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Copy deadline for Mar/Apr 2014 Edition:
Friday 21 March 2014
The new President delivered his inaugural address to members at the Society's Annual Dinner.

Mr. Justice Burgess, friends and colleagues, my Master Niall Browne and my father - welcome to the 93rd Annual Dinner of the Law Society of Northern Ireland here in a new venue for us Titanic Belfast.

Tonight is a most important event in the Society's social calendar as it provides an excellent opportunity for you, the members of our profession, without the distraction of clients, to relax and unwind at the end of what I have no doubt has been another hard week at the coal face.

Tonight's dinner also provides an opportunity for our newly admitted solicitors to attend their first Society social function alongside their colleagues and contemporaries.

For the last few weeks I have constantly been asking myself how on earth did I get into this position. I wondered was it good fortune or might it have been destiny (since as you have heard, I am following in the footsteps of both my grandfather and father, who I am delighted to be able to have here as a guest this evening). Eventually, I decided that it was probably a combination of a number of factors - in any event I am unashamedly proud of being a solicitor.

I take great pride in the solicitors' branch of the legal profession and I am immensely proud to have been elected to serve as your President for the next twelve months.

I can't promise that during my year I will get it right all of the time but what I can assure you is that I will do my utmost and to the best of my abilities to represent your interests, those of your firms no matter what size and those of the collective profession in a robust and
Legal Aid ....we will remain vocal in our call for a holistic review of the justice system before any proposed cuts are implemented.

forthright manner when dealing with the many challenges that lie ahead in what are still turbulent, unpredictable and difficult times.

I do hope that you will indulge me as I give you a very brief overview of just a few of the major issues which are likely to engage the Society over the next twelve months.

• Legal aid continues to occupy the headlines. There is no need to rehearse in detail what the Society, as the authoritative voice on the matter, has said in recent weeks. Suffice to say we will remain vocal in our call for a holistic review of the justice system before any proposed cuts are implemented. We are delighted at the profession’s collegiate response to the call to lobby both in the significant numbers that attended our recent Legal Aid Conference and thereafter as to the very significant engagement with local MLAs. The results of this co-ordinated and merged approach are now being seen in a growing awareness amongst our elected representatives of the strength of the arguments being put forward.

• We have for some time been pressing for a legislative ban on the payment of referral fees in road traffic cases. Our protestations fell on deaf ears and somewhat incredulously we have recently seen a Ministerial report suggesting that Claims Management Companies do not play a large role in Northern Ireland. As such the Society has taken the bull by the horns and passed its own Regulations prohibiting the payment of such referral fees. This will be closely monitored and hopefully all of our phones will start ringing again with clients seeking to instruct us in such matters.

• Solicitor advocacy remains high on the Society’s agenda and I can promise you that we will do all within our power to ensure that our highly skilled advocates will be able to represent their clients in the higher Courts just as soon as possible.

• Lest the conveyancers amongst you think I have forgotten about them, there are a number of important matters either under consideration or on the horizon. Our Home Charter Scheme, which was ground breaking when it was introduced almost 20 years ago, is currently undergoing a root and branch review. We continue to liaise with mortgage lenders seeking to convince them that Northern Ireland is an entirely different playing field from that in England & Wales and that as such wide Solicitors’ Panels should be maintained. Members are also rightly concerned about requests for their files for review in cases where properties have been re-possessed and apparently sold at a significant loss. I can assure you that in such cases the Society will do what it can to ensure that we, the profession, do not end up being the fall guys for what in many instances was nothing short of reckless lending. This has ignited a debate on the merits of separate representation for borrower and lender which will no doubt unfold over the coming months and which I would ask you all to participate actively in whatever your views.

• The legal landscape here is constantly changing. Belfast is now seen as a centre of excellence in legal process outsourcing. As a corollary of this the Society has joined forces with Invest NI to carry out a feasibility study as to what services our indigenous members might be able to offer for export outside these shores. This is an exciting initiative and one which will hopefully continue to evolve as we all seek alternative sources of work.

• You will no doubt all have seen the recent advertising campaign on behalf of the profession, ASK or “A Solicitor Knows” perhaps whilst you

This has ignited a debate on the merits of separate representation for borrower and lender which will no doubt unfold over the coming months and which I would ask you all to participate actively in whatever your views.
We should, however, all remember that to practise law is not a right but rather a privilege. This requires the maintenance of the highest professional and ethical standards to which we should all aspire.

of this proud profession. We all share a tangible connection which makes us part of something which is lifelong, which requires our commitment and which in turn defines us – that is the right to use the solicitor brand and the core values that this entails.

I have become somewhat troubled recently that the sense of pride, of honour and especially of worth which we should all have has become diminished either intentionally or unintentionally by the environment in which we now operate and by the challenges which we are all now facing. I can sometimes understand why others rally against our profession and seek to devalue the work and the importance of the services provided by our network of local solicitors’ firms.

If I could take an example from one of the areas in which I practise - the issue of conveyancing fees. Why oh why do many of us persist in carrying out such work, which invariably involves the largest transaction in a client’s lifetime, for such pitifully low fees? Why do we frequently seem content to write large cheques to estate agents for their part in such matters but then equally seem almost embarrassed to charge a proper fee for the very significant work that we do? When others are intent on attacking us from the outside, why do we persist in attacking ourselves from within?

Put simply, once it becomes purely about cost this is nothing more than a race to the bottom and I ask you if we are not prepared to value ourselves and the services that we provide how can we expect others to do so? Therefore as I begin my presidency I intend to continue the work of my predecessors in emphasising the importance of collegiality and sense of value.

With that in mind, if I could conclude, you will be relieved to hear, by returning to our newly admitted solicitors. You are embarking on your careers and that can be a slightly daunting experience. It shouldn’t be - you, like the rest of us, have earned the right to be called a solicitor. No-one can take that away from you. As I said a moment ago, the designation is significant and permanent. We should, however, all remember that to practise law is not a right but rather a privilege. This requires the maintenance of the highest professional and ethical standards to which we should all aspire.

Hopefully, even in these difficult times, your calling will give you the opportunity to make a healthy living and if your experience proves to be anything like mine you will find that as you do so, your work will be interesting, stimulating and challenging. Never be afraid to seek advice from others. You are surrounded by experienced colleagues who will be more than willing to assist you with difficult problems. You only have to ask. You are the future of the profession and those of us who are more experienced will be flattered when we are asked for our opinions. Believe me it will not be long before we are asking you to return the favour.

It is my fervent hope that you will commit wholeheartedly to the profession by engaging for example through the Young Solicitors’ Association, your local Associations and ultimately the Society Committees and Council.

As I approached the office of President, I have been asked what is my theme for the year going to be? So far my response has generally been to suggest that I would like to survive the year unscathed. However, if I am to ask the society brand and the core values to which this entails.

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New Presidential Team

The new Presidential Team. From left: Alan Hunter, Chief Executive; Michael Robinson, Senior Vice President; Richard Palmer, President and Arleen Elliott, Junior Vice President.

LAW SOCIETY NOTICE

Applications under Regulation 8(3) or 8(5) of the Solicitors’ Admission and Training Regulations 1988

CLOSING DATE for 2014

The closing date in 2014 for applications under Regulations 8(3) and 8(5) will be no later than 5pm on Monday 28 April 2014. Any person who wishes to apply under Regulations 8(3) or 8(5) with a view to admission to the Solicitors’ Vocational Training Course at the Institute/Graduate School commencing in January 2015 (apprenticeship starting September 2014) will have to lodge an application with the Society.

Any applications received after 28 April 2014 up until 30 April 2015 will be considered for the next vocational training course for solicitors, which would be due to start in January 2016 (apprenticeship starting September 2015).

Applications under Regulation 8(3)

NOTICE OF DISCONTINUANCE

Following the recommendations of the Education Review carried out by the Society, the alternative route to train and qualify as a solicitor under Regulation 8(3) of the Solicitors’ Admissions and Training Regulations 1988 will be discontinued in April 2015. Applications will not be accepted after 30 April 2015.

The alternative route to training under Regulation 8(5) is not affected by this.

THE LAW SOCIETY OF NORTHERN IRELAND
Mediation Matters

As the tenth anniversary of the Halsey decision approaches, Brian Speers, solicitor and mediator, reflects on some recent case law.

For lawyers involved in disputes, mediation matters. All lawyers should be aware of the recent publication of the Jackson ADR handbook by Messrs Blake, Brown and Sime. This book has been endorsed by the Judicial College, the Civil Justice Council and the Civil Mediation Council in England and Wales and arose in response to Lord Justice Jackson’s review of civil litigation costs. He concluded that a cultural change was needed among those engaged in civil litigation so that the benefits of participating in alternative dispute resolution were better recognised.

The judiciary in Northern Ireland have been provided with the Jackson ADR Handbook, the foreword of which states (echoing words in the judgement of Lord Justice Dyson in the seminal case of Halsey, of which more later) that all members of the legal profession who conduct litigation should routinely consider with their clients whether their disputes are suitable for ADR. It can easily be concluded that those who do not leave themselves exposed to complaint or liability for failing to inform and advise their clients about alternatives to proceeding with the Court process.

Mediation also matters because an unreasonable failure to participate or an outright refusal can result in a successful party not recovering their costs or being otherwise adversely impacted in the decision on costs by the trial Judge. The tenth anniversary of the publication of the judgement in the case of Halsey v Milton Keynes General NHS Trust [2004] EWCA civ 598, is in May 2014. In the ten years since Halsey a number of commentators have queried whether or not the burden of proving that mediation would have had a reasonable prospect of success, which presently bears upon the proponent of the mediation, should be replaced by the burden falling upon the party who refuses to mediate. (“See pages 9 and 10 for details of an important Mediation Conference).

This article briefly considers three cases decided post Halsey. The first is Rolf v De Guerin [2011] EWCA civ 78. This case involving modest building renovation works was a Court of Appeal case in England.

There were strongly held views between the householder and her builder. The builder was a litigant in person. He refused to mediate. The Claimant said that this refusal was unreasonable. The Defendant said he wanted his ‘day in court’ and that only in court could he effectively highlight the Claimant’s conduct. Lord Justice Ricks said that the refusal to mediate amounted to unreasonable behaviour and made no order as to costs notwithstanding the fact that the case was decided more in favour of the Defendant that the Claimant.

In Frost v Wake, Smith and Tofields Solicitors [2013] EWCA civ 1960, Lord Justice Tomlinson praised the conduct of the mediator involved in a protracted, wide ranging and fractious dispute between two brothers who had together built up a substantial property and business empire. He remarked:

‘this unhappy story ultimately bears testimony to the ability of a skilled mediator to resolve even the most apparently intractable dispute attended by the inevitable animosity of a fractured family relationship’.

The case involved a claim by one of the brothers against his solicitor arguing that the solicitor failed to ensure that a legally binding agreement was concluded at the end of the mediation rather than a ‘heads of terms’ type agreement which required more work to turn it into an enforceable agreement.

Notwithstanding the excellent efforts of the mediator to reach an outline agreement the detail was never resolved and the fallout was the claim against the solicitors. The Judge towards the end of an interesting judgement remarked:

‘it should be a cause for neither surprise nor dismay that the process of mediation did not in this case at the first session result in an immediately enforceable agreement. Mediation has proved a flexible and immensely valuable process of dispute resolution. No doubt in some situations immediate and binding agreement is possible whereas in others of which this was a paradigm, fresh will need to be put upon the bones. It would be regrettable if any decision of this court were to cause practitioners to approach the process of mediation with anything other than maximum flexibility’.

The Judge went on to observe that it would normally be a solicitor’s duty to advise his client of the nature of the mediation process and the status of any agreement reached as a result.

This provides another example of how “mediation matters” to the professional obligations of a solicitor to her or his client.

The message from England is clear, and is likely to be no less the position in this jurisdiction, that practitioners in civil litigation need to be aware of mediation, familiar with the process, capable of advising their client about the process and mindful of the risks associated with refusing to mediate when invited to do so.

An important restatement of the obligation of parties not to unreasonably refuse is found in the recent Court of Appeal judgement in the case of PGF II SA v OMFS Company One Limited [2013] EWCA civ 1288. This appeal was from a judgement of Mr Recorder Forst QC published earlier in 2013 and Lord Justice Briggs who delivered the main judgement for the Court of Appeal sets the scene in the first line of his judgement where he states:
“this appeal raises for the first time as a matter of principle the following question: what should be the response of the court to a party which, when invited by its opponent to take part in a process of alternative dispute resolution (“ADR”) simply declines to respond to the invitation in any way?”

Lord Justice Briggs cites the Halsey case and recognises that in his judgement he is expanding the reach of Halsey. He explains:

“The Court’s task in encouraging the more proportionate conduct of civil litigation is so important in current economic circumstances that it is appropriate to emphasise that message by a sanction which (even if a little more rigorous than I would have preferred), nonetheless operates pour encourager les autres”.

Throughout the judgement of Lord Justice Briggs in PGF he refers with approval to the Jackson ADR Handbook and he provides a glowing endorsement of the value of mediation. Those involved in civil litigation should note that their responsibility is no longer to battle on towards the court and discuss nothing and spend no time seeking resolution. The duty is rather as Briggs LJ said:

“The parties should discuss these difficulties and seek to narrow their differences before those which are irreconcilable are put to the Court for determination…”

The Court of Appeal in London had no difficulty in concluding that the ignoring of an invitation to mediate by the Defendant amounted to a refusal and that that refusal was unreasonable. Therefore substantial costs were awarded notwithstanding the acceptance of a part 36 settlement offer.

Another case worthy of note is the Port of London Authority v Tower Bridge Yacht and Boat Company Limited [2013] EWCA 3084 (CH). In this case the Claimant refused the Defendant’s offers to mediate and made reference to the PGF case and highlighted the fact that the Court of Appeal in PGF was aiming to widen the scope of Halsey.

