

Continued from page 1...

meet the needs of staff and all those who will have occasion to go to the Commission's premises.

The Legal Aid Department is scheduled to move to the Waterfront Plaza in early autumn, before the Commission is formally established. Work is in hand to ensure that all users and providers of publicly funded legal services receive timely notification of the move to the new accommodation.

Legal Aid Reform Implementation Plan

For a transitional period the Commission will continue to administer the existing legal aid scheme. There will of course be a rolling programme of reform flowing from the new legislation. A Draft Implementation Plan⁵ has been published setting out initial thoughts on the timetable for that reform programme. Ministers have stressed that this is very much a Draft Plan as it would be wrong in practice and principle to impose such a Plan on the new Commission. When the Commission is established they will wish to consider the Draft Plan and in due course publish their own Implementation Plan, which they will agree with Ministers. Further reform will be supported by research, which may include pilot schemes.

Further Updates

As we move towards the establishment of the Commission in November 2003, there will be further updates issued to ensure that the users and providers of publicly funded legal services are kept informed.

In due course a press notice will announce the appointment of the Chair and Chief Executive and Members of the Commission and information will be disseminated on the move to Waterfront Plaza.

NORTHERN IRELAND COURT SERVICE JUNE 2003

¹SI 2003 No 435 (NI10)

²Previous issues of the Legal Services Commission Newsletter can be viewed on the Legal Services Commission website: [www.legalservicescommission.ni]

³The Consultation Paper can be viewed on the Legal Services Commission website

⁴2nd Floor, The Waterfront Plaza, 8 Laganbank Road, Belfast

⁵The Draft Implementation Plan can be viewed on the Legal Services Commission website

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Notice of AGM/ Nominations for NIYSA Committee 2003-2004

Please note that the Annual General Meeting of the NIYSA will take place on Thursday 31st July 2003 at 5.30pm at Law Society House.

The deadline for nominations is Thursday 24th July 2003 and any such nominations should be sent to:-

Barbara Johnston
Secretary, NIYSA
Hewitt & Gilpin Solicitors
14-16 James Street South
Belfast

NOTE: All solicitors under the age of 36 are members of the NIYSA and are eligible to nominate committee members, stand as committee members and attend the AGM.



STOP PRESS: Date for Diary

**Four Jurisdictions Family
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Details to follow in the September
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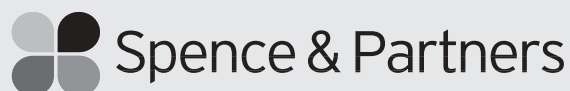
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BELFAST SOLICITORS



ASSOCIATION

BSA Golf Outing

Malone Golf Club
Thursday 15th May 2003

Once again on 15 May last a large contingent of Belfast Solicitors and guests descended upon Malone Golf Club for the Association's Annual Outing.

Despite the atrocious weather throughout May the "Golfing Gods" took pity on the assembled masses and very kindly delivered a dry, albeit, somewhat windy afternoon.

As usual, the course and the hospitality at Malone were excellent and once again owe a debt of gratitude to GMA Management Consultants and SGS Yarsley ICS Limited for their very generous combined sponsorship of the outing with Gary Millar of GMA and Mary Norton of SGS Yarsley joining us for the whole day and for the meal/prize giving respectively. Rumour has it that Gary is trying to convince Lexcel



Ernie Telford trying desperately to smile having been pipped at the post by Lester Doake for the Members prize!

that a new condition of accreditation should be one afternoon's golf a week!!

The Members' Trophy was won this year by Lester Doake who was obviously spurred on by his newly appointed Coach, the recently retired and therefore even more relaxed than normal, Peter Welsh.

For the record the full list of this years prize winners was as below:-

Once again many thanks to all who

took part making the event as successful as usual and we hope to be back at Malone next year with the provisional date for your diary presently being Thursday 20th May 2004.



Who needs David Leadbetter when you have Mr Welsh – Lester Doake receiving the Trophy from the Chairman Peter Campbell in the company of Gary Millar and Mary Norton.



Orla Mallon feels "the strong arm of the law" on the First Tee!



Chris Ross and guests before their round – we wonder did Chris look this happy once he had finished!

Members	Winner	Lester Doake
	Runner-Up	Ernie Telford
	Third	Sean Robb
Members Special	Winner	Peter Campbell
Ladies	Winner	Orla Mallon
Visitors	Winner	Robert Hamilton
	Runner-Up	Brian Campbell
Closest to the Pin		John Kinney
Longest Drive		John Gibbons

Belfast Solicitors' Association

PRACTICE MANAGEMENT AND CLIENT CARE HALF DAY SEMINAR

At the Wellington Park Hotel
on 27 September 2003

9.00 am - 9.30 am	Registration and coffee
9.30 am - 10.10 am	Risk Management in Legal Practice By Donald Eakin of Macaulay & Ritchie Solicitors
10.10 am -10.45 am	Money Laundering Legislation and its impact on the Legal Profession By John Rae of DPP
10.45 am -11.00 am	Coffee
11.00 am -11.45 am	Benefit of ISO/Lexcel to Legal Practice By Mary Norton of SGS Yarsley ICS Ltd
11.45 am -12.30 am	Pitfalls in Legal Practice – Complaints Against Solicitors By Moira Neeson of Law Society of Northern Ireland

The cost is £60.00 for BSA members
Or £90.00 for others.

Attendance at this lecture will qualify for three hours CPD

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2/3rds costs or 1/3rd costs?

We are concerned that a number of our members have been asked by some insurers to accept 1/3rd County Court scale costs, rather than the current agreed fee of 2/3rds of the scale, in respect of pre-action settlements.

The BSA have received no notification from insurers that they are withdrawing from this agreement, which has been in existence for over 20 years.

If insurers insist on breaching this agreement, our members will be left with no option but to simply issue proceedings.

As a reminder to our members, the BSA Guide to County Court Costs has been reproduced below :-

Costs in County Court before proceedings issued

(a) It is recommended by the BSA Committee that in cases where settlement is **below £5000** the professional fee should be at least **2/3rds** of the present scale. There are cases where extra work has to be done or negotiations are protracted and in those cases higher fees are being paid and should be negotiated. It is understood by the Committee that it is not unusual to negotiate 75% costs for settlements in this range.

(b) Where settlement is **£5000 or over** the BSA Committee still recommends the professional fee to be at least **75%** of the scale. This is confirmation of the position in existence since 1993.

Costs in the County Court after proceedings are issued

(a) It is recommended that the fee should be at least 75% of the scale in all cases and depending on the circumstances, higher fees should be negotiated. Fees of up to 100% prior to service of the Certificate of Readiness are common.

(b) After delivery of the Certificate of Readiness, the professional fee should be 100% of the scale. If the Court fixes the date of trial at a Review this fee should also apply.

BSA On-Line

The BSA website can be found at:

www.belfast-solicitors-association.org

EMPLOYMENT LAWYERS' GROUP (NI)

Sec. John O'Neill, Thompsons McClure Solicitors, 171 Victoria Street, Belfast

Chairperson Adam Brett

E-mail: JohnO'Neill@thompsons.Law.co.uk

Hon. Treasurer Orlagh O'Neill

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

Lunchtime Seminar

Employment Lawyers' Group (NI), in association with the Institute of Employment Rights, is pleased to present a talk:

'Tribunal justice: working for reform'

Speaker: His Honour Judge Jeremy McMullen QC, a judge of the Employment Appeal Tribunal (and author of 'Employment Tribunal Procedure') will consider the implications for employment rights of the proposed statutory disciplinary and grievance procedures in the workplace and changes to IT procedure.

Judge McMullen's talk will be followed by the ELG's a.g.m., between 2 and 2.30pm.

Date: Friday 19 September 2003

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

Venue: Law Society House, Victoria Street, Belfast

Cost: Members £5, Non-members £10.

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.

Booking Form

Name _____

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Membership

The Employment Lawyers' Group welcomes new members. Membership fees are now due for 2003-04. Membership Fee for the year is £20. Please return the form below to our Treasurer, Ms Orlagh O'Neill, at the address cited above, with cheques made payable to Employment lawyers' Group (NI).

Membership Form

I enclose cheque for £20.00 made payable to ELG (NI)

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The AGM will take place immediately following Judge Jeremy McMullen's talk on Friday, 19th September.

