

Peebles Friends

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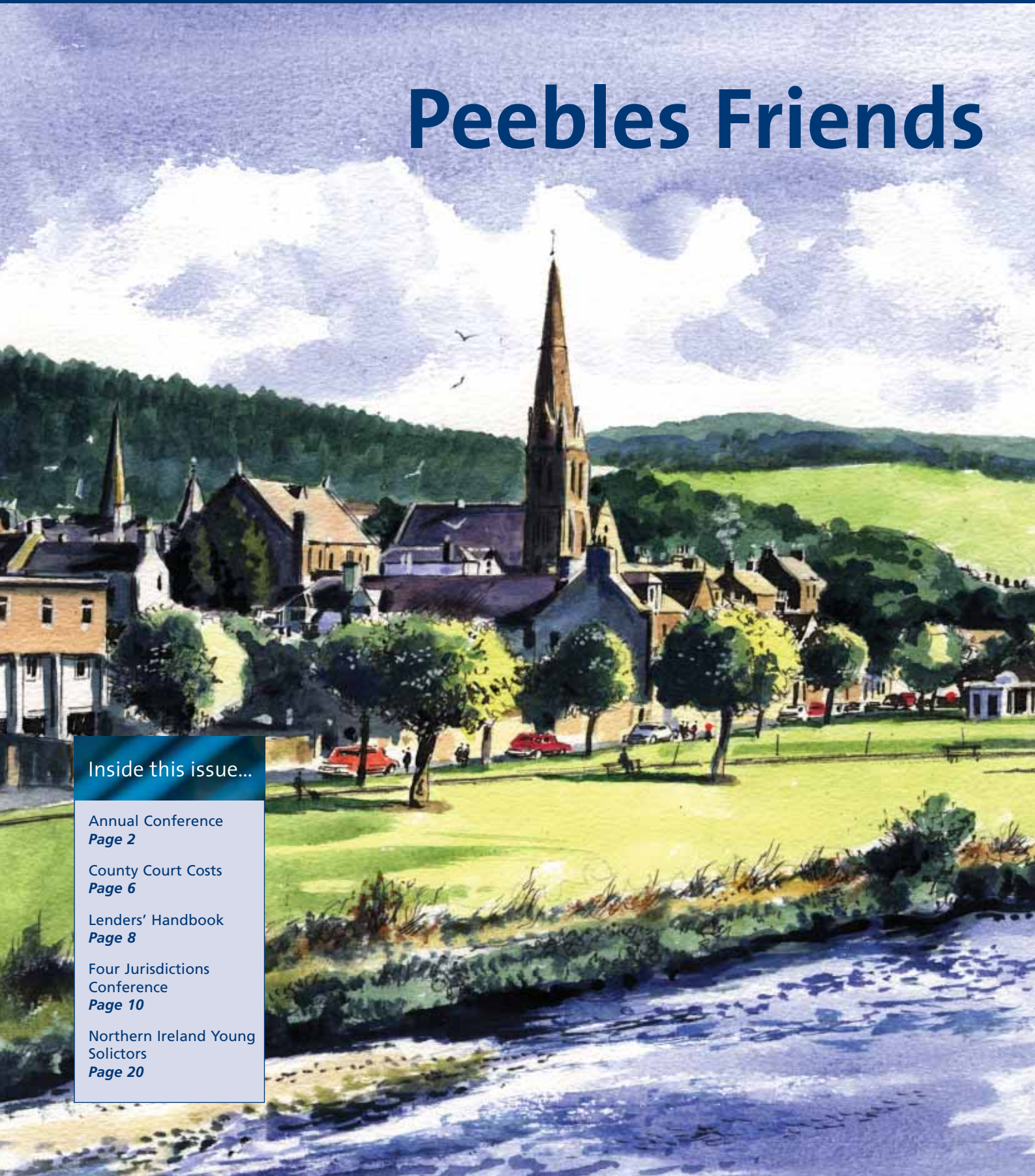
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Suspicious Activities - *Conference Report 2004*

The Annual Conference of the Law Society of Northern Ireland took place over the weekend of 26th – 28th March. Although acclaimed a success by those attending, the Conference gave rise to some unexpected controversy and misunderstanding. We reproduce alongside a piece written by a local journalist (of Scots – Italian descent) who happened to be staying in the conference hotel at the time. The events depicted have been only partly substantiated, any resemblance to persons you may know is accidental, and of course what follows should be taken with a pinch of salt.



Read All About It!

Pictured at the Annual Conference from left are Ed Nally, Vice President, Law Society of England and Wales; John Pinkerton, President, Law Society of Northern Ireland; Joe Platt, President, Law Society of Scotland and Gerry Griffin, President, Law Society of Ireland.

"Dateline Friday 26th March. I was up at the Peebles Hotel Hydro for some much needed R. and R. I had just finished my healthy option lunch (deep-fried chocolate sandwich and Irn Bru) when I noticed something funny going on. My attention was drawn to the arrival of a SUV driven by a tall gentleman, with three shifty-looking companions. The number plate and the accents were unfamiliar and I was first put on the alert by the tommy-gun shaped case among the luggage.

From discreet inquiries raised with the hotel manager I was able to ascertain that this individual was in fact John "Corelli" Pinkerton, posing as the President of the Law Society of Northern Ireland. Throughout that afternoon I watched with increasing alarm as I began to suspect what was taking place. Arrivals from all over Britain and Ireland, more unusual licence plates, even odder accents. It was obvious from the quality of the cars that a fair number of those arriving were made guys.

Despite the outwardly legitimate nature of the operation and the good humour of the participants I knew I was on to something. By Friday evening I had managed to ascertain from the cuttings that all the big cafes were there: from London, Ed "Tescorini" Nally; from Dublin, Gerry "Spoons" Griffin; and the local don, Edinburgh Joe "Clementi" Platt, together with their known associates, molls, bambinos and consiglieri.

That first evening the families gathered together for dinner. Dress code - smart, casual and tasteful: some had obviously gone for two out of three. Due to the unfamiliar argot I could only pick up a little of what was being said by "Corelli" Pinkerton, but it was clear that plans were afoot for a major meet the following morning. Although at that stage I could not get close, after dinner the main players closeted themselves at one end of the bar. There into the small hours they were mumbling incomprehensibly, with snatches of Sinatra, the odd Father Jack impersonation, badaboom badabing.

Dateline Saturday 27th March. Woke up this mornin', sunlight in my eyes. My suspicions were confirmed when I heard of a big conference in the Bannockburn Room to discuss money laundering. By this time I had managed to infiltrate posing as a hotel management trainee

and was therefore able to observe at first hand what was going down. First there was an introduction by Pinkerton, who was clearly the capo. He emphasised how significant money laundering was to all the "firms", and it was clear from the attendance and the reaction of the audience that this topic was of vital interest. "Corelli" was followed by someone billed as Sam Hornell presenting as a compliance agent with an organisation known only as NAGE. (This was later established to be the National Australia Group Europe; connected overtly to the Northern Bank which was apparently offering what were referred to as "tailored financial solutions"). This was very much an insider's master class on how the banks set about compliance with money laundering regulations and requirements.

Next up was a well-received presentation by a big boss purporting to be Alan McQuillan, the padrone of an outfit called the ARA. This punter knew all about money laundering. It was all there:

excise evasion; smuggling; dope; refuse collection; protection rackets; hawala banking. It seemed obvious from the questions at this so-called "business session" that all this stuff was a matter of the keenest utility to the attendees, and that they were all snorkelling in the same think-tank.

On the Saturday afternoon the hotel grew strangely quiet as the various participants dispersed for "leisure activities". The sun shone on both the just and the unjust. A sizeable number departed for what was billed as a "golf outing". Some were heading off for racketeering, others to see a man about a horse. There was affectionate talk of a fraternal visit to another organisation known as the I.K.E.A. The majority, however, seemed to have some sort of numbers game running on a rugby match in Dublin shown live to an excitable crowd on a big screen in the hotel. It was apparent that a lot hung on the result.

And so on to the gala dinner. This featured an excellent meal, a highland piper, a toast to the haggis, and a motivational speech by Il Duce Pinkerton. Thanks were offered to Marsh Limited, Northern Bank, and AFP Consulting all of whom had bankrolled the event. There was also a presentation of awards, for achievements at "golf", presented by one "Rosso" Rory McShane.

After the dinner there was athletic ethnic dancing, as much rigor as rigour. The survivors retired to the bar, the eponymous mandolin was produced by Pinkerton, the infamous harmonica by Norville "Ravenelli" Connolly and the odd canzone was rendered more or less tunefully, rhythm courtesy of Griffin on the hotel cutlery. More Tenors than Sopranos. By four in the

morning the conversazione had deteriorated into algebra and the divertimenti was over.

Dateline Sunday 28th March. I was up the next morning in time to see the communal risorgimento and partenza. It was apparent that the

benefits (first sign of spring, lighter evenings) of the clock moving forward an hour had been lost on most, who woke up feeling worse than when they went to bed. By lunch-time the main players were moving on, with strong rumours of another sit-down in Sicily.

I may of course have misunderstood the whole thing, but the esperienza was obviously regarded as a great success, within the peculiar perspective and value system of those attending. New contacts had been made, no major feuds had arisen, no one had been disrespected and much had been learned which would be useful on returning to do whatever solicitors do. I suspect the Peebles Hydro will not see the like again.

Versace McClatchey"

NB A copy of this article has been sent to the National Criminal Intelligence Service.



Speakers at the conference from left: Sam Hornell, John Pinkerton and Alan McQuillan



*(L-R) Paul Boyle;
Anne Fenton and
Fionnuala Boyle.*



*(L-R) Peter Kelly;
Alison Kelly; Richard
Palmer and Wendy
Palmer.*



*(L-R) John Pinketon
presents Joe Platt
(Law Society of
Scotland) with yet
another wooden
spoon*



*(L-R) Douglas Mill,
Christine Mill; Mary
Durkin and Janet
Paraskeva.*



*(L-R) John McBurney,
Ruth Hewitt, Roberta
McBurney and Alan
Hewitt*



*(L-R) Liz McKay,
Judith Glasgow and
Cathy Forsythe.*



*(L-R) Joe Donnelly;
Ken Murphy; Gerry
Griffen and David
Preston.*



*(L-R) Catherine
Griffen; Iris Rountree
and Sheila Preston.*



(L-R) Nuala Sheeran; Nessa Agnew and Karen Quinn.



(L-R) Alastair Rankin; Catherine Dixon; Arthur Dixon; Rosemary Bailie and Gillian Rankin.

County Court Costs

Did You Know you may be entitled to enhanced costs ?

We are grateful to **Steven Millar** of the Belfast Solicitors' Association for this analysis of aspects of the County Court costs regime.

The Association has become aware that practitioners may not be fully aware of all of the changes, in the last 12 months to the County Court rules in relation to scale costs.

In particular the attention of practitioners is drawn to the **County Court (Amendment No. 2) Rules (NI) 2002 (No. 412)** which were made on 3rd December 2002 and which came into operation on 3rd March 2003.

By way of background, during the consultation process initiated by the County Court Rules Committee in relation to County Court costs generally, the Association in its submission indicated that there were many cases in the County Courts which were not straight forward and which by their nature were more complex. These cases required additional time to prepare for hearing. The Association submitted that these types of cases should be distinguished from other cases and consideration should be given to a change in the rules to allow for enhanced fees to be available.

The Association therefore welcomed the recognition of this issue by the County Court Rules Committee in the changes to the County Court rules as implemented by the amending provisions referred to above.

These rules amend Order 55 to allow an enhancement of fees **to the value of one third of the defended Civil Bill scale fee** in particular types of cases provided certain criteria are met. Set out below for information is an extract from the relevant rules.

" Costs

2. - (1) Order 55 shall be amended as follows-

(a) by revoking paragraph (1) in rule 9;

(b) by the insertion of the following new rule-

" 11. - (1) This rule only applies where the plaintiff's cause of action (or if there is more than one cause of action the principal cause of action):

(a) related to contracts for works of building or engineering construction, contracts of engagement of architects, engineers or quantity surveyors, the sale of goods, insurance, banking, the export or import of merchandise, shipping or other mercantile matters, agency, bailment, carriage of goods, professional or clinical negligence or title to land;

(b) claimed assault, battery, wrongful arrest or false imprisonment and where a named defendant is the Ministry of Defence, Chief Constable of the Police Service of Northern Ireland or Head of the Northern Ireland Prison Service; or

(c) was brought under:

(i) Part IV of the Sex Discrimination (Northern Ireland) Order 1976;

(ii) Part III of the Race Relations (Northern Ireland) Order 1997;

(iii) Part IV of the Fair Employment and Treatment (Northern Ireland) Order 1998;

(iv) Part III of the Disability Discrimination Act 1995; or

(v) section 76 of the Northern Ireland Act 1998;

(2) Subject to paragraph (4) where, at the conclusion of a cause of action to which this rule applies, the judge is satisfied that the issues in the case were of particular complexity, he may order that the parties receive an enhancement of their costs in addition to the scale costs set out in Appendix 2.

(3) The amount of any enhancement under this rule shall be one-third of the scale fee in Appendix 2 to which the parties are entitled.

(4) No enhancement shall be permitted under this rule unless:

(a) prior to service of the civil bill or counterclaim, the plaintiff or the defendant has endorsed upon the civil bill or counterclaim that a cause of action between the parties falls within the provisions of this rule; or

(b) where the proceedings were commenced in the High Court by writ of summons and remitted to the county court-

(i) the plaintiff within 14 days of the order for remittal serves a notice on the defendant that a cause of action falls within the provision of this rule; or

(ii) the defendant within 14 days of the service of the order for remittal upon the plaintiff serves a notice on the plaintiff that a cause of action in his counterclaim falls within the provision of this rule.

(5) Notice under paragraph (4) shall be copied to the chief clerk." "

It should be noted that the types of cases that may attract enhanced

costs are those which are generally regarded by the profession as being of a more complex nature and which would require a substantially increased volume of time to be spent on them to bring the cases to conclusion. (As can be seen the categories of cases are clearly set out in the rules).

