THE WRIT

THE LAW SOCIETY OF NORTHERN IRELAND

THE EZINE OF THE LAW SOCIETY OF NORTHERN IRELAND
ISSUE 235 Autumn 2020

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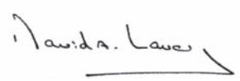
This is the third E-Writ we have published this year. I hope you find it interesting and relevant. We decided to publish the Writ digitally at the beginning of the Covid-19 Pandemic. Like a lot of changes introduced in these unprecedented times in which we live, I very much doubt whether we shall return to the old way of doing things. An E-Writ is a new way of reaching out to our members and I believe that is how we should "publish" all future issues.

As with the other issues published in this format, this issue has adopted a thematic approach. This issue considers how we have been adapting to what is often referred to as the "new normal". I am grateful to our contributors for their willingness to share their experience and for their honesty in doing so.

One area where a "new normal" is yet to emerge is in the area of court business. The Court System appears to be suffering from what might be termed "Long Covid" as it is proving difficult to get things up and running again. This is one area which the Society is monitoring carefully on behalf of the profession.

In this issue you will also be able to read about some of the work to which the Society contributes internationally. For a small Society we undoubtedly "punch above our weight" in the various legal fora in which we participate.

Our next issue of the Writ will be published early in the New Year. Let's hope that by then we find ourselves in an improving public health situation both at home and abroad.



David A Lavery CB
Chief Executive

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President's Message

Welcome to the autumn edition of The eWrit, the theme of which is **"Adapting to the New Normal."** Even a cursory glance at the list of contents will give you an indication of the extent to which things have changed in recent months or currently remain in a state of flux. Who would have guessed this time last year that, just twelve months on, they would be scrolling through an electronic version of The Writ containing articles on the topic of great immediacy such as *"Business Recovery Measures?"* Which of us would have imagined that we would need a piece on *"Sightlink for Clients?"* Who had even heard of Sightlink back in those already distant days? And I suspect that if at that time I had come across an article entitled *"Curbing rights and freedoms in times of public emergencies"* I would never have thought it was written in the context of a public emergency which had suddenly engulfed almost the entire population of the globe. So much has changed so radically in such a short space of time.

Some of the changes we are experiencing will be short-lived; most, I suspect, will not. The requirement for the recovery measures I have mentioned should gradually reduce and ultimately disappear as our workloads increase and our ability to process them improves. The extension of time given this year for trainees to register with the Society was a necessary measure to accommodate them and their potential masters but it was temporary in nature and is unlikely to be repeated.

The mantra *"Build Back Better"* has become well-known and, although perhaps a little glib, it does neatly encapsulate an objective for which we should all be aiming. It is very much to the forefront of the Society's thinking. Let me give just a few examples. Online CPD, which the Society has expanded successfully will continue once the pandemic has abated. Online applications for practising certificates are being introduced for the first time in 2021 and the explosion in the use and popularity of video-conferencing has resulted in the Society taking a conscious decision to equip the new meeting room suite which we propose to develop at Law Society House with high specification audio-visual technology.

Increased use of technology has also permeated the way in which the Society conducts its day-to-day business. Perhaps the most significant change is that all Council and Committee meetings are currently being conducted by video-conference. The level of attendance has increased noticeably as members' time commitment is limited to the duration of the meeting itself. Time which would otherwise be lost to travel now remains productive and any practical difficulties involved in getting to, or around, Law Society House are removed. There is a little less formality surrounding these meetings as members frequently participate from home and in casual wear; this has given rise to some interesting sartorial discussions as well as comments on the content of background bookshelves or the quality of the artwork adorning the walls. By way of contrast, before March of this year it was only possible to participate in meetings remotely by telephone. In practice, this was a very 'clunky' process which was not much used. Those who did use it probably felt, with some justification, like Economy Class passengers, with everyone else travelling Business Class. When conditions allow it, the likelihood is that the Society will move to hybrid meetings, with members being able to attend either in person or remotely by video link. I hope that this will be a real and permanent incentive to members based outside Belfast to play a full and active part in the Society's affairs.

Looking beyond the Society itself, it is clear that many other changes made in response to the pandemic will outlast it. NICTS is currently developing a strategy on modernising the courts and tribunals system and digitalisation is an important element of that strategy. The Society has been invited to contribute to this work and will be emphasising the importance of grasping this unique opportunity to re-examine and re-evaluate the way in which courts and tribunals function at all levels. If that opportunity is missed then, sadly, the new normal will look remarkably similar to the old normal so far as court users are concerned.

Members are likely to encounter permanent change in other areas too. The Probate Office, which introduced very welcome measures to assist practitioners with the practical difficulties they were experiencing as a result of the pandemic, is piloting online applications. The Land Registry has for some time been planning to introduce a new IT system with enhanced functionality. The Society will be working hard to ensure that both projects fully recognize the needs of practitioners and their clients in these important areas of practice.

One significant feature of the Society's activities during the lockdown period was the Members' Survey in May 2020. The response rate, at around 66%, was remarkable and the information gleaned from it has been of real value to the Society in its dealings with Government departments and agencies. A further survey is about to be launched and a similar or even better response is vitally important to add authority to the Society's voice in the many discussions which lie ahead. The modest amount of time required to complete the survey is therefore a good investment and I urge you all to ensure that your firms do respond.

As I read back through what I have just written, I am struck by an obvious thought. Change has probably been a constant for most of us throughout our careers. As a profession, we have shown over the years that we are good at change. Admittedly, the pace in recent months has been unprecedented but we have coped well and I believe we will continue to do so. In that sense, we are not facing a new normal at all, just a continuation of the same old normal. *"Plus ça change, plus c'est la même chose....."*

As we near the end of a very difficult year, I wish you and your families a peaceful, restful and not entirely virtual festive season, coupled with the hope that 2021 will be infinitely happier and more prosperous for all.

Rowan White
President

Independent Review of Administrative Law

Law Society Response

Ann McMahon
Head of Contentious Business

The Law Society has lodged a Response to the Call for Evidence by the Independent Review of Administrative Law.

To inform the response, the Law Society formed a small Working Group of practitioners in the field chaired by Peter Madden, and invited a leading academic to join them. The Group then organised a workshop chaired by a Lord Justice of Appeal, bringing together a range of interests from private practice, the public sector and third sector organisations. The discussions thereat helped inform the Society's response which had a particular focus on how any changes might affect this jurisdiction.

The Society agrees that judicial review is an essential feature of the justice system across the United Kingdom and is a fundamental mechanism for individuals, organisations, NGOs, businesses and others to challenge decisions and actions of public bodies to ensure that they have acted in accordance with their procedures, policies and powers. It also provides the ability to enable citizens to assert their fundamental individual rights and to seek remedies when powers have been unlawfully applied or abused. The motivation behind the review was debated as concerns were raised that it may be an attempt by the Government to curtail judicial review in response to recent court decisions where the judiciary have been at the centre of matters of public concern, most notably in the case of *Miller and Cherry* [2019] UKSC 41. The Society is concerned that the agenda of Government is to limit the powers of the court to review administrative decisions in order to shield it from scrutiny. It is notable that there is no reference to the Human Rights Act within the terms of reference, which is surprising, as it is difficult to consider grounds for judicial review and issues of justiciability without references to human rights

In its response the Society raised concerns that the review appeared to apply to UK-wide issues but took cognisance only of England and Wales without consideration of the implications for devolved administrations, especially as justice and administrative law are devolved matters for Northern Ireland. Northern Ireland is a society in transition from conflict, with unique constitutional and power-sharing arrangements therefore respect for the rule of law in Northern Ireland is central to ensuring public confidence in the government. The periodic collapse of power sharing arrangements in Northern Ireland since the Good Friday Agreement in 1998 and the instability of governing arrangements reinforces the need to provide adequate protections for citizens to seek remedies. During the collapse of the Northern Ireland Assembly in January 2017, citizens turned to the courts to put focus on policy and procedure and without this there could not have been progress on matters of importance in this society – most notably compensation for victims of historical institutional abuse and the pension scheme for victims of the troubles.

The Society stated that without judicial review there would be lack of accountability and a lack of redress which would impact on wider access to justice matters. It is the Society's view that any attempt to remove areas or categories, or to reduce the scope of judicial review through codification, would result in inconsistencies, and would contribute towards a reduction of rights for individuals.

Judicial review permits judicial scrutiny where parliamentary accountability has been inadequate or insufficient. The Society points out that there have been various cases in Northern Ireland where individuals have had to turn to the courts to ensure that Ministers disclose and follow their own guidelines and policies. Accordingly, given the complex background and history of this jurisdiction, judicial review plays a significant role in holding Ministers and Government to account for their actions and the Society supports the view that judicial review is a fundamentally democratic legal process promoting accountability and transparency on the part of public authorities.

The Society considers that limiting judicial review, including, for example, making it difficult to access legal aid, and other attempts to frustrate the use of judicial review, are unacceptable and worrying. The Society believes that there should be no concerns that frivolous or vexatious cases are allowed to progress through the court system and accumulate costs, as there is a natural filter at the 'leave' stage in a judicial review application which effectively identifies such cases.

Available statistics provided by Northern Ireland Courts and Tribunals Service do not show that there has been an abuse of judicial review in this jurisdiction. Furthermore, there is no available evidence to suggest any fundamental difficulties or shortcomings in the current judicial review process. Rather than eroding or curtailing the powers of individuals to gain access to fundamental rights or attempting to limit the role of the independent judiciary in exercising their scrutiny functions, the Society believes that the current judicial review system should be protected, strengthened and made more accessible.

To view the full Response lodged by the Society, please access this link: *https://www.lawsoc-ni.org/DatabaseDocs/new_70715__lsni_response_to_iral_call_for_evidence_oct20.pdf*

THE LAW SOCIETY OF NORTHERN IRELAND

Business Support Measures for Members

At a Special Meeting in March, Council approved contingency measures to assist the profession at a time of significant business disruption due to the coronavirus pandemic. These measures cost the Society approximately £1.7m. In the subsequent October meeting the following measures were adopted to mitigate against the effects of the pandemic.

Andrew Kirkpatrick,
Head of Policy and Engagement

1. Practising Certificate 2021

The 2021 Budget has been developed on the basis that the Practising Certificate fee should be set at £1,200. This is the same level as in 2016 and represents a 7.7% reduction on the fee set for 2020.

A facility is being introduced to allow Members to spread the cost of the Practising Certificate fee by allowing it to be paid by quarterly instalments by way of Direct Debit.

The Compensation Fund contribution would be set at [£100] with this amount reduced by 50% for Members in receipt of their 4th, 5th and 6th Practising Certificate, with no contribution to be made by a Member on the issue of their first three Practising Certificates.

2. Professional Indemnity Insurance

The Society has been able to negotiate a professional indemnity insurance renewal premium increase of only 6.2% for the Master Policy. By contrast, professional indemnity premiums in the open market system operated in England and Wales have increased by an average of 30%.

The premium surcharge under the Master Policy for firms requiring ex jurisdictional cover for work undertaken outside Northern Ireland will change from 1st November 2020. Rather than a flat payment there will be a graduated charge per solicitor, per firm (capped at four solicitors per firm) per jurisdiction. This includes additional jurisdiction coverage in Ireland underwritten through EEA based insurers and represents a fairer allocation of the overall renewal premium across firms.

Instalment payment plans for the PI renewal premium will be available from Premium Credit.

3. The Continuous Professional Development 2021 Programme

For 2021 CPD requirements will continue to be met by private study using the Society's online resources. CPD will be delivered free of charge during the period January to June next year with charging reintroduced on an incremental basis thereafter where circumstances permit.

The Education Committee will consider a proposal that Members should complete 15 hours CPD in 2021 of which 2 hours would be Compulsory Risk Management and 2 hours would be Compulsory Conveyancing.

4. Trainee Solicitor Support

The number of firms who have agreed to take on a trainee starting in the Autumn of 2020 has surpassed expectations with 109 places offered by the closing date for registration. Late applications will be considered up to 1st NDecember 2020 this year. Council has already agreed to waive the Admission Fee for the Trainee Solicitor intake starting this Autumn.

Business Support Measures for Members (continued)

5. Health & Wellbeing

The Society will publish a health and wellbeing toolkit for Members.

The intention is to raise awareness of mental health within the solicitor profession and reduce the stigma around mental health issues. It will provide practical information to enable Members to manage their own personal wellbeing and that of their staff. There will be guidance for members on how to take a more proactive approach on wellbeing issues within their offices.

6. Member Firms Survey

The Society undertook a comprehensive Survey of Member firms in May this year. The results of the first survey played a major part in informing the Society's response to the pandemic.

A further survey will be carried out next week. This will allow the Society to monitor the ongoing position with firms, taking into account the impact of the extended Furlough scheme.

7. Library and Information Service

(i) Library services

All fees for library services will continue to be waived until June 2021.

(ii) Society Publications

Fees for the commercial Journals will be re-instated in 2021 and prices held at current subscription rates.

8. Regulatory Matters

A lighter touch regulatory regime by both Professional Conduct and Client Complaints Departments was implemented in the immediate aftermath of the global pandemic and will continue for 2021.

A three-month extension for delivery of statutory Reporting Accountants' reports will continue while the Professional Conduct Department will undertake an enhanced programme of desk-based reviews pending the resumption of on-site inspections.

9. Practice Development and Succession Planning

The Society is developing links with external advisers to advise firms on Practice Development opportunities and business restructuring options.

The Society is also introducing a matching system to assist retiring principals to identify successors and bring them into their firm. This is intended to ensure that there is a succession plan to enable smaller firms to continue to operate in the future but also to ensure that principals who wish to retire can do so in a managed way.

The Society is also introducing additional support for mergers, acquisitions and restructuring of firms including guidance on complying with regulatory requirements. It is the intention to launch a practical toolkit for firms in this position to ensure that this process is made as efficient as possible for those firms.

Adapting to the New Normal – Reflections from the Bench

Presiding District Judge Brownlie

In this article Presiding District Judge Brownlie outlines the steps and opportunities which have been taken to manage a Civil Court during the pandemic

Since the explosion of the Covid-19 pandemic in March, our courts have turned to short and long-term solutions to ensure, where practicable, continuous access to our justice system. Whilst initially many of our courthouses had to close to prevent the spread of Covid-19, we have rapidly adapted our operations as we seek to establish a new norm. This has necessitated a significant increase in the investment and role of technology in the justice system in Northern Ireland. The use of technology has played a positive role in enabling cases to be dealt with where they may not otherwise have done. That said, the effectiveness of remote hearings depends on a range of factors, including having the appropriate platform, hardware and internet connection.

Since April I have been dealing, where possible, with interlocutory proceedings and minor's approvals and petitions on the papers apart from scarring cases which I have dealt with in court. I also listed for in-person hearings those cases which fell into the 'urgent category' such as applications for injunctions both in terms of harassment proceedings and also in relation to housing anti-social behaviour cases. There was a significant increase in these cases as many of the anti-social behaviour allegations included breach of Covid-19 legislation. These cases involved in-person and SightLink hearings. Initially there was a moratorium on ejectment cases based on outstanding rent but as of the 30th August this was lifted in most cases involving private and social housing. These cases are now proceeding in person and by way of hybrid hearings.

Additionally, as from April I was also able to list reviews in Ancillary Relief applications. These were normally by SightLink but, if requested, in-person to give directions, approve settlements and to make Orders in preparation for full hearings which commenced in August.

In early August I resumed in-person and hybrid hearings in Civil Bill proceedings, albeit in reduced numbers whilst adhering to the Courts & Tribunal Service's social distancing precautions and to the Protocols issued by the Lord Chief Justice. New policies have been implemented to ensure that courtrooms are regularly cleaned to include cleaning the witness box after a witness has given evidence. I am pleased that my assigned Court, Court 4 at Laganside, has recently undergone an updated risk assessment which, with the introduction of Perspex screens, can now safely accommodate 12 people. This has enabled the listing of cases with increased numbers. I do, however, encourage solicitors to make the appropriate arrangements to have witnesses available outside of the Court precincts to be contacted when required. I am acutely aware of how important it is to list Civil Bills for hearing, not just in the administration of justice to clear the backlog but also because it focuses the minds of the parties and their legal representatives to narrow the issues or indeed resolve cases, where possible.

I also actively encourage the use of hybrid hearings which means that we can accommodate witnesses giving evidence in court, where appropriate, and also by way of SightLink. In my experience this has proven to work well especially with expert and vulnerable witnesses. This procedure has permitted cases to be listed which would otherwise have had to be adjourned.

Solicitors are required to let the Court Office know how witnesses wish to give evidence

and, where possible, remotely, but also to identify witnesses who will give evidence in court.

With regard to Small Claims proceedings, I have, since March, given directions and Orders in those cases which have been urgent such as where a decree has been issued in default and the judgment has created hardship to individuals or companies. Many of these applications have been heard remotely even where both parties have been unrepresented.

As the Presiding District Judge I have had, throughout the pandemic, the benefit of weekly (remote) meetings with the Lord Chief Justice and the other Presiding Judges. I have found this extremely helpful and reassuring as the emergency developed. This was done to seek to ensure a cohesive approach whilst benefiting from the experience of others. Additionally, through the Judges Council for Northern Ireland, the Judicial Studies Board for Northern Ireland and the European Network for Councils of the Judiciary we have benefited from the experiences of jurisdictions throughout the UK, other common Law jurisdictions and the European Union jurisdictions as to best practices to deal with the Covid-19 pandemic and the Courts. It is clear that for most legal systems, the pandemic has resulted in an unexpected adoption of different forms of digital procedures.

