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THIS ISSUE

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representation for
borrowers and
lenders?

John Guerin
President



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Practice Direction No. 1
of 2015

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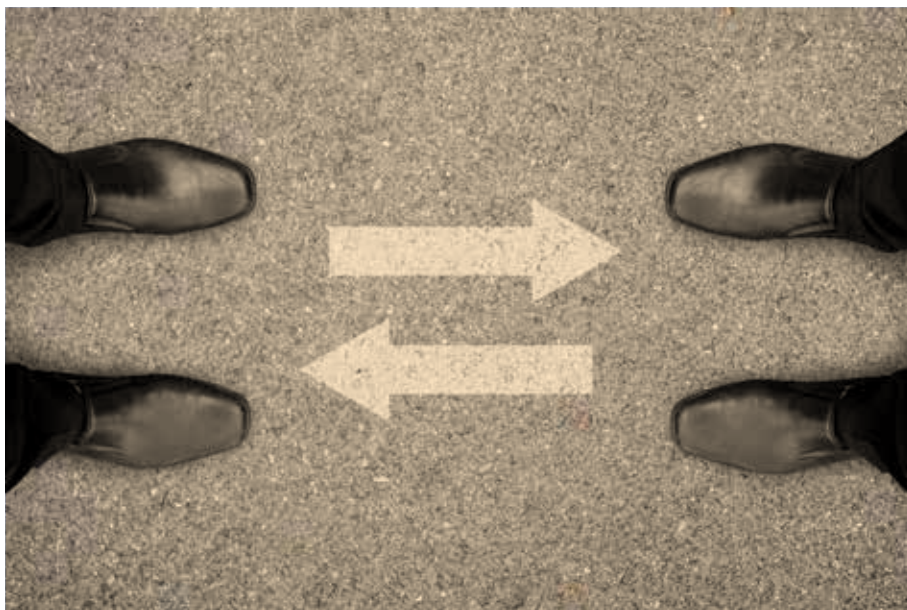
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Correction

In the Spring 2015 issue of The Writ, we incorrectly attributed an article entitled 'Discharge Consents: a cause for concern?' to Steven Cockcroft of Johns Elliot Solicitors. The author of the article was Jason Thompson of Johns Elliot Solicitors and we apologise to both parties for this error.

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Separate representation for borrowers and lenders?

Members will be aware that in recent months there have been two Special General Meetings of the profession.

The first meeting was to discuss whether or not members should act for both Mortgagor and Mortgagee in the same transaction. There is a view that such represents a conflict of interest. There is also a view that such conflicts can be appropriately managed by solicitors.

The second meeting was held to propose that a postal vote be taken on whether or not a Solicitor should act for a lender and a borrower in the same transaction.

Running in parallel with the Special General Meetings there have been ongoing negotiations with the Council of Mortgage Lenders in relation to a new Certificate of Title for transactions in Northern Ireland.

These negotiations have taken place under the stewardship of Mr Richard Palmer (former President of the Law Society) and agreement has been reached on a new Certificate of Title and I would ask each of you to review it.

Agreement of the new Certificate of Title does not detract from the issue of separate representation and in accordance with the resolution from the Special General Meeting on 14 April a postal ballot will take place on whether or not Solicitors should act for both the Lender and Borrower in the same transaction. The vote will not be determinative since Council has statutory responsibility to make such decisions. Obviously, however the vote will inform Council's views on the next steps. If Council takes the view that separate representation is desirable, then further consultation will take place with a range of parties.

I can assure members that in advance of the postal vote a further Special General Meeting will be arranged to allow for an informed and an informative discussion on the subject to take place.

The Special General Meeting and postal ballot will take place after the summer recess and further information will be publicised to the membership in due course.

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Charity Law update



Since delivering the CPD Seminar on Charity Law for the Law Society in February 2015 Jenny Ebbage, Partner and Head of the Charities Team at Edwards & Co. Solicitors,

writes on some recent developments. Over the year it has been a fast moving environment for charities in Northern Ireland and it is important for practitioners to keep up to date so as to provide accurate and timely advice to charity clients or to better inform themselves should they sit on a charity board.

It would be impossible to cover everything in this short piece but even a cursory look at the News items on the Charity Commission for Northern Ireland's website will identify significant recent movement in regulation impacting on the charity sector. Take charity accounting for example. The new regulations, the Charities (Accounts and Reports) Regulations (NI) 2015 came into effect on 1 January 2016, these affect charity accounting and reporting. It is a legal requirement for registered charities to report annually to the Commission. All registered charities are required to complete and submit an online annual monitoring return form, and their accounts and reports. The full reporting and accounting regulations apply to charities reporting on a full financial year that begins on or after 1 January 2016, or those registered with the Commission on or after 1 January 2016. Interim arrangements remain in place for charities registered before 1 January 2016. Charities that are companies must comply with the Companies Acts as well. The reporting obligations are primarily determined according to the level of income of the charity. The trustees annual report will be of interest as the trustees have to report on how the charity meets the public benefit requirement. The full annual monitoring return also requires charity trustees to identify if any serious incident reports need to be made. It is hoped that the guidance issued by the Commission on accounting and reporting will follow soon. In addition, the adoption of the new SORP, makes it essential for new charities to ensure that their accounts are in the right format.

Although not all charities are registered, and this process is likely to take a couple of years to complete, more than 4300 charities appear on the register. The registration of charities looks like a simple enough process at the outset; however, this has proved to be a challenge on occasions particularly when the charitable purposes do not neatly fit within any of the twelve charitable purposes on the registration application. We find that clients struggle with the concept of the public benefit statement and find it hard to articulate and demonstrate their public benefit. On occasion the registration application has acted as a catalyst for a wide-ranging governance review and also an opportunity for upskilling boards and those who work with them. From Friday, 3 June 2016 an updated version of the online charity registration application form is expected to go live. This is to be a more user friendly and intuitive version of the online application process, with a change to the look and flow and format of the questions being asked. Hopefully this will assist charities to register more easily.

We are keeping a watching brief on the outcome of the recent non-domestic rates consultation and in particular if this affects charity shops.

Equality Guidance for charities was produced in conjunction with the Equality Commission for Northern Ireland to help charities understand equality legislation as it applies to charitable bodies and where exemptions apply to charities.

Those practitioners who also practice company law will be aware of the likely impact of the Small Business, Enterprise and Employment Act 2015 which is relevant to those charities that are companies limited by guarantee and to trading subsidiaries. Also be aware from 30 June 2016 that confirmation statements (which replace annual returns) to Companies House must contain "beneficial ownership" details, this follows from the launch of the Person with Significant Control (PSC) Register, which requires certain organisations including companies to report on the people who own or control their business.

The "Monitoring and compliance guidance – Getting it right" issued by the Commission, helps charity trustees and their solicitors by providing a summary of some of the relevant legislation and a checklist to help charities to

comply with their legal obligations. This can be read in conjunction with the *Running your Charity* guidance. Of particular interest are the sections on how the Charity Commission monitors and identifies non-compliance and what consequences arise for charity trustees when non-compliance is identified.

In Edwards & Co. we have advised clients where a concern has been raised and the Commission has imposed self-regulatory or regulatory guidance or in other instances invoked its statutory inquiry process.

So far as the Charity Tribunal is concerned there have been a number of decisions published. Many of these have arisen from the institution of statutory inquiries and the removal of charity trustees.

The Court of Appeal decision in *Charity Commission for Northern Ireland and Bangor Provident Trust and the Attorney General for Northern Ireland*, seems to have now settled the question that Bangor Provident Trust was indeed a charity and subject to the jurisdiction of the Commission which had instituted a statutory inquiry under s. 22 of the Act citing a concern in relation to governance and financial matters. The decision of the Commission to institute the inquiry dated back to August 2012 and the matter had been considered by the Charity Tribunal and subsequently appealed to the High Court and then to the Court of Appeal.

In March the Charity Commission published its Interim Statutory Inquiry Report into the Disabled Police Officers Association Northern Ireland. In early May 2016 the High Court (Chancery Division) delivered its judgment in *Attorney General for Northern Ireland and Robert Crawford (a trustee of the Disabled Police Officers Association)*, and the Charity Commission, which was an application by the Attorney General to appeal a decision of the Charity Tribunal for Northern Ireland on various points of law. The Attorney General was using his powers under s. 14 of the Charities Act (NI) 2008. The Attorney General sought to appeal the decision of the Charity Tribunal to remove Mr Crawford as trustee of the charity. The Attorney General was not involved in the hearing before the Charity Tribunal, but intervened to appeal the decision of the Tribunal. Mr Justice Horner concluded that the appeal raised various issues which may be of general importance in other appeals

and issues as to how a decision of the Charity Tribunal should be recorded, and in particular the importance of setting out in an unambiguous fashion the findings of facts, and providing reasons which are intelligible and meet the substance of the arguments advanced and which the Tribunal was required to consider. Mr Justice Horner granted leave to extend time given that there are points of general and not merely particular significance, and in particular that answers were provided to issues such as the correct interpretation of “administration” in

the Charities Act. We shall continue to watch this matter with interest.

Advising on charity law matters on a day-to-day basis a number of challenges come across the desk. One thing is certain that even though you have undertaken a particular transaction or application before you cannot be certain that the same issues and considerations will apply the next time as practices and procedures are developed and revised. One of the most challenging areas has been dealing with old trusts and endowments and in particular

identifying the proper forum to bring the matter forward for consideration.

Any solicitor or charity trustee should keep a watching brief on this developing area.

Editor's Note: All decisions from the Charities Tribunal are held on the Libero database maintained by the Society's Library and available on the Society's website www.lawsoc-ni.org.

2016 new NI Departments

Below are the new Departments for the Northern Ireland Executive. The changes are effective from 8 May 2016 by virtue of Departments (2016 Act) (Commencement) Order (NI) 2016 SR 89.

New Department 2016	Encompasses	Website
Dept of Agriculture, Environment & Rural Affairs (DAERA)	The functions of the former Dept of Agriculture & Rural Development (DARD) excluding Rivers' Agency. Environmental functions of the former Dept of Environment (DOE). Inland fisheries from the former Dept of Culture, Arts and Leisure (DCAL).	www.daera-ni.gov.uk
Dept for Communities (DfC)	The functions of the former Dept for Social Development (DSD). Functions of DCAL, including PONI, but excluding inland fisheries and waterways. Employment service from the former Dept of Employment and Learning (DEL). Local government from DOE, including Built Heritage from NIEA.	www.communities-ni.gov.uk
Dept for the Economy (DfE)	The functions of the former Dept of Enterprise, Trade & Investment (DETI) and DEL (except for the Employment Service).	www.economy-ni.gov.uk
Dept of Education (DE)	The functions of the former Dept of Education. A range of services (excluding child protection) for children and young people.	www.education-ni.gov.uk
Dept of Finance (DoF)	The functions of the former Dept of Finance and Personnel (DFP).	www.finance-ni.gov.uk
Dept of Health (DoH)	The functions of the former Dept of Health, Social Services and Public Safety (DHSSPS).	www.health-ni.gov.uk
Dept for Infrastructure (DfI)	The functions of the former Dept for Regional Development (DRD). Driver and Vehicle Agency (DVA) functions from DOE. Strategic planning from DOE. Rivers' Agency from DARD and inland waterways from DCAL.	www.infrastructure-ni.gov.uk
Dept of Justice (DoJ)	The functions of the former Dept of Justice (DOJ).	www.justice-ni.gov.uk
The Executive Office	Some of the functions of the former Office of the First and Deputy First Minister (OFMDFM) plus the Strategic Policy and Innovation Unit.	www.executiveoffice-ni.gov.uk

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The real threat of cybercrime



In this article Joanne Cracknell MSc LLB (Hons) Divisional Director of Willis Towers Watson highlights the dangers posed by cybercrime to law firms

Cybercrime is a global phenomenon that is escalating and the risk it poses cannot be ignored. The advances in IT infrastructure and our dependency upon the use of technology in our personal and professional lives have resulted in an upsurge in cybercrime.

The impact of cybercrime has significantly increased within law firms and is of growing concern to members of the legal profession, those who regulate it, those who provide professional indemnity insurance cover to fund the losses incurred and also law firms' clients.

The increase in reports of cybercrime to the Society and/or Willis Towers Watson (appointed by the Society to place the Master Policy for Professional Indemnity) from firms falling victim to scams, fraudulent activity, theft of client monies and the risk of client information being compromised has led to the need for training, heightened awareness and the reinforcement of information management and security measures.

Cybercrime is not a new crime but it is a new issue for the legal profession. Cybercriminals see the legal profession as an attractive target because of the access to vast sums of client monies held in firms' client accounts and confidential and sensitive information held about their businesses and their clients. Data and money are considered to be extremely valuable commodities to cybercriminals.

It is essential that firms comply not only with their legislative requirements, such as the Data Protection Act 1998 but also their regulatory obligations. Firms should implement measures necessary to protect not only themselves, but also their clients from the threat of cyber attack.

These measures include having effective policies and procedures in place to deal with cyber security and ensuring that all staff receive the necessary training.

Solicitors must comply with the Society's Solicitors' Practice Regulations 1987 (as amended) ("the Regulations")¹ and are expected to act with integrity, act in the best interests of their clients and behave in a way that maintains the good repute of solicitors.² These professional conduct principles are essential, especially as more and more firms are falling victim to cyber attacks.

Whilst cyber vulnerabilities are prevalent, it is how they are managed and how the impact of such vulnerability is quantified that matters. To join the fight against cybercrime everyone, including managers and employees, should be aware of the threat and they need to be educated about the preventative measures.

Cyber security is a business issue that is here to stay and ideally needs to be factored into firms' business strategies and budgets. It is necessary for firms to understand what data they hold on their IT systems because unless they do so, they are unable to accurately assess the importance of that data, implement measures to best protect the data and identify, monitor and manage the risk of different data types being lost.

It is recommended that firms work on the basis that breaches are inevitable. By carrying out a risk assessment of what type of data they hold, solicitors can identify what data matters the most to the business and what data they cannot afford to lose. Categorising data will help minimise the extent of data being exposed in the event of a cyber attack.

Solicitors are becoming familiar with the phishing and vishing scams being used by

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cybercriminals but there has been an increase in cyber-attacks known as the 'CEO email'. Employees are instructed by their "employers" to pay monies into specified accounts. Dutifully the employees follow their employer's instructions yet unbeknown to them, these instructions were not from their employers but were provided by a fraudster and monies are subsequently paid away to the fraudsters.

Another technique more commonly seen in conveyancing firms is known as 'interception and diversion'. Fraudsters hack into firms' IT systems and wait for the transactions to progress and when the details about the completion monies are exchanged via email between the firm and their respective clients the cybercriminals intercept the information from the firm's IT system. The payee details are manipulated by the cybercriminals and the monies are transferred to the fraudster's account upon completion.

Principals are required as a matter of regulation to replace any deficit in the client bank account(s) promptly. Breaches of regulations may lead to referral to the independent Solicitors Disciplinary Tribunal.

In addition to the Society having the power to take disciplinary action against firms for cyber breaches, the Information Commissioner's Office ("ICO") also has enforcement powers against the legal profession. The ICO can impose fines of up to £500,000 for serious breaches of the Data Protection Act 1998.³

The fallout from a cyber-attack for a firm could be catastrophic. It may result in the disclosure of confidential and sensitive information about clients or the business, theft of monies, damage to IT infrastructure and reputational damage.

Denial, complacency and the belief that 'it is not going to happen to us' or 'we will worry about it when it happens' will no longer be acceptable as the threat of cybercrime escalates. The insurance industry is concerned about the impact cybercrime is having on the legal profession. Whilst there are cyber insurance products available these are no substitute for an awareness and understanding of the issue of cybercrime and the potential risks it poses on the legal profession.

¹ Available from the Members' Section of the Society's website - www.lawsoc-ni.org

² Regulations 12(a) to 12(c) of the Solicitors Practice Regulations 1987 (as amended)

³ <http://www.legislation.gov.uk/UKPGA/1998/29/contents>

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Practice Direction No 1 of 2015: Expert Evidence in the Commercial List



In this article Ryan Elliott of The Elliott-Trainor Partnership Solicitors, Newry, considers issues raised by Practice Direction No 1 of 2015.

As of 1 June 2015, all proceedings in the Commercial List are subject to Practice Direction No 1 of 2015: Expert Evidence issued by The Honourable Mr Justice Weatherup.

The new Practice Direction is much more concise than its long-standing predecessor, Practice Direction No 6 of 2002. Its introductory paragraph reinforces the Overriding Objective of Order 1, Rule 1 and the **overarching principle** that expert witnesses owe a duty to assist the Commercial Court on matters within his/her professional expertise and that this duty overrides any obligation to the party from whom the expert has received instructions.

The Direction further maintains the duties placed upon solicitors to actively consider whether expert evidence is necessary, to ensure that the Court is informed at earliest review of the party's intention to rely upon expert evidence, and to justify the retention of an expert and the relevance of his/her expertise upon the Commercial Judge's request.

Whilst the Practice Direction maintains the status quo in respect of the principles governing expert evidence in the Commercial Court, it now succinctly stipulates the best practices that solicitors should adopt when initially engaging experts.

Prior to instruction, solicitors should establish whether the intended expert:

- i. has the appropriate expertise and experience for the particular instruction;
- ii. is familiar with the general duties of an expert witness;
- iii. can produce a report, deal with questions and have discussions with other experts within a reasonable time, and at a cost proportionate to the matters in issue;
- iv. is available to attend the hearing, if attendance is required; and
- v. have no potential conflict of interest.

