

Settling Scores

Will a recent Court of Appeal decision lead to more caution over advice on outcomes?

On 8 June 2001 the Court of Appeal (Schiemann and Kay LJ and Sir Murray Stuart Smith) gave judgement in *Griffin v Denise Kingmill and DJ Freeman & co (A Firm) and Peter Clark HHJ (unrep)*. It is an interesting and important judgement which deals with the nature of the duty counsel and solicitors owe to lay clients in giving advice about the likely outcome of litigation.

Background

The facts were simple. In 1988 the claimant, who was 12 years old, was going home from school when she was knocked down by a motor car. She suffered devastating injuries. The first defendant, a solicitor whose practice subsequently merged with that of the second defendant, was instructed to investigate with a view to recovering damages against the driver of the car. She did so. In 1989 the driver's insurers made an offer of settlement of £50,000. The third defendant, who was then a barrister specialising in personal injury cases, was instructed to advise on whether the offer should be accepted. He was told that the claim was privately funded and that the claimant's parents had very little money but were rearranging their finances with a view to qualifying for legal aid. He advised in writing. The opinion was short. He briefly analysed the evidence, and concluded:

'I cannot hold out any reasonable prospect of establishing any liability on the part of any driver for this accident.'

The first defendant apparently agreed with this advice. She noted that legal aid was not available and that the offer should be accepted. Acting on the advice from the first and third defendants the claimant accepted the offer. It was agreed that, on full liability, the claim would have been worth at least £500,000. Sir Murray Stuart Smith thought that it would have been worth nearer £1m. Since the claimant was an infant, the settlement had to be approved. Master Turner approved it. A lot of the available evidence was not put before the Master

at the approval hearing. The claimant subsequently contended that the advice to settle had been negligent and that the action had really had considerably greater prospects of success than the third defendant had advised. The Court of Appeal concluded that the third defendant's analysis of the evidence was wrong, and that had it been corrected, advice to settle for £50,000 would or should have been given.

Standard Advice

The leading judgement was given by Sir Murray Stuart Smith. He pointed to Lord Diplock's speech in *Saif Ali v Sidney Mitchell & Co (1980) AC 198* at 220, and went on: 'The circumstances in which barristers and solicitors have had to exercise their judgement vary enormously: On the one hand decisions have frequently to be made in court with little time for mature consideration or discussion. That is a situation familiar to any advocate. It is one in which it may be very difficult to categorise the advocate's decision as negligent even if later events proved it to have been wrong. Or in a very complex case it may be that in advising settlement too much weight is given to some factors and not enough to others. Here again a difficult judgement has to be made; and unless the advice was blatantly wrong, i.e. such as no competent and experienced practitioner would give it, it cannot be impugned and the prospects of successfully doing so would seem very slight.'

This, with respect, is very confusingly put. The only test which applies, to courtroom and paper decisions and in simple and complex cases alike, is whether the advice which is criticised is advice which no competent and experienced practitioner would give.

Claimants criticising advice given in complex cases do not have to prove that the advice given is blatantly wrong any more than claimants criticising advice in simple cases do. Of course increasing complexity will make negligence more evidentially difficult to show, but the test the evidence has to satisfy remains the same. But this case, said Sir Murray Stuart Smith was, '...essentially a simple case. It was a case

which was typical of many personal injury cases where, if the claimant's evidence, or that on his or her behalf is accepted, the claim will succeed and if the defendant's account is accepted the claim will either fail or there will be substantial contributory negligence. Where there is such a conflict it is very difficult, if not impossible at an earlier stage of the case, as (the advice to settle) was, to be sure which evidence will be preferred.'

Counsel's responsibilities

In a case such as this, which depended on assessing which evidence was likely to be preferred, Sir Murray Stuart Smith said that:

'All that can be done is to point out the fact and the significance of the conflict of evidence and then make some attempt to evaluate the strengths and weaknesses of the conflicting account. It would take very cogent reasons indeed to say that it was overwhelmingly likely that a particular witness's account would be preferred and another's rejected, and consequently that the claim had no reasonable prospect of success... In a case such as this, logical and sensible reasons have to be given for rejecting the favourable evidence of a witness. If the reasons do not bear examination they are not such as can be expected from a competent and experienced practitioner.'

The court was anxious that its judgement should not be taken as requiring counsel to sit on the fence. It pointed out that the fence was not necessarily a safe place to be. Kay LJ said:

'Litigants do require clear advice. There is little point in obtaining the opinion of counsel, if counsel is not prepared to give the client the benefit of his experience and expertise. Nothing in the conclusions I have reached in this case would discourage the giving of such robust advice provided it was given with proper care. Indeed an indecisive opinion in circumstances which would lead a reasonably competent practitioner to give clear and positive advice might in itself be viewed as negligent.'

Unsurprisingly, the court emphasised that a fuller, more reasoned opinion would be easier to defend than one which consisted of thinly reasoned assertions. Kay LJ put it like this: '...counsel need do no more than refer to those parts of the evidence in their

opinion that justify their conclusion on material matters. The absence of a reference to a piece of evidence clearly does not in itself lead to any inference that it has been over-looked. If, however, that evidence is such that it would appear to be against counsel's conclusion then a failure to explain why the point had been rejected may lead to a conclusion that insufficient or inappropriate weight has been given to the point.'

This is common evidential sense and says nothing new.

Solicitor's role

The first defendant did not contend that reliance on counsel's advice exculpated her, and Sir Murray Stuart Smith said that she was right in this. He went on:

'In my judgement the first defendant's recommendation to accept £50,000 was negligent. It flowed from an unjustified rejection or assessment of the evidence of one witness and the failure to appreciate the weakness of the evidence of another witness and a failure to appreciate the alternative line of argument based upon that second witness's evidence. An experienced and competent personal injury solicitor ought not to have recommended acceptance of the offer. So a solicitor in the first defendant's position is bound to take an independent view of the evidence, disregarding counsel's advice if necessary.'

Relevance of funding

The funding position is summarised above. The third defendant noted that legal aid was not available (but not, apparently, that it might be in future), and evidently considered it relevant to the acceptability of the offer. How it acted on the mind of the first defendant is not clear from the judgement. The third defendant contended before the Court of Appeal that it was relevant that the case was privately funded and the parents had limited means. Sir Murray Stuart Smith disagreed, saying:

'...what the parents wanted was to be advised on the prospects of success, and in particular whether they had reasonably good grounds for getting more than £50,000. It was for them to decide what money they would risk to achieve it. In any event the claimant would have been eligible for legal aid when the regulations were altered as

everybody knew they shortly would be.'

Decision not to prosecute the driver

The driver of the car which knocked down the claimant was not prosecuted. It was contended that this supported the view of the case taken by the defendants. Sir Murray Stuart Smith, unsurprisingly and obviously correctly, again disagreed.

Where there is conflict of evidence and no independent witness, it would be understandable that the police or prosecution service might not have the confidence of satisfying the criminal burden of proof. A vast number of running down cases succeed although there is no prosecution: they also succeed on occasion when the defendant driver has been acquitted of a criminal charge.

Significance of the Master's approval

It was not contended that the Master's approval meant that it was an abuse of the process of the Court to challenge the acceptability of the settlement. That would have been an interesting, if doomed, argument. But it was contended that the endorsement of Master Turner, who had himself been an experienced personal injury practitioner, showed that the advice was such that a reasonable practitioner could give. The court rejected this, Sir Murray Stuart Smith pointing out that several important documents, containing evidence relevant to the prospects of success, were not before the Master. He went on:

'It is impossible to say what view the Master would have taken if he had seen these important documents. But in any event a judge or a master approving a settlement is greatly influenced by the view of solicitors and counsel where, as in this case, they were known to be experienced. I do not think it was at all surprising that in the space of a relatively short appointment Master Turner failed to spot the fallacious argument for rejecting the approach of one witness or a gross overestimation on the strength of another witness account.'

This is strange stuff. It strongly implies that even if all the relevant material had been before the Master, he could still have endorsed the settlement. And if endorsed in those circumstances has no, even evidential, significance because of the weight which will inevitably be

given to the urgings of counsel, the question which should be asked is what is the point of approval hearings at all?

Conclusions

Griffin will make barristers and solicitors more cautious. It will tend to make barristers less decisive and therefore less useful. It will probably make opinions longer and more tediously discursive. It will tend to encourage a wait and 'see what emerges and see what the judge makes of it' approach to litigation.

It will rightly remind practitioners that it is for privately funded clients, not lawyers, to make decisions about whether and to what extent they want to risk their money on litigation.

