

President's Message



By the time this edition of the Writ hits your desk it will be well past the time for those well worn seasonal greetings but as this is the first opportunity I have had to do so, may I wish you all a belated happy and prosperous 2004.

Now that we are all back at work having survived the hype, euphoria and excesses of Christmas and the New Year and the consequent worry about the damage that the ingestion of too much high cholesterol food, drink and sundry other toxins may have done to our systems, we can now concentrate on that mundane task of making a living.

Not only are the months of November through to February the bleakest and most dismal months of the year weather wise but it is also the time when our money only ever seems to travel in one direction - outwards. On the domestic front there are the ever increasing demands of Christmas: we have now become conditioned to believe that if we do not spend about half of our incomes on gifts, food and drink that people neither need nor want then we are somehow letting the side down. Then come the ski holidays when we torture ourselves both on and off the slopes and afterwards while we wait for the Visa bills to catch up.

On the practice front we kick off this bleak season by having to find increasingly large sums of money for our professional indemnity insurance premiums. The single biggest cause for this continues to be solicitors who allow matters to become statute barred. Concurrently there are the increased contributions towards the Society's Compensation Fund to be found. The threefold increase in this year's contribution is a direct consequence of the actions of a small number of our colleagues who have the quaint but misplaced belief that they can sustain a certain lifestyle by simply helping themselves to their clients' money. Fortunately the number of solicitors who hold this belief is very small but it none the less adds to the overheads to be borne by the rest of the profession. It also serves to fuel the quite erroneous public perception that all solicitors are a bunch of corrupt, overfed fat cats.

It seems that no sooner have the cheques cleared for the PI than we have to send off a further tranche to the Law Society for our Practising Certificates. Happily this does not present too dismal a picture as the fees this year were increased more or less in line with inflation. Another inevitable event in the new year is the cheery little letter from the Inland Revenue reminding us that we have to submit our Tax Returns before 31st January. And it is quite pointless telling them that you cannot send them any money as you have already spent it on ski holidays and such other essentials!

As if that were not enough, the new Legal Services Commission, by way of an opening gambit, decided to suspend payment for work carried out under the Green Form Scheme and some family work. Just when those practitioners who are directly affected can expect to be put in a position to pay their overheads is anyone's guess. Rest assured, however, that the Society is not taking this lying down and certain steps have already been taken.

"What is the good news, then?" I hear you cry. The answer is, not a lot. However, we set ourselves up as problem solvers and we have been providing that service to our clients since time immemorial and furthermore, we do it rather well. It should not, therefore, be beyond the members of this profession to find solutions to the problems, or the perceived problems, that beset it. Our profession may have to undergo some changes and of course we must wait until we can see more clearly what is suggested before we can deal with them. But let me once again assure you that the governing body of this profession will resist to the utmost the foisting upon us of changes for the sake of change. We are quite determined that only those measures that are genuinely in the best interests of the public in Northern Ireland will be accepted.

"Every cloud has a silver lining" and in our case it is our Annual Conference to be held this year in Scotland from 26th to 28th March. The hotel we have chosen is the

genuine luxury article which will stand comparison with the best on offer anywhere in the British Isles. So we can guarantee a memorable experience to those who want nothing more than a bit of rest and recreation in highly congenial surroundings.

As I explain in the foreword to the conference brochure, I picked the Peebles Hydro in part because I had had a number of super family holidays there when my children were young. The ambience of the Hydro has not changed although the facilities are even better since I last stayed there: it has all sorts of supervised activities for different age groups and its reputation as a children-friendly hotel is well deserved. You could hand the little darlings over on your way in, safe in the knowledge that they will be ready for collection on the way out – if they want to go home, that is! In the meantime we can get on with doing what we do best at conferences – enjoying ourselves and, of course, being educated.

The theme of this year's conference is money laundering and the talks will be by way of an adjunct to the articles in the Writ and the Society's road shows. We all know what a confounded nuisance it is to have to produce evidence of identity even when we have been customers of our bank for a lifetime. It is therefore hoped that our speakers will add a new dimension to the whole problem that may help to make all the jumping through hoops more meaningful. It should also be both interesting and entertaining.

Without prejudice to the generality of the foregoing, may I once again wish you a happy and prosperous 2004! And don't forget, if you want to avoid disappointment, book now for the Annual Conference in the Peebles Hydro Hotel.

John W D Pinkerton
January 2004

Avoiding Money Laundering

A fresh focus on the dangers of solicitors becoming caught up in money-laundering was provided by a series of seminars organised by the Law Society around the Province.

The roadshows visited Belfast [twice], Derry and Newry. They were led by Alison Matthews who has extensive experience of giving practical advice to solicitors on the implications of the substantive and procedural law in this area. The provisions of the Proceeds of Crime Act 2002 were examined as also the requirements of the new regulations which will come into effect on 1st March.

These seminars, based on a wealth of practical experience and sound common sense, provided meaningful assistance to the significant number of solicitors who attended them. As well as an analysis of the basic legislative framework in the UK as a whole and in Northern Ireland, she was able to give examples of situations where as Irwin Mitchell's own Money-Laundering Reporting Officer (MLRO) she has made National Criminal



Alison Matthews in full flow at one of the Belfast seminars

Intelligence Service (NCIS) reports and, more importantly, where she thought them unnecessary.

Of real use was her guidance on implementing the training, verification and record-keeping

procedures required by the Money-Laundering Regulations, with an emphasis on achieving systems proportionate to practice size and client profile.

She advised on the information which would satisfy verification procedures and pointed out constantly that solicitors face draconian prison sentences if they not only fail to address the regulatory requirements but also if they breach the "head-line" offences in the Proceeds of Crime Act 2002.

Alison is not an apologist for the new regime, but a pragmatist who has no illusions about the weight of political opinion here and internationally which is determined that the anti-money laundering measures will remain on the statute-books. Her objective is to protect her



Donald Eakin (Chairman, Risk Management Committee) with Alison Matthews



Barry Finlay (Chairman, Financial Services Committee), Alison Matthews (Principal speaker) and Sue Bryson (Deputy Secretary, Law Society of Northern Ireland)



Part of the Belfast seminar audience, rivetted

colleagues and other practitioners from penalty. Alison provided an invaluable guide through the maze of legal concepts, obligations and acronyms which beset the unwary solicitor. The clear message was that we fail to come to grips with all this at our peril. The prize for the best (and most empathetic) crack goes to the wag at one of the Belfast seminars. Alison was asked what was the best advice she could offer a solicitor faced with this plethora of apparently conflicting obligations -----'take early retirement' was volunteered from the back of the hall.

The good news is that if you were not able to be at the seminars the notes prepared by Alison are available from the Society at a cost of £10. They are extensive and will prove very useful. Finally a reminder that you are required to have appropriate office procedures in place by 1st March. The key message is that more than ever solicitors need to protect themselves and turning a blind-eye to the legal requirements will not achieve that.



John Bailie (Chief Executive, Law Society of Northern Ireland) with Alison Matthews



**Opening of
DPP/Public
Prosecution Service
Headquarters**

Pictured at the opening of the new DPP/Public Prosecution Service Headquarters are l-r The Right Honourable Lord Peter Goldsmith, QC, Attorney General; Mr Joe Donnelly, Senior Vice-President; Mrs Attracta Wilson, Junior Vice-President and Lord Carswell (former Lord Chief Justice of Northern Ireland).

5th Advanced Advocacy Course



Advanced Advocacy – pictured left to right – Tony Caher; Professor Lonny Rose, NITA and Brian Johnston, NITA..

The next issue of the Writ will see the formal notice and will include the application form for the Law Society's Advanced Advocacy Course. It is important that all solicitors

submit their application forms early for this Course for which there has been great demand in the past. This year will see the Course attract maximum CPD hours which will make it even more

attractive for younger participants. Just to remind you that the Course is now open to all Solicitors and last year we had a wide cross-section in terms of experience, practice and gender (50% of the participants were women). Our advocacy teaching experts from NITA in the USA have agreed to lead the Course once again and the Institute of Professional Legal Studies will host the Course and provide the usual teaching skills and teaching aid backup. It will follow the same format as in previous years with the preliminary Evidence Course run over a number of evenings in May/June followed by the week long Advocacy Course itself commencing Monday 6th September finishing with a mock trial in the Royal Courts of Justice on Friday 10th September.

Remember to submit your application as soon as you receive next month's Writ.

Client Counselling Success

The Institute of Professional Legal Studies has earned the right to represent Northern Ireland at the 2004 International Client Counselling Competition to be held in Glasgow from 29 March - 2 April.

In the final held at Law Society House on the 12 December 2003, the two IPLS apprentices, Anne Kerr of Faloon & Toal Solicitors, Dungannon and Michelle McVeigh of James McNulty & Co Solicitors, Omagh, won the regional Client Counselling Competition against a team from the Law School at Queens University Belfast, comprising Kerrie Stewart and Hamill Clawson, coached by Hazel Cuthbert. The panel of judges was chaired by John Neill and the part of the client was once again played by local actress Laine Megaw.

The general aim of the competition is to encourage and assist with the development of interviewing and counselling skills. It emphasises the importance of preventive law and the need to train students to be effective counsellors in the legal office, dealing with both the legal and non-legal goals and concerns of clients. The Competition essentially simulates a legal consultation whereby students are required to conduct a client interview to determine how they would proceed in the

hypothetical situation.

IPLS has a strong record in this field of legal practice skills. A team from IPLS won the International competition in 2001 and were runners up in 2002 with the 2003 team reaching the semi-finals.

To enable the trainees to take part in the international competition some serious fund-raising has to be undertaken and in previous years this has been kicked off with a generous donation from the Law Society which was always greatly appreciated. However any donation, no

matter how small is always welcomed.

There will be 15 other countries competing in the international event. The students spend time together socially for three days before the competition, with the emphasis being on participation rather than winning. However, the winners of the International Competition can go on to be judges at the International Competition to be held in 2005. The competition provides a great opportunity to establish links with colleagues from all over the world. The nature of the international exposure it gives is invaluable, not only for the apprentices, but also for Northern Ireland, IPLS and the Law Society.



Pictured left to right are John Neill, Solicitor; Michelle McVeigh, Trainee; Linda Wright, Counsellor with RELATE; Anne Kerr, Trainee; Laine Megaw, Local Actress; Martin Mallon, Solicitor and Chairman of the Belfast Solicitors' Association.

Would the next John Grisham please stand up?

Dear Colleague

Imagine yourself three years from now relaxing on a tropical beach, exotic cocktail in one hand, sultry maiden (or manservant) in the other. Well, it could happen if you respond promptly to this invitation. Trust me.

As mentioned by the President at the time of the recent re-launch of the magazine, we are keen to encourage contributions, and ideas for articles, from within the profession. We have received favourable feedback on the new-style Writ. This is encouraging. However the success of the Writ will depend ultimately on its substance. This will not happen without your help.

I have absolutely no doubt that within our ranks there are reserves of creative talent which remain untapped. As a profession we tend perhaps not to be associated with violets of the shrinking variety but it is often difficult to get started, and to find time in the midst of a hectic schedule. In order to help we have decided to create a Contributors Panel so as to identify those who would be willing on an occasional basis to provide something for the Writ. Contributions might be a serious article on a legal issue or new legislation, a book review, or something in a lighter or fanciful vein ("The Runaway Commission"?; "The Bisto Brief"?; "The Albatross Client"?) or even a piece of verse (!).

No commitment is involved on your part other than to think about contributing something as and when the muse strikes, and to accept an occasional commission from The Writ.

If you feel you may be able to help, please register your interest simply by sending your name and contact details (correspondence address, phone numbers, e-mail address) to me. All that is required at this stage is that you indicate a willingness to be available: no other commitment is required and you do not need to have any particular article or other contribution in mind or in hand. Contributions prepared and accepted for publication will be credited to the author and can be claimed for CPD purposes.

So please pick up your pen, or switch on your dictaphone/computer. And so as you sit in your office, harassed and overworked on a gloomy Northern Ireland winter day remember this: John Grisham had to start somewhere.

Yours sincerely

JOHN BAILIE
Editor



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SCARRING REVIEW REPORT PUBLISHED

At the time of going to press, the Government has just published the Report compiled by Professor Desmond Greer arising from his review into the process of viewing of scarring in criminal injuries compensation cases.

The Greer Review was commissioned by the Northern Ireland Office in reaction to media coverage reporting allegations against counsel and solicitors arising out of the conduct of settlement consultations.

Despite reservations about the basis upon which this review had been established and the initial terms of reference (which pre-proposed a need for reform) the Law Society and the Bar Council were concerned to assert to Professor Greer the inherent value of the present practice, but recognising also that it was capable of refinement. The main conclusions and recommendations arising from the review are summarised below.

In a joint statement issued at the time of publication of the Report, the Society and the Bar commented:

"We welcome in particular the conclusions reached in the two individual cases which received adverse media attention in Summer 2002. The review vindicates comprehensively the barristers and solicitors involved. Professor Greer has concluded that the viewings in these cases were conducted entirely in accordance with the standards operated by the Bar Council and the Society, and found no cause for concern or action against any individual. Contrary to the damaging allegations reported in the media, Professor Greer found that "both viewings were conducted

quickly, efficiently, with no fuss and at all times in a sensitive and dignified fashion".

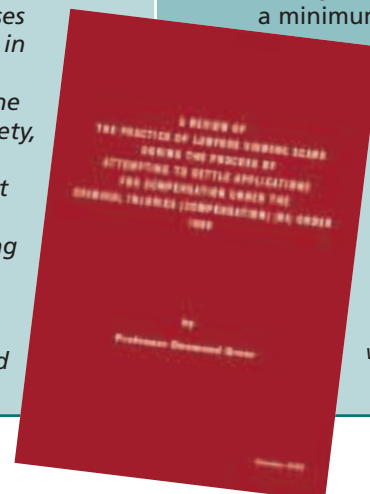
"We welcome also Professor Greer's recognition of the value of the present practice, his view that the current practice is not seriously flawed and his confirmation that viewing is generally carried out in a wholly professional and considerate fashion. He found that there is no case for a fundamental change".