It should be noted that receipt of enhanced costs is by no means automatic and a number of steps must be taken to ensure that a Plaintiff's solicitor is in a position to seek enhanced costs at a hearing. Obviously attention needs to be paid to the detail of the legislation but in summary the following points should be noted:

1. The cause of action must fall within one of the categories in Order 55 Rule 11 (1).
2. Prior to service of the Civil Bill (or Counterclaim) the proceedings must be endorsed to the effect that the cause of action arises within the provisions of Order 55 Rule 11 (1). (Clear wording should be used and it is recommended that reference to the rule be made in order to avoid any doubt over what is being claimed and why).
3. In remitted cases notice that the cause of action falls within the provisions of the rule must be copied to the Chief Clerk.
4. Application must be made at the conclusion of the cause of action for enhanced costs and the awarding of these costs remains at the discretion of the Judge.

It can therefore be seen that whilst the general provisions and principles behind the amendment to the rules are very welcome, the award of any enhancement remains at the discretion of the court. The existence and exercise of that discretion does not appear to be available until the conclusion of the case. Failure to adhere to the procedural requirements of the rule would seem to be a bar to the making of an application for the enhancement.

The Association is of the view that irrespective of whether or not a case

settles or proceeds towards hearing, then in appropriate situations enhanced fees should be sought by way of negotiation.

The Association has since the introduction of the rule been in correspondence with the Court Service in relation to obtaining statistics with regard to the number of cases in which an enhancement has been claimed and subsequently when it has been awarded by a Judge. The Association will continue to keep in correspondence with the Court Service in relation to these statistics but it has been confirmed that in a number of cases the Judge's discretion has been exercised in favour of the plaintiff and enhanced costs awarded.

The important issue for practitioners is to ensure that in appropriate cases the full entitlement to costs is claimed and vigorously pursued.

This short article only deals with some of the amendments to the rules and another significant advance which is welcomed by the Association can be found in the amended Order 55 Rule 14 (6) which confirms that in any case commenced by way of a Civil Bill or Petition where the approval of a Judge is required under Order 44, costs payable to a Solicitor and Counsel shall be the **full scale fee allowable on the defended scale**. This should now eliminate the previous practice adopted by some insurers of attempting to seek reduced costs or even undefended scale costs in Minors settlements etc.

The Civil Litigation Sub-Committee.

Information or experiences in relation to enhanced costs or any other matter concerning County Court costs can be passed on to the BSA Civil Litigation Sub-Committee by contacting the Chairman Niall Skelton c/o, the Association's Administrator, Suite 7, Merrion Business Centre, 58 Howard Street, Belfast, BT1 6PJ or via e-mail at niall@caldwellwarner.co.uk.

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Lenders' handbook for Northern Ireland

On 11 May 2004 the Council of Mortgage Lenders (CML) will launch the Lenders' Handbook for Northern Ireland. The Lenders' Handbook provides comprehensive instructions for conveyancers acting on behalf of lenders in residential conveyancing transactions. This article sets out the main features of the Lenders' Handbook and how to use it.

The CML

The CML is the representative trade association for mortgage lenders in the UK. Its members comprise banks, building societies and other specialist residential mortgage lenders, which together represent around 98% of the assets of the UK mortgage market.

The Lenders' Handbook

In 1999, the CML and several major lenders created the first Lenders' Handbook by combining lenders' individual instructions to conveyancers in England and Wales to make one set of clear and comprehensive instructions. The Lenders' Handbook has proved a success and over 125 lenders have adopted it. There are now Lenders' Handbooks for England and Wales, Scotland and the Isle of Man. The Lenders' Handbook for Northern Ireland will come into effect on 11 May 2004. The Lenders' Handbook is divided into two parts. Part 1 contains the main instructions to conveyancers. Part 2 details each lender's specific requirements which arise from those instructions. The main instructions cover lenders' requirements with regard to all aspects of a normal residential conveyancing transaction. The list of areas covered is too large to mention in this article, but includes:

- Leasehold requirements;
- Freehold, flying freehold and freehold flat requirements;
- Newly built and newly converted property requirements;
- Insurance requirements; and
- Documents to be sent to the lender after completion

The Lenders' Handbook is only available on the CML website

(www.cml.org.uk/handbook). The CML will not produce hard copies of the Lenders' Handbook. Conveyancers that do not have access to the Internet must contact their lender client to request a paper copy.

Use of the Lenders' Handbook is not mandatory for lenders. Lenders' initial instructions to conveyancers will indicate if a conveyancer is being instructed in accordance with the Lenders' Handbook. Where this is the case, conveyancers should log onto the CML web site to access the main instructions and the relevant Part 2 instructions for their lender client. If conveyancers have any queries regarding the Lenders' Handbook, they should raise these with their lender client and not the CML.

Conveyancers should familiarise themselves with the requirements of the Lenders' Handbook in advance of its introduction in Northern Ireland on 11 May 2004. The main instructions are available on the CML website now.

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Where the Mountains of Mourne Sweep Down to the Sea

The advocacy of the participants from Ireland, North and South, and Scotland was music to the ears of the National Institute for Trial Advocacy Faculty and trained local tutors at the Burrendale Hotel and Country Club between 11th and 14th March.

Good solicitors became great advocates over the intense four day Further Advanced Advocacy Course. This was the second course of its kind and the Advocacy Working Party was delighted to welcome nine solicitor advocates from Scotland in addition to the participants from Southern Ireland.

It was a tremendous course with solicitors from the three jurisdictions converging at the foot of the Mournes, sharing their individual skills and expertise and learning from each other. Professor Lonny Rose, Executive Director of NITA, Jeanne Jourdan, a former Chief Judge in Indiana and



John Pinkerton, President of the Law Society of Northern Ireland; Tony Caher, Chairman of the Advocacy Working Party; Professor Lonny Rose, Executive Director NITA; Frank Maguire of the Scottish Society of Solicitor Advocates; James MacGuill, Solicitor Advocate of the Law Society of Ireland.

Mike Roache, San Diego's finest criminal lawyer, together with the local tutors, put the advocates through their paces, concentrating on the essential elements of advocacy as they ran a complex commercial case. NITA has identified this event as one of their most prestigious foreign programmes. Despite the hard work there was time for multi-jurisdictional music

and merriment culminating in an entertainment extravaganza on the Saturday night with participation from all regions and not least from our own President on his banjo. The weekend concluded with an international conference on advocacy which earmarked strategies for pooling resources to ensure a far-sighted proactive approach to progressing solicitors' skills to deliver those services for which there is a growing demand.

Our own Advanced Advocacy course, which is a pre-requisite for this further course, takes place 6th-10th September when we will again look forward to welcoming the cream of the NITA Faculty.



Marian Killen in action

OBITUARY

EAMONN McEVROY – THE LAWYER'S LAWYER



Eamonn McEvoy, who died suddenly on the 13th March 2004, was born on 20th February 1940 at Ballyward in County

Down. Educated at St Colman's College, Newry and the National University of Ireland, he qualified as a Solicitor and shortly afterwards in 1968 opened his own practice in Lurgan.

From the outset Eamonn was a tenacious and articulate advocate and he subsequently acquired practices in both Banbridge and Belfast.

Over the years he built up a large client base and became one of the leading claims lawyers in this jurisdiction.

Through the McEvoy family's interest in horses, Eamonn found himself representing many famous racing and showjumping clients and he was considered an expert in equine cases. This in turn meant that he came into contact with a great number of sporting personalities. Clients from these fields and from the business community admired his energy and ability and became his friends. Colleagues, clients and friends alike were entertained by his rapier wit and enjoyed his infectious sense of humour.

His wide experience and sound judgment meant that he was frequently consulted by his legal colleagues on complex issues and he was always ready with a word of sensible advice, thereby earning him the accolade "The Lawyer's Lawyer". Eamonn's funeral at St Theresa's Church in Banbridge was attended by the Lord Chief Justice Sir Brian Kerr, other senior members of judiciary and a great number of his colleague from both branches of the legal profession. The large attendance from all walks of life and from all sections of the community at his funeral gave testament to his tremendous generosity and popularity. Our thoughts and sympathy go to Sheelagh his wife, his sons Philip, Christopher and Simon and to his daughter Eve.

THE FOUR JURISDICTIONS FAMILY LAW CONFERENCE - BELFAST 2004

Blisters, Monkeys, Botch-ups and Footballers Wives

Perhaps these are not matters which one might anticipate encountering when attending a family law conference but I can assure you that they all form part of my memories of a most interesting and enjoyable Four Jurisdictions Family Law Conference held in Belfast from 20th – 22nd February.

Today family law is an area of practice which is constantly in the media spotlight and not always for positive reasons. It encompasses a vast array of issues including, to name but a few, children's rights, ancillary relief, the rights of parents and, of course, human rights.

The Four Jurisdictions Family Law Conference is an annual event focusing solely on this constantly developing field of the law. It is hosted every four years within each jurisdiction, namely the Republic of Ireland, Scotland, England and Northern Ireland. Normally a weekend event, it provides an ideal opportunity for solicitors, barristers and the judiciary who work within the field, not only to exchange thoughts and ideas on current topics of interest, but also to meet and socialize with fellow colleagues. For me the "Four Jurisdictions experience" began when I joined other hard working family law practitioners in grappling with boxes,

brochures, photocopiers and hundreds of name-badges (which incidentally were the source of those infuriating and painful little blisters!!). Each delegate received a lovingly prepared pack providing them with information on Belfast, other areas of interest in Northern Ireland, the programme of events as well as information in relation to each of the lectures, which were to take place on the Saturday. For early bird arrivals the conference began on Friday afternoon with a visit to Hillsborough Castle. It then moved onto a tour of the new 'state of the art' Bar Library followed by a Drinks Reception and Buffet in the Main Hall of the Royal Courts of Justice on Friday evening. Recently appointed Lord Chief Justice Kerr provided the 'official welcome', entertaining us with amusing anecdotes involving long-winded witness examinations and wayward monkeys.

On Saturday morning the Lord Chief Justice kindly returned to perform the formal opening of the Conference Session in the Hilton Hotel. The first speaker was Nigel Williams, appointed in October 2003 as Commissioner for Children and Young People in Northern Ireland. We were provided with an insight into his groundbreaking role, functions and significant powers. It was refreshing to see Mr Williams' enthusiasm and dedication to his role. He appears to be an individual who possesses the ability to bring all sections of our small but divided community together to ensure that the interests of children are both represented and respected.

Dr Ursula Kilkelly, a lecturer in law at University College Cork, stopped off to make her presentation whilst en route to Romania where she provides training for lawyers and judges. She discussed the challenges faced by family law practitioners in relation to human rights. Her comprehensive lecture progressed through the realms of the impact of the Proceeds of Crime legislation on the duty of confidentiality, the use of expert

evidence in family proceedings and the amendments which have been proposed to the Human Fertilization and Embryology Act 1990 in relation to the child's right to identity.

Professor Nigel Lowe of Cardiff Law School provided us with a condensed, albeit thorough, examination of selected issues in the vast and varied area of law regarding the relocation of children. Nigel has an exemplary record of achievement, both academically and practically, in the field of family law. He drew attention to a number of "botches" which have arisen in national case law due to apparent confusion in relation to the hierarchy of numerous international instruments. His mission is to help courts avoid those "botch-ups" and arrive at the correct decision by clarifying hierarchical and jurisdictional issues regarding both national and international legislation.

The afternoon session began with a presentation by Ciaran Hunter, a partner at BDO Stoy Hayward Belfast, entitled "Blood from a Stone". He reminded us of the importance of achieving a profitable and well structured financial settlement in cases of marriage breakdown, especially in the long-term.

Pre-nuptial agreements may sound like something of interest only to the rich and famous. However Peter Duckworth, practising English barrister and well known writer on family law issues, informed us that with a higher incidence of second marriages increasing numbers of clients are now looking for them. He discussed the arguments for and against "pre-nups", as well as providing us with a useful guide on what they should contain.

However, it remains to be said that the award for comical respite must go to the 'panel presenters' who included Muriel Walls of McCann Fitzgerald Solicitors, Dublin; Anthony Hayden leading family law practitioner in England and Morag Wise of the Scottish Bar who recounted some of her experiences in acting for the wife of a very well known Scottish footballer and TV pundit. The star

performance however was undoubtedly given by our very own Charles Redpath, Master of the Bankruptcy Court. His 'light but erudite' presentation was a perfect end to the day,

Saturday evening was the social highlight of the weekend with a Black Tie Gala Dinner Dance held in the beautiful surroundings of Belfast City Hall. This satin and silk wrapped stilettoed event was a wonderful opportunity to let our hair down. Many thanks to Mr Justice Gillen for providing a most entertaining discourse as a considerably less fattening alternative to dessert! Finally, on Sunday morning, those delegates who had not been overly indulgent on both Friday and Saturday evenings, were offered a 'black taxi' tour of Belfast.

Next year is the tenth anniversary of The Four Jurisdictions Conference and the event will be held in Nice between 4th- 6th February 2005. I am sure the fact that the venue is the South of France is of little consequence to the considerable numbers who have already expressed an interest and that it is due purely to the importance such an event can have on family law practice!

It should also be noted that the 4th World Congress on Family Law and Children's Rights will be held in Cape Town, South Africa from 20th to 23rd March 2005 and will concentrate on an examination of the UN Convention on the Rights of the Child. The World Congress, recognized as "one of the most significant events on the world calendar in promoting the protection of children" is an international event generally attracting in the region of 800 delegates, where family lawyers can meet each other in a "warm, convivial and alcoholic environment"! Further information can be downloaded at www.lawrights.asn.au.

I would like to take this opportunity to thank all the sponsors particularly the principal sponsor Bank of Ireland, the speakers and each of the host venues, which provided comfortable surroundings and excellent facilities.

The success of the conference was in no small measure due to the excellent working relationship established between both branches of the profession. Accordingly a special thanks for all their hard work and good humour must go to the small group of solicitors and barristers on the Conference Organising Committee who assisted by Clair Balmer were involved in the preparations from beginning to end. In my view they produced a memorable event with just the right mix of academic and social content and which was considered by many veterans of the conference as 'the best yet'. See you in Nice!
Lesley Irwin

Further information on any of the issues raised in this article can be obtained from the Law Society of Northern Ireland.



Pictured l-r are Henry Toner QC; Meg Nixon; Ken Nixon RM and Susan Nixon.



Pictured l-r are Hayley Gregan; Jill Comerton; Edel O'Grady and Roisin McKenna.



Pictured l-r are Mr Justice Gillen; Lady Brenda McLaughlin and Mr Justice McLaughlin.



Pictured l-r are Clair Balmer and Dawn Creighton.



