

# THE WRIT

THE LAW SOCIETY  
OF NORTHERN IRELAND



THE JOURNAL OF THE LAW SOCIETY  
OF NORTHERN IRELAND

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## THIS ISSUE

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welcomes its  
new President,  
Ian Huddleston



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Developments in mediation

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Comparing and contrasting  
Northern Ireland with England  
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A quick guide



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THE **LAW SOCIETY**  
OF NORTHERN IRELAND



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The Law Society of Northern Ireland has welcomed Mr Ian Huddleston as its new President.

"It is a privilege and an honour to take up the presidency of the Law Society of Northern Ireland.

"During my Presidency I will seek to promote the solicitor profession and the important role it plays in the economy and significant contribution it makes to the community in Northern Ireland.

"I will work to ensure that the Law Society remains at the forefront of justice issues in Northern Ireland working on behalf of our members and in the public interest."

Mr Huddleston is originally from Downpatrick and studied Law at Queen's University Belfast before undertaking a Master's Degree in Commercial Law at Bristol University.

After completing his apprenticeship with Murlands Solicitors in Downpatrick he was admitted to the Roll of Solicitors in Northern Ireland in 1991 and subsequently to the Roll of Solicitors in England and Wales in 2010.

Following his apprenticeship Ian began working for L'Estrange & Brett and was heavily involved with the management of that firm prior to its mergers.

Ian advises in relation to all aspects of real estate law but with a particular emphasis on complex development work and the development of strategic property solutions for both public and private sector clients.

He has advised on a number of major large regeneration initiatives and developments throughout Northern Ireland.

Ian also advises private clients and business

owners on the structuring of their assets and the use of corporates, trusts and partnerships as part of that and to deal with succession issues.

He is also actively involved in the area of charity law and philanthropy.

He has been named in *Chambers UK Guide to the Legal Profession* for a number of years as a "leader in the field" for both for his real estate and private client practice where he is described as "a pragmatic lawyer who is great at keeping on top of loose ends and getting a deal across the finishing line".

Ian has an interest in legal education and is the outgoing chair of the Law Society's Education Committee although he remains a member and also sits on the Council of Legal Education.

He is a member of the Global Council of the Society of Trust and Estate Practitioners and a Committee Member of the Northern Ireland Branch.

He is a board member of a number of large companies and charities and is on the Board of Giving NI – a body set up to encourage philanthropy in Northern Ireland.

Ian became President of the Law Society of Northern Ireland on Wednesday 30 November 2016.

His chosen charity of the year is Marie Curie.

*The new Presidential Team: Ian Huddleston, President; Eileen Ewing, Junior Vice President; John Guerin, Senior Vice President and Alan Hunter, Chief Executive.*





## Mediation matters

*In this article Brian H Speers Solicitor, Mediator and Chair DRS comments on developments in mediation.*

### Introduction

There have been significant developments in the world of mediation in recent times and this short article identifies some of these developments. Solicitors should consider undertaking training in mediation given the prominence that the role of resolving disputes is going to take if the current trends and direction of travel have been correctly identified.

### The Gillen Review

Many colleagues will know of the Gillen Review of Civil Justice. It is recommended that everyone practising litigation should read in particular chapter 9 of the Gillen Draft Review in which a reflection of the position of mediation in the civil justice system is undertaken. It seems to me quite clear that Lord Justice Gillen expects mediation to continue to play a significant role in civil justice. There is to be every encouragement given as a matter of court practice and procedure that mediation and attempts at resolution of cases should be attempted. It seems likely that the courts and the judiciary will make enquiries from all participants in litigation before the courts whether or not they have addressed their obligation to seek to resolve matters.

### The position in Ireland

This obligation to consider resolution is going to be enhanced in my opinion by the likely passing of the Mediation Act<sup>1</sup> in the Republic of Ireland. This piece of legislation has been prepared in draft ready for enactment for some time. Recent indications suggest that it will be enacted soon and it is a most comprehensive and influential piece of legislation.

Among the matters it will enact is an obligation on all solicitors and barristers to advise clients of the availability of an option to mediate cases. If the lawyers do not advise it seems likely that they will have breached their legal obligation giving rise of course to potential liability.

This should bring about a change of attitude in dispute practitioners as they will no longer

only present adversarial communication and pleadings but will in fact be expected to advise their clients of the availability of mediation. One can predict with certainty that many clients will take up that opportunity. This will mean that lawyers will have to become more accustomed to assisting clients within the mediation process and of course for lawyer mediators it is likely to give rise to a greater demand for their services.

### The EU Mediation Directives

If our immediate neighbour in the Republic of Ireland is influential then there is further and significant influence from Europe. Many will be aware of the European Mediation Directive<sup>2</sup> which requires all member states to make information about mediation known to its citizens and also requires member state governments to make court rules susceptible to the involvement of mediation. While stopping short of making mediation mandatory prior to accessing courts, nonetheless the Mediation Directive has created a climate where increased reference to mediation and increased numbers of mediations have taken place.

### The EU Consumer Mediation Directive

Of particular significance to all law firms is the coming into force of the European Consumer Mediation Directive.<sup>3</sup> This Directive requires all those providing goods or services to consumers to offer consumers in the case of a dispute the option of mediating. Similarly, all providers of goods and services to consumers must make it known to the consumers when a dispute arises that they have selected a mediation provider which may, if they and the consumer agree, be used to assist to resolve the dispute.



This EU Consumer Directive applies as equally to law firms and architects as it does to car salesmen and electrical white goods suppliers which might more readily be understood to involve the provision of goods and services to consumers.

Accordingly law firms must include in their Terms of Engagement letter to clients an indication of who that firm would select as an ADR provider.

The ADR provider must be accredited by the Chartered Trading Standards Institute. Until very recently there was no ADR provider accredited in Northern Ireland. However the Dispute Resolution Service (DRS) which is a mediation service whose members comprise mediation trained barristers and solicitors has recently been accredited in full by the Chartered Trading Standards Institute. The DRS is now the only accredited mediation provider for consumer disputes in Northern Ireland. All law firms should therefore consider including within their Terms of Business reference to the DRS as the ADR provider of choice should clients have disputes.

The EU Directive does not compel either the customer or the service or goods provider to use mediation but where both parties agree then the DRS has terms and conditions available to the consumer to enable a dispute to be addressed by mediation free of charge to the consumer.



#### The DRS

The DRS has made considerable progress in other respects. The IPLS mediation training course, recognised by the DRS as amounting to approved training, was once again delivered in the autumn of 2016 and the photograph on page 8 shows the class of 2016 at its final session. It is notable that among those who have recently undergone training are a variety of solicitors working in-house, in private practice and in government service. In addition senior and junior counsel have undertaken the training as have some members of the judiciary who have recently retired.

The pool of talent now available within the membership of the DRS provides a cohort of legally trained Mediators who can be selected to assist parties who have a dispute.

#### DRS mediation

The type of mediation that DRS Mediators offer is entirely compliant with accepted definitions of mediation, both in accordance with the original EU Mediation Directive and in accordance with the EU Consumer Mediation Directive. It similarly complies with the Code of Conduct for European Mediators and the DRS' own Code of Conduct. These require a form of mediation which might be described as 'broadly facilitative'.

This means that the Mediator will engage with the parties to the dispute through listening attentively, will gain an understanding of the interests of the parties and may then explore options for resolutions and discuss options where authorised with the other party. Many colleagues will have experienced something called mediation but which does not really reflect the broadly facilitative



approach that mediation is expected to deliver. Mediation is not about lawyers meeting to enable the lawyers to resolve matters between them and then announce the position to their clients. Mediation is client centred, client involved and the Mediator acts as a facilitator of a dispute. This of course does not mean that the Mediator cannot be forthright, robust and strong in challenging any stubbornness, encouraging the parties to be flexible in their position or to justify their position but it is far cry from either telling clients what to do or simply refereeing between counsel who may have been retained.

### DRS documents

Readers of this article are encouraged to go to the DRS website [www.mediatorsni.com](http://www.mediatorsni.com) and review the standard form of agreement, the fee structure, the Code of Conduct and consider the profiles of DRS members.

Anyone wishing to become a member of the DRS should note the application form and should further note that training of an approved nature must be undertaken. Details of the next Institute of Professional Legal Studies mediation course are on page 8.

### Cases

There have been a number of interesting cases in the past couple of years. Of perhaps the most significance is the case of *PGF v OMFS*.<sup>4</sup> This case was taken to the Court of Appeal in England and Wales and gave an opportunity for a detailed consideration of the state of mediation in England and Wales to be undertaken, particularly in light of the seminal *Halsey* case<sup>5</sup> (*Halsey v Milton Keynes National Health Trust*).

Some colleagues will recall that Lord Dyson contributed a paper to a conference entitled *Mediation Across the Commonwealth* in June 2014 to coincide with the 10th anniversary of the original judgment in the *Halsey* case. This conference, organised jointly between the Law Society, the DRS and the Commonwealth Lawyers' Association, received Lord Dyson's paper in which he emphasised that the voluntary nature of mediation still remained and the court should not compel it. However the court should continue to robustly encourage mediation. What the *PGF* case addressed was a party who ignored the suggestion made by the other party that mediation should be undertaken. There was no actual refusal to mediate as there

had been in *Halsey*, simply an ignoring of the suggestion. In the *PGF* case this proved extremely damaging for the party who had ignored an invitation to mediate and who was ordered to pay costs on the basis that ignoring a request to mediate was tantamount to an unreasonable refusal.

### Mediator clauses

It is worth considering that mediation arises from a contractual agreement to mediate. I suggest that a mediation clause in a contract should be fairly straightforward – perhaps 'in the event of any dispute arising concerning the terms of this agreement, the parties agree to mediate the dispute in accordance with the terms in force from time to time of the Dispute Resolution Service administered by the Law Society of Northern Ireland.'

However a less precise clause was used in the case of *Emirates Trading Agency LLC v Prime Mineral Exports Private Limited*.<sup>6</sup> In this case the clause agreed between the parties to a contract was that the parties 'shall first seek to resolve the dispute or claim by friendly discussions'. Many might think that this clause would be unenforceable simply on the basis that it was nothing more than an agreement to agree which were traditionally not recognised by the English Courts. However the Judge in the *Emirates Trading* case decided that he was not bound by previous cases and that this clause was enforceable as it was consistent with the public policy 'of encouraging parties to resolve disputes without the need for expensive arbitration or litigation'. It is suggested that this case simply points with even greater clarity to the direction of travel for civil disputes. Put bluntly it is that all practitioners need to be aware of the expectation that they should resolve cases, that they should respond to invitations to meet; they should make a proposal for mediation and that the mediation process should be one in which they are skilled.

### Types of cases suitable for mediation

Mediation has in my experience been used in a wide range of cases and more often than not very successfully. Inheritance cases and cases involving partnerships or minority shareholders or disputes within Boards of Directors are all ideal for mediation. Cases involving allegations of breach of contract and claims for compensation or damages again lend themselves well to mediation. I have mediated cases involving difficulties arising from hospital treatment or lack of

treatment or lack of aftercare and once again these have proved extremely fertile ground for imaginative solutions based around listening attentively to the interests and concerns of the complaining party and addressing those in an empathetic manner.

### New mediation possibilities

The devolution of planning powers to local councils has also brought with it the need for community consultation for planning schemes above a certain threshold. Public consultation meetings can often be fractious and difficult to manage and a good lawyer Mediator could prove to be a very successful and useful Chair for such meetings. Negotiating a joint venture agreement involving a number of parties will require mediative qualities to listen to the needs and requirements of each of the protagonists but to give confidence that you are achieving an agreement which best reflects the agreement requirements of the parties.

### Conclusions

In conclusion it seems to me that lawyers whether solicitors or barristers, although this is primarily addressed to solicitors, will need to know what mediation is, will need to have the skills to assist clients who are participating in a mediation and may also wish to become trained in mediation and offer their services as Mediators.

All the signs suggest whether decided cases within the United Kingdom, the legislation in the Republic of Ireland, the EU position or the approach in the common law nations of the world, that disputes are expected to be handed in a less adversarial way, with a more consensus based approach and resolved outside of court.

Clients and lawyers can all find the law through internet searches or through sophisticated subscription sites. What technology however cannot replicate is the need to persuade, to influence and to succeed in the presentation of your case. These skills are what the solicitors require. Those skills are often met by a mediative approach learned through training. We have come far but yet have much further to go.

<sup>1</sup> *Mediation Bill 2012.*

<sup>2</sup> *2008/52/EC*

<sup>3</sup> *2013/11/EU*

<sup>4</sup> *PGF II SA v OMFS Company [2012] EWHC 83 (TCC)*

<sup>5</sup> *Halsey v Milton Keynes General NHS Trust [2004] EWCA 3006 Civ 576*

<sup>6</sup> *[2014] EWHC 104*

## New mediators - the class of 2016



*Pictured with trainers Brian Speers, Alva Brangam QC and David Gaston are lawyers who completed the Mediation Training Course at the Institute of Professional Legal Studies in October 2016.*



Queen's University  
Belfast

### Institute of Professional Legal Studies Mediation Course – Register interest

The Institute of Professional Legal Studies (IPLS) at Queen's University invites registrations from solicitors, barristers and members of the Judiciary wishing to attend a Mediation Training Course in Autumn 2017.

The IPLS mediation course offers training in civil and commercial mediation and comprises 40+ hours including training, private study, lectures, practical exercises, reflective learning

and group study over an 8 week period. The course includes assessment feedback to all participants. This is the longest established lawyer's mediation training course in Northern Ireland.

The course will run for **8 evenings** each Wednesday from early September until end October at IPLS Lennoxvale, Belfast. There will also be an all day Saturday programme on 21st October.

The course is delivered by experienced local practitioners:-

- Brian Speers, Solicitor, Mediator
- David Gaston, Solicitor, Mediator
- Alva Brangam QC Mediator

Additional local legal practitioner mediators (solicitors and barristers and Judges) support the formal lectures and tutorial input.

Attendance at the course will allow an application to be made for inclusion on the Law Society Dispute Resolution Service (DRS) mediator's panel. Participation and completion of the course is accepted as approved training for purposes of the DRS and the Bar Mediation panels.

The nature of the course means that the maximum numbers attending is restricted and anyone interested is asked to apply **immediately**. The course is open to solicitors and barristers with 5 years post qualification experience and to members of the Judiciary. The cost will be **£1,950.00** per person. This compares extremely favourably with mediation training course fees offered by other providers.

If you wish to take up a place please contact Fionnuala McCullagh-O'Kane of **Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY. Tel. No. 028 9097 6521 or [F.McCullagh@qub.ac.uk](mailto:F.McCullagh@qub.ac.uk)**



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*In this article Sheena Grattan, TEP, Barrister-at-law of the Bar of Northern Ireland and of the King's Inns, Dublin compares and contrasts family provision legislation in Northern Ireland and England & Wales.*

### **General assimilation between the jurisdictions**

Northern Ireland followed England and Wales in opting for a discretionary system of family protection, in contrast to the fixed elective share system that protects spouses in the Republic of Ireland. The governing legislation in this jurisdiction remains the Inheritance (Provision for Family and Dependents) (NI) Order 1979 ("the 1979 Order"), which is, for the most part, identical to the Inheritance (Provision for Family and Dependents) Act 1975 ("the 1975 Act"). Indeed, the overwhelming desire for parity with our larger neighbouring jurisdiction clearly influenced the work of the Committee on Family Provision in the 1950s. In the report that preceded the enactment of the seminal Inheritance (Family Provision) Act (NI) 1960, it observed that:

"...owing to the size of the community in Northern Ireland there are never likely to be any Northern Ireland textbooks on the subject and very few reported cases...so [we] recommend that if legislation is introduced...it should follow the Inheritance (Family Provision) Act 1938..." (Report of the Family Provision Committee, Cmd (NI) 330 (1953) at para 37)

Prior to devolution, the piecemeal statutory amendments that were made to the 1975 Act duly followed in Northern Ireland. For

## **Family Provision: comparing and contrasting Northern Ireland with England and Wales**

example, the Northern Ireland equivalent to the Law Reform (Succession) Act 1995 (which introduced the separate cohabitation category (ba)) is the Succession (NI) Order 1996.

### **Recent reform in England and Wales**

Unfortunately, it is now all too evident that the Northern Ireland Assembly will not be responding so quickly in future. In England and Wales there have been several significant changes made to the 1975 Act by the recent Inheritance and Trustees' Powers Act 2014 ("the 2014 Act") but it would appear that there are as yet no plans to amend the 1979 Order accordingly. One hopes that Northern Ireland trusts and estates law is not in for a long period of stagnation, now that it is back on the law reform agenda elsewhere in the United Kingdom and has already been under the microscope of the Law Reform Commission in the Republic of Ireland.

The main changes introduced by the 2014 Act in respect of the family provision jurisdiction (other equally important amendments made by the legislation relate to the intestacy rules and certain statutory powers of trustees including maintenance and advancement) include a change in the definition of a child of the family (category (d) applicants); a change in the definition of a person being maintained by the deceased (category (e) applicants) and express clarification that the hypothetical divorce yardstick is neither the upper nor lower limit with surviving spouse applicants.

It hardly needs stating that Northern Ireland practitioners will now have to be alert to the fact that the law is different in a number of potentially significant respects when referring to English reference material on the family provision jurisdiction.

