THIS ISSUE

How you can help tackle risk-taking behind the wheel
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How you can help tackle risk-taking behind the wheel

Targeting high risk drivers and the courses keeping our roads safer through education

The good news is that anyone found guilty of a drink-drive offence, whether or not they have been found to qualify as a high risk offender, can avail of the courses for drink drive offenders (CDDO) scheme. The scheme has been proven to reduce the chances of re-offending, and offers a significant reduction in the length of the period of a drink-drive ban.

Courses for Drink Drive Offenders (CDDO)

The CDDO scheme in Northern Ireland is run by Telford Training Consultants (TTC) on behalf of DOE. TTC is a not-for-profit company, the largest provider of drink driving courses in the UK, and now educates around 800 convicted drink drivers across Northern Ireland each year.

A driver is deemed to be a high risk offender if they have been found guilty of:

- having an alcohol level of over 200mg in 100ml of blood, or 87.5mg in 100ml of breath, or 267.5mg in 100ml of urine;
- committing two drink and driving offences (or being in charge of a vehicle while unfit through drink) within 10 years; or
- refusing or failing to provide a specimen for analysis.

A person considered to be a high risk to other road users will be:

- labelled a high risk offender (HRO);
- required to prove that drink related problems have been overcome before having their licence returned;
- required to undergo a special medical examination (current cost, payable by the offender, is £179.50) in order to satisfy the Department they do not have a serious alcohol problem; if the examination indicates a continuing alcohol issue, they may be refused a new licence on medical grounds, after the court’s order of disqualification has expired;
- subject to a higher licence renewal fee (currently £90.00).

It is clear that attending a drink-driving course has the potential to change the attitudes and behaviours of drivers convicted of a drink drive offence compared with 11.4% who had not complete a course - in other words, the likelihood of reconviction was 1.6 times higher if the offender had not completed a course;

- in the first two years after their original conviction, 1.9% of offenders who had completed a course had been reconvicted of a subsequent drink-drive offence compared with 6.2% of those who had not completed a course – in other words, the reconviction rate was 3.3 times higher for offenders who had not completed a course than for those who had.

Helping change attitudes and behaviours

A study of the scheme in September 2010 found that:

- around 31% of offenders offered CDDO places opted to attend;
- a greater proportion of females (35%) than males (31%) who were referred opted to attend;
- among offenders who had completed the course, 7.0% were reconvicted of a subsequent drink-drive offence compared with 11.4% who had not complete a course - in other words, the likelihood of reconviction was 1.6 times higher if the offender had not completed a course;

- in the first two years after their original conviction, 1.9% of offenders who had completed a course had been reconvicted of a subsequent drink-drive offence compared with 6.2% of those who had not completed a course – in other words, the reconviction rate was 3.3 times higher for offenders who had not completed a course than for those who had.

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of drinking and driving, helping to prevent re-offending and making a valuable contribution towards reducing the numbers of people killed or seriously injured on the roads.

Educational interventions of this kind are a powerful tool in the fight to reduce the incidence of drink drive offending. Attending a course following becoming a ‘High Risk’ driver will help avoid drink driving in the future. Even more important, it could also be the difference between life and death on the road.

The aim of the Course for Drink Drive Offenders is to equip participants with the knowledge, skills and attitudes necessary to make the correct and responsible decision as a driver and to – Never Ever Drink and Drive.

Each course covers alcohol awareness, health, responsible driving, the law, sentencing and victims. They last 18¼ hours spread over three days, and are available on weekdays and at weekends. The cost is £155, with a reduced fee of £110 for unemployed people, full-time students and pensioners, and are available in Ballymena, Belfast, Coleraine, Dungannon, Enniskillen, Londonderry, Omagh, Newry, Portadown and Downpatrick. The fees may be paid by instalments at no extra cost.

On successful completion, a participant is offered a 25% reduction in the period of their disqualification.

Taking the opportunity

Courts have the power to refer any offender who they consider would benefit from a course.

A district judge may offer an offender the opportunity to attend a course if convicted of any of the following offences:

- causing death or grievous bodily injury by careless driving when under the influence of drink or drugs;
- driving or being in charge of a vehicle when under the influence of drink or drugs;
- driving or being in charge of a vehicle with excess alcohol; or
- failing to provide a specimen.

In order for a referral to be made, the period of disqualification from driving must not be less than 12 months. The offender must also be aged 17 or over, and a place on a programme must be available.

Although referral is at the discretion of the courts, it is up to the offender, or his or her legal representative, to ensure that the district judge has all the facts necessary to enable an informed decision to be made. If a referral is then offered it is solely the offender’s decision of whether or not to accept.

Having accepted a referral, there is no penalty for not attending. There can be no retrospective referrals - a referral must be made at the time of sentencing.

Unfortunately the rate of participation for drink-driving courses in Northern Ireland is not as high as it could be, undermining the value of the courses in terms of re-offending rates and therefore road safety.

Between 1 January and 31 December 2009 a total of 1,347 referrals were made, equivalent to a referral rate of approximately 37%. The referral rate for 2008, when a total of 1,251 referrals were made, was approximately 34%. The figures for Great Britain suggest a much higher referral rate of around 65%.

Upon successful completion of the course the offender must send the certificate of completion to the court, this authorises the Driver & Vehicle Agency to reduce the disqualification by up to 25%, as ordered by the original sentencing court. Apart from the reduction in disqualification, offenders may also benefit from reduced insurance costs.

What can be done to help increase attendance?

By simply highlighting the excellent support, education and other opportunities that attending a Course for Drink Drive Offenders offers individuals convicted of a drink-drive offence, a significant contribution can be made towards changing attitudes and behaviours on our roads.

Further information about Courses for Drink Drive Offenders can be obtained from the course providers TTC, who can be contacted at:

Website - www.ttc-uk.com (click on the drink drive option)
Telephone - 0845 270 4380
Email - train@ttc-uk.com
Fax - 0845 270 4381
Anyone who visited the NIJAC website last month to read about the District Judge and County Court Judge competitions may have been surprised by the Commission’s new online appearance.

NIJAC discreetly launched their new website www.nijac.gov.uk at the end of August - a few days in advance of the recent high profile competitions.

The Writ has had a chance to look at the website and we must say, it is particularly impressive, very easy to navigate and features a lot of new content.

Edward Gorringe, Chief Executive of NIJAC, explains why the Commission decided to change its online appearance:

“With devolution came a change of sponsor department. This meant that our old website could no longer be supported and we had to move to a new site.

Whilst ever mindful of the tax payer we serve, we were however delighted to have the chance to make over the website. We are always looking for ways to improve and refine the service we offer and the ways in which we communicate with people.”

Explaining the rationale behind the project, Edward gave The Writ an insight into how important NIJAC’s online presence has become in recent times:

“Our Diversity and Communications Team has spent the last six months working closely with colleagues in the Department of Innovation and Design in developing the new website.

“We wanted it to be more informative, much easier to use and to contain more meaningful and accessible information for people.”
“Over the last few years, our website has become the principal way in which we communicate information about who we are, what we do and the opportunities to serve in judicial office.

“It is also how we communicate developments in assessment and selection, how we promote awareness about current initiatives such as judicial shadowing and future ones such as online recruitment (eRecruit).

“The new website allows us to communicate this information more effectively while also giving us a more appropriate platform for eRecruit which we hope to launch in the New Year.

“On that note, we are presently working with local IT & Recruitment experts on developing the system to the needs of our staff and applicants – and we are very excited about launching a rigorously tested product which will allow people to safely and securely apply for judicial office online.”

One of the most interesting new additions is the introduction of video podcasts.

Narrated by the BBC’s Donna Traynor, the video interviews can be watched online and feature contributions from County Court Judge, Geoffrey Miller QC and Lay Magistrate, Aine Lockhart.

In a bid to dispel some of the myths and misconceptions about the appointments process and the practical aspects of judicial office, His Honour Judge Miller QC and Aine Lockhart provide visitors with an insight into their day to day work, and personal motivations for seeking judicial office.

If you haven’t already checked out NIJAC’s new website, we recommend you take some time to do so.

The website will keep you to the speed with developments in the eRecruit project and there is a particularly interesting section on “myth busting”.

NIJAC’s website address is www.nijac.gov.uk

Leaving a Legacy

Please consider CONTACT when advising your clients about leaving a Legacy to charity or making a gift.

Contact was established in 1977 in response to a growing recognition that people have complex and diverse emotional and mental health needs which are not always met in existing support structures. We offer:

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For further information on our work contact: 1st Floor Lanyon Building, North Derby Street, Belfast BT15 3HL.

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Lifeline - 24/7 Freephone Helpline For anyone in distress or despair
Who stole my house?

Who stole my house? These were the unusual instructions I received back in May 2008 from a client who had purchased a property in the Shankill Road area, some months before. He intended to renovate it and rent it out. In fact his brother had bought the house next door and they intended to develop the houses together. Neither had bothered with landlord’s buildings insurance, as the houses were empty, though not derelict. Whilst abroad, the client was contacted and advised his house had been demolished!

The answer was “brick bandits” and the only route to assist the client was going to be a claim under the Criminal Damage (Northern Ireland) Order 1977. This legislation was of course designed to assist property owners during the Troubles, from incidents such as bomb damage and riots, as terrorist related claims were often excluded from commercial insurance cover. That usually required a certificate from the Chief Constable confirming “the incident” was paramilitary related (eg a bomb) or else proof that the incident was caused by “three or more people involved in an unlawful assembly” (eg a riot).

The term “brick bandit” relates to an activity whereby organised criminals target empty houses, (often after vesting in regeneration areas) damaging them with a view to stealing the old red Belfast bricks. These are then sold on to salvage or builders’ yards, apparently fetching up to £1 per brick. In my client’s case, over the period of a few weeks, an entire terrace of empty houses was broken in to, vandalised and stripped of so much brick that Belfast City Council had to issue demolition notices and ultimately demolish what was left. The criminals then returned to remove the rest of the brick.

After the expected denial of liability from the Compensation Agency, the appeals eventually came on for hearing before Her Honour Judge Smyth at Belfast County Court in November 2010. She split the trial, to first determine liability. Without a Chief Constable’s certificate confirming paramilitary involvement, the issue was then to prove the involvement of three or more people, involved in an unlawful assembly.

Door to door enquiries produced two witnesses, who confirmed that up to ten youths at a time were engaged, with sledgehammers and other tools, in the destruction of the houses, from the inside out. This was often at huge risk to their own personal safety, from the building collapsing or gas, live electricity cables or fire.

At trial, the Agency conceded that three or more persons may have been involved but defended the case on the basis that we couldn’t prove (a) the exact date of the damage, or (b) that three or more people were “unlawfully riotously or tumultuously assembled together” on any relevant date, (ie Art 5(1)(a) nor (c) that there was “an act
committed maliciously by a person acting in connection with an unlawful association” (Art 5(1)b).

The evidence from the local witnesses indicated they believed the activity was paramilitary controlled. The police witness referred to the area as being “under the control of the UDA and UVF”. The witness from Belfast City Council described how the activity was highly organised, with vehicles on hand, to take away the brick on pallets.

After a rigorous examination of the existing case law, Judge Smyth determined that an unlawful assembly required “three or more... with intent to commit crime...in such a manner as to cause reasonable people to fear a breach of the peace”. Whilst the damage was likely to have been carried out with the imprimatur of the paramilitaries, she was not satisfied that Art 5(1)b was satisfied. However, she found that the damage was caused unlawfully, that three or more people were involved and that it was carried out in such a way that reasonable people apprehended a breach of the peace and were intimidated. The judge also found that this was “a continuous operation from start to finish”, dismissing the Agency’s argument that we could not prove when, exactly, the damage had occurred.

At a recent quantum hearing, substantial damages were eventually agreed.

Comment:
Even property owners with insurance find their policies can be void if the property is left empty for a significant period of time. In certain areas, such properties can be very vulnerable. Despite brick theft becoming an epidemic, this is apparently the first time a “brick bandit” case has succeeded under the legislation. Whilst paramilitaries are suspected of involvement, this is very difficult to prove without a Chief Constable’s certificate. In this case, the key evidence was from the local neighbours who could prove that three or more people were involved and also that they felt afraid or intimidated when the damage was being carried out. This evidence was essential to prove an unlawful assembly. Without this type of evidence, the appeals may not have satisfied the statutory definitions.

