

# THE WRIT

THE LAW SOCIETY  
OF NORTHERN IRELAND



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OF NORTHERN IRELAND

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## THIS ISSUE

Brian Speers,  
new President of the  
Commonwealth Lawyers'  
Association

### **The Role of the Coroner**

An overview of Coroner McGurgan's role and the legal framework in which he operates.


### **DVADs One Year On**

How has the Domestic Violence & Abuse Disclosure Scheme fared since its introduction in March 2018?

### **Retaining Biometric Data**

Looking at how a recent case and upcoming legal challenge may impact the retention of data.

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*Presentation of Report on Child Marriage in the Commonwealth.*

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# Commonwealth Lawyers Association

*Brian Speers, newly elected President of the Commonwealth Lawyers' Association, reflects on the Association's 2019 Conference held in Livingstone, Zambia.*

The Commonwealth Lawyers' Association was formed in 1986 and has since then grown to include all 54 members of the Commonwealth. While the concept of the Commonwealth to some may seem slightly old-fashioned with the remnants of the British Empire at its heart, in fact the Commonwealth is a modern organisation linking English speaking jurisdictions with a common law approach to legal practice and procedure, all arising of course from former involvement of the British in those jurisdictions. Many of the jurisdictions have now been independent nations for upwards of 60 years and have developed their own practices and expertise and systems but with a central core of the common law.

The Commonwealth Lawyers' Association (CLA) involves lawyers who share an interest in the Rule of Law and in upholding the independence of the legal profession - in some jurisdictions often to their great cost.

In some countries the voice of the CLA in upholding the Rule of Law and drawing the attention of governments and decision-makers to international norms regarding the Rule of Law has been highly welcomed and most helpful.

Every two years the CLA holds a major international conference in a Commonwealth jurisdiction. This conference attracts upwards of 600 lawyers often including Chief Justices, senior legal officials but also senior office holders in Law Associations and Bar Councils throughout the Commonwealth including of course many 'ordinary' legal practitioners.

The most recent Commonwealth Law Conference was held in Livingstone, Zambia from 8-12 April 2019. This attracted in excess of 600 lawyers from 43 Commonwealth jurisdictions. Northern Ireland was represented by our own Lord Chief Justice Sir Declan Morgan who spoke at business sessions during the conference and also participated in the judging of the Commonwealth moot and in a Chief Justices' Forum.



*Brian Speers with members of the Council of the CLA.*

Our Chief Justice has been an active participant in the Commonwealth Law Conferences and is now regarded as a very senior Chief Justice within the Commonwealth framework.

Our Chief Executive, Alan Hunter, also attended and was very much in demand both from other Chief Executives to take part and lead discussion in a Chief Executives' Forum but also to talk on the legal practice implications from Brexit and also dealing with Law Society regulation and privacy and information management.

The President of the Law Society of Northern Ireland also attended and delivered a very well received contribution to a discussion about the #metoo movement. She described the Gillen Review of Trial Practice and Procedures in cases involving sexual offences following the so called "rugby player trial". This attracted significant interest and our President's presentation was very well received by delegates.

I have been the Law Society of Northern Ireland's nominee to the Council of the CLA for eight years and in the last four years have participated as a member of the Executive Committee. Following the conference in Melbourne where regional hubs were inaugurated, I became the Vice-President of the CLA and the Chair of the European Hub. In that connection I organised the inaugural meeting of

Commonwealth jurisdictions in Europe (being Scotland, England & Wales, Isle of Man, Jersey, Guernsey, Malta, Gibraltar and Cyprus) to take place in Edinburgh, Scotland at the end of January 2019. A further European Hub meeting is to take place in Belfast in September and it is hoped that the programme for that European Hub meeting will attract the interest of many local practitioners who can then share experiences with these other common law European jurisdictions.

I was honoured to be elected as the President of the Commonwealth Lawyers' Association at the General Meeting held in Livingstone at the commencement of the conference in April. At the closing ceremony, the outgoing President Mr Santhaaan Krishnan from Delhi, India, passed over to me the flag of the Commonwealth Lawyers' Association. In a short address to the delegates present I made it clear the support I had received from the Law Society of Northern Ireland and hoped that I could serve the interests of all jurisdictions in the Commonwealth who had an interest in upholding the Rule of Law.

The opening ceremony at the conference in Livingstone was especially memorable for being opened by the President of Zambia, President Lungu. He also had qualified as a lawyer and spoke with some passion and interest on the question of the Rule of Law and the importance of upholding the independence of the Judiciary and the legal

profession. It was quite an experience to be part of the small platform party ushered into the opening ceremony by a close protection group of Zambian military, all carrying machine guns and preceded by a dancing and singing troupe of talented Zambian artists!

Also on the platform party was Baroness Patricia Scotland, the Secretary General of the Commonwealth and a lawyer who endeared herself to the delegates by going out of her way to thank each delegate for their work in practising the law, upholding the Rule of Law and serving the interests of clients throughout the Commonwealth.

The opening ceremony preceded a key note address by the Lord Chief Justice of England and Wales, Lord Justice Burnett who spoke on the important subject of parliamentary privilege.

The conference sessions then unfolded over the succeeding four days covering a wide variety of topics ranging from the death penalty to the Amritsar massacre and from cryptocurrency to corruption. I was pleased to moderate and contribute to a session on mediation. I had the opportunity at the end of the contributions from myself and other speakers on the panel to conduct an impromptu interview with Senator Sekai Holland, a former Senator of the Zimbabwe parliament who had experienced unspeakable torture during the Mugabe era simply for speaking out and upholding the values which she and all other right thinking people in the Commonwealth would uphold. This articulate and humble lady made a lasting impression with her approach to peace building, reconciliation and dispute resolution and invited me

during my presidential term to visit her in Harare and contribute to her network of influencers regarding conflict and dispute resolution.

This opportunity will build on other opportunities from Commonwealth jurisdictions interested in developing their own mediation training and this interest in mediation is on the rise in all Commonwealth jurisdictions. Having had an opportunity of providing mediation training to the lawyers who are members of the Law Society of Namibia and also undertaking training in Kuala Lumpur, Malaysia, I hope that the experience of mediation gained in our jurisdiction can be exported to other jurisdictions who have an interest in developing the essential skill of lawyers to be problem solvers and to manage disputes in the interest of their clients.

There are many initiatives within the CLA which members of the Law Society of Northern Ireland will wish to take an interest in. One is the Report on Child Marriage which I was pleased to supervise and bring to a conclusion. At the CLC in Livingstone I presented the Report to delegates and chaired a discussion on this important issue with contributions from leading lawyers from India and Zambia. Child marriage of course is not a phenomenon confined to some remote jurisdictions. I am presenting a copy of the CLA Report on Child Marriage to our President so that it becomes a resource in this jurisdiction.

A further project will be on the question of freedom of speech. We tend to take this for granted in our jurisdiction. However, in

many Commonwealth jurisdictions lawyers demonstrate extreme bravery in simply representing their clients and in either criticising or challenging decisions taken by government or by state bodies.

In Malaysia recently a lawyer has been imprisoned for 30 days for the offence of scandalising the judiciary, an offence which received attention in Belfast a short number of years ago and which attracted such publicity that that ancient offence has since been removed from the UK statute books.

One further area of interest at the Livingstone conference was the fact that the Law Society of Northern Ireland and other delegates provided tangible and generous financial support which allowed a classroom to be built for the Linda Community School which is a school comprising around 400 pupils from highly disadvantaged and vulnerable backgrounds. The classroom was commissioned and was delivered on time, on budget and had a mural painted reflecting the support given by the Law Society of Northern Ireland. The classroom was opened by the Secretary General of the Commonwealth, Baroness Scotland. I was honoured to preside at the opening ceremony formalities introducing the inspirational head teacher of the school as well as the barrister trustee of the school Mr John Gillette and the UK High Commissioner to Zambia.

The community was so excited at the prospect of visiting legal dignitaries that they all turned out in force. The drive to the school down an uneven track flanked on each side by cheering and waving school pupils as I travelled with Baroness Scotland and President Santhaan Krishnan, will be forever a memory of mine. There was great singing,



Presidents with the Linda Community School Choir after they performed at the Opening Ceremony.



Standing for the Zambian National Anthem to mark the opening of the 2019 Conference (from left) Baroness Scotland, Secretary General of the Commonwealth; President Lungu, President of Zambia; Eddie Mwitwa, President Law Association Zambia; Santhaan Krishnaa, outgoing President CLA; Brian Speers.

dancing, drum playing and whistling. The opening of the classroom proved to be a catalyst for thinking as to how best to continue support for such a worthy project. I am pleased to advise that the Law Society of Northern Ireland is willing to commit to providing further support to this school such as by the provision of school uniforms and extra school materials as well as through the provision of money to ensure that the pupils get at least one regular meal during the week.

I hope that this gives a flavour of some of the work of the CLA. The Law Society of Northern Ireland is now able to contribute through my role as CLA President. I would like to encourage as many members as possible who have an interest in belonging to an international organisation of English speaking common law jurisdictions to make contact with me or to visit the CLA website where for a modest £50 annual membership you can join the organisation. This is an organisation which has a scope

and range which is proportionate to our jurisdiction unlike some much larger international legal organisations. The character of the CLA is one which is instantly likeable, friendly and approachable and the issues raised in all of the jurisdictions throughout the Commonwealth are ones to which we in Northern Ireland can relate.

During my presidential period in the CLA I would hope to provide other periodic reports.



Brian Speers speaking at the new classroom built from funds donated by delegates to the Conference and with a donation from LSNI. Also in the picture are Santhaan Krishnaa, outgoing President CLA, Baroness Scotland and the Head teacher of the Linda Community School, Cathy Chilambe.



From left: Santhaan Krishnan, outgoing President of the CLA; Baroness Scotland, Secretary General of the Commonwealth; Edgar Lungu, President of Zambia; Irene Mambilina, Chief Justice of Zambia; Brian Speers, incoming President of the CLA along with children from Linda Community School.



Brian Speers presenting to delegates the CLA Report on The Role of the Law in Eliminating Child Marriage in the Commonwealth.



Baroness Scotland unveils the plaque at the opening of the new classroom.



Society President Suzanne Rice with attendees at the Women in Law event.



Lord Chief Justice Sir Declan Morgan addressing Conference attendees.

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## Appointment of Civil Legal Services Appeal Panels

The Permanent Secretary of the Department of Justice, Peter May, has announced the names of additional appointees to the Civil Legal Services Appeal Panels, who will consider appeals regarding the granting of legal aid in civil cases.

Four Presiding Members have been appointed with effect from 1 April 2019 to 31 March 2024. They are Ciaran Harvey, Jim Kitson, Charles Redpath and Htaik Win.

Eight Other Members have been appointed with effect from 1 April 2019 to 31 March 2024. They are Keith Dunn, Louisa Fee, Kristina Gordon, Johanna Higgins, Steven Millar, Anne Mullan, Sean O'Hare and Deep Sagar

Presiding Members are remunerated £350 per sitting and Ordinary Members are remunerated £250 per sitting, which includes preparation required and attendance at each sitting of the Appeal Panel.

## Increase to amount of Statutory Bereavement Damages

The Damages for Bereavement (Variation of Sum) Order (NI) 2019 (SR 2019 No.80), which applies only to causes of action accruing on or after 1 May 2019, amends Article 3A(3) of the Fatal Accidents (NI) Order 1977 increasing the sum which may be awarded for damages for bereavement in Northern Ireland from £14,200 to £15,100.

The sum prescribed was last increased in April 2016, at which time a commitment was given by the then Minister of Justice, David Ford, to adjust the amount in line with inflation every three years, to ensure that it is appropriately fixed on a regular and consistent basis.

## Legal Aid Assessment Office – Transfer to Legal Services Agency

Further to a recommendation of the Access to Justice Report, the financial eligibility assessments functions undertaken by the Legal Aid Assessment Office (LAAO) have transferred from the Department for Communities to the Legal Services Agency.

Solicitors applying for legal aid on behalf of their clients will continue to apply in the same manner they currently do and will continue to engage directly with LSA staff in relation to any queries.

The transfer of the statutory functions to the LSA is aimed at supporting the development of a more integrated approach to the delivery and administration of legal aid.

# NEWS IN BRIEF

## The single jurisdiction and County Court Divorce cases

Practitioners are reminded that one of the effects of a single jurisdiction in Northern Ireland is that there are no longer County Court Divisions or Petty Sessions Districts as per the Lord Chief Justice's Direction on the matter - <https://judiciaryni.uk/sites/judiciary/files/decisions/LC%20Direction%205-16.pdf>

The removal of all such references in paperwork is an ongoing process. NICTS requests members of the profession involved in County Court Divorce cases to use revised forms which are available on the NICTS website which can be accessed <https://www.justice-ni.gov.uk/publications/forms-and-checklists-making-application-divorce-county-court>

Practitioners will note that the revised titles are, for example, 'In the County Court of Northern Ireland sitting at ...'. It is important that the appropriate court venue is inserted by the party submitting the form.

Any other court forms which have not yet been amended may be changed by the parties or their representative to reflect the new wording. NICTS staff are happy to assist with suitable wording if necessary.

## LAWCARE TO LAUNCH WEBCHAT SERVICE

LawCare has announced that it will pilot a new webchat service from 1 July 2019. The charity, which offers emotional support to legal professionals and staff in the UK and Ireland through a free confidential helpline and peer support network, received its highest ever number of helpline calls in 2018.

Recognising that more and more people in the legal community are reaching out to it for support every year, LawCare has decided to expand its support service. Noting that many young people are more likely to seek help online than pick up the phone, the webchat service will allow anyone working in the legal profession to contact one of LawCare's trained team members online for emotional support on any issue that is troubling them.

Webchat will be available from 1 July at [www.lawcare.org.uk](http://www.lawcare.org.uk) or [www.lawcare.ie](http://www.lawcare.ie). The helpline is 0800 279 6888 in the UK and 1800 991 801 in Ireland.

## RELOCATION OF REGISTRY OF DEEDS RECORDS

Pre-1990 Registry of Deeds' records which have previously been housed in the Public Record Office of Northern Ireland (PRONI) have now been relocated from PRONI to Land & Property Services (LPS), Customer Information Centre (CIC) at Lanyon Plaza, 7 Lanyon Place, Belfast, BT1 3LP.

The hours of opening of the CIC in LPS are:

- Monday to Thursday 9.30am to 4.30pm; and
- Friday 10.00am to 4.30pm

The Registrar of Titles has thanked the PRONI staff for the excellent provision of facilities and customers for their support during this relocation.

## Changes to National Minimum Wage

New increased rates of National Living Wage (NLW) and National Minimum Wage (NMW) came into effect on 1 April 2019.

Minimum pay rates increased as below:

- NLW (workers aged 25+) — from £7.83 to £8.21 per hour.
- NMW rates:
  - workers aged 21-24 — from £7.38 to £7.70 per hour
  - workers aged 18-20 — from £5.90 to £6.15 per hour
  - workers aged 16-18 — from £4.20 to £4.35 per hour
  - apprentice rate — from £3.70 to £3.90 per hour.

The accommodation offset rate rose to £7.55 per day.



