THIS MONTH

Car hire - to be or not to be?
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- e: michael.blair@fgspartnership.com

**Louise Williams**
- t: +44 (0) 28 9023 4343
- e: louise.williams@fgspartnership.com
INDEX SUMMER 2010

04 Cover Story:
Car hire - to be or not to be?

07 Message from the President
12 Ready to step up to the County Court?
14 Party Structures
19 The Equality Act 2010
21 Law Society Annual Conference
24 New look E-nformer launched
29 Guidance on oaths
37 High Court and Court of Appeal Decisions
41 Library update – package holidays and tour operators

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Copy deadline for Sept/Oct Edition:
Monday 27 September 2010
Car hire - to be or not to be?

The Northern Ireland High Court has recently had to deal with the ability to recover car hire charges from the at-fault party’s insurers, particularly where there is the involvement of an Accident Management Company (AMC). The cases typically have the following features:

- There is a road traffic accident whereby the plaintiff is not at fault.
- The plaintiff’s car is damaged and requires repair and a replacement car is then required.
- The plaintiff hires a car under a Credit Hire Agreement (usually arranged via the AMC).
- The plaintiff does not pay for the hire but signs an agreement to allow the Credit Hire Company pursue the Third Party for the expenditure caused.
- The amount claimed by the plaintiff is disputed as being excessive and unreasonable.

The main issue is that the plaintiff gains the benefit of receiving a replacement vehicle but never actually has to pay for the use of the vehicle. For this benefit an additional charge is included in the overall hire rate charged.

Can the plaintiff recover the full hire charge amount?

This was addressed by the House of Lords in Dimond v Lovell [2000] UKHL 27 whereby the court found that some deductions must be made for the additional benefits received by the plaintiff. How this is to be calculated was not made clear, but essentially the tortfeasor should not be faced with paying for additional benefits received by a plaintiff.

The case had all the factors as detailed at the start of this article and their Lordships accepted that it was perfectly reasonable for Mrs Dimond to use the services of the AMC. Lord Hoffman, giving the main judgement, stated in conclusion:

‘… The hiring contract does not distinguish between what is attributable simply to the hire of the car and what is attributable to the other benefits. But I do not think that a court can ignore the fact that, one way or another, the other benefits have to be paid for.’

Thus, Mrs Dimond could not recover the costs for the additional benefits provided by the Car Hire Agreement. Their Lordships, albeit obiter, did suggest that the common sense approach would be to allow the plaintiff to recover the ‘spot-hire’ rate in respect of the vehicle. This would require calling evidence to establish what the fair market price would be. Should this be less than the actual hire charge claimed then the relevant deduction would be required.

This is possibly a dogmatic approach to the duty to mitigate one’s loss. For it is implicit from this judgment that the plaintiff must satisfy himself/her that the rate charged is reasonable and secondly must be in a position to pay the cost of hire upfront regardless of the risk of recovery through litigation.

Are the additional costs of the benefits ever recoverable?

The case of Lagden v O’Connor [2003] UKHL 64 gave the court the opportunity to consider the impecunious plaintiff. The facts were similar to those in Dimond but concerned a plaintiff who, it was accepted was impecunious, and as a result had no option but to use the services of a Credit Hire Company. Their Lordships held unanimously that this was the distinguishing feature from the decision in Dimond. The judgement established that where it is proven that the plaintiff is impecunious then it follows that it is reasonable for the plaintiff to use the services of a Credit Hire Company. This is not a case of betterment but where the benefits are incidental to the loss sustained and therefore cannot be distinguished for the purpose of applying a deduction.

Their Lordships rejected the argument that this would open the floodgates to small claim litigation, and implied that the onus is on the insurance companies to derive a simple procedure of enquiry to establish whether the plaintiff is impecunious. As Lord Nicholls stated in Lagden para 7:

‘In the case of the impecunious plaintiff someone has to provide him with credit, by incurring the expense of providing a car without receiving immediate payment, and then incur the administrative expense involved in pursuing the defendant’s insurers for payment.’

What is an impecunious plaintiff?

The court in Lagden failed to define ‘impecunious’ but recognised that it will be a matter to be considered case by case and the taking into account the plaintiff’s true ability to pay up-front for the car hire having regard to the plaintiff’s financial priorities.

Essentially, the plaintiff engages the services of the Credit Hire Company. The invoice is raised and forwarded to the third party’s insurers, who then object and the plaintiff will then raise the defence of being impecunious. This will then lead to enquiries being made to which the plaintiff no doubt will provide evidence of his/her financial position. The defendant must then show that the plaintiff had a choice and chose a more costly route. (See comment of Stephens J at para 9 in Gilheaney v McGovern et al [2009] NIQB 38).

Thus, practitioners when seeking to recover car hire costs will be well advised to enquire into their client’s financial stability before advising him/her to enter into a Credit Hire Agreement for car hire.

Has the plaintiff mitigated his/her loss?

Stephens J in Gilheaney v McGovern [2009] NIQB 38 succinctly addressed this issue when he said at para 12:

‘… Prima facie, the plaintiff is entitled to the rate which he paid. Thereafter, the burden is on the defendant to show in the particular circumstances that it would not have been reasonable to use that particular credit hire company and that the reasonable course would be to use another
company which charged a lower credit hire rate. Another way to articulate the same proposition is that a reasonable rate is not necessarily the cheapest.’

In Gilheaney the plaintiff was an 18 year old student studying for his A-levels. The plaintiff held a part time job earning approximately £70 - £90 a week which was used to run and maintain his car. The plaintiff was impecunious. He had no choice but to use a Credit Hire Company. The plaintiff had been referred to Crash Services through his insurers Quinn Direct. He made no other enquires as to the availability of other companies offering a similar service. The car hire charge was £42.00 per day but the defendants contended that another company, Reliable Cars Limited, would have provided the same service at £32.75.

The plaintiff accepted that he did not price around. Had he known of Reliable Cars Limited, the court stated that he ought to have used that company. However, the defendants failed to adduce any evidence on the issue of whether it would have been easy for the plaintiff to have found out about Reliable Cars Ltd e.g. by referring to Yellow Pages or by an internet search. Stephens J therefore concluded as follows at para 21:

‘… Such evidence may be forthcoming in other cases and if it is then even for those facing exams it might be established that such a comparative search of the market place would not be particularly arduous or time consuming. However in this case, absent such evidence and with particular emphasis on the fact that the plaintiff was in the middle of his “A” level exams, I conclude that the defendants have not established that it was unreasonable for the plaintiff to use Crash Services.’

A plaintiff must also be aware to the necessity of a hire vehicle. In Kelly v Mackle [2009] NIQB 39 the plaintiff owned an 8-seater taxi which was damaged in an accident. The plaintiff via Crash Services arranged for a replacement vehicle costing £227 per day. It transpired that the plaintiff only used the eight-seater taxi three or four days a week and the taxi’s earning capacity was £300 per week. The plaintiff in his own evidence accepted that had he known the true costs of the hire he would not have dreamt of entering into the agreement. Stephens J concluded at para 19:

‘I conclude that the plaintiff is not entitled to charge against the defendant the claimed cost of hiring the replacement vehicle for the purposes of the taxi business when the claimed cost is many times the gross income. If as here the plaintiff chooses to be extravagant that extravagance is not at the expense of the defendant. I find that the venture that was entered into was economic folly.’

Instead, the learned Judge awarded the plaintiff general damages for the loss of his vehicle. The judge awarded £55 per day as a reasonable charge but did suggest that a differing method of calculating damages could be based on financial loss. In other words, the eight-seater taxi was off the road for five weekends at a loss of £300 per week, total loss being £1,500. Off course this view would not apply where a hire vehicle which is reasonably priced enables mitigating the overall loss of earnings.

In any event, one must be alert to the strict interpretation being adopted by the court when it comes to the plaintiff’s use of a hire car in particular when there exists a Credit Hire Agreement. I am reminded of the statement made by Lord Nicholl’s in the case of Dimond at para 6:

‘The law does not assess damages payable to an innocent plaintiff on the basis that he is expected to perform the impossible. The common law prides itself on being sensible and reasonable. It has regard to practical realities. As Lord Reid said in Cartledge v E Jopling & Sons Ltd [1963] AC 758, 772, the common law ought never to produce a wholly unreasonable result.’

The final aspect of mitigation concerns the availability of a courtesy car under the non-fault party’s own insurance. The obligation to use such a benefit is aptly addressed by Nicholson LJ in McMillen v Gibney [1999] NIQB 1 at para 5:

‘… a tortfeasor cannot require the injured party to invoke his contract with his insurers in order to mitigate his loss.’

Therefore, a plaintiff is not obliged to invoke any contractual benefit under his/her policy of insurance even if by doing so the result would be to reduce the amount claimed from the at-fault party’s insurers. This analogy has become complicated by the ever narrowing of the relationship between insurers and AMC. In Salt v Halley [2009] NIQB 69 the plaintiff was insured with Open & Direct who as one of its policy benefits provided the insured with a courtesy car. The plaintiff after her accident was referred to MIS Accident Management Company who duly arranged for a hire car. For this benefit the plaintiff paid an additional premium being a ‘Claim line Fee’ which in effect turned out to be a self-standing insurance policy issued by MIS Ltd. The documents provided to the Policy Holder included documents from both Open & Direct and MIS Ltd.

The effect was when the plaintiff had a no-fault accident she would report it to her Claims Helpline. At this stage, her case is identified as a no-fault accident and her details are then passed to MIS Ltd, the plaintiff not being aware of the separate identities between her insurers and MIS Ltd. It is then MIS Ltd who arrange the usual repairs and replacement vehicle and follow the typical procedures akin to all cases in this article.

The result was that the plaintiff was not advised of any alternative option but to enter into a Credit Hire Agreement for car hire and thereby putting herself at risk of not recovering such costs. Stephens J at para 25 stated:

‘They [MIS Ltd] had failed to inform her about the terms of her own insurance policy and the availability of a courtesy car which would have avoided exposing her to any of those personal liabilities in circumstances where they knew that a courtesy car was available to her and where they also had means of acquiring such knowledge through making inquiries of the plaintiff, or of Open and Direct...’
Insurance or of Prestige as to whether the plaintiff was entitled to a Courtesy Car.’

Stephens J held that the plaintiff as a result had failed to mitigate her loss and stated at para 18:

‘If she had been aware of the correct factual position she would have availed of the courtesy car and would not have hired the replacement car.’

The basis for the decision was that due to the close relationship between MIS Ltd and the plaintiff’s insurers that MIS Ltd took on the role of agent for the plaintiff and as agent were obligated to act in the best interests of the plaintiff. As Stephens J explained at para 28:

‘… If the plaintiff has no obligation, in so far as the tortfeasor is concerned, to avail of her contractual rights on foot of her insurance policy to a courtesy car, then her agent, Motorists Insurance Services Limited/Independent Car Hire Limited had no obligation, in so far as the tortfeasor is concerned to do so on her behalf. That is however a different question than the question as to whether her agent Motorists Insurance Services Limited/Independent Car Hire Limited had an obligation to the plaintiff.’

As MIS Ltd knew that courtesy car was available then they should have advised the plaintiff to avail of such service. The consequence was that MIS Ltd could not recover from the defendant but would also not be able to recover from the plaintiff.

Summary

In summary, one should firstly establish the spot-rate for the hiring of the vehicle. Then one considers if the plaintiff is impecunious. If so, the full costs of a Credit Hire Agreement will be prima-facie recoverable otherwise the plaintiff will only recover the spot-hire rate. I say prima-facie because in either case the issue of reasonableness must always be considered. This was evident from the case of Kelly, wherein another question must be asked and that is usage of the vehicle. If the plaintiff only uses the vehicle 2 days a week, then they will only recover 2 days hire and so forth. However, if the hire of the vehicle becomes economic folly the ability to recover may be severely reduced. The resolution will again come down to reasonableness and the duty to mitigate.

The innocent victim in the aftermath of an accident is inundated by companies wanting to help them with their ordeal. It is this person who is only too pleased to sign a Credit Hire Agreement without thought nor concern as to what the hire rate is. This was all too evident in both Gilheaney and Kelly. As a result, it is this person who is liable to be forced to give evidence in court as the insurances companies battle between themselves in a hope to recover the Credit Hire costs.

The new initiative being launched by the Law Society is a welcome step in the right direction. The lawyer is the best placed person to advise clients on their legal rights in the aftermath of a RTA. Perhaps, Shakespeare was not totally accurate when he wrote in Henry VI, ‘The first thing we do, let’s kill all the lawyers,’ perhaps the phrase should now read ‘The first thing we do, is contact our lawyers.’
Message from the President

“As these outworkings are hugely significant for all of us who are involved in the legal profession.”

...become a regular feature and an example of the interaction between the legal profession and our political colleagues.

A further example is the proposed new increase in the jurisdiction of the County Court Jurisdiction which will now be decided by our Justice Minister. This is a marked change from the past when the Lord Chancellor would make the decision. The changes are dramatic and the above are only small examples of such change. We must all educate ourselves to this new way of political interaction so as to effectively and properly shape our legal future.

The Chief Executive and I have just recently completed our series of ‘Law Society Roadshows’. We have been out to a total of eight locations around Northern Ireland to meet our members on their own territory. At these meetings I gave an overview of the issues facing our profession at present and the Chief Executive gave a ‘nuts and bolts’ talk on the governance of the Society and its current challenges and opportunities. We then had an open question and answer session during which members’ concerns were aired. These Roadshow meetings will be arranged again next year. They are an invaluable conduit between Society and its members.

Our new web site is also now up and running. We will continue to add to it and improve it as it settles in. Any feedback you have in this regard is appreciated. Our e-newsletter, E-nformer, has been a huge success. Again we will continue to update and refine this. We have launched the Law Society Claims Advice Service and this has been extremely well received. If you have not done so, please sign up as the more that do the more effective it will be.

I pledged at the beginning of my term to work hard so as to not only to create ways to permit the Society to better communicate with its members and thereby be a much more cohesive profession but also to encourage a process whereby solicitors would have more pride in their profession, more confidence in their own advice giving, their own decision making, their own ability to mediate and arbitrate and their own advocacy - whether that be written or oral. An enormous amount of work has been done to advance all of these objectives and this work continues apace. As a political slogan said some time ago “Much done … much more to do.”

Norville J Connolly
President

“We must all educate ourselves to this new way of political interaction so as to effectively and properly shape our legal future.”
In October 2009, the Lord Chief Justice asked Lord Justice Girvan and judges from each of the sentencing tiers to join a Sentencing Guidelines Working Group. That Group was tasked with reporting to him on ways which could enhance the system by which judges are provided with guidance and information on sentencing for the huge variety of cases they deal with.

Their report has now been published and is downloadable from the website of the Courts & Tribunals Service at http://www.courtsni.gov.uk/en-GB/Publications/Policy_and_Policy_Development/p_ppd_LCJSentencingReport.htm.

It contains a number of recommendations, which the Lord Chief Justice has accepted. These will assist the judiciary at all levels as well as the legal profession in relation to the approach to sentencing in the criminal courts. The Lord Chief Justice’s objective is that these changes, together with the greater availability of information generally, will help to increase consistency in the courts and public confidence in the justice system. A programme of work has been put in place to implement the proposals over the coming months.

Since taking office, the Lord Chief Justice has met a wide range of individuals and groups. These include both those within and those outside the criminal justice system. It has been clear to him from these contacts that sentencing is an area that causes much interest and, on occasion, concern among the public and their representatives, whether elected or in voluntary and community groups. While many of them have been very well-informed, it is also clear to him that there can sometimes be a lack of understanding of how sentencing is conducted.