Pictured l-r are Master Redpath; Ruth McGregor; Paula Ranaghan and Richard Murphy.



Pictured l-r are Jayne Ballentine and District Judge Hilary Keegan.



Pictured l-r are Joseph Donnelly, Senior-Vice President of the Law Society of Northern Ireland; Agnes Donnelly; District Judge Hilary Keegan; Dolores Keegan; Eilish O'Brien and Peter O'Brien.



Pictured l-r are Anne Caldwell; Mr Justice Gillen and Siobhan O'Hagan.



Pictured l-r are Professor Nigel Lowe; Ursula Kilkelly and Nigel Williams.



Pictured l-r are Harry McKibbin RM; Ciaran Hunter; Anne-Marie Kelly; Neil Cooke and Ken Nixon RM.

Youth Conferencing update



Belfast Pilot Scheme

Solicitors in the Greater Belfast area with an interest in youth justice are cordially invited on Thursday 3rd June 2004 at 4.00pm to meet informally with Youth Conference Service Co-ordinators and Officers at their premises at 41-43 Waring Street, Belfast. In addition to a short tour of the facilities, there will be an opportunity to discuss a number of issues arising from the introduction of Youth Conferencing at Belfast Youth Court from 18th December 2003. As places are limited, kindly register your interest with Janine Tyrie at Law Society House – tel: 90231614

Pilot Scheme for Fermanagh & Tyrone

From 5th April 2004 a second pilot scheme has commenced in the Youth Courts operating in the County Court Division of Fermanagh & Tyrone at the Petty Sessions Districts of East Tyrone, Fermanagh, Omagh and Strabane. The scheme will apply to all young persons falling within the provisions of the legislation who both reside and commit an offence in a Petty Sessions District, within the County Court Division of Fermanagh & Tyrone.

Website

The Youth Conference Service now has its own website at www.youthconferenceserviceni.gov.uk

In addition to a considerable amount of explanatory material about Youth Conferencing, you can also access the following documentation of interest to legal practitioners:-

- (a) Part IV of the Justice (NI) Act 2002
- (b) The Youth Conference Rules (SR 2003 No.473)
- (c) Guidelines for Co-ordinators and Youth Conference Officers

Legal Aid FAQs

The Legal Services Commission (LSC) has prepared a useful handout of Frequently Asked Questions in relation to legal aid arrangements relating to Youth Conferencing. Copies are available from Law Society House.

Legal Aid Forms – Diversionary Youth Conferences

Copies of the new Legal Aid Application Form for use when applying to the Clerk of Petty Sessions for a legal aid certificate in cases involving a Diversionary Youth Conference are available from all Petty Sessions Offices participating in the two Pilot Schemes namely:- Belfast, Omagh, Dungannon, Strabane and Enniskillen.

Practitioners should note that it is essential to attach to the

Application Form a copy of the original letter from the Youth Conference Service advising the client of the date and time of the Diversionary Youth Conference.

Legal Aid – Payment of Costs

The Rules prescribing the remuneration for solicitors and counsel assigned in respect of diversionary youth conferences and attendance at court-ordered youth conferences is by way of a system of standard fees. Full details can be found in the Legal Aid for Youth Conferences (Costs) Rules (NI) 2003 SR 2003 No.512.

Given the structure of the standard fees allowed in these cases, it is essential for practitioners to keep accurate time records of their attendances at youth conferences.

If a conference is adjourned, the time spent at any resumed conference will be added cumulatively to the time spent at the initial conference. The LSC has already indicated that it intends verifying time records with the time log taken by the Youth Conference Service Co-ordinator. Practitioners may consider it prudent therefore to confirm time record details with the Co-ordinator at the conclusion of each conference.

Please note that Rule 4(1) provides that no claim for costs will be entertained by the LSC unless the solicitor submits the claim **within 3 months** of the conclusion of the proceedings to which the criminal aid certificate relates.



BELFAST SOLICITORS



ASSOCIATION

www.belfast-solicitors-association.org

BSA Handbook

Further to the recent publication of the BSA Handbook, members are advised that further copies may be purchased from the **BSA Administrator, Suite 7, Merrion Business Centre, 58 Howard Street, Belfast BT1 6PJ, at a cost of £10.00 per copy.**

The Handbook, amongst other useful matters, contains a handy guide to High Court, County Court, Conveyancing and Non-contentious Probate matter costs. It also contains the CPD lecture programme for 2004.

A must for every practitioner's desk or briefcase

Annual Lecture Series 2004

Dr P Bell

'PTSD – An Update'
Friday 23rd April 2004

John Beattie and Ann Williams

'Capital Taxes on assets based in the Republic of Ireland - Why Irish Capital Taxes could cause unwelcome liabilities, even for those who may have a good UK Tax Strategy'
Thursday 29th April 2004

Judge Isobel Brownlee

'Pitfalls for Solicitors in Dealing with Interlocutory Applications'
Friday 30th April 2004

Master Napier

'Taxation Pitfalls for Solicitors'
Thursday 6th May 2004

Alastair Rankin

'Legal Problems of the Elderly'
Thursday 27th May 2004

Ronald Bentley QC

'How to Maximise Fatal Accident Claims'
Thursday 3rd June 2004

Sarah Witchell

'Conveyancing – the Future'
Thursday 17th June 2004

Dr Joseph McMahon FRCP

'The Medical Legacy of Shipbuilding'
Thursday 24th June 2004

Paul Kerr

'Taxation – an Update'
Thursday 7th October 2004

Tony McGleenan

'Human Rights Law in Practice; An analysis of recent NI Jurisprudence – the up to date position'
Thursday 4th November 2004

Joe Rice

'Presenting Cases in Magistrates Court'
Thursday 2nd December 2004

All seminars will take place at Law Society House. Coffee and sandwiches will be available from 12.30pm and the talks will start at 1.00pm.

The cost of all lunchtime seminars is £10 for BSA members and £20 for others.

Cheques payable to the BSA, c/o The Administrator, BSA, Suite 7, Merrion Business Centre, 58 Howard Street, Belfast BT1 6JP.

Belfast Solicitors' Association Annual Golf Outing - Thursday 20th May 2004 at Malone Golf Club.

This year's Annual Golf Outing will take place on Thursday 20th May 2004 from 1.30pm at Malone Golf Club, Belfast.

The cost per person will be £40.00 green fee and £10.00 meal. Malone Golf Club members and persons not wishing to take a meal should adjust their payment accordingly. All members of the Association and their visitors will be welcome and you are invited to complete the Form and return it as soon as possible. There will be prizes for the main competition for members with official handicaps and for visitors. As usual there will also be a special competition for members without official handicaps. The main prizes will be decided on a Stableford Points basis on full handicap (maximum 24).



BSA Golf Outing – Booking Form Thursday 20th May 2004

Name: _____

Contact address: _____

_____ Tel: _____

Subscription attached (payable to Belfast Solicitors' Association): £ _____

Please indicate against the names the prizes to be played for – Members Visitors Members Special

Return to:

Stephen Andress, BSA, Suite 7, Merrion Business Centre, 58 Howard Street, Belfast BT1 6JP.

Tel/fax: 028 9058 5974.



New employment legislation web page launched at LRA seminar

A major new employment legislation web page was launched today at a Labour Relations Agency seminar on Alternative Dispute Resolution at the Ramada Hotel in Belfast.

Speaking at the seminar Pat McCartan, LRA Chairman welcomed the launch of the Agency's new employment law link page. For the first time, this page offers link access to an updated statutes website compiled by the Office of the First Minister and Deputy First Minister in conjunction with HMSO.

Mr McCartan said, "It will be of tremendous use to employment relations practitioners, providing an easy-to-use, fast route to employment legislation from 1871 to the present. Anyone who has used the Agency's Encyclopaedia of Principal Industrial Relations and Employment Legislation will find this useful. It is a free service and contains a brief summary of each of the main pieces of legislation." He concluded by explaining that the page will be updated on a biannual basis to incorporate new developments.

Legal Opportunities

BrightWater Selection is a leader in the Recruitment Market. Our success has been based upon our level of expertise and professional service. Our specialist Legal Division recruits professionals into practice and in-house roles from Partner to Para Legal level.

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Private Client Solicitor £20,000 - £25,000

Busy provincial practice with an established client base requires a 2 years+ PQE Solicitor with general practice experience in matrimonial and criminal work at High Court level, with a working knowledge of domestic conveyancing desirable. Easy commuting distance from Belfast. Ref: 12669

Criminal Solicitor £18,000 - £20,000

Assistant Solicitor required to cover all aspects of criminal law. The ideal candidate will have 1 - 3 years PQE including practical experience in PACE work. Ref: 12396

For further information on these roles and other opportunities, please contact Amanda McBride for a confidential discussion on 028 90 325 325 or email a.mcbride@brightwatersselection.com



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Lee Hatton, social security legal adviser at Law Centre (NI), reviews recent Disability Living Allowance cases with wide-ranging implications for clients and details the new permitted work rules for Incapacity Benefit. He argues that aspects of the new rules may be open to legal challenge.

People with disabilities



Recent developments in benefit law

Disability Living Allowance C12/03-04(DLA)

In this recent decision, Commissioner Brown examined the provisions in the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 relating to advance renewal claims for Disability Living Allowance (DLA).

The case involved a person in receipt of DLA whose award was due to expire on 30 June 2001. In accordance with Reg 13C of the 1987 Regulations, he submitted a renewal claim for DLA within six months of the date his current award was due to expire. As permitted, the Department treated the claim as if it was made on the first day after his current award would expire (1 July 2001), and disallowed the claim by a decision dated 9 March 2001.

The grounds of appeal contained various contentions regarding the tribunal's treatment of the evidence and its reasoning but, during the appeal procedure, an issue arose concerning an English Commissioner decision, CDLA/3848/01, and the Department's power to disallow an advance renewal claim before the date that a person's current award had expired. As this person's award had been disallowed by a decision dated 9 March 2001, but his current award did not expire until 30 June 2001, the decision to disallow could not take into account any possible deterioration in the claimant's condition before 30 June 2001. His condition could have deteriorated in, for example, early June, to such an extent that he may have been entitled to DLA. If he were to appeal the decision, the tribunal would be barred from considering anything after the date of decision (9 March 2003) and could not therefore consider the impact of his possible deterioration.

Held: The Department does not have the legislative power to disallow a renewal claim before the expiry of the current award. The Department is entitled to treat a renewal claim as if made on the day after the expiry of the current award only if it is to allow the renewal claim. There is no express power in the legislation to disallow before that date. Therefore, no valid decision was ever made on the claim, and the tribunal erred by hearing the appeal when it had no jurisdiction to do so. The case was remitted back to the Department so that a valid decision can be made on the claim. This decision has wide ranging implications for the practice of renewal claims for DLA, and the possible ramifications of the decision are not yet settled. Essentially, if a person in receipt of DLA submits a renewal claim and, on the basis of that claim, the Department is satisfied that the entitlement conditions are met, it can allow the claim and the person's award continues uninterrupted after the current award expires. If the Department is minded to disallow the claim, it has one of two options. As there is no power to make an advance refusal, the Department can wait until the current award expires and then make a decision on the claim. This can therefore allow any deterioration in a person's condition to be taken into account by the decision maker and also by the tribunal on appeal.

Alternatively, the Department can treat the renewal claim as a request for supersession. If the Department decides that the renewal claim form indicates an improvement in a claimant's condition, it can supersede the current award on the basis of a change in circumstances. This would mean that claimants would have their current award terminated, and it would not continue up to the expiry date.

Comment: The Department has produced draft guidelines to this effect, but, following representations from the Law Centre and Citizens Advice, is looking at the guidance again before issuing a final version.

C46/02-03(DLA)

This decision from Commissioner Brown followed an appeal by the Department. The claimant had made a claim for DLA on 23 June 2000, which was disallowed on 15 September 2000 (Decision A). The claimant appealed this decision. Before the appeal was heard, the claimant had made a fresh claim, and was awarded the high rate mobility component and the low rate care component from 1 March 2001 to 28 February 2004, on the basis of the fresh claim. This decision was made on 20 March 2002 (Decision B).

When the appeal of Decision A was heard, the tribunal was requested to restrict any award it might make to 28 February 2002, which was the day before Decision B was made. However, the tribunal made an indefinite award, which then overlapped with the award given under Decision B. The Department appealed on the basis that the tribunal had exceeded its jurisdiction.

Held: Appeal allowed. The tribunal only has the power to make an award up to the date that Decision B took effect (in this case, 28 February 2002).

Comment: This situation had arisen in the past, and posed some problems for those who had been awarded DLA under a fresh claim, while awaiting an appeal of an earlier decision. It particularly affected those claimants who had appealed to the Commissioner, because of the extra time involved in appealing to the Commissioner. Some claimants, despite their appeal being allowed by the Commissioner, were withdrawing their remitted tribunal appeals in order to ensure their current awards were protected. This welcome decision from Commissioner Brown has clarified the situation, and claimants can now make fresh claims while awaiting an appeal, safe in the knowledge that their current award will be protected.

Incapacity Benefit

Permitted work uptake

The rules relating to people in receipt of Incapacity Benefit (IB) and doing some work changed in April 2002, and the old 'therapeutic work rules' were replaced with the new 'permitted work rules'.

Transitional protection was given to those who were under the old rules in April 2002, and they were allowed to continue working under the therapeutic rules. However, all claimants have now been transferred onto the new rules since April of this year.

The new rules allow a person in receipt of IB to do some work under the following restrictions.

- **Permitted Work: Lower Limit**
Person can work for an unlimited period, providing s/he does not earn more than £20 per week.
- **Permitted Work: Higher Limit**
Person can work for up to 26 weeks, providing s/he does not earn more than £72 per week and works on average less than sixteen hours per week. This can be extended by a further 26 week period if there is 'appropriate evidence' to suggest that continuing the work would improve the person's chances of getting back into full time employment. After the further extension, there must be a 52-week gap before the person can do this work again.
- **Supported Permitted Work**
Person can work for an unlimited period, providing s/he does not earn more than £72 per week and her/his work is supervised by someone employed by a public or local authority or voluntary organisation, whose job it is to find work for people with disabilities.
- **Work as part of a treatment plan**
This relates to work done under medical supervision, either in hospital or as an outpatient attending hospital and the person earns less than £72 per week.

The Department should be informed if a person is starting any of the above work.