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## FORMER SOCIETY PRESIDENT SWORN IN AS HIGH COURT JUDGE

The Nisi Prius Court was packed with legal practitioners as Mr Justice Huddleston was sworn into office as a High Court Judge before the Lord Chief Justice, Sir Declan Morgan.

His appointment follows a legal career straddling three decades. Mr Justice Huddleston was admitted to the Roll of Solicitors in Northern Ireland in 1991 and went on to become a partner in law firms in Belfast and London. He is a former Council Member of the Society, Chairperson of its Education Committee and served as Society President in 2016-2017. During his tenure as President of the Society, he represented the profession at a policy level on key issues.

In practice he has been involved in both fee earning and senior management roles, specialising in areas of property, tax and private client.

A qualified mediator, Mr Justice Huddleston was also a fee-paid legal member on the Tax Tribunal, and sat on the Charity Tribunal which hears appeals against decisions of the Charity



*From left: Rowan White, Junior Vice President; Eileen Ewing, Senior Vice President; Mr Justice Huddleston; Suzanne Rice, President and Alan Hunter, Chief Executive.*

Commission, prior to his appointment to the High Court.

Society President, Suzanne Rice, offered her congratulations to Mr Justice Huddleston, saying: "Over the course of his career, Mr Justice Huddleston has shown great dedication and contribution to the legal profession as a solicitor, Council Member and as President of the Law

Society of Northern Ireland in 2016/17.

"The Society is confident that he will make a significant contribution to the work of the Court and the development of the law. His appointment is further recognition of the important role which solicitors continue to provide in the justice system and to the rule of law in Northern Ireland".

### Northern Ireland Chest Heart & Stroke

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## The Role of the Coroner

April 2019 marked Coroner McGurgan's third year as one of three full time Coroners in Northern Ireland. He takes this opportunity to provide colleagues with an overview of his role and the legal framework in which he operates.

Each year in Northern Ireland there are some 16,000 deaths reported to the Coroner.

As indicated there are three full time Coroners as well as a number of County Court Judges who also serve as Coroners when required. Mrs Justice Keegan is our Presiding Coroner.

The Coroner's Service is based on the 5th floor of Laganside House. As well as administrative staff we have five in house legal advisors, three Coroner's Liaison Officers and a full-time doctor. Having a doctor on staff is invaluable given the complexities that arise daily in relation to deaths.

There is a duty upon medical practitioners, registrars of deaths, funeral undertakers, occupiers of a house or mobile dwelling, or persons in charge of any institution or premises in which the deceased was residing to report deaths to the Coroner.

Under Section 7 of the Coroner's Act (NI) 1959 this duty arises whenever a death has occurred in the following circumstances:

- a. as a result of violence or misadventure or by unfair means;
- b. as a result of negligence, misconduct or malpractice on the part of others;
- c. from natural illness or disease for which the deceased has not been seen AND treated within 28 days prior to death;



- d. in such circumstances as may require investigation (including deaths from the administration of an anaesthetic).

Similarly, under Section 8 of the same Act, the police have a duty to report:

- a. the finding of a dead body;
- b. any unexpected or unexplained death; or
- c. a death attended by suspicious circumstances.

As WWB Topping, Minister of Home Affairs stated in 1959, sections 7 and 8:

*"... are framed so as to secure, as far as humanly possible, that all questionable deaths are brought to (the coroner's) notice."*

Once a death is reported to the Coroner's Service then it is for the Coroner to decide as to whether or not he can accept the suggested cause of death or if a post mortem is required.

Currently around 35% of deaths result in a post mortem. It should be noted that only the Coroner has the authority to order a post mortem and this applies also to requests from

solicitors representing defendants in murder cases for a defence post mortem.

It should also be noted that still births are also reported in Northern Ireland unlike in England, Scotland or Wales.

On receipt of the post mortem it is then for the Coroner to decide as to whether or not an Inquest is required.

The Coroner has an absolute discretion in this regard save for deaths which occur in prison. In those circumstances an Inquest sitting with a jury is mandatory even if the prisoner died from natural causes.

The purpose of an Inquest is to try and answer who the deceased was, where they died, when they died and how they died. It should be noted by practitioners that an Inquest is an inquisitorial process. It is not adversarial and it is not there as a mechanism to attribute blame or to find fault.

The Coroner decides which individuals should be called as witnesses and it is the Coroner, or his legal representative, who leads the questioning of the witnesses. Those individuals who the Coroner has designated as Properly Interested persons are then afforded the opportunity to ask questions of the witnesses but bear in mind that the questions must be relevant to answering the four statutory questions. It should also be noted that under Rule 17 of the Coroner's (Practice and Procedure) Rules (NI) 1963, a Coroner can admit witness statements into evidence without the need for the witness to be called.

At the conclusion of the Inquest, the Coroner considers the evidence and delivers his findings. Findings are a factual narrative and do not touch upon blame or fault. Remember that Inquests are neither a criminal nor civil trial.

In addition at the conclusion of an Inquest, the Coroner can write under Rule 23(2) to the Government Departments, organisations, the Chief Medical Officer or any other relevant body to highlight particular concerns and ask for proposals on remedies so as to try and ensure there is no repetition of the circumstances of the death which has just been the subject of an Inquest.

This is a particularly useful tool and one which I utilise as and when necessary to try and effect change and to support my belief that one of the roles of the modern day Coroner is to try and prevent future deaths.

DEATH CERTIFICATE  
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2. FIRST NAME

EXACT DATE OF

## DOMESTIC VIOLENCE AND ABUSE DISCLOSURE SCHEME ONE YEAR ON

Over 326 applications were made to the Northern Ireland Domestic Violence and Abuse Disclosure Scheme (DVADS), since its introduction in March 2018. To date, 40 people, identified as being at risk, have been advised about their partner's abusive past.

The scheme, operated by the Police Service of Northern Ireland, in conjunction with statutory and voluntary partners allows a potential victim to receive information on their partner's history of abusive behaviour in terms of the risk they pose, enabling them to make an informed choice about their relationship.

Anthony Harbinson, Director of the Department of Justice's Safer Communities Directorate, said: "I welcome the take up of the disclosure scheme and the courage of those coming forward to make an enquiry. Domestic violence and abuse is a serious problem within Northern Ireland's society and we remain committed to tackling it through implementation of the joint Department of Justice and Department of Health seven year strategy.

He continued: "I am also encouraged by the proactive steps being taken by police and partner organisations in making their own enquiries through the scheme. We will continue to work in partnership with PSNI and our statutory and voluntary sector colleagues to help create a safe community where we respect the law and each other."

Discussing the first anniversary of the Domestic Violence and Abuse Disclosure Scheme, Detective Superintendent Ryan Henderson from Police Service Public Protection Branch, said: "I am extremely proud that we now have this Scheme in place across Northern Ireland. This Scheme shows that as a society we say there is no place for domestic abuse or no hiding place for domestic abusers.

"The Scheme is different because it focuses on preventing people from becoming victims. Abusers can often move from relationship to relationship leaving a trail of abuse which the Scheme stops from remaining hidden.

"One year on from the launch I am pleased to see the uptake in the number of people who have come forward to apply. This has surpassed our expectations and shows the Scheme has a vital part to play in tackling domestic abuse."

Applications can be made via the Police Service's website at <https://www.psni.police.uk/crime/domestic-abuse/dvads/>

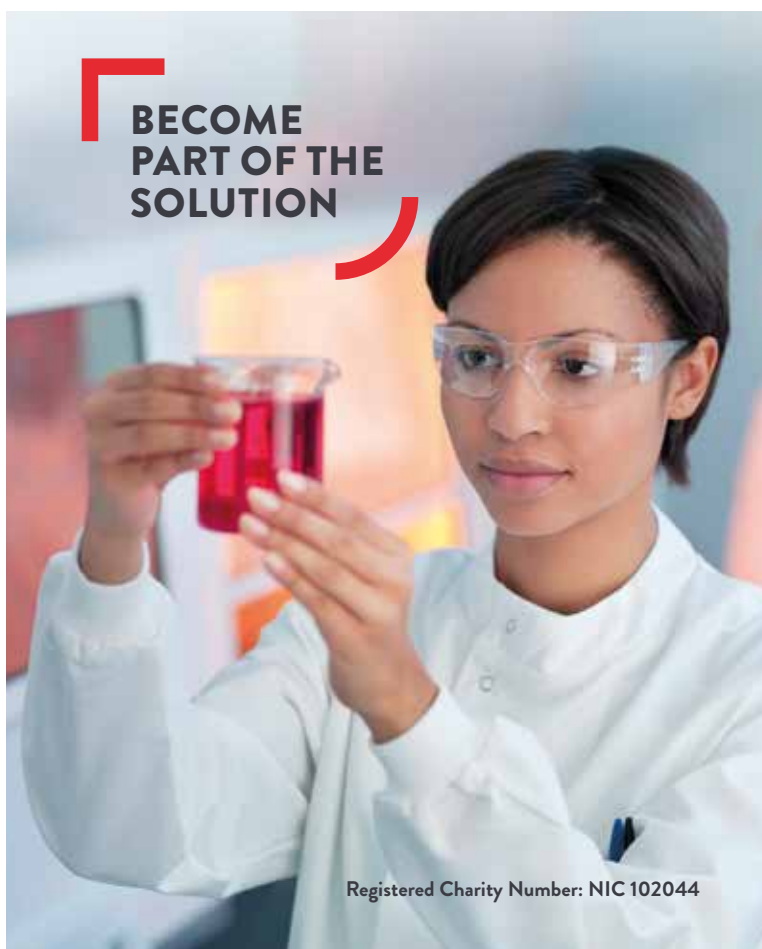
During 2018, there were more than 31,000 domestic violence and abuse incidents reported to police, with almost 16,000 crimes committed. Further, there are, on average, around six murders a year committed with a domestic abuse motivation. Approximately 70% of all victims of domestic abuse are female, with around 30% male.

The 'Right to Ask' strand of the scheme is non-statutory but underpinned by existing law which enables police to disclose relevant information in order to prevent crime.

The 'Power to Tell' provision allows police to act on information that may come to their attention by other means. As with the 'Right to Ask', police will assess the degree of risk and act accordingly.

Disclosure made will be on a general basis, indicating a risk to the person, rather than specifying the detail of any previous offence. This follows a number of stringent checks made by police together with participating statutory and voluntary sector partners.

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## New licensing scheme for Houses in Multiple Occupation

**A new licensing scheme aimed at improving conditions for occupiers and addressing issues that can affect neighbourhoods has been introduced for Houses in Multiple Occupation (HMOs) with effect from 1 April 2019.**

Latest figures provided by the Housing Executive show there are approximately 5,700 HMOs registered - many of these are in the Holylands and in the Coleraine University area. The number of people living in this tenure could be as many as 30,000.

Whilst the Houses in Multiple Occupation Act (Northern Ireland) 2016 had been granted Royal Assent and introduced into law, most of the sections contained therein had not yet been enacted. A suite of new Regulations (SRs 2019 Nos.31-39) enact the remaining sections of the HMO Act 2016 which see responsibility for HMO regulation transfer from the Northern Ireland Housing Executive to local Councils with effect from 1 April 2019 and provide further clarity on the requirements of the licensing scheme.

In the 2016 Act the meaning of a "house in multiple occupation" is a building or part of a building that is classed as living accommodation occupied by three or more persons who are all not members of the same family or of one or other of two families; in specific types of accommodation; with use of prescriptive basic amenities.

The NI HMO Unit based in Belfast City Council is managing the licensing scheme on behalf of all local authorities in Northern Ireland. More information and Guidance is available on Belfast City Council's website at <http://www.belfastcity.gov.uk/buildingcontrol-environment/housing/NIHMO/NIHMO.aspx>

The new Unit will process applications and enforce the Regulations across NI, ensuring the terms and conditions of the licences are complied with by landlords. The decision on whether to award a licence will be the responsibility of the local council in which the HMO is located.

Councils will have various functions relating to enforcement of the HMO licensing regime, ranging from powers to vary and revoke licences, to powers to impose Fixed Penalty Notices and summary conviction offences. It is a criminal offence for landlords to manage a licensable HMO without holding the appropriate licence for a house in multiple occupation. The maximum fine for failing to have a licence is £5,000 for a fixed penalty notice and £20,000 on summary conviction.

The maximum that can be charged for a HMO licence is £45 as per the Regulations. The agreed charge will be £37 per person per annum. The person in this case means the occupant of the HMO. This means for example, that if a HMO has 10 occupants it will cost the applicant £370 per annum.

It is expected that the new system will work more effectively because HMO regulation will be linked to other critical functions, such as planning, building control and environmental health, all of which are under the responsibility of district councils.

David Polley from the Department for Communities, said: "From 1 April 2019 Councils are responsible for HMO regulation carrying out checks and inspections to ensure that the property is suitable for the specified maximum number of persons intending to occupy it. This is about improving the quality of this type of private rented accommodation and is something which should be welcomed by landlords, those living in HMOs and those living around them.

"Well managed multi-occupancy houses are an important part of the housing market in Northern Ireland. New licensing arrangements will mean councils will be expected to work with landlords and owners of HMOs to ensure flats and houses are safe and well maintained.

"HMO licensing is mainly intended to improve conditions for occupiers. It also impacts on issues that can affect neighbourhoods as a whole. So, while landlords are not responsible for their tenant's actions, this can support more active engagement in terms of enforcing tenancy conditions if problems arise. This can include issues of noise or rubbish, arising from licensed HMOs."





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## FAMILY DRUG AND ALCOHOL COURT (FDAC) PILOT AT NEWRY FAMILY PROCEEDINGS COURT



*In this article Shane Donnelly Solicitor of Ferris & Co, Banbridge reports on the pilot Family Drug and Alcohol Court at Newry Family Proceedings Court.*

The above scheme commenced in Newry Family Proceedings Court in December 2017. There is currently an evaluation taking place as to how this pilot scheme has worked for participants.

The scheme is designed specifically to help parents with drug and alcohol problems. Its scope does include other issues which need to be addressed, including mental health problems and domestic abuse. However, the programme is designed specifically for parents with drug/alcohol addiction issues which lead to family intervention by the local Health & Social Care Trust.

The procedure commences with the local Trust identifying if a case is one suitable for the FDAC process. Proceedings are initiated in the normal way by the Trust and at the same time, consideration will be given to determine if the parents are appropriate candidates for

the pilot scheme. There is an initial meeting at Newry Courthouse where both the parents and their legal representatives discuss the FDAC process and it is explained to the parent/parents what the process entails and what assistance can be offered to them. It is an intensive process which is targeted to last approximately 26 weeks.

Participation is voluntary and if a parent does not feel that they wish to avail of the services provided by FDAC, they can simply request that the Trust proceedings are dealt with in the normal way at the Family Proceedings Court (FPC).

The process has been described in Court as the "golden ticket". The FDAC team provide an intense number of services specifically aimed at helping parents address their issues. Practitioners will know that there can be long waiting lists for parents to see particular addiction experts. In the FDAC process however, services are allocated and intervention is available straight away. This is certainly an advantage to a parent facing addiction or other mental health/domestic abuse problems.