Terms of engagement should be agreed at the outset and will normally include:

- i. the capacity in which the expert is to be appointed (party appointed expert or single joint expert);
- ii. the precise services required from the expert;
- iii. time for delivery of the report;
- iv. the contractual basis on which the expert's fees and expenses will be charged;
- v. time for making the payment;
- vi. whether fees are to be paid by a third party;
- vii. guidance that the expert's fees and expenses may be limited by the court.

Solicitors are concurrently directed to provide clear written instructions and relevant documentation to the appointed expert to include the following:

- i. basic information, such as names, contact details, and any relevant claim reference numbers;
- ii. the nature of the expertise required;
- iii. the purpose of the advice or report, the identity of all parties, a description of the matters to be investigated, and the precise issues to be addressed;
- iv. copies of the pre-action protocol correspondence and pleadings;
- v. those relevant documents which form part of disclosure, making clear which have been served and which are drafts and when the latter are likely to be served;
- vi. where proceedings have not commenced, whether they are contemplated and, if so, whether the expert is being asked solely for advice;
- vii. an outline timetable for the completion and delivery of each stage of the expert's work;
- viii. the dates of any negotiations, mediation, court sessions, and any requirements for the attendance of experts at or the production of information by experts at same;
- ix. the dates fixed by the Court or agreed

between the parties for the exchange of experts' reports and any other relevant deadlines to be adhered to.

A statement of the duties of expert witnesses, known as the Ikarian Reefer Rules,¹ is set out in Appendix 1 to the Practice Direction. Solicitors should furnish a copy of these rules (or indeed, a copy of the Practice Direction in its entirety) to the expert as a matter of course, and further draw his or her attention to Appendix 3 of the Direction which sets out the wording of Practice Direction No 7 of 2014; being the Expert's Declaration and the Joint Statement Declaration which must be included and signed off at the end of the expert's report (or latterly, any minute of meeting of experts).

Solicitors of opposing parties to a commercial action who instruct different experts are encouraged to seek to agree, where practicable, the instructions to the experts and ensure that experts receive the same factual material. It is imperative that solicitors act to honour the equality of arms principle by actively checking that the experts have access to all relevant information held by the parties.

There are **three key new provisions** incorporated into the Practice Direction of which practitioners should be aware.

The Commercial Court may direct a party instructing an expert to produce a Costs Budget.

Any directed costs budget will normally set out the projected costs of engaging the expert to, *inter alia*, produce a report and to attend as a witness at the hearing of the action. The Court is becoming increasingly concerned with establishing that the engagement of the expert will be in conformity with the Overriding Objective and in particular that the expert's anticipated costs are proportionate to the value of remedy sought by the plaintiff.

Where the Court directs a costs budget, the report and oral evidence of the expert will not be admitted unless the budget has been approved by the Court. Whilst the costs charged by the expert must not exceed the budget without the prior approval of the Court, the Judge may approve an increase or a decrease in the budget.

Solicitors are therefore strongly advised to inform experts at the earliest opportunity before terms of appointment are signed of the Court's



power to restrain costs that may be charged by them.

Any party may seek clarification of an expert's report by directing written questions to the party instructing the expert within 28 days of receipt of the expert's report.

Copies of the questions should be forwarded by the party to the expert and to all other parties who have received the expert report.

Written questions must only relate to the clarification of the expert's report, must be proportionate and may only be issued on one occasion. Experts should provide written answers to the party instructing the expert for forwarding to the party asking the question and all other parties who have received the expert report within 28 days. Expert's answers to questions become part of their reports.

Perhaps most significantly, the Commercial Court will expect an expert witness to have obtained a form of accreditation as an expert witness.

This requirement has emanated from the landmark 2011 judgment of *Jones v Kaney*²; where the Supreme Court, by a majority of five to two, decided that expert witnesses were not immune in the law of England and Wales from

claims in tort or contract for matters connected with their participation in proceedings. This decision, reversing a line of authority dating back more than four centuries, has divided legal opinion, with some commentators arguing that it may cause experts to become reluctant to express firm concluding remarks to the Court and render them unduly hesitant under cross-examination.

This latter argument is somewhat negated in respect of cases where single joint experts are appointed, as the new Practice Direction expressly provides that written questions should be put to experts before requests are made for them to attend court for the purpose of cross-examination.

In any event, this new provision will require practitioners to carefully consider who they instruct to act or agree to instruct as an expert witness, and solicitors should now routinely enquire as to whether the expert holds an accreditation from an official accreditor, such as the RICS Expert Witness Accreditation Service.

Finally, practitioners should keep in mind the sanctions that may apply due to failure to comply with the new Commercial List Practice Direction, whether or not proceedings have yet commenced.

In respect of acts or omissions constituting non-compliance when proceedings have already commenced, the Court may at its own

discretion or upon application impose wasted cost penalties against an expert or those instructing the expert, direct that evidence be inadmissible, and/or order that some or all of the expert's fees and expenses be disallowed.

The practical limitations of the replaced Practice Direction are maintained. The 2015 Practice Direction will have no application in respect of advice received from experts who are instructed only to proffer advice and not to prepare evidence for the proceedings. For example, an expert instructed to comment upon a single joint expert report.

However, the Direction will apply if experts who were formerly instructed only to advise are later instructed as an expert witness to prepare or give evidence in the proceedings.

Some 13 years have passed since the introduction of the preceding Commercial List Practice Direction. However it is readily apparent that the compliance of solicitors and appointed experts with the practices of the Commercial Court will continue to remain dependent upon early, attentive, and transparent communication between those professionally involved in litigious commercial actions.

Ryan Elliott, Solicitor

The Elliott-Trainor Partnership Solicitors, Newry

¹ *National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)* [1993] 2 Lloyd's Rep. 68.

² *Jones v Kaney* [2011] UKSC 13

S v S [2014] EWHC 7 (Fam): The door opens for arbitration in Ancillary Relief disputes



In this article Nigel Martin BL discusses the advantages of arbitration in solving disputes in Ancillary Relief claims. Nigel is a Member of the Chartered

Institute of Arbitrators, an IFLA trained and qualified Arbitrator and a Mediator Certified by Harvard Law School (HNI) More information on the key benefits of Arbitration are available at www.nigelmartin.co.uk.

In *S v S*, Sir James Munby, President of the Family Division of the High Court of England & Wales gave clear approval for the use of arbitration as a means of dispute resolution in Ancillary Relief claims. This article will address the legislative context in which that decision was reached and the key points addressed in *S v S*.

The legislative context

The various legislative provisions which previously regulated arbitration were codified in a single Act, the Arbitration Act 1996. The Act expressly extends to Northern Ireland and its provisions apply where the “seat” of arbitration is sited within Northern Ireland (Section 2). Whilst the Act itself contains no express definition of arbitration, the General Principles set out in Section 1 identify its purpose:

- (a) *The object of arbitration is to obtain the fair resolution of disputes by an impartial Tribunal without unnecessary delay or expense;*
- (b) *The parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest;*
- (c) *In matters governed by Part 1 the Court should not intervene except as provided by [Part 1].*

This object, expressed with admirable clarity, is supported and further advanced by the express duties imposed on the arbitrator (Section 33) and the parties themselves (Section 40).

Section 1(b) emphasises the autonomy of the parties to adopt a procedure for resolution by arbitration which meets their needs, (speed, cost and flexibility) subject to the minimum procedural safeguards. The Act, therefore, contains a binary procedural framework comprising both *mandatory* and *non-mandatory* provisions (Section 4). The mandatory provisions are contained in Schedule 1 to the Act and include such matters as the staying of legal proceedings, the general duties of the Tribunal and the parties, and the enforcement of the award. The non-mandatory procedural rules (which will apply in default of any alternative procedure agreed by the parties) are contained within the body of the Act and include such matters as, whether or not the strict rules of evidence as to the admissibility, relevance or weight of any material should apply and the form in which evidence should be submitted, eg orally or in writing and whether the Tribunal may appoint an expert and whether or not it can make a provisional award.

The Court’s powers pursuant to Section 1(c) are broadly confined to those which support

the arbitral process or correct a manifest injustice. Once the parties have entered into a valid and binding written agreement to arbitrate, the scope for either party to subsequently resile and resort to litigation before the Court is extremely limited. The broad but not unlimited autonomy provided to the parties by Section 1(b) endows arbitration with a flexibility which may better serve the interest of the parties than a “full-blown” Court adjudication of Ancillary Relief.

Arbitration as a means of dispute resolution alternative to the Court system has the potential to achieve significant time and cost savings. Often, one or two issues will emerge as “sticking points” in negotiations whether before or during formal Court proceedings. For example the quantum and duration of ongoing spousal maintenance by way of periodical payments, the valuation of commercial interests or farm lands, whether there should be pension sharing or set-off and, if so, the quantum of each. Whilst it is possible to have a discrete “valuation” hearing in the course of Ancillary Relief proceedings, this requires the initiation of proceedings by way of a Petition (usually on the grounds of Behaviour which brings with it a significant risk of escalation) and can only take place after the parties have filed substantive affidavits (in which each party will typically amplify accusations of behaviour under the banner of “conduct”). When the Court is asked to determine valuation as a discrete issue in the course of ongoing proceedings there is a real risk that whichever party feels he or she has lost the valuation hearing, will then force the proceedings on in the hope of recovering perceived “lost ground”. By contrast, arbitration can provide an early pre-proceedings determination of discrete issues, without the risk of escalation and allow negotiations on the broader issues to advance once the “sticking points” having been removed.

The Matrimonial Causes (Northern Ireland) Order 1978

Those readers familiar with the provisions of the Order will immediately identify the potential problem with enforcement of an arbitral award in an Ancillary Relief dispute. The statute grants the Divorce Court a broad discretion as to what Ancillary Relief, if any, should be granted to either or both of the parties (and in some circumstances children) and expressly provides that the discretion cannot be ousted by an agreement. Time and again, the Courts have re-affirmed

that “supervisory” role in the context of applications for Consent Orders. Thus, questions arise as to whether or not it is open to a party dissatisfied with an arbitral award to then initiate formal Ancillary Relief proceedings before the Court and, if so, what procedure the Court will adopt, ie an abbreviated or a full-blown procedure, and what weight, if any, will the Court attach to the arbitral award. The answers to these questions were provided in clear and categorical terms by Sir James Munby in *S v S*.

S v S [2014] EWHC 7 (Fam)

The factual matrix

Mr and Mrs S had been married for 24 years with one child then aged 19. Their net matrimonial assets were in the region of £1.5 to £2 million. They agreed in writing to have their Ancillary Relief claims determined through arbitration under the procedural scheme adopted by the Institute of Family Law Arbitrators “IFLA”. The parties then applied to have the arbitral award made the subject of a Consent Order. The case was referred from the County Court to the High Court to allow the President of the Family Division to rule on the application.

At the outset of his decision, Sir James Munby declared that he had “no doubt” that the Court should approve the Consent Order and then went on to give some general guidance on the proper approach by the Court to such applications. The Court stated, “*the strong policy argument in favour of the Court giving effect to an agreement that the parties have come to themselves for the resolution of their financial affairs following divorce*” and cited the well-known cases of *Edgar v Edgar* [1980] 1 WLR 1410 and *Xydhias v Xydhias* [1999] 1 FLR 683. The Court added, “*as a matter of general policy what the parties have themselves agreed would be upheld by the Courts unless contrary to public policy or subject to some vitiating features such as undue pressure or the exploitation of a dominant position to secure an unreasonable advantage*”.

More notably, the Court identified what it described as “*the increasing emphasis*” on the autonomy of the parties exemplified by the two decisions of the Supreme Court in *MacLeod v MacLeod* [2010] 1 AC 298 and *Radmacher v Granatino* [2011] 1 AC 534. Further, the President specifically endorsed the *dicta* by Charles J in *B v B*

(*Prenuptial Agreement*) [2011] EWHC 3230 at paragraph 36:

“Radmacher necessitates a significant change to the approach to be adopted, on a proper application of the discretion conferred by the MCA, to the impact of agreements between the parties in respect of their finances. At the heart of that significant change, is the need to recognise the weight that should now be given to autonomy, and thus to the choices made by the parties to their marriage ... the new respect to be given to individual autonomy means that the fact of an agreement can alter what is a fair result and so find a different award to one that would otherwise have been made.”[Emphasis added.]

In looking to the future, Sir James Munby specifically indicated that where the parties have bound themselves to accept an arbitral award of the kind provided for by the IFLA Scheme, it will generate “*a single magnetic factor of determinative importance which in the absence of some “very compelling countervailing factor” will result in a Consent Order embodying the arbitral award*”. Finally, in terms of procedure Sir James Munby saw no reason why a streamlined process such as that which was applied by Mr Justice Coolidge in *S v P (Settlement by Collaborative Law Process)* [2008] 2 FLR 2040 should not similarly be made available where a Consent Order was being sought on the basis of an arbitral award.

Possible advantages of arbitration

- (i) The parties can achieve a binding determination of discrete issues without first having to issue a Petition and file full (often blame infused) affidavits. This avoids the risk of escalation leading to competitive enmeshment.
- (ii) The parties can avoid having to join the public queue for Final Hearings at the end of a time-consuming interlocutory process and move quickly to an early binding determination.
- (iii) The arbitration process can provide much greater privacy for the parties and the freedom to have their case determined by an arbitrator or arbitrators of their choice.
- (iv) The parties can choose to adopt a procedure, subject to the “minimum

safeguards” which fits their personal needs and financial circumstances; For example, the parties could agree to a determination on the papers without oral testimony.

- (v) Arbitration can be utilised as a tool in negotiation to determinate a discrete issue or determine the entirety of the dispute.
- (vi) There is no right of appeal by way of a re-hearing. Arbitration can bring greater finality to the dispute as the grounds upon which an arbitral award can be challenged are very limited.

The judgment in *S v S* can be seen as giving the “green light” to arbitration as an alternative means of dispute resolution in Ancillary Relief claims. The IFLA Scheme simply provides a usable “off the peg” procedural framework which the parties can choose to adopt or adapt to ensure a fair procedure. It is worth noting, that the IFLA Scheme currently applies not only to Ancillary Relief claims, but also to applications for capital payments under Schedule 1 to the Children Order, Financial Provision following the dissolution of Civil Partnerships and Inheritance (Provision for Family and Dependents) claims. The extension of the scheme to embrace Private Law Contact and Residence disputes is under active consideration.

Postscript

In *DB v DLJ* [2016] EWHC 324, Mostyn J. was invited to reject an arbitral award on the ground of mistake, namely, that the matrimonial home had a much lower OMV than the parties had believed at the time of the arbitration. The Court ultimately rejected the challenge to the arbitral award. At para [27] Mostyn J opined “*...when exercising its discretion following an arbitral award the court should adopt an approach of great stringency, even more so than it would in an agreement case. In opting for arbitration the parties have agreed a specific form of alternative dispute resolution and it is important they understand that in the overwhelming majority of cases the dispute will end with the arbitral award. It would be the worst of all worlds if the parties thought the arbitral process was to be no more than a dry run and a rehearing in court was readily available.*”

Beware of the limitations of Discounted Gift Trusts in Estate Planning

Estate planning invariably attempts to achieve a blend of the following objectives – mitigating a Potential Inheritance Tax ('IHT') liability, allowing beneficiaries access to assets at an appropriate time and (the illusive) ability for the settlor to retain some access to the assets or receive an income.

The most simple and cost effective solution of an outright gift is often dismissed as many people are not in a position to gift capital, as they cannot be sure they will not need it to provide for their own future financial security. Therefore the ideal solution for many clients is one where they can achieve the potential IHT savings that an outright gift offers yet retaining access to capital or an income.

The Gift with Reservation of Benefit ('GWR') rules introduced in 1986 and Pre-Owned Assets ('POA') rules of 2004/05 target some of the more aggressive structures aimed at achieving the "have your cake and eat it" objective. Discounted Gift Trusts ('DGT') are often portrayed as the structure which best achieves this goal.

The key attractions of a DGT are twofold. Firstly, the ability to place an amount greater than the available nil rate band into a discretionary trust without incurring a Chargeable Lifetime Transfer ('CLT') and secondly the ability to retain an ongoing "income" from the trust. While a DGT undoubtedly has some very attractive features (the discount is outside the estate immediately and the remainder after seven years), the discount is merely the capitalised value of the retained income rights and these "income" payments will simply accrue back into the settlor's estate unless spent. Therefore the DGT is unlikely to be suitable for those clients that do not require an immediate and ongoing income.

"Careful consideration should be made prior to establishing a Discounted Gift Trust and in many cases the lesser known Flexible Reversionary Trust may be a more appropriate solution."

A further disadvantage of the DGT is that while the settlor retains an "income" they lose the access to capital. In addition the income level and timing of payments is likely to be set at outset and cannot be changed. While this may not seem like an issue at the outset it can create problems in the future. An income set at 5% of the initial DGT value will fall by 22.4% in real terms with an inflation rate of 2.5% per annum over 10 years. While inflation is low at the moment, many predict it will rise in the future as Governments pay the price of Quantitative Easing ('QE').