Having had only limited experience of remote hearings prior to the pandemic I approached my first remote hearing with some trepidation. Notwithstanding my excellent support team at Laganside, the hi-tech kit and strong Wi-Fi, the inevitable happened and connection was lost. I found this to be both frustrating and stressful. Many of the solicitors and barristers taking part in these remote hearings were doing so from their homes and Wi-Fi coverage varied. I am relieved to say that the technical issues I experienced in the beginning have now mostly disappeared and I am using the technology on a daily basis without interruption.

I have no doubt that some Judges, myself included, have traditionally been either reluctant or frightened to embrace technology. Since April it has been demonstrated that, when required to do so, we have adapted remarkably well to the new ways of working.

How will this impact in the aftermath of the pandemic?

In my view, while remote hearings may not become the 'new norm' post Covid-19, I believe and hope they are here to stay. They have established themselves as a useful tool in preliminary applications, contested interlocutory proceedings and trials without evidence where both sides are legally represented. It is likely to reduce time and costs of travelling to and attending court.

The LCJ has issued various guidance notes and Protocols governing the conduct of remote hearings, the most recent of which was published last week.

I note that there is also a very helpful practical guide to remote hearings in the summer issue of the Writ and that a version specific to the County Court was issued on 21st October 2020[1].

My sincere thanks to all those solicitors who, through their professionalism, have assisted in the largely seamless transfer of work to the remote model in Court 4.

[1] https://www.judiciaryni.uk/sites/judiciary/files/media-files/Guidance%20on%20Remote%20Hearings%20in%20the%20County%20and%20Magistrates%20Courts%20211020.pdf

ADAPTING TO THE NEW NORMAL – LIFE AFTER [the] LEAP

Tony Caher, Campbell and Caher

In this article Tony Caher, a partner in Campbell and Caher, outlines his firm's rapid transition to Cloud technology following the onset of the pandemic and the ensuing benefits for his practice.

Having spent 42 years in the profession, a certain smug complacency had been embedded in my attitude to legal practice. Our firm was small (four solicitors) relatively successful and very very busy. Nothing had to be changed. Dictation, ably managed by an army of support staff, was king, emails and letters were sent and received by secretaries and much of my time was spent travelling to Court, waiting in common areas of Court buildings, travelling to consultations and then working into the wee small hours dictating, searching and retrieving files and then re-reading papers to prepare for the next days' battles. **And then came Covid-19** and the first lockdown in March 2020.

All of us in the legal world know how this awful pandemic has forced huge changes on legal practice at every level. Zoom, Webex, Teams, Sightlink etc are now familiar to us all and the benefits and drawbacks of vastly reduced face to face contact at meetings, consultations, mediation and hearings are dealt with elsewhere in the Writ.

My High Street firm, depending as it does, on high volume cases, easy access to clients faced a bleak, and potentially disastrous, future. The enforced absence of support staff, closed premises and the necessity of remote out of office work practices left our firm with no alternative but to acquire and embrace, at very short notice cloud technology. That was all achieved within a two-month time frame with a further month of training and replacement of computer hardware required to operate the new system. Everyone in the office, solicitors and support staff, had to have their own portal to permit access to the majority of files and, for the solicitors, to the accounting information relating to each individual's case. The cost, in terms of replacing all computers, acquiring new monitors, training and the hard decisions to reduce the now excess support staff was considerable. We had to ensure that our (new) IT providers were reliable and, thankfully, that turned out to be the case. The Company that provided us with the Cloud system (LEAP) charged a licence fee to each terminal user on a monthly basis making the transition during a period of reduced fee income manageable and of considerable assistance to our cashflow. There was, for us, no initial upfront fee. The new Cloud system within a very short time transformed our firm in the most dramatic way and left us in a position whereby in the event of another serious lockdown we could manage to operate to an acceptable level.

What then are the important features of operating a Cloud based technology in the solicitors office in our experience?

1 The ability to review, consider and update every single file at any time and from any location in the world (subject to internet availability).

2 The requirement to haul massive files to Courts, home and on vacation has gone. All data is held in a dedicated location in the Cloud and can be accessed by phone, ipad or laptop.

3 Access to all data is totally secure with each Licensee possessing an exclusive password and secure log in procedures.

4 Different staff and different departments may access every casefile within the firm. If one case handler is absent, other staff can access the file and the up to date data contained to allow the client queries to be answered immediately, dispensing with formal inter-department briefings and handovers between qualified staff. Each firm can determine what files can be locked or secured so that only certain individuals within the firm may access them.

5 Dispensing with a requirement to leave the desk, search out a file and spend time locating the necessary information to respond to queries from clients, other professionals or institution. It is all there on screen at one's fingertips.

6 The integrated legal accounts package ensures that solicitors and secretarial staff are not obliged to make time-consuming checks and enquiries from the Accounts Department as to the up to date ledger balances. All accounts and transactions are visible to staff but posting and editing are restricted to particular individuals, such as a bookkeeper.

7 The migration of the old legal software/ accounts package was carried out seamlessly. It also encouraged us to purge dormant accounts/matters that were clogging up the system. The Accounts package which came alongside the Cloud permitted day to day nominal expenditure management including a live feed to the office bank account. Bank reconciliations were performed digitally almost eliminating the requirement for paper bank statements. VAT returns are now submitted effortlessly from the desktop to the HMRC portal.

8 We found the Company's online support and live chat feature extremely helpful when faced with novel technical difficulties and even simple accessibility queries. The User Guide Articles from the community forum and the full expert training package were ,and remain, invaluable.

9 Practice Managers and Directors/ Partners can benefit from the Comprehensive Management Reporting feature whereby individual performances can be evaluated with helpful graphic displays. Overall income and expenditure are clearly defined and targets, financial strengths/weaknesses can be identified in a timely manner.

10 Despite the Company operating mainly in GB, we have been provided with an impressive library of precedents peculiar to the Northern Irish Jurisdiction. These precedents can be populated with all relevant information at the touch of a button. Such frequently used documents can be incorporated into a precedents library and produced on our own specific letterhead and pre-printed stationary.

11 The Cloud fully integrates with Microsoft Outlook for seamless email and calendar/diary entries.

Not everything about the Cloud system as installed is positive, however. It is not compatible, in our experience with LAMS, CJSM and ICOS. It requires discipline, patience, and time to open a file for each matter and then scan every piece of correspondence to that matter. It is still conceptually difficult to commit to be almost paperless and dispense with paper files. One has to develop new patterns of behaviour for file management, particularly in complex matters. Diary discipline is essential. Creating your own precedents can be frustrating and installing data at the outset before action is taken also requires patience and tenacity. Finally, we have to update skills and IT regularly to maximise the benefit of the Cloud.

Having said that **ALL** of us in the Practice solicitors and support staff are appreciative of the Cloud system. It is demonstrating considerable cash savings already in terms of reduced support staff requirements, stationery and postage, both commercially and Royal Mail. The fee earners' time is spent more profitably and productively and managing a file himself/herself and familiarity with each case and accessibility by the clients to the case progress have been greatly enhanced.

Covid-19 is the worst societal event in the lifetime of us all but it has forced us to adopt the new technology. Survival of the network of independent legal practitioners will depend on how quickly all of us embrace and adopt to the new Cloud. This 43rd year is going to be like no other.

ADAPTING TO THE NEW NORMAL – JMK SOLICITORS

In this article, **Jonathan McKeown**, Chairman, JMK Solicitors, outlines the changes across his practice brought about by the pandemic, and in particular the changes to flexible working practices.

I was speaking to the founder of a mid-sized legal practice some years ago; lamenting my limited ability to manage and motivate staff. With surprising candour I was advised that they should be treated like attack dogs - 'keep them hungry and give them a good kicking from time-to-time'.

I am not sure if all of the people who I have employed would agree that I didn't follow that instruction.

As the owner of any business you will see things from an entirely different perspective to the employees. What might seem to me as reasonable terms and conditions of employment, or a reasonable expression of dissatisfaction about an outcome of a transaction, is viewed through a different prism by the person on the receiving end.

Above all the fears and worries that employees have, the greatest is about whether they will be paid at the end of the month. Something that they may think will be at risk should they mess something up on a file with the resulting reputation damage for the firm or even worse- a claim on the PII.

The hardest lesson that I have learned, forgotten, relearned, reforgotten, re-relearned, re-reforgotten and re-re-relearned again - is to maintain my empathy.

It's also something I try to remind everyone about when dealing with an unhappy client. Rather than recoiling and terminating the retainer, as I suspect most solicitors are minded to do, I urge an engagement with the client to understand the underlying issue. I can genuinely say that not once in my nearly 20 years has the client ever been actually as irate at us as it first seemed.

One of my partners is truly excellent at this and no matter what the level of aggression from the other person is, she always gives a warm smile and says 'And tell me about why that is?'

There is usually something else going on in the client's life that was the real cause of the raised concerns. Taking a little time to work through the issue with kindness and patience usually ends up with the discovery of what that was. And the client-solicitor relationship is improved as the client unburdens their woes.

It is difficult to remain empathetic when we ourselves are wound up about something. Even pre-Covid what was not to get ourselves in a spin about?

Trump, Boris, Brexit, RHI, climate change, let alone our own personal concerns about managing family and work commitments.

A couple of years ago at JMK we resolved to begin a process of reducing our full-time hours from 37.5 to 30 per week. The idea was to recognise and mitigate the mental and physical impact of being at work so much.

Flexible working has always been something we've been open to. We see working from home as another part of that flexibility.

We decided that if we announced a 20% reduction in hours AND salary that this would not solve the problem of a poor-work-life balance. A pay cut would only put our people under greater stress at home leading to increased stress at work.

It was necessary to create a positive incentive - we would need to become 20% more efficient so that two things would happen. Full time workers would have their hours reduced with no loss of pay. Anyone who was already working reduced hours would have their pay increased.

Under the masterful care of our Managing Director, Maurece Hutchinson and Legal Services Director, Olivia Meehan, it has taken two years to study what our current standards were so that we could ensure that the same or better results would be maintained.

The majority of the improvements which we have made involve the streamlining of processes so that automation and the embracing of technological solutions became essential.

We were already as free of paper as we could be by the use of a case management system where all documents are scanned-in and accessible from anywhere; meaning hard-copy files are mostly unnecessary. A real advantage in lockdown where getting into the office was not always an option.

These new changes extended beyond the JMK staff and also included barristers and medical experts who have also had to make alterations to their processes. Mutual efficiencies have coincidentally arisen making all parties better.

All of our staff have the capability, through equipment supplied by the firm, to work remotely from any location and still have secure access to their files, their phone and the support of the rest of the company.

This all came at a high price, a cost incurred so as to have a sturdy Business Continuity and Disaster Recovery Plan- fortuitously one able to withstand everything that 2020 has thrown at it.

Anyone who has devised a BC/DR Plan will know that you consider what would happen in various situations and what you would do about it. What isn't usually thought about is what happens when all of those scenarios happen at the same time and happen to the entire world at the same time.

If the plan deals with what happens if our Newry office is out of action by suggesting that Belfast can be utilised, that's of no use when both are offline!

As far as our infrastructure and business planning are concerned, Covid-19 has been relatively easy going.

The biggest problem has been the parts of the system that are out of our control, the standard of broadband and telecommunications equipment provided by the national suppliers that faced massive pressure from the entire country having to work from home at the same time.

The psychological impact on our staff of not having the easy, random social interactions that come from being in your co-workers' physical presence is what we now see is the biggest future risk to the firm.

During lockdown we instigated a process of our HR department regularly telephoning those we thought might need extra support, especially newer staff, those living on their own or those with additional caring responsibilities.

We reminded everyone of the benefits available under our employee health insurance scheme to give access to medical treatments and counselling.

We sent a mixture of emails, video messages, whatsapp updates and Zoom meetings to keep staff informed on the progress of the business throughout the lockdown.

We tried not to be sensationalist giving the bad news quickly and matter-of-factly.

We cancelled all social events including the Summer and Christmas party, any and all discretionary spending has been shelved, there's no prospect of payrises or bonuses any time soon.

We did make some charitable donations as we recognised that our ability to raise funds for our chosen beneficiaries this year would be hampered.

As a firm we generally have little to no complaints but during Covid-19 this spiked during May with an unusually frequent series of expressions of dissatisfaction arising then and whilst we've 'flattened the curve' they now still arise more than we would expect.

We 'lost' a couple of clients to other firms who promised them they could get them offers in their cases quicker than we could, in situations where the claims were, in our opinion, nowhere near ready for negotiation.

This all pointed to an area of concern for us and additional training on the empathy I mentioned above.

We arranged an information event with some of the medical consultants that we instruct to provide staff with first hand knowledge of what those frontline workers are facing and what they are seeing and expect to see in terms of the mental health affects of the crisis on the public.

Society has been rocked, people are scared and they are living through that in the supposedly safe environment of their own homes. They do not know if they will have a job or be able to pay their bills and keep a roof over their head. They need to feel secure – it's the first couple of rungs on the famous 'Maslow's Hierarchy of Human Needs' – in order to properly live.

As business owners and solicitors we have to keep remembering that it's not Post Traumatic Stress that our staff and our clients have - its Current Traumatic Stress.

Anything that causes hassle and inconvenience risks tipping people over the edge into a state of chaos. One that will take time and effort to come back from.

We have launched our new client App in recent weeks aimed at further improving the lines of communication between us and those we are helping and it has had a great initial response. Hopefully cutting down on the need for clients to keep paperwork around to remind themselves of appointments or how to get in touch or to check the current position of their case.

We have taken pressure off our solicitors with what we think is probably a unique action in relation to emails. All external emails are now sent to a central address for sorting and allocating to files.

This has multiple advantages, solicitors are interrupted less by the constant ping of new mail, there is less risk that an email will not be allocated to a file, there are no distractions with non-work related junk mail being received. This all serves to improve productivity and the enhancement of the client experience.

When all of that comes together it has the overall effect of smoothing out the ups and downs and the stresses of our working day. When we remember to be understanding and caring towards others and their struggles we walk in their shoes and it's a much more rewarding experience.

Life is already making people hungry and giving them a kicking- the last thing they need is to get that from their employer!

Adapting to the New Normal – **the Probate Office**

In this article **Master Hardstaff** (Chancery Master, High Court) outlines the work of the Probate Office in dealing with the challenges it faced this year during the pandemic.

I wish to use this article to strike an upbeat note. This is not a time to be overly critical. The Profession, the Court staff, the Masters and Judges are all experiencing unprecedented challenges in managing and progressing matters so as best to maintain an effective administration of justice. Probate work is no exception to this.

At the start of the first lockdown staff capacity in the Probate Office was severely hit and for a few weeks the normal processing of Grants dried to a trickle. During that period however, High Court management along with the Lord Chief Justice's Office and myself and the Chancery Judge worked to put in place interim measures designed to ensure that an increasing volume of work could be undertaken by the staff available. The office staff have been relocated to the old Coroners Court room in Laganside House to provide greater room for social distancing. I need not rehearse the various guidances that have been issued nor the more flexible arrangements allowed by me to enable staff to process the issue of grants, but I believe that they have been effective.

Since mid-March 2395 grants have been issued by the Office up to mid-October. The Probate Office is now dealing with an application within approximately four weeks of it being received. Whilst unfortunately a significant number of applications are still returned under query, the Checklist introduced earlier in the year has had a positive effect on reducing the number of errors and omissions. Please bear in mind that if your papers are returned under query, when corrected and put back in the system, they will have lost their place in the queue so to speak. This is perhaps a little unfair, but the working arrangements of the office are such that they cannot nuance the running order for the day to accommodate re-lodged papers. Clearly an incentive, if one were needed, to get it right first time round. Happily, however, it seems obvious to me that solicitors have become much more used to the interim measures and that the rate of return is steadily reducing.

Statements of Truth have provided a sensible way to establish the evidential base required to issue a Grant as opposed to the need for a sworn oath or affidavit. The rules remain, however, unchanged and therefore affidavit sworn evidence is still the preferred basis upon which to proceed. Indeed, in the area of non-contentious applications by summons, whilst I am permitting Statements of Truth, any matter of significant dispute between parties will necessitate sworn evidence in due course. The certifying of copy wills has been helpful to the profession as well, I believe. Please remember there remains the need to lodge the original will. There was some initial misunderstanding around this but the confusion seems to have been cleared up.

The prioritising of certain grant applications, primarily because of property sales has been finessed to the point where there is now a dedicated team within the office dealing with priority cases. I have invariably granted priority in cases involving property sales which are imminent or in any way likely to be prejudiced by delay. There are, of course, other reasons why priority should from time to time be given and I have always given priority when an appropriate case demands it. Needless to say, the more detailed the information which I receive in support of a priority request the more likely that it will be immediately granted. To some extent the prioritising of certain applications has meant a reduction in the number of *ad colligenda bona defuncti* applications being made. However, there are, of course, particular circumstances when it is not appropriate to obtain a full grant but nonetheless a limited grant is useful. Therefore, I encourage the profession to continue to use the *ad colligenda bona* process when it is considered appropriate. Non-contentious probate summons have been allowed now for some time and I am dealing with a steady stream of the usual sorts of applications; lost wills, amending grants, Article 5 applications for leave to appoint and so forth. I would hope that I can continue to increase the level and turnaround of such applications. I am dealing with most summonses on the papers. Many matters can in effect be dealt with on an ex parte basis as the reliefs sought should generally be non-contentious.