The process is overseen personally by the Family Proceedings Judge in Newry. There are informal fortnightly meetings between the FDAC team, the parents, the Judge and the


Guardian ad Litem appointed by the Court. The parents' legal representatives do not normally attend these meetings. These meetings are seen as motivational in nature. What is particularly novel is that it allows the parents to meet with the Judge hearing their case face to face. They can discuss with the Judge directly any issues that they are having and if there are any contentious issues or facts in dispute, the case will be referred back to the FPC where the parents will have their legal representatives at Court to assist them with whatever issue has been raised by them. All parties receive an update Report from the FDAC team before each review of the case in Court.

The main feedback from parents is that they feel much more involved in the Court process and appreciate that their views are being heard directly by the Judge hearing and dealing with their case.

The evaluation of the cases that have gone through the process to date will be eagerly awaited by both practitioners and the Court. Depending on the outcome, the pilot scheme could be extended across all Family Proceedings Courts in Northern Ireland. Even if the scheme is proved to have been successful, there is no guarantee it will be rolled out as it will no doubt be subject to an economic assessment as has been the case in England & Wales. We will wait and see.







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# Retaining biometric data



*In this article Les Allamby (Chief Commissioner of the Northern Ireland Human Rights Commission), looks at the question of legislation and PSNI's policy of*

*retaining biometric data (including DNA and fingerprints) in the light of a recent case settled by the Commission in October 2018 and a forthcoming legal challenge to be heard in the European Court of Human Rights in Strasbourg. The terms of the settlement entailed destroying the applicants retained biometric detail and an agreement to produce and publish a policy that takes into account Article 8 of the European Convention on Human Rights (the right to private and family life). The policy would also provide the public with clear guidance on how to challenge decisions to retain biometric data once obtained.*

## Background

The applicant had been arrested after intervening to keep the peace in a neighbourhood dispute. The applicant was arrested alongside the two protagonists and all three had fingerprints and DNA samples taken. It was accepted that the applicant had been the peacemaker and no further action was taken against him. He had previously been convicted of a common assault 17 years earlier and received a fine of £50. No biometric

data had been retained following the earlier conviction. However, on this occasion PSNI decided to retain the data on an indefinite basis because of his earlier conviction. The applicant had attempted assiduously to find out if his DNA and fingerprints were being retained and if so, on what grounds. He struggled to ascertain what the position was until approaching the Commission.

The lack of a clearly available policy detailing the retention of biometric material and the process for challenging such decisions was before the High Court alongside whether the practice in this case was compliant with Article 8 of the European Convention on Human Rights.

## The Law and other Legal Challenges

Under the Police and Criminal Evidence (NI) Order 1989, PSNI is able to take fingerprints, intimate samples, photographs and other material with or without a person's consent for the purposes of investigating a crime. Where a person is subsequently convicted of an offence then, the material taken can be retained indefinitely though only for a clearly defined purpose including the prevention or detection of crime, the conducting of a prosecution or the identification of a deceased person. There is also a discretionary basis to retain material in circumstances where the samples are taken from an individual who is subsequently eliminated from inquiries save in specific circumstances.

Initially PSNI's position had been to retain all biometric material indefinitely except where

there was a statutory obligation to destroy material. This blanket practice which also applied elsewhere in the United Kingdom had been challenged on human rights grounds. In particular, in *S and Marper v UK* (Applications 30562/04 and 30566/04) 4 December 2008 the Grand Chamber of the European Court of Human Rights (ECtHR) held that in cases of unconvicted individuals while the (then) practice of retaining biometric material indefinitely pursued a legitimate aim, its blanket nature was a disproportionate interference with the applicant's right to privacy and was therefore contrary to Article 8.

As a result of this judgement, the law was amended in England and Wales and similar changes were mooted in Northern Ireland through section 9 and Schedule 2 of the Criminal Justice Act (NI) 2013. The relevant provisions received Royal Assent in April 2013 but, had still not been introduced at the time the Northern Ireland Executive fell in January 2017. In essence, the legislative position remains unchanged from that considered by the ECtHR in *S and Marper*. Meanwhile, a copy of the police biometric database has been retained and will be made available to the Historical Investigations Unit for its exclusive use. The powers to retain this data was recently renewed by the Secretary of State.

A second legal challenge is now before the ECtHR and awaiting a hearing in the case of *Gaughran v UK* where the applicant is represented by Fitzsimons and Mallon Solicitors in Newry. In *Gaughran*, the applicant was arrested for being over the alcohol limit while

driving. His fingerprints, photograph and a DNA sample were taken. The applicant was convicted and disqualified from driving for 12 months and fined £50. The PSNI refused a request to destroy the samples taken. The practice of PSNI had changed after *S and Marper* in relation to those acquitted but retention normally continued indefinitely for those convicted of an offence. The issue before the Supreme Court was whether this blanket approach to indefinite retention of biometric material for individuals convicted was proportionate under Article 8 of the Convention.

By a majority of four to one the applicant's appeal was dismissed (Lords Clarke, Sumption, Neuberger and Lady Hale) with Lord Kerr dissenting. The majority distinguished the case from *S and Marper* which had concerned non-convicted applicants. The judgment held that while the blanket approach was not automatically compliant with Article 8 it was, nonetheless, proportionate. The arrangements in place governed adults and not children, the potential benefit in resolving crime outweighs the interference with an individual's privacy rights and the practice adopted was considered to be within the UK's margin of appreciation. A number of countervailing factors covering indefinite retention including failure to consider the gravity of the offence and whether the conviction will be spent did not shift the

balance decisively. Ultimately, a blanket approach can be legitimate in some cases, as here.

In contrast, Lord Kerr held the policy was not proportionate as there is a requirement to provide a rational connection between the legitimate objective and the policy and the policy must go no further than is necessary to meet the objections. In Lord Kerr's view neither criteria were satisfied.

This decision will now be considered by the ECtHR but no date for a hearing has yet been fixed.

#### The extent of retention and producing and publishing a clear policy

In March 2014, the PSNI held 123,258 individuals on their database<sup>1</sup>. Based on the numbers being added each year it is likely that the database will now contain well over 150,000 individuals' DNA.

What PSNI had agreed to do in the case settled is to develop and publish a clear policy. It will be based on the proposed legislative approach contained in the amendments in the Criminal Justice Act (NI) 2013. In effect, it will still seek to retain the DNA of all individuals convicted of an offence. Nonetheless, the

PSNI has estimated that implementation of such an approach will mean that around 25,000 individuals' DNA samples and 80,000 fingerprints currently retained will be destroyed<sup>2</sup>. In addition, PSNI will provide details of how to seek a review of its Biometric Retention Disposal Committee's decisions. The Commission has agreed to contribute its views on the policy though it will ultimately be the PSNI's policy not the Commission's.

The production and publication of a policy will be welcome in terms of clarity and its preparedness to use the proposed legislation on the drawing board is understandable. Nonetheless, whether the policy will be fully human rights compliant will only become clear once the ECtHR reaches its judgment on the *Gaughran* case. Depending on the outcome in *Gaughran* in Strasbourg, the proposed legislative change and any policy in line with it may well need altering again by both the Northern Ireland Assembly and PSNI.

In the meantime, the Commission would welcome enquires from solicitors should this issue come across their desks.

<sup>1</sup> See the Detail – Genetic Profile of 123,000 people on NI's DNA database, 4 January 2005.

<sup>2</sup> Interview given by ACC Mairs on Good Morning Ulster, 9 January 2019.

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## Statutory Employment Rights payments increased

The Employment Rights (Increase of Limits) Order (NI) 2019 (S.R. 2019 No.63) revises, from 6 April 2019, the limits applying to certain awards of industrial tribunals, the Fair Employment Tribunal or Labour Relations Agency statutory arbitration, and other amounts payable under employment legislation, as specified in the Schedule to the Order - see Table below for further details.

Under Article 33 of the Employment Relations (Northern Ireland) Order 1999 ("the 1999 Order"), if the retail prices index (RPI) for September of a year is higher (or lower) than the index for the previous September, the Department is required to change the limits, by Order, by the amounts of the increase or

decrease (rounded as specified in Article 33(3) of the 1999 Order as amended). The increases made by this Order reflect the increase in the index of 3.3% from September 2017 to September 2018.

The increases apply where the event giving rise to the entitlement to compensation or other payments occurs on or after 6 April 2019. Article 2 of the Order revokes the Employment Rights (Increase of Limits) (No.2) Order (Northern Ireland) 2018 (S.R. 2018 No.80) ("the 2018 Order"). Article 4 of the Order preserves limits previously in operation under the 2018 Order in relation to cases where the relevant event was before 6 April 2019.

Amendments contained within the Enterprise and Regulatory Reform Act 2013 made limits applicable in Great Britain subject to increase on a fixed date (6 April annually) and a different method of rounding. Corresponding amendments in respect of Northern Ireland, contained within section 22 of the Employment Act (Northern Ireland) 2016 ("the 2016 Act"), were commenced in 2018. Consequently, limits in Northern Ireland have diverged slightly from those applicable in GB. Section 22 of the 2016 Act also contains an amending provision that will allow this divergence to be addressed, if there is agreement to do so, in the future.

**TABLE OF INCREASE OF LIMITS**

Relevant statutory provision	Subject of provision	Old Limit	New Limit
1. Article 40(6) of the 1995 Order	Minimum amount of compensation awarded by the industrial tribunal where individual expelled from union in contravention of Article 38 of the 1995 Order and where, when the application is made, the applicant has not been re-admitted to the union.	£9,663	£9,982
2. Article 23(1) of the 1996 Order	Maximum amount of "a week's pay" for the purpose of calculating a redundancy payment or for various awards including the basic or additional award of compensation for unfair dismissal.	£530	£547
3. Article 63(1) of the 1996 Order	Limit on amount of guarantee payment payable to an employee in respect of any day.	£28.00	£29.00
4. Article 77E(3) of the 1996 Order	Amount of award for unlawful inducement relating to union membership or activities, or for unlawful inducement relating to collective bargaining.	£4,260	£4,401
5. Article 154(1) of the 1996 Order	Minimum amount of basic award of compensation where dismissal is unfair by virtue of Article 132(1) (a) and (b), 132A(d), 133(1), 134 or 136(1) of the 1996 Order.	£6,442	£6,655
6. Article 158(1) of the 1996 Order	Limit on amount of compensatory award for unfair dismissal.	£83,847	£86,614
7. Article 231(1) of the 1996 Order	Limit on amount in respect of any one week payable to an employee in respect of debt to which Part XIV of the 1996 Order applies and which is referable to a period of time.	£530	£547

## Requests for Audio Recordings and Transcripts of Court Proceedings

### Making a request

All requests for a CD of audio recordings or written transcripts of court proceedings within Northern Ireland should be made in writing to The Court Reporting Unit (CRU), Laganside Courts, Belfast.

Requests will be placed before the Lord Chief Justice for consideration. This policy also applies where a judge directs the parties to obtain a CD/transcript (except in the case of ongoing proceedings).

When making a request, the following information should be provided:

- the full details of the case including ICOS number, names of the parties, dates and times of hearings, the presiding Judge and the court venue (including, where possible, the Courtroom)
- detailed reasons for the request including the purpose for which the material is required and

- whether the request is for the whole or a specific part of the proceedings

### Considering a request

The Lord Chief Justice will consider the request and, if approved, the applicant will be required to pay an upfront fee of £30 and sign an undertaking before the CD will be processed. Subject to eligibility for remission or exemption of the fee, £30 is the fee prescribed for a CD audio recording of up to one hour of the proceedings. The fee for transcripts is £1 per folio in criminal trials and £1 per folio in civil trials.

The applicant will be required to pay the balance of the fee (if any) before the CD will be provided. If the applicant fails to submit the fee within 10 working days, the request will be deemed to be withdrawn and a fresh application (including payment of an upfront fee) will have to be made. Undertakings should be signed and returned by post, fax or as an attachment to an email (electronic signatures will not be accepted).

CDs will ordinarily be provided. All audio CDs are encrypted in line with GDPR arrangements. Requestors will receive an email with instructions explaining how to

open the audio. The Lord Chief Justice will only approve written transcripts in exceptional circumstances. If a written transcript is required, a full and detailed written reason must be supplied.

The NICTS aim to issue a response in 10 working days. Transcripts may take longer to produce depending on the length of the hearing. If a request is more urgent than this timeframe, the applicant should highlight the reason for this in the request (eg a case is listed for a particular date).

In general, CDs or transcripts will only be available in respect of proceedings in the Court of Judicature, Crown Courts and Family Care Centres. It should be noted that for cases before August 2004 there will be no digital recording, although there may be an audio tape. For older cases, the court reporter's shorthand notes may no longer be available.

### Contact details for The Court Reporting Unit:

The Court Reporting Unit (CRU)  
Laganside Courts  
45 Oxford Street  
Belfast  
BT1 3LL  
Email: [courtreportingunitadmin@courtsni.gov.uk](mailto:courtreportingunitadmin@courtsni.gov.uk)

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## Paperless trials on the horizon as technology advances



*Matthew McKee, Forensic and Investigation Services Manager at Grant Thornton in Belfast, examines the increasing use and widening scope of technology in the Northern Ireland legal landscape.*

An inquiry established by the Central Bank in the Republic of Ireland into alleged regulatory breaches at the Irish Nationwide Building Society has been the subject of many headlines south of the border over recent months. While the case warrants the column inches it has generated, the inquiry also marks a significant milestone in the digitisation of the legal sector as the first fully paperless public inquiry ever to be held in Ireland.

It is a major step and one which Northern Ireland is expected to follow as the region continues to establish itself as a centre of excellence for technological innovation. Already, larger cases such as the inquiry into the Renewable Heat Incentive have been digitised in a bid to efficiently deal with the vast quantities of data involved.

The recent launch of a new Commercial Hub at Belfast's High Court is also playing a significant role in increasing the uptake of technological solutions in the legal sector. The Practice Direction for the hub actively encourages the use of eDiscovery to improve the speed and efficiency of litigation proceedings, thereby reducing time and money spent at court.

This development reflects similar changes in other Common Law jurisdictions. It has been the norm in the United States and Australia since the mid-2000s and in most parts of the UK since the turn of the decade. This year sees Ireland's tenth anniversary of the introduction of electronic litigation.

However, technology is not just being utilised in litigation discovery or contentious cases. Recent trends mean that its use is now becoming more prevalent in non-adversarial

cases such as corporate due diligence relating to mergers and acquisitions or real estate, leasehold reviews, while eDiscovery is also being routinely utilised to handle Freedom of Information and Data Protection requests.

It's not surprising, as the amount of data involved can be huge, rendering the manual processing of information highly problematic.

Northern Ireland has been typically slower in adopting these newly available technologies. There are a number of common misconceptions that may explain that. There is a still widespread perception here that legal technology is too expensive and complicated. This is incorrect. Major strides have been made in recent years making advanced, and user-friendly technologies more accessible. Any lawyer that can draft and send an email can, with a minimum amount of training, use eDiscovery technology.

There is also a commonly-held misconception that legal technology is only useful in large cases with substantial values, involving millions of documents. In reality, electronic discovery can be utilised in cases with, for example, as few as between 50 to 200 documents, placing them within the bracket dealt with by the Commercial Courts in Northern Ireland.