The written judgment of these cases, Mohammed Kahn -V- Secretary of State for Northern Ireland, Liquat Ali Khan -V- Secretary of State for Northern Ireland, is now available at the Law Society Library.

We are grateful to John Gibbons, John F Gibbons & Co, 40 Church Lane Belfast, Solicitor for the appellants, for this article. Niall Hunt BL appeared for the appellants and Joe McEvoy BL for the Compensation Agency.
It was good news in October as the Law Society received notification that it had obtained ISO 9001:2008 accreditation. ISO 9001 is the benchmark standard for quality management systems and the Society achieved the accreditation following a rigorous review of its operations and systems.

At a ceremony at Law Society House, the President of the Society, Brian Speers, presented the Society’s Chief Executive, Alan Hunter, with the certificate of ISO accreditation.

Speaking afterwards, Alan Hunter said:

“This achievement reflects the personal commitment of all the staff of the Law Society who have continuously, over the course of the last year, been dedicated in obtaining the accreditation.

“On behalf of the Society I would like to take this opportunity to thank all of the staff of the Society and in particular, Heather Semple, our ISO Co-ordinator and Janine Tyrie, who contributed significantly.

“ISO 9001 certification is an important achievement for the Society. It will contribute to ensuring that our service delivery is of a high standard and it underscores our commitment to our members to continuous improvement.”
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The Law Society Council Dinner took place in Belfast City Hall on 23 September 2011.
The Lord Chief Justice, Sir Declan Morgan.

From left: Justice Minister David Ford MLA, Professor Monica McWilliams and Professor Michael O’Flaherty.

From left: John Comerton, Raymond Segal, Aidan Canavan, Judge Isobel Brownlee, Comgall McNally OBE and Tony McGettigan.

From left: John Guerin, Susan Brennan and Emma Hunt.

From left: Alan Reid, Her Honour Judge Philpott QC, Barry Finlay and Cathy McKay.

From left: Norville Connolly and His Honour Judge Miller QC.
Council Dinner

His Honour Judge Smyth QC, His Honour Judge Fowler QC, Anne Fenton MBE, Brendan Maguire and Ian Huddleston.

Law Society President, Brian Speers.

From left: Ian Wimpress, Conor Houston, Gary Rocks and Elaine Carr.

From left: Eileen Ewing, Karen Fox and Judith Brown.

From left: Richard Palmer, Gary Thompson and Gerry Daly.

From left: Alan McAlister, James Doran and Alan Logan.

From left: Brian Stewart, Geraldine Fee, Marian Killen and District Judge White.

From left: John Ross, Peter Hill, Cathal Gilmore, Peter Kelly and John Cross.
Advocacy training course 2011

Just as the court term began, 48 solicitors descended upon the Institute of Professional Legal Studies to take the Law Society of Northern Ireland Advanced Advocacy course.

The course has been established since 2000 when, as a result of research, both nationally and internationally, the Society’s Advocacy Working Party in conjunction with Queen’s University Belfast (Institute of Professional Legal Studies) and the world renowned National Institute of Trial Advocacy USA (NITA) developed the first advocacy programme of its type in these islands. The partnership with NITA has ensured that the programme’s reputation extends beyond the jurisdiction of Northern Ireland and indeed the template for the programme has been adopted by not only sister jurisdictions in Scotland and the Republic of Ireland but also in public and private programmes throughout Europe.

These 48 lawyers challenged themselves, pushed at their own personal boundaries, opened themselves up to new ways of doing things, hungered for improvement and achieved huge success becoming better advocates and better lawyers – able to add true value for the benefit of their clients, the courts and society.

Having completed an intensive course in Evidence culminating in an assessment, the solicitors embarked upon a programme in which they worked and re-worked their advocacy skills. In all of this they were supported by alumni of the course acting as witnesses. They had the unique opportunity to work with ten consultants from Accident and Emergency Units, enabling them to hone the skill of examination and cross-examination of Expert Witnesses.

In addition to experienced local faculty drawn from members of the judiciary and senior echelons of the profession, course participants had the benefit of guidance from some of the best lawyers and teachers from the United States.

- Michael Roake, a fighter pilot, a death row lawyer, former counsel in Baker & Mackenzie and a trainer to the judiciary in Azerbaijan
- Jo-Anne Roake, a published appellate lawyer who has set up a Human Rights Agency in Azerbaijan
- Maria Danaher, a top employment lawyer in Pennsylvania who writes for a Human Resource publication and is an adjunct professor for the University of Pittsburgh
- Gene Tanaka, a partner in a municipal law firm, specialising in land use cases, toxicology and environmental law also teaching at the University of California
- Mark Drummond, a trial lawyer for 20 years before becoming a trial judge who trained prosecutors at The Hague, in Arusha, Tanzania and teaches barristers at Oxford
- Rich Schoenberger, one of Northern California’s Super Lawyers named as one of the Best Lawyers in America for four years running. Having prosecuted serious felonies as Deputy District Attorney, he now deals with serious injury cases as a partner and has been selected by the American Bar Association and Department of Justice to teach advocacy in Georgia and Sarajevo.

A stirling cast who brought enthusiasm humour and rich learning to our shores. They were joined by Professor Peter Lyons of CPD UK Limited and Gillian Moore from the Procurator Fiscal’s office in Scotland.

The course culminated in trials held in the High Court before Mr Justice McCloskey, Mr Justice McMahon (ROI), Her Honour Judge Smyth and Judge Drummond (US), all of whom provided great insight and gave hugely constructive feedback to the participating lawyers.

That evening everyone relaxed and celebrated in style at the presentation ceremony held at Ivory in Belfast’s landmark Victoria Square.
Feeling the Pinch?

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

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Health Support and Advice for Lawyers
Realising new legal horizons down under

"Realising the new opportunities and legal horizons in Australia" was the central theme of a recent seminar held at Law Society House, attended by over one hundred local solicitors.

Speaking at the seminar was Alex Ward, the President of the Law Council of Australia, who was in Belfast at the invitation of the Law Society to speak to its members about the challenges and opportunities facing the legal profession.

In his key note address to delegates, Mr Ward provided an overview of the legal landscape in Australia as well as outlining to delegates the new and unrealised opportunities which exist for Northern Ireland solicitors to develop their careers and hone their legal skills in Australia.

Commenting on his visit, Mr Ward said: "I am grateful to the Society for allowing me the opportunity to meet with its members and to reflect on the new challenges and opportunities which exist in the global market place for the legal profession."

From left: Brian Speers, President of the Law Society of Northern Ireland and Alex Ward, President of the Law Council of Australia.

Speaking after the seminar, Society President, Brian Speers said:

"The Law Society is delighted to welcome Alex to Northern Ireland to address our members on a number of important issues - not least the challenges and opportunities which face all who work within the legal profession."

"Alex has outlined that there are real opportunities for solicitors who may wish to consider practising law in Australia. "This should be seen in terms of the real opportunities which exist for our members to enhance their skills sets, build upon their careers and to offer to future clients at home and abroad the wealth of their legal experience."

Chief Executive attends Westminster business programme

The Society’s Chief Executive, Alan Hunter, was amongst delegates from the Northern Ireland Assembly and Business Trust who attended a two day business programme on Central Government which was held at Westminster.

As part of the two day programme, the Chief Executive attended a number of information sessions and meetings with local MPs, members of the House of Lords as well as Northern Ireland Committee members.

The focus of the programme was very much on providing advice, guidance and practical information on the issues discussed by local political representatives at Westminster as well as the ongoing work of a number of initiatives which sought to raise the profile of Northern Ireland at an economic level.

From left: Alan Hunter, Law Society Chief Executive; Judith Cochrane MLA and Leslie Cree MLA.
The value of charitable legacies

At the recent CPD seminar on ‘Elderly Issues’ held at Law Society House, Amanda Pearson, National Legacies Manager and Caroline Greer, Partnership Development Executive of Alzheimer’s Society, delivered a presentation on the work of the charity in Northern Ireland.

The presentation looked at dementia services and the value of charitable legacies in support of the charity. As the current Society Charity of the Year it was a wonderful opportunity to speak about how the partnership is making a difference to people living with dementia across Northern Ireland.

There are currently 17,700 people in Northern Ireland diagnosed with dementia, with only one in three receiving a formal diagnosis. This number could be a gross underestimation. This figure is set to grow and research has revealed that it will more than double to 47,000 in the next thirty years.

Legacies are a large part of Alzheimer’s Society’s voluntary income and account for 20% of total income. They have estimated that £1 in every £5 spent on providing services to people with dementia comes from a gift in someone’s will. Last year over £10m was given to Alzheimer’s Society in this way.

How can the solicitor profession in Northern Ireland help the Alzheimer’s Society?

If you have a client, in the future, who is either making or updating their will, it would of great support to the charity to enquire as to whether they have considered leaving a charitable gift in their will.

It is not for everyone to leave a gift to a charity in a will but a large majority of people say that the reason they haven’t done so is, simply, because they have never been asked. A simple question like this could lead to someone making one of the largest gifts they have ever made – and what a difference this could make to any charity.

If you would like to know more about suggested wording for leaving a legacy specifically for Northern Ireland, to Alzheimer’s Society, then please contact Amanda. pearson@alzheimers.org.uk

Solicitors on song for Alzheimer’s Society

A concert organised by the Law Society and featuring performances from solicitors hit the right note after raising more than £6,000 in support of the Alzheimer’s Society. BBC Newsline presenter, Sarah Travers, and Ambassador for the Alzheimer’s Society, was on hand to receive the cheque from the President of the Law Society, Brian Speers. The ‘Bop ‘til you Flop’ concert was organised by former Law Society President, Joe Donnelly.

Brian Speers, Law Society President; Sarah Travers, Ambassador for Alzheimer’s Society; Amber Law, Bank Manager, Northern Bank and Joe Donnelly, Law Society.

Caroline Greer from the Alzheimer’s Society, Sarah Travers and Mary Murnaghan, solicitor.
Choir hit high notes for charity

The Society’s Pro Bonos Choir hit the right notes over the summer raising more than £500 for the Alzheimer’s Society, the President’s chosen charity of the year.

Presenting the cheque to Sarah Travers, local ambassador for the Alzheimer’s Society, were Joe Rice and Joanne White from the Choir. The money was raised from the Choir’s summer concert.

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American lawyers welcomed by First Minister

Over 60 lawyers from some of America’s most prestigious law firms and organisations were in Belfast recently as part of a series of events organised by the Law Society of Northern Ireland to showcase the legal sector.

The delegates from the American Bar Association had been invited by the Society’s President to visit Northern Ireland as part of the ABA International Section Fall Conference.

As part of their two day visit to Northern Ireland, delegates were invited to Hillsborough Castle for a reception hosted by the Society and attended by up to 100 guests.

The Lord Mayor, Councillor Niall Ó Donnghaile, formally welcomed the delegates to Belfast before they attended a series of seminars held at Law Society House.

Those speaking at the seminars included the Society President, Brian Speers, Senior Vice President, Norville Connolly and Chief Executive, Alan Hunter.

Also speaking was the Attorney General for Northern Ireland, John Larkin QC, Adrian Colton QC, Chairman of the Bar Council, Jeremy Finch, Invest NI and Virginia McVey, Chief Executive of the Human Rights Commission.

The two day visit to Belfast culminated with the opportunity for delegates to meet the First Minister, Peter Robinson, at a special dinner hosted by Invest NI at the Long Gallery in Stormont.

Speaking after the visit Brian Speers said.

“The Law Society was delighted to have welcomed delegates from the American Bar Association to Northern Ireland.

“The two day trip to Northern Ireland has provided an excellent opportunity for the Law Society to promote the work of our legal community and the real investment opportunities which exist in Northern Ireland.”
When a planning permission has been granted, subject to condition, it must have begun before the expiration of the specified period attached to the consent or otherwise the planning consent will lapse. It is when the proposed development benefiting from the planning consent has been commenced within the specified period that the ‘time limits’ condition has been complied with.