Agenda: 1. Minutes of 2002 A.G.M. 2. Chairperson's and Treasurer's Report. 3. Election of Officers
4. Election of Committee members 5. A.O.B.

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During the course participants will follow a file from the preparation and execution of the will through the taking out of the grant of probate and administration of the estate, to the ultimate distribution and the preparation of estate accounts. Participants who successfully complete the weekly assignments and attend regularly will be awarded a certificate.

Numbers will be limited to 20 and the course will run for 7 weeks from October 2003 at Queen's University from 5–6.30 pm. The cost per person will be £275. Bookings will be taken in order of receipt.

The course has been developed by Sheena Grattan, who is a practising barrister and senior lecturer in the School of Law. She is also the author of "Succession Law in Northern Ireland" which is the recognised authority for all practitioners working in this field. Sheena herself will be taking the course and her vast experience in teaching both undergraduates and members of the legal profession will make this a very lively and interesting course.

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CHANGES TO IMMIGRATION RULES

Maura Hutchinson reports on major changes to immigration law, in relation to spouses and unmarried/same-sex partners.

New immigration rules for spouses and unmarried partners were introduced on 1 April 2003. The new rules affect spouses and unmarried partners of British citizens, people settled in the UK and people in certain long-stay categories leading to settlement in the UK, such as work permit holders.

Spouses

For spouses, the changes are double-edged. Until 1 April 2003, a visitor who married a British citizen in the UK could apply to the Home Office for leave to remain for one year under the spouse category, providing s/he could show why her/his initial intention to apply for leave as a visitor had changed. At the end of that year, the person could apply for indefinite leave to remain as long as the couple were still living together in the UK and able to support themselves financially, without public funds.

Under the new rules, a person with limited leave to enter or remain in the UK for six months or less (such as visitors who are normally granted leave to enter for six months) can no longer switch to spouse status within the UK. Instead, the person must leave the UK and apply overseas for a spouse entry clearance at a British diplomatic post.

Another major change is that the probationary period has been increased from one year to two years. People who are granted spouse entry clearances or leave to remain in the UK as spouses are now granted leave for two years and have to wait until the end of this period before applying for indefinite leave to remain. In addition, they will have to show that they have met all the conditions during the two year period, including not having any recourse to public funds.

On the other hand, a person applying to enter the UK on the basis of marriage to a person who has the right of abode in the UK (such as a British citizen) or who has indefinite leave to enter or remain will now be granted indefinite leave to enter immediately (instead of having to wait for two years) if the couple married at least four years ago and have been living together outside the UK since then.

In addition, the provisions have also been tightened to prevent their use until the person who has the right of abode in the UK, or who has indefinite leave to remain here, is aged eighteen or over.

Unmarried partners

Until 1 April 2003, the two main requirements for unmarried partners were that the parties had been living together in a relationship akin to marriage which had subsisted for two years or more, and that the parties were legally unable to marry under UK law. On 1 April 2003, the second of these requirements was removed, opening up the unmarried partner category to heterosexual couples who cannot satisfy this requirement because they are unmarried through choice.

The rules on unmarried partners have also been changed in line with the new rules on spouses to allow an unmarried partner to apply for indefinite leave to enter on the basis of a four year relationship.

These new rules have not been publicised by the government since being mentioned in last year's white paper, *Secure Borders, Safe Haven*, but they represent a major change in immigration policy.

Other changes to the rules

In addition to the above changes, several other amendments were introduced on the same date.

The provisions of the Seasonal Worker scheme, which allows overseas students to come to the UK temporarily to work in agriculture, have been broadened, effectively extending the scheme so it can operate all year round. However, an individual still cannot spend more than six months in total on the scheme, although this may be reviewed again early next year.

The Innovator and the Highly Skilled Migrant provisions, which previously operated as concessions outside the rules, have now been included in the Immigration Rules. Equally, the Long Residence Concessions, which have always operated outside the Immigration Rules, have now been incorporated in the Immigration Rules. These provisions allow those overseas nationals who have notched up ten years lawful residence (ie, within the scope of immigration provisions) or fourteen years where there have been periods of illegal residence, to obtain Indefinite Leave to Remain (or 'permanent residence' in the UK).

The provisions in relation to adopted children who are foreign nationals entering the UK, has now been amended, including formal recognition of de facto adoptions.

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High Court, Court of Appeal and Tribunal Decisions

REFERENCE BY HER MAJESTY'S ATTORNEY GENERAL FOR NORTHERN IRELAND (No. 1 OF 2003) (James Patrick Curran)

Referral of sentence by Attorney General. - 3 counts of indecent assault. - Probation Order of 3 years imposed for sentences which took place 30 year previously. - whether unduly lenient. - whether exceptional factors in case of offences of such seriousness. - HELD that sentence was unduly lenient: Probation Order quashed and 21 months' imprisonment imposed
COURT OF APPEAL
30 MAY 2003
NICHOLSON LJ

BAXTER, LYNNE and SIMPSON MCLEARNON AND FERGUSON LTD t/a TOY TOWN

Small claims application. - buyer's rights to reject goods which may be of unsatisfactory quality. - whether goods damaged as a result of customer abuse or manufacturing fault. - whether goods of satisfactory quality. - claim dismissed
COUNTY COURT
12 MAY 2003
WELLS DJ

IN THE MATTER OF AN APPLICATION BY E D BY HIS FATHER AND NEXT FRIEND D D FOR JUDICIAL REVIEW

Application for judicial review of decision of Glenveagh School. - autistic child with special educational needs. - whether school's decision that child should not be taught in a classroom setting was lawful. - whether school in breach of special educational needs statement. - application dismissed
QUEENS BENCH DIVISION
19 MAY 2003
KERR J

MF and MF

Application for contact. - opposed by mother by reason of allegations of sexual abuse of children by father. - whether investigation procedures and techniques adequate and proper. - whether information obtained was reliable. - HELD that supervised contact order not given, but indirect contact should be initiated
FAMILY DIVISION
11 APRIL 2003
WEATHERUP J

IN THE MATTER OF AN APPLICATION BY COLIN MALCOMSON FOR JUDICIAL REVIEW

Appeal against dismissal of judicial review of decision by Governor of HMP Magheraberry that applicant not eligible for home leave. - applicant convicted of offence in Scotland and transferred to Northern Ireland. - whether Prison Service entitled to regard earliest release date of transferred prisoner as the date on which he must be released. - appeal dismissed
COURT OF APPEAL
16 MAY 2003
CARSWELL LCJ

IN THE MATTER OF AN APPLICATION BY NEVILLE PEART FOR JUDICIAL REVIEW

Application for judicial review of a refusal of parole application by Parole Board for England and Wales. - whether jurisdiction to deal with Scottish sentence. - whether unreasonable with regard to the Wednesbury principles. - whether in breach of art.5 ECHR. - whether adequate reasons given. - application dismissed
QUEENS BENCH DIVISION
20 MAY 2003
KERR J

IN THE MATTER OF AN APPLICATION BY THE NORTH AND WEST BELFAST HEALTH AND SOCIAL SERVICES TRUST FOR JUDICIAL REVIEW

Application by Trust for judicial review of decision of Mental Health Review Tribunal that a patient should be conditionally discharged. - whether patient suffered from severe mental impairment and impairment of intelligence. - application dismissed
QUEENS BENCH DIVISION
28 MAY 2003
WEATHERUP J

RANA, DILJIT SINGH and MICHAEL JAMES MCCANN AND MAXINE JAMES MCCANN

Contract for sale of land. - whether conveyance in breach of charitable trust. - declaration sought that plaintiff has shown good title in property. -

whether consent was given that premises could be used for different purpose from those required by the trust. - declaration granted
HIGH COURT
3 JUNE 2003
GIRVAN J

SPANBOARD PRODUCTS LIMITED and ERNEST CHARLES ELIAS, STEPHEN EDWARD ELIAS AND DAVID ANDREW ELIAS T/A ELIAS ALRINCHAM PROPERTIES

Application for order that defendants be restrained from presenting a winding up petition against plaintiff company. - non payment of service charge. - apportionment of charge. - company not insolvent. - whether winding up petition appropriate. - injunction granted to restrain defendants from presenting petition
CHANCERY DIVISION
20 MAY 2003
GIRVAN J

IN THE MATTER OF T, C, M & B (THE CHILDREN (ALLOCATION OF PROCEEDINGS) ORDER (NORTHERN IRELAND) 1996)