As stated above, all claimants changed to the new rules in April 2002 (or April 2003 if they had transitional protection). This means that the 26-week period ended in and around the start of October. Claimants working under the *Permitted Work: Higher Limit rules* had to obtain the necessary evidence if they wished to continue.

There are some issues arising in regard to this evidence. Incapacity Benefit Branch stated it would accept evidence from the following sources: a personal adviser, a job broker, a Disability Employment Adviser, a community psychiatric nurse or consultant. This list is not exhaustive; it only provides examples of the type of evidence accepted. It was stated, however, that the Branch would not accept evidence from a person's GP. The legislation does not have such a restriction, and Reg. 17 of the Social Security (Incapacity for Work) Regulations 1995 states that the 'appropriate evidence' can come from anyone, including the person claiming. The Incapacity Benefit Branch's decision not to accept GP evidence would therefore appear to be challengeable, and the Law Centre is interested in seeing any cases where this issue has arisen.

Incapacity Benefits Branch has a Customer Care Helpline that claimants can contact to seek advice and find out where their local Disability Employment Adviser is based, to arrange a meeting. Tel: 9033 6960.

Training

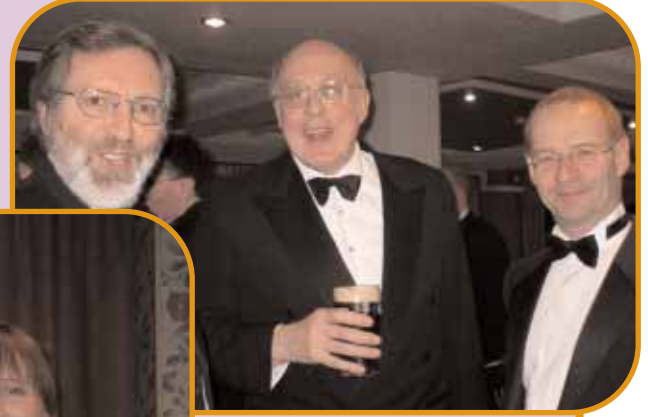
The Law Centre training programme for 2004-05 is now out. For a copy, contact: training department, Law Centre (NI), 124 Donegall Street, Belfast BT1 2GY.

Courses take place both in the Belfast office and in the Western Area Office. Subjects covered include, among others, running an employment case, rights of migrant workers, human rights and community care, mental incapacity. Law Centre training counts toward CPD for solicitors.

The Annual Dinner of Coleraine and Ballymoney Solicitors' Association was held at the Royal Court Hotel on Friday 5th March 2004.



Pictured l-r: Mr Trevor Martin; Mr Richard McPhillimy; Mr Neil Faris.



Pictured l-r: Mr Richard Rountree; His Honour Judge John Martin QC; Mr Gavin Lapworth.



Two Presidents [and a pipe]l-r: Mr John Pinkerton, President, Law Society of Northern Ireland with Mrs Fionnula Boyle, President, Coleraine and Ballymoney Solicitors' Association.

LEGAL SERVICES COMMISSION

Draft Corporate Plan

The Commission has published a draft of its first Corporate and Business Plan. The draft is available on the NILSC website at www.nilsc.org.uk or can be obtained from the Commission Secretary at NILSC, Waterfront Plaza, 8 Laganbank Road, Mays Meadow, Belfast.

Resignation of Sir Kenneth Bloomfield

The Secretary for Constitutional Affairs, Lord Falconer of Thoroton, has announced that he has accepted the resignation of Sir Kenneth Bloomfield as Chairman of the Northern Ireland Legal Services Commission.

Lord Falconer said "Sir Kenneth has intimated that, on health grounds, he finds it necessary to reduce his commitments. As the most important and onerous of these is his chairmanship of the Legal

Services Commission, he has submitted his resignation from that office with effect from 12th March 2004. I am deeply sorry that Sir Kenneth will not be able to continue in this position, building on the considerable progress he has made since the Commission was established. I hope that he will make an early return to good health."

Procedures are in hand to appoint a replacement as soon as possible.



STOP PRESS

We have just been notified that Sir Anthony Holland has been appointed to replace Sir Kenneth Bloomfield as Chairman of the Northern Ireland Legal Services Commission.

Sir Anthony is currently Chair of the Northern Ireland Parades Commission.

He has an extensive background in the legal profession in England and Wales, and was President of the Law Society of England and Wales from 1990 to 1991. His appointment as Chair of the Northern Ireland Legal Services Commission is with effect from 19 April 2004 and is for a period of three years.



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YOUNG SOLICITORS ASSOCIATION

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IN ASSOCIATION WITH

**THE YOUNG SOLICITORS' GROUPS OF
ENGLAND & WALES, SCOTLAND AND IRELAND**

FOUR NATIONS SPRING FORWARD CONFERENCE

THE HILTON, GATESHEAD, NEWCASTLE UPON TYNE

FRIDAY 14 MAY - SUNDAY 16 MAY 2004

11 CPD HOURS IN ONE WEEKEND

Conference Fee:

Friday & Saturday seminars and Gala Dinner

£345 including accommodation on Friday and Saturday nights.
However, NIYSA will offer first 30 the substantially subsidised rate of £195.

Saturday seminars & Gala Dinner

£220 including accommodation on Friday & Saturday nights.
However, NIYSA will offer first 30 the substantially subsidised rate of £150.

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PROGRAMME

Friday 14 May 2004

9.00-9.30

Registration, refreshments & networking.

9.30-9.45

Welcome by the Conference Chair, Nigel Dodds.

Introduction by Adrian Barham, Chairman of the Young Solicitors' Group.

9.45-10.15

Keynote: 'Justice as an effective public service' by David Lammy MP, Parliamentary Under Secretary of State for Constitutional Affairs.

10.15-11.00

People Management – Michael Napier, Senior Partner, Irwin Mitchell/Leslie Perrin, Partner, Osborne Clark.

11.00-11.45

Managing Finance – Andrew Otterburn.

11.45-12.45

Quality & Risk Management – Suzanne Bryson, Law Society of Northern Ireland & Jane Ridley, Alexander Forbes Professions.

12.45-13.45

Lunch & networking

13.45-14.30

Keynote: 'The importance of excellent management' by Peter Williamson, President of The Law Society of England & Wales, Gerard Griffin, President of the Law Society of Scotland, Joseph Platt, President of the Law Society of Ireland, John Pinkerton, President of the Law Society of Northern Ireland.

14.30-15.15

Marketing & Communication – Kim Tasso, Kim Tasso Consulting.

15.15-16.00

Business Development & Client Service: Speaker to be confirmed.

16.00-16.30

Refreshments & networking.

16.30-17.15

Career development – Fiona Westwood, Westwood Associates

17.15-17.45

Promoting yourself – Patricia Wheatley-Burt, Trafalgar – the People Business.

17.45-18.00

Summary: Adrian Barham, Chairman of the Young Solicitors' Group.

18.00-19.30

Wine reception sponsored by Newcastle Law Society.

19.30-0200

Social programme arranged by Newcastle YSG.

Saturday 15 May 2004

10.00-10.15

Welcome from Ben Rigby, Conference & Events Director, YSG.

10.15-11.00

'Preparing for Partnership' – Tony Roe, Boyes Turner & Burrows, speaker from High Street Bank and Paddy Oliver, AFP Consulting.

11.00-11.45

Parallel Session One: Alternative Ways of Working: Managing Public Funded Work, Sara Murray, James

Murray Solicitors, LMS Executive Committee, Angus Andrew, Chair, Representation Board and Member of the Legal Services Commission, Richard Moorhead, Senior Research Fellow, Cardiff University, Past Chair, YSG and Member, Legal Services Consultative Panel. Parallel Session Two: Career Development: Family Friendly Practice: Anna Kavanagh, Law 4 All, Geraldine McCool, Leigh Day & Co, past Chair, YSG.

11.45-12.30

Parallel Session Three: Alternative Ways of Working: Speakers from Judicial Appointments Group, Government Legal Service, Local Government Group and Commerce & Industry Group.

11.45-12.30

Parallel Session Four: Career Development: Recruitment & Remuneration Trends in the United Kingdom and Ireland: Speakers from leading recruitment consultants in England, Ireland and Scotland.

12.30-13.15

Plenary session on 'Ask the Chairs' with Chairs of TSG, YSG, SYLA, SYS and NIYSA.

13.15-19.00

Free time

19.00-19.30

Champagne reception

19.30-02.00

Black Tie Gala Ball with band and disco. Four course dinner, subsidised bar.

Cheques and booking forms to NIYSA, c/o Emma Duffy, Carson McDowell, Murray House, Murray Street, Belfast, BT1 6DN. Email: emma.duffy@carson-mcdowell.com Telephone: 028 9024 4951

Booking Form - SPRING FORWARD CONFERENCE

Name: _____

Firm: _____

Address: _____

_____ Tel: _____

Please tick corresponding box:

Friday & Saturday Seminars & Gala Dinner Saturday Seminars & Gala Dinner

I enclose remittance of £ _____



NORTHERN IRELAND
YOUNG SOLICITORS ASSOCIATION

**NORTHERN IRELAND YOUNG SOLICITORS'
ASSOCIATION PRESENTS A LUNCHTIME
LECTURE ON:**

**JUDICIAL REVIEW &
THE HUMAN RIGHTS ACT**

Speaker: Gordon Anthony

Date: Thursday 6th May 2004

Time: 1pm- 2pm (tea, coffee and sandwiches from 12.30 pm)

Venue: Law Society House, Victoria Street, Belfast

Cost: £10 for members of the NIYSA* and £20 for non- members.

Attendance at this Seminar will provide one hour's CPD entitlement.

Cheques and Booking Forms to NIYSA c/o Catherine Calvert, Caldwell Warner Solicitors, Floral Buildings, 4 East Bridge Street, Belfast BT1 3NQ Fax to 028 9059 5301. E- mail to catherine@caldwellwarner.co.uk

* All Solicitors aged 36 or under are automatically members of the NIYSA.

BOOKING FORM _____

NAME _____

FIRM _____

ADDRESS _____

E-MAIL ADDRESS _____

TEL _____

NUMBER OF PERSONS ATTENDING _____

I ENCLOSE REMITTANCE OF £ _____



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AND LIVE BAND**

Places for this year's event are limited to 160 guests. Interested parties should complete the booking form below.

Cheques are to be made payable to NIYSA.

Cheques, booking forms and table plans of 10 to be sent to Darren Toombs, c/o Carson McDowell Solicitors, Murray House, Murray Street, Belfast, BT1 6DN.

Telephone: 028 9024 4951.

(No reservation confirmed until cheque received).

A limited number of rooms are available from Clandeboye Estate for £25 per head.

Coaches for the return journey to Belfast may be provided, subject to level of interest. Each party should confirm on booking form below if they require places on the coach.

Booking Form Mid-Summer's Ball

Name: _____

Firm: _____

Address: _____

Email: _____

Tel: _____

I enclose remittance of £ _____

I require/do not require a place on a return coach to Belfast

Risk Management

ADVICE

To Err is Human

The power failure and the resulting Underground stoppage in London several months ago illustrates many of the shortcomings in attitudes towards risk management and business continuation systems. Solicitors could benefit from considering the event and its application to their own practices. The initial failure was in the incorrect installation of a fuse – a human error. The supervisor who checked the work overlooked the mistake – a second human error. The resulting power cut was a combination of further factors but was not in fact severe; it was thought to be so because of its effect on the Tube system, which was out of action for a number of hours. The Tube train managers had decided, some time before, to discontinue the maintenance of an independent electricity substation, which could supply the system if there was a power cut. The electricity supplier maintains that the combination of events was a one-in-a-million change and that, having rigorously checked the system, there are no further problems with the fuses. However, this fundamentally missed the point about risk management. Human error is a fact of life in any system. There will always be human errors but they will crop up in different places – fuses one day, wiring the next. While risk management systems should be directed in part to eliminating mistakes, equal attention must be given to minimising the impact of errors when they occur. The degree to which a mistake has a detrimental effect on your business will depend on how you manage the events that follow.

The lesson to be learned from the power cut is not to scrimp on the costs involved in putting in place good supervisory systems, complaints handling procedures and business continuation plans. These will all have a positive effect on the business and will be essential in preventing a minor mistake turning into a major problem. It is important to remember the following:

- Good supervision not only prevents mistakes happening in the first place but enables staff to discuss problems before they reach a crisis, enabling the supervisor to remedy the mistake and rescue the situation with the client.
- An effective complaints handling procedure – which staff understand and put into practice – will limit the damage to the firm of a complaint or claim even

where the complaint or claim is justified. It gives the firm a second chance to prove itself to the client and to demonstrate that the error was truly a one-in-a-million chance and does not reflect the standards of the firm.

- Not all problems are of our own creating and forecasting the damaging possibilities of external events is an essential part of risk management. Clients are entitled to know that their affairs will be taken care of, even if the physical environment of an office is damaged or staff are absent.

This column was prepared by AFP Consulting, a division of Alexander Forbes Risk Services UK. This article first appeared in 'The Gazette', the journal of the Law Society of England and Wales, 100/47 11 December 2003.



Practice Update

A summary of recent developments

Domestic Violence Survey

The Northern Ireland Office has published "Research and Statistical Bulletin 1/2004 - Experience of Domestic Violence in Northern Ireland: Findings from the 2001 Northern Ireland Crime Survey". The Bulletin is based on an analysis of research findings from a self-reporting domestic violence module that was included in the 2001 Northern Ireland Crime Survey, a personal interview survey of the experience of crime and attitudes to crime of adults living in private households throughout Northern Ireland. The domestic violence module was completed only by respondents aged 16 to 59 years and focused on:

- Determining the extent of domestic violence
- Investigating the risk factors associated with domestic violence victimisation
- Identifying the responses to and perceptions of domestic violence.

Key findings were as follows:

- 14% of respondents claim to have been victims of domestic violence at some time in their lives, with females (16%) experiencing a higher victimisation rate than males (11%).
- A greater proportion of 16-29 year-olds (17%) claim to have been victims of domestic violence than those aged 30-59 years (13%).