In Northern Ireland a common question is: what forms a ‘technical start’ or commencement to development? It is a widely held belief that the best means of securing a planning permission, without developing the entire planning consent, has been to either start putting the foundations down or create the access road. In many cases this method is suitable, however, the devil is in the detail and the developer must ensure a careful and methodical assessment of the wording of the planning conditions attached to the consent. In addition, it is often a matter of planning judgement as to whether or not development has started.

The access and the commencement argument has raised much debate in recent years and a typical condition is often worded, as follows:

“The vehicular access, including visibility splays and any forward sight line, shall be provided in accordance with the approved plans, prior to the commencement of the development hereby permitted.”

In some cases the developer has been ‘caught out’ by not fulfilling a condition, such as that outlined above prior to, for example, starting foundations. If the developer built a house considering that this was a ‘technical start’ but had not provided the vehicular access including visibility splays and any forward sight line in accordance with the above condition (if attached) then the development, in our opinion, may not have been commenced and a ‘technical start’ may not have been formed. However, if the developer formed the access arrangements in line with the requirements of the consent and then put down the foundations of the first dwelling then a ‘technical start’ would, in our opinion, have been formed.

What if a standard commencement timeframe is omitted?
Sometimes, rather surprisingly, the Department forgets to add a commencement timeframe. If so, what is the time limit? The standard timeframes apply, ie five years to a full planning permission if the condition for commencement timeframe is omitted. The Planning (Northern Ireland) Order 1991 Article 34 “Duration of planning permission” states:

“(1) Subject to this Article, every planning permission granted or deemed to be granted shall be granted or, as the case may be, deemed to be granted, subject to the condition that the development to which it relates must be begun within—

(a) five years of the date on which the permission is granted; or

(b) such other period (whether longer or shorter) as the Department considers appropriate.

(2) If planning permission is granted without the condition required by paragraph (1), it shall be deemed to have been granted subject to the condition that the development to which it relates must be begun within—

(a) five years of the date on which the permission is granted; or

(b) such other period (whether longer or shorter) as the Department considers appropriate.

(3) Nothing in paragraphs (1) and (2) applies:

(a) to any outline planning permission;

(b) to any planning permission granted by a development order;

(c) to any planning permission granted for a limited period;

(d) to any planning permission granted for development carried out before the grant of that permission;

(e) to any planning permission granted by an enterprise zone scheme; or

(f) to any planning permission granted by a simplified planning zone scheme.”

If an outline planning permission is granted without a timeframe condition, then you have three years in which to apply for Reserved Matters and then either two years from the granting of the last of the Reserved Matters or five years from the granting of the outline planning permission in which to commence.

Upon receipt of a planning permission it is always prudent to check the dates for commencement, bearing in mind pre-commencement conditions, as the Department can either shorten or lengthen the standard timeframes.

Powers to complete development
A “technical start” or commencement to development can safeguard a planning consent, however, the Department has the power to serve a ‘completion notice’ if, for example, a site has been partially developed for some time and shows no signs of full completion. The Planning (Northern Ireland) Order 1991 Article 37 “Termination of planning permission by reference to time limit” states the following:

“(1) Paragraphs (2) to (6) shall have effect where by virtue of Article 34 or 35, a planning permission is subject to a condition that the development to which the permission relates must be begun before the expiration of a particular period and that development has been begun within that period but the period has elapsed without the development having been completed.

(2) If the Department is of the opinion that the development will not be completed within a reasonable period, it may make an order (in this Article referred to as a “completion order”) whereby the planning permission will cease to have effect at the expiration of a further period specified in the order, being a period of not less than 12 months after the order takes effect.

(3) Before making a completion order, the Department shall serve notice of its intention to make the order on the owner and occupier of the land affected and on any other person who in its opinion would be affected by the order; and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service thereof) any person on whom the notice is served so requests in writing, the Department shall afford to him an opportunity of appearing before and being heard by the Planning Appeals Commission.

(4) Where a completion order is made, the planning permission therein referred to shall at the expiration
of the period specified in the order be invalid except so far as it authorises any development carried out thereunder up to the end of that period.

(5) Where the Department makes an order under this Article it shall serve a notice on any person mentioned in paragraph (3) stating the general effect of the Order.

(6) The Department may withdraw a completion order at any time before the expiration of the period specified therein as the period at the expiration of which the planning permission is to cease to have effect; and if it does so it shall forthwith give notice of the withdrawal to every person who was served with notice of the making of the Order."

The effect of the above notice, if served, is to make invalid the planning permission at the expiration of the period specified in the notice.

Planning due diligence advice

In essence, as long as any ‘negative conditions’ that have the heading “prior to the commencement of development” have been fully complied with and, for example, the access road has been put in place then the development has, in our view, been commenced. However, because there is no ‘tick box’ means of ensuring 100% that the development has been commenced it would be prudent to also ensure that the foundations of at least one of the permitted units has been completed. Proof of when the works were started is also important and this should be documented by photographs or, a request for building control inspection etc. This evidence would help to prove that a commencement of development was started within the specified period in case there was any doubt later down the line.

Some issues to consider getting planning advice on:

- Pre-planning application guidance on potential conditions;
- A review of existing planning permissions for advice on key aspects, loopholes, pitfalls and opportunities;
- Advice on potential success of appealing conditions and lodging applications for variation of a planning condition(s);
- Advice on the potential Use Classes that may be permissible in a restricted use condition;
- Opinion on how to ensure a “technical start” has been formed;
- Advice on how not to fall foul of ‘negative’ conditions;
- Submission of Reserved Matters or a new application to extend the life of a consent; and
- Co-ordination with other specialists necessary to dispatch conditions correctly and timely.

We are grateful to WYG Planning for this article.

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BDO in Northern Ireland is authorised and regulated by the Financial Services Authority to conduct investment business.
The Institute of Professional Legal Studies is offering a 5 week course in Commercial Conveyancing.

Main Facilitator: Mr Ian Huddleston – McGrigors  
(supported by members of the Institute staff).

Issues covered in the course include Site Assembly, Building Contracts, Analysis of a Commercial Lease and Finance.

When:  
Monday 16 January 2012  
Monday 23 January 2012  
Monday 30 January 2012  
Monday 6 February 2012  
Monday 13 February 2012

Time:  
9.30am – 1.00pm

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

Cost:  
£650

Successful completion of the course will lead to a Certificate in Commercial Conveyancing from IPLS

15 CPD hours (including 3 Client Care/Practice Management) are awarded for attendance at this course.

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

Closing date for applications: Friday 16 December 2011

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

(Places are limited to 30 people)

This course is designed primarily for those who have relatively little practice experience in Commercial Conveyancing.

Commercial Conveyancing Course - Booking Form

Name: ________________________________

Firm: ________________________________

Address: ________________________________

Email Address: ________________________________

Tel. No: ________________________________  I enclose remittance of £_______________________
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INSTITUTE OF PROFESSIONAL LEGAL STUDIES

Why you should know about Electronic Disclosure

The Institute of Professional Legal Studies is offering a course on Electronic Disclosure.

When: Tuesday 22 November 2011
Time: 5.00pm – 8.00pm
Venue: Institute of Professional Legal Studies, 10 Lennoxvale, Belfast

Cost: £120

Main Facilitator: Professor Peter Lyons – CPD Training (UK)

Peter Lyons is a Barrister and Solicitor who was admitted to the Bar in Australia in 1987. He founded CPD Training (UK) in 2005.

It has been increasingly difficult for the law to keep up with technological change, and nowhere is this more evident than in the area of electronic disclosure.

But with a manifold increase in electronic documents, the fact that 90% of business documents are electronic and a natural fear of computers amongst a large section of legal practitioners and clients, the costs of litigation look like getting out of control again.

This course has been written with the assistance of His Honour Simon Brown Q.C., the pioneering e-disclosure judge in Earles v Barclay’s Bank. The programme has been designed to allay the fears of practitioners and to encourage the profession to use cost-effective and efficient disclosure procedures. It also aims to ensure that the courts in their case management role are assisted in the administration of justice.

It is a lively mixture of short presentations, group exercises, feedback and discussion sessions with demonstrations of file management and search tools from PWC.

3 CPD hours are awarded for attendance at this Course.

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

Closing Date for applications: Tuesday 15 November 2011

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

Electronic Disclosure - Booking Form

Name: 
Firm: 
Address: 
Email Address: 
Tel. No: ___________________________ I enclose remittance of £ ___________________________
New services at Law Society Library

ALL the Law by Barry Valentine BL

The Library is now in charge of subscription management and distribution of this product for our members. A leading resource of legal material for the NI lawyer, this CD contains the complete text, up-to-date and as applying to Northern Ireland, of:

- Acts (of the Northern Ireland Parliament and Assembly and Westminster Acts which apply to NI in any way)
- Orders in Council
- UK Statutory Rules of particular interest
- Rules of the Court of Judicature and County Court Rules*
- all Northern Ireland case law, relevant Irish case law dating back to 1995.

*This is the only electronic resource for Rules of the Court of Judicature and the County Court Rules.

Members wishing to subscribe to this product are invited to register for an update every six or 12 months to ensure you maintain access to current legal information.

To subscribe to ALL the Law of Northern Ireland, please complete the Standing Order Form below and return to:

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(start-up costs for new subscribers £350+VAT - £420)

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OR

I wish to receive an update every 12 months (£75 +VAT - £90)

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Tel no

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Please note the Law Society Library will issue an invoice on receipt of order.

Access to the Lexis-Nexis (LNB) Platform

The Law Society Library is pleased to announce that it has successfully negotiated a licensing arrangement with LNB which will allow members to receive electronic material directly from their LNB Legal Platform via the Law Society Library.

The LNB platform contains a vast amount of online information for practitioners and is particularly strong in historic unreported NI caselaw and precedent material, such as their very popular Encyclopedia of Forms and Precedents.

The Encyclopaedia of Forms and Precedents is the leading source of non-contentious precedents in terms of the breadth and authority of its content. It covers everything that both the specialist and generalist practitioner is likely to encounter, offering access to an unrivalled collection of precedents covering all aspects of non-contentious work. In addition to complete precedents it contains additional clauses and model letters together with guidance on the law.

Also included on the platform is the full online text of Halsbury’s Laws and Statutes, together with a vast range of full text law books, looseleafs, caselaw and journals.

Access to the database is via professional library staff who are well-experienced in efficiently retrieving specific material from the database. Material is generally despatched to members within the same or next working day.

Heather Semple, the Society’s Librarian said: “We are very pleased to be working with LNB to provide solicitors with access to the material on this database.

“Our members can now avail upon one of the premium legal online collections vicariously. “One of our most popular library services is the provision of precedents electronically and in a malleable format to enable solicitors to draft or amend a precedent on-screen according to their client requirements.

“Another very useful resource within LNB is the full text of NI caselaw going back as far as 1945.”
Experts Beware

Following a recent Supreme Court ruling in Jones v Kaney1 expert witnesses are now no longer immune from suit in relation to the evidence that they give in court or for the views which they express in anticipation of court proceedings. Stephen Burns of BDO’s Forensic Accounting Department in Belfast considers the potential implications that this judgment may have for expert witnesses.

This landmark case involved a claimant (Jones) who suffered injuries in a road traffic accident and who settled his case following a joint witness statement which was signed by the mental health medical specialists instructed for each side. Unfortunately, the claimant’s expert (Dr Kaney, a clinical psychologist), had signed the joint statement even though it did not accurately reflect her views. Jones sued Kaney alleging she had been negligent in signing the statement and had thereby forced him to settle for less than he would otherwise have received. Kaney claimed immunity from suit.

Traditionally, all expert witnesses enjoyed a general civil immunity from being sued for the evidence given at trial and this immunity from suit had previously been held to extend to the preparation of a joint witness statement for use in legal proceedings. Therefore no matter what evidence an expert provided in this context, they could not effectively be sued by their client for detriment suffered as a result of that evidence. However, by a majority of 5-2 the Supreme Court held that the immunity from suit for breach of duty enjoyed by expert witnesses in relation to their participation in legal proceedings would be abolished.