Finally, there is an oft-held view about automation in general that it is intrinsically inferior to human involvement, and that excellent client service requires sophisticated thinking and sound human judgment.

It is true that automation will never replace humans, but technology such as eDiscovery can benefit both lawyers and clients by, for example, making the process of wading through hundreds or thousands of case documents easier, faster and more defensible. Rather than replacing lawyers, even the most sophisticated legal technology currently available is designed to assist them.

The most useful technologies remove much of the worst drudgery in legal work: The long page-by-page trawl through thousands of documents to find relevant ones, or manually dredging through hundreds of pages of contract text looking for specific clauses. The new technology removes a lot of this activity and replaces

it with more challenging, worthwhile, and lucrative work. Work that requires a greater level of legal expertise.

Looking ahead, an increasing use of artificial intelligence is anticipated as technology advances at an incredible rate.

There is already software available and in use in other jurisdictions that enables sophisticated contract review and real-time monitoring. The technology can conceptually recognise hundreds of contractual clauses and terms without the need for keywords or local configurations. This software is already used widely in corporate, banking and real estate due diligence projects, and legal experts can train the software to recognise additional contractual terms.

Less than two decades from the advent of eDiscovery, advancements in the digitisation of the legal sector are still in their early stages.

The paperless public inquiry in the Republic of Ireland illustrates what is possible and it is certain more 'digital trials' are likely to be on the horizon as legal technology becomes increasingly sophisticated, making an impact across the legal sector.

**For further information, Matthew McKee can be contacted on [matthew.mckee@ie.gt.com](mailto:matthew.mckee@ie.gt.com) or 028 9587 1050.**



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# MENTAL WELLBEING



*LawCare's Elizabeth Rimmer shares tips about how to have a conversation with a colleague about their mental wellbeing*

At LawCare we have been providing emotional support to legal professionals for 21 years through our free confidential helpline and peer support network. We have visited hundreds of legal workplaces over the years and we have listened to thousands of legal professionals tell us about the stress, anxiety and depression they are experiencing, which is often caused or exacerbated by a difficult working environment. Lack of support or supervision, an overly critical manager, being undermined after a career break, an unreasonably heavy workload, long hours and sleep deprivation are all very common issues. In fact, last year on our helpline for the legal profession calls about bullying and harassment at work nearly doubled.

Law is by nature competitive and adversarial and the heavy workload begins when studying or training to be a lawyer. There are high levels of negative emotions within law: the work is often about winning or losing requiring legal professionals to be critical, judgemental, combative and aggressive. You are required to think pessimistically, looking for potential problems and worst-case scenarios. In

addition, many law students and lawyers are perfectionists who fear failure and making mistakes. All of this can significantly affect mental health and wellbeing – especially when coupled with some of the many challenges we face in our personal lives, relationship problems, financial worries or bereavement.

When we are in a difficult situation we lose our problem-solving abilities. It can be impossible to focus and it can seem overwhelming to choose what action to take. Sometimes a listening ear and a nudge in the right direction is all we need to move on. We all need someone to talk to about personal matters without judgement and in confidence - to listen to us and offer help when we need help.

For some it's not as easy as talking to a friend or family member. Some of us just don't have people we can turn to in difficult times for a variety of reasons. If you are working with someone who appears to be struggling, is frequently anxious, short-tempered or low and depressed, consider asking your colleague in private what is wrong and how you might help. Talking to a colleague in this way can be difficult but it is not necessary to be an expert in mental health to start a conversation of this nature. It is important to remember that talking could make all the difference to your colleague's mental health.

Here are some tips that might help.

- Find a suitable place, ideally outside of the office - perhaps a café or go for a walk.
- The conversation could be started with a simple "How are you?" Once a person knows they are being given the space and time to talk, they often will.

- Actively listen to the person, and give them your undivided attention. Keep your phone switched on silent and refrain from looking at your watch.
- Don't interrupt - try to leave any questions or comments you may have until the person has finished.
- Ask open questions: - "What support do you have in place?" "What would you like to happen in this situation?"
- Use positive body language, and encourage the person to continue with small verbal comments like "I see" or "What happened next?"
- Check your understanding by paraphrasing what the person has said back to them.
- Respond by using empathetic statements such as: "I appreciate this must be difficult for you..."
- Avoid clichés. Comments like "pull yourself together" or "what will be, will be" are not helpful.
- Don't make the conversation about you: avoid saying things like "I know how you feel" or "The same thing happened to me."
- The important thing is to listen, rather than give advice. The individual needs to be able to act for themselves.
- Be reassuring and signpost them to support such as LawCare, HR, another colleague or suggest they visit their GP

**If you are worried about a colleague you can ring the LawCare helpline on 0800 279 6888 or visit [www.lawcare.org.uk](http://www.lawcare.org.uk)**





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When moving you to a new system occurs, some suppliers may look at the lifetime value of you as a client and charge a set fee for the service rather than consider the actual daily rate and time taken to complete the task. Others offer an import solution, which allows the customer to import the data themselves if they wanted to. But what happens if your current supplier then also says it wants money in order to hand you back your data?

### Smoke and mirrors

In the days before cloud, data lived on premise. There would be a good chance that a reputable chosen software supplier who has been in the market for some time would know how to access the databases of competitor products, pick it up and then migrate it without having to involve the incumbent supplier. However, as software increasingly operates in the cloud, data now often sits in a multi-tenanted environment, making it impossible to merely pick up and provide a copy of an entire database.

It goes without saying that client retention is a very important metric for modern software companies, which can greatly impact the value of a business. Therefore, it isn't uncommon for providers to try and find ways to keep customers in any way possible. For example, you might be informed the only way to retrieve your data is by running reports. However, this doesn't provide you with a complete 'data dump' and may leave many pools of data locked up in the system. These pitfalls often

leave firms stuck with suppliers even if the solution isn't fully supporting their business.

It could even be that they aren't actually working to give you back your data, or it is a last ditch attempt to get some money from you before you leave. Either way, this can potentially leave unsuspecting firms out of pocket or with inaccessible data - or both.

### Keep control of your data

The moral of the story is that many firms are being unknowingly held to ransom by software suppliers using their data. But what exactly can you do to ensure this doesn't happen to you?

- **Check the fine print:** To mitigate this risk before it's too late, firms should check the fine print to ensure they only do business with suppliers which offer full control over their entire data set if they ever decide to leave. The clauses facilitating this data ransom effort are often buried within the detail, under the layers of information about the value that the software can deliver for the business. Read the terms for data retrieval with a fine tooth comb before signing a contract.
- **Come armed with questions:** When tasked with finding a software supplier with no tricks for retaining your data, it is important to ask the right questions in the market research phase. Be direct and ask potential suppliers about their data supply and retention policies to understand exactly how your data will be unlocked from their system if you leave. Chances are, those able to answer these queries quickly and with clarity are your best bet for keeping full control over your data.

Some vital questions to ask your potential new supplier, or check in your current contract include:

- Is there an exit clause in your contract?
- How is my data supplied back to me?
- Do I get access to all my data in a format that my new supplier can understand?
- Do you charge to supply my data back to me? If so, how much?
- If I leave, what happens to my data and how long is it left on your servers? (One particularly crucial area given the control that GDPR regulations now offer data owners)
- **Take your time:** When faced with fast approaching contract expiry, or even looming regulatory changes, it is easy for firms to make fast and sometimes, rash decisions about their next software supplier. It may sound obvious, but this haste can ultimately lead to oversight when ensuring the status of a firm's legal data once they choose to invest in a particular provider. Ensuring firm decision makers are abreast of upcoming changes and starting research well ahead of change can give firms the time they need to evaluate the options available and distinguish the suppliers who do not hold data to ransom from the rest.

Taking these necessary precautions can ultimately be the difference between a firm retaining full control of its data or having to stomach a sizeable bill when trying to take their information out of these systems quickly and effectively. They are also the essential steps for firms to cut out the market noise and hone in on reputable and transparent legal software suppliers, instead of falling victim to the efforts some providers take to retain their business through conditionally holding their rightful legal data to ransom.



By Brian Welsh, CEO of Insight Legal

To discuss this topic further or the services we can offer, please give us a call on 028 9433 9977, email us at [info@insightlegal.co.uk](mailto:info@insightlegal.co.uk) or visit our website; [www.insightlegal.co.uk](http://www.insightlegal.co.uk)

## President welcomes newly qualified solicitors at Admission Ceremony



President Suzanne Rice welcomed newly admitted solicitors to the legal profession at the Law Society of Northern Ireland's Admission Ceremony which took place at the Whitla Hall at Queen's University Belfast.

Eighty four newly admitted solicitors joined their Masters, family and friends for this important event in the legal calendar.

As part of the ceremony the 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.

In her keynote address the President took the occasion to offer some advice and guidance to the newly admitted solicitors.

In his address the Lord Chief Justice reflected on the important role that newly admitted solicitors have within the legal profession in Northern Ireland.

The Thomasena McKinney Prize was awarded to Sarah Mulholland who attained first place in the Solicitors' Apprenticeship Course at the Institute of Professional Legal Studies.



From left: Suzanne Rice, Society President and Sarah Mulholland, Winner of the Thomasena McKinney Prize.



From left: Rowan White, Junior Vice President; Sir Declan Morgan, Lord Chief Justice; Suzanne Rice, President; Alan Hunter, Chief Executive and Eileen Ewing, Senior Vice President.



Newly admitted solicitors, Pic 1.



*Newly admitted solicitors, Pic 2.*



*Newly admitted solicitors, Pic 3.*



*Society President, Suzanne Rice, reflects on her attendance at the Annual Conference of European Law Societies and Bars.*

Vienna was the venue for the 47th Annual Presidents' Conference. This important conference has become a regular fixture in the legal calendar providing a platform for the Presidents of each Law Society and Bar Associations within Europe to meet to discuss issues affecting the legal profession.

Despite the obvious theme of the impact of Brexit, the conference organisers focused on a more general theme of the 'Rule of Law' allowing delegates to contribute more freely and openly to a discussion from all member states on its progress (or not) within their own countries.

As colleagues will be aware the Rule of Law does not have one specific definition nor is it any specific legal rule but rather the principle that everyone, including governments, are considered equally subject to publicly disclosed legal codes and processes. This principle can be traced back to the 16th century in Britain.

Throughout my time at the conference I took the opportunity to meet with as many colleagues from the 41 countries which were attending as possible. In my discussions with representatives from Austria, France, Germany, Italy and Moldova as well as our home nations, it occurred to me how developed our own legal system was and the robust steps which are taken to defend the Rule of Law in Northern Ireland in comparison with other countries.

We must never become complacent in ensuring the authority and influence of the Rule of Law in our own country. We also have an obligation whenever we can to actively promote the Rule of Law and offer support to other countries where legal democracy and independence is under threat.



*Society President, Suzanne Rice.*

In countries where the appointment of the judiciary is overseen by Government, the independence of the Judiciary and the role of lawyers in progressing democracy remains under attack. By way of examples:

On 2 August 2018 the Polish Supreme Court referred the decision by their Government to force 27 out of 72 Senior Judges into retirement by reducing the age from 70 to 65 to the European Court of Justice on an issue of compatibility. A decision is awaited.

In Ukraine the number of attacks on lawyers has risen significantly over the last two years and many countries report how the media has played a part in contributing to the personal vilification of judges and in turn lawyers.

We see this ourselves closer to home in the English case of *Millar v Secretary of State*

*for Exiting the European Union* [2016] EWHC 2768 with the now infamous front page of the Daily Mail with the three faces of the judges entitled "Enemies of the People".

Many other countries report similar attempts to erode the independence of the legal profession. Issues affecting each country can be reviewed in their annual reports to the Conference at [www.e-p-k.at](http://www.e-p-k.at)

The themes discussed at the Presidents' Conference reminded me of the key message I delivered at the Admission Ceremony in Belfast for our newly admitted solicitors when they were called to the Roll. I reminded them of the four cornerstones of our profession - independence, transparency, relevance and professionalism and our role as 'Officers of the Court'.

Following the Presidents' Conference, it is clear these principles not only shape our profession but the Rule of Law and much more work requires to be done to highlight these important cornerstones to the global legal profession.

In his address at the conference to the Presidents, Professor Michael O'Flaherty, Director of the European Union Agency for Fundamental Rights referred to solicitors no longer being 'Officers of the Court' but 'Guardians of the Court' and referenced the exceptional times we now live in requiring exceptional actions by us in the protection of the most marginal and vulnerable in society.

Through the Society's Representatives on the Council of Bars and Law Societies of Europe (CCBE), the Commonwealth Lawyers' Association and the International Bar Association, the Law Society of Northern Ireland continues to progress and promote the Rule of Law and to be at the forefront of challenge and changes to our Profession.



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# A MASTER'S VOICE

At this time of the 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, 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 they can assess the law faster than you through their natural use of modern technology.

## 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 return for Easter. 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**

## ATTENTION ALL PROSPECTIVE MASTERS

Are you interested in taking on an apprentice for the two year term commencing September 2019?

If you are in private practice and have

1. practised as a solicitor for at least seven years, and
2. been a principal for at least three years

Or

If you are in the public sector and have been in practice for at least 10 years

and, in either case, if you can provide training for students, you may wish to consider becoming a Master.

The Education Committee will also consider applications from prospective Masters who have less than the requisite number of years in practice.

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. Details will also be included in the "Masters' List" in the "Becoming a Solicitor" section on the Society website.

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.

## APPLICATION TO BECOME A MASTER 2019/2020

I confirm that I am interested in acting as a Master as and from September 2019 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)

.....

**How would you prefer to receive applications from prospective applicants:**

CV by email

CV by post

Firm's own recruitment procedure (please detail)

.....

.....

.....

.....

Date .....

Please return the completed form to:

**Admissions Officer, Law Society of Northern Ireland,  
Law Society House, 96 Victoria Street,  
Belfast BT1 3GN or DX422 NR BELFAST 1.**

Or scan and email to  
**admissions@lawsoc-ni.org**



## Society hosts Four Jurisdictions meeting

Law Society House in Belfast recently hosted the meeting of the Four Jurisdictions attended by the Presidential and Chief Executive Teams of the Law Societies of England & Wales, Scotland, Northern Ireland and the Republic of Ireland.

The regular meeting comes at an important time for the legal profession in the four jurisdictions.

The meeting provided as an opportunity to discuss issues affecting the solicitor branch of the legal profession and to explore areas of mutual interest.



*Presidential and Chief Executive Teams of the Law Societies of England & Wales, Scotland, Northern Ireland and the Republic of Ireland.*

## Society is venue for important Brexit Planning Event

The UK's withdrawal from the European Union and the issues arising for the legal profession were the focus of a special event which took place at Law Society House. The event entitled 'Planning for Brexit' had been organised by the Society and it provided a platform for discussion on important issues including civil justice co-operation post Brexit as well 'no deal' planning issues.