### **A longstanding difference – time limits and joint tenancy property**

Of course, the 1979 Order has never been a precise mirror image of its English equivalent. In particular, there has always been one very significant difference between the two statutes that can present a very large elephant trap for the unwary Northern Ireland practitioner.

Applications under the 1979 Order must be made within six months of the date on which the grant of representation is first taken out, unless the leave of the court is obtained. This is the same as the primary time limit in England and Wales and the English jurisprudence on discretion to extend time is often relied upon in submissions in the Northern Ireland Chancery Division. So far, so good, but that is not the end of the matter if one is dealing with joint tenancy property.

Any award under the 1979 Order is ordinarily made out of the "net estate" of the deceased, a concept that is defined by article 2(2). However, article 11 gives the court power to widen the estate artificially by including the deceased's notional share in joint tenancy property, thereby effectively clawing back all or part of the deceased's notional "share" in joint tenancy property into the net estate in order to fund an award. Significantly, however, there is no power to extend the primary time limit. A similar power to utilise a deceased's "share" of joint property is given to the Court by section 9 of the 1975 Act. However, there is a very significant difference in the Northern Ireland legislation. In England the sole time limit is the usual six months from the grant of representation. In Northern Ireland, by contrast, the time limit is EITHER the standard six months from the grant of representation OR 18 months from death, whichever is sooner. An applicant can therefore be statute-barred from effectively making a claim (eg if the only wealth released by death was held on joint tenancy) before the grant of representation has even been extracted.

It is therefore imperative that Northern Ireland practitioners are alert to the possible existence of joint tenancy property from the outset and do not overlook this alternative time limit.

*NOTE: A longer article by Sheena Grattan on various time issues arising out of the family provision jurisdiction was published in Issue 2/2014 of Folio (Law Society of Northern Ireland, 2014). To obtain back copies of Folio or to subscribe to the journal please contact Deborah McBride at the Law Society Library (deborah.mcbride@lawsoc-ni.org).*

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## Post-Brexit property dilemmas

By Chris Taylor,  
Chief Executive Officer,  
Titlesolv

The post-Brexit property market in Northern Ireland is proving to be fairly unpredictable, with all involved taking precautionary steps to guard themselves against any potential longer-term fallout.

Following a reasonably steady recovery in the wake of the recent recessionary climate, the housing market had shown signs of slowing in the months leading up to the referendum as uncertainty impacted the market. The result certainly did not improve its fortunes. Perhaps unsurprisingly in the aftermath of the referendum result, the FT reported that UK homebuyers were now “assessing the potential impact of the vote on house prices”.

As a result of the referendum, some mortgage brokers and estate agents noted that a small proportion of Northern Ireland buyers were pulling out of transactions due to concerns over negative equity, with commentators also predicting a house price readjustment. Although Northern Ireland avoided the worst of the post-Brexit slowdown, these perceptions were confirmed by a survey conducted by RICS, which reported “clearly dampened sentiment”

in the Northern Ireland market following the referendum result.

In response, a base rate cut by the Bank of England had been predicted in order to tackle what *The Guardian* called the “Brexit crisis”. In the event the Bank decided to keep to the current rate of 0.5%, only to cut it to 0.25% a couple of months later.

As shares in housebuilders and banks were falling amidst this “crisis”, the Bank’s Governor, Mark Carney, commented that “some monetary policy easing will likely be required over the summer”. This remark of course came after the Bank had already relaxed banking sector rules to free up lending to households and businesses.

In addition to these actions the Bank is also monitoring a number of sectors, including the buy-to-let lending and commercial property markets.

The latter has seen a number of major funds take steps to stop nervous investors from withdrawing their investments; a move that could force funds to sell off properties at a loss. Reports in *The Times* suggested that up to £5 billion worth of property assets in the UK would need to be sold to satisfy the potential flood of redemption requests by investors. Property funds worth up to £18 billion stopped trading after the Brexit referendum result. These included Standard Life, Aviva and L&G; the majority doing so for 28 days.

Investor concerns about the long-term forecast for property are understandable and there

is certainly less of an appetite to undertake any large purchases or developments. A prominent example of this was when the *Belfast Telegraph* reported that the sale of the Sirocco site in east Belfast, due to be developed in a £300m project, was under threat due to Brexit uncertainty. In addition, it was also confirmed that one developer had shelved plans to build a large office building in Belfast city centre.

Whilst it is true that the drop in the value of the pound has made the domestic property market more attractive to foreign investors, the current nervousness surrounding asset values is likely to continue at least for the short term. It is also likely that transaction volumes will be affected.

In a post-Brexit market, title insurance will play a vital role in bolstering the attractiveness of assets. When assets are sold, this protection mitigates risks and ensures otherwise uncertain transactions are completed in a timely and efficient manner. Wherever warranties are required but not obtained on portfolio sales, tailored insurance solutions provide a purchaser with confidence and reassurance. Similarly, any foreign investors holding off on buying in the UK will be comforted by the absolute guarantee that title insurance provides.

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## Attention all conveyancing practitioners

The Housing Executive wishes to remind all Solicitors who act in conveyancing transactions on behalf of either vendors or purchasers of former Housing Executive properties of the following matters affecting such transactions:

1. **Repayment of discount** - a subsequent sale or disposal of any house or flat **within five years** of purchase from the Housing Executive **normally** requires repayment of discount and removal of the charge affecting the property except where that disposal is exempt under the terms of the relevant house sale deed.
2. **Option to purchase** - a subsequent sale or disposal of any house or flat **within ten years** of purchase from the Housing Executive always requires **prior** notification to the Housing Executive by the then owner of the proposed disposal so that the Option to purchase can be considered and cancellation of the charge affecting the property.

3. **Flats and maisonettes** – if the property being sold or disposed of is a flat or maisonette there is always an obligation for leaseholders to notify the Housing Executive of any such transfer or change in ownership. This is necessary in order to maintain proper and effective management of such properties and ensure that service charges and other charges are properly accounted for and applied to the correct owner or former owner in any subsequent change of ownership and constitutes good conveyancing practice. In particular, Covenant 9 of Schedule 3A of the Northern Ireland Housing Executive Flat Lease imposes a requirement on a leaseholder to notify the Housing Executive in writing within one month of any transfer of a Lease or other instrument evidencing a devolution of title (including Probate or Letters of Administration) and requires payment of a £10 administration fee when doing so.

### Requirements

In acting on behalf of a leaseholder, under a Housing Executive Flat Lease, or on behalf of a householder of a former NIHE property selling or disposing within 10 years of the original purchase, please provide the following information to the office listed below:

1. Date of sale or transfer of property
2. Name(s) of new owners and correspondence address (if applicable)
3. Forwarding address of vendor/transferor
4. Remittance for the required £10 fee (where applicable) made payable to NIHE

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**The Leasehold Unit**  
**Northern Ireland Housing Executive**  
**2nd Floor**  
**2 Adelaide Street**  
**Belfast BT2 8PB**

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### Northern Ireland Chest Heart & Stroke

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

**In Northern Ireland almost half of all adult deaths are caused by chest, heart and stroke illnesses.** NICHs are working to change this through funding research and caring for those who are

affected by devastating health conditions every day. A gift to NICHs in a client's Will could be invested in critical local research that will help change the future for families at risk from our biggest killers.

**The smallest investment can lead to the biggest breakthrough.** For advice on leaving a legacy to NICHs and more information on our life-saving work, please contact us on 028 9032 0184.

To see how our Medical Research Programme has already supported groundbreaking projects, please visit our website [www.nichs.org.uk](http://www.nichs.org.uk)



**Chest  
Heart &  
Stroke**



*In this article Louise Maguire BL considers the measure of damages available to a plaintiff who has sustained asymptomatic pleural plaques as a result of exposure to asbestos. Louise is a junior barrister practising in civil litigation, with a particular interest in personal injury law.*

## Introduction

This is the first case, since the coming into operation of the Damages (Asbestos-related Conditions) Act (Northern Ireland) 2011, in which a court in Northern Ireland has had to consider the proper measure of damages to be awarded in circumstances where a person has developed asymptomatic pleural plaques as a result of tortious exposure to asbestos.

Pleural plaques are areas of fibrous thickening of the membrane surrounding the lungs caused by the inhalation of asbestos fibres. In the majority of cases a person with pleural plaques does not experience any symptoms or functional impairment; nor does their presence increase the risk of developing any other asbestos-related condition or alter a person's life expectancy.

The absence of symptoms and risk led the House of Lords, in *Johnston v NEI International Combustion Ltd; Rothwell v Chemical and Insulating Co Ltd* [2007] UKHL 39, to unanimously hold that pleural plaques do not cause any appreciable harm or damage and therefore do not give rise to a claim in tort. Thus the plaintiffs, who had sustained pleural plaques unaccompanied by functional impairment, could not establish any compensatable harm and were therefore

# Damages for Asbestos-related conditions

Carol McCauley as personal representative of the Estate of William McCauley (deceased) v Harland and Wolff PLC and Royal Mail Group Limited [2015] NICA 28

not entitled to damages for personal injury. Nor were they entitled to damages for the stress and anxiety arising from the diagnosis, since the success of such a claim depends on the existence of physical harm or recognised illness.

The decision in *Rothwell* was a controversial one, and, as was noted in *McCauley*, its effect was to deprive a large number of individuals of compensation. However, in 2011 the Northern Ireland Assembly legislated to reverse the decision. It did this by recognising pleural plaques as a personal injury at section 1 of the Damages (Asbestos-related Conditions) Act (Northern Ireland) 2011. Section 1 is as follows:

'1—(1) Asbestos-related pleural plaques are a personal injury which constitutes actionable damage for the purposes of an action for damages for personal injuries. ...'

This creates a statutory cause of action in circumstances where a plaintiff sustains asymptomatic pleural plaques as a result of tortious exposure to asbestos. Consequently damages are now recoverable for both the pleural plaques as a physical injury and also any stress and anxiety caused to the plaintiff by reason of the diagnosis.

However the question is, what is the scope of damages that can be recovered? And how are they to be assessed? The Act itself says nothing about the quantification of damages and the current edition of the Green Book (2013) is silent on the matter; the only reference to pleural plaques is to those accompanied *with* functional impairment. This absence of guidance is intentional, as the introductory foreword reveals:

'Pending any judicial determination of the correct level of damages in relation to such claims, consequent upon the passing of the 2011 Act the Committee concluded that it would be premature to purport to set out the appropriate levels of awards in relation to

these conditions.'

Thus, the appropriate value to be attributed to a claim for damages for asymptomatic pleural plaques and the means of quantifying this was a matter that was left for judicial determination; it is this question that arose for consideration by the Court of Appeal in *McCauley* as personal representative of the estate of *William McCauley (deceased) v Harland & Wolff PLC and Royal Mail Group Limited*.

## McCauley: facts

The plaintiff in this case was the widow of Mr McCauley. Mr McCauley had worked for Harland and Wolff PLC from 1955-1961 and for Royal Mail Group Limited from 1964-1980, during which time it was accepted by both defendants that he was exposed to asbestos. As a result of this exposure, Mr McCauley developed pleural plaques. These first appeared on a chest x-ray on 2 September 1991, although Mr McCauley was only informed of the diagnosis some twenty years later on 10 February 2012. His death, in 2013, was unrelated to asbestos exposure.

Mr McCauley suffered no symptoms or functional impairment, however once diagnosed with pleural plaques he was caused some anxiety and stress (albeit not an identified psychiatric condition). This is because the existence of pleural plaques in the lungs demonstrates that a person has inhaled asbestos fibres and their presence is therefore an indicator that that person is at risk of developing asbestosis or mesothelioma. In Mr McCauley's case the fear of developing a life threatening asbestos-related disease was compounded by two further matters; firstly, his wife suffered from asthma and Mr McCauley did not like what he saw of the effect that this condition had on her. Secondly, he also knew one man, and knew of others, who had died from asbestos-related conditions.

Thus in *McCauley* the issue for the court was to assess and quantify the damages to be

awarded in respect of the pleural plaques as a physical injury and also in relation to the stress and anxiety caused to the deceased as a result of the diagnosis.

### The Appeal

At first instance, the plaintiff was awarded (as personal representative of the deceased) £10,000 in damages, with the trial judge reverting to the pre-*Rothwell* case law and guidelines on quantum for guidance (allowing for some increase in the range by reference to changes in the retail price index).

The first defendant appealed the decision on the ground that this was not a proper basis upon which to assess general damages. Firstly, because the effect of the 2011 Act was simply to allow the plaintiff to surmount the hurdle of the *de minimis* principle; secondly, because pre-*Rothwell* case law and the Green Books are based on the erroneous proposition that pleural plaques are an injury to health and a significant bodily injury; and thirdly, because any assessment of damages should take account of the judicial reasoning in *Rothwell*.

### Held

The Court of Appeal rejected the appeal, holding at paragraph 28, that although the award of £10,000 was 'at the top of the range of permissible awards' it was 'not so far outside the permissible range' that the court should intervene. However, unlike the decision at first instance, the court did not rely on pre-*Rothwell* case law and guidelines as a means of assessing the value of the plaintiff's claim.

Instead, the court adopted a new approach. Gillen LJ outlined at paragraph 24 that the starting point in any assessment should be a valuation of the physical injury that comprises the compensatable harm – in this case the pleural plaques. Damages for any distress and anxiety caused by the diagnosis should then be added to this valuation in order to arrive at a total figure for recoverable damages. Thus the two elements can and should be assessed separately.

### Physical injury

In order to determine a proportionate valuation of pleural plaques as a physical injury Gillen LJ engaged in an analysis of the damages recoverable for comparable injuries, in particular lung injuries and scarring. He

noted specifically that at one end of the scale, trivial scarring can attract an award in the order of £1,000 and upwards. Whereas, at the other, mild respiratory conditions causing discomfort may attract upwards of £7,500. Damages for smoke inhalation (again causing some discomfort) fall somewhere in between, generating awards of £5,000 and upwards depending on the effect on the lungs.

In light of this analysis the court reached the conclusion that, when considered alone, asymptomatic pleural plaques would attract 'an award in the region of £3,000.'

Despite being 'in the region' of £3,000, this figure appears to be static for a number of reasons. Firstly, the court identified a single figure, rather than a range of figures. Secondly, the court did not provide any guidance or outline factors to consider when determining the appropriate figure in any given case, therefore suggesting that this is the appropriate figure in every given case. Finally, in its evaluation of damages for distress and anxiety the court has provided both a range and specific guidance. Thus, it appears to be a case of one size fits all and therefore it may be difficult to persuade a court to depart from this figure in the future.

Thus, at £3,000, the amount of damages recoverable for the pleural plaques as a physical injury is quite modest and, as Gillen LJ observed, 'cannot be described as significant on its own'. However, at paragraph 24 the court noted that its significance and therefore the quantity of damages recoverable for pleural plaques is heavily influenced by the extent of the anxiety and distress engendered by the diagnosis.

### Damages for Distress and Anxiety

The extent to which it is influenced will depend upon both the degree of anxiety and distress and also the period of time over which it was suffered. For instance, Gillen LJ observed at paragraph 24 that 'in the case of a deceased person who was never aware of the condition and who thus suffered no distress on that count the award must be a very modest one.' He also observed that it would not be unusual for a person, upon receipt of a diagnosis of pleural plaques, to be caused some initial distress and anxiety; at this early stage such feelings would be most acutely felt, however over the passage of time this would wane in the absence of further medical scares.

The court held that (in the absence of evidence of a grave psychiatric illness) it was unlikely that a plaintiff would recover outside the bracket of £5,000-£15,000, regardless of how long the stress or anxiety persisted.

The determination of where each case lies within that bracket should be considered in light of its own particular facts. In *McCauley* it was accepted that the deceased did suffer from anxiety as a result of the diagnosis – an understandable reaction in the circumstances. However the period of anxiety was short and therefore taken into account.

At first instance the plaintiff was awarded £10,000. When one applies the formula laid down by the court on appeal, and in accordance with the above analysis, the award can be broken down into its separate components; £3,000 for physical injury and the remainder – £7,000 – for distress and anxiety.

However, such an assessment of the damages recovered in this case is somewhat artificial for a number of reasons. Firstly, the figure of £10,000 was not generated by the application of this formula, but rather upon an application of pre-*Rothwell* guidelines and case law. Secondly, it was noted by the Court of Appeal to be at the 'top range of permissible awards'. The particular factual circumstances of this case, in terms of the extent and duration of anxiety suffered, should therefore not be taken as indicating those which will always give rise to an award of this value. The case should therefore be treated with caution in this regard.

### Conclusion

In summation, the court outlined that damages for physical injury are valued at £3,000. Damages for distress and anxiety are to be assessed separately and range from £5,000 - £15,000, depending on the extent and duration of suffering. Both components are then added together to determine the total award recoverable.

Thus the decision in *McCauley* is a welcome development in the jurisprudence surrounding pleural plaques. Where the body of pre-*Rothwell* case law and guidance comprised two conflicting schools of thought, the decision brings some much needed clarity to the method by which damages in asymptomatic pleural plaques cases are to be assessed. Although how strictly this formula will be followed in future cases remains to be seen.



*The President of Appeal Tribunals, Mr John Duffy, has requested that the Code of Practice for Tribunal Representatives be published in The Writ. It is also downloadable from the Society's website at [www.lawsoc-ni.org](http://www.lawsoc-ni.org)*

## Introduction

Representatives play a vital role in the working of the tribunal system. The Code of Practice seeks to provide guidance to the many representatives appearing before tribunals. Whilst the Code has no formal statutory basis it is hoped that it will provide a statement of best practice for those providing representation.