We will be considering as early as possible how best to take forward those recommendations which fall for action by the two professional bodies".

Summary of Recommendations

Professor Greer recommends that the scar-viewing practice should continue, but should be refined as follows:

- the procedure followed should be designed to ensure that in every case the applicant's consent to a viewing is an "informed" consent;
- a written statement of the practice to be followed should be made generally available;
- steps should be taken to improve the quality of medical reports and photographs, with a view to reducing the need for a viewing of scars wherever possible;
- the number of lawyers present at a viewing should be kept to a minimum.



Copies of the Report are available on the NIO website: www.nio.gov.uk

FORENSIC PATHOLOGY SERVICES

The Government has announced a major shake-up in the organisation of forensic pathology services in Northern Ireland.

Following completion of a consultation exercise carried out in 2003, it has decided that the best way forward to secure the long-term future of quality forensic pathology services is by way of a combination of centralisation, additional pathologists and closer working with hospitals.

According to many of the comments received, centralisation of autopsies at one single location meets most of the criteria for maximising pathologists' time and for maintaining high standards of clinical governance. This will be phased in over the next three years. It will also be necessary to increase the state pathology team by one additional pathologist.

The next stage in the process will be to research where a central mortuary facility should be located.

Minimum Terms in Mandatory Life Sentence Cases

The Northern Ireland Prison Service, on behalf of the Secretary of State, has recently launched a public consultation on proposals to introduce a statutory framework for the judicial determination of minimum terms for persons convicted of murder.

The proposal is based on legislative provisions, contained in the Criminal Justice Act 2003, which recently came into force in England and Wales. The statutory framework adopted in England and Wales provides for four different starting-points for minimum terms of mandatory life sentence cases depending on the nature of the offence and the age of the offender.

The Act also gives the Court the ability to consider statutory mitigating and aggravating factors that may provide for the tariff to be adjusted either downwards or upwards from the relevant starting point to determine the appropriate minimum period an individual must serve in custody before being considered for release.

The Consultation Paper which is available on www.niprisonservice.gov.uk outlines these provisions in detail and seeks views on their possible application in Northern Ireland.

The views sought are two-fold. Firstly, views are sought on both the principle of setting starting-points for minimum terms and the appropriateness of their application to Northern Ireland, and secondly, as part of the requirements under section 75 and schedule 9 of the Northern Ireland Act 1998, the Northern Ireland Prison Service seeks views on the likely impact of the proposal on the promotion of equality of opportunity. The paper identifies, at pages 16-17, some important issues and questions on which comments would be particularly welcome.

Anyone interested in commenting on the proposals should contact Peter O'Brien, Secretary to the Criminal Law Committee. The closing date for submission of views is 31st March 2004.

Measures to tackle anti-social behaviour

The Criminal Justice Policy Branch of the NIO has issued a consultation paper seeking views on a package of proposed measures to tackle anti-social behaviour in Northern Ireland.

It states that the proposals are a response to community concerns about anti-social behaviour in general and a direct response to one of the objectives of the Government's Community Safety Strategy for Northern Ireland which was launched in March 2003. Anti-social behaviour and low level neighbourhood disorder were identified as key issues and the strategy identified the need to promote measures to combat this kind of behaviour.

The proposed package consists of three specific measures: -

- the development of Acceptable Behaviour Contracts (ABCs). ABCs are a non-statutory intervention and may be a sufficient warning to people involved in anti-social behaviour (including young people and their parents). They may also be a precursor to enforceable action;
- introduction of Anti-Social Behaviour Orders (ASBOs) as an option available to a court where there is a conviction for a related criminal offence;
- introduction of ASBOs without an associated criminal conviction and on the basis of a partnership arrangement between the police and, in the first instance, District Councils and the Northern Ireland Housing Executive.

A copy of the document may be accessed at www.nio.gov.uk. The closing date for receipt of comments is 1st April 2004.

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

NIGALA ANNUAL REPORT 2002-2003

The Northern Ireland Guardian and Litem Agency has recently published its Annual Report.

It contains a detailed analysis of the Agency's workload. It records the year 2002/2003 as a challenging year with the instigation of a waiting list for the allocation of a guardian following appointment by the court.

Public law proceedings accounted for 67% of NIGALA's workload (378 cases involving 643 children), the balance relating to adoption proceedings.

A copy of the Report is downloadable from www.nigala.n-i.nhs.uk.

the Custody Visiting scheme

One Monday morning in August 2002 two custody visitors set out from their homes to visit a custody suite in Co Antrim. They had made a similar journey on many occasions before, but this time was different. They were making history for custody visiting in Northern Ireland as the first custody visitors to have access to detained terrorist suspects.

Now, the Northern Ireland Independent Custody Visiting Scheme is about to take another important step. Preparations are being made for custody visitors to observe police interviews of detained terrorist suspects on camera, provided they have the consent of the detainee to do so. It is hoped that this extension of the scheme will commence in Spring 2004.

The key factor behind both of these changes is a recommendation made by the Independent Commission on Policing in Northern Ireland - the Patten Report.

Patten said that "Responsibility for inspecting all custody and interrogation suites should rest with the Policing Board, and Lay Visitors* should be empowered not only to inspect the conditions of detention (as at present), but also to observe interviews on camera subject to the consent of the detainee (as is the case for cell visits)".

In Northern Ireland the Custody Visiting Scheme has been in operation since 1991 and there are five custody visiting teams covering Belfast, Antrim, Tyrone and Fermanagh, the North West, Down and Armagh.

So who are custody visitors and what do they do?

Custody visitors are volunteers from the community who make unannounced visits to police custody suites to check on the welfare of people being detained. They look, listen and report back to the Northern Ireland Policing Board on what they

find. In this way people unconnected with the police or the criminal justice system can inspect and report on how arrested persons are dealt with by the police and the conditions in which they are held.

For example, custody visitors check that detainees have access to legal advice, that someone has been informed of their detention, that medical attention, an interpreter, or an appropriate adult has been provided if required.

During 2002/2003 custody visitors made nearly 1000 visits to custody suites throughout Northern Ireland. In July 2003 the Policing Board published a report on their work. But the full implementation of the Patten recommendation and, in particular, observing interviews on camera, is a major development for custody visiting.

Custody visitors will carry out their new role alongside their current custody-visiting role. However, when they arrive at the custody suite and find that a detainee is being, or is about to be, interviewed by the police and has given consent - the consent of the detainee is crucial and detainees may change their minds at any time - the visitors may observe the interview, with sound, on a remote monitor. In effect, this will be a "snapshot" of the interview, around 10 to 15 minutes.

During their visits they will not be looking for flaws in interview techniques, or assessing how well interviewing officers are carrying out their duties, neither will they be monitoring how other people involved in the interview process carry out their role.

But what they will do is check that the interview is not oppressive and in particular, that the correct standards are being followed - something that is particularly important when the police are interviewing people who may be vulnerable in some way, such as juveniles or people

who are mentally vulnerable. The custody visitors will report back to the Policing Board on what they observe.

To prepare them for this new role, the already comprehensive training that custody visitors receive is being added to so that the volunteers understand the basic rules of good interview practice, and so that they are aware of what behaviours they should expect to see in an interview, and what behaviours are unacceptable.

Fairness, human rights, the standards set out in legislation regarding interviewing, and the roles of others involved in the interviewing process, including solicitors, will also be part of the training.

Their reports on observing the interviews will be an important part of the Board's new arrangements for monitoring the performance of the police in complying with the Human Rights Act 1998.

The Policing Board believes that the custody visitors' independent oversight has an important role to play, and their contribution to the Criminal Justice System should not be underestimated. By giving up their time to do this valuable work, they are also assisting the Board to fulfill its role in making sure the police service is effective, efficient and accountable to the community it serves.

**"Lay visiting" is the previous name for custody visiting.*

We are grateful to Ruth Thompson, Deputy Head of Policy and Accountability at the Northern Ireland Policing Board for this article.

If you wish to learn more about the work of the custody visitors please contact the Policing Board at email: information@nipolicingboard.org.uk, or check its web-site at www.nipolicingboard.org.uk.



ATTENTION ALL LITIGATION PRACTITIONERS

The Masters in the Queen's Bench Division have recently issued two Practice Notes detailing new requirements, commencing on 1st March 2004, in relation to ex parte applications and applications to abridge time for service of Writs of Subpoena.

The text of the Practice Notes is set out below. Copies of the relevant ex parte checklist and application form requiring to be completed after 1st March are downloadable from the Members Section of the Society's website at www.lawsoc-ni.org

EX PARTE APPLICATIONS BEFORE THE MASTERS IN THE QUEEN'S BENCH DIVISION

Commencing on 1 March 2004, and with the aim of encouraging improved practice on ex parte applications before the Masters, applicants will be required to complete the annexed checklist when lodging papers in the Writ Office. This will ensure that the papers are in order and that the procedures laid down in the Rules of the Supreme Court have been followed.

The current practice whereby the deficient papers are returned with a note as to the correct procedure, will be discontinued - instead, such applications will be dismissed. The Masters may direct that the costs of any application so dismissed for deficiency are not to be borne by the client.

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

C J McCORRY
Master (High Court)

5 January 2004

APPLICATIONS TO ABRIDGE TIME FOR SERVICE OF WRITS OF SUBPOENA IN THE QUEEN'S BENCH DIVISION

1. Practitioners are reminded that Order 38, rule 15 of the Rules of the Supreme Court provides: "A writ of subpoena must be served personally and, subject to rule 17, service shall not be valid unless effected within 12 weeks after the date of issue of the writ, and not less than four days, or such other period as the Court may fix, before the day on which attendance before the Court is required".

2. Commencing on 1 March 2004, applications for leave to serve a writ of subpoena less than four days before the day on which attendance before the court is required should be brought to the Masters' Secretary at room 1-2 Royal Courts of Justice, and not to the Writ Office.

3. With the aim of encouraging improved practice applicants will be required to complete a brief checklist (copy annexed) when lodging the application papers with the Master's Secretary, to assess as to whether all proper steps have been taken. Applicants should be in a position to indicate:

- (a) the date when attendance is required;
- (b) whether there has been contact with the witness to be served;
- (c) whether the witness to be served has indicated his or her availability or unavailability to attend;
- (d) the date and time by which the writ of subpoena can be served; and
- (e) the reason for the delay in serving the subpoena.

4. Where an application is clearly in order the Master's Secretary will bring it to the attention of a Master and an appearance before a Master may not be required.

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

C J McCORRY
Master (High Court)

5 January 2004

Costs and Disputes

Brian H Speers LLB; MCIArb; Solicitor; Mediator; Chairman, Law Society of Northern Ireland ADR Committee examines the costs implications of not considering alternatives to litigation

I suspect many lawyers were on holiday last July. Disputes and their resolution would have been far from the hard pressed solicitor's mind – unless it involved disputes regarding whose turn it was to reserve the sun beds.

However disputes were not cast from the mind of Mr Justice Gavin Lightman of the High Court in England.

On 11th July 2003 Mr Justice Lightman was addressing a conference held by Action for Victims of Medical Accidents. He said this about litigation:-

"The overwhelming balance of negative considerations in the case of modern litigation requires the development and promotion by the State and the adoption by the parties of alternative means of resolution (colloquially ADR) and most particularly the foremost method of ADR, namely mediation." Mr Justice Lightman went on to say:- "In the case of mediation everyone can be a winner, the costs can be small; a result may be salvaged. Mediation is not a universal panacea: it has its limitations and it is not always applicable. But where it is available, in my view, no sane or conscientious litigators or party will lightly reject it if he fairly weighs up the alternative, namely litigation."

(The above quotations have been taken from the report of this conference provided by the Centre for Effective Dispute Resolution – CEDR).

Many will recall in a previous article how I drew attention to the observations of judges in cases in England concerning the advantages of mediation. Apart from speed, costs savings, privacy, flexibility and the possibility of imaginative commercial solutions which work for the parties and in which the parties are involved – quite a list of advantages in itself – there is now to

be added the advantage of avoiding costs penalties.

There is now well established precedent to the effect that if a party insists on proceeding to court and rejects an offer to resolve the dispute whether by mediation or another ADR process then that party is at a significant risk of not recovering costs – even if successful in the litigation.

This is still a difficult concept for solicitors and barristers used to the culture of costs following the event. The recent cases, however, show that judges expect serious and sensible efforts to be made to resolve the matters in dispute. This is not something that has sprung up recently. The High Court of Justice in Northern Ireland, Chancery Division Practice Direction No 4 of 1997 states:-

"Many Chancery actions settle on the day of trial, sometimes after protracted discussions. While the Court is always anxious to encourage the settlement of actions, the failure by parties to enter into and exhaust the possibility of settlement negotiations at an earlier time results in an unproductive use of court time, increased costs and the requirement for the attendance of witnesses whose attendance might otherwise be avoided...."

More recently the High Court of Justice in Northern Ireland, Queen's Bench (Commercial list) Practice Direction No 1/2000 amended 7th October 2002 states in the preamble:- "The commercial court

specifically recognises the importance to the commercial community of economy, efficiency and the maintenance of good business relationships and, accordingly, the court is anxious to encourage serious attempts by the parties to enter into productive negotiations with a view to achieving a mutually satisfactory resolution of the litigation or, at the very least, identification and reduction of disputed issues at an early stage in the proceedings." Paragraph eight of this Practice Directive states:-

"Consistent with the aim of the commercial list set out at the commencement of this practice direction the Commercial List Judge may draw the attention of the parties to commercial litigation to the existence of alternative means by which a case or a specific issue/issues therein may be resolved including, in particular, a suitable form of alternative dispute resolution."



Past-President of the Law Society, Joseph Donnelly presents Denis Moloney with his certificate.



In appropriate cases the Commercial List Judge may require the parties to justify a decision not to resort to an appropriate form of dispute resolution."

It is to be expected that with both the Chancery Judge and the Commercial List Judge encouraging settlements on a regular basis in their courts, and asking legal representatives what steps have been taken to resolve the differences, costs sanctions are likely to follow in this jurisdiction as well.