These interesting cases from England and Wales emphasise how much mediation matters in that jurisdiction to those engaged in civil litigation. Given the influential impact the Jackson ADR Handbook and these cases will have on our own judiciary and given the increasing numbers of legal representatives who have now been trained in and are familiar with mediation it will surely not be long before a costs hearing arising from an alleged unreasonable refusal to mediate in this jurisdiction will be heard.

*Belfast Mediation Conference

Almost exactly on the tenth anniversary of the judgement in Halsey v Milton Keynes National Health Trust, the Dispute Resolution Service, the Commonwealth Lawyers Association and the University of Ulster are hosting a major international Mediation Conference in Belfast.

A highly impressive programme has been organised for the two day event with contributions from international speakers including The Master of the Rolls, Lord Dyson, who delivered the principal judgement in Halsey, who will present a keynote retrospective assessment of Halsey ten years on.

Lord Kerr of the Supreme Court of the United Kingdom will consider whether the encouragement to mediation compromises the rights of parties.

Also of special interest will be the contributions from Professor Laurence Boule, author of many leading publications about mediation, dealing with principles, practice and policy across the world.

The contributions from other practitioners, both local and international, including Minister of Justice, David Ford MLA, will further enhance the Conference.

The Mediation Conference will take place on:
Thursday 8 and Friday 9 May 2014
in the Conor Lecture Theatre, University of Ulster, Belfast Campus, Northern Ireland.

Demand for places is expected to be high both at a local level and from international delegates wishing to attend. Therefore you are encouraged to book your place as soon as possible.

The cost of the Conference is £250.00.
The Conference will provide 8 hours mediation related CPD.

To secure your place at this CLA Belfast Mediation Conference please contact and send your cheque, made payable to ‘CMG Solicitors’ to:

Emma Stephenson
CMG Solicitors
20 May Street
Belfast
BT1 4NL

You can also contact Emma on 028 9023 4606 to make arrangements to pay by bank transfer.
Commonwealth Lawyers Association,
The Law Society of Northern Ireland Dispute Resolution Service
and the University of Ulster

Belfast Mediation Conference

8th and 9th May 2014

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The Institute of Professional Legal Studies (IPLS) at Queen’s University is delighted to announce that it will be hosting the 16th Mediation Training Course at the Institute. The course will run for 8 Wednesday evenings and there will also be an all day Saturday programme.

The IPLS mediation course offers training in civil and commercial mediation and comprises 40+ hours including training, private study, lectures, practical exercises, reflective learning and group study over an 8 week period. The course includes assessment feedback to all participants.

The dates and times of the course are:-

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

Comments from previous participants on the course attest to the quality and value of the course.

“The course was extremely well taught, well thought out and presented. The course tutors and guest speakers spoke authoritatively on the subject and their enthusiasm was infectious.”

“Having participated in many CPD courses, I certainly feel that this has been the most beneficial and without doubt the most enjoyable.”

The course is an excellent preparation for acting as a Mediator, for representing clients involved in mediation and for advising clients about mediation. Attendance at the course will allow an application to be made for membership of the Dispute Resolution Service (DRS) administered by the Law Society. Participation and completion of the course is accepted as approved training for purposes of the DRS and the Bar Mediation panel.

The course is delivered by experienced local practitioners:-

- **Brian Speers**, Solicitor, Mediator, visiting Professor of Dispute Resolution at the Graduate School, University of Ulster, Magee.
- **David Gaston**, Solicitor, Lecturer and accredited Mediator
- **Alva Brangam QC** who, in addition to practising at the Bar, is a CEDR accredited mediator, a Member of the Mediators’ Institute of Ireland and the Academy of Experts.

Additional local legal practitioner mediators (solicitors and barristers) support the formal lectures and tutorial input.

The nature of the course means that the maximum numbers attending is restricted and anyone interested is asked to apply **immediately** to take up the places. The course is open to solicitors and barristers with five years’ post qualification experience. The cost will be £1,895 per person. This compares extremely favorably with mediation training course fees offered by other providers.

If you wish to take up a place please contact Mrs Amanda Elliott, Institute of Professional Legal Studies, 10 Lennoxeval, Belfast, BT9 5BY. Tel no 028 9097 6521 or a.elliott@qub.ac.uk
The Department of Justice, in collaboration with the National Autistic Society, has recently published a guide for criminal justice professionals, built on the real life experiences of people with autism and those who have worked with them in a caring or professional capacity.

Autism is a spectrum condition, embracing individuals with an incredibly wide range of support needs and intellectual abilities – from severely learning disabled to genius.

A popular saying within the autism community is “when you’ve met one person with autism, you’ve met one person with autism”.

While all children and adults with autism have the same underlying deficits in social functioning and will experience difficulties with sensory processing (with each of their senses being either over-sensitive or under-sensitive), how they experience the world and deal with these challenges can vary tremendously. Some may never be able to live independently, while others will excel in their chosen field or be able to maintain successful relationships.

Another core feature of autism is anxiety, which can be exacerbated by unexpected changes in routine or unfamiliar surroundings.

Autism is also, very often, a hidden disability and there are thought to be many individuals on the “higher-functioning” end of the spectrum who remain undiagnosed, or who may have been incorrectly diagnosed with a mental health condition or personality disorder. In addition, most people’s perceptions about autism have been shaped by how the condition has been portrayed in the media, which often gives a very narrow or even misleading impression of the condition.

All of this presents real challenges for those within the criminal justice sphere who may come into contact with someone with an autism spectrum condition, particularly those who may need to interview or cross-examine them.

The new guide provides background information about autism and offers some suggestions on the types of approaches that might work best when approaching or questioning a person on the autism spectrum.

The guide is part of the Department’s response to the new cross-departmental Autism Strategy and Action Plan recently published by the Department of Health, Social Services & Public Safety.

The new strategy, which was a key requirement of the Autism Act (NI) 2011, commits the whole of government in Northern Ireland to work collaboratively to address the needs of people with autism, their families and their carers.

The Autism Act, which came into force in August 2011, also extended the scope of the Disability Discrimination Act 1995 to include difficulties in normal social interaction or forming social relationships.

Questioning vulnerable witnesses: why The Advocate’s Gateway is essential

Readers of The Writ will recall recent articles on vulnerable witnesses: ‘New schemes to assist vulnerable persons to give Evidence’ by Norma Dempster of the Department of Justice and ‘Registered Intermediaries Making it Work’ by David Wurtzel of City University. The pilot schemes for Registered Intermediaries (RIs) are now well and truly up and running. Case by case RIs provide specialist advice to police officers and the courts on how best to question the vulnerable witness and how that vulnerable witness can best communicate their answers. In short they are all about facilitating best evidence. The pilot schemes began in May 2013. The DoJ invited me and David Wurtzel back to Belfast and Coleraine in September to help train more police and lawyers for the extension in November 2013 of the RI pilot to all Crown Courts in Northern Ireland. Witnesses (both prosecution and defence) as well as defendants in Northern Ireland can benefit from the schemes.

By 19 February 2014, the RI pilot had received 90 requests, 72 from the PSNI, 15 from the PPS and three from solicitors. Of these, 75 requests have been for alleged victims, six for prosecution witnesses, six for suspects and three for defendants. Thirty-nine requests were for adults (aged from 18 to 78), 20 for teenagers and 31 for young children (2 to 12). The referrals were based on a variety reasons:- some on account of their age, others on account of learning disability, Autism Spectrum Disorder (ASD), Down’s syndrome or Aphasia (from a stroke). The requests for RIs cover all manner of cases including sexual offences, assaults, cruelty/ neglect and fraud.

The way it works is that once the Registered Intermediary (RI) has assessed the witness, he or she will report to the police/ PPS/ defence solicitor on whether they think the individual needs an intermediary to communicate. In one referral the RI concluded that the witness would not need the services of an intermediary; a referral does not mean the will automatically get an intermediary. If the witness is assessed as requiring an RI there will be a detailed report on how to approach interviewing and court questioning. The advice is witness specific, for instance RIs can and do advise on the best way to conduct memory refreshing of the ABE interview and the best time to do it, the frequency of breaks, the use of communication aids (such as diagrams or pictures), the vocabulary to use/avoid, how to structure questions and how to keep the witness focussed. The end result is a very detailed, bespoke RI report for the trial advocates and the trial judge to discuss at a ‘Ground Rules Hearing’ (or ‘Meeting’). The RI who wrote the report and knows the witness’s communication abilities must be there.

The Ground Rules Hearing must involve the judge, advocates and RI for the trial. If one of these is missing it will not be completely effective. It must be far enough ahead of the witness giving evidence to give the advocates an opportunity to reflect on what is agreed at the hearing and to plan questioning accordingly. It is better for it to take place one or two days before the witness gives evidence.

How does an advocate or a judge approach the Ground Rules Hearing? Help is available at www.theadvocatesgateway.org where there is a specialist toolkit for advocates. The toolkit on Ground Rules Hearings explains that this hearing is as much for the advocate as it is for the witness. When ground rules are agreed well enough in advance of the hearing, it allows the advocate properly to plan the questioning and the court to ensure that technical and practical issues are resolved in good time for when the witness gives evidence. Ground Rules Hearings should cover matters such as how to address the witness, how to address the intermediary, and how questions should be put to help this particular witness understand them. The advocate can seek intermediary advice about adapting specific questions. Ground Rules should also cover how the intermediary will alert the court if the witness has not understood and how the intermediary will alert the court if the witness needs a break.

RIs have been trained to insist on Ground Rules Hearings; they do not wait outside, they are not witnesses, they come into court to help the judge and the advocates plan to manage the questioning. RI interventions, if any, during the witness’s evidence will be based on what was agreed at the Ground Rules Hearing. During the evidence the judge remains in control throughout. An effective Ground Rules Hearing ought to reduce the need for RI interventions because the judge and advocates will have had the chance to consider and plan the proper handling of the witness’s evidence.

There is more to The Advocate’s Gateway than advice on Ground Rules Hearings. Ten other toolkits cover topics such as questioning very young children, case management for young defendants, questioning someone with a learning disability and questioning someone with ASD (including Asperger Syndrome). The ASD toolkit can tell you in a nutshell what it is, what to do and what to avoid.

‘Autism is a lifelong developmental disability, biological in origin and more common in males. The condition may not be immediately obvious. Some people have not had a formal diagnosis. It is described as a spectrum condition or disorder (ASD) because

Following the introduction of the pilot schemes for Registered Intermediaries last year, Professor Penny Cooper, Kingston Law School, Kingston University London, looks at the assistance that can be provided by The Advocate’s Gateway.
although all people with autism share certain difficulties, these affect each person differently. Around 1% of the population are somewhere on the autistic spectrum.

The toolkit continues:

‘Heightened sensory sensitivities may affect functioning, concentration and ability to attend to questions. Abnormal sensory responses are present in the majority of children and over 90% of adults with autism spectrum disorders (Crane et al, 2009), eg difficulties filtering out background sensory information (sound, light, colour, smell or taste). Depending on the individual, problems at court could include: lights that are too bright, buzz or flicker; noise or vibration from a lift or escalator; announcements over a loudspeaker; electronic feedback over the live link; echoes in the courtroom; smells (even something as ‘minor’ as flavoured crisps); or colours, fabrics or materials (eg a different kind of chair might be needed).’

The toolkits also draw attention to the need to avoid saying things that will be taken literally by the witness and not in the sense that the questioner intended. Questions such as ‘Who wears the trousers in your house?’ or ‘Did you get cold feet’ are to be avoided with the autistic witness; it is the advocate’s responsibility to express him or herself clearly in a way that the vulnerable witness or defendant can understand.

The Advocate’s Gateway was launched in April of 2013 by the Right Honourable Dominic Grieve QC MP, Attorney General for England and Wales and Advocate General for Northern Ireland. The website is the result of a great deal of collaboration and its ‘invention’ was led by the author and fellow vulnerable witness researchers Joyce Plotnikoff and Richard Woolfson. After the launch of a very well received prototype ‘blog’, The Advocacy Training Council funded the building and promotion of a new website and continues to provide wide-ranging support and resources. The website exists as the hub for the latest vulnerable witness research and best practice guidance for advocates and judges. It is believed to be the first of its kind in the world.

Sections of the website include information on intermediaries, case law and research papers.

The Advocate’s Gateway goes from strength to strength. It has been praised as a resource for judicial training by the former Lord Chief Justice of England and Wales and has been cited by a recent Home Affairs Select Committee Report on child grooming and sexual exploitation. The Legal Education Foundation has awarded it a grant to develop three new toolkits on witnesses with mental disorders, using remote live-link and screening witnesses for vulnerability. A toolkit about questioning witnesses who are deaf is also underway.

There will be some criminal cases where a witness is vulnerable under the statute but is not assisted by a Registered Intermediary, either because the court has decided that it is not necessary in this case or because it is being heard in the magistrates’ court or because of a lack of awareness of the scheme by those who might have sought a referral. The good practice guidance contained in The Advocate’s Gateway is vital in such cases. Though the toolkits are more generic than the tailored advice in an RI report they can assist with general advice on certain conditions, how they affect communication and can provide examples of good and bad practice.

There will be situations when advocates in other parts of the justice system find themselves in court with a vulnerable witness or client. In England and Wales in family cases some vulnerable witnesses have had an intermediary even though the statutory schemes do not stretch that far, yet. Re A [A Child] (Vulnerable Witness: Fact Finding) [2013] EWHC 2124 (Fam), includes a detailed description of how the vulnerable witness’s testimony was heard with the assistance of special measures including an intermediary. Rosemary Wyatt, an RI in England and Wales who has also been mentoring some of the new NI RIs, has for example facilitated communication with a patient in a Mental Health Review Tribunal. It remains to be seen whether NI RIs will be called in to assist in cases which fall outside the current schemes. Again, even if there is no intermediary available for the vulnerable witness, especially when there is no intermediary, advocates should consult www.theadvocatesgateway.org.