### *The Purpose of this Code of Practice is:*

- a) *To explain what Appeal Tribunals expect from representatives both prior to and at hearing.*
- b) *To ensure that representatives use their best endeavours to secure compliance with Directions made by tribunals.*

## Written submission by the Department

A Departmental decision-maker will have prepared a written submission in advance of the hearing. That submission will generally contain much of the evidence relied upon by the decision-maker. It should also include particulars of the decision under appeal and any other relevant decisions, the reasons for the decision(s) and an explanation of how the decision-maker applied the facts of the claim to the relevant law. The submission should also contain a copy of the statutory provisions

# Code of Practice for Tribunal Representatives

and regulations relevant to the decision under appeal.

Currently a copy of the submission is sent to the appellant at the same time as it is sent to the Appeals' Service (TAS). This will usually occur sometime prior to the notice of hearing being issued by TAS. It is important to commence preparing for the appeal and to gather all evidence, including medical evidence, once the submission papers are issued. Representatives are expected to read the submission and to be familiar with it at the hearing. If it becomes apparent to a representative prior to the hearing that an appellant has not received the submission the representative should contact TAS in relation to this well in advance of the hearing. It should not be assumed that an appeal will be adjourned on account of the absence of the submission.

## Written submission by appellant/ representative

Whilst it is not compulsory to do so, it will often be the case that a representative and/or appellant will wish to make a written submission for consideration by the tribunal. Any such submission together with supporting evidence (including medical evidence) should be provided to the tribunal well in advance of the hearing and in all cases not later than SEVEN days prior to the hearing. This will enable TAS to circulate the material to tribunal members prior to the hearing. Copies of any Social Security Commissioners' / Court decisions relied upon should also be provided together with a written explanation of how any such decision(s) may be relevant to the issues in dispute at the hearing.

## The Tribunal hearing

1. Representatives should use their best endeavours to be in attendance at least 15 minutes prior to the allocated hearing time. This will provide ample time to consult with the appellant and view medical notes and records, if available. Representatives should also ensure that appellants are aware of the possibility that an appeal may not always commence at the allocated time due to other pre-listed appeals taking longer than may have been anticipated.

2. The procedure at hearing shall be such as the tribunal chairperson shall determine. This is provided for in Regulation 49(1) of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999.
3. Representatives should be aware that the tribunal members will wish to question appellants and witnesses in order to clarify many aspects of the oral and written evidence provided at hearing and the arguments contained in written submissions provided by the parties. Any medical reports or other written evidence in support of an appellant's appeal shall normally be forwarded to the Appeals' Service not later than SEVEN days prior to the hearing, to facilitate distribution to all parties in advance of the hearing. Representatives should ensure that appellants are always aware that they may be asked questions of a very sensitive nature eg in relation to their physical and mental health and their ability to carry out certain activities. Much of this may be intimate, private and personal. The nature of the tribunal's task in this regard is such that many appellants may feel aggrieved and sometimes offended by it. Tribunals must ask very searching questions and will always seek to do it in a proportionate and sensitive way. Representatives play a pivotal role in giving appellants advance notice of this type of questioning.
4. Representatives should reassure appellants that all information/evidence provided in connection with an appeal will be treated by the tribunal with the strictest confidence, subject to any disclosure on appeal or to the Office of the President.
5. A representative should at all times ensure the confidentiality of his client's information.
6. In most cases only one representative will be allowed to address the tribunal in that capacity.
7. A representative must appreciate that it is the appellant who must give evidence as to the issues in dispute, not the representative. The representative's role is to assist the appellant to put his case by directing the



tribunal to any relevant matters of fact or law. The representative will not be allowed to deflect the tribunal from its primary task of assessing all relevant evidence. This task cannot properly be carried out unless the tribunal hear from and question the appellant directly.

8. The representative will always have the opportunity to ask relevant questions and to make submissions.
9. Any statements of fact made by a representative are not evidence and may be disregarded unless they relate to matters within the representative's own knowledge. There is nothing to prevent a representative giving evidence if he wishes to do so as long as the evidence relates to matters within his own knowledge. The mere fact that he is a representative does not prevent him from also being a witness. The tribunal will evaluate the representative's oral evidence in the same way that it evaluates all other evidence. The fact that the evidence comes from a representative does not mean that it can either be discounted or given any special status.

10. A representative's duty to do his best for an appellant must be tempered by an obligation to at all times conduct the appellant's business in a manner which respects the tribunal and is in accordance with accepted professional standards.

A representative should never:

- a) deceive or knowingly or recklessly mislead the tribunal
- b) indicate agreement with information put forward by another person which the representative knows to be false
- c) call a witness whose evidence the representative knows to be false
- d) attempt to influence a witness with regard to the contents of a statement which the representative is taking
- e) tamper with or falsify evidence

Failure to adhere to these obligations may result in a report to the representative's employer, funding organisation and/or professional body.

11. The tribunal will cooperate with the representative with a view to ensuring

that all relevant evidence is adduced and properly weighed. The tribunal's overall aim is to ensure that the appellant receives a fair hearing during which all relevant issues are properly addressed. Representatives will use best endeavours to facilitate this overall aim.

12. Representatives and appellants will be treated by the tribunal with courtesy, politeness and respect. It is expected that the tribunal members, clerks and administrators will be treated in a similar way by representatives and appellants.

Representatives will use their best endeavours to ensure that appellants are aware of this and that they too will behave appropriately. For the avoidance of doubt representatives and appellants are informed that foul and abusive language, threats and/or acts of violence towards tribunal members or staff will not be tolerated under any circumstances and may be the subject of a report to the police and, in the case of a representative, to his/her employer, funding organisation and/or professional body.

13. Presenting Officers are expected to be familiar with all the submission papers (including those provided by appellants and/or their representatives) and shall expect to be questioned by the tribunal in relation to those documents. Presenting Officers must also be in a position to answer questions from the tribunal, the appellant and his/her representative.

14. All parties to the appeal will be given an opportunity to make submissions to the tribunal.

### Postponements and adjournments

*(A Postponement relates to an application for deferral PRIOR TO the hearing. An Adjournment relates to an application for deferral AT HEARING).*

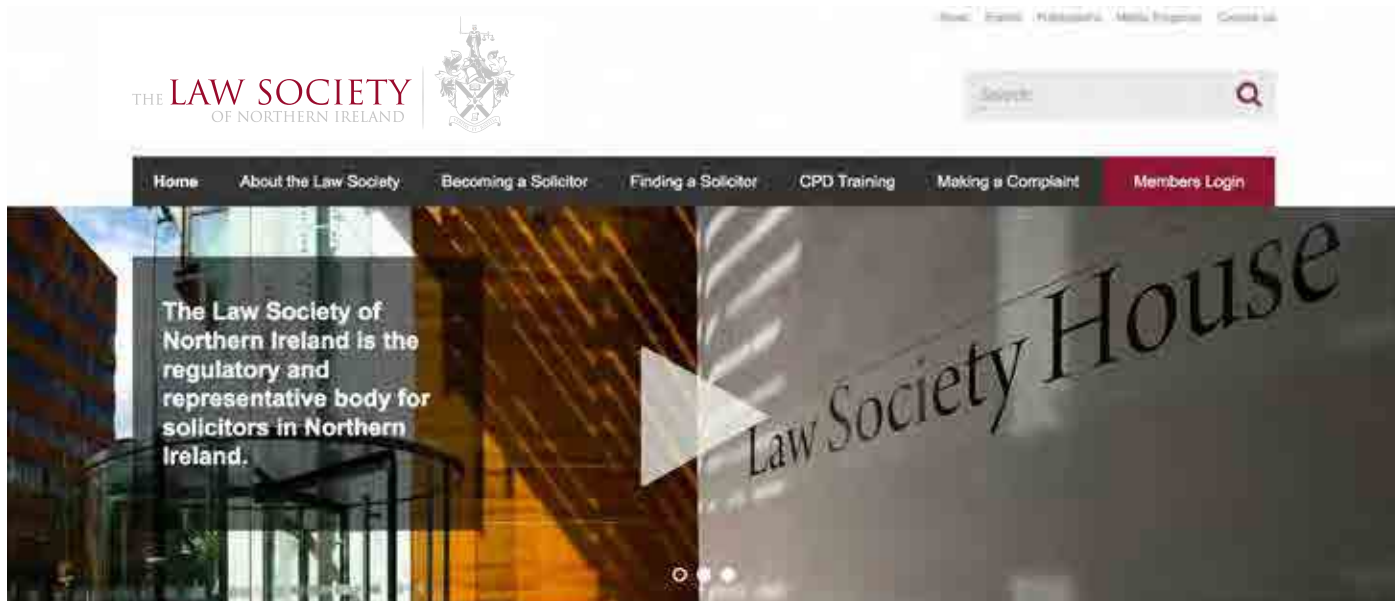
More than 20% of appeals are adjourned for different reasons. This figure can be greatly reduced because appellants are entitled to have their appeals dealt with at the earliest opportunity.

Representatives should be aware that once an appeal has been listed for hearing it will only be postponed/adjourned in exceptional circumstances. Representatives should be in

a position to proceed to hearing on the first allocated date.

Representatives are asked to note as follows:

- a) In the event that a representative believes or becomes aware prior to listing that he/she will be unable to attend for hearing on particular dates (due, for example to holiday commitments), the representative shall inform the Appeals' Service of this at the earliest opportunity. This MAY, subject to the requirements and normal listing practices of the Appeals' Service, prevent a case being listed unnecessarily.
- b) Subject to the provisions of Regulation 51 of the Decisions and Appeals Regulations, in the event that a representative seeks a postponement of a hearing in relation to which he/she is on record it will generally be preferable that such a request be received from the representative in writing and stating the grounds for the request.
- c) Representatives may sometimes assume that, if they are not available on the day of the hearing, an application to postpone on those grounds will automatically be successful and may advise an appellant not to attend the hearing. This is wrong. In those circumstances an individual tribunal may, in its absolute discretion, decide to proceed with the hearing, subject of course to an appellant's right to a fair hearing.
- d) In the event that a representative finds that he/she is double booked for a particular session he/she should seek to ensure that both hearings will be dealt with, otherwise arrangements should be made to secure the services of another representative well in advance of the hearing. If an appellant is represented by a representative organisation (eg Citizens' Advice Bureau) or a firm of solicitors the tribunal may expect that organisation/firm to take reasonable steps to arrange for a substitute representative to attend and, if that is not possible, to explain why.
- e) In the event that a hearing is postponed or adjourned with directions representatives should ensure that all such directions are complied with in the manner directed by the tribunal. Unless the circumstances are exceptional, representatives should be aware that no further postponement/adjournment may be considered by the tribunal on account of any failure to comply with the tribunal's directions.



## New Law Society website

The Society is delighted to announce the launch of its new website

[www.lawsoc-ni.org](http://www.lawsoc-ni.org)



Over the course of the last year the Society has been working closely with the Web Bureau to develop and build a new website which would meet the needs of various key audiences.

The central requirement of the new website development has been to provide information in a timely, relevant and accessible format and to provide enhanced and interactive services for members.

After many months the new website is now operational with new sections and new interactive services now available.

### New website layout

Those accessing [www.lawsoc-ni.org](http://www.lawsoc-ni.org) and arriving at the front page will now be presented with a new layout showcasing

key areas including news and events as well as allowing the user to access information about the Society, its regulatory functions, its complaint section, consultations and responses as well as contact details for local associations and specialist solicitor groups. Of particular interest are the

- **Solicitors' directory section** which allows the user a faster more prescriptive search facility detailing information about individual solicitors, firms, locations and services in a clear and concise way.
- **Complaints section** which outlines to the user the five stage process involved in making a complaint to the Society.
- **News and events section** which highlights and presents news and events items from the Society and others.

### New Members' Section

For solicitor members the new Members' Section has been completely revamped and designed to meet the requirements of members.

The old antiquated site was often criticised for being bland, uninviting and poor when it came to finding information required by solicitor members. The new section has been built with these comments in mind.

New and exciting parts include an online payment system for Law Society CPD seminars/events, access to self-contained information sections clearly laid out, an optimised search facility, E-formers listed chronologically, and access to the Law Society Twitter feed.

### Signing into the new Members' Section

Unlike the old website the new website requires all solicitor members to enter their email address (which must be registered with the Society) and a password.

Members simply enter their email address and generate a password of their choosing. There is no longer a need to enter your surname or roll number. Once the member has signed in they will be greeted with a new layout with new sections for them to explore.

### New Members' Section layout

Immediately upon signing in members will be greeted with their name which indicates that their sign in has been successful.

The Members' Section is laid out in **two areas** on the left and right hand side of the page.

The **left hand** side includes –

- **An alert bar** which highlights issues of importance to members.
- **A find an event section** which allows members to quickly search and access details of CPD and events being organised by the Society and others.
- **An upcoming events/CPD training section** which provides daily news updates on information showcased in the public section of the website and private news items for members only. Information which appears in the E-former and on Twitter is showcased here. The new search facility within the Members' Section allows members to search by topic or general interest.

- **A Library section** providing information about the Library and Information services, FAQs, Publications, Library Updater, contact details and *Libero*.
- **A Services section** providing a one stop location for members seeking information on a wide range of topics including conveyancing, Home Charter, cybercrimes, file disposal etc.
- **Events section** showcases Society and non-Society events of general interest to members from conferences, to invitations and charity events.
- **CPD training section** allows members to review the Society's CPD seminars/courses and to book courses using the new online payment system.
- **Publications section** in the members area provides members with access to publications of practical use to them and their practice such as conveyancing/Home Charter documents, annual reports and rebates forms to name but a few.
- **E-former section** allows members to access previous editions of the E-former and other stand-alone communications issued by the Society.
- **The Writ section** provides members with access to copies of the The Writ published by the Society from 2000.
- **Library and information services section** provides a quick link to an important section on the website.
- **Members' services section** again provides a quick link to information often requested by members.
- **Twitter feed** showcases news, information, event and CPD tweets from the Society and others including the Lord Chief Justice's Office.

On the **right hand side** of the page members will see a list of hyperlinks in the following order:

- **President's message** showcasing issues of importance to the profession.
- **My profile section** which is bespoke to each solicitor. Whenever a member completes a Law Society CPD course their attendance will be shown in a graph recording their overall CPD progress. This is an invaluable tool allowing members an opportunity to access an accurate record of Society courses they have undertaken. **(Please note that the profile at this moment in time does not record external courses undertaken).**
- **News section** as previously indicated provides members with access to public and private news items, practice directions, guidance notes from the Society and other key sources. The information is updated on a daily basis and reflects information issued in the E-former.

The new website is very much a work in progress and within the coming month's new announcements will be made about how members can fully utilise the website.

Perhaps the most exciting announcement will be confirmation that the Society will be adding a **Find a European Lawyer** section to its new website.

**Find a European Lawyer or FAL** is a European initiative to provide European citizens with access to a directory of lawyers in each jurisdiction who specialise in specific legal services. Local solicitors wishing to showcase the services they offer and specialisms they undertake will have an opportunity to do so through FAL.

Unlike the Society's online directory FAL will showcase individual solicitor's specialisms. It is an excellent opportunity for local solicitors to showcase and market their services to European citizens who may need legal advice for this jurisdiction such as those involved in a car accident or divorce.

This article provides a very quick overview of the new sections of the Law Society website. It is by no means exhaustive.

Members are encouraged to take time out of their busy schedule to sign into the Members' Section to explore the new sections and begin to use the online booking facility.

If members have any comments or questions please email [paul.oconnor@lawsoc-ni.org](mailto:paul.oconnor@lawsoc-ni.org)



[www.lawsoc-ni.org](http://www.lawsoc-ni.org)



## How to log into the new Members' Section

The new Members' Section of the Society website has been designed to increase functionality, information provision and security.

To date the vast majority of members have been able to login and reset their password to access the Members' Section.

Those contacting the Society who have had problems logging in have discovered that:

- They have not registered an individual email address with the Society.



- Their password reset email has been blocked or has been found in their **trash/junk box**.
- Individual email addresses have not been provided to the Society and the firm is relying on **Law@** or **info@** accounts for multiple people.

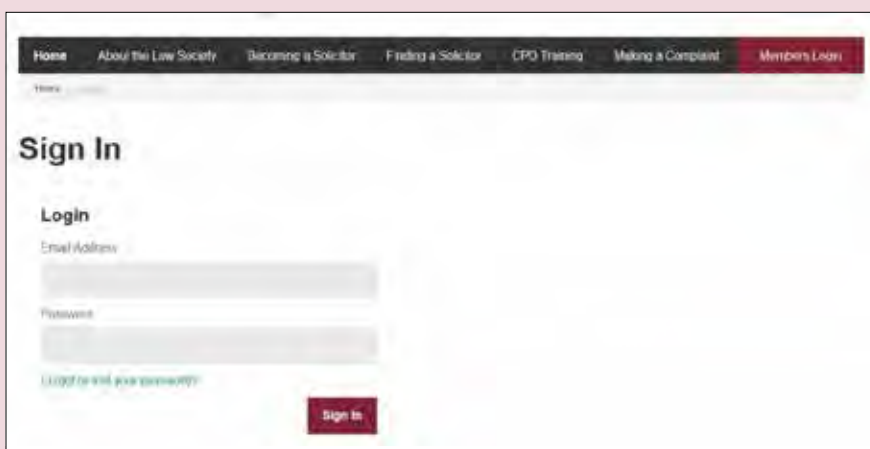
### What do I need to do to login for the first time?

