

THE WRIT

THE EZINE OF THE LAW SOCIETY
OF NORTHERN IRELAND

ISSUE 243 Winter 2023



THE
LAW SOCIETY
OF NORTHERN IRELAND

100
YEARS

A portrait of Darren Toombs, the new President of The Law Society of Northern Ireland. He is a middle-aged man with short grey hair, smiling, wearing a dark blue suit, a white shirt, and a blue tie. He is also wearing a gold chain of office with a large circular medallion at the bottom. The background is a blurred office setting.

THIS ISSUE
The Society
welcomes
its new President,
Darren Toombs

Introducing the New
Presidential Team

Conveyancing Week 2023-
A Roundup

The Windsor Framework:
Article 2



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Foreword

Welcome to the winter edition of The Writ, the final issue of 2023. This time of year is characterised by endings and beginnings.

For the Society, it's the time of year when we say thank you to outgoing President and new Senior Vice-President Brian Archer and welcome our new President – Darren Toombs. There is also a new face on the Presidential team – Colin Mitchell, the incoming Junior Vice-President, and again, we extend our thanks to outgoing Senior Vice President Brigid Napier.

Darren Toombs came into Law Society House earlier this month for a chat with me about what he hopes to achieve during his year as President. I'm always amazed by how quickly the Presidential year passes but the pace Darren has set in his first few weeks leaves me in no doubt that much will be achieved during this year!

We know that for some Members The Writ keeps you up-to-date with what is happening in the Society and the wider legal profession. We try to include something for everyone and I hope this issue achieves that. During 2023 we expanded the number of articles and range of topics we cover. I hope you will find these interesting.

We are always happy to hear from readers – I harbour a secret wish for a regular letters page! If you'd like to share an opinion on any of the articles contained within this issue please get in touch. Or, if there are any subjects you would like us to cover in a future issue - or you'd like to volunteer to write an article yourself... - we'd be delighted to hear from you at Writ@lawsoc-ni.org

Wishing you the compliments of the season and a peaceful and prosperous 2024.

A Gundle

THE
WRIT



Darren Toombs sets out his new priorities for the year

The Society's new President Darren Toombs met with Alison Grundle, Head of Member Services, for coffee and a catch up in the Law Club

Incoming President Darren Toombs arrived slightly late for our meeting having been tied up with a pressing client matter that morning. A busy partner in local law firm Carson McDowell, he agrees that the tone has already been set for his year as President.

"In my first week I have already dealt with the initial ramifications of all that was discussed at the AGM; met with the Criminal Cases Review Commission; attended the Annual Dinner of the Mayo Solicitors Bar Association; met with Alison Hook, author of the Hook Tangaza Report on the legal profession along with the Council of Legal Education and Institute of Professional Legal Studies students, and survived an afternoon photoshoot with Khara Pringle in Law Society House....having had to, quite literally, shave the last three days off the Movember challenge. Safe to say, it is going to be a busy year if that week is anything to go by".

A native of Warrenpoint, Darren is the first in his family to enter the legal profession. He admits to starting Queen's without really knowing what to expect.

"I knew it was a four-year course, rather than the usual three and that meant an extra year as a student before I had to join the real world! I didn't realise how competitive it was though. At that time there were only around 80 places in the IPLS each year and with 400-500 applicants it was tough. At that point I thought a career in criminal practice awaited me and I did start out on that path. I joined MacElhattons and followed that well-trodden route of attending police stations, making bail applications and entering pleas. I remember very well making my first plea in Magherafelt Court. I loved attending court and still enjoy advocacy, although there are fewer opportunities to do so in my current role.

From MacElhattons I moved to Carson McDowell where I'm now a partner. I initially started off in Debt Recovery and prosecuting Translink's bye-law cases. The experience of working in a small general practice stood me in good stead as I already understood the business side of practice, the importance of client relationships, the need to manage cash flow and the need to generate fees."

As Chair of the Education Committee, access to the profession will remain a key focus during his Presidential year.

"I see our future as very much about investing in the next generation and as someone who has been passionate about the education and training of solicitors, I am committed to identifying ways to improve access to the legal profession and supporting those wishing to follow a career in law and ultimately to join us, in our Society and become a solicitor.

I was pleased to lead a sub-group of the Education Committee last year tasked with creating and administering a new Centenary bursary scheme for trainees. Two very worthy applicants received bursaries of around £10,000 from underused educational trusts. Steps have been taken within the Society to combine a number of dormant trusts and with some additional reserves added through the retained balance of the Master Policy Profit share I will be pressing Council Members to see the benefit of agreeing to fund two full similar bursaries each and every year. The whole of the England and Wales Society provides 15 bursaries to similarly disadvantaged trainees. If we operated pro

rata to their size we'd only fund a fraction of one bursary. We are already punching well above our weight with this new scheme.

As many of you will know, my primary interest in the Society has always been in the field of education, qualification and entry into the profession. I was first co-opted to the Education Committee having served on the Northern Ireland Young Solicitors Association for several years. I think my interest stems from a personal feeling, that at all of my sliding door moments, the door just happened to slide the right way for me. It should not have to be like that. I hope that I can gently push open the door to broaden the entry and access points to more individuals and also to a more diverse range of applicants.

Whilst there are many challenges ahead, I believe that these potentially open doors and force us to face up to, faster than we might otherwise have, opportunities to build a more diverse, accessible, and welcoming solicitor profession fit for purpose and responsive to the needs of local business and our community."

Supporting general practice, particularly those in small and/or rural firms, will also be a priority.

"I am very familiar with the challenges for solicitors working in these firms. My predecessor, Brian Archer, a sole practitioner, worked tirelessly on the issue of Legal Aid. From my own days working in general practice, I recall the difficulties of Legal Aid and it has become much worse since then. The additional funds announced just last month for the legal aid budget are welcome. I am hopeful that the Fundamental Review of Criminal Legal Aid, being led by past President Tom Burgess, will bring about real and lasting results for the firms struggling to provide access to justice for their clients in constrained times.

I am hopeful that taking a leaf out of the book of our friends in Blackhall Place in Dublin, and introducing a Business Support Hub, will, in time, be of great assistance. This project will undoubtedly take a few years to bear fruit, but it is hoped that the advice and resource that hub will provide will make the burden of regulation and red tape just that bit lighter. Another hope would be that it will make exiting the profession at retirement point just that little bit easier. We have all known a sole practitioner that has struggled to close their last few files and find a good home for their deeds and will bank. Whilst there

is no panacea, it is hoped that the hub will at the very least prove a valuable additional resource."

A modernised Society representing all Members is another area of focus

"Traditionally Law Society activities have focused mainly on those who hold a Practising Certificate – or are studying and intend on holding a Practising Certificate. This is no doubt a consequence of being a regulator as well as a professional body but the profession has changed and the Society needs to change with it. The Hook Tangaza report on the state of legal profession here has really brought home to us how much the profession has grown and diversified in recent years. Council has agreed a transformation programme that will change and modernise the Society.

In Law Society House, addressing all of our Members' issues will mean listening and engaging more proactively with our stakeholders, decision-makers and most importantly our Members, us, to identify how best we can better support them moving forward.

As a practising solicitor, I am all too aware of the invaluable contribution that solicitors make to the economy as employers and as businesses. Solicitors remain at the very heart of every aspect of Northern Ireland life, their contribution is often unseen and unheard, yet they provide an important role supporting business and our community.

Despite the challenges I am optimistic for the future of the profession here. Hook Tangaza concluded that there is room for more solicitors in Northern Ireland and that is good news for us all."

The year ahead

"During my presidency I will continue to champion the excellence of our profession at home and abroad as well as promoting the importance of maintaining the network of solicitor firms, large and small, across Northern Ireland, who provide advice - and most importantly, access to justice and to the law - to the local community and to business. I am all too aware that this year will fly by and I am already involved in many of the initiatives that Council is prioritising as part of the Transformation Programme. I hope to meet as many of you as possible and I would encourage you to become more involved with the Society and make your voice heard."



The Presidential Team





PRESIDENT – DARREN TOOMBS

Darren Toombs grew up in Warrenpoint, was educated at Abbey CBS in Newry and graduated with an Honour's degree in law and accountancy from Queen's University Belfast in 1998.

He accepted an apprenticeship with MacElhatton & Company Solicitors in Belfast, graduated from the Institute of Professional Legal Studies (IPLS) QUB in 2000, and was admitted to the Roll the same year.

In 2003, Darren moved to the Litigation Department within Carson McDowell Solicitors where, for the next 15 years, he

headed up the Debt Recovery Team and the firm's Departmental Enforcement Team, for bodies such as The Planning Service, the Roads Service and Translink.

Following the opening of an opportunity within the firm, he moved to working within the Insolvency sphere, quickly gaining a sound reputation litigating for trustees, administrators and liquidators. He has built a full Insolvency and Restructuring team within the firm over the past seven years.

Darren has been recognised as a leader in his field in the areas of Debt Recovery and Insolvency and Restructuring in the Chambers and the Legal 500 Directories over the years. His team is recognised as one of Northern Ireland's leading teams in its specialism.

He has been active in a number of professional bodies over the course of his career including the NIYSA when he was Vice Chair in 2005.

Darren was co-opted onto the Education Committee of the Law Society of Northern Ireland in 2006.

In 2015 he was elected to the Council of the Law Society of Northern Ireland and has served on a range of Council Committees.

In recent years Darren has been a member of the Society's Professional Conduct Committee, the Contentious Business Committee and the Future of the Profession Committee. He currently chairs the Society's Education Committee and its Business Committee. He also serves as a nominee of the Society on the Council of Legal Education at the IPLS.

Darren was an active hockey and Gaelic football player from childhood and has a passion for road cycling and racing. One of Darren's proudest moments representing the Society was participating in the 110-mile cycling leg of the "renowned" Ironlaw triathlon relay race victory against the Law Society of Ireland team in 2019.

He became President of the Law Society of Northern Ireland on Wednesday 29th November 2023.



SENIOR VICE-PRESIDENT – BRIAN ARCHER

Brian Archer graduated from Queen's University Belfast with an Honours degree in law in 1991 and qualified as a solicitor in 1994.

Following this he worked as an assistant solicitor for Francis Keenan Solicitor in Belfast from 1994 - 2001 specialising in criminal law representing clients before the Magistrates and Crown Courts.

In 2001 he set up his own firm in partnership with two other colleagues and in 2016 set up as a sole practitioner as Archer Solicitors in Belfast.

Brian qualified as an Advanced Advocate in 2001 and was appointed to the Law Society's Children Order Panel and NIGALA Children Order panel in 2010.

In 2007 Brian was appointed a Deputy District Judge and he continues to sit throughout the

jurisdiction in Magistrates, Youth Courts, and Family Proceedings Courts.

Over the last 20 years Brian has been involved in legal education as a Teaching Assistant at the IPLS and has been a Law Society Council member for over 10 years chairing several committees.

Outside his legal practice Brian has been involved in several charities including the sexual abuse counselling service Nexus for which he was appointed Chair of its Board of Directors from 2016 -2018. Brian is presently a trustee of the Include Youth charity.



JUNIOR VICE-PRESIDENT – COLIN MITCHELL

Colin grew up in Lisburn but now lives in Fintona.

He attended RBAI and graduated with an honour's degree in Law from the University of Dundee in 1997.

Colin was an apprentice in McCartan Turkington Breen. There he became a partner in 2006 and senior partner in 2020.

Throughout his career he has specialised in litigation and licensing.

Colin is a former chair of the Belfast Solicitors' Association and is currently a member of the County Court Rules Committee.

In 2017 he was elected to Council of the Law Society of Northern Ireland.

He has been a member of various committees, including Client Complaints, Library and Publications and Education. He is the current chair of the Contentious Business Committee.

BOOM FOUNDATION

The Boom Foundation is the new LSNI President's chosen charity of the year. Here the charity explains what it does, identifying its objectives and how it works.

The Boom Foundation is honoured to be the President's chosen charity of the year. The Boom Foundation remains the only charity in Northern Ireland supporting patients suffering from sarcoma cancer, putting a support network in place for those suffering from a 'forgotten cancer'. There are two main types of sarcoma: soft tissue sarcoma and bone sarcoma. Within these two types, there are around 100 subtypes.

Every day, 15 people are diagnosed with sarcoma in the UK. That's about 5,300 people a year. There are over 100 new patients diagnosed with sarcoma each year in NI. Sarcoma is the third most common cancer in children.

The Charity's objectives are to:

- (1) Promote and protect the physical and mental health of sufferers of sarcoma cancer in Northern Ireland through the provision of financial assistance, support and practical advice;
- (2) Advance the education of the public in all areas relating to sarcoma; and
- (3) Advance the research of sarcoma cancer through the provision of financial support to Sarcoma UK (a registered charity in the UK under charity number 7487432).

Boom has a unique referral system in place with the Belfast Health and Social Care Trust and the South Eastern Health and Social Care Trust (the two HSCNI Trusts who deliver care to sarcoma patients). When a patient is diagnosed in NI with sarcoma, a referral is made by their consultant oncologist and sent to Boom.

Boom has a dedicated team of volunteers who liaise with the patient throughout their treatment, ensuring that they and their family receive the unfettered support they require without delay. Referrals for financial support are not means tested in any way and examples of support include the following (not an exhaustive list):



Leona O'Neill, founding Trustee of the Boom Foundation, with Alison Grundle, Head of Member Services at the Law Society.

1. Winter fuel allowance (sent to every patient annually);
2. Car modifications (for instance, following a patient's amputation);
3. Private counselling;
4. Private tuition for children undertaking treatment during GCSE/AS/A-Level;
5. Travel insurance;
6. Funding the travel to GB and abroad for patients' families during periods of treatment;
7. Weekend breaks;
8. Provision of an iPad for children who are beginning treatment in hospital;
9. Provision of private personal training/swimming lessons for patients in rehabilitation (particularly for those who have had an amputation).

Boom is a voluntary run charity with no overheads. 50% of the money raised is used in Northern Ireland to offer practical support and assistance to patients. The remaining 50% goes to Sarcoma UK to fund vital research into sarcoma and its treatment. The charity's six trustees and members of the charity give their time voluntarily to ensure that patients receive the support that they need, when they need it. Boom is privileged to work closely with health professionals in Northern Ireland which means that it provides support in the right way to patients and their families.

Boom has received an overwhelming level of support since its launch back in 2013. In its first

year (April 2013 - April 2014), the charity was registered with the NI Charity Commission and had raised over £100,000 through voluntary donations. To date, the charity has raised over £500,000 through voluntary donations and its fundraising efforts.

The charity has received several awards and has been invited to 10 Downing Street on two occasions, most recently in November 2023. In 2017 the charity's founding Trustee (and solicitor), Leona O'Neill, was awarded the "Point of Light Award" by the then Prime Minister. In a personal letter to Leona, Prime Minister Theresa May said:

"The Boom Foundation is changing the lives of hundreds of people living with sarcoma across Northern Ireland. Your tireless dedication to this cause is a wonderful tribute to Philip's [Leona's fiancé] life."

At the very centre of what Boom does is support the sarcoma patient and their family. Boom wants to ensure that the charity will develop alongside the needs of sarcoma patients and that it expeditiously will fill any gaps in the support afforded to them. We are truly delighted that the Law Society of Northern Ireland has chosen to support Boom in its endeavours.

Please visit the Boom Foundation website if you would like to learn more about the charity and the work that it does at: www.theboomfoundation.co.uk

Passing on the Baton

Brian Archer reflects on his past year as President

Being President in the Society's 101st year could have been a pedestrian affair - Brigid Napier's excellent Centenary year was indeed a hard act to follow. However, this year as President has been a whirlwind of activity for me. The Centenary year was a celebration of our first one hundred years, but this year has been about looking ahead - renewing our focus and commitment to serving our Members and supporting your interests.

One of the key centenary activities the Society undertook was a comprehensive review of the state of the legal sector in Northern Ireland. This important work, led by the Policy and Engagement Department and supported by the Hook Tangaza consultancy, has set the priorities for Council in leading the Society forward into its next phase.

The research has confirmed much of what we already knew but previously had no evidence base to work from. It also provided new information about the way in which the sector is evolving and diversifying. Some parts of the report make difficult reading. As a sole practitioner, I know well the challenges faced by those of us who work alone or in small firms, not only in the practice of law but in the day-to-day running of a business.

The Future of the Profession Committee established a Sustainable Practices Group to look at this area and it has recommended setting up a Practice Support Hub. This will now be carried forward by the Member Services Department with a programme of work established to support small, general and rural practices.

The resounding message from the research is that whilst there are undoubtedly challenges to be addressed, the legal economy in Northern Ireland has considerable growth potential and there is a continuing need for more solicitors.

Access to the profession is a particular interest of mine and I was delighted that the Centenary Bursary scheme announced last year was able to make two awards this year. Northern Ireland is developing into a multi-cultural society and it is important that our profession reflects the communities we serve.

I have taught at the IPLS for many years and was particularly heartened to see for the second consecutive year more than 150 trainee solicitors in place there. However, it is clear that demand is growing for solicitors. The Professional Development Department and Education Committee are exploring options that would allow more solicitors to qualify, whilst maintaining the integrity of training and qualifications.

One of the most rewarding parts of my presidency was visiting the Local Associations. It was a pleasure to meet so many Members who are actively involved at local level. Many, but not all, work in private practice and it was interesting to meet colleagues who practise in different areas and have different work patterns.

I was joined at many of these events by representatives of the Northern Ireland Young Solicitors Associations, particularly Katherine McAuley the first NIYSA Outreach Officer. The commitment and dedication of the NIYSA members is commendable and I hope to see them continuing this work and connecting more closely with Local Associations in the future.



Former President Brian Archer with Maura Derivan, immediate Past President of the Law Society of Ireland, who attended the LSNI Council meeting on 18th October.



Former President Brian Archer attended the IBA annual conference in Paris from 29 October-3 November 2023.

These visits really brought home to me the importance of local networks. Not only are they the lifeblood of the profession in their local areas but they are an important part of the relationship between the Society and its Members. The Society is committed to supporting the local associations to build a closer relationship with each other and with the Society. Since the end of my tour, I have been working to build a forum of representatives from across all of the local associations. I'm really pleased with the enthusiastic response this has received. The launch event was held at the end of November and I am confident that the Forum will play an important role going forward.

Legal Aid has been a longstanding area of difficulty for practitioners. The recent announcement by the Department of Justice, of a Fundamental Review of Criminal Legal Aid, under the leadership of our Society past President, Judge Tom Burgess, is most welcome and long overdue.

For many of the most vulnerable members of our communities, legal services are now available only through the goodwill of individual solicitors. This poses a direct threat to Access to Justice and on this issue, the last Justice Minister, Naomi Long, agrees with the Society.

Fundamentally, we need politicians back in place. The longer we are without functioning

government, the further down the agenda will slip important issues like Legal Aid. The Society will continue to engage and make representations to politicians and officials, but a return to Stormont is now critical.

The President attends a number of key events during the year and I was proud to be your Society representative at events at home and abroad. As well as events in these islands I attended the Commonwealth Lawyers Association Conference in Goa, the International Bar Leaders Conference in Helsinki and the American Bar Association's conference in Denver. I was also pleased to receive visitors to Belfast from Zambia, Zimbabwe, Austria and Ukraine.

This was a special year for one of our Local Associations with the Belfast Solicitors Association celebrating its 80th year. The Society sponsored one of three lifetime achievement awards and this was presented at the annual dinner in June, by former Society President and BSA Chair, Rowan White, to Judge Tom Burgess – also in his 80th year.

One of the most poignant meetings I attended was when the Solicitors' Benevolent Fund held its bi-annual meeting in Belfast, in Law Society House. I was humbled to hear first-hand of the work this

amazing organisation undertakes on behalf of, not just our Members on this whole island, but their families too. The compassion and sensitivity every Trustee displayed towards Members in really distressing circumstances was deeply touching and I would urge everyone to donate to this extremely worthwhile organisation. They are here for all of us when we need them and you just don't know when that person in need might be you or your loved one.

My own charity during my term was Include Youth, a Northern Ireland based charity that exists to help every child and young person to reach their potential, regardless of their circumstances. I thank everyone who has supported the charity this year. In particular, I thank Fiona Dowds for the hard work she has put into liaising with the charity and organising fundraising events.

This has been an extraordinary year for me. As a sole practitioner it has presented its challenges but it was an experience I would not have missed. Those of you who know me personally, will know that I am a history buff. As I conclude this review, I think back to those who were the first Members of the then new, Law Society of Northern Ireland a century ago. What would they make of our Law Society today? I hope they would see a profession of integrity and diversity, practising to the highest standards of professionalism and with an unwavering commitment to our values 'Veritas et Justitia' - truth and justice - for all.



Former President Brian Archer hosted a delegation of Ukrainian Judges who were visiting Belfast and Dublin.

Four Jurisdictions Meeting in Belfast

Former President Brian Archer chaired the Four Jurisdictions Meeting of the Law Societies of Ireland, England & Wales, Scotland and Northern Ireland in late October.

As part of the visit, Nick Emmerson (LSEW President), Sheila Webster (LSS President), Barry MacCarthy (then SVP, now President of LSNI) and Brian Archer (then LSI President) attended a tour of the Titanic Centre Belfast.