Having reflected on these early exchanges, the Lord Chief Justice established the judicial Working Group to examine the judiciary’s current approach to sentencing and to see if improvements could be made in both their approach and the way they make information available to the public. The Working Group found, and the Lord Chief Justice agrees, that Northern Ireland has a well-developed system for ensuring fairness and consistency in sentencing. Nonetheless, they recommended a number of significant steps which the judiciary might take to improve that system. The Report recognises that the guidelines issued by the courts to assist individual judges in sentencing sit within a wider framework of sentencing policy which is set by the Assembly, and their proposals do not intrude on the responsibilities of the Assembly. The Report’s proposals cover the system of sentencing guidelines produced by the Court of Appeal in the cases that come before it, as well as the work of the Judicial Studies Board in disseminating guideline cases via its website (which is also publicly accessible) and providing training to sentencing judges, to assist them as they decide the individual cases which come before them.

The recommendations are summarised at the beginning of the report. One of the most far reaching of these addresses the way in which guidance is made available to judges, and the legal profession. As mentioned, there is an existing body of sentencing guideline cases in Northern Ireland, produced by the Court of Appeal which is complemented by guidance from decisions from cases decided at lower levels. Up until now the subjects of those guidelines have been limited by the fact that they can only be given in the cases which come before the Court of Appeal. There has not been a systematic approach to identifying areas to be covered by that guidance in particular for the Magistrates’ Courts. The proposals seek to ensure that areas with no guidance and which would benefit from it, or areas in which the guidance is out of date, are identified. The Working Group has recommended the establishment of a system whereby a list of prioritised areas will be identified to ensure that judgments are given on the next available opportunity. These judgments will be published on the internet. The effect of the Group’s report will be to transform the breadth and availability of guidance.

The Lord Chief Justice has begun the process of identifying aspects of the law which guidance might cover. A group made up of judges representing each level of court with sentencing responsibilities is aiding him in identifying the areas that should be given priority. This will enable him to draw up and publish a list of the priority areas. Following publication, he will welcome and respond to suggestions from the community on areas they wish to see included. Their views will assist him in reviewing the list from time to time.

The new devolved Government may choose to develop policy in this area. The Group and the Lord Chief Justice are aware that the Minister has plans for legislation in a number of important areas and consideration is to be given to the establishment of a sentencing guidelines council. It is an important constitutional principle that the judiciary should not, and will not, interfere in the policy aspects of the Executive’s decisions although, if invited, they will be glad to offer advice on operational aspects to ensure that any changes are effective and have a positive impact.

The Lord Chief Justice has considered the recommendations in this report carefully and accepts them in their entirety. He anticipates that they will make a significant contribution to the work of the judiciary in the difficult and sensitive area of sentencing.
Judicial Review update
Issuing of a Notice of Motion

The purpose of this note is to remind all Solicitors that RSC Order 53:5 (5) provides that: ‘A Notice of Motion must be issued within 14 days after the grant of leave or else leave shall lapse.’ Failure to issue the Notice of Motion within time therefore results in leave automatically lapsing.

Without consent leave will have to be re-contested and, of course, consent cannot be guaranteed. The following changes have been agreed and directed by the Judicial Review Liaison Committee Panel chaired by The Hon Mr Justice Treacy.

Any solicitor failing to issue a Notice of Motion within the 14 day period will have to undertake the following procedure in order to proceed with the application.

Guidelines

- The applicant’s solicitors must first contact the respondent and seek agreement to leave being granted on the same terms.
- The papers are not required to be re-lodged.
- The applicant’s solicitors must complete an affidavit:
  a) explaining the reasons for the failure to issue the Notice of Motion within time
  b) confirming the respondent’s consent (or not) to leave being granted on the same terms
  c) confirming that there has been no material change in circumstances since leave was granted
- The applicant’s solicitors must lodge a fresh Ex-Parte Docket along with £200 fee and the above affidavit.

After receiving confirmation from the Judicial Review Office of leave being granted the applicant’s solicitors’ must lodge a Notice of Motion with the £200 fee. If the hearing date cannot be adhered to the case is to be listed for mention.
In the first two articles published on the sentencing framework (see Editions 201 and 202) much reference was made to the licence conditions imposed on offenders who have been released from prison. This article explains these licence conditions in more depth.

Licence conditions

The aim of the licence period is to reduce the risk to the public, reduce re-offending and support the resettlement of the offender.

All prisoners who have been given a sentence of twelve months or more will be released on standard licence conditions, whether their sentence is an indeterminate custodial sentence (ICS), an extended custodial sentence (ECS) or a determinate custodial sentence (DCS). They may also be subject to ‘prescribed’ or bespoke licence conditions – conditions that it is felt are required to secure the offender’s safe release into the community, and to ultimately protect the public.

Determinate Custodial Sentences – 12 months or more

The Court will define how much of the sentence is to be spent in prison and how long the licence period will be. The custodial element of the sentence cannot be any more than half of the overall sentence.

The Court, when passing sentence, may recommend particular conditions to the Department of Justice which, in its view, should be included in any licence granted to the offender under a. 17 of the Order on release from prison.

The Prison Service will have regard to any recommendations made by the Court when setting the licence conditions. The recommendations should not, however, be treated as part of the sentence passed on the offender.

The licence must include the standard conditions and may include prescribed conditions. The licence will be set and served by the Prison Service and is not subject to any consultation process with the Parole Commissioners.

Public Protection Sentences

The release provisions for ICS or ECS prisoners are contained in a. 18 of the Order. Where a prisoner is released on licence under a. 18, the licence must include the standard conditions and may include prescribed conditions specified by the Prison Service.

In the case of an ECS, the Court will define the length of the extended supervision period under a licence – the maximum periods being five years for violent offenders and eight years for sexual offenders.

The Prison Service cannot specify any prescribed conditions or subsequently insert, vary or cancel any licence condition unless there has been consultation on the prescribed conditions with the Parole Commissioners.

In the case of an ICS, the Court will specify the tariff expiry date but release under supervision will be determined by the Parole Commissioners. If released, the offender will be subject to a life licence which may be rescinded ten years after the date of release, where the Parole Commissioners direct that it ceases to have effect as it is no longer necessary for the protection of the public from serious harm.

The Prison Service cannot specify any prescribed conditions or subsequently insert, vary or cancel any licence condition unless there has been consultation on the prescribed conditions with the Parole Commissioners.

Standard licence conditions

The licence conditions are provided for in the Criminal Justice (Sentencing) (Licence Conditions) (NI) Rules 2009 and came into operation on 1 April 2009.

The prisoner must:

a) keep in touch with the probation officer as instructed by the probation officer
b) receive visits from the probation officer as instructed by the probation officer
c) permanently reside at an address approved by the probation officer and obtain the prior permission of the probation officer for any change of address
d) undertake such work, including voluntary work, as approved by the probation officer, and obtain the permission of the probation officer for any proposed change; and
e) not travel outside the United Kingdom, the Channel Islands or the Isle of Man without the prior permission of the probation officer, except where the prisoner is deported or removed from the United Kingdom in accordance with the Immigration Act 1971 or the Immigration and Asylum Act 1999

The prisoner must not:

a) behave in a way which undermines the purposes of the release on licence, which are the protection of the public, the prevention of re-offending and the rehabilitation of the offender
b) commit any offence

Other licence conditions

As already stated, the Prison Service may impose other licence conditions above and beyond the standard conditions. These will typically be specific to the individual and their offending behaviour. They may be inserted only if it is lawful, following consultation with the Parole Commissioners.

To be lawful the condition has to be authorised by the Statutory Instrument and in addition must comply with a. 8 of the European Convention of Human Rights (the right to respect for private and family life). To be compatible with that right a condition must be necessary and proportionate for the purposes of ensuring

1 The Northern Ireland Prison Service acts on behalf of the Department of Justice for the purposes of licensing offenders.
public safety and/or prevention of crime. In this context, ‘necessary’ means that the measure adopted must be the appropriate way of managing a particular risk: and ‘proportionate’ means that the restriction on the offender’s liberty is the minimum required to manage the risk and that no other, less intrusive, means of addressing the risk is available or appropriate.

While consultation on such conditions with the Parole Commissioners is a legal requirement, the Order provides that such consultation is treated as having occurred where similar licence conditions are to be applied to a similar class of case.

The conditions are those which impose on a prisoner:

- a requirement that the prisoner resides at a certain place
- a requirement as to the prisoner making or maintaining contact with a person, more than one person or identified group
- a restriction relating to the prisoner making or maintaining contact with a person, more than one person or identified group
- a restriction on the prisoner’s participation in any activity
- a requirement that the prisoner participates in or co-operates with a programme or set of activities, which may include testing, designed to further one or more of the purposes referred to in a. 24(8) of the Order
- a requirement that the prisoner complies with a curfew arrangement
- a requirement that the prisoner complies with an electronic monitoring arrangement
- a restriction on the prisoner’s freedom of movement which is not a requirement referred to in sub paragraph f)
- any other requirement relating to the prisoner’s supervision in the community by a probation officer

**Bespoke conditions**

There may be exceptional cases where, in order to manage the risk of an offender in the community, an additional condition is required which does not appear in the conditions above. This will be subject to consultation with the Parole Commissioners but it is important to note that the final decision on the inclusion of any licence condition lies with the Prison Service. In all such cases the condition must be necessary and proportionate.

If you would like to read more about the sentencing framework, please go to www.sentencingreformni.gov.uk.

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A review of all the 2010 legislative changes and a consideration of their implications.

- How to mitigate the 50% additional rate of income tax and plan for capital disposals in the light of the CGT rate changes.
- What scope still exists for lifetime tax planning and to what extent are trusts still a valuable planning tool.

These are some of the issues that will be considered along with a review of all the recent case law.

To register your interest in this programme please email

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Ready to step up to the County Court?

On 9 September 2010 NIJAC intends to advertise for a minimum of two County Court Judges, the closing date for applications will be 1 October 2010.

Judge Burgess (the Recorder of Belfast) says of judicial work ‘… it will always be fundamentally a people business … the intellectual challenge and stimulation are rewarding’.

The work of a County Court Judge falls into three broad categories: criminal, civil and family. Typical county court cases involve the recovery of debts, trespass, negligence, adoptions, undefended divorces, applications for the grant of intoxicating liquor licences, appeals from the magistrates’ courts and, of course, Crown court cases.

Four County Courts have been designated as Family Care Centres and judges also have to deal with certain applications or appeals relating to the care or welfare of a child or young person. The work is varied, stimulating and challenging. Judge Burgess adds ‘… there is nothing as sobering but at the same time rewarding as discharging, to the best of your ability, responsibilities which you know have a significant impact on the present and future lives of others, victims and defendants, many being vulnerable human beings …’.

You can find out more about the role of the County Court Judge by accessing: www.nijac.org/appointments/forthcomingvacancies. This link will take you to information such as profiles of serving County Court judges, the job description, terms and conditions and an article on the nature of the role.

The anticipated timeline is:

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
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<tbody>
<tr>
<td>Advertising</td>
<td>9 September 2010</td>
</tr>
<tr>
<td>Closing date</td>
<td>1 October 2010</td>
</tr>
<tr>
<td>Assessment and Selection</td>
<td>1st week November 2010</td>
</tr>
<tr>
<td>Appointment</td>
<td>February 2011</td>
</tr>
</tbody>
</table>

The new competition will consist of two stages: shortlisting and an assessment event.

Shortlisting will be based on completed application forms and consultee comments.

The basis for the application form will be the Judicial Selection Framework which includes five key areas: knowledge, analysis and decision making, leadership and management, communication, and understanding people and society.

Applicants will only be required to nominate three consultees, two must be legally qualified – one at a senior level.

Consultees are asked to give an insight, which may not otherwise be available to the Commission, into an applicant’s suitability for judicial office; they provide supplementary evidence and their comments are not marked.

We recommend applicants when completing their application form and preparing for interview to:

✓ take time to prepare;
✓ think themselves into the role;
✓ decide which areas of their knowledge, skills and experience are the most relevant to the role; and
✓ evidence what done, how done and the result.

It is not enough for applicants to state that they have a law degree and have been practising for x number of years – the judicial appointments process is evidence-based, and applicants must provide that evidence drawn upon their own knowledge, skills and experience.

Those who are shortlisted will be invited to an assessment event lasting approximately 3 hours.

This will consist of:

- applicants playing the role of a County Court Judge hearing a mixed list
- consideration of a case study on a civil matter
- consideration of a judgement in a criminal case.

During the final interview stage applicants will be asked questions on the civil case study, on the issues and the judgement in the criminal case and other areas of the Judicial Selection Framework.

For more information about how NIJAC selects and the new competition, please visit our website: www.nijac.org.

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Classified Advertising in The Writ

If you wish to place an advertisement on the classified pages, your wording, together with payment of £29.38 per advertisement, should be sent to:

Karen Irwin
dcp Ltd
91-93 Saintfield Road
BELFAST BT8 7HN

Your cheque should be made payable to ‘dcp Ltd’

You may also email your advertisement to karen@dcppr.co.uk

Tel: 028 9040 2296
In October 2009, the Northern Ireland Judicial Appointments Commission (NIJAC) launched the Judicial Shadowing Scheme.

Supported by the Lord Chief Justice’s Office, the Bar Council, the Law Society, the Northern Ireland Courts and Tribunals Service and NIJAC, the scheme gives barristers, solicitors, medical professionals and land valuation experts an unique opportunity to spend a day in a court or tribunal of their choice and go behind the bench.

Legal and other professionals are only required to have two years’ experience to apply.

Speaking to The Writ, a few local practitioners gave their views on their shadowing experience.

Peter Thompson (Thompson Mitchell Solicitors) who shadowed Master Wells (Office of Care and Protection) states that the experience was professionally helpful:

“I observed solicitors and barristers from the judge’s perspective and gained a better understanding of what lawyers should be doing to prepare and present their case to the Master.”

Peter would have no hesitation in recommending the scheme to others: “not only for potential applicants for a judicial appointment but also for any lawyer to gain an insight into a judge’s perspective.”

Prior to participating in the scheme, David had only limited dealings with the Lands Tribunal and, as a land valuation expert, was keen to get an insight into the mechanics of the Tribunal and how it handled its business.

David was full of praise for the experience and commented that the most useful aspect of the shadowing day was being able to “…find out how the process of mentions generally brings the parties to agreement of their own accord without having to proceed to a costly hearing.”

Another local solicitor, who shadowed District Judge McCourt in the Magistrates’ Court was keen to praise the helpful attitude of the judge who was very willing to discuss both his role and how he conducted the business of the court.

The solicitor commented that “getting behind the scenes, being able to talk openly and honestly with the judge about his work and its challenges, was the most beneficial aspect of the day…and something that could not have been gained by merely sitting in the Magistrates’ Court.”

Participants have spoken of how the scheme gives unique access to judicial office holders, to see what goes on behind the scenes, case management and being able to see how fellow solicitors and barristers perform from a different perspective.

Nine months after its launch, the scheme is proving popular with solicitors throughout Northern Ireland.

Adeline Frew (NIJAC, Head of Diversity and Communications), says: “To date 24 people have applied and the majority have been solicitors. The overwhelming reason given for applying has been to gain inside experience of the court or tribunal. We welcome all requests and have been very pleased with the positive feedback received.”

You can be assured that your shadowing day will be handled discreetly and you can shadow in:

- Any Court;
- Coroners’ Service;
- Appeal Tribunals;
- Care Tribunal;
- Lands Tribunal;
- Planning Appeals Commission;
- Industrial Tribunals and the Fair Employment Tribunal (IT/FET);
- Mental Health Review Tribunal (MHRT);
- Social Security and Child Support Commissioners;
- Special Educational Needs and Disability Tribunal (SENDT); and the
- Northern Ireland Valuation Tribunal (NIVT).