The ruling may not come as a complete surprise to those in the legal sphere following the abolishment of immunity for advocates by the House of Lords 10 years ago. Nonetheless it represents a fundamental change in the law for expert witnesses. Whilst the Jones v Kaney case related to a personal injury case, the effects are likely to be felt across the whole legal sphere from clinical negligence to corporate insolvency. So what are the most likely implications for expert witnesses and people who use their services?

Stephen Burns of BDO believes that there will inevitably be a reduction in the number of experts, where expert witness work has traditionally only formed a minor part of their practice, as their professional indemnity insurance premiums may increase as a result of the judgment. The judgment should also make potential expert witnesses take a long hard look at whether the provision of expert evidence is an area they want to get involved in. For the person who has historically only occasionally acted in this capacity the risk – both reputational and financial – may outweigh the reward.

While the implications of the judgment are wide-ranging, it seems unlikely that any floodgates will open. If an expert’s incompetence causes loss to their client then it is only reasonable that they should be held to account and wasted costs orders and disciplinary proceedings are already available for sanction in this regard. However, the new ruling should not engender unnecessary fear for expert witnesses as the test for professional negligence will still apply, so if they maintain the standards of a reasonable competent expert in their field, any claim would likely fail.

However, one area in which there may be potential difficulties in the future is in the appointment of jointly instructed experts, who owe duties to each of the parties who instruct them. As such, they might be more vulnerable to claims because they are likely to disappoint at least one of those instructing them.

In short, expert witnesses should already be aware of their responsibility to provide independent, objective advice, as their primary duty is to the court and not to their instructing party or the party responsible for their fees. Expert witnesses must now be very careful to only accept instructions when they have the relevant qualifications, training, expertise, experience and professional indemnity insurance in place before doing so.

The ruling in Jones v Kaney will only help serve as a reminder to experts to be independent and rigorous from the word go, especially if advice is sought on a matter pre-litigation. With immunity no longer providing a shield to expert witnesses, it should only help ensure that those involved perform a thorough job and take proper care over their work thus benefitting all and signalling the end of the part time amateur expert.

Stephen Burns is a Senior Manager within the Forensic Accounting department at BDO and can be contacted on stephen.burns@bdo.co.uk or 028 9043 9009.

1Jones v Kaney ([2011] UKSC 13, [2011] All ER (D) 346 (Mar))
### Recent appointments

#### A&L Goodbody

**Name:** Alastair Keith  
**Company:** A&L Goodbody  
**Position:** Associate in Corporate and Commercial  
**Role:** To advise A&L Goodbody clients on corporate and commercial transactions including mergers and acquisitions.  
**Track record:** Alastair specialises in providing corporate transactional and commercial advice and has advised on a wide range of transactions both at a national and multi-jurisdictional level, including public and private acquisitions. Before joining A&L Goodbody, Alastair spent six years at global law firm Linklaters LLP where he also spent six months seconded to Vodafone Group Legal. Alastair is a member of the Law Society of Northern Ireland, the Law Society of England and Wales and the Corporate and Commercial Lawyers Group, Northern Ireland.

**Name:** Ross Kane  
**Company:** A&L Goodbody  
**Position:** Associate, Restructuring and Insolvency  
**Role:** To advise A&L Goodbody’s clients on banking and insolvency matters.  
**Track record:** Ross was admitted to the Roll of Solicitors in Northern Ireland in 2006 and in 2011 joined A&L Goodbody’s Restructuring and Insolvency Team. He deals with all aspects of banking law and secured lending and advises a wide number of financial institutions and insolvency practitioners on the validity and enforcement of security. Ross is a member of the Law Society of Northern Ireland and Newry Junior Chamber of Commerce.

**Name:** Micaela Brunton  
**Company:** A&L Goodbody  
**Position:** Assistant in EU and Competition/Litigation and Dispute Resolution  
**Role:** To advise A&L Goodbody’s clients on procurement law matters, assist on court cases and advise clients on contentious and non-contentious construction issues.  
**Track record:** Micaela joined A&L Goodbody in 2010 and specialises in public procurement, competition and construction. Micaela has experience in assisting clients with a variety of contentious and non-contentious procurement issues including the structuring of Framework Agreements, conducting Market Soundings exercises and High Court challenges. Micaela also worked in A&L Goodbody’s Dublin office where she worked with clients such as the Health Service Executive, Electricity Supply Board, The Courts Service and Dundalk Institute of Technology. Micaela is a member of the Law Society of Northern Ireland, Belfast Solicitors’ Association and the Procurement Lawyers’ Association.

**Name:** Shirley Blair  
**Company:** A&L Goodbody  
**Position:** Associate, Employment  
**Role:** To advise and support A&L Goodbody’s clients on the full spectrum of employment law issues, including in relating to Tribunal and High Court claims, general advisory matters, corporate support and restructuring.  
**Track record:** Shirley is a senior employment lawyer with substantial contentious and client advisory experience. She specialises in defending Industrial Tribunal claims, High Court bonus cases, reference claims, restraint of trade clause cases and injunctions. She regularly advises on the dismissal of senior executives, redundancy restructuring and TUPE related matters. Shirley is a member of the Law Society in England and Wales and the Employment Lawyers’ Group (NI).

### Magennis & Creighton

Nicola Lowry and Caroline Chambers have become partners in the firm of Magennis & Creighton.

**Nicola Lowry** specialises in all aspects of Litigation, Children Order and Family work.

Nicola Lowry and Caroline Chambers have become partners in the firm of Magennis & Creighton.

**Caroline Chambers** has extensive experience in Commercial and Residential Conveyancing, Wills and Probate.

The addition of the new partners at Magennis & Creighton serves to complement the legal team within the firm which looks forward to continuing to provide a wide range of legal services within the Newtownabbey area and beyond.
On Friday 9 September 2011, the NIYSA held its annual AGM at Law Society House. The NIYSA was delighted to have its Honorary President, His Honour Judge Burgess, in attendance to keep a watchful eye on the proceedings and we are grateful for his continued support and valued advice to our Association.

Looking forward to a busy year ahead, our theme for the year will be one of ‘engagement.’

We wish to engage and interact with business and civic society, the legal profession both in Northern Ireland and internationally and with our members.

In the current climate and given the unprecedented challenges facing our profession and the wider economy, the NIYSA are committed to informing both business and civic society of the valuable role we as lawyers play within our society. We wish to seek new opportunities within emerging markets, adapt to change in existing areas of practice and reaffirm our commitment to our profession.

During the course of the year we have plans to engage with community groups, charities and the voluntary sector. In addition, we are in discussions with young accountant organisations, the Institute of Directors and NI Chamber of Commerce for a ‘Young leaders’ conference’ to take place next year.

The NIYSA plays an active role within the legal profession. We are proud of our excellent relationship with the Law Society and we look forward to collaborating through our events to promote the best of our profession.

We also are keen to engage with other members of the legal profession including the judiciary, the Bar and the Office of the Attorney-General. Indeed, the Office of the Attorney-General for NI, in conjunction with the NIYSA and the Young Bar Association, has organised a prestigious human rights lecture series which will conclude with a debate to be held at Stormont.

The NIYSA is at the heart of the European Young Bar Association (EYBA) organisation. For the past two years I was proud to be the first lawyer from Northern Ireland to serve on the Executive Committee of the EYBA and we are delighted that Lorraine Keown from our committee was elected Vice-President of the EYBA in Barcelona in June. In addition, the EYBA Spring Conference, held in Belfast in March 2011, was a huge success, demonstrating that we can play a pivotal role on the international legal stage. The NIYSA will continue to develop and promote our links with the EYBA and other international organisations, including the American Bar Association, to share ideas and solutions nationally and internationally.

The Society of Young Solicitors of Ireland celebrates its 40th anniversary this year and we look forward to building upon the strong links that exist between our Associations over the year ahead.

Finally, at the heart of our Association is our members. Through building the relationships and initiatives outlined above, we act to develop and promote our profession for our members. We have a number of high quality CPD events aimed specifically at the needs of our members, to increase their skills and to allow them to network with other young solicitors. Our social events are an important element of this and provide an opportunity to make new contacts and friends. We look forward to organising events outside of Belfast to ensure all our members can benefit from the NIYSA.
The NIYSA is committed to continuing to communicate and ensure our voice is heard on issues facing our members. We will be relaunching our website, together with greater e-communication with our members. The NIYSA is on Facebook and LinkedIn and is keen to communicate with all solicitors to ensure we represent our members on matters which concern them. We will continue to organise visits and support to trainee solicitors.

I chose to be a solicitor. I am proud to be a solicitor. The NIYSA will engage with business & civic society, the legal world and our members to ensure that we uphold and promote the virtues of our noble profession.

Conor Houston
Chairman NIYSA
The Institute of Professional Legal Studies is offering two evening sessions on Effective Financial Management for Solicitors. The course is targeted at solicitors with some responsibility for management of their firm.

The lecture on the 28th November will cover:
1. Solicitors’ Accounts Regulations to include management of Clients Monies, Risk Management and Financial Best Practice.
2. Governance Issues, Internal Control Issues and Management of Cash, Work in Progress and Debtors

The lecture on the 5 December will cover:
1. Taxation issues for a legal practice including Options for Incorporation.
2. Practice Management in a changing environment to include instilling a business development culture.

Speakers: From RSM McClure Watters will be Qualified Advisors with extensive experience in dealing with Solicitors’ practices and growing businesses

When: Monday 28 November and Monday 5 December 2011
Time: 6.30pm – 9.30pm
Venue: Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY.
Cost: £90 for each evening

On each of these evenings 3 CPD hours will be awarded.

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

Closing Date for applications: Friday 18 November 2011

Effective Financial Management for Solicitors

□ Monday 28 November 2011
□ Monday 5 December 2011
□ Both lectures

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ACCESSIBLE : PROFESSIONAL : KNOWLEDGEABLE
Assessing the Access to Justice Review

The long awaited Access to Justice review published its findings in September 2011. The report contains 159 findings and recommendations and needs to be read as a whole. This article by Les Allamby, Law Centre (NI) Director, sets out the key findings covering civil legal aid and analyses what the report is likely to mean for legal services in Northern Ireland.

Backdrop
The review team of Jim Daniell, Angela Ritchie and Catherine McClements was appointed in September 2010 and the report is the culmination of earlier agenda and discussion papers. The review team outlined its intention to meet the mantra of devising Northern Ireland solutions to Northern Ireland problems and has been true to its word. The ‘slash and burn’ approach adopted to reduce legal aid expenditure in England and Wales has been largely avoided.

The financial backcloth is laid bare with the budget for legal aid dropping from £105.2million in 2010/2011 to £75million by 2014/2015. The report acknowledges a number of initiatives already in train through the Department of Justice (DoJ) and the Legal Services Commission to reduce costs. These changes which impact on criminal legal aid in particular are designed to reduce expenditure to £80.1million by 2014/2015. The review’s recommendations are designed to meet the remaining shortfall of £5.1million by 2014/2015.

Civil Legal Aid

Scope of civil legal aid
The review recommends the removal of a number of changes to legal aid coverage but stops short of the approach adopted in England and Wales.