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

Jenny Pickrell, Head of EU & Trade Legal Services Policy at the Ministry of Justice in London

Laurene McAlpine, (Deputy Director, Civil Justice Policy, Department of Justice, Northern Ireland)  
Jo Wilson, Senior Brexit Lawyer, (Department of Justice, Northern Ireland, Legal Team)

Michael Foster, (DOF, Head of Civil Law Reform Division, Departmental Solicitors' Office)  
Dr Frank Geddis, (Head of Research and Governance, Law Society of Northern Ireland)

*From left: Michael Foster; Jenny Pickrell; Dr Frank Geddis; Alan Hunter; Laurene McAlpine and Jo Wilson.*







## Bonjour Bordeaux!

As President, one of the most enjoyable presidential “tasks” has to be organising the annual conference for our solicitors and our annual conference this year, which ran between 28 - 31 March, was no exception for me.

When canvassing potential delegates on what they wanted from a modern law conference the list was extensive - and in no particular order - consisted of the following: informative CPD courses, good food and good company (plus sunshine on top please). However, as always, task number one is to find the city - a task often easier said than done.

With the Conference Committee chaired by Rory McShane, I can safely say, if anyone wants to know where you can fly to, from Dublin on a Thursday and return on a Sunday, then look no further than the Conference Committee who, after many days poring over flight itineraries, settled on Bordeaux (as most of the other European cities have also

been invaded (sorry mistype - visited) by the Law Society of Northern Ireland with our past conferences.

Considering our arrival in Bordeaux coincided with our proposed exit from Europe, my presidential theme was one of optimism with a view to looking forward rather than backwards and the challenge and opportunities facing solicitors.

The business sessions inspired this theme with pairings of our key sponsors with solicitors which allowed delegates to consider the inter-play between different professions and the role of the solicitor in case studies. Of particular interest was the focus on the regulatory side of the solicitor’s profession from Catherine McKay with emphasis on how to manage risk with cybercrime and money laundering from Harry Weir and Andrew Fryer from Willis Towers Watson which became key areas for discussion. The sessions were both informative and entertaining and ended with a light-hearted role play of the ideal clients (or rather the ideal legal issues). The diversity of areas presented on the business sessions reflected the diversity of solicitors’ practices covering regulation, matrimonial, criminal, employment and insolvency laws.

One modern theme which provoked debate centered on social media and the role of the

employer and it was insightful to hear case studies from Louise McAloon of Worthington Solicitors on challenging perceptions on what types of social media postings would warrant an employee’s dismissal. It is timely, as we look to the future, to consider the rise of the phenomenon of social media for solicitors, especially when the delegate profile consisted of a wide range of solicitors from newly qualified to senior partners and how social media means different things to each generation of solicitors.

Our guest speaker at the conference was Professor Jerome Casey from Bordeaux University who is a practising advocate in civil and family law both in Bordeaux and London. His insightful interpretation of the definition of an international lawyer certainly left an impression on us all when he emphasised a lawyer is first and foremost, a lawyer in the jurisdiction you learn in and whilst you may travel further afield with your legal skills, you remain a lawyer of your “home” jurisdiction. For him, an international lawyer is a lawyer promoting/interpreting their own country’s laws, internationally. With Brexit remaining very much still on the horizon, this was a timely reminder to us all that as solicitors in Northern Ireland, we should promote our legal skills as Northern Irish solicitors first and foremost, as we have much to give on the European and international legal stages.



*Delegates on an evening out in Bordeaux – from left: Suzanne Rice, Julie Cooper, Aoife McShane, Angela McShane, Lenora Rice, Martin Hart, Claire Hart, Dolores Keegan, Hilary Keegan and Melanie Rice.*



*Patrick Dorgan, Suzanne Rice and Alison Attack – Presidents of the Law Societies of Ireland, Northern Ireland and Scotland.*

My thanks go to all our solicitor speakers who were brave enough to accept my call to speak and their firms for allowing them time to attend – Catherine Dixon, Hugh Edgar, Louise McAloon, Maria Glover, William Nugent, Chris Kinney and Owen Williamson.

The conference venue was held at the stunning Intercontinental Grand Hotel which faced such iconic buildings as the Bordeaux Opera House and within easy walking distance of La Garonne. The hotel facilities had a nod to interior finishes which would not have looked out of place in the Napoleonic period and indeed, this revolutionary era seemed to flow through our conference social agenda.

Starting on Friday afternoon, we visited a Grand Premier Cru vineyard with tasting rooms where it was not the taste but rather the colour of the red wine flame which held our attention and we all simply had to try out our new found skill in the wine cafes of the historical village of Saint Emilion.

On Saturday afternoon, Bordeaux became the epi-centre for social reform demonstrations (otherwise known as a social revolution) with the unexpected arrival of Les Gilets Jaunes. Whilst the official food walking tour of Bordeaux had to be cancelled, this did not deter many delegates from exploring what Bordeaux city centre had to offer (during a demonstration) and whilst many of us bring back fridge magnets or key ring souvenirs from our conference travels, the young solicitors, aided by solicitor Karen McNally and her husband Eugene, brought back video footage and souvenirs of the demonstrations. Who knew whistling the theme tune to Les Miserables would have the French gendarmerie mistake you as a demonstrator!

With all delegates safely back in the hotel, the highlight of the conference was the closing Gala Dinner held in the Ballroom of the Grand Hotel where our guest Judge (Mrs. Justice Keegan) summed up the conference experience when she emphasised the modern themes and modern way forward for solicitors.

On Sunday morning, as the 2019 conference drew to a close, talk turned to next year's conference with several delegates using every form of manipulation possible on our Junior Vice President to sway the vote in favour of their city of choice. If rumours are to be believed, next year's conference may well find us back in Central



*On the River Garonne. From left: Paul O'Kane, Margaret O'Kane, Mary Doherty, Kevin Downey, Julie McGirr, Mary Murnaghan, Gavin Patterson, Jennifer Barret and Suzanne Rice.*



*Owen Williamson, William Nugent, Eileen Ewing and Chris Kinney.*



*Darren Toombs, Virginia Toombs, Martin Hanna, Arleen Elliott and Tara Hanna.*



*Delegates enjoying a roof top drink.*



*Janice Spence, Jimmy Scullion of Advanced Legal, Adam Spence and Tony Nicholl of GM:G Chartered Accountants.*

Europe flying the Law Society of Northern Ireland flag but we shall have to wait and see.

For any solicitors thinking of attending our annual conference next year, I would encourage you to look at the photos of the 2019 conference which sums up what a great event this is for solicitors to come together, learn and relax away from busy practices. The experience and friendships you make at the annual conference will last throughout your professional lives and I would encourage any new delegates to sign up for next year's conference.

Finally, no conference can occur without the hard work and effort of a back-room team. My thanks go to our events coordinator Jennifer Ferguson who gave up her weekend to spend with a group of solicitors, to McShane and Company Solicitors for finding a weekend Rory McShane was free to Chair the conference, our Head of Communications Paul O'Connor for preparing the Conference Brochure and publicity and the team at Libra Events - Ross Licence and Judith Brannigan. Lastly, my huge thanks go to our sponsors - Willis Towers Watson, GM\*G Chartered Accountants, Advanced Legal, MCS Group, Titlesolv, Merchant Hotel and Asdon Group who make the planning of a conference a reality.

All that is left is for me to say is to everyone who attended the Conference - thank you for the memories, Au Revoir..... and te veo el próximo año



*Suzanne Rice, Mrs Justice Keegan and Catherine McKay.*



*Visit to a winery at St Emilion.*

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## Use of free email by firms

The Society's Professional Indemnity Insurance/Risk Management Committee is concerned to note the increasing number of reports to the Society of scams and cyber-attacks involving firms who use free email addresses from different internet providers.

As members are aware through the Scam Alerts issued by the Society, it is vital that solicitors take steps to mitigate the risk of cyber-attacks, not only through vigilance but also by ensuring that they mitigate the risk as best they can, recognising the constantly evolving and changing nature of scams and cyber-crime.

Part of the mitigation of risk includes taking steps to ensure as best you can that your on-line presence is protected and that your email address(es) is/are secure.

Firms using free email addresses appear to be at greater risk of compromise and increasingly vulnerable to the risk of scams and cyber-crime attacks than those firms using email with a secure and dedicated server.

The Committee reminds members of the risk associated with scams and cyber-crime, which may lead to claims under the Master Policy Scheme of Professional Indemnity Insurance, regulatory sanction, professional and reputational damage, and which may have other consequences in the event of the compromise of data.

## New office bearers at Immigration Practitioners' Group

Society President, Suzanne Rice and Chief Executive, Alan Hunter welcomed solicitors Ashleigh Garcia and Sinead Marmion to Law Society House to mark their election as Chair and Secretary of the Society's Immigration Practitioners' Group (IPG).

Ashleigh, who works for HHD Solicitors in Belfast, was recently elected Chair and Sinead, who works for Tim McQuoid Solicitors, was elected as the IPG's new Secretary.

In her welcoming remarks, the President said: "I wish to congratulate Ashleigh and Sinead on their election and I look forward to working with them to highlight the issues of importance affecting immigration practitioners and their clients."

Speaking on behalf of the IPG, new Chair Ashleigh Garcia said:



*From left: Ashleigh Garcia, Chair of the IPG; Suzanne Rice, Society President; Sinead Marmion, Secretary of the IPG and Alan Hunter, Society Chief Executive.*

"In light of Brexit, the Immigration Practitioner's Group must support practitioners to navigate the changing landscape of immigration law in Northern Ireland. It is important that we continue to develop best practice, and strongly advocate for access to

justice for those most vulnerable. We should also begin to establish expertise in emerging areas of immigration, such as corporate and education, and reach out to our counter-parts in other jurisdictions to help us achieve that aim."

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## MANAGING CONVEYANCING COMPLAINTS

More than 50 solicitors were in attendance at the *Managing Client Complaints Series: Managing Conveyancing Complaints* seminar held at Law Society House.

The focus of the seminar was to examine the issues which arise between solicitors and clients involved in conveyancing matters which are not conducted in an efficient and satisfactory way.

Attendees heard from John Mackell, Head of Complaints at the Society and Alan Reid, Chair of the Society's Conveyancing & Property Committee, on why it is important that solicitors deal with complaints efficiently and in accordance with the Solicitors' (Client Communication) Practice Regulations 2008. The benefit of dealing effectively with complaints in-house was outlined by both speakers. Attendees were also advised of pending regulatory changes being introduced by the Legal Complaints and Regulation Act (NI) 2016.



*John Mackell, Head of Complaints, introducing Alan Reid, Chair of the Society's Conveyancing & Property Committee.*

The seminar was part of the Client Complaints Committee's commitment to providing practical and instructional seminars on these important issues. Upcoming seminars are as follows:

- *Probate Complaints - Wednesday 11 September 2019 to be delivered by Julie Ann Osborne, CMG Cunningham Dickey Solicitors.*
- *Family Complaints - Wednesday 6 November 2019 to be delivered by Janice Spence, Donaldson McConnell & Co.*



### Children Order Day Private Law Applications

Law Society House was the venue for an important event entitled *Children Order Day - Private Law Applications*. Organised by the Society's Family Law Committee the event focussed on the private law aspects of the Children's Order.

The well attended event was divided into four parts comprising presentations delivered by a Family Law solicitor, a Court Children's Officer [CCO], a Contact Centre Co-Ordinator and a District Judge.

Each presenter focussed on a specific aspect of the private law application process and in so doing alerted attendees to those issues which other court users and stakeholders needed to be aware of.



*From left: District Judge Prytherch; Anne Miller, Children's Court Officer; Kelly Breen, Chair Family Law Committee; Maryanne Doherty, Contact Centre Co-ordinator; Raymond Calvert, Contact Centre Regional Chair and Anne Caldwell, Solicitor.*

First to the podium was Anne Caldwell, experienced family law practitioner and member of the Society's Family Law Committee, who provided a solicitor's perspective.

She was followed by Court Children's Officer, Anne Miller, who presented an overview of what each Health & Social Care Trust offer by way of Court Children's Services as well as general information in regard to CCO applications, issues arising and how they can be best addressed.

Maryanne Doherty, a Contact Centre Co-Ordinator, then delivered an interesting presentation on what a Contact Centre is, what it does and equally importantly what it does not do in terms of the provision of supported contact.

District Judge Prytherch, who has sat in Family Proceedings Courts since 2005, brought the event to a close with a presentation highlighting areas that court users needed to focus on.

## Clinical Negligence Practitioners' Group goes from strength to strength

In December 2018 the Society re-launched its Clinical Negligence Practitioners' Group at Law Society House. The re-launch event was opened by Mr Justice Maguire and the first CPD Lecture delivered by Mr Justice McAlinden.

The Group is formally known as The Law Society of Northern Ireland Clinical Negligence Practitioners' Group (LSNICNPG) and offers members bespoke CPD training for this specific area of practice, as well as an opportunity to network and exchange knowledge and promote the development of best practice in clinical negligence litigation in this jurisdiction. Membership of the Group currently stands at approximately 140, comprising both plaintiff and defence practitioners.

Currently attendance at CPD events organised by and for LSNICNPG is voluntary. However the Society may at a future point resolve that anyone practising in this area of law must



*From left: Paddy Mullarkey; Paul Andrews, Chief Executive Legal Services Agency; Mr Justice McAlinden and Mark Harvey.*

attend a pre-requisite number of CPD events each year and/or accumulate a specific number of compulsory CPD points. For 2019 a voluntary bespoke CPD series is being provided to assist practitioners in maintaining the standards which are expected by the Society and the Courts.

At the end of January 2019 Master McCorry provided a comprehensive overview of case management in clinical negligence cases and focusing on delays and potential solutions.

In April 2019 Mr Justice McAlinden returned to the Society to deliver a further paper entitled

PPOs, the Discount Rate and Accommodation Claims in Clinical Negligence Actions. On the same afternoon Paul Andrews, Chief Executive of the Legal Services Agency presented on Best Practice in lodging applications for legal assistance in Clinical Negligence Cases.

The programme of CPD lectures for the rest of the year includes a Coroner's Series and an Office of Care & Protection Series. Further details are available from the CPD Department. An anniversary conference is also being planned for early December 2019.

Membership of the LSNICNPG and attendance at the organised CPD events will keep clinical negligence solicitors focused and up to date with practice standards and issues, thereby avoiding the necessity for imposition of compulsory CPD. Membership remains open and free to all members who are on the Roll of Solicitors in this jurisdiction and either practise in the area of clinical negligence or have an interest in it. The Group is operated by a Management Board, the Chair of which is currently Patrick Mullarkey. Each new member is issued with a Terms of Reference document which sets out the aims of the Group.

**If you wish to join the LSNICNPG please email [ann.mcmahon@lawsoc-ni.org](mailto:ann.mcmahon@lawsoc-ni.org) for further details.**

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## Mediation Matters

It is noteworthy how many colleagues are now familiar with mediation. That situation has changed over the past few years. There is an opportunity to build on this increased activity. Solicitors are well suited to resolving cases through mediation and assisting clients to achieve flexible workable solutions without the need to go to court. Many cases which would otherwise be litigated can be resolved through early mediation. Often it is not the legal issues which are the problem – but the interpersonal, the family, the history. The Law Society has recently encouraged a Policy on Mediation which is being advanced through the Contentious Business Committee and will hopefully be settled and promulgated very soon. As the designated UK expert, I contributed to the publication of the combined bars of Europe (the CCBE) entitled Guide to Mediation for Lawyers published recently.