"For it is in giving that we receive" - St Francis of Assisi

For many clients, as they grow older and have more certainty that their own needs will be met, they can now afford to give away assets and benefit from seeing the joy their gift gives to the beneficiaries. The perceived value of the gift by the beneficiary is also likely to be greater the sooner in life that they receive it. A 40 year old with a mortgage and three children is likely to appreciate a gift more so than a 60 year old with no mortgage and financially independent children. Many DGTs do not allow payments to beneficiaries until the settlor has died.

Having looked at the disadvantages of the DGT, what alternatives are there? An often overlooked gem is the little known Flexible Reversionary Trust ('FRT'). Similar to a DGT the right to an "income" is carved out at the outset, however the power of the trustees to vary the "income", creates additional, valuable flexibility. The main advantages of an FRT over a DGT are that income benefits need not be taken at all. They can be deferred to a later date and can vary in the amount taken. But a 'discount' will not be available. After seven years, if the annual "income" payments have been deferred the settlor would have the whole value of the trust fund outside of their estate while retaining access to the full trust value. In addition, payments can be made to beneficiaries at any time without further IHT implications.

FRTs therefore often appeal to clients who want to set up a discretionary trust but want to retain access to the capital, knowing that they are



unlikely to ever need it. The settlor has peace of mind in that they have a flexible income stream should they need it, have started the seven year clock on a proportion of their assets and retain (as a trustee) the discretion to make payments to a wide class of beneficiaries as and when they see fit.

The most commonly asked questions when discussing an FRT is why the settlement into Trust is not a GWR and what is HMRC's opinion on the structure?

The settlor will not be deemed to make a GWR as all that is retained is the equitable right to the policy maturities or unit reversions, which will be paid to the settlor if alive at the relevant dates. This carve-out principle is accepted by HMRC and founded upon a number of decided cases including *Ingram v IRC* [2000] 1 AC 293. That is not to say HMRC could not seek to change their opinion in the future and this is something of which the client should be aware.

The trustees' powers to defeat the settlor's interest should not impact upon this position as these powers are detrimental and not beneficial to the settlor.

Conclusion

While a DGT may be an excellent IHT planning solution in the right circumstances, the benefits

and the perceived value of the discount are often over sold. The lack of flexibility can be a serious constraint in the future and the value of the discount will be eroded if the settlor lives to their calculated life expectancy. Careful consideration should be made prior to establishing a DGT and in many cases the lesser known FRT may be a more appropriate solution.

Each client's circumstances are different and we would welcome the opportunity to meet clients, discuss their needs and establish if an FRT (or indeed some other arrangement) is a more appropriate IHT planning solution.

Warning: The value of investments and income taken from them can fall as well as rise. You may receive back less than the original amount of your investment.

IMPORTANT DISCLOSURES

In publishing this article, Davy aims to highlight the differences between the Discounted Gift Trust & the Flexible Reversionary trust. The information contained herein is general in nature, does not purport to be comprehensive or all inclusive and is strictly for informational purposes only. No party should treat any of the contents herein as constituting advice or

rely on it to make investment decisions since it does not take into account the investment objectives or financial situation of any particular person. Investors should obtain advice based on their own circumstances from their own tax, financial, legal and other advisors before making an investment decision, and only make such decisions on the basis of the investor's own objectives, experience and resources. While Davy has taken reasonable care to ensure that the information provided herein is accurate and up-to-date at the time of writing, the information is not promised or guaranteed to be correct or complete. Davy expressly disclaims all liability in respect to actions taken or not taken based on any or all the contents of this document. This document and its contents are proprietary information and products of Davy and may not be reproduced or otherwise disseminated in whole or in part without Davy's written consent.

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Northern Ireland Chest Heart & Stroke

A gift in a Will to Northern Ireland Chest Heart & Stroke is a legacy of hope and care for generations to come.

In Northern Ireland almost half of all adult deaths are caused by chest, heart and stroke illnesses.

NICHS are working to change this through funding research and caring for those who are affected by devastating health conditions every day.

A gift to NICHS in a client's Will could be invested in critical local research that will help change the future for families at risk from our biggest killers.

The smallest investment can lead to the biggest breakthrough.

For advice on leaving a legacy

to NICHS and more information on our life-saving work, please contact us on 028 9032 0184.

To see how our Medical Research Programme has already supported groundbreaking projects, please visit our website www.nichs.org.uk

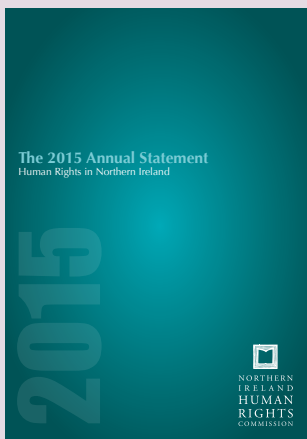


The Northern Ireland Human Rights Commission



In this article, Les Allamby, Chief Commissioner of the Northern Ireland Human Rights Commission, discusses the current work of the Commission.

The Northern Ireland Human Rights Commission is a statutory body set up under the Northern Ireland Act 1998. Its role includes promoting and protecting the human rights of everyone in Northern Ireland, and keeping under review the adequacy and effectiveness of law and practice relating to human rights. Our statutory powers include to advise the Secretary of State and NI Executive of measures to be taken to protect human rights, provide legal advice and assistance, undertake research and educational activities, undertake investigations and provide advice on a Bill of Rights. This article sets out some of the work being undertaken by the Commission.



Annual Statement

The Commission continues its work across Northern Ireland promoting best practice and highlighting any gaps in human rights protections. In December 2015 we launched our Annual Statement at Stormont; it provides a yearly analysis of human rights laws and policies. The Commission applies a traffic lights system to progress. A red has been given

to a number of areas including: the lack of progress on dealing with conflict related deaths, the unnecessary remand of children within juvenile justice custodial facilities, the failure to prohibit corporal punishment of children within the family, the failure to increase the age of criminal responsibility from age ten to at least twelve in line with international human rights standards including the UN Convention on the Rights of the Child and the failure to introduce an anti-poverty strategy highlighting the recent successful High Court challenge to OFMDFM in this regard.

More positively, a green light was given to the introduction of domestic violence protection orders, a statutory victim's charter and legislation to protect victims of human trafficking.

Legal work

One red listed in the Annual Statement this year was on the status of Northern Ireland's Termination of Pregnancy Laws. This Commission initiated legal proceedings against the Department of Justice after lengthy engagement with the Department on the non-compliance with international human rights obligations. The Commission argued that the failure to provide access in NI to a termination of pregnancy in circumstances of serious malformation of the foetus, (including fatal foetal abnormality) rape and incest - breached the human rights of women and girls.

In November 2015 the High Court found in the Commission's favour ruling that our current law is incompatible with human rights. The High Court held that Article 8 of the European Convention on Human Rights is breached by the absence of exceptions to the general prohibition of abortion in cases of fatal foetal abnormality and pregnancies due to sexual crimes. The Court also held there was no breach of Article 3 or Article 14 and no contravention of Convention rights in failing to provide for terminations in cases of serious malformation of the foetus.

The High Court subsequently granted a Declaration of Incompatibility (DOI) under the Human Rights Act. This was based on the law prohibiting termination of pregnancy in the cases of fatal foetal abnormalities and sexual crime being a violation of a women's right

to personal autonomy under Article 8 of the Convention.

The Department of Justice and the Attorney General have lodged appeals in the case and the Commission has appealed both. We will re-introduce all of the original grounds brought before the court. Both the Department and Attorney General are also challenging under the Northern Ireland Act the Commission's right to bring the application without a victim.

Access to justice and other research

The Commission is a member of the reference group of Lord Justice Gillen's family and civil justice review. In spring of this year we began a new research project with the School of Law at Ulster University into Access to Justice. This is the first in-depth research into the issue of the needs of litigants in person in Northern Ireland and is taking place over a period of two years. The project is being funded by the Nuffield Foundation and has a number of components. It will incorporate a human rights analysis of the legal position on access to legal representation including international human rights treaties and Article 6 of the European Convention of Human Rights.

It will also include a qualitative study of litigants in person's experience of utilising the courts. This will be undertaken from September 2016 to June 2017 and will concentrate on family issues including divorce and bankruptcy where there are significant numbers of litigants in person. The research will also access statistical data and analyse case files to assess whether there are any general characteristics, circumstances or events among litigants in persons or which lead to going to court without representation.

This research will build on research done in England and Wales on 'Litigants in person in private family law cases' by Trinder et al in 2014 for the Ministry of Justice and elsewhere on the needs of litigants in person. Following completion of this research in 2018 we will hold a conference to examine the key recommendations that arise from the research itself.

Last year we published research on Children in Care, and also identified a key concern in our Annual Statement in relation to the remand

of children within juvenile justice custodial facilities. In 2015 the National Preventative Mechanism designated under the Optional Protocol to the United Nations Convention Against Torture published a report of an announced inspection of Woodlands Juvenile Justice Centre. It recorded that only 9% of children imprisoned at Woodlands in 2013-14 had been sentenced following a conviction. Of the remainder, 47% were formally remanded to custody and 44% related to PACE proceedings. The National Preventative Mechanism found that the rate of PACE admissions to the Juvenile Justice Centre has almost trebled between 2008-9 and 2013-14 and has described this as 'disproportionately high'. It recommended that the Youth Justice Agency and its statutory partners should set targets to improve the current arrangements for children who do not have a suitable bail address. The Commission has sought immediate action from the Department of Justice to introduce suitable bail arrangements and bring to an end the serious risk of human rights violations. It is an issue we have raised at the United Nations and will give evidence on before United Nations Treaty Monitoring Bodies later this year.



Commonwealth Forum work

In November 2015 we were elected to the Chair of the Commonwealth Forum of National Human

Rights Institutions (CFNHRI), a role we will hold until at least 2017. CFNHRI is an informal and inclusive body of Commonwealth National Institutions for the promotion and protection of Human Rights. It has 38 members, countries including New Zealand, Canada, Africa, Uganda, Sri Lanka and Malaysia. The forum promotes the sharing of information, experiences and best practices, encouraging countries to establish UN Paris Principle-compliant NHRIs, and assisting national institutions to fulfil their mandated activities.

One important Commonwealth organisation is the Commonwealth Lawyers' Association, a membership organisation for professional lawyers, academics and students practising within the Commonwealth. It encourages exchanges between members of the profession, through projects, conferences and workshops, and by driving improvements in legal education. Former President of the Law Society of Northern Ireland Brian Speers plays a crucial role as a current Council member of the Association.

Business and human rights

A further Forum also convened by the Commission is the Northern Ireland Human Rights and Business Forum. It is a forum which brings Government, business, and civil society together to engage on business and human rights. Its work is underpinned by the UN Guiding Principles on Business and Human Rights. The UK government will shortly be publishing its second national action plan on business and human rights and the Irish government its inaugural national action plan.

It is an open forum to promote human rights issues in business and has looked at public procurement and supply chain issues. The meeting in April 2016 looked at progress in developing a new Department of Economy.

Other initiatives

The Commission has worked closely with the NI Ombudsman on utilising human rights standards and concepts within complaints handling procedures. This led to the publication of a guide in 2014. In May the Commission and NI Ombudsman ran an international conference in Belfast to showcase the developments internationally, many national human rights institutions (NHRIs) have a complaints handling role so the issue is of considerable significance to both NHRIs and international ombudsman organisations. The Commission has also developed on-line training programmes and material for the Northern Ireland Civil Service on human rights and its role in decision-making and policy development. This strand of work is innovative and generated considerable international interest.

In June 2013 the Commission published the findings from its human rights inquiry into healthcare in emergency departments. Outcomes from the work have included working with the Belfast Health and Social Care trust on their programme to pilot what a human rights based approach in an emergency department would look like in practice. This builds on the template provided in the Inquiry report itself. A second initiative entails working with the Northern HSCT on a human rights based approach to participation and consultation on future health and social care plans.

We are also setting our own strategic priorities for the next three years, our ongoing commitment to protect the most vulnerable in society is at the forefront of our minds as we finalise this work.

Human Rights



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

For information on the Commission's see
www.nihrc.org
Twitter: twitter.com/nihrc
Facebook: facebook.com/nihrc
Youtube: youtube.com/nihrc



Admissions Ceremony 2016

The President of the Law Society, John Guerin, welcomed newly admitted solicitors to the profession during the Society's Admission Ceremony at the Whitla Hall at Queen's University Belfast on Wednesday 2 March 2016.

As part of the ceremony, the Chief Executive and Registrar of Solicitors, Alan Hunter, presented the newly admitted solicitors to the Society's President and to the Lord Chief Justice for Northern Ireland, Sir Declan Morgan.

Special prizes were awarded to: Carlann Majella Knox, Michael Patrick Allison, Kathryn Laverty and Steven Douglas.





The President of the Law Society, John Guerin presents Steven Douglas, solicitor, with the Professional Conduct Course 1st Prize.



The President of the Law Society, John Guerin presents Kathryn Laverty, solicitor, with the Thomasena McKinney Prize.



The President of the Law Society, John Guerin, presents Carlann Majella Knox, solicitor, with the Solicitors' Apprenticeship Prize for highest mark in all skills based courses and assessments at the Graduate School Professional Legal Education.



The President of the Law Society, John Guerin, presents Michael Patrick Allison, solicitor, with the Solicitors' Apprenticeship Prize.





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President represents Society at CCBE event in Vienna

The Law Society President, John Guerin joined his fellow Presidents from Ireland, England and Wales and Scotland as they attended the CCBE meeting in Vienna in February 2016.

From left: Simon Murphy, Jonathan Smithers, Christine McLintock and John Guerin.



Women in the Law Mentoring Programme

Now in its third year the Women in the Law Mentoring Programme continues to go from strength to strength.

More than 40 lawyers from across Northern Ireland have signed up for the Mentoring Programme and they had an opportunity to hear from past participants and key speakers at an event held at the Galgorm Manor on 5 May 2016.

Amongst those offering their reflections on the Programme were past participants, the Honourable Madam Justice McBride and the Honourable Mrs Justice Keegan.

Commenting after the event, Chair of the Women in the Law Programme, Imelda McMillan said:

"We are delighted to welcome more than 40 new lawyers to the Mentoring Programme for 2016 and as with previous years, all participants will be offered the support, guidance and expertise of some of Northern Ireland's finest legal minds with regards to their careers and work as lawyers."



Above, from left: Elizabeth Birrell, Stewart Title; Hon Madam Justice McBride; Niamh Sheilds and Imelda McMillan.

From left: Niamh Shields, Hon Mrs Justice Keegan and Imelda McMillan.

A Master's Voice

At this time of year the scramble for places in the Institute and hence for places in solicitors' offices reaches fever pitch. Those of us who have more years behind us than before us in the profession have perhaps forgotten the anguish and stress experienced by young idealistic law graduates who have struggled to overcome many obstacles to put themselves on the brink of a career in the law only to find that the greatest obstacle of all is, to a large extent, outside their control. I refer of course to the lottery of finding a "Master".

At a time when solicitors' practices are facing strong competition, a down turn in some areas of work, particularly conveyancing, a curtailment of legal aid, increased costs, there is an understandable temptation to dismiss out of hand the prospect of taking on an apprentice with the attendant extra costs this will entail.

My opening remarks are not a prologue to an argument that we, as a profession, have a moral obligation to ensure that those graduates who make it through the system should, as a matter of course, find appropriate Masters and be given a solid training. There may well be some merit in that argument but I would prefer to commend to you the real benefits that the employment of an apprentice can bring to your firm:-

1. Long term planning

How many times do we hear the complaint from our colleagues that they cannot get assistant solicitors? This is a common complaint particularly in the provincial towns. I am always amazed at this. It seems to me that the employment of an apprentice gives the employer the option, two years down the line, to employ a solicitor who has been trained in the methods and ethos of the firm. An apprentice given good training, respect and good working conditions will invariably reciprocate with loyalty.

2. Development and growth

When we look at how our firms are to grow and increase fee income how many of us take into account the positive potential of an apprentice and later (if kept on) a young solicitor? Most of them have a wide circle of friends, some of them have many useful contacts and all of them will bring in varying amounts of work through these friends and contacts. Apart from this it's quite astounding, in my experience, how in a very short period of time, they develop their own contacts and build up their own portfolio of clients. Often they do this from the crumbs thrown from their Master's table whilst at the same time being available to deal with all that "loss leader" work which increasingly lands on all our desks.

3. A breath of fresh air

Don't forget that these students have all done their law degrees more recently than you. Whilst in your employment they are attending lectures on all aspects of law, practice and procedure. Whilst they may not have your experience most of them are likely to know more about recent changes in the law than you do. You can learn from them. Furthermore it is likely that they will be more technically literate than you.

4. You think you cannot afford an Apprentice?

"It's not just the wages you have to pay during those first four months – it's the fact that they haven't a clue what they are doing."

This is by far the most common complaint about the current system and on the surface would appear to be a justifiable one.

This is in my view not so. On the contrary you have on your hands a highly motivated

individual who has worked extremely hard to get to this stage (often at great expense). That person will almost certainly be computer literate and, whether male or female, will have excellent typing skills. He/she will not need a secretary. You will be amazed at how quickly he/she will tune in to the working environment. As a rule apprentices have no hang ups or bad habits (the only bad habits they will pick up will be from you). They are extremely willing to turn their hands to anything and, without exploiting them, you will be able to extract from them a tremendous amount of work and at the same time give them that insight into the reality of private practice which will be invaluable to them when they attend the Institute for the first time.