If you are interested in gaining experience that will contribute to your personal development, acquiring an insight into a new or less familiar field, in judicial office as a career, or you are just simply curious about life on the bench, then please visit NIJAC’s website for further information on the Judicial Shadowing Scheme: https://www.nijac.org/JudicialShadowing/default.htm

Alternatively, if you would like to speak to someone directly about the scheme, please telephone NIJAC’s Diversity and Communications Team on 028 9072 8702.
Party Structures

One of the issues being considered as part of the NI Law Commission’s project for the reform and modernisation of land law is the introduction of statutory measures regulating party structures and access to neighbouring land.

I previously wrote an article in the Writ (September 2009) in which I set out the current law in relation to party walls and access to neighbouring land. I explained that there is legislation in England contained in the Access to Neighbouring Land Act 1992 and the Party Walls etc Act 1996, although it is not entirely clear how these two Acts interact. Legislative provisions have now also been enacted in the Republic of Ireland in the Land and Conveyancing Law Reform Act 2009. These statutory provisions are all fairly limited, both procedurally and in terms of compensation. I emphasised that we were keeping an open mind on the subject of statutory reform and would be interested to receive any evidence from solicitors as to their experience in practice.

In its Consultation Paper on Land Law published in June 2009 (NILC 2 (2009), para. 4.45 and 4.466) the Commission indicated that, at that time, it was not inclined to introduce any statutory provisions in relation to these matters. However, the majority of the responses to the questionnaire on issues of reform were firmly in favour of having a mechanism for dealing with disputes and some were in favour of legislation along the lines of the English Party Wall etc Act 1996.

After further consideration and consultation with interested parties, the Commission has reviewed its position. It has been convinced by the evidence produced that there would be an incentive to introduce legislation dealing with both party structures and the linked issue of access to adjoining buildings which can only be carried out by having access to the adjoining land. It will basically provide a new statutory entitlement for a building owner to carry out works to a party structure.

The rights that will be conferred are in addition to those which the building owner may already have by agreement or under the general law and are subject to compliance with specified conditions. The definition of a party structure will include any arch, ceiling, ditch, fence, floor, hedge, partition, shrub, tree, wall or other structure which horizontally, vertically or in any other way divides adjoining and separately owned buildings or is situated alongside or so close to the boundary between them that it is impossible or not reasonably practical to carry out works without access to the adjoining buildings or land.

There will be no requirement to follow the procedures set out in the legislation if the building owner obtains the consent in writing of the adjoining owner to the proposed works and the exercise of his rights. Either party will also be free at any time to consult or obtain advice from a surveyor in relation to the works. This will mean that if the proposed works are of a minor nature, such as the cutting of a party hedge, it will not be necessary to comply with the procedure, the cost of which may be disproportionate to the problem and the value of the structure involved.

If there is no prior written consent or agreement between the parties, the building owner will be required to serve on any adjoining owner a party structure notice before exercising any rights to carry out building works. The party structure notice will contain a detailed description of the proposed works, the timescale for carrying out and complying with them, the anticipated impact on the adjoining land, the proposals for making good damage or reimbursing costs and paying compensation for any inconvenience caused as well as any contribution that will be claimed from the adjoining owner. The adjoining owner may then serve a counter notice which confirms either consent to the works, consent to the works subject to specified conditions or the refusal of consent. If the adjoining owner fails to serve a counter notice within one month, consent is deemed to have been given.

In advance of commencing any works, the building owner must also nominate a surveyor from an appropriate panel who will be appointed and engaged as an independent expert to certify as accurate and appropriate the contents of the party structure notice. If, after consultation with the independent surveyor, an agreement is not reached between the parties, or the adjoining owner does not consent to the proposed works, a dispute is deemed to arise which either party may refer to the Lands Tribunal for determination.

It is envisaged that the statutory provisions will be amplified by regulations which will set out the details of matters such as the contents of the party structure notice, the different categories of works, the requirements of making good damage, procedures and costs. It is also proposed that jurisdiction will be conferred on the Lands Tribunal to determine any disputes which may arise between the parties.

If anyone has any comments or queries, about the proposals, please feel free to contact me.

We are grateful to Sarah Witchell for this article.
Her contact details are: Sarah Witchell, NI Law Commission, Linum Chambers, 2 Bedford Square, Bedford Street, Belfast BT2 7BS. Tel: 028 9054 4880.
Email: sarah.witchell@nilawcommission.gov.uk.

1 It is important to note that the procedure of engaging a surveyor under this legislation is much simpler than that under the English 1996 Act which requires three surveyors. The parties each appoint their own surveyor and then a third surveyor who is independent.
INSTITUTE OF PROFESSIONAL LEGAL STUDIES
Repossession Proceedings and Sales

The Institute of Professional Legal Studies is offering two Lectures on mortgage repossession law. The first entitled “Repossession Proceedings” will cover aspects of the law and practice involved in acting for a borrower or a lender in cases of mortgage default. The second entitled “Repossession Sales” will consider aspects of the law and practice involved in the sale of repossessed property.

These Lectures are ideally suited to those who advise lenders or borrowers in repossession proceedings and those who act for vendors or purchasers in the sale of repossessed property.

Speaker: Charles O’Neill LL.B
When: Monday 18 October & Monday 15 November 2010
Time: 6.00pm – 7.00pm
Venue: Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY
Cost: £40 per Lecture
Monday Completion

Charles O’Neill is a solicitor who is currently a legal adviser with the Northern Ireland Co-ownership Housing Association Ltd. He is the author of the textbook The Law of Mortgages in Northern Ireland - published by SLS Legal Publications (NI) in May 2008.

1 CPD hour is awarded for attendance at each of these Lectures.
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 12 October 2010

Booking Form

Repossession Proceedings: Monday 18 October 2010
OR
Repossession Sales: Monday 15 November 2010
OR
Both lectures: 

Name: ____________________________________________________________
Firm: ____________________________________________________________
Address: _________________________________________________________
Tel. No: __________________________ I enclose remittance of £ __________
Email address: ____________________________________________________
The Institute of Professional Legal Studies is offering a five 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 17 January 2011  
Monday 31 January 2011  
Monday 14 February 2011  
Monday 28 February 2011  
Monday 14 March 2011

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 points (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, 17 December 2010
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

Name: __________________________________________

Firm: __________________________________________

Address: _________________________________________

_________________________________________________

Email Address: _____________________________________

Tel. No: _________________________ I enclose remittance of £ _______
Pensions in Divorce

Pensions in divorce - to share or not to share, that is the question.......

We are grateful to James Woods, Forensic Accounting at BDO for the following article.

The latest figures published by the Office of National Statistics have shown that, for the fourth year in row, the number of divorces in the UK has fallen. At c.136,000 divorces we are at a 20 year low. This national picture is also true for Northern Ireland with divorces here falling from 2,913 in 2007 to 2,773 in 2008.

As well as this overall fall in number of divorces, other patterns are emerging. The average age at divorce has risen from 40.4 to 43.9 years for men and from 37.9 to 41.4 years for women, and the seven year itch has become the 12 year itch. These increases are significant for the role of pensions in divorce. As we get older, our pension often becomes a more significant asset. This is particularly evident given our current economic climate when other assets held may have fallen significantly in value, possibly even becoming worthless.

Pensions have often been the focus of divorces for couples aged 60 and over. However with this current state of affairs, pensions have become a significant asset in many settlements where before they could have been left untouched. Pensions must now be considered at the outset of any divorce proceedings and a clear understanding of the options is essential to a better outcome for clients.

Before the “noughties” there were two ways to deal with pensions in divorce - offsetting or earmarking. With offsetting one partner gave up their rights to a pension in return for cash, or a larger share of other assets, such as the family home. This provided a short term solution, however, often left one partner with only their state pension at retirement. Earmarking keeps the pension intact until retirement, and then both partners will receive a share of the tax free cash lump sum or the continuing pension payment. A major down side to this, particularly for a younger couple, is that some form of communication must be maintained after the split. Ownership of the pension remains with the member and will continue to be subject to scheme rules. An earmarking order will cease if the ex-spouse (ex-spouse can also be taken to mean ex-civil partner) remarries or if the member dies.

1 December 2000 saw the introduction of Pension Sharing, the clean break. By using pension sharing each partner will retain ownership of the disputed pension. Transfers can be internal within the same pension scheme or external into a new plan. All private sector schemes must offer a transfer out and most public sector schemes will offer shadow membership. At first glance pension sharing may seem the better option. However, advisers and legal teams must look at the complete picture.

Tax is an important area for consideration in any divorce proceedings. Earmarking may be more tax efficient for an ex-spouse (ie non pension scheme member) as income tax, and potentially lifetime allowance liability remains with the member, where tax will be split under pension sharing. Conversely, earmarking may be less tax efficient for the pension member.

The benefits of pension sharing were increased following “A-Day” in the UK, 6 April 2006. Any individual can now pay an amount up to the total of their earnings into pensions each year, capped at £255,000. Therefore, following a pension split, a member can quickly rebuild their pension up to previous levels. Also, for pensions coming in to effect after A-Day, and before a pension sharing order takes effect, the ex-spouse can claim an enhanced lifetime allowance, taking into account the fact that benefits had been previously tested in the hands of the member.

Pension sharing can also allow both parties to make better use of their tax allowances. If a higher rate tax payer is ordered to earmark their pension, they will still be treated as having received the full amount of the pension for tax purposes. If, however, pension sharing is used to split a cash equivalent transfer value (CETV) both parties may receive pension income below the higher rate tax band, therefore losing less money to the tax man and an ex-spouse may not need as large a share of a members pension as would be the case under earmarking.

The nature of a pension scheme must also be considered. While pension sharing legislation ensures most pension schemes offer ex-spouses an external pension transfer credit, unfunded public service schemes, including NHS and civil service schemes, do not. Under these circumstances an internal transfer will give the ex-spouse a pension credit under the same pension scheme. Earmarking may be preferable in this instance as payments may not be able to be made until the ex-spouse satisfies the scheme’s eligibility conditions.

As highlighted above, the many rules and issues surrounding pensions in divorce are complex. In any case offsetting, earmarking and pension sharing should all be explored, if only to identify why they may be disregarded. Indeed, in some instances, a combination of two, or maybe three of these methods may be appropriate.

Too often financial advisors find themselves engaged at the tail end of the process when the percentage split and method has already been finalised, where earlier involvement may have led to a better outcome for both parties. Pensions, and in particular the tax issues surrounding pensions, are changing all the time. Seeking the involvement of financial experts in this field will ensure your advice is current, and may save time and money in the long run, while producing a better result for your client.

Should you have any queries in relation to the above article please do not hesitate to contact James Woods or Johnny Webb at BDO on 028 9043 9009.
The New Business Centre situated within the Library offers a range of enhanced facilities developed for practitioners.

Discreet office space for busy practitioners on the move.

Wi-Fi access across the whole library offering practitioners a range of web-based facilities such as digital dictation.

Free internet access.

Separate LAN allowing secure transmission of emails and data.
The Equality Act 2010 - the gaps between GB and NI Equality Law

**Introduction**

In April this year, the Equality Act 2010 was passed in Great Britain (GB). The provisions of the Act, apart from a few minor exceptions, only apply to GB and will not change equality law in Northern Ireland.

The Equality Act 2010 replaces the existing anti-discrimination laws in GB with a single act. It simplifies, harmonises and strengthens GB equality law in order to tackle new forms of discrimination and address deep-rooted existing inequalities.

The enactment of the Equality Act 2010 will, however, result in significant differences between GB and Northern Ireland equality law. These differences affect all grounds of discrimination (race, sex, age, disability, etc) across a wide range of areas (employment, education, the provision of goods and services and housing, etc).

Once the planned changes in GB come into force, vulnerable and marginalised individuals in Northern Ireland will have less protection against unlawful discrimination, harassment and victimisation than those in GB.

These changes will also mean that employers and service providers who operate both in Northern Ireland and GB, will have to grapple with the increased inconsistencies and differences in equality law between the two jurisdictions. They will have to keep track of their responsibilities under differing legislative frameworks, as well as case-law emerging from separate legislative provisions.

**Key changes**

Outlined below are some of the key changes which will take place in GB once the Equality Act 2010 takes effect. The majority of the Act’s provisions are due to come into force in October 2010. It is proposed that the provisions relating to outlawing age discrimination outside the workplace will take effect in April 2012 and those relating to the public sector equality duty will come into force in April 2011.

**Legislation harmonised and simplified**

The Act addresses inconsistencies in the current discrimination law framework so as to ensure uniform protection against discrimination across all grounds, where appropriate. For example, it has harmonised the race equality legislation so that individuals have the same level of protection on the grounds of colour and nationality, as on the grounds of race, ethnic origin and nationality. Harmonising and simplifying the legislation will also make it easier for people to understand and comply with the Act.

**Age discrimination outside the workplace**

Age discrimination against people aged 18 or over will be extended to non-employment areas, so that, for example, individuals will be protected against unjustifiable age discrimination when accessing health or social care, or financial services. Public bodies will also be prohibited from discriminating on the grounds of age when exercising their public functions.

**Disability legislation strengthened**

The disability equality legislation will be both streamlined and strengthened. Changes include:

- the replacement of the concept of ‘disability-related discrimination’ with protection against ‘indirect disability discrimination’ and ‘discrimination arising from disability’. These provisions are primarily designed to address the effects of the House of Lords’ decision in Mayor and Burgess of the London Borough of Lewisham v Malcolm [2008] UKHL 43, which severely restricted the scope for disabled people to claim disability-related discrimination.

- express protection for people, such as carers, friends or family members, who are subjected to direct discrimination or harassment due to their association with a disabled person or for individuals because they are wrongly perceived to be disabled. Protection against discrimination due to association and perception will also be extended to the grounds of sex and gender reassignment;

- employers will be prohibited from asking job applicants questions related to disability, prior to making a job offer, except in specified circumstances.

**Dual discrimination prohibited**

Dual discrimination will be prohibited outlawing direct discrimination on up to two combined grounds, for example, disability and gender or gender and race.

**Equal pay provisions strengthened**

Employers will be prohibited from preventing or restricting their employees from having discussions in order to establish if pay differences exist that are related to an equality ground (eg gender). Employers will also, in certain circumstances, be able to claim direct pay discrimination, even if no actual comparator can be found.

**Positive action measures extended**

Employers and service providers will be allowed (but not required) to take a wider range of measures aimed at alleviating disadvantage experienced by under-represented groups.

**Public sector duties extended**

Public authorities in GB will be required to have due regard to the need to promote equality of opportunity across the additional grounds of age, religion and sexual orientation. The good relations duty on public authorities will also be extended to cover additional grounds. Certain public authorities will, in addition, be required to
consider socio-economic disadvantage when taking strategic decisions on how to exercise their functions.

Northern Ireland law reform

Despite a consultation by the Office of the First Minister and deputy First Minister (OFMDFM) on proposals for a Northern Ireland Single Equality Bill in July 2004, there has been little progress since that date on single equality legislation. In recognition of the need to streamline and modernise Northern Ireland equality law and to keep pace with developments in GB, the Equality Commission has put forward a number of proposals for urgent legislative reform in this area. Further information on these proposals is available on the Equality Commission's website (www.equalityni.org).

Note: Roisin Mallon is delivering a lunchtime seminar on the Equality Act 2010 and the differences between GB and Northern Ireland equality law on Wednesday 15 September 2010 for the Northern Ireland Employment Lawyers Groups in the Inns of Court.