Perhaps the most significant recent development is the judgement of McCloskey J in the case of *Edmunds v Legal Services Commission* 2019 022063/01. In this case the Judge decided that the LSC erred in law by failing to recognise and or exercise in a lawful manner the discretion conferred on it by the legislation to authorise public funding for intra-litigation ADR in civil cases other than family cases. In the course of the Judgement he reviewed Practice Directions, the Rules of Court and the Gillen Civil Justice Review. He noted that mediation “has for some time been a settled feature of the civil litigation

landscape in Northern Ireland”. Gary Adair of Wilson Nesbitt brought the Judicial Review of the decision of the LSC not to grant legal aid for mediation.

Many colleagues will now wish to review cases where they have obtained and are acting under a civil legal aid certificate for extant civil proceedings. They should consider, in the light of the *Edmunds* decision, if it is not in the interests of their client to seek to mediate and request legal aid to cover the related costs.

In the course of my involvement with the Commonwealth Lawyers Association I was sent an interesting judgement of the High Court in Trinidad and Tobago. Mr Justice Vasheist Kokaram in this case (*Moraldo*) reviews many of the key decisions in England and Wales about mediation and observes “An attractive feature of mediation is its informality, its fluid shape, its control by consensus of the parties and the guiding but not determining hand of the mediator. The informality of mediations should not be underestimated by litigants nor their attorney at law. Parties and their attorneys must be properly prepared for their mediation. They must prepare in advance for all possible options to resolve a claim, be prepared to negotiate in good faith and to share all necessary information to obtain what they will consider the best possible result in the circumstances of the uncertainty, high stakes and risks of litigation. It is not often that a Court will set aside an agreement which was obtained in a mediation. These mediation agreements must be treated with the respect it deserves as an expression of the free will of the parties.”

He continues “The key difference in this consensual problem-solving model from adversarialism in litigation is the focus on underlying interests of disputants and not on positions based on rights. As in some cases mediation is seen as a superior form of dispute resolution to litigation, no effort must be spared by all practitioners in the profession to ensure the quality of the process.”

The quality of the process of mediation must include adherence to internationally accepted process norms. The mediator should prepare carefully. She or he should engage with the parties in advance and explain the process. The date for the mediation should not contain distractions for the parties or solicitors or counsel. The mediator must be focussed and committed to the cause of seeking a solution which works for the parties. The process and reality of mediation was experienced by the participants in the latest Civil and Commercial Mediation Training course run by the Institute of Professional Legal Studies at Lennoxvale. The class of 2019 is featured in the photograph below.

Mediation is here to stay. It works well for many cases on solicitors’ desks. Many solicitors have the skills and relationship with their clients to make mediation work and as McCloskey J noted in the *Edmunds* case quoting from the well-known judgement of Woolf CJ in *Cowl v Plymouth City Council* [2001] EWCA Civ 1935; “insufficient attention is paid to the paramount importance of avoiding litigation whenever this is possible”.

**Brian Speers Solicitor, Mediator**



## Mediation Course – the class of 2019

Those attending the Mediation Training Course at the Institute of Professional Legal Studies recently received their Certificates, having completed eight weeks of training. Missing from the photo are experienced trainer, David Gaston and Sam Corbett, solicitor.

Brian Speers solicitor, an experienced mediator, who along with David Gaston and Alva Brangam QC started the mediation training course more than 15 years ago said: “The mediation training course has involved solicitors and barristers (and on occasion judges) with the goal of allowing all those attending to experience the role of mediator and be better equipped to advise clients about mediation and suitable cases which could be resolved by mediation.”

Course participants with their tutors.





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# Society

## Guidance on *Larke v Nugus* letters

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Following the recent Review of Civil Justice in Northern Ireland (the Gillen Review) a greater emphasis has been urged on reaching a fair resolution of disputes as early as possible in any process and reducing costs.

With this in mind and bearing in mind recent Northern Ireland court decisions (see below), it is likely that the service of what have been termed "*Larke v Nugus* letters" will become more widespread.

In the case of *Larke v Nugus* (2000) WTLR 1033, the deceased's solicitor declined to provide, at an early stage, a statement of his evidence dealing with the execution of the will and the circumstances surrounding same. Although the will, in this case, was ultimately held to be valid, the English Court of Appeal refused to order the unsuccessful party to pay the costs of contesting the will because of the solicitor's refusal to make the relevant information available at an early stage, which could have prevented a full trial. In his judgment in the case Brandon LJ stated:

"...when there was litigation about a will, every effort should be made by the executor to avoid costly litigation if that can be avoided and, where there are circumstances of suspicion attending the execution and making of a will, one of the measures which can be taken is to give full and frank information to those who might have an interest in attacking the will, as to how the will came to be made".

In the recent Northern Ireland case of *Watton v Crawford* (2016) NICH14 Horner J stated:

"9. There is much to be commended in a solicitor in a case where there are allegations of undue influence and/or incapacity sending a *Larke v Nugus* letter .... which may request the following information prior to the institution of proceedings. The requests may include:

- (a) How long the solicitors have known the deceased;
- (b) Who introduced the solicitors to the deceased;
- (c) What date the solicitors received instructions from the deceased;
- (d) Contemporaneous notes of all meetings and telephone calls, including an indication of where the meeting took place and who else was present at the meeting;
- (e) How the instructions were expressed by the deceased;
- (f) What indication the deceased gave that he knew he was making a will;
- (g) Whether the deceased exhibited any signs of confusion or loss of memory;
- (h) Whether and to what extent earlier wills were discussed and what attempts were made to discuss departures from the deceased's earlier will making pattern;
- (i) What reasons the deceased gave for making any such departure;
- (j) How the provisions of the wills were explained to the deceased; and
- (k) Who, apart from the attesting witnesses, were present at the execution of the will and where, when and how this took place...

11. This court does not believe in ambush or delay. It is firmly of the view that the default approach should be "cards on the table".

This means that before a party commences proceedings he or she should be in a position to make a fair assessment of the risks of that litigation. If a solicitor acting for the estate does not want to provide early disclosure of the circumstances in which the disputed will was made and the capacity of the person making the will, then there are likely to be adverse consequences for the estate and/or the principal beneficiary depending on who is responsible for the failure to cooperate in the sharing of crucial information....

18. For the avoidance of doubt, I must stress that a headlong rush into litigation where serious allegations are made by a disappointed beneficiary without ascertaining all the relevant circumstances and/or obtaining the key documents will almost certainly have adverse costs consequences for that party. By the same token, a refusal by an executor or personal representative to provide a full response to a reasonable request for information under cover of a *Larke v Nugus* letter and/or to make disclosure of key documents will almost certainly have serious costs implications for the estate and/or the principal beneficiary. There should always be full disclosure as soon as reasonably possible of both the circumstances in which the will was made and executed and/or the capacity of the deceased if the validity of the will is being challenged. Any behaviour by either side thwarting this laudable aim is almost certainly contrary to the overriding imperative enshrined in Order 1 Rule 1A".

It is clear therefore that the Northern Ireland courts will not look kindly upon failure either to serve, in appropriate cases, or to respond to, *Larke v Nugus* letters. It is therefore felt that guidance can be given as follows:

1. A full and clear *Larke v Nugus* letter should be sent where a serious dispute arises as to the validity of a will.

2. A full response to such a request should be provided within a reasonable period taking account of the requirement to locate the original file, consider same, make relevant copies and provide the statement to relevant parties.
3. A full reply and statement of evidence should be provided at the earliest reasonable date and a copy of the file of papers, if requested, should also be provided with the consent of any third party personal representatives. In the case of *The Mortgage Business PLC and Bank of Scotland PLC (trading as Birmingham Midshires) v Thomas Taggart & Sons* 2014 NICH 14 Deeny J stated:

“22 ... It does seem to me that the Defendant is entitled to be paid for its time if asked, as here, to send the documents to the Plaintiff. I consider that a solicitor is entitled to charge his normal professional fees for going through the files and selecting what is to be disclosed on foot of this order. He is also entitled to charge for his secretary’s time in photocopying any materials that are sent and for the postage or delivery costs”.

It therefore seems reasonable to suggest that a proper charge can be made for the time and work required to respond properly to a *Larke v Nugus* letter.

4. If the *Larke v Nugus* letter goes further than comprising a request for information and has any mention or suggestion of professional negligence, the matter should be referred to your insurers before any response is made.
5. If the will appoints you as an executor, you should consider your position and, in particular, whether to act as an executor, carefully. As an executor you are in a fiduciary position in relation to the beneficiaries of the estate, whoever they turn out to be and you should therefore remain non-partisan in any subsequent litigation.
6. Note that it is not the case that costs in a probate case are payable from the estate and, in *Watton v Crawford*, the judge specifically made it clear that costs may follow the event.

7. Whether or not you are appointed as an executor, you should consider your position carefully in respect of conducting any litigation in relation to a disputed will which you prepared, whether litigating as executor or on behalf of any beneficiaries or potential beneficiaries. It is considered that the safest course of action is to suggest to any such beneficiaries that they seek separate advice.
8. If you are appointed as an executor, even if the will is in dispute, do bear in mind your duties in respect of preservation of the estate and discharge of liabilities. It may be possible, with the agreement of other parties, to make an application for an appropriate grant, for example a grant of administration pendente lite or a grant of administration ad colligenda bona.

A sample of a typical *Larke v Nugus* letter is downloadable from the Members’ Section of the Society’s website.

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## SOCIETY PUBLISHES NEW JOURNAL OF ELDER LAW AND CAPACITY

Senior members of the judiciary, legal profession and interested stakeholders recently attended Law Society House for the launch of a new journal which aims to provide a new source of information for practitioners working in all aspects of elder law and capacity.

The *Journal of Elder Law and Capacity*, published by the Law Society of Northern Ireland, has a UK and international focus with coverage on legal issues relevant to elder clients, clients with capacity issues, their families and carers.

Society President, Suzanne Rice joined the Chair of the Editorial Panel, Linda Johnston, in welcoming Mr Justice Huddleston as the keynote speaker at the event. She said:

"The launch of this new Journal underlines and reflects the long tradition and commitment held by the Society to provide the legal community in Northern Ireland with the necessary resources, support and publications they require. Legal materials are a fundamental part of any solicitor's armoury of legal knowledge, especially in a small jurisdiction like ours where laws and procedures are often discrete."

She paid tribute to the invaluable contribution of the Society's Editorial Board and the



From left: Dr Barbara English, Heather Semple, Linda Johnston, Michael Graham, Society President Suzanne Rice, Mr Justice Huddleston, Andrew Kirkpatrick and Sheena Grattan.

Editorial Panel which had been set up especially for this Journal. She acknowledged the time and commitment of all the members of the Panel - Linda Johnston (Chair), Michael Graham, Sheena Grattan, Andrew Kirkpatrick, Dr Barbara English and Heather Semple (Secretary) who acted as Editor for this issue.

The new journal will target a multidisciplinary audience in Northern Ireland and beyond to include lawyers, doctors, social workers and other bodies interested in the area of elder law and capacity.

It will be published in hard and soft copy and will be issued two times per year and will include sections on:

- News and updates
- Articles
- Case commentaries or case studies
- Legislative developments and Practice Directions
- Book reviews

The cost of subscription is £90 per annum for two issues. This entitles the subscriber to a hard copy of the Journal plus an e-zine, facilitating the build-up of an e-library of documents.

Anyone wishing to order a copy should contact the Library Team at Law Society House or download the Order Form from [https://www.lawsoc-ni.org/DatabaseDocs/med\\_5449427\\_journal\\_of\\_elder\\_law\\_and\\_capacity\\_order\\_form\\_final.pdf](https://www.lawsoc-ni.org/DatabaseDocs/med_5449427_journal_of_elder_law_and_capacity_order_form_final.pdf).



## Pro Bono Choir raise £20,000 for local charities

Society President, Suzanne Rice, joined colleagues from the Pro Bono Choir outside St Anne's Cathedral for the presentation of a cheque for £20,000 to Aware NI (which assists people with depression and bipolar disorder as well as carers for people with the illness) and The Welcome Organisation (which provides a range of potentially life-saving services to around 1400 people affected by homelessness across Greater Belfast every year).

The money had been raised at their Christmas performance - *O Holy Night* where guest artists Friar Alessandro, Liam Lawton and Karl McGuckin had given most generously of their time.

*The cheque presentation to Aware NI.*

## Legal Profession steps up for Marie Curie Northern Ireland

In much more benign weather conditions compared to those in 2018, over 200 members of the legal profession took time out of work on Friday 17 May to raise funds in aid of Marie Curie Northern Ireland, a charity which carries out vital work in the heart of our community providing end of life care and support for people living with a terminal illness, whether that is cancer or some other illness.

The Legal Walk/Run, which was organised by the Society is now in its third year with the event attracting office support staff, students, solicitors, barristers and members of the judiciary.

Participants dressed in bright yellow t-shirts set off from outside the Royal Courts of Justice in Chichester Street for a 5km walk/run to the Titanic Centre and back. The event concluded with a BBQ in the National Bar in High Street.

Commenting Society President, Suzanne Rice, said: "I am delighted that so many colleagues in the legal profession have committed themselves to participating in the Legal Walk/Run to help raise funds for Marie Curie Northern Ireland. The event has been a resounding success and is now a regular feature of the Legal Year."

Ciara Gallagher, Head of Philanthropy and Corporate Partnerships, Scotland & NI - Marie Curie UK said: "Marie Curie would like to thank everyone for their ongoing support and participation in the Legal Walk/Run 2019."

The monies raised will go towards supporting families across Northern Ireland facing terminal illness."

To date the event has raised the sum of £7374. However there's still time to sponsor friends and colleagues by making a donation at <https://www.justgiving.com/fundraising/lisni19>



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## Solicitors' Benevolent Association 155th Report & Accounts Year 1 December, 2017 to 30 November, 2018

This is the 155th Report of the Solicitors' Benevolent Association, which was established in 1863. It is a voluntary charitable body, consisting of all members of the profession in Ireland. It assists members or former members of the Solicitors' Profession in Ireland and their wives, husbands, widows, widowers, family and immediate dependants who are in need and is active in giving assistance on a confidential basis throughout the 32 counties.

The amount paid out during the year in grants was €773,058 which was collected from members' subscriptions, donations, legacies and investment income. Currently there are 84 beneficiaries in receipt of regular grants and approximately one half of these are themselves supporting spouses and children.

There are 19 directors, three of whom reside in Northern Ireland, and they meet monthly in the Law Society's offices, Blackhall Place. They meet at The Law Society, Belfast, every other year. The work of the directors, who provide their services entirely on a voluntary basis, consists in the main of reviewing applications for grants and approving of new applications. The Directors also make themselves available to those who may need personal or professional advice.

The Directors are grateful to both Law Societies for their support and, in particular, wish to express thanks to Michael Quinlan, Past President of the Law Society of Ireland, Eileen Ewing, Past President of the Law Society of Northern Ireland, Ken Murphy, Director General, Alan Hunter, Chief Executive and the personnel of both Societies. The Law Society again organised the Spring Gala during the year, for the benefit of our Association and a very sincere thanks to Michael Quinlan, the members of the Council and to the organisers of the Gala.