In summary, if your client or witness is vulnerable go to The Advocate’s Gateway. It is suggested that lawyers take the following three steps:

1) Consider whether it is a case for a Registered Intermediary (check the ‘Intermediaries’ section)
2) Insist on a Ground Rules Hearing, whether or not there is an RI, before the trial (follow the Ground Rules Hearing toolkit)
3) Plan the witness’s evidence by reference to the RI report (if there is one) and the relevant toolkit/s depending on the special characteristics of the witness.

The site is freely available for all to use; even if you do not have a specific case in mind browse it for interesting articles and reports and the excellent Criminal Bar Association film ‘A Question of Practice’. This thought provoking video is likely to cause some advocates to stop and ‘think twice’ about how to cross-examine vulnerable witnesses. It also has court enactments of a Ground Rules Hearing and the use of an intermediary. It is the ‘go to’ site for information on handling vulnerable witness and vulnerable defendant cases - www.theadvocatesgateway.org.

The author chairs the Management Committee of The Advocate’s Gateway and together with David Wurtzel trains all Registered Intermediaries. Penny and David’s article ‘Better the Second Time Around? Department of Justice Registered Intermediaries Schemes and lessons from England and Wales’ will be published in the Northern Ireland Legal Quarterly in 2014.
Relocation of the Taxing Office

With effect from Monday 3 March 2014, the Taxing Office has relocated from its location in Bedford House to new accommodation at:

3rd Floor, Mays Chambers, 73 May Street Belfast BT1 3JL

The new accommodation provides the same standard of facilities for users as are currently provided and all taxation hearings from this date are being heard in the Taxing Master’s court at the new location.

Access to the office can be done through the main entrance in Mays Chambers and visitors will be directed to the Taxing Office accommodation by our security staff.

Relocation of the Enforcement of Judgments Office from the 31st March 2014

With effect from the 31st March 2014, the Enforcement of Judgments Office (EJO) will be relocated from its present offices in Bedford House to new accommodation at:

Laganside House, 23-27 Oxford Street, Belfast BT1 3LA

DX 2933 NR Belfast 1

Hearings before the Master and Nominated Officers

Hearings in respect of debtor examinations in Belfast will also be heard in our new accommodation in Laganside House.

With effect from the 3rd March 2014, hearings listed before the Master (Enforcement of Judgments Office) are being held in new accommodation at:

3rd Floor, Mays Chambers, 73 May Street, Belfast BT1 3JL

It is important that all practitioners continue to check details on hearing notices to confirm the location of hearings before the Master (Enforcement of Judgments Office) or debtor examinations before Nominated Officers.

Telephone Numbers

Please note that the long standing existing telephone number, 028 90245081 will change to 0300 200 7812 from 31st March 2014. Calls to 028 90245081 will be redirected automatically to 0300 200 7812 for a period of 3 months.

New direct line numbers will replace the existing direct dial numbers and you will be able to contact the taxing office staff on:

- 028 9044 8842;
- 028 9044 8810;
- 028 9044 8832;
- 028 9044 8826;
- 028 9044 8827 and;
- 028 9044 8805

Trevor Long
Business Manager
Court of Judicature of Northern Ireland
Taxing Office

Enforcement of Judgments Office
7th Floor Bedford House, 16-22 Bedford Street
Belfast, BT2 7FD
Renewable energy developments affecting residential properties - roof mounted solar panels

Micro-level green energy generation has recently received a boost both as a result of government grants, and perceived financial benefits for the individual householder. It is this latter benefit - the opportunity to generate surplus energy for sale back to utility companies – that has led to an increase in the installation of both wind turbines and solar panels on private properties under licence or lease.

Although the comments here relate specifically to solar panels similar issues arise in respect of building mounted wind turbines, installation of heat pumps, underground heat collection and distribution systems; or installation of bio-mass storage boilers.

A typical solar panel scheme involves the householder entering into a lease giving an energy company the right to install its own solar panels on the roof of the householder’s property. The panels remain the property of the energy company whilst the energy produced, and the benefit of any sales of surplus energy to utility companies, are shared with the householder.

Given the Government's stated intention to encourage small scale low-carbon generation of electricity, it is likely that this type of roof lease scheme will become increasingly wide spread.

These schemes raise a number of issues not only for the householder but also for third parties such as secured lenders, who have an interest in the property on which this equipment is mounted.

Planning & Statutory Approvals

The Department of the Environment (NI) published a useful information leaflet in April 2011 entitled ‘Your Home and Planning Permission – A guide for householders’. Briefly stated, planning restrictions have been relaxed in relation to solar panels fitted to pitched and flat roofs and to walls, subject only to certain restrictions where the property lies within a conservation area or similar.

It is likely that a secured lender, particularly in a mortgage of commercial property, will have obtained a covenant from the borrower not to make or permit any planning application without the lender’s prior consent. The relaxation of planning requirements in this context should be noted and brought to a lender client’s attention.

Building control approval for installations will be required. However, it is likely that regulations may develop to meet changing circumstances.

CML guidelines

The Council of Mortgage lenders (‘CML’) has also issued guidance setting out a number of minimum requirements where a borrower seeks consent to enter into a lease or licence for the installation of solar panels. These are minimum requirements and are expressly stated to be intended as general guidance only. CML emphasise that borrowers should include lenders in the negotiation of relevant documentation at an early stage.

CML recommend the inclusion of a break clause in any solar panel lease that can be exercised by the borrower or by a mortgagee in possession. It should, however, be borne in mind that there are differences between landlord and tenant law in England & Wales and landlord and tenant law in Northern Ireland. These differences significantly alter the application of the CML Guidelines in this jurisdiction, as set out below.

Third party consents

It is likely that all lenders will have included provision in their standard mortgage or charge requiring the lender’s formal written consent to the creation of any third party rights affecting the mortgaged property.

Given the likely increase in the number of renewable energy schemes at a domestic level, lenders should consider specifically making reference to formal written consent being required to cover the creation of both leases and licences. Lenders should also consider obtaining direct covenants from the energy company to regulate competing interests in the property as set out below.

Statutory compliance

It is the responsibility of the borrower to ensure compliance with all relevant statutory approvals affecting the property. Again this is likely to already be the subject of a specific covenant between the borrower and lender.

As between the homeowner and the energy company it will inevitably be the case that the homeowner will be required to waive any right to object to, or to support any objection to, any application for statutory approvals made by the energy company. This may in itself create a potential conflict between the rights of the lender under the mortgage, and the rights of the energy company under the panel lease. In a mortgage, particularly of commercial property, it is likely that the lender will have obtained a covenant from the borrower not to make or permit any planning application without the lender’s prior consent.

Liability to repair and insure

A typical solar panel lease will provide that the energy company will obtain and maintain a policy of insurance in relation to the installation and maintenance of the relevant equipment.

At very least the interests of both the householder and any mortgagee should be noted on the relevant policy.
Again in a typical solar panel lease insured risks may be specifically defined as being subject to any condition, excess, exclusion or limitation imposed by or agreed with the insurance company by the energy company. This would allow the energy company to vary the terms of insurance from time to time as it sees fit. Obviously this would be unacceptable to both the householder and to a secured lender. It is essential that the householder and any lender make certain that the policy of insurance being maintained by the energy company is adequate and covers any damage caused to the property itself or to any third party or third party property.

With regard to repair, the energy company will require rights of access, and the householder should seek to obtain a robust indemnity for any damage caused to the property on which the panels are mounted. The lender should seek to obtain the benefit of any such indemnity either by way of direct covenant with the energy company or by obtaining a covenant from the householder to enforce the indemnity.

**Registration**

At least one solar panel lease currently in use in Northern Ireland, although granted for a term of 20 years, appears intended to be registered at Land Registry or Registry of Deeds. The document appears to be based on an English precedent where registration is possible for a leasehold term of years less than 21 years. In Northern Ireland registration should – at least in theory - not be possible. The energy company, if the lease term remains below 21 years, may nevertheless seek the registration of a caution or inhibition against a registered title. This should obviously be resisted by an existing lender.

**Forfeiture**

One risk for the energy company would be forfeiture of the householder’s leasehold interest. Forfeiture for breach would automatically bring to an end any sublease including the solar panel lease. This may be rare in practice, save perhaps in relation to equity sharing leases under the NI Co-Ownership Scheme.

**Sale by a lender**

In the event that a lender seeks to enforce its rights to sell, regardless of how this may arise, it seems clear that the solar panel lease will remain in place, and that the sale would have to be made effectively subject to that lease. There are obviously practical concerns, specifically whether or not the existence of solar panels in a particular case increases or adversely prejudices the value of a particular property.

It would be strongly recommended that if a lender is minded to consent and is involved at a sufficiently early stage in negotiation of a solar panel lease, that a direct covenant be obtained which would permit the lender to require removal of the solar panels were the property to be repossessed with a view to sale. Difficulties with the practical operation of such a provision are considered below.

**Business tenancies implications**

It is clear from some of the typical leases currently in use that some energy companies regard the arrangement as being a business lease and as such as falling within the terms of the Business Tenancies (NI) Order 1996. One such lease specifically provides that any termination right either by the householder or by a mortgagee in possession is in each case expressly “subject to the Business Tenancies (NI) Order 1996”.

There may be issues as to whether or not the energy company would be regarded as being technically “in possession” at the relevant date. However, until the matter has been considered by the Lands Tribunal the only safe assumption is that the lease is protected under the 1996 Order. This being so the energy company would effectively have security of tenure to this extent the inclusion of a break provision for the householder is slightly disingenuous.

Given that there is no mechanism in Northern Ireland to allow a tenant – here the energy company – to contract out of the security of tenure conferred by the 1996 Order, the exercise of any break option would automatically trigger the statutory right for the energy company to seek renewal of the lease, via application to the Lands Tribunal if necessary.

This is a significant difference between business tenancy legislation in Northern Ireland and in England & Wales, and alters the application of the CML Guidelines referred to above.

By virtue of the 1996 Order alone a lender should be extremely reluctant to agree to a borrower entering into such an arrangement. Even with an expressly drafted break provision exercisable either by the householder or by the mortgagee in possession there can be no effective guarantee that this mechanism will apply and be capable of enforcement.

**Conclusion**

It seems unlikely that any third party mortgagee would feel comfortable in permitting a borrower to enter into a licence or lease agreement which was not capable of being brought to an end if required.

It is extremely important to note that there are significant differences in the legislation regarding business tenancies between Northern Ireland and England and Wales. Guidance issued by CML with regard to break clauses and this type of scheme should therefore be regarded as not directly applicable in Northern Ireland.

Undoubtedly if an effective break clause were introduced exercisable by a mortgagee in possession this would significantly change the risks for a lender. However, at present no such mechanism exists in Northern Ireland and its introduction would require a fundamental change to existing legislation.

We are grateful to Steven Cockcroft of Johns Elliot Solicitors, Belfast, for this article.
Society team briefs Finance & Personnel Committee on client complaints handling

On 29 January 2014, the Committee for Finance and Personnel of the Northern Ireland Assembly met at Law Society House to receive evidence in respect of the draft Legal Complaints and Regulation Bill. Before holding their formal meeting, the Committee received a presentation in private from the Society’s Chief Executive, Alan Hunter, on the work and role of the Society. At their evidence gathering session the Committee heard from a Society team comprising Society President, Richard Palmer, the former President and Chair of the Society’s Bain Committee, James Cooper, the Society’s Chief Executive, Alan Hunter and the head of the Society’s Client Complaints Department, Moira Neeson.

From left: James Cooper, Richard Palmer, Alan Hunter and Moira Neeson.

Legal aid cuts – representations to MLAs

The Society’s Chief Executive, Alan Hunter, has continued to meet with MLAs on the issue of the impact of legal aid cuts on solicitors’ practices, clients and the community.

He recently met with Mickey Brady, Sinn Fein MLA for Armagh and Newry, providing him with a full briefing on the implications of the proposed legal aid cuts.

The Chief Executive has met with and continues to meet with individual MLAs to explain the Society’s concerns about the recent proposals for further cuts to the legal aid budget.

Mickey Brady, Sinn Fein MLA for Armagh and Newry and Alan Hunter, Society Chief Executive.
Compulsory Conveyancing CPD

Introduction of 3 hour Compulsory Conveyancing CPD requirement for conveyancing solicitors

From 1 January 2014 all solicitors who complete any type of conveyancing transaction are now required to undertake three hours of Compulsory Conveyancing Group Study CPD courses. A conveyancing transaction includes preparation of an assent or transmission, a residential, commercial or agricultural conveyance (whether for monetary consideration or not) and/or a mortgage/remortgage in respect of any property in 2014 – see guidance notes below for full details.

In 2005 the Law Society of Northern Ireland introduced the Continuing Professional Development Scheme. Initially the Scheme applied to those solicitors in their first 10 years of practice. Shortly afterwards the Scheme was extended to cover the entire profession. The aim of the scheme was, and still is, to ensure that members keep up to date with current developments so as the profession continues to operate to the highest possible standards ensuring that clients are given the best possible service available.

Professional Indemnity Insurance experience shows that conveyancing matters continue to be a major issue. Therefore the Society has decided to introduce Compulsory Conveyancing CPD for all solicitors involved in conveyancing. The aim of the initiative is to ensure that members keep up to date with developments in the field of conveyancing and are able to continue to advise clients accurately and professionally.

To facilitate those solicitors who have to comply with the introduction of Compulsory Conveyancing CPD hours the Society has built a variety of specific conveyancing related CPD events into the 2014 CPD Programme. The Society is fully committed to providing relevant, accessible, quality CPD which will allow practitioners to comply with the Compulsory Conveyancing CPD requirement in a constructive and useful way.

Guidance notes for compliance with the introduction of Compulsory Conveyancing CPD hours

Background

From 1 January 2014 all solicitors who complete any type of conveyancing transaction will now be required to undertake three hours of Compulsory Conveyancing CPD courses. The aim of the initiative is to ensure that members keep up to date with developments in the field of conveyancing and are able to continue to advise clients accurately and professionally.