One option for parties and their advisers to consider is to suggest a formal mediation using the Dispute Resolution Service of the Law Society of Northern Ireland. This involves completing a short form confirming that the parties agree that the dispute be referred to mediation under the Law Society scheme. A mediator will then be suggested from the panel of solicitors and barristers who have received approved training.

The mediation is likely to work – even if complete settlement is not achieved issues are likely to be narrowed and each party will have a



The course trainers with the immediate past-President of the Law Society, Mr Joseph Donnelly, at the presentation of certificates to those who had completed their Mediation and Disputes Resolution training course.

greater understanding of their own and the opposition's case. In addition, by participating in a mediation parties will be insulated from adverse judicial comment – and possible costs sanctions – that not enough was done to try and resolve the dispute.

In conjunction with SLS the Law Society has provided mediation and dispute resolution training for the past three years. Experienced solicitor mediators Brian Speers and David Gaston, assisted by Alva



Sheena Grattan BL receives her certificate from past-President of the Law Society, Joseph Donnelly.

Brangam QC have now provided training to nearly 50 solicitors and barristers. While the course provides training in mediation, it also provides wider training in conflict management and disputes handling. The next training course will take place in February/March 2004. Those wishing to register their interest should contact Miriam Dudley of SLS at 028 9033 5224. The course is open to solicitors and barristers. An application form can be found at page 22.

Common errors in completed SDLT forms

The Inland Revenue has been closely monitoring the completed Land Transaction Returns that it has been receiving since 1 December and has published details of the most common errors on its website at www.inlandrevenue.gov.uk/solltr_errors.htm

The main issues are:

- **Pre – 1 December**
Practitioners are posting documents to Netherton for pre- 1 December transactions. Some of these transactions also have a completed SDLT 1 attached, which is not needed.

Any documents for pre - 1 December transactions should be posted to local Stamp Offices and not Netherton.

- **Post 1 December Transactions**
Practitioners are sending in documents, deeds and the actual lease with SDLT1's. Only the SDLT 1 is required and no additional documents.
- **Effective Date – Box 4 on the SDLT1**
It is vital to enter the effective date of the transaction. They have had a number of cases where this has been omitted.
- **Total Consideration Payable – Box 10 on the SDLT 1**
It is vital that this information is entered.

- **Payment**

It is essential that payment has been made. All cheques must agree with the amount of tax due for the transaction and tally with the amount shown on the SDLT 1.

- **Queries**

No written queries should be sent to Netherton. The unit will process the returns but are not able to answer enquiries.

Please direct any written enquiries to a Stamp Office or contact the Enquiry Line on **0845 6030135**





Risk Management

ADVICE

Keeping Paper Records

Should your firm be hit with a negligence claim, one of the main parts of your defence against such an accusation should be a complete and comprehensive paper trail.

However, by paper trail we do not just mean copies of any written correspondence between parties, but also all documentation covering every aspect of work undertaken for the client from day one.

This documentation will act as a record of all advice given and work accomplished for the client. Therefore, rather than simply attaching a scribbled Post-It note into a client's file, make sure that all records are written up professionally and contain all relevant information. Below we have outlined what should be included in this comprehensive paper trail and how records should be maintained:

- Make clear, written records of all telephone conversations and meetings;
- In all cases, date and sign written records. If appropriate put time on record;
- In the case of meetings or conference calls, include names of all participants;

- If a client is involved in a meeting, it can be worthwhile providing the client with a copy of the written record/minutes and asking him to sign and return it for retention on file. This should ensure against the client claiming no knowledge of whatever course of action may have been decided upon in the meeting;
- Maintain orderly stand-alone files with records in chronological order. Therefore, should a claim be made and the partner responsible is away, or has left the firm, all necessary documentation needed to dispute the claim can be easily found;

- Keep an efficient diary system and ensure all actions are dealt with in timely fashion, especially if legal or regulatory deadlines apply;
- Date stamp faxes as received and keep on file;
- Keep copies of e-mails on file, as opposed to simply keeping them on the computer;
- For outgoing faxes, attach individual transmission confirmation slip to back of fax;
- Maintain a central log of master receipt/transmission journals for faxes and make sure that old copies are filed, not just thrown into the bin once the central log file is full.



While it is fashionable to talk about a paperless office, the reality is that proper paper records will need to be produced in order to prove that no negligence has taken place. Therefore, it is important to ensure that relevant documentation is filed appropriately at the end of each day, and can be easily obtained as and when it is required.

This column was prepared by Alexander Forbes Professions risk management team.

This article first appeared in 'The Gazette', the journal of the Law Society of England and Wales, 100/03 23 January 2003.

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Mental incapacity: *care and welfare decisions (Part 2)*

Part 1 of this article was published in *The Writ* in November/December 2003.

In the case of *Re C (1993)*, the court again invoked its authority under the declaration procedure to determine a dispute concerning whether a disabled adult who lacked capacity should have contact with her mother. Although the case never came to a full hearing, the court accepted that it had jurisdiction to make a declaration about such a matter as it held that interference with a vulnerable adult's contact was a tortious act and therefore the court had power to grant a declaration to ensure that an adult who lacked capacity would enjoy freedom of contact, in that case with an estranged parent. However, in a later case a different judge doubted whether the court had the equivalent power to restrict the contact of an adult who lacked the capacity unless there was a demonstrable threat of violence or other injury to her/him or some other tortious act.

Certainly, the courts have restricted and, in some cases, terminated contact between adults who lacked capacity and their abusers. Whether the courts will restrict contact on the grounds of best interest where there is no tortious act remains unclear. However, in the case of *Re D-R (1999)* which involved a father who wanted to see his severely mentally impaired adult daughter after a break in contact of over two years, the court denied contact on the basis of best interest. Contact and association were regarded as part of the treatment of an incapacitated person. In that case, it should be noted that the Court of Appeal highlighted some of the difficulties of using the declaratory procedure and in attempting to enforce a declaration when it pointed out:

'... the lack of teeth in a declaration, the inflexibility and inability to monitor or vary its contents, the extent to which, if it can be granted,

it should be backed up by prohibitory or mandatory injunctions with the appalling vista of enforcement or contempt proceedings.'

There is a limited statutory provision under the Mental Health Order (NI) 1986 which allows for vulnerable adults to be received into guardianship and to have decisions with regard to their welfare taken by a third party. Guardianship is a supervisory arrangement for people who suffer from a mental disorder and require supervision in the interests of their welfare. Article 18(2) of the 1986 Order sets out the criteria for a person to be received into guardianship:

- s/he must be suffering from mental illness or severe mental handicap of a nature or degree which warrants her/his reception into guardianship; and
- it is necessary in the interests of the welfare of the patient that s/he should be so received.

The guardianship application must be accompanied by two medical recommendations and a welfare recommendation. A social worker must recommend that the patient should be received into guardianship in the interests of her/his welfare, giving reasons as to her/his opinion. The social worker must also give a statement as to whether s/he is related to the patient or of any financial interest s/he may have in the reception of the patient into guardianship. The person named as the guardian on the application can be either the responsible board or any other person including the applicant her/himself. Where a person other than the responsible board is named as guardian, s/he must make a written statement that s/he is willing to act as guardian.

A guardianship application may be made by the nearest relative to the patient or by an approved social

worker. An application must only be made by a social worker after consultation with the nearest relatives of the patient unless such consultation is not reasonably practicable or would involve an unreasonable delay. Also, where the applicant is a social worker s/he must not make the welfare recommendation on which the application is founded.

Article 21 of the Order defines the powers of the guardian and these are:

- to require the patient to reside in a certain place;
- to require the patient to attend for medical treatment, occupation, education or training at specific times and places;
- to require access to be given at any place where the patient is residing to a doctor, social worker or other person specified by the board.

Where a person falls without the remit of the 1986 Order, s/he will fall outside the scope of guardianship which, as stated above, is a limited statutory provision. If an adult is without the provisions of the 1986 Order then no statutory provision exists which allows for decisions to be made about her/his welfare by a third party. The Scottish Executive has proved to be forward thinking in this area and has legislated in this regard.

The Adults with Incapacity (Scotland) Act 2000 sets out a comprehensive reform of the legislation in the field of decision making on behalf of mentally incapacitated adults. The Act provides the definition of incapacity as being incapable of:

- acting; or
- making decisions; or
- communicating decisions; or
- understanding decisions; or

- retaining the memory of decisions.

The Act also establishes a welfare power of attorney which enables the attorney to take day to day welfare decisions on behalf of the person with incapacity subject to a defined 'best interests' test.

For cases where there is no welfare attorney, there are procedures whereby an application can be made on behalf of the person with incapacity. This is an order regarding a specific decision and is not as significant an intervention as guardianship. A decision then made under the order must be taken in accordance with the statutory 'best interests' test.

The best interests test involves a number of steps. The decision must benefit the incapable adult and that benefit must not be able to be achieved without taking a decision on her/his behalf. The decision which is taken must be the least restrictive option and must be made in light of the past and present wishes of the person in so far as they are ascertainable and the views of the nearest relative, primary carer and other people with an interest in so far as it is reasonable and practicable so to do.

As stated in the first part of this article and as recognised by the courts, we are now facing the situation of having an ageing population and a community into which more persons without capacity are integrated. It is to be hoped that the current Review of Mental Health and Learning Disability (Northern Ireland) as chaired by Professor David Bamford will lead the government to grasp the nettle (as is happening in England and Wales with their draft Mental Incapacity Bill) and we will be able to look to legislation for guidance in relation to dealing with the many affairs of a person who lacks mental capacity and it is hoped that the legislation will be as wide ranging as that in Scotland. However, even with statutory intervention, disputes will still arise and recourse to the courts will be inevitable.

Vincent Sheils, community care legal adviser, Law Centre (NI)

CONTINUAL PROFESSIONAL DEVELOPMENT
Law Centre courses attract CPD points for solicitors. Contact: Training Department, Law Centre (NI), 124 Donegall Street, Belfast BT1 2GY. Telephone: 028 9024 4401. The training programme can be viewed on: www.lawcentreni.org

Charity Update



Coffee with Pudsey

Institute of Professional Legal Studies trainees held a coffee morning with Pudsey Bear and raised £213 for Children in Need.

Well done!

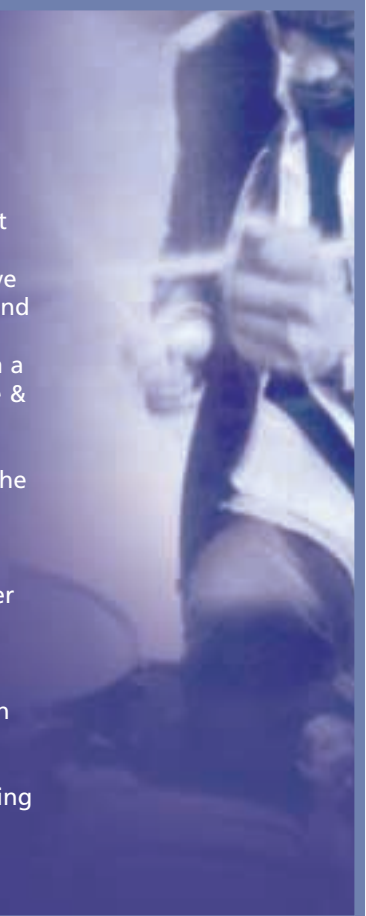
“Rhythm & Stew”

Many of you will remember the great night that was had by all when, at the end of his Presidential year, Joe Donnelly appeared live at a charity evening combining Irish Stew and the blues. The evening was in support of Action Cancer and below is an extract from a letter received from the charity's Corporate & Trust Fundraising Officer, Leo Donaghy: “On behalf of everyone here at Action Cancer, can I thank you most sincerely for the fantastic donation of £4,150 to the charity recently.

The former President, Mr Joe Donnelly, organised a great evening for Action Cancer and we are indebted to him for his fundraising efforts.

As we receive no government funding, we must rely on the generosity of the Northern Ireland public and companies to help us to continue to deliver our services of health promotion, prevention, detection, counselling and support.

Please pass on my thanks to all involved.”



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Tenders stating full details of costs, including the cost per hour for ancillary advice, must be submitted to the address below in a sealed, opaque envelope to be received no later than 4pm on Tuesday 9th March 2004.

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Reparation and Community Responsibility Orders

The Justice (NI) Act 2002 created two new Court orders for children found guilty of offences in Northern Ireland. These new Orders – the Community Responsibility Order and the Reparation Order became available to all Youth Courts from 18th December 2003. Each brings a new element to the work with children who have offended.

The Orders will be delivered by the Community Services Directorate of the Youth Justice Agency and will join the Attendance Centre Order and the Juvenile Justice Centre Order to provide a range of options available through the Agency to Courts.

The Reparation Order provides the opportunity for the victims of crime to become involved in the decision about how best to respond to the child who has committed the offence. The opportunity will be created for children to repair the harm caused either by making some form of recompense to their victim directly or by participating in an activity that contributes to society generally.

For some victims of crime this may mean that they have the opportunity

to meet the child who committed the offence and express their view on how he or she could repair the damage done - this could range from making an apology, helping with a specific task through to helping out at a charitable organization. However even where the victim does not wish to meet the child, their views will be heard and will have an effect on how the child makes reparation for the damage done.

The aim of the Order is to bring home to the child the consequences of his or her actions and to give the victim the opportunity to have their views heard. The intention will be to prevent the child from committing any more offences by showing them the effect of their actions.

The Community Responsibility Order is available for situations where the victim does not wish to be involved and where reparation may not be immediately appropriate. This Order requires the child to be involved in up to 20 hours of instruction in citizenship. This will focus on the responsibility of the individual to society and the effects of crime on other people. However the Order will also require the child to participate in other activities for up to another twenty hours thus providing an alternative opportunity to make good the harm done. This may be a physical activity such as working for a charitable cause but could also be learning a skill such as life saving or first aid. The objective is to give the child a chance to change his or her behaviour and make a more positive contribution to society.