Former President Brian Archer speaking at the Sports Law Conference on 17th November 2023.



Visit of Lady Chief Justice

The Council of the Law Society of Northern Ireland welcomed the Lady Chief Justice, The Right Honourable Dame Siobhan Keegan, to its meeting at Law Society House in Belfast on Wednesday 29th November 2023. Council took the opportunity to update the Lady Chief Justice on issues affecting the Society's Members.



Review of the Year by David A Lavery CB Chief Executive of the Law Society of Northern Ireland

At the Society's Annual General Meeting on 29th November Chief Executive, David A Lavery CB, reported on the Society's operations over the last year. Below is a condensed version of his remarks.



The Society has embarked on a transformation journey to become a modern membership organisation offering the best services we can to Members. Over the past year or so we have consciously tried to be more strategic and forward-looking in our approach but to do so requires an evidence-based approach.

To support this approach, we have undertaken three major research exercises.

The Hook Tangaza consultancy report shines a light on just how much the legal sector has changed in recent years. We now have a solicitor profession of striking contrasts. Half of our firms are small general practices comprising sole practitioners and sole principals. At the same time, in Belfast we have more large international law firms than any other part of the United Kingdom outside the City of London.

The Diversity and Equality Survey told us a lot about the changing composition of our profession. The new reality is that women now make up the majority of new entrants to the profession.

Finally, this year we surveyed our Training Firms and recently qualified solicitors to learn about their experience of preparing to enter the profession.

Charting a New Course

As the governing body of the Society, the Council is responsible for developing responses to these new realities. At the

start of this year, the Council reviewed the many challenges and opportunities that lie ahead and embarked on a Transformation Programme that will likely take the next three years to complete.

The programme is outlined below with reference to the four pillars of the Society's responsibilities – Education, Regulation, Representation, and Member Services.

Education

The underlying question we have to address is whether the current vocational training model for solicitors needs to adapt in light of the changes we have seen in the legal sector. The current training regime for solicitors dates back to 1977 with the establishment of the Institute of Professional Legal Studies (IPLS). The IPLS remains the sole entry route into the solicitor profession for law graduates in Northern Ireland. The vocational training model introduced in 1977 was designed to prepare newly qualified solicitors for their first three years in general practice. But we need to consider whether this is the right model for entering practice in 2024 and beyond in light of new realities. These include:

- The Hook Tangaza research which tells us that the demand for newly qualified solicitors in Northern Ireland outstrips supply. And yet we have created a 'choke point' where the number able to enter the profession depends on the number of training contracts available in any year.

- Smaller firms tell us that they have difficulty in attracting trainees and even greater difficulty in retaining them.
- Larger firms tell us that the trainees are not ready to undertake commercial work and other aspects of modern legal practice.
- Of every 100 newly qualified solicitors leaving the Institute, 50 will have left private practice within five years.

The time may be approaching when a review needs to be undertaken of entry routes into the profession.

I would suggest – and here I emphasise that I am offering a personal opinion – that any review of entry routes into the profession might consider whether in future there could be scope for more than one entry route.

The **Institute** would continue to have a pivotal role to play in preparing trainees to enter the profession. One change might be to do away with the requirement to have a training contract before a trainee can enter the Institute. Instead, entry to the Institute would be solely dependent on the candidate's performance in the Admission Test and the number of places the Institute has the capacity to provide. At the end of the year, the trainee would leave the Institute with a Certificate in Professional Legal Studies from Queen's University. They would then be free to apply for a 'probationary' place in a law firm where they would complete their training under supervision before being admitted to the Roll of Solicitors.

A second entry route to the profession might take the form of a **Higher Level Apprenticeship** where the trainee would undertake a prescribed number of years training while in employment. This would require the support of the Northern Ireland Department for the Economy, but it could potentially be attractive to our smaller firms and also to those trainees who are unable to secure – or perhaps could not afford – a place at the Institute.

There might also be room for a third entry route into the profession. I am calling this the **'Returners Programme'**. It would be aimed primarily, but not exclusively, at the many female solicitors who choose to leave our profession. I believe we should try to encourage these leavers to return to private practice. Currently, by the time they think of returning to work they may well feel that they are 'out of touch'. But it ought to be possible to devise a suitable programme of refresher training that would give them the skills and confidence to return to work as a solicitor and hopefully resume a fulfilling career.

Regulation

The Society wants to remain Regulator of the profession, under the control of the Council and subject to appropriate oversight. The alternative would almost certainly be the type of external regulation that has already been introduced in England and Wales and which now seems likely to be introduced in Scotland.

If the Society hopes to retain our role as Regulator of the solicitor profession, we must be able to demonstrate that the current regulatory system is fully effective.

The Council has accordingly commissioned an independent review of our regulatory work, which makes 20 recommendations for improvement. The Society is developing an Improvement Programme to take forward these recommendations.

Representation

The Society is the voice of the profession. When it comes to dealing with Government this work falls to the Society's Policy & Engagement Department.

In this area of the Society's work, a significant change in approach is already evident. Today, we are much more proactive in setting the agenda on issues concerning legal reform and Access to Justice.

The 'Justice Agenda', which we published to coincide with the Assembly Election in 2022, set out an ambitious programme for much-needed modernisation of the justice system. We are refreshing this work and will publish a new Justice Agenda as soon as the devolved administration at Stormont gets back to work. The plan is to have justice modernisation at the centre of the new Executive's Programme for Government.

Another example of where we are being more effective is in the area of Legal Aid, where the problems of chronic underfunding and unacceptable delays in payments are well-known.

We have persuasively made the case for a properly funded system of Access to Justice. Judge Tom Burgess – a former LSNI President – has been appointed to lead a Fundamental Review of Criminal Legal Aid and to report by next Summer.

In our engagement with Judge Burgess we have pressed the case for additional funding and for the prompt payment of legal aid fees. Above all, we are pressing the case for a significant uplift in sustainable funding for Access to Justice.

I remain confident that this Fundamental Review and the other work we are doing represents the best opportunity we have had since the devolution of Justice in 2010 to produce a Legal Aid system that is fit for purpose and which provides sustainable Access to Justice for the people of Northern Ireland.

Our work on legal aid reform will be further strengthened by a new All Party Group on Access to Justice to be established shortly at Stormont.

We are also working to build a compelling evidence base making the case for Access to Justice. We have commissioned a comprehensive report on the social value of Legal Aid and we plan to share this with the new All Party Group at the earliest opportunity.

Member Services

The Society is a Members' organisation. We have 6,000 Members and we should aspire to be a professional organisation where they value their membership.

This will mean identifying new ways of supporting our Members.

One sector of the profession which undoubtedly faces challenges is the small general practice firms. One early result of work undertaken into this sector will be the creation of a new **Practice Support Hub** to provide advice and support to general practice firms.

As well as introducing new initiatives, we also need to be better at explaining the benefits of the services we already provide. An example of this is the Master Policy of Professional Indemnity Insurance that we procure annually on behalf of the profession. The Council considers that the Master Policy Scheme continues to serve the solicitor profession well. The fact that this year we achieved an almost 12% reduction in the Master Policy Premium illustrates that it is a value proposition for the profession.

Conclusion

Some of our other successes this year have included:

- A record 161 trainees entering the Institute;
- The award of the Society's inaugural Centenary Bursaries to support trainee solicitors undertaking vocational training;
- The Society's new Sustainability Strategy developed under the oversight of our new Climate Justice Group;
- The £32m increase we have secured in legal aid funding;
- The Society's new strategic partnership with the Institute of Legal Finance & Management.

However, while acknowledging these achievements, I want our focus to be on the 'big picture' issues on which we are working on your behalf. The message I want to leave you with is that the Society is pursuing a Transformation Programme that will ensure that we are well-placed to support the profession going forward.

By the year 2026 – 50 years after the enactment of the Solicitors Order - I believe you will see a Law Society that has positioned itself to become an effective professional membership organisation of which you will be justifiably proud.

A Year in Review: The Northern Ireland Young Solicitors' Association (NIYSA)



Shannon Gawley,
Chair, NIYSA

Shannon Gawley, Chair of the NIYSA,
reflects on her year as Chair of the group.

As this year draws to a close, I find myself reflecting on what has been a truly incredible experience as Chair of the Northern Ireland Young Solicitors' Association. At the outset of this year, the committee's ambition for 2023 was shaped by one overarching theme: "The Future of the Profession". We endeavoured to embody this theme in our pursuits and initiatives, striving to equip our Members with the knowledge and skills needed to thrive in an ever-evolving legal landscape. After all, in the tapestry of the legal profession, young lawyers are the vibrant threads that weave the future.

In an era that is defined by rapid technological advances, it was imperative for us to foster a keen awareness of the future within our community. Through the launch of the CPD Spotlight Series and the annual CPD Conference, we engaged in thought-provoking discussions, hosted expert panels and facilitated skill-building workshops, all with the aim of preparing our Members not only to navigate but to thrive in the ever-changing legal profession.

This year also saw the creation of an exciting new role within the committee of Member Engagement Officer. The position was created to enhance Member engagement and foster connections with local solicitor associations across Northern Ireland. Through attendance at the Presidential Outreach Meetings with local associations and involvement in various Law Society sub-committees, the role has continued to evolve from strength to strength and provides an important point of contact for members from local associations.

Beyond the professional realm, we recognised the importance of fostering a sense of community and camaraderie for our members. Our social events, such as the Spring Mixer and Solicitors v Accountants Quiz, became not just gatherings, but vibrant forums for connections to flourish. These occasions weren't merely about networking but more so about forging bonds and creating a support system for our Members both within and beyond the courtroom.

In our pursuit of professional growth, we also established connections with local and international young lawyers' associations including the Society of Young Solicitors of Ireland and the Young Members Committee. One of the highlights was our continued involvement in the European Young Bar

Association and our attendance at international conferences held in Lisbon, Oslo and London. Another highlight was the opportunity to attend the American Bar Association Annual Conference in Colorado as representatives from Northern Ireland. The exchange of ideas, sharing of best practices and the establishment of lasting connections with young legal professionals on an international scale has expanded our horizons and fortified the foundation of our association.

In October, the legal community witnessed the event of the year as our association joined forces with the Young Bar Association to host the inaugural Masquerade Ball at Crumlin Road Gaol. This collaborative effort marked a historic moment, setting the stage for a new era of partnership between two esteemed associations. The event symbolised more than just an evening of glitz and glamour, it represented a significant stepping stone toward fostering stronger ties and promoting the value of shared endeavours.

This year, we also remained steadfastly committed to nurturing the wellbeing of our members. Our focus on mental health this year was not just a response to the times we live in but a proactive step towards ensuring the resilience of our Members. From organising mental health webinars to introducing Pilates mornings, we aimed not only to address the challenges but to create a culture where mental wellbeing is a priority.

As my tenure as Chair comes to a close, I want to express my deepest gratitude to the dedicated committee members who have been the driving force behind our successes this year. It has been an honour and a privilege to serve alongside individuals whose passion, dedication and unwavering commitment have propelled our association to new heights. Looking ahead to the 40th anniversary next year, I am filled with excitement for what lies in store. As we celebrate our rich history and look forward to the future, I am confident that the Northern Ireland Young Solicitors' Association will continue to be a trailblazer in shaping the legal profession and a beacon of excellence for generations to come.





The Society of Young Solicitors Ireland Annual Conference hosted in Limerick, Ireland October 2023.



ABA Annual Meeting Denver Colorado August 2023.



The European Young Bar Association Summer Conference hosted in Oslo, Norway June 2023.



Dorothea Heron –
First Lady of Law



Former President Brian Archer at the unveiling of the portrait in Law Society House on 29th November 2023.



Members of the Diamond Heron team at the unveiling of the portrait of Dorothea Heron at Law Society House on 29th November 2023.

Outgoing President Brian Archer is known for his love of history and his championing of women role models in the profession. His last act as President combined both. Brian is responsible for the Society recognising the first woman on the Roll of Solicitors on the island of Ireland – Dorothea Heron.

With the assistance of Margaret Elliott, the most senior woman Past President, Brian unveiled a portrait of Dorothea Heron in Law Society House on 29th November 2023.

Mary Dorothea Heron was born in Harcourt Street, Dublin in August 1896. She was educated at Victoria College, Belfast and later at Queen’s University Belfast where she read Classics, graduating in 1918. She went on to study Law, again at Queen’s University, graduating with a first-class degree in 1921.

Following the tumultuous struggle of WW1 and the political emancipation of women in 1918, the professions were for the first time opened to women. The Sex Disqualification (Removal) Act 1919 allowed Dorothea Heron to be the first woman in Ireland to be apprenticed to a solicitor’s firm (T M Heron Belfast) and in April 1923 she was registered as a solicitor on the Roll of Solicitors by the Law Society of Ireland in Dublin.

Dorothea continued to work in her uncle’s firm as a conveyancer – which interestingly, did not require her to hold a practicing certificate. She remained in the firm until her retirement in 1946. Her last remaining years were spent living in Portstewart. Sadly, she passed away following a stroke in 1960, at the age of 63.

It would be 1978 before a woman would become the President of the Law Society of Northern Ireland, the indomitable Thomasena McKinney, and another 43 years until the first woman Chief Justice, Dame Siobhan Keegan, was appointed in 2021.

Since 2017, over half of practising certificates are held by women and women make up over 70% of trainees at the Institute of Professional Legal Studies, Queen’s University Belfast. Their success is built on the foundation laid by the talented and ambitious Mary Dorothea Heron and her contemporary Frances Kyle, the first woman barrister in Ireland.



Law Society staff presented a portrait of Dorothea Heron to her former school, Victoria College Belfast, on 12th December 2023.



Claire McNamee, Conveyancing and Non-Contentious Practice Lead at the LSNI, gives an overview of the Society's Conveyancing Week.

The Law Society of Northern Ireland launched its inaugural Conveyancing Week, the purpose of which was to highlight the central role of solicitors in the conveyancing process. Building from its annual conference for solicitors, the Society expanded the scope of its engagement to include other stakeholders such as members of the public, the student population, estate agents and surveyors. Northern Ireland's original property portal, Property News, sponsored the week and played a key role in raising the public's awareness of the solicitor's role with a social media campaign across their platforms and also by helping to deliver the events with hospitality and merchandise.

The week's itinerary included:

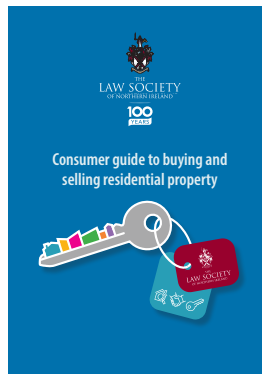
- **The launch of a new Consumer Guide to Buying and Selling Property**

Conveyancing Week 16th- 20th October: A Roundup

This Guide focuses on what a solicitor's role in the process is, what is typically involved, common issues and a general flowchart on the process. The consumer leaflet was promoted with an appearance on BBC Ulster's "On your Behalf" radio programme and at the outset of Conveyancing Week, Property News circulated this leaflet to the approximately 15,000 customers on their database. The leaflet is also available on the Law Society's website [here](#). It is hoped that the Society will further develop this leaflet and continue to circulate it more widely in order to raise awareness with the public as to the central role of a solicitor in the conveyancing process. This also reflects the desire of 69% of respondents in the Society's comprehensive Conveyancing Survey (conducted in June 2023) for a dedicated media campaign on the role of a conveyancing solicitor.

- **The annual Conveyancing Conference**

The Conference, held at Titanic Belfast and sponsored by DUAL Asset, was attended by over 400 delegates and featured updates on the most topical conveyancing issues. Many of the talks delivered, such as those in relation to Title Indemnity Insurance and Management Companies and Disclaimed Interests, reflected the wishes of the conveyancers who had



participated in the Conveyancing Survey on areas where more CPD was desired. The overall feedback from the Conference was overwhelmingly positive and the Society will use this feedback and that obtained from the Conveyancing Survey to tailor its CPD offering to meet the needs of its Members going forward.

- **Conveyancing Solicitors Panel Sessions**

The Conveyancing Survey revealed that many practices struggle to recruit and retain staff, particularly in areas outside of Belfast. The Society organised student events at Queen's University Belfast, the University of Ulster and for the trainee solicitor cohort at the Institute of Professional Legal Studies with a curated panel of solicitors who practise outside of Belfast. They kindly and candidly provided their insights on daily life in conveyancing practice working outside the Belfast area, and the benefits of such a career path. These events were well-attended and received and some of the students have gratefully provided their thoughts on the events.

Rosemarie McQuaid of MHM Solicitors Limited, reflecting on the IPLS event said: *"The student engagement event hosted by the Law Society at the Institute of Professional Legal Studies during Conveyancing Week was a great success, providing us with the opportunity to hear from current practitioners during the panel discussion, as well as the opportunity to chat informally.*



Julie Ann Osborne, Simon Murray, John O'Prey, Ellen Hartles and Kathryn Rafferty.



Maeve Corrigan, Enda McKaigue, Josh Burgess, Cormac McGirr and Simon Murray.



Maria Glover, Napiers Solicitors.

It was great to hear from practitioners, who are at various stages of their careers, about their day-to-day work in the area of conveyancing as well as particular cases of interest, bringing conveyancing to life for those with limited experience. Panellists were passionate about conveyancing but were also candid in sharing some of the challenges of working as a qualified solicitor. It is reassuring to know that as trainee solicitors we are not alone in experiencing similar challenges! It was also interesting to hear about the positive aspects of working life in regional practices in particular.

We also heard briefly about the work of the Conveyancing Committee which was a good opportunity for trainees to think about strategic issues in the area of conveyancing. The opportunity to ask questions prompted me to think about the bigger picture”.

Speaking about the Ulster University event, the Chair of the Student Law Society, Mariella Quispe Vildoso, said: “I found the Conveyancing Solicitors Panel Session held at Ulster University to be a great opportunity for me as a final year law student to get an insight into how to forge a career as a solicitor in Northern Ireland. The event provided me with useful information on the steps to qualification - that definitely helped to demystify the pathway to the profession from an undergraduate student’s perspective.

The panel established by the Law Society showcasing the work of Conveyancing within various areas of Northern Ireland opened up a career path that has not been as prominent. The panel’s views on how they are at the centre of their community, how they interact and communicate with other businesses, organisations and individuals within their own towns and the level of responsibility that they have been exposed to by their practice and community engagement is one that sheds a light on how being a solicitor is not limited to roles that first come to mind such as commercial law.



Philip Armstrong, Chair of the Society’s Conveyancing Committee.

In my role as President of the Ulster University Student Law Society I have been able to see the benefit that the session has had in relation to student engagement, prospective career, and employability options. The Conveyancing Solicitors Panel Session has highlighted alternative areas of law that may not have been otherwise considered. Most importantly, the panel’s discussion about their personal and legal experiences in conveyancing has made me realise that, in an evolving global market, conveyancing offers a valuable and rewarding career path. I feel that the event could really be an inspiration for the next generation of conveyancers in Northern Ireland!”

Matthew Byrne, a final year Law student at Queens University Belfast said, “Having the opportunity to attend the Solicitors Role in Conveyancing event was a great opportunity to gain an insight from smaller law firm practices.

In law today, small town law firms are often silenced by big international law firms however this talk demonstrated the vitality of smaller firms.

Hearing from a range of conveyancing solicitors, from Armagh to Belfast, I got to understand the close connections between these firms. Additionally, work-life balance was emphasised, something which is rarely seen or talked about in the top corporate law firms.

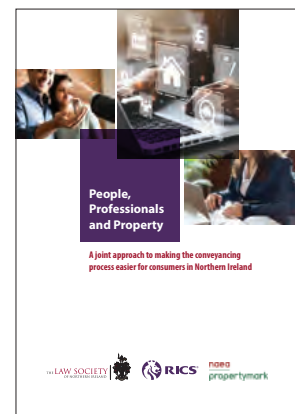
Getting an insight into the conveyancing industry was a great experience also. Understanding the highs and lows was amazing. I often heard the solicitors describing the joy of ringing clients and saying, “you can now pick your keys for your house”. This is something I would love to contribute to in my life.

I want to say thank you to the Law Society for holding this event, and for the refreshments and merchandise!”

• Revised documents

Throughout the year, work was undertaken by the Society, RICS and NAEA Propertymark to consider how best to revise the 2018 Memorandum of Understanding for improving communication between the professions. The Conveyancing Survey indicated that 81% of the respondents desired front-loading of the sales process and identified areas of friction between agents and solicitors.

The revised **People, Professionals and Property** document further clarifies the respective roles of each of the professions in the conveyancing process



while also emphasising the importance of instructing a solicitor as early as possible to mitigate factors which can typically delay the process, such as in requesting title deeds.

The Vendors Property Questionnaire is designed not to replace Replies to Pre-Contract Enquiries but rather to allow agents to set expectations in expanding on the vendor’s circumstances for selling, including timescales and viewing times, for example, and for solicitors to identify items which can cause delays if discovered late in the process such as building control matters, management company matters and also in relation to discharge consents.