<table>
<thead>
<tr>
<th>TABLE 1: REDUCTIONS IN SCOPE OF LEGAL AID</th>
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<tbody>
<tr>
<td><strong>NORTHERN IRELAND</strong></td>
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<tr>
<td>Move areas of welfare and education under legal advice and assistance to contract/grant aid arrangements, subsume family matters into family help</td>
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<tr>
<td>Remove money damages (though not high level clinical negligence) from civil legal aid and advice and assistance</td>
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<tr>
<td>Limit the ability to secure legal aid to re-open private family law issues</td>
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<tr>
<td><strong>ENGLAND &amp; WALES</strong></td>
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<tr>
<td>Remove from legal aid:</td>
</tr>
<tr>
<td>• Clinical negligence</td>
</tr>
<tr>
<td>• Consumer issues and general contract</td>
</tr>
<tr>
<td>• Criminal Injuries, Compensation Authority cases</td>
</tr>
<tr>
<td>• Debt except where there is an immediate risk to the home</td>
</tr>
<tr>
<td>• Employment</td>
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<tr>
<td>• Education except for special educational needs</td>
</tr>
<tr>
<td>• Housing except where there is immediate risk to the home or housing disrepair where there is a risk to life or health and anti-social behaviour cases</td>
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<tr>
<td>• Immigration (non detention)</td>
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<tr>
<td>• Private family law except where there is domestic violence or abuse</td>
</tr>
<tr>
<td>• Tort and general claims</td>
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<tr>
<td>• Welfare benefits</td>
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<tr>
<td>• Miscellaneous cases including cash forfeiture under the Proceeds of Crime Act contentious probate issues, trusteeship and will-making</td>
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</tbody>
</table>

The report does fire a warning shot by suggesting that if the recommendations do not lead to the savings envisaged then further candidates for removal from scope will need to be considered namely, consumer issues and general contract, criminal injuries compensation, debt save where the home is at risk, immigration, tort including nuisance and injunctive relief (except in protection from harassment cases where mediation has failed) and other miscellaneous matters for example, probate.

The savings to ‘green form’ are designed to be used for areas of law traditionally picked up by the voluntary sector for example, support for social security appeals and other welfare law services under grant aid or contractual arrangements. The report anticipates any such arrangements for funding will be based on competitive tendering and open to the private profession. The report also endorses the need to sustain the Housing Rights Service’s existing representation service for people facing home repossession due to mortgage or rent arrears.

Family and children
The report does not seek immediate fundamental change to family law. On the public law side, legal aid should
continue to be available to children, parents and others exercising parental responsibility in specified cases without reference to means or merits. However, legal aid should not be granted for separate representation for each parent or others unless there is a distinct and different interest impacting on the welfare of the child. The report proposes a significant reduction in the use of counsel in the Family Proceedings Court with counsel being retained in the Family Care Centre but with greater flexibility for solicitors proceeding without counsel with fees payable adjusted accordingly. Far less use of senior counsel is proposed both in the Family Care Centre and in the High Court including examining whether it is reasonable to brief senior counsel alone. These recommendations on use of senior counsel are extended to civil cases as a whole. The report also supports the Guardian Ad Litem Agency’s wish to establish a smaller specialist group of solicitors and move away from the existing Children Order Panel.

In private law proceedings, the report urges greater use of mediation and early resolution, with legal aid changes to incentivise this. In addition, legal aid will not be available to re-open issues unless directly related to domestic violence or the safety of children.

In family law, in general, the report supports further extensions of standard fees, with cost capping and other arrangements designed to reduce payments for family work.

Finally, the review calls for a fundamental review of family justice by other interested government departments or the Law Commission. The aim is to take into account the recommendations from a similar review led by Sir David Norgrove for England and Wales.

**Money damages**
The recipe for money damages is the introduction of conditional fees alongside the implementation of Lord Justice Jackson’s review of Civil Litigation costs and the continued banning of referral fees. The discussions between the profession, insurers and the Legal Services Commission to provide an insurance based solution is acknowledged. However, without further details the report suggests instead a leap to where England and Wales is going on money damages.

Unlike money damages which will fall out of scope, the report recommends that until arrangements for money damages beds down, clinical negligence cases falling within the High Court’s financial jurisdiction should remain with legal aid.

**Early and alternative dispute resolution**
The report gives a strong welcome for early and alternative dispute resolution (ADR). In practice, the report offers a limited number of concrete suggestions for greater use. Proposals offered include introducing legislation to prevent apologies and offers of redress during Ombudsman investigations or other mediation from being used in subsequent court proceedings. Additional resources for the Prisoner Ombudsman are suggested to deal with urgent time-bound issues as an alternative to judicial review although, in practice, any changes here may also require a look at the Prisoner Ombudsman’s remit. Changes introduced to restrict the granting of legal aid for judicial review in immigration and asylum cases in England and Wales are endorsed for Northern Ireland. If implemented, this would virtually eliminate judicial review for immigration cases.

To carry ADR forward, the report proposes a co-ordinating body to promote and map ADR and address training and accreditation standards. A pilot family ADR scheme to provide on the spot mediation before court proceedings is also proposed.

**Financial eligibility**
The report recommends a tightening of financial eligibility, including benchmarking the upper income and capital limits with England and Wales; introducing a housing equity test so that equity above £100,000 is counted as capital for civil legal aid; introducing the capital limits for eligibility for people otherwise entitled because of receipt of passported benefits such as Income Support and to provide for a small up front contribution to be paid by everyone receiving legal aid save for public law children cases where there is no means-test. The report also suggests looking at Scotland’s financial eligibility rules where income rules are more relaxed but with a more tapered contribution level. This approach managed to combine increased eligibility for application without a significant increase in expenditure.

**Non-family civil cases**
A codified standard fee structure for solicitors and counsel formalised in a Remuneration Order is posited. The report notes the decision in England and Wales to reduce all fees by ten per cent and recognises that a reduction in fees may also be required in Northern Ireland. If so, the report argues for an examination of individual areas rather than an ‘across the board’ reduction.

**Quality and regulation**
The report concludes that there is an insufficient case for moving straight to contracting and best value tendering for general civil and criminal services, although the issue should be kept under review.

The report recommends an early decision from government on the Bain review on regulation, competition and complaints. The review also notes the extent of progress on alternative business models elsewhere and suggests this issue may need revisiting. Moving the Legal Services Commission’s quality assurance scheme on to a statutory footing is also recommended.
Delivery of legal aid

The report recommends moving legal aid service delivery into a division within the DoJ. Criminal and civil legal aid policy should also be brought together within the Department. The assessment of legal aid would also be brought in-house. The arrangements to ensure independence from ministers are addressed. There is also a recommendation to move civil justice responsibilities including regulation of the profession from the Department of Finance and Personnel to the Department of Justice. Finally, the creation of an interdisciplinary forum to address civil justice matters is proposed, echoing Lord Justice Campbell’s recommendation ten years earlier.

Overview

Reform of legal aid has been slow. The review is wide ranging and contains tentative costings of its proposals. There is no action plan with timelines though a task force within the DoJ and Commission is suggested to carry the work forward.

The financial eligibility proposals are controversial and collecting contributions from people on benefits may cost more to administer than the money collected. In addition, the housing equity proposal will hit older owner occupiers particularly badly and have a significant adverse equality impact on older people whose mortgages have been paid up. There is now a financial impetus to carry this work forward and the review cannily provides other suggestions for savings if the work is delayed. The ‘plan B’ has a greater negative impact on access to justice. There will be some pain. However, I suspect colleagues in England and Wales will be looking enviously at the recipe for change proposed for Northern Ireland.

Les Allamby is Director of the Law Centre and from July 2003 – July 2011 was a Legal Services Commissioner.

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**Admission:** Free  
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Email gary@gmass.com
BSA CPD Programme for 2012

The Belfast Solicitors’ Association is now working on its CPD programme for 2012.

The 2011 Programme has been highly successful and has included a number of notable speakers including Tom Frawley, the Northern Ireland Ombudsman, Mr Justice Gillen, the Attorney General for Northern Ireland, John Larkin QC (pictured below with Reg Rankin, Secretary of the BSA), Dr Gordon Anthony and Dr Jack Anderson of Queen’s University Belfast.

High court procedure, defamation and privacy, ancillary relief, the role of the Parole Commission, corporate insolvency and judicial review are amongst some of the areas covered by the Association in its CPD events for this year. Indeed the BSA provides over 20 hours of CPD training throughout the year at the most competitive rates.

Work has already been undertaken with regards to the CPD programme for 2012 and the BSA would invite anyone who would like to see a particular topic covered or would be willing to provide a talk to our membership on any area of law to contact our administrator Briege at Suite 7, Merrion Business Centre, 58 Howard Street, Belfast or email her at briege@belfast-solicitors-association.org.

All ideas and thoughts are welcome.
Further photographs of BSA Gala dinner 11 June 2011

Aiya Borghbayrua, Dina Khemlani, Kerry McCloy, Olamide Raheem and Miriam Kearney.

Miriam Kearney and Joe Kelly with Michelle and Andrew Neill.
Yvonne and John Burke.

Caroline Boston and her husband Colin Moorhead with Susan Brennan, BSA Chair.

Colin and Johanna Mitchell with Chris Sayers and Laura Kar Ling Ho.

Gaelle Berthelot, Garry and Catherine Bonner, Claire and Kevin McAteer and Brid Devlin

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ADMINISTRATION OF JUSTICE

SERIOUS ORGANISED CRIME AGENCY v SEAMUS MULLAN

Plaintiff has brought proceedings against the defendant in respect of certain properties held by the defendant which are claimed to be recoverable property within the Proceeds of Crime Act 2002. - application by defendant to stay proceedings as an abuse of process on the basis that the defendant’s inability to give instructions due to his medical condition renders him unable to effectively participate in the trial and that to continue with the proceedings would constitute a breach of his a.6 ECHR rights. - HELD that the defendant’s medical condition is not a basis for staying the proceedings and application dismissed

HIGH COURT
23 JUNE 2011
TREACY J

BUILDING AND ENGINEERING CONTRACTS

AJM ELECTRICAL LIMITED v BLACKBOURNE ELECTRICAL COMPANY LIMITED

Plaintiff claims sum of money from the defendant said to be owing on a contractual basis for works and services rendered. - application by defendant for order under the Arbitration Act 1996 s. 9 to stay proceedings on the ground that the subcontract which governed the relationship between the parties is lacking. - application to stay proceedings dismissed

HIGH COURT
22 December 2009
MCCLOSKEY J

THE LONDONDERRY PORT AND HARBOUR COMMISSIONERS v W S ATKINS CONSULTANTS LIMITED AND CHARLES BRAND LIMITED

Application for stay of proceedings pursuant to s. 9 Arbitration Act 1996. - application that the dispute which is the subject matter of this action be determined by arbitration. - first defendant provided design and consultancy and tender document preparation and management services to the plaintiff in the construction of a proposed new quay extension at the port. - second defendant is a construction contractor. - plaintiff alleges excessive settlement in an area included in the extension was caused by the breach of contract and negligence of the defendants. - plaintiff claims loss and damage. - whether the contract between the first defendant and the plaintiff incorporated an arbitration agreement. - whether acceptance of offer by conduct. - whether the first defendant took a step in the proceedings such as would bar any stay of the proceedings. - HELD that the arbitration clause was incorporated into the contractual arrangements between the plaintiff and the first defendant and that the actions taken by the first defendant did not constitute steps in the proceedings to answer the substantive claim . - Order made on behalf of the first defendant staying the proceedings and referring to arbitration

HIGH COURT
27 JULY 2011
WEATHERUP J

COSTS

NORTHERN BANK LIMITED v RHONA MARGARET GUY

Dispute about costs of an application brought by the plaintiff bank by originating summons for an order for possession of a dwelling pursuant to an order charging land made in the Enforcement of Judgments Office. - defendant is sole occupier and registered owner of the dwelling house. - sufficient equity exists in dwelling to meet the amount recoverable including plaintiff’s costs. - HELD that an order be made for legal aid taxation of the defendant’s costs and the plaintiff is entitled to add to its security its costs of the action

HIGH COURT
13 JUNE 2011
ELLISON M

CRIMINAL LAW

PROCEEDS OF CRIME AGENCY v SAYERS

Request from defendants for court to interpret a recovery order and to clarify whether that order entitled the plaintiff agency to take and sell cattle what were supplied after the date of the consent order. - defendant was seized of 2 herds of cattle. - constitution of the 2 herds differed between the dates of the the consent order and the recovery order. - defendants assert 269 more cattle were supplied to the defendants but not paid for and an amount owed to suppliers. - HELD that at the time of making the consent order the parties were fully aware that the composition of the herd would change

HIGH COURT
21 JUNE 2011
TREACY J

R V DENISE MARIE BOYD

Appeal against conviction of wounding with intent to do grievous bodily harm. - whether at trial senior counsel failed to put to the victim the contents of a criminal injury application form prepared for her and signed by her in which it is asserted that her version of events was different in a material respect from her account given to the police and in evidence at the trial. - approach to be applied where an appeal is brought on the grounds of a failure
of counsel to properly conduct an appellant’s case at trial. - impact of errors. - whether the omissions of counsel have such an effect on the trial and verdict that the conviction cannot be said to be safe. - HELD that the case did not fall into the exceptional category where they would have an effect on the trial and verdict, and the conviction is safe and the appeal dismissed.