NI Employment Lawyers’ Group Lunchtime seminar

Speaker: Ms Roisin Mallon, Equality Commission for NI
Title: The Equality Act 2010: the differences between GB and NI equality law
Date: Wednesday 15 September 2010
Time: 12:30pm to 2:00pm – a light lunch will be served.
Venue: Inns of Court, Royal Courts of Justice, Chichester Street, Belfast
Cost: £5:00 for members. Pay at the door
Cheques should be made payable to ELG (NI).
The seminar will attract one CPD hour
To book a place on the seminar please email Edel Anderson at EAnderson@equalityni.org

Ballymena courthouse temporary closure

Ballymena courthouse closed on Friday 2 July 2010 until Friday 1 April 2011 inclusive to allow essential maintenance and improvement works to be carried out. The courthouse will re-open on Monday 4 April 2011.

Courts:

- All Ballymena magistrates statutory sittings will move to Antrim. This includes adult, youth, departmental, domestic, family and contest courts.
- Ballymena and Antrim magistrates courts will remain separate and business should be listed on the appropriate day for the relevant Petty Session’s district.
- Solicitors are asked to remind clients who have been remanded from Ballymena magistrates courts to a date after 2 July that this will be heard at Antrim.
- County court hearings will be heard at Antrim, Coleraine and Larne as directed by the Chief Clerk or County Court Judge.
- Magistrates court appeals to the County Court will be heard at Antrim and Coleraine as outlined in the Lord Chancellor’s Directions 09/10
- Crown Court hearings will be heard at Antrim and Coleraine as directed by the Chief Clerk or County Court Judge.

Processing of business

As the office will be closed for all business, enquiries relating to magistrates, family proceedings and county court business should be directed as below:

- All Ballymena magistrates court business and family proceedings will be processed at Antrim courthouse
- All County Court business will be processed at Coleraine courthouse
- All County Court licensing matters will be processed at Coleraine, while Ballymena magistrates court licensing will be dealt with at Antrim.

Further information can be obtained by contacting Antrim and Coleraine court offices below:

Antrim Court Office: 028 9446 2661
e-mail: antrimcourt@courtsni.gov.uk

Coleraine Court Office: 028 7034 3437
e-mail: coleraine@courtsni.gov.uk
Law Society annual conference in Budapest

Undaunted by the volcanic ash cloud, President Norville Connolly led more than 180 delegates and guests to the Law Society annual conference in downtown Budapest on 22 April 2010.

Over the ensuing four days, legal and business debates would mix seamlessly with the sights and sounds of a most beautiful city.

The sun shone brightly from Dublin Airport onwards and what a special conference it turned out to be for everyone involved.

Thanks to the sponsorship of First Trust Bank, Marsh Limited, Zurich, First Title/Blue Chip and Chartis, the intrepid delegates were treated to a cocktail of social, legal and cultural delights in a city full of remarkable historic sites, as well as magnificent new buildings. Our number included the Presidents and Chief Executives of the Law Societies of England and Wales, Scotland and Ireland. Two business session programmes were arranged which were not so taxing that we could participate in that quintessential city break experience – shopping.

On that first afternoon there was an opportunity to explore the city centre shops – where east meets west – and to enjoy a coffee along Andrássy Avenue. Some chose to dine at terrace cafes and wore coloured blankets to keep off any chill and they included Margaret and James Cooper, Sue Bryson and Gillian and Alastair Rankin. I was assured no political point was intended.

Back at the Welcome reception in the opulent and stylish Corinthia Royal Hotel, the right note of friendship and cordiality was struck. The backcloth of a vast ash cloud stretching from Iceland only succeeded in galvanising our determination to go that extra mile to ensure that everyone enjoyed themselves. Thanks to the organisational skills of Matt and Una Higgins, we later dined that evening at Café Kor which offered local and international produce and full value for money. Its comfortable bistro-like atmosphere was as much reminiscent of Vienna or Berlin. A conference veteran – John Guerin who had missed the conference in Paris - told us he was delighted to be back along with his many colleagues from Campbell Fitzpatrick.

After midnight, many delegates auditioned impromptu for the new Law Society choir, singing and performing into the wee small hours. Some of the NYS contingent – Richard Craig, Michael Graham, David Andrews, Ciaran Fegan, Emma Hunt, John Greer, Maria McCloskey and Maria Glover - included, tried to obtain even more CPD credits after dark. The ingenuity (and energy) of the typical Northern Ireland Young Solicitor.

On the first morning, the business session was introduced by Norville Connolly, followed by views upon policy and perspective by Alan Hunter and Jim McMillan of McMillan Estate Agents. John Gordon provided an illuminating insight into Judicial Appointments. Ian Bamford listened keenly to ensure fair play as always. John Andrews from DBM Consulting shared his extensive knowledge and experience in relation to managing our career development. Unfortunately, Tony Caher was unable to attend due to that Icelandic cloud but his role was successfully filled by Noel Phoenix and Stephen Scott setting the future scene for Solicitor Advocates.

In the afternoon, some delegates enjoyed a walking tour in the Buda Castle district while others explored the city on their own, visiting the Terror Haz, the Bela Bartok Memorial House, the National Gallery, the Royal Palace and other offbeat treasures.

In Budapest one is never far from the river. Water brings fish and fish bring restaurants. Show me a good fish restaurant and I am certain it will be a lively city. That evening we dined with other conference veterans – Brigid Napier, John Andrews, Gilbert and Alison Nesbitt and Matt and Una Higgins, at the Spoon Café – a standing riverboat on the Danube, with a cosmopolitan style and beautiful views to the Buda side.

Early on Saturday morning, before the conference business session, I managed a swim in the luxurious Aphrodite spa at our Hotel. Silently congratulating myself upon my fitness level, that illusion was suddenly shattered when Peter Jack, the Limavady Ironman, swam by me at speed using a medley of strokes. I eventually persuaded him to wind down and go for breakfast. Breakfast itself was remarkable for its variety and size. The traditional continental organic buffet, buttermilk pancakes and strawberries, eggs Benedict with smoked salmon and lashings of fine crispy bacon. However, Peter ate very little.

The final business section included tips from Professor Lester Manley for promoting our legal practices and from Brendan Keenan, the economist, as to the prospects for the Irish economy. Both contributions were delivered (and received) in such witty and sunny tones, that a most lively question and answer session ensued.
and noting this rush of CPD work in my 2010 record card, all our legal futures seemed assured and completely ash free.

On the Saturday afternoon, many enjoyed a river cruise on the Danube. Yet it wasn’t at all blue despite the sunshine and as the afternoon wore on it became increasingly grey and overcast, especially for James Cooper, Gary Millar and myself, all long suffering Spurs supporters. Robbed again at Old Trafford. Amongst those Man United fans who took advantage of our situation were John McGettrick, Peter Conlon, Seamus Leonard and Rory McShane – all jolly good sports.

On Saturday evening, we were treated to the President’s Reception and Gala Dinner followed by music from a local jazz band. This was a most relaxed and colourful affair with a humorous and personal view of our illustrious President from Tim Donnelly and afterwards the strolling minstrels of Noel Phoenix, Martin McLaughlin, Stephen Scott and Gavin Campbell struck up some new tunes that would have made even Mozart sit up and take notice. Conor Houston, still a young solicitor, having spent the previous two days in the presence of President Mary McAleese, Prince Charles and Prince Philip, felt it was entirely appropriate that he should spend quality time with President Connolly.

On Sunday morning, the sun continued to shine and there was time for church, a visit to the Museum of Fine Arts and a leisurely lunch before we were swept away kicking and screaming to the airport to rejoin the rest of our families at home.

This was a remarkable conference despite taking place right under the volcano. Its success depended upon significant organisational skills and careful planning and all the delegates were aware of their indebtedness to Norville Connolly and Rory McShane, who called it absolutely right. A special thanks has to be given to the MCI conference organisers and to Paul O’Connor, our Communications Officer.

Now that the dust has settled on the great ash crisis of 2010, next year’s conference is an absolute must.

JOE RICE
Solicitor Recognition Awards 2010

The Law Society of Northern Ireland is delighted to launch the Solicitor Recognition Awards for 2010.

The Law Society of Northern Ireland is delighted to launch the Solicitor Recognition Awards for 2010.

The Awards were successfully launched in 2009 to recognise excellence within the solicitors’ profession in Northern Ireland at an individual, practice and team level.

Last year the Society presented four awards to individual solicitors and firms at the award ceremony in the Culloden Hotel. The Society is once again inviting individuals and practices to enter the Junior Solicitor and Senior Solicitor of the Year Award Categories.

The Junior Solicitor of the Year Award is open to solicitors who are up to three years’ qualified (from date of admission to the Roll of Solicitors) and who have shown evidence of commitment to their practice, legal professional development, excellence in their chosen field of law and going beyond what would be required of a ‘three years’ qualified’ solicitor.

The Senior Solicitor of the Year Award is open to solicitors who are over 10 years’ qualified and who have enjoyed a successful legal career whilst also making a significant contribution to the profession.

Both awards are open to individual solicitors and practices of all types and sizes.

The ‘President’s Award’ is a new award introduced to recognise significant contribution to the solicitor profession on a theme chosen by the incoming President.

The theme chosen for the President’s Award, 2010 is ‘Contribution to legal education’.

The winners of all three awards will be announced at the Law Society Annual Dinner which this year will be taking place on Thursday 25 November 2010 at the Culloden Hotel, County Down.

Details about the awards categories, criteria and application forms will be available to download from the Law Society’s website at www.lawsoc-ni.org from Wednesday 1 September 2010.
New look E-nformer launched

In June the Society launched its new look E-nformer to the profession.

The new version of the E-nformer builds on the success of its predecessor and continues to provide members with clear and concise information in a much more accessible format.

The new format presents a modern and contemporary newsletter allowing members to access the information and documents they require through a series of hyperlinks and downloads.

In order to download attachments and access hyperlinks, members will be required to sign into the Members’ Section of the new Law Society website. This allows the Society a level of security in issuing our communications and encourages members to access the Members’ Section as much as possible.

Over the coming months the new E-nformer will be issued more regularly on a Thursday.

Periodically, members will also receive new versions of Presidential and CEO Communications, together with a regular monthly Library Circular and Updater as well as a number of bespoke newsletters.

How to download your new E-nformer

When you receive your new E-nformer it may look strangely set up. (See illustration below).

The reason for this is that your Outlook Express or email software has prevented the pictures from downloading as a security precaution. This is normal!

To download your new E-nformer with pictures please follow the instructions underneath:

1. When you open your E-nformer email you will notice a grey box with the following text:
   Click here to download pictures.
   To help protect your privacy, Outlook prevented automatic download of some pictures in this message.

2. Click on the grey box and text. A smaller box will now appear offering you several options. Please choose ‘Download Pictures’. Immediately after doing this your new E-nformer will be displayed properly on your computer screen.

I haven’t received my new E-nformer yet!!

If you haven’t received your new E-nformer to date then there may be a simple explanation as to why not.

1. Your server may be blocking emails from the Society. To rectify this simply contact your IT service provider and request that any emails from the Society including mailer@lawsoc-ni.org is added to the ‘safe senders’ list.

2. Your inbox may be full thus preventing the delivery of your new E-nformer.

3. Your own computer’s security settings may be causing the E-nformer to be treated as spam and not delivered as mail.

4. If you have recently changed jobs or your email address then you will need to contact the Society so that we can amend your contact details and add you to our distribution databases.

If you are having problems downloading or accessing the new E-nformer please contact Paul O’Connor at paul.oconnor@lawsoc-ni.org
Alcohol related deaths in the legal profession

Lawyers no longer appear in the top ten of professionals most likely to die from alcohol related illnesses according to ONS statistics. However, there remains a problem with alcohol misuse, particularly within the more senior end of the profession.

Anna Buttimore, LawCare’s administrator, explains: “When LawCare first started in 1997 the latest statistics showed lawyers fourth in the league table of professionals dying from cirrhosis of the liver – which is usually related to alcoholism. The only professions above us were doctors, publicans and seafarers.”

More recent statistics, however, have doctors among those professions least likely to die from alcohol misuse, and lawyers somewhere in the middle of the table. Having said this, the actual number of alcohol related deaths annually has doubled since 1991, so this does not mean that fewer lawyers are dying each year as a result of alcohol addiction.

LawCare’s files suggest that there is still a culture of alcohol misuse in certain sectors of the profession. Calls to the free and confidential helpline show that those qualified longer are less likely to report problems with stress, but more likely to be abusing alcohol.

In the UK 84 trainee solicitors have called LawCare for support and advice since January 2009, none of whom were reporting any issue with addiction to either alcohol or drugs. The vast majority were feeling stressed, with around 10% also suffering from clinical depression. Compare that with the 79 senior solicitors (more than 20 years PQE) calling the helpline, 12% of whom were showing signs of serious alcohol addiction.

Anna Buttimore explains: “It is quite noticeable that we see levels of stress reducing with lawyers who are further established in their career, and troubling that we see a corresponding rise in alcoholism. It may be that stressed young lawyers are self-medicating with alcohol and developing an addiction problem later in life.”

LawCare offers resources such as an online Wellbeing Portal, accessed via the website www.lawcare.org.uk, and free (except for expenses) CPD accredited presentations aimed at helping legal professionals deal with stress in more constructive ways than through a bottle.

Need a Drink?

If you are relying on alcohol to make you feel better after a difficult day, you may find that the days just become more and more difficult.

If you are wondering whether you need to cut down on your drinking, if you are feeling guilty about your drinking, or if people are commenting, you can call us for free and completely confidential advice.

Our helpline is open 9 a.m.—7.30 p.m. on weekdays, and 10.00 a.m.—4.00 p.m. at weekends and public holidays.

0800 279 6869
www.lawcare.org.uk
Renowned mediation expert and Fordham University academic, Professor Jacqueline Nolan-Haley was the keynote speaker at a unique event held at Law Society House in June 2010.

The Society was delighted to welcome Professor Nolan-Haley to the special event on the theme of mediation and to thank her for her ongoing support of the Society’s Dispute Resolution Service training course over the years.

Attending the lecture were solicitors from across Northern Ireland as well as members of the Presidential team and Council Members. Also in attendance were the Lord Chief Justice, Sir Declan Morgan and the Honourable Mr Justice Weatherup.

The Society’s mediation event provided those attending with an opportunity to hear from Professor Nolan-Haley on the use and benefits of mediation in legal dispute resolution.

Speaking after the event, Mr Brian Speers, Junior Vice President of the Society said:

“We are delighted to welcome our friend and colleague Professor Nolan Haley back to the Society. She has been supportive of the Society’s mediation programme over the years.

“Tonight’s lecture provides our members with the practical experiences of one of the world’s leading mediators and underscores the Society’s commitment to its mediation programme.”
“The Law Society of Northern Ireland – a History” is very much more than a good read. Recently launched at a well-attended function at Law Society House, this beautifully presented book, written by Alan Hewitt, President of the Society in 2002, and senior partner of L'Estrange & Brett from 1991 to 2003, is a worthy addition to any self-respecting lawyer's library.

It is written in an elegant style, and beautifully illustrated. The author traces the history of the Society, (and not specifically of the solicitors' profession in the Province, although the two are necessarily intertwined) from its initiation in 1922 to the present day, and includes a brief overview of the profession and of the Northern Law Club in particular, in earlier times.

The book is not overly long and includes some forty-eight pages of photographs together with six useful appendices, and the chapters are well chosen, focused and punchy. The narrative is laced with gentle humour and contains many anecdotes concerning many of the “characters” who have served the profession at various times.

A chapter, “All work and no play”, describes notable sporting successes of many of our members, as well as conferences and other significant occasions. Under the heading of each chapter there is a pithy sub-title, such as, in the chapter on “The Royal Commission, a dictum of Disraeli”; “Reform, reform, don’t talk to me about reform. Things are bad enough already”, or in the closing chapter “What next?: The future ain’t what it used to be” (Yogi Berra).