Application by Trust for care orders. - Trust alleges that substandard parenting putting children at risk. - proceedings transferred from Family Proceedings Court to Family Care Centre to High Court. - High Court subsequently issued criteria for allocation of proceedings and made order that proceedings be referred back to Family Care Centre in the best interests of the child
FAMILY DIVISION
21 MAY 2003
GILLEN J

IN THE MATTER OF AN APPLICATION BY JOHN JOSEPH TORNEY FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

Application for leave to apply for judicial review of Criminal Cases Review Commission decision not to refer conviction to Court of Appeal. - whether Commission properly investigated case. - HELD that Commission's decision may be challenged and leave to apply for judicial review granted
QUEENS BENCH DIVISION
29 MAY 2003
KERR J

R V DAVID COLEMAN, WAYNE THOMAS ORR, THOMAS POTTS AND MARK HUGH WHITESIDE

Charges of affray contrary to common law following public disorder. – possession of firearm and membership of proscribed organisation. – grievous bodily harm with intent. – application for order to stay proceedings on grounds that trial at this time would breach art. 6 ECHR. – delay in bringing case to court due to various reasons. – right to fair trial within reasonable period. – application dismissed
CROWN COURT
23 MAY 2003
CAMPBELL LJ

IN THE MATTER OF AN APPLICATION BY CLANMIL HOUSING FOR JUDICIAL REVIEW

Application for judicial review of refusal of industrial tribunal to state a case for the opinion of the Court of Appeal. – application to Tribunal claiming unlawful discrimination and victimisation in his application for employment. – whether Tribunal erred in law with regard to the previous experience of the candidates. – HELD that the tribunal required to state its case to the Court of Appeal on several issues raised
QUEEN'S BENCH DIVISION
6 JUNE 2003
KERR J

INDUSTRIAL TRIBUNALS

BLANE, JAMES V CBS REALISATIONS INDUSTRIAL TRIBUNAL, 2 MAY 2003, 2402/02

Applicant claimed for outstanding pension entitlement and remuneration. – Tribunal rules sum of money to be paid to applicant in respect of these claims

BURNSIDE, WINNIFRED V MANOR HOUSE HOTEL and LYONS, PAUL INDUSTRIAL TRIBUNAL, 23 APRIL 2003, 3684/01

Applicant applied for a job with respondent. – applicant alleged racial discrimination as she was a member of the travelling community. – Tribunal is satisfied the Tribunal was not aware that applicant was a member of the travelling community

CARSON, EILEEN V SOCIAL SECURITY AGENCY and FOX, KEVIN and MAGEE, PAT INDUSTRIAL TRIBUNAL, 28 JANUARY 2003, 3021/01

Applicant alleged she was unlawfully discriminated against on the grounds of disability under s.4 of the Disability

Discrimination Act 1995. – applicant suffered from congenital sensor neural deafness. – applicant recommended for promotion. – applicant considered posts offered to her unsuitable due to travelling involved. – Tribunal rules respondent did not discriminate against applicant on grounds of disability

CLARK, ELIZABETH V POLICE REHABILITATION & RETRAINING TRUST INDUSTRIAL TRIBUNAL, 28 JANUARY 2003, 262/02

Originating application received outside the prescribed time limits. – Tribunal accepted that but for a postal stoppage and subsequent strike the application would have been delivered within the time limit. – Tribunal extends time limit and allows applicant's complaint to proceed

CLYDESDALE, FRANCES V MCANERNEY, SEAN T/A BALLYKELLY WOOD PRODUCTS AND BALLYKELLY GLAZING, 25 FEBRUARY 2003, INDUSTRIAL TRIBUNAL, 273/02

Applicant alleges unfair dismissal and unfair selection for redundancy. – respondent alleged applicant was made redundant as a result of reorganisation of the business. – Tribunal ruled applicant had been unfairly dismissed and ordered compensation to be paid to applicant

DORAN, JOHN J ET AL V DOWN DISTRICT COUNCIL INDUSTRIAL TRIBUNAL, 11 DECEMBER 2002, 1475/01

Applicants' claims are dismissed following withdrawal of applications

DYER, TINA V J H MCKEAGUE & CO (STOCKTAKING SERVICES) LIMITED ET AL INDUSTRIAL TRIBUNAL, 6 MARCH 2003, 00844/00

Applicant alleged sex discrimination. – applicant alleged numerous inappropriate sexual incidents took place. – Tribunal were not satisfied the incidents occurred as described. – Tribunal dismisses application

GALLAGHER, FRANCIS V DALEY, DAN T/A DALEYS GARAGE INDUSTRIAL TRIBUNAL, 14 MARCH 2003, 1838/01

Application is dismissed following its withdrawal by the applicant without objection from the respondent

HALL, DR JANET AILEEN V SOCIAL SECURITY AGENCY INDUSTRIAL TRIBUNAL, 15 JANUARY 2003, 2428/01

Whether respondent fell within definition of worker contained in the Employment Rights Order and the

Working Time Regulations. – Tribunal rules applicant is not a worker within the meaning of these definitions

HUTTON, ALLAN V MCCARTNEY, WALLACE and JOHN FRACKELTON & SON INDUSTRIAL TRIBUNAL, 3 MARCH 2003, 1786/02

Applicant alleged breach of contract. – applicant did not appear and was not represented. – Tribunal dismisses application

KEARNS, PAULINE V F11 FOOTWEAR MANAGEMENT LTD INDUSTRIAL TRIBUNAL, 29 APRIL 2003, 2418/02

Decision on a preliminary issue. – Applicant alleged disability discrimination. – application lodged outside time limits. – Tribunal says applicant was under a considerable degree of stress throughout period of delay. – Tribunal rules it is just and equitable to grant extension of time

JOHNSTON, LISA V ABBEYVIEW NURSING HOME INDUSTRIAL TRIBUNAL, 29 JANUARY 2003, 2008/02

Applicant claimed unlawful deductions from wages. – respondent claimed deductions were in lieu of her failure to work out her notice period. – Tribunal finds that the deduction was authorised and dismisses application

MCALLISTER, MATTHEW V NORTHERN IRELAND HOUSING EXECUTIVE INDUSTRIAL TRIBUNAL, 28 FEBRUARY 2003, 2851/00; 2523/01

Applicant alleged disability discrimination and breach of contract. – applicant diagnosed with bipolar affective disorder. – Tribunal believes respondent was aware of applicant's limitations but believed there were few efforts to place him in an appropriate alternative working environment. – Tribunal rules that applicant was discriminated against by respondent on grounds of disability. – case re-listed for consideration on issue of remedy

MCALLISTER, PAT V DUNLOP, PETER T/A GLENCO DECORATORS & DEPARTMENT OF HIGHER & FURTHER EDUCATION TRAINING & EMPLOYMENT, REDUNDANCY PAYMENTS SERVICE INDUSTRIAL TRIBUNAL, SEPTEMBER 2002, 3845/01

Applicant claimed in respect of redundancy pay, pay in lieu of notice, and unpaid wages in respect of lying week. – Tribunal is satisfied that the applicant was summarily dismissed from employment by respondent. – Tribunal rules in favour of applicant and orders compensation to be paid

**MCGUINNESS, CIARA V ANDRAS HOUSE GROUP
INDUSTRIAL TRIBUNAL, 21 MARCH
2003, 141/02**

Applicant alleged unfair dismissal and constructive dismissal. - applicant was obliging her employer by working long hours and carrying out extra menial duties. - Tribunal believed there was a continuing erosion of the implied condition of trust and confidence between the applicant and her employer. - Tribunal upholds applicant's complaints of unfair dismissal and constructive dismissal. - Compensation awarded to applicant

**MCGURK, SINEAD V MCQUEEN,
STANLEY and SUPERSPECS LTD
INDUSTRIAL TRIBUNAL, 7 MAY 2003,
2112/02**

Applicant applies to amend her originating application to include a claim for maternity pay. - Tribunal grants application to amend originating application

**METCALFE, ALISON SARA V BURTON,
COLIN (DECEASED) and BURTON,
MAUREEN
INDUSTRIAL TRIBUNAL, 10 APRIL 2003,
01243/00**

Applicant claimed she was entitled to a redundancy payment and a sum due for unlawful deductions under the National Minimum Wage. - Tribunal upholds applicant's complaint and awards sum in respect of this