I am a great believer in speaking to people. The telephone is a remarkable piece of technology for maintaining social distance. It should be used more often. An increasing number of the profession have direct access now to my mobile phone. I can live with that as it hasn't been abused. It seems equally the profession is now getting used to fairly frequent calls directly from Master Hardstaff. Andrew Kirkpatrick, Head of Policy and Engagement at the Law Society, may have been tempted to block my number!! Thanks are indeed due to Andrew for coordinating the ebb and flow of information.

Mark Borland, solicitor, took to the airwaves over the course of the Summer. It was very brave of him I thought. I must commend his efforts on the Radio Consumer Programme "On Your Behalf". He spoke eloquently on behalf of the profession and its efforts to provide a comprehensive service to clients in these extremely difficult times. He also spoke up for the Probate Office which I very much welcomed. He did his very best to address issues raised by members of the public often to do with personal applications. He rightly steered away from the temptation to simply get it out there that a solicitor should always be used in the administration of an estate. He did however very effectively communicate the reasons why often an estate administration which appears simple is not, and the very considerable benefit of taking legal advice. The matter of personal applications has been particularly challenging for the Office. At the start of the first lockdown personal applications were stopped. This was on the basis of public health advice concerning social distancing measures. Personal interviews simply couldn't take place. This drew a great deal of criticism from members of the public and from some of our local politicians on their constituents' behalf. Our approach was to accentuate the positive. We emphasised that we were working on robust reforms to the personal application process which would ensure that there was only minimal personal contact required at the end of the process. There is now a significant number of personal applications being dealt with in a speedy and effective way. I say that knowing that it may draw some comment from some solicitors. T'was ever thus. However, whilst the law allows for personal applications they must not be treated disadvantageously as against solicitors' applications. Equally I am satisfied that solicitors' applications are not being treated disadvantageously because of personal applications. So, the two must rub along together as always.

Work continues in respect of the proposed online Probate arrangements. Indeed, many of the lessons learned through this crisis have been useful in their application to that project. It is likely Statements of Truth will become the norm in any online arrangements. Robust verification of identity, so as to avoid fraud, is being incorporated into the proposed system. The online system should considerably eliminate the need to return applications under query. You simply won't be able to progress to the next stage of the application until you have completed the preceding step correctly.

I understand that some difficulties may have arisen in respect of returned IHT421s from HMRC. This is undoubtedly due to staffing arrangements within HMRC during the crisis. However, I am informed that HMRC is consistently looking at ways of improving its processing of these matters not least because of the implications for tax revenue raising.

In concluding what I think has been a pretty positive school report I would simply ask you to bear in mind that the office staff are doing their very best. They are dedicated people who are proud of their work. Their turnaround times compare extremely favourably with the rest of the United Kingdom and the Irish Republic. Please bear in mind, however, that they are all individuals, perhaps coping with all sorts of personal challenges at this time of crisis which they do their best to leave at the door when coming into work. To assist them the profession can continue to ensure that it rigorously checks applications before they come in. Please also bear in mind that anything that is likely to amount to a query about the law should be immediately directed towards me by way of a written request rather than time being wasted in batting back and forth correspondence with staff members. I want to intervene where appropriate so as to speed matters up. If something is urgent please make that clear when lodging. Do however bear in mind that a request for priority or urgency does not of itself rectify a bad application!

That all said I think we can all as lawyers be modestly satisfied with the efforts which we all have made to ensure that the administration of estates in Northern Ireland has continued with as little disruption as possible.

WORKING AS THE REGISTRAR OF TITLES DURING CORONAVIRUS

Christine Farrell, LLB, LLM

It will come as no surprise to those reading this article that Covid-19 and lockdown has posed Land Registry with one of its greatest challenges in its entire history.

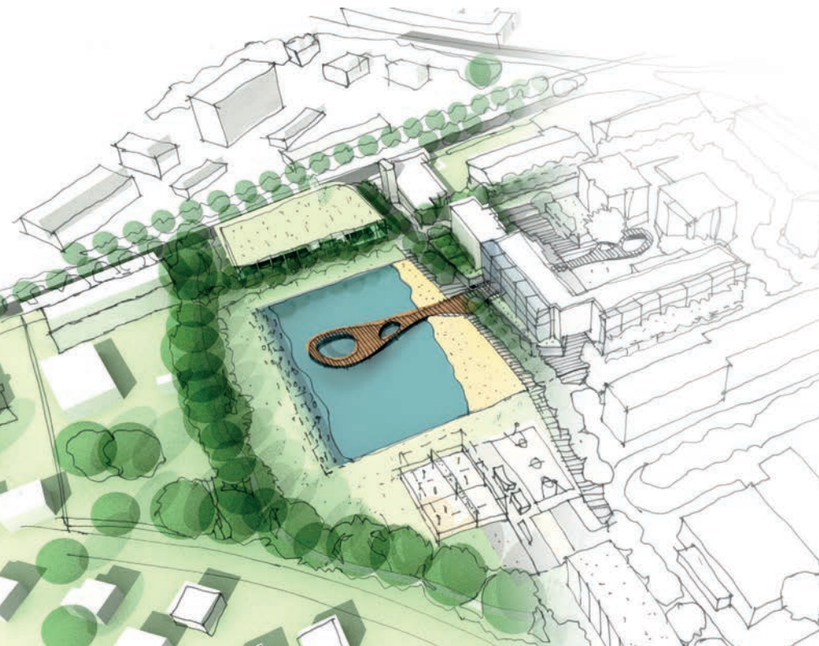
Albeit business continuity plans had been put in place by Land & Property Services, no one could have prepared for the dramatic and extraordinary events that arose on 23rd March 2020 and thereafter.

On lockdown, the Land Registries in the British Isles were not declared as essential services. Accordingly, the Land & Property Services Management Board, of which I am a member, took the immediate decision in the interests of the health and safety of our staff to close the Registry from 25th March 2020 for a three week period.

Closure of the Land Registry was always going to be difficult as Land Registry operations are paper-based, labour-intensive and require the majority of staff to be in the office. In fact, the Registry currently only has 45 casework staff who are able to work remotely. The remaining 130 staff are required to attend work at Lanyon Plaza.

Indeed the LandWeb system, which was implemented in 2004, was specifically designed to support a paper based process. Applications lodged in the Registry are received and dated by our post section. Our intake team then performs first line scrutiny of applications, enters key information on to Landweb and logs fees. Applications are subsequently scanned and validated and images automatically pass to casework teams for processing. Once registered, our despatch team retain documents for filing and return completed applications to lodging solicitors.

Faced with the task of running a closed Land Registry required a 5am start on the morning of the 25th March 2020. The Deputy Registrar and the Registry's legal team were also woken early from their beds and it was heads down to figure out how best to run a partial service remotely to enable the property market to function. The issue of priority searches was the most challenging area to address, as the legislation is specific and a significant amount of time was spent figuring out the matrix that could be introduced to allow practitioners to have the security of priority search protection.



Sympathetic to the issues facing practitioners, it was decided that other Registry procedures would be relaxed to assist the profession. These measures were then agreed with the Law Society and the first of seven Covid practice notes to practitioners was issued. Extensive engagement then took place with UK Finance and lending institutions. Financial institutions were, on the whole, satisfied that the new procedures would protect their interests and accordingly continued to lend. The majority of solicitors also appeared content with the new arrangements and in fact, nearly 4,000 priority searches were lodged during the Registry's closure.

To effectively implement the temporary measures, it became apparent that the outstanding post had to be logged on to enable the registers to be updated. A small team of volunteers, including myself (accompanied by a stock of hand sanitisers and latex gloves) opened the office at the start of April to enable this work to be carried out. The experience of travelling from home to Belfast with no traffic on the roads was eerie, as was walking through a deserted city centre. It felt very surreal, as if you were playing a part in a post-apocalyptic film. Over a number of days the Registry staff worked tirelessly to update the registers. I am very grateful to those staff members for the resilience they displayed when the pandemic was at its height.

In tandem with this work, negotiations were conducted with our IT supplier for a remote working solution to enable caseworkers to process applications remotely. Staff in all registries globally have traditionally worked in an office environment due to the concerns around fraud and breaches of data protection that could take place at home. Our IT supplier and staff worked at pace to secure the remote solution. Challenges were encountered as equipment had to arrive from overseas and got delayed in shipping. Securing laptops was difficult as it appeared every organisation in the UK was purchasing laptops for remote working. Thankfully our remote solution was operational by the end of April and caseworkers were able to recommence the registration of applications.

Problems had also arisen with the inability of solicitors to top up suspense accounts by cheque. Again, Registry staff worked with our IT suppliers to urgently develop a credit card top up solution, integrated with a new version of LandWeb Direct. Over 75 pilot users were provided with the new service and feedback was positive. I am grateful to those solicitors who took part in this pilot exercise. Above all, I am thankful to our IT supplier for the speed at which they delivered the new service and how they went over and beyond to implement it.

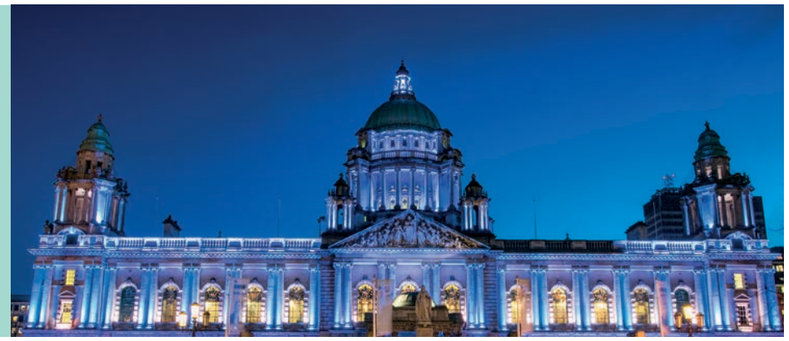
With declining Covid numbers at the end of April, I took the decision to re-open Land Registry with the approval of the LPS Management Board and the Department of Finance. A significant piece of work was conducted with our premises team to ensure the safety of Lanyon Plaza for staff. One way systems were introduced, hand sanitiser stations erected, additional cleaners employed and desk space generously distanced in an effort to protect staff. A Covid champion was appointed to encourage staff to follow the protocols put in place and to assist in any Covid-related concerns or queries.

I very much admire the tenacity of all Land Registry staff during this pandemic. Staff working at home have faced the challenge of isolation and reduced team camaraderie. Those staff working in the office since 11th May have faced the challenge of using public transport and working socially distanced from their colleagues. With the improvements in track and trace testing, the Registry has also encountered the daily challenges of staff going for Covid testing, waiting for results, self-isolating where necessary, or battling coronavirus when testing positive. This can be very stressful for staff and operationally difficult. For Registry managers, every Covid day is unfortunately a day filled with drama and I applaud them for their fortitude during this pandemic.

The main lesson learnt from the challenges of Covid has clearly been the need for us all to embrace digital change. Our current IT system, LandWeb, has served us well, but it is now over 18 years old. Work is well underway for its replacement. Solicitors have recently engaged in workshops to enable us to gain an understanding of what functions the legal profession would like to see in a new solution. I welcome this valuable input and appreciate the engagement and the time spent by solicitors in this exercise. It is hoped that within the next several years a system will be implemented that will bring Land Registry into a more digital age and will bring quicker turnaround times and improvements to the customer journey.

In concluding this article, the news of a potential vaccine has just broken, bringing a ray of light to the end of a long dark tunnel. Seemingly in the months to come the mantra, "Keep your distance, wash your hands and wear face coverings," will gradually fade in to the distance as we enter a new world post Covid. I expect and hope people will have learnt to be kinder, more tolerant, patient and respectful of each other in this new world!

Adapting to the New Normal – Belfast Solicitors Association



Ciaran Maguire,
Chair of the Belfast Solicitors Association,

highlights the founding principles of the Association since its formation and outlines how these have come into play during the pandemic

Since its establishment in 1943 the BSA has often had to adapt to changing times and developments in wider society and 2020 has been no exception. The year got off to a good start with a full CPD Programme underway and an updated Costs Reckoner produced and circulated to our members. On 10th of March we staged a successful table quiz in The Errigle Inn raising over a thousand pounds for Action Cancer; for many of those who attended this was to be their last large scale gathering before lockdown came into effect a few days later. As time went on it became clear that we would have to pause many of our other much-anticipated events including our CPD delivery, our formal Gala Ball in the Great Hall at Queen's University in June, our charity Golf Day in Belvoir Park Golf Club in May and our Belfast marathon fundraising.

The BSA committee continued to meet remotely throughout lockdown to formulate a way forward and discuss the various issues that were facing our Members. We took the decision to re-schedule our main group activities for 2021 and our re-started CPD programme will be delivered remotely in a manner compliant with Law Society requirements. Updates have been made to our website and social media, both of which we hope will prove to be invaluable tools for our members as we continue through these challenging times. We understand that COVID-19 is pushing law firms worldwide to rapidly function in new ways and IT is being tested as never before. As firms and individuals alike juggle a range of challenges such as a changing workload, healthcare challenges, childcare issues and new-fangled case management systems, the BSA is proud to partner with Advanced who are market leading case management providers and who have guided individual firms and provided support throughout lockdown.

Our organisation was originally set up 'to ensure the provision of ethical and efficient legal services to the community' and 'to promote the welfare and interests of the legal profession in general'. These founding principles have come to the forefront of our minds since March and we have continued to advocate on behalf of our members in relation to the issues which they raise on an ongoing basis. We understand that during these difficult times many firms and individuals will be struggling both financially and psychologically and we would like to take this opportunity to thank the Law Society for their support in this regard. The BSA Committee conduct regular engagement with the Law Society and recently met with the President and Chief Executive to discuss various issues raised by members including progress on the resumption of Court work and suggestions as to how best to achieve it, financial support from the Law Society, the increase in the professional indemnity insurance premium, progress on setting the litigation discount rate and problems encountered by members complying with the new practice directions around Covid-19.

We would also like to take this opportunity to mention our chosen charity, Action Cancer, who would usually at this time of year be presented with a substantial cheque as part of our fundraising efforts. Covid-19 has meant fundraising for all charities is difficult and whilst fundraising may be halted, cancer sees no barriers. Cancer is a disease which most people will be affected by either directly or indirectly in their lifetime. Action Cancer is Northern Ireland's leading, local charity passionate about delivering on its Mission of "Saving Lives and Supporting People". At a time in which there is a massive amount of pressure being put on our NHS, Action Cancer is the only charity in the UK and Ireland providing high demand lifesaving breast screenings to younger women aged 40 to 49. All of the services provided by the charity are free of charge to the end user. This year already over 1,000 women have been screened for breast cancer, with a further 1,000 women booked for before Christmas. As Christmas approaches and the air of uncertainty with Covid-19 continues to linger, we would encourage the profession to donate to this worthwhile charity to help them, help us and ease the pressure on the NHS. You can do this online at *http://www.actioncancer.org/Donate/Make-a-Donation*

As our AGM approaches on Friday 27th November 2020, we would like to invite members of the profession to attend virtually. The Committee will seek approval of its extension of the appointment of Ciaran Maguire for a second one year term, as Chair of Belfast Solicitor's Association. We would also like to invite proactive new members who wish to join the committee. If you wish to join us or simply attend the AGM online, please complete registration by contacting our secretary *briege@belfast-solicitors-association.org* and you will be sent a link and access the meeting.

Stay safe and we'll look forward to better times ahead!

HOME CHARTER REVIEW

Andrew Kirkpatrick
Head of Policy and Engagement

The Society has been engaged in a review of the Home Charter Scheme since 2017. This included a consultation exercise during 2019 with members which received an excellent response. The review of the Scheme has culminated in a new set of Home Charter Regulations and documents which will be implemented on 1st January 2021.

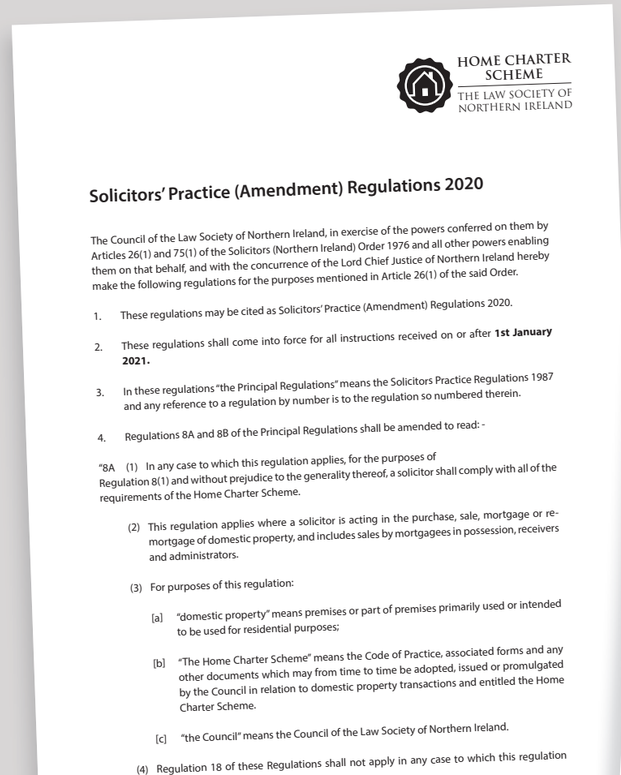
All the new documents can be accessed here:

https://www.lawsoc-ni.org/new-home-charter-scheme-2020

The key elements of the updated Home Charter Scheme are as follows:

Solicitors' Practice (Amendment) Regulations 2020

The Solicitors' Practice Regulations 1987 have been updated by the Solicitors' Practice (Amendment) Regulations 2020 to remove the opt out from the Home Charter Scheme. It has also updated the definition of domestic property so that it is defined by the nature of the property rather than the purpose of the vendor.