If you have used them properly you will be very disappointed to see them go to their vocational trainer in January and delighted when they turn up on your doorstep every Monday of term. Their shock and bewilderment of having to work during the two summers they are with you will only be matched by your delight at being able to solve some of your holiday dilemmas and having a few more days off than usual yourself. Adopt the correct approach and you will find that you have an employee worth every penny of his/her wages.

5. Generally

Firms can only grow through the introduction of young talent. Properly nurtured that talent will reflect your own standards. Properly treated that talent will stay with you. You will have little turnover of professional staff. Clients like continuity. A sensible approach to the employment of apprentices will provide that continuity. Sole practitioners and small firms wrongly believe that they cannot afford apprentices. I believe, on the contrary, that they can be their salvation. Often the best time to take an apprentice is when you think you do not need one.

6. And finally

Whether or not we have a moral obligation to ensure that those who have worked hard to qualify find placements can be debated elsewhere. I contend that you have an obligation to yourself and to your firm to give serious consideration to the employment of an apprentice. In the longer term failure to do so may be your loss and someone else's gain.

Gerry O'Hare, Senior Partner
J G O'Hare & Company Solicitors

Call for Masters

The Society each year draws up a list of members who are qualified and willing to act as Masters. This list will be provided on request to students who are seeking apprenticeships.

If you have –

1. practised as a solicitor for at least seven years, and been a principal for at least three years or if in the public sector, you have 10 years' experience and
2. are willing to act as a master for the two year term commencing September 2016 and
3. can provide a suitable training environment for an apprentice

please complete the attached form and return it to the Admissions Officer at the Society.

The relevant criteria are set out in the Solicitors' Admission and Training (Qualification of Masters) Regulations 1988 as amended by the Solicitors' Admission and Training (Qualification of Masters) (Amendment) Regulations 1992.

The minimum wage for apprentices has been revised as follows:

- (a) the Law Society's recommended wage shall be the greater of £250.10 per week or the relevant UK national minimum hourly rate which shall not be less than £6.70 per hour (£6.95 per hour from 1 October 2016) (£7.20 per hour for those over the age of 25 – national living wage).
- (b) During the Institute term, when the apprentice is in his/her Master's office each Monday, a minimum wage of one-fifth of the prescribed rate set out at (a) above.

Masters are reminded of their obligations under the apprenticeship contract and also under the national minimum wage legislation (including national living wage) regarding payment of apprentices.

MASTERS 2016/2017

I confirm that I am interested in acting as a Master as and from September 2016 and am willing for my name to be added to a list of potential masters and circulated to students seeking apprenticeships.

Name of intending Master.....

Name of firm.....

Contact name and details of the person to whom application should be made (if different from Master)

.....

Is there a closing date for your recruitment process? (If so, please specify)

.....

Would you prefer to receive applications from prospective applicants:

- CV by email
- CV by post
- Law Society application form
- Firm's own recruitment procedure (please detail).....

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Date

Please return the completed form to:

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Please note that Masters who take on Apprentices can have the benefit of:

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Local solicitor receives award for international work

A former President of the Law Society of Northern Ireland has been recognised for his promotion of Northern Ireland's legal profession to international business audiences with an 'Ambassador of the Year' Award.

Norville Connolly, a solicitor with Fisher Mullan Solicitors in Newry, received his award at the Visit Belfast Ambassador Awards held at the Ulster Museum in Belfast. Norville, who is the Law Society's International Bar Association representative, has been instrumental in promoting the legal profession and in securing events such as the International Bar Leaders Conference & mid-year meeting to be held in Belfast in May 2017. This conference is widely considered an important event in the international law calendar and will attract up to 500 delegates for four days and will be an estimated £800k boost to the local economy.



Caroline McComb from McCombs Executive Travel; Norville Connolly and David Gavaghan, Chairman of Visit Belfast.

Commenting, the President of the Law Society, John Guerin, said: "We are delighted that Norville has been recognised for his ongoing

work and commitment in showcasing Northern Ireland and its legal profession to international audiences."

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Local lawyers focus on IBA International Conference

On 28 April, Invest NI, in collaboration with the Law Society of Northern Ireland and the Bar of Northern Ireland, ran a short information session for lawyers interested in attending the IBA Annual Conference which takes place from 18 - 23 September 2016 in Washington DC.

The IBA is the world's leading organisation of international legal practitioners, Bar Associations and Law Societies. It has a worldwide membership of 55,000 lawyers from more than 190 Bar Associations and Law Societies. At the conference, attended by some 6,000 lawyers, there will be in excess of 180 working sessions covering all areas of practice and also a variety of social functions providing an opportunity to develop client networks.

Following Northern Ireland's very successful presence at the 2015 conference in Vienna, Invest NI, in co-operation with the Law



Society of Northern Ireland and the Bar of Northern Ireland, are encouraging lawyers interested in pursuing export opportunities to join an Invest NI-supported sector mission to this global event.

The IBA has agreed to host the IBA Bar Leaders & Mid-Year Conference in Belfast in May 2017. This will provide a top class marketing opportunity for local law firms to seek international legal work.



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Davy Private Clients - new sponsor of Law Society

The Law Society of Northern Ireland is delighted to announce it has entered into a sponsorship agreement with Belfast based Davy Private Clients for 2016. Davy Private Clients is part of the Davy Group which employs 650 staff, manages £11 billion of client assets, and operates from offices in Belfast, Dublin, London, Cork and Galway.

The Law Society has confirmed Davy Private Clients as main sponsor of its Annual Conference and Continuing Professional Development (CPD) Programme in 2016.

Commenting, the President of the Law Society, John Guerin, said:
"We are grateful to Davy for its generous support and sponsorship of the Law Society, our annual conference and CPD programme. Its contribution to our ongoing CPD programme will provide our members with access to relevant and timely financial advice from the experts in this field."

Conor Cahalane, Head of Partnerships at Davy Private Clients, said:
"Davy is delighted to be sponsoring the Law Society of Northern Ireland and we look forward to working with the Society and supporting its members in 2016".



From left: Chris English, Davy Private Clients; John Guerin, President of the Law Society and Conor Cahalane, Davy Private Clients.

Brexit – a briefing for practitioners

Law Society House was the venue for an important conference which was attended by more than 120 members of the legal profession and academics to discuss the issue of Brexit.

The conference, which was held on Friday 6 May 2016, had been organised by the Law Society of Northern Ireland in conjunction the Irish Centre for European Law and provided an opportunity for attendees to hear from a number of leading legal professionals and academics on key issues surrounding Brexit.

Of particular interest to attendees were the speakers' comments on the implications of Brexit and its real impact on Northern Ireland's economy, legal profession, citizens' lives and issues surrounding human rights.

Those attending had the opportunity to hear from a number of key note speakers.

Introductions on Brexit were provided by Michael Robinson, Head of the UK Delegation, CCBE (Council of Bars and Law Societies of Europe) and Judge Anthony M Collins, General Court of the EU, Luxembourg.

Thoughts on the effects of Brexit on the operation of Devolution under the Northern Ireland Act were provided by Brian Doherty, former Solicitor with the Departmental Solicitors Office who spoke on the "Good Friday Agreement and EU law- the NI statute book-North South and East West relations and its Practical implications".



Alan Hunter, Society Chief Executive and John Guerin, Society President join keynote speakers at the brexitlawni briefing for the legal profession in conjunction with the Irish Centre for European Law.

In his presentation he noted how Brexit matters more to Northern Ireland than rest of the UK. He concluded by quoting Sir David Edwards: "The long term consequences of Brexit are certainly unimaginable."

Margaret Gray, Barrister offered attendees her insight on "Commercial considerations and the Single Market in an all-island setting".

She observed the benefits for Northern Ireland of staying within EU as being EU funds, single market access, services and benefits to consumers.

Laura Gillespie, Partner at Pinsent Masons (Belfast), provided a presentation on "Practical Implications for Lawyers in a Post-Brexit landscape".

Professor Colin Harvey, Professor of Human Rights Law from the Law School QUB, concluded the conference with his overview of the "Constitutional guarantees - Remain and Leave scenarios".

Commenting on the conference, the President of the Law Society of Northern Ireland, John Guerin said:

"Undoubtedly there are significant issues surrounding Brexit most notably the impact of the possible exit on the legal profession, the economy and Northern Ireland in general. It is important to encourage debate and discussion as we move closer to the referendum on the 23 June 2016."



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Established in 1950, Murphy O’Rawe have an exceptional track record in the delivery of legal services. Acting for a diverse range of insurance companies and international organisations, data security and business continuity is extremely important. Following an audit, Murphy O’Rawe identified the need to replace their IT infrastructure with a new future-proof solution.

Joanne Logan, IT Manager at Murphy O’Rawe explained, “By 2015 our existing server had reached end of life and was unable to cope with the security requirements of our clients. Xperience conducted a security audit which highlighted the risks of relying on a single point of failure and having zero redundancy. Our clients require a high degree of security and resilience, so it was important for us to improve to meet their security needs.”

WORLD-CLASS SECURITY

To ensure a bulletproof data security strategy, Murphy O’Rawe commissioned Xperience to design and install a new server environment. Jonny Weir, Technical Business Advisor at Xperience, comments, “When we meet with a client we don’t just look at what they need today but

look at what may be required in future. With Murphy O’Rawe we have designed and implemented a platform that deals with the now and caters for future demands. The overarching remit for the design was to insure resilience, security and business continuity.”

The new setup provides Murphy O’Rawe with a security enhanced platform with built-in resilience that monitors and detects potential security threats. In the event of a disaster Murphy O’Rawe could be back up and running on the same day, with minimal disruption. In addition, wireless access points with high-end intrusion detection were implemented, creating a safe environment for everyone accessing the network.

THE FUTURE

The new server environment has fulfilled Murphy O’Rawe’s need for effective data security with round-the-clock protection and guaranteed confidentiality. Joanne Logan concludes, “We now have an outstanding, secure and resilient system that will take our business into the future. It’s been great working with Xperience, they understand our industry and are certainly an IT partner I can recommend!”

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Personal Asset Log

The Non Contentious Business Committee of the Society has produced a new Personal Asset Log.

Members can download the Personal Asset Log by signing into the members section of the Law Society's website and will find the Personal Asset Log here:

<http://www.lawsoc-ni.org/fs/doc/publications/personal-asset-log.pdf>

What is the purpose of the Personal Asset Log? The Personal Asset Log has been produced with two purposes in mind:

1. With the intention of being an aide to solicitors who are taking instructions for a will; and
2. For solicitors to give to clients to retain within their own papers and update themselves from time to time.

Members will note that space has been left on the top right hand side of the first page of the Log so that firms can insert their own branding or stamp to assist as a marketing tool.

The Personal Asset Log is not intended to be a definitive list of all assets and members



should make further enquiries from the client if required in relation to any other assets.

The Log has been designed to include reference to digital assets which are becoming an increasing part of any estate. Some of the digital assets which are referenced in the Log may not have been encountered in many estates to date however solicitors need to be aware of the value within such assets as they will become increasingly important in the future.

By way of example, recently some computer game avatars have sold for six figure sums.

Reference has also been included to items such as email accounts, digital photographs and social media. It is recognised that these items may not have a particular monetary value however how they are dealt with after death can be an emotive issue for families and it may be of benefit to obtain instructions from the client on how they wish them to be dealt with after death.

Members can provide feedback on the new Personal Asset Log to Andrew Kirkpatrick, Assistant Secretary, at andrew.kirkpatrick@lawsoc-ni.org.

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Pro Bono Choir hits high notes for NI Hospice

Congratulations were the order of the day as members of the Pro Bono Choir presented a cheque for £10,000 to the NI Hospice. The Choir, which is made up of solicitors and barristers, raised the money through sales of their Christmas 'Midwinter Carols' CD.

Richard Palmer (left), Society past President and Joe Rice (2nd left) of the Pro Bono Choir presenting the cheque at the new Somerton House.



National Mediation Competition

The UK National Mediation Competition, held this year at the University of Central Lancashire, was a wonderful opportunity for four trainees from the Institute of Professional Legal Studies - Ruth Forbes, Mary-Jane Byrne, Brigid Moore and Elise Quigley, with the help of coach Barbara Jemphrey - to further the invaluable skill of mediating by putting it into practice in a competitive environment.

The team competed against 18 teams drawn from universities throughout the UK. The

Competition took place over two days and comprised four rounds during which members of the team attempted to create harmony between two highly emotional and indignant actors for ninety minutes. This gave a flavour of the challenges of mediation. The IPLS team worked hard and thrived on the various challenges each round produced. They were delighted with being placed second overall in the Competition.

Ruth Forbes, Mary-Jane Byrne, Brigid Moore and Elise Quigley with coach Barbara Jemphrey.

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Mediation training In Namibia

Council member and Past President Brian Speers, is the Law Society representative to the Council of the Commonwealth Lawyers Association (CLA). The CLA holds a major international conference every other year – next year this will be in Melbourne. In addition to the major conference the CLA has encouraged CLA Council members to provide in country training. Brian Speers, an experienced mediator and trainer, was invited to and volunteered to deliver mediation training to members of the Namibian Law Society.

The training was delivered in Windhoek, Namibia on 24 and 25 February 2016 and 35 members of the Law Society of Namibia attended. In Namibia, rules of its High Court

have recently changed to prescribe that mediation must take place before accessing a Court Hearing in a number of areas of law. A register of Court appointed mediators had been created and many of those attending had undertaken mediations under this Court scheme.

Many others were aware that their clients may be required to participate in mediation and wished to know more about the mediation process and how to most effectively represent a client in mediation.

The mediation training provided an opportunity for all present to experience and discuss the role of a legal representative within a mediation and provided information about core skills for acting as a mediator. All present were also able to experience a mediation roleplay in which some participants acted as mediators and others acted as parties to a hotly argued consumer dispute.

Some of the Namibian lawyers present at the training clearly demonstrated good knowledge of how to be an effective mediator and assist

parties towards a resolution of their dispute.

The informal style of the training and the varied programme allowed all participants to make contributions, ask questions and engage in active discussion.

Brian Speers says: "I was delighted to deliver mediation training to such an interested and interesting group of legal colleagues in Namibia and wish the Law Society of Namibia and its members well as they adapt to the incorporation of mediation in their High Court disputes.

"This was my first visit to Namibia and I was hugely impressed by the warmth of the welcome, the excellent organisation arranged by the Law Society of Namibia and for the great attendance at the training which made the travel to Windhoek worthwhile."

Delegates attending the Namibia Mediation Training.



Work and Families Act (Northern Ireland) 2015 – Shared Parental Leave



In this article, Khara Glackin, Solicitor with the Crown Solicitor's Office, outlines the key points surrounding Shared Parental Leave and Pay.

The Department for Employment and Learning (DEL) brought a Work and Families Bill to the NI Assembly to give families the same rights to paid and unpaid leave as apply in Great Britain. The Bill received Royal Assent on 8 January 2015.

One of the key aspects of the Act is the creation of a system of Shared Parental Leave and Pay which will allow eligible working families to have more choice about how they balance their work and caring commitments. Parents can choose to be at home together, or to work at different times, and share the care of their child.

Eligible fathers and partners will be able to request more leave from work in the first year following their child's birth. As the leave can be shared, there will be cases where eligible mothers will return to work early because the child's father or their partner has chosen to take the leave in their place.

The right to Shared Parental Leave and Statutory Shared Parental Pay became effective from 5 April 2015. As such, if the couple's baby was due on or after 5 April 2015, or they adopted a child on or after this date, they could enjoy shared rights to maternity or paternity leave and pay.

Key points to note:

- Employed mothers will continue to be entitled to 52 weeks of maternity leave and 39 weeks of Statutory Maternity Pay or Maternity Allowance.
- If they choose to do so, an eligible mother can end her maternity leave early and, with her partner or the child's father, opt for Shared Parental Leave instead of maternity leave. If they both meet the qualifying requirements, they will need to decide how

they want to divide their Shared Parental Leave and Pay entitlement.

- Paid paternity leave of two weeks will continue to be available to fathers and a mother's or adopter's partner, however additional paternity leave will be removed (Shared Parental Leave will replace it).
- Adopters will have the same rights as other parents to Shared Parental Leave and Pay.

To qualify, the mother or adopter must be entitled to, and have given notice to curtail their, maternity or adoption entitlements and must share the main responsibility for caring for the child with the child's father or their partner.

Eligibility for Shared Parental Leave

For a parent to be eligible to take Shared Parental Leave they must be an employee and pass the continuity of employment test. In turn, the other parent in the family must meet the employment and earnings test.

- **Continuity of employment test:** the employee must have worked for the same employer for at least 26 weeks at the end of the 15th week before the week in which the child is due (or at the week in which an adopter was notified of having been matched with a child or adoption) and is still employed in the first week that Shared Parental Leave is to be taken.
- **Employment and earnings test:** this person must be the partner of an employee (the mother's partner or the child's father - even if the father is not in a relationship with the mother). The person must have worked in Northern Ireland for at least 26 weeks in the 66 weeks leading up to the due date and have earned above the maternity allowance threshold of £30 per week in 13 of the 66 weeks.

Eligibility for Statutory Shared Parental pay

To qualify for Shared Parental Pay, the employee must

- meet the qualifying requirements for Shared Parental Leave and have a partner who meets the employment and earnings test; and

- have earned not less than the lower earnings limit (currently £112 per week) for the eight weeks up to (i) the end of the 15th week before the child's due date or (ii) the week of the placement for adoption.