The new Members' Section of the website requires that all members supply their **email address** and a **generated password**.

This replaces the old website login where members were required to provide their surname and roll number.

As this is a new website members will have to do the following:

1. In order to login to the members' area each member/user will be required to supply their email address.
2. Your email address **must** match the email address provided to the Law Society which is kept on record. If you have not supplied the Society with your email address you will **not be** able to proceed.
3. To register your email address contact **Tom Speers** at **tom.speers@lawsoc-ni.org** so he can update your Law Society member profile.
4. When logging in for the first time each member/user will have to reset their password using the following link:



To reset your password click on <https://www.lawsoc-ni.org/recover-password>



5. On entering your email address at the above link members will be sent an email with a link to reset their password.

### Check your junk box and trash can!!

6. Members must choose a password - please make this a secure password (a mix of upper and lower case letters, and numbers or different characters).
7. This password will be required for future logins.
8. If forgotten, members can reset their password using the above link

### What if I have problems?

If you have problems or issues please feel free to contact [paul.oconnor@lawsoc-ni.org](mailto:paul.oconnor@lawsoc-ni.org)



# PRIORITY INVESTIGATIONS

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Belfast, BT9 6DJ  
028 9099 2441  
[contact@pilimited.com](mailto:contact@pilimited.com)  
[www.pilimited.com](http://www.pilimited.com)



When  
You  
Have a  
Need to  
Know...

## Annual Dinner 2016

The Society's Annual Dinner was held at the Merchant Hotel Belfast on 5 December 2016.

More than 150 members and their guests attended including 42 newly admitted solicitors.

Speeches were delivered by the Society's new President, Ian Huddleston, guest speaker, The Right Honourable Lord Justice Weir and Brigid Moore speaking on behalf of the newly admitted solicitors.

The Society wishes to thank BDO for its sponsorship and support of the Annual Dinner 2016.



*From left: Lord Justice Weir; Ian Huddleston; Brigid Moore and Alan Hunter.*



*From left: Lord Justice Weir; Ian Huddleston; Sarah McClenaghan (BDO) and Alan Hunter.*



*Madame Justice McBride and Ian Huddleston.*



*From left: District Judge Gilpin; John Guerin; Eilidh Wiseman (President of the Law Society of Scotland); Alan Hunter and Alastair Rankin.*



*From left: John Guerin and Eilidh Wiseman (President of the Law Society of Scotland).*



From left: John Guerin; Eileen Ewing; Ian Huddleston and Carol Malcolmson (BDO).



Lord Justice Weir.



From left: Laura Thom; Emily Paisley; Rachel Brady; Katie Buchanan and Sarah Graham.



From left: Hanna McDaid; Sarah Stewart; Helen Smyth and Aoife King.



From left: Kirsten McKeivitt; Olivia O'Kane and Eoghan McKenna.



From left: Lynn Mounstephen; Avril Browne; Lynn Trainor and Jill Downing.



John Guerin.



Ian Huddleston.



Brigid Moore.

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## Court of Judicature of Northern Ireland Offices of the Court of Judicature

Pursuant to Order 64, rule 5(1) of the Rules of the Court of Judicature (Northern Ireland) 1980, the offices of the Court of Judicature will be closed to the public on the following days in 2017:

St Patrick's Day Holiday	<b>Friday 17 March</b>
Good Friday	<b>14 April</b>
Easter Monday	<b>17 April</b>
Easter Tuesday	<b>18 April</b>
May Bank Holiday	<b>Monday 1 May</b>
Spring Bank Holiday	<b>Monday 29 May</b>
July Bank Holiday	<b>Wednesday 12 July</b>
July Privilege Holiday	<b>Thursday 13 July</b>
August Bank Holiday	<b>Monday 28 August</b>

A notice setting out the Christmas and New Year closures will issue at a later date.



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### Banking Solicitor, Belfast. 1-3 YRS PQE, Up to £35k plus benefits

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### Corporate Solicitor, Belfast, 2 yrs + PQE, Up to £40k plus benefits

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### Employment Law Solicitor, Belfast, 0- 3 yrs PQE, Up to £30k plus benefits and excellent career path

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### Legal Professional/ISDA Negotiators, Belfast, Up to £25k, plus benefits

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We are seeking to recruit talented and ambitious ISDA Negotiators or candidates from a legal background (with an LLB) who wish to transfer their skills into this area.

[energisrecruitment.com](http://energisrecruitment.com) [LinkedIn](#) [Twitter](#)



Care and support  
through terminal illness

## Marie Curie - Law Society Charity for 2017

The Society has announced that Marie Curie is its chosen charity of the year for 2017.

The President of the Society, Ian Huddleston, was joined at the announcement of the new charity partnership by Marie Curie Hospice Lead Nurse, Cindy Anderson and Head of Regional Partnerships & NI Fundraising, Ciara Gallagher.

Commenting the President said:  
"The Law Society of Northern Ireland looks forward to supporting the invaluable work and services which Marie Curie provide through awareness and fundraising initiatives with our members in 2017."



From left: Marie Curie Hospice Lead Nurse, Cindy Anderson; Society President, Ian Huddleston; Head of Regional Partnerships & NI Fundraising, Ciara Gallagher.

Ciara Gallagher, Head of Regional Partnerships & NI Fundraising, said:

"Marie Curie is absolutely delighted to have been chosen as the Law Society of Northern Ireland's Charity of the year.

"All the funds raised from the partnership will help Marie Curie Nurses provide high quality care to people with terminal illnesses in their own homes right across Northern Ireland or in the charity's hospice in Belfast.

"Marie Curie services are always free of charge for all patients and their families. This

is only made possible thanks to the generous donations of our supporters."

Marie Curie provide care and support for around 2,500 people living with a terminal illness in Northern Ireland each year. There are more than 120 Marie Curie Nurses working in Northern Ireland, caring for around 2,000 terminally ill people and their families in their homes each year.

The Marie Curie Hospice in Belfast cares for around 500 people each year, including people staying in the hospice and those using day hospice services.

## New Home Charter logo

The Society has been reviewing the use of its branding and logo on solicitor firms' stationery and websites.

The Society recognises the need to provide firms with up-to-date logos to allow them to showcase their membership of the Law Society of Northern Ireland and of the Home Charter Scheme.



HOME CHARTER  
SCHEME

THE LAW SOCIETY OF  
NORTHERN IRELAND

### Downloading the new logo

The new Home Charter logo is available to download in the Members' Section of the Society's website at:

<https://www.lawsoc-ni.org/home-charter-logo>



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## Society publishes new information leaflets

The Society in partnership with Queen's University, School of Modern Languages has launched 'Connecting with our Community', a pilot initiative to promote greater access to information about the solicitor profession and the invaluable services which solicitors provide to the community.

The Society is pleased to announce the publication of 36 information leaflets on legal matters which have been translated by the students of Queen's University, School of Modern Languages and Central Translations (N.) Ltd into nine languages: Arabic, Chinese, Czech, French, German, Irish, Polish, Portuguese and Spanish.

The leaflets are available for download from the Publications Section of the Society's website and are available in hard copy format upon request from Law Society reception on 028 9023 1614.

Connecting with our Community is a pilot initiative and the Society hopes to add to the suite of publications available along with a new engagement programme which seeks to promote the network of solicitor firms to every part of our community in coming months.



Yi Feng from Queen's University, School of Modern Languages.



Our translators - Liyang Lu; Jinghan Li and Orla McGrory.



From left: Then Society President, John Guerin; Meng Yuhong, Deputy Chinese Consul and Alan Hunter, Society Chief Executive.





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## Society launches Legally Able Group

More than 50 members of the legal profession and representatives from community and voluntary groups were in attendance at the launch of a new solicitor group set up to raise awareness of disability issues amongst solicitors and their clients.

The new group called 'Legally Able' was formally launched at Law Society House by the then President of the Law Society, John Guerin, who was joined by Andy Allen MLA and solicitor Laura Lee Jenkins, and Chair of the new group.

Commenting after the launch, John Guerin, said: "The Law Society is delighted to launch Legally Able and we wish to take this opportunity to thank Andy Allen MLA and Laura Lee Jenkins for their support and help in launching the new group. Legally Able will provide a forum for discussion and a platform to identify issues of interest to the profession and wider community."



*From left: Laura Lee Jenkins, Chair of the new group, then President of the Law Society, John Guerin and Andy Allen MLA.*

Andy Allen MLA said: "I was delighted to accept the invitation from the Law Society to their launch of Legally Able. It is encouraging to see the Law Society taking a proactive approach by setting up this forum to help to raise awareness of disability issues amongst solicitors and their clients and further identify issues of interest to the profession and wider community. I look forward to engaging

and working with the forum to assist their work."

The new group is open to any person who is on the Roll of Solicitors in Northern Ireland, disabled colleagues and those with experience of working with or otherwise supporting disabled colleagues, clients, family or friends or the wider community.

## Society meets Lord Dunlop to discuss Brexit



In October 2016 the then President of the Society, John Guerin and Chief Executive, Alan Hunter, met with Lord Dunlop, Parliamentary Under Secretary of State, in Whitehall in London to discuss the Northern Implications of Brexit.

Commenting after the meeting, the President said:

"Our meeting with Lord Dunlop was both constructive and informative. We wish to thank him for meeting with the Society on this important issue."

*From left: John Guerin, then Society President; Lord Dunlop, Parliamentary Under Secretary of State at the NI Office and Alan Hunter, Society Chief Executive.*



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Charity registration number: NIC102633



A packed year of fundraising activities by members of the Society has raised more than £15,000 for CLIC Sargent, the cancer charity supporting children and young people.

The Society has over the course of the last year been supporting and fundraising on behalf of CLIC Sargent its chosen charity of the year.

Perhaps the most successful fundraising event was the CLIC-athon challenge in June 2016, which saw members of the legal profession in Northern Ireland battle it out in front of the High Court on 'spin bikes' to secure the furthest distances travelled in an hour.

Twenty five teams of solicitors, barristers and members of the Judiciary including Lord Chief Justice, Sir Declan Morgan gave their time and energy to raise money for CLIC Sargent.

## Society raises £15,000 in aid of CLIC Sargent



*Nadine Campbell, Fundraising Manager from CLIC Sargent with John Guerin, President of the Law Society of Northern Ireland 2015/16.*

Other fundraising activities included a golf day and charity raffles all of which have contributed to the final amount raised.

Commenting, John Guerin, President of the Society 2015/16, said:

"We are delighted to have supported CLIC Sargent and to have raised more than £15,000 which will go towards the invaluable work which CLIC Sargent provides for children and young people with cancer. The Society is grateful to the members of the legal profession and judiciary who been so supportive."

Nadine Campbell, Fundraising Manager with CLIC Sargent, said:

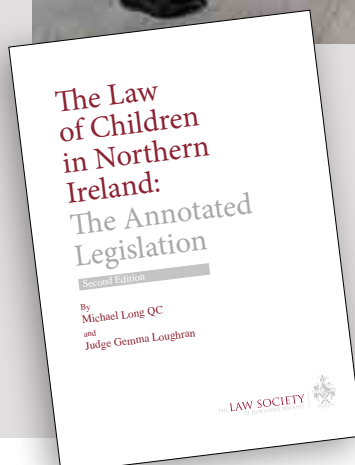
"We would like to thank the Law Society of Northern Ireland and its President, John Guerin, for their commitment and dedication in raising this fantastic amount of money for CLIC Sargent. The money raised can support four families to stay in our homes for four months."

## Law of Children in Northern Ireland: the Annotated Legislation

The Society has published a completely new and revised second edition of the very popular **Law of Children in Northern Ireland: the Annotated Legislation by Michael Long QC and Judge Gemma Loughran.**

The new edition provides family law practitioners with the annotated texts of the major primary and secondary legislation applying to children in Northern Ireland, conveniently collected in one volume.

The authors have used their extensive practical experience to produce updated and amended versions of the relevant legislation. In addition, the book contains an expanded section on the international aspects of the law relating to children together with new commentary on consent to medical treatment and extended coverage of the Human Rights Act. Reference is also made to unreported Family Care Centre decisions as well as decisions of the House of Lords/Supreme Court on appeals from Northern Ireland and to relevant applications to the European Court of Human Rights. The legislation has also been fully annotated with reported and unreported judgments of the Northern Ireland High Court and Court of Appeal. The format of the text also allows (where appropriate) easy reference to the standard English textbooks.



*Pictured at the book launch held at Law Society House are Mr Justice O'Hara, Heather Semple, Judge Loughran, Michael Long QC, Deborah McBride, Alan Hunter and John Guerin.*

Copies are available from the Law Society Library, price £70.



## Sports Law Conference 2016

In November 2016 Law Society House was the venue for the Annual Sports Law Conference.

Now in its fifth year the conference has gone from strength to strength with more members than ever from the legal, medical, sporting and academic professions attending the conference.

This year the theme of the conference was Good Governance and Equality and attendees had an opportunity to hear from speakers including:

**Keith McGarry**, Sports Law NI and Conn & Fenton Solicitors;  
**Michael McKillop**, Paralympic gold medalist;  
**Erin Stephens**, Principal in-house solicitor, Sport England;  
**Andrew Nixon**, Head of Sport, Sheridans, London;



*Contributors to the Sports Law Conference 2016*

**Jonny Madill**, Sheridans, London;  
**Feargal Logan**, Logan & Corry Solicitors and Tyrone and under 21 GAA manager;  
**Professor Jack Anderson**, Court of Arbitration for Sport;  
**Angela Platt**, Chairperson Female Sports Forum;  
**Andrew Johnston**, Managing Director, NI Football League.

The conference, which was organised by the Society in association with the Northern Ireland Sports Forum, provided attendees with a comprehensive update on sports law. In addition, attendees heard from prominent speakers in the sports law field, with

contributions from academia and the judiciary who took the opportunity to provide an overview of the challenges lawyers face in advising their clients - whether they be governing bodies, clubs, managers, coaches, players or officials. Topics discussed at the conference included transparency, diversity, integrity, leadership and decision-making, financial probity and the future of the sports industry in a digital world. The conference drew on the expertise of an experienced panel for questions and discussion. This year's conference was of particular interest to Governing Bodies, their members and advisors, as issues of good governance and equality in sport were discussed.

The Society is grateful for the continuing support of Northern Ireland Sports Forum in organising the conference.





## Conveyancing Conference



From left: Chris Taylor, CEO of Titlesolv; Christine Farrell, Land & Property Services; Brian Speers, LSNI; Gary Mills, Bluechip Title Solutions and Andrew Kirkpatrick, LSNI.

More than 230 solicitors from across Northern Ireland attended the Society's annual Conveyancing Conference at the Ramada Hotel in Belfast.

The conference programme covered current issues of importance and relevance to solicitors who undertake conveyancing transactions.

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

- Brian Speers, CMG Cunningham Dickey Solicitors
- Nigel Thompson, Moore Stephens (NI)
- Chris Taylor, Titlesolv
- Christine Farrell, Land and Property Services
- Maria Gillen, Gillen & Co Solicitors
- Cathal Gilmore, Gilmore Solicitors
- Mark Borland, Conway Todd and Co Solicitors

Attendees also had an opportunity to purchase the Society's wide range of conveyancing and property publications from the Society's Library and Business Centre stand.

The Society is grateful to Titlesolv for its support and sponsorship of the conference.

## EUROPEAN LAWYERS' DAY 2016

In December 2016, more than 80 solicitors from across Northern Ireland attended a special event to mark European Lawyers' Day 2016.

*The Society was delighted to welcome recently appointed County Court Judge Her Honour Judge Elizabeth McCaffrey and Michael Robinson CCBE, both of whom spoke.*



## Dispute Resolution Service accredited

The Dispute Resolution Service (DRS) has announced that it has received accreditation from the Chartered Trading Standards Institute for consumer mediation.

The announcement of accreditation of the DRS was made at an event at Parliament Buildings, Stormont and was attended by MLAs and representatives from business, community, voluntary and legal sectors.

The European Directive on Consumer ADR, which is now in force, requires that **all businesses** throughout Northern Ireland must advise consumers in their terms and conditions if they offer mediation as a means to resolve any potential dispute and what mediation provider they suggest using.

The Society has now updated its Guidance in relation to the European Directive on Consumer ADR to reflect the accreditation of the DRS. Firms may wish to amend their client care letters accordingly.

Speaking at the mediation event, Brian Speers, Chairman of the Dispute Resolution Service, said:

“It is important that consumers and businesses throughout Northern Ireland are aware of what mediation is, understand how it can help them and that it is accessible through the accredited Dispute Resolution Service.

“For local consumers it provides an alternative way of attempting to resolve their dispute which is free and often quicker. For local



From left: Brian Dolaghan, Invest NI; Alan Hunter, Society Chief Executive; Brian Speers, DRS Chair; Anne Beggs, Invest NI; Colum Eastwood MLA; Ian Huddleston, Society President and Michael Bready, Mediator/Barrister.

businesses they are now required by the European Consumer Mediation Directive to consider mediation with regards to consumer disputes.