HOME CHARTER SCHEME
THE LAW SOCIETY OF NORTHERN IRELAND

Solicitors' Practice (Amendment) Regulations 2020

The Council of the Law Society of Northern Ireland, in exercise of the powers conferred on them by Articles 26(1) and 75(1) of the Solicitors (Northern Ireland) Order 1976 and all other powers enabling them on that behalf, and with the concurrence of the Lord Chief Justice of Northern Ireland hereby make the following regulations for the purposes mentioned in Article 26(1) of the said Order.

1. These regulations may be cited as Solicitors' Practice (Amendment) Regulations 2020.

2. These regulations shall come into force for all instructions received on or after **1st January 2021.**

3. In these regulations "the Principal Regulations" means the Solicitors Practice Regulations 1987 and any reference to a regulation by number is to the regulation so numbered therein.

4. Regulations 8A and 8B of the Principal Regulations shall be amended to read: -

"8A (1) In any case to which this regulation applies, for the purposes of Regulation 8(1) and without prejudice to the generality thereof, a solicitor shall comply with all of the requirements of the Home Charter Scheme.

(2) This regulation applies where a solicitor is acting in the purchase, sale, mortgage or re-mortgage of domestic property, and includes sales by mortgagees in possession, receivers and administrators.

(3) For purposes of this regulation:

[a] "domestic property" means premises or part of premises primarily used or intended to be used for residential purposes;

[b] "The Home Charter Scheme" means the Code of Practice, associated forms and any other documents which may from time to time be adopted, issued or promulgated by the Council in relation to domestic property transactions and entitled the Home Charter Scheme.

[c] "the Council" means the Council of the Law Society of Northern Ireland.

(4) Regulation 18 of these Regulations shall not apply in any case to which this regulation

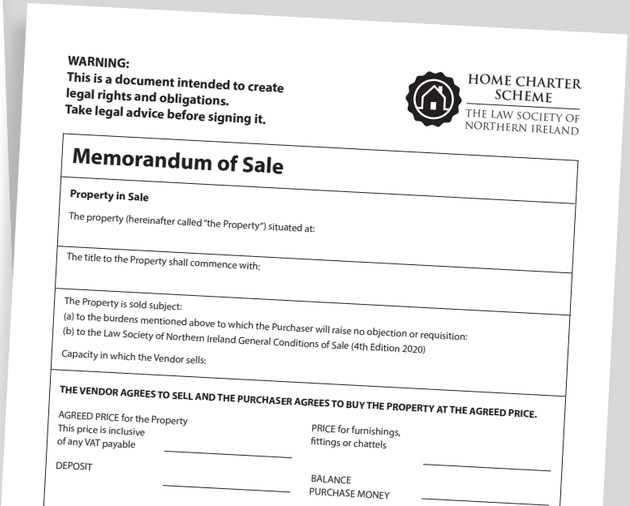
General Conditions of Sale 4th Edition 2020

The General Conditions of Sale have been re-drafted to improve and update the document. The emphasis has been on frontloading the conveyancing process and has been designed to work in conjunction with the Memorandum of Understanding that the Society agreed with RICS and NAEA in 2018.

The main changes to the General Conditions are:

- The use of email is now formally included within the General Conditions for the first time.

- On the Memorandum of Sale, there is a new insertion just above the signature clause which is for the vendor to confirm that if the Replies to Pre-Contract Enquires which they have previously furnished were repeated at the date of signing of the contract then those Replies would be unchanged.



WARNING:
This is a document intended to create legal rights and obligations.
Take legal advice before signing it.

HOME CHARTER SCHEME
THE LAW SOCIETY OF NORTHERN IRELAND

Memorandum of Sale

Property in Sale

The property (hereinafter called "the Property") situated at:

The title to the Property shall commence with:

The Property is sold subject:
(a) to the burdens mentioned above to which the Purchaser will raise no objection or requisition:
(b) to the Law Society of Northern Ireland General Conditions of Sale (4th Edition 2020)

Capacity in which the Vendor sells:

THE VENDOR AGREES TO SELL AND THE PURCHASER AGREES TO BUY THE PROPERTY AT THE AGREED PRICE.

AGREED PRICE for the Property
This price is inclusive of any VAT payable

PRICE for furnishings, fittings or chattels

DEPOSIT

BALANCE PURCHASE MONEY

- Under the new clause 2.4 of the General Conditions, the contract is deemed to be unconditional in respect of those property certificates, searches and other documents which have been furnished prior to the contact being signed. This change is to reflect practice as it now stands. The principle is that if the purchaser's solicitor has seen the document, property certificate or search then they are fixed with the contents and if the solicitor then advises their purchaser client to sign the contract having seen the document then they cannot complain after the fact.

- Clause 5.1 deals with the provisions around the formation of the contract. Contracts must be formed by offer and acceptance and the General Conditions reflect that. The Society has decided not to introduce the English concept of exchange in respect of contract formation.

- The new General Conditions will amend how ground rent is dealt with. It is now dealt with on a contractual basis between the parties at completion. If the ground rent has not been paid or a receipt not produced then there will be a deduction from the purchase price of a sum equal to 6 years ground rent (or for as many years as no receipt can be produced). This deals with ground rent once and for all without the need for solicitor undertakings and indemnities and small amounts being held in client accounts for 6 years.

- Clause 12 is updated in relation to the preparation of the assurance so that the deed must be provided ideally along with the contract and certainly sufficiently in advance of completion to enable the vendor's solicitor to have the deed executed and be able to validly undertake at completion.

- Clause 15 contains amended provisions in relation to occupation before completion and is now a full caretakers agreement. This means that no separate caretakers agreement is required to be drafted and signed.

- The loan clause has been removed entirely.

- A new Commercial Schedule has been produced in conjunction with the NI Commercial Property Lawyers Association which will work as a Schedule to the General Conditions on the basis that the General Conditions do not operate particularly well for commercial transactions.

Completion Protocol

This is an entirely new document and is intended to govern the behaviour of both the vendor's and purchaser's solicitors at completion. The purpose of the Protocol is to remove some of the undertakings from the standard completion letter which may have been inappropriate as undertakings and place them in the Protocol. Some of the main provisions are;

- A vendor's solicitor's commitment to inform the vendor and their agent that funds have been received and keys should be released and vacant possession provided. This removes the previous undertaking in relation to the authorisation to release keys and provide vacant possession. It deals with the concerns that strictly speaking neither of those undertakings were in the solicitor's control so it ensures that the solicitor does what they are able to do but no more.

- A vendor's solicitor's commitment providing for reasonable assistance to the purchaser's solicitor to facilitate the completion of registration at Land Registry.

- A purchaser's solicitor's commitment to provide the vendor's solicitor with the engrossed deed in sufficient time prior to completion. This will enable the vendor's solicitor to have it executed in advance of completion so that they are actually in a position to validly give an undertaking at completion to furnish the executed Deed.

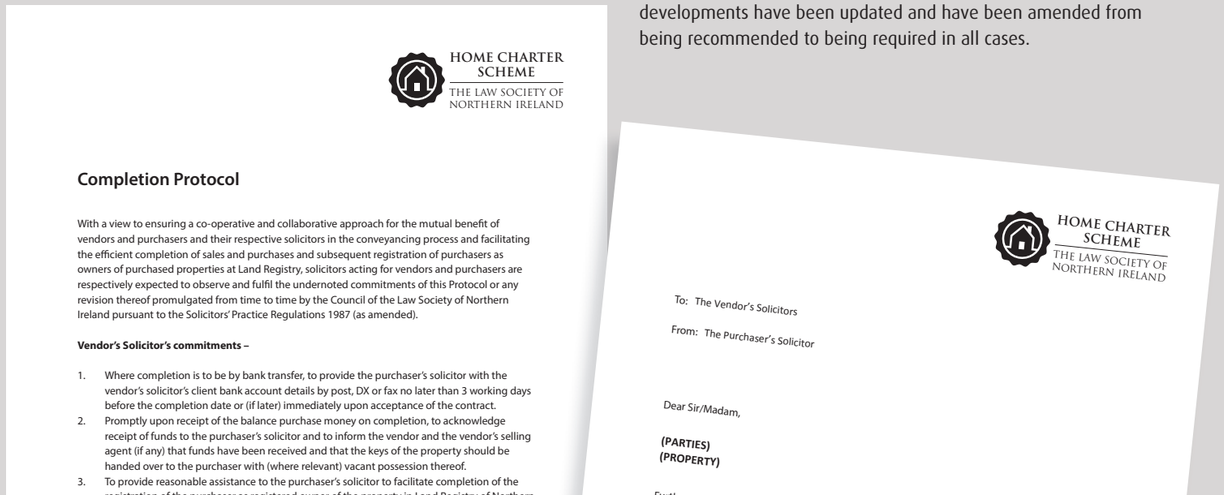
Completion Letter

As a result of the new Completion Protocol, the Completion Letter has been amended to remove a number of undertakings.

The remaining undertakings are those in relation to the deed, the other original documents of title and the discharge of mortgages and charges.

Building Control Completion Certificates

From 1st January 2021, it will become a requirement that the Building Control Completion Certificate is provided before completion for new build properties. Generally the procedures for building developments have been updated and have been amended from being recommended to being required in all cases.



HOME CHARTER SCHEME
THE LAW SOCIETY OF NORTHERN IRELAND

Completion Protocol

With a view to ensuring a co-operative and collaborative approach for the mutual benefit of vendors and purchasers and their respective solicitors in the conveyancing process and facilitating the efficient completion of sales and purchases and subsequent registration of purchasers as owners of purchased properties at Land Registry, solicitors acting for vendors and purchasers are respectively expected to observe and fulfil the undernoted commitments of this Protocol or any revision thereof promulgated from time to time by the Council of the Law Society of Northern Ireland pursuant to the Solicitors' Practice Regulations 1987 (as amended).

Vendor's Solicitor's commitments –

1. Where completion is to be by bank transfer, to provide the purchaser's solicitor with the vendor's solicitor's client bank account details by post, DX or fax no later than 3 working days before the completion date or (if later) immediately upon acceptance of the contract.
2. Promptly upon receipt of the balance purchase money on completion, to acknowledge receipt of funds to the purchaser's solicitor and to inform the vendor and the vendor's selling agent (if any) that funds have been received and that the keys of the property should be handed over to the purchaser with (where relevant) vacant possession thereof.
3. To provide reasonable assistance to the purchaser's solicitor to facilitate completion of the

HOME CHARTER SCHEME
THE LAW SOCIETY OF NORTHERN IRELAND

To: The Vendor's Solicitors

From: The Purchaser's Solicitor

Dear Sir/Madam,

(PARTIES)
(PROPERTY)

What you couldn't learn at the Institute

In this article **John Bailie**, former CEO of the Law Society and Master (High Court), reflects on the formative influence of his first boss – John P. Shearer.

"To me education is a leading out of what is already in the pupil's soul."
(Muriel Spark: The Prime of Miss Jean Brodie)

Just before the Covid-19 lockdown came news of the passing of John Shearer.

He was my boss, who became a mentor, colleague and friend. For many the pandemic has provided an opportunity to clear out accumulated papers and for rear- mirror reflection. For me, this has included much material dating back to the early 1980s, the Institute of Professional Legal Studies and my first job, including a valued farewell letter from John when I moved back to Belfast from Cookstown in 1985.

This piece is primarily a personal appreciation of the person who was probably the single biggest influence in my professional life. It may perhaps have some resonance with the residual perennials who can remember (however vaguely) those very different times, for the millennials who can't, and for those embarking on their professional journeys.

The way it was

I first met John Shearer, together with his partner Peter Black, at a job interview held in the Law Society of Northern Ireland offices, then located in the Royal Courts of Justice. The immediate impression was of a tall trim and athletic figure. I remember warmth, a Scottish burr and a friendly smile, but also a penetrating glint of steel behind the twinkle, a look with which I was to become very familiar.

In June 1980 I duly emerged from the Institute of Professional Legal Studies and arrived wet behind the ears in Mid-Ulster. Odd though it may seem now, in these early years of the operation of the Institute there was no requirement for any in- office training element or Master/Apprentice contract prior to admission.

Consequently, the firm assumed a responsibility for a professional salary (thankfully not commensurate with inexperience) together with moderated practising, Compensation Fund, professional indemnity and administrative costs. So, from the outset, the expectations were that you would handle a personal caseload and, at a minimum, earn your keep.

The IPLS teaching, training and course materials were excellent, and very highly-regarded by the partners. Nevertheless, of course, there was much still to be learned. At the local Petty Sessions, for example, I discovered early that the "local rules" adopted to expedite business or to pander to Worshipful Whims were mysteriously missing from the Institute files. In the office too, inevitably there were Private Pike moments although John was gracious enough to restrain his laughter, at least until I had left the room. I still cringe at the memory of the look on the face of the farmer client when I was baffled by his reference to his "springin' heifer."

Knowledge of substantive law and procedures was a given, a capacity for hard work was assumed, and time was valuable. As regards access to the partners, the door was always open. But I learned early that before going through it you needed to be sure the answer was not available anywhere else, that you had all the information relevant to the issue, and be prepared to withstand rigorous interrogation. This in itself was a maturing discipline.

But by far the most productive learning process was osmotic, observing John as a consummate professional, in terms of his values, his high standards and humane dedication to his clients' interests. Let me try to capture a sense of this, and how it worked.

I should explain briefly the very different circumstances of the time. The firm (Millar Shearer and Black) was what would now be called an all services practice.Through the seventies it had grown considerably. By 1980 it was one of the larger firms outside Belfast.The two partners made a formidable and complementary team; business savvy and forward looking. The premises had been expanded and modernised.The vibe was functional but not ostentatious; think neither " Suits" nor " All Creatures Great And Small". Bear in mind also that at the time there was no mandatory Continuing Professional Development, and post-qualification training was limited or non-existent, certainly outside Belfast.

Aye John....

First, I credit John with the completion of my transition from the student mindset. I remember a discussion (he was talking, I was listening) about how when a client came through the door, the advice he/she received couldn't be just exam pass-mark right (i.e. 50 or 70%). It should be 100% right 100% of the time, for 100% of the clients. An unattainable counsel of perfection of course, but an indispensable professional aspiration.

Secondly, John was an exceptionally astute judge of human nature, and clients in particular. Much more sophisticated than just an empathetic "bedside manner" he was an expert at listening to, reading the client and responding accordingly. He had the ability to connect with clients of all sorts and to inspire trust, sometimes in unexpected ways. On one occasion I had spent much time in a doubtful liability case trying to convince the client not to refuse a very generous settlement offer. Having had three goes at this, I asked John to sit in on the fourth appointment. He listened intently in silence for around ten minutes, until the client drew breath. Finally he said: *"You know your trouble, you talk too much and you don't listen enough."* The only person more surprised than the client was me, but it worked. Talk about knowing your client.

Unfortunately for me, his perceptiveness was not confined to clients. Tidiness was a big thing with him. One weekend the office had been broken into.They got nothing of value but did much random wrecking. Each of us had to identify what had been damaged. I confirmed that, strangely, nothing had been disturbed in my office to which John's reply was: *"Aye John....I'll explain to the police that one of the vandals looked into your room and thought it had already been done."*

Thirdly, his love of learning and of his profession in particular. Although he had a flirtation with mathematics, he had found his true love in the law. He once told me that in over 25 years he had never had a week when he hadn't learned at least one new and fascinating thing about the

law. For John, and being with John, every day was a school day; inspiring and encouraging.

None of this would of course have been of much benefit to me if John hadn't also been a natural teacher. The pedagogical gene ran strong in his family. The office tradition was that, as and if available, the professional staff had tea/coffee in the mornings in a cramped kitchen amidst filing cabinets and office paraphernalia.

For me, these "Scullery Sessions", discussing interesting or problematic cases were the most valuable exposure to how John and Peter worked, and as a means to have my own skills critiqued and appraised. Just a couple of JPS examples. *"Aye John ..... I wonder if that's actually right?" " You know John, when a client tells you it's not the money it's the principle ..... it's always the money."* On the other hand, I think he may have regretted once giving me a tip as to how to gain time to think if under pressure in a telephone call; that is, cut the call off but always do it while you are speaking. Also not in the IPLS files.

Fourthly, his efficiency in his own work and the management of the office. He was naturally meticulous, orderly and methodical in everything he did. He is remembered for keeping his pencils sharp, probably an apt metaphor. None of this was parsimony: he knew both the cost and the value of everything. Admittedly this verged on obsession at times, which he acknowledged himself.

He also had a mischievous streak, exemplified by the morning I came into his office to be confronted by the question; *"What do you think of that?"* Being quick on the uptake that day, I realised he was referring to two glasses of water on his desk each containing a paper clip. Baffled by the question (was it an initiative test?) I mumbled something about it being extraordinary. He explained in some detail the 4-week experiment he had been conducting as a comparative cost/benefit/rust analysis of two stationery brands.To this day I'm not sure whether this was a leg pull, but I suspect not.

Fifthly, John never took himself too seriously. Most days he was in the habit of walking briskly home for lunch, along Cookstown Main Street. His practice was to smile and wave with a *"How are ye?"* greeting to anyone he thought he recognised. A sound business strategy which came off the rails only once when someone shouted back some random but succinct abuse, suggesting in two words that John remove himself from the vicinity. Certainly not a client of his, but conceivably one of mine.