**MONTGOMERY, J V MONTUPET (UK)
LIMITED
INDUSTRIAL TRIBUNAL, 17 FEBRUARY
2003, 1624/01**

Applicant claimed unlawful deduction from wages. - applicant claimed he was denied access to a benefit applied to hourly rated workers in the form of a shift premium. - Tribunal dismisses application

**MORRISON, PATRICIA V HALL, A and
EAST ANTRIM INSTITUTE OF FURTHER &
HIGHER EDUCATION
INDUSTRIAL TRIBUNAL, 12 DECEMBER
2002, 00148/00**

Decision on interlocutory issue. - applicant applies for variation of earlier Order after parties reached an agreement in settlement of the application with the assistance of the Labour Relations Agency. - Tribunal dismisses application

**MORRISON, TERESA V COMPASS UK
LIMITED
INDUSTRIAL TRIBUNAL, 31 JANUARY
2003, 1812/02**

Neither party appeared nor was represented. - Tribunal dismisses application and respondent's counter-claim

**RICE, EAMON MICHAEL V WHITE
YOUNG GREEN CONSULTING LIMITED
INDUSTRIAL TRIBUNAL, 23 APRIL
2003, 2401/02**

Applicant did not appear and was not represented. - Tribunal dismisses application

**SMYTH, EAMON V EDMUND QUINN
INDUSTRIAL TRIBUNAL, 21 MARCH
2003, 2624/02**

Applicant alleged unfair dismissal. - Applicant did not appear at hearing. - Tribunal is satisfied that by his actions the applicant resigned from his employment. - Tribunal dismisses originating application

**STACEY, STELLA V DEPARTMENT OF
HEALTH & SOCIAL SERVICES AND
PUBLIC SAFETY
INDUSTRIAL TRIBUNAL, 13 MARCH
2003, 01875/00**

Decision on a preliminary issue. - Applicant alleged sex discrimination. - applicant applied to amend originating application to include a complaint under the Equal Pay legislation. - Tribunal decides to amend the complaint

**WOLSEY, JOHN V SOCIAL SECURITY
AGENCY
INDUSTRIAL TRIBUNAL, 7 MAY 2003,
2807101**

Preliminary hearing found applicant to be a disabled person within the meaning of the Disability Discrimination Act 1995. - Applicant alleged disability discrimination. - Applicant's job application not processed because he was in receipt of Incapacity Benefit. - Tribunal believes respondent's treatment amounted to less favourable treatment. - Respondent ordered to pay sum to applicant in respect of injury to feelings for unlawful disability discrimination

FAIR EMPLOYMENT TRIBUNALS

**BROWN, RONNIE V SHORT
BROTHERS PLC and HAUGHEY,
STEPHEN
FAIR EMPLOYMENT TRIBUNAL, 27
MARCH 2003, 00346/99**

Applicant alleged harassment and intimidation of a sectarian nature. - application lodged out of time. - Tribunal decides not to extend time limit and application is dismissed

**DOUGLAS, SANDRA V SOUTH EASTERN
EDUCATION & LIBRARY BOARD
FAIR EMPLOYMENT TRIBUNAL, 15 APRIL
2003, 409/02FET**

Decision on a preliminary issue. - Application lodged outside time limits. - Applicant delayed lodging proceedings due to failure of respondent to reply to her request for information. - Tribunal decides it is just and equitable to extend the time limit

**THOMPSON, JOHN V ASHDERG LTD
FAIR EMPLOYMENT TRIBUNAL, 8
JANUARY 2003, 00459/00FET**

Tribunal dismisses originating application after applicant fails to comply with an Order for Further Particulars

**WHITE, CHRISTOPHER V CURTIS
PEUGEOT
FAIR EMPLOYMENT TRIBUNAL, 11 APRIL
2003, 546/01FET; 3632/01**

Decision on a preliminary hearing. - applicant alleged unfair dismissal and religious discrimination. - solicitors acted contrary to instructions given by clients. - applications not lodged within the time limits. - Tribunal believes the remedy for the proceedings lies against those solicitors and is not a valid reason for extending the time limits. - application is dismissed

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Criminal Injuries and Criminal Damage Costs Revision

Further to the most recent increase in the prescribed County Court Costs, the Society has been advised by the Compensation Agency of a parallel increase in the scales which apply to claims disposed of at the pre-appeal stage.

In accordance with its previous practice, the Agency has approved rates which equate to 80% of the costs prescribed by County Court Rules. They apply to all new claims received on or after 3rd March 2003; or where a Form of discharge in existing claims is received on or after that date.

The full details of the new scales are as follows:

Criminal Damage Compensation (NI) Order 1977

Applicant's Solicitors Costs at determination effective from 3 March 2003

Compensation Not exceeding	Solicitors Costs	Counsel's fee
£250	£145	£56
£500	£179	£69
£750	£225	£92
£1000	£256	£107
£2000	£288	£121
£3000	£322	£135
£4000	£356	£141
£5000	£387	£152
£6000	£423	£162
£7000	£456	£174
£8000	£487	£182
£9000	£523	£194
£10000	£557	£205
£15000	£709	£259
£20000	£879	£319
£25000	£1032	£376
£30000	£1201	£443
£35000	£1354	£501
£40000	£1519	£570
£45000	£1675	£612
£50000	£1829	£703
£60000	£2074	£813
£70000	£2316	£925
£80000	£2551	£1041
£90000	£2795	£1166
£100000	£3026	£1285
£125000	£3182	£1369
£150000	£3349	£1461
£175000	£3514	£1576
£200000	£3672	£1649
£250000	£3991	£1836
£300000	£4071	£1890
£350000	£4150	£1937
£400000	£4224	£1985
£450000	£4303	£2031
£500000	£4381	£2086
£600000	£4543	£2191
£700000	£4699	£2294
£800000	£4860	£2398
£900000	£5023	£2512
£1000000	£5177	£2621

Criminal Injuries Compensation (NI) Order 1988

Applicant Solicitor's Costs at determination. Effective from 3 March 2003 POST APPEAL

Compensation Not exceeding	solicitor's costs	Counsel's Fees
£500	£225	£92
£750	£310	£126
£1000	£387	£148
£2000	£423	£163
£3000	£444	£181
£4000	£478	£198
£5000	£500	£215
£6000	£523	£220
£7000	£544	£227
£8000	£565	£236
£9000	£588	£246
£10 000	£611	£256
£15 000	£701	£283
£20 000	£808	£322
£25 000	£921	£349
£30 000	£1030	£378
£35000	£1143	£422
£40 000	£1254	£466
£45 000	£1365	£509
£50 000	£1472	£557
£60 000	£1608	£606
£70 000	£1774	£686
£80 000	£1997	£784
£90 000	£2217	£886
£100 000	£2440	£989
£125 000	£2773	£1154
£150 000	£2881	£1228
£175 000	£2995	£1293
£200 000	£3104	£1356
£225 000	£3219	£1415
£250 000	£3328	£1473

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Northern Ireland (Emergency Provisions) Act 1996 and para (5) of Schedule 12 to the Terrorism Act 2000.

Applicant's Solicitor's Costs at Determination. Effective from 3 March 2003.

Compensation Not exceeding	solicitor's costs	Counsel's Fees
£250	£145	£56
£500	£179	£69
£750	£225	£92
£1000	£256	£108
£2000	£288	£121
£3000	£322	£135
£4000	£356	£141
£5000	£387	£152
£6000	£423	£162
£7000	£456	£174
£8000	£487	£182
£9000	£523	£194
£10000	£557	£205
£15000	£709	£259
£20000	£879	£319
£25000	£1032	£376
£30000	£1201	£443
£35000	£1354	£501
£40000	£1519	£570
£45000	£1673	£612
£50000	£1829	£703

Fundraising Coffee Morning



Trainees at the Institute held a coffee morning on 4th June 2003 and raised £179 for Sargent Cancer Care for Children. Well done!

From left to right in the photo: Anna-Marie Quinn, Tobias McMurray, Valerie Cromie (Sargent Cancer Care for Children), Richard Craig and Nicola Murray.