- Protestant respondents (16%) were more likely to have experienced domestic violence than Catholic respondents (12%). Similarly, those from Belfast (18%) had higher victimisation rates than residents in the East (15%) or West (12%) of Northern Ireland.
- Over half (54%) of identified victims suffered injuries as a result of their 'worst' incident, the most common of which was mental or emotional problems sustained by 30% of victims.
- In one-quarter (24%) of worst incidents, children in the household were aware of what was going on, either by seeing or hearing the incident, or a combination of both.
- The police were unaware of the vast majority (84%) of worst incidents identified. Only 1 in 7 (14%) were reported to the police.
- Only 37% of victims considered their worst incident a crime, while over one-quarter (27%) accepted it as 'just something that happens'.
- 92% of respondents believe that domestic violence is never acceptable under any circumstances, a percentage that is higher for females (94%) than males (89%). Those who have been victims of force and/or threats represent the group with the smallest proportion who believe it is never acceptable (87%).

This Research and Statistical Bulletin is available for downloading at www.nio.gov.uk/pdf/domestic12004.pdf

SDLT & Budget 2004

In his Budget speech, the Chancellor announced some changes to SDLT which take effect from 17th March 2004. Full details can be found at www.inlandrevenue.gov.uk/so/budget2004.htm. There you will find a Technical Note which explains these changes and should be read in conjunction with the Budget Resolutions. The Inland Revenue have also published two SDLT related Budget Notes, one on technical clarifications and one on partnership transactions.

The Inland Revenue Press Release states "The changes taking effect after today will affect only larger and more complex transactions. In any case, many of changes merely clarify the intention of the legislation. The vast majority of purchasers will be completely unaffected. If you have any queries on these changes please call our enquiry line on 0845 6030135.

The changes taking effect after today do not require the SDLT6 Guidance Notes to be amended. Both the Guidance Notes and our SDLT guidance manual will be revised when the other changes take effect once the Finance Bill receives Royal Assent."

Unusual Probate Applications

A set of Guidance Notes entitled "Probate Applications Less Frequently Encountered" was recently launched at a lunchtime seminar in Law Society House.

In her address Master McReynolds of the Probate Office remarked on how the structure of both society and of the Probate Office had changed considerably since 1981 when Margaret Aiken's "Probate Practice Notes" were first published. One had the impression that solicitors then had more time to ponder and the usefulness of computer records in respect of "copy" and "reconstructed" wills would have been beyond contemplation.

The Master went on to commend a set of Guidance Notes which had been prepared by Rosalind Neill of the Probate Office. These provide useful advice and precedents to deal with the increasing number of unusual situations relating to the administration of estates now encountered by practitioners. These include applications: -

- to be appointed guardian
- to amend grants
- to prove a copy will – lost will
- to revoke and cancel grant
- to impound grant
- to swear to the death of a missing person

The notes also provide useful assistance on Inland Revenue Accounts, Surety's Guarantees, Foreign Domicile and more.

Bringing the presentation to a conclusion, Alastair Rankin stated that the profession owed a considerable debt of gratitude to the Master and to Rosalind Neill for this initiative and for the significant time and effort which they had expended in preparing a set of notes which would prove invaluable to probate practitioners.

Copies of the Guidance Notes are available from Janine Tyrie at Law Society House Belfast at a cost of £15.00.

Review of Child Protection Vetting arrangements

The Secretary of State has announced that there is to be a review of child protection vetting procedures in Northern Ireland. The Commissioner for Children and Young People, Nigel Williams, for the first time exercising his duty under the Commissioner for Children and Young People (NI) Order 2003 to formally advise Ministers of an issue affecting the rights and best interests of children, had written to the Secretary of State suggesting a review.

This followed the controversy in England surrounding failure to pass on allegations about Ian Huntley's previous behaviour to Soham Village College, Cambridgeshire, who employed him as a caretaker. To make sure there is no delay, the various Government Departments involved have begun to make preparations ahead of the review. This means that once the Bichard Inquiry into the failures in the Huntley case has reported in the summer, detailed work can begin immediately to examine arrangements in Northern Ireland.

Details of the terms of reference and arrangements for the review including how it will be publicised will be announced within the next few months.

NIGALA

The Northern Ireland Guardian Ad Litem Agency (NIGALA) wants to know what children and young people think about the service they get from the Guardian. One of the ways the Agency is seeking to do this is by the development of an interactive computer based system called Viewpoint for young people over ten years of age. The system enables young people to give their views on how satisfied they were with their Guardian, what they expected from him/her and what they thought about the Court and their Solicitor. The information received will be treated confidentially and will help the Agency continuously develop its service.

Consultation on new suspended and expulsion procedures for schools

The Department of Education has announced the start of a three-month consultation exercise to consider proposals for new suspension and expulsion procedures in schools.

A review group which was set up in May 2002 has now completed its deliberations and has made a number of specific recommendations and identified options for change based on findings from across all the Education and Library Board areas and all sectors of the schools' system. The main proposals of the group are:

- All schools should be required by law to use the same scheme for the suspension and expulsion of pupils.
- Specific guidance should be issued to schools on the proper use of the suspension sanction, a pupil's rights in the process and the re-integration after an extended period on suspension. The Education and Training Inspectorate should monitor these procedures.
- Schools should be required to respond to applications for admission, outside the normal period for admissions within 15 school days.
- The education of a suspended pupil should remain a school's responsibility.
- All schools should operate the same expulsion procedures. The Department should consult on how this should be done.
- Expelled pupils should not be out of education for longer than 15 school days.
- An independent expulsions appeals process should be established.
- There should be a no expulsions policy for pupils with statements of special educational needs.

Copies of the document are available on the Department of Education website: www.deni.gov.uk/about/seconsultatin/se.htm.

The consultation exercise closes on 2nd July 2004.

NHS wrong on organs

The High Court in England has ruled that the NHS was wrong to remove organs from children without the consent of their parents.

More than 2,000 families sued the NHS. The mother of one of the children was awarded £2,750, but the judge said not all the families would be entitled to compensation.

As a result of the ruling persons who are claiming in relation to hospital post-mortems should be entitled to compensation. In these cases the judge found the claimant was owed a duty of care and that was breached. Those persons who are subject to Coroner's Courts post-mortems will not be given compensation.

Around two-thirds of the cases before the court involved hospital post-mortems.

Mortgages: Action for possession

The Northern Ireland Court Service has published statistics for writs and originating summonses issued in respect of mortgages in the Chancery Division of Northern Ireland High Court. The statistics cover both Northern Ireland Housing Executive and private (e.g. banks and building societies) mortgages and relate to both domestic and commercial properties.

During the fourth quarter of 2003, 535 writs and originating summonses were issued. The comparable figure for 2002 was 324.

Figures on mortgage possession actions are published on a quarterly basis. The publication date for the figures covering the first quarter of 2004 will be 28th April 2004.

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'The Terms they are a Changing' Issues Around Variation of Contract - Individual and Collective

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Date: Friday 30 April 2004

Time: 1pm (tea coffee and sandwiches from 12.30pm)

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Cost: Members £5, Non-members £10.

Attendance at this seminar will provide one hour's CPD entitlement

Booking forms and cheques, payable to The Employment Lawyers' Group (NI), should be sent to our Treasurer, Ms Orlagh O'Neill, Napier & Sons, Solicitors, 1-9 Castle Arcade, High Street, Belfast BT1 5DE.

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Running in memory of Annemarie

Belfast City Marathon, Monday 3rd May 2004



On 6th October last year our firm lost a very dear friend and colleague to breast cancer. Annemarie Ferguson was just 37 years of age. She started work with us in August 1984 at 17 shortly after leaving school and worked continually with us until she died. This year would have been her 20th anniversary. Annemarie's service to Francis Hanna & Co is testament in itself to her loyalty as a person. She was a very conscientious, hard working individual who everyone else in the practice looked up to and sought advice from. Such a tragic irony was it that someone so healthy throughout

her entire life, succumbed to such a dreadful illness at such a young age. Annemarie is survived by her husband Geordie and her two young children, Fionnuala (6 years) and Emmet (20 months). This year I and Paul McLaughlin BL have decided to run the Belfast City Marathon in memory of Annemarie and to raise funds for the ward on which she was treated at the Belfast City Hospital throughout her illness. We also have over 20 participants doing either the team relay or the fun run events. Specifically we are raising funds for Ward 4 South and in particular the patient comfort fund. This fund helps to provide better facilities for

patients in terms of equipment and pain relief etc. It also aims to provide better facilities on the ward for family members. We are hoping to raise as much money as we can to benefit people like Annemarie and their families on 4 South. I would ask you to consider making a contribution to this worthy cause. If you would like to make a donation, cheques should be made payable to 'Belfast City Hospital - Ward 4 South' and sent to me at Francis Hanna & Company, 75-77 May Street, Belfast, BT1 3JL.

Very many thanks for your support.
Martin Hanna
Francis Hanna & Company, Solicitors

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Administration of Estates (Small Payments) (Increase of Limit) Order (NI) 2004 SR 2004 No. 68

The Administration of Estates (Small Payments) Act (Northern Ireland) 1967 specifies a limit on the amount of property which is allowed, under certain statutory provisions, to be disposed of on death without the necessity for probate or other proof of title, or in pursuance of a nomination made by the deceased. That limit was increased to £5,000 by the Administration of Estates (Small Payments) (Increase of Limit) Order (Northern Ireland) 1985. The present Order, which revokes that Order, further increases the limit to £10,000. In doing so the Order also takes account of the repeal of certain statutory provisions in respect of which the limit was formerly specified.

By virtue of section 6(2) of the Administration of Estates (Small Payments) Act (Northern Ireland) 1967, this Order which comes into operation on 16th April 2004 applies in relation to deaths occurring, or nominations affected, after the expiration of a period of one month beginning with the date on which the Order comes into operation.

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Northern Ireland Court Service Notice Civil Practice Note No 7

Internet Publication of County Court Judges



1. Although written judgments in county court cases are published in the bulletin on the Court Service Intranet if the judge wishes, they have not been included on the Internet website which has hitherto only contained judgments of the superior courts. Arrangements are being made by Ms Radcliffe, the Court Service Librarian, to publish county court judgments on the Court Service Internet website. This will ensure that any judgment which a judge (whether a county court judge, a district judge, deputy county court or deputy district judge) wishes to make generally available will appear on the Court Service website, thereby making them more widely and readily available to the profession.

2. It is for the judge to decide in each case whether the judgment should be sent for publication in this way, and to arrange for this to be done. If a written judgment is handed down it is likely that it will eventually be cited to another judge in the future and therefore I would urge judges to consider sending copies of all written judgments to the Librarian. It is a simple matter to attach the text to an email to Ms Radcliffe.

3. Written judgments are frequently delivered in Children Order matters and this arrangement is not intended to change the present practice whereby such judgments are normally only made available to the parties. If such case raises a point of general interest and the judge feels that the judgment should appear on the website it is the judge's responsibility to ensure that the judgment is sent to the Librarian in anonymised form so that nothing in the judgment can lead to the identification of the child.

4. There are certain technical requirements that have to be met before judgments can be placed on the website and therefore any judge who wishes a judgment to be published should comply with the following when preparing the judgment.

(a) The judgment must be prepared in Word format suitable to be emailed to the Librarian. Ms Radcliff's email address is:
patriciaradcliffe@courtsni.gov.uk

and is to be found in the address book in the laptops supplied to all judges and district judges.

(b) Space should be left at the top of the first page so that the Library can add a table containing the neutral citation and date of delivery. This table is needed for web publishing in order to keep the information in the right place no matter what size the user's computer is.

(c) The date of delivery should always be included in or sent with the judgment.

(d) Each paragraph of the judgment should be consecutively numbered.

5. When county court judgments appear on the Court Service website they will have a Neutral Citation number in the same style as High Court judgments and this will be [200?] NICTy.

6. These arrangements will be drawn to the attention of chief clerks and the profession.

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Public Prosecution Service Pilot Scheme extended to Fermanagh & Tyrone

Further to the launch of the initial Pilot Project for the Public Prosecution Service in the South Belfast Policing District in December 2003, a second pilot scheme has now commenced in the County Court Division of Fermanagh & Tyrone effective from 1st April 2004.

Sir Alasdair Fraser, Director of Public Prosecutions, speaking at the Information Event for the Fermanagh & Tyrone Pilot to inform legal practitioners and other stakeholders in the area of the planned changes said "One of the most significant aspects of the substantial change that my Department is undergoing, as it transforms into the new Public Prosecution Service is the development of a network of regional offices, known as Chambers, across Northern Ireland.

The Criminal Justice Review recommended that these regional chambers must be responsible for the bulk of prosecutorial work in their respective areas.

There will be four regions across Northern Ireland. Each region will be headed by a regional prosecutor who has overall responsibility for the majority of cases in that region.

There will be five offices outside Belfast. It is proposed that these offices should be located in Lisburn, Newry, Omagh, Londonderry and Ballymena subject to the availability of suitable accommodation. Each of these offices will provide access to a full range of services e.g. for victims and witnesses. The development of

regional offices will make the new Public Prosecution Service increasingly accessible to the community."

Detailing the new arrangements for the Fermanagh and Tyrone pilot, the Director said: "Omagh Chambers will be the main office of the Public Prosecution Service in the region with approximately 60 staff based in the Chambers. These staff will include Public Prosecutors and administrative support staff. In addition to providing Public Prosecutors with appropriate facilities, the Omagh Chambers, like each of the new regional offices, will provide modern, well equipped and accessible facilities for victims and witnesses of crime with whom the prosecution service comes into contact."

Although the prosecution service currently has premises in Omagh, these premises are not a suitable size as the new service grows and moves forward. Therefore a major project is underway to identify and procure suitable accommodation in the area to house the local Chambers of the new Public Prosecution Service. Until the new office is available, the prosecution service will continue to use its existing premises in Omagh with support provided from Belfast.

The key changes which will result from the implementation of the new Public Prosecution Service include: -

- All prosecution decisions will be taken by Public Prosecutors including decisions as to an informed warning, caution or alternative options such as youth conferencing in conjunction with the new Youth Conferencing Service.
- It will be for the prosecutor to determine what charge is put before the court, not police as is the case currently.

- The new Public Prosecution Service will have a statutory obligation to provide prosecutorial advice to police at any stage of the investigative process.
- There will be enhanced liaison with police to increase the effectiveness and efficiency of the interface between the police and the Public Prosecution Service.
- Public Prosecutors will conduct the vast majority of prosecutions in the Magistrates Court, Youth Courts and County Courts. Police Inspectors will no longer conduct prosecutions in the Magistrates' and Youth Courts.
- The Director of Public Prosecutions will have a new relationship, based on consultation rather than superintendence, with the Attorney General for Northern Ireland and the Advocate General as defined in the Justice (NI) Act 2002.
- The new Public Prosecution Service will provide a range of enhanced services to victims and witnesses in conjunction with partner agencies such as Victim Support.
- The new Public Prosecution Service will publish an Annual Report, a Code of Practice and a Code of Ethics – these publications will help to explain to the community the prosecution processes and how the Public Prosecution Service is performing.