Giants of the profession are brought to life. A section outlines the exploits of Blair Mayne, the war hero who later became Secretary of the Society. The exchange of addresses by Samuel Reid and J C Taylor, on the occasion of a dinner in Mr Taylor’s honour following his important work for the Society, are set out in full. As the author says: “the speeches seem to me to epitomise a great deal of what is best about the Society and the profession, a sense of purpose and of values which go far beyond the mere making of money … the same values are still to be found amongst those who take on the task of running the Society”.

Perhaps inevitably, the writing tends to become more subjective when covering recent events, such as the cluster of government-driven reform projects concerning inroads into self-regulation, “Tesco Law”, and alternative business structures, with which the author was personally engaged on behalf of the Society. He expresses unapologetically strong views regarding the perceived efforts of government to undermine our core values which are threatening to transform the management and ethos of the profession, and he takes a dim view of the role taken by the Law Society of in England and Wales in its efforts to challenge them.

Has anything been overlooked by the author in his task of chronicling the various activities of the Society? His canvas is admirably broad but perhaps an opportunity has been missed to cover in general terms the experiences of our
criminal law brethren as they have sought to maintain the rule of law in dealing with their clients, from both sides of the community, caught up in the Troubles, and with the prosecuting authorities, and the role of the Society in these matters. These perhaps unique experiences could be helpful to practitioners in other jurisdictions caught up in internal conflict. And perhaps a section dealing more fully with the ever potentially volatile (but happily normally harmonious) relations between the Society and the Bar, and occasionally the Bench, would have been of interest.

The book has been published shortly after the Society took up possession of its splendid new headquarters, and, in a sense, both events have occurred at the end of an era of unparalleled prosperity and success. One ponders about the future. We note the decimating effect of the Recession on our profession which perhaps for too long has been over reliant on conveyancing and a buoyant property market, with other important work being effectively subsidised and undertaken for too modest reward.

The author also raises the question can the Society continue to flourish as both a representative and a regulatory body at the same time. One follows with concern the fortunes of our colleagues in the neighbouring jurisdictions as they grapple with these issues. We note, for example, the position in Scotland where alternative business structures are currently permitted. While, as Alan Hewitt strongly argues, we must continue to seek to maintain our independence, and adherence to our core values, we must at the same time be careful not to become out of sync with the evolving professional structures in the neighbouring jurisdictions. Another threat could be apathy on the part of our members as these important issues are moved forward.

Notwithstanding these concerns, however, this important book presents a picture of the Society in good heart. Happily, capable people continue to come forward to serve on Council and committees, and while the Society must give strong leadership in difficult times, it must also remain mindful of the need to reflect the views and concerns of its members in its dealings with the public, the courts and government. Everyone within the profession (particularly younger members) would be well advised to read this book, and to endeavour to emulate and perpetuate the attitudes and practices of our predecessors which are so ably recorded in this worthy volume.

To purchase the publication (price £21) please email heather.semple@lawsoc-ni.org

Feeling the Pinch?

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

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

Our helpline is free and completely confidential. It’s open 9 a.m.—7.30 p.m. on weekdays, and 10.00 a.m.—4.00 p.m. at weekends and public holidays.

0800 279 6869
www.lawcare.org.uk

Health Support and Advice for Lawyers
Guidance on Oaths

Recent years have seen a significant increase in the number of people from different religious groups living in Northern Ireland. In addition, the number of people who do not practise any religion has increased significantly. In this context it is important that practitioners are conscious of the implications that this may have for their dealings with clients. One particular area in which the religious beliefs of your client may have implications is in the administration of oaths.

Background

Historically an oath was considered to be a religious declaration. In addition to any legal implications which may emerge, a person who lied under oath was considered to have offended their religious conscience. This viewpoint may not attune closely with prevailing views held today. However, for some of our clients, particularly the religious, this statement may attune with their own views on the significance of an oath. We therefore must be conscious of the need to respect the religious beliefs of our clients. This guidance is for the purpose of assisting solicitors when advising clients on the making of an oath or affirmation.

Oaths Act 1978

The Oaths Act 1978 lays down the methodology by which an oath may be administered in England, Wales or Northern Ireland. The 1978 Act at section 1(1) states:

‘The person taking the oath shall hold the New Testament, or, in the case of a Jew, the Old Testament, in his uplifted hand, and shall say or repeat after the officer administering the oath the words ‘I swear by Almighty God that ……, followed by the word of the oath prescribed by law.’

The expression ‘the words of the oath prescribed by law’, suggests that such words are to be found elsewhere in the Act, or elsewhere in the Statute Book, or in rules of court, none of which is the case. A form of words often used for Christian clients is:

‘I swear by Almighty God that this is my name and handwriting and that the contents of this my affidavit are true [if there are exhibits add that this/these is/are the exhibit/s referred to].’

The 1978 Act provides that, in the case of a person who is neither a Christian nor a Jew, the oath shall be administered in any lawful manner.

Affirmation

The Act at s. 5 provides that any person who objects to being sworn shall be permitted to make a solemn affirmation instead of taking an oath. An affirmation has the same force and effect as an oath. A commonly used form of words for an oral affirmation is:

‘I, _______ do solemnly, sincerely and truly declare and affirm . . .’

It should be noted that religious persons may choose to affirm rather than take an oath due to their particular religious beliefs.

Non-Christians

A religious person who is not a Christian may wish to comply with the practice of oath making within his own religion. You should approach this issue sensitively with your client. The remainder of this note provides guidance on the form of words and issues to be conscious of, when administering an oath for non-Christian religious persons.

• Jews

A Jew will normally elect to take the oath on the Old Testament. Traditionally Jewish men cover their heads on solemn occasions, including the taking of an oath. A Jew will typically use the ordinary form of oath provided in the 1978 Act.

• Muslims

A Muslim will normally take the oath on the Koran. A strict Muslim may require a copy of the Koran in Arabic, rather than a translation. A Muslim may wish to attend to his/her ritual purity prior to the taking of an oath.

A suitable form of oath for a Muslim is:

‘I swear by Allah that …’

• Hindus

A Hindu will normally take an oath on the Bhagavad Gita. The Gita should be kept in a covered cloth and the suggested colour is red. A Hindu may wish to attend to his/her ritual purity prior to the taking of an oath.

A suitable form of oath for a Hindu is:

‘I swear by the Gita that …’

• Sikhs

The holy scripture of the Sikh religion is known as the Guru Granth Sahib, and a portion of it known as the Sunder Gutka may be suitable for the purposes of swearing an oath. The Sunder Gutka should be kept in a covered cloth and the suggested colour is orange or yellow. A Sikh may wish to attend to his/her ritual purity prior to the taking of an oath.

A suitable form of oath for a Sikh is:

‘I swear by Guru Nanak that …’

• Buddhist

In the case of Buddhist clients, practices and preferences differ greatly. Therefore practitioners are encouraged to ask their Buddhist clients the form of declaration which they consider appropriate.

Colin Caughey, Policy and Research Officer, Law Society of Northern Ireland.
The Institute of Professional Legal Studies, in conjunction with the College of Law London, is offering a six session course in Business Law.

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

<table>
<thead>
<tr>
<th>Monday</th>
<th>E-Commerce</th>
<th>Commercial Contracts and Remedies</th>
<th>Remedies</th>
<th>Agency/Distribution/Franchising</th>
</tr>
</thead>
<tbody>
<tr>
<td>24 January 2011</td>
<td>• Introduction and Overview</td>
<td>• Formation of a Contract</td>
<td>• Limitation Periods</td>
<td>• The choice of marketing agreement</td>
</tr>
<tr>
<td>9.30 – 12.30pm</td>
<td>• Establishing a Web presence</td>
<td>• Form Capacity and Privity</td>
<td>• Restitution</td>
<td>• Distribution Agreements and Competition Law</td>
</tr>
<tr>
<td>1.30 – 4.00pm</td>
<td>• Compliance Issues</td>
<td>• Misrepresentation</td>
<td>• Action for Agreed sum, Liquidated damages Indemnities and default interest</td>
<td>• Agency Agreements and the Commercial Agents (Council Directive) Regulations 1993</td>
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<td>• Franchising Agreements</td>
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| Monday                  | Intellectual Property                            | No half-day available            | Time:                                  | Venue:                           |
| 21 February 2011        | • Relevance of Intellectual Property Rights to a Corporate Lawyer |                                   | 9.30am – 4.00pm                        | Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY |
| 21 March 2011           | • Assigning Intellectual Property Rights         |                                   |                                   |                                   |
|                         | • Licensing Intellectual Property Rights         |                                   |                                   |                                   |
|                         | • Selling a business, including Intellectual Property Rights |                                   |                                   |                                   |
|                         | • EC and UK Competition Law Issues               |                                   |                                   |                                   |

Time: 9.30am – 4.00pm  
Venue: Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY  
Cost: £550 for the complete course or £100 for each half-day session where available.  
(please tick which you wish to attend)

Successful completion of the course will lead to a Certificate in Business Law  
Applications will be taken on a first-come first-served basis  
(Places are limited to 25 people)
People trafficking - the National Referral Mechanism one year on

Lois Hamilton, immigration adviser at Law Centre (NI), looks at a report which shows a worrying lack of compliance in UK anti-trafficking practice with the Council of Europe Convention on Action Against Trafficking in Human Beings.

In December 2008, the UK government ratified the Council of Europe Convention on Action against Trafficking in Human Beings. The Convention is the first international Treaty that obliges states to adopt minimum standards to assist trafficked persons and protect their rights. It focuses primarily on protection and support of victims. The Convention came into force in the UK in April 2009 by virtue of the National Referral Mechanism (NRM). It is now over a year since the implementation of the NRM.

When the mechanism came into force, no formal monitoring was put in place to assess whether or not the NRM was sufficient to ensure that the UK remains compliant with the Convention. As a direct result, a group of nine UK-based organisations set up the Anti-Trafficking Monitoring Group to monitor the implementation and to share the information they were able to gather throughout the UK about the process.

The nine organisations are:
- Amnesty International UK
- Anti-Slavery International
- ECPAT UK (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes)
- Helen Bamber Foundation
- Immigration Law Practitioners’ Association (ILPA)
- Kalayaan
- POPPY Project (of Eaves Housing)
- TARA (The Trafficking Awareness Raising Alliance, of Glasgow Community and Safety Services)
- UNICEF UK

UK practice not Convention compliant

The Group’s extensive and detailed report was launched throughout the UK on 16 June 2010 (see footnote). In summary, the research finds that the UK government’s anti-trafficking practice is not compliant with the Convention and, where it relates to children, it is not compliant with other aspects of UK law or best practice.

The key reasons why this has happened are summarised in the report. The report states that in implementing the Convention the government has:
- misunderstood key provisions of the Convention;
- not addressed the entirety of the Convention;
- delegated considerable authority on identification to a flawed mechanism staffed by substantially unaccountable officials;
- overlooked the necessary safeguards for child victims of trafficking in the implementation of the Convention.

The report was also launched regionally. The Northern Ireland section provides an analysis of what is happening here. In short, the process is flawed, does not protect victims and in many cases actually deters victims from using it. The group visited Northern Ireland in November 2009 and contacted key agencies again in April 2010. A focus group was organised and a total of eleven interviews with statutory and non-statutory agencies took place to gather information. Five interviews took place with NGOs, two with law enforcement, three with statutory agencies and one with a legal representative.

UK-wide conclusions: victims treated as criminals

The conclusions drawn as a result of the information gathered UK-wide are worrying. The system appears to rely excessively on the discretion of officials who receive minimum training and is supported by flawed legal guidance relating to who should be identified as a victim of trafficking.

- There is no formal appeals process.
- There is an over emphasis on the immigration status of victims, a failure to meet the needs of people who have suffered abuse and trauma, a lack of prosecutions of the perpetrators of these crimes, an absence of access to compensation for victims and a failure to identify, in particular, child victims in situations of exploitation.

This can often result in victims being treated as a criminal rather than a victim of crime despite the provision of a “non-punishment” clause in the Convention.

The Northern Ireland situation

In comparison to the UK as a whole, Northern Ireland figures of victims identified here remain significantly lower. In 2008/2009, figures from the annual report of an Organised Crime Task Force established in 2000 to provide a multi-agency partnership approach to tackling organised crime in Northern Ireland stated that eleven trafficked adult women were rescued, six were victims of sexual exploitation, two were victims of domestic servitude and three were victims of forced labour.

In April 2010, the Police Service of Northern Ireland (PSNI) confirmed to the group that, between 1 April 2009 and 1 April 2010, a total of 25 people had been identified as potential trafficked persons. Of these, 21 had been referred through the NRM and four were children.

However, these statistics are not an accurate reflection of the reality of the problem. Many victims do not go through the referral process at all and therefore are not included in figures. Others have dual trafficking and asylum cases that are not referred through the UK Human Trafficking Centre (UKHTC). Many more have never been found due to the nature of this type of exploitation. In addition, the UKHTC does not publish figures specific to Northern Ireland and neither the Northern Ireland Office nor the Northern Ireland Assembly have a system in place to collect and publish data on human trafficking in Northern Ireland.
The true number of victims in Northern Ireland is simply unknown.

Recommendations for Northern Ireland
What happens in practice in Northern Ireland is dealt with in detail in the summary report. The report makes ten recommendations to the Northern Ireland Office and the Northern Ireland Executive to address the problems being faced by victims here.

- An All Northern Ireland Human Trafficking Group should be created across devolved and non-devolved, statutory and non-statutory agencies to establish an integrated approach to human trafficking in the province, especially in terms of victim support.
- NGOs with expertise and experience in working with trafficked persons in Northern Ireland should be appointed as First Responders.
- A localised National Referral Mechanism should be established in Northern Ireland along with a local infrastructure of support in accordance with the obligations of the Convention.
- Documentation should be developed and made available in different languages for statutory and non-statutory agencies to give to presumed trafficked persons in Northern Ireland.
- The Public Prosecution Service should provide guidance on human trafficking for all prosecutors in Northern Ireland in order to improve the level of convictions in Northern Ireland. It should also offer guidance on the non-criminalisation of trafficked persons who may have committed offences during their trafficking, especially related to cannabis cultivation offences, immigration related and soliciting or procuring offences.
- An information sharing protocol should be established across devolved and non-devolved government departments in order to collect and publish relevant data on the extent of human trafficking in Northern Ireland. This would include the number of persons identified as presumed trafficked persons (initially and also as a result of both ‘reasonable grounds’ and conclusive decisions) and the number of traffickers arrested, charged and successfully prosecuted under trafficking and trafficking-related offences.
- A specific individual should be given lead responsibility on the issue of human trafficking in all relevant devolved and non-devolved government departments as well as other non-statutory agencies in Northern Ireland.
- An evaluation should be conducted on the impact of the Blue Blindfold campaign, to be made public in 2011. It should involve more than a register of the number of hits or calls to particular web pages or services.
- An evaluation should be conducted in 2011 of the training packages available to frontline practitioners and officers developed by the Department of Health, Social Services and Public Safety (DHSSPS) and PSNI and the effectiveness of the arrangements for the support of child and adult trafficked victims.
- To continue to ensure that guidance about the support to be provided to trafficked persons is developed by the DHSSPS, issued and disseminated adequately, including guidance focusing on trafficked children.
Overhaul needed
The conclusions drawn from the UK-wide research are that in reality the UK has not established a system led by the principle that a person who has been trafficked has experienced abuse and requires time to recover before being exposed to our rigorous immigration system, which is primarily designed to identify and remove people without entitlement to remain in the UK. The existing system does not satisfy the provisions of the Convention nor key principles of the rule of law itself. What is clear is that the current NRM process needs an overhaul and reform is needed urgently.