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NORTHERN IRELAND COURT SERVICE NOTICE

The Crown Court (Amendment No 2) Rules (Northern Ireland) 2003 [SR 2003 No 279]

The above named Rules came into operation on 30th June 2003. These Rules amend the Crown Court Rules (Northern Ireland) 1979 ("the principal Rules") to prescribe:

- That, in applications for leave to present a voluntary bill on indictment under section 2(2)(e) of the Grand Jury (Abolition) Act (Northern Ireland) 1969, appearances before the judge may be in private; and
- The procedure relating to applications under the Criminal Evidence (Northern Ireland) Order 1999 for a special measures direction in the case of witnesses who require assistance on the grounds of age and
- The procedure relating to applications under section 59 of the Criminal Justice and Police Act 2001 for the return of seized material and for directions as to the examination, retention, separation or return of seized property.

Rule 2(1) inserts a reference to the Criminal Evidence (Northern Ireland) Order 1999 into the interpretation provisions in the principal Rules.

Rule 2(2) amends rule 36(8)(a) of the principal Rules to provide that, in applications for leave to present a voluntary bill of indictment, appearances before the judge may take place in private.

Rule 2(3) amends rule 44B of the principal Rules by revoking paragraph (1)(b), and making some further minor consequential amendments.

Rule 2(4) inserts a new rule 44BA, which provides for an application for a special measures direction to be made in the form specified in the Schedule to the Rules. An application for a direction to give evidence by means of a live link or by means of a video recording of the witness's testimony must also contain the additional information specified in Part 2 or Part 3 of the form.

Rule 2(5) substitutes a new rule 44C which provides for extending the time for making an application for a special measures direction.

Rule 2(6) inserts new rules 44CA – 44CF. New rule 44CA provides for late applications. New rule 44CB provides for an application to be made to vary or discharge a special measures direction which has already been made. New rule 44CC provides for renewal applications where a material change of circumstances has occurred since an application was refused.

New rule 44CD imposes additional requirements where the application relates to the giving of evidence by means of a live link.

New rule 44CE imposes additional requirements where the application relates to the admission of a video recording of an interview of the witness as evidence in chief of the witness.

New rule 44CF provides for the mutual disclosure between the parties of expert evidence to be adduced in connection with the application for the special measures direction.

Rule 2(7) makes a minor consequential amendment to the title of Part XI of the Principal Rules.

Rule 2(8) inserts new rule 105 to provide the procedure for applications under section 59 of the Criminal Justice and Police Act 2001.

Rule 2(9) amends the Schedule to the principal Rules by substituting new Form 5 (Form of application for leave to use television link under Article 81(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989; Form 6 (Form of application for a special measures direction) and Form 7 (Notice of decision on an application for a special measures direction).

Queen's Bench Summons Court

Sitting during the Long Vacation 2003

1. Having regard to representations made to the Masters on behalf of Solicitors, the Queen's Bench Summons Court will again sit on a number of specified days during the Long Vacation.

2. The Master will generally not entertain an application for adjournment of a summons listed for a specified day, but where such an application is allowed the summons will be adjourned to a Thursday or Friday Court after the commencement of the Michaelmas Term, and not a subsequent specified day during the Vacation.

3. The Master will not adjourn a summons listed for a specified day to enable Counsel to be briefed or to facilitate the attendance of Counsel.

4. The specified days on which the Summons Court will sit during the long Vacation 2003 will be:-

Wednesday July 2nd
Wednesday July 23rd
Wednesday 6th August
Wednesday 20th August

J W WILSON
 C J McCORRY

Master (Queen's Bench and Appeals) Master (High Court)

April 2003

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In the High Court of Justice in Northern Ireland Queen's Bench Division

Practice Note

No 1 of 2003 (revised text)

Unless orders

1. An unless order [stating (i) that unless the plaintiff complies with an earlier order of the Court or a particular provision in the Rules, his Writ of Summons will be struck out for want of prosecution with the defendant to have the costs in the action or (ii) that unless the defendant complies with an earlier order of the Court or a particular provision in the Rules, his defence will be struck out and judgment entered for the plaintiff with costs to the plaintiff] is effectively a judgment in the action in favour of the party on whose behalf it is made. (See the discussion in Hughes v. Hughes [1990] N.I. 295 at pp 297 & 298)
2. The respondent (or the party required to comply with its terms) can

only relieve himself of the order in question by doing what the unless order enjoins him to do.

3. As and from 28 April 2003, an unless order will include a clause (see the Schedule to this Note) the purpose of which will be (i) to underline that it constitutes, if not discharged by the respondent, a final order of the Court and (ii) to facilitate any subsequent claim for costs.

4. The present practice, under which persons seeking to enforce the penalty prescribed in an unless order return to Court on an ex parte application for a final order in the action or its dismissal for want of prosecution, will be discontinued from the date mentioned above.

J W Wilson
Master (Queen's Bench and Appeals)

C J McCorry
Master (High Court)

27 March 2003

Schedule

If the (plaintiff) (defendant) fails to comply with the terms of this order, an affidavit by the (plaintiff) (defendant) or a certificate completed by the (plaintiff) (defendant)'s solicitor confirming service of the order and non-compliance with its terms will be accepted by the Taxing Master as evidence that the action has been struck out and/or that judgment has been entered for the plaintiff and that the moving party is entitled to tax his costs for payment by the respondent.

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Further details about this charity and its work will gladly be supplied by the Secretary, The Heart Trust Fund (Royal Victoria Hospital), 9B Castle Street, Comber, Co. Down BT23 5DY. Tel: (028) 9187 3899.

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Risk Management

ADVICE

Risky Business Part 2



In this second article on risk management for law firms, Peter Maguire considers potential liability to non-clients to transactional work. Peter Maguire is a partner in the insurance and reinsurance group at CMS Cameron McKenna.

One area of risk solicitors face in an increasingly demanding environment is third party claims. This article looks at issues which may arise in transactional work and suggests how they may be addressed.

Identifying the client and other recipients of the advice
A solicitor may in certain circumstances owe a duty of care to non-clients, usually where it appears the third party is reasonably relying upon the advice or information provided by the solicitor.

Hence, the prudent solicitor will know at every stage of a transaction:

- The identity of the client – all transactions involve parties with differing interests and these may include the shareholders, the directors, the company and the financiers;
- Whether the client is passing on the advice to third parties who have an interest in the transaction – in that event, it is necessary to identify and clarify the existence and scope of any duty of care which may arise; and
- Whether another party to the transaction appears to be relying upon the advice – eg where such a party is not independently advised.

The prudent solicitor will attempt to limit the persons to whom he owes a duty of care, save where the provision of advice to third parties is in accordance with accepted commercial practice and the implications have been properly considered.

Is the client passing on the advice to third parties who have an interest in the transaction?

A duty of care may arise where:

- The advice is required for a purpose which is made known to the adviser at the time the advice is given;
- The adviser knows the advice will be communicated to the third party (either directly or as a member of an ascertainable class) so it may be used for that purpose;
- The adviser knows the advice is likely to be acted upon by the third party for that purpose without further enquiry or obtaining independent advice; and
- The third party acts upon the advice to his detriment.

The issue of duties to third parties has been brought sharply into focus by the decision of the Scottish Court of Session in Royal Bank of Scotland v Bannerman Johnstone Maclay 2003 SLT 181; [2003] PNLR 6. The Scottish court held that, in the absence of a disclaimer, a company's auditors could owe a duty of care to a lending bank (despite the absence of any direct contact between the parties) if the auditors knew (or ought reasonably to have known) that the bank would rely upon the audited accounts when making its lending decisions. In the light of that knowledge, it was the omission to send a disclaimer to the bank,

rather than any positive action by the auditors, that supported the existence of a duty of care.

While that decision is subject to appeal, it prompted the Institute of Chartered Accountants in England and Wales to issue further specific guidance to members in January 2003 on the basis that, even if the Bannerman judgment were overturned on its particular facts, the finding at first instance might represent a trend in judicial thinking which might be followed by the English courts and encourage third parties to pursue claims. Although auditors and reporting accountants are in a particularly exposed position, there is no reason why the principles in question should not apply to other professions, including solicitors.

Regardless of the outcome of the appeal in Bannerman, the legal basis for incurring third party liabilities is well established in English law, so solicitors must guard against inadvertently assuming responsibility to non-clients.

Does another party to the transaction appear to be relying on the solicitor's advice?

A number of the principles relating to the existence of third party duties are illustrated by two contrasting cases.

In Dean v Allin & Watts [2002] PNLR 39, a loan had been made to an unincorporated business by a private individual who was not separately represented. The borrower's solicitors were instructed to provide an effective security and they advised that security could be provided by a deposit of title deeds, which they

agreed to hold to the claimant's order. In the event, the business failed, the return of the deeds was demanded and, by reason of non-compliance with s 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the claimant was constrained to agree to their return. He therefore lost the benefit of security.

