lee, President of the Law Society of England and Wales and Imelda McMillan, Junior Vice President of the Law Society of Northern Ireland.

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Our comprehensive support service, with self-help options, is available to help with any problem – Monday to Friday 08.30 to 18.00 hours – and all upgrades to the latest version of the software are included FREE.

For more information, please call 0844 815 5575, email legal@iris.co.uk or download the IRIS Software Solutions Guide 2011 at www.iris.co.uk/legal
## Law Society 2011 CPD Programme

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For more information or to book any of the above courses please e-mail susan.duffy@lawsoc-ni.org or jennifer.ferguson@lawsoc-ni.org or 028 9023 1614.
Advanced Advocacy for Solicitors

A Course to Promote The Practice of Solicitor Advocacy in Northern Ireland

Incorporating a Series of Lectures on Evidence (Saturdays)
and
A Five Day Intensive Course in Advanced Advocacy
About the Course..

The Law Society of Northern Ireland is delighted to announce this course in Advanced Advocacy for Solicitors. The course will consist of a series of lectures on evidence followed by a practical five day intensive course in Advanced Advocacy. The Advanced Advocacy course will be delivered by faculty members from the National Institute for Trial Advocacy (NITA) and local tutors drawn from the Bench, Bar and Solicitors’ Profession.

The five day Advocacy course will utilise the highly respected methodology of the NITA organisation and the teaching facilities and technical aids available at the Institute of Professional Legal Studies.

The number of participants will be limited to enable an acceptable tutor/participant ratio.

The course is open to all those who hold a current Practising Certificate from the Law Society of Northern Ireland who have three years’ post-qualification experience on 5 September 2011. It is anticipated that demand for places may exceed availability and in that event, places will be allocated by seniority. The cost of attending the complete course is £1,100.

A Certificate in Advanced Advocacy will be awarded on successful completion of the course. This is a composite course and those hoping to receive the Certificate must attend both the series of Evidence lectures, complete all coursework assigned to them, successfully complete any assessment and attend the five day Advanced Advocacy Course.

When and Where...

The series of lectures will be delivered over two Saturdays, namely Saturday 21 May and Saturday 4 June 2011 plus an evening assessment on Tuesday 14 June 2011.

The practical course in Advanced Advocacy will be held at the Institute of Professional Legal Studies, Lennoxvale, Malone Road, Belfast, lasting from Monday, 5 September until Friday, 9 September 2011.

Participants must attend all lectures in Evidence and all five days of the Advanced Advocacy Course and successfully complete any assessment in order to be eligible to receive the Certificate in Advanced Advocacy.

Court dress must be worn for the five days of the Advanced Advocacy Course in September.
This is the twelfth year of this widely acclaimed course which has the wholehearted endorsement of the Law Society. The present Justice Bill includes provision which will open rights of audience in the higher courts to suitably qualified solicitors. The entitlement to represent a client in Court may in due course not be the exclusive preserve of the legal profession. In a more competitive environment we, as solicitors, must clearly indicate our competence. Major reforms in the areas of legal aid, both civil and criminal, as well as the streamlined procedures that are to be put in place following the implementation of the Civil Justice Reform Group’s proposals, will place demands upon the solicitors’ profession to have a sizeable number of well qualified civil advocates if we are to maintain a major role in all areas of litigation.

The proposals contained in the Access to Justice (NI) Order 2003 have already had profound implications for criminal law practitioners. The changes in Criminal Legal Aid have provided a major incentive for all firms intending to carry out legally assisted criminal work to have at least one certified advocate in the practice. Competence at advocacy is vital to ensure that Solicitor Advocacy is properly remunerated.

The Certificate in Advanced Advocacy will be duly accredited and validated by the Law Society. Full CPD hours will be awarded to all participants completing this course. By the end of this year just over 300 members of our profession will have been awarded a certificate having completed this course. This allows those firms which include Solicitor Advocates to deliver a complete legal service to clients. In Great Britain Solicitor Advocates are commonplace and conduct trials and hearings, both civil and criminal, at many levels, delivering a complete legal service to clients and securing business growth and greater remuneration for their firms. We are some way behind our colleagues in Great Britain and in particular those in Scotland but major advances have taken place over the last few years.

Whether you are primarily involved in criminal or civil work, this course in Advanced Advocacy will enable you to improve and develop your Advocacy skills, obtain an insight into those factors that make one a competent advocate and hopefully enhance the esteem in which Solicitor Advocates are held by the Judiciary and the public at large. The course this year will use a case file dealing with both civil and criminal issues.

We are extremely fortunate to be able to deliver this Advanced Advocacy Course under the guidance of NITA which is acknowledged as the premier provider of trial and courtroom skills training in the Western world. NITA is a non-profit making body based at Boulder, Colorado, USA. It was set up to develop and promote methods and materials for Trial advocacy and alternative dispute resolution and to promote quality legal representation by skilled, professional and ethical lawyers. The guiding philosophy of NITA teaching is learning by doing. Participants’ performances are video taped then critiqued, providing each student with valuable feedback as to technique, style and strategy. The NITA trainers, known as the faculty, include both academic and practising lawyers as well as both serving and retired Judges and four members of that organisation will be involved once again in teaching the course in September. All those who have participated in past years will vouch for the expertise and stimulus provided by the US faculty.
I wish to apply for registration for the Advanced Advocacy Course incorporating lectures in Evidence and enclose a cheque for £400 which I understand becomes a non-refundable booking deposit once notification is sent to me of acceptance for the course. I undertake to pay the balance fee of £700 by Friday 6 May 2011 and I understand that no refunds will be made in the event that I do not attend or complete the course.

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**Number of full years Post Qualification Experience as a Solicitor**

(Must have 3 years’ PQE at 5 September 2011)

| Signature |  |
| Date |  |

Please return to: Advanced Advocacy Course Co-ordinator
The Law Society of Northern Ireland
Law Society House
96 Victoria Street
Belfast
BT1 3GN

**Closing Date for Applications: Friday 15 April 2011**
Cheques to be made payable to: The Law Society of Northern Ireland
Tierney Associates, founded by Martina Tierney OT, is the only company in Britain and Ireland to offer a one stop shop to personal injury lawyers, insurers and claimants. We provide the services of Nurse Consultants, Dentists, Occupational Therapists, Speech & Language Therapists, Physiotherapists, Vocational Rehabilitation Consultants, and Assistive Technology experts.

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Web: www.tierneycostofcare.com

Tierney Associates, 131 Carnamuff Rd, Limavady, N. Ireland, BT49 9JG
Festive voices raise vital funds for Make a Wish Foundation

The President of the Law Society, Brian Speers and Chairperson of the Pro Bonos choir Joe Rice, presented Gail McKee from the Make A Wish Foundation with a cheque for over £3,500.

The money was raised by the choir at their Festival of Nine Lessons and Carols in December 2010.

Speaking on behalf of the Society, Brian Speers said: “We are delighted that so much money has been raised for such a worthy charity. I congratulate Joe and the members of the choir for their hard work in preparing and organising the carol concert and for making it such an outstanding success.”

Gail McKee from Make A Wish said: “The money raised will go towards granting some magical wishes to children here living with a life-threatening illness.”

Benevolent Fund receives welcome donation

In October 2010, over £5,000 was raised for the Solicitors’ Benevolent Fund at the Society’s Mediation event, organised by the Society in conjunction with Edwards & Co, Solicitors, Belfast and the Centre for Effective Dispute Resolution (CEDR).

Speaking on behalf of the Solicitors’ Benevolent Fund, John Gordon said:

“We are delighted that so much money has been raised and we are grateful to the Law Society and Edwards & Co for its generosity. It is also important to thank those who paid to attend the event and our key speakers who waived their fees which were donated to the Fund.

“The Solicitors’ Benevolent Fund provides much needed support and help to members and their families through difficult times. It is only through the contributions of our members and events such as this that we are able to sustain the fund.

“I would encourage all members to consider making a small contribution to the Fund to ensure that we support those members in need and their families throughout the year ahead.”
Notification under the Data Protection Act 1998

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

Businesses which process personal information are liable to notify (i.e. register) under the Data Protection Act 1998. Processing personal information obviously includes information recorded on computers but it also extends to information held in manual filing systems.

The Information Commissioner takes the view that it will be almost impossible for a solicitor’s firm to show that it does not process personal information and does not therefore have to notify under the Act. Prosecutions of solicitors in England have taken place and remain a possibility in Northern Ireland.