“The cost to local businesses is minimal and the potential benefits in terms of overall cost savings underscores the effectiveness of mediation as a consumer dispute solution.

“We are delighted that the Dispute Resolution Service is the only mediation provider based in Northern Ireland to be fully accredited by the Chartered Trading Standards Institute for consumer mediation.

“We would encourage consumers and local businesses to find out more about how mediation can help them by contacting the DRS and visiting [www.mediatorsni.com](http://www.mediatorsni.com)”.

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## IBA Bar Leaders Conference & Mid-Year Meeting Belfast 24 -27 May 2017

The International Bar Association (IBA) is coming to Belfast. The legal, business and political communities in Belfast will be opening their doors to welcome the IBA Bar Leaders Conference and Mid-Year Meeting on 24 – 27 May 2017. The IBA has a membership of more than 80,000 individual lawyers and more than 190 Bar Associations and Law Societies spanning in excess of 160 countries.

Most of the leaders of these Bar Associations and Law Societies together with the leaders of the many IBA committees will be in Belfast for this conference. The President of the IBA, Martin Solc, the Executive Director, Mark Ellis, and many of the IBA secretariat will also attend. The IBA will also convene its formal Council meeting in Belfast on 27 May 2017 and the IBA's Human Rights Institute will also have its formal Council meeting on Friday 26 May 2017.

In the past number of years the Law Society has been extremely proactive in engaging with the international legal community to favorably profile the legal expertise, which our local firms have, and with the help of Invest NI to help them seek out new work opportunities in other jurisdictions. A total of nine of our local law firms sent representatives to the last IBA Conference in Washington USA in September 2016 and this law firm networking is already bearing fruit for some of these firms by creating contacts for new legal work.

The forthcoming conference will create further networking opportunities for attendees to meet international business lawyers with diverse legal interests and for these business lawyers to explore the legal, business and other opportunities presented by Belfast and Northern Ireland



The Law Society, through its IBA representative, Norville Connolly, has for some years been lobbying the IBA to host one of its major conferences in Belfast. This is now going to happen with the IBA Bar Leaders Conference & Mid-Year Meeting coming to Belfast in May this year.

A most interesting business and social programme has been put together for the conference, which will bring together delegates from around the globe to discuss the latest developments and thorny issues affecting the legal profession today.

This year's programme will include input from expert panelists and commentators as well as encouraging interaction from delegates in several discussion sessions.

The speakers will include the Society's President, Ian Huddleston and Chief Executive, Alan Hunter, as well as some of our members.

Topics will include:

- **Brexit: opportunities or challenges for Bar Associations and law firms.**

In June 2016 the United Kingdom in a referendum voted to leave the European Union (EU). However, Scotland and Northern Ireland voted to remain. The British Prime Minister, Theresa May, has indicated that Article 50 of the Treaty on European Union, the formal procedure for withdrawing, will be invoked by the end of March 2017. What are the implications for law firms and Bar Associations in England & Wales, Northern Ireland and

Scotland presented by the UK withdrawing from the EU? What are the opportunities and challenges for these law firms and bar associations posed by such withdrawal? Similarly, what are the challenges and opportunities posed by such withdrawal for law firms and Bar Associations located outside the UK?

- **Protectionism, cooperation or exploitation?** How local and international lawyers work together today, and best practices for Bar Associations to help their professions win a bigger slice of the international pie.
- **How can leadership be encouraged within Bar Associations?**
- **Robot lawyers? The challenges and opportunities to the legal community in the age of artificial intelligence.** Artificial Intelligence (AI) has made extraordinary progress in the past few years, thanks to a versatile new technique called 'deep learning'. Suddenly AI systems are achieving impressive results in a range of tasks. Given enough large data (or deep learning) computers, modeled on the brain's architecture, can be trained to do all kinds of things. We read about robots that have "personalities." For lawyers employing computer programs that perform certain tasks once handled by lawyers, the ethical rules and obligations continue. However, is it simply old wine in new bottles, or are the current rules insufficient to maintain professional standards in the use of AI? The move towards increased automation of legal services continues to gather momentum as pressures to lower costs, increase efficiency, satisfy existing clients and attract new business continue. This programme addresses the following questions: What is the detail of this automation of legal services? How has this changed how lawyers offer their services? What are the costs and earnings

implications for clients and law firms? To what extent will the numbers of employed lawyers be affected? What are the expected changes to IT and consequently legal practice in the coming years? What are the challenges to ethical rules and obligations? What are the implications of all of this for bar associations?

- **IBA Legal Aid roundtable:** A discussion which will inform the IBA Bar Issues Commission and the IBA Legal Aid & Access to Justice Committee in developing an IBA Guidelines on Legal Aid.

The Steering Committee has also put together a most interesting social programme, the highlights of which are as follows:

- **Welcome Reception in the High Court of Justice on 24 May 2017**
- **Bar Leaders' Dinner in Parliament Buildings, Stormont, Belfast, with a pre-dinner tour and historical talk by Dr Eamon Phoenix (ticketed event) 25 May 2017**

- **Closing Reception in the City Hall Belfast on 26 May 2017**

The IBA is the world's leading organisation of international legal practitioners, Bar Associations and Law Societies. Its principal aims and objectives are to promote an exchange of information between legal associations worldwide, to support the independence of the judiciary and the right of lawyers to practise their profession without interference and to support of human rights for lawyers worldwide through its Human Rights Institute. What better place for the IBA to have its Bar Leaders Conference and Mid-Year Meeting than in Belfast Northern Ireland and for the attendees to explore the many opportunities to work with local law firms here.

Registration for the conference will open on 28 February but people can register their interest online and then they will receive an update when it 'goes live'.

The link is <http://www.ibanet.org/Conferences/conf782.aspx>.



Enquiries also to the Law Society or to [norville@defisher.com](mailto:norville@defisher.com)

We look forward to welcoming the International Bar Association here on 24 May 2017.

**Norville Connolly**

*Chair of the Steering Group for IBA Conference Belfast 2017.*

*Past President Law Society Northern Ireland Law Society Northern Ireland's Nominee to the IBA.*

*Senior Officer, IBA Bar Issues Commission Council Member, IBA Human Rights Commission.*

## NEW PUBLICATION

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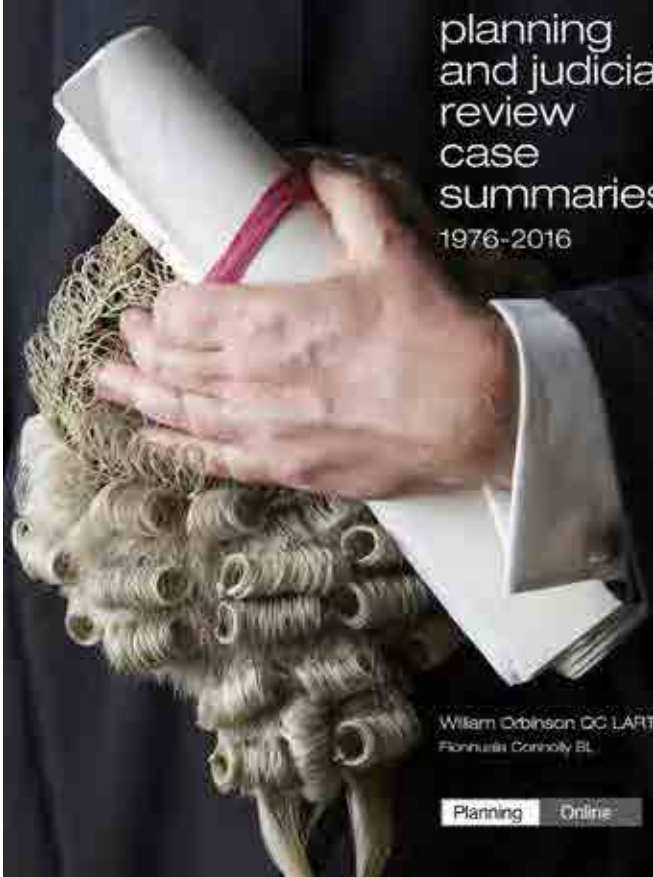
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## Married couples missing out on up to £432 tax break

Are you, or your partner, one of the 3 million+ couples who are eligible to claim the Marriage Allowance but haven't got round to doing it? HMRC has taken to the media to alert married couples of this little known tax break. So are you missing out? Here's how it works.

### To claim you have to be

- married or in a civil partnership
- a non-tax payer - your income is under £11,000
- your partner's income is between £11,001 and £43,000
- both born on or after 6 April 1935



If you were born before 6 April 1935 you may be able to claim Married Couple's Allowance which is a different tax allowance.

### The amount you can claim

In the current tax year the amount you can claim is £220 but if you didn't claim last year you can add last year's amount of £212 to it and receive a £432 tax break.

### How to claim

First you need to work out whether you qualify and will save tax. To find that out click

<https://www.tax.service.gov.uk/marriage-allowance-application/benefit-calculator/> and enter your salary details. If you are eligible, the process to claim the tax is also straightforward. Simply click on <https://www.gov.uk/apply-marriage-allowance> to apply.

### More information

The recent push by HMRC means there is a wealth of information available on-line. One useful link that has more information and case studies can be found at the Money Saving Expert site. <http://www.moneysavingexpert.com/family/marriage-tax-allowance>

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# SBA

Solicitors'  
Benevolent  
Association

## NOTICE

Notice is hereby given that the one hundred and fifty third Annual General Meeting of the Solicitors' Benevolent Association will be held at the Law Society, Blackhall Place, Dublin 7 on Monday 10 April 2017 at 12.30pm

- 1 To consider the Annual Report and Accounts for the year ended 30 November 2016
- 2 To elect Directors
- 3 To deal with other matters appropriate to a General Meeting.

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## Proposed prize in memory of Her Honour Judge Corinne Philpott QC

### Dear Colleague

We know that you will have been much saddened by the untimely death of Corinne after her long illness, borne with great fortitude. Throughout her time in practice at the Bar, as its Vice-Chairman, as the first Chairman of the Guardian ad Litem Agency and thereafter during all her years on the Bench one of her chief interests and concerns was the encouragement and support of young members of both branches

of the profession. She was, as many of you may have personal cause to know, readily approachable, generous with her time and invariably thoughtful and kind to those in need of help, reassurance or guidance.

There is a widespread feeling among colleagues and members of the profession that they would like to find a means of remembering Corinne and at the same time to recognise in her memory her constant desire to help those starting out in practice. It is well understood that those now finding their feet in the profession often have to do so against a background of considerable personal debt which makes the task of getting going even more problematic.

Our plan therefore is that there should be endowed a prize or prizes at the Institute of Professional Legal Studies which would enable one or more of the graduates leaving there to receive some tangible assistance with their transition to practice and ensure that, from year to year, Corinne's name and work will continue to be remembered in a practical way of which we feel she would have warmly approved. We write to you with the knowledge and support of Corinne's family.

We very much hope that you will feel inclined to support this endeavour and, to that end,

we attach a form of donation which you might complete and either return to one of us for onward transmission to Queen's or directly to the University. If you are willing to do so please bear in mind that the use of Gift Aid adds significantly to the amount receivable by the charity at no additional cost to the donor.

Yours sincerely,

**The Right Honourable Sir Declan Morgan**,  
Lord Chief Justice of Northern Ireland  
**His Honour Judge David McFarland**, Recorder of Belfast  
**Mrs Fiona Bagnall**, Presiding District Judge (Magistrates' Courts)  
**Mr John Guerin**, President of the Law Society 2015/2016  
**Mr Liam McCollum QC**, Chairman of the Bar Council

**Anyone wishing to make a donation should contact:**

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## Obituary - Michael Davey 1940 - 2016

It is a very difficult task to write an obituary for a friend whom you have known for many years. The history of his life can never do justice to a person who achieved so much and left an indelible impression on all who knew him.

In the case of Michael Davey it is doubly difficult because his discretion and capacity to keep confidences were legendary.

He graduated from Liverpool University and served his apprenticeship in C & J Black before being admitted to the Roll of Solicitors in September 1964. He continued in that practice until his appointment as Secretary of the Law Society in 1985.

Shortly after becoming a Solicitor he became Editor of "The Gazette" in March 1966. This publication was the predecessor of "The Writ".

He retired from his position as Secretary in 1997 but continued to be closely involved with the legal profession particularly as Chair of the Legal Aid (Statutory) Committee from 1996 until 1999 and Chair of various Tribunals including the Competition Appeal Tribunal.

In addition to his involvement in the legal profession he was also committed to the Church of Ireland and he served that Church in many capacities. In particular his advices to Lord Eames were very much appreciated not only by Lord Eames but also by the wider Church. During the Troubles Lord Eames carried a very heavy burden and I have personal knowledge how much he valued Michael's advices. The wider community will never know the debt owed to Michael for he never spoke of it.

There are those who proclaim their religion vigorously. Michael Davey had no need to do so because his faith was so engrained in his character that his actions and consideration for others spoke for themselves. Above all Michael prized his family. Monica was in every sense his soul mate. The three children were never the subject of boasting but rather Michael had a very quiet and profound sense of pride when he spoke of them.

I first met Michael in his role as Secretary of the Law Society shortly after his appointment. I quickly learnt of his diplomatic skills and his ability to advise the Council and its various Committees and to negotiate with various Statutory Authorities. I particularly valued his help during my year as President in 1991. During that time there were many difficult negotiations with Government on matters such as conveyancing and Legal Aid. The success of these negotiations were largely due to Michael's very careful planning. He steered the Society through many difficulties. There were bombs, the consequences of a major air disaster, references to the Cabinet, negotiations with Ministers and the Judiciary, negotiations with other regulatory bodies and

perhaps the most difficult of all dealing with the consequences of the tragic deaths of Members of the profession.

Throughout these he preserved a great sense of humour. On one occasion during a crisis he asked me what we should tell the Council of the Society. I replied that we should tell them the whole truth. He grinned broadly before saying "that will never do". Council was, of course, told everything and, of course, unanimously approved his strategy.

He never hesitated to use humour at his own expense and on many occasions recalled that he was the only driver to be caught speeding by the Gardai and the RUC on the same day.

Even after suffering a heart attack he never shrank from completely devoting himself to the needs of the Society. He valued every Member and every employee of the Society equally. During his tenure the Society had to face many changes. Michael never shrank from the need for embracing such changes. It is difficult now to appreciate the depths of divisions within our community which existed at this time but he always managed to steer the Society on a course which preserved its unity and maintained its dedication to the service of every individual of whatever status or background.

He had a unique ability to give advice in such a way that you couldn't reject it. The conversation always started with the same words "I was wondering if ...."

Above all he had a vision. A vision to outline strategy which had the best chance of success in achieving his twin goals of enhancing the Society and promoting access to justice for all.

He was a very patient gardener who was quite happy to plant the seed of an idea and let it grow over a period of time.

I have been very conscious in writing this that I would have difficulty so I asked Members of the profession and members of staff what I should write. Over and over again I heard the same three words.

"A perfect gentleman".

**BRIAN WALKER**





## Obituary - Gerald Patrick Jemphrey LLB 1931-2016

Gerald Patrick Jemphrey known to his many friends and colleagues as Patrick or Pat was born on the eve of St. Patrick's Day 1931. His father Thomas Herbert Jemphrey worked in the linen industry and was a director of Jennymount Mills. His mother Elizabeth had the distinction of being the first woman ever to have been employed by the Northern Bank now known as Danske Bank.

Educated at Campbell College and the Queen's University of Belfast Patrick was articled as an apprentice to the late Sir Thomas Brown in the practice which was then known as Johns Elliot Wallace & Co. He was admitted to the Roll of Solicitors on 1 January 1954 and spent some time working in the Parliamentary Draftsman's Office at Stormont. His preference was however for general practice and he rejoined Johns Elliot Wallace & Co in 1956 this time as an assistant solicitor. He was made a junior partner in the firm in 1958, a senior partner by 1970 and following the death of Frank Byers and the retirement of Sir Thomas Brown he became head partner.

His main areas of expertise in law practice were commercial conveyancing, company law and banking law. He took an active interest in the affairs of the Law Society for 21 years from 1966 until his retirement in 1987. He chaired both the Publications and Practice Committees of the Society and he served as President from 1972-1973.

In 1958 Patrick married Ray Smyth. In May 2016 they celebrated 58 years of married life. They had four sons, Michael who practised as a solicitor for two years and then became a Bible translator; Alan who is a teacher at Campbell College; Peter who is a minister in the Reformed Presbyterian Church and is currently serving in Galway; and Shaun who is a solicitor and partner in the firm of King and Gowdy.

At the Service of Thanksgiving for the life of Patrick which took place in Knock Presbyterian Church on 19 July 2016, moving tributes were made to Patrick by his sons and by representatives of his twelve grandchildren.

I first met Patrick when I joined Johns Elliot Wallace & Co as an assistant solicitor in March 1958. We both eventually became senior partners in the firm but even more importantly we became good friends for life. I quickly learned to enjoy his warm wit and sense of humour. I admired his undoubted ability as a lawyer, his sheer delight in outdoor activities such as gardening and golf, and his concerned interest in social justice and public affairs. He served for a number of

years as a committee member of the Ledley Hall Boys' Club in East Belfast and he joined the Alliance Party following its launch in 1970.

In the early 1980s we completely refurbished the offices and modernised the practice. The changes included shortening the name of the firm to Johns Elliot. Patrick led and enthusiastically embraced the changes.