And it is likely to cause child settlement hearings to be longer and more detailed and less of a formal rubber stamping than they had previously been.

Practice points

- Before advising that an offer of settlement is accepted, conduct a detailed and even-handed review of the evidence, and be prepared to justify the decision later.
- A solicitor will not necessarily escape liability by relying on counsel's advice on settlement
- The solicitor has a duty to assess and advise on the acceptability of an offer independently.
- If a client is privately funded, the funding arrangements are irrelevant to the advice on settlement you should give. It is for the client to decide what risks he wants to run. Your job is to tell him what you think those risks are.
- Draw no comfort from endorsement of the settlement at a child or other approval hearing. It does not mean that you cannot be sued for recommending the settlement.
- This article first appeared in the Solicitors Journal 7 Sep 2001 and is reproduced here with the editor's kind permission. The Solicitors Journal is a Sweet & Maxwell publication. [Article Written by Charles Foster, a barrister practising from 6 Pump Court, Temple, London, EC4Y 7AR]

Solicitors Prepare for Sahara mountain trek In Aid of Action Cancer

Local Solicitor Janice McGlone of Donard King & Co and Adam Spence of Donaldson McConnell & Co are preparing to embark on the journey of a lifetime. In February 2002 they will be part of the Action Cancer Sahara Mountain Trek to raise funds for one of Northern Ireland's leading Cancer Charities.



Adam and Janice will be two of 60 hikers who will trek together through the rugged beauty of North Africa. For six days, the group will travel across the Anti Atlas mountains, visiting the villages of the Berber People who inhabit them.

Adam said "Participating in the Trek is a physical and financial challenge for us both. We are exercising daily to build up our fitness levels and we also have a goal of £3,800 to raise. To date the legal profession have been extremely generous and we have nearly reached our goal. We are hoping to hold a pub quiz at the end of November, and all are welcome to come along. There will be advertisements for it in both the Bar Library and Law Club".

Money raised from the Trek will go towards Action Cancer's early detection services for men and women, support services and research



programmes.

If you feel you could sponsor or support Janice and Adam in any way, please contact both via their respective offices, or send your contribution directly to 48 Hilden Court, Lisburn, BT27 4YN.

ADVERTISEMENT

AlphaLAW™ ESPRIT and AlphaLAW™ VANTAGE window systems

If You're
Buying
Your First Computerised Accounts System

Or

If You're
CHANGING
Your Current Computerised Accounts System
Please contact us before making any decisions

AM Systems -
028 9045 6700



One of the leading legal accounting & case management systems suppliers

data conversions, training, support, easy to use, affordable

in excess of 200 local firms benefit from AlphaLAW™

accounts, time management, case management

PRACTISING CERTIFICATE APPLICATIONS: REMINDER

Application forms for Practising Certificates for the year 5th January 2002 to 4th January 2003 will shortly be despatched by the Society. Each solicitor wishing to apply for a certificate for this period should ensure that the form is completed in accordance with the Guidance Notes which appear on the reverse side of the application forms. Practitioners are reminded that responsibility for a correct and timely application lies with the individual solicitor seeking the authority of the certificate (not with his or her firm or Department). The forms, together with the other specified documentation and appropriate fees, must be returned to the Society no later than 4th January 2002.

ADVERTISEMENT

Peapod announce Legal Aid Forms on disk

Peapod Solutions are a first class supplier of electronic forms and case management. The reason for our success is simple, we have a good track record for providing high quality forms and a reputation for innovative ideas. We provide legal forms to over 1,250 firms and to 9,232 users.

We are now pleased to announce our NEW Legal Aid Forms for Northern Ireland are now available on disk.

- Automatic calculations, hours and rate claim for Rep 5 and Form 2
- Auto phrase library for inserting standard clauses
- Client database for auto file of client information
- Extra pages on most forms at the click of a button
- Immediate updates via our Secure Internet Service
- Leave your typewriters behind for form filling
- Quick, accurate, easy to produce forms for faster turnaround
- Printing is easy, no more photocopies
- Information can be saved for recalling at a later date
- Inland Revenue forms also available, IHT 200 and D1-D18

Licensed by the Legal Aid Department
(Northern Ireland)

Contact Peapod Solutions today

 **PEAPOD**
SOLUTIONS

EXPERTS IN LEGAL I.T.

020-8574 8288

www.peapod.co.uk/legal

Our Present is Your Future

Law Society (NI) Financial Advice Ltd has launched a new corporate identity. The new image - incorporating the slogan 'Our present is your future' - was revealed at an event at the Waterfront Hall, attended by leading members of the legal profession from all over Northern Ireland.

As one of the leading independent financial advice organisations in Northern Ireland, the re-branding is aimed at consolidating the company in the marketplace and refocusing its strategy towards its main target client base in the legal profession.

Carol Malcolmson, Managing Director of Law Society (NI) Financial Advice Ltd said, "We are now in our twelfth year of business, a business with a unique link with the legal profession, providing financial advice to solicitors and their clients. Now, facing a new era, we intend building on our success delivering quality unbiased advice resulting in a high level of customer satisfaction."



John Neill, President of the Law Society; Colin Haddick, Chairman of Law Society Financial Advice Ltd. and Alan Hewitt, Junior Vice President of the Law Society pictured at the launch of the Company's new corporate identity at the Waterfront Hall.

Pro Bono Scheme

A chance to give something back

It is a year since Mr. Ronnie Appleton QC launched the Northern Ireland Lawyers Pro Bono Unit. The Unit is a joint venture sponsored by the General Council of the Bar of Northern Ireland and the Law Society of Northern Ireland.

The objective of the Unit is to provide Pro Bono free legal advice and representation in deserving cases where Legal Aid or other funding is not available and where the Applicant is unable to afford legal assistance.

The Unit has been set up as a company limited by guarantee and is registered as a charity

Mr. Appleton QC chairs the Management Committee. It is his view that although lawyers have in the past often given their services without payment to those with worthy causes, both branches of the legal profession in Northern Ireland have joined to establish a formal scheme whereby those without funding can obtain representation and advice from solicitors, barristers and QC's.

The scheme was set up in response to concerns expressed by lawyers about the number of people who slipped through the Legal Aid net. The Management Committee with Mr. Brian Garrett as Vice-Chairman and representatives from both the Bar Council and Law Society believes that the Unit will make a real contribution to tackling specific instances of injustice. However, they feel that the scheme is no substitute for a properly funded Legal Aid system which must remain the principal means for assisting those with insufficient means to obtain legal services.

Advice and representation is provided by barristers and solicitors who have volunteered to join the panel and who cover the full range of legal specializations. Each has offered their services free of charge up to 3 days or

20 hours each year.

The cases most likely to meet the criteria of the Pro Bono Unit will be appeals, applications for leave to appeal, judicial review applications, specific steps in proceedings, tribunal hearings and advisory work. Cases that raise a specific issue of principle or test cases are particularly welcomed.

91 barristers from across Northern Ireland, including 26 QC's, have volunteered for this scheme which will formalize and complement a long tradition of barristers individually acting without a fee in deserving cases.

The response from solicitors has been immense. Over 100 firms of solicitors have volunteered to participate. The formal scheme builds on the well established commitment to the provision of Pro Bono advice by solicitors at local level which has always formed part of the professional ethos of solicitors here.

Anyone wishing to obtain further information should write in the first instance to The Northern Ireland Lawyers Pro Bono Unit, PO Box 414, Royal Courts of Justice, Chichester Street, Belfast, BT1 3JP. Telephone number: 028 9056 2385

ADVERTISEMENT

HOW JUST ONE PHONE CALL COULD SAVE YOUR PRACTICE THOUSANDS OF POUNDS!

As you know, there are many opportunities within technology to **save your practice time and money**, but this usually takes your staff time and effort to research and put into place. Time and effort that could be better spent continuing the development of your firm.

That's where our range of services has been proven within various practices to be both **efficient and cost effective**. So, before you commit to spending thousands on your practice's technology systems give Lee Surgeoner a call on 028 9044 5100 (or 07776 152318 outside business hours) to arrange a **free consultation** for practical advice on saving your firm time and money!



IBM House, 4 Bruce Street, Belfast, BT2 7JD
itteam@harbinson-mulholland.com www.harbinson-mulholland.com

Letter to Editor

Dear Sir

I refer to Mr John W D Pinkerton's article in September's Writ which was his perspective on issues within Registry of Deeds (RoD) and the Land Register (LR), both registries of Land Registers of Northern Ireland (LRNI). While his article had many interesting points contained within there were a few areas where the information supplied was incomplete. Clarification of these areas would allow your readers to be more fully informed of the total picture.