The revised Sales Advice Note places an onus on agents to furnish solicitors with the information such as the EPC, gas safety certificate and management company pack, which may help to alleviate the administrative burden on the solicitor chasing this up. The document also highlights the need to encourage a purchaser to get a survey completed early in the process so to avoid delays from things that may be revealed from its results and also clarifies what solicitors are qualified to comment on from these results.

The breakfast launch event held at Law Society House was sold out and it was encouraging to see so many attendees, particularly agents. This will hopefully provide the revised

collaboration with the momentum it needs to front-load and streamline the process for all professionals involved. The documents can be found here <https://www.lawsoc-ni.org/conveyancing-week-2023>

The Society is delighted as part of the inaugural Conveyancing Week to not only have created new resources in the form of the consumer leaflet and the revised industry collaboration **People, Professionals and Property**, but also to have had such encouraging feedback from the key stakeholders that will be the building blocks

for future events in promoting the role and importance of conveyancing solicitors.

Conclusion

The Society would like to sincerely thank our sponsors, DUAL Asset for sponsoring the Conveyancing Conference and Property News for sponsoring Conveyancing Week and all those who assisted with organising the week for helping to create such memorable events.

A roundup of the first-ever Conveyancing Week can be watched [here](#)



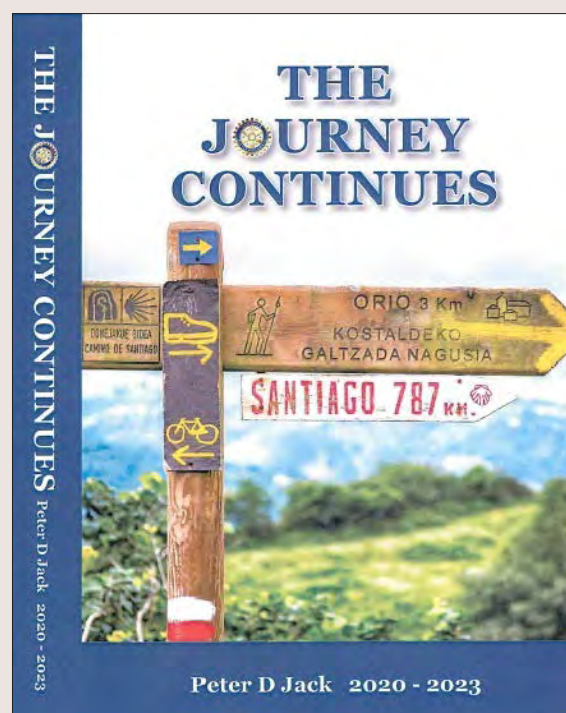
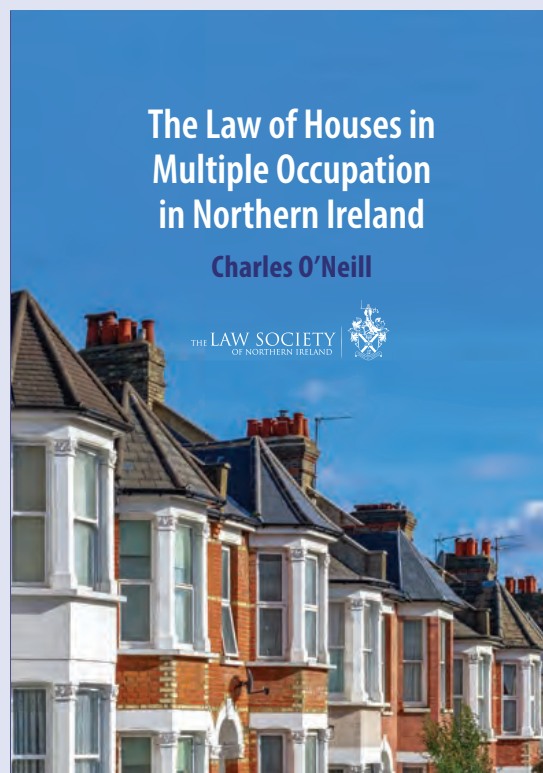
Publication Update - The Law of Houses in Multiple Occupation in Northern Ireland by Charles O'Neill

We are pleased to announce the forthcoming publication of **The Law of Houses in Multiple Occupation in Northern Ireland** by Charles O'Neill (£50) in January 2024. The book will be essential reading for landlords, tenants, their legal advisers, letting agents and local councils – in short all who are in any way involved in this element of the private rented sector in Northern Ireland.

Houses in Multiple Occupation (HMOs) provide an important element of housing in Northern Ireland. This book explains the law relating to HMOs and in particular the Houses in Multiple Occupation Act (NI) 2016 and associated legislation. It covers all aspects of the HMO Act from the definition of an HMO to the requirement for an HMO to be licenced and the process of applying for the licence. It then covers matters that can arise during the licence. Finally, it covers appeals under the Act and enforcement of the legislation.

The book will be available to purchase at the end of January. If you would like to reserve a copy, please contact the Library to reserve a copy.

Other publications by the author, **The Law of Private Tenancies in Northern Ireland** and **The Law of Mortgages in Northern Ireland**, are also available to purchase from the Library.



Publication Update - The Journey Continues by Peter Jack

Author, athlete, announcer and solicitor **Peter Jack MBE LLB** is well-known and respected amongst the legal profession. Over the years he has committed his personal and professional time through sport endurance and his series of books to supporting local and international charities raising much-needed money for special projects.

Peter was duly recognised in December 2022 for his services to charities and to endurance sports with an MBE in the New Year's Honours list.

Now Peter is once again leading from the front with the release of his new book entitled **"The Journey Continues"** - a personal reflection on his life, sporting, charity achievements over the years with sage advice to the reader on life, love and sports injuries. Peter is encouraging colleagues to purchase the new book with proceeds going towards supporting two charities in Africa: Lifeline Radios and Moving Mountains.

To order a book please email peterdjack58@gmail.com

The cost is £15 which includes postage and packing.

Innovation and Engagement at Law Centre NI



Sarah Corrigan took up her post as Director of Innovation and Engagement at Law Centre NI in March 2022. In this article, Sarah who is a qualified solicitor shares a 'day in the life' of the work of the Director of Innovation & Engagement.



What does the Law Centre NI do?

Since 1977, Law Centre NI has worked across all communities in NI with a vision to create a just and equal society. Using a blend of law, policy and legal education resources, Law Centre NI focuses on ensuring people have access to vital social security assistance, upholding the rights of workers at risk of exploitation and working for a fairer immigration system. Law Centre NI is a member of the Law Centres Network and is Lexcel-accredited and regulated by the Office of the Immigration Services Commissioner (OISC).

In Northern Ireland, we are the regional infrastructure legal support organisation to the advice sector and for our Members. This means that as well as giving free, independent, and expert legal help to the public, we are a referral and support organisation for other organisations on complex legal issues in areas of social welfare law. In essence, our work empowers others to support their local communities.

Law Centre NI's services are delivered through:

- the Social Security Rights Project;
- the Employment Rights Project; and
- the Migration Justice Project.

Test cases in the public interest advance the rights of everyone in NI and we influence policy with evidence-based analysis. This year our strategic legal work in social security focused on the rules regarding Cost-of-Living Payments, Child Benefit and access to Bereavement Support.

We also work collaboratively to inject our legal expertise into cross-sectoral work, convening both the NI Cliff Edge Coalition and the Refugee and Asylum Forum.

What does my role at Law Centre NI involve?

Innovation and engagement have always been at the heart of the Law Centre's work. My role was introduced as part of the organisation's continuing growth and development. In essence, my job is to ensure that the Law Centre NI fulfils its vision, mission and values by being responsive to the changing local environment. For the day to day, this means

leading our communications, social policy, legal education and working alongside the Director of Legal, ensuring a multi-disciplinary approach to strategic litigation.

My role is fast-paced and intuitive. An ability to see and understand the bigger picture - of both the legal issues unfolding and the ever-changing legal landscape - is paramount. Anticipating the needs of the people who access our services and reacting to the broader social environment is a significant part of my job. The challenging times that people are living in make the existence of the Law Centre NI even more important. My role is to make sure the people who access our services are getting what they really need, when they really need it. Contributing to the ongoing development of the Law Centre NI so we can continue to provide this support is a crucial aspect of what I do.

My background has prepared me well in this respect. Prior to joining the Law Centre NI, I was the Project Manager and solicitor at the Public Interest Litigation Support Project ('The PILS Project') - a project that helps NGOs and legal professionals in NI build public interest litigation. Before that, I started my career at Housing Rights in 2009 - a legal NGO working to improve lives by tackling homelessness and housing problems in NI. I was there for 10 years, during which time I qualified as a solicitor and ultimately led the legal team.

What's ahead for the Law Centre NI?

We've just completed a new strategic plan for the next five years and a key component of that is to transform the digital capability of the organisation. We're future-proofing Law Centre NI's professional learning by revolutionising how we deliver our legal education programmes. The digital transformation will enable us to reach more people who wish to educate themselves on specialist areas of law and empower them in their work for social justice.

Sustaining services in social welfare law that support people facing financial and other pressures has always been, and remains, our key goal.

For up-to-date news please visit our [website](#) and follow us on social media.

Protecting Equality and Human Rights After Brexit



Roisin Mallon, Director, Dedicated Mechanism Unit, Equality Commission for Northern Ireland

The Windsor Framework contains an important commitment by the UK Government to protect certain equality and human rights in Northern Ireland after Brexit. In this article, we consider this commitment set out in Article 2 of the Windsor Framework ('Article 2'). We outline the role of the Equality Commission for Northern Ireland, along with the Northern Ireland Human Rights Commission, in enforcing Article 2. We summarise the jurisprudence of the Northern Ireland Court of Appeal in relation to Article 2, and to conclude, we consider how individuals can take legal action, and seek assistance in relation to an alleged breach or future potential breach.

What is the UK Government's commitment to protecting equality and human rights after Brexit?

Under the EU/UK Withdrawal Agreement, the UK Government has committed in Article 2 to ensuring that certain equality and human rights in Northern Ireland will continue to be protected after Brexit.

It has therefore committed to ensuring that the **protections currently in place regarding the rights, safeguards and equality of opportunity provisions set out in the Belfast (Good Friday) Agreement will not be reduced as a result of the UK leaving the EU.**

Significantly, along with the UK Government, the Northern Ireland Assembly and the Northern Ireland Executive cannot act in a way that is contrary to Article 2.

The UK Government also committed to ensuring that some of Northern Ireland's equality laws will keep pace with any future changes to the EU equality laws set out in Annex 1 to the Windsor Framework. This means that if the EU amends or updates these equality laws, Northern Ireland equality laws will keep pace with those changes.

What rights are covered under the UK Government's commitment?

The commitment applies to the rights, safeguards and equality of opportunity provisions set out in the chapter in the Belfast (Good Friday) Agreement entitled 'Rights, Safeguards and Equality of Opportunity'.

Some of these rights are underpinned by protections against discrimination in EU law. These EU equality laws (set out in Annex 1 to the Windsor Framework) provide minimum standards of protection against discrimination and promote equal treatment. These EU laws cover areas such as employment, access to goods and services, and social security.

The UK Government has also indicated that there are other pieces of EU law that

The Equality Commission for Northern Ireland, along with the Northern Ireland Human Rights Commission, have statutory functions and related powers to monitor, supervise, advise and report on and enforce the UK Government's commitment under Article 2.

are relevant to the Chapter of the Belfast (Good Friday) Agreement, such as the Parental Leave Directive, Victims' Directive and Pregnant Workers' Directive, as well as specific measures aimed at protecting the rights of disabled people.

What is the role of the dedicated mechanism?

The Equality Commission for Northern Ireland, along with the Northern Ireland Human Rights Commission, have statutory functions and related powers to monitor, supervise, advise and report on and enforce the UK Government's commitment under Article 2.

In particular, our powers and duties include:

- Monitoring how the commitment is implemented;
- Reporting and providing advice on its implementation to government;
- Promoting understanding and awareness of how important the commitment is;
- Bringing or intervening in legal proceedings in respect of an alleged breach (or potential future breach of the commitment); and
- Assisting individuals in relevant legal proceedings.

What have the Commissions said about Article 2?

The Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission have jointly produced their preliminary understanding of the legal scope of Article 2. In a Working Paper, the Commissions set out a suggested set of questions for when Article 2 is engaged and set out the EU law which the Commissions have identified to date as falling within its scope. It should be noted that this list of EU law may be subject to change, not least in light of any judicial decisions on this matter.

How have NI Courts applied and interpreted Article 2?

In the matter of an *Application by SPUC Pro-Life Limited for Judicial Review*, the Northern Ireland Court of Appeal set out a 'six element test' which must be satisfied in order to establish a breach of Article 2. This test was similar to the test suggested by the Commissions.

In particular, the test set out by Court of Appeal is as follows:

- (i) 'A right (or equality of opportunity protection) included in the relevant part of the Belfast/Good Friday 1998 Agreement is engaged.
- (ii) That right was given effect (in whole or in part) in Northern Ireland, on or before 31 December 2020.
- (iii) That Northern Ireland law was underpinned by EU law.
- (iv) That underpinning has been removed, in whole or in part, following withdrawal from the EU.
- (v) This has resulted in a diminution in enjoyment of this right.
- (vi) This diminution would not have occurred had the UK remained in the EU'.

The Court of Appeal made clear that each one of these elements must be demonstrated for the ground (of challenge) to succeed.

The Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission intervened to assist the Court in relation to the application and interpretation of Article 2.

How can an individual challenge a breach of Article 2?

Individuals can bring legal action, by way of judicial review, if they consider that there has been a breach, or a potential future breach, of the UK Government's commitment under Article 2.

Therefore, if individuals consider that the Westminster Parliament, the Northern Ireland Assembly, or the Northern Ireland Executive has acted in a way that is incompatible with the UK Government's commitment under Article 2, they can challenge those actions in domestic courts by lodging judicial review proceedings.

It is ultimately a matter for the Court to determine whether a breach or potential breach has occurred.

In addition, a failure by the UK Government to ensure that Northern Ireland equality laws keep pace with any future changes that the EU may make to amend or replace the EU equality laws would also be a breach of its commitments.

The Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission can provide advice and assistance to individuals, and support individuals to bring legal proceedings where they believe that the UK Government's commitment under Article 2 has been or may be breached.

In addition, we can also bring legal challenges in our own name, or intervene in legal cases where we believe a breach of the UK Government's commitment has occurred or may potentially occur in the future.

We would like to hear from you if you are planning any proceedings that engage, or may engage, Article 2. We welcome early notification, given the strict time limits for lodging judicial review proceedings that are set out below.

Individuals can bring legal action, by way of judicial review, if they consider that there has been a breach, or a potential future breach, of the UK Government's commitment under Article 2.

Are there time limits for making a complaint?

It is important to note that there are strict time limits for lodging judicial review proceedings. Judicial review proceedings for an alleged breach, or potential future breach of Article 2, must be brought within three months of the decision or action being complained of taking place.

If you wish to refer a client on to us, you should contact the Equality Commission for Northern Ireland or the Northern Ireland Human Rights Commission as soon as possible if you consider that there is a breach or there may be a future potential breach of the UK Government's commitment.

Where can legal professionals find out more about equality and human rights after Brexit?

Further information is available on the Commissions' websites or by contacting the Commissions directly.

For further information and enquiries, please contact:

Equality Commission for Northern Ireland

DMU@equalityni.org
028 9050 0600
www.equalityni.org/brexit

Northern Ireland Human Rights Commission

info@nihrc.org
028 9024 3987
www.nihrc.org/our-work/human-rights-after-brexit

Windsor Framework Article 2 and the Rights of Refugees and Asylum-Seekers



Alyson Kilpatrick, Chief Commissioner of the Northern Ireland Human Rights Commission

Alyson Kilpatrick, Chief Commissioner of the Northern Ireland Human Rights Commission, explains Windsor Framework Article 2 and its potential application to refugee and asylum-seeker cases.

Article 2 of the Windsor Framework ('Article 2'), the UK Government's commitment not to diminish certain human rights and equality protections after Brexit, is being tested before the courts. The first judgments are starting to trace out the essential contours of this complex provision. Further cases are in the pipeline.

Some of the issues requiring legal clarification include the personal scope of the provision and the range of rights and protections encompassed within the Rights, Safeguards and Equality of Opportunity chapter of the Belfast (Good Friday) Agreement ('the Agreement'). These questions have been brought into sharp relief in recent legislation and policy affecting refugees and asylum-seekers.

Crucially, as regards personal scope, the signatories to the Agreement expressed their commitment to the rights of 'everyone in the community'. This approach is consistent with international human rights treaties. Moreover, EU standards such as the Victims Directive (2012/29/EU) stipulate that protections apply 'irrespective of residence status'.

While the Agreement was never intended as a definitive statement of rights, careful analysis is required to determine the range of EU law falling within the scope of the 'no diminution' protection.

The Commission's view is that the relevant chapter should be read in the context of the signatories' pledge in the declaration of support to build a society founded upon 'the protection and vindication of the human rights of all.'

From the commitment to protect the 'civil rights and religious liberties of everyone in the community' to references to the European Convention on Human Rights and a non-exhaustive list of rights 'affirmed in particular', it is clear that the participants were making a wide-ranging commitment, arguably one that should be interpreted in line with the body of international human rights standards to which the UK is signatory.

The Commission has recently published independent research, written by Alison Harvey BL, on the rights of refugees and asylum-seekers in the context of Windsor Framework Article 2. Early drafts, as well as legal opinions and in-house research, informed the Commission's approach to a joint Working Paper with the Equality Commission for Northern Ireland (ECNI) on the scope of Article 2. On this basis, the appendix of EU measures we identify as relevant to Article 2 includes original versions of the Asylum Procedures Directive (2005/85/EC), the Qualification Directive (2004/83/EC), the Reception Directive (2003/9/EC) and the Dublin III Regulation (EU 604/2013), to which the UK had opted in, prior to Brexit.

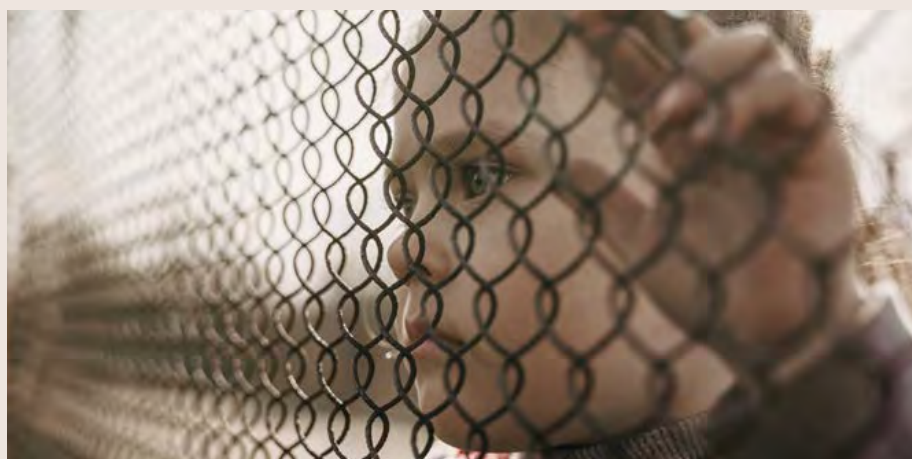
In a recent [AA](#) case, an asylum-seeker challenged a decision to remove him to Scotland relying, in part, on Windsor Framework Article 2. The Commission and ECNI intervened jointly. While the applicant was unsuccessful, the High Court confirmed

that asylum-seekers and refugees are within the personal scope of Article 2 and that aspects of EU asylum law to which the UK had opted in prior to Brexit continue to set minimum standards in Northern Ireland. Further, the Court drew attention to the continuing relevance of the Charter of Fundamental Rights of the EU in Northern Ireland. The Court rejected the assertion that the rights in the relevant chapter were frozen in time or limited to the political context of 1998, stating that it was drafted with fundamental EU rights in mind.

The Commission is among those gravely concerned about the breaches of human rights standards at the heart of the Illegal Migration Act 2023. The Commission is using its own motion powers to challenge the Act on a range of grounds including breach of Windsor Framework Article 2 in relation to provisions we believe reduce rights below the minimum standards included in the Directives referenced above. The case will be heard in the new year.

The Supreme Court's decision on the Rwanda policy in November 2023 provided a moment of relief in an otherwise bleak time for human rights. Placing welcome emphasis on international standards and the 'unique and unrivalled expertise' of the United Nations High Commissioner for Refugees, the judgment noted helpfully that neither party disputed the incompatibility of the policy with the EU Procedures Directive.

Windsor Framework Article 2 is a dynamic new area of law offering a measure of hope in challenging circumstances. The Commission will continue seeking to inform the discourse on the range of rights protected.



The Office for Environmental Protection - a new public body and approach to environmental enforcement



Office for
Environmental
Protection

Ben Matson and Elaine Keenan, Principal Lawyers at the Office for Environmental Protection

The overwhelming algal blooms which appeared in Lough Neagh over the summer brought environmental issues into sharp focus for many in Northern Ireland. We examine the role of the OEP, which has been established with the aim of protecting and improving the environment by holding government and public authorities to account.