Patrick's year of office as President of the Law Society occurred at the height of the Troubles. In fact the year 1972 proved to be the single bloodiest year with nearly 500 dead and thousands injured.

Like the rest of the population of Northern Ireland, Patrick and I and our colleagues in our law firm endured the violence and upheavals of the so-called Troubles. City centre commercial buildings and businesses were regularly bombing targets. On many occasions our colleagues and staff had to vacate our offices for hours at a time. On one occasion in the mid-seventies a bomb exploded in Lombard Street causing serious damage to many premises including our own. Fortunately there were no human casualties on that occasion which was at a weekend when the offices were closed.

Patrick was by nature a conciliator and a peace maker and a devoted family man. He will of course be greatly missed by Ray and all of his family. He will also be long, fondly remembered by those of us in various walks of life who had the privilege of knowing him.

**JIM HENDRON**



**In this article Les Allamby, Chief Commissioner of the Northern Ireland Human Rights Commission, discusses the impact of human rights treaties in interpreting domestic legislation.**

What role do international human rights treaties have in interpreting domestic legislation? Recent social security judgments in the Supreme Court suggest they can play an increasingly prominent role. As a result, UN treaty monitoring bodies' periodic reports on the UK government's performance in meeting treaty obligations and published comments are significant documents for the courts as well as the legislature.

Unlike the European Convention on Human Rights and its incorporation through the Human Rights Act, the substantial majority of other human rights conventions remain unincorporated. An exception is the UN

## Human rights treaties and the interpretation of domestic legislation

Convention on the Rights of Persons with Disabilities (UNCRPD) which was ratified by the European Union in December 2010.

The traditional legal view is that unincorporated international treaties are not binding on domestic courts. Instead treaties can be relevant in one of a number of ways. These include where the meaning of domestic legislation is in doubt, the court may conclude it should be interpreted on the basis that international obligations will be honoured. Further, international treaty obligations can be used to guide the development of common law. In addition, when applying the European Convention on Human Rights through the Human Rights Act, the European Court has frequently drawn on other international human rights treaties in accordance with Article 31 of the Vienna Convention on the Law of Treaties. Examples of this approach include *Neulinger v Switzerland* (2010) 54 EHRR 10 where the Convention for Elimination of all forms of Discrimination against Women (CEDAW) and Hague Convention on the Civil Aspects of International Child Abduction were

utilised and *Demir v Turkey* (2008) EHRR 1272 where the International Covenant on Civil and Political Rights (ICCPR) was applied in a case concerning the right of civil servants to join a trade union on the basis that 'the precise obligations that the substantive obligations of the Convention impose on contracting states may be interpreted, first, in the light of relevant international treaties that are applicable in the particular sphere' (paragraph 69).

This traditional approach has come under particular scrutiny in a number of recent social security legal challenges. In *Burnip v Birmingham City Council* [2012] EWCA Civ 629 the Court of Appeal considered whether restrictions on eligibility to housing benefit based on the number of bedrooms in a home amounted to discrimination against disabled people. The Court of Appeal found there had been unlawful disability discrimination under the European Convention. Maurice Kay LJ made it clear that while he did not need to resort to the UNCRPD to resolve the issue, he would have done so if required, noting that in terms of freedom from discrimination under Article 14 of the European Convention on Human Rights the UNCRPD 'has the potential to illuminate our approach to both discrimination and justification'.



The issue came to the fore once again in the Supreme Court in *SG and others v Secretary of State for Work and Pensions* [2015] UK SC 16 - a challenge to the introduction of the social security benefit cap and its impact on women in particular. A key argument in this case was whether Article 3(1) of the UN Convention on the Rights of the Child (UNCRC) applied. Article 3(1) provides that in all actions concerning children the best interests of the child shall be a primary consideration. If the UNCRC was relevant, then the impact of the benefit cap on the private and family life of a child living in a household affected by the cap would need to be considered as part of Article 8 (the right to family and private life) and Article 14 (freedom from discrimination) read with Article 1 protocol 1 (no undue interference with property rights).

A majority of the court found that consideration of the primary interests of the child under the UNCRC had not been taken into account by the Department of Work and Pensions and was relevant to the issue of justification of any discrimination. Lord Kerr went considerably further arguing that Article 3 of UNCRC was directly enforceable in UK domestic law (a conclusion no other colleague was willing to support). The challenge ultimately failed as a majority held that whether the UNCRC applied or not, the indirect discrimination alleged was against women and not children and as a result, there was not a direct link between the UNCRC and the particular discrimination under challenge.

The UN Convention on the Rights of the Child arose again in *Mathieson v Secretary of State for Work and Pensions* [2015]

UK SC 47 a challenge to the legality of a legislative provision to automatically suspend entitlement to Disability Living Allowance where a child has been in hospital for more than 12 weeks. The child's best interests' provision under Article 3(1) was again scrutinised. The Supreme Court noted that Lord Carnwath in *R (SG)* had described the UN Committee on the Rights of the Child's General Comment No 14 analysis of a child's best interests as authoritative guidance and that the failure to consider the impact of the provision as a breach of international law. The judgment recognised that 'the decision of the majority in the SG case was not that international conventions were irrelevant to the interpretation of Article 14 (freedom from discrimination) but, that the UN Convention on the Rights of the Child was irrelevant to the justification of a difference in treatment visited upon women rather than children' (para 43). The Supreme Court went on to unanimously find that the automatic suspension of a child's DLA after 12 weeks in hospital was unlawful.

Closer to home, international obligations and their effect was one of the issues considered by Mr Justice Horner in the Commission's judicial review against the current law on termination in Northern Ireland and the issue is likely to be revisited in the Court of Appeal judgment.

These developments make the findings of UN treaty monitoring bodies and their published General Comments of more than academic interest to lawyers. In June 2016, the UN Committee on the Rights of the Child issued its concluding observations on the fifth periodic report of the United Kingdom and the Committee on Economic, Social and Cultural Rights its sixth periodic report. Both reports pay particular attention to Northern Ireland reflecting the active participation of the Human Rights, and Children's Commissions and local NGOs in giving evidence alongside the UK government. It was regrettable therefore that Northern Ireland officials did not attend the evidence sessions. The impact of the concluding observations may become more far reaching than Whitehall as the courts continue to grapple with the role of unincorporated international human rights treaties on domestic law.

The Commission has a range of duties and responsibilities including contributing to the monitoring of international human rights treaties in Northern Ireland and reporting on compliance to the United Nations and Council of Europe.

For details of the Northern Ireland Human Rights Commission's submissions to the UN Committee on the Rights of the Child and the UN Committee on Economic, Social and Cultural Rights go to the Commission's website at [www.nihrc.org](http://www.nihrc.org)

To access the periodic reports of the UN Committee treaty bodies go to the Office of the High Commissioner for Human Rights at [www.ohchr.org](http://www.ohchr.org)



## Magna Carta hiberniae 800 at Christ Church Cathedral, Dublin 25-26 November, 2016

A conference was organised by the Irish Legal History Society in conjunction with Christ Church Cathedral, Dublin to celebrate the 800th anniversary of the sealing in November 1215 of a copy of Magna Carta for transmission to Ireland. The venue was the Music Room of Christ Church Cathedral, the archive of which contains a late 13th century copy of Magna Carta which is on display in the Crypt.

The theme of the conference was Law and the idea of liberty in Ireland: from Magna Carta to the present with the opening address by Dr Claire Brey of the British Library. She spoke about the issues involved in organising the Magna Carta exhibition which she curated there in 2015, and brought together the surviving four original copies of the charter. There followed a paper by Dr Sean Duffy (TCD) outlining the political background to King John, Magna Carta and Ireland.

After lunch in a session chaired by Dr Maebh Harding (University of Warwick) Dr Adrian Empey spoke about the introduction of the Common Law to Ireland following the Norman conquest. Dr Peter Crooks (TCD) examined the text of Magna Carta Hiberniae to identify the differences with the great charter of 1215 and then considered the Statutes of Kilkenny

1366 against the charters. Subsequently in a session chaired by James McGuire MRJA, Dr Ian Campbell (QUB) spoke of Magna Carta and Irish political theory 1541 - 1660. Dr Colum Kenny (professor emeritus at DCU) spoke about Audley Mervyn in relation to the charter and Dr Coleman Dennehy (UCD) examined how the right of 'trial by peers' affected the Irish aristocracy on trial in Ireland as against England where the Irish peer Lord Maguire was tried as a commoner and executed.

Sir Donnell Deeny president of the Society, presided at the keynote session when the address was by Professor Paul Brand of All Souls College, Oxford. Professor Brand demonstrated the relevance of Magna Carta in Ireland during the period 1215 - 1320 but queried whether the copy transmitted to Ireland was the version known as Magna Carta Hiberniae contained in the Red Book of Exchequer destroyed in the Four Courts Fire of 1922. Professor Brand set the absence of reference to that document in the sources against the frequent reference to the various English texts. In discussion he said that the concepts contained in Magna Carta were not compatible with Brehon law and the rights set up in the charter were confined to the common law area. Ken Murphy, Director General of the Law Society of Ireland proposed the vote of thanks to Professor Brand for his address and congratulated the Society on its initiative on organising the conference.

Dr Kenneth Milne chaired the 18th century session of the conference on Saturday morning when the speakers were Professor James Kelly (DCU) speaking about the politics of political rights in 18th Century Ireland and Dr

Patrick Geoghegan (TCD) who focused on Daniel O'Connell and Magna Carta.

The concluding session, chaired by Sir Anthony Hart a former president of the Society, addressed the effect of Magna Carta on the Irish Free State Constitution, Bunreacht na hEireann and its position in the Statute Books of Ireland and Northern Ireland. The speakers respectively were Dr Thomas Mohr of UCD, Dr Blathne Ruane SC, and John Larkin QC, Attorney General for Northern Ireland. This session highlighted how the rights and principles which can be traced back to Magna Carta would be unrecognisable to those who negotiated the Charter at Runnymede 800 years ago. The conference closed with a lively discussion initiated by Judge Hart, on the current relevance of the Charter, to which contributions were made by the concluding panel and Ronan Keane, Chief Justice of Ireland 2000-04.

The Lord Chief Justice of Northern Ireland, the Right Hon Sir Declan Morgan, and the Hon Mrs Susan Denham, Chief Justice of Ireland, who are patrons of the Society, attended.

The organising committee was chaired by Robert Marshall, solicitor, currently an honorary treasurer of the Society. The academic directors were Dr Peter Crooks, (TCD) and Dr Thomas Mohr (UCD) with sponsorship by the Law Society of Ireland, Trinity College Dublin, and Sir Anthony Hart. Courtesy of the institute of Humanities UCD, in the new year a podcast of the papers presented to the conference will be available on the websites of the UCD Humanities Institute and of the Society: [www.ilhs.eu](http://www.ilhs.eu).



Celebrating the 800th anniversary of Magna Carta Hiberniae at Christ Church Cathedral Dublin: from left Mr Justice Deeny, President of the Irish Legal History Society, with Professor Paul Brand, All Souls College Oxford who delivered the key note address entitled **Magna Carta in Ireland 1215 -1320**; Robert Marshall Solicitor, joint honorary Treasurer of the Society who chaired the conference organising committee, and John Larkin QC Attorney General for Northern Ireland who spoke about Magna Carta and the Irish Statute Books. (Photo: Lynn Glanville)



Celebrating the 800th anniversary of Magna Carta Hiberniae at Christ Church Cathedral Dublin: Sir Anthony Hart (on right) a former president of the History Society who chaired the final session of the conference with from left: John Larkin QC Attorney General for Northern Ireland; Dr Thomas Mohr (UCD) one of the academic directors, and Dr Blathne Ruane SC all of whom addressed the final session.



**Caroline Maguire, employment legal adviser at Law Centre (NI), reviews two recent Supreme Court decisions - *Taiwo v Olaigbe* and another, and *Patel v Mirza* - both relevant for those advising victims of forced labour and labour exploitation.**

In June 2016 the Supreme Court handed down its decision in the case of *Taiwo v Olaigbe and another*.<sup>1</sup> This judgement confirms the need for a broader remit for employment tribunals to compensate victims of modern slavery.

### The cases

The joined appeals concerned the cases of two migrant domestic workers, Ms Taiwo and Ms Onu, who suffered severe mistreatment by their respective employers.

Ms Taiwo was a Nigerian national who was lawfully brought to the UK by her employers on a migrant domestic worker's visa. On arrival her employer took her passport from her. She was required to work long underpaid hours and was subjected to physical and mental abuse by her employers.

Ms Onu was also brought by her employers from Nigeria to work for them on a migrant domestic worker's visa. She too had her passport taken off her on arrival, worked long hours with low pay and was threatened and abused by her employers.

Both had successfully brought claims to the Employment Tribunal for breaches of the National Minimum Wage Act 1998 and the Working Time Regulations 1998. However, both Appellants had ultimately failed in claims for race discrimination on the grounds

## Supreme Court decisions illustrate the complexity of compensation claims for victims of modern slavery

that immigration status was not to be equated with nationality for the purpose of the Race Relations and Equality Acts.<sup>2</sup> The Court of Appeal held that *"discrimination on a particular ground will only be treated as discrimination on the grounds of a protected characteristic if that ground and the protected characteristic exactly correspond."*

It was argued on appeal to the Supreme Court that immigration status is a function of nationality and indissociable from it and that therefore Ms Taiwo and Ms Onu had suffered direct discrimination on grounds of nationality. It was conceded that the facts of the cases did not support a claim for indirect discrimination.

### The Supreme Court decision

The Supreme Court found that both employees *"... were treated disgracefully, in a way which employees who did not share their vulnerable immigration status would not have been treated"*. However, the Court dismissed both appeals and held that Ms Taiwo and Ms Onu had not suffered race discrimination because the reason for their abuse had been their vulnerability as a particular kind of migrant worker and not nationality.

In both cases, the employees were held to be particularly vulnerable because they were on visas that made them dependent on their employers for a continued right to live and work in the UK. The Court held that other non-British nationals who had the right to work and live in the UK [independent of any employer] would not have been treated as badly as they were. Thus the Court held that discrimination on grounds of immigration status does not amount to direct discrimination on grounds of nationality under the 1976 or 2010 Acts. The Court was careful to clarify that while no indirect discrimination argument existed in the present case, it should not be ruled out in other cases involving exploitation of migrant workers.

### The need to provide meaningful redress for victims

Many practitioners who represent workers exploited through modern slavery will be disappointed but not surprised by this

ruling. While the decision is not impervious to criticism<sup>3</sup>, it does confirm that some race discrimination claims involving labour exploitation may be difficult to prove and certainly require very careful pleading.<sup>4</sup>

Race discrimination is a potentially important avenue of redress for migrant workers who have been exploited as it allows a worker to be compensated for the injury to feelings s/he has suffered as a result of the discrimination. Only a discrimination claim before an Industrial Tribunal affords an injury to feelings remedy. In the above cases, although it was recognised that Ms Taiwo and Ms Onu had suffered *"grievous harms"*, no compensation for the mistreatment *per se* could be awarded. Only compensation arising from loss of wages and other economic loss was payable.

The Industrial Tribunal is intended to be an accessible and affordable route for parties to achieve justice in employment disputes. Employment judges and panel members are experts in the field of employment relations and employment law. Therefore, the Tribunal should be the ideal forum to hear claims involving modern slavery. However, this decision highlights the difficulty workers can face in recovering just compensation for their exploitation from an Industrial Tribunal. Lady Hale recognised this unsatisfactory situation in her final comments when she stated:

*"Parliament may well wish to address its mind to whether the remedy provided by section 8 of the Modern Slavery Act 2015 is too restrictive in its scope and whether an employment tribunal should have jurisdiction to grant some recompense for the ill-treatment meted out to workers such as these..."*<sup>5</sup>

The Law Centre and other bodies representing workers exploited through modern slavery<sup>6</sup> are concerned that such workers are still not obtaining adequate compensation for the mistreatment they endure.<sup>7</sup>

### Patel v Mirza

The case of *Patel v Mirza*<sup>8</sup> is a world away from the sad background to the *Taiwo v Olaigbe* cases but it is, without doubt, a

more significant decision as the Supreme Court has rewritten the law on illegality of contract. Illegality of contract has, to date, been a significant barrier to justice for victims of slavery where they have been working illegally (illegality most frequently arising through breach of immigration rules).

Mr Patel transferred £620,000 to Mr Mirza with the intention that Mr Mirza place bets on a bank's share price in breach of insider trading rules. Mr Mirza expected to receive advance inside information prior to a government announcement that would affect the bank's share price. However, the bet never actually took place because the government announcement did not happen. Nevertheless, the agreement was illegal as a conspiracy to commit an offence under section 52 of the Criminal Justice Act 1993. Mr Mirza did not return the money to Mr Patel and the latter sued Mr Mirza for breach of contract and restitution for unjust enrichment.

The High Court held that Mr Patel's claim was unenforceable and drew on the well-established caselaw that a court will not enforce a contractual claim where the claimant has to rely on his own illegal conduct to bring that claim: the 'reliance' principle.<sup>10</sup> The Court of Appeal upheld Mr Patel's appeal on the basis that while his claim did fall foul of the reliance principle, he fell within the locus poenitentiae exception (ie he had voluntarily withdrawn himself from the illegal agreement before it was performed). One judge agreed with allowing the appeal but held that it should be allowed for different reasons: the law prohibiting insider trading would not be stultified by allowing the claim and it would be disproportionate to disallow the claim (bearing in mind that this would mean one of the parties to the illegal transaction would enjoy a £620,000 windfall).