Details of the Scheme

(i) Definition of “Conveyancing transaction”

A Conveyancing transaction is defined as including preparation:

- of an assent or transmission
- of a residential, commercial or agricultural conveyance
- of a mortgage/remortgage in respect of any property

- a), b) and c) detailed above apply to any conveyancing transaction in 2014, whether for monetary consideration or not.

(ii) Number of hours needed

Any solicitor who undertakes any conveyancing transaction will be required to complete three hours of relevant Conveyancing CPD courses.

(iii) Type of hours needed

The three hours of Compulsory Conveyancing CPD must be Group Study – it cannot be completed via Private Study methods.

(iv) Restricted Practice

Those solicitors who wish to reduce their restricted practice period from three to two years must be able to prove to the satisfaction of the Society that they have completed a total of three years’ required CPD hours (45 hours) within two years of their date of admission to the Roll of Solicitors in Northern Ireland. Not less than 30 hours of the 45 hours must be Group Study. The 30 hours Group Study must include 9 hours of Client Care and Practice Management. The 30 hours Group Study must also include the required Conveyancing CPD hours if applicable.

(v) Completion of Record Card

Solicitors must complete an individual CPD record card in respect of each practice year. Solicitors who have undertaken any conveyancing transaction must list the three hours relevant Conveyancing CPD courses in the separate section of the form [section B (iii)]. Compliance with the requirement to complete Conveyancing CPD courses in respect of conveyancing will also be monitored.

(vi) Exemptions

Currently any solicitor who does not work full time throughout the year is exempt from the requirement to undertake 15 hours CPD per annum as detailed in the Exemptions section on Page 3 of the CPD Record Card. However these exemptions do not apply to Conveyancing CPD which is mandatory where a solicitor undertakes any conveyancing transaction or any part of a conveyancing transaction. Where a solicitor has undertaken any conveyancing transaction (or any part of a conveyancing transaction) that year, the solicitor must attend three hours of Conveyancing CPD courses.

If you have any queries please do not hesitate to contact the CPD Department on 028 90 231614 or susan.duffy@lawsoc-ni.org.
Legal Matters at Law Suit...

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Most of our clothing range is exclusive to us in Belfast City and we are sure any of our luxury suits will stand up to the strictest crossexamination.

Our court tunics are from La Valiere, and we keep all collar combinations. Our dress shirts are 100% non-iron cotton from Olymp, and Casa Moda, both exclusive to Law Suit.

We also keep an extensive casual range for those advocates of fashion. Casual jackets from Bugatti, Cabano and Lapidus. Knitwear is from Casa Moda and Baileys. Shirts are from Casa Moda, Andre, Culture and Bruun+Stengade.

Another speciality of ours is the Sports Jacket. Baumler, Van Kollem and Roy Robson, ensure the wearer feels dressed out-of-court. Albeit with Denims from Andre or MEYER, or dress and casual trousers by MEYER and M.E.N.S.

We are perhaps best known for our range of Ties. Zazzi and Silkworm London provide the fabulous collage of patterns and exclusive colours, that will complement any outfit.

Law Suit Gentlemen’s Fine Clothing, Advice, Service and Quality.
Society Annual Dinner

The Annual Dinner was held at the Titanic Building, Belfast on 29 November 2013.

Suzanne Rice and Richard Palmer, President of the Society.

From left: Emma Hunt, Maria Grimes, Enda Lavery, Tracey Diamond, Johnny Hewitt, Maureen Bell and Conor Houston.

From left: George Palmer, Richard Palmer, Society President and Raymond Seagal.

From left: Richard Murphy, Alan Hunter, Society Chief Executive, Julie Leonard and Richard Palmer, Society President.
From left: Aimee Larkin, John McCloskey, Robert McTernaghan, Jennifer Lynch, Carla Fraser, Leanne McGuckin and Mairead McGuigan.

From left: Nick Harvey, Simon Crawford, Tim Browne, Richard Palmer, Society President, George Palmer and Niall Browne.

From left: Maura Ruoppolo, Paula Savage, Claire Wilson, Catherine Cooney, Julie Leonard and Joanne Kerr.

From left: Margaret O’Leary, Katy Wheeler and Catherine Conway.

From left to right: Arleen Elliott, Junior Vice President of the Society; Richard Palmer, President of the Society; Alan Hunter, Chief Executive of the Society and Michael Robinson, Senior Vice President of the Society.
From left: Patrice Murphy, Nicki McConnell and Aoife Duffy.

From left: Gordon Laird, Steven Millar, Richard Palmer, Society President, Ken Rutherford and David McSpadden.

From left: John Greer, Richard Palmer, Society President and Gavin Graham.

Mr Justice Burgess.

John Kelly represented newly admitted solicitors.

From left: From left: Patrice Murphy, Nicki McConnell and Aoife Duffy.

Tim McGarry and Suzanne Bryson, Deputy Chief Executive.

From left: Seamus Delaney, Gareth Liddy and Paul Pierce.

From left: John Kelly represented newly admitted solicitors.
Society President cements Hospice charity partnership

The Northern Ireland Hospice has been chosen as the Society’s charity partner for 2013/14.

Inspired by the care and support Northern Ireland Hospice provides to those with a terminal illness and the plans to rebuild Somerton House, the Society is proud to lend its support to raising funds to support this well-known and respected local charity. The President is calling on members to support the ‘Buy a Brick’ campaign to help fund a bedroom within the new Hospice facility.

The new hospice will take 18 months to complete at a cost of £12.7m with contractors expected on site in early 2014. The ‘Buy a Brick’ campaign has a public fundraising target of £3m towards the overall total. The local community has really got behind the campaign and to date has generously donated £1.4m.

The new facility will be a hospice fit for the future and will accommodate 18 single en-suite bedrooms each opening out to its own garden and offering space for patients and their families. At the heart of the new building will be an internal courtyard garden and the Day Hospice and Education and Research Centre will each have their own entrance. It will be a centre of excellence for hospice care delivering a first class service to patients, families and the Northern Ireland community.

On launching the partnership the President, Richard Palmer, said “The Law Society has a wonderful opportunity to be part of the rebuilding of Northern Ireland Hospice and leave a lasting legacy for local people. I couldn’t help but be inspired when we were informed of the plans for the rebuild of Somerton House. From the dementia friendly design to the education and research centre, it really will be a building fit for the future. We are proud to be part of the legacy for future generations who will need hospice care.”

The President is calling on all members of the Society to get behind the campaign and Buy a Brick to help rebuild Somerton House. A brick costs just £30 and with the help and support of Society members we can help fund a bedroom or special space within the new Hospice.

Over the coming year the President, supported by Northern Ireland Hospice, will be hosting a series of fundraising events and asks for your support. Whether it is participating in a football
match, playing in a charity golf match or attending a glamorous fashion show your support will make all the difference. The annual Christmas Carol Service has already raised £2,769 - a very successful start to the campaign.

Delighted about the partnership and the valued support received so far, Ellen Hillen, Corporate Fundraising Manager at Northern Ireland Hospice said: "We are very grateful to the Law Society for choosing Hospice as its charity of the year and supporting us during this important phase as we seek to redevelop Somerton House and build upon the services provided by our staff to those most in need. The dedication and energy already demonstrated by the members is very encouraging. In Northern Ireland one in three people will have been touched by Hospice care and charity partnerships like that with the Law Society play a vital role in helping us maintain local Hospice services. They are crucial in helping us to rebuild the new Hospice."

How to get involved in the ‘Buy a Brick’ Campaign

You can lend your support by supporting Law Society fundraising events or by simply donating £30 to the Law Society Charity Appeal to buy a brick for the Hospice.

Northern Ireland Corporate Fundraising Manager, Ellen Hillen, can be contacted on T 028 9078 1836 M 07866 701350 or E ellen.hillen@nihospice.org to take donations or answer any queries you may have in relation to Buying a Brick or supporting the Law Society Charity Appeal.

Solicitors’ Golf Association presentation to Society

John Rogers and Peter Conlon, representatives of the Solicitors’ Golf Association attended a meeting of the Society’s Council to present to the then President, Michael Robinson and to Treasurer, Rory McShane, the European Legal Team Golf Championship Trophy which had been won by a LSNI and Dublin Solicitors’ team at an event in Portugal.

From left: Peter Conlon, John Rodgers, Michael Robinson, Senior Vice President of the Society and Rory McShane, Society Treasurer.
Social Media Month

In November 2013, the Law Society launched Social Media Month, a series of guest lectures and workshops aimed at exploring the growth of social media both inside and outside the profession.

The month-long events had been developed in response to demand from members to outline the opportunities and dangers of using social media for practices, solicitors and their clients.

The Society’s Communications Committee and in particular, Council Member, Emma Hunt, were instrumental in drawing together a series of keynote speakers to address members on a variety of inter-connected issues surrounding the growth, use and misuse of social media and the internet.

The Society welcomed the Honourable Mr Justice Gillen as its first keynote speaker of the series. His presentation, entitled ‘The social media – a lawyer’s friend or foe?’, was engaging, entertaining and very informative, giving attendees a judicial perspective on social media and its uses.

Regrettably, the addresses from Barra McGrory QC, Director of Public Prosecutions and Jim Gamble, CEO, INEQE Group, had to be postponed due to unforeseen circumstances but it is hoped these events will be rescheduled to dates later in 2014.

To complement the talks provided by the keynote speakers, the Committee organised a number of interactive workshops to provide members with the necessary information, practical knowledge and skills to allow them to gain a fuller understanding of how to use social media, case law on how it has been used to date and practical demonstrations on how it could benefit solicitor practices.

The first workshop presenter was the Society’s Communications Officer, Paul O’Connor. Entitled ‘The Dodo bird - unfortunate or just plain stupid?’, his presentation explained social media and how it was transforming the global village; how it was impacting on solicitors’ practices and their clients and why practices needed to embrace it.

For the second workshop, Emma Hunt and Kiera Lee from Mills Selig, provided an overview of legal issues emerging from the increased use of social media and what this means for the solicitors’ practice, including emerging sources of revenue and generating income.

Lastly, Peter Thompson and Brian Scott, from Navigator Blue, gave members an overview of ‘How to use social media effectively’, including using current social media platforms.

The workshops were very well attended and the Society hopes to return to the postponed keynote addresses later in 2014. It also hopes to issue social media guidance notes for members.

* A copy of Mr Justice Gillen’s comprehensive presentation is obtainable on request from the Society’s Librarian – email heather.semple@lawsoc-ni.org
His Master’s Voice

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

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

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

### 1. Long Term Planning

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

### 2. Development and Growth

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

### 3. A Breath of Fresh Air

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

### 4. You think you cannot afford an Apprentice?

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

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

This is in my view not so. On the contrary you have on your hands a highly motivated individual who has worked extremely hard to get to this stage (often at great expense). That person will almost certainly be computer literate and, whether male or female, will have excellent typing skills. He/she will not need a secretary. You will be amazed at how quickly he/she will tune in to the working environment. As a rule apprentices have no hang ups or bad habits (the only bad habits they will pick up will be from you). They are extremely willing to turn their hands to anything and, without exploiting them, you will be able to extract from them a tremendous amount of work and at the same time give them that insight into the reality of private practice which will be invaluable to them when they attend the Institute or Graduate School for the first time. If you have used them properly you will be very disappointed to see them go to their vocational trainer in January and delighted when they turn up on your doorstep every Monday of term. Their shock and bewilderment of having to work during the two summers they are with you will only be matched by your delight at being able to solve some of your holiday dilemmas and having a few more days off than usual yourself. Adopt the correct approach and you will find that you have an employee worth every penny of his/her wages.

### 5. Generally

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

### 6. And Finally

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

Gerry O’Hare, Senior Partner
J.G. O’Hare & Company Solicitors

### CALL FOR MASTERS

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

If you have –
1. practised as a solicitor for at least 7 years, and
2. been a principal for at least 3 years, and
3. are willing to act as a master for the 2 year term commencing September 2014 and
4. can provide a suitable training environment for an apprentice
please complete the attached form and return it to
At present the minimum wage for apprentices is as follows:

(a) for the first 16 months of the apprenticeship £240.00 per week.
(b) for the last 8 months of the apprenticeship £270.00 per week.
(c) During the Institute/Graduate School term, when the apprentice is in his/her Master’s office each Monday, a minimum wage of one-fifth of the prescribed first level rate (namely £48.00 per week).
(d) Alternatively Masters have the option of totalling each year’s salary and averaging it and paying the same amount each week or each month (Year 1 total divided by 52 or 12, as appropriate).

Masters are reminded of their obligations under the apprenticeship contract and also under the national minimum wage legislation regarding payment of apprentices.

The Centre for Children’s Rights is an innovative interdisciplinary centre with an international reputation for advancing understanding of children’s rights, promoting children’s participation and developing children’s rights-based research methods. This new and distinctive MSc/PgDip will develop participants’ expertise in two distinct but interconnected areas:

- **Children’s Rights** - using the United Nations Convention on the Rights of the Child and other relevant international standards to evaluate the laws, policies and practices which affect children.
- **Research with Children** - evaluating the best methods of conducting research into children’s lives with a particular focus on approaches which involve children actively in the research process.

The MSc Children’s Rights will provide participants with a thorough grounding in these two areas and the opportunity to explore a range of contexts in which these perspectives can be used to better understand children’s lives and secure improved outcomes for children.

Duration: Full-time: 1 year; Part-time: 3 years

Why study Children’s Rights at Queen’s?

- The programme features input from leading international children’s rights scholars, including Professors Laura Lundy and David Archard.
- There will be some opportunities to develop advanced workplace skills by collaborating with community organisations to undertake research to help them improve their services for children and young people.
- The programme is part of an innovative university wide initiative ‘Improving Children’s Lives’ which will give participants access to interdisciplinary research and education which aim to improve the quality of life for children in Northern Ireland and beyond.
- As a Russell Group University, we are one of the UK’s 24 leading universities.