Relevant Background Information

The Land Registers of Northern Ireland started their computerisation programme back in 1999 with Syntegra under a Private Finance Initiative (PFI), the ensuing partnership programme was branded Landweb.

The main objective of the computerisation programme was to alleviate the difficulties that Compulsory First Registration (CFR) would introduce while facilitating the Joined Up Government initiative to have all public services online by 2005.

This included the conversion of the Land Registry data into electronic format, a considerable undertaking involving the conversion of over 400,000 paper folios and to date over 4,000 maps.

In the early part of this year the RoD was also added to the overall programme to ensure that we could meet the electronic government targets for 2005.

Customer Liaison

Even before the original PFI contract was signed we actively engaged feedback from a range of LRNI's customers via surveys, mailshots and focus groups, to ensure that all parties had an opportunity to comment on our proposals and to be aware of any impact they may have on them. Indeed, much of our original planning changed to take LRNI customer concerns into account. We have even presented update sessions at 2 of the last 3 Law Society Annual Conferences. This is a process that continues to this day, indeed only last month we provided information seminars to over 130

solicitors on the latest development of Landweb Direct - the internet based service we are delivering for direct access to LRNI records.

We are also embarking, within the next month, on a full survey of all LRNI customers into their requirements of the service for the future. This will provide us with a constructive set of requirements to help further improve the service LRNI offer to their customers. I would strongly recommend that your readers take the time to reply to this very important survey.

Register of Deeds

The RoD programme has throughout sought and gained input from the law searcher community, to ensure that as far as is possible we encapsulate their requirements within the overall design. This includes the ability to print results, which was delivered in early October. Indeed, the overall searching mechanism is going through an acceptance process with law searcher representatives to ensure the output is suitable for their needs. We are even planning a further release soon to encompass feedback given to us following extensive use of the facilities.

Land Registry

The introduction at this point of a few statistics will perhaps help your readers to understand the current work programme within the LR. Last year certain types of application to LRNI grew by over 25% in volume from the previous year, to a new record level. At the same time certain types of application into the Register by solicitors saw error levels in excess of 20%. The timing if this was actually fortunate as the Landweb programme by the introduction of computerised services and new working practices allowed LRNI to achieve an 18% year on year growth in productivity.

I have to state that from a personal perspective I find that to be a laudable achievement at a time of great change. There are few organisations who can manage such increases in productivity in such a short space of time. Unfortunately the growth of transactions due to an increase in the housing market outstripped the

productivity increase and backlog grew as a consequence, however without such productivity improvements the backlog position would have been far worse.

However, LRNI being the first rate organisation they are, have not simply sat on their laurels during this period. They have tasked Syntegra with helping to introduce new productivity tools which will specifically target the backlog over the coming months. I can confirm that a great deal of resource is being focused on this issue.

One such resource is the Landweb Direct internet capability the address of which is www.lrni.gov.uk. This is the online system that enables LRNI customers to access electronic Land Registry information directly at LRNI premises and will ultimately provide the following features over the internet into their offices:

- Direct access to maps and folios;
- An integrated Mapbase, accessible via property or map criteria;
- Access to maps from folios, and vice versa;
- On line payment.

However even now the internet service provides a range of Forms, Precedents, Guidelines and a fees calculator. If greater use were made of this information store by LRNI customers, this would really help to reduce the error rates being experienced by LRNI and would in itself help to alleviate the backlog issue.

Customer Contact

As mentioned earlier it is very important for LRNI and Syntegra to understand LRNI's customers needs and to receive as much feedback from the LRNI customer base as possible. Again we have a feedback mechanism in place for this via our website or by sending email to feedback@lrni.gov.uk. Additional information about new releases and improvements will be available via the Landweb website: www.lrni.gov.uk.

I trust that this will clarify the situation regarding the computerisation programme and backlog position within LRNI, a little more fully than perhaps it has been previously recorded.

Yours sincerely

Craig Apsey
Syntegra Landweb Programme Director

ADVERTISEMENT

Conveyancing problems? We provide the solutions!

Widen your products and increase your efficiency

Products available

- * Restrictive Covenant Indemnity
- * Full Range of Defective Title Indemnities
- * Accessway/Services Indemnity
- * Commercial Development Risks
- * Insolvency Act Indemnity
- * Defective Lease/Maisonette Indemnity
- * Judicial Review Indemnity
- * Trustee Indemnities
- * Mining/Mineral Rights Indemnity
- * Sewer Indemnity
- * Lack of Easements Indemnity
- * Forfeiture of Lease (Commercial and Residential)
- * Chancel Repair
- * Railway Lease Indemnity
- * Tenant Default Indemnity
- * Contaminated Land Insurance

Special Schemes available

- * Title Insurance
- * Block Legal Indemnities
- * Residential Search Validation
- * Residential Search Delay
- * Commercial Local Search Delay
- * Deposit Guarantee
- * Homebuyer Costs Insurance
- * No Search Required for Remortgages
- * Lenders Block Policies
- * Local Authority Block Policies
- * Housing Association Block Search Validation

Our Promise

- * Rapid response to all new enquiries
- * Comprehensive cover and competitive quotes
- * Cover up to and in excess of £50m
- * Flexible and Sympathetic underwriting approach
 - * Legally trained Underwriters
 - * Bespoke Policies when required
 - * Emergency Helpline

If you need a solution to your problem

contact our Underwriters on:

020 7488 2626

The logo for Legal & Contingency Limited, featuring the letters 'L&C' in a large, bold, serif font.

LEGAL & CONTINGENCY LIMITED
69-70 Mark Lane London EC3R 7HS

Telephone: 020 7488 2626 Helpline: 07970 060545
Facsimile: 020 7488 2727 DX: 843 London/City
e-mail: legal.contingency@btinternet.com

No one tries harder for clients

WEB WATCH

Busy lawyers in Northern Ireland often find themselves with even more work to do when they volunteer to become committee members of one or more of the many solicitors' interest groups regularly featured in *The Writ*. A considerable administrative burden often besets these noble volunteers particularly those with secretarial responsibilities having to circulate minutes, draft letters and so on.

Nowadays, the Internet can do much to reduce this unwelcome burden. Documents can be sent to all groups members at once in just a few seconds by use of the cc or bcc options in email clients such as Outlook Express. Bcc stands for blind carbon copy and should be used when the sender wants to keep all other addresses used

confidential and unseen by the other recipients. The newly formed Irish Society for Computers and Law works entirely through email and has yet to send out any document to a member through the post. Some groups have gone as far as setting up their own email list via a web site. This method of message and document distribution is preferred because it doesn't require the input of anyone individual member before circulation takes place. Instead, each member is given a username, password and email address. All emails sent to the address are then automatically re-distributed to other members. Mailing list hosts as they are called, often charge for this service. A few do not however. Two of the best free services are provided by Coolist (www.coolist.com) and Yahoo!



Groups (<http://groups.yahoo.com>).

Those who prefer a more passive use of email might choose to subscribe to a closed mailing list. This simply provides the subscriber with information on a given topic and there are thousands of these lists to choose from. One of the largest is Ananova. This offers a staggering 2,500 options on email subjects. Subscribers to their email services at www.ananova.com can receive news on topics which range from Law and Order in the UK to ideas for Christmas gifts

barryjphillips@hotmail.com

Council Dinner Guests



Top Table guests from left to right:- Prof. George Bain, The Rt. Hon. Lord Justice Campbell, The Rt. Hon. Lord Justice Nicholson, Prof. Richard Barnett, Mrs Cynthia Neill, Mr John Neill, Mr Michael Irvine, Mrs Barbara Stephenson, The Rt. Hon. Harriet Harman MP, Ms Eilish McDermott, QC, The Rt. Hon. Councillor Rodgers, Mr. David Preston, The Hon. Mr Justice Gillen, The Lord Alderdice and Mr Eugene Creally.