Mr Mirza appealed to the Supreme Court which dismissed the appeal and held that Mr Patel was entitled to restitution of the money. Giving lead judgment in the decision, Lord Toulson conducted a thorough review on the history of the common law of illegality in various jurisdictions and concluded that:

*"The essential rationale of the illegality doctrine is that it would be contrary to the public interest to enforce a claim if to do so would be harmful to the integrity of the legal system (or possibly certain aspects of public morality...).*

In assessing whether the integrity of the legal system would be harmed Lord Toulson went on to say:

*"... it is necessary a) to consider the purpose of the prohibition which has been transgressed and whether that purpose will be enhanced by denial of the claim, b) to consider any other relevant public policy on which the denial of the claim may have an impact and c) to consider whether denial of the claim would be a proportionate response to the illegality, bearing in mind that punishment is a matter for the criminal courts"*

### Impact on access to justice for victims of modern slavery

It would be premature to say that the doctrine of illegality is no longer a potential bar to access to justice for victims of trafficking and labour exploitation wishing to pursue a contractual claim against their exploiter. Much will depend on how Lord Toulson's test is interpreted by the courts and what arguments representatives can bring to demonstrate that the integrity of the legal system will be enhanced by affording justice to victims of trafficking and exploitation.<sup>11</sup> Our experience indicates that there are compelling arguments which would weigh strongly in favour of the illegality doctrine not being applied in such cases. Some key arguments would be:

- If through the doctrine of illegality an exploiter were, for example, to escape investigation for failure to pay the National Minimum Wage to a person trafficked into Northern Ireland for forced labour, the exploiter may retain the profit s/he has made from the exploitation.<sup>12</sup> This outcome is harmful to the integrity of the legal system.
- While there are public policy arguments for ensuring immigration rules are observed, there are also compelling public policy reasons for upholding the rights of victims of human trafficking and labour exploitation and for ensuring exploiters do not profit from their crimes.
- It is not proportionate to deny a victim of trafficking payment of her/his wages where s/he has been forced to work weeks on end without pay on the basis that s/he was working in breach of immigration rules (particularly where the breach of immigration rules has occurred due to the employer)<sup>13</sup>.

<sup>1</sup> [2016] UKSC 31: [www.supremecourt.uk/cases/uksc-2014-0105.html](http://www.supremecourt.uk/cases/uksc-2014-0105.html)

<sup>2</sup> Part of Ms Taiwo's claim fell under the Race Relations Act 1976 rather than the Equality Act 2010 but the Supreme Court held that for the purposes of the case it made no material difference.

<sup>3</sup> See in particular Rubenstein in IRLR June 2014 commenting on the Court of Appeal's decision in the cases. His comment that the Court of Appeal decision took no account of discrimination against a sub-group of a protected characteristic applies equally to the Supreme Court's ruling.

<sup>4</sup> In both *Taiwo* and *Onu* the exploitation involved a sole individual. Where a group of workers of the same nationality (for example) are exploited, there may be stronger evidence that the exploitation was on racial grounds.

<sup>5</sup> Section 8 of the Modern Slavery Act 2015 requires a court to consider making a slavery and trafficking reparation order against a person convicted of an offence of slavery or human trafficking (or related offence). The equivalent provision in Northern Ireland is under section 10 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

<sup>6</sup> See Access to Compensation for Victims of Human Trafficking July 2016, FLEX: [www.labourexploitation.org/sites/default/files/publications/DWP-Compensation-F.pdf](http://www.labourexploitation.org/sites/default/files/publications/DWP-Compensation-F.pdf)

<sup>7</sup> See Law Centre (NI) briefing Remedies for Victims of Trafficking (Labour Exploitation): [www.lawcentreni.org/policy/policy-briefings.html](http://www.lawcentreni.org/policy/policy-briefings.html)

<sup>8</sup> [2016] UKSC 42

<sup>10</sup> *Holman v Johnson* (1775) 1 Cowp 341, *Tinsley v Milligan* [1994] AC 340 and *Hall v Woolston Hall Leisure Ltd* [2001] 1 WLR 225.

<sup>11</sup> It should be noted that while the majority of the nine judge panel supported Lord Toulson's focus on public policy, significant concerns were expressed by the minority judges. At paragraph 192 Lord Mance warned that replacing the previous rules on illegality "...wholesale with an open and unsettled range of factors..." might "...prove more problematic than the troubled doctrine of *ex turpi causa*" itself."

<sup>12</sup> Criminal proceedings may result in the proceeds of crime being confiscated but this is dependent on a prosecution being successful.

<sup>13</sup> The Law Centre recently represented a fisherman who was trafficked into Northern Ireland on a visa which permitted him to join a ship in England. Our client in fact was brought to Northern Ireland but did not this until some weeks after his arrival.

## Introducing the Independent Advice, Support and Mediation Service (Community Care)

The Law Centre's Independent Advice, Support and Mediation Service (Community Care) runs a specialist advice line and representation service.

Community care legal advisers **Patricia Southern** and **Caroline Cooley** are experts in health and social care law.



Caroline Cooley.



Patricia Southern.

They provide advice and assistance to adults who have needs due to physical or mental disability, ill health or age, adults with sensory disabilities and adults whose needs arise because of their role as carer.

They can help in cases which raise issues concerning the legal responsibilities of health and social care trusts and other public bodies in the provision of health and social care. They advise in all areas of community care, including:

- needs assessments
- provision of services
- benefits and community care
- grants for home improvements for people with disabilities
- services for young adults transitioning from Children's Services
- financing residential and nursing home care
- carer's assessments
- capacity and decision making in social care
- human rights issues and social care

The majority of cases are resolved through negotiation with HSC Trusts and service providers.

Where necessary, the Independent Advice, Support and Mediation Service (Community Care) initiates judicial review proceedings in the High Court to clarify interpretation of health and social services law and/ or to challenge decisions made by public bodies or HSC Trusts, and can pursue appeals to the Court of Appeal and beyond.

Service users, carers, advisers, health and social care staff can contact the Independent Advice, Support and Mediation Service (Community Care) for help through the advice line.

**Advice line 028 9024 4401**

**Monday to Friday, 9am to 1pm and 2pm to 5pm**

**Out of hours voicemail service available**

## Welfare Changes Helpline

The Welfare Reform Advice Services Consortium, made up of Citizens Advice, Advice NI and Law Centre (NI), has been set up to provide help and support to anyone affected by changes to the welfare system.

The free, independent Welfare Changes Helpline is available on 0808 802 0020, 9am to 5pm, Monday to Friday. Face-to-face support is also available across the 11 council areas in local Citizens Advice and Advice NI offices. Specialist legal advice is available from Law Centre (NI) who can arrange access to specialist legal services as required.

These services are free for anyone who needs help or advice relating to any of the changes to the welfare system.

Solicitors are welcome to contact the helpline on behalf of clients with welfare related issues, or to refer clients directly.

**Do you need Welfare Reform Advice?**

Personal Independence Payments  
Disability Living Allowance  
Attendance Allowance  
Carer's Allowance  
Employment Allowance  
Tax Credits

Help is available through face to face advice or by telephone from your local Citizens Advice or Advice NI independent advice centre.

Call our free independent welfare changes helpline Monday - Friday 9am to 5pm

**0808 802 0020**

www.citizensadvice.org.uk

citizens advice NI



*Sarah Corrigan, Housing Advisor with Housing Rights discusses the New Housing (Amendment) Act (NI) 2016.*

### Introduction

Gaining Royal Assent on 9 July 2016, the Housing (Amendment) Act (NI) 2016 (2016 Act) is the most recent piece of housing legislation to come into force in Northern Ireland (NI).

This concise, potentially very effective and enabling piece of legislation facilitates the sharing of information in relation to antisocial behaviour (ASB) and empty homes, and enables the Northern Ireland Housing Executive (NIHE) to register a statutory charge in respect of grants by way of loan.

Arguably, the most crucial provision of this recent Act is contained within Section 2; information sharing in order to tackle ASB. For the first time, this section affords NIHE and Registered Housing Associations (RHAs) the right to seek information in order to take possession action against those involved in ASB. This provision dramatically changes the way in which social landlords, tenants, third parties (eg local district councils), solicitors, advisers and individuals can deal with ASB possession cases.

Recognising the importance of this legislative development,

## Housing (Amendment) Act (NI) 2016 – What does this mean for antisocial behaviour in possession proceedings?

this article will look at ASB in a housing context in NI and determine the impetus for the change in the law, the development of the law in relation to information sharing and ASB by showing both the previous and new legislative position, and will also highlight further points to consider.

### ASB in a housing context in NI – determining the impetus for change

The issue of ASB is a matter that concerns everyone in the community; it can seriously damage the quality of life for many people through the fear of crime and the long-term effects of victimisation. According to the NI Statistics and Research Agency, the number of recorded incidents of ASB in NI from Feb 2015 – Feb 2016 was 59,354. This figure represents a concerning level of ASB within a relatively small jurisdiction.

ASB in a housing context is an extremely complex and dynamic problem. Social landlords in NI have a statutory obligation to respect, protect and promote Article 8 of the European Convention on Human Rights: “Everyone has the right to respect for his private and family life, his home and his correspondence”, this right applies to both the alleged perpetrator(s) and the other tenants/community, and therefore this can be an extremely delicate balance to perfect for the social landlord.

Evidence has shown that rapid intervention, careful analysis of the ASB and proportionate action, coupled with a range of complementary forms of action

such as support from other bodies can lead to the successful resolution of a situation involving ASB and greater compliance with Article 8.

Statutory guidance, both in NI and in the rest of the UK encourage a multiagency approach to help best tackle ASB; unfortunately however, NI’s legislative framework prior to the introduction of the 2016 Act, did not allow for the mechanisms to be in place to fully implement such an approach. This barrier to the effective management of ASB was raised by several stakeholders during the consultation phase of this new Act; notably, it was reported that a number of consultees highlighted the need for improved information sharing in order to tackle ASB. While NIHE did enjoy information sharing in limited circumstances, RHAs were extremely restricted. RHAs currently preside over a growing share of the social rented sector, therefore any change in the law needed to ensure RHAs would be given the same powers in respect of information sharing, allowing them to adequately manage tenancies and promote sustainable communities.

### The development of the law in relation to information sharing and ASB – from the previous legislative position to the 2016 Act

The previous legislative position regarding information sharing in respect of ASB was found in Section 13 of Housing (Amendment) Act (NI) 2011.

Section 13 allowed any person to disclose “relevant information” to a landlord under a secure tenancy

if the information was disclosed for the purposes of enabling the landlord to decide whether or not to withhold consent to a mutual exchange or allow a tenant to exercise their right to buy their home. In addition, Section 13 allowed any person to disclose “relevant information” to NIHE if the information was disclosed for the purpose of enabling NIHE to decide whether or not to treat someone as ineligible for assistance for allocation of social housing and/or for homeless assistance. By virtue of Section 13, “relevant information” could also be disclosed to RHAs for the purpose of enabling the RHA to decide whether or not to allocate housing accommodation to any person. Section 13(4)(b) defines “relevant information” as information relating to any order or application mentioned in Ground 2A or 2B in Schedule 3A to the Housing (NI) Order 1983, eg an injunction against breach of tenancy agreement.

While the previous legislative position did help social landlords manage their stock ie appropriate sanctions such as applying limitations on tenant’s rights such as the right to exchange, and made social landlords aware of potential difficulties and helped them identify trends of ASB in certain areas, Section 13 had a number of limitations. While Section 13 allowed social landlords to deal with the consequences of ASB, it did not provide all social landlords with the tools to try to prevent ASB at an early stage. In addition, the lack of information sharing during the investigation stage of ASB would often act as an incentive for rapid legal action rather than pursuing alternative



measures. While NIHE were able to set up some information sharing protocols to circumvent this barrier, RHAs continued to face obstacles to effectively dealing with ASB.

The introduction of the 2016 Act aims to remove these barriers; the objective of this Act is to improve the ability of relevant agencies to properly investigate ASB. Therefore, Section 2 provides that a “person” may disclose certain information about ASB to NIHE or a RHA where such information is required for certain housing management purposes. “Purposes” has been widened and now includes applying for injunctions on grounds of ASB, applying for possession orders on such grounds, withholding consent to the mutual exchange of secure tenancies and determining that a person is not eligible for accommodation on the basis of their unacceptable behaviour. The 2016 Act repeals Section 13 of the 2011 Act.

It is anticipated that this new Act will aid social landlords in their duty to manage ASB.

#### **Points to consider**

During the legislative process, potential data protection and human rights concerns were raised, and the Bill was considered in light of these. While careful consideration has been given to the 2016 Act, like any new law it is possible that an issue may arise during the application of this Act. Importantly, guidance is currently being issued for this Act, to outline appropriate application. It is important to note that this legislation and the information sharing procedures do not apply to the private rented sector.



# BSA annual Golf Competition

The annual BSA Golf Competition was held at the beautiful inland course of Malone Golf Club. With a record attendance and with great prizes up for grabs, the scores did not disappoint.

With the temperatures high and a gentle breeze, the competitors dealt with the conditions well. Following an enjoyable day of golf everyone headed to the 19th hole to relax, enjoy some good food and a well-deserved drink. The scoring was exceptional - even Rory McIlroy would have been impressed. The honour of the day and the overall winner, with 42 points, (a superb up and down out of the bunker at 18) was Peter McGettrick. Runner-up was Joe Moore with a fine score of 41 points which was due to a great display of putting that would have been worthy of Jordan Speith at his best.

The winning team consisted of **John Gordon, Dr Conor McHugh, Dominic McHugh and Kevin Toner**. At hole 15, with a wonderful six iron to avoid water on the left, **Eoghan McKenna** lifted the prize for Nearest the Pin.

Other winners were:

- Peter Houston**, Danske Bank - Best Gross prize
- Kevin Toner** - Best Back Nine
- Glen Young**, Abacus Recruitment - Putting prize
- Anne-Marie McVeigh** - Ladies' prize
- Neil McGivern** - Visitors' prize

A huge thanks must go to our event sponsors, Abacus Recruitment and Libra Events. The day also could not have happened without the prize sponsors, namely, AM: PM, Hilton Hotel, Danske Bank, Quarter Accountants and Down Royal. A further thanks to the greens staff at Malone Golf Club who had the course in top notch condition. A word of thanks to the Malone catering and bar staff for looking after everyone so well.

BSA would like to thank everyone for their support and participation. Special thanks must go to Libra Events for organising the event and to Gareth Magee and Ciaran Maguire of the BSA Committee. We look forward to seeing everyone next year for the next course challenge.