It is expected that the transition to the new Public Prosecution Service will be completed by December 2006 following a phased implementation.

Currently the Department of the Director for Public Prosecutions employs around 300 people and handles around 10,000 cases each year. It is anticipated that the new service will have a total staffing of approximately 580 and will handle around 75,000 cases every year.

NOTICE

RETIREMENT OF COUNTY COURT JUDGE



Judicial Services Division

The Lord Chancellor, Lord Falconer of Thoroton, has announced the retirement of His Honour Judge James Brady QC as a County Court Judge in Northern Ireland.

Lord Falconer has accepted Judge Brady's wish to retire as a County Court Judge with effect from 31 March 2004 following a period of illness.

Lord Falconer has expressed his gratitude to Judge Brady for his service as a County Court Judge since his appointment in June 1995.

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NOTICE

The Rules of the Supreme Court (NI) (Amendment) 2004 SR 2004 No. 108

These Rules which come into operation on 19th April 2004 amend the Rules of the Supreme Court (Northern Ireland) 1980 to provide that appeals in small claims arbitrations, under Article 30(4)(b) of the County Courts (Northern Ireland) Order 1980, to the Court of Appeal shall be by way of case stated and to revoke the existing provision prescribing the procedure for such appeals to the High Court.

The amendment is consequent upon the amendment to Article 30(4)(b) of the County Courts (Northern Ireland) Order 1980 by section 74 of the Justice (Northern Ireland) Act 2002.

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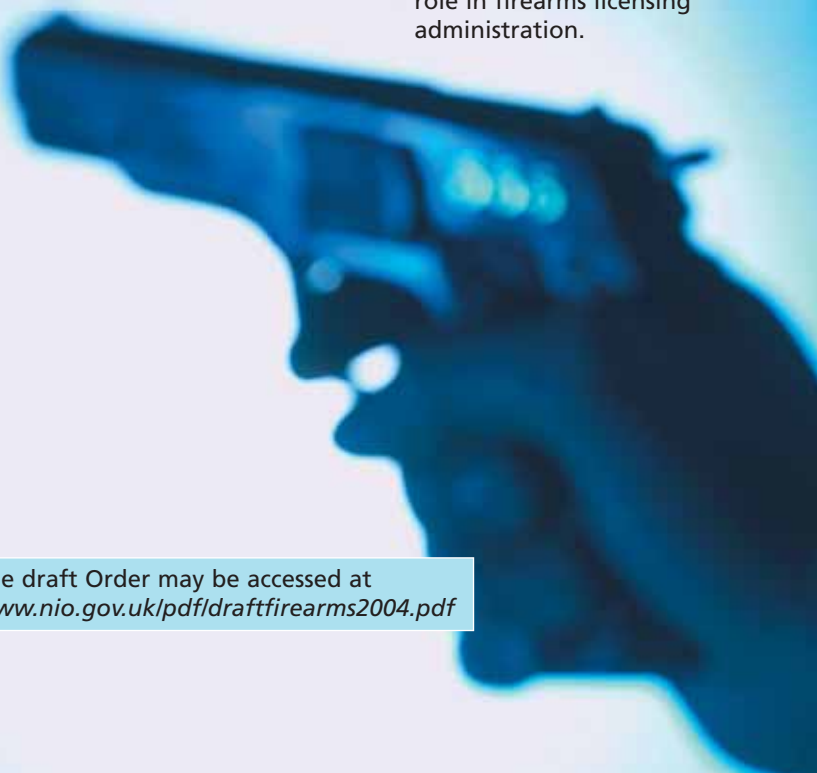
A Draft Firearms Order and an accompanying Explanatory Memorandum were laid in Parliament on 9th February 2004. The new Order provides the legislative framework for the control of firearms in Northern Ireland and will replace the Firearms (Northern Ireland) Order 1981.

The Draft Order was prepared following a detailed review of existing firearms legislation by the Northern Ireland Office during which the proposals were subjected to wide consultation. The Northern Ireland Affairs Committee at Westminster also examined the proposals as part of its Inquiry into firearms controls.

Much of the 1981 Order will be re-enacted, some with amendment. It will also include a number of new provisions which will improve public safety and lead to a simpler regulatory regime for the police and shooting enthusiasts. Some of the main changes include:-

- an extended firearm certificate from 3 to 5 years and replacement of the present system of renewals with a more rigorous one of ongoing grants;
- maintaining strict controls on air guns but de-certifying low powered air guns of one-joule muzzle energy or less and deactivated firearms;
- a period of supervised shooting for first time certificate holders and those existing certificate holders seeking to acquire a firearm of a significantly different type from one already held;
- provision for the borrowing of shotguns and estate rifles;
- provision for paintball guns to be used under controlled conditions;
- provision to enable firearms dealers to amend firearm certificates for those persons wishing to substitute one shotgun for another;
- provision for the PSNI's civilian support staff to play a greater role in firearms licensing administration.

The draft Order may be accessed at www.nio.gov.uk/pdf/draftfirearms2004.pdf



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Proposals for improving the Coroners Service in Northern Ireland

A consultation paper setting out organisational improvements to the Coroners Service in Northern Ireland has recently been published.

The Northern Ireland Court Service, which has responsibility for the service in Northern Ireland, is inviting comments on a range of administrative redesign proposals aimed at improving the service provided for bereaved families and other users of the service.

Comments are invited on the following areas:

- Creating a single Northern Ireland Coroners Jurisdiction;
- Revising the Judicial Structure by appointing a High Court Judge as head of the Coroner Service supported by three full-time coroners;
- Providing an improved service to the public;
- Establishing protocols with other agencies;
- Death investigation;
- Improving management information systems;
- Introducing a Coroners Service Inspectorate; and
- Planning future policy on the reform of the Coroners Service.

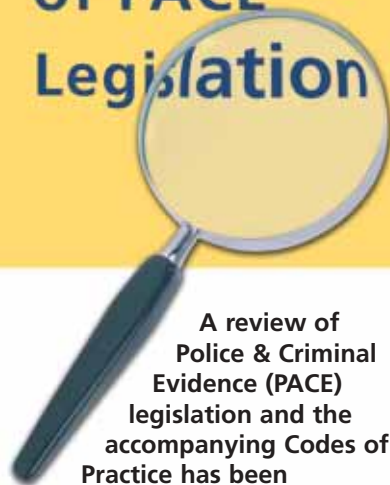
The proposals set out in the Consultation Document follow from: the Review of the Criminal Justice System in Northern Ireland which recommended an independent review into the law and practice of inquests in Northern Ireland and the review of Death Certification and Investigation in England, Wales and Northern Ireland led by Mr Tom Luce.

The consultation period will run until 30th April 2004.

Copies of the consultation document are available from the Court Service Information Centre (028 9041 2387) and the Court Service website www.courtsni.gov.uk.

Anyone interested in responding to the proposals should contact Kevin Delaney, Secretary to the Human Rights Committee.

Review of PACE Legislation



A review of Police & Criminal Evidence (PACE) legislation and the accompanying Codes of Practice has been announced by the Northern Ireland Office.

The Police & Criminal Evidence (Northern Ireland) Order 1989 currently provides the legislative framework for the operation of non-terrorist police powers in Northern Ireland.

The five associated Codes of Practice regulate the exercise of those powers by the police and provide safeguards to the public in the areas of stop and search; searches and seizure of property; detention, treatment and questioning of suspects; identification; and tape recording of interviews. The Codes were last revised in July 1996.

The planned review aims to consolidate into a single new PACE Order the many changes made to the 1989 legislation over the years, and it will also take account of recent developments in England & Wales flowing from their own fundamental review of PACE in 2002. It is anticipated that the current Northern Ireland Codes of Practice will be extensively revised as part of the review process.

A draft Police & Criminal Evidence (Northern Ireland) Order and associated Codes of Practice are likely to be issued for consultation in Autumn 2004, with the aim of them becoming operational by summer 2005.

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New measures to combat 'hate' crime

A draft Criminal Justice (NI) Order 2004 has recently been laid in Parliament. The key features of the proposals are:

"Hate crime"

- Where an offence involves hostility based on religion, race or sexual orientation, on conviction the Court must take this into account when sentencing.
- The Court's sentencing powers - mainly in relation to specified crimes of violence and which are often connected with "hate crime" - are also proposed for increase.

For example, offences of "grievous bodily harm", "assault occasioning actual bodily harm" and "putting someone in fear of violence" will increase from 5 to 7 years imprisonment; and criminal damage will increase from 10 to 14 years imprisonment. Common assault will have a maximum penalty of two years imprisonment, a fine, or both.

- Hostility based on actual or presumed race, religion or sexual orientation can be based both on hatred of a group or of an individual. The legislation will cover attacks on both people or property.

Road Traffic Offences

- Two offences will be created:
 - a) the offence of aggravated vehicle-taking (which would involve taking a vehicle without consent, which is then driven dangerously, or causes an accident which results in injury, damage to property, or damage to the vehicle) with a penalty of up to five years imprisonment, a fine, or both; and
 - b) the more serious offence of causing death or grievous bodily injury by the new offence of aggravated vehicle taking (the taking of a vehicle without consent, but which is then driven in a manner which causes an accident in which someone is killed or suffers grievous bodily harm). The maximum penalty for this offence will be up to 14 years imprisonment, a fine, or both.
- The proposals also increase the maximum penalty for dangerous driving from 2 to 5 years imprisonment.

A copy of the document may be accessed at www.nio.gov.uk/pdf/draft-hate2004.pdf.

Anyone interested in responding to the proposals should contact Peter O'Brien, Secretary to the Criminal Law Committee.

"HATE CRIMES"

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Victims and vulnerable intimidated witnesses

The Northern Ireland Office has recently published "Research and Statistical Series: No.10 - Victims' and Witnesses' Views on their Treatment in the Criminal Justice System".

The research was commissioned by the NIO to examine the views of victims and witnesses in Northern Ireland on their treatment by various criminal justice organisations (Director of Public Prosecutions, Police Service of Northern Ireland and Northern Ireland Court Service) and others who work within the criminal justice system, such as Victim Support, defence and prosecution barristers and judges.

The research highlights the following points:

- A key element of the research aimed to determine witnesses' satisfaction and confidence levels in the criminal justice system. Of the research sample 56 per cent of those interviewed were satisfied by their overall treatment and 42 per cent dissatisfied. However there were substantial differences in these ratings when individual agencies within the criminal justice system were examined with high satisfaction levels with Judges and VSNI Witness Services but high dissatisfaction with defence barristers.
- Confidence levels in relation to elements of the criminal justice system were also assessed. A high proportion of interviewees did not have confidence in the effectiveness of the criminal justice system in bringing people who commit crimes to justice. The majority was confident that defendant's rights are upheld and many witnesses expressed the view that the system is weighted far too heavily in favour of the defendant.
- Other key findings of the research highlighted additional concerns in relation to:
 - witnesses' sensitivities, privacy and protection;
 - perceptions of the adequacy of information received by witnesses;

- sources of case information and points of contact; and
- witnesses' experience of giving evidence.
- Consultations were carried out with organisations representing the Section 75 (of the Northern Ireland Act 1998) categories. These include people with disabilities and ethnic minority communities. Many of these organisations cited barriers to reporting crime to the police that were based on a fundamental lack of confidence that the action of reporting a crime will result in conviction or in a positive outcome for the victim (i.e. the injured party). Some particular support needs and concerns of these groups (e.g. access to facilities and specific information requirements) in relation to being a witness in a criminal trial were identified.
- The report outlines a series of recommendations based on the research findings. Some of these recommendations are overarching and apply across a number of organisations,

while a number highlight areas for further consideration by the various agencies involved in working with victims and witnesses: VSNI, PSNI, NICtS, DPP, barristers and the NIO.

This Report is available for downloading at www.nio.gov.uk/pdf/victims2004.pdf.



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Top law firm in Ireland wish to recruit recently qualified and experienced solicitors looking for a stimulating Commercial environment. Expertise in at least one of the following area's is essential; Property, Investment Funds, Banking and Insurance. Excellent remuneration packages are competitive and include a range of benefits such as relocation assistance & health insurance.

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DO THE MONEY LAUNDERING REGULATIONS APPLY TO ME?

By virtue of the Money Laundering Regulations 2003 (MLR) which came into operation on 1st March 2004, new anti-money laundering controls are now extended into most areas of a solicitor's practice.

As advised by letter dated 25th February 2004 from the President to all firms, all practitioners should urgently acquaint themselves with the following materials which are available for your assistance:-

1. "The Money Laundering Pack" issued by the Society to all firms in April 2003
2. "Avoiding Money Laundering" - seminar notes of presentation by Alison Matthews
3. "Money Laundering Guidance" issued by the Law Society of England & Wales and downloadable from www.lawsociety.org.uk

Over the next number of editions we intend to consider in a question and answer format some of the issues which arise for practitioners as a result of these new regulations.

Can the Society give any assistance regarding the categories of work where Money Laundering regulations will apply?

The MLR apply to persons who carry out 'relevant business' and are therefore within the 'regulated sector'. Regulation 2(2) defines relevant business as including the provision of legal services which involve participation in a financial or real property transaction (whether by assisting in the planning or execution of transactions or otherwise by acting for or on behalf of a client) and where solicitors are

forming, operating or managing a trust or companies. Full details of the scope of the Regulations together with Treasury guidance can be found in the materials listed above.

Accordingly solicitors are potentially at risk of carrying out money laundering on behalf of clients in many common areas of work. Great care therefore needs to be taken when accepting and following instructions particularly when these cover both the receipt and disbursement of client monies. Knowing your client and understanding their financial position is now even more important in terms of the Proceeds of Crime Act 2002. The following general comments may be helpful:-

(a) Conveyancing

In both purchase and sale property transactions, consideration needs to be given to the proper identification of clients and source of incoming funds. This is particularly important when a purchase of property is being contemplated. If funds are being received from the identified clients' own bank account, then no further checks on the funds are necessary.

Any changes to this arrangement, particularly when carried out without reasonable explanation and close to the settlement date require to be considered, particularly if funds are being introduced from a third party.