The gift for which I am most indebted to John is his genuine interest in, and management of, my development. During my time in Cookstown, I made one irretrievable error. I missed a court date, as a consequence of which judgment was given against the client. Because it was a small claims case there was no right of appeal and the firm had to stump up around £300.To me it seemed like I had sunk the Titanic, although of course it was a minor capsize. When I went to John to explain, apologise and offer financial restitution I remember him sitting back, pausing (there was always a pause) and saying: *"Aye John, forget about it. The only thing that would worry me is if you weren't worried".*

Finally, John was a modest man. I cannot recall a single instance when he was boastful or bombastic. He saw himself as an artisan doing his job with care and compassion to the best of his ability. He told me once that the most important thing in your work was to be able to sleep soundly with a clear conscience.

Many years later, after I had begun to work for the Law Society I was chatting to him by phone. I spoke rather too enthusiastically about the previous weekend when I had attended a European conference on behalf of the Society. There was a long pause at the other end, followed by *"Aye John ..... I suppose the fact that it was you who got to have such a good time at this conference at my expense makes me resent it a wee bit less."* Had I learned nothing?

The way it is

Despite the fondness of this recollection I would not want to suggest that these were the "good old days". John was a pragmatist, and not given to sentimentalism or nostalgic retrospection. Nor am I describing some bucolic professional idyll. In fact, I would say that by the standards of that time Peter and John were well ahead of the curve in understanding the need to invest in and run the firm as a business, to be forward looking and adaptable.

Obviously in the last forty years there has been a massive transformation in societal context, and in the nature and structure of solicitors practice. These include; many more women; CPD is extensive and regulated; increased competition and consumerism; legal complexity and specialisation; solicitor advocacy. Add to this increased social and geographical mobility, information technology and digital communication.

The private client practice model has evolved, shifted shape and survived. Over the same period there has been an enormous expansion in specialisation, and also new opportunities to practice in other models, such as large multinational and commercial firms and the public and voluntary sectors.

This diversity has obvious implications for the mentoring type of process described earlier. For example, there have been modifications which allow trainee/ apprenticeship to take place other than in private practice. And of course the qualification and training processes have been modified significantly (and sensibly) to integrate in-office experience with IPLS teaching prior to admission.

What remains common to all the models and sectors of modern practice is that the job of the solicitor will involve a client relationship. John would have been the first to recognise that the vast majority of client relationships will be transactional and functional. All clients will always expect, as they are entitled to, an up-to-date legal competence, efficiency and effective communication from their solicitor. But there will always be situations, and not only in private client contexts, when a level of trust, compassion and speaking truth between solicitor and client is at a premium. Some might still say that these situations are the most worthwhile part of being a solicitor.

Conclusion

Although I regard John Shearer as an exemplar to whom I owe a debt of honour, he was not unique. Many solicitors, past and present, will be able to recall with gratitude an equivalent formative professional relationship.

John's compatriot (albeit fictional), Jean Brodie described her role as "putting old heads on young shoulders." I was very fortunate to have known John Shearer in his prime. He was an inspiration to me; whether he got much other than light entertainment value from me is much less certain.

I would like to think that this testament to John speaks also to the enduring value and importance of a first boss, whether as Master or mentor. It is certainly a reminder of the potential which lies in a mutual commitment based on mutual respect, with a shared responsibility to define expectations within the relationship. A commitment on the part of the "learner" to meet expectations in an adult way, earn trust, and thereby increase self-reliance and confidence. On the part of the "learned", not only formal supervision and interaction with the junior, but the development of a relationship which facilitates exposure to lived professional experience.The things we can only know if we are shown.

As a boss and mentor John Shearer was more interested in substance than image (although I did get my hair cut before my interview). He set high ethical and performance expectations. His philosophy was very much: "don't tell me how hard you work, show me what you've done". None of this would have been effective for me unless he had embodied the work ethic, epitomised professionalism, and demonstrated that being a solicitor could be not only fulfilling but fun. Who knew?

Tell us about your Life in the Law

Elizabeth Rimmer,
CEO, LawCare

Life in the law can be rewarding and enjoyable, but it can also be very challenging at times. We receive hundreds of contacts every year at LawCare from lawyers and support staff who feel overwhelmed, stressed, anxious and burnt out. They tell us about their heavy workloads, demanding bosses and clients, incivility in the office, not feeling good enough, and their fear of making a mistake.

Although there has been research done in other countries, notably America and Australia, we have little data from the British Isles on how the culture and practice of law affects wellbeing. What is it about working in the law that can affect wellbeing? Are lawyers more at risk of poor mental health than other professions? And how will the issues created by a global pandemic; a lack of routine and support structure, no separation between home and work, too much time or not enough time alone, a lack of supervision; feed into this?

We want to understand more about the impact of work culture and working practices on the wellbeing of legal professionals and we've teamed up with leading academics in the field to develop the ground-breaking Life in the Law research study.

Life in the Law is the biggest ever research study into the wellbeing of legal professionals in the UK, Ireland, Channel Islands and Isle of Man. This is a cross-profession, cross-jurisdiction piece of research that seeks to understand the day to day realities of life in the law. We're looking at issues such as workload, working environment, supervision and support, workplace well-being support and self-care. The research study uses three academic research scales for burn-out, psychological safety and autonomy. Anyone working in the legal industry, including support staff, can complete the online questionnaire anonymously. The results will form the basis of an academic paper and will be announced next year. The data will help LawCare to improve the support available to legal professionals and drive long lasting change in legal workplaces so that people working in the law can thrive.

In the meantime, if you're finding things difficult, we're here to listen. We provide emotional support to all legal professionals and support staff. You can call our confidential helpline on **0800 279 6888**, email us at ***support@lawcare.org.uk*** or access webchat and other resources at ***www.lawcare.org.uk***

Lifeinthelaw.org.uk is open until December 31st

LawCare
Supporting the Legal Community

Curbing rights and freedoms in times of public emergencies

Les Allamby,
Chief Commissioner,
Northern Ireland Human Rights Commission

Governments in London, Belfast and Dublin have taken unparalleled powers and sweeping measures unheard of in peace times. Curtailed freedoms, we have long taken for granted include to move freely, attend workplaces, see our families and friends, open and run our own businesses and attend social and civic activities. This article explores what human rights has to say in the face of such restrictions and outlines how international and domestic human rights standards provide a framework for dealing with a public health emergency and outlines some of the work being undertaken during the pandemic.

The application of Human Rights standards

Human rights do not take a back seat during emergencies. For civil and political rights including freedom of thought, conscience and religion, a set of human rights principles have been developed on when limitations can be applied during an emergency. The *'Siracusa Principles on the Limitations and Derogation Provisions in the International Covenant on Civil and Political Rights'* ("ICCPR") were produced by the American Association of the International Commission of Jurists in 1984. It sets out clear parameters for restrictions on freedom covering the ICCPR, including that limitations must be prescribed in law, with adequate safeguards and effective remedies, not be arbitrary or unreasonable and legal rules should be clear and accessible to everyone. The measures, including their severity, nature and scope shall be only those strictly necessary to deal with the emergency and be proportionate to the threat posed. The restrictions should also be for no longer than required. In the case of a public health emergency due regard shall be given to the international regulations of the World Health Organization. Certain rights cannot be derogated from even in a time of an emergency for example, the right to life, freedom from torture, cruel and inhuman treatment, freedom from medical or scientific experimentation without free consent, freedom from slavery and freedom of thought, conscience and religion.

It is arguable whether the plethora of current regulations to deal with the fluid circumstances do render the law accessible even to lawyers. Moreover, there is a lively political and public debate about the necessity and proportionality for the measures taken and whether the most recent 'circuit breaker' provisions should either be more localised or less draconian.

The *Siracusa* principles are not binding in domestic law. Nonetheless, the ICCPR and other international treaties may be relevant in domestic law in certain circumstances. Lord Hughes identified three ways in the Supreme Court decision *SG and others v Secretary of State for Work and Pensions (2015) UKSC 16 para 137*. First, if the construction of UK legislation is in doubt, a court should generally construe the law on the basis of honouring international obligations. Secondly, international treaty obligations may guide the development of common law. Thirdly, (in the case of the UN Convention on the Rights of the Child) (UNCRC) it may be relevant in law to the extent that it falls to the court to apply the European Convention on Human Rights (ECHR) via the Human Rights Act. The European Court of Human Rights (ECtHR) has sometimes accepted that the ECHR can be interpreted in its own case law in line with international human rights treaties.

The ECHR has, of course, been incorporated into domestic law through the Human Rights Act and a number of the *Siracusa* principles apply equally to the ECHR which is justiciable domestically. The Convention has absolute rights (the right to life, freedom from torture, inhuman and degrading treatment) while other rights such as the right to private and family life under Article 8 of the Convention is a qualified right. In the case of the right to private and family life there shall be no interference with the right except in accordance with the law, where necessary in a democratic society and in specific circumstances which include public safety, protection of health and the protection of the rights and freedom of others.

Further, case law has tended to examine the legality of any restrictions by considering whether a limitation has a legitimate aim, corresponds to a pressing social need and is necessary and proportionate. On proportionality, this has often involved assessing whether there

is a rational connection between the public policy objective being pursued and the means deployed by the government to achieve that objective. In addition, the ECtHR has looked at whether a fair balance has been struck between the demands of the general community and the protection of an individual's fundamental right. So how does this play out in practice and what has the Commission done to ensure rights are protected?

The work of the Commission

The dilemma facing legal advisers and the enforcement of Convention rights in the pandemic can be crystallised in one example, namely, the right to visit loved ones in residential care homes. The Department of Health has issued guidance and revised it on a number of occasions as the pandemic has unfolded. The latest version 'Covid-19 Regional Principles for Visiting Care Settings' was published on September 23 2020[1]. It references Article 8 (the right to Family and Private Life) outlining that blanket visiting bans are contrary to the rights of patients and families and that a failure to adopt an individual approach will breach the Convention. Nonetheless, the guidance sets out parameters based on the level of surge, which vary from only end of life visits and alternatives such as 'virtual visiting' only in cases of high surge, to two people accommodated with social distancing where there is a low surge and outdoor and virtual visiting used wherever possible.

The Commission has received complaints about undue restrictions on visits for example, virtual visiting not being sufficient to visit a parent with dementia alongside concerns about prevention of infection being spread in care homes housing family members. In practice, the former has generated more work than the latter. Applying Article 8 as a qualified right to protect health has invariably led to advising individuals to negotiate with care home management to achieve the best possible solution rather than launching a legal action attacking the guidance or its application. Save where the guidance is being interpreted in a *Wednesbury* unreasonable way a legal challenge is unlikely to succeed and, in any event, would take some time to work its way through the courts. Elsewhere, legal challenges have had more impact, for example, the decision to resume inspections of care homes by the RQIA was almost certainly influenced by an imminent High Court hearing.

The Commission has sought to make an impact through a number of means. In April 2020 the Department of Health announced its intention to introduce regulations to dilute statutory duties when reviewing and supporting looked after children including in foster care, residential and secure care settings. Alongside the Children's Commissioner, Children's Law Centre, Voice of Young People in Care and the British Association of Social Workers among others the Commission was able to significantly ameliorate the original proposals including the length of their application and through the NI Assembly's Health committee ensure effective reporting and monitoring of the use of the new powers. In contrast, the Department of Education made far less attempt to engage when diluting statutory requirements around timescales for assessments for Special Educational Needs assessments – an issue under legal challenge where the Commission was able to compare and contrast the two different Departmental approaches for the solicitor taking the case.

A number of Select committees have undertaken inquiries into the Government's handling of the pandemic including the Joint Select committee on Human Rights and the Women and Equalities committee and the Commission contributed to both inquiries. Dealing with groups who have fallen through the cracks and ensuring effective support for example, people in the UK under the 'No Recourse to Public Funds' immigration rules who have lost their income due to the pandemic and effective oversight and accountability for the Test, Track and Contact arrangements under the Stop Covid-19 app have exercised the Commission though advice on these issues has largely gone unheeded.

In looking ahead, to a time when Northern Ireland comes out of the pandemic the question of how the recovery of the economy will be managed and paid for will loom large. This will inevitably engage human rights which has increasingly embraced issues of poverty and taxation both in terms of ensuring corporations pay taxes in full and the need for governments to implement genuinely progressive tax regimes. The work of Phillip Alston and others in the post of UN Special Rapporteur on Extreme Poverty have addressed this matter. In July 2020, the Treasury Select committee has launched an inquiry into 'Tax after Coronavirus' and the Commission contributed to the inquiry. The issue of whether Northern Ireland should have tax varying powers and if so, how should it use them is a potential matter for the new Fiscal Council to look at drawing on the experience from Scotland.

Human rights issues remain in play throughout the pandemic both in terms of legal challenges and the need to adhere to the wider framework of safeguards created through international human rights standards. The Commission will continue to be vigilant and welcomes issues being brought to our attention by the profession.

NORTHERN IRELAND HUMAN RIGHTS COMMISSION

Please note
The Commission's new address is
4th Floor
19-21 Alfred Street
Belfast BT2 8ED
Tel: 028 90 243987
Website: www.nihrc.org

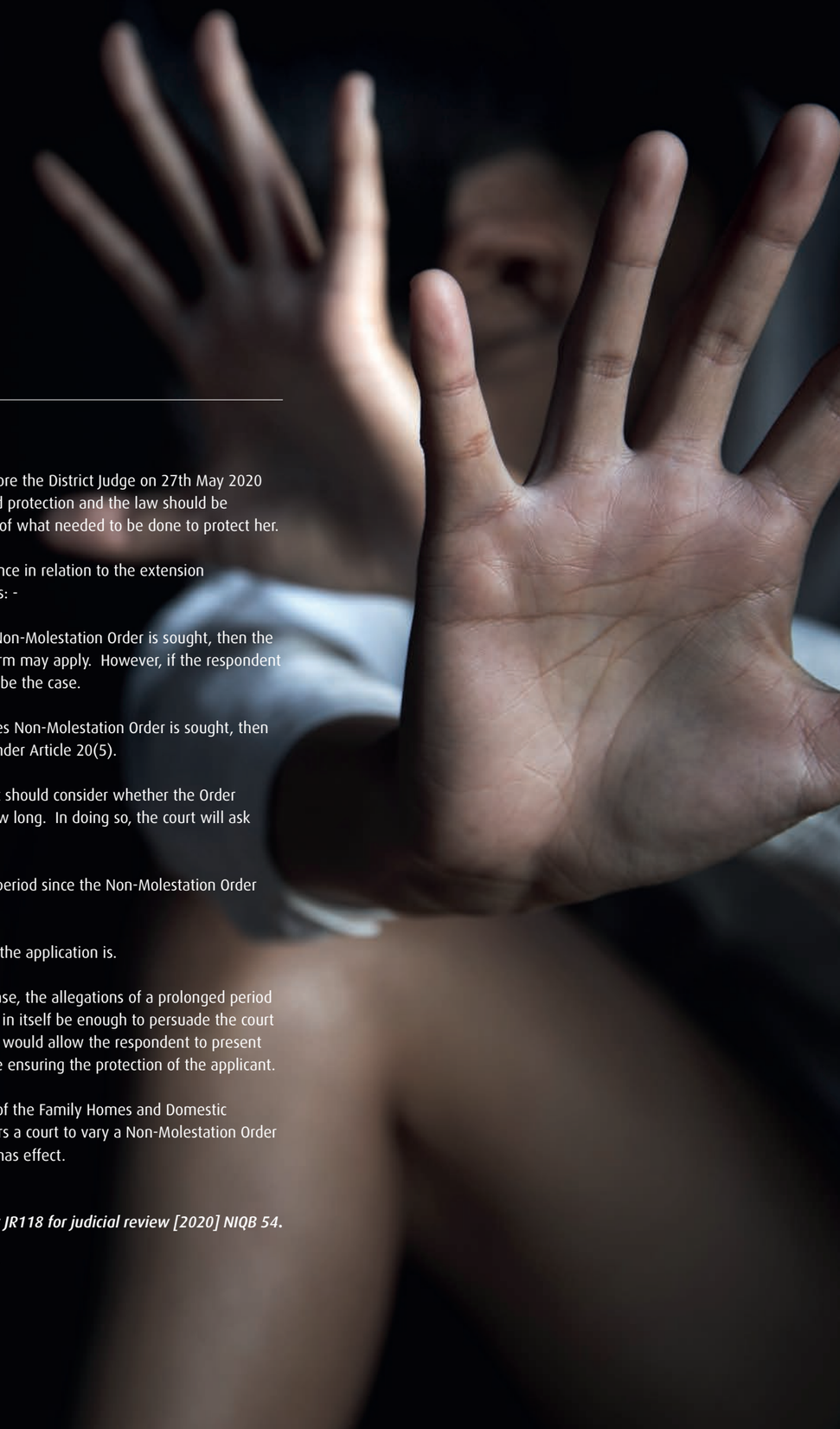
[1] https://www.health-ni.gov.uk/Covid-19-visiting-guidance

Ashton McKernan,
Trainee Solicitor,
Brentnall Legal

Case review

Re JR118's Application for Judicial Review

The issue surrounding the extension of Non-Molestation Orders has been clarified by the High Court in the judicial review case of JR118's Application in a case brought by Brentnall Legal Limited.



Background

We were instructed by AS to bring Non-Molestation Order proceedings against her ex-partner, P. The allegations made by AS against P were of sexual violence and prolonged coercive conduct. P had been arrested for the rape of AS and released on police bail pending further investigation. An ex-parte Non-Molestation Order was granted by District Judge Bagnall on 30th April 2020 and given a return date of 27th May 2020. It was confirmed with the PSNI that P had been served with the Order however there had been no contact by P or by any legal representative on his behalf by 26th May 2020 and so the relevant Covid FCI1 form was lodged with the Court advising the same and seeking a four week adjournment with the Order extended on a without prejudice basis to allow P to seek legal advice and/or present to defend the application. An email was then sent from the court office advising that whilst P had been served with the Order, he had not been served with the summons. The email further advised that District Judge Meehan had advised that AS could make a further application if there were any further incidents. We were then advised that this was due to the legislation not providing for extensions. Three steps were then taken; an appeal to the Family Care Centre was lodged, an application was made to the District Judge to state a case to the Court of Appeal and judicial review proceedings were initiated. Given the urgency in the matter, O'Hara J agreed that judicial review was the preferred option.