Introduction

The Office for Environmental Protection (OEP) was established as an independent public body under the Environment Act 2021 (Environment Act), to protect and improve the environment by holding government and other public authorities to account. It is a small and specialised body with jurisdiction in England and Northern Ireland and is part of the new environmental governance arrangements introduced following the UK's departure from the EU.

The OEP has functions that can be split into four main activities:

- Scrutinising government's progress against its environmental improvement plans and statutory targets;
- Scrutinising the implementation of environmental law;
- Advising ministers on changes to environmental law and on other matters relating to the natural environment; and
- Receiving complaints about public authorities suspected of serious failures to comply with environmental law, conducting investigations, and commencing court proceedings in relation to those failures.

This article considers the legal basis of the OEP's enforcement powers, how it can exercise those powers, and the enforcement steps it has taken thus far in Northern Ireland.



A new kind of environmental enforcement

The OEP's principal objective is to contribute to environmental protection and the improvement of the natural environment. One of the ways it can meet this objective is to utilise its enforcement powers to deal with alleged serious failures to comply with environmental law by public authorities. Understanding these powers is dependent on a number of key concepts.

Firstly, consider the meaning of 'environmental law' in this context. Section 46 of the Environment Act defines environmental law as any legislative provision to the extent that it is mainly concerned with environmental protection but not concerned with certain excluded matters. The Environment Act also provides definitions for the 'natural environment' and 'environmental protection' to assist in determining whether a particular legislative provision is environmental law.

Secondly, what is meant by a 'failure to comply with environmental law'? Section 31 defines this as where a public authority unlawfully fails to take proper account of environmental law when exercising its functions or where it unlawfully exercises or fails to exercise a function it has under environmental law.

Finally, a 'public authority' is any person carrying out any function of a public nature that is not a devolved function, a parliamentary function or a function of specific bodies. This could include private companies carrying out public functions.

The OEP can receive complaints from anyone other than a public authority and it can also undertake investigations on its own initiative. It can only consider a complaint where the complainant has first exhausted any relevant internal complaints process operated by the public authority. A complaint must be submitted within a year of the alleged failure to comply with the law, or within three months of completing the public authority's internal complaints process, whichever is later.

The enforcement steps available to the OEP are broadly escalating in nature and require specific legal thresholds to be met before each can be taken. An investigation may be commenced where the OEP has information that indicates a serious failure to comply with environmental law by a public authority.

Public authorities have a duty to co-operate with the OEP, including providing information

reasonably requested. In the context of the OEP's enforcement function, the gathering of information can inform a decision whether to investigate and also assists during the early stages of an investigation. Where the OEP has reasonable grounds to suspect a serious failure to comply with environmental law by a public authority, either during an investigation or otherwise, it may serve an information notice.

If a matter remains unresolved after an information notice has been served, the OEP may serve a decision notice if it considers that there has been a serious failure to comply with environmental law by the public authority. A decision notice sets out the OEP's conclusions and the steps the public authority should take in relation to the failure.

Judicial review

Where a public authority does not comply with a decision notice, the OEP may apply to the High Court in Northern Ireland by way of a review application if it considers there has been a serious failure to comply with environmental law. Such an application is subject to the same procedural rules as judicial review. It requires the court to determine whether the public authority has failed to comply with environmental law applying judicial review principles. A review application relates to the original alleged failure to comply with environmental law; it is not a challenge to the public authority's failure to comply with steps set out in the decision notice.

If the court finds that a public authority has failed to comply with environmental law, then it must make a statement of non-compliance and may grant any remedy that could be granted on a judicial review, other than damages, subject to specific additional constraints.

Separately, the OEP may apply for judicial review where it considers there is a serious failure to comply with environmental law and the application is urgent to prevent, or mitigate, serious damage to the natural environment or to human health.

The OEP also has the power to apply to intervene in any judicial review relating to an alleged failure to comply with environmental law where it considers that the failure (if it occurred) would be serious. The OEP can make such an application whether it considers that the relevant public authority has failed to comply with environmental law or not.

How the OEP will exercise its enforcement powers

The OEP published its first strategy and enforcement policy in June 2022, setting out how it will exercise its enforcement function. Where the OEP acts, it will act strategically and proportionately. Its enforcement function is different from, for instance, that of an Ombudsman as its complaints process is not one of individual dispute resolution. It is not intended that the OEP will investigate every complaint received, or that it will investigate all complaints it assesses as relating to serious potential failures. Instead, it will use the prioritisation criteria set out in the policy to determine where its actions can make the most difference to improving and protecting the natural environment.

The OEP will aim to resolve non-compliance through co-operation, dialogue and agreement with public authorities.

As the OEP may only act in relation to serious potential failures to comply with environmental law, when assessing whether a failure is serious, it may consider:

- Whether the conduct raises any points of law of general public importance;
- The frequency of the conduct over time;
- The behaviour of the public authority;
- The harm or potential harm to the natural environment; and
- Any other relevant factors.

Current enforcement activity

The OEP's enforcement powers commenced in Northern Ireland on 28 February 2022. To date, the OEP has received a total of 95 complaints, of which 12 emanated from Northern Ireland.

In May 2023, the OEP commenced its first investigation in Northern Ireland in relation to advice issued by the Department of Agriculture, Environment and Rural Affairs (DAERA) to planning authorities when they are assessing ammonia emitting developments. The aim of the investigation is to determine whether DAERA has failed to comply with its duties under the Habitats Regulations. At the time of publication of this article, this investigation is ongoing.

Whilst it has only been 18 months since the OEP commenced its work in Northern Ireland, it has been a busy period and given the scale of the current environmental challenges, there remains plenty of work to be done.

Commonwealth Latimer House Principles 20th Anniversary: A Legal Perspective



Brian Speers,
Immediate Past President,
Commonwealth Lawyers
Association,
President Law Society of
Northern Ireland 2011-12

Brian Speers examines the application
of the Commonwealth Latimer House
Principles in a number of areas.

Introduction

The Commonwealth Latimer House Principles (CLHP) on the three branches of government were both far-sighted and far-reaching. They remain as relevant and important today as they were when adopted at the Commonwealth Heads of Government Meeting (CHOGM) in Abuja, Nigeria in November 2003. During the four years in which I was President of the Commonwealth Lawyers Association (CLA), I regularly referenced the CLHP in statements or speeches. However, many in Northern Ireland will not be aware of these important Principles.

The CLHP confirm that a three-cornered separation of government, Parliament and the Judiciary is a strong and fundamental foundation for democracy. The distinct and separate roles for Parliament, the Executive and the Judiciary are explained and justified. No part of the UK should be complacent. To this end the Law Society of Northern Ireland (LSNI) has been vigilant in speaking out. LSNI signed the Vienna Resolution on the Rule of Law and independence of the legal professionⁱ and has also issued associated statements.ⁱⁱ

Democracy is experiencing challenges in 2023, perhaps not anticipated in 2003. The use of instant communications, artificial intelligence, and the development of a 'play book' of steps taken by autocrats and dictators, all threaten the foundations of democracy. Public statements disrespecting the Judiciary do not help. Overreaching power grabs by governments do not help. A lack of effective opposition and accountability also deprives societies of democracy operating within the Rule of Law.

The importance of preserving the confidence of the people in the institutions by which they are governed is relevant and important. 20 years on from the adoption in Abuja of the CLHP it is appropriate to reflect on how these Principles have contributed and can contribute to the preservation of an effective democracy.



The Commonwealth

The Principles: other applications

In the November 2023 edition of the *Parliamentarian*, the journal of the Commonwealth Parliamentary Association (CPA), various articles were included to mark the 20th anniversary of CLHP. Some contributors considered the Principles from the point of view of the Government or Parliament or the Judiciary. I contributed some thoughts on what the Principles have to say about the role of women, about the legal profession, about civil society and about freedom of the press. The CPA has kindly given permission to adapt my article and relate it to the Northern Ireland jurisdiction.

i. Women

Twenty years ago, it was far-sighted to include reference to the role of women in democracy in the CLHP. Principle Vb states that subject to merit and proven integrity being the criteria of eligibility for appointment to public office *'measures may be taken...to ensure that the holders of all public offices generally reflect the composition of the community in terms of gender...'* The Latimer House Guidelines for the Commonwealth (the Guidelines) out of which evolved the Principles, specifically encourage an increase in the number of women participating in politics and encourages Commonwealth Member States to proactively seek women candidates to stand for election and to use imaginatively proportional representation to assist in the election of women. There is also an encouragement to publish data and information as to the degree of representation of women in politics.

'measures may be taken... to ensure that the holders of all public offices generally reflect the composition of the community in terms of gender...'

The encouragement in the Principles to take measures to ensure in effect that public bodies are reflective of the community and of genders is striking. However, twenty years on - has the representation of women in public life improved?

At present, there are many Chief Justices of Commonwealth Member States who are

women. In 2021, Dame Siobhan Keegan was appointed Lady Chief Justice in Northern Ireland. At the recent CLA conference in Goa, India in March 2023, delegates were addressed by Chief Justice Tengku Maimun Tuan Mat, the Lady Chief Justice of Malaysia, who was joined in a judicial session by the future Lady Chief Justice of India. In England and Wales, Dame Sue Carr was recently appointed to become the first woman to hold the office of Chief Justice. Hopefully these prominent women will continue to promote the role of women in public office.

ii. The Legal Profession

It is vital that there is an independently appointed Judiciary which is properly financed, with permanent appointments made by an independent Judicial Appointments Commission (JAC). Judicial appointments are a controversial matter in most Commonwealth jurisdictions. The Law Society nominee to the Northern Ireland Judicial Appointments Commission spoke at a session at the 23rd Commonwealth Law Conference in Goa in March 2023 which was devoted to a consideration of judicial appointments on the work of the JAC in Northern Ireland.

While the Judiciary is rightly emphasised as one of the key pillars of democracy, a vibrant independent legal profession also has an important place. The CLHP acknowledge the importance of an independent legal profession, with Principle IV on the Independence of the Judiciary stating, *'an independent, effective and competent legal profession is fundamental to the upholding of the rule of law and the independence of the Judiciary.'*

Lawyers uphold the Rule of Law in all areas, from registering ownership of property, to forming companies and businesses enabled to undertake trade and business. They administer and distribute estates and they have a role in the resolution of disputes. They step in during family life challenges, protecting children and negotiating separation of matrimonial assets. These somewhat unheralded and normal legal activities are fundamental to the operation of society.

The Guidelines at paragraph 8.3 recognise that *'an independent organised legal profession is an essential component in the protection of the rule of law.'* The Guidelines go on to encourage the provision

'an independent, effective and competent legal profession is fundamental to the upholding of the rule of law and the independence of the Judiciary.'

of adequate Legal Aid schemes for poor and disadvantaged litigants. They also advocate that legal professional organisations should assist in the provision of Access to Justice and that governments should refrain from obstructing the functioning of an independent legal profession.

CLHP Principle VIIc encourages a recognition that democratic principles require the actions of government to be open to scrutiny by the Courts. The rationale stated is this would ensure that decisions are taken to comply with the Constitution and relevant statutes and other law, including law relating to the principles of natural justice. Who is better placed to undertake and argue for judicial review of an overreaching government or a non-compliant public authority than practising lawyers who can independently and fearlessly represent their clients and hold to account these bodies?

It is of concern that many politicians disrespect the role of lawyers in holding governments to account. Lawyers are seen as a nuisance. They are accused of creating delay in the implementation of proposed legislation. They challenge decisions. However, governments should be held to account, and must be subject to challenge within the law in order that they make decisions which can withstand scrutiny when analysed in the context of the Constitution, relevant statutes and the principles of natural justice. Challenge and accountability by an independent legal profession will result in appropriate legislation, stronger institutions and contribute to public trust.

To disparage lawyers publicly is to do a disservice to the Rule of Law. It is also inconsistent with the CLHP which respect an independent legal profession and

ⁱ Vienna Resolution on the rule of law and independence of the legal profession 5th March 2020

ⁱⁱ Law Society Statement 14th September 2020 concerning the UK considering breach of international law and Statement on 24th September 2021 calling upon the UK Government to uphold the rule of law relating to the proposed legacy legislation

acknowledge the importance of judicial review and accountability.

Accountability, transparency, intolerance of corruption and operation within the law and the Constitution can only be achieved if there are checks and balances, enabling a real prospect of being held to account by a properly independent Judiciary in cases brought by a properly independent legal profession. Without those constraints there will be, and have been, government actions which are taken with impunity, benefitting self-interest and contrary to constitutions or constitutional principles.

The Commonwealth Lawyers Association (CLA) supports the existence of an independent, and not a compliant, legal profession. That too is the position of the Law Society of Northern Ireland. At the Commonwealth Law Conference in Goa, there was an important Bar leaders' meeting of some 48 jurisdictions attended by former LSNI President Brian Archer. That meeting produced the *'Declaration on Preserving and Strengthening the Independence of the Judiciary and on Ensuring the Independence of the Legal Profession'* (the 'Goa Declaration'). This Declaration reinforces and complements what the CLHP say about judicial and legal profession independence.

iii. Media

The influence of the CLHP can also be seen in the *Declaration on 'Freedom of Expression and the Role of Media in Good Governance'* (the Media Principles). This Declaration was endorsed by the Commonwealth Law Ministers at its meeting in Mauritius in 2022.ⁱⁱⁱ

I was pleased to introduce the Media Principles to the assembled Commonwealth Law Ministers, and I noted that they were *'a direct descendant'* of the Commonwealth Latimer House Principles. The CLHP in Principle IX state that oversight of the Government is an important element of democracy particularly with regards to corruption.

Principle IX goes on to state that a transparent and accountable government together with freedom of expression encourages the full participation of its citizens in the democratic process and at Principle IX b there is specific reference to how government's transparency

...government's transparency and accountability 'is promoted by an independent and vibrant media which is responsible, objective and impartial and which is protected by law in its freedom to report and comment upon public affairs.'

and accountability *'is promoted by an independent and vibrant media which is responsible, objective and impartial and which is protected by law in its freedom to report and comment upon public affairs.'*

The Media Principles accepted by the Commonwealth Law Ministers for recommendation to the Commonwealth Heads of Government Meeting (CHOGM) in Samoa in 2024 are an important elaboration of the media freedom references in the CLHP.

Of course, twenty years ago, the media and the press were different. Today we have social media, artificial intelligence, expanded use of the internet and 24-hour live news feeds which all create instant news and instant awareness, sometimes not particularly moderated by reflection and balance or indeed accuracy. It is vital that the role of the media in good governance is neither overlooked nor endorsed without qualification. Proper accountability, shining a media spotlight into dark corners of decision-making, is fundamental in holding politicians and the government to account.

iv. Civil society

My final observation about the Principles concerns the important role of civil society. Principle X encourages Commonwealth governments and Parliaments to recognise the role that civil society plays in the implementation of the Commonwealth's fundamental values. Governments are encouraged to strive for a constructive relationship with civil society *'to ensure that there is a broader opportunity for lawful participation in the democratic process.'*

'to ensure that there is a broader opportunity for lawful participation in the democratic process.'

Civil society organisations - including LSNI - play a vital role in providing an opportunity for the sharing of ideas, for the promotion of alternative strategies and thinking, for collaboration in the interest of minorities and disadvantaged communities. It is vital that civil society organisations thrive and are supported. Far from being a nuisance or a bothersome noise interfering with what the politicians wish to do, civil society reflects the needs, wishes and aspirations of the people. The role of civil society is rightly recognised in the Commonwealth Latimer House Principles.

Summary

In all these areas - the role of women, the importance of the independent legal profession, media freedom and civil society - we find a common thread. Effective democracy must ensure that there is appropriate representation reflective of the community, that there is a holding to account of the government and public bodies, and an ability to comment and disagree in accordance with some fundamental principles of the Rule of Law.

While the CLHP rightly focus on the separation of the three branches of government, it is appropriate also to reflect on these other areas. Twenty years on from their adoption, the CLHP and their related Guidelines remain relevant and important, and it is gratifying that both in the Goa Declaration and in the Media Principles they have generated other legacies which go towards strengthening and upholding democratic principles throughout the Commonwealth.

It is hoped that in this jurisdiction an increased awareness of the CLHP will give further confidence to the Law Society to continue to speak out on important issues and to be vigilant in upholding the Rule of Law.

ⁱⁱⁱ David Page *'Freedom of Expression and the Role of the Media in Good Governance'* [2023] *The Parliamentarian* 55 and William Horsley *'To Protect the Truth, we must protect the Truth Tellers: The Commonwealth and Media Freedom'* [2023] *The Parliamentarian* 224.

ChatGPT still has a lot to learn



David Baskerville,
Baskerville Drummond

In this article David Baskerville of Baskerville Drummond discusses the potential application of ChatGPT to the legal sector with particular emphasis on the risks involved.

It has been impossible to avoid the explosion of artificial intelligence (AI) news, with a plethora of new developments and products being discussed on mainstream news, in the

legal press, on LinkedIn and at networking events.

Huge and exciting strides are being made in the areas of automation and data analysis, but despite the attention-grabbing headlines we are still a long way away from true AI as defined by the "Turing test", a test of a machine's ability to exhibit intelligent behaviour equivalent to, or indistinguishable from, that of a human. The most widely-discussed tool both by press and law firms has been ChatGPT. Particular interest has been paid to its potential application in the legal sector since the tool passed the law exams at the University of Minnesota and scored 75% on the Uniform Bar exam.

However, we must remember that despite giant leaps forward, the tools we are seeing are currently advanced "decision tree" / prediction/natural language processing models which can repeat the failings and prejudices of their developers, or the dataset used to "train" the model.

I would hazard a guess that at some time nearly every lawyer has tried speech recognition (Dragon Dictate being the most

popular solution). Some love the technology and have used it for years, but I suspect the majority have tried and refused to accept the 80-90% accuracy level even after "training" the product - many will remember having to read "Mary had a little lamb" over and over again.

These days even traditional transcription tools such as Dragon Dictate are now sold as AI solutions. Prior to the AI boom we would have just referred to them as "transcription tools".

Using our past experience of transcription tools such as Dragon Dictate (especially those of you who tried the system 10 years or so ago) is a great metaphor to help understand the current position of AI. There are some great tools, but they are far from infallible.

I decided to try an experiment. Without telling my colleagues, I asked ChatGPT to write a blog for me on System Procurement ([System Procurement: A Guide for Organisations](#)) which I sent around for review. The feedback was lukewarm - whilst the article provided some good points it had no personality or "bite", and it was bland and uninteresting. Yes, the article was publishable, but it very much left



an impression of “so what” – the points made were not relatable or any better than those gleaned from a basic Google search.

There are also several risks of using ChatGPT which users need to be aware of:

1) Information Governance

Any information uploaded to ChatGPT becomes available to ChatGPT engineers to refine and improve their model or the data source which it uses. Following a security breach in March 2023, OpenAI (ChatGPT’s creators) implemented a more visible privacy policy and an “opt-out” form to exclude data from training ChatGPT or delete data entirely, but despite these changes it is currently unlikely that ChatGPT complies with GDPR as data which has been uploaded/used for training is likely to contain personal information without the data subject’s permission.

2) Unauthorised Use by Staff

Whilst firm policy could caution against (or ban) the use of such tools, the excitement and ease of access will make them a very attractive “quick win” for less experienced lawyers who find them quicker and easier to use than the firm’s other knowledge resources.

This risk of systems being adopted as “shadow IT” does not simply stop with junior lawyers. If your experienced fee earners were under pressure to deliver to tight deadlines, might they not also

be attracted to a tool which provides a shortcut? It doesn’t stop there – taking a hypothetical example of the application of AI in marketing, if a regional law firm specialising in private client and business law needed a new marketing strategy, ChatGPT could rattle one off in a few minutes.

Think back to when Google and other early search tools were introduced. Some firms actively sought to stop fee earners from using them due to the inaccuracy of results. With ChatGPT the risk is higher as staff can upload material for it to “learn” from. Unless the account is “opted out” this content is then available for ChatGPT to consider when it answers questions from other users of the system.

It is therefore essential that firms create and adopt an AI policy which staff understand. Equally, risk and compliance reviews must actively start to identify content which has been generated from such tools.

3) Accuracy

ChatGPT makes mistakes. Surprisingly, it often gets basic maths questions wrong and struggles to answer logical questions. Its knowledge is only as good as its training dataset and it is out-of-date having been trained up to a certain point of time.

For example, as of 8th May 2023, ChatGPT still thought Queen Elizabeth was the UK’s monarch and was unaware of the

coronation of King Charles. Similarly, it will be behind with legal developments and up-to-date case law and precedent.

While ChatGPT passed the Minnesota Law School exams, it did so with a low C+ pass level. Jon Choi, one of the Law School professors, reported that “*ChatGPT struggled with the most classic components of law school exams, such as spotting potential legal issues and deep analysis applying legal rules to the facts of a case*”. Choi suggested at best ChatGPT could currently be seen as a tool for helping first drafts.

4) Bias

ChatGPT has been trained based on a wide-ranging collection of information (although it is not publicly known which sources were used) and has reportedly “picked up” a bias based on the information it has consumed. There is a suggestion in some reports that as a higher percentage of higher education academics, researchers and newspaper reporters tend to be “left leaning”, then material consumed by ChatGPT will contain more “left leaning” material than middle ground or “right leaning” articles.