For more details and to apply visit www.qub.ac.uk/edu
Library and Information Services publish new Criminal Practice and Procedure book

Law Society House was the venue for the launch of a new book on ‘Criminal Practice And Procedure In The Magistrates’ Court Of Northern Ireland’. Written by John O’Neill, a Solicitor Advocate and Senior Public Prosecutor, this new book addresses all aspects of work in the Magistrates’ Court on a sequential basis, from initial investigation by the police to decision making by the PPS and through to the court process itself.

This is the first major practitioner text published by the Law Society for many years and it has already received the praise of many legal practitioners who believe that it will become an essential resource for those starting their careers in the Magistrates’ Court, experienced practitioners or anyone involved in the criminal justice system.

The new book was launched by the Society’s President, Richard Palmer and the Presiding District Judge, Fiona Bagnall.

The book costs £95 and is available for purchase from the Law Society Library.

Heather Semple, Head of Library and Information Services

From left: Barra McGrory QC, Director of the Public Prosecution Service; Alan Hunter, Chief Executive of the Law Society; Richard Palmer, President of the Society; John O’Neill; Presiding District Judge, Fiona Bagnall and the Lord Chief Justice for Northern Ireland, Sir Declan Morgan.
Legal eagles progress to next stage of Client Consultation Competition

Two teams of legal professionals from the Institute of Professional Legal Studies at Queen’s University and the Graduate School of Professional Legal Education, University of Ulster at Magee, recently battled it out to win the regional heat of the Client Consultation Competition.

The theme of this year’s competition organised by the Society was Commercial Contracts. Both teams were tasked with interviewing a client who had a problem with a contract.

The judging panel was made up of David Gaston, retired solicitor, Colin Mitchell, partner in McCartan Turkington Breen Solicitors and Chair of the Belfast Solicitors’ Association and Anne Devlin, Education Secretary at the Law Society, who marked the teams on their approach and style, ability to obtain relevant information, problem analysis and morals and ethics.

Finally, the Graduate School of Professional Legal Education was announced as the winner.

They will now proceed to the final of the Louis M. Brown and Forrest S. Mosten International Client Consultation Competition which is being held in Puerto Rico from 8-12 April 2014.

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Society recognised for charity fundraising efforts

The Law Society has been presented with an award from Action Mental Health (AMH) for its partnership and sponsorship undertaken in 2013 in support of the local charity. In total the Society donated £15,000 towards AMH.

David Babington, Chief Executive of AMH, made the presentation of the award to the Society’s Senior Vice President, Michael Robinson and Chief Executive, Alan Hunter at the ceremony at Law Society House.

Also in attendance were Society Events Co-ordinator, Jennifer Ferguson and AMH Events Fundraiser, Callum Clark.

Society’s choir receives award for fundraising efforts

The Society’s Pro Bono choir has received ‘A heads up’ award from Action Mental Health in recognition of its significant fundraising contribution in 2013 in support of the local charity. Callum Clark from Action Mental Health visited the choir during a rehearsal to present the award to the Choir’s Director, Joe Rice.
Clinical negligence practitioners hold plastic surgery seminar

The Society’s Clinical Negligence Practitioners’ Group recently held a seminar on ‘Clinical Negligence in Plastic Surgery’ to provide members with an overview of developments and associated problems with cosmetic and plastic surgery procedures in the UK.

Those attending the seminars were provided with a synopsis of the main problem areas in plastic surgery including Botox, liposuction, breast reduction/enhancement and facial surgery.

The seminar was delivered by Colin Rayner, Consultant Plastic Surgeon, and Colum Smith, Managing Partner of McMillan Williams, Solicitors, Croydon.

From left: Ronnie Bentley QC; Colin Rayner and Stephen Scott.
Do or die deadlines

Douglas Adams (author of Hitchhiker’s Guide to the Galaxy) once said:

‘I love deadlines. I like the whooshing sound they make as they fly by’.

Sadly, not all of us can have the relaxed attitude to deadlines that this late comic genius did. In the legal profession, a missed deadline or time limit can result in major problems for a client in being unable to pursue a claim and the potential for a costs award against you, plus a possible negligence claim. For all lawyers, and particularly those working in litigation, deadlines are crucial and a fact of everyday life. They can therefore, not unexpectedly, also be a tremendous source of stress.

It is a fact of life that prolonged stress can lead to clinical depression. Depression is exhibited by symptoms that include an inability to concentrate, a lack of motivation or interest in anything, sleeplessness, overwhelming apathy and a sense of hopelessness. Depressed lawyers may make it in to work, but will not open the post – may even hide it, hoping that if they ignore it, it will go away. They will shuffle papers around, may even tap at the computer for a while, but will not get any productive work done. Depression and deadlines don’t mix. If you, or a colleague, seem to be suffering from any of these symptoms – including indifference to matters which might be regarded as urgent – this is too important to be ignored. See your GP immediately.

Whilst depression can be cured, stress related depression is best avoided in the first place. If deadlines are a major contributory factor to the pressure and anxiety you face, then learning to deal with them and to manage time well can avert problems later.

- Recognise that deadlines are necessary and that they bring order and allow you to plan ahead.
- Especially if you have multiple deadlines, keep a calendar (virtual or real) with the deadlines clearly marked and put it where you can see it. You could also use this to plan your work towards these deadlines.
- Find out in advance what extensions and allowances are available, how important the deadline really is, and where possible, make a ‘plan B’ just in case you are unable to make the deadline despite your best efforts. Hopefully you will never need it but knowing that you do have a contingency plan could help to alleviate the stress.
- Establish exactly what needs to be accomplished by the deadline.
- Break up all that needs to be done into smaller tasks and focus on them in turn, setting ‘micro-deadlines’ for each if this helps. Focus on these plateaus rather than the whole looming mountain, and reward yourself each time you achieve something.
- Don’t procrastinate or put everything off until the last minute – if something goes wrong or something else crops up, you won’t have time to deal with the essentials to meet the deadline.
- Don’t be afraid to ask for help, either from a colleague or a superior, or to delegate parts of the work where appropriate.
- When planning towards the deadline, build in a little extra time to allow for unexpected setbacks or things which crop up.
- Prioritise carefully, thinking about how urgent and important each task is.
- Make a task list. Be realistic when listing the tasks you need to do each day and take satisfaction in crossing off tasks as you do them.

Deadlines can cause stress but they are a necessary part of the legal profession and good client service. Learning to deal with them and work with them is an important part of being the best lawyer you can be.

If you still find that you are not managing to keep up, then LawCare’s free and confidential helpline is available to you, 365 days a year:

0800 279 6869
9am to 7.30pm on weekdays
10am to 4pm at weekends and on Bank Holidays
www.lawcare.org.uk
The Irish Legal History Society (the Society) held its Annual General Meeting in November 2013 when in addition to approving the reports, it elected its officers and council for the year 2013-14 and amended and restated its constitution. Full details of the new council and the constitution will be found on the Society’s website.

Following the meeting, by invitation of Mr David Ford, MLA, Minister of Justice, a reception for members of the Society and their guests was held in the Long Gallery of Parliament Buildings at Stormont. The reception sponsored by the Law Society of Northern Ireland was the celebration in Belfast of the 25th anniversary of the foundation of the Society in 1988. The Society was honoured to welcome to the occasion its two patrons, the Rt Hon Sir Declan Morgan, Lord Chief Justice of Northern Ireland and the Hon Mrs Susan Denham, Chief Justice of Ireland.

At the reception, a volume to commemorate the 25th anniversary entitled “Changes in Practice and Law” was launched. Before introducing the speakers, Sir Donnell Deeny, a Vice President of the Society and a High Court Judge in Northern Ireland, spoke briefly about Parliament Buildings. He noted how upon the purchase of the Stormont demesne in 1921 the then government of Northern Ireland had envisaged a parliamentary, judicial and administrative complex but that the judiciary had preferred to locate the courts at an independent location and the courts had been built at Chichester Street. Professor Kenny, who with Daire Hogan, Solicitor, edited the volume, thanked the Chief Justices for their generous foreword and spoke about the contributors, three of whom were present, the essays in the volume and the illustrations included.

Mr Ford in launching the volume, spoke of his perceptions of the law and the changes which he had seen since he had been involved in social work and how these perceptions had assisted him in his work as Minister of Justice. He commended the volume as a record of some of the changes in practice and personnel in the law, particularly in legal education and the role of women. He wished the Society well in its continuing endeavours.

Dr Conor Mulvagh then delivered the Winter Discourse speaking to the title “Legislative Landmine?: evaluating the third Home Rule Bill.” This ground-breaking paper examined the bill introduced in 1912, enacted in August 1914 but suspended for the duration of the First World War.

Having outlined how it had built upon Gladstone’s first two Home Rule Bills, Dr Mulvagh examined the bill in detail, particularly the consequences for parliamentary arithmetic of continuing Irish representation at Westminster. The discourse also set the bill in the context of legislation establishing parliaments in the dominions of the British Empire and was supported by helpful slides depicting the personalities involved and, when being discussed, the relevant section text.

The warmth with which Dr Mulvagh’s discourse was received was reflected in the vote of thanks passed on proposal by John Larkin QC, Attorney General for Northern Ireland and seconded by Prof Tom Cope from Denver, Colorado. Mr Larkin noted that the 1912 bill had 50 sections and four schedules but the Northern Ireland Act, 1998, as enacted, had 101 sections and 15 Schedules. He drew attention to the similarities between the stillborn 1914 Act, the 1920 Act establishing Northern Ireland and Article 16 of the Schedule to the Irish Free State Agreement Act, 1921. Given the similarities, it was clear that the 1912 bill, as enacted in 1914, “cast an indirect but clear mark on both Northern Ireland and the Irish Free State”.

The Society looks forward to publishing Dr Mulvagh’s discourse in its next collection of addresses and papers.
Below are a selection of those most recently published.

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<th>AUTHOR</th>
<th>TITLE</th>
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To support its clients in Northern Ireland, Titlesolv has appointed Reema Mannah to the role of Solicitor and Senior Underwriter. As one of the most experienced underwriters in Northern Ireland jurisdiction, Reema works alongside Titlesolv Introducer Appointed Representatives, BlueChip Title Solutions Limited which represents Titlesolv exclusively in Northern Ireland.

At the beginning of 2014 Titlesolv has committed to building its working relationship with local solicitors through a number of sponsorship and academic commitments demonstrating its enthusiasm for working with solicitors, academics, decision makers, insolvency practitioners, funders and other stakeholders to continually and collectively build its brand.

As part of its ongoing commitment Titlesolv has agreed to be the sole sponsor of a full day property seminar scheduled for September 2014 which will bring together academics and decision makers and provide a platform for open dialogue on the current and future of the Northern Ireland property market.

Titlesolv will be participating and supporting the Law Society’s Annual Conference to be held in Copenhagen in March 2014.

Commenting, the Chief Executive of Titlesolv, Christopher Taylor, said:

“I have ensured that we have developed a long-term strategy for our Northern Ireland clients which we can be proud of and one that will see Titlesolv create products and services that will assist the solicitors of Northern Ireland meet their objective of competing in a global and increasingly commoditised legal market, whilst simultaneously preserving the integrity of their local jurisprudence.”

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Who’s afraid of James Joyce?

Introduction

The work of James Joyce has a clear shape. It consists of four major books – the volume of short stories, Dubliners, the semi-autobiographical A Portrait of the Artist as a Young Man, the mighty prose epic, Ulysses, and the linguistic firework that is Finnegans Wake. There are four other substantive works, the earlier version of A Portrait known as Stephen Hero, the play Exiles, and the two volumes of poetry, Chamber Music and Pomes Penyeach, with some verse and prose. There is no need to be afraid of such a magnificent body of writing.

By far the best way to approach Joyce’s work is in this sequence of the major works, beginning with Dubliners. One of the stories A Painful Case revolves around the accidental death of a Mrs Sinico, the work of the Dublin Coroner’s Court along with the intrusion of the Press. Characters in Dubliners reappear in his later work, and it is much easier to appreciate their later manifestations if you know their earlier selves.

Essentially, the three works, Dubliners, A Portrait and Ulysses, form one world. Ulysses is almost inexplicable without some knowledge of the other two. The books increase in difficulty and complexity as one moves along, so it is natural to start with the more straightforward.

Background

James Joyce was born at 41 Brighton Square, Rathgar, Dublin, in the early morning of 2 February 1882. It was the festival of Candlemas, an appropriate birthday for a writer who combined a sense of religiosity with a fascination for myth, legend and things pagan.

His family moved around Dublin – to even grander houses as his father’s career blossomed, and to ever more dilapidated ones as it faded. He was the eldest of ten surviving children of John and May Joyce and nicknamed as a boy as “Sunny Jim”. His father, a civil servant, was basically a wastrel with pretensions to gentility.

Believing a Jesuit education would set the boy up for life, John sent him to Clongowes Wood and Belvedere College where he achieved many prizes. As an undergraduate, James became prominent as a speaker in University College Dublin’s Literary and Historical Society – the “L & H”. John took it as a sign that young James should become a barrister and strongly urged him in that direction.

James, however, preferred to follow his father’s example, rather than his advice, firstly by enrolling as a medical student and secondly, by being expelled.

He attended a few weeks of law lectures, presumably to gratify his father and eventually scraped a pass degree in Modern Languages, as his talents lay elsewhere.

Later in that same year of 1902, around December, he departed Dublin for Paris where he initially intended to study medicine. He returned home to Dublin in 1903 on news that his mother was dying and a short time later commenced writing his novel Stephen Hero which was to evolve into A Portrait of a Young Man. During this time, he was to meet the love of his life Nora Barnacle, a Galway girl working in Finn’s Hotel.

Famously, Ulysses is set in Dublin on the day of his first date with Nora, 16 June 1904, celebrated today as Bloom’s Day after Leopold Bloom whose perambulations around Dublin trace out Joyce’s map of the City – from Sandycove to Eccles Street by way of cemetery, bar, bedroom and brothel. He again leaves Dublin for the Continent in 1905 and spends most of the remainder of his life abroad, with only brief trips back home.