Firms which have notified are recorded on the public register maintained by the Information Commissioner’s Office, Notification Department, PO Box 66, Wilmslow, Cheshire SK9 5AX. Do not post the fee to any other address. The fee is £35 (VAT is not payable).

Tiered notification fees have been introduced by the Ministry of Justice for all register entries that fall for renewal from 1 October 2009. The basic fee remains at £35 but larger firms with staff of over 250 members and/or turnover exceeding £25.9 million will pay £500. Public authorities also pay the higher fee. Solicitors should be aware of the higher rates for bigger organisations if they are advising their clients on the matter.

You should not use any agency or third party to process your application or to make payment as many such firms are bogus. They charge higher fees and do not actually complete your notification. The process for first time notifications is not difficult to complete and renewals each year are more straightforward so solicitors do not actually need to outsource the task to any outside agency. Make sure that your payment is posted only to the Notifications Team at the above address.

In the past, some firms attempted to argue that they did not have to notify because they did not use their computers to process personal information, which they said was kept only in traditional hard copy files. However, personal information kept in an organised manual filing system structured in such a way as to allow retrieval in relation to specific individuals comes within the Act and accordingly the duty to notify applies equally in these circumstances. This is clear from s. 1 of the Act which defines a relevant filing system and from the leading case of Durant v Financial Services Authority (2003) EWCA Civ 1746 Court of Appeal.

The duty to notify extends to “data controllers” who are defined in section 1 of the Act as the person who alone or with others “determines the purposes for which and the manner in which” any personal information is processed. Therefore, it applies to partners and sole practitioners but not to assistant solicitors and others in the firm. When notifying, partner details are not required as the firm name suffices but for sole practitioners, the name of the solicitor is submitted.

Attention all new principals

Solicitors’ Training (Practice Management Course) Regulation 1995

The above Regulations apply to any solicitor becoming a principal for the first time after 30 August 1995. These Regulations are available in the Publications Section of the Society’s website under Education Regulations http://www.lawsoc-ni.org/publications/regulations. For such solicitor it will be compulsory to attend a Practice Management Course. The solicitor in question can attend at any time up to six months after becoming a principal or alternatively up to 12 months before becoming a principal.

Anyone who wishes to attend the next available course should fill in the form provided and return same to The Admissions Officer, The Law Society of Northern Ireland, Law Society House, 96 Victoria Street, Belfast, BT1 3GN or email admissions@lawsoc-ni.org

I wish to attend the next available Practice Management Course.

Name (please print).........................................................................................................................
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Status (ie principal or assistant and if applicable date became principal)
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Law Society’s chosen charity of the year is the Alzheimer’s Society

The Alzheimer’s Society is the leading charity working in the field of dementia within Northern Ireland.

Dementia is an umbrella term used to describe a group of symptoms that affect the brain and cause progressive decline in the ability to learn, think, remember and read – of which Alzheimer’s disease is the most commonly known form.

In Northern Ireland there are currently 17,000 people living with dementia and research undertaken indicates that this number is expected to increase within the next 30 years to around 47,000 people.

As this figure increases the demand and need for services offered by Alzheimer’s Society will undoubtedly increase as more, within our local community, seek help and support.

As the leading dementia charity we continue to:

• provide information, support and sign posting of services to people with dementia, their carers, the general public and health professionals
• campaign for improved support and services to those living with dementia and their carers
• support research into the cause of dementia, best care and cure for tomorrow

The Society’s vision is of a radically improved world for people with dementia – a world where they can fully contribute to community life and live with dignity, free from discrimination.

As a charity we rely heavily on voluntary donations - contributions from the public and business community to help fund the work we do and the services we provide.

We are therefore delighted that the Law Society has chosen us as their Charity of the Year and we look forward to working with the Society to help raise much needed funds.

For more information on the Alzheimer’s Society please visit: www.alzheimers.org.uk

Junior Vice President highlights the work of solicitors to secondary school children

The importance of the solicitor in the local community and the route to becoming a solicitor one were just some of the areas discussed in a presentation given by the Junior Vice President, Imelda McMillan, to secondary school students on 7 February 2011.

The students, from schools across Northern Ireland, were provided with an interactive and informative presentation by the Junior Vice President on the solicitors’ profession during their visit to Law Society House.

Speaking after the presentation, Mrs McMillan said: “I am delighted that I was able to offer the students an insight into the solicitors’ profession and the processes involved in becoming a solicitor in Northern Ireland. The solicitors’ profession is an invaluable asset to the community in Northern Ireland and I was heartened that so many of the students expressed an interest in becoming a solicitor in the future.”
Well, that’s settled!

The alternative dispute resolution method of mediation is becoming increasingly prevalent in pre-court proceedings. So much so that advocates are pushing for the word “alternative” to be dropped from the phrase! Throw into the mix an agreed EU directive and mediation is likely to become less of a process du jour and more a permanent fixture of the legal system in settling conflict.

Therefore, last month I felt extremely lucky to gain some invaluable experience in mediation after being chosen to represent QUB’s Institute of Professional Legal Studies (IPLS), alongside my fellow trainees Nicholas Nolan and Suzanne Keenan, in the United Kingdom Mediation Competition. The event was hosted by Liverpool John Moores University and took place in Jury’s Hotel in Liverpool’s Albert Dock area. We were participating against a number of law schools from around the UK including College of Law, London, University of Manchester and Reading University for the prestigious prize of top UK student mediators.

This was the first time a team from the IPLS had entered the competition, so we weren’t quite sure what to expect. Each individual competitor was required to participate in three mediation sessions, the first two of which involved co-mediating with a team mate. The third required us to indulge in a little theatrics, by posing as a client in another session with one of the other competing teams. Nick in particular took to this with some gusto - he was told afterwards that he could have won an Oscar for his performance!

In the week preceding the competition we received some intensive training from Anne Fenton and David Gaston, and some very helpful advice from Brian Speers and US mediation guru Case Ellis. We made our way over to Liverpool on the red-eye flight, and shortly after arriving at the venue Suzanne and I were thrown into our first mediation session. Afterwards we received feedback from the judges and quickly became aware that mediation is rather a subjective science. Differences in approaches to issues such as pushing for a settlement and even room layout were rife amongst the judges.

On our second day we had two further sessions. We were starting to feel like we were getting the hang of this mediation lark, and we received some very positive comments from the judges in the final rounds. However, at the award ceremony we were all very surprised and delighted to hear our name called as runners up, having come “a very close second” to the winning team, the College of Law, London. We were especially delighted to hear Nick Nolan named as top Client Mediator.

Overall, we were very proud of our achievements in this the IPLS’s first entry in the competition. As we were placed so highly, we have been invited to participate in the international round of the competition, where we will be competing against teams from the USA, Canada and India.

Last year this prestigious competition was held in Chicago, and this year its glamorous international setting is… London. Oh well, at least we won’t have to contend with the jet lag impairing our mediation skills. To quote mediator extraordinaire Case Ellis: “Aren’t we the optimists?”

President welcomes distinguished mediator to Law Society

In December 2010, the President, Brian Speers, welcomed a renowned American lawyer and mediator to Law Society House for a guest lecture to a select group of invitees who had completed the Law Society and SLS mediation training course. Mr Case Ellis had been invited by the President to provide an overview of mediation and steps taken in Chicago to provide experience for lawyer mediators and to share his thinking and wealth of experience of mediation with those attending the lecture.

American lawyer and mediator Case Ellis with the President, Brian Speers.
The Ivory offers affordable luxury, fantastic food and breathtaking views in stylish surroundings. Situated on the third floor of the House of Fraser in Victoria Square, we cater for every occasion including corporate events, business meetings, engagement parties and fashion shows.

Visit www.theivorybelfast.com to register for an Ivory Privilege card and receive 10% off your total food and drinks bill. As an Ivory Privilege member we’ll keep you updated on special dining promotions and offers, exclusive events and exciting menu changes.

We would like to offer a further 10% off the total food and drinks bill exclusive to Law Society members during March and April. To avail of this offer quote ‘Law Society’ when booking on 028 9032 4577

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Email your contact details and answer to info@theivorybelfast.com

T&C's available on our website.
Refugee Law

Paradigm for change:
The case of HJ (Iran) & HT (Cameroon) v SSHD [2010]

Eimear McCann, immigration solicitor at Law Centre (NI), looks at a landmark Supreme Court ruling on homosexuality and the wider implications on refugee law.