There is also bias which is introduced into the model by the developers (or OpenAI culture) which come through. For example, until recently if you asked for a poem admiring President Trump the engine refused to write one, but it would happily produce an admiring one for President Biden.



This is of grave concern as this must be “programmed” bias rather than a “learned from data” bias and it is not clear what other biases have been introduced into the system.

This type of “interference” in the system is dangerous as:

1) the developers are predetermining the results and topics/views they “support” rather than the tool truly “learning” from the material which it has been trained with; and 2) it is not stated what “programmed” bias exists and therefore which results may be “tainted” by them. The example above is clear cut but what if these programmes affected the results in a less obvious way? Others have highlighted that ChatGPT struggles with divisive social-political issues such as climate change, electronic cars and sexism.

Regardless of your personal or political view, such systems should deal with public figures and divisive social-political issues with an even hand and analyse and present views from all sides of a debate without applying “baked-in” bias.

Considering bias in a legal context, if you are a lawyer working on a hate crime and employment tribunal sexual discrimination case you may struggle to get ChatGPT to assist you.

5) Personality and Reputation

If you are a regular writer of articles, you will, over time, develop your own distinctive style. The same will be true of business communications. It will therefore be the case that clients will know your “style” and quickly identify occasions where you have used a tool to formulate your work.

My colleagues straight away identified there was something “not right” with the ChatGPT authored article I passed as my own work. Your clients will do the same and could then question why they are paying you to use a tool they could use themselves.

I’m hugely excited by the advances of tools in the AI space and think there will be some which truly change the legal profession. These tools, however, need to be “managed”, nurtured and challenged to ensure that client data and their intellectual property rights are not made public/available to their competitors.

I think most firms will make use of their own installation of such tools rather than using “public” platforms. In practice this would mean that these private installations would take a feed of standard dataset which is then enhanced by the firm’s own knowledge bank.

I can therefore see that an “AI Professional Service Lawyer” job role will emerge as trained lawyers become the custodians of the AI tools available, ensuring that they are properly trained and provide appropriate results.

I asked ChatGPT about the limitations and risks of a Law firm using ChatGPT and it responded:

While ChatGPT can be a useful tool for various applications, including assisting law firms, it’s important to consider its limitations. Here are some potential limitations of using ChatGPT in the context of a law firm:

1. *Lack of legal expertise: ChatGPT is a language model trained on a wide range of internet text, but it doesn’t have specific legal training or knowledge. It may not have the legal expertise required to provide accurate or reliable advice on complex legal matters.*
2. *Interpretation of local laws: Legal systems vary across jurisdictions, and laws are subject to change. ChatGPT might not have access to up-to-date legal information, and its responses may not account for jurisdiction-specific nuances or recent legal developments.*
3. *Risk of incorrect or incomplete information: ChatGPT generates responses based on patterns it has learned from its training data. However, this means it can sometimes produce incorrect or incomplete information. It may also provide plausible sounding but inaccurate answers, which could lead to potential legal complications if relied upon without verification.*
4. *Ethical and privacy concerns: Law firms handle sensitive and confidential information. Using a third-party AI system like ChatGPT raises concerns about the security and privacy of client data. It’s important to ensure that adequate safeguards are in place to protect client information when using such technologies.*
5. *Lack of empathy and understanding: ChatGPT doesn’t possess emotional intelligence or the ability to empathize*

with clients. In some legal situations, understanding and empathy are crucial to providing appropriate advice and support. Human interaction may be necessary to address clients’ emotional needs effectively.

6. *Limited context awareness: ChatGPT analyzes text inputs in isolation and may not have a comprehensive understanding of the broader context of a legal case or client situation. It may struggle to ask clarifying questions, gather additional information, or recognize nuanced details that could significantly impact the advice given.*
7. *Propagation of bias and misinformation: ChatGPT learns from a vast dataset of human-generated content, which can inadvertently contain biases, stereotypes, or misinformation. Despite efforts to mitigate biases during training, ChatGPT may still reflect or amplify these biases in its responses. Users should be vigilant in critically evaluating and fact-checking the information provided by ChatGPT to avoid spreading or perpetuating misleading or inaccurate content.*
8. *Liability and accountability: When relying on AI-generated advice, law firms may face questions regarding the liability and accountability for the accuracy and consequences of the advice provided. It’s important to consider the ethical and legal implications of using AI systems in a professional capacity.*
9. *Perception and reputation: Relying excessively on AI systems for legal advice may raise concerns among clients and the legal community about the quality, competence, and professionalism of the law firm. Clients may prefer direct interaction with knowledgeable legal professionals rather than AI-powered solutions.*

While ChatGPT can be a useful tool for certain tasks within a law firm, it should be seen as a complement to human expertise rather than a substitute. Legal professionals should exercise caution, verify information independently, and carefully evaluate the limitations and potential risks before relying solely on AI systems for legal advice or decision-making.

Smart thing this AI.

Divorce Study Uncovers Legal Deficits Impacting Fair Outcomes in England and Wales



Claire Edgar,
Partner, Francis Hanna

Claire Edgar of Francis Hanna examines a recent report into the financial arrangements of couples when they divorce.

The Nuffield Foundation recently released findings following a comprehensive study of the financial arrangements that people make when they divorce in England and Wales. The study entitled **“Fair Shares? Sorting out money and property on divorce”** was published on 1st November 2023. It evaluates the extent to which the divorce system enables divorcing couples to reach fair outcomes.

The study was commissioned against the backdrop of increasing criticism in recent years of the law governing finances on divorce. The study acknowledged that much of this criticism was based on reported cases of high value, which make up the minority of the general divorcing population. In contrast, very little is known about how the law works for the majority of divorcees. While approximately 100,000 couples divorce each year in England and Wales, of these, only around one third leave the marriage with a Court Order, most of which are made by consent.

Fairness and equality

The study highlighted the financial vulnerability of many female divorcees. Up to five years after the divorce, women, and in

particular mothers with dependent children, were on average worse off financially than men. This financial vulnerability impacted on many women’s ability to achieve a standard of living post-divorce comparable to that which they had enjoyed during the marriage. Conversely, men were more likely than women to move into or remain in higher income bands than before the divorce.

Lack of awareness in pension entitlement

The study found that there was a lack of awareness amongst many divorcees of how or indeed whether pension provision should be considered in a financial settlement. It appears that a general lack of interest in the pension and a belief that it should remain with the spouse who contributed to it were the main reasons for the failure to see it as a potential sharing resource.

Abuse contributing factor to poor deals

The study also showed that domestic abuse was an important factor in cases where divorcees had ‘settled’ for poor or even no deals, reflecting their weak bargaining power and the continuing control that the dominant party exerted over them even years after separation.

Legal advice leads to more positive outcomes

The study found evidence of a difference in outcomes for those divorcing couples who had the assistance of legal advice compared with divorcees who did not obtain legal advice. The provision of legal advice appeared to protect individual divorcees, especially wives, from unfair financial arrangements. In particular, the use of legal advice was linked to a greater likelihood of wives receiving ongoing support, a share of pension and a higher share of the proceeds of sale of the matrimonial home.

The majority of divorcees incurred costs in trying to sort out their finances on divorce. It is interesting that, contrary to popular misconception, the study found that the amounts spent were relatively modest. Unsurprisingly, the costs were generally

higher in divorces where the assets were higher. The study found that while very substantial sums can be spent on pursuing legal proceedings, legal costs were not inevitably or commonly high.

Recommendations

The Matrimonial Causes Act 1973 is the law which governs the division of finances on divorce in England and Wales (which is equivalent to our legislation found in the Matrimonial Causes (NI) Order 1978). The study concluded that the broad discretion provided by this legislation to tailor financial arrangements to meet the individual circumstances of each couple is proportionate and necessary, particularly given the range and disparities in wealth and earning capacity of the divorcing population as well as couples’ own priorities and circumstances. It recommended against any legal presumption of equal sharing of assets, commenting that this would be more likely to “cement inequality” between husbands and wives, with mothers and older wives doing particularly badly.

Instead, the study recommended that policymakers need to focus their attention on how to enable couples to take full account of all their assets and future prospects when deciding on what would be the appropriate outcome for them and their family. In particular, greater consideration needs to be given to how pensions may more readily be factored into the arrangements that couples make, if real fairness - as distinct from notional ‘equality’ - is to be achieved.

Overall, the research recommended that steps should be taken to address the deficit in knowledge about the law and legal procedure among the divorcing population in England and Wales. The purpose of this would be to provide couples with a clear understanding of what issues they should be focusing on, including the range of assets (most notably pensions) that can and should be considered and the principles that should guide their arrangements as well as how to reach a settlement. The study also recognised the supervisory value of court scrutiny to ensure fair arrangements and to enable couples to have the finality and certainty of Court Orders.

Tax Allowances – Use Them or Lose Them



John Baxter, Law Society (NI) Financial Advice Ltd

Building on one of his points in his last Writ article about wasting wealth unnecessarily, John Baxter takes a deeper dive into the most common tax allowances that some solicitors don't always take advantage of.

Cliff Edges

Possibly the most common issue we see amongst solicitors is where their income trips slightly over what we call 'cliff edges'.

For every £2 of income earned above £100,000, the Personal Allowance is reduced by £1. This means that individuals earning £125,140 or more will not receive any Personal Allowance. This has the impact of taxing income in this band at 60%! A pension contribution for income in this band therefore means for every £1 invested the individual pays 40p and HMRC pay 60p.

There is a similar cliff edge at £50,000 for those claiming child benefit. Again, pension contributions can be a potential solution to keep both incomes below the £50,000 limit and preserve the child benefit.

Planning with your Spouse

If you are married, think about your situation from a joint perspective. If one spouse is a low or non-earner this presents a number of opportunities.

If your partner isn't using their full £12,570 personal allowance, up to £1,260 can be transferred to their higher earning spouse. See www.gov.uk/marriage-allowance for details.

The capital gains allowance has more than halved for this tax year from the £12,500 last

tax year to only £6,000 in this tax year. As there is usually no tax for transferring assets between spouses, this gives you the opportunity to use both parties' allowance rather than just one. The rate is also due to fall to £3,000 in the tax year 2024/25.

A basic rate taxpayer can earn £1,000 on their savings tax-free, whereas a higher rate taxpayer can only earn £500. It is common for us to see savings in the higher earner's name rather than splitting it with their spouse and therefore paying more tax unnecessarily.

Saving and Investing Tax Efficiently

A good starting-point for solicitors in their wealth accumulation years is to avail of the most commonly-used vehicles of Individual Savings Accounts (ISAs) and pensions. ISAs are particularly useful for younger and pre-retirement solicitors as the funds are fully accessible tax-free. So, if you have savings or investments such as cash, shares, unit trusts, OEICs etc and you haven't used your full £20,000 annual ISA allowance you may find yourself paying tax on these completely unnecessarily.

In the recent Autumn Statement, the Chancellor confirmed that the Pension Lifetime Allowance would be abolished. Pensions are an excellent savings vehicle for solicitors' retirement because not only do they grow tax-free the Government contributes as well by giving you tax relief at your marginal tax rate. Some solicitors stopped contributing to pensions because they were worried about breaching the Lifetime Allowance and being penalised for doing so with tax charges as high as 55%. Anyone who did this should revisit this with their financial planner as their individual circumstances may warrant restarting contributions.

Finally, many retired solicitors stop paying into pensions. This is often a mistake as the contributions can still benefit from tax relief up to age 75. In addition, the fund grows tax-free and is also usually free from Inheritance Tax (IHT).

Inheritance Tax

This leads to my final point on Inheritance Tax. IHT is often referred to as a tax paid by the ignorant rather than the wealthy. Whether this is true or not, what can't be argued is the increasing number of people having to pay it or the overall increasing amount of revenue it generates for HMRC

According to HMRC's latest statistics, IHT receipts for October 2023 were £691 million, which is considerably higher than October 2022's figure of £580 million.



Source: www.gov.uk/government/statistics/inheritance-tax-statistics-commentary/inheritance-tax-statistics-commentary

A great phrase that I only learned a few years ago when I started working with solicitors in Northern Ireland is 'it is better to give with a warm hand than a cold one'. Most of us work hard to accumulate our wealth and there are a number of practical allowances and investment strategies that can be used to keep your wealth for the dependants you want it to go to rather than to HMRC.

Conclusion

The tax legislation is constantly changing and throwing up opportunities and threats. Why not speak to your financial planner, accountant or better yet, Law Society (NI) Financial Advice, and have an 'MOT' on your tax affairs to make sure they are still roadworthy for your journey to financial independence?

Law Society (NI) Financial Advice Ltd was set up by solicitors to serve the financial needs of solicitors, their families and their clients. If you'd like to discuss anything in this article or any other wealth matter, please call 028 9023 0696 or email info@lsnifa.com



Law Society (NI)
Financial Advice

Important note: Investments can fall as well as rise, and past performance may not be a reliable guide to the future. Tax treatment depends on the individual circumstances of each client and may be subject to change in the future. The Financial Conduct Authority do not regulate Tax planning or Estate planning.

Policy and Engagement Department – Roundup of 2023



Nuala McMahon,
Law Society of
Northern Ireland

The Policy and Engagement Department acts as the assertive and authoritative voice of the solicitor profession through its engagement with Government, other stakeholders, and the wider community. This article highlights some of the main activities undertaken throughout the year and provides details on ongoing projects that will be delivered beyond 2023.

Practitioner and Policy Committees

The Department provides important support to the Society's Practitioner and Policy Committees, as well as several established and ad hoc Working Groups. The contributions and expertise provided by Members volunteering their time to these Committees and Groups are a vital support to the work of the Society and its policy objectives.

Legal Aid and Access to Justice

The Department of Justice has recently announced two fundamental reviews relating to criminal and civil legal aid. Engagement in respect of both these reviews is ongoing with Members and wider stakeholders. We will continue to emphasise matters such as the vulnerability of legal aid suppliers because of the lack of sufficient funding within the legal aid budget and resulting knock-on effects on payment times.

We have recently appointed Rocket Science, a specialist independent research organisation, to conduct a study into the social return on investment in legal aid expenditure in Northern Ireland. The purpose of the study is to consider and seek to quantify the economic and social value that legal aid delivers in Northern Ireland. We hope that the outputs of this research will help to further strengthen the Society's evidence base for use in engagement with political representatives and Government officials.

To further the work on Access to Justice and to try to fill the vacuum created by no functioning Executive and Assembly, the Society is working to jointly establish an All-Party Group on Access to Justice in conjunction with the Bar of Northern Ireland. Further details on this are contained below.

With many of these projects already in the pipeline, 2024 will undoubtedly be as busy as 2023 has been.

Policy and Legislative Reform and Political Engagement

Another key function of the Policy and Engagement Department is contributing to policy and legislative proposals and reforms in respect of issues relevant to the profession. However, given the current political stalemate in Northern Ireland, the pace and nature of this has slowed, and the Department has looked at alternative ways to ensure the voice of the profession is heard.

In anticipation of the restoration of power-sharing, the Department has adopted a proactive approach and has continued to engage local parties on issues facing the profession. We hope to work with the parties to support an All-Party Group on Access to Justice which will provide a platform for engagement between the profession, politicians and other relevant stakeholders and will highlight the vital contribution solicitors make to Northern Ireland.

The Department has also been working to refresh the 2022 Justice Agenda which sets out the key issues for justice and law reform for a political audience. The refreshed version sets out a medium-term roadmap of reform of the justice system in Northern Ireland, with key priority actions across the themes of Access to Justice, Upholding the Rule of Law, and Justice Reform. Timing of publication is dependent on political developments but is likely to happen in 2024.

Future of the Profession

The Future of the Profession Committee is one of the Department's key responsibilities. The Committee has a wide remit in considering strategic issues that cut across the profession. This year, the Committee has been responding to the findings of the Hook Tangaza research into the solicitor profession in Northern Ireland.

While the research highlighted the important contribution that solicitors provide to the local economy and the role of solicitors in serving local communities, it also highlighted several challenges, such as those facing small, rural and/or general practices. To this end, a Sustainable Practices Working Group was established to consider how best to support these practices. A key recommendation arising from this Group is the creation of a new online Practice Support Hub for Members which we hope to launch in the new year, which will provide vital and practical support for firms. The Group is also considering what actions the Society can take on recruitment and retention issues, succession planning and the costs of compliance on firms.

The Future of the Profession Committee also has two further Working Groups – the Climate Justice Group and the LawTech Group. Over the year, the Climate Justice Group has been building on the Society's resolution on climate change and has developed a sustainability strategy which we hope to publish soon. Actions within the Strategy aim to make the Society more climate conscious in its day-to-day activities, and others focus on providing support and guidance to Members in this area.

The focus of the LawTech Group this year has been providing several CPD events along with practical online resources for Members on topics such as e-discovery, e-bundling, and tech procurement.

Diversity and Equality

The Department has also been working hard to support the Human Rights and Equality Committee in the delivery of the Diversity and Equality Action Plan 2022 which aims to tackle some of the core issues around gender equality and address barriers facing under-represented groups accessing the profession. Most of the proposed actions have been delivered, such as introducing a Centenary Bursary, developing a Diversity and Equality Toolkit, and gaining the Bronze Diversity Mark Accreditation. Work is underway to refresh and build upon the current Action Plan so that progress in this area can continue.



Ann McMahon, Head of Practice and Procedure, Law Society of Northern Ireland

Ann McMahon, Head of Practice and Procedure at the LSNI, as overseer of the Society's Children Order Panel explains the accreditation process.

The Law Society of Northern Ireland invested in the training of specialist Children Order practitioners to ensure that the quality of legal professional service in this arena is accredited. It is one of only two specialisms recognised by the Law Society and is strictly governed by regulations and procedures. The Children Order Panel is administered by the Children Order Panel Accreditation Board ("the Board"). The Board was set up under the Children Order Panel Regulations 2016 ("the Regulations") which were made by the Law Society with the concurrence of the Lord Chief Justice under powers conferred on it by the Solicitors' (Northern Ireland) Order 1976 (as amended). The Board's powers and duties have therefore a statutory basis. The Regulations came into operation on 1st April 2016 and previous Regulations have been repealed.

I was *gifted* the oversight of the Society's Children Order Panel by a colleague, shortly after I joined the Society. If given sufficient attention the Panel can operate like a well-oiled machine, and that, I have found, is the secret to keeping it on the right track. It is never far from my thoughts as I tackle my weekly tasks; however, it completely takes over my diary every two years when reaccreditation of existing Members of the Panel takes place and accreditation of new Members is processed.

It is very much a hands-on task which requires constant attention to detail during the biennial process. It all starts in early summer with a pre-notification to Members that the process will commence in the coming weeks and alerting those on the

Children Order Panel Accreditation Process

Panel that if they do not apply to be re-accredited then they will be removed from the Panel. By the start of August applications open for approximately 6-8 weeks, to allow for busy practitioners to juggle office demands and have sufficient time to complete an application form requiring specific details of complex cases worked on and the solicitor's role in the case, as well as advocacy experience, CPD training and private study.

The 2023 process has just concluded and saw the introduction of a fully online application form. This step assisted in streamlining the front of the process to ensure that only applicants eligible to go forward do so once they evidence compliance with post qualification experience and CPD requirements. Also, this year applicants had access to a 2023-2025 Information Booklet which was a user-friendly guide to the application process. Applicants subsequently confirmed that the Booklet was a useful tool to help them navigate the process.

Once applications closed on 15th September 2023 the tsunami of online forms arrived for careful analysis to see which required to be referred to the Management Board for discussion due to issues like insufficient advocacy and CPD training and inadequate detail in the five cases exemplified by the applicant. It has to be said that some applicants go above and beyond what is requested, and then there is the other end of the scale! It is important to remind applicants that applying for accreditation to be a member of the Panel is a badge of honour as they are holding themselves out as experts in their field. Board Members take the task of

awarding accreditation very seriously and meet several times to consider applications and additional information lodged by applicants to decide if approval can be granted.

New applicants seeking to join the Panel for the first time undergo a well-tested accreditation process which includes a compulsory two-day hands-on Training Course, a written examination and an interview. The Board consider the results of the accreditation process before awarding accreditation. Members of the Panel receive individual notification that they have been admitted to the Panel, and when that accreditation will expire – two years later. At the end of two years those wishing to remain on the Panel must reapply for accreditation. Due to the status that accreditation gives a solicitor, the Board must oversee compliance with training and advocacy by Panel Members and this is assiduously observed.

Save for 2023, numbers on the Panel have increased year on year. The biennial process usually sees a drop off from those seeking to re-apply of approximately 8 - 10 Members, and approximately 25 - 30 seeking accreditation for the first time, but the overall Panel size increases each time. However, the 2023 process saw an almost 40% drop off in number applying

for accreditation for the first time, and re-accreditees dropping by 5%. The total number on the Panel in 2023 is 222, compared to 241 in 2021. This fall in numbers may be indicative of a general trend in private practice and in particular the appetite to undertake publicly funded legal representation.