Footnote
The full report from the Anti-Trafficking Monitoring Group can be found at anti-trafficking@antislavery.org

Conference and research call for major reform of tribunals in Northern Ireland

Law Centre (NI) has launched ‘Redressing Users’ Disadvantage: Proposals for Tribunal Reform in Northern Ireland’, a report calling for major reform of tribunals. The report was handed over to the new Minister for Justice, David Ford MLA, and the Lord Chief Justice, Sir Declan Morgan, at a conference in Belfast’s Inns of Court in June.

The conference, Tribunal Reform – The Way Forward, counted among its speakers the Lord Chief Justice, the Minister for Justice and the report’s authors, Gráinne McKeever (University of Ulster School of Law) and Brian Thompson (University of Liverpool School of Law).

The report covers users’ views of tribunals and provides an agenda and proposed roadmap for carrying forward tribunal reform in Northern Ireland.

“More people go to tribunals than to courts to resolve legal problems. Tribunals decide important issues including whether you can be paid a social security benefit, be released from a mental health institution, be granted asylum or have your job back, yet it remains an unheralded part of the justice system. This research, the first of its kind in Northern Ireland, aims to put the work of tribunals on the map,” said Les Allamby, Director of Law Centre (NI).

Co-author of the report, Gráinne McKeever, commented: “A number of themes emerged from the interviews with users and others involved in the tribunal system. These included that people appealing didn’t know what to expect from tribunals prior to the hearing, that good quality specialist advice and representation is very beneficial, the importance of tribunals being independent, and strong support for increased oversight and accountability to maintain standards across tribunals. This feedback has helped to inform the agenda for tribunal reform for Northern Ireland.”

Brian Thompson, co-author, noted that: “Substantive reform of tribunals has taken place in Britain and we need a similar process that meets the needs of people in Northern Ireland. The research places users at the centre of reform by recommending that users have access to good quality advice and representation, that the independent role of tribunals is strengthened and that the oversight and accountability of tribunals’ work is enhanced. The Hillsborough Agreement set out that tribunal reform was part of the programme for the new Department of Justice and our research should make a valuable contribution to carrying that work forward.”

Footnote
The full report from the Anti-Trafficking Monitoring Group can be found at anti-trafficking@antislavery.org

CPD training at Law Centre (NI)

BELFAST
- Industrial Injuries Benefits: 28 September 2010
- Identifying Errors of Law – Social Security Appeals: 12 October 2010
- Introduction to Immigration Law and Practice: (two days) 8 and 15 November 2010
- Employment and Support Allowance – Case Law and Practice Update: 16 November 2010
- Advocacy Skills: (two days) 24 and 25 November 2010
- Tax Credit Overpayments: (half day) 30 November 2010
- Mental Health Law: 7 December 2010

DERRY
- Welfare Rights Adviser Programme: eight days) 7 October – 25 November 2010
- Mental Health Law: 2 December 2010

Download a copy of our full training programme from www.lawcentreni.org, or get more information from Deborah Hill at 9024 4401 (Belfast courses) or Noirin Hyndman at 7126 2433 (Western Area courses).

Presenting Redressing Users Disadvantage: Proposals for Tribunal Reform at the tribunal reform conference. From left: Brian Thompson, University of Liverpool, co-author; Lord Chief Justice Sir Declan Morgan; Minister for Justice David Ford MLA and Gráinne McKeever, University of Ulster, co-author. Photograph by Photoline
Children’s Law Centre - Fifth Annual Lecture

The protection of children in European justice systems

The Children’s Law Centre (CLC) hosted its Fifth Annual Lecture on 5 March 2010 at the Old Bar Library, Royal Court of Justice, Belfast. This year’s Annual Lecture entitled ‘The protection of children in European justice systems’ was delivered to a packed audience by the Deputy Secretary General of the Council of Europe, Maud de Boer-Buquicchio. She follows on from previous speakers at CLC Annual Lectures including Baroness Hale, Justice of the Supreme Court of the United Kingdom, in 2006, Thomas Hammarberg, Commissioner for Human Rights in the Council of Europe, in 2007, Yanghee Lee, Chairperson of the UN Committee on the Rights of the Child, in 2008 and Mary McAleese, President of Ireland, in 2009.

The Children’s Law Centre Annual lecture is now a permanent and much anticipated feature of the legal calendar. This year’s Lecture was opened by Paddy Kelly, Director of the Children’s Law Centre to a packed audience of lawyers and members of the community and voluntary sectors. The event was chaired by the Lord Chief Justice, Sir Declan Morgan.

The Deputy Secretary General focused on the issues of children's rights in European justice systems and commented that “just because children are small, their rights are not (or should not be considered as) small, quite the opposite … children are not mini human beings with mini rights.” She went on to say: “while children have long been considered as objects of rights, they have only been recently recognised also as subjects of rights … The extent of children’s rights violations and the lack of adequate protection and prevention measures as well as the absence of effective remedies for child victims of violations of their rights show the long way we still have to go … This is particularly true when it comes to our justice systems which constantly fail to take children’s rights, interests and specific needs into account.”

In her examination of the Council of Europe programme ‘Building a Europe for and with Children’ the Deputy Secretary General noted that: “the programme has attached much importance to the promotion of access to justice at both national and international level … First, we are introducing specific provisions in our treaties that take into account the need to improve children’s contact with the justice system … Second, we are developing new standards to ensure that the rights and specific needs of children are duly taken into account … Third, we are placing child-friendly justice as one of the main pillars of any national strategy on children’s rights … Fourth, we are providing guidance for the development of child-friendly justice … Fifth, we are promoting mainstreaming of children’s rights into other policy areas … Sixth, we are seeking to improve access to information on children’s rights … And last, we are deploying considerable efforts to raise awareness on children’s rights through training programmes, education material and campaigns targeting the professionals, parents, as well as any other person in a position to affect child development.”

In concluding, the Deputy Secretary General looked at the challenges of the juvenile justice system and in particular the minimum age of criminal responsibility. “We should get ready to move towards a system that does not criminalise children. A system which takes into account the specific needs of each individual child and benefits each child with a seamless web of professional support and therapy … Detention is harsh for everyone. It is even harsher for children who are not armed to understand the grounds and overall objective of their detention … In Northern Ireland, children as young as ten can be held criminally responsible. This has to be challenged as a matter of urgency. I know that on this front, as in many others concerning children’s rights, the Children’s Law Centre is fighting hard to improve the lot of many children in this country.”

A full copy of the Deputy Secretary General, Maud de Boer-Buquicchio’s Lecture is available on request from CLC. If you would like to know more about the work of CLC, or support the work of CLC, they can be contacted at:
3rd Floor Philip House
123 – 137 York Street
BELFAST BT15 1AB
Tel: 028 9024 5704
CHALKY Freephone
08088085678
info@childrenslawcentre.org
Carmel Ferguson LLB, solicitor with Housing Rights Service, is part of a team of four from the charity heading to Romania with Habitat for Humanity Northern Ireland in October.

As part of the Big Build 2010, the Housing Rights Service team will join with other volunteers in a week long initiative to build homes for orphan headed families.

Speaking about the trip Carmel said: “Even twenty years after the fall of Ceausecu, it is difficult to forget the images of children tied to their cots in squalid orphanages. While there has been some improvement, many children and adults still suffer appalling conditions and abuse in institutions; we are keen to do our bit to help.”

To help fundraise there will be a Night at the Races in Madison’s Hotel on 10 September 2010. Races can be sponsored for a minimum donation of £100 and all sponsors will receive six complimentary tickets for the event and have their names included on the race card given to all attendees.

If you would like to sponsor a race or just make a contribution please make your cheque payable to ‘Habitat for Humanity NI’ and return to Carmel at Housing Rights Service, 10-12 High Street, Belfast, BT1 2BA.
Belfast Solicitors’ Association celebrates partnership with Northern Ireland Hospice

Local solicitors’ network, the Belfast Solicitors’ Association, is celebrating its partnership with Northern Ireland Hospice.

Raising funds for the local charity, which provides care to adults and children with life limiting and life threatening illnesses, has not proved too difficult for the local Association which has members throughout the Greater Belfast area. However, the innovative and strategic partnership between the Belfast Solicitors’ Association and Hospice is not just about raising funds, it also involves supporting carers and patients through planned workshops in the Autumn, whilst also raising awareness of the necessary services that the Northern Ireland Hospice provides in the community.

Simon Crawford, Chairman of BSA, believes that this partnership reinforces the continued commitment of BSA to support local community issues and relevant causes affecting Northern Ireland.

“We are delighted to be able to support the Hospice and in particular to donate £2,700 to the charity to date. We are currently planning a number of presentations and workshops for carers of Hospice patients to support them through legal issues during this difficult time and BSA members are looking forward to engaging with the Hospice further and organising further events over the coming year.”

The money given to the Hospice to date has been used to provide over 250 nights of Hospice care to patients both in the Hospice and in their own homes. Each year the local charity cares for over 3000 people and their families and it relies heavily on legacies and donations to fund its services. Siófra Healy, Fundraising and Marketing Manager at the Hospice is working closely with the Association to develop this partnership.

“Partnerships such as this where patients and families can directly benefit from professional support and funds raised, are unique and very important for us at the Hospice. Demand for our services is increasing every day and we are delighted that BSA is supporting us.”

Ways that you can help NOW include:

- Make a donation
- Take part in Ireland’s Biggest Coffee Morning on 16 September 2010
- Abseil down the Europa Hotel, Belfast on 19 September 2010
- Run the New York Marathon on 7 November 2010 or the Dublin Marathon on 25 October 2010
- Recycle your ink cartridges and printer toners and raise cash for the Hospice
- Display a Hospice legacy postcard in your office

Remember every £100 you raise pays for a night of Hospice care.

Anyone or office interested in supporting the Hospice should contact the fundraising office on 028 9078 1836, e-mail fundraising@nihospice.org or visit www.nihospice.org.

For further information please contact:

Fiona Sterritt
BSA Office
Merrion Business Centre
58 Howard Street
Belfast BT1 6PG
info@belfast-solicitors-association.org

OR

Siófra Healy
Northern Ireland Hospice Care
Fundraising and Marketing Manager
T: 028 9078 1836
M: 0777 3367304

BSA – RUNNING THE DISTANCE FOR CHARITY

Every May the Belfast Solicitors’ Association enters a number of teams in the Belfast Marathon. The Association has a long tradition of working with local charities to enhance the reputation of the profession in Belfast and to raise much needed funds for local worthwhile causes. It’s also good craic!

Currently the BSA is working in a charitable partnership with the Northern Ireland Hospice and Children’s Hospice helping to raise both funds and awareness for this extremely worthwhile cause.

Awareness was raised on the day as no one could miss the distinctive purple t-shirts emblazoned with the Hospice logo.

Funds were also raised by the relay teams from Higgins Hollywood Deazley, Patterson Taylor, McGallion Keown, Macartan Turkington Breen and MacElhatton Solicitors.

Matt Higgins, on behalf of the team from Higgins Hollywood Deazley solicitors, stated that: “The Hospice is such a important charity not just for Belfast but for Northern Ireland as a whole and it’s great to have the opportunity to raise the profile of the profession by fundraising for the Hospice.”

John Burke, Partner in MacElhatton added: “It’s a great opportunity to run through Belfast when there is such a carnival atmosphere, raise some money for charity and have a good time doing so.”

The BSA would like to thank not only the runners who took part and the staff at NI Hospice and NI Children’s Hospice but also anyone who kindly sponsored our entrants. Donations are still coming in and we are still happy to accept donations from any firms or individuals.
Selected High Court and Court of Appeal Decisions

BUILDING AND ENGINEERING CONTRACTS

F B MCKEE AND COMPANY LIMITED V NORTH WEST REGIONAL COLLEGE
Determination of a preliminary issue. - plaintiff claims a sum plus VAT and interest as monies due and owing by the defendant to the plaintiff on foot of a standard form JCT building contract whereby the plaintiff, as main contractor, agreed with the defendant, as employer, to construct a new teaching block. - windows which were installed were defective, let in rain and required the cladding system to be replaced. - whether the firm that installed the windows was a sub contractor of the plaintiff or was engaged under a contract with the defendant. - whether there was a variation under the contract in respect of the change of window type. - HELD that the windows manufacturer was not engaged by and on behalf of the defendant and that there is no contract between them
HIGH COURT
11 MAY 2010
WEATHERUP J

CONTRACT

TREVYNN JAY NELSON, A MINOR, SUING BY HIS FATHER AND NEXT FRIEND BRIAN NELSON V NUTTS CORNER CIRCUIT LIMITED AND ULSTER KARTING CLUB LIMITED AND SUPER ONE-SERIES LIMITED
Application for injunction for order requiring the defendants to facilitate the plaintiff to enter and compete in a cart race. - injunction sought prohibiting the defendants and each of them from running the race on the proposed dates. - plaintiff asserts that he has a contractual right to take part in the race and should be entitled to enter the premises in order to take part. - whether the defendant is improperly refusing him access. - whether the plaintiff has made out an arguable case in contractual terms that he has a right to enter the premises. - HELD that the plaintiff has not made out a legal basis for the injunction
HIGH COURT
28 MAY 2010
GIRVAN LJ

CRIMINAL LAW

IN THE MATTER OF AN APPLICATION BY BRIAN AND PAULA ARTHURS FOR JUDICIAL REVIEW
Application for judicial review of a decision made by the Director of Public Prosecutions whereby he certified that the trial of the applicants be conducted without a jury. - applicants charged with a number of proceeds of crime offences. - certificate issued under s. 1 Justice and Security (Northern Ireland) Act 2007 that a trial on indictment be conducted without a jury. - limitation to challenges to the issue of a certificate. - whether the Director’s decision was substantially flawed, procedurally unfair and contrary to a.6 ECHR. - HELD that application dismissed
HIGH COURT
30 JUNE 2010
MORGAN LCJ, GIRVAN LJ, WEATHERUP J

R V MICHAEL PATRICK CLARKE AND STEPHEN PAUL MCSTRAVICK
Ruling under s.46(3) Criminal Justice Act 2003 which applies in circumstances where the jury sworn to try an accused person has been discharged on account of tampering and the trial judge is empowered to continue without a jury. - whether it is appropriate to continue without a jury in the present case. - defendants charged with robbery, false imprisonment and kidnap. - HELD that the trial should continue without a jury.
CROWN COURT
1 FEBRUARY 2010
MCCLOSKEY J

R V THOMAS CORRIGAN
Appeal against sentencing. - guidance to sentencers on the factors that should be taken into account when sentencing for handling stolen goods. - circumstances of the offences. - appellant’s previous convictions. - aggravating factors to include closeness of the handler to the primary offence, seriousness of the primary offence, high value goods, whether goods were proceeds of domestic burglary, sophistication, level of profit made or expected, provision of regular outlet, whether threats of violence and whether the offence was committed whilst on bail. - HELD that the defendant be sentenced to 2 years and 9 months imprisonment and appeal allowed to that extent
COURT OF APPEAL
28 MAY 2010
MORGAN LCJ, COGHIN LJ

R V ROISIN DOYLE
Sentencing. - defendant pleaded guilty to the manslaughter of her husband who died of a single stab wound to the chest. - aggravating and mitigating factors. - whether the defendant had exceptional personal circumstances as mother to four small children whereby a non-custodial sentence should be passed. - HELD that this case is not sufficiently exceptional to justify imposing a non-custodial sentence and the defendant be sentenced to 3 years’ imprisonment to be followed by 2 years’ probation
CROWN COURT
26 MARCH 2010
TREACY J