Background

HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department [2010]

UKSC 31 represents a fundamental shift in UK asylum law and is viewed by many as an effort to converge the typically pragmatic and conservative domestic approach with the more forward-thinking international jurisprudence. The magnitude of this case is highlighted by the fact that both the Equality and Human Rights Commissioner of the UK and the UN High Commissioner for Refugees intervened to state their opinions. Its implications are far more wide reaching than the sole issue of the persecution of gays and lesbians in their country of origin. It has the potential for a much broader application in the context of refugee law generally.

Essentially, the test for whether gay or lesbian asylum seekers are entitled to refugee status is no longer whether they can reasonably be expected to tolerate being discreet about their sexual identity in order to avoid persecution. The ‘reasonable tolerability’ test, which was established in earlier case law, was unanimously held by the Supreme Court as incompatible with the purposes of the Refugee Convention (‘the Convention’) and as unworkable in practice.

In HJ (Iran), Lord Rogers provided guidance: ‘the underlying rationale of the Convention is that they should be able to live freely and openly as gay men and lesbian women, without fearing that they may suffer harm of the requisite intensity or duration because they are gay or lesbian.’

Lord Hope adds, ‘The Convention does not permit, nor indeed envisage, applicants being returned to the countries of their nationality ‘on condition’ that they take steps to avoid offending their persecutors’.

In other words, an application for asylum should not be refused on the basis that individuals should be expected to modify their behaviour and act discreetly in order to avoid persecution. This would completely undermine the purpose of the Convention. The Supreme Court now says that if an asylum seeker will not act in a way which invites persecution, preferring to avoid persecution by concealing fundamental parts of her/his identity and personality, then she/he is equally entitled to asylum. Raza Husain QC, on behalf of the appellants, put forward the imaginative submission that lesbians and gays who are forced to modify their behaviour in order to avoid persecution may be said to have “taken internal flight within the self”. In a sense, this sums up the new approach to be followed by the tribunals.

The facts of the case

Both appellants were ‘practising homosexuals’ in their home countries and both said they had suffered persecution as a result.

HJ, a 38 year old Iranian national, had brief relationships with men during military service and two subsequent relationships during a nine month period. He had concealed his sexual orientation from everyone, except for his family and a small number of like minded people. He had come to the adverse attention of the authorities in Iran owing to his homosexuality and fled to the UK in December 2001, where he immediately claimed asylum.

At present, Iran is one of only seven countries worldwide that retain the death penalty for consensual same-sex acts. Mahmoud Ahmadinejad famously stated three years ago that homosexuality does not exist in Iran. The tolerance of sexual minorities is therefore zero.

HT, a 35 year old man from Cameroon, claimed asylum in 2007, saying that he had relationships with two different men in Cameroon, with the second relationship lasting three years. He stated that he was spotted kissing another man in his garden and was subsequently attacked. Before this incident, he had always been discreet about his relationships.

Homosexuality is currently illegal in Cameroon and individuals known or perceived to be gay or lesbian risk attacks and arrests.

Both men had sexual relationships while resident in the UK and both relied on the Convention for protection as refugees.

1951 Convention and the status of refugees

Article 1A(2) of the Convention states that a person is a refugee if, ‘owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country’.

It is well established case law that, for this purpose, lesbians and gays are a particular social group.

A refugee’s right to be protected against forcible return, or refoulement, is set out in Article 33(1) of the same Convention:
'No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social or political opinion.'

The decision of the Court of Appeal, (which the Supreme Court overruled), had concluded that neither appellants had shown a well-founded fear of persecution by virtue of the Convention. They had lived discreetly, had not stated that it was difficult for them to do so and did not appear to have come to the attention of the authorities prior to leaving their respective countries.

However, the question of whether they would need to live discreetly upon return to their country of origin was the question raised before the Asylum and Immigration Tribunal. Whilst this began as a subsidiary issue, the Supreme Court decided this question was the fundamental core of the case. In the facts of this case, the question before the Court was not about past persecution but about future persecution and what the appellants would have to do in order to avoid this.

**The Court's conclusions and the new approach**

The Supreme Court borrowed important principles from, inter alia, international jurisprudence, namely, from an Australian decision, *Appellant S395/2002 v Minister for Immigration* (2003). Lord Rodger, who gave the leading judgment, set out a new approach to be followed by the Immigration Tribunal.

The full judgment runs to 55 pages. Below are the main points of note.

- There is no dispute that lesbians and gays are protected by the Convention, membership of the relevant social group being defined by the immutable characteristic of its members’ sexuality.
- To compel them to pretend that their sexuality does not exist, or that the behaviour by which it manifests itself can be suppressed, is to deny them their fundamental right to be who they are. They are as much entitled to freedom of association with others of the same sexual orientation, and to freedom of self-expression in matters that affect their sexuality, as heterosexuals.
- The Convention confers the right to asylum in order to prevent individuals suffering persecution, which has been interpreted to mean treatment such as death, torture or imprisonment. Persecution must be either sponsored or condoned by the home country in order to implicate the Convention.
- Simple discriminatory treatment on grounds of sexual orientation does not give rise to protection under the Convention. Nor does the risk of family or societal disapproval, even trenchantly expressed.
- One of the fundamental purposes of the Convention was to counteract discrimination and the Convention does not permit, or indeed envisage, applicants being returned to their home country ‘on condition’ that they take steps to avoid offending their persecutors. Persecution does not cease to be persecution for the purposes of the Convention because those persecuted can eliminate the harm by taking avoiding action.
- The ‘reasonable tolerability’ test applied by the Court of Appeal must accordingly be rejected.
- There may be cases where the fear of persecution is not the only reason that an applicant would hide her/his sexual orientation, for instance, s/he may also be concerned about the adverse reaction of family, friends or colleagues. In such cases, the applicant will be entitled to protection if the fear of persecution can be said to be a material reason for the concealment.
- Lord Rodger (at para [82]) and Lord Hope, (at para [35]), provided detailed guidance in respect of the test to be applied by the lower tribunals and courts in determining claims for asylum protection based on sexual orientation.

The judgment is also significant for what it says about internal relocation. Lord Hope dismissed relocation to another part of the country as incompatible with the principles of the Convention, stating, ‘it assumes that the applicant will be prepared to lie about and conceal his orientation when he moves to the place of relocation’. By analogy, this would equally apply to the religious or political activist who would be expected to relocate but remain inactive and sacrifice her/his beliefs.

**The ripple effect**

This fundamental shift in thinking has led to a new approach to asylum cases; not just in relation to homosexuality but equally to cases involving, for example, religious or political opinion.

Taking the example of a Christian convert from a Muslim country, where apostasy is a serious offence: such an asylum seeker could rely on *HJ Iran* if s/he could show that s/he had to lie about her/his religious beliefs to avoid persecution. Even if s/he had never come to the attention of the authorities before fleeing her/his country, s/he could succeed if s/he could show that her/his inactivity stemmed from fear of persecution. Arguably, s/he should not have to forfeit a fundamental human right in order to evade the glare of the authorities.

The case of *TM (Zimbabwe) [2010] EWCA Civ 916*, which followed *HJ Iran*, reinforces this new approach and stresses that, ‘the ratio of HJ is not limited just to sexual orientation cases but will apply to all grounds covered by the Convention.’

*SM, AM, RT, DM (Zimbabwe) v SSHD EWCA Civ 1285; [2010]* set a further precedent and held that, in considering imputed political opinion, the issue of whether political activity was of central or marginal importance to the lives of the asylum seekers was beside the point. The core of the protected right was the right not to be persecuted for being perceived as holding political views, irrespective of whether a person actually holds them or not. In this case, the Court of Appeal held that if asylum seekers are forced to lie about their absence of political beliefs solely to avoid persecution, the principle in *HJ (Iran)* must be applied and
such actions cannot defeat the person’s claim to asylum. It was the very fact that the appellant had to lie about his political involvement or otherwise, in order to avoid persecution, that enabled him to rely on the Convention for protection. This judgment shows how the decision of the Lords in *HJ (Iran)* has been extended and applied to an applicant for protection under the Convention which is completely unrelated to a person’s sexuality.

It is expected that future asylum cases will follow this paradigm. While the shift towards a more liberal approach is welcome, we can only hope that *HJ (Iran)* will continue to engender many positive outcomes for asylum claimants in the UK and abroad.