Civil and criminal law

Joyce had been fascinated with the law from an early age. It is documented that, as far back as September 1899, he had attended the murder trial of Samuel Childs in Green Street Courthouse. Childs, an aging accountant retired from Brooks Thomas, was charged with the murder of his wealthy brother in Bengal Terrace, beside Glasnevin Cemetery. It was a case based on circumstantial evidence which quickly unravelled in cross-examination as it was shown that the Police had simply suppressed all inconvenient facts. Childs was acquitted. The Childs’ murder is one of more than thirty law cases which feature in Ulysses.

Joyce never forgot the case which features prominently in Ulysses. It lodged in his mind as an example of how a seemingly plausible case can be made even against an innocent man and of the great difficulty of getting at the truth of any past offence. ("Bushel Q.C. …secured the acquittal of an innocent man").

This epistemological problem preoccupied him. To say that Joyce was litigious is simply to recognise that he was as obsessed with the dialectic of injury and remedy in his practical affairs as in his writing.

Both in A Portrait and Ulysses, Joyce returns repeatedly to the theme of injury and remedy – the fundamental rhythm of the law, civil and criminal. Indeed, his fictions can be received as fabulous remedies for actual wrongs, real or imagined. The pandying that Father Dolan inflicts upon Stephen Dedalus in A Portrait is appealed directly to the High Court of the Rector’s Office. In Ulysses, he creates the figure of Buck Mulligan, modelled on Oliver Gogarty, whereby wrongs committed by Gogarty against the young Joyce, although not actionable, could...
disposition, his wife Molly is a strong believer in both flogging and hanging. She reflects from her position of safety on the position of the Victorian poisoner Mrs Maybrick, “they’re not brutes enough to go and hang a woman surely are they?”

Con Curran, an old College friend and also a lawyer and writer appears as himself in Ulysses when Stephen Dedalus remembers that he owes him ten guineas.

Joyce was equally fascinated with civil as well as criminal litigation where he found revealed many dramas and tragedies of human life. His work features such civil actions as the Parnell divorce case, several actions on life insurance policies (which fascinated Joyce), a number of marine collision cases, a breach of promise action and actions about the tax status of bequests for the saying of masses.

Even in Finnegans Wake, it is arguable that the whole text is an enquiry into the guilt or innocence of the main character, HCE, of an unspecified crime allegedly committed in Phoenix Park. Is he indeed the “foenix culprit”? No certainty is ever achieved, the four cryptic judges saying only, “the unfacts, did we possess them, are too imprecisely few to warrant our certitude”.

The central evidence in the case of HCE is said to be a letter scratched out of a midden. Of dubious providence, this closely parallels the Piggot forgery implicating Parnell with the notorious Invincibles and the Phoenix Park murders. There are also veiled references to Roger Casement and his alleged forged diaries. The Captain Dreyfus affair in France and the forged bordereau are touched upon. All wrapped up in complex legal issues.

As Joyce said to Arthur Power:

“For myself, I always write about Dublin because, if I can get to the heart of Dublin, I can get to the heart of all the cities in the world. In the particular is contained the universal.”

Launch of Craobh na Cúirte

A little bit of history was made in December 2013 with the launch of the first branch of the Conradh na Gaeilge (the Gaelic League) in the Royal Courts of Justice, Belfast. The new branch, Craobh na Cúirte (the Courts Branch), was launched with an inaugural lecture on “Irish in Administration” by Dr Art Hughes. The lecture took place in the Upper Bar Library and those attending enjoyed a cup of coffee followed by an informative and entertaining lecture from Dr Hughes of the Ulster University. For those without Irish a simultaneous translation service was provided.

Craobh na Cúirte is open to solicitors and barristers, and aims to provide a social and educational outlet for members of the profession with an interest in Irish. The chairperson Michael Flanagan says that further lectures are envisaged, as is a visit to meet with the Craobh na Ceithre Cúirte (The Four Courts Branch) in Dublin.

For further information about the branch contact Michael Flanagan, solicitor, on 028 9023 3309 or email michael@michael-flanagan.com
Employment and Support Allowance

While the project focuses on representation in the Greater Belfast area, the tribunal representatives are happy to offer advice about preparation of appeals beyond this area.

2. CABx and local advice centres

Some CABx and advice centres provide assistance with ESA disputes. It is a good idea for practitioners to build up links with local CABx and advice organisations in order to be aware of what help can be offered and how long a person may have to wait to arrange an appointment.

3. Legal Support Project

Co-ordinated by the Law Centre, the Legal Support Project (LSP) accepts referral after an appeal has been made and the Appellant has received tribunal papers. The LSP accepts referrals from across Northern Ireland, but only from members of the Law Centre. If your practice is not a member then an initial referral may be made to an advice agency or CAB who may refer it to LSP if that organisation does not have the resources to handle the case.

To make a referral, contact the LSP at 028 9043 5050 or email admin@legalsupportproject.com.

Patricia Carty, social security adviser at Law Centre (NI), explains options available to solicitors when contacted by clients about problems with Employment and Support Allowance.

Employment and Support Allowance (ESA) is the welfare benefit which was introduced in 2008 to replace Incapacity Benefit. The statutory test for entitlement was designed to make it more difficult to satisfy than its predecessor. It comes as no surprise that there has been a surge in appeals as a result of more people being turned down for benefit. In the year ending April 2013, more than 18,000 ESA appeals were received and this is leading to pressure on the appeals system.

This article outlines options available to practitioners when clients contact them with ESA queries.

Make a referral

In many cases, the most effective way of dealing with ESA queries will be to refer the person to an agency with expert knowledge of ESA and representation at appeal tribunals. Where possible, referrals should be made at an early stage for clients to get help with the ESA claims process.

1. Citywide Tribunal Service

The Citywide Tribunal Service was launched in August 2013 to provide social security tribunal representation in the Greater Belfast Area. Funded by Belfast City Council, it will initially run for two years. It employs a senior tribunal worker, four tribunal representatives and two tribunal assistants.

To make a referral to the Citywide Tribunal Service, phone 90391765 or email tribunal@ligonielvillage.com.

An overview of the rules on entitlement to ESA can be found in the Law Centre’s Encyclopaedia of Rights at chapter 10 (http://www.lawcentreni.org/EoR/benefits-and-tax-credits/employment-and-support-allowance.html). This is updated on a regular basis and is brief and user friendly. The statutory tests for ESA are set out at Appendices 1 and 2 of the chapter on ESA and are essential reading for understanding how the assessment works.

I am setting out some pointers below on how to get started, resources available for practitioners and what to expect in the process and hearing.

Getting started

An overview of the rules on entitlement to ESA can be found in the Law Centre’s Encyclopaedia of Rights at chapter 10 (http://www.lawcentreni.org/EoR/benefits-and-tax-credits/employment-and-support-allowance.html). This is updated on a regular basis and is brief and user friendly. The statutory tests for ESA are set out at Appendices 1 and 2 of the chapter on ESA and are essential reading for understanding how the assessment works.
Where ESA branch are satisfied in light of new evidence that the initial assessment was wrong, the decision will be revised. The Legal Support Project has been able to resolve a third of the appeals referred to it in this way in the last year.

**Getting medical evidence**

Medical evidence can make a real difference to a person’s chances of success.

One way that a practitioner can offer practical assistance is to help with obtaining relevant medical evidence through the Green Form scheme. Northern Ireland Legal Services Commission (NILSC) will pay the following rates for medical reports for ESA appeals under the general authority:

- £55 for a report without examination
- £71.50 for a long report without examination
- £77 for a report with examination
- £145 for the report of a consultant

If the medical practitioner is requiring a higher fee, it is possible to request authority from NILSC to cover this higher fee upon confirmation from the doctor. Also, authority may be obtained from legal aid to cover the cost of the release of GP notes or clinical records such as those covering physiotherapy, occupational therapy and counselling, which may contain important supportive medical evidence.

Submit relevant medical evidence in good time to avoid possible adjournments and to give ESA branch an opportunity to reconsider its decision.

**At the hearing**

Appeal tribunals hearing ESA appeals are made up of a Legal Member and a medically qualified member. There is no medical examination at the hearing and, in contrast to Disability Living Allowance appeals, GP notes are generally not considered by the appeal tribunal.

Appeals are often decided on the basis of credibility and medical evidence. The hearing is an opportunity for the person to give a full account of how her/his disabilities affect daily living.

The Appeals Service may provide an opportunity for practitioners to observe appeal tribunals and it is always possible to discuss what to expect at a hearing with a social security practitioner on the Law Centre’s advice line.

**Law Centre services**

The Law Centre offers a social security advice line, 9024 4401 or 7126 2433, open every day from 9.30am until 1pm. Our caseworkers are happy to advise on where to refer clients to, but also on how to draft appeals and on preparation for hearing.

There is a lot of useful information on the Law Centre’s website (www.lawcentreni.org) and we offer a programme of CPD accredited training. The training calendar is available on: http://www.lawcentreni.org/training/courses.html

We would encourage all legal practices to become members of the Law Centre and to use our advice, training, information, library and case referral services.

Notice is hereby given that the 150th Annual General Meeting of the Solicitors’ Benevolent Association will be held at the Law Society, Blackhall Place, Dublin 7 on Monday 14 April 2014 at 12.30pm.

1. To consider the Annual Report and Accounts for the year ended 30 November 2013
2. To elect Directors
3. To deal with other matters appropriate to a General Meeting
Anti-trafficking project launched

On 6 December 2013, the Law Centre launched a new legal support and advocacy project for young people who have been trafficked in Northern Ireland.


Pro bono legal work makes a difference

On 8 November, the Law Centre’s Legal Support Project (LSP) hosted a conference on Pro Bono in Practice: International Perspectives at Riddel Hall, Queen’s University. The conference was chaired by the Honourable Mr Justice Stephens.

From left: speakers - Balázs Sahin-Tóth, counsel with Allen & Overy (Budapest); Dr Colin Gonsalves, founder of the Human Rights Law Network (India) and a senior advocate at the Supreme Court in India and Mr Justice Stephens.

Photo: Sarah Hunter.

From the Courts -
abstracts of some recent case law

ADMINISTRATION OF JUSTICE

CA (A MINOR) V PUBLIC PROSECUTION SERVICE
Applicant is aged 17 and is the subject of an allegation of having inflicted grievous bodily harm contrary to s.20 Offences Against the Person Act 1861. - applicant challenges the Public Prosecution Service conclusion that the allegation is not suitable for diversionary disposal as alternative to prosecution as provided for by the Criminal Justice (Children) (NI) Order 1998.- approach of the PPS to the availability of a diversionary disposal in a case considered by the PPS to involve only partial or limited admissions from the applicant. - applicant seeks an order quashing the decision by which it is concluded that the applicant’s case was not suitable for diversionary disposal, a declaration that the decision was unlawful, ultra vires and had no force of effect and an order that the matter be reconsidered and determined according to law. - applicant allegedly struck a member of an opposing football team, leading to the match being abandoned. - applicant admits to part, but not all, of the assault. - HELD that this is an exceptional case which entitles the Court to intervene by quashing the decision of the prosecutor and remitting the matter to the PPS for the decision to be made according to the law
COURT OF APPEAL
9 NOVEMBER 2013
MORGAN LCJ

CRIMINAL LAW

R V MCATARSNEY
Appellant charged with theft and production of controlled drugs. - police discovered a large number of cannabis plants and associated machinery at the appellant’s home. - whether the appellant intended to supply drugs or was growing them for his own personal use. - whether a future intention to supply could be proved. - whether there was useable and suppletable cannabis in the plants. - HELD that appeal dismissed
COURT OF APPEAL
24 OCTOBER 2013
HIGGINS LJ, GIRVAN LJ, MAGUIRE J

R V ROBERT MCKEOWN, EDWARD LYNN AND STEPHEN FERRIS
References by the Director of Public Prosecutions under s.36 Criminal Justice Act 1988 in which it is submitted that unduly lenient sentences were imposed on the respondents following convictions for riotous assembly contrary to common law. - convictions arose out of disturbances which took place following the decision by Belfast City Council to limit the number of days in which the Union flag is flown outside Belfast City Hall. - PPS contends that the sentencing judge erred in failing to identify the correct starting point or setting the period of imprisonment too low by comparison to the starting point and by suspending the sentence of imprisonment. - matters to be taken into consideration in sentencing for riotous assembly. - HELD that the sentences on two of the three defendants was unduly lenient and replaced with custodial sentences
COURT OF APPEAL
12 NOVEMBER 2013
MORGAN LCJ, COGHLIN LJ, HORNER J

R V RYAN MCGREECHAN
Appeal with the leave of a single judge from a decision where the judge decided that he should lift a reporting restriction preventing the reporting of the identity of the appellant subsequent to his conviction on two counts of rape and one count of indecent assault. - defendant was 15 at the time of the assault and 17 at the time of sentencing. - case transferred from the Youth Court to the Crown Court. - whether lawful basis for maintaining a reporting restriction order. - children and the criminal justice system. - balancing exercise between the right of child to privacy and rehabilitation and disclosure in the public interest of a serious sexual offence. - HELD that in the interest of open justice the defendant should be identified
COURT OF APPEAL
17 JANUARY 2014
MORGAN LCJ, HIGGINS LJ, COGHLIN LJ

R V GARETH MARCUS
Appeal by leave of the single judge on one ground and an application on other grounds for leave to appeal against his conviction on two counts arising out of an incident when a device was put through a window pane. - applicant was convicted of possession of explosives with intent to endanger life or cause serious injury to property and causing an explosion likely to endanger life or cause serious injury to property. whether verdicts safe. - credibility of defendant. - trial judge’s direction to the jury. - circumstantial evidence. - HELD that appeal dismissed
COURT OF APPEAL
24 OCTOBER 2013
HIGGINS LJ, GIRVAN LJ, COGHLIN LJ