Purchasing a property in nominee name for the benefit of an undisclosed principal also requires to be considered carefully to ensure you have an official owner properly identified.

Ownership of heritable property and land is a very desirable target for money launderers. Setting up a number of unnecessary steps in creating final ownership or holding the title in a corporate vehicle is a popular device employed by money launderers.

The simple step of providing funds as a deposit for a substantial conveyancing transaction, then cancelling the purchase and seeking recovery of the funds to a third party's nominated account is another popular device to use the solicitor to achieve the money launderer's ends.

(b) Matrimonial and Family Work

The placing of funds in the name of a spouse or children is commonplace. First stage enquiry regarding such arrangements should always be made and a proper note of any explanation given should be included in the file.

(c) Administration of Estates

Unusual instructions from beneficiaries or legatees regarding the payment of funds to their order should be reviewed, particularly if the sums are in any way substantial.

(d) Investment Business

This is specifically caught under the Money Laundering Regulations and must always be handled with particular care.

(e) Trusts and Offshore Investment Vehicles

The creation of specialist trusts or other corporate structures sometimes in an offshore jurisdiction, in such a way as to obscure the true beneficial ownership of funds or assets is also a popular target for money launderers. Particular care should be taken in dealing with monies which are being placed offshore as part of a tax planning regime. Tax avoidance is legitimate but tax evasion constitutes a crime (and would fall foul of Money Laundering Regulations).

The Society advises practitioners to take a cautious approach when determining whether their firms

carry out relevant business. Firms that do not undertake relevant business – or who carry out a range of activities both inside and outside the regulated sector – may wish to consider applying the MLR across the entire range of services provided by the firm as a form of risk management. This should ensure consistency for clients and staff and help avoid the commission of the criminal offences under the Proceeds of Crime Act 2002

Why am I a target for money launderers?

Solicitors should always be conscious of the real benefits to money launderers of having funds passed through a solicitors' client bank account on the way to the next level since solicitors' funds are deemed to have been thoroughly vetted on receipt. Particular care should be paid to any last minute change of instructions, unusual or unnecessary arrangements or the use of third party names in connection with normal commercial arrangements.

How can I minimise these risks?

In all circumstances you should make a full note of your enquiry and answers in connection with:-

- (a) client identification and
- (b) source of funds

Remember this involves a two-stage check – of both clients and their money. You should also make a note of any concerns which you may have raised at the time and fully record the client's response. This record is important to you and may in fact become very significant at a later date in circumstances where investigations are being carried out under the Proceeds of Crime legislation.

What do I have to do under the Regulations?

It is vital that all firms ensure that their money laundering procedures are fully documented and that there is hard evidence that these procedures have been followed in every case. In the event of a firm being accused of money laundering, it is the hard evidence which will be subject to close scrutiny.

In next month's edition we will look therefore at the specific requirements imposed on solicitors by virtue of the MLR namely:-

- (1) identification procedures
- (2) record keeping procedures
- (3) training of staff
- (4) appointment of a Money Laundering Reporting Officer

NOTE: The Society's Monitoring Officers are unable to deal with any money laundering queries which practitioners may have. These should be directed by the firm's Money Laundering Reporting Officer (MLRO) to Peter O'Brien at Law Society House who can provide general advice on the law. However practitioners should recognise that the Society or its officers cannot reach decisions as to whether a report should be made to NCIS - this must be a matter for each MLRO.

REPORTS TO NICS

The National Criminal Intelligence Service (NCIS) has prepared new reporting forms and guidance necessary for a suspicious activity report concerning money laundering under the Proceeds of Crime Act 2002. This can be downloaded from www.ncis.gov.uk

NEWS FROM IPLS

The second Commercial Conveyancing Course successfully concluded on Monday, 22nd March 2004. A total of 25 solicitors participated in the course which ran for 7 evenings.

The course included topics such as Agreements for Lease, Building Contracts, Rent Review and Business Tenancies.

The participants thoroughly enjoyed the course and appreciated the practical insights the speakers brought to the topics.



Participants in the 2nd Commercial Conveyancing Course.



Contributors to the course included Ian Huddleston, Gordon Mawhinney, Alan Reilly and Rosemary Carson.

It is hoped to repeat the course next year.

SOLICITORS' ACCOUNTS REGULATIONS 1998

Designated Cash Room Partner

Note: This Practice Direction is issued by the Professional Ethics and Guidance Committee pursuant to the Solicitors' Accounts Regulations 1998 with effect from 1 April 2004 as approved by the Society's Council on 25th February 2004.

The Committee considers that it is best practice for each firm, where there are two or more partners, to appoint a specific partner within that firm to act in the role of **Designated Cash Room Partner** and to assume particular responsibility for financial matters within the practice.

Compliance with Accounts Regulations

The Designated Cash Room Partner will be specifically responsible for the operational aspects of securing compliance with the Solicitors' Accounts Regulations as laid down from time to time by the Law Society of Northern Ireland.

This is notwithstanding the concept of the joint and several liability of the partners and in no way dilutes the overall responsibility of each partner within a practice to ensure that the firm complies with the above Regulations.

Client Accounts

The Designated Cash Room Partner will also have overall responsibility for ensuring that accurate Client records are maintained. The role will include supervision of accounts staff and review of such management and financial information as is necessary to enable the partners to monitor the Client income and expenditure by the firm.

Control of Receipt of Funds

The Designated Cash Room Partner will be responsible for ensuring that all cheques, banker's drafts and cash received by the firm must, where appropriate, be presented to the firm's bank for immediate lodgement into the appropriate account.

Control of Payment of Funds

Cheques, banker's drafts, direct transfers and petty cash should be authorised by at least one partner within the firm and should be issued

only after verifying on each occasion that there are adequate cleared funds in the appropriate account before issuing the cheque. Care should be taken over the different periods of clearance, which apply to the differing methods of transferring funds. Although funds which are transferred by telegraphic transfer or CHAPS are cleared upon the date of receipt, even when such transfers are initiated in the morning before 11.00 am the bank is unlikely to be in a position to confirm receipt of funds until after bank closing time on that day and therefore it is advisable to request that the transfer instructions are given the day before the funds are actually required.

Bank Accounts

The Designated Cash Room Partner will be expected to ensure that an up to date record of all bank accounts held in the name of the firm is maintained and may be requested to produce current bank statements confirming the balances held in each account during the monitoring visits carried out by the Society. This will apply to Client designated deposit accounts as well as to general Client current, deposit and business reserve accounts. Statements should be specifically requested from the bank at quarterly intervals rather than awaiting the six monthly or annual interest statements provided in some cases. Where the funds are recorded by way of bank passbooks these should be regularly updated for interest purposes and the information provided to the accounts department or bookkeeper within the firm to ensure that Client records accurately reflect all the transactions on such accounts, including interest.

Compliance with the Financial Services Act

The Designated Cash Room Partner will also be responsible for ensuring compliance with the Financial Services Act and for maintaining the Central Register recording all investment activity, referrals and commission received by the firm.

Liaison with the Law Society of Northern Ireland

The Committee will expect the Designated Cash Room Partner to

become the acknowledged first point of contact between the Society's accountants and each practice and to be in a position to address any matters arising pursuant to the monitoring inspection. Should the Society have any reason to require confirmation of the amount of Client monies held by the firm at any given date then it will be the responsibility of the Designated Cash Room Partner to provide whatever documentary evidence should be requested by the Society.

Rotation of the role of Designated Cash Room Partner

It is anticipated that the role of the Designated Cash Room Partner should be rotated among the partners within a firm although this requirement will be constrained by the number of partners within the firm.

Identification of the Designated Cash Room Partner

From 1 April 2004, the members of our monitoring teams will be asking firms to identify the Designated Cash Room Partner prior to their inspection visit and will be recording the name of the person identified. In the case of a sole practitioner the name of the principal of the firm will be recorded.

ADVANCE NOTICE

PROCEDURAL CHANGE: CIVIL & FEE PROCESSES

Presentations will be held in early May to inform members of the legal profession of administrative changes to the civil and fee processes within both the High Court & Belfast County Court.

These changes are as a result of the opportunities provided by the introduction of Northern Ireland Court Services' Integrated Court Operations System (ICOS). The rollout program commenced in Newry in January and will conclude with Belfast in July.

Key changes include the automatic generation of county court decrees, the introduction of pre-paid accounts and the availability of on-line services.

Detailed information on the dates & venues for the presentations will be available soon.

High Court,

Court of Appeal and Tribunal Decisions

A list of abstracted decisions is now included with the current awareness circular of recent journal articles which accompanies The Writ as an insert.

BARKLEY, COLIN JOHN V JOHN NELSON BELL WHITESIDE

Summons seeking discovery of documents. - legal professional privilege. - sale of business where parties were in partnership. - plaintiff alleges he only subsequently realised the total sale price of the partnership and should have received one third of that sum in accordance with his one third share in the partnership. - solicitors should not have acted on behalf of applicant and plaintiff as both were parties in the partnership and had been retained jointly for the purpose of completing the sale transaction on their behalf. - HELD that as joint retainers their respective claims to legal professional privilege was waived and order for discovery made
QUEENS BENCH DIVISION
3 MARCH 2004
COGHLIN J

BEACOM, ROBERT V ACTION MENTAL HEALTH

Appeal by way of case stated from a decision of a Fair Employment Tribunal whereby it held that, although the applicant was not in the employment of the respondent, the respondent had provided services to the applicant which came within art 24(1) of the Fair Employment and Treatment (Northern Ireland) Order 1998. - whether services provided were in connection with training applicant for employment. - whether applicant was still undergoing training when complaints of disability discrimination, religious discrimination and victimisation arose. - HELD in the affirmative and appeal dismissed
COURT OF APPEAL
2 MARCH 2004
KERR LCJ

BURKE, LEANNE COLETTE MARY V SOUTHERN EDUCATION AND LIBRARY BOARD AND N K FENCING

Damages for personal injuries, loss and damage. - applicant injured while

climbing fence on school grounds. - negligence and breach of statutory duty of care under Occupiers' Liability (NI) Order 1987 and 1957. - whether access should have been prevented by defendant with notice that no through route existed. - whether foreseeable that persons would attempt to climb fence and that children would be less careful than adults. - HELD that plaintiff had not established that first defendant breached duty of care to visitors or negligence in construction of gate. - judgment awarded for defendants
QUEENS BENCH DIVISION
3 MARCH 2004
HIGGINS J

IN THE MATTER OF AN APPLICATION BY JOHN KENNETH DORAN AND SAMUEL WILLIAM SELWYN DORAN AND IN THE MATTER OF AN APPLICATION BY JOHN MARTIN DOHERTY AND IN THE MATTER OF THE PROCEEDS OF CRIME (NI) ORDER 1996

Confiscation scheme under the Proceeds of Crime (Northern Ireland) Order 1996. - whether compensation provisions where defendant not convicted are inadequate and result in a statutory scheme that interferes disproportionately with defendant's property. - whether art. 23 Proceeds of Crime Order 1996 is compatible with art 1 protocol 1 of ECHR on protection of property. - whether effective compensation to innocent defendant. - HELD that a fair balance is struck between public interest and private interests of defendants and that art. 23 of 1996 Order is not incompatible with ECHR
QUEENS BENCH DIVISION
5 MARCH 2004
WEATHERUP J

IN THE MATTER OF AN APPLICATION BY NEIL WHITE FOR JUDICIAL REVIEW

Application for judicial review of a decision of Governor of HMP Magheraberry. - adjudication of applicant for offence against prison discipline by intentionally or recklessly setting fire to or destroying or

damaging prison property. - whether issue of duress adequately dealt with at investigation stage. - refusal of legal representation. - whether breach of art. 6 ECHR. - HELD that Governor did not proceed on basis that he was satisfied beyond reasonable doubt that applicant not subject to duress. - adjudication quashed
QUEENS BENCH DIVISION
12 MARCH 2004
WEATHERUP J

R v GALLAGHER, WILLIAM DESMOND

Appeal against sentence of life imprisonment on charge of robbery. - whether offence was of sufficient seriousness to take into account previous convictions or failure to respond to previous sentences under art. 37 Criminal Justice (Northern Ireland) Order 1996. - whether life sentence should be imposed solely because it was considered the offender is likely to re-offend on release. - HELD that sentence of life imprisonment cannot stand but should be replaced with determinate sentence of nine years imprisonment
COURT OF APPEAL
12 MARCH 2004
KERR LCJ

R V HAGANS, ANTHONY MARTIN

Application for leave to appeal murder conviction. - conflict of evidence and reasonable doubt. - whether this was identification case and judge ought to have given Turnbull warning. - whether trial was prejudiced when juror discharged. - HELD that conviction safe on the weight of evidence available and that no other grounds advanced on behalf of applicant have been made out. - conviction safe and leave to appeal dismissed
COURT OF APPEAL
5 MARCH 2004

TRIBUNAL DECISIONS

BYRNE, MICHAEL JAMES V WINE INNS AND FIONAGH PROPERTIES LTD INDUSTRIAL TRIBUNAL, 3 FEBRUARY 2004, 1208/01IT

Applicant claimed breach of contract and unfair dismissal. - Respondent claimed the applicant resigned voluntarily. - Applicant raised the issue of payment for overtime as he worked in excess of 48 hours per week as provided for in Working Time Regulations 1998. - There was a conflict of evidence as to whether the Applicant had signed a contract of employment. - Tribunal did not accept that the applicant had resigned. - The applicant was unfairly dismissed and entitled to one week's pay in lieu of notice and to payment for two statutory holidays worked.

**CHAPMAN, ROWLAND V QUINN
CONCRETE LIMITED AND FELIX JOHN
ROGERS
FAIR EMPLOYMENT TRIBUNAL, 22
JANUARY 2004, 489/01FET**

Unlawful discrimination on the grounds of religious belief and political opinion. - applicant alleged he had been unfairly dismissed. - tribunal decided that even allowing for the change in burden of proof in Art 38A of the Fair Employment and Treatment (NI) Order 1998 as amended the applicant had not been subjected to religious and political discrimination nor had he been unfairly dismissed. - the applicant was ordered to pay costs of £1000 to the respondents.