R V PAUL ANTHONY MCCGAUGHERTY AND DERMOT DECLAN DOHERTY
Conspiracy to possess explosives, firearms and ammunition. - whether the prosecution can prove beyond reasonable doubt that the defendant agreed with others to illegally obtain munitions in the form of explosives, detonators, rocket launchers, firearms, silencers and ammunition. - defendant was apprehended as a result of a sting operation by the Security Service
CROWN COURT
30 JUNE 2010
HART J

R V PAUL EDWARD MEEHAN
Sentencing. - defendant pleaded guilty to firearms, conspiracy to possess Class A drugs. - sentencing guidelines. - totality. - whether sentences should be consecutive or concurrent. - aggravating and mitigating factors
CROWN COURT
29 JUNE 2010
STEPHENS J

Journal of the LSNI
Summer 2010
Selected High Court and Court of Appeal Decisions

R V THOMAS REYNOLDS
Appeal against conviction. - appellant tried on counts of indecent assault, gross indecency. - whether the trial judge had failed to direct the jury correctly in relation to the evidence. - whether the judge should have refused to permit the appellant to introduce bad character evidence relating to the complainant. - whether the appellant should have been entitled to cross examine the complainant. - HELD that appeal allowed, verdicts quashed and a retrial ordered
COURT OF APPEAL
27 APRIL 2010
MORGAN LCJ, HIGGINS LJ, GIRVAN LJ

DISCLOSURE

CHRISTOPHER MCGAUGHEY V SUNDAY NEWSPAPERS LIMITED
Appeal against order dismissing the defendant’s application to remit the plaintiff’s application to the county court. - Sunday newspaper photographed and published the plaintiff and his house without consent . - damages. - misuse of private information. - breach of a.8 ECHR. - whether the defendant is a data controller and has acted in breach of its statutory duty under the Data Protection Act 1998. - defence of public interest and qualified privilege. - whether the defendant was acting under a moral/social duty and had a legitimate interest in communicating the offending information to its readers. HELD that the plaintiff’s application is appropriate to be heard and determined in the County Court
HIGH COURT
14 MAY 2010
MCCLOSKEY J

DAMAGES

KEVIN KENNEDY V CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND
Applications for discovery under RSC as an interlocutory application. - plaintiff was employed as a staff officer with PSNI but was subsequently refused security clearance when he was informed that there was recent and historical intelligence information on his brother. - plaintiff was asked to leave the building and not to return. - plaintiff claims that this implied that he was involved or connected with terrorist or criminal activity when there were no grounds or justification. - damages for malicious falsehood, negligent misstatement and misuse of public office. - plaintiff sought discovery of security advice given by the PSNI. - whether these causes were significantly different from other types of litigation where considerations of Public Interest Immunity have prevailed to prevent discovery of certain types of documents. - whether the principles of equality and open justice outweigh any public interest that there might be in favour of non-disclosure. - HELD that the documents contain nothing which requires the defendant to make further discovery to the plaintiff and applications dismissed
HIGH COURT
18 JUNE 2010
WEIR J

EQUAL OPPORTUNITIES

IN THE MATTER OF AN APPLICATION BY DEBBIE MORRISON FOR JUDICIAL REVIEW
Applicant challenges the lawfulness of the Police Service of Northern Ireland Regret (Injury Benefit) Regulations 2006 insofar as they treat the unmarried partner of a deceased police officer less favourably than they treat such an officer’s widow, widower or bereaved civil partner. - whether incompatible with a.14 ECHR. - injury benefit of which eligibility is confined to an adult survivor. - definition of surviving spouse or surviving civil partner. - whether as a person who is unmarried and not a civil partner is being discriminated against in being refused the benefit. - whether the maintenance of the Regulations is Wednesbury unreasonable and irrational. - whether the difference in treatment is justified. - proportionality. - HELD that the difference in treatment between the applicant as a bereaved unmarried partner and a spouse or civil partner cannot be justified and is incompatible with ECHR
HIGH COURT
16 APRIL 2010
SHEIL SIR JOHN

EMPLOYMENT

STEVEN MCCORMICK V SHORT BROTHERS PLC
Appeal by way of case stated from a decision of an Industrial Tribunal whereby it found that the claimant’s dismissal by reason of redundancy was unfair in view of the manner in which his employer selected him for redundancy. - whether the Tribunal was entitled to make the determination that the claimant was unfairly dismissed. - whether the decision of the Tribunal was wrong in finding that the marking down of the claimant on the criteria of attitude and ability to work unsupervised was perverse and irrational and was outside the range of reasonable responses of a reasonable employer, whether the criteria for selection for redundancy were correctly applied by the employer
COURT OF APPEAL
16 APRIL 2010
BROTHEL J

EVIDENCE

R V AIDAN QUINN
Evidence. - admissibility of recorded material. - defendant charged with managing a meeting in
support of a prescribed organisation contrary to s.12(2) Terrorism Act 2000. - prosecution assert that a You Tube video clip shows the defendant standing with members of the Continuity IRA and holding the microphone for a uniformed individual who made a speech in a cemetery and fired rounds into the air as a salute. - whether the evidence should be admitted, or should be regarded as inadmissible since it has not been authenticated by the Crown. - HELD that the Crown has not established the authenticity of the video clip and that it will not be admitted as evidence in the trial

CROWN COURT
10 JUNE 2010
GRANT HHJ

FAMILY LAW

BELFAST HEALTH AND SOCIAL CARE
TRUST V SM AND EW
Applicant Trust has applied for a determination of the issue as to whether non-accidental injuries sustained by EW were deliberately inflicted. - HELD that the Court cannot be satisfied that the injuries were intentionally inflicted

HIGH COURT
28 JUNE 2010
WEIR J

MARY PHILOMENA DONNELLY V PATRICK GERARD DONNELLY
Application for ancillary relief. - valuation of livestock and farm machinery. - clean break settlement sought by the wife. - whether the property was inherited by the husband prior to the marriage and resulted in him having a strong emotional attachment to the farm. - factors to be considered under the Matrimonial Causes (NI) Order 1978 a.27A. - HELD that a property adjustment order be made transferring some of the farm land and other properties to the wife

HIGH COURT
21 APRIL 2010
BELL, M

HUMAN RIGHTS

AN APPLICATION BY CHRIS CARTER FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
Applicant was prosecuted for smoking in a "smoke free place" contrary to a.8 Smoking (NI) Order 2006. - challenge to smoking ban. - challenge to conviction on the basis that certain witnesses were not summoned to the Court in accordance to the County Court (Summoning of Witnesses in Criminal Proceedings and Appeals) Rules 1966. - applicant had sought attendance of the Secretary of State for NI, the Chief Medical Officer for NI, and CEO of the Health Promotion Agency and the Health Minister for NI. - challenge to the validity of the legislation. - whether the legislation was invalid. - whether the 2006 Smoking Order was incompatible with the applicant’s ECHR rights. - HELD that application for leave to apply for judicial review be dismissed

HIGH COURT
7 JUNE 2010
TREACY J

CAOIMHIN MAC GIOLLA CATHAIN V NORTHERN IRELAND COURT SERVICE
Applicant wished to present an application to the court for an occasional licence drafted in Irish. - whether requirement that only English can be used in court proceedings is incompatible with a.14 ECHR and is incompatible with the Government’s obligations under the European Charter for Minority and Regional Languages. - Court Service stated that the requirement that the court proceedings should take place in English was imposed by the Administration of Justice (Language) Act (Ireland) 1737. - whether decision was unlawful. - order of certiorari sought to quash the decision and an order of mandamus sought requiring the court to accept the application in Irish. - declaration sought that the decision of the Court Service was incompatible with Convention Rights. - HELD that the applicant lacked locus standi to bring the application and that English is the working language of the Courts and almost all the population

COURT OF APPEAL
2 JUNE 2010
MORGAN LCJ, GIRVAN LJ, COGHLIN LJ

INQUESTS

IN THE MATTER OF AN APPLICATION BY THE CHIEF CONSTABLE OF THE POLICE SERVICE FOR NORTHERN IRELAND FOR JUDICIAL REVIEW AND IN THE MATTER OF A DECISION BY HER MAJESTY’S SENIOR CORONER FOR NORTHERN IRELAND IN RELATION TO THE PROPOSED RESUMPTION OF INQUESTS INTO THE DEATHS OF SERGEANT JOHN QUINN, CONSTABLES ALAN MCCCLOY, PAUL HAMILTON, JOHN GERVAISE KERR, EUGENE TOMAN, JOHN FREDERICK BURNS, MICHAEL JUSTINE TIGHE, PETER JAMES MARTIN GREW AND RODERICK MARTIN CARROLL
Application by the Chief Constable PSNI for declaratory relief with respect to the correct approach to be adopted to the disclosure of materials in Coronial inquests where an application for Public Interest Immunity (PII) is brought. - all deaths relating to this application are controversial deaths occurring at the height of the Troubles. - application challenges the decision of the Senior Coroner whereby he directed the applicant to make available to him redacted copies of the Stalker and Sampson reports for onward dissemination to the other interested parties in relation to the proposed resumption of inquests into the deaths of the persons named. - applicant objects to the Coroner’s refusal to first rule on the relevance of the said materials which thereby allegedly impedes the Chief Constable’s application for a PII Certificate for proposed redaction of the reports. - whether the Coroner erred in law in concluding he could require dissemination of a redacted version of the report by deeming that material to be generally relevant without determining the specific relevance of that material. - whether the Coroner failed to have due regard to a.2 ECHR rights of third parties who might be identified in the reports in circumstances where a PII application could not be made until the Coroner had determined the relevance of the material in question. - whether the Coroner was acting ultra vires and in error of law in proposing to require the applicant to furnish redacted copies of the reports pursuant to s.8 Coroner’s Act (NI)
Selected High Court and Court of Appeal Decisions

1959. - determination of relevance of documents supplied in the course of a coronial inquest. - HELD that the applicant has misconceived the nature of the coronial process, the role of the Coroner and the nature of disclosure within the process and application dismissed
HIGH COURT
27 MAY 2010
GILLEN J
LEGAL AID

AN APPLICATION FOR JUDICIAL REVIEW BY FEARGAL MAGENNIS
Judicial review to challenge the decision of the Legal Services Commission whereby the Legal Aid Appeal Committee refused the applicant legal aid to appeal to the Court of Appeal. - whether the Committee took into consideration an irrelevant, immaterial and inaccurate consideration and ignored relevant factors. - whether the Committee erred in concluding that it was not reasonable that the applicant should receive legal aid - applicant sought to challenge decisions of the Child Support Agency and the Department of Social Development on child maintenance. - HELD that the decision of the Committee be quashed
HIGH COURT
27 APRIL 2010
TREACY J

NEGLIGENCE

CM V UNITED HOSPITALS TRUST
Medical negligence. - whether the defendant's servants had failed to examine the plaintiff properly on his initial admission to hospital, causing him personal injury, loss and damage. - whether the plaintiff was suffering from the condition at his time of his initial admission to hospital. - nature and extent of the examination carried out on his initial admission to hospital. - HELD that negligence proved against the defendant and the plaintiff awarded £35,000
HIGH COURT
18 MARCH 2010
HIGGINS LJ

ODYSSEY CINEMAS LIMITED V VILLAGE THEATRES THREE LIMITED AND SHERIDAN MILLENIUM LIMITED
Appeal against judgment relating to preliminary questions. - whether the trial judge’s conclusions that a misrepresentation which he found had been made by the respondent (the defendant in the action) was not made fraudulently but was made negligently, that the remedy which should be awarded to the appellant in respect of the respondent’s negligent misrepresentation should not be recission but damages, and that the appellant was guilty of contributory negligence. - whether the trial judge had applied the wrong legal test of fraud. - meaning of fraud in law. - HELD that the trial judge was correct in rejecting the appellant’s case of fraudulent misrepresentation but was wrong to conclude that damages would fail to be reduced by reason of contributory negligence. - action remitted to the trial judge to reconsider the question whether recission should be refused having regard to the contents of the judgment
COURT OF APPEAL
2 JUNE 2010
MORGAN LCJ, HIGGINS LJ, GIRVAN LJ

ULSTERBUS LIMITED V JOHN SUFFERIN
Appeal against decision on liability when the judge dismissed the plaintiff’s claim for damages sustained by the plaintiff by reason of the negligence and nuisance of the defendant in about the inspection, maintenance and cutting back of trees on his property. - double decker bus carrying children collided with an overhanging branch of a tree belonging to the defendant causing damage to the bus and personal injuries to some passengers. - duty of an occupier owning trees projecting over or onto a highway. - reasonable foreseeability of harm. - HELD that the defendant in this case was not aware of the risk or should not have become aware with reasonable care of any danger posed by the branch with which the bus collided. - HELD that the decision of the District Judge is upheld and appeal dismissed with costs to the respondent
HIGH COURT
20 APRIL 2010
GILLEN J

PRISONER LAW

IN THE MATTER OF AN APPLICATION BY IAN REA FOR JUDICIAL REVIEW
Application for judicial review of the Governor of Magheraberry prison’s calculation of the applicant’s earliest release date. - Governor refused to give the applicant credit for a period spent on remand on the ground that these related to different charges and were not considered a relevant period for the purposes of s. 26(2) of the Treatment of Offenders (NI) Act 1968. - whether the order of the court remanding the applicant in custody was made in connection with proceedings relating to the offences for which the applicant was sentenced. - HELD that the applicant had not established a necessary direct connection and appeal dismissed
HIGH COURT
12 MAY 2010
MORGAN LCJ, HIGGINS LJ, COGHLIN LJ

REAL PROPERTY

KARL ARMSTRONG AND MARGARET ELAINE ARMSTRONG V PHELIM BERNARD SHIELDS AND ROSALEEN SHIELDS
Right of way over a strip of ground which is a laneway on the driveway to property owned and occupied by the plaintiffs. - what land represented the dominant tenement for the purposes of the right of way. - interpretation of the Land Registry transfer. - effect of the way in which the right of way was registered. - HELD that having regard to the way in which the burden was registered the right was limited and that the plaintiffs are successful in their contentions as to the definition of what the dominant tenement was that was served by the right of way
HIGH COURT
27 MARCH 2010
GIRVAN LJ
Library Update

Package Holidays and Tour Operators

Legislation


The Package Travel, Package Holidays and Package Tours Regulations 1992/3288
These Regulations implement Council Directive 90/314/EEC on package travel, package holidays, and package tours. The Regulations set out what information must be given to the consumer before the contract is concluded (including information to be in brochures, where one is published) and information which must be given to the consumer before the package starts.
In force: 23 December 1992


Articles

New horizons
Considers the scope of the Package Travel, Package Holidays and Package Tours Regulations 1992. Discusses when holidays are no longer considered packages.
Ramage: 2010 SJ 154(10), 15,17

Proof of the pudding
Considers the obstacles to bringing a successful claim for damages in relation to illness or injury suffered whilst on holiday abroad against the tour operator.
Grover: 2009 L. Ex. Jul, 38

Regulation 15 of the Package Travel Regulations. Where are we now? And where are we going?
Reviews the ruling in Holden v First Choice Holidays & Flights Ltd that the package holiday customer bore the burden of proof that a foreign hotel did not meet local health and safety standards.
Prager: 2008 ITLJ, 4, 149-153

Part of the package
Whether flight passengers who had to be diverted to make an emergency landing when a hole appeared in the plane’s fuselage might have any claim against the airline, in particular for mental harm.
Grant: 2008 SJ 152(31), 12

Liability: personal injury - swimming pools - diving accidents - package holidays - breach of contract
Comments on the Court of Appeal decision in Evans v Kosmar Villa Holiday Plc on whether a tour operator was liable for severe injuries resulting in incomplete tetraplegia sustained by a holidaymaker who had dived into the shallow end of a swimming pool despite the presence of “no diving” signs.
Harvey: 2008 J.P.I. Law, 2, C71-73

Holiday meals: the standard of care
Reviews the Birmingham County Court ruling in Kempson v First Choice Holidays & Flights Ltd (unreported) on whether a tour operator was liable under the Package Travel, Package Holidays and Package Tours Regulations 1992 for any failures on the part of a foreign hotel which caused salmonella poisoning among holidaymakers.
2007/08: Cons. L. Today, Dec/Jan, 3-4

Fraudulent holiday claims
Discusses how tour operators can defend themselves against personal injury claims which they suspect are fraudulent.