The rate of Shared Parental pay

Shared Parental Pay is paid at the rate of £139.58 a week or 90 per cent of your average weekly earnings, whichever is lower.

Does Shared Parental Leave replace current Maternity, Adoption and Statutory Paternity Leave?

Shared Parental Leave does not replace current maternity, adoption and statutory paternity leave. Shared Parental Leave is optional for parents and is intended to give working families more flexibility and choice over when they take leave during the first year of their child's life or adoption and who takes that leave, allowing parents to be on leave at the same time if they desire.

Notification of Shared Parental Leave

If an employee wishes to take Shared Parental Leave they must provide their employer with a notice of entitlement to take Shared Parental Leave. This notice must be given at least eight weeks before the start of a period of Shared Parental Leave and must include how:

- much leave is available
- much leave they are entitled to take
- much leave the parent is intending to take
- they expect to take the required leave

It is important for eligible individuals to have an early and informal discussion with their employer. This can provide an opportunity for both parties to talk about their preference regarding when Shared Parental Leave is taken. Employers should use this discussion as an opportunity to indicate the different options available, such as maternity, paternity, or adoption leave, and can ensure the employee is aware of their statutory rights or any contractual schemes the employer may have in place.

Khara Glackin LLB, LEC (CARICOM)

Solicitor
Crown Solicitor's Office

PROTECTING VICTIMS OF TRAFFICKING – The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015



Fidelma O'Hagan, Anti Trafficking Legal and Policy Adviser at Law Centre (NI), explains the provisions of the 2015 Act that are directly relevant to the protection of victims of trafficking and unaccompanied minors in the immigration system.

In 2015, 53 potential victims of human trafficking were identified in Northern Ireland, of whom 40 were adults and 13 were minors.¹ This is a 17.8% increase on the previous year's figures. Labour exploitation was the majority experience among the adults and sexual exploitation the majority experience among the minors.

The Human Trafficking & Exploitation (Criminal Justice & Support for Victims) Act (NI) 2015² ("the Act"), which received Royal Assent on 13 January 2015:

- simplifies the legislative framework relating to offences of human trafficking and slavery;
- amends criminal law tools aimed at reducing demand for, and increasing the prosecution of, the offence of human trafficking; and
- provides for protection and the support of victims.

Of the 28 sections contained in the Act, 23 relate to criminal justice provisions. These include:

- a duty on the Department of Justice (DoJ) to issue guidance to victims on applying for compensation³;
- protection for suspected victims during police interviews⁴ as well as for those giving evidence as victims within the criminal justice system⁵; and
- the creation of a new statutory defence for those who were compelled to commit an offence while in a situation of slavery or relevant exploitation⁶.

While the legislation was progressing through the Assembly, Law Centre (NI) focused on the draft provisions relating to assistance and support for suspected victims of trafficking as well as the creation of independent guardians for minors, contained in sections 18 and 21 of the Act respectively. This article considers these particular provisions in the context of international and European law and looks at what the Act provides for a suspected victim of trafficking in Northern Ireland

EU law provisions on assistance and support

The Council of Europe Convention on Action against Trafficking in Human Beings⁷, ratified by the UK on 17 December 2008, identifies as one of its defining purposes the protection and support of victims from a human rights based approach within a comprehensive framework.⁸ Article 12 sets out what support is required to assist with physical, psychological and social recovery, for example secure accommodation, material assistance, access to medical treatment and legal advice.



Anti-Trafficking Young People Project

The Trafficking Directive 2011/36/EU was transposed into UK law on 6 April 2013⁹. Preamble 18 is clear that assistance and support are necessary for the individual “to be able to exercise their rights effectively” and that Member States should provide resources to enable this support to be freely available which should include “at least a minimum set of measures that are necessary to enable the victim to recover and escape from their traffickers”. Article 11 of the Directive proceeds to replicate the requirements enshrined in article 12 of the Convention.

Northern Ireland provisions on assistance and support

Assistance and support for potential victims of human trafficking is a devolved matter. Departmental guidance was issued in relation to support for child¹⁰ and adult¹¹ suspected victims. The 2014-2015 Department of Justice Human Trafficking Action Plan¹² had as a strategic aim the need to put in place an effective legislative framework. Following on from that, in January 2015 Northern Ireland became the first devolved administration within the UK to place the support and assistance provisions contained in the Convention and Directive onto a statutory footing.

Section 18 of the Act enshrines the guiding principle that assistance and support should be available from the point at which a person first presents with human trafficking indicators¹³ and is about to be, or has already been referred into the National Referral Mechanism (NRM), the UK’s victim identification process¹⁴. Benefiting from these provisions is not contingent on the individual agreeing to act as a witness in criminal proceedings¹⁵ and assistance and support will continue until either:

- a negative reasonable grounds decision is made¹⁶;
- a positive or negative conclusive grounds decision is made¹⁷; or
- a positive conclusive grounds decision is made during a 45 day period, known as the recovery and reflection period, whereby support and assistance will continue until the end of that 45 day period¹⁸.

Reflecting the Convention and Directive, our legislation provides for:

- “(a) appropriate and safe accommodation;
- (b) material assistance (including financial);
- (c) assistance in obtaining healthcare service (including counselling);
- (d) appropriate information on any matter

- of relevance or potential relevance to the particular circumstances of the person;*
- (e) *translation and interpretation services;*
- (f) *assistance in obtaining legal advice and representation;*
- (g) *assistance with repatriation.”*¹⁹

S.18 (8) empowers the DoJ to continue to provide discretionary assistance and support in certain cases where the individual leaves the jurisdiction, and s.18 (9) extends these support provisions to an individual referred into the NRM notwithstanding the fact that the 45 day reflection and recovery period has expired or a positive conclusive grounds decision has already been issued.

Section 18 of the Act commenced on Royal Assent and is therefore in effect. Whilst adult support and assistance within the NRM process has been in place for a number of years, putting these entitlements onto a statutory footing ensures that the rights of adults who are proceeding through the trafficking identification process in Northern Ireland are given the legal priority they require and deserve. In March 2016²⁰ the then Justice Minister, David Ford, announced that arrangements will now be put in place to extend the scope of the NRM to all victims of modern slavery, not just to those who have been trafficked.

Guardianship

Unaccompanied migrant children face a myriad of different, complex procedures, such as education, health and immigration, some of which involve difficult and important interviews with social workers, UK Visas and Immigration (UKVI), solicitors and the PSNI. Child victims of human trafficking are particularly vulnerable. Many come to the attention of the authorities scared and confused, sometimes traumatised. Most do not speak English or know where they are in the world and have limited understanding of the complicated proceedings they are involved in. Health and Social Care Trusts are responsible for accommodating and caring for these children; however, if aged between 16 and a half and 18 years old a care order is rarely sought. This age group makes up the majority of the children the Law Centre represents through its Anti-trafficking Young People Project.

International and EU law provisions on guardianship

The UN Guidelines for the Alternative Care of Children²¹ and the UN Committee on the Rights of the Child General Comment No 6²² set out the roles and responsibilities of a guardian.

Standards contained in the UN Convention of the Rights of the Child²³ must be at the heart of any decision relating to a separated child, including the best interest principle²⁴ and the requirement that the views of the child are given a voice and respected²⁵. With regards to the duty on Member States to protect child potential victims of trafficking, the Convention and Directive highlight the particular vulnerabilities of this group of minors and the need for there to be a child-centred approach with procedural safeguards.²⁶ To this end, the Directive specifically requires that a guardian is appointed in the case of unaccompanied children²⁷. However, there is no commonly agreed definition of a guardian. In recognition of this gap, the European Commission and the European Union Agency for Fundamental Rights carried out a comparative report²⁸ on practices across EU Member States with a view to assisting States in reinforcing their guardianship systems to provide better protection to all separated migrant children, with a particular focus on child victims of human trafficking.

Northern Ireland provisions on guardianship

The Act is the first instrument in the UK to introduce guardianship as a legal right for this group of children. S.21 provides for the appointment of an independent guardian where a referral into the NRM has been or is about to be made and there has been no conclusion to that process, including any challenge by way of judicial review in the High Court²⁹.

Trafficked children rarely self-identify and do not always disclose their experiences in detail when they first come into contact with the authorities, or at all in some cases. Research shows that a child is more likely to disclose experiences of exploitation to a person with whom they have a continuous secure and trusting relationship³⁰. It is for this reason that the Act provides for the appointment of a guardian to all separated children, therefore also including those who have not been referred into the NRM. By including separated children as beneficiaries in this way, the Act affords these children the space and protection to build a relationship with a single trusting adult which may eventually enable them to disclose. A separated child is defined as one who:

- “(a) is not ordinarily resident in Northern Ireland;
- (b) is separated from all persons who –
 - (i) have parental responsibility for the child; or
 - (ii) before the child’s arrival in Northern Ireland, were responsible for the child whether by law or custom; and

(c) because of that separation may be at risk of harm."

In terms of the breadth of the role, s.21(7) sets out the extent to which a guardian can assist a child. The child must be kept informed³² and his or her views must be ascertained and communicated³³, the guardian must accompany the child to meetings³⁴, contribute to safeguarding plans from a best interest perspective³⁵, make representations and liaise with care providers³⁶, trace family members where appropriate³⁷ and assist the child in obtaining legal advice including appointing a solicitor where necessary³⁸. This support can be provided to the age of 21³⁹.

S.21 (8) allows the guardian to access appropriate information relating to the child and gives weight to their role vis a vis "any person or body providing services or taking administrative decisions" relating to that child who then "must recognise, and pay due regard to, the functions of the guardian".

A robust guardianship system must be put in place urgently

Section 21 was to commence ten months after the Act received Royal Assent, i.e. on 13 November 2015. Section 21(5) required DHSSPS to consult on draft regulations which set out the qualifications and experience necessary to be appointed as a guardian, as well as the supervision the guardian should receive. That consultation process concluded in November 2015.

It is disappointing that the provisions enabling the creation of a guardianship system for some

of the most vulnerable children in our society did not commence within the timeframe set down.

However, the Law Centre lobbied for a guardianship model which is UNCRC compliant and human rights focused; establishing a robust system which enshrines these principles is a priority. We are currently working with others to ensure s.21 comes into effect as quickly as possible and offers the protection and support these children are entitled to.

The advice line of the Anti-Trafficking Young People Project is open Monday to Friday, 9.30am to 1pm: 028 9024 4401.

¹ National Crime Agency National Referral Mechanism Statistics, - End of Year Summary 2015, (page 20) <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/676-national-referral-mechanism-statistics-end-of-year-summary-2015> (page 20)

² <http://www.legislation.gov.uk/niq/2015/2/contents/enacted>

³ S20

⁴ S23

⁵ S24

⁶ S22

⁷ <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm>

⁸ Article 1(1) (b)

⁹ : <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

¹⁰ Working Arrangements for the Welfare and Safeguarding of child Victims of Human Trafficking: Guidance issued by the DHSSPS and PSNI (February 2011) http://www.dhsspsni.gov.uk/oss_working_arrangements_for_the_welfare_safeguarding_of_child_victims_of_human_trafficking.pdf

¹¹ Working Arrangements for the Welfare and Protection of Adults victims of Human Trafficking. Guidance issued by Department of Justice and DHSSPS (October 2012) <http://www.dojni.gov.uk/index/publications/publication-categories/pubs-policing-community-safety/community-safety/organised-crime/working-arrangements-for-the-welfare-protection-of-adult-victims-of-human-trafficking-oct-2012.pdf>

<http://www.dojni.gov.uk/index/publications/publication-categories/pubs-policing-community-safety/community-safety/organised-crime/northern-ireland-human-trafficking-and-slavery-action-plan-2014-15.pdf>

¹³ UN Human Trafficking Indicators http://www.unodc.org/pdf/HT_indicators_E_LOWRES.pdf

¹⁴ S18(2) *ibid*

¹⁵ S18 (5)(a) *ibid*

¹⁶ S18(3)(a) *ibid*

¹⁷ S18 (3)(b) *ibid*

¹⁸ S18 (3) *ibid*

¹⁹ S18(7) *ibid*

²⁰ <https://www.justice-ni.gov.uk/news/ford-announces-measures-support-victims-slavery>

²¹ http://www.unicef.org/protection/alternative_care_guidelines-English.pdf This document seeks to enhance the implementation of relevant international instruments in relation to the protection and well being of children who do not benefit from parental care.

²² The Treatment of Unaccompanied and Separated Children Outside of their County of Origin (June 2005) <http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf>

²³ http://www.unicef.org/Documents/Publication-pdfs/UNCRC_PRESS200910web.pdf

²⁴ Article 3

²⁵ Article 12

²⁶ Preamble 23, Articles 14 (2) and 16 (3) *ibid*

²⁷ Article 16 (3) *ibid*

²⁸ Guardianship Systems for Children Deprived of Parental Care in European – with a particular focus on their role in responding to child trafficking (FRA, October 2015) http://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-guardianship-systems-in-the-eu_en.pdf

²⁹ S21 (2) *ibid*

³⁰ Pearce, J, Hynes, P & Bovarnick, S (2009), *Breaking the Wall of Silence: Practitioners' responses to trafficked children and young people*, NSPCC. <http://www.nspcc.org.uk/globalassets/documents/research-reports/breaking-wall-silence-summary.pdf>

³¹ S21 (11)

³² S21 (7) (d)

³³ S21 (7) (a) *ibid*

³⁴ S21 (7) (h) *ibid*

³⁵ S21 (7) (e) *ibid*

³⁶ S21 (7) (b) *ibid*

³⁷ S21 (7) (g)

³⁸ 21 (7)(c) *ibid*

³⁹ S21(10) *ibid*

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'Making a Murderer' defence lawyer, attends European Young Bar event in Belfast

Jerry Buting, star of hit Netflix documentary series 'Making a Murderer', joined more than 150 young legal professionals in Belfast for the European Young Bar Association Spring Conference. The event was hosted by the Northern Ireland Young Solicitors' Association.

The Northern Ireland Young Solicitors' Association (NIYSA) successfully brought the prestigious European Young Bar Association Spring Conference to Belfast from the 7-9 of April.

The conference came to Northern Ireland for only the third time and featured one of the world's current highest profile lawyers in America, Criminal Defence Attorney, Jerry Buting.

Mr Buting expressed his admiration for how the Belfast based event was coordinated: "I'm very pleased with how well the European Young Bar Association Spring conference was received in Belfast. It was my pleasure to speak to so many young, enthusiastic legal professionals from across Europe who are creating a bright future for the profession.

I hope everyone got something out of the conference and I was genuinely delighted to be invited. I look forward to visiting Belfast again soon."

Mr Buting was also keen to praise the efforts of the NIYSA whilst drawing upon his experience in the hit documentary series:

"I would like to congratulate Julie-Ann and the Northern Ireland Young Solicitors' Association for bringing the European Young Bar event to Belfast. The "Making a Murderer" documentary captured the public imagination and has got many young people interested in the legal profession once more."

NIYSA Chair, Julie-Ann McCaffrey, spoke of her delight at bringing such an event to Belfast:

"As Chair of the NIYSA I am exceptionally proud to have been able to bring an event of this magnitude to Belfast. With the help of our sponsors, Herbert Smith Freehills, Brightwater Recruitment, Cleaver Fulton Rankin, the Law Society of NI and the Bar of Northern Ireland, lawyers from all across Europe and further afield got to sample this wonderful event and explore some of what Belfast has to offer. It was our pleasure to have Jerry Buting on board as guest speaker and we are grateful to him for accepting our invitation."



From left: John Guerin, President of the Law Society; Elisabeth Batiste, President of the EYBA; Jerry Buting; Julie-Ann McCaffrey, Chair of the NIYSA and The Lord Chief Justice Sir Declan Morgan.



From left: Julie-Ann McCaffrey, Chair of the NIYSA; Ronan Lavery QC; Elisabeth Batiste, President of the EYBA; Jerry Buting and Charlene Dempsey.



From left: Elisabeth Batiste, President of the EYBA; Jerry Buting and Julie-Ann McCaffrey, Chair of the NIYSA.

The PILS Project

Financial support available for solicitors to bring public interest cases

"In the current legal climate where funding is an ever more challenging issue, PILS is a crucial support to the legal profession. Whilst lawyers are expected to contribute pro bono support, the increasing pressure on the profession means that it is more and more difficult, particularly for small, specialist firms to do so and without organisations like PILS many important and worthwhile cases would not proceed."

Dorcas Crawford, Senior Partner, Edwards and Company.

The PILS (Public Interest Litigation Support) Project is committed to advancing human rights and equality through the use of and support for public interest litigation (PIL).

What we do

- Provide financial and legal support to our members to take public interest cases.
- Enhance communication and co-ordination between non-governmental organisations (NGOs), and between NGOs and the legal profession, on the use of public interest litigation. We organise free CPD events and training on a wide range of issues.
- Raise awareness of and tackle barriers to public interest litigation and promote access to justice for those most in need. In addition to our litigation fund, we operate a pro bono register, where legal practitioners provide us with exploratory legal opinions, appear in court and tribunal cases and help deliver training to our members.

Our members

Currently we have 69 members, comprising solicitor firms and NGOs. Solicitor members come from across Northern Ireland, and range from sole practitioners to large local firms.