ADVERTISEMENT

DUBLIN AGENTS

MCERLEAN WEIR SOLICITORS

45 Fitzwilliam Square
Dublin 2, Ireland
Tel: (353-1) 678 7777
Fax: (353-1) 678 7878

E-mail: info@mcerleanweir.com

ALL LEGAL WORK
UNDERTAKEN ON AN
AGENCY BASIS

FEE SPLITTING BY
ARRANGEMENT

CONSULTATIONS IN
NORTHERN IRELAND WHEN
REQUIRED

CONTACT

Kevin H. McErlean, Solicitor
(Also admitted N.I. 1998)

BELFAST SOLICITORS



ASSOCIATION

Annual B.S.A. Dinner

Sat 19th January 2002
at
Culloden Hotel, Cultra

Champagne Reception 7.30pm
Dinner 8.00pm sharp
Bar open till late

Enquiries and bookings to
Oonagh McClure at
Thompson McClure 9089 0400

(no reservation confirmed until
cheque received)



BSA On-Line

The BSA website can be found at
www.belfast-solicitors-association.org

ADVERTISEMENT

Winter Exhibition

at
Eastwood Gallery

Including works by

Sarah Longley

Basil Blackshaw

Colin Middleton

Ross Wilson

567 Lisburn Road, Belfast, BT9 7G
Tel: 028 9066 1001

www.eastwoodgallery.co.uk



ADVERTISEMENT

The complete Probate & Trust Service for Solicitors



EFFICIENT

Probate Trust service for Northern Ireland Solicitors. Providing probate valuations, confirmation of holdings support and advice. Trust service providing investment advice and ongoing portfolio management



SERVICE

Deceased estate disposals, apportionment, trust and private client portfolio management. Independent tax and financial planning advice



ACCESSIBLE

Regular presence in Northern Ireland to assist with Client liaison and advice



EXPERIENCE

Over 200 years of serving investors and a member of the London Stock Exchange since 1852. Voted the 'Best medium sized Stockbroker 1999' by Investors Chronicle readers

Charles Stanley
STOCKBROKERS

Member of the LSE • Regulated by the FSA

For more information contact
Jamie Boag on

02380 381809

e-mail: jamie.boag@charles-stanley.co.uk



By Brian E Doherty

MOX PLANT LEGAL CHALLENGE

The Irish Government has warned it will challenge the British Government by bringing a case before the European Court if necessary concerning the UK decision to expand nuclear processing at Sellafield.

A decision to approve the opening of a mixed oxide plant on the site triggered the Irish Government's statement.

PROTECTION FOR CONTRACT WORKERS

The European Court of Justice has ruled that women workers may not be dismissed because they are pregnant, and have the same rights as permanent employees when they are on short-term contracts.

ABORTION PROPOSAL AND TREATY OPT OUT

In the face of disagreement from the Labour party the Irish Government has insisted that its proposed constitutional amendment will not require a change in the 1992 Maastricht protocol on abortion.

GENE PATENTING PROVED BY EUROPEAN COURT

A challenge by the Netherlands to the directive on the legal protection of biotechnological invention which has been dubbed the "patenting of life directive" has been dismissed by the court which said that the directive provided sufficient protection to prevent the human body becoming invention and

consequently safeguarded human dignity. The directive, promoted to protect patent and encourage medical research has been attacked as allowing companies to control genes and DNA sequences.

RIGHT TO OFFEND, SHOCK OR DISTURB PROTECTED BY EUROPEAN HUMAN RIGHTS CONVENTION

Judge Wildhaber, President of the European Court of Human Rights, at a University College Dublin lecture indicated that the freedom of expression protected by the Convention was extensive, and allowed the media to be more critical of politicians than private individuals.

The Judge, however, also indicated that the Court in its decisions had been more restricted in relation to the criticism of members of the judiciary which "had to enjoy public confidence" which required protection "against destructive attacks that were essentially unfounded particularly as "Judges were subject to a duty of discretion which prevented them from replying".

COMMISSION DECISION-MAKING ON PEACE FUNDS CRITICISED

Advocate General Jeane Mischo has opined that the decision-making process of the Commission providing finance for the peace programme was flawed. The funding exercise involved a redistribution of Commission allocations which were otherwise available for other countries expenditure.

ADVERTISEMENT

Republic of Ireland Agents

All legal work undertaken on an agency basis

All communications to clients through instructing solicitors

Consultations in Northern Ireland if required

Contact:
Seamus Connolly
S.C. Connolly & Co.
Solicitors

Bank Building *or* Arran House
Hill Street 35/36 Arran Quay
Newry Dublin 7
County Down
Tel: (01693) 65311 Tel:(003531) 8725622
Fax: (01693) 62096 Fax:(003531) 8725404

ADVERTISEMENT

REPUBLIC OF IRELAND AGENTS



51/52 Fitzwillian Square,
Dublin 2, Ireland
Tel: (3531) 6619826
Fax: (3531) 6614581
DX 188.
E-Mail: info@lavelco.ie

Willing to undertake agency work on behalf of Solicitors in Northern Ireland

Contact AnneMarie
McCrystal LL.B.
(Also admitted N.I. 1991)

ADVERTISEMENT

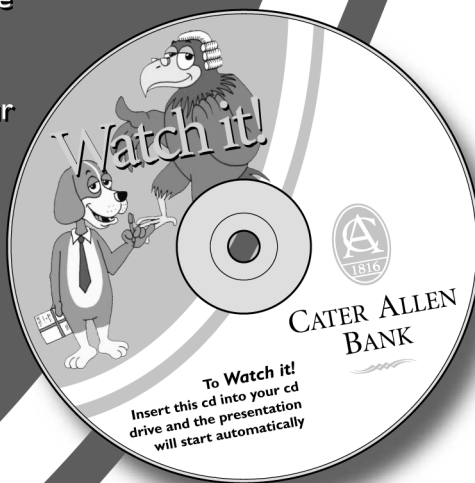
Watch it!

*...to discover how private banking
can benefit you and your clients*

If you are a Trust & Probate specialist, or handle client's money in designated accounts, then you will want to Watch it!

In our light-hearted CD-ROM presentation, Legal Beagle & Legal Eagle explain how you can:-

- Earn high interest on your clients bank accounts
- Simplify your administration
- Avoid bank charges
- Access other valuable services



Ask for your free CD today!

No CD-ROM drive? We can send you a printed version of the presentation.

For further information,
please quote TW/1/01 when you:-

Phone free on **0500 009462**

or fax us on **020 7645 6623**

or e-mail us on info@caterallen.co.uk

or visit us on www.caterallen.co.uk



**CATER ALLEN
BANK**

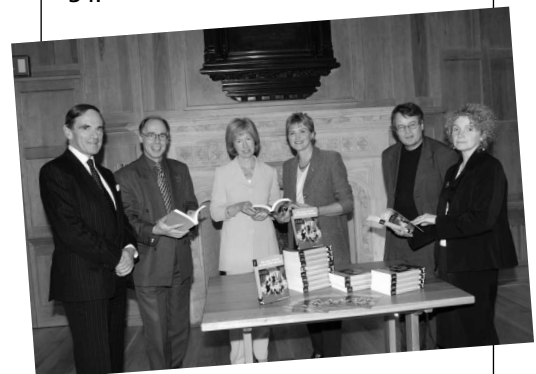
*A member of the
Abbey National Group*

LEGAL AID WITH A DIFFERENCE

At the recent launch in Queen's of the latest edition of Brice Dickson's book, "The Legal System of Northern Ireland", 30 copies of the book were donated through the Northern Ireland Voluntary Trust to a range of voluntary and charitable organisations in Northern Ireland. They were a gift from the publishers, SLS Legal Publications, and the Legal Information Forum.

The book is a clear and comprehensive guide to all those seeking an explanation of legal terminology and procedures and is aimed at law students and the general public. However, it also provides an invaluable collection of facts and information and will be the first port of call for anyone with a query about the Northern Ireland legal system.

Copies (price £25) are available from SLS Legal Publications, School of Law, Queen's University, Belfast BT7 1NN. Tel 028 9033 5224: Fax 028 9032 6308: DX 4330 NR Belfast 34.



Pictured: Lord Justice Campbell (Chairman of SLS Legal Publications). Professor Brice Dickson (Chief Commissioner, Northern Ireland Human Rights Commission), Miriam Dudley (Director of SLS Legal Publications), Linda McAuley (BBC Northern Ireland), Les Allamby (Law Centre(NI)) and Marie Abbott (Programme Manager, Northern Ireland Voluntary Trust)

Risk Management

ADVICE



Time for Change

Many solicitors admit being strangely drawn to this column. But after reading it and thinking 'that nearly happened to me,' how many actually change the way they work?

The important point is not to develop a macabre interest in other people's misfortunes but to learn from their mistakes. The aim should be to take steps to avoid falling into the same traps.

Sadly these warnings are not always heeded. Solicitors are making the same old mistakes time and again. Here are some common examples:

The final document, be it a lease, will, witness statement or commercial agreement, does not reflect the client's instructions;

Cheques are drawn for incorrect amounts, in favour of the wrong person, or sent to the wrong address.

Time limits are not identified or are simply overlooked.