COURT OF APPEAL
17 JUNE 2011
GIRVAN LJ, COGHLIN LJ, HART J

R V RICHARD BROWN
Appeal against conviction and sentence. - appellant convicted on a plea of guilty to unlawful carnal knowledge of a girl under 14 years contrary to s. 5 Criminal Law Amendment Act 1885. - strict liability offence. - mens rea. - constitutional principle which imposes a duty on the courts in most circumstances to import a requirement of mens rea into statutory offences where the statute is silent on the mental element necessary for the crime. - defence of offender’s belief of the age of the child omitted from the 1885 Act. - HELD that the appeal against conviction dismissed and that the original sentence of 3 years detention was manifestly excessive and should be reduced to 2 years.

COURT OF APPEAL
8 SEPTEMBER 2011
MORGAN LCJ, HIGGINS LJ, COGHLIN LJ

R V AIDAN GREW AND HILARY PATRICK MCLAUGHLIN AND R V PATRICK MACKLE, PLUNKETT MACKLE AND BENEDICT MACKLE
Two sets of appeals arising out of two trials. - in each case the appellants were convicted of fraudulent evasion of duty contrary to s. 170(2) Customs and Excise Management Act 1979. - trial judges made confiscation orders against the appellants on their consent. - whether the trial judges erred in imposing the confiscation orders. - whether the courts failed to properly recognise the effect of the Tobacco Regulations 2001. - whether the appellants were personally liable for the duty evaded and therefore could be said to have benefited from their conduct so as to make them liable for a confiscation order. - whether the sentences were unduly lenient. - HELD that the confiscation orders should stand and that the sentences should not be changed.

COURT OF APPEAL
30 JUNE 2011
MORGAN LCJ, GIRVAN LJ, COGHLIN LJ

R V KENNETH JOHN HAMILTON
Defendant charged with counts of unlawful carnal knowledge of a girl under 17 contrary to s. 5(1) Criminal Law Amendment Act 1885. - appeal against conviction on the grounds that he should have been allowed to raise a defence of reasonable belief in relation to the victim’s age, and that s. 5(1) was not applied in a Convention compliant manner. - leave to appeal against sentence on the grounds that it was manifestly excessive and wrong in principle in that he had no relevant previous convictions and the relationship was consensual. - whether gender discrimination. - HELD that none of the grounds of appeal against conviction or sentence have been made out and appeal dismissed.

COURT OF APPEAL
8 SEPTEMBER 2011
MORGAN LCJ, HIGGINS LJ, COGHLIN LJ

R V DESMOND ANDREW HEANEY
Applicant convicted of murder and sentenced to life imprisonment with a minimum tariff of 22 years. - application for leave to appeal the minimum tariff set on the grounds that it was manifestly excessive and wrong in principle. - whether this was a higher starting point case as the injuries inflicted were not extensive and/or multiple, that the attack lacked premeditation, that in the particular circumstances the pre-arming by the applicant with a knife was not an aggravating feature when set in proper context, that the applicant was still a young man who had shown a degree of contrition and acceptance of culpability after the conviction. - HELD that the minimum tariff was manifestly excessive and is reduced to 20 years. - appeal allowed.

COURT OF APPEAL
7 SEPTEMBER 2011
MORGAN LCJ, HIGGINS LJ

R V MARK FRANCIS KENNEDY
Application for leave to appeal sentences of imprisonment for common assault contrary to s.47 Offences Against the Person 1861. - first applicant sentenced to a period of nine months detention. - second applicant sentenced to a period of nine months imprisonment and 2 suspended sentences of four months imprisonment. - whether manifestly excessive. - HELD that taking all things into consideration the sentences were manifestly excessive and be reduced accordingly.

COURT OF APPEAL
7 SEPTEMBER 2011
MORGAN LCJ, HIGGINS LJ, COGHLIN LJ

R V PAUL JAMES MORRIN
Sentencing. - appeal against sentence. - appellant convicted of murder. - minimum term to be served under Life Sentences (NI) Order 2001. - aggravating and mitigating factors. - whether the trial judge had engaged in double counting when selecting a number of features as justifying a substantial upward adjustment of the minimum term. - whether the trial judge penalised the accused for contesting the trial. - HELD that the sentence was manifestly excessive and is reduced accordingly.

COURT OF APPEAL
23 JUNE 2011
HIGGINS LJ, COGHLIN LJ, HART J

R V PAUL ANTHONY MCCAUHERTY AND DERMOT DECLAN GREGORY (AKA MICHAEL DERMOT)
Appeal against conviction for terrorist related offences including conspiracy to possess explosives and firearms with intent, belonging to a proscribed organisation, using money for the purposes of terrorism and making
Selected High Court and Court of Appeal Decisions July 2011 – Sept 2011

property available for terrorism. - whether the proceedings should be stayed on the basis that each had been entrapped by the State into performing actions that constituted the offences charged. - whether evidence was reliable. - whether convictions safe, - whether the trial judge had erred in holding that the prosecution had defeated the appellant’s case of duress beyond reasonable doubt and had erred in the circumstances in drawing an adverse inference from the appellant’s failure to testify, - HELD that no grounds for appeal had been made out and appeal dismissed

COURT OF APPEAL
8 SEPTEMBER 2011
MORGAN LCJ, GIRVAN LJ, COGHLIN LJ

AN APPLICATION FOR JUDICIAL REVIEW BY DIMITRIS OLCHOV
Applicant is a recalled determinate custodial sentence prisoner whose case has been referred to the Parole Commissioners in accordance with a.28 (4) Criminal Justice (NI) Order 2008. - application for judicial review of 2 decisions in which the Parole Commissioners directed that the applicant should not be released and a further decision by which they declined the applicant’s request for a hearing before a Panel of three Parole Commissioners. - whether the decisions were unfair and unreasonable in that, amongst other reasons, they did not specify the nature or extent of the risk to the public posed by the applicant, that the decisions relied upon the applicant’s previous non compliance with licence conditions without properly taking into account the reasons for such non compliance, - whether failure to hold an oral hearing was unfair and unreasonable. - HELD that in the interests of fairness this case dictates that an oral hearing should have be heard and the decisions of the Parole Commissioners quashed

HIGH COURT
8 JULY 2011
TREACY J

R V LEON OWENS
Application for leave to appeal an extended custodial sentence imposed under the Criminal Justice (NI) Order 2008 comprising a 2 1/2 year custodial period and a 3 year licence period for the offence of assault occasioning actual bodily harm, likelihood of further offending given that the applicant was convicted of a specified violent offence. - risk to members of the public. - previous convictions. - HELD that there is no significant risk of serious harm as a result of the commission of further specified offences and appeal allowed and extended custodial sentence revoked

COURT OF APPEAL
12 SEPTEMBER 2011
MORGAN LCJ, HIGGINS LJ, COGHLIN LJ

R V SR
Renewal of application by the prosecution for leave to appeal the trial judge’s decision to stay criminal proceedings against the respondent for rape contrary to the Sexual Offences (NI) Order 2008. - trial judge stayed the prosecution because he held the respondent’s article 6 ECHR rights were breached because of unreasonable delay and the continuation of the prosecution constituted an abuse of process. - whether decision wrong at law and unreasonable. - whether stay is an appropriate remedy. - HELD that a stay as an abuse of process is not made out and the ruling was wrong in law, appeal allowed and ruling reversed

COURT OF APPEAL
13 SEPTEMBER 2011
MORGAN LCJ, HIGGINS LJ, GIRVAN LJ

R V ADAM SMYTH
Application for leave to appeal against conviction for attempted murder. - whether the trial judge misdirected the jury in relation to joint enterprise. - application for leave to admit fresh evidence. - application for leave to appeal against sentence. - HELD that appeal against conviction and sentence dismissed

COURT OF APPEAL
30 JUNE 2011
MORGAN LCJ, GIRVAN LJ, COGHLIN LJ

R V CHANG HAI ZHANG
Appeal against conviction of murder. - whether the trial judge erred in law with regard to his direction to the jury in respect of the definition of the reasonable man when considering the issue of provocation. - whether the trial judge had identified to the jury elements of assessment of the gravity of the provocation and the application of the external standard of self-control. - whether the trial judge erred in law in failing to admit expert evidence before the jury of the characteristics of an appropriate reasonable comparator for the application of the objective test of the defence of provocation. - HELD that none of the grounds have been made out and the conviction was safe

COURT OF APPEAL
24 JUNE 2011
HIGGINS LJ, GIRVAN LJ, WEATHERUP J

CRIMINAL JUSTICE AND PROCEDURE

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY NJ AND IN THE MATTER OF A DECISION OF THE SECRETARY OF STATE FOR NORTHERN IRELAND AND IN THE MATTER OF A DECISION OF THE LOCAL PUBLIC PROTECTION PANEL
Application for judicial review on the lawfulness of the Secretary of State’s decision to issue the Public Protection Arrangements Northern Ireland (PPANI) Guidance to Agencies on the basis that the Guidance breaches a.8 ECHR; on the lawfulness of the decision of the Local Area Public Protection Panel (LAPP) to categorise the applicant as a potentially dangerous person as defined within the guidance and whether the LAPP took into account irrelevant consideration. - co-operation and sharing of information between agencies under Criminal Justice (NI) Order 2008 a. 49 and 50 and the identification of relevant offenders and potentially dangerous persons.
EMPLOYMENT

TERRY ROONEY-TELFORD V NEW LOOK RETAILERS LIMITED
Appeal against decision of the Industrial Tribunal. - correctness of tribunal decision of the majority of the industrial tribunal that it did not have jurisdiction to consider her claims because she had been constructively dismissed, and as she had failed to send a written grievance to her employer before she entered her claim in the Industrial tribunal the tribunal did not have power to entertain her application. - whether the respondent’s employees in the course of a meeting deliberately manoeuvred the appellant into resigning. - whether the notice of appeal should be amended. - HELD that the majority of the tribunal erred in law by making a perverse finding that the appellant’s employers did not intend to dismiss the appellant. - appeal allowed and tribunal decision quashed and matter remitted to a differently constituted tribunal

HIGH COURT
27 JUNE 2011
COGHLIN LJ, HART J, SIR JOHN SHEIL

IN THE MATTER OF AN APPLICATION BY JAMES CONNELLY FOR JUDICIAL REVIEW AND IN THE MATTER OF A DECISION OF THE POLICE SERVICE OF NORTHERN IRELAND
Application to quash decision of the PSNI by which it detained the applicant under the Police and Criminal Evidence (NI) Order 1989 (PACE) and charged him with offences of burglary and theft. - application for order releasing the applicant from the obligation to surrender to custody at Magistrates’ Court imposed on him as a bail condition. - claim for damages in respect of his unlawful detention. - definition of continuous time. - whether this is a continuous period from the time of arrest and includes both periods when the applicant was detained in police custody after arrest and those periods during which he was admitted to bail. - HELD that periods on bail are excluded and the application for judicial review dismissed. - bail conditions upheld

HIGH COURT
5 AUGUST 2011
MORGAN LCJ, WEATHERUP J, MCCLOSKEY J

R V JONATHAN BOWE, LIAM DUFFIN AND ELIZABETH MARGARET MCCLURE
Special measures. - Crown application for anonymity orders pursuant to s.88 Coroners and Justice Act 2009 for under-cover police officers who it wishes to call as witnesses upon the trial of the defendants who are charged with the offence of possession of a firearm in suspicious circumstances in Belfast. - applications that the witness names and identifying details are withheld and removed from materials disclosed to any party, that they be permitted to use pseudonyms throughout, that they are not asked questions of any specified description and that they be screened from all persons present in the courtroom with the exception of the judge, legal representatives and the defence. - officers had expressed their fear of the...
Selected High Court and Court of Appeal Decisions July 2011 – Sept 2011

consequences of giving evidence other than in anonymised form. - applicable principles. - statutory conditions which must be met before an Anonymity Order can be granted. - HELD that all statutory conditions are not met and application fails CROWN COURT 22 OCTOBER 2010 MILLER HHJ