The claimant issued proceedings against the borrower's solicitors, alleging the existence and breach of an implied retainer and a duty of care.

The Court of Appeal held:

- An implied retainer had not arisen as between the claimant and the solicitors. This was indicated neither by the broad picture of the relationship nor by the specific facts;
- On the facts, however, the solicitors owed the claimant a duty of care. Although a court would be slow to find an assumption of responsibility by a solicitor towards a party entering into a transaction with that solicitor's client where there was a conflict of interest, there was no conflict of interest in the provision of effective security in the present case and it was intended that the claimant should benefit from this. The solicitors knew or ought to have known the claimant was relying upon them; there was the necessary foreseeability of damage and proximity; and it was just and reasonable for the law to impose a duty of care.

The factual position in Dean v Allin & Watts was somewhat unusual and, as the Court of Appeal emphasised, the courts will generally be reluctant to recognise the existence of a duty of care where this would give rise to a conflict of interest. The decision does, however, highlight the need to be alert to potential problems, particularly in circumstances where the other party is unrepresented. Contrast the position in BDG Roof-

Bond Ltd (In Liquidation) v Douglas [2000] PNLR 273, in which the company had purchased Douglas' 50 per cent share-holding in the company for £135,000. Douglas had been represented in the transaction by solicitors, who were named as second defendants in the action. The company subsequently went into liquidation and the liquidator sought to recover damages against the solicitors on the grounds that the purchase was invalid by reason of non-compliance with various provisions in the Companies Act 1985.

The Court of Appeal held:

- The solicitors had not been retained by the company to act in relation to the transaction and, accordingly, they did not owe any contractual duty to it. The fact Douglas had arranged for the company to pay the solicitors' bill did not affect this conclusion, as such a practice was commonplace in small private companies;
- The solicitors did not owe a common law duty of care to the company. There were insufficient proximity between the parties in circumstances where the company was 'on the other side of fence' from the solicitors' client in the transactions; nor was it fair, just or reasonable to impose such a duty of care.

Disclaimers and Unfair Contracts Terms Act 1977

When reports or letters of advice are prepared which might be the subject of broader circulation, it may be appropriate to consider including a disclaimer of liability to third parties. Such a disclaimer will be subject to the 'reasonableness' test in UCTA 1977. In the case of such a non-contractual notice, it must be fair and reasonable to allow reliance upon the exclusion, having regard to all the circumstances obtaining when the liability arose or (but for the notice) would have arisen. The burden of establishing the reasonableness of the exclusion will be on the solicitor.

Use of opinion letters

Opinion letters are letters to third parties (normally financiers) which are designed to provide assurances on a limited number of specific issues. They are common in the world of banking and finance and are also sometimes provided in corporate transactions (for example, in the acquisition of disposal of shares or in the issue of debt or other securities). They are a normal part of doing business but require strict adherence to a firm's internal rules and established precedents. Critically, they must be limited to matters of law, not fact.

Opinion letters vary in scope but will typically include opinions on one or more of the following:

- A company's capacity and authority to enter into the agreement.
- That the agreement contains 'valid and binding' obligations which are enforceable;
- That any payments under the transaction are not subject to any withholding tax or stamp duty;
- That any judgment will be binding upon the parties and that any judgment in the relevant jurisdiction will be enforceable.
- The City of London Law Society has established 10 principles which govern the use of opinion letters and these must be adhered to. A number of firms involved in banking and finance work have established opinions committees, one member of which must authorise each opinion letter, together with the partner with overall responsibility for the matter in question. The rationale of this approach is to develop a pool of expertise and attempt to ensure consistently high standards are maintained in the provision of such letters.

Practice Points overleaf...

Practice Points

- To limit the potential for third party claims, consider including a term in your retainer with the client that, unless otherwise expressly agreed in writing, your services are provided solely for the benefit of the client and you accept no responsibility to anyone else. Including such a term in the retainer will put you in a better position to resist client pressure to pass on the relevant advice to third parties. Where disclosure is to be made, you will be in a better position to agree a satisfactory basis for such disclosure to the third party.

- Where advice may be passed to third parties, clarify the existence and scope of any duty of care which may arise. The appropriate use of disclaimers will (subject to the application of UCTA 1977) help to protect your position. The wording and terms of any exclusions or limitations of liability require careful consideration.

- Ensure any disclaimer is not overridden by any statements or representations which are inconsistent with it (whether made contemporaneously or at a later date). For example, it might be alleged that comfort was sought and obtained from the solicitor by the third party in relation to the contents of a report or opinion letter.

- Where a party is unrepresented, ensure that no retainer arises by implication and that no common law duty of care is assumed to that party. One way to negate any assumption of responsibility is to make it clear in writing that the unrepresented party should obtain independent legal advice, having regard to the conflict of interest and that you accept no responsibility to them.

- Where opinion letters are provided, it is important to adhere

to the principles enunciated by the City of London Law Society. The use of opinions committees will also help to ensure consistency and generate a pool of relevant expertise.

- You may also be asked to provide less formal 'letters of comfort' to third parties on behalf of clients. Particular care is required in these circumstances, given that the liability risks are exacerbated by the commercial context and the inherent conflict of interest. Such letters have proved to be fertile ground for claims against professionals in recent years.

- Care is also required if a third party makes a specific enquiry of a solicitor, with a view to obtaining a response which could constitute an actionable representation. This position was most graphically illustrated in ADT v Binder Hamlyn [1996] BCC 808 in which a partner in the defendant accountants stated, during the course of a meeting with the prospective purchaser, that he stood by his firm's earlier audit. It was held that this gave rise to a voluntary assumption of responsibility and a liability of £65m plus interest and costs. While the action was eventually settled pending the hearing of an appeal, the decision illustrates the scale of third party liabilities to which professional advisers may be exposed.

- Where contracts are governed by the law of England and Wales, regard must be had to the potential impact of the Contracts (Rights of Third Parties) Act 1999. It is advisable for the retainer letter between you and the client to state that, unless expressly provided, none of the terms of the retainer shall be enforceable by any person not a party to it.

The above articles first appeared in the Solicitors' Journal on 4 April 2003 and 11 April 2003 respectively and have been reproduced here with the kind permission of the Editor

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26 September 2003

AGM and

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17 October 2003

Lunchtime Seminar on the Experience of Fathers in the Legal Process – Speaker James Binns of the Men’s Advisory Project

14 November 2003

Lunchtime Seminar on Changes in Adoption Law – Speaker Michael Long QC

All seminars are £10 for members of the AFSC and £15 for other interested parties. The lunchtime seminars are from 1-2 with 1 hour CPD . Tea and coffee and sandwiches are served from 12.30pm

If you are interested in joining or attending one of the seminars please send a cheque made payable to AFSC to:

**Claire Doherty - Mc Cann & McCann Solicitors
Queen’s Buildings, 10 Royal Avenue Belfast BT1 1DB**

Preliminary Notice

Advanced Children Law Course

Who should attend?

Legal Practitioners working in the area of Children’s Law and to those seeking to represent children.

The course will attract Law Society of Northern Ireland C.P.D. points (12 hours)

When: OCTOBER 2003
Format: Either 2 full days or 4 evenings
Venue: BELFAST

Watch this space for registration details.

NEW DPP HEADQUARTERS

On Monday 9 June 2003 the Department of the Director of Public Prosecutions (DPP) began its move to new headquarters. These are located at the rear of the Bar Library beside the Royal Courts of Justice and the address of the new Headquarters is 93 Chichester Street, Belfast, BT1 3JR.

The phone number for the Department remains 028 9054 2444 and the fax number remains 028 9054 6116. Further contact details will be provided at a later stage. Any queries regarding the above should be directed to Muriel Wilkinson, Head of Facilities Management, 028 9089 7097.

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The Children Order – An Introduction

This course is aimed at all legal practitioners as an introductory course. The focus is practical, explaining both the law and how to put it into effect. For those with little or no Children Order experience this course will be invaluable.

Under the private law sections we will look at the rights of parents, the rights of children in respect to the expression of their wishes, where the child will live and who will make the decisions regarding the child's education, religion etc. The discussion is set within the legislative context of the Children (Northern Ireland) Order 1995 and the Article 8 Orders made under the 1995 Order. Residence, contact, prohibited steps and specific issues will be individually and clearly explained.