Files are sat on, clients affairs are not progressed, resulting in delay, loss and anger.

Important facts or information are not communicated to the client, preventing the client from making an informed decision - 'Had I been told that, I would never have bought the property'.

The client is not correctly identified. (Watch out for this in

corporate and commercial matters).

No steps are taken to define what the solicitor will or will not be doing for the client, and no retainer letter is sent.

No record is kept of advice given to a client. The client then denies ever having received the correct advice, and says that if he had he would have acted differently;

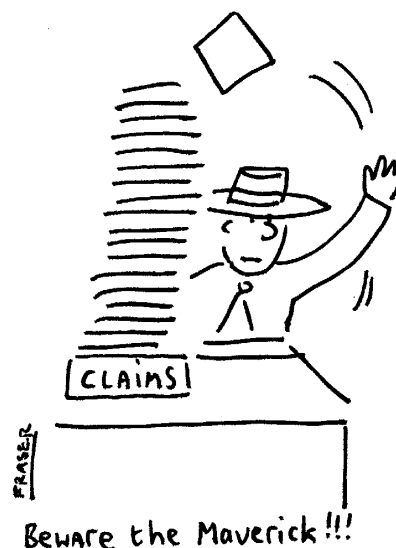
Staff including partners, are not supervised properly and are left to their own devices. This results in the 'rain maker' or maverick (often left alone because he or she 'brings in the money') racking up claims and acting at the 'flaky end of respectability';

Work is not delegated in a structured manner, but is dumped on other members of staff, normally junior fee earners. This often results in junior staff being given unrealistic workloads and matters outside their expertise. When something goes wrong it is of course 'their fault' and the problem is 'solved' by sacking them.

Solicitors take on matters which they do not have the resources or expertise to handle. In addition they fail to keep abreast of case law, statutes or regulations that have a fundamental impact on the area of law that they practice.

A complete lack of organisation within the firm, caused by an absence of systems and procedures. This results in lost files, deeds, wills and documents. How much time do you and your staff waste time looking for such items?

All of these scenarios have caused, and continue to cause claims. So if you recognise them, you need to do more than thank your lucky stars that you haven't had a claim. You need to take action now.



EMPLOYMENT LAWYERS' GROUP (NI)

Hon. Sec. Eamonn McArdle, Bar Library, Royal Courts of Justice, Chichester Street
Voice Mail: (028) 9056 2282
Fax: (028) 90231850
E-mail: eamonn.mcardle@ireland.com

Chairperson Orla Murray
Hon. Treasurer June Turkington

Website: www.legal-island.com/elg.htm

Lunchtime Seminar

Discrimination: A review of the latest caselaw

Speaker: Beverly Jones, of Jones and Cassidy Solicitors
Date: Friday, 7 December 2001
Time: 1.00pm (coffee and sandwiches served from 12.30pm)
Venue: Law Society Lecture Theatre, Law Society House, Victoria Street, Belfast
Cost: Members £3, Non-members £6.

*Booking forms and cheques, made payable to The Employment Lawyers Group (NI), should be sent to:
Ms June Turkington, Legal Directorate, Central Services Agency, 25-27 Adelaide Street, Belfast, BT2 8FH*

Booking Form

Name _____
Firm _____
Address _____

I enclose remittance of £ _____

Notice

Next Meeting: Barry Mulqueen BL will give our next talk on 'Restrictive covenants and confidentiality in contracts of employment' on Friday 8 February 2002, usual time, usual venue.

ELG Election Profile of Incoming Officers

Orla Murray LLB has been elected Chairperson of the Employment Lawyers' Group. Orla is a Senior Legal Assistant in the Departmental Solicitor's Office and specialises in employment, anti-discrimination and human rights law.



Eamonn McArdle BA, BL, Dip Laws(Labour Law), has been elected Honorary Secretary of the Employment Lawyers' Group. A former journalist and trade union activist, he practises as a barrister in the Industrial and Fair Employment Tribunals.

June Turkington MA(Cantab)LLM has been elected Honorary Treasurer of The Employment Lawyers' Group. June is a Solicitor in the Legal Directorate of the Central Services Agency and specialises in employment and discrimination law within the health and personal social services sector.



General Insurance Council Standards (GISC)

Following a decision of the Competition Commission Appeal Tribunal (CCAT) in relation to appeals against GISC membership by ABTA and The Independent Insurance Brokers group, solicitors will not be obliged to join GISC at present. The Tribunal took the view that GISC's requirement was a restrictive practice.

In their decision the CCAT struck down a rule which would have prevented GISC members dealing with non-GISC members eg solicitors, providing general insurance services.

This decision should be drawn to the attention of any insurance companies which require solicitors with whom they are dealing to be members of GISC

Membership Renewal

Membership fees are now due for 2001-2002. Members are invited to renew their membership for the forth-coming year. New members are welcome. Please return the form below completed together with cheque for £10 made payable to ELG (NI) to: June Turkington, Legal Directorate, Central Services Agency, 25-27 Adelaide Street, Belfast BT2 8FH

Membership Form

I enclose cheque for £10.00 made payable to ELG (NI)

Name _____

Address _____

Telephone No: (work) _____ E-mail _____

ADVERTISEMENT

Republic of Ireland Agents

We are willing to act as agents in most legal matters.

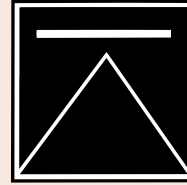
Our offices are close to Courts, Government Buildings and Commercial Centre.

Fee splitting by arrangement.

Hughes & Liddy Solicitors

2 Upper Fitzwilliam Street
Dublin 2

Tel: (00 3531) 6766763
or (00 3531) 6789701
Fax: (00 3531) 6766702



NORTHERN IRELAND
YOUNG SOLICITORS ASSOCIATION

BRITISH COUNCIL VISIT

Dinner -

**Belfast Castle
20th February 2002**

The annual visit from European students to Northern Ireland for a week long study tour will take place in February next year. The NIYSA will host a dinner at Belfast Castle on Wednesday 20th February. A limited number of places will be available to our members (all solicitors under 36).

If you are interested in attending please contact:

Nuala Sheeran
Mills Selig
21 Arthur Street
Belfast
BT1 4GA

Tel: 028 9024 3878

ADVERTISEMENT

Employability Assessment in Personal Injury Claims

**A New Service for
Litigation Lawyers**



Ann Marie McMullan C.Psychol.
Chartered Occupational Psychologist

Occupational Psychology Services (N.I.)
49 Balmoral Avenue Belfast BT9 6NX
Tel: (028) 9028 0555

The British Psychological Society Regulates
Chartered Psychologists (C. Psychol.)

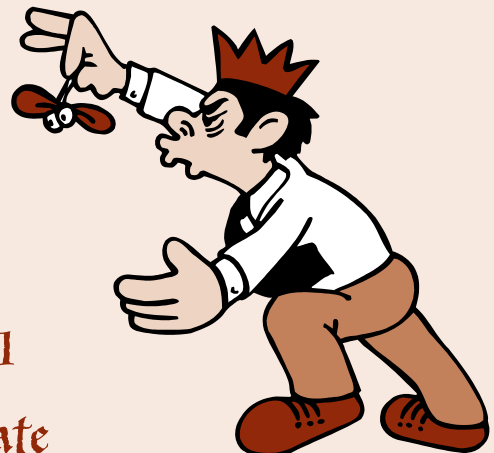
NIYSA CHRISTMAS DISCO

O'Neills Bar

4 Joys entry
(off high Street)
Belfast

**Friday 14th
December 2001**

9.00pm - to late



Admission £5.00

Annual Conference

8th - 10th March 2002

Faithlegg, Waterford
Joint Conference with SYS

We wish to announce that our conference in 2002 will be a joint conference with the Southern Young Solicitors. The conference agenda has yet to be finalised.

The Conference fee will be in line with previous years and will be approximately £140.00.

Anyone interested in reserving a place should complete the booking form below. Numbers are strictly limited and early booking is advised.

Booking Form

8th – 10th March 2002, NIYSA Conference.

(Please complete in type or block letters)

Name _____

Firm Name _____

Address _____

Cost (approx £140.00)

Tel(inc.code) _____ Fax _____

e-mail _____

I will be sharing with _____

I wish to book for the NIYSA Annual Conference. I prefer a double/twin room *(Please circle your preference)*. I accept that all payments are non-refundable and that my booking is subject to availability and to written confirmation by the Organisers.

The remaining balance shall be payable by me to the NIYSA on request. I shall be responsible directly to the Hotel for any incurred room tab on check out.