R V COLIN DUFFY AND BRIAN SHIVERS
Defendants charged with murder, attempted murder, possession of firearm and ammunition. - application to court to declare a No Bill on counts. - whether sufficient evidence to prove guilt. - reliance that could be placed on the DNA evidence. - HELD that cases should go to trial so that close scrutiny of the evidence can be completed and that the defendants should be put on trial on all counts CROWN COURT 17 JUNE 2011 MCLAUGHLIN J

R V JSK
Application for leave to appeal against conviction in respect of 8 counts of indecent assault on a child. - inconsistencies in complainants’ statements between those to a friend and those given in court. - whether the trial judge was correct to advise the jury that these statements could be taken into account as evidence. - manner in which the trial judge charged the jury about the weight that they should give to the evidence of the complainants. - adequacy of the trial judge’s direction on delay. - application to introduce fresh evidence. - safety of the conviction. - HELD that some of the evidence may afford a ground for allowing an appeal, that there may be some doubt about the safety of the conviction and retrial ordered COURT OF APPEAL 8 SEPTEMBER 2011 MORGAN LCJ, HIGGINS LJ, COGHLIN LJ

EXTRADITION
REPUBLIC OF POLAND V ANDRZEJ JACEK SYSLER
Application by the Republic of Poland, as the Requesting State, for the extradition of the defendant, the Requested Person on foot of a European Arrest Warrant based on the judgment of a Circuit Court in Poland. - Requested Person was sentenced to imprisonment for drug offences and the defendant had served half of the sentence on remand. - Requested Person resisted the extradition on the grounds that it would be incompatible with his human rights. - whether the Requested Person’s physical or mental condition is such that it would be unjust or oppressive to extradite him. - whether the Requested Person can produce evidence to satisfy the Court that there is a real risk of him being subjected to torture or other degrading treatment if returned. - HELD that nothing has been presented to the Court that would warrant a conclusion that it would be unjust or oppressive to extradite the Requested Person and extradition ordered to Poland RECORDERS COURT 10 JUNE 2011 GRANT HHJ

FAMILY LAW
CM V A HEALTH AND SOCIAL SERVICES TRUST
Appeal by way of case stated from the Family Proceedings Court. - where there are ongoing proceedings under a.44 of the Children Order and the court has adjourned those proceedings by way of an Interim Secure Accommodation Order, whether the court has jurisdiction to make a further Interim Secure Accommodation Order on the adjourned date where the statutory criteria are established but the child has absconded in the meantime and is not present in court on the adjourned hearing date by the Guardian and the child’s legal representatives are present. - need for the presence of the child when the court is considering making a Secure Accommodation Order. - HELD that both Guardian and solicitor would need to advise a child and obtain instructions in order to sufficiently protect a child in these type of proceedings. - Court can only proceed without the presence of a child in exceptional circumstances COURT OF APPEAL 7 SEPTEMBER 2011 MORGAN LCJ, HIGGINS LJ, COGHLIN LJ

H AND P (RESIDENCE APPLICATION)
Application under a. 8 Children (NI) Order 1995 brought by a father for a residence order in respect of his children. - father from an African country and mother, who is now deceased, was from Northern Ireland. - residence order in place settling the children with their maternal uncle who opposes the application for residence from the father and proposes there should be shared residence between himself and the father. - maternal uncle seeks a continuation of a prohibited steps order preventing the children from being removed from the jurisdiction without the leave of the court. - legal principles in relation to residence and the prohibited steps applications. - family structure. - welfare checklist. - HELD that the father’s application for a residence order be granted and prohibited steps order be continued HIGH COURT 14 JULY 2011 STEPHENS J

JAKUN AND DAWID (PSEUDONYMS) (NO.2) (APPLICATION FOR DIRECTIONS TO FACILITATE THE ENFORCEMENT OF A POLISH COURT ORDER)
Proceedings under Brussels II revised to facilitate the enforcement of an order of a Polish court which determined that 2 children were to live with their father in Poland as opposed to continuing to live with their mother in Northern Ireland. - Court had given a direction facilitating the children’s travel to Poland with their father on a particular date,
which had not happened due to resistance from the children. - nature of the contact that should now take place in Northern Ireland between the children and their father so as to facilitate the enforcement of the Polish court. - mediation and agreement for contact. - whether parents are preventing implementation of court order. - previous harm to the children and missed opportunities. - HELD that a programme for steady and sustained build up of contact be directed and maintained

HIGH COURT
30 JUNE 2011
STEPHENS J

MARGARET ANNE MCVEIGH V PATRICK JAMES MCALEER

Circumstances in which a party who has signed a written agreement dividing matrimonial property, which has been made a Rule of Court, can be successful in having that agreement set aside. - summons for ancillary relief which was the subject of a Financial Dispute Resolution Hearing at which the parties were given an indication of the case outcome. - both parties signed a consent order. - whether there was material non-disclosure, fraud or misrepresentation, a “Barber event”, undue pressure or influence or negligence of a party’s legal team. - HELD that there are no grounds on which the agreement can be set aside

HIGH COURT
18 AUGUST 2011
BELL M

NORTHERN HEALTH AND SOCIAL CARE TRUST V B AND H

Child sustained non-accidental injuries. - identification of pool of perpetrators. - mother and father both deny injuring their child. - HELD that both parents failed to protect the child from harm and that each knew the child was suffering at their own or other’s hands. - ALSO HELD that the child should not be placed by the Trust with her paternal grandparents who were unlikely to be able to keep the child safely away from her parents

HIGH COURT
30 JUNE 2011
WEIR J

JOHN SMITH (PSEUDONYMS)

APPLICATION FOR BAIL

Application for bail. - interaction between bail applications and family law. - need to obtain information from Social Services in advance of a bail application to ensure that the interests of children are properly taken into account. - child protection, threshold for state interference and the impact of further offences on children. - examples of the way in which the interests of children can impact on the grant or refusal of bail or on the conditions to be applied if bail is granted. - facts in relation to the bail application. - sequence in relation to the progress of the bail application. - HELD that the risk to the applicant’s child and partner can be met with the imposition of stringent bail conditions and bail granted accordingly

HIGH COURT
14 JULY 2011
STEPHENS J

ULSTER BANK LIMITED V RAYMOND ACHESON

Application by plaintiff for summary judgment under o. q14 RCJ. - plaintiff claims £800,000 due on foot of a guarantee entered into between the parties together with interest from the call in of the guarantee. - defendant provided the plaintiff with a personal guarantee in respect of borrowings of a limited liability company. - interpretation of guarantee document which refers to the defendant’s company as Euro Construction Company Limited as opposed to Euro Construction Corporation Limited. - defendant denies liability under the guarantee. - whether this is a matter of mistake. - whether, to give commercial sense to the guarantee, it should be interpreted as to refer to the Corporation and not the Company. - whether sufficient information before the Court to make such an interpretation. - HELD that the guarantee is effective to provide for the liability of the defendant in respected of the indebtedness of Euro Construction Corporation Limited and that the Corporation is indebted to the plaintiff for a sum of £800,000 plus interest on foot of the guarantee and judgment made accordingly

HIGH COURT
8 FEBRUARY 2011
WEATHERUP J

HUMAN RIGHTS

IN THE MATTER OF AN APPLICATION BY JR54 FOR JUDICIAL REVIEW

Judicial review against the PSNI and North West Regional College out of a decision by the College to uphold its own decision to refuse a work placement on the applicant’s dental nurse course because of concerns prompted by the disclosure of a 2006 caution on an Enhanced Disclosure Certificate (EDC). - whether disclosure of the caution breached the applicant’s a.8 ECHR rights. - PSNI admitted the disclosure of the caution was in
Selected High Court and Court of Appeal Decisions July 2011 – Sept 2011
MEDICINE

AN APPLICATION FOR JUDICIAL REVIEW BY JR52
Applicant was in receipt of psychiatric and psychological care and treatment. - Trust ceased offering services when the applicant assaulted a nurse and behaved in an aggressive manner. - whether the removal and failure to restore the pre-existing services was unlawful. - clinicians now agree that the applicant would be harmed if the pre-existing services would be offered and that support should be offered instead. - HELD that the decision on who should provide the support was an issue for clinical judgment and was not within the remit of the court and application dismissed
HIGH COURT
8 JULY 2011
TREACY J

NEGLECT

A AND B BY C (THEIR MOTHER AND NEXT FRIEND) V A HEALTH AND SOCIAL SERVICES TRUST
Negligence. - appellants were twins successfully born to their mother following successful IVF treatment. - mistake made by the Trust resulted in their skin colour being different from their parents. - legitimate expectation of the parents to produce children with the same ethnic characteristics as their own. - applicants claim they have been subject to abusive and derogatory comments causing them emotional upset and affecting their quality of life. - whether the trial judge was wrong in concluding that their claim against the Trust be dismissed. - whether there existed a duty of care to the class of persons of whom the plaintiff is one. - whether breach of duty of care occurred. - whether causal connection between the defendant’s conduct and resultant damage. - whether the damage was sufficiently foreseeable. - HELD that the plaintiffs have suffered no compensatable wrong and appeal dismissed
COURT OF APPEAL
24 JUNE 2011
MORGAN LCJ, GIRVANLJ, SIR JOHN SHEIL

PRISONS

IN THE MATTER OF AN APPLICATION BY BRENDAN CONWAY FOR JUDICIAL REVIEW
Lawfulness of full body searching of prisoners who are being discharged on acquittal or on discharge following completion of their sentence. - effect on operational security within prisons if full body searching of prisoners on final discharge was stopped. - HELD that there are compelling, convincing and subsisting security needs which justify such full body searching
HIGH COURT
3 JUNE 2011
TREACY J

IN THE MATTER OF AN APPLICATION BY JAMES DAVIDSON FOR JUDICIAL REVIEW
Appeal against decision of Judge’s refusal of the appellant’s application for judicial review of the decision of the Deputy Governor of HM Young Offenders Centre cancelling a period of temporary home leave previously granted to the applicant. - applicant allegedly involved in the supply of drugs to the Centre while on previous temporary home leave. - appellant requested that the respondent provide evidence. - whether procedural fairness required that the appellant should be entitled to know the information on which the decision was made and have an opportunity to respond to it. - whether the applicant had legitimate expectation in light of the fact he was initially assessed as suitable for temporary release. - risk of harm or danger to others. - HELD that the appellant has not succeeded in demonstrating that the decision was taken in a manner which procedurally unfair and appeal dismissed
COURT OF APPEAL
6 SEPTEMBER 2011
MORGAN LCJ, HIGGINS LJ, SIR JOHN SHEIL

PROCEDURE

LIAM HOLDEN, PERSONAL REPRESENTATIVE OF PAULINE BOWDEN (DECEASED) V THE WHITEROCK HEALTH CENTRE
Service of writ. - plaintiff issued a Writ against defendants alleging medical negligence following the death of his wife following an accidental overdose of prescription medicine. - whether the Writ was properly served on the second named defendant. - application for an order declaring that the Writ had not been duly served on the second named defendant and should be set aside. - application in response for extension of time for the service of the Writ under RCJ O.6 r.7. - what constitutes good personal service. - whether validly effected by personal service, by ordinary first class post at last usual known address, or by insertion through letterbox of usual or last known address. - HELD that the Writ was not been validly effected under the RCJ and application for extension of time refused
HIGH COURT
21 SEPTEMBER 2011
BELL, M

PROCEEDS OF CRIME

PROCEEDS OF CRIME AGENCY V SEAN GERARD HUGHES AND OTHERS
Application by joint receivers for directions pursuant to s.251 Proceeds of Crime Act 2002 as to the exercise of their functions with regard to the interim receiver order and an order from the bank regarding the sale of property. - whether the bank is obliged to hold monies which have been deemed recoverable property by the interim receiver to the order of the
Selected High Court and Court of Appeal Decisions July 2011 – Sept 2011

interim receiver pending the determination of the recovery proceedings or whether the bank is free to deal with the proceeds of sale of the lands. - HELD that it would not be appropriate to release property deemed recoverable property by the interim receiver at this stage and direction made accordingly
HIGH COURT
29 JUNE 2011
TREACY J