What support we provide

We provide financial support to meet the costs related to legal proceedings, for example:

- Counsel's opinion
- Court fees and other disbursements

- Applicant's legal fees
- An indemnity against the other side's costs

Recent cases

Bank of Scotland v Rea and Others [2014] NI Master 11

PILS member: Housing Rights.

PILS support: The Project provided financial support to meet the fees for Counsel for the borrowers and an indemnity against the legal costs of the lender.

Impact: The Court held that when applying for a Possession Order against a borrower, a lender cannot rely on arrears that they have already consolidated unilaterally.

CAJ and Brian Gormally's Application [2015] NIQB 59

PILS member: Committee on the Administration of Justice (CAJ).

PILS support: PILS provided the financial support that allowed the case to be taken. An initial legal opinion was from a Barrister from our pro bono register.

Impact: The High Court found the Executive had failed to create an anti-poverty strategy based on objective need, as required by the Northern Ireland Act 1998.

Steven Watters [2015]

PILS member: McNamee McDonnell Solicitors.

PILS support: We provided an indemnity against the respondent's costs and outlays associated with taking judicial review proceedings.

Impact: The DOJNI agreed to review the fees structure for the fees of legal representatives in confiscation hearings under the Proceeds of Crime Act 2002 and the 2011 Legal Aid Rules.

Why become a member?

- Membership is free
- You will be able to apply to PILS for financial support for your cases for free
- You will have free admission to PILS events, including CPD seminars

What our solicitor members say

"The PILS Project assisted our clients with funding for the appeal to the Supreme Court in the case of McCartney & MacDermott which is now the leading authority on the test to be applied on eligibility for compensation for miscarriages of justice. As a result of the successful outcome in the Supreme Court more victims of miscarriages of justice are entitled to compensation than was previously the case."

"Without the assistance of the PILS project it is unlikely that the applicants in that case would have been able to take their appeal to the Supreme Court which would have meant they and others like them would continue to be deprived of their rightful compensation entitlement."

Greg McCartney, Partner, McCartney and Casey Solicitors. The PILS Project supported the case of *McCartney and MacDermott* [2011] UKSC 18.

"The PILS Project has provided invaluable support in allowing my firm to bring significant equality cases to the Courts. The cases funded often assert the rights of vulnerable and marginalised groups in our society. I feel that these cases are vital to bring about social change and it is great to have an organisation that empowers applicants that otherwise may not have been able to afford the high costs associated with public interest litigation to assert and protect their rights."

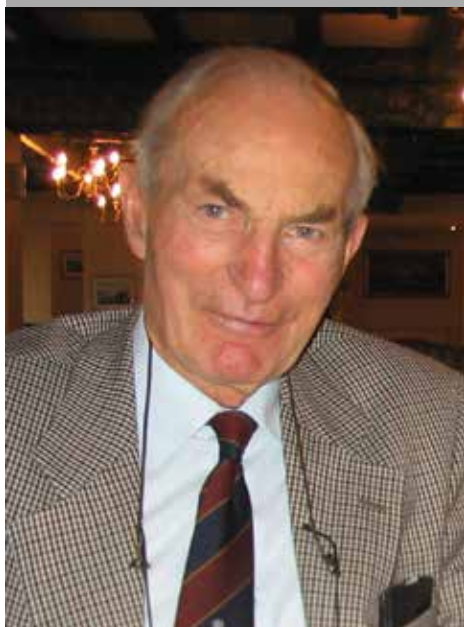
"The application process is straightforward and staff are very supportive in assisting with the application. I have no doubt that if PILS had not funded some cases they would never have occurred and my clients would not have been able to access justice."

Ciaran Moynagh, Partner, McLernon Moynagh Solicitors. The PILS Project has supported a number of cases from this firm, most recently a challenge seeking recognition of same sex marriages in Northern Ireland.

Want more information?

If you would like to find out more about the PILS Project, please check out our website at www.pilsni.org or contact us at info@pilsni.org or on 028 9099 4258. You can also follow us on twitter at [@PILSni](https://twitter.com/PILSni).

Obituary - **James Scott Tweed** MA, LLB, OBE 1926 - 2014



James S Tweed, formerly Senior Partner with O'Rorke McDonald & Tweed Solicitors and Senior Resident Magistrate, died peacefully on 22 December 2014, aged 88 years.

James was born at the family farm in Ballycoose, the second son of Campbell and Lavinia Tweed. Educated at Cairncastle Primary School and Coleraine Academical Institution, James went on to study at Trinity College, Dublin, graduating in 1948 with a Bachelor of Arts (Honours) in Legal and Political Science and as a Bachelor of Law (Honours).

While a student in Dublin James met his future wife, Audrey. They married in 1953 and lived together happily for nearly 60 years.

In 1951 he was awarded his Master of Arts degree from Trinity. He joined the family law firm O'Rorke, McDonald & Tweed working initially in the firm's Antrim office, but later returning to Larne. James was invited to become a partner in 1958. He developed an extensive legal practice, becoming the trusted family solicitor for many individuals and families. He also served on Law Society committees, advised and prosecuted for both his local Council and Northern Ireland Railways and acted for a wide variety of businesses, charitable and religious organisations. He rose to become Senior Partner, remaining with the firm for 26 years until sworn in as a Resident Magistrate in May 1977.

In 1979 James was assigned to Belfast Juvenile Court and appointed a Deputy County Court Judge. At the time he was understood to be the first Solicitor to preside in Crown and County Courts in Northern Ireland. Specialising in juvenile and domestic proceedings, James became an expert in this field of law. One of his most significant achievements was in developing the Children (Northern Ireland) Order 1995, which placed the best interests of the child as the pre-eminent consideration in legal proceedings.

James was appointed Northern Ireland representative of the Commonwealth Magistrates' and Judges' Association in 1982. He served as a Council member, then Vice-President, addressing legal conferences across the Commonwealth and meeting many interesting people, from local judges to national Presidents.

In 1994 James was appointed by the Secretary of State to the Northern Ireland Criminal Justice Consultative Group and spent time training lay magistrates and others in juvenile court procedures. He was Chairman of the Lord Chancellor's Advisory Committee for the appointment of lay panel members.

Throughout his career James was renowned for his legal expertise, his wise counsel, his sense

of justice and fairness, as well as his unfailing kindness and courtesy. Legal colleagues have paid tribute to his generous help and support with personal and professional issues, and for the considerable time he spent encouraging lawyers new to the profession.

On his retirement in May 1997 James was Senior Resident Magistrate in Belfast. He was awarded an OBE in the Queen's Birthday Honours List in 1997 for his service to the judiciary.

Alongside his devotion to his career and family, James' interests were many and varied.

Maintaining his interest in education, he served as President of the Board of Governors of Coleraine Academical Institution and Chairman of the Board of Governors of Cairncastle Primary School.

A committed Rotarian, James served as President of Larne Rotary Club and then as Secretary and District Governor of Rotary International in Ireland.

He had a lifelong passion for rugby, playing for CAI in two Schools' Cup finals, then scrum-half for Dublin Universities and captain of Larne Rugby Club. He also enjoyed playing tennis, badminton and golf.

In retirement, James and Audrey were able to indulge their love of gardening, and of travel, especially cruising. They attended garden parties at Buckingham Palace and Hillsborough Castle and celebrated their golden wedding anniversary in 2003.

James and Audrey were devoted members of Cairncastle Presbyterian Church. James was ordained an elder in 1963 and served as Clerk of Session for many years. He also served on the Judicial Commission, the Church and Government Committee and the Moderator's Advisory Committee of the Presbyterian Church in Ireland.

James had a strong and secure faith which instilled in him the most wonderful generosity of spirit and gave him an authenticity and integrity evident to everyone he met. He was a true Christian gentleman.

James is survived by his son Alan, solicitor son Robin, daughters Grace and Jennifer and eleven grandchildren.

A service of thanksgiving for his life was held in Cairncastle Presbyterian Church on 24 December attended by then Society President, Arleen Elliott and a large number of family, friends and legal colleagues.

Obituary - **Peter James Rankin OBE** 1942-2015



Peter Rankin was until his retirement, in March 2005, the senior Partner in the Belfast practice of Cleaver Fulton Rankin.

Born in Belfast, the son of William Brian Rankin and Margaret Rankin, he was educated at RBAI and Trinity College Dublin.

On returning to Belfast from Dublin, in 1965, there being no concept of "a year out" in those days, he was apprenticed to his distinguished father in Cleaver Fulton Rankin.

Peter qualified in the summer of 1968 and was made a partner in the firm in 1970. At that time there were only four partners. Sadly, in 1976 Brian Rankin died very suddenly and the other senior partner John Drennan, suffered a severe stroke and retired in the early 1980s. This left Peter as the senior partner. From then on the firm grew with the addition of new partners, many of whom were trained in the firm. He retired from the firm in 2005.

Peter's main areas of practice were in the fields of charity law, trusts, company and partnership law. He was also quite an expert in problems of rights of way and in conveyancing and land law. He was an excellent draftsman. In the days before the Charity Commission, charities had to meet the requirements of the Charity Department of the Inland Revenue. Peter guided many charities through the procedure to acquire charitable status. Peter attended many meetings of his charity clients to advise them, often in evening meetings far from his County Down home. He also served on the Boards of Bryson House and The Belfast Charitable Society, at Clifton House.

Peter spent many hours driving around Northern Ireland visiting clients and engaging his great interest in historic architecture. He was a founder member of the Ulster Architectural Heritage Society, serving many years on the committee in various capacities, including that of Secretary. He was co-author with Lady Dunleath of a monograph, published by the Society, on the architecture of Downpatrick. He also wrote on Downhill and the building ventures of the Earl Bishop of Derry, Frederick Hervey.

Peter latterly served on various boards connected with the preservation of buildings throughout Ireland, including the Irish Landmark Trust which finds new uses for historic buildings and renovates them accordingly. He served on the Historic Buildings Council of Northern Ireland and the Irish Architectural Archive in Dublin. In 2009 Peter was awarded the OBE for his work as Legal Advisor to the Belfast Buildings Preservation Trust and for voluntary service to the cause of heritage in Northern Ireland.

Peter was also involved in the Scout Movement becoming Group Scout Leader of the 40th Scout Group, based at McCracken Memorial Presbyterian Church on the Malone Road.

Peter had a passionate sporting interest in riding and spent many winter days on the hunting field. Saturdays were no problem but the Wednesday hunts required a lot of organisation. He would come into the office at about 7am, if not earlier, and dictate a day's work for his secretary, who incidentally was with him from his apprentice days, until her untimely death, a few years before Peter's retirement. He would then depart for the hunting field, collecting his horse on the way from a neighbouring member of the hunt, or friendly farmer; hunt all day and often return to the office in the evening to sign his post. Peter's great love of hunting and riding introduced him to farming and he spent much of his leisure time, assisting on a neighbouring farm with silage, hay, harvesting and livestock duties, often well into summer nights. He had a great love of the countryside.

Peter's other great interests were music and art. He was a good classical pianist and organist. He often played at morning services in churches as far apart as Portaferry and Co Donegal. From his student days he loved to attend art exhibitions and acquired, over his lifetime, an important collection of Irish Paintings, which, from time to time, would be seen in retrospective exhibitions.

Peter's brother Alastair, his partner for many years in the firm, his close family and his many friends sharing his wide variety of interests, were shattered to hear of his totally unexpected death on 16 July, at the early age of 72, when he had so much more to do and to achieve.

From the Court of Appeal - abstracts of some recent case law

The full text of these decisions is available on the [Liberio Database](#) in the member's section of the [Law Society Website](#) at www.lawsoc-ni.org

ADMINISTRATION OF JUSTICE

WILLIAM JOHN MORROW V ATTORNEY GENERAL FOR NORTHERN IRELAND

Appellant appeals from an order (the order) of the Judge whereby upon application of the Attorney General for Northern Ireland it was ordered pursuant to s.32(1) of the Judicature (NI) Act 1978 that no legal proceedings shall without the leave of the High Court be instituted by the appellant in any court or tribunal. - that any legal proceedings instituted by the appellant in any court or tribunal before the making of the order shall not be continued by him without such leave. - that such leave shall not be given unless the court is satisfied that the proceedings are not an abuse of process of the court and that there is a *prima facie* ground for the proceedings, and that a notice of the making of an order under the section be published in the Belfast Gazette. - judge found that the applicant had been habitually and persistently engaged in litigation, that there had been no reasonable grounds for doing so and that the proceedings had been vexatious. - whether to exercise discretion. - whether the order disclosed no reasonable cause or action. -

whether the order is scandalous, frivolous or vexatious. - HELD that appeal dismissed
COURT OF APPEAL
30 NOVEMBER 2015
MORGAN LCJ, WEATHERUP LJ,
WEIR LJ

ARBITRATION

TRUNK FLOORING LIMITED V HSBC ASSET FINANCE (UK) LIMITED AND COSTI RIGHI SPA

Appeal by the second named defendant from the decision of the judge in which he acceded to the plaintiff respondent's application for the removal of a stay of proceedings granted to the appellant for referral of a dispute between the parties to arbitration. - appellant is the manufacturer of plant and machinery and the respondent identified a machine manufactured by the appellant for their business purposes and entered into a hire purchase agreement. - dispute arose between the appellant and the respondent because a machine allegedly failed to operate properly with the result that the respondent claims to have sustained loss by reason of the appellant's alleged negligence and breach of contract. - arbitration clause in the contract. - impasse developed between the parties with regard to costs. - principles governing a stay of legal proceedings under the 1996 Arbitration Act. - whether there was evidence of an express offer on the part of the appellant to abandon the arbitration or an express acceptance by the respondent of any offer to abandon the arbitration agreement. - whether the judge failed to distinguish between the ending of the arbitration reference on the one hand and the suggested ending of the arbitration agreement on the other. - HELD that the order of the judge be reversed and the appellant's application for a stay of proceedings granted
COURT OF APPEAL

11 NOVEMBER 2015
GILLEN LJ, WEIR LJ, DEENY J

COSTS

H V H

Costs. - ancillary relief. - order for costs on an indemnity basis. - whether the trial judge was correct in ordering that the costs of the appeal from the Master and the costs before the Master should be awarded against the appellant. - conduct of the appellant in continuing to relentlessly pursue the respondent on unmeritorious grounds and making serious unfounded allegations against counsel, solicitors and the judiciary which have inflated the costs. - HELD that all orders for costs made against the appellant and that the costs for the hearings in the Court of Appeal be made on an indemnity basis
COURT OF APPEAL
11 FEBRUARY 2016
GILLEN LJ, GIRVAN, SIR PAUL, COGHLIN, SIR PATRICK

CRIMINAL LAW

R V DOUGLAS FREDRICK AYTON

Appellant seeks leave to appeal against the cumulative term of imprisonment resulting from the individual consecutive sentences imposed upon him and appeals against the imposition by the judge of an order under a.26 Criminal Justice (NI) Order 1996 imposing a licence period rather than making a custody probation order under a.24 of that Order. - appellant had pleaded guilty to 15 of 36 counts involving sexual offences against three girls and pleaded not guilty to the remaining counts at arraignment but just before trial he stated his plea to 18 of the remaining 21 counts. - totality principle. - HELD that appeal allowed on the ground of totality and on

the a.24/26 ground. - sentences substituted
COURT OF APPEAL
18 DECEMBER 2015
MORGAN LCJ, WEIR LJ, MCBRIDE J

R V ROBERT BARI

Appeal against sentence in respect of one count of assault occasioning actual bodily harm and one count of common assault. - appellant was arraigned and pleaded not guilty to both counts and to a third count of making a threat to kill. - personal circumstances and pre-sentence report. - risk factors connected with the offender and likelihood of reoffending. - whether the sentence was manifestly excessive on the grounds that the learned trial judge failed to give adequate weight to the fact that the injuries sustained were relatively minor and this placed the assault in the lower end of the spectrum of assaults occasioning actual bodily harm, failed to give weight to the fact that although the matter was contested, the complainant was not called to give evidence and therefore failed to give any mitigation of sentence to reflect the manner in which the trial was conducted and failed to allow any reduction in sentence to reflect the fact that the PPS directed that the offences proceed summarily and if dealt with by a Magistrates Court the maximum sentence would have been lower. - HELD that the sentence was entirely appropriate and the appeal dismissed
COURT OF APPEAL
18 DECEMBER 2015
MORGAN LCJ, GILLEN LJ, KEEGAN J

R V JOHN PAUL BRANIFF

Appeal against a determinate custodial sentence imposed for the unlawful deposit, keeping and treating of controlled waste on the appellant's land. - applicant seeks to further appeal the Confiscation Order made against him for the sum of £108,350. - impact on land, air and water of the burning of controlled waste including an area of Special Scientific Interest. - personal circumstances of the

appellant. - sentencing guidelines on environmental offences. - culpability and recklessness. - aggravating and mitigating factors. - HELD that the trial judge did not indicate his starting point before making allowance for the plea and that there was no actual evidence of environmental damage. - a determinate custodial sentence of 18 months be reduced to 12 months comprising six months in custody and six months on licence
COURT OF APPEAL
4 MARCH 2016
MORGAN LCJ, WEIR LJ, MCBRIDE J