Note We regret that we cannot accept bookings at the Conference Hotel for single rooms or single nights. All bookings must be made through NIYSA.*

Please tick if vegetarian

Signed _____ Date _____

Please return completed booking form and £40.00 deposit cheque in an envelope marked "NIYSA Conference" to: Nessa Agnew, Vice-Chairman, NIYSA, c/o Joint Legal Services, SEELB, Block 1, Grahamsbridge Road, Belfast BT16 2HS

ADVERTISEMENT

“Why didn't you tell me?”

are words you *don't* want to hear

Advise your client about legal costs insurance

Indemnis operates a straightforward application process. There are no panel or registration fees



11 Donegall Square South,
Belfast, BT1 5JE
Tel: 028 9057 3300 Fax: 028 9057 3311

DX No: 2024 NR Belfast 2
Website: www.indemnis.com
E-mail: enquiries@indemnis.com

ADVERTISEMENT

REPUBLIC OF IRELAND
AGENTS



CROWLEY MILLAR

Solicitors

15 Lr. Mount Street,
Dublin 2.
DDE Box 140

Tel. No. (353-1) 6761100

Fax. No. (353-1) 6761630

E-Mail: law@crowleymillar.com

ALL LEGAL WORK UNDERTAKEN ON AN AGENCY BASIS

FEE SPLITTING BY ARRANGEMENT

CONTACT:

FINBARR J CROWLEY BCL

JOHN W CARROLL B.COMM BCL



Law Centre (NI)

STATUTORY SICK PAY - REMEDIES FOR NON- PAYMENT

Statutory Sick Pay (SSP) is something of a misnomer. While it may be regulated by statute, the primary obligation to pay lies with the employer rather than with any government agency. The current rate payable is £62.20 per week, calculated on a daily basis. It is payable for a maximum period of 28 weeks.

To qualify for SSP, the person claiming must be an employee, and be incapable of working for a period of four or more consecutive days. After a claim, the SSP can be backdated to the start of the period of illness, except for the first three days. These are known as waiting days. It is only on the fourth consecutive day of illness that an employee qualifies for SSP. Separate periods of incapacity which are less than eight weeks apart may be treated as one period, which removes the need for a second three day waiting period. Employee is given the usual meaning, as is incapable of work. It should be noted that employees earning less than the lower earnings limit of £72.00 are not eligible for SSP, nor are employees who have less than three months service. This can cause problems where an employer disputes the length or nature of the employment, although a term of the contract which expressly or implicitly seeks to rule out SSP will clearly be illegal.

To make a claim, employees must first inform their employer that they are sick and incapable of work, either in writing within seven days, or by any method set by their employer (whether in the contract of employment or under a collective agreement, for

example). Late notification may bar a claim, unless the employer accepts that there are good reasons for the delay. The employer cannot set very strenuous tests for an employee to notify the employer of sickness. For example, the employer cannot ask that the employee report in person, or more than once a week, or on a particular printed form. After seven days, an employer may well ask for a medical certificate, and it is up to the employer whether or not to accept whatever medical evidence the employee provides. An employer who does not accept an employee's medical evidence may try to obtain her/his own medical evidence, or failing that can ask the Inland Revenue Medical Service to perform an examination. If the employer decides the employee is not eligible, the employee may want to challenge this decision. In this case, or when the employer simply refuses outright to pay SSP, there are remedies for non-payment.

Challenging a Statutory Sick Pay decision - the Inland Revenue

It is a comparatively little known fact that to force payment of SSP, or to appeal a decision not to grant SSP, an employee can involve the Inland Revenue. Where payment has been refused, employees should receive an SSP1 form from their employer stating the reasons for this. The employee should complete the rest of the form, and submit it to the local DHSS office and/or the Inland Revenue National Insurance contributions office, which decide on entitlement. If the employer refuses to give out a copy of the SSP1 form, the employee can apply in writing, passing on any reasons which the employer has given for refusing to provide SSP and specifying the period for which entitlement is at issue. This should be done within six months of the earliest date for which SSP payment is in dispute.

The Inland Revenue may ask for further information from either employer or employee before deciding the claim, and may attempt to negotiate a settlement between them. Failing that, it will issue a decision. Such a decision is legally binding. Should an employer continue to refuse payment, the Inland Revenue may pay the employee instead, and will almost certainly take action against the employer for that refusal. Equally, should an employer be

unable to pay due to insolvency, the Inland Revenue may pay in its place.

Either party can appeal against the decision, in writing and with reasons, within thirty days of notification of the original determination. The Inland Revenue will seek to settle the appeal with the consent of the parties, and will encourage the parties to reach an agreement but, failing that, the commissioners will determine the matter. Normally general commissioners hear the appeals, but the appellants can ask that the special commissioners, who will be legally qualified adjudicators rather than lay persons assisted by a clerk, hear the appeal. Although they usually sit in Belfast, it is possible to apply to the clerk for a hearing to be held locally if there is a serious illness or disability.

Further appeals from this decision will be on purely legal points, and should be made to the High Court. The time limits for lodging such an appeal against a decision by the general commissioners is 30 days from the day the employee was told of the decision, rather than the date when written notice arrived. In an appeal against a decision of the special commissioners, it is 56 days. There is a fee for lodging such an appeal, so it is advisable that anyone wishing to appeal get some sort of legal advice before doing so.

The employer should pay SSP on the first payday after the notification of the final decision, or refusal of leave to appeal, or the expiry of the time limit for appeal. If an employer has dismissed an employee solely or mainly to avoid having to pay SSP, the employer remains liable to pay for the full length of entitlement, or until the contract of employment would have ended naturally.

Alternative route - unlawful deduction from wages

Under the Employment Rights (Northern Ireland) Order 1996, wages are given a wide definition. Article 59(1)(b) specifically includes SSP within that definition, so that a failure to pay SSP qualifies as an unauthorised deduction from wages. An employee could therefore go to the industrial tribunal within three months of the last non-payment. The tribunal, if it finds in favour of the employee, should make an order for payment of the full amount, or such amount as the Tribunal finds to be unjustly deducted

(Article 56 and 57, ER (NI) O 1996).

It is also possible to argue that the non-payment is a breach of the employment contract, being a condition of the contract implied by statute. If the employee is still employed, the remedy for breach of contract would be in the County Court. With the limits of small claims actions now being £2,000, this avenue may in practice prove to be a quicker remedy than an industrial tribunal. The risks of a possible counter claim by an employer and of losing the court fee however means that taking a claim for unlawful deduction of wages in the tribunal is the safer route.

Unfair dismissal

It should be noted that employees who have been continuously employed for a period of one month do not require the normal period of service of one year to claim unfair dismissal if they are dismissed for assertion of a statutory right. Thus employees who either are dismissed because the employer has infringed the right of the employees not to suffer unlawful deductions from wages or are dismissed for bringing proceedings employees are dismissed for bringing proceedings for enforcing the right could claim unfair dismissal if employed for more than one month. It should be noted that such an employee could claim unfair dismissal regardless of whether or not s/he actually has the right or whether or not the right has actually been infringed as long as s/he acted in good faith. To be protected, the employee does not actually have to specify the right, it is sufficient if s/he made it reasonably clear to the employer what the right claimed to have been infringed was. (See Article 135 of the Employment Rights (NI) Order 1996).

Conclusion

SSP lies somewhere between true benefit and contractual right, hence these overlapping means of enforcement. While a lawyer's first instinct may be to go to the industrial tribunal or Small Claims Court, there is a way to avoid these in favour of the less adversarial Inland Revenue route.

Helen O'Hara, Intern
Law Centre (NI) Western Area Office
Employment Unit

ADVERTISEMENT

LAING & COMPANY LIMITED
 REGISTERED INSURANCE BROKERS

HIGH NET WORTH HOME INSURANCE

For building over £150,000 & contents over £100,000 we individually underwrite every case, hence we tailor the policy precisely for you.

Subsequent rates are the most competitive on the market.

Key Distinguishing Features.

- World-wide All risk cover for your contents
- New for Old an all contents including clothing
- Specialist cover for antique collections, fine art and jewellery
- No onerous jewellery and alarm conditions
- Annual Travel with personal accident cover
- A guarantee to pay interest on any claim over ££2,500 not paid to you by us within 4 working days of your signed agreement form
- Reassurance you will not be penalised in the event of a claim if sums insured are unintentionally inadequate
- World-wide cover for business equipment
- Liability for charity events held at the insured premises
- Interest free direct debit facility

Ring Tanya or Graham on 028 9042 5125

142 High Street, Holywood, Co Down, BT18 9H5
 Fax: 028 9042 5126 Email: tanyab@lainginsurance.demon.co.uk

ADVERTISEMENT

Law Society (NI) Financial Advice Ltd

Regulated by the Financial Services Authority

WHAT'S ON OFFER?
WHAT'S ON OFFER?