The Orders will make demands on the children who receive them. They will not ignore the fact that children are a part of a family. Parents and other family members will be asked to participate with workers in helping the child with planning activities and in supporting the work. They will be involved in reviewing progress and in addressing

difficulties. Similarly the Orders will take account of the fact that the child should be involved in education, training or work. The Agency will ensure that Orders do not interfere with education or employment but if the child is experiencing difficulties there the Agency will ensure that the child is making full use of the opportunities available.

The Orders make significant demands on children, but they also take into account individual circumstances. Each of the Orders has particular requirements that can be adapted to suit the offence the child committed and the circumstances of the victim and of the child. The Orders will help the child to realize the consequences of their actions and give them the opportunity to make some reparation either directly to their victims or to society as a whole. The Orders will provide the opportunity for the child to develop skills and attributes that can make a positive contribution to society and reduce the risks of them repeating the behaviour that got them into trouble.

Some children will not accept the opportunities that the Orders offer and breach proceedings will be initiated in those cases to bring to bring those children back to the Court. However, it is envisaged that through motivation and engagement, successful completion will be achieved in the majority of cases. By building on the strengths and abilities of the child and relating the reparation activities to these and to the offence, the Orders will make a significant contribution to the prevention of offending by children.

This article by Dave Weir, Assistant Director, Community Services at the Youth Justice Agency first appeared in "Youth Justice Connections" (the magazine of the Youth Justice Agency) and is reproduced here with permission.

Legislative Update



1. Management of Health and Safety at Work and Fire Precautions (Workplace) (Amendment) Regulations (NI) 2003

SR2003 No.454

These Regulations amend the Management of Health and Safety at Work Regulations (Northern Ireland) 2000 ("the 2000 Regulations") and the Fire Precautions (Workplace) Regulations (Northern Ireland) 2001 ("the 2001 Regulations"). They came into operation on 24th November 2003.

They replace regulation 22 of the 2000 Regulations (which provided that breach of a duty imposed by the Regulations could not confer a right of action in any civil proceedings), to the effect that employees may bring civil claims against their employers where they are in breach of duties imposed by the 2000 Regulations (but as respect claims by non-employees the exclusion of civil liability for breach of duties imposed by the 2000 Regulations remains). They also make amendments to the 2001 Regulations so as to achieve the same effect in relation to breaches of duties imposed by Part II of those Regulations and regulations 1 to 5, 7 to 12 and 13(2) and (3) of the 2000 Regulations in so far as those regulations impose requirements concerning general fire precautions to be taken or observed by an employer (other than in "excepted workplaces", as defined by those Regulations).

Other provisions of the Regulations effect activities on ships, occasional work or short-term work involving domestic service in a private household.

2. The Juries (NI) Order 1996 (Amendment) Regulations 2003

SR2003 No.474

The purpose of these Rules, which came into operation on 1st December 2003, is to amend the Juries (Northern Ireland) Order 1996. Regulation 2 amends Article 4 (1) of the 1996 Order to provide that within the period of 14 days immediately preceding 15th December each year, the Chief Electoral Officer shall arrange for the selection of a sufficient number of jurors from the electoral register to enable the empanelling of such juries as may be required for that year.

3. County Court (Amendment No. 3) Rules (NI) 2003

SR2003 No.485

The above Rules came into operation on 1st January 2004.

The purpose of the Rules is to amend Part IIA of Order 32 (Appeals from magistrates' courts) of the County Court Rules (Northern Ireland) 1981 and contain provisions relating to Part II (Special measures directions in case of vulnerable and intimidated witnesses), Part III (Protection of witnesses from cross-examination by accused in person) and Part IV (Protection of complainants in proceedings for sexual offences) of the Criminal Evidence (Northern Ireland) Order 1999 ("the 1999 Order").

Rule 2(1) amends Order 32 Part IIA of the principal Rules by –

(a) substituting a new sub-paragraph (a) of Rule 6B(7) to prescribe the information to be provided to the court by a person wishing to oppose an application for a special measures direction;

(b) inserting after Rule 6H(4)(c) a new sub-paragraph (ca), to require an applicant for a special measures direction to admit video recorded evidence in chief to make a statement confirming that each

person present during a recording is visible in the recording; and

(c) inserting after Rule 6I, new Rules 6J to 6N.

New Rule 6J provides for an application by a prosecutor for a direction under Article 24 of the 1999 Order preventing an appellant from cross-examining a witness in person. New Rule 6K prescribes the time when, and the manner in which, a legal representative is to be appointed to act for the appellant for the purpose of cross-examining any witness whom the appellant is prevented from cross-examining in person by virtue of Article 22, 23 or 24 of the 1999 Order.

New Rule 6L provides for the procedure to be followed when the court appoints a qualified legal representative where the appellant fails to appoint a legal representative to act for him. New Rule 6M details the procedures where the appellant subsequently arranges for a legal representative to act for him.

New Rule 6N provides for the procedure to be followed on an application for leave under Article 28(2) of the 1999 Order, to introduce evidence or to ask questions in cross-examination about sexual behaviour of the complainant, in criminal proceedings relating to a person charged with a sexual offence.

Rule 2(2) amends Appendix I to the principal Rules, by :

- substituting for Form 137A, the new Form 137A in the Schedule to these Rules; and
- inserting after Form 137B, the new Forms 137C to 137I in the Schedule to these Rules.

4. Employment Equality (Sexual Orientation) Regulations (NI) 2003

SR2003 No. 497

These Regulations, which are made under section 2(2) of the European Communities Act 1972 (c. 68), implement in Northern Ireland Council Directive 2000/78/EC of 27th

November 2000 establishing a general framework for equal treatment in employment (O.J. No. L303, 2.12.2000, p. 16) so far as it relates to discrimination on grounds of sexual orientation.

The Regulations make it unlawful to discriminate on grounds of sexual orientation in employment and vocational training. They prohibit direct discrimination, indirect discrimination, victimisation and harassment. They came into operation on 2nd December 2003.

5. Land Registry (Fees) Order (NI) 2003

SR2003 No.506

This Order prescribes the fees to be taken in the Land Registry for the purposes of the Land Registration Act (Northern Ireland) 1970 ("the 1970 Act") and the manner in which those fees are to be paid. It comes into operation on 1st February 2003.

The Order revokes and replaces the Land Registry (Fees) Order (Northern Ireland) 2000.

6. The Housing (2003 Order) (Commencement No. 2) Order (NI) 2003

SR2003 No.528

This Order provides for the coming into operation of Articles 122, 144 and 146 of and Schedule 3 to the Housing (Northern Ireland) Order 2003 ("the 2003 Order").

Article 122 of the 2003 Order, which enables district councils to institute proceedings against landlords who do not provide tenants with rent books; and Article 144 of, and Schedule 3 to, the 2003 Order, which make provision for a registration scheme for houses in multiple occupation, came into operation on 1st January 2004.

Article 146 of the 2003 Order, which enables the Commissioner for Complaints for Northern Ireland to investigate complaints against registered housing associations, comes into operation on 1st April 2004.

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Friday 20th February

The Conference opens on Friday afternoon with an optional visit to Hillsborough Castle. The Castle set in the picturesque village of Hillsborough will be instantly recognisable to many as the venue for some of our recent historic political talks.

On Friday evening at 7.30pm onwards, there will be a Drinks Reception and Buffet Supper in the Royal Courts of Justice which is located just across from the Hilton Hotel. This will be an informal evening and we will arrange a tour of the adjacent New Bar Library with all its state of the art facilities. For those with continuing stamina details of local hot spots will be provided.

Saturday 21st February

The Conference Session will get underway in the Hilton Hotel and will encompass, amongst others, the following topics:

- the role of the newly appointed NI Commissioner for Children - Nigel Williams
- pre - nuptial agreements - Peter Duckworth
- family law and human rights - Ursula Kilkelly
- relocation of children - Professor Nigel Lowe

Delegates will have an opportunity to participate in active debate throughout the Conference.

On Saturday evening, the magnificent Belfast City Hall will be the venue for the Gala Dinner Dance. Belfast City Council is hosting a Drinks Reception which will be followed by dinner and dancing until late.

Sunday 22nd February

On Sunday morning there is the option to tour Belfast by Black Taxi before starting your journey home.

The Conference fee of £110 includes the visit to Hillsborough Castle, Friday Drinks Reception and Buffet, the Conference Session and lunch and the Gala Dinner Dance.



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Please return completed Booking Form together with cheque payable to Four Jurisdictions Conference Belfast to:

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Tel: 028 7035 3217 Email: clair@cbpr.co.uk

To download additional booking forms and to find out more about transport links, Belfast and Conference Hotel go to www.lawsoc-ni.org

In order to assist in updating the database for future Four Jurisdiction Conferences, it is necessary for data protection purposes to indicate consent for the storage of the above information. Please do so by ticking the

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New Conflict Regulations: The Solicitors' Practice (Amendment) (No.2) Regulations 2003

The Council of the Society, with the concurrence of the Lord Chief Justice, has approved an adjustment to the present conflict of interest rules. The new Regulations, which came into effect on 31st December 2003, are designed to effect a rationalisation and limited liberalisation of the present requirements. Although the whole of Regulation 19 has been re-enacted (full text below) the effective amendment is contained at Regulation 19(3). This permits a solicitor to act for vendor/lessor and purchaser/lessee in the same transaction where the vendor/lessor is a builder or developer but only in certain defined circumstances. As with the existing regulations, this option is subject to an overriding prohibition on acting where a conflict of interest appears.

The Regulations are reproduced in full below:

Solicitors' Practice (Amendment) (No. 2) Regulations 2003

The Council of the Law Society of Northern Ireland in pursuance of the powers conferred upon them by Articles 74(1) and 75 of the Solicitors' (NI) Order 1976 and all other powers enabling them in that behalf and with the concurrence of the Lord Chief Justice of Northern Ireland, hereby make the following Regulations for the purposes mentioned in Article 26(1) of the said Order:

1. These Regulations may be cited as the Solicitors' Practice (Amendment) (No. 2) Regulations 2003 and shall come into operation on 31st December 2003.

2. For Regulation 19 of the Solicitors' Practice Regulations 1987 there shall be substituted the following regulation:


"19 – (1) Subject as hereinafter provided, a solicitor shall not act for both vendor and purchaser on a transfer of land for value at arm's length or for both lessor and lessee on the grant of lease for value at arm's length.

(2) Provided no conflict of interest appears and the vendor and/or lessor is not a builder or developer selling or leasing as such this regulation shall not apply if:

- (a) the parties are associated companies; or
- (b) the parties are related by blood, adoption or marriage; or
- (c) both parties are established clients and both parties have been informed in writing that:-
 - (i) the solicitor is acting for both parties; and
 - (ii) no conflict of interest appears to the solicitor at the time of receipt of instructions; and
 - (iii) in the event of such a conflict of interest arising the solicitor will be unable to continue acting for either party in the transaction; or
 - (d) on a transfer of land the consideration is less than £3000; or
 - (e) one of the parties is the Northern Ireland Co-

NORTHERN IRELAND COURT SERVICE

APPOINTMENT - HIGH COURT JUDGE



The Lord Chancellor invites applications for appointment as a High Court Judge in Northern Ireland.

Eligibility
To be eligible for appointment as a High Court Judge a person must be:

- (i) a member of the Bar of Northern Ireland of at least ten years' standing;

or

- (ii) a solicitor of the Supreme Court of at least ten years' standing.

The statutory retirement age is 70 and the Lord Chancellor will expect a reasonable period of service before retirement.

The Lord Chancellor will recommend for appointment the candidate who appears to him to be best qualified regardless of ethnic origin, gender, marital status, disability, sexual orientation, political affiliation, age (subject to the statutory requirements), religion, or whether or not the candidate has dependants.

Remuneration
The current salary for a High Court Judge is £147,198 per annum.
A non-contributory pension scheme is available in respect of this position.

How to Apply
Further information relating to this appointment can be found on the Northern Ireland Court Service website www.courtsni.gov.uk or by telephoning 028 9072 8712

An application form together with the guide for applicants are available from

**Judicial Appointments Unit
Northern Ireland Court Service
Headline Building
10-14 Victoria Street
Belfast
BT1 3GG**

All persons wishing to be considered for appointment will be required to complete an application form.

Completed forms MUST be returned to the above address not later than 4.00pm on Thursday 19 February 2004.

Ownership Housing Association.

- (3) Where the vendor and/or lessor is a builder or developer this regulation shall not apply if
- (a) no conflict of interest appears; and
 - (b) the purchaser is:-
 - (i) an associated company of the vendor/lessor; or
 - (ii) a director or partner of the vendor/lessor; or
 - (iii) a person related by blood, adoption or marriage to such director or partner; or
 - (iv) the solicitor himself; or
 - (v) an employee or partner of the solicitor or his firm and
 - (c) both parties have been informed in writing that:-
 - (i) the solicitor is acting for both parties; and

- (ii) no conflict of interest appears to the solicitor at the time of receipt of instructions; and
- (iii) in the event of such a conflict of interest arising the solicitor will be unable to continue acting for either party in the transaction.

(4) Notwithstanding the provisions of paragraphs (2) and (3) hereof a solicitor shall not in any circumstances act for the purchaser on the transfer of land for value at arm's length or for the lessee on a grant of lease for value at arm's length where he or a solicitor practising in a joint property selling practice with him is instructed to negotiate the sale of the property concerned."

ALTERNATIVE DISPUTE RESOLUTION *and* MEDIATION TRAINING COURSE

**Wednesday 25 February – 7 April 2004
at the Institute of Professional Legal Studies,
10 Lennoxvale, Malone Road, Belfast**

SLS in conjunction with the Law Society is pleased to announce the sixth repeat of this very successful course which provides training in advanced negotiation, dispute resolution and mediation. The course will be delivered by experienced mediators and skills trainers led by Brian Speers (Carnson Morrow Graham), David Gaston (Gaston Graham) and Alva Brangam QC and will combine lectures with experiential role play and analysis. Response to this course has been immensely enthusiastic and those who have taken part to date have found the course to be of great interest, value and enjoyment.

The course is open to both solicitors and barristers but numbers are limited to 15 participants.