R V LUKASZ ARTUR KUBIK

Application for leave to appeal against extended custodial sentence of 9 years comprising 4.5 years in prison and 4.5 years on licence followed by an extended licence period of 3 years for convictions of rape and sexual assault. - pre-sentence report. - victim impact. - sentencing remarks. - mitigating and aggravating factors. - dangerousness. - HELD that leave to appeal given, appeal allowed and custodial sentence substituted to 7 years comprising 3.5 years in custody and the same on licence and removing the extended sentence
COURT OF APPEAL
29 JANUARY 2016
MORGAN LCJ, GILLEN LJ, KEEGAN J

R V STEPHEN MCCAUGHEY, IAN WEIR AND JASON WEIR

Defendants convicted of murder and possession of a firearm with intent to endanger life. - Director of Public Prosecutions seeks leave to refer the sentences imposed to the Court of Appeal pursuant to s.36 Criminal Justice Act 1988 on the grounds that they are unduly lenient. - first defendant sought leave to appeal his sentence on the grounds that the learned trial judge had erred in not beginning with a lower starting point to reflect his lower culpability in the

offence. - principles governing the sentencing of assisting offenders. - HELD that the sentences are not unduly lenient and the appeal by the first defendant also dismissed
COURT OF APPEAL
24 NOVEMBER 2015
GILLEN LJ, DEENY J AND SIR PATRICK COGHLIN

R V HEATHER RAMSEY

Appeal against conviction. - appellant convicted of concealing criminal property contrary to s. 327 (1) (a) Proceeds of Crime Act 2002. - whether the conviction was unsafe. - whether the trial judge erred in incorrectly admitting before the jury evidence of a plea of guilty of the co-accused, which plea was not probative and was unduly prejudicial to the appellant in the circumstances. - whether the trial judge erred in refusing to accept a submission of no case to answer at the close of the prosecution case and in refusing to accept a further submission that the case should be withdrawn from the jury. - whether the judge erred in failing to direct the jury fully and adequately as to the inherent lack of weight and lack of probative value in the evidence of the plea of the co-accused. - whether the jury were left to speculate as to the meaning of the evidence of the co-accused. - HELD that there was unsupportable weight placed on the evidence of the co-accused and verdict unsafe and conviction quashed
COURT OF APPEAL
29 FEBRUARY 2016
GILLEN LJ, WEATHERUP LJ, WEIR LJ

EMPLOYMENT

CAROLINE CONNOLLY V WESTERN HEALTH AND SOCIAL CARE TRUST

Appeal from a decision of the Industrial Tribunal to dismiss the appellant's claim for unfair dismissal. - Tribunal found that despite deficiencies in the conduct of the disciplinary investigation and disciplinary hearing

rendering them unfair, the appeal process restored fairness to the disciplinary process as a whole. - whether the Tribunal erred in not finding the appeal process itself was unfair and that the Tribunal erred in finding that dismissal was a reasonable sanction for the appellant's misconduct. - application for extension of time to bring appeal. - applicant had asked for the Tribunal to review its decision and then issued a Notice of Appeal to the Court of Appeal, thus exceeding the time limit. - time for appeal runs from the date of the Tribunal's decision and is not postponed or extended by any review. - HELD that the Tribunal's decision that the appeal hearing served to restore fairness to the matter is unsupported by the material that was available to it and the Tribunal's decision that the appellant's dismissal was not unfair is not well-founded and should be set aside. - that the delay in the case was not excessive, is understandable and did not prejudice the respondent and time should be extended. - matter remitted to a differently constituted Tribunal for rehearing
COURT OF APPEAL
1 FEBRUARY 2016
GILLEN LJ, WEATHERUP LJ, WEIR LJ

DEPARTMENT FOR EMPLOYMENT AND LEARNING V RICHARD JAMES MORGAN

Appeal from a decision of the Industrial Tribunal which found the respondent to be an employee for the purposes of a.3 Employment Rights (NI) Order 1996 and entitled to redundancy payment, notice pay, holiday pay and arrears. - director and shareholder of a limited company also claiming employee status. - approach to determining whether a person is an employee. - Tribunal found that the substance of the money received by the claimant was an emolument for services rendered by the claimant to the company and should be treated as a salary and not a so-called dividend. - whether, in

determining that the respondent was an employee for the purposes of a.3 Employment Rights (NI) Order 1996, the Tribunal failed to properly direct itself in law and/or properly apply relevant law and by reason of such error reached the wrong outcome. - whether, in its decision and the reasoning contained therein, the Tribunal failed to adequately explain its determination that the claimant was an employee for the purposes of a.3 Employment Rights (NI) Order 1996 and therefore erred in law. - whether the Tribunal acted irrationally, perversely or otherwise erroneously in law. - whether the Tribunal erred in making no finding in relation to the fact that the PAYE payments made to the claimant were lower than the national minimum wage and the purported contract of employment was in breach of the National Minimum Wage. - whether payments to a person in the form of dividends is incompatible with an employment relationship. - HELD that the Tribunal applied the correct legal principles and did not reach a decision that was irrational or perverse or erroneous in law and appeal dismissed
COURT OF APPEAL
14 JANUARY 2016
GILLEN LJ, WEATHERUP LJ, WEIR LJ

DR MALGORZATA STADNICK-BOROWIEC V SOUTHERN HEALTH AND SOCIAL CARE TRUST AND HEALTH AND SOCIAL CARE BOARD

Appeal from the decision of the Industrial Tribunal ("the Tribunal") by which it dismissed the appellant's claims for discrimination on grounds of race and sex, breach of contract, unlawful deduction from wages, unfair dismissal and detriment and of dismissal on the ground of having made a protected disclosure. - incidents which led the Trust and the Board to have serious concerns about the appellant's ability to carry out her job and her eventual dismissal. - appellant challenges the factual

findings of the Tribunal. - HELD that the Court was satisfied that the Tribunal's findings of fact were entirely justified by the evidence and that its process of reasoning from the facts as found in reaching its conclusion cannot be faulted and appeal fails

COURT OF APPEAL

7 JANUARY 2016

GILLEN LJ, WEATHERUP LJ, WEIR LJ

EVIDENCE

IN THE MATTER OF THE CHILDREN (NI) ORDER 1995 UPON APPEAL FROM THE FAMILY CARE CENTRE IN BELFAST RE A AND B (NO.2)

Children. - injury. - proof. - suspicion. - speculation. - whether the Family Division judge was correct in law in finding that in cases involving injuries to children, medical witnesses should not be asked to express an opinion as to whether the injuries are accidental or otherwise. - whether it was necessary to state a case. - role and expectations of medical experts and judges. - HELD that request to state a case declined but that the original judgment be expanded to state that "in cases involving injuries to children medical witnesses should not be asked to express an opinion as to whether the injuries are accidental or otherwise other than in clinical terms."

HIGH COURT

2 FEBRUARY 2016

O'HARA J

PPS V JAMIE BRYSON

Application by way of case stated from a decision of the Presiding District Judge (Magistrates Courts). - appellant had been charged with 4 offences of taking part in an unnotified procession contrary to s. 6(7) Public Processions (NI) Act 1998. - nature of the burden upon the appellant in respect of the statutory defence in s. 6(8) of the 1998 Act. - [preliminary issue that the application to

state a case was received by the clerk of petty sessions within the required time period but the case was not transmitted to the Court of Appeal until 15 weeks outside the statutory time-limit and not served on the PPS until 17 days later. - whether the delay in the case was such that the court no longer had jurisdiction to deal with the case stated. - whether failure to transmit the case as required meant that there was no substantial compliance. - extent of the failure and reasons for it, nature and importance of the issue to be determined and the general prejudice arising from any delay. - court concluded that they could address the issues despite the delay]. - whether a burden placed upon a defendant in a criminal statute is a legal or evidential burden. - whether the judge was correct to hold that the legal burden imposed upon the accused by section 6(8) of the Public Processions (NI) Act 1998 does not unjustifiably infringe the presumption of innocence. - whether the judge was correct in applying the legal burden to section 6(8) Public Processions (NI) Act 1998. - HELD in the affirmative for both

COURT OF APPEAL
7 MARCH 2016
MORGAN LJ, GILLEN LJ, KEEGAN, J

JUDICIAL REVIEW

DEPARTMENT OF EDUCATION V MAIGHREAD CUNNINGHAM (A MINOR) BY HER MOTHER AND NEXT FRIEND BREDA CUNNINGHAM AND COUNCIL FOR CATHOLIC MAINTAINED SCHOOLS

Appeal by the Department of Education from an order of the Judge removing into the Queen's Bench Division and quashing two decisions related to Clintyclay Primary School. - applicant is a pupil at the school. - decisions by the Minister to refuse to approve a transformation of the school into an integrated primary and to approve the closure of the school. - policy background of

the Department and viability reviews. - whether the judge erred in law in concluding that the Minister clearly and mistakenly made both impugned decisions on the basis that the school was under financial stress and in concluding that the advice given to the Minister was infected by a CCMS report and in finding that the Minister had misdirected himself on the question of the school's finances by his reliance on the advices given to him which directly or indirectly referenced financial matters. - whether there were mistakes of law giving rise to unfairness. - adequacy of reasons. - HELD that the matter remitted to the judge to reconsider his decision

COURT OF APPEAL
14 MARCH 2016
MORGAN LJ, WEATHERUP LJ, DEENY J

PAUL LAVERTY V POLICE SERVICE FOR NORTHERN IRELAND AND THE POLICE APPEALS TRIBUNAL

Appellant appeals against the decision of the trial judge to dismiss the appellant's application for judicial review by reason of the appellant's delay. - appellant applied for leave to apply for judicial review of the decisions of the Police Appeals Tribunal (the Tribunal) but the application was not made promptly or within 3 months of the decision as required by the rules. - whether the trial judge erred in failing to conclude that the PSNI acted unlawfully by using material unlawfully provided to it by An Garda Siochana and information arising from it for the purposes of a misconduct investigation and internal disciplinary proceedings. - whether the judge erred in failing to conclude that the Police Appeals Tribunal had acted unlawfully by failing to exclude from relying upon in its proceedings material unlawfully provided for the PSNI by An Garda Siochana and information

arising from it. - whether the judge erred in failing to determine any of the appellant's grounds of judicial review and grant any of the forms of relief. - issue of delay reserved at the leave hearing to the substantive hearing. - whether there was reasonable objective excuse for applying late. - what damage in terms of hardship or prejudice to third party rights and detriment to good administration would be occasioned if permission was now granted. - whether the application should proceed in the public interest. - factors relevant to the consideration of good reason to extend time. - appellant seeks quashing of decision of PSNI to initiate an investigation and misconduct proceedings, quashing of the decision of the Tribunal determining that there was no reason to exclude material unlawfully obtained. - whether the information used by the PSNI and the Tribunal was in breach of the Data Protection Act 1998. - HELD appeal dismissed

COURT OF APPEAL
16 DECEMBER 2015
MORGAN LJ, WEATHERUP LJ, MCBRIDE J

LIMITATION OF ACTIONS

SEAN DILLON V CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND

Appeal by way of case stated under a.61 County Courts (NI) Order 1980. - transmission of the case stated and non-compliance with the statutory time limit. - approach to non-compliance with the requirements for a case stated. - nature and effect of non-compliance in the present case. - extension of time under the rules of court. - HELD that the consequence of non-compliance with the statutory time limit is that the Court lacks jurisdiction to hear the appeal

COURT OF APPEAL
14 MARCH 2016
WEATHERUP LJ, TREACY J, MCBRIDE J



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- Share sale agreement
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- Compromise agreement
- Partnership agreement for doctors
- Sale of a pharmacy
- Sole distribution agreement
- Personal injury trust
- Springboard agreement
- Contract for services of a graphic designer
- Cohabitation agreement

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Company Secretarial Precedents
Goode: Consumer Credit Precedents
Modern Law of Patents Precedents
Practical Commercial Precedents
Practical Lending and Security Precedents

Employment

Employment Precedents and Company Policy Documents
Harvey Employment Precedents

Family

Butterworths Family Law Service
Rayden and Jackson's Family Precedents

General

Encyclopedia of Forms and Precedents
Kelly's Legal Precedents
Precedent Library for the General Practitioner

Private client

Parker's Will Precedents
Potter and Monroe Tax Planning with Precedents
Practical Trust Precedents
Practical Will Precedents
Tristram and Coote's Probate Precedents
Williams on Wills Precedents

Property

Edge: Form of leases
Laffoy: Irish Conveyancing Precedents
Practical Lease Precedents
Precedents for the Conveyancer
Ross: Commercial property precedents

Library Update – Latent damage and limitation periods

NI Legislation

- **Limitation (Amendment) (Northern Ireland) Order 1987**
This Order amends the law of limitation of actions in negligence cases involving latent damage (other than personal injuries) and provides for the accrual, in certain circumstances, of a cause of action in negligence to successive owners in respect of latent damage to property.
a.5 equivalent to Limitation Act 1980 ss.14A & 14B.

English Legislation

Neither Act applies in NI but they are referred to in articles and caselaw below.

- The Latent Damage Act 1986
- Limitation Act 1980 ss.14A & 14B

Articles

Murphy's law: limitation periods and latent defects (discusses whether claim in negligence out of time and references relevant caselaw)
Higgins: 1993 NILQ 44(1), 78-82

Longtail liability and limitation (explains the working of liability insurance policies, in particular the issues thrown up by their longtail liability nature)
Wright: 2015 26 (4) Cons Law 26

The date of damage in defective property cases (discusses the Court of Appeal ruling in *Abbott v Will Gannon & Smith Ltd* on the date on which damage had occurred for the purpose of establishing when the limitation period started for claiming damages for negligent building work which resulted in defective premises)
Dugdale: 2006 PN 22(3), 196-199

Building contracts - is there concurrent liability in tort? (examines the Court of Appeal judgment in *Robinson v PE Jones (Contractors) Ltd* on whether a building contractor owed the house purchaser a duty of care in tort for pure

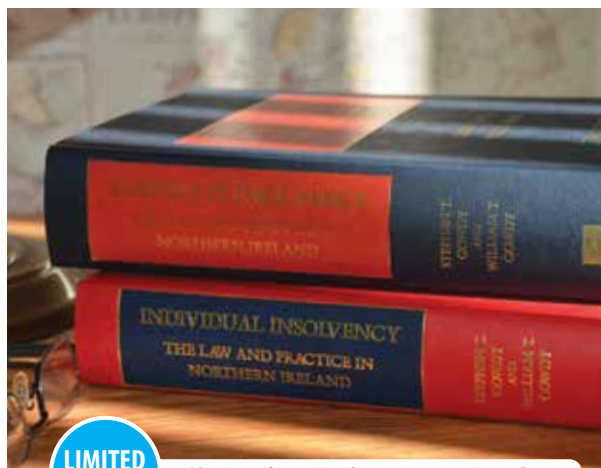
economic loss arising from defects concurrent with its contractual liability.
O'Sullivan: 2011 CLJ 70(2), 291-294

Defective premises law: time for remedial works? (examines legal developments concerning liability for building defects and the problems arising from the restrictive approach of the courts. Reviews the restrictions on the recovery of damages arising from building defects imposed by the House of Lords ruling in *Murphy v Brentwood DC* and the subsequent solutions attempted by the courts)
Johnson: 2012 Const. L.J. 28(2), 132-143

Adjudication limitation: a spectre of uncertainty (discusses adjudication with reference to the Aspect case)
Batty: 2014 25 (4) Cons Law 23

Putting limits on limitation (the courts and very short contractual limitation periods)
Wilkinson: 2012 23(1) Cons Law 20

Legal terms explained (discusses the basic principles when looking at claims of negligence)
Jackson: 2011 22 (6) Cons Law 5



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Cases

Blakemores LDP (in administration) v Scott and others

Whether a judge had been right to have granted summary judgment striking down the first and third appellants' negligence claims against their solicitors, on the grounds that they had been issued more than three years after they had acquired the knowledge required for bringing an action for damages in respect of the relevant damage, within the meaning of s 14A(5) and (6) of the Limitation Act 1980. - allowed the appellants' appeal and set aside the orders for summary judgment.
[2015] EWCA Civ 999

Chinnock v Veale Wasbrough and another

Limitation of action – Negligence – Lawyers – Claimant retaining defendant solicitor and counsel to act in clinical negligence proceedings – Defendants advising no viable cause of action – Claimant not pursuing claim – Claimant subsequently being advised cause of action having been viable – Claimant issuing proceedings against defendants alleging professional negligence – Judge finding defendants not being liable in negligence and claim being statute barred – Whether judge erring
[2015] EWCA Civ 441

Jacobs v Sesame Ltd

Limitation of action – Negligence – Accrual of cause of action – In 2005, claimant, on defendant's advice, making investment – In 2009, claimant having received statements showing catastrophic fall in value of bond – Claimant surrendering bond in 2012 and suffering loss – In November 2012, claimant issuing claim in negligence against defendant – Judge extending limitation period – Defendant appealing – Whether claimant being able to rely on relevant statutory provision to pursue claim that otherwise being time-barred
[2014] EWCA Civ 1410

The following cases are referred to in the NILQ article listed above.