- 100% Mortgage for Professionals (Purchase Only) +
- Free Basic Valuation
- No penalties, no arrangement fee and **NO MORTGAGE INDEMNITY GUARANTEE PREMIUM***

(* Mortgage indemnity to be repaid if loan redeemed within first 3 years)

HOW DO I FIND OUT MORE?
HOW DO I FIND OUT MORE?

Contact Adrian Arnold or Kirsty Maguire for further details on
028 9023 0696

+The Financial Services Authority does not regulate mortgages

Your home is at risk if you do not keep up repayments on a mortgage or other loan secured on it. Be sure you can afford the repayments before entering into a credit agreement.

The Land Registries - What we can do to help

There could not be too many solicitors who have not been affected by the downturn in the performance of both the Land Registry and the Registry of Deeds as a result of their major IT initiatives and the timing of the introduction of CFR. However, if the further roll-out of CFR and the introduction of the Ground Rents Act can be delayed until the Registries have been properly resourced and are able to cope then we should hopefully see a marked improvement in performance. Things are already beginning to look up in the Registry of Deeds.

Not all the blame for poor performance can be laid at the door of the Registries, however, and it has been publicly acknowledged by the Law Society that there is a significant element of "contrib." on the part of the solicitors' profession. This should not come as a great surprise to anyone as this topic has been covered before in these pages on more than one occasion. It is therefore distressing to learn that, despite exhortations in this journal, some 12 to 15% of applications to the Registry of Deeds (approximately one in every seven) are still being rejected. The cost to the profession in terms of loss of priority, extra work, frustration, etc is difficult to quantify but it must be considerable.

The largest proportion of errors (86%) in the Registry of Deeds is due to sloppy conveyancing and lack of control and includes the following reasons for rejection:-

- Memorial not in correct format
- Grantor/Grantee not specified
- County or City not specified
- Date of satisfaction missing
- Parties/Description on the Deed and Memorial do not agree.
- Mortgages already vacated
- Assignment Deed not lodged
- Date on Deed does not agree with memorial
- Surrender and release requires a memorial
- Memorial says release but it relates to a new mortgage
- No memorial enclosed

- No registration details on statutory declaration
- No date of instrument

The remaining 14% of rejections is largely attributable to bad administration and includes the following:-

- Wrong fee
- Cheque not signed/not enclosed
- Form 2 not enclosed

There is, in my opinion, a direct correlation between the amount charged for conveyancing and the rate of rejection of applications for registration. If you:-

- do your conveyancing at the gallop because you have charged a fee that is totally uneconomic; or
- employ an unqualified person who may well be highly intelligent and enthusiastic but who none the less does not have the skill or experience to do the job properly and you do not devote any time to training or supervising that person; or
- you do not have the necessary skill or knowledge yourself to do the job, then mistakes are bound to happen. Also, if you are a solicitor specialising exclusively in litigation and you do the occasional conveyance, either as a favour to an existing client or because you feel you cannot let any work escape your grasp, then not only are you more likely to clog up the system with duff deeds and duff applications but you are also stacking up trouble ahead for yourself. Unfortunately the maxim "horses for courses" does not always apply because the low cost, high volume "conveyancing mill" firms are just as likely to generate mistakes due to lack of solicitor involvement.

I do not have an up-to-date breakdown of the sort of errors experienced by the Land Registry but I am sure it is safe to say that they follow a similar pattern to the Registry of Deeds. According to the Land Registry, "since 1999, 4,782 applications have been rejected by L R

staff." If that means from the start of 1999 then that is 140 rejections per month but if it means from the end of that year then it is a more staggering 217 per month. Either way, the time spent by staff rejecting these applications has cost the Registry some £71,730.

"To err is human" and even the Registries would agree that it would be impossible to eradicate mistakes entirely. However, by spending a little more time (for which we should be charging appropriately) in the preparation, execution and dating of deeds and in the preparation of memorials and in checking that the application form is properly filled in and that the correct fee is enclosed, life would be considerably less fraught for both practitioners and the Registries.

John W. D. Pinkerton
Chairman
Non-Contentious Business Committee

LIFE SENTENCE (NORTHERN IRELAND) ORDER 2001

The Northern Ireland Prison Service, Legislation Branch, have produced a useful guide to the Life Sentence (Northern Ireland) Order 2001. This is being made available to current life sentence prisoners and other interested parties.

Copies can be obtained from the

Prison Legislation branch
Northern Ireland Prison Service
Headquarters
Dundonald House
Upper Newtownards Road
Belfast
BT4 3SU -

Tel: 028 90 522922

fax 028 90 525824

E-mail:
info@niprisonservice.gov.uk.

ADVERTISEMENT

GMA

G M ASSOCIATES MANAGEMENT CONSULTANTS

GMA Management Consultants
Wish to take the opportunity,
to congratulate our clients

Fitzsimmons Kinney and Mallon

On being the first solicitor's practice to be
successfully assessed to ISO9001/2000

As Ireland's leading Quality Consultants for the Public and Private Legal
Sector, we provide consultation on:

LEXCEL

ISO9000/2000

INVESTORS IN PEOPLE

HEALTH AND SAFETY

COMPUTERISED CASE MANAGEMENT

Over the ten years we have been in business in Northern Ireland we have
assisted over 150 professional practice's with the implementation and
assessment of 200 management systems, our current client list includes
large and small local practices and our integrated documentation allows
choice on which standard they wish to approach.

For a free consultation/quotation or further information contact:

Gary Millar
GMA Pinetree Lodge,
40 Tullyhubbert Road,
Ballygowan,
Newtownards,
BT23 6LZ

Tel: 028 9752 8427

Mobile: 07831 530178

Fax: 028 9752 1256

ADVERTISEMENT



Visit our Website:
www.nationalwillsregistry.co.uk

or E-mail us on:
info@nationalwillsregistry.org

ADVERTISEMENT

Action
cancer
Fighting for Freedom from Cancer

A Legacy for the Future

Action Cancer saves lives through
the provision of free early
detection clinics to men and
women concerned about cancer.
The Charity's support service
helps families affected by Cancer
and our research provides hope
for the future. A bequest could
make a real difference to future
generations. If you would like
more information or our legacy
leaflet, please ring Leo.

Tel: (028) 9080 3342
Web site: www.actioncancer.org
Charity Reg No: XN48533
DETECTION SUPPORT RESEARCH

Missing Wills

RE: Mr. Cecil Ellis, Deceased
Late of 34 Ulsterville Grove
Portadown
County Armagh
Deceased: 10th August 2001

Would any solicitor who is aware of a Will made by the above named deceased, please contact Conor Downey, Bogue & McNulty, Solicitors of Unit 8 First Floor, Legahory Centre, Craigavon, BT65 5BE.

Tel: 028 3834 9911
Fax: 028 3834 9920

RE: Gerard McCabe Deceased late of 79
Moneyslane Road Ballyward
Castlewellan Co Down

Would any person having knowledge of the whereabouts of the Will of the above named Deceased

Please Contact:-

Colman R Hanna
Solicitors
11 Causeway Road
NEWCASTLE
Co Down
BT33 0DL

Tel: 028 4372 3232
Fax: 028 4372 3352

RE: Archibald McKay Deceased
Late of 238 Shore Road, Belfast,
formerly of 3 Ventry Street, Belfast,
previously of 35 Oxford Street, Belfast,
and with an address at 203/205 Torr
Road, Cushendun, Co. Antrim.

Would any person having knowledge of the whereabouts of a Will of the above -named deceased please contact Napier & Sons Solicitors
1/9 Castle Arcade
Belfast
BT1 5DF

Tel: 02890 244602
Fax: 02890 330330

RE: Walter Campbell Deceased
Late of 10 Princess Way, Carrickfergus,
County Antrim

Would any person having knowledge of the whereabouts of the Will of the above named deceased please contact Stephen Perrott & Company Solicitors
49c High Street, Holywood
Co. Down
Tel: 028 9042 8330
Fax: 028 9042 8306

RE: Albert Ernest Baxter Savage
Deceased
Late of 9D Kilbroney House, Greenway,
Belfast

Would any person having knowledge of the whereabouts of the Will of the above named deceased please contact Stephen Perrott & Company Solicitors
49c High Street, Holywood
Co. Down
Tel: 028 9042 8330
Fax: 028 9042 8306

RE: James Wilson Loudon Savage
Deceased
Late of 84 Coleraine Road, Maghera
County Londonderry

Would any person having knowledge of the whereabouts of the Will of the above named deceased please contact Stephen Perrott & Company Solicitors
49c High Street, Holywood
Co. Down
Tel: 028 9042 8330
Fax: 028 9042 8306

RE: John Cochrane Moon Deceased
Late of 17 Windy Hill Road, Limavady.