R V HO LING MO
Sentencing. - conspiracy. - illegal immigration. - sham marriages. - defendant is connected through evidence discovered at various addresses related to her to nine sham marriages. - aggravating and mitigating factors including the fact that the defendant was a solicitor. - contemporaneous trial on money laundering charges. - totality principle. - HELD that defendant sentenced to two and a half years for the conspiracy charge reduced by one fifth to take account of mitigating factors
CROWN COURT
4 NOVEMBER 2013
HORNER J

COSTS

IN THE MATTER OF AN APPLICATION BY JOHN J RICE AND COMPANY, SOLICITORS FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
Application for judicial review now academic and dismissed by agreement following a Court of Appeal judgment on a related judicial review. - applicants now seek an order for costs against the proposed respondent which was resisted. - costs where a judicial review is being discontinued. - HELD that the bringing of the present judicial review is unnecessary since it ought to have been clear from the beginning that the point at issue would have been determined in the Court of Appeal judgment. - no order for costs made between the parties
HIGH COURT
28 OCTOBER 2013
TREACY J

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
Applicant is aged 17 and is the subject of an allegation of having inflicted grievous bodily harm contrary to s.20 Offences Against the Person Act 1861. - applicant challenges the Public Prosecution Service conclusion that the allegation is not suitable for diversionary disposal as alternative to prosecution as provided for by the Criminal Justice (Children) (NI) Order 1998.- approach of the PPS to the availability of a diversionary disposal in a case considered by the PPS to involve only partial or limited admissions from the applicant. - applicant seeks an order quashing the decision by which it is concluded that the applicant’s case was not suitable for diversionary disposal, a declaration that the decision was unlawful, ultra vires and had no force of effect and an order that the matter be reconsidered and determined according to law. - applicant allegedly struck a member of an opposing football team, leading to the match being abandoned. - applicant admits to part, but not all, of the assault. - HELD that this is an exceptional case which entitles the Court to intervene by quashing the decision of the prosecutor and remitting the matter to the PPS for the decision to be made according to the law
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CROWN COURT
4 NOVEMBER 2013
HORNER J
From the Courts - abstracts of some recent case law

R v HO LING MO
Sentencing. - defendant found guilty of eight counts of fraud by false representation contrary to s. 1 Fraud Act 2006 and two counts of removing criminal property contrary to s.327 Proceeds of Crime Act 2002. - defendant made claims to the Legal Services Commission for interpreting services allegedly provided. - aggravated and mitigating factors including the fact that the defendant is a solicitor. - HELD that defendant sentenced to 21 months in prison followed by 21 months on licence
CROWN COURT
10 JULY 2013
WEIR J

R v THOMAS CHRISTOPHER CHARLES WARD
Appeal against conviction and sentence for the sexual assault of a female. - appeal against sentence. - evidence of propensity. - whether adverse effect on fairness. - circumstantial evidence. - guidance on the manner in which the jury should be directed in a case where bad character evidence is admitted to show propensity
COURT OF APPEAL
16 JANUARY 2014
MORGAN LCJ, HIGGINS LJ, COGHLIN LJ

DAMAGES

JANINE ANN GILLILAND (A PERSON UNDER A DISABILITY) BY ROBERT GEORGE GILLILAND NEXT FRIEND V JEMMA MCMANUS AND ANOTHER
Plaintiff sustained a catastrophic injury as a result of a road traffic accident. - primary liability accepted save that contributory negligence arose because of the plaintiff's failure to wear a seatbelt at the time of the accident. - damages for future pecuniary loss . - whether court should make an order that the damages are to take the form of a periodical payments order or whether a lump sum should be made. - form of award preferred by the plaintiff and reasons for preference. - scale of the annual payments, taking into account any deduction for contributory negligence. - nature of any financial advice when considering the form of the award. - advantages and disadvantages of a periodical payments order. - HELD that a lump sum is more likely to be in the interests of the plaintiff
HIGH COURT
6 DECEMBER 2013
GILLEN J

KEVIN O'NEILL, KAREN O'NEILL, CIARA O'NEILL, SHELLEY O'NEILL AND JORDAN O'NEILL V GRAHAME TOMLINSON AND ELLA TOMLINSON
Appeal from a decision of Deputy County Court judge when he awarded general damages to the plaintiffs arising from an escape of oil from the defendant's property on to the plaintiff's property. - negligence and nuisance. - liability. - recovery of non-pecuniary losses. - discomfort and inconvenience. - HELD that damages awarded by the Deputy County Court judge are too high and reduced to £5,500
HIGH COURT
3 JULY 2013
GILLEN J

DEFAMATION

J19 AND J20 V FACEBOOK IRELAND
Application on behalf of the defendant to vary and discharge orders of injunction made in the case of both plaintiffs. - orders have been made on foot of ex parte applications by counsel of behalf of the plaintiffs. - application to obtain an interim injunction restraining the defendant from placing, or allowing to be placed on its website the plaintiff's name or similar material identifying the plaintiff and which associates him with the activities alluded to in the material which was the subject of the interim injunction. - plaintiffs issued writs for damages for breach of human rights, breach of privacy, breach of data protection, misuse of private information. - obligations on the applicant to establish a serious question to be tried. - principles to be applied in the case of interim mandatory injunctions. - whether there is evidence before the court of a real and immediate risk to the life of the plaintiffs. - whether Facebook could comply with the order because it is impossible for it to prevent its users from accessing the website and posting the content. - whether the defendant has a general responsibility to properly monitor the nature of material appearing on its website. - risk of infringement of the plaintiff's rights to freedom from inhuman and degrading treatment. - HELD that the injunctions must be discharged since the law requires reassuring clarity and the orders made are not sufficiently precise and may require the court to give an indefinite series of rulings to ensure the execution of the court order or run the risk of wasteful litigation over compliance and that monitoring all the possible websites would impose a disproportionate burden on the defendant
HIGH COURT
15 NOVEMBER 2013
GILLEN J

EDUCATION

IN THE MATTER OF AN APPLICATION BY HR (A MINOR) BY HER MOTHER AND NEXT FRIEND FOR JUDICIAL REVIEW
Application to challenge a decision of the Belfast Education and Library Board not to provide her daughter with travel assistance to and from school. – pupil lives within the DENI radius of 3 miles from the school and therefore does not qualify for free transport. – whether the proposed route to walk to school was safe with regard to sectarian tensions in the area. – whether in breach of applicant's a.8 ECHR. – whether exceptional circumstances. – whether exceptional circumstances. – whether in breach of child's right to education. – whether the Board misdirected itself as to what would come within the remit of exceptionality. – whether decision rational. – HELD that the applicant's case was considered fairly and exhaustively by the Board and application refused
HIGH COURT
11 NOVEMBER 2013
TREACY J
EMPLOYMENT

GAVIN McGlincheY, BARRY ConAGhan, JOSEPH CANNING, KEVIN PATRICK DonNELLY, PATRICK ROBINSON, JAMES JOSEPH McMONAGLE, AARON SEAN MARTIN CASSIDY, MARTIN WILLIAM MOORE AND EAMON CONAGHAN V COLM JOSEPH MCGURK AND PATRICK PEARSE MOORE T/A MCGURK AND MOORE AND OMEGA MECHANICAL SERVICES LIMITED

Appeal by nine claimants from a decision of an Industrial Tribunal which concluded in six of the cases that the claim should be dismissed on the basis that the contracts were tainted by illegality. - quantum of compensation and the liability of the individual respondents in the remaining cases. - first respondent entered into a response maintenance contract for a five year period which was renewed for a further five years. - contract was retendered and the second respondent was the successful bidder. - operation of the Service Provision Change Regulations and transfer of employees. - Tribunal found that the facilities manager for the first respondent had made special effort to regularise the tax and national insurance position in order to preserve the status quo for potentially affected employees. - law on illegality. - whether the employees were aware of the illegality and participated. - HELD that appeals should be dismissed except in 2 cases and remitted to the tribunal for submissions on the issue of statutory uplift and giving of reasons for any decision.

COURT OF APPEAL
9 JANUARY 2014
MORGAN LCJ, HIGGINS LJ, COGHLN LJ

LEGAL AID

IN THE MATTER OF AN APPLICATION BY RAYMOND BROWNLEE FOR JUDICIAL REVIEW

Appeal by Department of Justice against the decision of judge holding that the Crown Court Proceedings (Costs) Rules (NI) as amended by the Crown Court Proceedings (Costs) (Amendment) Rules 2011 defeated the respondent’s right to practical and effective access to legal assistance. - judge granted an Order of Mandamus compelling the appellant to take all necessary steps to make the respondent’s right to legal aid effective and found that there must be a modest adjustment to the impugned scheme to meet the exceptional and unusual circumstances of the case and avoid injustice. - respondent convicted of false imprisonment, threats to kill, wounding with intent and common assault.

— respondent dispensed with the services of his legal representatives after evidence had been concluded at the trial. - fees payable to the new legal team did not allow for full consideration of the documentation involved in the case, evaluation of convictions and preparation of the case. - test applied in considering the grant of legal aid. - whether breach of respondent’s a. 6 right to fair trial. - whether a.6 guarantees any particular level of breach of respondent’s a. 6 right to fair trial. - whether a.6 right to fair trial.

COURT OF APPEAL
23 OCTOBER 2013
MORGAN LCJ, HIGGINS LJ, GIRVAN LJ

FAMILY LAW

CM V CL AND NORTHERN HEALTH AND SOCIAL CARE TRUST

Appeal from a threshold judgment on the identification of the person responsible for the ingestion of salt by the child as a result of which she suffered significant harm. - whether the judge’s conclusion was sustainable on the evidence and whether he had given sufficient reasons for it. - duty to give reasons. - HELD that the submissions on appeal have not been made out and appeal dismissed.

COURT OF APPEAL
20 DECEMBER 2013
MORGAN LCJ, HIGGINS LJ, COGHLN LJ

O’H V O’H

Respondent appeals from the Order of the Master made in Ancillary Relief proceedings. - valuation of property and pensions. - Master departed from equality in division of the assets given all the circumstances of the case. - whether matrimonial home and occupational pension had been undervalued. - whether respondent should have more of the assets since one of the children was now living with him. - HELD that having regard to the considerations set out in a.27 Matrimonial Causes Order and to the fact that the marriage was of medium duration and that care of the children is now more equally divided, respondent entitled to greater share of the assets. - HELD that the excess of £40,000 which was incurred in costs be allocated to the parties in the same proportion as applied to the assets.

HIGH COURT
28 NOVEMBER 2013
WEIR J

HEALTH AND SAFETY

R V COLERAINE BOROUGH COUNCIL

Defendant Council has pleaded guilty to 3 counts under Health and Safety at Work (NI) Order 1978 relating to an incident that occurred at the defendant’s civil amenity site. - Council employee died as a result of failures of the defendant Council. - working practices of Council. - relevant guidelines for Container Equipment Manufacturers issued by the Health and Safety Executive which warned of the risks involved in lifting containers had not been followed by the Council. - risk assessments had been carried out internally rather than independently. - sentencing guidelines in relation to seriousness. - HELD that Council is fined £75,000 and is subject to costs.

CROWN COURT
10 OCTOBER 2013
MARRINAN, HHJ
NEGLIGENCE

MARGARET MCERLEAN V THE RIGHT REVEREND MONSEIGNOR AMBROSE MACAULEY AS NOMINEE ON BEHALF OF THE TRUSTEES AND THE BOARD OF GOVERNORS OF ST BRIDE’S PRIMARY SCHOOL

Negligence and breach of statutory duty. - plaintiff, a teacher, slipped and fell on an icy path while escorting pupils for choir practice. - whether the defendant, as her employer, is liable to compensate her for those personal injuries. - whether the defendant was in breach of its duty to the plaintiff by requiring her and the other teachers and children in their care to make their way along the public footpath to the venue. - Headmaster had completed a risk assessment prior to the excursion taking place. - what is reasonable in all the circumstances. - HELD that the plaintiff has failed to prove that the defendant was guilty of negligence and/or breach of statutory duty to the requisite standard

HIGH COURT
10 JANUARY 2014
HORNER J

PENSIONS

DENISE BREWSTER V NORTHERN IRELAND LOCAL GOVERNMENT OFFICERS’ SUPERANNUATION COMMITTEE V DEPARTMENT OF THE ENVIRONMENT FOR NORTHERN IRELAND

Appeal by the Northern Ireland Local Government Officers’ Superannuation Committee and the Department of the Environment for Northern Ireland from the decision of the judge whereby he allowed the respondent’s application for judicial review of a decision by the Superannuation Committee not to pay a survivor’s pension as the deceased had failed to nominate the respondent as the person to receive benefits under the Local Government Scheme. - whether the scheme and the requirement to complete a declaration on the appropriate form signed by both parties and notified to the Committee is unjustified or disproportionate and gives rise to discrimination. - HELD that appeal allowed

COURT OF APPEAL
8 NOVEMBER 2013
MORGAN LCJ, HIGGINS LJ, COGHLIN LJ

REAL PROPERTY

AURORA LEASING LIMITED V COLLIERS INTERNATIONAL BELFAST LIMITED

Plaintiff claims for damages for loss and damage alleged to have been sustained by reason of the professional negligence of the defendant as surveyors and valuers who completed a valuation of property for the purposes of a loan proposed to be made by the plaintiff to a company with personal guarantees provided by Paul and Mary Campbell. - defendant was instructed by the Campbells to provide a valuation in respect of their property and, acting on this, they advanced a considerable sum to the company. - plaintiff claims the defendant was negligent in conducting the valuations of the property which was worth less than the valuations. - company defaulted on the payments and judgment was obtained against the Campbells who have been declared bankrupt and the company has been placed in compulsory liquidation. - plaintiff claims from the defendant the amount due on foot of the loan to the company together with interest due on the loan as well as wasted costs of pursuing the company and the Campbells. - comparable properties. - approach taken to valuation of property by a chartered surveyor. - whether the evidence of the estate agents was appropriate to enable the Court to deal with allegations of negligence by surveyors and valuers. - in professional negligence cases an expert witness comes from the profession under investigation. - whether the valuation was within the range of values that might have been given by a competent valuer exercising reasonable care and skill. - duty of valuer. - actual loss to the plaintiff. - whether the defendant’s breach of duty was the cause of the loss to the plaintiff. - amount of loss recoverable by the plaintiff. - whether the plaintiff was guilty of contributory negligence. - HELD that the valuations were a significant overvaluation such as to amount to a breach of the defendant’s duty to exercise reasonable care, competence and skill. - plaintiff did not take all measures that a reasonably prudent lender should have taken and contributory negligence found at 20%. - judgment for the plaintiff for the amount of the advance of
The full text of these decisions are available on the Libero Database in the member's section of the Law Society Website at www.lawsoc-ni.org
Human Trafficking

Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons defines Trafficking in Persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” United Nations Office on Drugs and Crime website (details below)

Legislation

Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill
A Bill to make provision about human trafficking offences and exploitation, measures to prevent and combat human trafficking and slavery and provision of support for human trafficking victims. Second stage completed on 24 September 2013. Committee stage extended to 11 April 2014.
http://www.niassembly.gov.uk/ (available from the legislation section)

Criminal Justice Act (Northern Ireland) 2013 Ch 7
An Act to amend the law relating to sex offender notification, sexual offences prevention orders and human trafficking;
Commencement: ss 3, 6-8, 10-15 and Part 2 of Schedule 4 on 26 April 2013. s 13(1) of the 2013 Act is 8 June 2013 and 13 July 2013
http://www.legislation.gov.uk/nia/2013/7/enacted

Sexual Offences (Northern Ireland) Order 2008 NI 2
Sexual Offences Act 2003 c.42 ss 57-60

Legislation associated with the immigration dimensions of trafficking is from Westminster

Nationality, Immigration and Asylum Act 2002 S.145

Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 s.4
Provides for the offence of trafficking for exploitation
http://www.legislation.gov.uk/ukpga/2004/19/contents

Coroners and Justice Act 2009 s.71 Provides for offences relating to slavery, servitude and forced or compulsory labour

Personal injury trusts: key points for personal injury lawyers.
Coldrick: 2004 2 JPIL 163-168

European Legislation

The Council of Europe Convention on Action Against Trafficking in Human Beings
http://www.conventions.coe.int/Treaty/EN/Treaties/Htm1/197.htm

http://www.eur-lex.europa.eu

Cases

NI Caselaw

In the matter of an application by W for judicial review and in the matter of an application by X for leave to apply for judicial review
Application of the Council of Europe Convention on Action against Trafficking in Human Beings (Trafficking Convention). - applicants challenge the actual decisions of the Competent Authority refusing them victim status under the terms of the Trafficking Convention. - preliminary issues on misdirection and legitimate expectation. - HELD that none of the grounds of challenge have been made out and applications dismissed
[2011] NIQB 76 7 September 2011

In the matter of an application by W for judicial review
Remittal of action back to court to consider the challenge under a. 4 ECHR and to give reasons. - whether the National Referral Mechanism policy (NRM) breaches a. 4 ECHR and whether the decision in the applicant’s case breaches the State’s obligations under that article. - whether the NRM policy failed to provide an effective means of identifying people who have been victims of trafficking. - extent to which the operation of the NRM policy and the impugned decision by the Competent Authorities breaches a. 4 ECHR. - positive obligations by State under a. 4 ECR. - HELD that the State has not breached its obligations.
therefore the applicant’s claim must fail

R v Matyas PIS
Defendant pleaded guilty to human trafficking and intentionally controlling the activities of another for the purposes of prostitution. - sentencing guidelines. - causing prostitution and controlling for prostitution. - brothel-keeping. - HELD that defendant sentenced to 3 years’ imprisonment

2012 NICB 37 31 May 2012

R v L and other cases
Criminal law – defence – offences committed under compulsion – victims of human trafficking – defendants having been convicted of criminal offences committed while alleged victims of human trafficking – defendants appealing convictions – Whether court’s obligation to safeguard victim’s rights independent of review of prosecutor’s decision to bring prosecution
2013 EWCA Crim 991

LM, MB, DG, Bettie Tabot, Yutunde Tijani v The Queen
Criminal law, prosecution, people trafficking, controlling prostitution for gain. - defendants claiming to be trafficked persons and committing offences. - duty to consider whether in public interest to prosecute. - whether convictions unsafe
2010 EWCA Crim 2327

Rantsev v. Cyprus and Russia
Duty to undertake effective investigation. - forced labour. - positive obligations. - right to liberty and security. - right to life. - trafficking in human beings. - complainant father complained that death of his daughter had involved breaches of the European Convention on Human Rights 1950. – daughter had gone to work as a cabaret artiste in Cyprus where many immigrant artistes became prostitutes. - claimant went missing from work and was later found dead
2010 51 EHRR 1

Above cases are available free of charge from the Libero database via the Law Society website.

Articles
Human trafficking and children: the legal response.
Wells: 2013 CL&JW 615

Trafficking of children (discusses how the UK conforms to art.4 of UN’s Protocol to Prevent, Suppress and Punish Trafficking in Persons in the context of child victims
Tapp: (2013) CL &JW 134

The Reality of Trafficked People’s Access to Technology (discusses a recent study dealing with the use of technology and trafficked people)
Elliott: 2013 JCL 77 (255)

Criminal Justice Act (Northern Ireland) 2013 - an overview (focusing on provisions relating to sex offender notification, human trafficking and retention of fingerprint and DNA samples)
2013 Writ, 217, 10-11.

Sensible prosecuting and Article 28 (use of discretion when people have committed crimes while being trafficked)
Wells: 2011 175 JPN 34

Human trafficking (addresses the manner in which English law and enforcement procedures can ensure respect for art.26 of the Treaty and emphasizes the need for the legal profession to acquaint itself with its terms)
Leigh: 2010 174 JPN 760

Books

- Chandron, P. Human trafficking handbook: recognising trafficking and modern day slavery in the UK. LexisNexis. 2011. (includes a chapter for Northern Ireland)


Available electronically from NI Assembly website or in hard copy from the library.

Websites
Department of Justice: NI Human trafficking action plan 2013-14.
“This is the first action plan on human trafficking for Northern Ireland. It identifies priorities and objectives for the year ahead across a range of areas including the prevention of human trafficking, the protection and support of victims and bringing perpetrators to justice through the Courts. It will be reviewed and updated annually.” David Ford

Department of Justice (DOJ) and Department of Health, Social Services and Public Safety (DHSSPS) - Working Arrangements for the Welfare and Protection of Adult Victims of Human Trafficking. Published October 2012.


Organised Crime Task Force
Has a useful set of publications dealing with human trafficking including a link to publications from outside agencies.
http://www.octf.gov.uk/

United Nations Convention against Transnational Organized Crime and the Protocols Thereto
The United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 2000, is the main international
New Books in the Library

- Lush, D. Cretney & Lush on lasting and enduring powers of attorney. 7th ed.

http://www.homeoffice.gov.uk/publications/crime/human-trafficking-strategy/?view=Binary

United Nations Office on Drugs and Crime (UNODC)
UNODC, as guardian of the United Nations Convention against Transnational Organized Crime (UNCOC) and the Protocols thereto, assists States in their efforts to implement the Trafficking in Persons Protocol. The website has a useful section explaining what human trafficking is and what measures UNODC has taken in combating it.

New correspondence address for classified advertising

Please note that the new address for sending notices for Missing Wills, Missing Land Certificates/Title Deeds, practice notices etc is:

Karen Irwin
dcp strategic communication Ltd
BT3 Business Centre
10 Dargan Crescent
Belfast
BT3 9JP

All classified advertisements cost £25 plus VAT and are payable in advance of publication. Cheques should be made payable to ‘dcp Ltd’ and sent, together with the text for your advertisement, to Karen Irwin at the above address.
Missing Wills

Re: **Reginald Dickson Hamilton** (deceased)
Late of: 16 Rathkeltair Park, Downpatrick
BT30 6RU
Date of death: **1 November 2013**
Would any person having any knowledge of the whereabouts of a Will made by the above named deceased please contact:
Jeremy P Hinds
Hinds & Small
Linenhall Exchange
26 Linenhall Street
Belfast BT2 8BG
Tel: 028 9024 5353
Fax: 028 9024 7212
Email: j.hinds@hinds-small.com

Re: **William Duncan Hale Humphreys** (deceased)
Late of: 3 Ellis Grove, Carrickfergus, County Antrim
Date of death: **26 October 2013**
Would any person having any knowledge of the whereabouts of a Will for the above named deceased please contact:
O’Rorke McDonald & Tweed
Solicitors
37/39 Church Street
Antrim
County Antrim BT41 4BD
Tel: 028 9446 3108
Fax: 028 9446 6592
Email: anne.weir@omtsolicitors.com

Re: **Marie Gabrielle Moorehead** (deceased)
Late of: 77 Stockman’s Lane, Belfast
Date of death: **28 June 2013**
Would any person having any knowledge of the whereabouts of a Will for the above named deceased please contact:
Ms Judy Rose
O’Reilly Stewart
Solicitors
Courtside House
75-77 May Street
Belfast BT1 3JL
Tel: 028 9032 1000
Fax: 028 9023 1959

Re: **Rev Samuel Niall Maurice Bayly** (deceased)
Late of: 81 Dunlunce Avenue, Belfast BT9 7AW
Date of death: **19 Irwin Place, Donaghloneyn
Craigavon BT66 7LN**
Date of death: **21 October 2013**
Would any person having any knowledge of the whereabouts of any Will made by the above named deceased please contact:
Jeremy P Hinds
Hinds & Small
Linenhall Exchange
26 Linenhall Street
Belfast BT2 8BG
Tel: 028 9024 5353
Fax: 028 9024 7212
Email: j.hinds@hinds-small.com

Re: **Eileen Gertrude McEnea** (deceased)
Late of: 5 Breda Drive, Belfast and
Croagh Patrick Care Home, Miller Hill,
235 Millisle Road, Donaghadee, County Down BT21 0LN
Date of death: **15 October 2013**
Would any person having any knowledge of the whereabouts of any Will made by the above named deceased please contact:
Basil Glass & Co
Solicitors
97 Saintfield Road
Belfast BT8 7HN
Tel: 028 9040 1463

Re: **Mary Rita Coney**
Late of: 33 Barrack Street, Coalisland,
County Tyrone BT71
Date of death: **1 July 2013**
Would any person having any knowledge of the whereabouts of any Will for the above named deceased please contact:
Logan & Corry
Solicitors
6 Limeside
Coalisland
County Tyrone BT71 4LP
Tel: 028 8774 1000
Fax: 028 8774 1001
Email: coalisland@loganandcorry.com

Re: **John Hamilton** (deceased)
Late of: 19 Irwin Place, Donaghloneyn
Craigavon BT66 7LN
Date of death: **26 October 2013**
Would any person having any knowledge of the whereabouts of any Will for the above named deceased please contact:
Nelson-Singleton
Solicitors
21 Gallows Street
Dromore

Re: **Mary Theresa Crawford** (deceased)
Late of: 30 Ladbrook Drive, Belfast BT14 7ND
Date of death: **11 October 2013**
Would any person having any knowledge of the whereabouts of any Will made by the above named deceased please contact:
James T Johnston & Co
Solicitors
Donegall Chambers
138 Donegall Street
Belfast BT1 2GY
Tel: 028 9024 6091
Fax: 028 9043 8486
Email: lynda@johnstonsolicitors.com

Re: **Bernadette Mary Atkinson** (deceased)
Late of: Aughnacloy House, 2 Tandragee Road,
Lurgan, Craigavon, County Armagh BT66 8TL
Formerly of: 44 Markville, Bleary, Craigavon,
County Armagh BT63 5JZ
St Luke’s Hospital, Loughgall Road, Armagh
BT61 7NQ
17 Manor Court Fold, Sloan Street, Lurgan,
Craigavon, County Armagh BT66 8NR
23 Elm Tree Road, Locking, Weston-Super-Mare
BS22 8BS &
20 Artemesia Avenue, Locking, Castle West,
Weston-Super-Mare, N Somerset BS22 8BJ
Date of death: **11 July 2013**
Would any person having knowledge of the whereabouts of a Will for the above named deceased please contact:
Mr Neil Mulholland
Gallery & Campbell Solicitors
48a Church Place
Lurgan
Craigavon
County Armagh BT66 6HD
Tel: 028 3832 4112
Fax: 028 3832 1758
Email: nmulholland@galleryandcampbell.com
DX: 2100 NR LURGAN

Re: **Domenica Maria Thornbury** (deceased)
Late of: 3 Thorn Heights, Banbridge, County Down BT32 4BF
Date of death: **5 September 2013**
Would any person having knowledge of the whereabouts of a Will for the above named deceased please contact:
Logan & Corry
Solicitors
6 Limeside
Coalisland
County Tyrone BT71 4LP
Tel: 028 8774 1000
Fax: 028 8774 1001
Email: coalisland@loganandcorry.com
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Seeking information

I am trying to find what became of my maternal grandmother, Mary Hamilton who was from Newtownards and in 1919 gave birth to my mother and identical twin sister at the Belfast Midnight Mission, Malone Place, Belfast, which was a home for unmarried mothers. At this time there were no official adoptions and children were placed with families through the church.

My mother's sister went to a family in Lisburn at two weeks old. My mother, Dorothy Hamilton, was placed with James and Jessie Peden when she was 14 months old. I have a copy of the agreement for this which was witnessed for Mary Hamilton by W O Uprichard from Newtownards, Clerk in Holy Orders. The witness for the Pedens was James Beattie who was a solicitor at George McCracken and Co Solicitors, 44/46 Upper Arthur Street, Belfast. I would like to know if any papers for this agreement would have been kept, where they might be and would there be any further information such as DOB of Mary Hamilton.

Mrs M Weatherall
65 Townhouse Road
Nelson
Lancs.
England BB9 9LH
Email: Marjorie.weatherall1@ntlworld.com

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