Pirelli General Cable Works Ltd v Oscar Faber & Partners

Date of accrual of a cause of action in tort for damage caused by the negligent design of a building is the date the damage came into existence.- P engaged D to design a factory chimney for them in 1969. - P discovered serious damage in 1977. - found that they could not, with reasonable diligence, have discovered it before 1972. – Writ issued claiming damages

for negligence. - D pleaded the Limitation Act 1939. - Held, allowing D's appeal, that time began to run from the date the damage came into existence, not from when it could have been discovered
[1983] 2 AC 1; [1983] 2 WLR 6

Abbott v Will Gannon & Smith Ltd

Appellant engineers (E) appealed against a decision on a preliminary issue that the claim brought by the respondent (W) in negligence was not statute barred.- In 1995, W, which owned a hotel, retained E, who were consulting structural and civil engineers, to design the work necessary to remedy structural defects in a large bay window of the hotel. - remedial work to E's design was completed in 1997. - in 1999, W noticed that the lintel over the window had moved and cracked the surrounding structure.- W issued proceedings against E in 2003 for breach of duty in contract and in tort, claiming the cost of remedying the defects which had appeared in 1999 and consequential losses. Held, dismissing the appeal, that the judge had been bound by authority to hold that a building owner's cause of action against his consulting engineer for negligent design accrued for limitation purposes when physical damage to the building first occurred
[2005] EWCA Civ 198 ; [2005] B.L.R. 195 ; 103 Con. L.R. 92 ; [2005] P.N.L.R. 30

Robinson v PE Jones (Contractors) Ltd

Appellant homeowner (R) appealed against a decision that the respondent builder (J) did not owe him a duty of care in tort. - latent defect had been discovered 12 years after J had built a house for R. - since a claim for breach of contract was statute-barred, R claimed in tort for economic loss and the case was struck out. Appeal dismissed.- contractual terms limiting protection to that conferred by the NHBC Agreement were not unreasonable.- agreement did not provide total protection, but it conferred extensive liability for defects on builders and was of very substantial benefit
[2011] EWCA Civ 9; [2012] Q.B. 44; [2011] 3 W.L.R. 815; [2011] B.L.R. 206; 134 Con. L.R. 26;

Murphy v Brentwood DC

M bought one of a pair of houses built on a concrete raft foundation on an in-fill site in 1970. - raft was defective and differential settlement occurred. - M was unable to repair the defect, and sold the house, sustaining a loss of GBP 35,000. - sued the council for negligent approval of the plans, claiming that there had been an imminent risk to health and safety from fractured gas and oil pipes. Held, that the loss suffered was economic loss and the council were not liable in tort for negligent application

of the building regulations where resulting defects had not caused physical injury
[1991] 1 A.C. 398; [1990] 3 W.L.R. 414; [1990] 2 All E.R. 908;

Nitrigin Eireann Teoranta v Inco Alloys Ltd

Ds manufactured and supplied to Ps alloy tubing used to form part of the header tubes where methane gases and steam were collected. - contract was made in March 1981. - in July 1983, Ps discovered cracking and took steps to repair it, but could not find the cause. - on June 27, 1984, the tube ruptured, causing methane to escape and ignite, resulting in an explosion which shut down the plant. on June 21, 1990, Ps brought an action for damages, alleging that the tube was defective and cracked by reason of negligence in manufacture. - Ds contended, as a preliminary issue, that the claim was statute-barred because the damage to the pipe and any negligence which caused it occurred in July 1983, more than six years before the writ, and alternatively that the loss in 1984 was purely economic and irrecoverable. - Ps contended that the cause of action accrued on June 27, 1984, and so was not statute-barred. - Held, that the action was not statute-barred.
[1992] 1 WLR 498; [1992] 1 All E.R. 854

Junior Books Ltd v Veitchi Co Ltd

V had been engaged as specialist sub-contractors to lay a floor in a factory being built for J; there was no contractual relationship between V and J. - J claimed that the floor was defective as a result of negligence by V, and that in consequence they had suffered a considerable loss of profit, and other economic and financial loss. - Held, that on the assumption that the allegations in the statement of claim were true, there was revealed a sufficient proximity between V and J to give rise to a duty of care, nothing being disclosed that would have the effect of limiting that duty. - J could, accordingly, recover financial losses sustained by reason of the negligence of V
[1983] 1 A.C. 520; [1982] 3 W.L.R. 477; [1982] 3 All E.R. 201

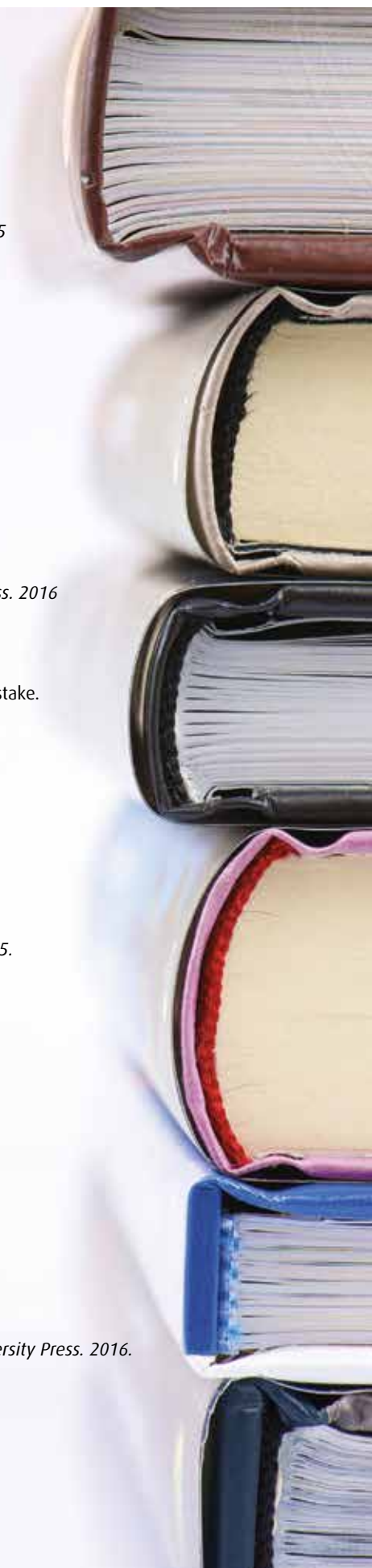
Above cases and journal articles are available from the library. Please ask a member of staff for details.

Books in the library

- Law of limitation. Looseleaf. Section B Chapter VIII Torts affecting land Section D Chapter III Latent damage
- McGee, A. Limitation periods. 7th ed. *Sweet & Maxwell. 2014*

New Books in the Library

- Davies, G. Copinger and Skone James on copyright. 17th ed. *Sweet & Maxwell*. 2016
- Gillard, C. Jordans company secretarial precedents. 8th ed. *Jordans*. 2016
- Fry, C. APIL guide to noise claims. *Jordans*. 2016.
- Miller, E. LinkedIn for lawyers: developing a profile to grow your practice. *Ark Publishing*. 2015
- Hardee, M. Legal training handbook. *The Law Society*. 2016.
- Isaac, D. Property development: appraisal and finance. 3rd ed. *Macmillan Publishing*. 2016.
- Walker, S. Setting up in business as a mediator. *Bloomsbury Professional*. 2015.
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- Galbraith, H R. Avoiding professional negligence claims. *Thomson Professional*. 2015
- Warwick, M. Break clauses. 2nd ed. *Jordan Publishing*. 2016.
- Raphael, M. Bribery: law and practice. *Oxford University Press*. 2016
- Gould, T. Unfair dismissal: a guide to relevant caselaw. 34th ed. *LexisNexis*. 2016
- Bielanska, C. Elderly client handbook. 5th ed. *The Law Society*. 2016.
- Williams, A. Drafting agreements for the digital media industry. 2nd ed. *Oxford University Press*. 2016
- Hayton, D. Underhill and Hayton: Law of trusts and trustees. 19th ed. *LexisNexis*. 2016.
- Slater, L. The lawyer's guide to strategic practice management. 2nd ed. *Ark*. 2015.
- Hodge, d. Rectification: the modern law and practice governing claims for rectification and mistake. 2nd ed. *Sweet & Maxwell*. 2016.
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- Whitaker, J. The law of limited liability partnerships. 4th ed. *Bloomsbury*. 2016.
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- Lewis, T. Employment law: an adviser's handbook. 11th ed. *LAG*. 2015
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- Lambert, P. The laws of the Internet. 4th ed. *Bloomsbury*. 2015.
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- Lewison, K. The interpretation of contracts. 6th ed. *Sweet & Maxwell*. 2015.
- Chitty on contracts. 32nd ed. *Sweet & Maxwell*. 2015.
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- Bean, D. Injunctions. 12th ed. *Sweet & Maxwell*. 2015.
- Powles, S. May on criminal evidence. 6th ed. *Sweet & Maxwell*. 2015.
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- Birds, J. MacGillivray on insurance law. 13th ed. *Sweet & Maxwell*. 2015.
- D'Costa, RR. Tristram and Coote's probate practice. 31st ed. *LexisNexis*. 2015.
- Hollander, C. Documentary evidence. 12th ed. *Sweet & Maxwell*. 2015.
- Abbey, R. A practical approach to commercial conveyancing and property. 5th ed. *Oxford University Press*. 2016.
- Nabarro Pensions Team. Pensions law handbook. 12th ed. *Bloomsbury*. 2016
- Ritchie, A. Guide to MIB claims: uninsured and untraced drivers. 4th ed. *Jordans*. 2016.
- Walden, I. Computer crimes and digital investigations. 2nd ed. *Oxford University Press*. 2016.
- Burr, A. Delay and disruption in construction contracts. 5th ed. *Informa Law*. 2016.
- North, P. Occupiers' liability. 2nd ed. *Oxford University Press*. 2014.



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Missing Wills

Re: Thomas McGivern
Formerly of: 99 Crawsfordsburn Road, Drumanness, Ballynahinch
Date of Death: 15 March 2016.

If anyone knows of the whereabouts of the Will of the above named deceased, please contact

E&L Kennedy

Solicitors

72 High Street

Belfast BT1 2BE

Tel: 028 9023 2352

Email: caoimhe.connolly@

eandlkennedy.co.uk

Re: Guy Ernest Pettet (deceased)
Late of: 67 Station Road, Bangor, County Down BT19 1EZ
Date of Death: 26 January 2015

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

Joseph F McCollum & Company

Solicitors

52 Regent Street

Newtownards

County Down BT23 4LP

Tel: 028 9181 3142

Fax: 028 9181 2499

Email: joe@josephmccollum.co.uk

Re: Patricia May Pettet (deceased)
Late of: 67 Station Road, Bangor, County Down BT19 1EZ
Date of Death: 12 March 2015

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

Joseph F McCollum & Company

Solicitors

52 Regent Street

Newtownards

County Down BT23 4LP

Tel: 028 9181 3142

Fax: 028 9181 2499

Email: joe@josephmccollum.co.uk

Re: Stephen Dickson (deceased)
Late of: 125a Derryboy Road, Crossgar, County Down
Date of Death: 12 March 2016

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

John Ross & Son

Solicitors

30 Frances Street

Newtownards

County Down BT23 7DN

Re: Mary Margaret Murphy
Late of: 126 Westacres, Craigavon BT65 4BB
Date of Death: 19 February 2016

Would any person having any knowledge of the whereabouts of a Will made by the above named deceased please contact the undersigned as soon as possible.

Conor Downey & Co

Solicitors

Unit 8, First Floor

Legahory Centre

Craigavon BT65 5BE

Tel: 028 3834 9911

Email: Craigavon@conordowney.co.uk

Re: Winifred Gordon (deceased)
Late of: Richmond Private Nursing Home, 19 Seafront Road, Holywood BT18 0BB
Formerly of: 51 Irwin Crescent, Belfast BT4 3AQ
Date of Death: 6 April 2016

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

Judith E Hutchinson

Mackenzie & Dorman

Solicitors

94/96 Holywood Road

Belfast BT4 1NN

Tel: 028 9067 3211

Fax: 028 9067 1751

Email: jeh@macdor.co.uk

Re: Mary Elizabeth Duggan (deceased)

Late of: 34 Tullyah Road, Belleeks, Newry and Carrickcloghan, Camlough, Newry, County Down

Date of Death: 27 April 2016

Would any solicitor holding a Will on behalf of the above deceased, please contact:

The Elliott-Trainor Partnership
Solicitors

3 Downshire Road

Newry

County Down BT34 1EE

Tel: 028 3026 8116

Fax: 028 3026 9208

Email: Gerard.trainor@

etsolicitors.com

Re: Albert Henry Goodman
Late of: 20 Kew Gardens, Belfast BT28 6GN

Date of Death: 6 April 2016

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

Cleaver Fulton Rankin

Solicitors

50 Bedford Street

Belfast BT2 7FW

Tel: 028 9027 1338

Fax: 028 9024 9096

Re: Jack Hayes
Formerly of: 68 Beechhill Park West, Belfast BT8 6NW
Date of Death: 13 April 2016

If anybody has any knowledge of the whereabouts of a Will made by the above named deceased please contact:

Mr Steven Ewing, Solicitor

Anderson Irwin and Co

Solicitors

32 Church Street

Antrim

County Antrim BT41 4BA

Tel: 028 9446 2636

Fax: 028 9446 6822

Email: steven@anderson-irwin.co.uk

Re: Walter Stanford (deceased)
Late of: 24 Cairngorm Crescent, Newtownabbey BT36 5EW
Date of Death: 18 May 2015

Would any person having any knowledge of the whereabouts

of a Will for the above named deceased, which was drawn up by Noel Wilson Solicitor and executed on 18 September 2007, please contact:

Lynda McNeill, Solicitor

Reid Black

Solicitors

2 Holywood Road

Belfast BT4 1NT

Tel: 028 9045 3449

Email: lynda@reidblack.com

Re: Beatrice Mary Taylor (deceased) & Desmond Taylor (deceased)

Both late of: 19 Lower Braniel Road, Belfast BT5 7JR

Would any Solicitor holding a Will of the above noted please contact:

Hart & Co

Solicitors

4th Floor, Causeway Tower

9 James Street South

Belfast BT2 8DN

Re: David Boyce (deceased)
Late of: Larne Care Centre, Coastguard Road, Larne BT40 1AU

Formerly of: 1 Bluefield Way, Carrickfergus BT38 7UB

Date of Death: 31 March 2015

Would any person having any knowledge of the whereabouts of a Will made by the above named deceased please contact the undersigned as soon as possible:

Skelton & Co

Solicitors

Washington House

14-16 High Street

Belfast BT1 2BD

Tel: 028 9024 1661

Fax: 028 9032 5795

Email: skeltonlegal@aol.com

Re: James Henry Magee (deceased)
Formerly of: 15 Tullywinney Road, Camlough, Newry BT35 7HW

Date of Death: 29 April 2016

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

Bernadette Rafferty

Rafferty & Co

Solicitors

83 Hill Street
Newry BT34 1DG
Tel: 028 3026 1102
Fax: 028 3026 0757
Email: bernie@ciaranaffertysol.com

52 Regent Street
Newtownards
County Down BT23 4LP
Tel: 028 9181 3142
Fax: 028 9181 2499
Email: joe@josephmccollum.co.uk

Property at:
**36 Cloona Crescent, Dunmurry,
Belfast BT17 0HG**

Owner: Marian Surgenor
If any persons have knowledge of the whereabouts of Title Deeds for the above property, would they kindly contact:
*Oonagh Maguire, Solicitor
Breen Rankin Lenzi Limited
Unit 2, Slemish Buildings
105 Andersonstown Road
Belfast BT11 9BS
Tel: 028 9061 8866
E-mail: Oonagh@brlsolicitors.com*

74 Edward Street
Lurgan
County Armagh BT66 6DB
Tel: 028 3834 1330
Fax: 028 3834 1165

Missing Title Deeds

Property at:
**67 Station Road, Bangor, County
Down BT19 1EZ**

**Owners: Guy Ernest Pettet
(deceased) and Patricia May
Pettet (deceased)**

If any persons have knowledge of the whereabouts of Title Deeds re: the above property, would they kindly contact:

*Joseph F McCollum & Company
Solicitors*

Property at:
**20 Kew Gardens, Belfast
BT28 6GN**
**Registered Owner: Albert Henry
Goodman**

Would any person having any knowledge of the whereabouts of Title Deeds for the above property please contact:

*Cleaver Fulton Rankin
Solicitors
50 Bedford Street
Belfast BT2 7FW
Tel: 028 9027 1338
Fax: 028 9024 9096*

Property at:
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Anyone with knowledge of the Title Deeds for the above property please contact:
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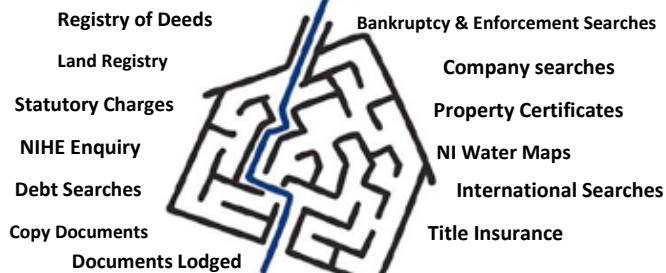
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Further details about this charity and its work will gladly be supplied by the Secretary, The Heart Trust Fund (Royal Victoria Hospital), 9B Castle Street, Comber, Co. Down BT23 5DY. Tel: (028) 9187 3899.

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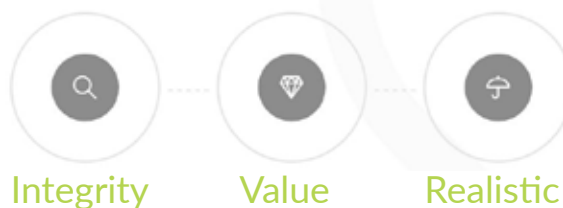


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