Response to Access to Justice Review

The NIYSA Committee met to draft a response to the Access to Justice Review consultation paper. The committee of the NIYSA is committed to being active in creating solutions to the difficulties currently faced by young solicitors and promoting the vital role we carry out within the wider justice system. The full response can be found at www.niysa.com. We hope this will ensure that the voice of young solicitors is heard and valued during the Access to Justice Review and subsequent recommendations.

Voluntary sector news

The NIYSA Easter Disco is to take place from 9pm on Thursday 21 April 2011 at Spring & Airbrake, Belfast. Admission £5.

The NIYSA Mid-Summer Ball will take place on Saturday 25 June 2011 in the Great Hall, Queen’s University, Belfast. Full event details to follow on www.niysa.com.

Charity

In October 2010, a lecture on the subject of financial planning in difficult times was organised, and kindly supported by the Law Society. All proceeds from this event were donated to Gareth McCay, a young solicitor seriously injured following an accident. The event raised £700.

The NIYSA, in association with RB Hunter Limited, organised a charity pub quiz in November 2010 with all proceeds donated to the Northern Ireland Cancer Fund for Children. A good night was had by all, and raised £800 for NICFC.
A Snapshot of 2010

The Company & Commercial Lawyers Group has been active over the past six years in promoting the interests of solicitors working in Northern Ireland practising in the field of company and commercial law and to provide representation for those lawyers working in that practice area, to deliver appropriate Continuing Professional Development and to contribute to this specialist area of the law.

Given the ongoing challenges in the economy during 2010, the Committee sought to run relevant and high quality but good value CPD seminars. These included the following seminars:

- Anita Morrish presenting on ‘Recurrent Problems in Contracts’
- Darren McDowell of Harbinson Mullholland presenting on ‘Financial due diligence or post-completion forensics: understanding the financial due diligence’
- Alan McCarthy of A&L Goodbody presenting on ‘Competition Law – what is the relevance to Northern Ireland’
- Thomas Dickson of McGrigors and Alastair Keith of Arthur Cox presenting on ‘Heads of Agreement and Due Diligence’
- Janette Jones and Sonia Cheetham of PwC and Paul Fahy of (A&L Goodbody) presenting on ‘Tax Covenants and Warranties – two perspectives’
- Harry Harpur from The Loop Training presenting a lunchtime seminar on ‘Changing for the Future’ and

The Group was delighted at the continuing high attendance numbers at all of the events which we believe is testament to the demand for relevant, convenient and cost effective training and which we hope to continue in 2011. Our CPD courses were subsidised by CCLG and meant practitioners could meet their full CPD obligations for approximately £200 for the year.

On 20 January after the AGM, we held a pub quiz at which a team from Mills Selig prevailed against strong opposition. We hope to follow this with further social events in 2011.

At the AGM the following officer holders were elected:

1. Richard Murphy (McGrigors) as Chair
2. Aaron Stewart (PWC) as Treasurer; and
3. Rhys Jones (Johnsons) as Honorary Secretary

To renew membership or enrol as a new member, please complete the form below. The membership fee remains at £20.00 and considerable discount is given to members for any seminars run by the Group.

Please return the form complete with membership fee to Rhys Jones, Johnsons Solicitors, Johnson House, 50/56 Wellington Place, Belfast, BT1 6GF.

CCLG Membership Form

I enclose a cheque for £20.00 made payable to The Company and Commercial Lawyers Group.

Title: ___________________________________________

Name: __________________________________________

Firm: ___________________________________________

Address: ________________________________________

Postcode: ________________________________________

Telephone Number: ______________________________

E-mail: _________________________________________
BSA update

Appointment of 2010/2011
BSA Chair – Susan Brennan

The Annual General meeting of the Association was held on Thursday 25 November 2011 at Law Society House and was well attended by our members. Susan Brennan of John J Rice & Co Solicitors was elected Chair for 2010/2011. Reg Rankin of Breen Rankin Solicitors was elected Honorary Secretary and John Burke of MacElhatton & Co Solicitors was elected Honorary Treasurer.

BSA Annual Gala Dinner Dance

11 June 2011
Belfast City Hall

7.30pm for drinks’ reception to be seated for dinner at 8pm.

Dinner and entertainment (with a few surprises thrown in!)

Tickets are £48 per person or £450 per table of 10. (Ticket price include a sumptuous five course menu to be served with wine per table).

Demand is already high for tickets. We would recommend early booking to avoid disappointment!

Guests are also able to take advantage of a room package deal at the nearby five star Fitzwilliam Hotel which has kindly offered our attendees a special room rate for that night at £115 per single and £125 per double bed and breakfast. Please ring early to book your room and quote ‘Belfast Solicitors’ as your reference.

Proceeds from ticket sales will go to the Solicitors’ Benevolent Fund.

Please contact the BSA administrator to reserve your ticket:
briege@belfast-solicitors-association.org

Cheques should be made payable to ‘BSA’, c/o The Administrator, Suite 7, Merton Business Centre, 58 Howard Street, Belfast BT1 6PJ.
BSA launches its 2011 “Learn at Lunch” CPD programme

On Thursday 20 January the BSA launched its CPD programme for 2011. Peter Smith QC, Chief Commissioner with the Parole Commission delivered his presentation on the role of the Parole Commissioners in Northern Ireland. The lecture heralded the start of the “Learn at Lunch” series for another year - currently the most competitive CPD provision available to practitioners. During the year the BSA will provide over 20 hours of CPD training with a diverse range of subject matter. Speakers this year will include, Senior Queen’s Bench Judge, Mr Justice Gillen, The Attorney General for Northern Ireland, John Larkin QC and Northern Ireland Ombudsman, Tom Frawley.

As with previous years, the presentations take place in the main lecture theatre at Law Society House at 1pm with tea and sandwiches available from 12.30pm and conclude promptly at 2pm. We guarantee that you will leave refreshed, enlightened and rewarded (with at least one hour CPD). Everyone is welcome.

However, for £210 BSA Members can complete the 10 hour group study CPD requirement including the mandatory three hours of client care/practice management. Non-members can complete their CPD quota for £380. So whether you are a BSA member or not, the “Learn at Lunch” CPD programme offers quality, diversity and value.

We have already started to plan for next year so if anyone would like to see a particular topic covered at a forthcoming event, please contact us with your suggestions.

We look forward to seeing you at some or all of our lectures during the year. Thank you for your continued support.

The BSA Golf Outing this year has been arranged to take place at Malone Golf Club, Belfast on Thursday 19 May 2011.

Full details of tee times and costs for the golf and meal will follow.

We would remind players that in previous years the event has been oversubscribed and therefore we invite you to reserve your place as early as possible.

All members of the Association and their visitors will be particularly welcome. Given that there are usually only a few lady players, we would particularly encourage the female members of the Association to take part in the Annual Golf Outing.

Please contact John Guerin at Campbell Fitzpatrick, Solicitors on john@cfs-law.com

CPD Seminar Series 2011

1 Thursday 17 February 2011 – an update on Ancillary Relief by Darren McAuley of Thompson McClure Solicitors.
2 Thursday 3 March 2011 – Mobile Phones and Cell Site Forensic Analysis by Corrina Chester of First Forensics.
3 Friday 25 March 2011 – half day conveyance Seminar – speakers and topics to be confirmed.
4 Thursday 14 April 2011 – Privacy and Defamation law by Dr Jack Anderson of Queen’s University, Belfast.
5 Thursday 5 May 2011 – the role of the Northern Ireland Ombudsman by Tom Frawley, the Ombudsman for Northern Ireland.
6 Friday 27 May 2011 – half day Litigation Seminar – Mr Justice Gillen – other speaker to be confirmed.
7 Thursday 9 June 2011 – the role of the Attorney General for Northern Ireland – Mr John Larkin QC.
8 Thursday 23 June 2011 – 10 leading cases in Judicial Review law – Dr Gordon Anthony of Queen’s University, Belfast.
9 Thursday 15 September 2011 – long term Care Planning – Bob Frazer of Towry Law.
11 Thursday 20 October 2011 – Environmental Law by Dr Sharon Turner of Queen’s University, Belfast.
12 Thursday 10 November 2011 – Co-ownership Law and Procedure – Dr Heather Conway of Queen’s University, Belfast.
13 Thursday 24 November 2011 – Incorporate Insolvency – Bridgette Napier of Napier & Sons.
14 Thursday 16 December 2011 – PPI Insurance – Colin Mitchell of Mc Cartan Turkington and Breen
One of Northern Ireland’s most senior solicitors and former President of the Law Society has received an OBE for his contribution to legal education in the New Year’s honours list.