The Management Board of the Children Order Panel delivers an annual conference for Panel Members in late spring every year. The theme varies each year and can be diverse. In the last number of years areas of practice covered included:

- Sir John Gillen's Civil Justice Review
- Confirmation bias
- Paperless working
- Family Drug and Alcohol Courts
- The role of the psychiatrist in Children Order cases
- Marginalisation issues in Children Order cases
- Parental alienation and co-parenting
- Vulnerability
- Adverse childhood experiences
- Immigration and unaccompanied children
- Trauma-informed practice

Panel solicitors must undertake professional training throughout

accreditation periods as they are required to demonstrate updated training undertaken on law and practice relevant to Children Order practice as deemed acceptable to the Board. They must also demonstrate experience in public law cases by offering details of cases in which they were involved (anonymised), to allow the Board to assess their suitability for re-accreditation.

Appointment and re-appointment to the Society's Children Order Panel is an accredited endorsement of the solicitor who will be holding themselves out as an expert in this area of practice, thus the Board strictly adheres to the accreditation procedures. The Children's Court Guardian Agency for Northern Ireland, formerly known as Northern Ireland Guardian Ad Litem Agency, operate a Panel of solicitors who may be appointed to act for a Guardian in public law proceedings. It is a compulsory requirement that any such solicitor must be an accredited member of the Society's Children Order Panel.

The next opportunity for a solicitor to join the Society's Children Order Panel will be in 2025. A general notification will issue to Members at the start of the summer indicating when applications will officially open. I look forward to welcoming new and existing Members to the Panel in 2025.



Update on VAT and Disbursements

THE LAW SOCIETY
OF NORTHERN IRELAND



100
YEARS

The cases of *Brabners v Commissioners for her Majesty's Revenue and Customs* [2017] UK FTT0666 and *British Airways v J Prosser* [2019] EWCA Civ 547 have brought the issue of VAT on disbursements to the fore insofar as it relates to HMRC's treatment of disbursements for the treatment of VAT.

The Society has taken advice to better understand the issues involved and provides the following guidance note to Members. The Society has endeavoured to be as clear as possible; however, it is not possible to cover every eventuality as the circumstances of firms, clients, transactions, and the disbursements will vary case-by-case (depending, in particular, on the scope of instructions and the terms and conditions governing the work undertaken by the Member). There remains uncertainty as to the correct interpretation of the law in some areas. It is ultimately the responsibility of individual firms to ensure their compliance with the relevant VAT rules and take their own expert advice.

The key rules governing VAT are detailed in the 2006 VAT Directive, article 79 (c)¹. This was implemented by the VAT Act 1994² and the UK's exit from the European Union does not currently affect the issues considered below, where relevant principles have been derived from retained EU law.

Whilst the term "disbursement" is commonly used to refer to all items of expenditure paid by solicitors to third parties in connection with the matter they are dealing with. Some of these items should not be treated as a disbursement for VAT purposes. The scope of what is commonly called a disbursement can fall into two main categories:

1. Items which a solicitor (like any other agent) may purchase and are supplied to the client, not to the solicitor, who merely acts as an agent to make the payment; and
2. Where the items are supplied to the solicitor to enable effective performance of the solicitor's overall services to their client³.

An item in the second category is not treated as a disbursement in the context of VAT rules.

Generally, if an item of expenditure cannot be treated as a disbursement for VAT purposes the solicitor is required to charge VAT on it because the use of the document obtained in advising the client is considered to be part of the overall supply of legal services provided to the client.

Key questions for Members to consider when deciding whether an expense represents a disbursement (*which does not attract VAT*) or whether it is remuneration (*where VAT should be charged*) are:

- Where the solicitor is acting merely as an intermediary or an authorised representative to facilitate payment to a third party this is likely to constitute a disbursement, not attracting VAT. This is particularly the case where the payment is to obtain something for the benefit of, and in the interest of, the client or to discharge an obligation borne by the client.
- If the payment is for something that a client has **not** expressly or impliedly asked for but rather is part of the whole legal service being provided and charged for by the solicitor, then it is more likely to be considered remuneration and would therefore attract VAT⁴. The solicitor's retainer under the Provision of Services Regulations 2008 may assist in clarifying the exact nature and extent of the services being provided.
- In the context of searches, which a solicitor ordinarily obtains as part of a conveyancing transaction, does the payment fall within the whole of the services, i.e., in doing such a search is the solicitor using their knowledge and information to know what to obtain and how to obtain it or is the solicitor acting simply as a conduit or post-box⁵? Instances where the solicitor is acting as more than a conduit (i.e. is doing more than simply obtaining and forwarding documents) are more likely to constitute remuneration which would attract VAT. A solicitor should consider whether, as part of the overall service to their client, that they do, even briefly, ordinarily consider the contents of the documents they obtain as part of a conveyancing transaction.
- If the terms and conditions of the solicitor's supply make it clear that the solicitor will obtain identified documents on behalf of the client and that the solicitor does not consider them or provide advice on them, the cost of obtaining the documents is more likely to constitute a disbursement, not attracting VAT. This should be clearly stated in the retainer.
- In respect of medical / expert reports, is the report used by the solicitor for the purposes of advising on the merits or otherwise to facilitate the pursuit of a claim, rather than being provided to the client and used by them? Instances where the report is used by the solicitor are more likely to constitute

remuneration which would attract VAT.

- In relation to other outlay, the key consideration for a solicitor, in light of the relevant case law is to consider whether, they are acting merely as a post-box, i.e. is the solicitor simply obtaining and then forwarding the document or is the information contained, used by the solicitor in the context of their overall services.

If the outlay has already included a VAT element, when preparing an invoice for the client, and if the search is treated as vatable, the solicitor should note this outlay with the VAT element being set out separately as would be the case with the professional fee. The amount the client pays for the search would be the same as that charged to the solicitor.

In the context of recent case law, and HMRC guidance, the Society has compiled the following general (non-exhaustive) list of expenses and the likely liability in the context of VAT at Appendix 1, based on typical circumstances of the supply (and an assumption as to commonly used terms and conditions).

The revised estimate will replace the current estimate forms from 1 January 2024 and can be found in the [Home Charter](#) section of the website.

Members should note however that this is a guide only and is not to be relied upon as conclusive. Ultimately, it is for individual law firms to ensure that they have applied the correct VAT treatment in light of the particular circumstances of their supply (and their terms and conditions) and to rely on their own independent advice in relation to treatment of VAT on disbursements. Sample invoices are shown at Appendix 2 to clarify however this is again, subject to the law firms determining the position in light of their particular circumstances.

Members will need to consult with their bookkeeper and/or legal accounting software supplier for practical assistance on how to treat VAT items arising in cases on a day-to-day basis.

¹ Council Directive 2006/112/EC

² Value Added Tax Act 1994, sections 1, 4 and 19

³ *Rowe & Maw (a firm) v Customs and Excise Commissioners* [1975] STC 340

⁴ *Rowe & Maw (a firm) v Customs and Excise Commissioners* [1975] STC 340

⁵ *Brabners v Commissioners for her Majesty's Revenue and Customs* [2017] UK FTT0666 para 50

Appendix 1 – List of Typical Outlays

Item of expenditure	VAT CHARGED TO SOLICITOR SUPPLIER?	TO BY	VAT TO CHARGED CLIENT SOLICITOR?	BE TO BY
Conveyancing searches:				
Local Council Property Certificate	N		Y	
Regional Property Certificate	Y		Y	
Mid Ulster Property Certificate	Y		Y	
NIHE Property Certificate	Y		Y	
Bankruptcy search (online NICTS)	N		Y	
EJO search online via NICTS	N		Y	
Combined searches via Law Search agent - Agent's Unit Price/Fees	Y		Y	
Combined searches via Law Search agent - Agent's outlays	N		Y	
NI Water Map	Y		Y	
Ordnance Survey for ACE Map	Y		Y	
Land Registry Copy Folio	N		Y	
Land Registry Copy Map	N		Y	
Land Registry Copy Instrument	N		Y	
Land Registry Map Search	N		Y	
Registry of Deeds search via Landweb (incl closing search)	N		Y	
Registry of Deeds search via agent	N		Y	
Mapping Fee to mapper	Depends on mapper's VAT status		Y	
Company search fee via Companies House online (if any)	N		Y	
Management Company/Agent's fees for providing sale pack	Y		Y	
Management Company/Agent's fees for share certificate	Y		N	
Building Control Completion Certificate (Duplicate requested)	N		N	
Building Control Regularisation Certificate	N		N	
Registration Fees/ administrative charges:				
Land Registry vacate registration fee	N		N	
Land Registry registration for reclassification of title	N		N	
Other Land Registry/Registry of Deeds registration Fees	N		N	
Land Registry Priority search fee in connection with registration	N		N	
Bank transfer Fees	N		Y	
Help to Buy ISA Fee	N/A		Y	
NIEA fee for transfer of Septic Tank Discharge consent	N		N	
Stamp Duty Land Tax	N		N	
Postage	N		Y	
Travel expenses	N		Y	
Estate agent fees	N		N	
Other:				
Estate Duty	N		N	
Court Fees	N		N	
Police Reports	N		Y	
DVLA Searches	N		Y	
Process Servers	Depends on process server's VAT status		N (depends on whether solicitor is forwarding charge for professional services of a third party) ⁷	
Translators	Depends on translator's VAT status		N depends on whether solicitor is forwarding charge for professional services of a third party) ⁸	
Traffic Sequence Reports	N		Y	
Medical Reports	N		Y	
GP Notes	N		Y	
Hospital Notes	N		Y	
Medical Certificates	N		Y	
Other Medical notes/records	N		Y	
Court stamps/civil bills ⁹	N		N	

⁶ Concession currently in place but subject to review by HMRC. See S Middleton and K Rowley, Billing the Client In Cook on Costs, 41. UK: Lexis Nexis, 2023 pp 41

⁷ <https://www.gov.uk/hmrc-internal-manuals/vat-taxable-person/vtaxper46000>

⁸ <https://www.gov.uk/hmrc-internal-manuals/vat-taxable-person/vtaxper46000>

⁹ <https://www.gov.uk/hmrc-internal-manuals/vat-taxable-person/vtaxper46000>

Appendix 2 – Worked Example Invoices

Worked Example Invoice (Property):

	Amount £	% VAT	VAT £
Purchase of property at 123 Grand Street			
Solicitor's Professional Fee		20	
Outlay subject to VAT:			
Land Registry Folio Search	7.00	20	1.40
Local Council Property Certificate	90.00		18.00
Regional Property Certificate	70.00		14.00
EJO Search (Law Searcher)	26.00		5.20
Law Searcher fee	20.00		4.00
Bank Transfer Fee	50.00		10.00
Outlay not subject to VAT:			
Priority Search as part of registration	31.00	N/A	N/A
Land Registry Registration Fee	220.00	N/A	N/A
Share Certificate Fee	3.00	N/A	N/A
Total Professional Fee	X		
Total Outlays subject to VAT	263.00		
Total Outlays not subject to VAT	254.00		
Total VAT on Outlays	52.60		
Total VAT incl Professional Fee	X		
TOTAL PAYABLE	X		

Worked Example Invoice (Contentious):

	Amount £	% VAT	VAT £
Personal Injury claim, Person X			
Solicitor's Professional Fee		20	
Outlay subject to VAT:			
Copy Police Report (traffic collision)	101.30	20	20.26
Independent Witness Details (per witness)	36.00		7.20
Expert Report (£500.00+VAT) (Expert registered for VAT)	500.00		100.00
Expert Report (£500) (Expert not registered for VAT)	500.00		100.00
Outlay not subject to VAT: Stamp on Writ	261.00	N/A	N/A
Total Professional Fee	X		
Total Outlays subject to VAT	1,137.30		
Total Outlays not subject to VAT	261.00		
Total VAT on Outlays	227.46		
Total VAT incl. Professional Fee	X		
TOTAL PAYABLE	X		



LAW SOCIETY ANNUAL DINNER 2023

The Law Society held its annual dinner on 7th December at the Culloden Estate and Spa.





Taking Some Time Out for International Men's Day



Sheelagh Walton,
Member Services
Development Manager,
Law Society of Northern
Ireland



The Member Services Department recently organised a selection of events on offer at Law Society House in the run-up to International Men's Day on Sunday 19th November. Events focussed on health and wellbeing and were open to all Members.

The Hench Fitness team was on hand to provide one-on-one consultations with a qualified strength expert, who put together personalised, actionable fitness and wellbeing guidance. Members walked away with a detailed body composition analysis, actionable goals and a fitness plan overview.

The Law Society Lecture Theatre took on a very different role during the week, to play host to Members who came along to master the Wim Hof Method Breathing Exercise. Certified instructor Alexander Gabrysch took Members through theory and practice with some meditation to bring the complimentary taster session to a close.

Wim Hof is a name familiar to many, renowned for his own back story and resilience training, with tools to restore innate strength to its full capacity.

The Wim Hof Method is based on the three pillars of breathing, cold therapy, and commitment. The specialised breathing exercise utilises heightened oxygen levels and is an effective tool to manage stress, improve sleep, and boost immune response.

Maybe next time, we should bring Alexander back to work on cold therapy!

Members were able to further enhance their health and wellbeing toolkits with the opportunity to book from a choice of health screenings with the team at Cathedral Health. Eye wellness and general health checks, plus blood screening tests, were all on offer during the week.

It was great to see Members taking some time out for themselves and we hope those who took part saw a benefit in doing so. The Wim Hof Breathing Exercise class, with a post-session lunch, received great feedback. Members shared how it was good to learn something new: one Member wanted to try something to complement his cold-water swimming, and another said it was just great to get together and do something else outside of work. A first for the Law Society, but certainly not the last!

We will look at opportunities to provide similar experiences in the future and welcome your feedback and thoughts.

Please get in touch by contacting:
memberservices@lawsoc-ni.org

Wim Hof Method certified instructor Alexander Gabrysch AKA The Lion Man ran a taster session for Members at Law Society House.



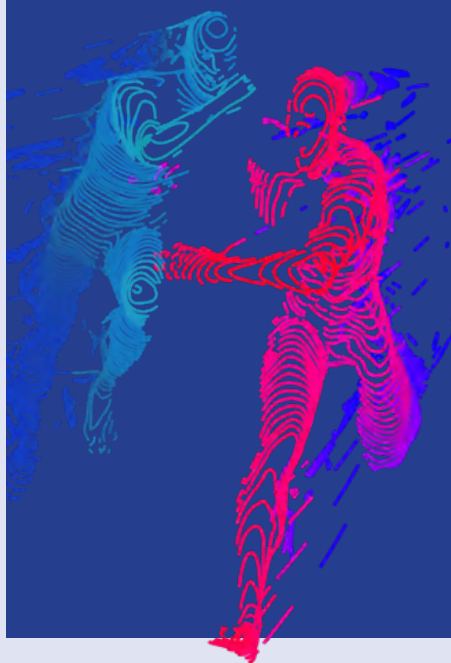


THE
LAW SOCIETY
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100
YEARS

NI SPORTS
FORUM

Sports Law Conference 2023



Keith McGarry,
Partner, Conn and Fenton

The 11th Sports Law Conference in partnership with the Northern Ireland Sports Forum took place at Law Society House on Friday 17th November 2023. Yet again this Conference provided one of the highlights of the CPD calendar with a packed audience of attendees from both the legal profession and sport's governing bodies.

As is tradition, retired District Judge Ken Nixon opened proceedings and introduced this year's representative from the High Court Bench, Mr Justice McFarland, who provided not only an insight into his own sporting prowess and interest but also provided a reflection of the history and development of negligence in sport with reference to historic cases and up-

to-date topical issues presenting themselves today.

The co-founder and chair of the Conference, Keith McGarry, then presented an update on the sporting and legal world, laying the foundation for later speakers on the subject of the interaction of legislation and insurance in the law.

One of the highlights of the day was provided by Anna Pim, a young Mary Peters athlete, who offered guidance on CPR through her company At the Heart of the Game. Anna provided an immediate takeaway on firsthand assistance for matters of health and wellbeing that can be applied within our offices, the sports field or any other forum required.

This year saw a first for intercontinental relations at the Conference as we were joined live from Melbourne, Australia, by Professor Jack Anderson, who again demonstrated why he is considered one of the leading experts in this field. Jack brought the Conference audience up-to-date with relevant sports law decisions in 2023 and provided a look at his life as special counsel for integrity regulation at Racing Victoria.

Dr Neil Heron, a Clinical Lecturer and GP in Sport and Exercise Medicine, provided a fascinating look at concussion in sport, and outlined how far regulation in this area and management still has to go.

Intercontinental relationships were extended further when Mervyn Whyte, who is



From left: Ken Nixon, Keith McGarry and Mr Justice McFarland.

synonymous with road racing in Northern Ireland - particularly the North West 200 - joined us from Macau and addressed the audience in relation to safety at road racing events, drawing parallels with the Las Vegas Grand Prix (taking place at that time), and calling for government funding to assist with such events due to the unparalleled increase in insurance premiums across the sporting world.

The theme of insurance was extended further by Alyn Spratt of Attis Sports Division, who spoke about ongoing issues such as increased premiums and reasons for the increase.

The organisers of the Conference have, for a long time, wanted to include the issue of restorative justice in sport as a themed topic and it was a delight this year to welcome Martina Jordan, restorative justice consultant, trainer and facilitator, who provided a fresh approach for participants and governing bodies to sports disputes within this area.

The Conference ended with a fascinating group discussion between Feargal Logan, a long time supporter of and participant in the Conference; Angela Platt, Director of women's football at the IFA; Alyn Spratt; Bernie Fox, Safeguarding Manager for Ulster GAA; and Andrew Nixon of Sheridans in London. In truth the group discussion could have gone on well beyond the time allowed and all participants should be thanked for their enthusiastic and expert input.

Brian Archer, the then President of the Law Society, concluded the Conference, referring to its ongoing success and already looking ahead to the 12th Conference next year.

It is fair to say that this Conference is enthusiastically supported by a wide body of professionals and administrators within sport and many participants remained to enjoy lunch and some networking at the close of another enjoyable and successful event.

Thanks as always go to Patricia Kirk of the Law Society and Niamh MacManus and Richard Honeyford from the NI Sports Forum for their unstinting efforts and assistance throughout the year.



From left: Andrew Nixon – Sheridans London, Feargal Logan – Logan & Corry, Bernie Fox – Safeguarding Manager for Ulster GAA, Angela Spratt – Director of Women's IFA, Alyn Spratt – Attis Sports Division.



From left: Karen Rollo – Executive Manager Netball NI, Marc Scott – Executive Manager Ulster Hockey, Keith McGarry – Chair Sports Law NI, Richard Honeyford – NI Sports Forum.



From left: Ken Nixon, Martina Jordan, Keith McGarry.

Society launches Menopause Policy and Guidance

The Law Society of Northern Ireland recently launched a Menopause Policy and Guidance to staff and provided awareness training. Then President Brian Archer joined Society staff at a coffee morning on 18th October and welcomed the initiative.

Women make up 51% of the UK workforce. These women will experience the menopause at some point in their lives and not necessarily in their late forties or early fifties.

Statistics show that around 1 in every 3 women has either experienced or is currently going through the menopause. Around 8 in every 10 women will experience noticeable symptoms and of these 45% will find their symptoms hard to deal with. Some women may cope well with the physical and emotional changes, but for others they may cause particular difficulties both in work and outside of work. However, with the implementation of appropriate policies and reasonable adjustments women can be supported in the workplace.

The Menopause Policy template is available for Members to download from the Law Society website. The Society continues its partnership with Legal Island to offer the membership a discounted rate on all its eLearning modules including 'Menopause in the Workplace'. The offer can be accessed from the following link - [The Law Society of Northern Ireland](https://www.law-society-ni.org.uk)



Solicitors' Benevolent Association: How You can Help



It's hard to believe that we are nearing the end of another year. A year that has not been without its challenges with

the effects of inflation and cost of living expenses. During this year, the SBA has continued to provide financial support to our profession, helping 79 people and paying out almost €900,000 in grants. This would not be possible without the generosity of solicitors throughout the island of Ireland. The Association exists for the benefit of all members of the solicitor's profession and their families, widows and children. The voluntary donations from solicitors go a very long way to supporting the profession and their dependants whose life circumstances have changed.

How you can help

Income is derived from donations, legacies, repayments of grants and fund-raising. The SBA's main income derives from annual voluntary subscriptions paid by members of the solicitor's profession in both the Republic of Ireland and Northern Ireland.

The Association would encourage solicitors, whether practising or retired, to pay the annual voluntary subscription in the knowledge that they are helping their colleagues and their dependants who have fallen on hard times for whatever reason. Indeed, there may be a time when you need to call on the Association in the future for assistance. So, this year when it is time to renew your PC, please think about a contribution to SBA.

How to apply for assistance

If you do need help, please contact the Association. The application procedure is straightforward. A statement of monthly income and expenditure together with a statement of assets and liabilities and entitlement to state benefits are taken into account when deciding on applications. Financial assistance can be in the form of monthly payments, occasional grants or by way of a loan.

Further information can be obtained from the Association's website www.solicitorsbenevolentassociation.com or by contacting one of the Northern Irish Directors - Caroline Boston, John Guerin or Colin Haddick.