I wish to express particular appreciation to all those who contributed to the Association when applying for their practising certificates, to those who made individual contributions and to the following:

: The Law Society of Ireland	: Sheriffs' Association
: Law Society of Northern Ireland	: Southern Law Association
: Dublin Solicitors' Bar Association	: Tipperary Solicitors' Bar Association
: Court Service	: Waterford Law Society
: Faculty of Notaries Public in Ireland	: West Cork Bar Association
: Limavady Solicitors' Association	: Anthony E Collins - President of The
: Medico-Legal Society of Ireland	Law Society 1984-5
: Midland Solicitors' Bar Association	

The demands on our Association are rising due to the present economic difficulties and to cover the greater demands on the Association additional fund-raising events are necessary. Additional subscriptions are more than welcome as of course are legacies and the proceeds of any fundraising events. In certain cases the Association can claim tax relief for donations of €250 or more. I would encourage Bar Associations to run functions such as CPD courses to raise funds for the Association. Subscriptions and donations will be received by any of the Directors or by the Secretary, from whom all information may be obtained at 73 Park Avenue, Dublin 4. Information can also be obtained from the Association's website at [www.solicitorsbenevolentassociation.com](http://www.solicitorsbenevolentassociation.com). I would urge all members of the Association, when making their own wills, to leave a legacy to the Association. You will find the appropriate wording of a bequest at Page 34 of the Law Directory 2018.

I would like to thank all the Directors and the Association's Secretary Geraldine Pearse, for their valued hard work, dedication and assistance during the year.

**Thomas A Menton**  
Chairman



### DIRECTORS AND OTHER INFORMATION

<b>DIRECTORS</b>	Thomas A Menton (Chairman) Felicity M Foley (Deputy Chairman) Caroline Boston (Belfast) Liam Coghlan (Killarney) Thomas W Enright (Birr) William B Glynn (Galway) John G Gordon (Belfast) Colin G Haddick (Newtownards) Niall Lavery (Dundalk) Seamus Mallon (Castleblayney) Paul Malone (Borrisokane) Anne Murrin (Waterford) John M O'Connor (Dublin) John T D O'Dwyer (Ballyhaunis) Mark Quinn (Gorey) James I Sexton (Limerick) John Sexton (Dublin) Andrew F Smyth (Dublin) Brendan J Twomey (Donegal)
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<b>TRUSTEES (ex officio Directors)</b>	Felicity M Foley John G Gordon John M O'Connor Andrew F Smyth
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<b>SECRETARY</b>	Geraldine Pearse
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<b>CHARITY NUMBER</b>	CHY892
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**RECEIPTS AND PAYMENTS ACCOUNT FOR THE YEAR ENDED 30 NOVEMBER 2018**

	2018 €	2017 €
<b>RECEIPTS</b>		
Subscriptions	448,721	429,962
Donations	133,422	183,328
Investment income	61,419	65,684
Bank interest	18	6
Repayment of grants	1,200	1,200
	<u>644,780</u>	<u>682,180</u>
<b>PAYMENTS</b>		
Grants	773,058	716,928
Administration expenses	55,447	59,770
Bank interest and fees	1,288	1,212
Currency loss	463	2,827
	<u>830,256</u>	<u>780,737</u>
<b>OPERATING DEFICIT FOR THE YEAR</b>	<b>(185,476)</b>	<b>(98,557)</b>
Profit on disposal of investments	50,901	152,468
Provision for decrease in the value of quoted investments	(434)	(18,277)
<b>(DEFICIT)/SURPLUS FOR THE YEAR</b>	<b><u>(135,009)</u></b>	<b><u>35,634</u></b>





# EVENT CALENDAR

## FAMILY LAW: A PRACTICAL GUIDE IN APPLICATIONS TO THE FAMILY PROCEEDINGS COURT

Speaker – TBC  
21st June 2019, Law Society House  
1pm – 3pm (2 POINTS)

Registration & Lunch From 12:30pm  
£40 members/£50 non-members

TICK

## PACE: ADVISING YOUR CLIENT IN THE POLICE STATION

Speaker – Charlene Dempsey, HHD Solicitors  
20th September 2019, Law Society House  
1pm – 2pm (1 POINT)

Registration & Lunch From 12:30pm  
£30 members/£40 non-members

TICK

## CONVEYANCING: HALF DAY SEMINAR

Speakers – TBC  
23rd October 2019, Law Society House  
1pm – 4pm (3 POINTS)

Registration & Lunch From 12:30pm  
£50 members/£70 non-members

TICK

## CIVIL LITIGATION UPDATE

Speaker – Ruaidhri Austin, Lacey Solicitors,  
Dr Phillip O'Connor  
15th November 2019, Law Society House  
1pm – 3pm (2 POINTS)

Registration & Lunch From 12:30pm  
£40 members/£50 non-members

TICK

## CLIENT CARE AND PRACTICE MANAGEMENT

Speaker – TBC  
18th December 2019, Law Society House  
1pm – 4pm (3 POINTS)

Registration & Lunch From 12:30pm  
£40 members/£50 non-members

TICK

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# FOLIO: the Northern Ireland Conveyancing and Land Law Journal

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folio



# The Child & Family Law Update

The Child & Family Law Update is a multi-disciplinary journal published by the Law Society of Northern Ireland. It is designed to keep lawyers, medical practitioners, social workers, advice workers and others involved in the field of child and family law up-to-date with legal developments. In addition to case notes, the Update contains articles on topical issues relating to children and families that will assist professionals across a range of disciplines discharge their responsibilities. Articles and cases notes are written by practising professionals and academics. The Update is published twice a year priced at £60 per annum.

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## Changing times means changes for recruitment in the legal market



*MCS Group is a leading recruitment consultancy operating across Northern Ireland. In this article David McCallum, Specialist Legal Recruitment Consultant*

*discusses some of the changes witnessed recently in the market and offers recommendations to keep ahead of the game.*

It's amazing how times change. In 2005 I joined a bank and believed it would be me set for the next 40 years. Fast forward three years to the start of the recession. Immediately it felt different, things had changed forever. The 40-year career ended up as 13 years but I'm not sad about it. The lesson I have taken is that the one thing in life you can be sure of is change, and to survive, you must change with it.

The legal market in Northern Ireland is not the same market as it was 10, 20 or even 30 years ago. People have changed and methods of recruitment have changed. Long gone are the days of sticking an advert in the paper and waiting for umpteen CVs through the post. In fact, most of the time you're lucky if it's one.

### So, what has caused the changes?

1. International firms in the market place – they have come into the market and taken on a lot of solicitors and graduates.
2. Small world – lots of solicitors are concerned about word getting around that they are looking at roles and are now more protective than ever about their CVs.
3. Graduate options – legal graduates have more options than ever and thus are not banging down the door of private practices.
4. The recession – in terms of solicitors, a lot went down the banking litigation route due to the requirements and thus there are shortages in other areas eg conveyancing.

### So, what's the answer?

Well, the answer is simple...Change! Change isn't always easy to grasp. I speak to people regularly who are nostalgic about how legal recruitment used to work in NI. Those private practices that are willing to try different things have discovered that there is real success in it. So, let's take the points above and explain how a change may be beneficial in the long term.

1. The international influx – yes, it's happened and it's true salaries cannot be competed against. However, opportunity and development can be utilised to level the playing field. There's no point complaining that there are no good paralegals in the market, why not change the approach and take on a graduate and train them? We recently had a private firm offer an opportunity and it worked both at solicitor and paralegal level.
2. Small world – the best method (I promise this isn't self-promotion) is using a recruiter. The privacy is increased, conversations can be done discretely and a wider pool of talent can be accessed.
3. Options for graduates – similar to the influx, why not come up with a scheme

for graduates? If you are unsure of a scheme, why not have a conversation and find out what has worked for other private practices?

4. The recession – it happened but here's the thing, those banking litigators are still available and are good solicitors. You don't necessarily know what they did for the banks in the recession but it might be worth finding out. Their skills could be transferrable to other specialist areas. They handled the pressure of the banking crash; they could handle another area of law.

This is just a taste of some actions that can be implemented to aid recruitment within the legal market. There is so much more that can be touched on including branding, marketing, hiring temporary employees, not to mention the impact artificial intelligence will have.

Please speak to a member of our legal recruitment division to discuss your hiring needs or to find out more about our latest roles. Call: 028 9023 5456 or email [d.mccallum@mcsgroup.jobs](mailto:d.mccallum@mcsgroup.jobs)



## Look After Yourself

### Top 10 Tips for Good Mental Health and Wellbeing



#### Keep Active

Find a physical activity you enjoy and make it part of your life, you will feel better and boost your self-esteem



#### Take a Break

Use your lunchbreak to get away from your desk. Step outside for just a few minutes, it can re-energise you



#### Sleep is Important

Sleeping well can improve concentration and refresh you



#### Eat Well

A balanced diet rich in nutrients is good for both your mental and physical health



#### Drink in Moderation

Stay within the recommended alcohol limits: heavy drinking affects brain function and can cause disease



#### Keep in Touch

Maintain good relationships with friends, family and your wider community: strong connections can help you to feel happier



#### Share How You Feel

Talk about your feelings, it can help you cope with problems and feel listened to



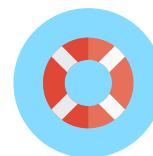
#### Give Back

It has been proven that giving - time or money - can make you feel valued and give you a sense of purpose



#### Be Mindful

Mindfulness - positive emotions and paying attention to the present - can help you enjoy life more



#### Ask for Help

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## Library Update – Conacre

**Conacre** is the right to till land, sow crops in it and to harvest them in due course and such arrangements are ‘lettings’ or ‘contracts’ that do not normally create tenancies, a system of agricultural land tenure which was believed to be peculiar to Ireland - *Valentine All the Law*

### Caselaw

#### Re Carson’s and others’ applications for Judicial Review

Joined applications for judicial review of decisions made by the Department of Agriculture and Rural Development imposing penalties on the applicants for over-declarations of land holdings in connection with applications under the Single Farm Payment Scheme (SFP). - applicants claims for SFP included lands that each held in conacre and in respect of which the respective landowners had also claimed SFP. - DARD emphasised the need for agreement between landowner and conacre farmer as to responsibility for the land and the entitlement for only one of them to claim SFP. - whether decision to impose penalties were unlawful and in breach of a. 68.1 of EC 796/2004 in that the applicant’s application was factually correct when submitted and the applicant was demonstrably not at fault, and that the over-declarations were an obvious error. - whether the DARD had not informed the applicant of an irregularity in the application so as to prevent amendment or partial withdrawal. - HELD that the applicants’ grounds are rejected based on obvious error, partial withdrawal of the application, prior notice by the applicants and the submission of factually correct information and upheld in relation to the no fault argument. - appeals referred back to the Independent Panel for reconsideration

[2008] NIQB 87

#### Foster & McWilliams v Cunningham & Others

Conacre letting – death of tenant for life – apportionment of conacre rent - monies paid in respect of the whole period must be apportioned as if they had accrued from day to day - amount found to be due on this basis for the period March 23 to July 7, 1954 must be paid to the representative of the tenant for life.

1956 (NI) 29

#### Maurice E Taylor (Merchants) Limited v Commissioner of Valuation

Rating and valuation – agricultural buildings – buildings occupied and plots of land held in conacre – plots of land dispersed and several miles from buildings – produce stored in buildings prior to export – whether land occupied for rating purposes – Whether buildings “occupied together with” land – whether buildings used solely in connection with agricultural operations - HELD that rateable occupation is not confined to the owner or lessee of land but depends upon the nature and extent of the use to which the land is put and upon whether the occupation of the person using the hereditament is of value to him and is exclusive or paramount - conacre agreements gave the company exclusive occupation of the land for 11 months, they were, having regard to their purpose and terms, of sufficient permanence to make the company the rateable occupier of the lands

[1981] NI 236

#### McCall and another (personal representatives of McClean (deceased)) v Revenue and Customs Commissioners

Appeal from a decision of the Special Commissioner whereby he dismissed the appellants’ appeal against a determination made by the respondents in relation to 33 acres of agricultural land of fields of grass let under conacre. - appellants are personal representatives of the deceased. - Revenue determined that for the purposes of inheritance tax payable on the death of the deceased no part of the value transferred on death was attributable to the value of any relevant business property for the purposes of Chapter 1 Part V of the Inheritance Tax Act 1984. - whether the property is entitled to the full business relief or whether it fails to qualify as relevant business property because it consists wholly or mainly of the business of making or holding investments. - whether the deceased had conducted a business for the requisite statutory period. - Commissioner decided that a business was being carried on which consisted wholly or mainly of the holding of investments and that, accordingly, the estate was not entitled to business relief.

- whether the seasonal letting arrangement to graziers was analogous to a lease of premises. - whether the Commissioner was erroneous in point of law in his decision. - HELD that the Special Commissioner’s decision affirmed and the appeal dismissed

[2009] NICA 12

#### TC05100: Mr John Carlisle Allen

Capital gains tax - Business Asset Taper Relief - Northern Ireland - land taken on conacre arrangements - whether occupied by the appellant landowner wholly or mainly for the purposes of husbandry - Appeal allowed

[2016] UKFTT 342 (TC)

### Articles

#### Safe to graze?

Discusses the *John Carlisle Allen case*. - statutory meaning of farming - Tribunal decided the land was occupied and husbanded by the taxpayer - explain when grazing is a trading activity - review agreements to ensure the landowner is the occupier and farmer

Ward: 2017 Taxation 16 March 14

#### Conacre conundrum

Discusses where farmland has been let continuously on a conacre basis from acquisition until disposal and business asset rollover relief

Curtis: 2016 Taxation 26 May 24

### Precedents

Letting in conacre  
Edge: Forms of leases

Model conacre licence agreement  
RICS: 5th ed 2015.