Comgall McNally has been a member of the Education Committee for almost half a century and has played a leading part in legal education over the years. He was a member of the Bromley Committee, which sat in 1983 to consider legal education and was a founding member of the Council of Legal Education.

Throughout his many years of service to the profession he has been closely identified with legal education and remains a member of the Education Committee.

He served for many years as Chairman of the Board of Examiners and was a founding member of the Institute of Professional Legal Studies.

Lately, he has contributed to the Review of Legal Education in Northern Ireland and to the report on “Shaping the future of Legal Education and the future of the legal profession” which is now before the Society’s Council.

In November 2010 he received an award in recognition of his lifetime contribution to the solicitors’ profession at the Law Society’s Annual Dinner.

He was senior partner in the long established firm of E & L Kennedy, Solicitors until 1982, when he was appointed as a Social Security Commissioner for Northern Ireland. This was the highest judicial appointment given to a solicitor at that time.

He was subsequently appointed Child Support Commissioner. When he finally reached the judicial retirement age of 72, the Lord Chancellor decreed that in the public interest, he should remain in the post, which he did until he was 76.

Comgall has always maintained an academic as well as practical interest in the law and continues to sit on Society’s Working Party on Education.

Senior solicitor honoured by the Queen

One of Northern Ireland’s leading business organisations is to be headed up by a local solicitor for the first time.

Ian Coulter, Managing Partner at Tughans, has been appointed as the new Vice Chairman of the CBI (Confederation of British Industry) in Northern Ireland.

He will take over as CBI Chairman in less than a year’s time (January 2012), succeeding local businessman Terence Brannigan in the key role.

Ian’s ‘day job’ as a corporate lawyer means that he is already a familiar figure in the Northern Ireland business community.

“I’m confident that I know something about the problems and opportunities facing businesses here, and I look forward to working on new ways of maximising our opportunities as a regional business community,” says Ian.

“The CBI Council here has unrivalled experience and achievement under its belt, and the organisation plays a constructive role in representing the interests of business, particularly when it comes to dealing with government.” The CBI is widely regarded as the leading lobbying organisation on behalf of private sector business in the United Kingdom. Its Northern Ireland Council has a 39-strong membership spanning a wide variety of economic sectors.

Ian Coulter became a partner in Tughans in 2001 and was appointed Managing Partner in 2008 at the age of 37.

Ian Coulter set to lead CBI
The Tale of Al Capone and the Forensic Accountant

As one of the world’s best known gangsters, Al Capone proved impossible to arrest - that is of course until Frank Wilson caught up with him.

Frank Wilson was a special investigative officer for the IRS – a Forensic Accountant and it was he who was responsible for Capone eventually ending up behind bars for tax evasion!

In more recent times, we are all too familiar with the collapse of Enron, the Madoff scandal and even the acrimonious divorce of Sir Paul McCartney and Heather Mills which, in various ways have only served to bring the role of the forensic accountant to the fore.

Forensic Accountants provide litigation support to the legal profession and as the volumes of litigation continue to increase their services are being called for more than ever.

The National Fraud Agency, an executive agency of the Attorney General’s Office has recently published statistics which make interesting reading. Their Annual Fraud Indicator estimates that fraud is costing the UK £38 billion per year with over £21 billion in the public sector and £15 billion of that arising out of tax fraud.

To illustrate the demand for the profession, the University of Ulster recently launched a forensic accounting degree course at Magee College, the first of its kind in Ireland.

But as well as the highly publicised cases we know of, there are a range of scenarios which can involve this specialist service including:

- Personal injury and Fatal Accident Claims
- Wrongful imprisonment
- Medical negligence
- Unfair dismissal & discrimination claims
- Matrimonial Disputes
- Partnership disputes and dissolutions
- Breach of contract
- Share valuations
- Professional negligence
- Business interruption
- Loss of profits
- Proceeds of crime cases
- Money laundering
- False accounting
- Theft
- Criminal damage
- Benefit fraud
- Evasion of fuel / cigarette duty
- Evasion of VAT and Income Tax
- Obtaining funds by deception

The role of the forensic accountant is part accountant, part detective, investigating and analysing financial information, providing concise presentation of evidence and assisting in legal proceedings which can include testifying in court as an expert witness.

As such, Forensic Accountants must be familiar with the law, be up to date with legal pronouncements and case precedents and possess an in-depth knowledge of multipliers, dependency levels and benefits, providing legal professionals with prompt reports across tight deadlines.

To hear first hand, how Forensic Accountants collaborate with the legal profession, Jeremy Harbinson will be presenting some case studies at a CPD event in partnership with McKelvey Associates on June 10 – to book please refer to your CPD brochure enclosed or visit www.mckelveyassociates.co.uk
### BANKING

**ALLIED IRISH BANK CORPORATION LIMITED V Rodney Williamson and Winston Lyness**

Claim by plaintiff against the defendants for the repayment of a loan plus contractual interest. - entitlement of bank to repayment on the basis of a so-called “facility” letter. - whether pursuant to this letter a sum of £404,000 is repayable by the defendants to the bank on demand. - whether the letter was comprehensive of the agreement between the bank and the first defendant. - whether a balance penalty payment should be waived. - HELD that the Bank’s letter to the defendants constituted the whole of the agreement between the parties and the loan is repayable on demand, and the first defendant has defaulted in discharging this obligation. - bank is entitled to recover in full from the defendants.

**HIGH COURT**

22 OCTOBER 2010

MCCLOSKEY J

### CONTEMPT

**FINANCIAL SERVICES AUTHORITY V Francois De Dietrich**

Application by defendants to set aside High Court orders requiring the defendants to furnish disclosure of their assets on a world wide basis. - steps to be taken on foot of the application by the Financial Services Authority (FSA) for committal of the first defendant for his contempt of court in failing to abide by the orders of the court. - first defendant found to be in deliberate contempt of court and of his statutory obligation to respond to the legitimate requests for information from the FSA. - matters to be taken into account include the large sums of money involved and the reasonable apprehension that many people have been defrauded. - HELD that the defendant is guilty of contempt of court and sentenced to 18 months imprisonment.

**HIGH COURT**

28 JANUARY 2011

DEENY J

### CORONERS

**CHRISTINE FORDE V Attorney General and Coroner for Northern Ireland**

Whether under existing NI law a coroner has jurisdiction to hold an inquest into the death of a person who died abroad whose body has been returned to NI for burial or cremation. - appeal against decision of trial judge that he cannot conduct an inquest. - appellant’s son fell off a balcony in Ibiza and the Spanish authorities concluded that the deceased committed suicide, a fact not accepted by the appellant who is the deceased’s mother. - whether there was a basis for the application of the Human Rights Act 1998 in circumstances where the UK had no extra-territorial jurisdiction or control over the place where the deceased died. - definition of “found” under the Coroners Act. - HELD that the trial judge was correct in concluding that the Attorney General was not invested with a power to confer a jurisdiction on the coroner which he does not have and appeal dismissed.

**COURT OF APPEAL**

18 JUNE 2009

KERR LCJ, GIRVAN LJ, COGLIN LJ

### CRIMINAL LAW

**R V Terence McGeough**

Attempted murder, possession of firearms and ammunition with intent, membership of a proscribed organisation in 1981. - application to stay proceedings as an abuse of process because of delay. - whether prejudice can be established. - whether breach of ECHR right to fair trial within a reasonable time. - applicant escaped from hospital following a shooting in which he was involved and went on the run. - whether those on the run would face arrest following the completion of the Belfast Agreement. - HELD that no abuse of process established and application dismissed.

**CROWN COURT**

13 SEPTEMBER 2010

COGLIN LJ

**R V Terence Gerard McGeough and Vincent McAnespie**

First defendant charged with attempted murder, possession of firearms and membership of proscribed organisation in 1981. - second defendant charged with possession of firearms and assisting an offender. - hearsay evidence. - accomplice. - approach to evidence of identification. - character of the defendants. - passage of time since alleged offences. - factual findings in relation to the shooting. - HELD that defendants found guilty on all counts and second defendant found not guilty on all counts.