PUBLIC PROCUREMENT

RUTLEDGE RECRUITMENT AND TRAINING LIMITED AND DEPARTMENT FOR EMPLOYMENT AND LEARNING V DEPARTMENT OF FINANCE AND PERSONNEL
Application by the Department for Employment and Learning (DEL) for an order pursuant to r. 47G of the Public Contracts Regulations 2006 terminating the requirement imposed by r. 47G(1) whereby the Department is currently precluded from entering into any contract for the provision of training services under a DEL training programme in Foyle. - plaintiff challenges the legality of the non-award of a contract to the plaintiff following a procurement process. - whether the decision was unfair. - whether there was manifest error in tender evaluation. - whether there was unlawful contract award criteria. - whether there was disproportionality and want of objectivity in the scoring methodology. - whether there were manifest errors in the scoring of the plaintiff’s tender. - HELD that the Department’s application succeeds and an order is issued accordingly
HIGH COURT
22 JUNE 2011
GIRVAN LJ

LIMITED AND ANGO IRISH BANK CORPORATION LIMITED
Commercial leases. - plaintiff claims that the first defendant defaulted in the payment of rent, service charges, insurance and electricity charges under the leases, and that the leases become forfeited to Odyssey Pavilion Limited so that it is entitled to possession of that unit. - claims for rent, rent interest and mesne profit amount to £5.8 million. - whether there were meetings between the plaintiffs and defendants at which discussions took place to authorise or approve a contractual arrangement between tham for the suspension, waiver or forgiveness of rent in exchange for the first defendant taking on development and management responsibilities in respect of various units. - estoppel. - whether the contractual position has been varied or modified. - HELD that the internal thinking of one of the directors which was not recorded or minuted or sanctioned by an appropriate corporate authorisation did not form and could not form the basis of a contract in law and that the defendant has not proved that there was a separate binding contractual arrangement whereby one party was released from its contractual obligation. - plaintiffs are entitled to recover rent on foot of the leases
HIGH COURT
22 JUNE 2011
GIRVAN LJ

SWIFT ADVANCES PLC V CONOR MAGUIRE AND MARTINA ADAMS
Plaintiff obtained an order for possession against the first defendant for dwelling house on foot of a second mortgage on the property the payments on which the first defendant had failed to keep up. - second defendant applied to the court for an order to stay or suspend execution of the order for possession. - whether the second defendant can prove that the register of titles is conclusive evidence of the title shown on that register save as otherwise provided for under the Act. - on second defendant whose name does not appear on that title to show that she has an interest capable of binding the plaintiff. - whether there was actual occupation of the property at the time the mortgage was taken out. - whether the defendant can show an equitable interest in the property and what the extent of that interest was. - HELD that the defendant is entitled to one half of the net equity in the premises
HIGH COURT
6 SEPTEMBER 2011
DEENY J

SPORT

IN THE MATTER OF AN APPLICATION BY HUBERT WATSON (ON BEHALF OF DOLLINGSTOWN FOOTBALL CLUB) AND IN THE MATTER OF THE DECISION OF AN INDEPENDENT ARBITRATION PANEL HANDED DOWN ON 13 JULY 2011
Application under the Arbitration Act 1996 on behalf of Dollingstown Football Club for leave to appeal from an award from the Independent Arbitration Panel. - applicant is a football club which played a match in the Mid-Ulster Football League (MUFL) against Tandragee Rovers Football Club subject to the jurisdiction of the Irish Football Association (IFA). - Tandragee formed the opinion that the applicant had played an ineligible player who had not been registered with the Dollingstown Club and lodged a protest with the MUFL which was appealed to the IFA. - IFA Player Registration Regulations. - relationship between sporting arbitrations and the legal system. - whether the jurisdiction of the court has been effectively excluded. - perverse findings of fact as a point of law arising out of an award by an Arbitration Panel. - whether a valid distinction can be drawn between the transfer of a player and registration of a player. - estoppel. - HELD that application dismissed
HIGH COURT
19 SEPTEMBER 2011
COGHLIN LJ

REAL PROPERTY

ODYSSEY PAVILLION LLP (IN ADMINISTRATION) AND SHERIDAN MILLENIUM LIMITED V MARCUS WARD

Missing Wills

Re: Mary Rosaleen McCombe (deceased)
Late of: 69 Portadown Road, Tandragee, Craigavon, County Armagh BT62 2JU
Date of Death: 16 December 2010
Would any person having knowledge of the whereabouts of a Will made by the above named deceased please contact:
Watson & Neill
Solicitors
23 High Street
Lurgan
Craigavon
County Armagh    BT66 8AH
Tel: 028 3832 5111
Fax: 028 3832 7319
Email: watsonandneill@aol.com

Re: Miss Mary Ellen Mills (deceased) and Miss Elizabeth Philomena Mills (deceased)
Late of: 38 Hill Street, Ardglass, Downpatrick, County Down
Both died on: 16 April 2011
Would any person having knowledge of the whereabouts of a Will of either of the above named deceased please contact:
Peter Stewart
Solicitor
King & Boyd
Solicitors
37 St Patrick’s Avenue
Downpatrick
County Down    BT30 6DW
Tel: 028 4461 2003
Fax: 028 4461 5215
Email: ursula.quinn@kingandboyd.co.uk

Re: Robert Deane (deceased)
Late of: 10 Pine Hill, Clogher, Lisburn BT27 5PL
Date of Death: 17 December 2010
Would any person having any 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
Email: law@wgmaginess.com

Re: Thomas Kevin Mailey (deceased)
Late of: 1 Mount Eden, Limavady, County Londonderry BT49 ORP
Date of Death: 2 July 2011
Would any person having any knowledge of the whereabouts of a Will for the above named deceased please contact:
Keith Leighton
Martin King French & Ingram
Solicitors
52 Catherine Street
Limavady
County Londonderry    BT49 9DB
Tel: 028 7776 2307
Fax: 028 7776 6232

Re: John Hewitt
Late of: 28 Springhill Drive, Damolly, Newry, County Down
Date of Death: July 2008
Would any person having any knowledge of the whereabouts of a Will made by the above named deceased please contact the undersigned as soon as possible:
Simon Casey
Casey & Casey
Solicitors
‘Legal House’
25/27 Lower Catherine Street
Newry
County Down    BT35 6BE
Tel: 028 3026 6214
Fax: 028 3026 0999
Email: s.casey@caseysolicitors.co.uk

Re: Sarah (otherwise known as Stella) Campbell (deceased)
Late of: 12 Father Mulvey Park, Londonderry BT48 9EE
Date of Death: 11 December 2010
Would any person having knowledge of the whereabouts of a Will made by the above named deceased please contact:
Brendan Kearney & Co
Solicitors
4 Clarendon Street
Londonderry    BT48 7ES
Tel: 028 7136 6612
Fax: 028 7137 1845

Re: Sidney Uprichard (deceased)
Late of: 14 Lennox Mews, Carrickfergus, County Antrim BT38 7HZ
Date of Death: 15 September 2011
Would any person having knowledge of the whereabouts of a Will made by the above named deceased please contact:
Reid, Black & Co
Solicitors
Six Mile Chambers
59 Main Street
Ballyclare
County Antrim     BT39 9AA
Tel: 028 9335 2221
Fax: 028 9335 4102
Email: karen@reidblack.com

Re: David Thompson (deceased)
Late of: 4 Carolhill Drive, Bangor, County Down
Date of Death: 21 March 1984
Would anyone having any knowledge of the whereabouts of any Will made by the above named deceased please contact as soon as possible:
Jacqui Withers
Wilson Nesbitt
Solicitors
33 Hamilton Road
Bangor
County Down     BT20 4LF
Tel: 028 9127 8177
Fax: 028 9127 8199
Email: jwithers@wilson-nesbitt.co.uk

Deeds

Folio: 1378
County: Londonderry
Registered Owner: Catherine Carton
Lands of: Gortnaran, Barony of Tirkeeran, County Londonderry.
(Gorse Road, Gortnarane, Killaloo, County Londonderry)

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.

Kelly & Corr
Solicitors
2c Clarendon Street
Londonderry
BT48 7ES
Tel: 028 7126 5253
Fax: 028 7126 2226
Email: mark@kellyandcorr.co.uk

Folio: 134490L
County: Down
Registered Owner: Zio Restaurants Ltd
Lands of: 96/98 Frances Street, Newtownards, County Down

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.

Johns Elliot
Solicitors
40 Linenhall Street
Belfast BT2 8BA
Tel: 028 9024 6881
Fax: 028 9024 8236

Folio: DN19881
County: Down
Registered Owner: Joseph McGrath
Lands at: 26 Cargagh Road, Annacloy

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.

Fionnuala Mallaghan
Flynn & McGettrick
Solicitors
9 Clarence Street
Belfast BT2 8DY
Tel: 028 9024 4212
Fax: 028 9023 6490

Folio: AN107854L
County: Antrim
Registered Owner: Patrick Burns
Lands of: 33 Nansen Street, Belfast

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

Rosemary Connolly
Solicitors
2 The Square
Warrenpoint
County Down BT34 3JT
Tel: 028 4175 3121
Fax: 028 4175 3141
Belfast BT2 8DY
Tel: 028 9024 4212
Fax: 028 9023 6490

Folios: 26865 & 26866
County: Tyrone
Registered Owner: Michael O’Hagan
Property at: Binnafreaghan, Barony of Strabane Upper and County of Tyrone

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

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

Carmel O’Meara & Co
Solicitors
32 Irish Street
Dungannon
County Tyrone BT70 1DB
Tel: 028 8775 2455
Fax: 028 8772 2386

Folio: 8435
County: Down
Registered Owner: William F Uprichard
(deceased)
Late of: Elmfield, Gilford, County Down
Date of Death: 8 February 1949

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.

Simmons, Meglaughlin & Orr LLP
Solicitors
20 Northland Row
Dungannon
County Tyrone BT71 6BL
Tel: 028 8772 2016
Fax: 028 8772 3398

Re: Peter Joseph McCrory and Eleanor McCrory

Property at: 100 Dunluce Avenue, Belfast

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

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

Kevin McGuigan
Solicitor
Meyer McGuigan
Solicitors
40 John Street
Legal Secretary seeking

Legal secretary with 20 years’ experience, who works from home, seeks part-time work. All areas of law covered but specialises in Plaintiff and Defence litigation. Fast, efficient, reliable service with full CV and references supplied. Has own car for convenience of collecting and returning work, if required.
If interested please telephone Diane on 07725 740 753.

Notice of Intention

Notice of Intention to Apply for Grant in the State of Queensland, Australia

After 14 days from today an application for a Grant of Letters of Administration of Intestacy of Sarah Lappin (also known as Sadie McBride and Sadie Lappin) late of Crana Nursing Home of 46 Fleming Road, Herston in the State of Queensland and once of 78 Helioplis Parade, Michelton in the State of Queensland, deceased, will be made by Zeke David Bentley to the Supreme Court at Brisbane.

You may object to the Grant by lodging a caveat in that registry.

Lodged by:
Aidan Quinn
Solicitor
18 Thomas Street
Dungannon
County Tyrone BT70 1HW
On behalf of:
Irish Bentley Lawyers
39 Leopard Street
Kangaroo Point in the State of Queensland
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  - gm@bluechiptitle.eu
  - www.bluechiptitle.eu

  **Derek Young**
  - tel +44 (0) 7763924935
  - dy@bluechiptitle.eu
  - www.bluechiptitle.eu

- **Telephone or Email Underwriting Enquiries**

  To discuss matters directly with our expert underwriting team please contact our Glasgow office:

  **First Title Insurance plc, Suite 5.1, Turnberry House, 175 West George Street, Glasgow, G2 2LB**

  **0141 248 9090**
  - scotinfo@firsttitle.eu
  - www.firsttitleinsurance.eu
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