*Caselaw, articles and precedents are available from the Library*



# From the High Court and Court of Appeal – abstracts of some recent case law

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

## CONTRACT

### RONALD KERR V AGNES JEAN JAMISON

Whether the defendant entered into a binding agreement whereby she assigned all her interest in a dwelling house to her niece. - plaintiff (who is the personal representative) seeks a declaration that the defendant is bound by the terms of an agreement entered into between her and all the other beneficiaries of the estate of the deceased whereby they all agreed to transfer their respective interests in land and premises to the niece, an order that the defendant takes all the necessary steps and executes all necessary documents to transfer her interest and alternatively damages for breach of contract. - legal principles of the formation of a binding agreement. - HELD that application dismissed  
*HIGH COURT*  
27 FEBRUARY 2019  
MCBRIDE J

## CRIMINAL INJURIES

### IN THE MATTER OF AN APPLICATION BY MARY MEEHAN

Appeal against dismissal of applicant's judicial review relating to the refusal to grant the applicant her criminal injury compensation in respect of physical and alleged sexual abuse which she suffered as a girl due to the "same household" rule. - whether the applicant has an interest in accessing the benefits of the 2009 Criminal Injuries Compensation Scheme which is sufficient to qualify as a "possession" for the purposes of Article 1 Protocol 1 ECHR. - whether the applicant is therefore excluded on a discriminatory basis. - whether any discriminatory treatment is justified. - HELD that the applicant's appeal successful  
*COURT OF APPEAL*  
23 NOVEMBER 2018  
MORGAN LJ, TREACY LJ, MAGUIRE J

## CRIMINAL LAW

### R V MICHAEL LOUGHLIN

Reference by the Director of Public Prosecutions under s.36 Criminal Justice Act 1988 in which he submitted that a determinate custodial sentence for attempted murder was unduly lenient. - appropriate sentencing range for the offence of attempted murder. - approach of double jeopardy in a PPS reference. - requirement to adhere to the statutory test in considering the imposition of suspended sentences. - need for care in the assessment of dangerousness. - aggravating and mitigating factors. - HELD that appeal allowed and sentence substituted for a higher custodial sentence  
*COURT OF APPEAL*  
8 MARCH 2019  
MORGAN LJ, STEPHENS LJ, HUDDLESTON J

## R V TN

Appellant appeals against a jury's finding pursuant to art. 49A of the Mental Health (NI) Order 1986 that he committed 23 historic offences of assault and sexual offences. - whether the trial judge erred in admitting bad character evidence of physical assaults by the appellant against his wife. - whether the evidence was to do with the alleged facts of the offence. - whether exclusion of the evidence would have an adverse effect on the fairness of the proceedings. - HELD that appeal allowed, finding quashed and verdict of acquittal recorded  
*COURT OF APPEAL*  
1 APRIL 2019  
MORGAN LJ, TREACY LJ, HUDDLESTON J

## DAMAGES

### DESMOND JAMES DOHERTY AS EXECUTOR OF THE ESTATE OF BRIDGET MCGUIGAN GALLAGHER (DECEASED) V MINISTRY OF DEFENCE

Plaintiff is the widow of a person shot dead on Bloody Sunday and initiated a claim for damages under the Law Reform (Miscellaneous Provisions) Act 1937 on behalf of the estate of her late husband under the Fatal Accidents (NI) Order 1977. - plaintiff died before the action came for hearing and was continued in the name of the Executor of the Estate. - whether in the case of a victim who died instantly as a result of being shot, it was possible in law to make an award of aggravated damages. - if so, whether an award should be made in this instance, and the appropriate amount. - HELD that the claim by the estate for injury to feelings of the deceased resulting from the tortious actions of the soldiers culminating in him being shot dead is established in

law and the estate is entitled to aggravated damages of £15,000  
*HIGH COURT*  
2 APRIL 2019  
MCALINDEN J

## FAMILY LAW

### HJC V MCC

Valuation hearing relating to the parties' former matrimonial home comprising a main house and attached annex located south of Belfast on a site of 1.110 acres with private landscaped gardens. - use of expert valuers and the Ancillary Relief Pre-Action Protocol. - approach to be taken when a jointly instructed expert provides a report with which one or other side is unhappy. - suggested comparable properties. - HELD that property valued at £800,000 to allow for some modernisation  
*HIGH COURT*  
8 NOVEMBER 2018  
SWEENEY MASTER

## S V S

Valuation hearing relating to an Individual Finance Advice practice set up by the husband (petitioner) which had gone into administration. - business valuation methods in ancillary relief cases. - net assets value approach. - income approach. - market value approach. - comparables and multipliers. - HELD that valuation fixed by the Court  
*HIGH COURT*  
8 NOVEMBER 2018  
SWEENEY MASTER

### IN THE MATTER OF AN APPLICATION BY SK2 FOR JUDICIAL REVIEW

Applicant is a 16 year old "child in need" within a.17 Children (NI) Order 1995 ("the Order") and "looked after child" under a.25 of the Order. - nature and duty of the Trust to provide accommodation for

the applicant in circumstances where, largely as a result of the child's own actions, the Trust could not provide him with accommodation when he was given bail despite having made strenuous efforts to do so. - declaratory order had been made to allow the child to be locked in to his residential accommodation. - a suitable home refused to take the child due to criminal damage and assaults on staff being carried out by him and he remains in custody. - whether the Trust owed a duty to accommodate the child pursuant to a.27 of the Order. - whether there was a duty to provide suitable and appropriate accommodation. - whether immediate duty or within a reasonable time. - HELD that the Trust is not in breach of its duty since the child's case is at the extreme end of those involving looked after children. - application for judicial review dismissed  
*HIGH COURT*  
21 DECEMBER 2018  
O'HARA J

## IMMIGRATION

### IN THE MATTER OF AN APPLICATION BY EFE AND OOE FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

Application for judicial review by a mother and son who have been granted anonymity. - Secretary of State refused an applicant's appeal against removal decision. - whether the decision maker failed to have regard to the statutory guidance entitled "Every Child Matters - Change for Children" published under s.55 Borders, Citizenship and Immigration Act 2009. - HELD that the decision maker failed to have regard to the statutory guidance and application for judicial review succeeds and decision of Secretary of State quashed  
*HIGH COURT*  
15 NOVEMBER 2018  
MCCLUSKEY J

## JUDICIAL REVIEW

### NEIL HEGARTY'S APPLICATION FOR JUDICIAL REVIEW

Appeal against dismissal of an application for judicial review brought about by the appellant who seeks to impugn 2 decisions by the Parole Commissioner and the Department of Justice recommending that the appellant's licence be revoked and he be recalled to prison. - applicant contends that both decisions were unlawful being based on an inaccurate and un-particularised assertion that the appellant had stated before leaving prison that he would not be consenting to the fitting of electronic monitoring equipment in respect of his curfew. - statutory provision on recall of offenders. - whether the decision of the Commissioner was unlawful on the basis that there was an uncritical assumption that all the facts in the police report were correct and there was an obvious need to make simple enquiries of the officer compiling the police report. - HELD that appeal allowed in so far as leave granted to apply for judicial review but dismissed the appeal on the merits  
*COURT OF APPEAL*  
1 APRIL 2019

### IN THE MATTER OF AN APPLICATION BY MARGARET MCQUILLAN FOR JUDICIAL REVIEW

Appeal against dismissal of an judicial review application seeking a declaration that the proposed further investigation into the death of her sister by the Legacy Investigation Branch ("LIB") of the PSNI conflicts with the requirements of a. 2 ECHR on the basis that the LIB lacks the requisite independence required to perform an a.2 compliant investigation into the death. - whether an a.2 investigatory requirement arose under the Human Rights Act 1998. - whether correct legal

tests of public confidence and public perception applied. - HELD that a.2 ECHR applies to the future investigation of the death, the Chief Constable has not demonstrated practical independence on the part of the LIB and the trial judge was correct to conclude that the PSNI were not bound in any form of procedural legitimate expectation, that there was no parallel obligation to a.2 existing at common law so that there was no breach of the common law that the Chief Constable had not acted irrationally or unreasonably in the exercise of discretion concerning the future conduct of any investigation into the death

*COURT OF APPEAL*  
19 MARCH 2019  
MORGAN LJ, STEPHENS LJ, SIR PAUL GIRVAN

## REAL PROPERTY

### IN THE MATTER OF CARROWREAGH MANAGEMENT COMPANY BETWEEN HSBC BACK PLC V REGISTRAR OF COMPANIES FOR NORTHERN IRELAND, THE CROWN SOLICITOR AND THE CROWN ESTATES COMMISSIONERS

Doctrines of escheat and bona vacantia on the property of a company which is dissolved and subsequently restored to the company register. - conflicting jurisprudence of courts in England and Wales and Scotland. - management company was dissolved following voluntary striking from the register and the Treasury Solicitor later disclaimed the lands. - applicant is a chargee of the lands and intends to bring proceedings before the Lands Tribunal under a.5 Property (Northern Ireland) Order 1978 to vary the onerous covenants contained in the lease. - company was restored to the register in order to do this. - applicant bank seeks a declaration that consequential on the restoration to the Register of the company the

freehold estate in the lands and premises in the Business Park is vested in the management company and in the alternative an order pursuant to s.1017 Companies Act 2006 vesting in the applicant the lands as the court thinks fit. - what happens to the property of a company when it is dissolved. - effect of a disclaimer by the Treasury Solicitor in respect of the property. - effect of restoration of the company on its property. - whether the disclaimer by the Treasury Solicitor constitutes a disposition. - HELD that declaration made that consequential on the restoration to the Register of the company the freehold estate in the lands is vested in the management company  
*HIGH COURT*  
19 SEPTEMBER 2018  
MCBRIDE J

## SOLICITORS

### EVELYN DONAGHY V JJ HAUGHEY SOLICITORS LIMITED

Application by plaintiff for an order for delivery up of papers and files held by her former solicitors in circumstances where the solicitors have refused to deliver them up. - lien for payment of costs. - guidance to the profession on the court's supervisory jurisdiction over the exercise of a solicitors' lien. - solicitor had terminated the retainer since the client was not co-operating in the enforcement of the settlement terms of a will and made a complaint about the solicitor. - plaintiff was seeking the papers for a limited purpose in on-going litigation. - interests of justice. - list of factors which the court may consider relevant to the exercise of its discretion. - HELD that order made providing the solicitor with security for costs by way of a charge over property prior to files being released  
*HIGH COURT*  
21 FEBRUARY 2019  
MCBRIDE J

# CLASSIFIEDS

## Missing Wills

**Re: Robert Kilpatrick (deceased)**  
**Late of: 45 Onslow Parade,**  
**Belfast BT6 0AS**

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.

*Joe Napier*  
*Napier & Sons*  
*1/9 Castle Arcade*  
*Belfast*  
*BT1 5DF*  
*Tel: 028 9024 4602*

**Re: Mary Rogers (deceased)**  
**Late of: Parkdean Nursing**  
**Home, Belfast**  
**Formerly of:**  
**23 Kelvin Parade, Belfast**  
**Date of Death: 5 December**  
**2018**

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.

*Joe Napier*  
*Napier & Sons*  
*1/9 Castle Arcade*  
*Belfast BT1 5DF*  
*Tel: 028 9024 4602*

**Re: Very Reverend Christopher Nellis**

**Formerly of: Parochial House,**  
**158 Glenshesk Road, Armoy,**  
**Ballymoney BT54 6BA**  
**Also of: 458 Crumlin Road,**  
**Belfast BT14 7GH**

Would anyone having knowledge of the Will of the above named person please contact:

*Napier & Sons*  
*Solicitors*  
*1/9 Castle Arcade*  
*Belfast BT1 5DF*  
*Email: jgg@napiers.com*

**Re: Agnes Selina McKee, also known as Ina McKee**

**Date of Death: 12 June 2010**  
**Late of: 200 Belfast Road,**  
**Ballynahinch, County Down**

If any person has any knowledge of the whereabouts of the Will for the above named Deceased, please contact the undersigned as soon as possible:

*Ciará O'Doherty*  
*Donard King & Co*  
*Solicitors*  
*27 High Street*  
*Ballynahinch*  
*County Down*  
*Tel: 028 9756 5525*  
*Email: ciarao@donardkingsolicitors.com*

**Re: John Fisher Little**  
**Late of: 14 Grove Road,**  
**Annalong, County Down**  
**BT34 4XB**

**Date of Death: 15 January 2019**

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.

*Robert G Ferguson*  
*Fisher Mullan Solicitors Ltd*  
*8 Trevor Hill*  
*Newry*  
*BT34 1DN*  
*Tel: 028 3026 1616*  
*Email: obert@fishermullan.com*

**Re: June Pottinger**  
**Late of: 34 Cherryhill Avenue,**  
**Dundonald, BT16 1JD**  
**Date of death: 6 November**  
**2018**

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

*Patricia Gaston*  
*Solicitor*  
*John Ross & Son*  
*21 High Street*  
*Newtownards BT23 4JN*  
*Tel: 028 9181 3173*  
*Email: patricia.gaston@john-ross.co.uk*

**Re: Rosaleen McKee (deceased)**  
**Late of: 25 Carlisle Road, Belfast**  
**BT15 2PT**

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

*Joe Napier*  
*Napier & Sons*  
*1/9 Castle Arcade*  
*Belfast BT1 5DF*  
*Tel: 028 9024 4602*

a Will made by the above-named deceased and/or Title Deeds for the above property please contact the undersigned as soon as possible:

*Ms M O'Brien*  
*Directorate of Legal Services*  
*2 Franklin Street*  
*Belfast BT2 8DQ*

## Missing Land Certificate

**Folio: 105**  
**County: Tyrone**  
**Registered Owner: Rosemary McCrory**  
**Lands of: 143 Redergan Road,**  
**Garvaghey, Dungannon, County Tyrone.**

Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio Number should forthwith produce said Certificate or communicate such information to the undermentioned solicitors. And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of communication of this notice, a duplicate Land Certificate may be applied for.

*Carmel O'Meara and Co*  
*Solicitors*  
*32 Irish Street*  
*Dungannon*  
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## Missing Will and Title Deeds

**Property: 26 Circular Road,**  
**Castlewellan, County Down**  
**Owner: Mary Catherine Owens (deceased)**

**Date of Death: 29 June 2014**  
Would any person having knowledge of the whereabouts of





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DK/Reavey and Company,  
Solicitors and Solicitor Advocates, Belfast.

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KB/Cleaver Fulton Rankin, Belfast.

*'We are very much obliged for your efforts in this matter and for the speed and efficiency of extracting this information'. KB/Doherty Brennan, Coleraine.*

Have a look at my website: [www.familyfindersni.co.uk](http://www.familyfindersni.co.uk)  
Contact me at [familyfindersni@gmail.com](mailto:familyfindersni@gmail.com) or  
Telephone Kathleen at 07778 052 492.

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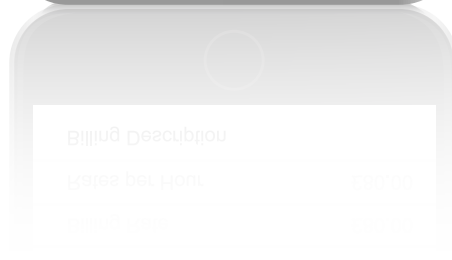
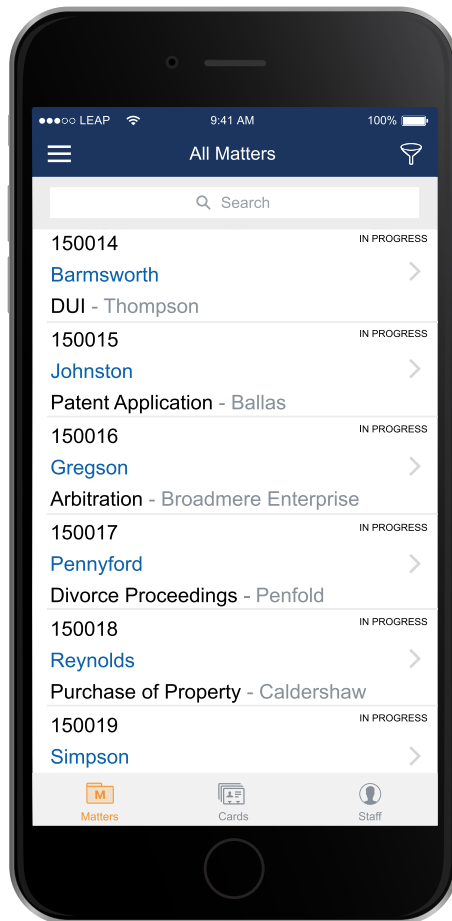
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