**CROWN COURT**

18 FEBRUARY 2011

STEPHENS J
Selected High Court and Court of Appeal Decisions December 2010 – February 2011

R V ANGELINE MITCHELL
Sentencing. - murder. - accused was convicted of murdering her partner. - whether the defendant acted in self defence or under provocation. - minimum term of life imprisonment tariff. - HELD that the defendant must serve a minimum term of 12 years in prison before her release can be considered
CROWN COURT
10 DECEMBER 2010
MCLAUGHLIN J

DAMAGES

CRAIGAVON BOROUGH COUNCIL V WESTERN BRAND CHICKENS LIMITED, WESTERN BRAND POULTRY PRODUCTS, WESTERN BRAND GROUP LIMITED AND BERTIE ROBINSON AND EUROFREEZE (IRELAND) LIMITED
Plaintiff is a local authority with statutory responsibilities for the implementation of provisions under the Food Safety (NI) Order 1991. - defendant companies are involved in the processing and supply of frozen chicken from premises in Mayo. - fourth defendant (Robinson) operates a cold storage facility. - Council claimed damages against the defendants for the expenses of the disposal of chicken products. - determination of responsibility for Western Brand and Robinson for the condition of the chicken that led to its destruction. - Council carried out an inspection of Robinson's premises which resulted in the condemnation of chicken for non compliance with food safety requirements. - Robinson was storing chicken on behalf of Western Brand. - both parties were in disagreement as to the freezing method to be applied to the chicken. - whether the chicken was past its freezing date on arrival at Robinsons or whether the manner of carrying out the freezing was the cause of the chicken being condemned. - records of the consignments are inaccurate and incomplete. - HELD that Western Brand were responsible for the costs of disposal of 2 of the 10 consignments and there will be judgment against Robinson for four fifths of the disposal cost of £41,885.06
HIGH COURT
18 NOVEMBER 2011
WEATHERUP J

J & J PROPERTIES (ANTRIM) LIMITED V PAUL DURNIEN
Damages. - role of defendant in the preparation of a contract between the plaintiff and a Housing Association whereby the plaintiff contracted to design and build houses for a total tender price. - whether the defendant was in breach of his contract to act as quantity surveyor and project manager for the plaintiff as when he prepared the bill of quantities he failed to make allowance for substantial elements of the cost of construction, and undermeasured quantities. - terms of engagement between plaintiff and defendant. - whether the plaintiff is entitled to recover losses made from the project from the defendant. - HELD that the plaintiff entitled to claim full amount contained in the Scott schedule
HIGH COURT
20 DECEMBER 2010
HART J

ZAIB KHAN V WESTERN HEALTH AND SOCIAL SERVICES TRUST
Plaintiff brought a Notice of Motion for an interim declaration and injunction to enable him to continue with a re-skilling. - plaintiff employed as a surgeon by the defendant who restricted his ability to perform his clinical duties on the basis of allegations regarding the plaintiff's performance. - plaintiff contends the defendant was in breach of contract in that it failed to carry out and conclude its investigation within a reasonable time, and that the delay in the investigation caused the plaintiff to become de-skilled as a surgeon. - whether the plaintiff can claim an interim declaration. - whether the interim injunctions sought are prohibitory or mandatory. - whether there is a triable issue. - HELD that the plaintiff's case be dismissed
HIGH COURT
30 JULY 2010
GILLEN J

EMPLOYMENT

JOHN KEVIN BOHILL V POLICE SERVICE OF NORTHERN IRELAND
Appeal from a decision of the Fair Employment Tribunal to dismiss the appellant's claim. - appellant a retired police officer who was registered with Grafton Recruitment Agency. - appellant claimed that repeated unsuccessful attempts to gain temporary employment with the PSNI through the Recruitment Agency was the result of unlawful discrimination upon the ground of age and/or religion and/or political opinion. - whether the respondent discriminated against the appellant on grounds of religion/perceived political opinion in failing to appoint him to a position on the occasions that his name was put forward by Grafton Recruitment. - whether the appellant was applying for a position with the respondent as an agency or contract worker in a self-employed capacity. - whether the appellant was entitled to the protection of the Fair Employment and Treatment (NI) Order 1998. - definition of employee. - HELD that the appellant cannot establish that he is seeking an employment relationship with the PSNI and appeal dismissed
COURT OF APPEAL
13 JANUARY 2011
MORGAN LCJ, COGHLIN LJ, SIR ANTHONY CAMPBELL

EVIDENCE

IN THE MATTER OF AN APPLICATION BY RICHARD ALEXANDER DONALDSON FOR JUDICIAL REVIEW
Application to challenge decisions of HM Senior Coroner. - whether Coroner's decision to call a particular witness was irrational. - whether bias arising from the alleged disparity of treatment, procedurally and substantively, between witnesses. - whether the Coroner displayed pre-determined bias regarding the status and quality of the witness evidence. - HELD that the application for judicial review be dismissed
HIGH COURT
17 JUNE 2010
TREACY J
IN THE MATTER OF AN APPLICATION BY JR27 FOR JUDICIAL REVIEW
Application for judicial review by a litigant to whom anonymity has been granted by virtue of his age. - applicant was arrested for suspected involvement in a burglary, interviewed, photographed and asked to provide DNA samples and fingerprints (the impugned measures) to which he neither consented or objected. - applicant not prosecuted. - applicant’s solicitor requested the police to remove all details of impugned measures from all relevant databases together with a written undertaking from the Chief Constable that he would not retain any of the information in any format after its destruction, to which the Chief Constable refused by virtue of the Police and Criminal Evidence (NI) Order 1989 a. 61-64A. - what the first limb of the the Applicant’s challenge should be. - whether the retention of the applicant’s photographic images by the PSNI interfere with the applicant’s right to respect for private life under a 8(1) ECHR. - HELD that application for judicial review and that a point of law on the continued retention of samples and fingerprints be determined by the Supreme Court. - leave to appeal to Supreme Court refused
HIGH COURT
23 DECEMBER 2010
MORGAN LCJ, WEATHERUP J, MCCLOSKEY J

FAMILY LAW
BRONAGH (A PSEUDONYM) (APPLICATION TO FREE FOR ADOPTION)
Application by a Trust to free for adoption without consent a 2 year old girl currently in foster placement. - half siblings have been freed for adoption. - Trust propose post freeing contact with parents and half siblings. - whether adoption is in the best interests of the child. - whether the Trust can establish on the balance of probabilities that the parents are withholding their consent unreasonably. - a. 8 ECHR. - HELD that an order be made freeing the child for adoption
HIGH COURT
19 JANUARY 2011
STEPHENS J

CATRIN, DONA AND ELLIOT (PSEUDONYMS) (NO.5) CARE PROCEEDINGS: REMITTED HEARING
Appeal by Trust against decision not to grant care orders in respect of the first 2 children. - case remitted so trial judge could hear evidence on developments which had occurred since the trial and determine whether he would make any different order in respect of any of the children and if so what orders in light of any further factual findings. - welfare checklist and risk of significant harm. - HELD that care orders be made for the first 2 children and no change to the orders previously made for the third
HIGH COURT
16 SEPTEMBER 2010
STEPHENS J

CATRIN, DONA AND ELLIOT (PSEUDONYMS) (NO.6) FINANCIAL PROVISION FOR THE CHILDREN
Application brought by a mother against a father under a.15 Children (NI) Order 1995 for financial provision to be made by the father to the mother in support of their son. - mother also applies for an order requiring a settlement to me made by the father for the benefit of their daughters. - mother also seeks a periodical payment order for herself. - income, earning capacity, property and other financial resources which the mother and father have or are likely to have in the foreseeable future. - financial needs, obligations and responsibilities which the mother and father have or are likely to have in the foreseeable future. - manner in which the children were being, or were expected to be, educated or trained. - assets and income of parents. - HELD that payments be made as laid down in the judgment
HIGH COURT
2 DECEMBER 2010
STEPHENS J

F AND T
Private law proceedings. - 2 children with foster parents on foot of interim care order. - mother seeks residence order in her favour in respect of both of her children residing with her. - one father seeking a residence order, the other seeking a joint residence order. - all parties are of different nationality but are habitually resident in Northern Ireland. - legal principles in relation to the private law proceedings between the parents. - threshold criteria in relation to public law proceedings. - welfare considerations in relation to the public law proceedings. - HELD that private law orders be made in respect of both children
JUDGMENT
HIGH COURT
10 JANUARY 2011
STEPHENS J