The agreed question for the Court was whether Article 24 of the Family Homes and Domestic Violence (NI) Order 1998 allowed for a Non-Molestation Order to be varied by extending the date to which it has effect.

Submissions

It was agreed between the parties that there was no material difference between the law in Northern Ireland and the law in England and Wales. It was submitted on behalf of AS that the Practice Guidance of Sir James Munby issued on 18th January 2017 specifically provided for circumstances in which an ex parte Non-Molestation Order could be varied by extending the duration of the Order.

Mr Lavery QC on behalf of AS submitted that the purpose of a Non-Molestation Order was to protect vulnerable people and therefore there is no justification for restricting the meaning of the word varied in Article 24(1). In fact, it would make no logical sense to allow every other part of an Order to be varied but the date, especially when read in conjunction with Rule 13 of the Magistrates Court (Domestic Proceedings) Rules (NI) 1996 and the relevant form F8 to 'extend vary or discharge'. Further, it was submitted that given the various and wide-ranging reasons for the adjournment of cases, the court must be regarded as having the power to extend the ex parte Order.

It was submitted by Ms McMahon on behalf of the Respondent that the legislation makes a clear distinction between Occupation Orders and Non-Molestation Orders. It was highlighted that the legislation has provisions for the length of time Occupation Orders can be made and extended for and that the power to extend Occupation Orders is not derived from Article 24 but instead by specific provisions within the legislation. It was further submitted that support for this stance was derived from the earlier Domestic Proceedings (NI) Order 1980 which would indicate that a new interim order would be made rather than an existing Order be extended.

Ms Rice for notice party, P, submitted that the approach taken by the District Judge on 27th May 2020 was the correct one.

Judgment

O'Hara, J disagreed with the District Judge and held that he could see no logic or basis for confining the word varied in Article 24 to exclude the variation of the date to which the Order has effect. He further drew a distinction between Occupation Orders and Non-Molestation Orders stating that the duration of an Occupation Order is curtailed by the legislation due to the fact that such an Order interferes with one's property rights whereas there is no right to molest someone.

O'Hara, J further agreed that the District Judge's interpretation did not fit with the wording of Rule 13 or Form F8 or the guidance issued in England and Wales which confirmed his view that the District Judge's interpretation was incorrect.

It was held that on the papers before the District Judge on 27th May 2020 that AS was a woman who needed protection and the law should be interpreted to allow consideration of what needed to be done to protect her.

O'Hara, J gave the following guidance in relation to the extension of ex parte Non-Molestation Orders: -

- If an extension of an ex parte Non-Molestation Order is sought, then the Article 23 risk of significant harm may apply. However, if the respondent has been served that may not be the case.

- If an extension of an inter partes Non-Molestation Order is sought, then the relevant test will be that under Article 20(5).

- In either of the above the court should consider whether the Order should be extended and for how long. In doing so, the court will ask itself two questions: -

    1. What has happened in the period since the Non-Molestation Order was made; and

    2. What the overall context of the application is.

It was stated that in the present case, the allegations of a prolonged period of coercive criminal conduct might in itself be enough to persuade the court to extend the Order. This approach would allow the respondent to present his answer to the allegations while ensuring the protection of the applicant.

O'Hara, J, declared that Article 24 of the Family Homes and Domestic Violence (NI) Order 1998 empowers a court to vary a Non-Molestation Order by extending the date to which it has effect.

The judgment can be found at
In the matter of an application by JR118 for judicial review [2020] NIQB 54.

[1] [2020] NIQB 54

The current work of the International Bar Association

John Guerin

John Guerin, Council member and Past President, is the Society's representative at the International Bar Association. This article provides an update on the work and activity of the Association.

The International Bar Association ("IBA") regards itself as one of the foremost organisations for international legal practitioners, Bar Associations and Law Societies and often describes itself as "the global voice of the legal profession". It has grown significantly since its inception in 1947 and is comprised of lawyers from 190 Bar Associations and Law Societies covering 170 countries.

The IBA has been engaged in a reform and strategic planning process over the last number of years and it was hoped that this could have been finalised at the annual IBA conference which this year was due to take place in Miami in November. This has been postponed but plans are afoot in relation to organising a virtual IBA council meeting before the end of this year.

As the Law Society of Northern Ireland representative, I have continued to engage with your IBA remotely attending committee meetings on issues affecting Bar Associations/ Law Societies, Regulatory matters and Human Rights/Diversity issues.

As Vice-Chair of the Regulatory Committee the matters we dealt with this year include the impact of Covid-19 on the work of regulators as well as the English SRA's project on BAME student underachievement.

Further work has also been undertaken (following last year's launch of an IBA survey) in relation to bullying and harassment within the legal firm and the regulatory repercussions of this for both the employee and also the employer."

The IBA has been vocal in its support of human rights and fundamental freedoms throughout the year and many countries have faced the imposition of draconian measures dressed up as emergency legislation to deal with Covid-19. Too often, the global crisis has been used as a guise by governments to extend their powers indefinitely. The IBA's view is that whilst certain measures are necessary to curb the spread of the virus, these must be proportionate and have limitations, with respect to fundamental human rights. While dubbed 'the great equaliser', it is indisputable that with emergency powers comes an increase in human rights violations against marginalised groups

The IBA has continued its role in supporting the rule of law and the role of lawyers throughout the world. This year marked the 30th anniversary of the United Nations Basic Principles on the role of lawyers which addresses the fundamental guarantees necessary for an independent and properly functioning legal profession.

In recent months the IBA (which is headquartered in London) has seen significant engagement from throughout the world on the Rule of Law with particular reference to the UK's Internal Market Bill and particularly clauses 42, 43 and 45. A UK Government minister admitted that, if implemented, the UK would be in breach of international law.

The practical consequences of the Bill in relation to the UK's future negotiations of international treaties, holding other countries to account for breaches of international law, the role of UK jurists on the world stage and the UK's reputation for probity, fairness and integrity have all come under scrutiny in light of the UK government's desire to pass the bill.

I remain committed to representing the interests of the Law Society of Northern Ireland in contributing to the ongoing work of the IBA.

For more information about the International Bar Association please go to *https://www.ibanet.org/*

Solicitors' Benevolent Association Special General Meeting

Notice is hereby given that a Special General Meeting of the Solicitors' Benevolent Association will be held remotely by video conference on Monday the 21st December 2020 at 11.30 am for the purpose of considering, and if thought fit, to adopt the new Rules of the Association which have recently been approved by the Charities Regulator. You can inspect and/or download a copy of the new Rules on the Association's website *www.solicitorsbenevolentassociation.com.*

You can register to attend the Special General Meeting by sending your name and email address to the secretary, Geraldine Pearse, at *contact@solicitorsbenevolentassociation.com*

Irish Rule of Law International's work continues apace supported by the legal professions in Northern Ireland

Aonghus Kelly, Executive Director, IRLI

Irish Rule of Law International is a project-orientated, non-profit rule of law initiative established and overseen by the four legal professional organisations from the island of Ireland. Originally founded in 2007, the organisation has collaborated with academics, Judges, legal practitioners, policymakers, and civil society around the world to advance collective knowledge of the relationship between rule of law, democracy, sustained economic development and human rights.

Irish Rule of Law International's (IRLI) work has continued apace since the last time we reported to The Writ in the Winter edition of 2018, via the former President of the Law Society of Northern Ireland, Norville Connolly. Since then over 600 detained persons have received legal services with the support of lawyers from across the island of Ireland in one of the poorest countries in the world, Malawi. We record our thanks to the Society for their support of IRLI in these initiatives as one element of their international engagement and contribution to developing the rule of law.

During that time Northern Irish and Irish lawyers have also given training courses to commercial lawyers from underprivileged backgrounds in South Africa, hosted and engaged with police officers working on gender-based violence crimes in Tanzania and assisted the Kosovo Chamber of Advocates in improving access to justice. IRLI is also now in the planning stage of a new project in Tanzania on child sex abuse cases.

Our work in Malawi, where we have a permanent in-country presence, has gone from strength to strength. Working in conjunction with our local partners, our work is especially life-changing for women. In the last year, we have assisted eleven women and adolescent girls who experienced miscarriages or stillbirths and were subsequently charged with infanticide and remanded in custody. Working with our local partners, we ensured each woman was released on bail from prison. All had been held for periods between six months and four years without trial. While each infanticide case is different, there tends to be common themes: abandonment, poverty, social stigma, loneliness, and fear of authority. In addition, each woman is dependent on overstretched legal aid lawyers and with little possibility of a trial in the near future.

IRLI also works to ensure that children held in police custody or prison are brought to appear before the Child Justice Court ("CJC") rather than remaining in police cells or brought to adult prisons. In the last year, 186 children have appeared before the CJC in the capital, Lilongwe, and IRLI provided support in all of those bail applications; 167 children were granted bail; 19 children were placed into our Child Diversion Programme, diverting children who come in conflict with the law away from the formal criminal justice system and into the community instead

IRLI's partnership with the Malawian Police Service has included the drafting and submission of a memorandum on torture in May 2019, which covered international, regional, and Malawian law as well as eight instances of torture reported to IRLI. It is hoped this memorandum can contribute to Malawi's reporting regarding the United Nations Convention Against Torture (UNCAT) and support training courses with the Judiciary regarding forced confessions. In addition, the IRLI Judiciary programme lawyer is training a significant number of magistrates on the law relating to evidence obtained through torture and, in turn, advocating for the inadmissibility of such evidence.

A troubling development in the last year is that the death sentence has reared its head again in Malawian jurisprudence. Four death sentences have been imposed in the last year. This represents a worrying step backwards given that the death penalty had not been imposed for almost five years prior to these decisions. As a result, IRLI has begun with others to build the capacity of Legal Aid Bureau advocates to defend accused persons in capital cases.

Another challenge in Malawi is that it is common for mentally ill accused persons to be held in prolonged police detention, sometimes for up to two years, without trial. However, legally accused persons can remain in pre-charge detention in police cells for a maximum period of 48 hours. IRLI was recently made aware of two men who had been held in the police cells for over five months. Our lawyers seconded to the Legal Aid Bureau, the Director of Public Prosecutions and the Malawi Police Service worked closely together to ensure the men's cases were listed before the Court. At Court, the judge ordered that one of the accused's charges be dismissed, while the other accused was sent for a fitness assessment and he was later discharged. Day by day, IRLI works to build the capacity of the criminal justice institutions in Malawi and increase the respect for the rights of mentally ill offenders.

Further information can be obtained at *info@irishruleoflaw.ie*

IRISH RULE OF LAW INTERNATIONAL

European Lawyers in Lesvos (ELIL)

providing legal assistance to asylum seekers

Philip Worthington,
Managing Director,
European Lawyers in Lesvos (ELIL)

Philip Worthington, Managing Director of European Lawyers in Lesvos (ELIL) outlines the activities carried out by the organisation in providing legal assistance to asylum seekers in order to uphold the rule of law and protect human rights. This project is supported by the Law Society of Northern Ireland.

The Context

In March 2016, the EU-Turkey deal created a legal crisis, stranding tens of thousands of people on the Greek Aegean islands as their claims for asylum are processed. They live in camps and reception centres in dire conditions and with limited access to basic services. These facilities are almost always critically over capacity. Last year alone, over 74,600 people, the vast majority of whom fled Syria, Afghanistan or Iraq, arrived in Greece after making the dangerous sea crossing in search of safety.

The asylum process is a legal one, yet on the Greek islands there is no state-provided legal aid available for asylum seekers before their decisive asylum interview, meaning that most attend without having spoken to a lawyer. The only way an asylum seeker can receive legal assistance at this stage is through one of the very few NGOs on the islands. On Lesvos, there are just 20-30 lawyers to assist over 10,000 people going through the legal process. On Samos, there is less than one lawyer for every one thousand asylum seekers.

The right to asylum is enshrined in Article 18 of the EU Charter of Fundamental Rights. This provision gives effect to the basic protection principles contained in the Geneva Convention of 1951 to which all EU Member States are contracting parties. As lawyers, we all know that the course of a case is invariably set at its commencement (at a time when serious mistakes can be made which may not be reparable). It is therefore crucial that people in need of protection and fleeing war and persecution are provided with competent legal advice from experienced practitioners.

European Lawyers in Lesvos (ELIL)

European Lawyers in Lesvos is a charity registered in Germany and Greece. It was founded by the Council of Bars and Law Societies of Europe (CCBE) and the German Bar Association (DAV) in 2016 and is now also supported by the French Bar Association (CNB). Our programmes are built on belief in the overriding critical importance of upholding the rule of law and defending human rights by providing access to free, independent legal assistance.

Our main activity is the provision of one-on-one legal consultations to prepare asylum seekers for their first instance interview. ELIL offers legal information, practical support and tailored advice to asylum seekers at this crucial stage of the process. ELIL also helps reunite families, providing legal consultations to assist with family reunification applications under the Dublin Regulation.

ELIL also provides support to unaccompanied minors, particularly those incorrectly registered as adults. The need in this regard is great - earlier this year, there were almost 1,100 unaccompanied minors in Moria alone. ELIL is one of the largest providers of legal assistance to unaccompanied minors on Lesvos, having assisted over 650 such individuals since 2016. This work focuses on family reunification and challenging incorrect age assessments, with our team also assisting minors with asylum interview preparation where relevant.

In summer 2020, after four years of successful work on Lesvos, ELIL extended its operations to the Greek island of Samos, where 5,000 people live in Vathy camp, which has an official capacity of just 700. Our new project will contribute to considerably increasing the legal capacity on the island.

ELIL's work has been made possible by the remarkable spirit of European collaboration which sees full-time Greek lawyers working alongside volunteer European asylum lawyers and legal assistants. Over the past four years, over 250 people from 18 European countries have volunteered with us, sharing their experience, skills and knowledge.

Along with in-person assistance, in recent months our volunteer lawyers from across Europe have also begun to provide consultations remotely from home, ensuring that we are able to support as many people as possible despite lockdown restrictions and challenges to legal access.

An Enduring Need

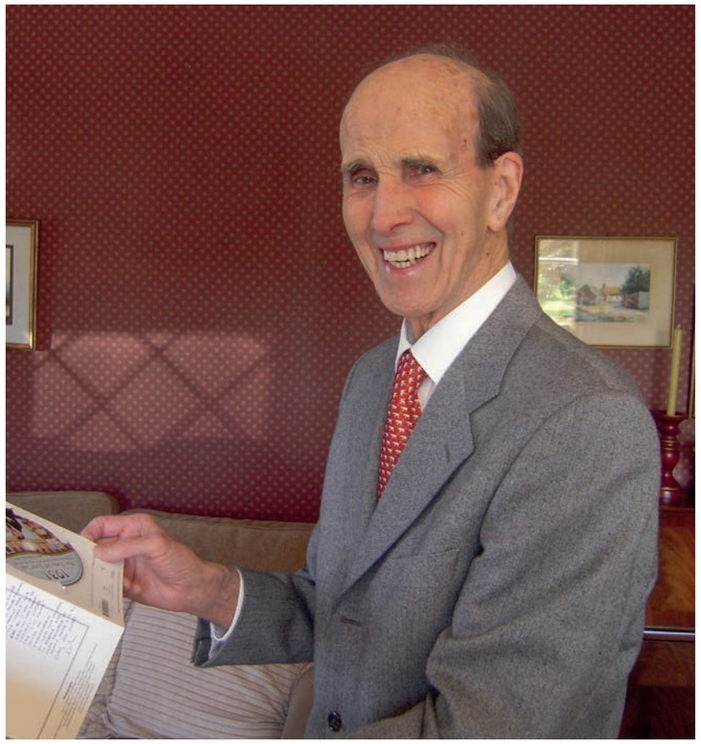
Over the past four years, ELIL has provided legal assistance to over 11,000 people. Our work demonstrates how important access to legal assistance can be for refugees. Of those we have assisted, 74.5% have been granted asylum (compared to an average of 46.5% in Greece), meaning they are given protection and do not have to return to face war, violence or persecution in their home country. We have also helped over 1,200 people, including 300 unaccompanied minors, be reunited with family members elsewhere in Europe.

The past year has brought many challenges that have eroded legal access still further, from the devastating fire that destroyed Moria camp on Lesvos, including our offices, to the Covid-19 outbreaks on both Samos and Lesvos and the increasingly strict asylum framework in Greece. In this context, guaranteeing meaningful access to legal support is more important than ever.

We are extremely grateful for the Law Society of Northern Ireland's support over the past four years. For further information and to support ELIL, please visit *www.elil.eu*

John Pitcairn Shearer MA 1931-2020

John Shearer was born on 2nd May 1931 in Glasgow. His parents Allan (a headmaster) and Jeannie were teachers. Together with his only and elder sister, Etta (now 97) John was nurtured on a diet of learning and intellectual rigour which sustained him for the rest of his life.



Neither the law nor Northern Ireland seem to have crossed his mind until a random conversation at an extended family gathering in his late teens. John's cousin Jack was in partnership with his maternal uncle SJ Millar in Cookstown and was looking for a long term successor. It was provisionally arranged that John would "give it a go" after completion of his mathematics degree at Glasgow University.