The course will run for 6 evenings (25 February, 3, 10, 16, 24 and 31 March at IPLS from 6.00-9.00pm). There is also an all day Saturday programme on 3 April from 10am – 4.00pm which it is essential to attend and it is expected that people will be committed to attend the complete programme. There will be a review of the course and presentation of certificates on 7 April.

This course provides a minimum 18 hours of CPD training and costs £675.

To reserve your place - please post, phone or fax:

**SLS Legal Publications (NI), School of Law, Queen's University, Belfast BT7 1NN
Tel: 028 9097 5224 / Fax: 028 9032 6308 / DX 4330 NR BELFAST 34**

Please reserve ___ place(s): Cost £675.00 per person

NAME(S) _____

ADDRESS _____

TELEPHONE _____ FAX _____ DX _____

Payment method:

- Cheque made payable to "SLS Legal Publications (NI)"
- Credit Card : Visa Mastercard Switch Iss No: _____ Other

Card number: ____ / ____ / ____ / ____ / ____ Expiry Date: ____ / ____

Signature _____ Date: _____



BELFAST SOLICITORS



ASSOCIATION

BSA On-Line

The BSA website can be found at:

www.belfast-solicitors-association.org

GUIDE TO HIGH COURT COSTS AS REVISED

	AFTER WRIT	AFTER STATEMENT OF CLAIM	AFTER DEFENCE	AFTER WARNED LIST	WITHIN 21 DAYS OF TRIAL
£0-£14,999	£2,150	£2,710	£3,050	£3,620	£4,180
£15,000-£19,999	£2,490	£3,050	£3,390	£4,070	£4,860
£20,000-£24,999	£2,940	£3,500	£3,840	£4,290	£5,200
£25,000 -£29,999	£3,160	£3,730	£4,070	£4,630	£5,540
£30,000-£34,999	£3,390	£3,955	£4,410	£4,970	£5,880
£35,000-£39,999	£3,620	£4,180	£4,630	£5,310	£6,215
£40,000-£44,999	£3,840	£4,410	£4,970	£5,650	£6,550
£45,000-£49,999	£4,040	£4,630	£5,310	£5,990	£6,890
£50,000-£54,999	£4,290	£4,860	£5,650	£6,330	£7,230
£55,000-£59,999	£4,520	£5,085	£5,990	£6,670	£7,570
£60,000 -£64,999	£4,750	£5,310	£6,330	£7,010	£7,910
£65,000-£69,999	£4,970	£5,540	£6,670	£7,345	£8,250
£70,000 -£74,999	£5,200	£5,760	£7,010	£7,680	£8,590
£75,000 -£79,999	£5,420	£5,990	£7,345	£8,020	£8,930
£80,000 -£84,999	£5,650	£6,215	£7,680	£8,360	£9,270
£85000-£89,999	£5,880	£6,440	£8,020	£8,700	£9,605
£90,000-£94,999	£6,100	£6,670	£8,360	£9,040	£9,940
£95,000-£100,000	£6,330	£6,890	£8,700	£9,380	£10,280

After almost three and a half years of the July 2000 Guide the BSA committee have considered and arrived at a new High Court Guide. This has been arrived at after lengthy deliberation and on consultation with a senior costs drawer.

BELFAST SOLICITORS



ASSOCIATION

We had specifically asked the costs drawer to advise us on the effect of:

- a) The results of taxation and settlements' in the last 3 years.
- b) The increase in the hourly rate allowed by the Taxing Master in the last three years.
- c) The changes in the average earnings index in the last three years.

Taking these in turn, we are advised that the taxations carried out and the settlements achieved produce on average professional fees which are 28% greater than the July 2000 BSA Guide². The cases forming the data base broadly fall into two categories (i) road traffic accident/industrial injuries and (ii) industrial diseases such as chest cases, dermatitis, stress etc. It has been established on taxation that 85% is the normal uplift over the calculation for time as opposed to 50% in the former. Removing the second category of cases from the analysis results in an average professional fee 18% above the July 2000 Guide. This relies on the data available until September 2003.

In June 2000 the Taxing Master allowed an hourly charge of £68.50. As of April 2003 he allows £76.00. This is an increase of 10.95%.

The Average Earnings Index in May 2000 was 122.50 and in July 2003 this had increased by 15.6, that is 12.7%, we have been advised³.

The combined effect of this analysis is that the July 2000 guide is now too low and we now seek to redress this to bring the guide into line with these economic indicators and the results of taxations/settlements.

Therefore our current recommendation is for an increase in the June 2000 BSA guide to High Court costs by 13%. This is what we have produced above.

Other changes are we have reintroduced the band of costs for damages of nil to £14,999.00 and extended the guide for damages of up to £100,000.00.

It is also now anticipated and planned that on 1st January 2005 the guide will again be increased so as to bridge the gap between the results of taxation and the current guide. While a final decision will have to be deferred until next year it is anticipated an increase of around 5% is likely at that time.

This guide is intended to apply to personal injury action settled after 1st January 2004. However as the data base kept by the costs drawer from which the increases on taxation/settlement have been drawn relates entirely to personal injury actions arising out of road traffic accidents and industrial injury/disease it is not recommended that the Guide should apply to the categories of case set out below.

- Professional Negligence.
- Assault Actions against the Crown.
- Medical Negligence.
- Commercial Litigation and Chancery.
- Defamation

The BSA recommends to all practitioners that the above guide is fair and reasonable in the majority of personal injury actions.

Solicitors are advised that even in the majority of ordinary cases increases in the guide should be sought in the following situations:

1. In cases of industrial disease, particularly chest cases, the appropriate figure on the Guide to be increased by 10%.
2. If there are interlocutory proceedings, an extra £170.00 should be added for each such application. This £170.00 reflects an additional 1½ hour's work, which is the average time spent. If the Interlocutory applications become complicated and lead to matters such as a remittal appeal

in the High Court the BSA recommends that time is recorded and that extra costs are added to the guide to reflect time spent.

3. Multiple Defendants

If there is more than one Defendant at Defence stage and each Defendant is being separately represented we recommend that for the first Defendant an extra 20% be added to the guide and for every Defendant thereafter a further 10%. This is to reflect the payment for additional time.

4. If the case runs to trial we are informed that the Taxing Master will normally allow an average of £650.00 for each additional full day and £360 for each half day of trial for an ordinary case. Again this figure should be added to the attached guide.

5. It is important for Solicitors to be aware that the point on the Guide should not necessarily be determined by the amount of the settlement. In *Antoinette Carr –v- Margaret Potts Carswell LJ* held that "...it would be equally wrong to have regard only to the full value or to assess the fee on the knock-down settlement value." His approach suggests that a Solicitor should take a point on the Guide halfway between that appropriate to the settlement and that appropriate to the full value.

In cases where liability is admitted at or before the service of the Defence, a 10% reduction should be allowed.

Please note that we have maintained the new category to remunerate cases settled on or within 21 days of Trial whether or not they are commenced on the day of Trial. We recognise the extra work and time taken for the day of Trial as we are informed that the Taxing Master makes allowances for this. This is also to encourage insurers to put their best offer forward at an earlier stage and hence seize the opportunity to avoid costs. We would also encourage Solicitors to co-operate with the reasonable insurer when such an offer is made.

Whilst the attached guideline has been arrived at after much consideration of various arguments, we believe that all practitioners need to educate themselves in relation to costs. The fact of the matter is that those Solicitors whose time is recorded are in a position to achieve higher costs.

¹ "Settlements" are cases which have been settled by the costs drawer with defendant representatives after an itemised bill has been prepared for taxation

² See the costs drawer's data base on the Association's web site

³ (1) Source IDS Statistics Average Earnings Index for Service Sector

BELFAST SOLICITORS



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58 Andersonstown Road, Belfast BT11 9AN
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28 Adelaide Street, Belfast BT2 8GD
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94 Victoria Street, Belfast BT1 3JZ
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7 Donegall Square West, Belfast BT1 6JB
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Briege Williams
Telephone : (work) 028 90 585974
E-mail :
info@belfast-solicitors-association.org

BELFAST SOLICITORS



ASSOCIATION

CPD Seminar Programme**Thursday 26th February 2004**

'An Update on Land Registry of Northern Ireland Practice and Procedure' by Patricia Montgomery.

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 6PJ.

BSA Recommended Closed Days 2004

Thursday	1st January
Wednesday	17th March
Friday	9th April
Monday	12th April
Tuesday	13th April
Monday	3rd May
Monday	31st May
Monday	12th July
Tuesday	13th July
Monday	30th August
Friday	24th December
Monday	27th December
Tuesday	28th December
(Monday)	5th January 2005)

LAW SOCIETY NOTICE**Practising Certificate Applications: Final Reminder**

Practitioners are reminded that PC Applications for the practice year commencing 6th January 2004 are now overdue. If you require a PC and have not yet applied, please do so immediately. Please note that a late application penalty may be applied.



NORTHERN IRELAND
YOUNG SOLICITORS ASSOCIATION

FORTHCOMING EVENTS**LECTURE TOPICS**

The NIYSA would ask its members to contact Nuala Sheeran (Chairperson), of Mills Selig Solicitors, with any comments they would like to make about the topics chosen for our CPD lectures and seminars over the course of 2003. We would also welcome suggestions for subjects of interest for next year's programme.

BRITISH COUNCIL VISIT DINNER**BELFAST CASTLE – Wednesday 18th February 2004**

The annual visit from European students to Northern Ireland for a week long study tour will take place in February this year. The NIYSA will be hosting a dinner at Belfast Castle on Wednesday 18th February 2004. A limited number of places will be available to our members (all solicitors under 36). All those who have attended in previous years will know that this is a lively, social occasion with good food, wine and entertainment on offer!

If you are interested in attending, tickets priced £15.00 are available from Catherine Calvert, c/o Caldwell Warner Solicitors, Floral Buildings, 4 East Bridge Street, Belfast BT1 3NQ. Tel: 028 9059 5300. Email: catherine@caldwellwarner.co.uk

The NIYSA would like to invite its members to attend the

"SPRING FORWARD" FOUR NATIONS CONFERENCE FOR YOUNG SOLICITORS**FRIDAY 14TH MAY – SUNDAY 16TH MAY 2004****VENUE – THE HILTON NEWCASTLE-UPON-TYNE GATESHEAD**

We will be hosting the conference jointly with the Scottish Young Lawyers Association, the Society of Young Solicitors of Ireland and the Trainee Solicitors Group of England and Wales.

There will be a full programme of CPD lectures on the Friday and Saturday. As always there will be a Gala Ball on Saturday night.

You are encouraged to contact any NIYSA committee member to register your name for a place at the conference. The registration cost will be confirmed shortly although we can advise that as in previous years, the first thirty places will be offered at a considerably subsidised rate.



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

COSTS IN PERSONAL INJURY CASES

Speaker: Paul Kerr, Costs Drawer
 Date: Friday 12th March 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 £ _____

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

PRACTICE MANAGEMENT STANDARDS

Speaker: Mary Norton, Client Manager SGS United Kingdom Ltd
 Date: Friday 2nd April 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 Practice Management 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.

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NORTHERN IRELAND
 YOUNG SOLICITORS ASSOCIATION

NIYSA MEMBERS' DATABASE

The NIYSA is presently compiling a database of its members' e mail addresses. We propose to e mail members about upcoming NIYSA CPD lectures/seminars and events. If you wish to be notified of these, please contact Catherine Calvert at Caldwell Warner Solicitors, Floral Buildings, 4 East Bridge Street, Belfast BT1 3NQ E mail address catherine@caldwellwarner.co.uk Tel: 028 9059 5300





Assoc. of Family Solicitors for
Children

Are you currently a member of the Association?

Membership is £25 for qualified solicitors and £15 for Associate members.
We organise lunchtime seminars
which attract CPD points

Coming events – Lunchtime Seminars

6 February 2004

Update on Relate Mediation Pilot Scheme –
Speaker Fiona O' Donnell - Relate

5 March 2004

When can I change a child's name? –
Speaker from Registrar of Births and Marriages

April 2004

The Commissioner for Children and Young people for Northern Ireland –
Nigel Williams

All seminars are £10 for members and £15 for all others
The lunchtime seminars are from 1-2pm and qualify you for 1 hour CPD
Tea, coffee and sandwiches are served from 12.30pm

If you are interested please send a cheque made payable to AFSC to:

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

Lord Chief Justice's Office

Appointment of Notary Public

The Lord Chief Justice has appointed Ms Olive O'Neill, Solicitor, 12 Torrent Enterprise Centre, Donaghmore, County Tyrone, to be a notary public.

Below is a list of notaries public currently practising in Northern Ireland together with their dates of appointment .