FISHERIES
AN APPLICATION FOR JUDICIAL REVIEW BY DAVID MULHOLLAND
Application for judicial review of a decision of the Lough Neagh Fisherman’s Cooperative Society refusing to grant the applicant a relevant eel-fishing licence. - whether the policy was formulated unreasonably in that erroneous and mistaken factors were taken into account. - whether the decision taken based on the policy was unreasonable and unlawful. - whether the decision making process was unfair. - whether the selection process for applicants was inconsistent and unfair. - applicant declined an eel-fishing licence on the grounds of conservation of the eel population given the declining numbers of eels and that the application was viewed as an application for an additional licence. - whether the Society was susceptible to judicial review. - licensing criteria. - HELD that application dismissed
HIGH COURT
22 OCTOBER 2010
TREACY J
Selected High Court and Court of Appeal
Decisions December 2010 – February 2011

INSOLVENCY

SWIFT ADVANCES PLC V MICHAEL
GERARD MCKAY AND BRIAN WALKER;
SWIFT ADVANCES V GERARD
DALRYMPLE AND BRIAN WALKER
Proceedings issued by the plaintiff against 2
defendants with similar circumstances. - right
of former bankrupts to defend possession
proceedings brought against them by way of
an appeal from the Master to the High Court
in circumstances where they no longer have a
proprietary interest in the dwellings in question
and where their trustee in bankruptcy (and
former solicitors) purported to withdraw the
appeal. - HELD that both defendants have
locus standi to pursue the appeals on their
behalf.
HIGH COURT
10 FEBRUARY 2011
DEENY J

JUDICIAL REVIEW

IN THE MATTER OF AN APPLICATION
FOR JUDICIAL REVIEW BY COLIN
DUFFY AND OTHERS (N0 2)
Application for a declaration of incompatibility
in respect of the paragraphs of the Terrorism
Act 2000 which deal with the circumstances
in which a person arrested under s.41
of the Act on reasonable suspicion of
being a terrorist may have their period of
detention extended for a period of up to
28 days. - history of the detention of the
applicants. - statutory scheme of continued
detention. - HELD that the appellants have
not established any basis for contending that
paragraphs of the Terrorism Act 2000 are
incompatible with a. 5 ECHR
HIGH COURT
24 FEBRUARY 2011
MORGAN LCJ, HIGGINS LJ, COGHLIN LJ

IN THE MATTER OF AN APPLICATION
BY JR1 FOR JUDICIAL REVIEW AND IN
THE MATTER OF A DECISION OF THE
CHIEF CONSTABLE OF THE POLICE
SERVICE OF NORTHERN IRELAND
TO INTRODUCE TASERS FOR USE BY
THE POLICE SERVICE OF NORTHERN
IRELAND AND IN A MATTER OF
THE DECISION OF THE NORTHERN
IRELAND POLICING BOARD TAKEN ON 2
OCTOBER 2008
Applicant is an 8 year old child seeking an
order to quash the decision of the Chief
Constable to introduce tasers for use by the
PSNI. - further order sought to quash
the decision of the Northern Ireland Policing
Board ("the Board") that the decision to
deploy tasers was an operational matter
for the Chief Constable. - effect of tasers
on children. - international perspective.
- evolution of decision to deploy tasers. -
whether the Board ered in concluding that
the decision to introduce tasers was an
operational decision for the Chief Constable.
- whether the decision to proceed on a pilot
basis was irrational since an Equality Impact
Assessment had not been completed.
- whether the applicant is victim for the
purposes of the Human Rights Act. - whether
the decision to introduce tasers for use by the
PSNI is contrary to a.2 ECHR. - powers of the
Board. - HELD that no grounds are made out
and application for judicial review dismissed
HIGH COURT
17 JANUARY 2011
MORGAN LCJ

LIMITATION

TRAFFIC SIGNS AND EQUIPMENT
LIMITED V DEPARTMENT FOR REGIONAL
DEVELOPMENT AND DEPARTMENT FOR
FINANCE AND PERSONNEL
Preliminary issue. - public procurement
proceedings. - plaintiff issued a Writ of
Summons against the defendants to prevent
the letting of public procurement contracts on
the basis that the defendants had infringed the
Public Contracts Regulations. - manner in which
the defendants carried out the tender process
for the award of contracts for the supply and
delivery of permanent and temporary road signs
and signposts. - preliminary issue in respect
of limitation issues. - whether the proceedings
were issued out of time. - general time limits
for starting proceedings. - whether time ran
out before the plaintiff was qualified to be a
contractor. - what the date was of the plaintiff's
actual or constructive knowledge. - whether
there is a good reason to extend time for the
issue of the proceedings. - HELD that there is
good reason to extend the time
HIGH COURT
22 NOVEMBER 2011
WEATHERUP J

MEDICINE

PATRICK JOSEPH ROGAN V NURSING
AND MIDWIFERY COUNCIL
Appeal against the finding of a Conduct and
Competence Committee of the Nursing and
Midwifery Council. - appellant challenges the
findings of fact made by the Panel in which it
found allegations of misconduct against him
New Books in the Library

- Snell’s Equity. 32nd ed. Sweet & Maxwell. 2010
- Hollington, R. Shareholders’ Rights. 6th ed. Sweet & Maxwell 2010
- Lindley & Banks on Partnership. 19th ed. Sweet & Maxwell 2010
- Murphy, J. The Law of Nuisance. Oxford University Press. 2010
- McDonald’s Immigration Law & Practice. 8th ed. LexisNexis. 2010
- Redgrave’s Health and safety. 7th ed. LexisNexis. 2010
- Blackstone’s Criminal Practice 2011. Oxford University Press. 2010
- Kessler, J. Drafting Trusts and Will Trusts. 10th ed. Sweet & Maxwell 2010
- Copinger and Skone James on copyright. 16th ed. Sweet & Maxwell. 2011
- Harker, S. Matrimonial Conveyancing. 10th ed. Sweet & Maxwell 2010
- Christou, R. Sale and Supply of Goods and Services. 2nd ed. Sweet & Maxwell. 2010
- Goff & Jones. The law of restitution, 7th ed. Sweet & Maxwell. 2007
- Underhill and Hayton Law of Trusts and Trustees. 18th ed LexisNexis. 2010
- Connolly, F. Immigration Law in Northern Ireland. SLS. 2011
- Cook, M. Cook on Costs 2011. LexisNexis. 2010

If you wish to advertise in The Writ please contact Karen Irwin for rates, specification and copy deadlines at:

dcp strategic communication ltd
Bamford House
91-93 Saintfield Road
Belfast
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Tel: 028 9040 2296
Fax: 028 9040 2291
Email: karen@dcppr.co.uk

THE Writ

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Email: karen@dcppr.co.uk

THE Writ

THE WRIT
Re: Hugh Cormican (deceased)
Late of: 105 Moira Road, Crumlin, County Antrim
Date of Death: 11 November 2010
Would any person having knowledge of the whereabouts of a Will made by the above named deceased please contact:
W G Maginess & Son Solicitors
68 Bow Street
Lisburn
County Antrim BT28 1AL
Tel: 028 9267 0997
Fax: 028 9267 2161
Email: law@wgmaginess.com

Re: James McGall (deceased)
Late of: Dunladry Nursing Home, Dunonald
Formerly of: 15 Drumcarn Close, Milltown, Shaw's Bridge, Belfast BT8 4HQ
Date of Death: 23 January 2011
Would any person having any knowledge of the whereabouts of a Will made by the above named deceased please contact:
James Boston & Sullivan Solicitors
408 Woodstock Road
Belfast BT6 9DQ
Tel: 028 9045 6601
Fax: 028 9045 9492

Re: Michael John O'Hagan
Late of: 5 Murnells Road, Pomeroy, County Tyrone
Date of Death: 27 November 2010
Would any person having knowledge of the whereabouts of a Will made by the above named deceased please contact:
Carmel O’Meara & Co Solicitors
32 Irish Street
Dungannon
County Tyrone BT70 2DQ
Tel: 028 8772 2455
Fax: 028 8772 3073