The 1995 Order governs the Health & Social Services Trust's responsibility for children and its duty to provide and regulate child care services and protect children from risk. We will examine the various Orders, such as Care, Supervision and Emergency Protection available to local Trusts.

Session 1

- Basic principles of the Children (NI) Order 1995
- Private & Public Law Orders
- Paternity & Blood Tests
- Basic principles of Adoption Law
- Care Plans

Session 2

- Court Rules and making applications
- Article 4 – Welfare Reports
- Article 66 – Assessments
- Recent case law developments
- Legal Aid
- Example/Precedent Forms

The seminars will be facilitated by experienced Children Order Practitioners, including Gillian McGaughey BL, Siobhan O'Hagan BL and Fiona Bagnall, Solicitor.

When: Monday, 15th September and Monday, 22 September 2003

Time: 6.00p.m. – 9.00p.m.

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

Cost: Full course fee £130, and either Seminar £75.

This course attracts 3 hours Law Society of Northern Ireland C.P.D. points per session.

Booking form and cheques, made payable to Queen's University Belfast, should be sent to Mrs Joan Playfair, Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY.

Closing Date for applications: Monday, 8 September 2003

BOOKING FORM

I am interested in attending:

Session 1

Session 2

Name: _____

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Client Care Workshop

This workshop is provided jointly by the Law Society of Ireland and the Institute of Professional Legal Studies, Queen's University, Belfast.

DATE: Thursday, 4 September 2003
TIME: 2.00pm to 5.30pm
VENUE: The Killyhevlín Hotel, Dublin Road, Enniskillen
FEE: £60 per person

Successful practice is intrinsically linked with effective client care. How do you make sure that you are providing appropriate care for your clients?

This practical workshop will help you to assess and develop your skills in dealing with clients. It will also take you through appropriate client care practices and systems, designed to maximize your foothold in a changing market.

Participants will have an opportunity to engage in group work and role play.

All practitioners concerned with honing skills in this vital area will benefit from attendance at this workshop.

Practical issues to be explored include:

- What is client care?
- The 40% rule
- How your emotional quotient affects business
- Maximizing a changing client base.

Providers:

Antoinette Moriarty – Law Society of Ireland
Anne Fenton and Ruth Craig – Institute of Professional Legal Studies

This course attracts Law Society of Northern Ireland C.P.D. points.

Due to the nature of this workshop places are strictly limited, so early booking is advisable.

Booking form and cheques, made payable to Queen's University Belfast, should be sent to Mrs Joan Playfair, Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY.

Closing Date for applications: Thursday, 28 August 2003

BOOKING FORM

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A Battle Royal

To the American writer Daniel R. White is attributed the apophthegm that "law school has been described as a place for the accumulation of learning. First-year students bring some in; third-year students take none away. Hence it accumulates!" However profound or ridiculous this witticism, that charge could certainly not be preferred against the Institute's team that competed in the Irish Bar Council/ Round Hall Press Moot Court Competition in Dublin. Roisín Martin, Stephen Mooney, Barry McKenna and Elaine Greer competed against teams from Blackhall Place, Trinity College and King's Inn in the preliminary rounds on 1 April 2003. However deterring that date may have proven to others, the Belfast team easily asserted their prowess and learned that night of their place in the final.

The competition aims to foster excellence in advocacy throughout the island of Ireland, and the Queen's competitors were conscious of the legacy of previous years; the Institute won the competition in 1997, 1998, 1999 and 2000. The magnificent specially-commissioned trophy was extradited back to the Republic over the past two years though, and Bar Trainees Mooney, Greer et al. boarded the Enterprise determined to repatriate the silverware on the return trip. Many, many hours of research and debate went into the team's written Memorials, submitted two weeks beforehand, and each running to twenty pages of legal opinion and submissions on this year's issue – the negligence or otherwise of a solicitor who failed to draft a Will in time before the testator's unforeseen death.

The final was held in the Dublin Supreme Court on 2 April, presided over by Mr Justice Adrian Hardiman flanked by a bother High Court Judge, a Circuit Court Judge, Senior Counsel and Mr James McNulty QC of the Northern Bar. The opposition comprised Bar Trainees from King's Inn. If there was something a little unnerving about Queen's versus King's, then it did not show on the faces or in the advocacy of Barry McKenna and Roisín Martin, who plied their "accumulation of learning" to devastating effect. After two and a half hours of argument, submissions and

probing from the Bench that would have put many a Silk to the ropes, the Institute team was proclaimed the outright victors. As if this judgment were not sweet enough, the Institute team was also awarded the prize for the best Memorials submitted, and Roisín Martin was adjudicated the Best Advocate Appearing in the Final – the first time in the history of the competition that such a grand-slam has been achieved!

Congratulations to all concerned for acquitting themselves so superbly. They have proven the nonsense of Daniel White's cheap jibe, and the wisdom of his countryman, lawyer Norm Sherman, when he said;

Good law schools teach you to think like lawyers. But the top law schools teach

young people to think; just to think. And that makes a potentially great lawyer.

These potentially great lawyers leave the Institute with our best wishes for successful practice at the Bar. AD MULTOS ANNOS.

Martin G.O'Brien



Pictured with four Institute trainees are Mrs Anne Fenton and Mr Martin O'Brien

Class of '83 Law Reunion

Friday, 12 September 2003

Reply Form (please print clearly)

Name: _____

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I will/will not (delete as appropriate) be able to attend on Friday 12 September.

I know the following 'lost alumni':-

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International Client Counselling Competition – South Africa

This year the international finals of the Louis M Brown Client Counselling competition were hosted by the Durban School for Legal Practice at the University of Natal, South Africa. The Institute team of Stephen Mearns and Gerard McLoughlin, having won the regional Law Society of Northern Ireland final, headed out to Durban at the end of March.

Each year the International Committee chooses a topic for the competition. This year's topic was criminal law. Teams from Australia, New Zealand, South Africa, England, Scotland, Republic of Ireland, Hong Kong, U.S.A., Sri Lanka, Malaysia, India and Northern Ireland took part.

On the first day each team had to interview two clients – each with quite different problems. Actors, fully briefed with background material, played the part of the client. At the end of the first day six teams moved forward to the semi-finals. Stephen and Gerard, being the top team that day, went forward to the semi-finals.

The Queen's men were drawn against Scotland and New Zealand and despite a great performance were beaten by the New Zealand team which went on to win the competition.

Participants in the competition and their coaches benefited from the very generous hospitality of the School for Legal Practice. We were taken on a safari drive in the nearby Tala Game Park, attended a civic reception in Durban City Hall, heard from a number of very interesting speakers during the academic day at the University and enjoyed a very splendid gala dinner on the last night.

Contacts were made and friendships were forged across many and varied jurisdictions. The opportunity for students to take part in this truly global experience is quite unique. Many thanks are in order – to the Law



Reg Weir QC with two Institute Trainees

Society, Belfast Solicitor's Association, Queen's University and many others for their generous sponsorship. Thanks are also due to Stephen's firm (Murphy and O'Rawe) and to Gerard's (Sheridan and Leonard) for their contributions and for allowing the team to be out of the office for so long. Stephen and Gerard gave us all just cause to be very proud - even if Stephen's taste in tee shirts is a bit suspect!

NORTHERN IRELAND COURT SERVICE NOTICE

County Court (Amendment) Rules (NI) 2003 (SR 2003 No 272)

These Rules which came into operation on 1st June 2003 amend the County Court Rules (Northern Ireland) 1981 so as to:

- make a minor amendment to small claims procedure (Rule 2);
- prescribe the time limit for serving notice of appeal under section 35A or section 40B of the Immigration and Asylum Act 1999 (Rule 3);
- revoke Order 50 and the associated Forms as the adoption procedures are now contained in the Family Proceedings Rules (Northern Ireland) 1996 (S.R. 1996 No. 322 as amended by S.R. 2003 No.75 (Rule 4); and
- substitute new Tables in relation to solicitor's costs and counsel's fees in equity and title proceedings (Rule 5).

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Missing Wills

Re: Hester Ferguson, Deceased, Late of 66 Woodcot Avenue, Belfast
 Would any Solicitor having knowledge of the whereabouts of a Will for the above named deceased please contact Mr Paul Ferris of Paul Ferris & Co Solicitors, Victoria House, 2 Newry Road, Banbridge, County Down.
 Telephone: 028 4062 8828 or fax 028 4062 8833.