LSNI Members Gain Recognition



Peter Jack receives an MBE

"It's been a surprising and enjoyable journey from QUB Law Faculty in September 1975 to standing in the Throne Room of Buckingham Palace in April 2023 when Her Royal Highness, Princess Anne, pinned an MBE on my lapel! My wife Sharon and my sons Patrick and Mark all had a grand day out.

*One of my swimming buddies thinks the MBE stands for "more bloody earache" from me but we had a **Marvellous Brilliant Exciting** day where Princess Anne promised not to keep me back from my training for too long! You can't take any of this too seriously, but it is great that endurance sport and local charities get a well-deserved spotlight shone on them once in a while. Now it's back to training - where did I leave my bicycle?..."*

Peter Jack was presented with an MBE by HRH Princess Anne for services to endurance sport and charity.

Decoration of the Order of Civil Merit

Trevor McBurney was awarded the Decoration of the Order of the Civil Merit for his services to Spain and the Spanish community in Northern Ireland. Trevor was formerly Honorary Vice Consul of Spain in Northern Ireland.



MEMBER OFFER

A full-bodied red is not just for Christmas, but it's a good place to start!

Members enjoy 15% discount on wines from Direct Wine Shipments.

This offer is available on wines purchased in store, by email and phone.

Just quote Account Number **LAW02** and show a business card or provide roll number to secure discount.

Please note the offer is not available via the website.



DIRECT WINE SHIPMENTS

Have a look at the Christmas brochure [here](#).



Let's Talk about Anxiety

In this short article LawCare explains what anxiety is, how we can identify it, and offers some tips on how to manage it.

Working in the legal sector can be stressful and demanding, and it's not uncommon for legal professionals to experience anxiety as a result. Anxiety describes feelings of unease, worry and fear. It incorporates both the emotions and the physical sensations you might experience when you are worried or nervous about something. Anxiety is related to the 'fight or flight' response – our normal biological reaction to feeling threatened.

Everyone knows what it's like to feel anxious from time to time. It's a normal human response to feel tense, nervous and perhaps fearful at the thought of a stressful event or

decision you're facing – especially if it could have a big impact on your life. You might even find it hard to sleep, eat or concentrate. Then usually, after a short while or when the situation has passed, the feelings of worry stop. It's sometimes hard to know when it's becoming a problem for you – but if your feelings of anxiety are very strong, or last for a long time, it can be overwhelming. You might find that you're worrying all the time. You may regularly experience unpleasant physical and psychological effects of anxiety, and maybe panic attacks.

Recognising the signs of anxiety

- Panic, fear, and uneasiness
- Sleep problems
- Not being able to stay calm and still

- Cold, sweaty, numb or tingling hands or feet
- Shortness of breath
- Heart palpitations
- Dry mouth
- Nausea
- Tense muscles
- Dizziness
- Overeating

Tips for managing anxiety

- Focus on the here and now - what is actually happening in this moment. Is there another perspective?
- Talk to people about your feelings – ask them for feedback.
- Keep a list or folder of your achievements and look at it when you need to.
- Talk to yourself as you would a friend.
- Distract yourself from your thoughts – read a book, take some exercise, see a friend, do something you enjoy.

Finding support

If you are worried about your anxiety, or if it is persistent, it is important to see your GP. Many people find counselling and CBT (cognitive behaviour therapy) helps with anxiety. Mindfulness can also help calm the mind - check out the Headspace website or app for more information.

For more information and emotional support call LawCare's confidential helpline on **0800 279 6888** or visit **www.lawcare.org.uk**.

How are you, really?

Life in the law can be tough.
Call our confidential helpline.
We're here to listen.
0800 279 6888

LawCare
Supporting the Legal Community

www.lawcare.org.uk



Navigating the Winter Wonderland: A Guide to Thriving in the Holiday Season

LawCare offers some helpful tips to successfully navigate the challenges of the festive period.

'Tis the season to be jolly', but let's be honest – the winter holidays can sometimes feel more like a whirlwind of stress and chaos, and in the current economic and global climate, it may not feel like a time of celebration. It's easy to feel overwhelmed.

Here are some easy steps you can take to help you manage during this festive season.

- 1. Master the art of prioritisation:** The key to a stress-free holiday season is to prioritise. It's time to let go of the idea that everything must be perfect. Make a list of your top priorities – the activities and traditions that truly matter to you and your family and friends. Focus your time and energy on these, and don't be afraid to delegate tasks if they don't have to be done by you.
- 2. Set realistic expectations:** The holidays are not a scene from a movie. Real life rarely matches the perfectly decorated homes and flawlessly orchestrated dinners we see on screen. Accept family and friends as they are even if they don't live up to all your expectations.
- 3. Learn how to say 'no':** It's okay to politely, but firmly, say no invitations or requests that will cause you

unnecessary stress. Your mental health should take precedence over obligations that don't bring you joy.

- 4. Create boundaries:** Setting boundaries is crucial during the holiday season. Communicate openly with friends and family about your limits, whether it's about presents, parties, or even the length of a family visit. Establishing clear boundaries helps manage expectations and ensures that you have the time and energy to enjoy the festivities without feeling overwhelmed.
- 5. Make the most of the holiday season and take a break:** Resist the urge to check emails and work during the holidays. This is a time for relaxation and recharging, so try to fully disconnect from work.
- 6. Practise self-care:** Amid the hustle and bustle, don't forget to save some time for yourself - this could be a quiet evening with a book, a brisk winter walk, or a relaxing bath. Taking care of yourself is not a luxury but a necessity, especially during this demanding time of year.
- 7. Embrace flexibility:** The holiday season rarely goes exactly as planned so be prepared to adapt to unexpected changes. Whether it's a last-minute change in plans or a shift in the weather, having a flexible mindset will help you navigate the season with ease.
- 8. Connect with others:** The holidays are about connection, so make an effort to

strengthen your relationships. Reach out to friends and family members and go to those social gatherings that foster a sense of community. Connection and shared experiences can be powerful antidotes to holiday stress.

- 9. Reflect and give thanks:** Take a moment to reflect on the positive aspects of your life. These could be work-related or about the people you love and the experiences that have shaped you.
- 10. Plan for post-holiday recovery:** Acknowledge that the period after the holidays can bring a sense of letdown. Plan activities for this time to help ease the transition back to normal work life. This could include planning a weekend getaway, starting a new hobby, or simply allowing yourself some downtime to recharge.

Managing and thriving during the winter holiday season is all about being kind to yourself and giving yourself space to find balance. By setting priorities, establishing boundaries, practising self-care, and embracing flexibility, you can navigate the festivities with a renewed sense of joy and fulfilment. Remember, taking a break is not only beneficial for you but can also improve your overall productivity and creativity when you return to work. Enjoy the holiday season and make the most of your well-deserved time off.

Cheers to a happy and stress-free holiday!

Ending Violence against Women and Girls (VAWG) is Everyone's Business



Sonia McMullan
Regional Services
Manager for Women's
Aid Federation Northern
Ireland

Women's Aid Federation Northern Ireland discusses the need for full implementation of a strategy to deal with violence against females in the jurisdiction.

Every 16 minutes of every day the PSNI respond to an incident of domestic abuse in Northern Ireland. The problem is not going away and Women's Aid is here to support those women, children and young people who are affected by domestic abuse. Women's Aid is made up of eight local Women's Aid groups across NI who are supporting women, children and young people with everything from crisis support through to emergency accommodation to support within their home and in the community. Times are hard at the moment with a cost-of-living crisis, cuts to funding and lack of government all culminating in a difficult environment for the sector as a whole. Women's Aid exists to challenge attitudes and beliefs which perpetuate domestic abuse.

As the lead agency tackling domestic abuse, Women's Aid services supported nearly 8,000 women last year. 250 of these women were pregnant whilst accessing this support and 6,300 children and young people were supported whilst their mother accessed

support. These are not statistics to be proud of - a full refuge provision is a flaw in society, not an achievement, and this is why we need an effective violence against women and girls strategy in Northern Ireland. When we talk about violence against women and girls in Northern Ireland in the context of gender-based violence, we are talking about crimes that are disproportionately more likely to affect women and girls, simply because they are women and girls, including sexual assault, rape, and domestic abuse. Every day we see how it is affecting the lives of women and girls, wherever they learn, live, and work. Women and girls have the right to feel safe.

On 9 March 2021, Women's Aid launched a petition calling for a violence against women and girls strategy in Northern Ireland. At that time, we were the only part of the United Kingdom that did not have a specific strategy dedicated to tackling gender-based violence, which meant that women and girls living in Northern Ireland were being let down, simply because of where they live.

This call for action garnered major public support and success with the Executive Office committing to consult on the introduction of a violence against women and girls strategy in Northern Ireland. Women's Aid welcomed this and was pleased that it was placed within the Executive Office rather than one government department, since many other western countries have also adopted a co-ordinated all-government approach, mandating all-government departments to play their part to bring about societal change to tackle gender-based violence. VAWG is everyone's business, and we need a joined-up approach across all of society to address this issue and impact change, from government, the public, statutory agencies, and preventative education to name but a few.

Full implementation of this strategy requires brave government leadership, with prioritised, adequate funding. The ultimate challenge is for this strategy to bring

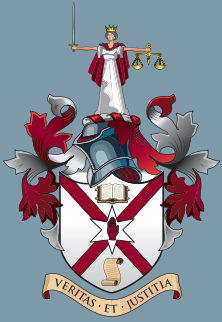
generational change and the sooner we begin that change, the sooner we will see a safer Northern Ireland for everyone. We cannot waste this opportunity.

We work to promote healthy, non-abusive relationships. We support women, children and young people affected by domestic abuse and help women and children be safe, to break free from the cycle of abuse, and to rebuild their lives. Work within our communities continues to raise public awareness of the signs of domestic abuse and a current area of work has evolved from the Safe Leave Act 2022. With the introduction of the Domestic Abuse (Safe Leave) Act pending, employers in Northern Ireland will have a duty to offer at least 10 days paid leave for victims of domestic abuse.

Domestic abuse affects around 10% of the workforce, costs the UK economy £1.9 billion every year and we know that 75% of people experiencing domestic abuse are targeted at work. The experience of domestic abuse can easily be misinterpreted by employers and there is a real need for businesses to be more aware of this often-hidden workplace issue. People experiencing domestic abuse are likely to be disciplined or even lose their jobs because of higher levels of absence from work, poor time keeping or reduced productivity. Women's Aid is helping employers navigate this and support them to help their employees. Employers all have a duty of care and are responsible for the physical and emotional health and safety of employees and Women's Aid is there to support this process through improving staff wellbeing, supporting staff retention and also reducing the stigma of an issue that causes serious harm in our society.

We are grateful to the Law Society and its Members for their assistance and representation of people experiencing and surviving domestic abuse.

More information about domestic abuse and the work of Women's Aid can be found on www.womensaidni.org



THE LAW CLUB

The Law Club at Law Society House in Belfast.

Situated on the fourth floor, it offers a contemporary and inviting location to have a free tea/coffee and a catch up with friends, a place to reflect or work.

With a stylish design, spacious seating areas, IT supported consultation rooms and open to all members from 9am - 5pm (Monday to Friday) the Law Club offers a unique membership experience.

Please visit The Law Club and see for yourself what's on offer.



CASE COMMENT

ARTICLE 2 OBLIGATIONS IN THE CONTEXT OF MANAGING INDIVIDUALS WITH MENTAL HEALTH ISSUES



Emma McIlveen BL

Emma McIlveen BL offers a commentary on the recent decision of *Health and Social Care Trust v JU*, considering some of the fundamental issues around capacity, deprivation of liberty and the inherent jurisdiction of the court.

Introduction

The recent decision in the case of *Health and Social Care Trust v JU* [2023] NIFam 12 examined the extent to which Article 2 of the ECHR applies in the context of managing individuals with mental health issues.

Background

This case involved a woman in her early seventies who resided in a private nursing home under a guardianship order. She suffered from longstanding mental health problems and had diagnoses (which she contested) of persistent delusional disorder, emotionally unstable personality traits and recurrent depressive disorder.

Under the inherent jurisdiction of the High Court, the Trust sought an order to deprive the woman of her liberty. The Trust's case was that should the woman's condition deteriorate then it is powerless to act to protect her wellbeing and to fulfil the Trust's operational Article 2 ECHR duty of care that it owes to her. The Trust accordingly made the case that it requires powers to deprive her of her liberty so that it can fulfil its duty.

The woman opposed the Trust's application.

Key issues for the Court

The key questions before the court were:

- (a) Does the Trust owe an operational Article 2 ECHR duty of care to the woman?
- (b) If so, is that duty currently engaged?
- (c) If not currently engaged, in the event of deterioration in the woman's mental health and the duty becomes engaged, are the existing statutory powers sufficient for the Trust to take lawful steps to fulfil its duty?
- (d) If the existing statutory powers are insufficient, is the inherent jurisdiction of the court available to permit the deprivation of the liberty of JU?
- (e) If they are available, should the court exercise its discretion and grant the Trust, and others, the powers the Trust seeks, and on what terms?

Article 2 ECHR

The Court ultimately found that the Trust as the Guardian under the Guardianship Order did exercise control over the woman and as a result, owed her an operational Article 2 ECHR duty.

However, Mr Justice McFarland held that the Article 2 duty must be viewed in the context of the woman's current presentation and specifically the risk of harm that she was currently presenting to herself and others.

In assessing whether the Article 2 duty was engaged, the Court applied the guidance given by the Grand Chamber in the case of *Fernandes de Oliveira v Portugal* [2019] 69 EHRR 8. The key passages of that judgment are as follows:

'110. *In a series of cases where the risk derived [...] from self-harm by a detained person, the Court found that a positive obligation arose where the authorities knew or ought to have known that the person posed a real and immediate risk of suicide.*

[...]

112. *...[T]he Court reiterates that the very essence of the Convention is respect for human dignity and human freedom. In this regard, the authorities must discharge their duties in a manner compatible with the rights and freedoms of the individual concerned and in such a way as to diminish the opportunities for self-harm, without infringing personal autonomy ... The Court has acknowledged that excessively restrictive measures may give rise to issues under Articles 3, 5 and 8 of the Convention.*

113. *As regards mentally ill persons, the Court has considered them to be particularly vulnerable ... Where the authorities decide to place and keep in detention a person suffering from a mental illness, they should demonstrate special care in guaranteeing such conditions as correspond to the person's special needs resulting from his or her disability. The same applies to persons who are placed involuntarily in psychiatric institutions.*

114. *[...] The Court in Reynolds [v UK no 2694/08] did not explicitly find that the positive obligation to take preventive operational measures extended to voluntary*

psychiatric inpatients. However, it clearly did not exclude such a finding either. The Court is now called upon to decide that question in the present case.

115. Concerning suicide risks in particular, the Court has previously had regard to a variety of factors where a person is detained by the authorities (mostly in police custody or detention), in order to establish whether the authorities knew or ought to have known that the life of a particular individual was subject to a real and immediate risk, triggering the duty to take appropriate preventive measures. These factors commonly include:

- (i) a history of mental health problems [...]
- (ii) the gravity of the mental condition [...]
- (iii) previous attempts to commit suicide or self-harm [...]
- (iv) suicidal thoughts or threats [...]
- (v) signs of physical or mental distress [...]

Applying the *Oliveria* guidance to the case of JU, the Court found that although there was a history of mental health problems, the issues were currently under control and there was no evidence of current suicidal thoughts or threats.

Recognising that this was not a case that contained any 'red flags', the Court commented:

'54. JU's mood and condition may fluctuate from time to time, as will often be the case with people with mental health problems, but there is nothing to suggest any particular problem at this moment. All the evidence suggests that the staff within the nursing home are well able to identify and cope with any heightened displays of anxiety by JU and, again, there is nothing to suggest that the nursing home staff are not able to cope with any peaks and troughs in JU's presentation based on the history of her period of residence in the nursing home.'

The Court accordingly held that the Article 2 duty was not engaged at present.

The Court further held that the statutory provisions in the Mental Health (NI) Order

1986 and the Mental Capacity Act (NI) 2016 were clearly adequate to deal with any deterioration in JU's condition or presentation and were available to Trust employees and to the nursing home employees if they required them.

Inherent jurisdiction of the High Court

Mr Justice McFarland went on to consider the inherent jurisdiction of the High Court in Northern Ireland.

In considering the exercise of the inherent jurisdiction, the Court was keen to emphasise that the starting point is to consider whether there are any gaps in the legislation, and then whether the court, in the role of *parens patriae*, is required to fill the gap to protect the wellbeing of the citizen.

The Court further highlighted the comments made by Keegan J in *O & R* [2020] NIFam 23 when she noted that the inherent jurisdiction was a safety net and not a springboard, and further that the inherent jurisdiction should not be used to reverse an outcome under a statutory scheme which deals with the actual issue.

The following observations were made by the Court about the recent direction of travel in this area:

'83. The theme emerging from this recent line of authority is not a new one but reflects a caution which the courts have always held against any form of interference in the liberty of a citizen. If the citizen lacks capacity either because of their age or their medical condition, then the court will act, as required, to protect their wellbeing. If, however, they do not lack capacity, it is not the role of the court to interfere with the liberty of a citizen, albeit for the best of motives. The deprivation of the liberty of a capacitous adult is a matter for the legislature subject to the compatibility provisions of the Human Rights Act 1998.'

Mr Justice McFarland ultimately concluded that the inherent jurisdiction of the court is not available in cases of making deprivation of liberty orders for vulnerable, yet capacitous, adults.

An important note in respect of Article 8

It is also important to note that the Court recognised the potential interference with Article 8 rights. Indeed, at para 88 of the decision, the Court stated:

'There is a strong argument to suggest that granting these powers to the Trust when JU is not only capacitous, but also receiving and taking appropriate medication, and is both settled and compliant within the nursing home and capable of carrying on her life with appropriate social interaction with staff, fellow residents and the wider community, would be hard to justify under Article 8 ECHR as a proportionate response.'

Outcome

The Court ultimately concluded as follows:

'89. The ultimate conclusion in relation to the situation in respect of JU is that although the Trust do owe her an operational Article 2 ECHR duty, her current presentation does not engage that duty. Should there be a deterioration in her condition (whether temporary or permanent) then the duty may become engaged, however the combined statutory scheme of the MHO and the MCA is available and proper application of the powers vested by the legislation would be sufficient to fulfil any duty. There being no gaps in the legislation there is no scope for the court to exercise its inherent jurisdiction, and even if it could, the court could not restrict the liberty of JU as long as she retained her capacity.'

The Trust's application was accordingly dismissed.

Notes for practice

Under Article 2 of the ECHR, the State has a positive obligation to take appropriate steps to safeguard the lives of those within its jurisdiction. However, this case demonstrates that where an individual has capacity and there are no current red flags regarding mental health issues, public authorities have limited scope to deprive individuals of their liberty and are restricted to powers available to them under the current statutory framework contained within the Mental Health (NI) Order 1986 and the Mental Capacity Act (NI) 2016.

CASE COMMENT

AGNEW RULING SETS HOLIDAY PAY ANEW: PSNI AND STAFF OFFICERS' HOLIDAY ENTITLEMENT CONFIRMED BY SUPREME COURT



Seamus McGranaghan,
Director of Commercial
at O'Reilly Stewart

Seamus McGranaghan, Director of Commercial at O'Reilly Stewart, discusses the recent Supreme Court judgment of *Chief Constable of the Police Service of Northern Ireland v Agnew*.

Introduction

The landscape of employment law has changed significantly in Northern Ireland since the seismic days of the Fair Employment (Northern Ireland) Act 1976 (since amended). Due to the devolution of employment law matters to the NI Assembly, Northern Ireland is often left behind where key legislative developments are made across the water. However, Northern Irish law has recently found itself at the heart of a long-awaited judgment handed down by the UK's highest court.

The Supreme Court judgment of [*Chief Constable of the Police Service of Northern Ireland v Agnew*](#) outlined that historic holiday pay claims can be brought even where there is a gap of three months or more between a series of underpayments or correct payments. The previous rule of the 'three-month break' had been used to limit claims for holiday pay and other claims for unlawful deduction of wages since 2014.

Background

Employees in this jurisdiction, like elsewhere, are entitled to holiday pay as per the Working Time Regulations (Northern Ireland) 1998. Over 3,300 police officers and 350 civilian staff lodged claims against the Police Service of Northern Ireland in respect of unlawful deduction of wages and underpayment of holiday pay. The claimants' position was that their employer was incorrectly calculating their holiday pay by reference to their 'basic pay' only, as this served to ignore the additional elements of pay that the claimants received, such as overtime and other similar allowances. In previous EU and UK caselaw, there existed a well-founded principle that workers should receive their 'normal pay' when taking holidays, which includes basic pay, regular overtime and other regular allowances.