22/5/56

RUSSELL, George
Messrs James L Russell & Son
55 High Street, Ballymena BT43 6DT
Telephone: Ballymena (028) 2565 2154

21/9/62

SALLY, John Joseph
Messrs Corr & Sally
1-3 Molesworth Street, Cookstown
BT80 8NX
Telephone: Cookstown (028) 8676 2226

21/2/75

THOMPSON, John Daniel
72 Address Road
Portadown, County Armagh BT62 1SQ
Telephone: Portadown (028) 3885 1347

26/9/75

McCLAY, Arnold Don
Messrs A D McClay & Co
1 Limavady Road
Waterside, Londonderry BT47 1JU
Telephone: (028) 7134 5666

29/9/82

RAMSEY, David William
Messrs J G H Wilson
71 Royal Avenue, Belfast BT1 1EY
Telephone: Belfast (028) 9032 2301

7/12/84

NESBITT, Hubert William Gilbert
Messrs Wilson Nesbitt
33 Hamilton Road, Bangor BT20 4LF
Telephone: Bangor (028) 9127 1035

7/10/85

NOLAN, Paul Kevin
135A Upper Lisburn Road,
Belfast BT10 0LH
Telephone: Belfast (028) 9030 1113

12/8/86

MOLONEY, Denis George Gerard
Messrs Donnelly & Wall
58-60 Upper Arthur Street,
Belfast BT1 4GP
Telephone: Belfast (028) 9023 3157

21/10/86

FINLAY, Barry Peter
c/o J Murland & Co
15 English Street, Downpatrick BT30 6AB
Telephone: Downpatrick (028) 4461 9980

13/10/87

O'REILLY, Garrett Edward
Messrs O'Reilly Stewart
114/116 Royal Avenue, Belfast BT1 1DL
Telephone: Belfast (028) 9032 2512

6/9/89

CREED, Angus, F R
Messrs Arthur Cox NI
Stokes House, College Square East
Belfast BT1 6HD
Telephone: Belfast (028) 9023 0007

30/3/90

DRINAN, Miss Patricia
P Drinan
16 Donegall Square South, Belfast BT1 5JG
Telephone: Belfast (028) 9032 2071

30/3/90

PINKERTON, John Wallace Dickson
Messrs John W Pinkerton & Son
5 Linenhall Street
Ballymoney BT53 6DP
Telephone: Ballymoney (028) 2766 2133

15/3/91

NEILL, John Maurice Warren
Messrs Watson and Neill
23 High Street, Lurgan BT66 8AQ
Telephone: Lurgan (028) 3832 5111

19/12/91

FOX, Sean T
Messrs Fox & Associates
403 Lisburn Road, Belfast BT9 7EW
Telephone: Belfast (028) 9038 2788

23/7/92

GRAHAM, Hugh Lindsay
Messrs Gaston & Graham
73 Holywood Road, Belfast BT4 3BA
Telephone: Belfast (028) 9047 1869

29/9/94

CAMPBELL, William Martin
Messrs Dickson & McNulty
50 Spencer Road
Waterside, Londonderry BT47 1AA
Telephone: Londonderry (028) 7134 1864

23/2/96

NEARY, Kevin John Patrick
Messrs Donnelly, Neary & Donnelly
1 Downshire Road
Newry

County Down BT34 1ED

Telephone: Newry (028) 3026 4611

26/2/98

RUSSELL, James Lockhart
Messrs James L Russell & Son
55 High Street
Ballymena
County Antrim BT43 6DT
Telephone: Ballymena (028) 2565 2154

26/3/98

NAPIER, Ms Brigid Sarah Mary
Messrs Napier & Sons
1-9 Castle Arcade
High Street
Belfast BT1 5DF
Telephone: Belfast (028) 9024 4602

27/5/98

FERGUSON, Robert Gerard
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The Common Property Certificate - an Evolutionary Process

A Viewpoint from SOLACE (Society of Local Authority Chief Executives)

The new local authority Common Property Certificate was recently launched to over 350 solicitors at four road shows held in Belfast, Ballymena, Craigavon and Derry. As all Local Councils in Northern Ireland have a statutory obligation to seek to improve the service they offer their customers, SOLACE will continue to engage with the Law Society and others to seek continuous improvement in this field. At the same time they are mindful that this initiative was in response to customer demand. So what can Solicitors expect in the evolution of services?

The four objectives of the road shows were to:

- launch the new Property Certificate
- demonstrate the On Line application process
- revisit the process of regularisation
- put the 10 year rule in context.

Taking each of these objectives in turn, let us examine the immediate and short term future.

The New Certificate

It is fundamental to the success of this project to ensure that all Councils adopt the new Property Certificate. SOLACE will be encouraging all its members to make available the necessary resources and proper infrastructure so that the questions presented in the Certificate are answered in an accurate and timely manner. SOLACE will continue to monitor the introduction of the Certificate and the consistency of the responses. We would encourage you, our customers, to channel regular feedback on how the new Certificate is working through the Non-Contentious Business Committee of the Society.

The SOLACE sub-group of officers who were tasked with this initiative are acutely aware that it is more than a set of questions. It is about receiving the appropriate information, which should be provided in a consistent manner and represented in a standard format for

ease of interpretation. In traditional government style this incorporates the use of an application form. Although much decried, the form is actually a very efficient way of standardising the inputs and this is paramount if we are to standardise the outputs. The subgroup have endeavoured to make the form as widely available as is possible. It is currently available from any Local Authority as well as being downloadable from many Council websites and indeed the Law Society website at www.lawsoc-ni.org.

We anticipate the greatest benefits of the new Certificate to conveyancing solicitors to be:

- No requirement to follow up with secondary correspondence given the level of detail now on offer.
- An interpretation guidance document, which brings clarity to the process.
- Choice in regard to the certificate period on offer, bearing in mind that the 10 year Certificate is the preferred option.

It is the intention of the SOLACE subgroup, in conjunction with the Law Society, that you obtain these benefits. By persuasive argument and continuous customer demand, we are confident that all Local Authorities will ultimately adopt this latest improvement in the conveyancing process.

On-line Applications

It was wholly refreshing for Council Officers, especially those who were involved in Lisburn City Council's pioneering work, to see the response from the straw polls which were taken to assess the interest in making applications on line. Well in excess of 50% of those in attendance said they were prepared to make their applications on line. More by accident than design, this initiative was slightly ahead of the Planning Service, Stamp Duty and Land Registry entrance into the electronic world, making it timely for all Local Authorities to exchange and adopt

the best practice of others. In the short term SOLACE will continue to work all the Local Councils and their software suppliers to continue to refine the systems to facilitate more efficient delivery of on-line applications.

"anything beyond 10 years did not require to be regularised. We are not sure whether this was tabloid journalism or selective listening"

Ultimately the Councils would like to adopt systems that have no user intervention and allow you to search the relevant property databases with the appropriate permissions. However it is important to realise that it is customer demand that drives such initiatives and SOLACE is seriously prepared to consider such projects if there is sufficient interest and it is to the benefit of the customer and ratepayer.

Regularisation Process

No one is under any illusion as to the added pressure that regularisation has brought upon Local Authority Building Control Services. Regularisation is, when all is said and done, retrospective approval for building regulations purposes. Consequently, Building Control is in catch up mode, in regard to these applications, with the obvious problems that this brings. Whilst SOLACE has no specific role to look at regularisation under the remit of this project, they are keen, in their primary employment role, to make sure that this process is operating properly.

10 Year Rule

Immediate feedback from the seminars suggested that attendees had taken away a message that anything beyond 10 years did not require to be regularised. We are not sure how this impression got out. John Neill representing the Law Society had in fact suggested that while the recommended 10 year period will be satisfactory in most respects for the majority of cases, regularisation may still be required for some unapproved work falling under building regulations since 1st October 1973. However, with the prospect of

agreement with the Council of Mortgage Lenders, the 10-year rule suggests that regularisation of unapproved work is not required in most cases by lenders or the purchaser if the work had been done more than ten years ago.

We would suggest to you, however, that illegal work done more than ten years ago may still pose serious health and safety risks and property owners and prospective purchasers should be made aware of their responsibilities and possible liabilities in this connection. Surveyors may quite properly still require specific investigation to be pursued in cases where questionable site specific features are present.

Particular care should be taken in respect to such high-risk alterations as:-

- Roof space conversions
- Heating system installations, both domestic and commercial.
- Stair alterations and installation
- Mezzanine Floor installations in the commercial sector
- Removal of load-bearing walls

We believe the interpretation of the "10 year rule" will take time to bed in and will lead to some frustration in the short term. It is important to understand that if Local Authorities are made aware of illegal work they are obliged to follow up on this and encourage the property owner to take corrective action.

In Conclusion

SOLACE and Council officers, have demonstrated a commitment to improve all services they offer. A Common Property Certificate for all local authorities has been a long time in the making, but we believe it is a welcome and timely development. However, we continue to require your support, feedback and co-operation in this and other fields in which you are involved if we are to make further service improvements. SOLACE is currently considering proposals for handling multi-site applications and is planning seminars for estate agents and others with a vested interest in this process and so the evolution continues.

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Revised Chancery Division Practice Directions

Eight Practice Directions dated 19th December 2003 have recently been received from the Chancery Master, Master Ellison. Copies are downloadable from the Members' Section of the Society's website at www.lawsoc-ni.org

The Master advises that these directions effect some minor updating revisions for the purpose of publication in due course by Northern Ireland Court Service on the Internet of the Practice Directions of the Divisions of the Supreme Court.

The Master has also kindly furnished a list of all Chancery Division Practice Directions presently in operation (other than those relating solely to business assigned to the Bankruptcy and Companies Office). These are as follows:-

1. **18 January 1968**
1968 No 1
Proof of Personal Service of Documents
2. **21 January 1972**
1972 No 5
Title of Chancery Proceedings
3. **21 February 1972**
1972 No 6
Style and Language of Documents
4. **14 February 1989**
1989 No 1
Ex parte Applications to Judge in Court for injunctions etc
5. **6 June 1997**
1997 No 4
(1) General (2) Encouraging and Expediting settlements
- (3) Witness Evidence
- (4) Preparation of Documents for Trial
6. **6 June 1997**
1997 No 5
Delivery of Judgments by the Chancery Judge
7. **6 June 1997**
1997 No 6
Citation of Authorities
8. **2 October 1997**
1997 No 8
Proceedings commenced by National & Provincial Building Society, Halifax Building Society, Alliance & Leicester Building Society and Woolwich Building Society
9. **8 September 1999**
Practice Guidance Note (Chancery) Preparation of Affidavits and Exhibits
10. **16 January 2001**
2001 No 1
Proceedings commenced by Bradford & Bingley Building Society
11. **12 September 2002**
2002 No 5
Applications under Article 9(4)(c) of the Administration of Estates (NI) Order 1979
12. **19 December 2003**
2003 No 3
Hearing of Originating Summons, Summons or Notice of Motion by Judge
13. **19 December 2003**
2003 No 4
Points in Practice
14. **19 December 2003**
2003 No 5
(1) Application for Judgment in Default of Defence
(2) Application for Summary Judgment (3) Orders
(4) Amendment of Orders
(5) Written Judgments
(6) Settlement or Compromise of Litigation
(7) Enforcing Terms of Settlement (8) Venue of Hearings before Master (Chancery)
(9) Telephone Numbers
15. **19 December 2003**
2003 No 6
Actions begun by Originating Summons
16. **19 December 2003**
2003 No 7
Appeals from Master to Judge
17. **19 December 2003**
2003 No 8
Setting Down and Fixing Dates for Trial of Actions begun by Writ
18. **19 December 2003**
2003 No 9
(1) Mortgage Actions
(2) Application by mortgagee for leave to Enforce Suspended Possession Order
19. **19 December 2003**
2003 No 10
Applications by fax for first adjournments by consent before the Chancery Judge or Master



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Children Order Advisory Committee

- Best Practice Guidance -

As you may be aware the Best Practice Guidance was launched recently. Following from that a short course will be offered to members of the legal profession.

The Guidance is designed to ensure that all Children Order cases are dealt with in a timely manner, and that the best interests of the child remain the central consideration throughout the court process.

The Guidance deals with issues which have emerged over time and which have resulted in delay within the court processes. The Guidance will provide direction on these issues and provide for consistent practice in all Children Order cases.

Guidance is provided in relation to certain strands of the court process and particular issues including:

- Adjournments
- Appeals
- Case Management in private and public law cases
- Concurrent criminal/care proceedings
- Disclosure
- Interim care orders, and the
- Hague Convention/Abduction of children cases.

Guidance is also provided in relation to the role of certain professionals involved in the administration of Children Order cases, including:

- Legal Practitioners
- Experts
- Guardian Ad Litem, and the
- Official Solicitor

This course is aimed at all legal practitioners working with Children Order cases.

COURSE OUTLINE

- Talk by Mr Justice Gillen on the new Guidance
- Talk by Mrs Gillian McGaughey BL on how the Guidance will affect practitioners and their work.

When: Monday, 19 April 2004

Time: 6.00 – 8.30p.m.

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

Cost: £50

This course attracts 2 hours Law Society of Northern Ireland CPD points.

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

Closing Date for applications: Friday, 2nd April 2004



Best Practice Guidance - Booking Form

Name: _____ Firm: _____

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Departmental Solicitor's Office Notice

Many members are still serving proceedings against Northern Ireland Government Departments erroneously on either the Crown Solicitor's Office or directly on Government Departments. Members should be reminded that the Departmental Solicitor's Office has assumed responsibility for litigation on behalf of all Northern Ireland Departments and is authorised to accept service of proceedings. The listing below should act as a reminder to members.

Crown Proceedings Act 1947

Civil Proceedings by or against Northern Ireland Departments

The Office of the First Minister and Deputy First Minister has published a list specifying the Northern Ireland Departments which are authorised departments for the purposes of the Crown Proceedings Act 1947 and the name and address of the person acting as Solicitor in Northern Ireland for those purposes. The text can be found in the Belfast Gazette dated 6 October 2000.

The authorised departments listed are:-

Department of Agriculture and Rural Development
 Department of Culture, Arts and Leisure
 Department of Education
 Department of Enterprise, Trade and Investment
 Department of the Environment
 Department of Finance and Personnel
 Department of Health, Social Service and Public Safety
 Department of High and Further Education, Training and Employment
 Department for Regional Development
 Department for Social Development
 Office of the First Minister and Deputy First Minister
 Commissioner of Valuation for Northern Ireland
 Registrar General of Births, Deaths and Marriages for Northern Ireland
 Director General of Electricity Supply for Northern Ireland
 Director General of Gas for Northern Ireland

The Solicitor, and address for service is:

The Solicitor
Department of Finance and Personnel
Departmental Solicitor's Office
Centre House
79 Chichester Street
BELFAST
BT1 3JE

The practical effect of the new arrangements is to update the list of authorised Northern Ireland Departments, and to substitute the Solicitor for the Department of Finance and Personnel, in place of the Crown Solicitor, as the person who will act on their behalf in civil proceedings by or against them.

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CIVIL PARTNERSHIP

**A LEGAL STATUS FOR COMMITTED
SAME SEX COUPLES IN NORTHERN
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The Office of Law Reform has issued a consultation paper containing proposals for a civil partnership scheme which would give a legal status, with consequent rights and responsibilities, to same sex partners who register their partnership.

It proposes that a civil partnership scheme should be introduced in Northern Ireland, similar to the scheme already put forward for England & Wales and Scotland. In order to achieve equality and parity of treatment with people throughout the UK it is proposed that provisions for Northern Ireland should be included in a UK wide Civil Partnership Bill.