Re: Patrick McGirr
Late of: 50 Garvaghy Bridge Road, Ballygawley, County Tyrone
Date of Death: 30 November 2010
Would any person having any knowledge of the whereabouts of a Will made by the above named deceased please contact:
Oliver M Loughran & Co Solicitors
9 Holmview Terrace
Omagh
County Tyrone BT72 3DA
Tel: 028 8224 1530
Fax: 028 8225 7897
Email: info@oliverloughran.com

Re: Gerald Montgomery (deceased)
Late of: 12 Tansy Road, Ballinderry Upper, Lisburn, County Antrim
Date of Death: 11 November 2010
Would any person having knowledge of the whereabouts of a Will made by the above named deceased please contact:
W G Maginess & Son Solicitors
68 Bow Street
Lisburn
County Antrim BT28 1AL
Tel: 028 9267 2161
Fax: 028 9267 0997

Re: Una Carrothers (deceased)
Late of: 84 Drumdarvey, Lisnarick Road, Irvinestown, County Fermanagh BT94 1LN and previously of Whitehill North, Irvinestown, County Fermanagh
Date of Death: 10 November 2010
Would any person having knowledge of the whereabouts of a Will made by the above named deceased please contact the undersigned as soon as possible:
Murnaghan Fee Solicitors
Boston Chambers
Queen Elizabeth Road
Enniskillen
County Fermanagh BT74 7JA
Tel: 028 6632 2819
Fax: 028 6632 3073
Email: law@murnaghanfee.com

Re: Thomas Roy McDowell
Late of: Mount Lens Care Home, 166 King's Road, Belfast BT5 7EL
Formerly of: 68 Channing Street, Belfast BT5 5GQ
Date of Death: 8 December 2010
Would any person having knowledge of the whereabouts of a Will made by the above named deceased please contact:
Keown Solicitors
19 Cregagh Road
BELFAST BT6 8PX
Tel: 028 9045 6042
Fax: 028 9045 6405

Re: Elizabeth Marmion
Late of: 5 Elmwood Park, Newry, County Down BT34 1LB
Formerly of: Grinan Road, Newry, County Down
Date of Death: 13 January 2011
Would anyone having any knowledge of the whereabouts of a Will made by the above named deceased please contact the undersigned as soon as possible:
Adrian Travers Solicitor
40 Rathfriland Street
Banbridge
County Down BT32 3LA

Missing Title Deeds
Folio: 3000
County: Antrim
Registered Owner: Gerald Montgomery
Late of: 12 Tansy Road, Ballinderry Upper, Lisburn BT28 2PB
Date of Death: 11 November 2010
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said
Certificate or communicate such information to the under mentioned Solicitors.
And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for:

Johnsons
Solicitors
Johnson House
50/56 Wellington Place
BELFAST BT1 6GF
Tel: 028 9031 3300
Fax: 028 9024 0183
Email: law@wgmaginess.com

Folio: 38996
County: Down
Registered Owners: William John McClenaghan & Elaine Carol McClenaghan
Lands at: 14 Comber Road, Saintfield, Ballynahinch, County Down BT24 7BB
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the under mentioned Solicitors.
And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for:

Morrow & Wells
Solicitors
11th Floor
Causeway Tower
9 James Street South
BELFAST BT2 8DN
Tel: 028 9023 3866
Fax: 028 9033 0762

Folio: AR107941
County: Armagh
Registered Owner: Jacqueline Edwards
Property at: 560 Drumbeg, Tullygalley, Craigavon, County Armagh BT65 5AF
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the under mentioned Solicitors.
And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for:

Mr Ciaran Hampson
Campbell Fitzpatrick
Solicitors
6 Castle Street
Derry BT48 6HQ
DX 3153 NR DERRY 3
Tel: 028 7137 2660
Fax: 028 7126 7766
Email: ciaran@cfs-law.com

Folio: LY67625
County: Londonderry
Registered Owners: Mr Sean McGlinchey
Lands of: Heather Road, Creevagh, Cerry BT48 9XD
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the under mentioned Solicitors.
And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for:

Mr Brendan Murphy
Harte Coyle Collins
Solicitors
55a Castle Street
BELFAST BT1 1GH
Tel: 028 9027 8227
Fax: 028 9072 7830

Property at: 16 Trossachs Drive, Belfast BT10 0HS
Registered Owner: Florence Hogg
Would anyone knowing the whereabouts of the documents of title in respect of the above premises please get in touch with:
Alastair J Rankin
Cleaver Fulton Rankin
Solicitors
50 Bedford Street
BELFAST BT2 7FW
Tel: 028 9024 3141
Email: a.rankin@cflaw.co.uk

Folio: DN5464
County: Down
Registered Owners: Edna Mildred Murrell & Heather McMurray & William John McClenaghan & Elaine Carol McClenaghan
Lands at: Rathmore and Innisfayle, Bangor
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the under mentioned Solicitors.

Mr Ciaran Hampson
Campbell Fitzpatrick
Solicitors
6 Castle Street
Derry BT48 6HQ
DX 3153 NR DERRY 3
Tel: 028 7137 2660
Fax: 028 7126 7766
Email: ciaran@cfs-law.com

Folio: 21005
County: Tyrone
Registered Owner: Gerard Kelly
Lands at: Aghaginduff
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the under mentioned Solicitors.

Mr Ciaran Hampson
Campbell Fitzpatrick
Solicitors
6 Castle Street
Derry BT48 6HQ
DX 3153 NR DERRY 3
Tel: 028 7137 2660
Fax: 028 7126 7766
Email: ciaran@cfs-law.com

Folio: 47
said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for:

W G Maginess & Son
Solicitors
68 Bow Street
Lisburn
County Antrim BT28 1AL
Tel: 028 9267 2161
Fax: 028 9267 0997
Tel: 028 9031 3300
Fax: 028 9024 0183
BELFAST BT2 8DN
9 James Street South
Causeway Tower
11th Floor
Solicitors
Morrow & Wells
14 Comber Road, Saintfield, Ballynahinch, County Down BT24 7BB

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

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

Doris & McMahon
Solicitors
63 James Street
Cockstown
County Tyrone BT80 8AE
Tel: 028 8676 2484
Fax: 028 8676 6781

Email: law@wgmaginess.com

Folio: 21005
County: Tyrone
Registered Owner: Gerard Kelly
Lands at: Aghaginduff
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the under mentioned Solicitors.

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Fax: 028 9267 0997
Tel: 028 9031 3300
Fax: 028 9024 0183
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9 James Street South
Causeway Tower
11th Floor
Solicitors
Morrow & Wells
14 Comber Road, Saintfield, Ballynahinch, County Down BT24 7BB

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Doris & McMahon
Solicitors
63 James Street
Cockstown
County Tyrone BT80 8AE
Tel: 028 8676 2484
Fax: 028 8676 6781

Email: law@wgmaginess.com
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- Absent Landlord
- Adverse Possession
- Bankruptcy / Insolvency – Gratuitous Alienations
- Building Over a Sewer
- Contaminated Land / Environmental Policies
- Contingent Buildings (covering defective insurance provisions)
- Defective Lease
- Exceptions and Reservations- Know and Unknown
- Flying Creeping / Freehold
- Forced Removal / Obstruction of a Right of Way
- Good Leasehold
- Judicial Review
- Lack of Building Regulations Consent
- Lack of Listed Building Consent
- Lack of Planning Permission
- Limited / No Title Guarantee
- Local Authority Search
- Missing Deeds / Leases
- Missing Matrimonial Homes Consent
- Outstanding Charges Entry
- Possessory / Qualified Title
- Pre-Emption Rights
- Profits à Prendre
- Rent Charge
- Restrictive Covenants- Known and Unknown
- Rights of Light
- Title Subject to a Lease

Supplemental cover is also available for loss of profits, consequential loss, rental liability, inflation and portfolio risks.

To discuss one of the above listed risks or for a general enquiry please contact your DEDICATED UNDERWRITING TEAM – NORTHERN IRELAND

Direct Dial Number: +44 (0) 141 248 9090
Email: scotinfo@firsttitle.eu
Contact: Reema Mannah
Address: FIRST TITLE INSURANCE plc, Suite 5. 1, Turnberry House, 175 West George Street, Glasgow, G2 2LB
Website: www.firsttitleinsurance.eu

For further information about First Title or access to our services please contact the appointed NORTHERN IRELAND representatives:

Gary Mills
Mobile No: +44 (0) 7793814300
Email: gm@bluechiptitle.eu
Derek Young
Mobile No: +44 (0) 7763924935
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