**CONNOLLY, MICHAEL V EQUALITY
COMMISSION FOR NORTHERN
IRELAND
FAIR EMPLOYMENT TRIBUNAL, 31/01,
20 JANUARY 2004**

Unlawful discrimination on the grounds of religious belief, race or political opinion. - Whether applicant had been subjected to less favourable treatment. - whether subjected to harassment, intimidation or bullying. - whether allegations speculative or unsupported. - tribunal decided that the applicant did not receive less favourable treatment on the grounds of religion, political opinion or racial grounds, and was not subjected to harassment or intimidation. - complaint dismissed and Tribunal ordered that applicant pay £350 costs to respondent

**GORDON, TERESA V SEAN'OHARE,
CAROLINE NELSON, MARTIN O'HARE,
KATRIONA O'HARE T/A O'HARE & CO
INDUSTRIAL TRIBUNAL, 18 DECEMBER
2003, 3403/01IT**

Redundancy payment. - dissolution of partnership following which applicant "made herself unemployed". - transfer of undertaking in place under which the applicant could have objected and that applicant could have claimed continuity of employment. - tribunal held that termination of employment did not fall within the constitution of redundancy under art. 174 Employment Rights Order. - application dismissed

**MAYNE, CARLA ELEANOR V
DEVENISH NUTRITION
INDUSTRIAL TRIBUNAL, 10
FEBRUARY 2004, 2447/02**

Applicant claimed unfair dismissal. - Applicant had used the respondent's name and account for personal use without respondent's consent or permission. - Respondent accepted that applicant had not stolen from the company or attempted to defraud the company but asserted the applicant was fairly dismissed for gross misconduct. - Respondent believed to have carried out a reasonable disciplinary hearing. - Tribunal decided hearing was defective as dismissal in this instance was contrary to respondent's disciplinary policy and that the dismissal was unfair. - Tribunal decided applicant contributed to her dismissal which it measured at 60% and awarded compensation of £1553.28.

**QUINN, MARGARITA, DEREK
TORRENS AND MELMOUNT FOODS
(2000) LTD
INDUSTRIAL TRIBUNAL, 1526/02, 19
JANUARY 2004**

Applicant was unlawfully discriminated against on grounds of her sex and race in the course of her employment and upon termination. - Applicant absent from work during probationary period and failed to contact respondents to give reason. - Respondent assumed she had found alternative employment. - Applicant claimed sexual and racial discrimination. - Applicant represented herself. - Tribunal found the applicant's complaints unfounded and dismissed the case in its entirety. - Applicant ordered to pay costs of £100 to the respondents.

Missing Wills

**Re: Robert Edgar Hammond
(deceased)**

Late of: 75 Deramore Drive,
Portadown, County Armagh
Born: 15th June 1926
Died: 15th February 2004
Would any person having
knowledge of the whereabouts of a
Will for the above-named deceased,
please contact:
McElhone & Co
Solicitors
1b High Street
Portadown
County Armagh
BT62 1HZ
Tel: 028 3835 0464
Fax: 028 3835 1119
Email: info@mcelhone-solicitors.com
Ref: CMcE/BAS/W164

**Re: John Wilkinson
(Deceased)**

Late of: 9 Harland Park, Belfast
Born: 1st January 1924
Died: 27th February 2004
Would any person having
knowledge of the whereabouts of a
Will for the above-named deceased,
please contact:
Philip Crossley
Solicitors
19 Cregagh Road
BELFAST
BT6 8PX
Tel: 028 9045 6042
Ref: 4/66/CM

Re: Lucy Macdonald deceased

Late of 3 Beechwood Grove, Lisburn,
Co Antrim
Date of death: December 2003
Would any person having
knowledge of the whereabouts of
any Will of the above named
deceased please contact:-
PO Box Number 130
c/o Citigate Northern Ireland Public
Affairs Ltd
128a High Street
Holywood
Co Down
BT18 9HW

Re: Patricia Rose Campbell (deceased)

Late of: 5 Massereene Gardens,
Antrim, County Antrim
Died: 14th February 2004
Would any person having knowledge
of the whereabouts of a Will for the
above-named deceased, please
contact:
Holmes & Swann
Solicitors
Trustee House
16 High Street
Antrim
County Antrim
BT41 4AN
Tel: 028 9442 9112
Fax: 028 9446 3063

Missing Land Certificates

Folio: 33071

County: *Down*
Registered Limited Owner: *Samuel Alexander Moore*
Take notice that any person having
custody of or information as to the
whereabouts of the Land Certificate
relating to the above mentioned
Folio shall forthwith produce said
Certificate or communicate such
information to the undermentioned
solicitors.
And further take 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.
L'Estrange & Brett
Solicitors
Arnett House
12/16 Bridge Street
BELFAST
BT1 1LS

Folio: 11764

County: *Antrim*
Registered Owner: *John Watt*
Lands of: *Scotchomerbane,
Kilconway*
Take notice that any person having
custody of or information as to the
whereabouts of the Land Certificate
relating to the above mentioned
Folio shall forthwith produce said
Certificate or communicate such
information to the undermentioned
solicitors.

And further take 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.
McCartan Turkington Breen
Solicitors
Chancery House
88 Victoria Street
BELFAST
BT1 3GN

Folio: 6992L

County: *Antrim*
Registered Owner: *Neil Gibson*
Lands at: *5-7 Ligoneil Road, Belfast*
Take notice that any person having
custody of or information as to the
whereabouts of the Land Certificate
relating to the above mentioned
Folio shall forthwith produce said
Certificate or communicate such
information to the undermentioned
solicitors.
And further take 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.
Magennis & Creighton
Solicitors
572 Shore Road
Newtownabbey
Co Antrim
BT37 0SL

Missing Title Deeds

Thomas Henry Smith deceased

Late of 30 North Bank, Cregagh,
Belfast BT6 0DX
Would any solicitor having any
knowledge of the whereabouts of
title deeds of the above property,
please contact:-
Mrs Adrienne Sheehan
Keenan Solicitors
54 Knockbreda Road
BELFAST
BT6 0JB
Tel: 028 9049 3349
Fax: 028 9049 3500

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Ballymoney
County Antrim
BT53 6HS

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Ref 02/04 - 2-3yrs+ PQE. This position offers the opportunity to become a key member of the corporate team concentrating primarily on JVs, M&A and disposals. Candidates will be required to demonstrate general experience of corporate and M&A work together with a proven record of business development.

Ref 04/04 - 1yr+ PQE. Corporate experience for this position is preferable but not essential. Candidates will be able to demonstrate good general experience, be a team player and have the ability to work under pressure to meet deadlines.

For an application form please contact:
The Finance Director
Tughans
Marlborough house
30 Victoria Street
Belfast BT1 3GS
Tel: 028 9055 3300,
Fax: 028 9055 0096

The closing date for receipt of completed application forms is 7 May 2004.

*Copy deadline for April
Wednesday 28th April 2004*

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PO Box Number 131
c/o Citigate Northern Ireland Public Affairs Ltd
128a High Street
Holywood
Co Down BT18 9HW

Change of Address

Tara Walsh LLB Solicitors

5/6 Sandy Street, Newry
County Down BT34 1EN

Tel: 028 3025 0920

Fax: 028 3025 0484

Please note as and from 15 March 2004 our new address shall be as above. However, our telephone and fax number shall remain the same.

To advertise in the Writ

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

Citigate NI Public Affairs Ltd
128a High Street
Holywood
BT18 9HW

Tel: 028 9042 8899

Fax: 028 9042 8877

Email: karen.irwin@citigateni.co.uk



Library Update

Recommended Reading - Fixed term & Part-time Workers

Legislation

Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002/298
<http://www.northernireland-legislation.hms.gov.uk/sr/sr2002/20020298.htm>

Part-Time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2001/319
<http://www.northernireland-legislation.hms.gov.uk/sr/sr2001/20010319.htm>

Part-time Workers (Prevention of Less Favourable Treatment) (Amendment) Regulations (Northern Ireland) 2002/286
<http://www.northernireland-legislation.hms.gov.uk/sr/sr2002/20020286.htm>
Also available on Libero via www.lawsoc-ni.org

European Council Directive on Fixed-Term Work 1999/70/EC
http://europa.eu.int/eurlex/en/search/search_lif.html

Articles

Management myths (covers the rights of casual workers, workers employed under fixed term contracts and agency workers)
Smith: 2003 NLJ 153(7107), 1819-1822

The matrix revisited – agency workers and employment status
Christie: 2003 Emp. L B 56(Aug) 7-8

A lasting dilemma (explores the status of temporary workers with the introduction of the Regulations)
Rees: 2003 Emp. L J 42(Jul/Aug) Supp (Employment & human resources 2003) 16-18

Caselaw

Dacas v Brook Street Bureau (UK) Ltd (discusses whether an agency worker was an employee of the agency despite the existence of a written agreement that it was not a contract of employment)
2003 IRLR 190

Frank v Reuters (discusses whether an agency worker who had worked for the organization for five years had an implied employment contract and was thus unfairly dismissed)
2003 IRLR 423

Textbooks in the library

Macdonald, L: Managing fixed-term and part-time workers; a practical guide to employing temporary and part-time staff. London, Butterworths 2002.

We also have an extensive selection of employment law books available for reference in the library.

New Books in the Library

1. Grattan and Kessler: Drafting trusts and will trusts in Northern Ireland. Butterworths. 2004.
2. Van-Duzer: Jordans company secretarial precedents. 3rd ed. Jordans. 2004.
3. Power: Intangible property rights in Ireland. Butterworths. 2003.
4. Cadman: Shareholders' agreements. 4th ed. Sweet & Maxwell. 2004
5. Lewison: The interpretation of contracts. 3rd ed. Sweet & Maxwell. 2004
6. Morgan and Boardman: Data protection strategy: implementing data protection compliance. Sweet & Maxwell. 2003.

Law Society Library Email:

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BOOK REVIEW

'Drafting Trusts and Will Trusts in Northern Ireland'
by James Kessler QC and
Sheena Grattan
Lexis Nexis 2004. 547 pp +
CD Rom. Price £125

Sheena Grattan has become almost a one woman industry in producing practical books for practitioners in Northern Ireland in the field of administration and trust law. Her book "Succession Law in Northern Ireland" is now a standard reference book and more recently she has produced a very helpful commentary on the Trustee Act (Northern Ireland) 2001. She has a real understanding (unfortunately not always shared by those now writing on legal matters in Northern Ireland) of what is useful to the legal practitioner in the real world.

Her latest book is a joint production with James Kessler QC, and as stated in the preface "is essentially the sixth edition of James Kessler's *Drafting Trusts and Will Trusts* adapted in its entirety to take account of Northern Ireland law (although the opportunity has been taken where appropriate to include revisions which will appear in the next edition of the English version). The most important differences between the two jurisdictions relate to the accumulation period (permitting much greater brevity and simplicity in Northern Ireland) and the treatment of trusts of land (where the law in Northern Ireland is long overdue reform) but there are many other differences which can be significant in practice".

James Kessler's book has long been admired by practitioners in the field of trusts and wills. The writer has used some of his precedents, (with adaptation for Northern Ireland) but always with a certain amount of trepidation, given some of the important differences between the two jurisdictions. Invariably questions arose: Have I got the accumulation period right? Do I need a trust for sale? Are the administrative powers usually given to trustees in England adequate in

Northern Ireland? All such doubts, and many others, are here resolved and the Northern Ireland practitioner can use the precedents with confidence, while always bearing in mind the authors' warning that:

"although this book contains many precedents, we hope to persuade the reader to regard standard drafts with an independent eye; as a suggestion and not a solution. The solicitor does not serve his client well if he produces to him for execution any standard draft without consideration of individual circumstances".

The text commences with chapters on the first principles of trust law and drafting James Kessler has always been a proponent of plain English in legal documents and both the text and the precedents follow this principle admirably. The days should long be over when lawyers delighted in the length and obscurity of their documents and this is not merely a matter of stylistic preference. To quote the authors again:

"dense and obscure drafting carries a heavier price than may be realised. The more complex a draft, the more professional time must be spent studying it in order to ascertain the meaning, and the greater the chance of error escaping observation".

Sadly, the aim of simplicity of style and concept has still not been embraced universally in Northern Ireland. One of my colleague recently showed me a draft lease of a shop in a shopping centre which ran to well over 100 pages (every word of which the lessee's solicitor has to read and consider carefully) and which could not be followed at all without continually turning back and forth to different parts of the document. Such "kitchen sink" drafting is something of which no-one should be proud.

Subsequent chapters of the book cover questions relating to beneficiaries, trustees, trustees' powers, trust property, the rule against perpetuities, the general provisions of a trust and some of the more complex questions which arise in drafting trust documents. There are also chapters relating to all the different types of trust which are most likely to be encountered by practitioners, including accumulation and maintenance trusts, discretionary trusts, interest in possession trusts and – notably – will trusts. More clients these days are likely to require well drafted will trusts than lifetime settlements, and it is extremely helpful that both

the text and the precedents give them prominence.

More specialised types of trust are also covered in some detail, including trusts of life insurance policies, trusts of death benefits, charitable trusts, trusts of damages and trusts for disabled beneficiaries. There is also a helpful chapter on stamp duty which takes into account the recent introduction of stamp duty land tax. The complexity of the rules relating to the residual stamp duty applying to trust documents is out of all proportion to the amounts involved (usually either £5 or nil) and one can only concur with the authors when they say at the end of the chapter that "all readers who have followed the text to this point will agree that these rules should be reviewed and (apart for the SDLT self certificate) abolished".

The book concludes with many helpful precedents of both lifetime trusts and will trusts. As already indicated, they are notable for their clarity of style and concept. They incorporate, where appropriate, the standard provisions of the Society of Trust and Estate Practitioners (Northern Ireland version) which enables the draftsman to avoid, *inter alia*, setting out most of the usual administrative powers in full. When the book went to press it carried the warning that the STEP standard provisions for Northern Ireland had not yet been approved for use by the Society, but that approval has now been given, so that the practitioner may incorporate the standard provisions with equanimity. Better still, the book is accompanied by a CD Rom which includes all the precedents in the book and also the standard STEP provisions. It also takes into account the provisions of the Trustee Act (Northern Ireland) 2001.

I have no hesitation in saying that any practitioner who is likely ever to have to draft either a lifetime trust or a will trust should immediately invest in a copy of this book. Larger offices should have multiple copies, for they are certain to be in constant use and your colleagues will guard their copies jealously. This is likely to be a standard text in Northern Ireland for years to come and we should all be extremely grateful to James Kessler and Sheena Grattan for their outstanding contribution to the literature on the topic in Northern Ireland.

Alan Hewitt
L'Estrange & Brett



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