A copy of the Consultation Paper can be accessed at www.olrni.gov.uk. Anyone interested in commenting on the proposals should contact Peter O'Brien, Secretary to the Family Law Committee. The closing date for submission of views is 5th March 2004.



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For details, please see 30th March

28th April - The Law Society, Belfast

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Changes to the Allocation of Business at Belfast Recorder's Court

The Society has recently been informed by The Recorder of certain changes being made in the allocation of Children Order work at Belfast Recorder's Court.

The text of the relevant letter is as follows:

"The increase in Children Order work in recent years has meant that it has been necessary to allocate an additional judge on a daily basis to assist Judge Markey in dealing with this work at Belfast Family Care Centre. For some time the additional work has been shared between Judge Rodgers, Judge Burgess and myself.

"Having discussed the matter with my colleagues we have come to the conclusion that it would be a more effective method of dealing with the extra workload if a single judge were allocated to assist Judge Markey on a permanent basis and it has been agreed that Judge Rodgers will do so from Monday 2 February 2004.

"A number of consequential changes are necessary in the arrangements for various categories of work, including directions hearings, and these are set out in the attached Notice.

NOTICE

From Monday 2nd February 2004 Judge Rodgers will assist Judge Markey with Children Order work on a permanent basis.

Directions Hearings

Judge Markey will hold Directions Hearings each Tuesday and Thursday at 10am and Judge Rodgers each Monday and Wednesday at 10am. Judge Markey will be at Belfast Crown Court from 2nd February until Easter and during that time Judge Burgess will also deal with Children Order business.

Other Business

(1) Judge Rodgers will continue to hear minor's petitions and minor's payments out each Tuesday and Thursday at 10am.

(2) Judge Burgess will take the equity civil bill work presently dealt with by Judge Rodgers and will deal with all matters that the Recorder normally deals with when the Recorder is at the Crown Court.

(3) The arrangements for other business are unchanged.

LEGAL MOVES

Neil Faris, who was formerly managing partner of Cleaver Fulton & Rankin has left that firm in order to pursue his special interests in public law, environmental law and aspects of commercial law. Neil is now practising under his own name, mainly in research and advisory work. He does not intend to take instructions directly from members of the public for transactional work. Accordingly he is available to assist other solicitors in appropriate cases.



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The successful applicant must be able to demonstrate a strong commitment to the University and the job as we wish to facilitate the development of this post to encompass a wide range of legal issues. To this end, the successful applicant shall be encouraged to broaden their expertise and become involved in wider corporate issues as directed by the Legal Services Manager.

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Speaker: Adam Brett, L'Estrange & Brett, Solicitors

Date: Friday 27 February 2004

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 _____

Firm _____

Address _____

I enclose remittance of

£ _____

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)

Name _____

Firm _____

Address _____

Tel (work) _____ E-mail _____

NOTIFICATION: PROCEDURAL CHANGE -

ENDORSEMENT OF BLANK CIVIL BILLS



1. The purpose of this Notice is to advise you that, with effect from 19 January 2004 the Northern Ireland Court Service will no longer accept and endorse blank Civil Bills.
2. Given that case details will, from that date, be recorded at the point of fee payment, all Civil Bills received for fee endorsement must be fully completed with the participant details including address, postcode and the amount of the claim in order that the correct fee can be endorsed on the document.
3. All previous directions or circulars in relation to the processing of blank Civil Bills should be disregarded.
4. Any queries in relation to this circular should be referred to George Richardson, Business Improvement Team, Bedford House, Bedford Street, Belfast. Telephone number 02890 728906

George Keatley
Director of Operations
Northern Ireland Court Service

POLICE STATION ADVICE *advising on silence*

The Criminal Law Committee of the Law Society of England & Wales has recently published updated guidance for criminal defence solicitors on the implications of adverse inferences and waiver of privilege for police station advice.

This is downloadable at
www.lawsociety.org.uk/dcs/pdf/CPN_oct03.pdf

NOTIFICATION: PROCEDURAL CHANGE -

INCLUSION OF POSTCODES ON COURT DOCUMENTATION



1. The purpose of this Notice is to advise you that, with effect from 19 January 2004, the Northern Ireland Court Service will require all court documentation received containing participant details to include the full postal addresses of all parties including postcode for all Civil, Criminal and Family cases.
2. This will include any Case Initiation documentation, Applications and any subsequent ancillary documentation. For example for Civil County Court business postcodes must be provided for all parties on Small Claim Applications, Civil Bills, NID's, Minors Petitions, Criminal Damage Appeal Applications, Third Party Notices, etc. You should note that any documentation received with an incomplete address and/or no postcode will be returned for completion.
3. The inclusion of postcodes will facilitate the use of postcode package software within the new Integrated Court Operations System (ICOS) enabling full address details to be entered quickly and accurately onto the system. Full address details will then be displayed on all outputs produced from the system. (ie Applicant & Respondent Packs in Small Claim cases, Notification of Hearing Letters, all Orders & Decrees)
4. Any queries in relation to this direction should be referred to George Richardson, Business Improvement Team, Bedford House, Bedford Street, Belfast. Telephone Number 028 90 728906

George Keatley
Director of Operations
Northern Ireland Court Service

ADVERTISEMENT

HEART TRUST FUND

(ROYAL VICTORIA HOSPITAL)

The main object of this established and registered charity is the support and furtherance of the vitally important treatment, both medical and surgical, provided for patients in the Cardiology Centre in the Royal Victoria Hospital Belfast, and the equally important work of research into heart disease carried on there. The charity is authorised to use its fund to provide that support, or achieve that furtherance when, (but only when) public funds are not available, or are insufficient, for the purpose.

The Royal's splendid record in the fight against heart disease is too well known to need advertisement, and by an immediate cash gift or a legacy or bequest to this charity in your will, you can help directly to reduce the grave toll of suffering and death from this disease in Northern Ireland. The grim fact is that the incidence of coronary artery disease in Northern Ireland is one of the highest in the world.

The administration of the charity is small and compact and the trustees are careful to ensure that its cost is minimal. As a result donors and testators can be assured that the substantial benefit of their gifts and bequests will go directly to advance the causes of the charity.

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.

(Registered Charity No. XN52409)

Missing Wills

Re: John Solanky (deceased),
late of 78 Shore Road, Greenisland,
County Antrim. Born 30th June
1942. Died 5th October 2003.
Would any person having knowledge
of the whereabouts of a Will for the
above named deceased please
contact:

Reavey & Company
Solicitors
22 The Diamond
Rathcoole
Newtownabbey
Co Antrim
BT37 9BJ
Tel: 028 9086 0335
Fax: 028 9036 5124
Ref: SO799001

**Re: Margaretta Frances McDowell
(deceased),**

late of 16 Crosby Flats, Bangor,
County Down.
Date of death: 24 September 2003
Would any person holding a will of
the above named deceased or having
any knowledge of the whereabouts
of same please contact:

PO Box Number 123
c/o Citigate NI Public Affairs Ltd
128a High Street
Holywood
Co Down
BT18 9HW

**Re: Mary Anne Hannah Louise
Taylor (deceased),**

late of 36 Knappagh Road, Killylea,
Co Armagh.

Date of death: 23 January 2003
Would any person holding an
original will for the above named
deceased please contact:

John J Taylor Solicitors
1 Mallview Terrace
Armagh
BT61 9AN
Tel: 028 3752 5400

Re: James Henderson late of 2C
Skerrymoor Place, Portrush. Died 3
December 2003.
Would any person having knowledge
of the whereabouts of a Will for the
above named deceased please
contact:

Pauline Knight & Co
75-77 May Street
BELFAST
BT1 3JL

Re: George Philpott deceased

Late of: Flat 8, Renfrew House,
Belfast
Formerly of 5c City Way and 30 Hurst
Street, Belfast

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

Patterson Taylor & Co
72 High Street
BELFAST
Tel: 028 9023 5987
Fax: 028 9023 5842

Re: Vera Shaw Wallace late of 56

Drumart Drive, Belfast BT8 4SE.
Born: 19th August 1919
Died: 3rd December 2003
Vera Shaw Wallace late of 56
Drumart Drive, Belfast, may have
made a Will some twenty two years
ago at the Belvoir Estate Community
while living at 35 Castlehume
Gardens, Belfast. Would any person
having knowledge of the
whereabouts of a Will, please
contact:-

J G Haughey & Co
Solicitors
138 Upper Lisburn Road
Finaghy
BELFAST
Tel: 028 9043 1222
Fax: 028 9061 2511

Re: The Estate of Sarah Ellen Grant,

late of 14 Camlin Park, Crumlin
We are acting in the estate of Sarah
Ellen Grant (deceased), 14 Camlin
Park, Crumlin. If any firm of
Solicitors presently holding a will on
behalf of Ms Sarah Ellen Grant or are
aware of a will being executed by
the deceased please contact:-

Louis Bannon
LK Bannon & Co
Solicitors
Tel: 028 9445 3444

Re: Agnes O'Neill (deceased), late of

3 Railway View, Coalisland, County
Tyrone. Born 12th February 1913.
Died 13th November 2003.

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

PA Duffy & Co
Solicitors
21The Square
Coalisland
County Tyrone
BT71 4LN
Tel: 028 8774 7159
Fax: 028 8774 0997

Missing Land Certificates

Folio: 544SDL

County: *Down*
Registered Owner: *Andrew Melville*
Lands at: *7 Old Shore Road,
Newtownards*

Take notice that any person having
custody of or information as to the
whereabouts of the Land Certificate
relating to the above mentioned
folio should forthwith produce
said Certificate or communicate
such information to the
undermentioned solicitors.

And take further notice that
unless the said Land Certificate
is so produced or adequate
information as to its whereabouts
is so communicated within three
weeks of publication of this notice,
a duplicate Land Certificate shall
be applied for.

Messrs Russell & Co
Solicitors
11 Lower Mary Street
Newtownards
Co Down
BT23 4JJ

Folio: 8766L

County: *Antrim*
Registered Owner: *Andrew Marshall
Robinson*
Lands of: *1 Moyard Gardens,
Greenisland*

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.

Thompson Mitchell
Solicitors
12-14 Mandeville Street
Portadown
BT62 3NZ

Folio: AN39428County: *Antrim*Registered Owners: *Robert McCaughey and Evelyn McCaughey*
Lands at: *4 Torr Gardens, Linn Road, Larne, County Antrim BT40 2JQ*

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
Arnott House
12/16 Bridge Street
BELFAST
BT1 1LS**Folio: LY15292**County: *Londonderry*Registered Owners: *John O'Neill and Deidre O'Neill*Lands at: *54A Windyhall Park, Coleraine, County Londonderry*

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
Arnott House
12/16 Bridge Street
BELFAST
BT1 1LS**Folio: 37158**County: *Down*Registered Owner: *Peter Collins*

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.
Gordon Bell & Son Solicitors
9-11 Newry Street
Rathfriland
Co Down
BT34 5PY**Folio: 29641**County: *Down*Registered Owner: *Herbert Graham*

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.
Gordon Bell & Son Solicitors
9-11 Newry Street
Rathfriland
Co Down
BT34 5PY

Missing Deeds

Jane Francis Stewart deceased or**John Wilson deceased****7 Chester Avenue, Bangor**

Would any solicitor having any knowledge of the whereabouts of the title deeds of the above property please contact:-

Ms Kristina Hare

Wilson Nesbitt

Solicitors

33 Hamilton Road

Bangor

Co Down

Tel: 028 9127 8178

Fax: 028 9127 8197

Re: 71 Windsor Road, Belfast,**County of the City of Belfast**Registered owner: *Catherine Martha**Ellison Carnduff, deceased*

Would any Solicitor holding or

having knowledge of the whereabouts of the title deeds to the above property please contact:-
Michael Ferguson
M Ferguson Solicitors
249 Lisburn Road
BELFAST
BT9 7EN
Tel:- 028 9038 2030**Re:16 Prince Edward Drive,
Stranmillis, Belfast, BT9**Registered owner: *Mary Gertrude McEvoy deceased*

Would any solicitor having any knowledge of the whereabouts of the title deeds of the above property please contact:-

Mr Con Lavery
Byrne & Herbert
SolicitorsAvonmore House
15 Church Square
BANBRIDGE BT32 4AP
Tel: 028 4066 2251

Missing Person

Re: Dinah Dawson

Formerly of 14 Hillsborough Old Road Lisburn and 19 Larrybane Park, Ballintoy

Would any Solicitor having knowledge of the whereabouts of the above-named, please contact

Miss Linda Gault

W G Maginess & Son

68 Bow Street

Lisburn

Co Antrim

Tel: 028 9267 2161

Legal Bookkeeper

Experienced legal bookkeeper available for East Antrim or City Centre. Enquiries to PO Box number 124, c/o Citigate Northern Ireland Public Affairs Ltd, 128a High Street, Hollywood, Co Down BT18 9HW.

Solicitors Required

Higgins Hollywood Deazley Solicitors require a Solicitor with experience in criminal law and personal injury litigation.

Successful candidates shall enjoy excellent working conditions and an attractive remuneration package. Please apply in writing with CV to:- Mrs Kelly Dickson
Higgins Hollywood Deazley Solicitors
523 Antrim Road
BELFAST
BT15 3BS

Stephen Perrott & Company Solicitors, 49 High Street, Holywood, require Lit/Mat Solicitor for busy office.

Salary depends on experience.
Telephone: 028 9042 8330
Email: Stephen.Perrott@nireland.com

Belfast City Centre Experienced conveyancing/commercial practitioner required for a senior position in a long established and highly regarded practice.

The ideal candidate will have upwards of 10 years PQE, the ability to lead, expand the drive an established department and will be motivated, energetic and ambitious. Please apply with CV by 28 February 2004 to:
R A Murphy
Edwards & Co Solicitors
28 Hill Street
BELFAST
BT1 2LA
We are an Equal Opportunities Employer

Solicitor required for General Practice in busy County Fermanagh firm with offices in both Enniskillen and Lisnaskea. An attractive salary will be offered to the successful candidate.

Please apply in writing with CV to:- Frank McManus
Murphy & McManus Solicitors
19 East Bridge Street
Enniskillen
County Fermanagh
BT74 7BW
All applications will be treated in strictest confidence.