Caselaw

Evans v Kosmar Villa Holiday Plc
The appellant tour operator (K) appealed against a decision that it was liable for the personal injury claim of the claimant (E). - E dived into the shallow end of the swimming pool at the complex, hit his head on the bottom and sustained serious injuries resulting in incomplete tetraplegia. - pool was not safe for diving and there were “no diving” signs. - Judge finding defendant’s failure to use non-slip paint on wall by swimming pool materially increasing material risk of injury but not causative of accident – Whether judge erring in approach to causation and material risk of injury.
[2010] EWCA Civ 372

Gouldbourn v Balkan Holidays Ltd and another
Claim in negligence brought in respect of personal injury sustained in consequence of fall on Bulgarian ski slope – County court judge dismissing claim applying ‘local’ standards of care – Whether judge correct
[2010] EWCA Civ 372

Clough v First Choice Holidays and Flights Ltd
Claimant suffered accident in swimming pool – Judge finding defendant’s failure to use non-slip paint on wall by swimming pool materially increasing risk of injury but not causative of accident – Whether judge erring in approach to causation and material contribution to damage or material risk of damage
[2008] EWCA Civ 15

Moran v First Choice Holidays and Flights Ltd and another
[2005] EWHC 2478 (QB)

All cases are available from the Law Society library. In the next issue the Library Update will be ‘Recent developments in holiday compensation.’
# Classifieds

## Missing Wills

<table>
<thead>
<tr>
<th>Re:</th>
<th>Late of:</th>
<th>Date of Death:</th>
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<tbody>
<tr>
<td>Michael Joseph Dunne</td>
<td>Coolcran, Tempo, County Fermanagh</td>
<td>31 March 2010</td>
</tr>
<tr>
<td>Matthew McCarthy</td>
<td>10 Ferry Street, Portaferry, Newtownards, County Down BT22 1PB</td>
<td>30 March 2010</td>
</tr>
<tr>
<td>Owen McNally</td>
<td>Residential – 16 Coolderry Road, Crossmaglen, Newry, County Down BT35 9JA</td>
<td>19 March 2010</td>
</tr>
<tr>
<td>Patrick Docherty</td>
<td>Kilblain Court, Greenock, Scotland PA15 1SW</td>
<td></td>
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<tr>
<td>Eileen Keating</td>
<td>Dunlady House Private Nursing Home, 18 Dunlady Road, Dundonald</td>
<td></td>
</tr>
<tr>
<td>Catherine Bridget McEvoy</td>
<td>15 Kingsway Fold, 246 Kingsway, Dunmurry, Belfast</td>
<td></td>
</tr>
<tr>
<td>John Joshua Johnston MBE</td>
<td>25 Park Avenue, Belfast</td>
<td></td>
</tr>
<tr>
<td>Olive Margaret Morgan</td>
<td>105 Woodland Park, Lambeg, Lisburn, County Antrim BT27 4PG</td>
<td></td>
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<tr>
<td>James Hunter</td>
<td>5 Langley Road, Ballynahinch BT24 8BT</td>
<td></td>
</tr>
</tbody>
</table>

## Other Information

- **Re: Michael Joseph Dunne**
  - Late of: Coolcran, Tempo, County Fermanagh
  - Date of Death: 31 March 2010
  - Would any person having any knowledge of the whereabouts of a Will made by the above named deceased, please contact:
    - John Quinn & Co Solicitors
    - 14 Belmore Street
    - Enniskillen
    - County Fermanagh BT74 6AA
    - Tel: 028 6632 6008
    - Fax: 028 6632 2592
    - Email: johnquinn@utvinternet.com

- **Re: Matthew McCarthy**
  - Late of: 10 Ferry Street, Portaferry, Newtownards, County Down BT22 1PB
  - Date of Death: 30 March 2010
  - Would any person having knowledge of the whereabouts of any Will made by the above named deceased please contact:
    - Danny Hughes
    - Ferguson & Co Solicitors
    - 11 Donegall Square South
    - BELFAST BT1 5JE
    - Tel: 028 9032 2998
    - Fax: 028 9032 6241
    - Email: danny.hughes@fc-law.co.uk

- **Re: Owen McNally**
  - Late of: Residential – 16 Coolderry Road, Crossmaglen, Newry, County Down BT35 9JA, and Nursing - Glencarron Nursing Home, Crossmaglen, Newry, County Down
  - Date of death: 19 March 2010
  - Would any person having knowledge of the whereabouts of a Will made by the above named deceased please contact:
    - Rosetta Hughes
    - S C Connolly & Co Solicitors
    - Bank Building
    - 39 Hill Street
    - Newry
    - County Down BT34 1AF
    - Tel: 028 3026 5311
    - Fax: 028 3026 2096
    - Email: rosetta.hughes@scconnolly.com

- **Re: Patrick Docherty**
  - Late of: 93 Kilblain Court, Greenock, Scotland PA15 1SW
  - Formerly of: 44 Kelso Court, Greencross, Greenock, Scotland and 57 Cardross Crescent, Greencross
  - Would any person having knowledge of the whereabouts of a Will made by the above named deceased please contact:
    - Nanette Cunningham
    - Blair & Bryden Solicitors
    - 4 Cathcart Square
    - Greencross
    - Scotland PA15 1BS
    - Tel: 01475 558420
    - Fax: 01475 558425

- **Re: Eileen Keating**
  - Late of: Dunlady House Private Nursing Home, 18 Dunlady Road, Dundonald
  - Formerly of: 51 Orpen Drive, Finaghy, Belfast
  - Date of Death: 15 January 2010
  - Would any person having knowledge of the whereabouts of any Will made by the above named deceased, please contact:
    - Fiona Wallace
    - Geo L Maclaine & Co Solicitors
    - 13 Lombard Street
    - BELFAST BT1 1RH
    - Tel: 028 9024 3126
    - Fax: 028 9024 8124

- **Re: Catherine Bridget McEvoy**
  - Late of: 15 Kingsway Fold, 246 Kingsway, Dunmurry, Belfast
  - Formerly of: 12B, Hawthorne Park, Dunmurry, Belfast
  - Would any person having knowledge of the whereabouts of any Will made by the above named deceased please contact:
    - Con O’Hagan
    - Solicitors
    - 13 Church Place
    - Lurgan
    - County Armagh BT66 6EY
    - Tel: 028 3832 4511
    - Fax: 028 3832 6172

- **Re: John Joshua Johnston MBE**
  - Late of: 25 Park Avenue, Belfast
  - Would any person having knowledge of the whereabouts of a Will made by the above named deceased please contact:
    - Law Quinn
    - Solicitors
    - Office 1
    - 16 Balloo Avenue
    - Bangor
    - County Down BT19 7QT
    - Tel: 028 9145 6666
    - Fax: 028 9145 7700

- **Re: Ann (Annie) Woods**
  - Late of: 22 Sallywood, Irvinestown, County Fermanagh BT94 1HQ
  - Date of Death: 30 March 2010
  - Would any person having any knowledge of the whereabouts of a Will made by the above named deceased, please contact:
    - John Quinn & Co Solicitors
    - 14 Belmore Street
    - Enniskillen
    - County Fermanagh BT74 6AA
    - Tel: 028 6632 6008
    - Fax: 028 6632 2592
    - Email: johnquinn@utvinternet.com
**Missing Title Deeds**

Property at: **13 Strand Road, Londonderry BT48 7BH**

Registered owner: **Albert Corscaden**

Would any person having any knowledge of the whereabouts and documents of title relating to the above mentioned premises produce said Deeds and communicate such information to:

**Kelly & Corr**

Solicitors

2c Clarendon Street

Derry BT48 7ES

Tel: 028 7126 1429

Fax: 028 7126 2226

Email: info@kellyandcorr.co.uk

Folio: **23097**

County: Down

Registered owner: **John Cunningham**

Lands in: **Townland of Ballymoney Barony of Iveagh Upper, Upper Half**

Take notice that any person having custody of or any information as to the whereabouts of the Land Certificate relating to the above mentioned folio should forthwith produce said Certificate or communicate such information to the under mentioned solicitors and take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.

**Haugheys**

Solicitors

138 Upper Lisburn Road

BELFAST BT10 0BE

Tel: 028 9043 1222

Fax: 028 9061 2511

---

Re: **Martha Torley** (deceased)

Late of: **31 Navan Street, Belfast BT11 8JR**

Would any Solicitor having knowledge of the whereabouts of a Will executed by the above named deceased please contact:

Kieran Barrett

Haugheys

Solicitors

138 Upper Lisburn Road

Finaghy Crossroads

BELFAST BT10 0BE

Tel: 028 9043 1222

Fax: 028 9061 2511

---

Re: **Thomas Gerard Kilfeather** (deceased)

Late of: **162 Finaghy Road North, Belfast BT14 6ND**

Date of death: **24 May 2005**

Would anyone having knowledge of a Will for the above named deceased please contact:

Paul McMullan Solicitor

2-4 Church Street

Ballynahinch

County Down BT24 8AF

DX: DJ3008NR Ballynahinch

Tel: 028 9756 2357

Fax: 028 9756 5915

---

Re: **Frances Josephine Cox**

Late of: **39 Kingsmere Avenue, Belfast BT14 6ND**

Any person having knowledge of the whereabouts of any Will or Title Deeds relating to the above named deceased please contact:

Alison Williamson

Francis J Irvine & Co

Solicitors

42 Dublin Road

BELFAST BT2 7HN

Tel: 028 9024 6451

Fax: 028 9033 1735

---

Re: **Harriett Maria Watson** (deceased)

Late of: **Carnalea Clinic, 20 Crawfordsburn Road, Bangor, County Down**

Date of Death: **26 December 2008**

Would any person having knowledge of the whereabouts of any Will made by the above named deceased please contact:

Murray Kelly Moore

Solicitors

1 Dufferin Avenue

Bangor

County Down BT20 3AL

Tel: 028 9127 0000

Fax: 028 9127 1332

---

**Register of Wills**

**Martha Torley** (deceased)

Late of: **31 Navan Street, Belfast BT11 8JR**

Would any Solicitor having knowledge of the whereabouts of a Will executed by the above named deceased please contact:

Kieran Barrett

Haugheys

Solicitors

138 Upper Lisburn Road

Finaghy Crossroads

BELFAST BT10 0BE

Tel: 028 9043 1222

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2-4 Church Street

Ballynahinch

County Down BT24 8AF

DX: DJ3008NR Ballynahinch

Tel: 028 9756 2357

Fax: 028 9756 5915

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Solicitors

1 Dufferin Avenue

Bangor

County Down BT20 3AL

Tel: 028 9127 0000

Fax: 028 9127 1332

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

**T D Gibson & Co**

Solicitors

Morrison House

107 Church Street

Portadown

County Armagh BT62 3DD

Tel: 028 3833 2176

Fax: 028 3833 0834

---

Folio: **TY15174L**

County: **Tyrone**

Registered owners: **Lawrence McKillion and Pauline McKillion**

Take notice that any person having custody of or any information as to the whereabouts of the Land Certificate relating to the above mentioned folio should forthwith produce said Certificate or communicate such information to the under mentioned solicitors and take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.

**Michael Ferguson**

Solicitors

249 Lisburn Road

BELFAST BT9 7EN

Tel: 028 9038 2030

Fax: 028 9038 2107

---

Registered owner: **Violet Bleakley**

Property at: **58 Ashgrove Avenue, Banbridge, County Down BT32 3RG**

Would any person having any knowledge of the whereabouts of the Deeds and Documents of Title relating to the above mentioned premises, please communicate such information to:

Claire Higgins

Ferris & Co

Solicitors

Victoria House

2 Newry Road

Banbridge

County Down BT32 3HF
Folio: AR 17640
County: Armagh
Registered Owners: Thomas & Elizabeth McCord
Registered Owner of Charge: Alliance & Leicester plc
Property: 14 Highfield Park, Craigavon, County Armagh BT64 3AF

Take notice that any person having custody of or information as to the whereabouts of the Land Certificate and Certificate of Charge relating to the above mentioned Folio should forthwith produce said Land Certificate and Certificate of Charge or communicate such information to the under mentioned Solicitors. And take further notice that unless the said Land Certificate and Certificate of Charge are so produced or adequate information as to their whereabouts is so communicated within three weeks of publication of this notice a duplicate Land Certificate and Certificate of Charge may be applied for.

Eamonn McEvoy & Co
Solicitors
22 Church Place
Lurgan
County Armagh BT66 6EY
Tel: 028 3832 7734
Fax: 028 3832 1760
Email: law@e-mcevoy.co.uk
Ref: 875/2

Bookkeeping Services
Qualified, registered bookkeeper providing services to the legal profession in the Belfast area. Fully conversant with software accounting systems. Many years’ experience. References available on request. Please contact Ray Gray on 028 9039 2030 or 07929 401817.
Email: raygray1949@yahoo.co.uk.

Solicitor’s Assistant
Solicitor’s Assistant (specialising in Personal Injury Litigation) with more than 25 years’ experience seeks full-time or part-time employment.
CV available upon request by telephoning 028 9041 8962.

Solicitor’s Assistant (Probate) with over 35 years’ experience seeks full or part-time employment.
NO SALARY REQUIRED
CV available upon request by telephoning 028 9083 6749 or emailing macauley_71@hotmail.com

Contact
Beverley MacRitchie
07763 006306
028 9337 2999
macall@btinternet.com

For Help With Personal Injury Claims In England and Wales

Contact:
John Whitcroft
L.L.B. Hons. (QLB)
Solicitor
(Admitted NI 1978)
Tel: 0117 922 7740
Fax: 0117 925 0202
Email: johnwhitcroft@onetel.com
59 Queen Charlotte Street
Bristol BS1 4HL

Member of The Association of Personal Injury Lawyers – Senior Litigator
www.johnwhitcroftsolicitor.co.uk
Gillian McClenahan ATT TEP tax, trust and estate specialist established Willplantax in 2003 to provide a confidential consultancy service for solicitors, accountants, and financial advisers throughout the province where help or a second opinion is required with:

- Inheritance Tax, Capital Gains Tax & personal tax planning and compliance
- Drafting tax efficient Wills, Trust Deeds, and Deeds of Variation
- Estate administration & related tax compliance
- Self-Assessment Tax Returns for individuals, Trusts, and Estates
- Inheritance Tax & probate forms and calculations
- Controllership applications
- Funding for care

Contact Michael Kleeman at (international toll free) 00-800-221-56970 or at mkleeman@kleemanlawfirm.com
Visit our website at kleemanlawfirm.com

Tel: 028 9127 4634
Mobile: 07967 581702
Web: www.willplantax.co.uk
Email: gillian@willplantax.co.uk

REPUBLIC OF IRELAND AGENTS

For your agency work in CORK
Frank Joyce & Company Solicitors
In practice since 1988
25 Grand Parade, Cork
Tel: (0035321) 4251700
Fax: (0035321) 4251702

Contact
Frank Joyce, BA, LLB.
Email: frank@joycelaw.eu
Leonard Leader, LLB.
Email: leonard@joycelaw.eu
Title Insurance Risks
Experts for Experts

Please find below a list of standard title insurance risks which are covered by First Title:

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

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

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

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

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

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

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