As planned, in 1951 he moved to Belfast and began the graduate entry process of study for Law Society examinations, being apprenticed to John Boston. He was admitted on 31st July 1955, and joined the practice just before Jack's departure to become a Resident Magistrate.

Having survived this baptism of fire with the help of two veteran old- school law clerks, John devoted the rest of his life to what had become his vocation, in the truest sense of the word. Over the next 50 years up to his retirement, and in his characteristically unassuming but determined way, he set about the development of himself and his firm. Joined by Peter Black at the end of the 1960s, in a dynamic and complementary partnership they built the practice into one of the largest outside Belfast. He gained a high reputation among his peers for his integrity and legal expertise in conveyancing, taxation and probate in Mid-Ulster, and a clientele across Northern Ireland.

Although retaining a soft Scottish burr, John became a thoroughly integrated Ulsterman. In part this was due to his capacity for friendship and his omnivorous curiosity about life, but even more so due to his good fortune in finding his life's partner in a local lassie Rosemary Duff. Together they built a purposeful life, raising three children, contributing to the community, and enjoying a long and happy marriage, including the celebration of their diamond anniversary in 2019.

Outside the law, John had been awarded "blues" in rowing by both Glasgow University and Queens University. He was captain of QUB Boat Club in 1953, and a member of the crews which won the Big Pot (Irish Championships) in 1952 and 1953. He maintained a life-long interest in Irish rowing. He and Rosemary enjoyed rallying, and he was a founder of Ballyronan Sailing Club, self-describing as the most-capsized but cleanest member. He was a persevering but ultimately disillusioned golfer (is there any other kind?). But his greatest sporting happiness came on the piste. He had the remarkable blessing of still skiing with his grandchildren when he was over 80.

John served as Treasurer of First Moneymore Presbyterian Church for 56 years. He was HM Coroner for East Tyrone for some 25 years, and also served as a Deputy District Judge.

He was able to have a fulfilled and active retirement, developing new interests and expanding others. Having been in his youth an energetic skiffle band member, he now had more time for his eclectic tastes in music and the arts. Always a DIY enthusiast he became an accomplished furniture repairer; perhaps an apt metaphor for his profession and his life. John was the go-to-guy to get things fixed.

John died on 13th March of Non Hodgkins Lymphoma after a mercifully short period of illness. He is survived by Rosemary and his three beloved children, Fiona, Alan and Colin.

John W Bailie

David Somerville Cook 1944 - 2020

David Cook was a man of many achievements. He came to Campbell College, Belfast at the age of 10 from England when his father was appointed Headmaster. He won a place at Pembroke College, Cambridge where he was proud of his successes on the river and formed enduring friendships.

He qualified as a solicitor to the Supreme Court of Justice in Northern Ireland in 1968, with the firm of Sheldon and Stewart in Belfast, of which he was for four decades the senior partner.

He was a founder member of the Alliance Party and its Treasurer while in his 20s. He fought five successful public elections – three in succession to Belfast City Council, for South Belfast, one to the Assembly in 1982 and most memorably his election as Lord Mayor of Belfast in 1978. No non-Unionist had held that office since Lord Pirrie in 1898. It required David to assemble a remarkable coalition ranging from Unionists to Republicans to achieve this end.

It must be remembered that no local politician exercised power in Northern Ireland between 1974 and 1999 and so the city council was for much of David's time the major centre for political debate in the absence of a Stormont parliament. David and his wife Fionnuala brought to the Lord Mayoralty inclusiveness, tolerance, generosity and style. The contrast was all the greater as the Troubles were still at their height. The Minister for Justice has said that David was 'a beacon of liberalism in the darkest of times.'

David's courage deserves recognition. This is not only in the physical sense - the Alliance party headquarters was bombed and its leader, fellow solicitor Oliver Napier, had a police bodyguard. There was a by-election in 1982 in South Belfast because the previous MP was murdered by the IRA. David stood and was runner-up.

When the British and Irish governments entered into the Anglo-Irish agreement in 1985 some councils including Belfast refused to strike a rate or discharge their statutory duties. This process would have led to considerable hardship for ordinary people. David's soundness as a lawyer is demonstrated by his opinion that these strikes could be challenged successfully in the courts as unlawful but also his moral courage, because he brought the proceedings personally and would have had to pay the council's legal costs if he had lost. Nor can his proceedings have been popular with all of his professional clients. In the event he won in the High Court before Hutton J., later Lord Hutton. That decision was upheld in our Court of Appeal – and David got his costs!

When politics ended for David with the proroguing of the Assembly in 1986, it seemed, to the author at least, that he returned to practising law with pleasure. He was highly regarded, particularly in the fields of probate and conveyancing. He was an active member of STEP.

He could not resist, in 1994, accepting the offer of the chairmanship of the Police Authority although it was regarded by many as a poisoned chalice. So it proved in that his reasoned calls for reform to make the Royal Ulster Constabulary, as it then was, more acceptable to the community as a whole did not win favour with a majority of his colleagues and led to a split and his own departure from the Authority, together with Chris Ryder. David's position was vindicated by the reforms implemented by Lord Patten, with whom he worked closely, only a few years later as a key part of the Good Friday Agreement.

David's work spread over so many valuable and learned bodies that it is impossible to address them in short measure but he named 16 in Who's Who ranging from his Chairmanship of the West Down Beagles Hunt Club to service on the Pharmacy Panel and his Presidency of the Belfast Literary Society in 2012. It is right to single out the Northern Ireland Voluntary Trust of which he was chairman for some 25 years. As Paul Sweeney has said David's appointment as the first Chairman was inspired. He raised millions of pounds by his passionate advocacy and tireless efforts, millions which were then spent constructively and wisely in the support of the voluntary and community sector in this part of the world.

His former colleagues will remember him not just as public man and philanthropist but as a respected lawyer, good humoured companion and a warm and generous host. He was a good shot and enjoyed his days out with two syndicates.

He derived huge enjoyment from the family home in Donegal. He is survived by his widow, Fionnuala, Vice Lord Lieutenant of County Down, five children, Barbary, John, Patrick, Julius and Dominic and by two grand-daughters.

As the editorial in the Belfast Telegraph said, we are all the poorer for his passing.

Donnell Deeny

THE INDUSTRIAL TRIBUNALS AND THE FAIR EMPLOYMENT TRIBUNAL

PRESIDENTIAL DIRECTION ISSUED UNDER REGULATION 14 OF THE INDUSTRIAL TRIBUNALS AND FAIR EMPLOYMENT TRIBUNAL (CONSTITUTION AND RULES OF PROCEDURE) REGULATIONS (NORTHERN IRELAND) 2020 AND PRESIDENTIAL GUIDANCE ISSUED UNDER RULE 8 OF THE INDUSTRIAL TRIBUNALS AND FAIR EMPLOYMENT TRIBUNAL RULES OF PROCEDURE 2020

APPLICATIONS FOR EXTENSION OF TIME FOR PRESENTING A RESPONSE

Rule 18 provides:

Applications for extension of time for presenting response

18. — (1) An application for an extension of time for presenting a response shall—
(a) be presented in writing;
(b) be copied to the claimant;
(c) set out the reason why the extension is sought;
(d) except where the time limit has not yet expired, be accompanied by a draft of the response which the respondent wishes to present or an explanation of why that is not possible; and
(e) if the respondent wishes to request a hearing, include that request.
(2) The claimant may within 7 days of receipt of the application give reasons in writing explaining why the application is opposed.
(3) An employment judge may determine the application without a hearing.
(4 If the decision is to refuse an extension, any prior rejection of the response shall stand. If the decision is to allow an extension, any judgment issued under rule 19 shall be set aside.

Rule 89 provides:

Correspondence with the tribunal: copying to other parties

89. Where a party sends a communication to the tribunal (except an application for an order requiring a person to attend a hearing under rule 27(1)(a)(iii)) that party shall send a copy to all other parties and state that it has done so (by use of "cc" or otherwise) including the date and means of delivery. The tribunal may order a departure from this rule where it considers it in the interests of justice to do so.

CLAIMANTS AND RESPONDENTS SHOULD NOTE THE FOLLOWING which arise from the above Rules:

1. Respondents are required to follow rule 18(1) in full when making an application for an extension of time for presenting a response to a claim. The application should be sent to the tribunal office by email, where possible.

2. In accordance with rule 18(2), if a claimant wishes to oppose that application, the claimant's written reasons for opposing the application must be sent to the tribunal office **within 7 days** of the claimant receiving the respondent's application. The claimant's written reasons should be sent to the tribunal office by email, where possible.

3. The tribunal office's email address is: *mail@employmenttribunalsni.org*.

4. Although rule 18(2) does not state that the claimant should copy their reasons for opposing the respondent's application for an extension of time to the respondent, **claimants are directed to copy their written reasons for opposing the application to the respondent, at the same time as sending them to the tribunal,** in accordance with the requirements of rule 89.

5. A respondent's application for an extension of time cannot be considered until either:

   (i) the expiry of 7 days from the date on which the claimant received a copy of the application for an extension of time; or

   (ii) the date on which the tribunal receives the claimant's written reasons for opposing the application for an extension of time, if earlier.

   Accordingly, the date on which an application for an extension of time can be considered may fall outside the 28 day time limit for presenting a response.

6. Any reference to a claimant or to a respondent means a reference to the claimant's representative or the respondent's representative, if they have a representative.

President: Eileen McBride CBE
18 October 2020

THE LAW SOCIETY OF NORTHERN IRELAND

Applications for Practising Certificate

Year commencing 6th January 2021

There are important new arrangements which will apply to
Practising Certificate Applications for 2021 (Practice Year beginning 6th January 2021).

At this time of year members would usually receive a hard copy Application Form for a Practising Certificate for the incoming year. This will **not** be happening this year as the process will be administered using a new online Application Form.

The new platform will be activated in week commencing 16 November 2020 and will be accessible from the Members' Section of the Society's website. The Society will be sending all members an e-communication notifying them when the system has gone live and providing guidance on what they need to do.

Please ensure that you and colleagues are fully acquainted with these changes.

Please note that in order to use the new online application process, it is essential that you can access the Members' Section of the Society's website.

You should test your login details to the Members' Section as soon as possible -
https://www.lawsoc-ni.org/member-login.aspx?ReturnUrl=/

If you are unable to gain access, you should immediately email *records@lawsoc-ni.org* to ensure that the necessary steps can be taken to facilitate access.

This is an exciting new development which will streamline the application process.

Please give it your full support.

Editor's Invite

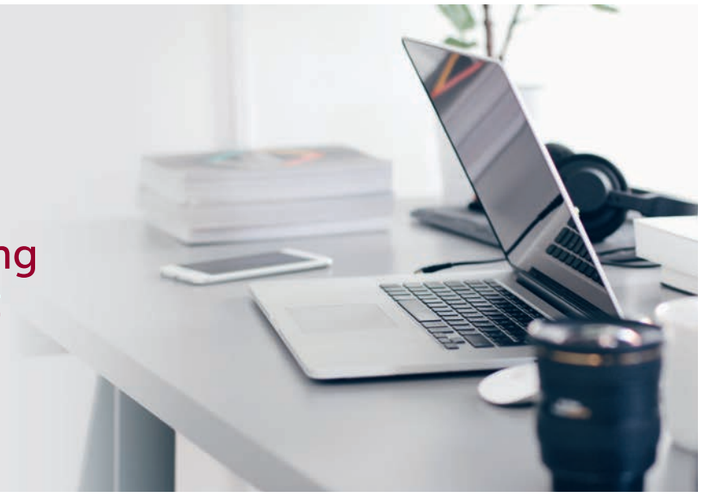
We are keen to welcome contributions, and suggestions for contributions from our members for the Writ Ezine. Our next edition, which is due out in the New Year, will be looking at the impact of **BREXIT** on firms, and will profile the experiences of a number of firms.

We also welcome feedback on any articles we carry, and are happy to develop a "Letters to the Editor" column.

If you would like to contribute to this topic, or provide an article on any other topic, please contact the Editor, Heather Semple (*heather.semple@lawsoc-ni.org*)

THE LAW SOCIETY OF NORTHERN IRELAND

Are you attending a remote Court hearing and not sure what it will involve?



If so the guidance below may answer your questions

This guidance has been prepared by the Society for solicitors to pass on to their clients. It aims to answer questions for clients as they prepare for a remote or hybrid hearing.

As a result of coronavirus, the court system has had to adapt arrangements to comply with public health guidance.

Many courts will operate on a remote basis whereby you will participate in your case from a venue outside of the court building using a smartphone, laptop or other device. Some cases will take place with some participants attending in the courtroom and others joining by a link to a video screen.

1. What is a remote hearing?

A remote hearing is one which is held without the people involved coming to court. Rather they join the hearing by telephone or by a video link using a phone, laptop or other device. The Judge may join the hearing from a court building, although not necessarily. Although all those involved in a case may be joining from different locations, apart from the fact that people are not in the same building, a remote hearing is exactly the same as a hearing where the parties come to court in person and the process is broadly the same. The court has all the same powers and will expect people to treat it just as seriously as a 'normal' hearing.

2. What is a hybrid hearing?

A hybrid hearing is a mixture of a remote hearing and a normal face to face hearing. This means that some of the people involved attend the court in person, and some of them join the hearing remotely by video link or phone. A hybrid hearing might happen if one person can't physically get to court or if the courtroom isn't big enough for everybody to fit in whilst being socially distanced.

3. What will happen if I am participating remotely in a hearing?

When court hearings take place in person in a court building, they do not always start on time because Judges often allow parties and their lawyers some time to discuss things before coming into the courtroom. *Remote hearings almost always start on time.* It's really important that any discussions you or your lawyer want to have with the others involved in the case take place before the start time for the hearing, and that you are ready and waiting at the time the hearing is listed.

It will take a few minutes for everyone to join the hearing. *It is a criminal offence and a contempt of court for you to record the hearing without permission.* The judge might explain that the fact that the hearing is being carried out remotely does not change the serious nature or the importance of the hearing. If the hearing is heard in private, meaning that members of the public cannot attend (this is the case for most family court hearings) the judge might check with everybody to make sure that they are on their own and somewhere private.

If you are to give evidence and wish to take an oath, you should ensure you have to hand a Bible/religious book. You may otherwise choose to 'affirm'. Discuss this with your solicitor in advance. The usual restrictions in a courtroom still apply - you should not eat, drink, smoke / vape, use a mobile telephone etc.

It can be easy to talk over other people accidentally in a remote hearing, and that can mean that people can get a bit lost. The Judge will probably be quite strict in making sure people take turns in speaking, and will ask for no interruptions. It is a good idea to put yourself on 'mute' (turning off the microphone on your device) except when you are actually talking, so that background noise does not stop people hearing what is being said. It will help to look for the mute function on your device before the hearing, or at the start, so you know how to switch yourself on to mute and back again when you need to speak.

Judges can and do hear evidence from witnesses at remote hearings, and can make final court orders. It will be up to the Judge in your case to decide whether it is fair and suitable for a particular hearing to be dealt with remotely and, if not, what the alternative arrangements are. You should tell the court about any difficulties that affect you which they might not otherwise know about.

4. How do I join a remote hearing?

You will be sent joining instructions before the hearing, either by the court or by the lawyer who is organising the connection. Ensure you have downloaded any software needed to connect to the court. If the hearing is a telephone hearing, this will usually be arranged by the court and they will call you so that you can take part. It is important that you make sure the court has your up-to-date phone number and that you are ready to answer the call when it comes. The court might call from a withheld number ('No Caller ID'). If you have your phone set to 'Withhold reject', make sure that this is turned off so you do not miss the call.

Make sure your phone or device is fully charged or connected to power so that it does not run out of battery during the hearing – video calls can use up the battery quickly. If the court is unable to reconnect to you during the hearing, it might carry on without you.

If the Hearing continues for any length of time ensure you can connect to a power source if the battery begins to drain.

5. Will it cost me anything to join?

It will not usually cost you anything to join a remote hearing. You will need to have a good phone connection for a phone hearing, and a good WiFi internet connection for a video hearing. If you live somewhere with poor phone signal but have WiFi, check if you can switch your phone to 'WiFi calling' so you can connect by phone through your WiFi. If you are relying on 3G or 4G data to take part in a video hearing, it might use up your data very quickly, which can be expensive and doesn't always provide a good enough connection. If your hearing is a telephone hearing, the court will call you, which means it doesn't use up your phone credit.

6. What devices, apps or software do I need?

The basic requirement is a functioning phone with a reliable WiFi connection. Even if your hearing is a video hearing, you can still join by phone, but you will find it much easier to follow if you are able to connect by video. Ideally, you would have one or more internet-enabled devices, so that you can join a hearing by video/internet connection on one, and you can view your documents on another, but some people manage with one device.

Make sure that the device you intend to use is fully charged before the hearing starts. You should use earphones or headphones with a microphone if you have them to keep the remote hearing confidential and also improve the sound quality.

If you only have one device, or difficulty accessing the documents yourself, you could ask whether the documents can be shared on screen by someone else as they are being discussed. This may or may not be possible, depending on the platform your hearing is happening on.

7. What if I am worried I won't be able to work the technology?

You will be sent instructions before the hearing. Although lots of people are unfamiliar with the technology, it is pretty easy once you get the hang of it, and the judge and lawyers will be used to helping people sort any glitches out. In advance you should find the camera function on your device and on the system being used for the hearing (eg Sightlink / Webex) so you know how to switch this on to ensure you are visible to the court; or ensure this is turned off where it has been agreed in advance that you are not required to be visible.