Re: Jane Dunn deceased
 Late of 18 Avonlea Street, Belfast (formerly 2 Lillian Street, Belfast)
 Date of death – 24 April 2003
 Would anyone holding a Will of the above-named deceased or having any knowledge of the whereabouts of same please contact Mr Paul Rice, Boyd Rice & Co, Solicitors, 4 Mill Street, Newtownards, Co Down. BT23 4LU.
 Telephone: 028 91817715. Fax: 028 91812374.

Re: Anne Mary Patton
 Late of 5, Heather Park, Newtownabbey, Co Antrim, BT37 9RE
 Date of death: 11 March 2003
 Would any person having knowledge of the whereabouts of a Will of the above named person, please contact: M D Loughrey Solicitors
 9 Portland Avenue
 Glengormley
 Co Antrim
 BT36 5EY
 Tel:- 028 9084 8116
 Fax:- 028 9084 9110

Locum Solicitor Required

Locum solicitor required to cover maternity leave from mid November 2003 to mid May 2004. Litigation experience required. Part-time applicants considered.
 Contact: Ms D McIvor at McIvor Farrell Solicitors, 129 Springfield Road, Belfast, BT12 7AE.

Solicitors Required

Vacancy for solicitor with experience primarily in litigation though more wide-ranging the better. Salary will be determined by competence.
 Applications, including CV, to:
 L J Mallon & Co
 Solicitors
 9 English Street
 Armagh
 BT61 7LJ
 Applications will be treated in confidence

Thompson's Solicitors require:-
 1. A Solicitor for busy Conveyancing Department. Ideal candidate will have at least three year's PQE in domestic/residential conveyancing.
 2. A Solicitor for general practice. Ideal candidate will have at least one year PQE in general litigation.
 Salary for each of the above posts commensurate with experience. Apply in confidence with CV to Mark Jackson, Thompsons Solicitors, 39 Frances Street, Newtownards, County Down, BT23 7DW. Closing date for applications is 25th July 2003. Thompsons Solicitors are an Equal Opportunities Employer.

Ambitious hardworking and personable Solicitor required for busy country practice. Wide-ranging case load to include Personal Injuries, Employment and some Conveyancing. Three year's PQE preferred. Excellent working conditions, good salary and genuine prospects.
 Apply in writing to The Partners, W B Thompson & Co, Solicitors, 36 Catherine Street, Limavady, Co Londonderry, BT49 9DB.

P R Hanna Solicitors, 2nd Floor, Lesley Suites, 2-12 Montgomery Street, Belfast, BT1 4NX require a Solicitor on a part-time basis for mainly conveyancing work and also some County Court litigation. Generous terms and conditions and flexible working hours. Please apply in writing and forward CV to Mr Gerry Lee at the above address. Applications will be treated in strictest confidence.

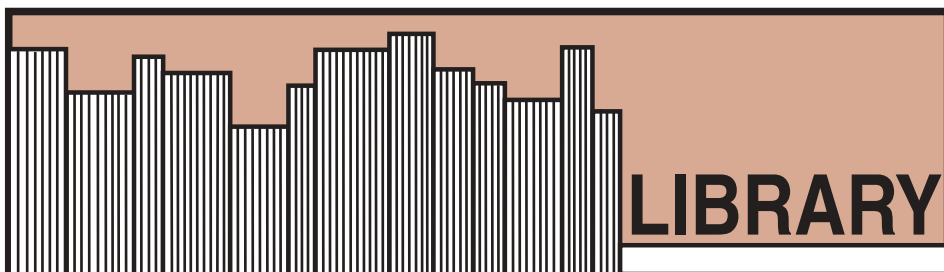
Solicitor required for approximately six months from October to cover maternity leave. Conveyancing experience essential. Full-time preferred but part-time will be considered. Attractive rates and conditions.
 Apply in writing with CV to Brian MacMahon, Doris & MacMahon Solicitors, 63 James Street, Cookstown, Co Tyrone, BT80 8AE.

MacAllister Keenan & Co
 Solicitors
 20 High Street
 Larne
 Require a solicitor preferably with experience in matrimonial and litigation law. Apply in writing with CV to the Senior Partner at the above address.

Assistant Solicitors Required

J. Blair Employment Law Solicitor has a vacancy for an assistant solicitor to work within an expanding employment law practice.
 Would suit a solicitor who is either newly qualified or who has up to one year's PQE.
 Contact J Blair for an application form:
 J Blair Employment Law Solicitor
 46 Hill Street
 Belfast
 Tel: 028 9023 0560
 Fax: 028 9023 6660
 E-mail: judithblair@jblairsolicitor.co.uk
 An Equal Opportunities Employer

Assistant Solicitor required for busy North West Practice
 Some experience desirable
 Salary commensurate with experience
 Closing date 25th July 2003
 Please apply in writing with Curriculum Vitae
 To:-
 Miss McCaffrey
 Copeland McCaffrey
 Solicitors
 29 St Patrick Street
 Strabane
 County Tyrone
 BT82 8DQ



Recommended Reading

Warsaw Convention on International Carriage by Air 1929 - Psychiatric Injury

In recent weeks Judge Graham Jones has given a reserved ruling allowing a group of 70 passengers to pursue damages claims for psychiatric injuries from Thomson Holidays after the plane they were travelling on from Cardiff to Gerona was forced to crash land. This seems to be the first case of its kind as previous cases have been unsuccessful in appealing decisions with regard to the definition of "bodily injury" under the Warsaw Convention on International Carriage by Air 1927 Art. 17.

Legislation

Warsaw Convention on International Carriage by Air 1929 Art. 17
<http://www.jus.uio.no/lm/air.carriage.warsaw.convention.1929/doc.html>

Articles

Crash victims can claim damages

Thomson Holidays is liable to compensate the passengers for the psychiatric injuries sustained because the company had not stated the limit of the liability for such injuries in its conditions of business.

Verkaik: Independent, May 7, 2003, 4.

The meaning of "bodily injury" in international carriage by air

Goh: 2002, ITLJ, 3, 139-143

Airborne injury to body and mind

Mullany: 2002, LQR, 118(Oct), 523-526

Caselaw

Thomson Holidays case

Available from the Law Society Library.

Morris v CLM Royal Dutch Airlines

K, an airline, appealed against a claim brought by Morris, a child who had travelled unaccompanied on one of KLM's flights, and who claimed that she had suffered from clinical depression following an indecent assault by a male passenger. K submitted that the incident which M claimed had caused her depressive illness was not an "accident" within the meaning of Art.17, and psychiatric illness did not constitute "bodily injury" for the purposes of Art.17. Held, allowing the appeal. 2002 2 AC 628

2001 EWCA Civ 790

<http://www.bailii.org/ew/cases/EWCA/Civ/2001/790.html>

King v Bristow Helicopters Ltd

The issue was whether a person who had suffered no physical injury but who had suffered mental injury or illness as a consequence of an accident on board an aircraft could bring a claim against the carrier under the Warsaw Convention on International Carriage by Air 1929 Art.17. Held, that a psychiatric condition developed by a passenger as a result of an accident on board an aircraft did not fall within the definition of "bodily injury" for the purposes of Art.17 of the Convention.

2002 2 W.L.R. 578 (HL)

2002 UKHL 7

<http://www.publications.parliament.uk/pa/ld200102/ldjudgmt/jd020228/king-1.htm>

New Books in Library

- 1) Bailey: Voluntary arrangements. Butterworths. 2003
- 2) Veale Wasbrough on property development. Butterworths. 2002
- 3) Formalities for contracts relating to the sale of land or interests in land and the rule in Bain V Fothergill. Law Reform Advisory Committee for Northern Ireland. 2003
- 4) Solicitors Family Law Association: Guide to good practice for solicitors acting for children. 6th ed. Solicitors Family Law Association. 2002

LIBRARY CLOSURE

Please note that the library will be closed from

Monday 14 July to 25 July 2003 inclusive

E-MAIL DIRECTORY – 7th edition

You may recall that the Library compiled a directory of e-mail addresses of firms last year. We are now producing a new edition of the directory which costs £5 and would be grateful if you could let us know whether your e-mail has changed.

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

The new edition should be available mid-July.

Law Society Library Email:

hsemple@lawsoc-ni.org

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Tuesday 12th August 2003**

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