Would any person having knowledge of the whereabouts of a Will of the above named person please contact:

F. J. Orr & Co (Norman Scott)
Solicitors of 14 Montgomery Street
Belfast
BT1 4QT

Telephone No: (028) 9023 0101
Fax No: (028) 9023 3021

RE: MARGARET GERTRUDE WRIGHT,
DECEASED

Late of 61 Carland Road, Dungannon,
County Tyrone

Would any person having knowledge of the whereabouts of any Will of the above named deceased dated after 2nd August 1996 please contact Crooke McAlister Solicitors
70 Holywood Road, Belfast, BT4 1NT
Telephone number: 028 9047 3673
Fax number: 028 9047 3419

Land Certificate

Folio No 11
County down
Registered owner - Teresa Lively
Land of Croan

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

AND TAKE FURTHER NOTICE that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.

Fisher & Fisher
Solicitors
9 John Mitchel Place, Newry, County
Down BT34 2BS

Estate of Patrick Joseph Matthews
Deceased
Date of Death - 21st August 2001
Take notice that any person having custody of or information as to the whereabouts of the title documents relating to property at
8 Cottage Road, Clontigora Newry
Co Down

Please contact Ciaran
Rafferty Solicitors of 98 Hill Street,
Newry, Co Down BT34 1BT

Tel: 028 3026 1102 Fax: 028 3026 0757

SOLICITORS REQUIRED

ASSISTANT SOLICITOR

Mainly Matrimonial/Personal Injury Litigation

May suit part-time applicant with suitable experience.

Excellent terms and conditions of employment in superb office in listed rectory building apply with full CV To The Principal John McLaughlin & Co. "The Rectory", 2 St Judes Avenue, Belfast BT7 2GZ

Caruth & Bamber

Solicitors
Ballymena

Solicitors required for general practice. Ideal candidate should have 2 years PQE. Please apply in writing enclosing full CV to Caruth & Bamber, Solicitors, 80 Broughshane Street, Ballymena, BT43 6ED

Solicitor Required

Experience in Litigation Essential
Full Time/Part-Time Position
Apply in writing with full C.V.
To

E.J. Lavery & Company
Solicitors
1 Hightown Road, Glengormley
Co Antrim BT36 7TZ

Richard Monteith LL.B

Solicitors required in Litigation and Conveyancing departments, together with general practice.

Outstanding prospects for suitable candidates. Apply with C.V. to:

32/34 Portmore Street
PORTADOWN B62 3NG

Title Deed

RE: ESTATE OF THOMAS CURRIE late of 51 Rathfriland Street, Banbridge, County Down (Deceased)
Obit. - 3rd January 1964

Would any person having knowledge of the whereabouts of Title Documents for the property situated at 51 Rathfriland Street, Banbridge, County Down, owned by the above named at the date of death, please contact Fisher & Fisher, Solicitors, 1 Newry Street, RATHFRILAND, County Down, BT34 5PY

ADVERTISEMENT



Computers— Networks— Imaging— Accounts— Time Recording

— Case Management— Office Management— Diary Systems—

Word Processing— Court Forms— Email— Internet Consultancy

— Training and Consultancy—

“Tie it all together with a PhiBeta system”

Complete Integrated Computer Solutions for the Legal Profession

PhiBeta

PhiBeta Business Systems Ltd
43 Rosetta Road, Belfast BT6 0LR
Telephone: 028 9049 1336 Fax: 028 9064 0753

ADVERTISEMENT

Belfast City Council Legal Services Dept

LEGAL ASSISTANT CONVEYANCING & CONTRACTS

(Locum cover for a period of up to six months)

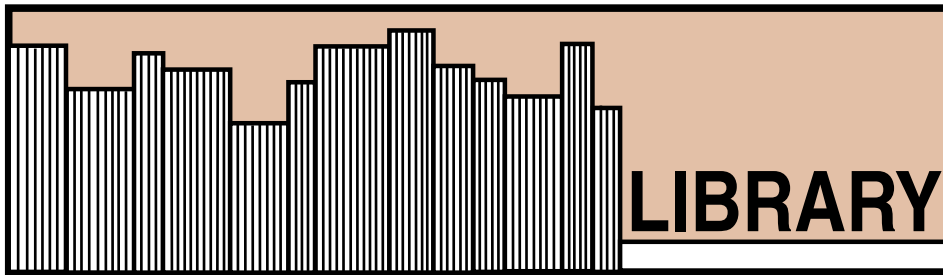
Applicants must, at 17th December 2001:

- be solicitors entitled to practice in N.I
- have experience in conveyancing and/or contract work

The Council reserves the right to invite for interview only those applicants who appear best able to satisfy the requirements of the post.

Application forms, job descriptions and conditions of employment may be obtained from the Human Resources Section, The Cecil Ward Building, 4-10 Linenhall Street, Belfast BT2 8BP.

Completed application forms must be returned no later than 4pm 17th December 2001.



SELECT SITES

PROFESSIONAL BODIES

The Law Society of Northern Ireland
<http://www.lawsoc-ni.org>

The home page for this site provides browsers with brief details of the work of the Law Society of Northern Ireland. It allows access to a number of downloadable information leaflets aimed at members of the public. A search facility offers the opportunity to focus on particular areas of interest, with hits sorted either by date or by score. An archive of The Writ from March 2000 is a useful feature for the public and practitioner alike. In addition, a comprehensive list of links is a good starting point for those interested in legal research

The Bar Library
<http://www.barlibrary.com/>

The Bar Library provides traditional "library facilities" as well as being the working environment for almost 500 barristers and must cater for all their office and ancillary requirements. The website explains the role of the barrister as well as providing access to the Bar Directory. It also has quite a vast list of links for news groups, search engines and a list of web addresses for caselaw, government departments and journals.

The Law Society of Ireland
<http://www.lawsociety.ie/>

This site provides an overview of the work of the Law Society and of the legal profession in Ireland. This easy to navigate site has information on the work of the Council and committees, a list of personnel contact names, information on member services and how to qualify as a solicitor in Ireland. It also has access to The Gazette, the journal of the Law Society from 1999 to the present day. The Links page is also worth looking at, as it provides an extensive guide to useful Internet sites of interest to legal practitioners.

The International Bar Association
<http://www.ibanet.org/>

The International Bar Association is the world's largest international organisation of Law Societies, Bar Associations and individual lawyers engaged in international practice. The site has extensive information for the practitioner, although some information is password protected. Certain issues of International Bar News, the journal of the IBA are available on the site as well as a list of recent press releases and new publications some of which can be downloaded free of charge. There is also a "Reading Room" which allows the user to search for specific publications by author, title or keyword.

The Law Society of Scotland
<http://www.lawsocot.org.uk/>

The Law Society of Scotland website provides a useful facility for members of the public to search for any of the 8422 practicing solicitors based in any of the 2237 firms in Scotland. For the solicitor, commonly used practice rules are available for downloading and printing. Another useful feature is a link to up to the minute information on computer viruses from an anti-virus company.

New Books in the Library

- 1) Gumpert: Trading standards; law and practice. Jordans. 2001
- 2) O'Hood Phillips & Jackson: Constitutional and administrative law. 8th ed. Sweet & Maxwell. 2001
- 3) Dane & Thomas: How to use a law library; an introduction to legal skills. 4th ed. Sweet & Maxwell. 2001
- 4) Walton: Charlesworth & Percy on negligence. 10th ed. Sweet & Maxwell. 2001
 MacDonald: Tolley's managing e-mail and internet use. Tolleys. 2001



E-MAIL DIRECTORY 4TH EDITION

We are now producing a new edition of the directory which costs £5 and would be grateful if you could let us know whether your e-mail address has changed.

The invitation still stands for any new contributors - in return for giving us your address we will send you your first copy free.

Law Society Library Email:

hsemple@lawsoc-ni.org

**Copy deadline for December
Friday 7th December 2001**

**Published by the Law Society of
Northern Ireland
98 Victoria St. Belfast, BT1 3GN
Editor John Bailie**

*The views expressed are not
necessarily those of the Law Society
of Northern Ireland*