8. Can I have someone with me during the remote hearing?

If your hearing is public (most civil cases) there is no restriction on who can be present with you. However, most family cases are not heard in public. They are heard in private.

If your hearing is private you should be on your own unless the judge gives you permission for someone else to be with you. *Discuss this option with your solicitor in advance so that the court can be notified.* Anyone who does attend a hearing to support you should remain silent throughout.

9. What if I need to speak privately with my lawyer or supporter during the hearing?

If you have a lawyer or supporter, you could discuss with them the best way of communicating during a remote hearing. Normally you could whisper to your lawyer in the courtroom, but in a remote hearing you could use WhatsApp, or email, or a separate video link or phone call to communicate privately as things happen. This arrangement should be set up by your solicitor before the hearing starts.

10. What if I want a face to face hearing?

If you think your case needs to be held face to face for any reason you should raise this with your solicitor as soon as possible. Your solicitor will raise this with the judge so that a decision can be made on whether it would be appropriate or not.

If you have a disability that makes a remote hearing impractical or unsuitable, or if you need an adjustment to be made so that you can participate, your solicitor should contact the court, explaining the difficulty and what might help to make things work better for you.

11. What if something goes wrong?

It is important that you understand what is happening during the hearing, so if you are struggling to see, hear or follow, you should let the judge know at the time. You can do this by speaking, putting your hand up or (on some platforms) pressing a button to raise a 'virtual' hand. Remember that, on some platforms, the judge might not be able to see everyone's face at the same time so if your hand does not attract their attention you may need to interrupt. You could say 'I'm sorry to interrupt but I can't hear'. If there is background noise, the judge may ask everyone who is not speaking to mute their microphones.

Sometimes people get cut off from a hearing part way through. Usually the people left behind will get a notification telling them you have gone, so they will either try and re-join you or wait for you to dial back in. It is a good idea to keep your joining instructions to hand throughout the hearing so that you know where to find them if this happens.

12. What happens after the hearing?

The court will produce an order which records the outcome of the hearing, and will send everyone involved a copy of the order. Your lawyer will send you the order once it has been approved. The order might not reach you straight away, so it's a good idea to make a note of things the court has asked you to do, the date you have to do them by and the date of the next hearing. When the hearing ends it is important that you disconnect from the link into the court. You should only reconnect if instructed to do so by your solicitor.

NIGALA Solicitor Panel seeking new applicants

NIGALA
NI Guardian Ad Litem Agency
A voice for Children and Young People in Family Courts

The Northern Ireland Guardian ad Litem Agency (NIGALA) has announced that it is opening the Panel for *new applicants.*

The Solicitors on the Panel work in tandem with Guardians to provide legal representation for children who are the subject of proceedings under The Children (NI) Order 1995 and proceedings within the Adoption (NI) Order 1987.

The Agency provides a regional service across all the Court tiers and is committed to providing a quality service to all children. At present there are pressures on Solicitor capacity within the Northern, South Eastern and Western Trusts all of which cover extensive geographic areas and relate to a number of Courts.

In 2015 there were 130 Solicitors on the NIGALA Panel. The Agency is opening the Panel for new applicants to join the existing 92 Solicitors on the Panel and replenish the numbers to the original 130.

It is a requirement that prospective applicants have been on the Law Society Panel for a minimum of two years. The Agency will host two Zoom information and Q&A sessions to facilitate prospective applicants to gain an insight into the operation of the Panel from both the perspective of the Agency and a Panel Solicitor. A waiting list will be established.

The information sessions are scheduled on

Wednesday 9th December @ 2pm and
Wednesday 16th December @ 2pm

Please contact **Una Doherty** (Panel Administrator) at *una.doherty@nigala.hscni.net* providing your contact details to register for attendance at one of the information sessions. If you are unable to attend an information session but still wish to apply, please e-mail Una Doherty with an expression of interest. It is important that you provide a valid email address with your correspondence as this will be the e-mail address that your Zoom invite and application form will be sent to. If you require a hard copy application form, please provide a full contact address.

The following timeline has been established for the application and selection process.

Week commencing 11th January 2021 -
Application forms will be issued by **e-mail** to all Solicitors who registered their interest with the Panel Administrator.

Friday 12th February 2021 @ 4pm –
Deadline for submission of completed applications by e-mail to *una.doherty@nigala.hscni.net*.
Application forms returned via post should be sent to:

FAO Una Doherty, NIGALA, 5th Floor Centre House, 79 Chichester Street, Belfast BT1 4JE

You must allow postage time for applications sent via post.

Monday 15th February – Friday 26th February 2021 -
Review of application forms and select successful applicants. This will be undertaken jointly by NIGALA and a representative from the Law Society.

Week commencing 1st March 2021 -
Successful applicants will be notified and provided with details of the governance requirement for going live on the NIGALA Panel by 31st March.

April 2021 -
Welcome and introduction session. Schedule of joint training.

ADVERTORIAL

Managing Partners must look beyond COVID and use technology to wire in real change

"Leadership is action, not position."

Donald McGannon (US Broadcasting Industry Executive)

We all sometimes overlook the most basic business principles, including that technology exists to make people's lives easier. Overlooking the obvious is understandable when uncertainty is all around us, but effective leaders can shape the future as well as manage the present. In the world of IT, Managing Partners don't have to be technical, they need to create an environment where technical experts can improve the working lives of those in the firm.

Take the current fluid situation about whether staff should work from home or the office. The big issue isn't how does everyone get set up at home again for Lockdown 2.0 - that's a tactical challenge. The issue is how can your firm leverage the opportunities of remote working for those who want/need it, to provide a better employee experience. The firms that have modern software installed are ahead of those that don't in making this a reality.

Technology and software are the enablers of remote working. COVID has been the unwanted experiment that shows law firms can support the remote working model. The eventual winners will be the firms that wire-in flexible working. The work or home option can be a positive choice, depending on the changeable demands of work and family life. The key is in making sure it works for the business as well as for the staff.

Having dealt with where people work, what about how they work?

Fluctuating demand for services across different departments in a firm is a predictable consequence of uncertainty. Micromanagement can help with the day-to-day challenge, but is not always practical or desirable. Case management built into modern software systems provides a more robust, longer-term response to this challenge. Matters can be run end-to-end, using a single platform with everything in one place, with guidance, supervision and compliance checks built in.

- **In busy scenarios:** A solicitor focuses on the elements that need most care and attention with administrative tasks automated, leaving more time to take on more cases. The system generates prompts, reminders and messages to keep the case progressing.
- **In quieter scenarios:** Case management substitutes for repetitive tasks and administrative duties, allowing fewer staff to deliver the same or greater level of service.

Returning to the theme of leadership. The examples above illustrate the efficiency gains that can be made. But people will make it happen. Firms that adopt these working practises will undoubtedly have happier and more motivated staff if micromanagement can be avoided and, in turn, a more efficient and productive business.

Deborah Edwards,
COO, Insight Legal

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

ADMINISTRATION OF JUSTICE

MARGARET DACK V MINISTRY OF DEFENCE
Appeal by the plaintiff in relation to an order of the Master staying the plaintiff's proceedings for damages for negligence. – whether the defendant has not established that Northern Ireland is not the natural or appropriate forum and that there is another available forum which is clearly or distinctly more appropriate than the Northern Irish forum. – *forum non-conveniens.* – HELD that appeal allowed and stay removed on proceedings in Northern Ireland
HIGH COURT
8 FEBRUARY 2016
BURGESS J

IN THE MATTER OF AN APPLICATION BY FINE POINT FILMS AND TREVOR BIRNEY FOR JUDICIAL REVIEW
Circumstances in which police can use the *ex parte* procedure contained in the Police and Criminal Evidence (NI) Order 1989 to obtain a search warrant in respect of journalistic material. – applicants, who are journalists, seek orders quashing warrants authorising the search of homes and business premises. – whether *ex parte* hearing fair. – Judge was not advised that a.10 ECHR rights were engaged nor was he advised that a warrant such as the one sought could only be justified by an overriding requirement in the public interest. – HELD that hearing fell short of the standard required to ensure the hearing was fair and warrant quashed
HIGH COURT
10 JULY 2020
MORGAN LCJ, TREACY LJ, KEEGAN J

R V SHAUN MCCAUGHEY
Appeal against verdict and sentence. - appellant convicted of wounding. – whether the Court is competent to decide all aspects of the appeal and to exercise all of its powers notwithstanding the absence of any decision on leave to appeal by a single judge under s.44 Criminal Appeal (NI) Act 1980. – application for extension of time to appeal. – HELD that appeal is devoid of merit and refused
COURT OF APPEAL
18 AUGUST 2020
MORGAN LCJ, MCCLOSKEY LJ

CONTRACTS

FLEXIDIG LIMITED V M&M CONTRACTORS (EUROPE) LIMITED
Construction dispute. - application to enforce an adjudication award determining that the plaintiff sub-contractor should pay the main contractor ("defendant") a sum of money and adjudicator fees in respect of various disputes arising out of a sub-contract entered into between the defendant and plaintiff. – whether the adjudicator was entitled to make the award he did. – standstill agreement. – estoppel by convention. – impecuniosity. - HELD that the adjudicator erred and was not entitled to award any sum on account for work to be carried out since the contract did not permit the recovery of prospective costs on account. – Court ordered that a reduced sum be paid by the plaintiff
HIGH COURT
2 DECEMBER 2019
HORNER J

QMAC CONSTRUCTION LIMITED V NORTHERN IRELAND HOUSING EXECUTIVE
Plaintiff has made two applications to enforce two awards by way of summary judgment made by an adjudicator. – whether the adjudicator had erred in his calculation of interest and/or the award of interest constituted a penalty. – current financial position of the plaintiff. – HELD that plaintiff is entitled to summary judgment with a stay of execution directed
HIGH COURT
30 APRIL 2020
HORNER J

CRIMINAL LAW

R V RICHARD SAMUEL HAZLEY
Appeal against conviction and sentence. - applicant convicted of 14 counts of indecent assault on a male and was sentenced to two years in custody and two years on probation. – whether to extend time as regards the application for leave to appeal against conviction. – whether the permit the amendment of the applicant's grounds of appeal. – whether the verdict is safe. – credibility of the applicant's evidence. – whether a *Makanjoula* or care warning ought to have been included by the judge in his charge to the jury. – whether the judge ought to have but failed to direct the jury in relation to bad character evidence. – HELD that conviction safe, application to extend time refused and application to amend the notice of appeal refused
COURT OF APPEAL
10 AUGUST 2020
STEPHENS LJ, TREACY LJ, MCCLOSKEY LJ

IN THE MATTER OF AN APPLICATION BY STEPHEN HILLAND FOR JUDICIAL REVIEW
Applicant received two consecutive prison sentences and was released on licence. – Department of Justice revoked the licence on the basis that the risk of harm to the public had increased significantly. – statutory scheme under the Criminal Justice (NI) Order 2008 ("the Order"). – consideration of the recall provisions by the Northern Ireland Courts. – test applied by the Department of Justice. – difference of treatment under the order between a Determinate Custodial Sentence ("DCS") as opposed to those serving an Indeterminate Custodial Sentence ("ICS") and an Extended Custodial Sentence ("ECS"). – whether this difference is a breach of a.5 and a.15 ECHR. – HELD that the Court concludes that for the purposes of this application DCS prisoners are not in an analogous situation to ECS and ICS prisoners, and if they were that difference in treatment is justified. – application for judicial review refused
HIGH COURT
18 MARCH 2020
COLTON J

DAMAGES

IAN MAURICE MAGEE V KENNETH AND JOCELYN STEWART
Plaintiff was injured while at work on the farm of the defendants. – whether the defendants are liable to pay damages in respect of the accident and whether any damages payable by the defendants should be reduced by the contributory negligence of the plaintiff. – conflicting evidence. – assessment of witness credibility and evidence. – HELD that the plaintiff's claim in common law negligence against the defendants had been made out and damages will be reduced by 25% for contributory negligence on the part of the plaintiff

HIGH COURT
11 SEPTEMBER 2019
MAGUIRE J

FAMILY LAW

IN THE MATTER OF DAWN AND MEG (MINORS) (APPEAL: PRACTICE AND PROCEDURE: OBLIGATIONS POST CARE ORDER)
Appeal against decision of Family Care Centre Judge. – whether the trial judge was wrong in all the circumstances of the case in finding the threshold criteria and approving a care plan for permanence via adoption at the stage the proceedings. – HELD that the Family Care Centre Judge was not wrong and appeal failed and post care planning routes summarised
HIGH COURT
16 JULY 2020
KEEGAN J

IN THE MATTER OF J, M, R, (MINORS) (FREEING FOR ADOPTION: JURISDICTION: BRUSSELS IIR: VIENNA CONVENTION)
Preliminary issue of jurisdiction in the context of an application to free three children for adoption. – applicability of Article 15 of Brussels IIa ("the Regulation"). - whether Northern Ireland should retain jurisdiction in relation to the case given that the parents of the children are Slovakian. – whether the Regulation applies to freeing for adoption proceedings. – grounding of jurisdiction. – requirements of the Vienna Convention on Consular Relations. – HELD that the Regulation does not apply to an application to free a child for adoption, that the Court has jurisdiction to hear the freeing application and that it is appropriate to notify the Slovakian authorities in accordance with the Vienna Convention.
HIGH COURT
31 JULY 2020
KEEGAN J

IN THE MATTER OF A CHILD KIM (ORDER OR NO ORDER: ARTICLE 3(5))
Applicant mother applies for a residence order and an order defining conduct in relation to a child who is 5 years old. – court must consider making an order unless making a no order is in the best interests of the child. – HELD that a residence order is made in favour of the mother and an order made defining contact arrangements
HIGH COURT
26 JUNE 2020
KEEGAN J

IN THE MATTER OF ORLA AND MARTIN (2) (SHARED PARENTING: BREAKDOWN)
Breakdown in shared parenting resulting in the need for specific issue orders. – HELD that the 16-year-old girl have an order made that the mother is to notify the father in writing without delay of any significant injury, trauma, illness or inpatient hospitalisation of his daughter and vice versa. – similar specific issue order made for the 13-year-old boy with an additional order that the Educational Welfare Service be engaged for him
HIGH COURT
10 JANUARY 2020
O'HARA J

IN THE MATTER OF AN APPLICATION BY JR118 FOR JUDICIAL REVIEW
Whether a court can extend the date to which a non-molestation order ("NMO") takes effect. – Family Home and Domestic Violence (NI) Order 1998 ("the Order") allows for orders to be "varied". – District Judge interpreted this as varied except by extending its duration. – whether the court has the power vary an NMO by extending the date to which it has effect under the provisions of the Order. – HELD that declaration made that a.24 of the Order empowers a court to vary an NMO by extending the date to which it has effect. – case remitted to a different District Judge for consideration
HIGH COURT
20 JULY 2020
O'HARA J

IN THE MATTER OF KW
Application for costs following withdrawal of proceedings. – costs in family proceedings. – whether the Trust took an unreasonable stance in pursuing proceedings. - HELD that there should be no order as to costs made against the Trust
HIGH COURT
21 JULY 2020
KEEGAN J

IMMIGRATION

IN THE MATTER OF AN APPLICATION BY OMAAR ISMAIL
Appeal against refusal of application for asylum. – whether the Secretary of State satisfied the requirements of the anxious scrutiny test in respect of the evaluation of the facts. – HELD that an order of certiorari made quashing the impugned decision of the Secretary of State and matter referred back for reconsideration by a different decision-maker
HIGH COURT
7 OCTOBER 2019
COLTON J

JUDICIAL REVIEW

IN THE MATTER OF AN APPLICATION BY RYAN TAYLOR FOR JUDICIAL REVIEW
Ruling in relation to interim relief based on delays in determining a claim for judicial review. – procedural challenges posed by Covid-19 and relevant legal principles in relation to interim relief in public law cases. – interim relief in judicial review of benefits
HIGH COURT
22 JUNE 2020
FRIEDMAN J

NEGLIGENCE

HUGH BURGESS V JOHN BURGESS
Plaintiff claims damages sustained a result of the negligence, breach of contract and misrepresentation of the defendant in or about his performance of settlement terms arising out of a High Court action. – parties are brothers who were required to enter into terms of a settlement. – one brother failed to do so within the required time resulting in a bankruptcy order being made against the brother who had met his terms of the settlement. – terms of the settlement agreement. – HELD that the settlement has not bestowed on the plaintiff any contractual right to enforce proceedings against the defendant
HIGH COURT
11 MAY 2020
MAGUIRE J

SOCIAL SECURITY

IN THE MATTER OF AN APPLICATION BY LORRAINE COX FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
Applicant is challenging the legislative requirement that claimants who apply for Universal Credit ("UC") and Personal Independence Payment ("PIP") on grounds of terminal illness must demonstrate that death can reasonably be expected within six months. – whether this is incompatible with the applicant's a.14 ECHR rights. - applicant was diagnosed with Motor Neurone Disease. – whether the Special Rules on Terminal Illness ("SRTI") are discriminatory from the perspective of an individual who has been diagnosed as suffering from a terminal illness but it is not possible for a clinician to state that the reasonable expectation is that the individual will be dead within 6 months either because it is impossible to estimate life expectancy or because life expectancy is greater than 6 months. – applicant refused PIP and was ismaiassessed as having limited capacity for work and work-related activity. - applicant seeks declarations that these decisions are incompatible with a.14 ECHR. – whether the circumstances fell within the ambit of more than one Convention right. – HELD that leave granted and the applicant succeeds in her application for judicial review
HIGH COURT
7 JULY 2020
MCALINDEN J

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