Judgment

Examining the appellate history of the case, the Tribunal upheld these claims in the first instance, finding that the decision of *Bear Scotland v Fulton* was wrong to find that a gap of three months or more would automatically break a 'series of deductions' for the purposes of a claim for holiday pay. The PSNI later appealed to the Northern Ireland Court of Appeal. There it was held that a 'series of deductions is not ended, as

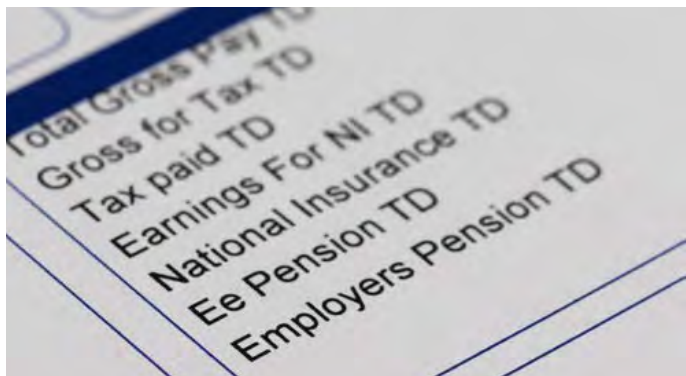
a matter of law, by a gap of more than three months between unlawful deductions nor is it ended by a lawful payment.' The Court of Appeal also found that the method of calculation used for the officers' holiday pay, by reference to basic pay instead of 'normal pay', served to link the payments as a series of deductions, as had been the case since 1998. The PSNI then appealed to the Supreme Court.

Crucially, the PSNI did not dispute that the original claimants had been underpaid. The key issue for determination was the question of how far back in time could a claim go in respect of underpaid holiday pay. The key arguments advanced in this respect surrounded the idea of a 'series', whereby the claim is based on a series of underpayments. The PSNI sought to argue that a series of wage deductions would be broken by a gap of three or more months between deductions, or by the payment of a lawful or 'correct' payment.

In handing down its seminal judgment, the Supreme Court upheld the decision of the Northern Ireland Court of Appeal, namely that the three-month break rule will not result in an automatic break of a series of deductions. In removing this rule previously established in *Bear Scotland v Fulton*, a claimant may still be able to claim for underpayments even where there has been a three-month gap between underpayments, as long as they form part of a series of deductions. The Supreme Court recognised that the old rule could lead to unfair results and act against the legislation's purpose of protecting workers from exploitation.

The Supreme Court further held that making a lawful payment in the middle of a series will not necessarily break that series of deductions. Ultimately, it is a question of fact as to whether a deduction forms part of a series. When considering such claims, the Tribunal will need to weigh all relevant factors to make a determination, with reference to the value and frequency of the deductions and how they are linked by a 'fault'. In the case of *Agnew*, the common fault that linked the underpayments was the basis on which the holiday pay was calculated, namely by using basic pay instead of 'normal pay'.

In providing the lead judgment, Lady Rose noted that the PSNI's case had relied on a provision in the Working Time Regulations



which would 'restrict the police officer claimants to claim only sums relating to holiday pay which they were paid in the three months before their claims were started before the industrial tribunal. The claimants say they can rely on an alternative provision in the *Employment Rights (Northern Ireland) Order 1996*,' she added.

This provision 'would allow them to claim underpayments which arise from a series of payments provided that the last underpayment in the series was not more than three months before they brought their claim before the Industrial Tribunal. Of course, if the claimants (police staff) can rely on the series extension then their claim can cover many more holidays they took in previous years, going back much further than just the three months before they lodged their claim.'

Lady Rose added that the Industrial Tribunal held that 'all the clients could rely on the series extension and that most if not all the payments they had received were in a series for that purpose. So, there is a very substantial difference between the value of the claim depending on whether they can rely on the series extension. That meant they could claim back over a number of years and not just over the most recent three months the employers unsuccessfully appealed to the Court of Appeal. The employers now appeal to the Supreme Court and the Supreme Court unanimously dismisses that appeal.'

The Supreme Court also addressed the issue of whether the PSNI officers were eligible to bring these claims by interpreting the Working Time Regulations (Northern Ireland) in a manner that provided equivalent rights to the police officer claimants, meaning that they could bring claims for series of underpayments under those Regulations. The PSNI had previously argued that the officer

claimants were ineligible to bring the claims for a series of deductions. This issue, although decided in obiter, was therefore a welcome finding in the eyes of the claimants.

Analysis

The Supreme Court's seminal decision finally resolves important points of principle and the long running dispute regarding the 'cut off' for backdated holiday pay. It means that a series of deductions for underpaid holiday pay for NI based workers could extend as far back as 1998, when working time legislation was introduced.

This decision has been overwhelmingly welcomed by a wide cross-section of society in Northern Ireland and in wider Great Britain. Undoubtedly, the decision will be most welcomed by the PSNI officers who are allegedly owed millions in holiday pay. The Police Federation for Northern Ireland, which represents rank and file officers, said the holiday pay judgment was a 'most significant legal milestone into securing what is due to thousands of officers.' This development

occurs amid a challenging period for the PSNI as the data breach scandal continues to unravel with serious repercussions for members of the force and their families in their daily lives. The PSNI now have a hefty legal bill of £40 million to pay out.

Most employers should by now have addressed any issues with their holiday pay calculations, by referring to 'normal pay' instead of basic pay. If any such issues remain outstanding, employers should be proactive in remedying any underpayments, especially given the lack of a two-year backstop in Northern Ireland compared to other parts of the UK. Employees should also review their own holiday pay arrangements to ensure they are not missing out on their true entitlements.

Looking to the future, the possibility of legislative reform remains open as a result of *Agnew's* impact, as the UK government continues to propose making potential changes to holiday entitlement and holiday pay after closing a consultation earlier in the summertime.



Law around the World

Venezuela urges judges to stop resumption of ICC probe

Jurisdiction: Venezuela

Venezuela has objected to the ICC's decision to resume an investigation into alleged human rights abuses in the country, saying that it is already investigating such claims and denying that large-scale crimes against humanity have taken place.

Isle of Man parliament backs bill to legalise assisted dying

Jurisdiction: Isle of Man

The island's Parliament has backed a proposal that would give the terminally ill the right to choose an assisted death, in a move that has been hailed as a 'historic step' by right to die campaigners and a 'dangerous and ideological policy' by opponents.

Online law schools could win ABA blessing in major policy shift

Jurisdiction: USA

The American Bar Association (ABA's) legal education arm is considering extending accreditation to fully online law schools, in what marks a major shift from its longstanding prioritisation of in-person teaching. The Law Dean of the oldest online law school - Perdue Global Law School - said he was 'very happy' with the development.

Deliveroo riders lose trade union appeal in Supreme Court

Jurisdiction: UK

The Supreme Court has ruled that riders for food delivery company Deliveroo are not legally classed as employees and cannot rely on trade union protections. In their ruling, Judges said that the terms of riders' contracts were not consistent with those of an employment relationship.



From the Courts - Abstracts of recent Case Law

Below please find headnotes and links to the full text of selected judgments from the High Court and Court of Appeal.

Please note that these headnotes are for guidance only.



CRIMINAL LAW

[R v Omar Ahamad](#)

Examination of sentence for drug-related offences. - importation and intent to supply. - pleas of guilty were entered at arraignment. - Judge imposed a sentence of 18 months' imprisonment on counts one and two, and two years' imprisonment on counts three to six. - sentences to run concurrently and suspended for three years. - DPP maintained the overall sentence was unduly lenient. - packages containing heroin were intercepted by UK Border Force. - packages had respondent's home address and the address of his ex-wife and children who confirmed she received packages for him. - respondent also had documentation relating to the drugs in his car and scales. - total wholesale value was over £50,000. - respondent claimed asylum in 2005 and came to Northern Ireland in 2015. - no previous convictions and of good character. - respondent began using cannabis and pressurised through associates to become involved in the enterprise. - HELD THAT the sentence imposed is quashed and substitute the suspended sentence for immediate imprisonment of two years and six months equally between custody and licence.

Keegan, LCJ

18 September 2023

Court of Appeal

[R v Jonathan Brown, Mark Sewell, Robert Spiers, Walter Alan Ervine, Glenn Rainey, Jill Morrison, Thomas McCartney, Christopher Haire, Reece Kirkwood and Neil Ogle](#)

Ruling on application by Neil Ogle for a No Bill. - defendant is charged with failing to give information within a reasonable time, without

a reasonable excuse in connection with a murder on 27 January 2019. - murder of Ian Ogle, defendant's uncle. - Ian Ogle and Ryan Johnston, the defendant's cousin, had subjected Neil Ogle to a vicious beating prior to Ian Ogle being murdered. - whether direct connection between the attack and subsequent murder of Ian Ogle. - defendant denied involvement or knowing anything about it. - whether defendant made a call which triggered or precipitated the murder of Ian Ogle. - risk of self-incrimination. - HELD THAT application for a No Bill is granted on the basis that a jury that is properly directed could not find the defendant guilty because he had a reasonable excuse for withholding information.

O'Hara, J

15 September 2023

Crown Court

[R v James Fox](#)

Ruling on an application for a No Bill under Grand Jury Abolition Act 1969 s.2(3). - committal papers do not disclose a case sufficient to justify putting defendant to trial. - whether defendant is guilty of any or all the various counts he faces. - in November 1994 an armed gang entered the Royal Mail sorting office to carry out a robbery and employee was shot and killed. - defendant was part of gang and is guilty of charges on the basis of joint enterprise. - alleged that those who carried out the robbery were IRA members and the defendant is charged with membership. - evidential issues to be considered. - defendant had been convicted of a similar robbery in Ireland in 1987 - issue of similarity. - consideration of evidence. - blood traces on trousers and jacket matching post office employee's blood. - likely to be that of defendant. - hairs found on cap came from defendant or someone closely

related. - HELD THAT application for a No Bill is dismissed. - case to proceed to trial.

O'Hara, J

17 August 2023

Crown Court

[In the matter of an application by Sharon Jordan, an applicant for bail](#)

Applicant was arrested in August 2020 and has been in custody for three years. - applicant is charged with a serious of offences relating to acts contrary to the Terrorism Act 2000, associated with the "New IRA". - applicant had attended meetings which involved the New IRA where extensive discussions took place including military strategy, recruitment, potential targets and weaponry. - meetings were the subject matter of video and audio surveillance. - applicant has a relevant criminal record for offences including firearm offences and terrorist training. - also subject to counter terrorism registration for 15 years. - applicant has made three applications for bail and was released to attend her mother's funeral in December 2022. - whether prosecution has reasonable suspicion that the applicant committed the offences for which she is charged. - whether applicant will commit further offences, abscond or interfere with the course of justice if she is released on bail. HELD THAT applicant can be admitted to bail under strict conditions.

Colton, J

29 September 2023

Kings Bench Division

[In the matter of an application by Kevin Barry Murphy for bail](#)

Applicant was arrested on 18 August 2020 and has been remanded

in custody since that date. - first application for bail. - applicant faced a number of charges relating to terrorism. - whether applicant is guilty of the charges. - whether reasonable suspicion has been established. - whether if released, applicant could commit further offences, abscond or not turn up for trial or interfere with the course of justice. - prosecution case rests on video and audio surveillance. - applicant had been present at meetings of the New IRA Army Council. - previous criminal record. - consideration of personal circumstances. - judicial consistency. - passage of time. - HELD THAT bail should be refused at this moment as Judge cognisant that committal proceedings will soon conclude. - application dismissed.

Humphreys, J

6 September 2023

Kings Bench Division

FAMILY LAW

[A Mother and A Father and in the matter of a female child aged 11 years](#)

Ex tempore judgment. - residence order had already been agreed in favour of the father until the child attains the age of 16 years and a contact order with mother on 27 April 2023 when both parties were represented by a solicitor and counsel. - mother lodged an appeal on 11 May 2023 as she believed she had been refused fairness as a litigant in person and as a person with a disability. - whether Judge was wrong in making orders which she was told were agreed orders and by consent. - neither party presented evidence which was their choice and no adjournment was requested by, or on behalf of the mother at the 23

April hearing. - no adjustments by mother were required either. - HELD THAT the appeal is dismissed as it has no merit. - case transferred back to the Family Proceedings Court.

McFarland, J

25 September 2023

Family Division

LEGAL PROCEDURE

[Christina Cardy v Belfast Health and Social Care Trust and South Eastern Health and Social Care Trust and Bayer PLC](#)

Application by third defendant to set aside the service of the writ. - plaintiff issued own summons seeking to extend validity of the writ. - plaintiff had claimed damages for personal injuries, loss and damage alleged to have been sustained due to negligence of the first and second defendants in respect of medical care and services provided in connection with the insertion of a female sterilisation device. - plaintiff alleges misrepresentation, negligence and breach of statutory duties in respect of the development and manufacture of the device. - whether proceedings were served in accordance with the Rules and before the expiry date. - whether plaintiff address was incorrect on writ of summons and subsequently both the writ and service thereof were defective. - extending the validity of the writ. - cure irregularities with service. - HELD THAT defendant's application is refused and grant the plaintiff's application curing the irregularities with service of the writ. - leave is granted to amend the writ to reflect the correct address of the third defendant.

Harvey, M

13 October 2023

Kings Bench Division

PERSONAL INJURIES

[James Moore v Harland & Wolff PLC and Somewatch Ltd](#)

Appellant aged 70 years developed pleural plaques as a secondary victim having been exposed to asbestos from his father who had worked as a pipe lagger at Harland & Wolff from 1948-1983. - domestic exposure to asbestos. - application

had been previously dismissed as appellant had not proven his exposure to asbestos increased his risk of contracting pleural plaques. - whether Judge had erred in awarding costs without affording the appellant the opportunity to make submissions to the court. - consideration of *Holtby* principles. - whether appellant had less exposure in his teenage years. - held that appeal is allowed.

Keegan, LCJ

10 October 2023

Kings Bench Division

PLANNING LAW

[In the matter of an application by Gordon Duff for leave to apply for judicial review](#)

Appeal from a decision of 30 September 2022 when applicant's application for leave to apply for judicial review was dismissed. - leave was refused on the basis the claim was out of time and unarguable. - whether applicant had standing. - whether applicant has sufficient interest. - none of the applicant's private law rights are affected as he does not live nearby and has no property in the vicinity. - applicant did not participate in the planning process which led to the decision he now seeks to challenge. - applicant is not a suitable representative of the public interest in this case. - whether site map had been fraudulently altered. - HELD THAT the applicant does not have standing and is out of time and appeal is dismissed.

McBride, J

20 September 2023

Court of Appeal

ROAD TRAFFIC

[DPP v Kevin Nixon](#)

Appellant was the subject of a summary prosecution alleging that he had committed two road traffic offences. - speeding and failing to provide information about the driver of a vehicle. - appellant was the registered owner of a vehicle recorded on a speed camera driving above the speed limit. - he did not comply with a notice to provide details of the driver of the vehicle. - appellant compels the Judge to state a case for the opinion of the Court of Appeal

under a.61 of County Courts (NI) Order 1980. - appellant had previously stated seven issues or grounds to the County Court Judge. - County Court Judge had determined that six issues were frivolous and unreasonable and applicant had misunderstood the law - HELD THAT the earlier decision of the County Court Judge is entirely sustainable in law. - appellant had failed to establish any new grounds. - case dismissed.

McCloskey, LJ

6 September 2023

Court of Appeal

SEXUAL OFFENCES

[In the matter of an application by Martin Ward for judicial review](#)

Applicant challenges that he remained subject to the notification requirements contained in Part 2 of Sexual Offences Act 2003 in the period prior to his successfully appealing to the County Court. - Order 53 statement alleges illegality under domestic law and ECHR against the PSNI. - notification requirements should not have been enforced pending "the final determination of the criminal proceedings". - whether applicant treated contrary to Article 40 of the Magistrates' Courts (NI) Order 1981. - applicant had been convicted of exposure and two further complaints of criminal damage. - sentenced to imprisonment of six months, suspended for three years. - requirement to register with the police. - applicant's solicitor indicated intention to appeal. - applicant complied with the notification requirements notwithstanding that he had issued judicial review proceedings. - exposure and criminal damage complaints were dismissed and applicant was no longer subject to the notification requirements. - HELD THAT that the claim must be dismissed.

Friedman, J

15 September 2023

Kings Bench Division

SOCIAL SERVICES

[In the matter of an application by JR241 and others for judicial review](#)

Mother (JR241) and her two children for whom she acts as next friend challenge a decision of the Trust to cease funding the provision of day care for children. - children are "children in need". - child protection register. - potential emotional and physical abuse. - domestic violence at hands of father. - mother and children moved home to a different town to provide distance from father. - Trust provided day care in new town initially until decision taken to withdraw funding for it. - deemed no longer necessary or appropriate to provide childcare. - whether JR241 notified of decision. - procedural fairness and engagement with applicant. - engagement with professionals. - HELD THAT application is dismissed. *Scofield, J*
19 September 2023
Kings Bench Division

[In the matter of an application by JR262 for leave to apply for judicial review and in the matter of decisions of Belfast Health & Social Care Trust](#)

Applicant is a minor and an Eritrean national. - he will be 18 in January 2024. - challenges the Trust's alleged failure to provide accommodation for him as a "separated child". - applicant's brother acts as applicant's next friend. - neither have contact with their mother or father. - both sought asylum on arrival in Belfast and were provided accommodation in various hotels and a house. - range of health and social care supports were put in place for the brothers. - whether welfare of applicant is best served by being with his brother and by being provided appropriate support. - HELD THAT leave to apply for judicial review is granted insofar as they are based on arts 21(1) and (3) of the 1995 Order, although application for judicial review is refused. - leave to apply for judicial review in relation to the other identified challenges is refused.

Simpson, J

27 September 2023

Kings Bench Division

The Last Word

Corporate Jargon: A 'Helicopter View'



Jordan Hanna,
Associate, Arthur Cox LLP

Jordan Hanna offers his thoughts on some of the corporate language which has recently made its way into the legal sector.

Introduction

At the Institute it was 'drilled' into my cohort of erudite and linguistically sophisticated would-be solicitors that the modern client demands shoot from the hip, plain English when receiving advice. Legalese is a thing of the past, and now linguistic anthropologists have found that to compensate for the lack of opportunity to mystify and bamboozle the layman a new language has been formed: the language of corporate jargon. Rapidly changing and ever-evolving, the Institute hasn't quite got around to adding this topic as a module, and so, with this article, I make my pitch for being the first guest lecturer on the topic and offer a foundational course in *Corporate Jargon for Beginners*. So, without further ado, let's take a 'deep-dive' into those phrases we know and love by selecting examples from my own sent folder in Outlook.

'Fighting fires'

Read: 'busy'

I use this phrase as an introduction to the topic generally because it gets right to the heart of exactly why we speak the way we do in the office. No-good spoilsports such as *The Secret Barrister* have stripped away all the mystique and grandeur of our once (in the eyes of the public) sexy profession, revealing to the world that what we do is only about 10% swashbuckling dealmaking and about 90% routine form filling. Therefore, it's important to remind one another that the other 10% still exists. And so, instead of simply relaying to your colleagues that you are busy, which runs the risk

of making you sound weak and overwhelmed, you instead elevate your heavyweight inbox to a towering inferno that you are bravely staring down with no more than a water pistol.

'Close of play'

Read: 'end of the day'

Workers have work 'days', but for solicitors, every day is a sports game to be won, lost or drawn. The practice of law has yet to be officially recognised as a valid event by the Olympic Committee, so we use this phrase to enforce the fact that we are athletes, akin to the likes of Lebron James for whom the clock is both friend and foe depending on the score of the adrenaline-fueled match being played daily.

'It's on my radar'

Read: 'I will do that when I get time'

Items on our to-do lists are not merely routine tasks, oh no. They are impending warheads that if not properly monitored will lead to the destruction of this fair city. While the rest of humanity is metaphorically asleep we act like WWII radarmen, dutifully ensuring that the worst does not befall them. Expressing yourself in this way reinforces this idea so that you never become lax in your role as watchman.

'Circle back'

Read: 'return to a previous topic'

In a manner reminiscent of a fighter pilot missing a bombing target, solicitors too sometimes must 'circle back' during the course of a meeting with a client to ensure that not one inch of ground is left uncovered. Of course, it would be ludicrous to suggest that you failed to pick up on something the first time, or that something new has just occurred to you. Instead, use this phrase to achieve that end without revealing any fault on your part.

'Action'

Read: 'do'

Anyone can 'do' as they are told, but we solicitors 'action' things. Going to do something to

progress a case? You could just say that, or you could say that you will 'action' it, which is guaranteed to increase the value in the eyes of the client by at least 50%.

'Thanks in advance'

Read: 'do as I tell you'

This arrogant little turn of phrase cleverly builds in the assumption that the person you are speaking to is going to jump to attention and immediately get down to the task you haven't asked, but demanded, that they perform for you. It's hugely effective in both raising fury in and elevating yourself above the person you're communicating with.

Now that Mr Snarky has had his fun, it's time to bring this article to a close. It is genuinely interesting how different workspaces develop their own idiosyncratic languages and what those convey about the culture of such workspaces. I would like to close the topic by briefly mentioning one last example. During the course of a case I was once accused of attempting to 'parse cheese', a phrase which to this day I still do not know the meaning of and can't find anyone else who does (I welcome letters to the Editor). Despite this, it undeniably has the feeling of a corporate colloquialism and I can only conclude that it is entirely made up as a private joke and the author is slowly incepting it into our corporate vernacular so they can reveal when the nonsense is one day finally repeated back to them, and that, dear reader, is the jargon game played at its height.





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