Solicitor required for busy country practice.

Please apply in writing, enclosing a CV to:-
P J J McGuckin
Solicitors
57 Hall Street
Maghera
Co Derry
BT46 5DA

Assistant Solicitor required for very busy Comber practice. Experience in all areas of general practice is required but with the emphasis on conveyancing. We would consider an applicant looking for part-time employment.

Please apply with CV by 28 February 2004 to:
Elaine Early & Co
Solicitors
19 Castle Street
Comber
Co Down
Tel:- 028 9187 1880
Fax:- 028 9187 1882
Email:
legaladvice@elaineearlyandco.com

Assistant Solicitor required for Belfast practice. Interest and/experience in Magistrate's Court work essential.

An attractive salary will be offered to the successful candidate. Apply with CV to:-
Mr Dennis Boyd
McKenna Boyd Solicitors
337 Woodstock Road
BELFAST
BT6 8PT
Tel:- 028 9073 9979

Assistant Solicitor required for expanding property department.

The Solicitor should ideally have one to three years experience of Commercial Conveyancing including Business Tenancies, although consideration would be given to a suitable Applicant with Conveyancing experience who would train in this area. This is a post with excellent prospects and an attractive salary. Apply in the strictest confidence, enclosing CV to:-
The Monitoring Officer
James Murland & Company
Solicitors
15 English Street
Downpatrick
County Down BT30 6AP
Closing date for applications:-
Monday 1st March 2004

W G Maginess & Son Solicitors of 68 Bow Street, Lisburn, require an Assistant Solicitor.

Experience in Conveyancing an advantage. The successful candidate will be required to help with Litigation/Matrimonial work. Please apply in writing with CV to:-
The Partners
W G Maginess & Son
Solicitors
68 Bow Street
Lisburn
BT28 1AL

Solicitors Seeking Employment

Solicitor seeking employment in May 2004. Newly qualified in England and Wales in a high street firm. Trained in residential and commercial conveyancing, probate and trusts, matrimonial and civil litigation. Worked for a year as a paralegal in a high street practice in Northern Ireland. Please contact PO Box 126, c/o Citigate Northern Ireland Public Affairs, 128a High Street, Holywood, Co Down BT18 9HW.

Experienced litigation Solicitor is available for employment (locum or full-time). Would consider plaintiff, defence or employment law caseload.

Apply in writing to PO Box number 125, c/o Citigate Northern Ireland Public Affairs Ltd, 128a High Street, Holywood, Co Down BT18 9HW.

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

High Court,

Court of Appeal and Tribunal Decisions

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

IN THE MATTER OF AN APPLICATION BY HER MAJESTY'S ATTORNEY GENERAL FOR NORTHERN IRELAND

Application by Attorney General claiming that Belfast Telegraph Newspapers and Martin Lindsay guilty of contempt of court. - articles published prior to trial. - whether defendant could obtain a fair trial. - risk of prejudice to the course of justice. - matter referred to Attorney General to consider whether contempt proceedings should be taken. - HELD that respondents guilty of contempt and fined £5000 in total
COURT OF APPEAL
12 DECEMBER 2003
KERR J

CLYDE, PAUL ROBERT V HUTCHINSON, R N

Appeal from Master's order. - extension of writ of summons. - whether good reason exists. - negligence for dental treatment. - delay in receiving expert reports together with error in solicitor's practice. - compatibility of Order 6 r.7(2) RSC and art.6 ECHR right to fair trial. - appeal allowed
QUEENS BENCH DIVISION
18 DECEMBER 2003
CAMPBELL LJ

RE G AND A (ABDUCTION: CONSENT) IN THE MATTER OF THE CHILD ABDUCTION AND CUSTODY ACT 1985

Application under Child Abduction and Custody Act 1985 and Hague Convention on the Civil Aspects of International Child Abduction 1980 for the return to Australia of 2 children. - whether wrongfully abducted to Northern Ireland. - residence order made in Australia in favour of mother together with order restraining removal of minors from Australia. - subsequent consent order made discharging earlier orders in the context of reconciliation between parents. - whether mother now free to leave Australia with children without restriction. - on return to Northern Ireland children made ward of court and residence order granted for mother and contact order for father. - consent and acquiescence surrounding Australian consent order. - HELD that return order should not be made and application dismissed
FAMILY DIVISION
22 DECEMBER 2003
GILLEN J

IN THE MATTER OF AN APPLICATION BY RM AND SM FOR AN ORDER FOR DIRECTIONS

Application for order for directions under art. 8 Children (NI) Order 1995 by father and stepmother. - residence and contact opposed by child's mother and stepfather. - child demonstrated opposition to visit natural father in Wales. - whether orchestrated by mother. - judge

spoke to child in chambers to ascertain true wishes of child. - whether punitive order should be imposed on mother if full implementation of contact orders not achieved. - whether in best interests of child that he should be compelled to spend time with his natural father in Wales. - HELD that previous art. 8 Order be varied by deleting provision relating to staying contact in Wales, but father can have contact with son in this jurisdiction
QUEENS BENCH DIVISION
23 DECEMBER 2003
KERR J

IN THE MATTER OF AN APPLICATION BY JAMES E MCCABE LIMITED FOR JUDICIAL REVIEW

Application for judicial review of decision of Industrial Court to accept application of ATGWU under Schedule 1A Trade Union and Labour Relations (NI) Order 1995 as amended. - application for recognition to be entitled to conduct collective bargaining on behalf of workers. - extent of documents and information on names of individual workers to be furnished to employer. - procedures adopted by Industrial Court further to union's application for recognition. - application refused
QUEENS BENCH DIVISION
19 DECEMBER 2003
WEATHERUP J

IN THE MATTER OF AN APPLICATION BY DAVID NAGRA FOR JUDICIAL REVIEW

Application for judicial review of decision by an Appropriate Authority under Legal Aid and Criminal Proceedings (Costs) Rules 1992. - applicant had failed to comply with time limit on a number of cases. - Appropriate Authority determined percentage reduction from profit costs. - whether Appropriate Authority had taken relevant considerations of good reason into account. - whether decision unreasonable and disproportionate. - whether reasonable opportunity to show cause. - application dismissed
QUEENS BENCH DIVISION
19 DECEMBER 2003
WEATHERUP J

WALLACE, A and QUINN, NOEL GERARD

Appeal by way of case stated. - driving while disqualified contrary to art. 167 (1) (b) Road Traffic (NI) Order 1981. - admission made while in the course of being questioned for more serious matter. - whether admission be admissible in evidence in the absence of a caution. - whether breach of Code C PACE. - requisition to state case not served by registered or recorded delivery post and no trace found. - responded unaware of proceedings. - whether service requirements of art. 146 Magistrates' Courts (NI) Order 1981 mandatory. - appeal dismissed
COURT OF APPEAL
25 NOVEMBER 2003
CARSWELL LCJ

WALSH, MOST REVEREND PATRICK, REVEREND JOSEPH GLOVER, JANE CRILLY and AMICUS AMALGAMATED ELECTRICAL AND ENGINEERING UNION

Application to enforce an undertaking given by plaintiffs upon an ex parte injunction granted to plaintiffs in relation to demolition works proposed at defendant's building adjacent to school premises and commercial offices. - access, impact on property and risk of asbestos. - whether urgency existed which required the plaintiffs to proceed ex parte. - whether plaintiffs should be required to pay damages for loss on granting of injunction. - HELD that plaintiffs entitled to obtain ex parte injunction on grounds of urgency and that plaintiffs not required to meet undertakings as to damages. - undertaking not to be enforced on the basis that the defendant should not have commenced demolition since they ought to have further investigated asbestos risk
CHANCERY DIVISION
11 OCTOBER 2002
WEATHERUP J

TRIBUNAL DECISIONS

CLERKIN, DESMOND V WARRENPOINT HARBOUR AUTHORITY, INDUSTRIAL TRIBUNAL, 31 JULY 2003, 3286/01; 3290/01

Preliminary issue to determine whether changes in terms and conditions of employment as negotiated and agreed between the respondent and Union were incorporated into applicant's contract of employment and on what date. - tribunal decided as affirmative and determined effective date

FLEMING, MALACHY V HALUS, NEELY AND MINISTRY OF DEFENCE FAIR EMPLOYMENT TRIBUNAL, 10 FEBRUARY 2003, 00174/98FET

Discrimination on grounds of religion. - applicant claims he was subject to sectarian harassment contrary to art 19(1) (b) Fair Employment and Treatment Order 1998. - further claims of being passed over for promotion. - tribunal decided that no equal opportunities policy in place and no steps had been taken to address equality issues and that applicant failed to be fairly considered for promotion and was therefore unlawfully discriminated against

HAMILTON, MARY V DOWN AND LISBURN HEALTH AND SOCIAL SERVICES TRUST, FAIR EMPLOYMENT TRIBUNAL, 11 JUNE 2003, 00308/00 FET; 01618/00 FET

Discrimination on the grounds of religious belief. - unfair dismissal. - allegations that applicant tried to influence or threaten other employees involved in an ongoing investigation. - tribunal decided that applicant was not unlawfully discriminated against and was unfairly dismissed

HOPKINS, COLIN V DEPARTMENT OF EMPLOYMENT AND LEARNING, INDUSTRIAL TRIBUNAL, 11 MARCH 2003, 2457/02

Appeal by applicant against refusal to pay redundancy payment in connection with his dismissal. Whether applicant was qualifying employee as defined by the Employment Rights (NI) Order 1996. - tribunal held that there was a contract of service and therefore applicant was an employee

SMYTH, DR JOAN V DEPARTMENT OF AGRICULTURE, FAIR EMPLOYMENT TRIBUNAL, 12 FEBRUARY 2003, 00185/98FET; 01419/98SD
Allegation of religious and sex discrimination arising from Departmental review proposals. - allegations that applicant leaked proposals. - applicant claimed victimisation. - tribunal held that the applicant was not unlawfully discriminated against by way of victimisation and complaint dismissed

All decisions listed here and in the accompanying insert are available in full text and free of charge from the Libero database.

MEMBERS OF THE SUPREME COURT & RESPONSIBILITIES

The Office of the Lord Chief Justice has advised us that the following re-allocation of judicial responsibilities, the present division of functions within the Supreme Court is as follows:

Lord Chief Justice

The Rt Hon Sir Brian Kerr

COURT OF APPEAL

Lords Justices of Appeal

*The Rt Hon Lord Justice Nicholson
The Rt Hon Lord Justice McCollum
The Rt Hon Lord Justice Campbell*

QUEEN'S BENCH DIVISION

Senior Queen's Bench Judge

The Hon Mr Justice Sheil

Queen's Bench Judge

The Hon Mr Justice Higgins

Commercial Judge & President of Lands Tribunal

The Hon Mr Justice Coghlin

Judicial Review Judges

*The Hon Mr Justice Girvan
The Hon Mr Justice Weatherup*

FAMILY DIVISION

Family Judges

*The Hon Mr Justice Gillen
The Hon Mr Justice McLaughlin*

CHANCERY DIVISION

Chancery Judge

The Hon Mr Justice Weir

**Copy deadline for February
Wednesday 11 February 2004**

Editor: John Bailie.

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98 Victoria St. Belfast, BT1 3GN
*The views expressed are not
necessarily those of the Law Society
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Library Update

Recommended Reading

Inheritance Tax Planning and the Family Home

Articles

Inheritance tax planning for the family home (examines strategies for avoiding inheritance tax on the family home)

Venables: 2002/03, PTPR 9(2), 143-179

Keep it in the family: Part 1 (warns of the pitfalls of inheritance tax planning involving the family home)

Author: John Goodchild
Goodchild: 2003, SJ 147(33), 981-982

Keep it in the family: Part 2

Goodchild: 2003, SJ 147(34), 1016-1017

Caselaw

Ingram (Executors of the Estate of Lady Ingram) v Inland Revenue Commissioners

[2000] 1 A.C. 293; [1999] 2 W.L.R. 90; [1999] 1 All E.R. 297
(available electronically from the Library)

Inland Revenue Commissioners v Eversden

Essex (Somerset's Executors) v Inland Revenue Commissioners
[2003] EWCA Civ 668
<http://www.bailii.org/ew/cases/EWCA/Civ/2003/668.html>

Textbooks available in the Library

Rays Inheritance Tax Planning.
Butterworths.1999.

McCutcheon on Inheritance Tax .
3rd ed. Sweet & Maxwell. 1988.

Golding: Tolley's Inheritance Tax. Reed Elsevier. 2003.

Butterworths Wills, Probate and Administration Service. 2000.
(looseleaf publication)

New Books in the Library

1. Brazell: Electronic signatures law and regulation. Sweet & Maxwell. 2004.

2. Bean: Injunctions. 8th ed. Sweet & Maxwell. 2004.

3. Clayton: Civil actions against the police. 3rd ed. Sweet & Maxwell. 2004.

4. Price: Defamation: law, procedure and practice. 3rd ed. Sweet & Maxwell. 2003.

5. Wadlow: The law of passing off. 3rd ed. Sweet & Maxwell. 2004.

6. Lowe: Consumer law and practice. 6th ed. Sweet & Maxwell. 2003.

7. Bullen and Leake and Jacobs precedents of pleadings. 15th ed. Sweet & Maxwell. 2004.

8. Commentary on the Northern Ireland Policing Board. Committee on the Administration of Justice. 2003.

9. The Children Order Advisory Committee Best Practice Guidance. 2003.

10. Gillow: Harassment at work. 2nd ed. Jordans. 2003.

11. Archbold Criminal pleading, evidence and practice 2004. Sweet & Maxwell.

12. Gatley on libel and slander. 10th ed. Sweet & Maxwell. 2003.

13. Harker: Matrimonial conveyancing: a draftsman's handbook.8th ed. Sweet & Maxwell. 2003.

14. Wright: Zurich investment and savings handbook 2003-2004. Pearson. 2003.

15. Goodall: A practical guide to the new pension credit. Butterworths. 2003.

16. Blackstone's criminal practice 2004. Sweet & Maxwell.

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