*Overall winner Peter McGettrick with Gareth Magee, BSA Committee and Judith Brannigan of sponsor, Libra Events.*



*Best Gross: Peter Houston, Danske Bank, accepts Best Gross prize from Gareth Magee, BSA Committee.*



*Nearest the Pin: Gareth Magee, BSA Committee, presents Eoghan McKenna with his prize.*



*Team Prize: Dr Conor McHugh, John Gordon, Gareth Magee, BSA Committee, Dominic McHugh and Kevin Toner*



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

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

## ADMINISTRATION OF JUSTICE

### DPP V PATRICK STEPHEN DOUGLAS

Appeal by case stated. - whether the Judge was correct in law in amending a complaint of taking and driving away, contrary to a.172 Road Traffic (NI) Order 1981 to one of vehicle interference contrary to a. 8 Criminal Attempts and Conspiracy (NI) Order 1981 by virtue of a. 155 Magistrates' Courts (NI) Order 1981. - provisions on defective and amending summonses. - whether the amendment is necessary for the purpose of raising real questions at issue. - the same or substantially the same facts. - a close connection between the offences. - justice of the case. - HELD that the District Judge was correct, one Court of Appeal Judge dissenting

*COURT OF APPEAL*

7 MARCH 2016

GILLEN LJ, WEATHERUP LJ, WEIR LJ

### SIMONE KATHLEEN HIGGINS AND ANTHONY LEE V CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND

Plaintiffs have commenced separate actions against the PSNI for declarations pursuant to s. 6 Justice and Security Act

2013 and O.126 r.21 of the RCJ that both proceedings are proceedings in which a closed material application may be made to the court. - plaintiffs allege that incendiary devices were planted at the instigation of the police by an agent of the police. - whether the closed material procedure would be in the best interests of the fair and effective administration of justice. - consideration of the statutory provisions. - discretion. - HELD that declarations made that both proceedings are proceedings in which a closed material application may be made to the court

*HIGH COURT*

28 JUNE 2016

STEPHENS J

## CRIMINAL LAW

### R V ALBERT ARMSTRONG

Sentencing. - murder. - life imprisonment. - tariff. - minimum term before eligible for release. - basis of plea. - HELD minimum term of 14 years imposed

*CROWN COURT*

15 JULY 2016

TREACY J

### R V CONNOR HUGHES

Sentencing. - defendant has pleaded guilty to one count of collecting information likely to be of use to terrorists contrary to s. 58(1)(b) Terrorism Act 2000. - defendant already serving a prison sentence for possession of explosives with intent to endanger life or cause serious injury to property. - HELD that the defendant sentenced to a determinate custodial sentence of two years to run consecutively with the sentenced currently being served

*CROWN COURT*

16 SEPTEMBER 2016

TREACY J

## EDUCATION

### IN THE MATTER OF AN APPLICATION BY EM TO APPLY FOR JUDICIAL REVIEW

Applicant is the mother of a child who attended an adventure centre as a Year 8 pupil and was subject to sexual assault by fellow pupils. - applicant seeks to quash the ongoing decision of the respondent not to convene a meeting of the Board of Governors in order to carry out a comprehensive review of its policies, practices and decisions in respect of ongoing schooling of the applicant and perpetrators in light of the need to make the welfare of the victim paramount in order to prevent ongoing human rights breaches. - applicant is unhappy about the failure of the school authorities to suspend and to consider the expulsion of pupils who were involved in the assault and is unhappy about the school suspending any disciplinary action pending a PSNI investigation. - application of the scheme for the suspension and expulsion of pupils. - whether, in deciding not to invoke a suspension, the school has acted irrationally. - HELD that the school has not acted illegally in terms of an alleged failure to implement the CCMS scheme in relation to suspensions and expulsions and application dismissed

*HIGH COURT*  
6 OCTOBER 2016  
COLTON J

### IN THE MATTER OF AN APPLICATION BY SCHOOL X FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

Admission to secondary education. - whether exceptional circumstances which require the admission of the child to a school. - whether the circumstances are personal to the child and whether they require admission to only a particular school. - application for an order of certiorari to quash the decision of the Exceptional Circumstances Body whereby the exceptional circumstances body decided that the applicants should admit the child into Year 8; a declaration that the said decision was unlawful, ultra vires, void and of no force or effect; an order remitting the consideration

of the child's application to a differently constituted panel of the Exceptional Circumstances Body. - procedural challenge on the decision of the Panel. - whether the Panel erred in law in its interpretation of the scheme and Regulations. - HELD that the decision of the Exceptional Circumstances Body was procedurally unfair in that it took into account material of which the applicant was unaware and had no opportunity to challenge or comment on

*HIGH COURT*  
9 NOVEMBER 2016  
COLTON J

## FAMILY LAW

### VS V GA

Application by the plaintiff, who is the Indonesian mother of the child, for the return of the child BA to Australia under the provisions of a.12 Hague Convention as enacted by the Child Abduction and Custody Act 1985. - defendant is a Northern Irish national who previously lived with the plaintiff in Australia. - whether wrongful removal and wrongful detention. - habitual residence. - whether acquiescence. - intention of the parties. - HELD that wrongful removal is not established and there has been a wrongful retention. - child's habitual residence has not changed from Australia. - return order made

*HIGH COURT*  
7 OCTOBER 2016  
KEEGAN J

## MEDICINE

### IN THE MATTER OF NS (INHERENT JURISDICTION: PATIENT: LIBERTY: MEDICAL TREATMENT)

Applicant (NS) is an elderly lady being represented by the Official Solicitor (OS). - whether NS should be discharged to a residential facility or into the care of her son (MS) with a health package - NS has a range of health issues but no longer requires to be kept in hospital. - whether or not

NS has the capacity to provide legally valid consent to the proposed care and treatment. - whether the proposed care and treatment is necessary and in her best interests. - whether the intervention is necessary and proportionate pursuant to a.5 ECHR. - HELD that NS lacks capacity and that MS is not able to provide for the needs of NS at home and should be moved to residential care

HIGH COURT  
14 OCTOBER 2016  
KEEGAN J

#### REAL PROPERTY

#### JULIAN SMITH AND ANDREW HUGHES V DAVID BLACK AND PERSONS UNKNOWN

Plaintiff's claim to be the Receivers appointed under a mortgage between Capital Home Loans Limited (CHLL) and Places 4 You Limited (the Company). - trespass action. - which party is entitled to the possession of the property. - whether the defendant had a written tenancy agreement with the Company for the property which predated any purported appointment of receivers. - whether the plaintiffs have necessary locus standi and title to institute the proceedings as receivers to eject the defendant from the property. - personal litigants. - HELD that the defendant did not have a written tenancy in respect of the property and the plaintiffs do not have the necessary title to eject the defendant from the premises however CHLL or such receivers as they can prove to have been validly appointed have the right to seek summary possession of the property should they seek to do so as the defendant has

no tenancy agreement with the Company  
HIGH COURT  
8 NOVEMBER 2016  
HORNER

#### SOCIAL MEDIA

#### AY, A MINOR ACTING BY FY AS NEXT FRIEND V FACEBOOK (IRELAND) LIMITED AND OTHERS

Plaintiff had sexualised and indecent images of herself posted on Facebook by a third party. - images were taken down by Facebook but thereafter intermittently subsequently published on other pages. - proceedings were issued in which the plaintiff claims that Facebook is liable on the basis of breaches of the Data Protection Act 1998, on the basis of the tort of misuse of private information and negligence and on the basis of breach of the Protection from Harassment (NI) Order 1997. - defendants deny liability and contend that the action be struck out on the grounds that it discloses no reasonable cause of action, is frivolous or vexatious and an abuse of the process of the Court. - whether Facebook has an unanswerable defence since it expeditiously removed the image each time it was notified. - whether the Electronic Commerce (EC Directive) Regulations 2002 apply. - HELD that there are insufficient grounds to strike out the plaintiff's claim on the basis of a. 15 of the E-Commerce Directive and also insufficient grounds to strike out the plaintiff's statement of claim on the basis of r.19 Electronic Commerce (EC Directive) Regulations 2002  
HIGH COURT  
9 SEPTEMBER 2016  
STEPHENS J

## Library Update – Forum Shopping/ COMI Shifting in Insolvency Proceedings

*The practice of choosing a specific jurisdiction favourable to an anticipated restructuring/insolvency, usually by moving COMI (centre of main interests).*

#### Legislation

##### Companies Act 2006

Part 26 – Arrangements and Reconstructions  
<http://www.legislation.gov.uk/ukpga/2006/46/introduction>

##### Council Regulation (EC) 1346/2000 on insolvency proceedings (Insolvency Regulation).

The Insolvency Regulation came into force on 31 May 2002. It is directly applicable (having automatic legal effect and prevailing over domestic legislation) in all member states in the European Union excluding Denmark. The Insolvency Regulation introduced conflicts of law rules for insolvency proceedings concerning debtors based in the EU with operations in more than one member state, giving particular prominence to insolvency proceedings commenced in the member state in which a debtor has its centre of main interests (COMI).

<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32000R1346&rid=1>

##### Recast Insolvency Regulation 2015/848

The Insolvency Regulation is to be replaced by Regulation (EU) 2015/848 of the European Parliament and of the Council on insolvency proceedings (recast). The Recast Insolvency Regulation 2015 will apply to insolvency proceedings commencing on or after 26 June 2017.

<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015R0848&rid=1>

##### Uncitral Model law on cross border insolvency (1997)

The Model Law is designed to assist States to equip their insolvency laws with a modern legal framework to more effectively address cross-border insolvency proceedings concerning debtors experiencing severe financial distress or insolvency. [http://www.uncitral.org/uncitral/en/uncitral\\_texts/insolvency/1997Model.html](http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/1997Model.html)

#### NI Caselaw

##### In the matter of Maurice Muldoon - petitioning debtor

Cross-border insolvency case in which the petitioner seeks a bankruptcy order in Northern Ireland on foot of his own petition. - whether the High Court in Northern Ireland has international jurisdiction to make a bankruptcy order if it is satisfied that the centre of the petitioner's main interests (COMI) lies in its jurisdiction. - whether the COMI lies in Northern Ireland by virtue of the petitioner moving his habitual residence from the Republic of Ireland to Northern Ireland. - where the debtor conducts the administration of his interests on a regular basis. - whether that place is transparent and ascertainable by third



parties. - whether grounds to suspect forum shopping. - HELD that the petitioner is not habitually resident in Northern Ireland and his COMI is not in the jurisdiction of the Northern Ireland High Court

[2016] NIMaster 5

13 May 2016

**Irish Bank Resolution Corporation Limited v John Ignatius Quinn also known as Sean Quinn**

Application to annul and rescind bankruptcy order on the basis that the court lacked the jurisdiction to open main proceedings under a. 3(1) of EC Regulation 1346/2000 on Insolvency Proceedings or on the basis that the ex parte order had been obtained through misrepresentation and/or non-disclosure. - centre of main interest of the defendant. - whether the head office of a corporate body is its main centre of interest. - where the debtor's centre of main interests, where he conducted the administration of his interests on a regular basis before the presentation of the petition for bankruptcy, was. - whether that centre of administration was ascertainable by third parties. - HELD that the centre of the defendant's main interest is the Republic of Ireland and that the defendant had failed to disclose relevant facts. - bankruptcy order annulled

[2012] NICH 1

10 January 2012

**In the matter of Latlorcan Developments Ltd (in administration) and in the matter of WL Dolan Construction Limited (in administration) John J Cavanagh v William John Dolan**

Applicant is the administrator of Latlorcan Developments Ltd and an experienced chartered accountant and insolvency practitioner. - Latlorcan company was principally concerned with the ownership of property whilst Dolan Construction built houses on it. - Ulster Bank had 3 mortgages relating to lands owned by Latlorcan and was indebted to 12 million euros when the administrator was appointed. - administrator found a buyer for some of the properties. - whether the administrator was validly appointed. - administrator seeks declaration that he was lawfully and validly appointed as administrator and may lawfully sell lands to Monaghan County Council. - whether the centre of main interest is in ROI or NI (COMI). - HELD that the declaration sought be refused and the matter returned for further hearing on all the facts

[2015] NICH 14

15 June 2015

[Available via Libero on the Law Society website.](#)

**English Caselaw**

**Re Eurofood IFSC Ltd**

Company – liquidation – insolvency – centre of main interests – wholly owned subsidiary – “Head office test” – where insolvency proceedings opened – main insolvency proceedings – conflict of laws – recognition of foreign judgments – Public policy – right to fair hearing

[2006] IESC 41

**Re BRAC Rent-A-Car International Inc**

Company with its registered office in the US. - no employees in the US and all its business operations were run from England. - administration was commenced in England in order for BRAC to obtain the benefit of the moratorium against a judgment entered against it in Italy. - whether England was the proper jurisdiction for BRAC's insolvency proceeding on the basis that its COMI appeared to be in England, even though it was a Delaware company. - court ultimately found that its COMI was in England and, on that basis, the English administration should be permitted to continue.

[2003] EWHC 128 (Ch).

**Re Stanford International Bank**

Insolvency – Company – Cross-border insolvency – Company incorporated in Antigua and Barbuda – Company wound up – Receiver appointed by United States court – Liquidators appointed by Antiguan court – Liquidators and receiver applying for recognition in United Kingdom – Serious Fraud Office successfully applying without notice for restraint order against company – Whether US receivership foreign main proceeding – Whether Antiguan liquidation foreign main proceeding – Meaning of ‘centre of main interests’ – Whether restraint order should be set aside

[2010] EWCA Civ 137

**Re Codere Finance (UK) Ltd**

Company – Scheme of arrangement. The Companies Court, on Codere Finance (UK) Ltd's application for an order sanctioning a scheme of arrangement, held that both the formal requirements for sanctioning the scheme had been met and, in all the circumstances, it was appropriate to exercise the discretion to sanction the scheme. In the circumstances, it could not be seen that the fact that the company had been acquired only recently, and with a view to invoking the scheme jurisdiction, should cause the court, in the exercise of its discretion, to decline to sanction the scheme.

[2015] EWHC 3778 (Ch)

**Trustees of the Olympic Airlines SA Pension and Life Assurance Scheme v Olympic Airlines SA**

Insolvency – Petition – Foreign winding-up proceedings – Cross-border insolvency proceedings – Greek airline company carrying on business in England – Company being put into liquidation by Greek court – Trustees of UK staff pension scheme applying to wind up company – Judge granting petition – Court of Appeal overruling decision – Whether company having ‘establishment’ in England – Meaning of ‘economic activity’ – Whether jurisdiction to wind up company – Council Regulation (EC) 1346/2000, art 2(h)

[2015] 3 All ER 694, [2015] 1 WLR 2399,

**Rubin and another v Eurofinance SA and others (Picard and others intervening) In re New Cap Reinsurance Corpn Ltd (in liquidation) New Cap Reinsurance Corpn Ltd and another v Grant and others**

Insolvency – Liquidation – Foreign company – Liquidators of foreign companies seeking to enforce in England judgments of United States and Australian courts to recover moneys transferred to defendants before liquidation – Defendants claiming not to have been present in or submitted to jurisdiction of foreign courts – Whether judgments in personam – Whether ordinary rules for enforcing judgments in personam inapplicable to bankruptcy proceedings – Whether judgments enforceable at common law – Whether alternative method of enforcement through international assistance provisions of Model Law on Cross-Border Insolvency – Statutory provisions allowing English court to “assist” Australian court in insolvency matter and for registration and enforcement of Australian judgment in “civil or commercial” matter – Whether either provision allowing English court to enforce Australian judgment against defendants – Foreign Judgments (Reciprocal Enforcement) Act 1933 (23 & 24 Geo 5, c 13), s 6 – Insolvency Act 1986 (c 45), s 426(4) – Reciprocal Enforcement of Foreign Judgments (Australia) Order 1994 (SI 1994/1901), art 4(a) – Cross-Border Insolvency Regulations 2006 (SI 2006/1030), Sch 1, art 21

[All above cases are available from the library.](#)

**Articles**

What now for administrations and schemes? The Brexit fall-out (as a result of the UK's exit from the EU, unless otherwise agreed, the UK will cease to be bound by and benefit from the EC Regulation on Insolvency Proceedings No 1346/2000 ('EIR'). This will have material

disadvantages for companies in administration under the Insolvency Act 1986 (UK) that have assets and/or operations in EU member states)  
(2016) 5 CRI 174

Brexit: what next for cross-border restructurings and insolvencies?

Although the referendum resulted in a vote to leave the EU, the exit model and the continuing arrangements between the UK and the EU, including the impact on the cross-border restructuring and insolvency landscape, remains uncertain  
(2016) 4 CRI 149

COMI and get it: international approaches to cross-border insolvencies (discusses at length COMI and its implications for companies, highlighting certain cases)

Moller et al: (2015) 6 CRI 223

Update: Recast EC Insolvency Regulation now adopted (discusses the implications of the *Recast Regulation*)  
Tett: (2015) 4 CRI 172

Defining COMI: where are we now? (discusses COMI at length with reference to relevant caselaw)

Fry: (2012) 1 CRI 16

More scheming: recent developments in schemes of arrangement and the decision in *Codere* (discusses the approach taken by the English courts to schemes of arrangement in the recent *VGG*, *Stemcor* and *Codere* cases)

Beckwith et al: (2016) 1 CRI 21

UK schemes and forum shopping (discusses company's centre of main interests with reference to caselaw)

Stones: (2014) 4 CRI 161

The European Insolvency Regulation recast: the main features of the new law (discusses the *Recast Regulation*)

Fletcher: (2015), *Insolv. Int.* 28(7), 97-103

### Online Resources

#### • Tolley's Insolvency Law Service

Division E - European Insolvency Issues - General Introduction

Division E - European Insolvency Issues - Personal Insolvency- Case law from other EU Member States

#### • Tolley's Company Law Service

Division I/Insolvency: Administrations V -- International Elements/The EC Regulation

*Available from the Law Society library – Please ask a member of library staff for details*

### Textbooks

The library has a wide selection of insolvency textbooks for reference that deal with COMI shifting.

## New Books in the Library

- Silverman, F. *Conveyancing handbook*. 23rd ed. *The Law Society*. 2016.
- Ormerod, D. *Blackstone's criminal practice 2017*. 27th ed. *Oxford University Press*. 2016.
- Woodroffe, G. *Woodroffe & Lowe consumer law and practice*. 10th ed. *Sweet & Maxwell*. 2016
- Luba, J. *Defending possession proceedings*. 8th ed. *LAG*. 2016.
- Richardson, P. J. *Archbold: Criminal pleading, evidence and practice*. 2017. *Sweet & Maxwell*. 2016.
- Shindler, G. *Aldridge: Powers of attorney*. 11th ed. *Sweet & Maxwell*. 2016.
- Clarke, J. *Redgrave's health and safety*. 9th ed. *LexisNexis*. 2016.
- Owen, L. *Clark's publishing agreements: a book of precedents*. 9th ed. *Bloomsbury*. 2013
- Smith, M. *Precedent library for the general library*. 3rd ed. *The Law Society*. 2016
- Valentine, B. *Booklet of criminal offences in Northern Ireland*. 2016. *Law Society NI*.
- Greenberg, D. *Stroud's judicial dictionary*. 9th ed. *Sweet & Maxwell*. 2016.
- Jones, R. *Mental Health Act manual*. 9th ed. *Sweet & Maxwell*. 2016.
- Arlidge, A. *Arlidge & Parry on fraud*. 5th ed. *Sweet & Maxwell*. 2016.
- Christou, R. *Drafting commercial agreements*. 6th ed. *Sweet & Maxwell*. 2016.
- Mitchell, C. *Goff & Jones: the law of unjust enrichment*. 9th ed. *Sweet & Maxwell*. 2016.
- Wadlow, C. *The law of passing off: unfair competition by misrepresentation*. 5th ed. *Sweet & Maxwell*. 2016.
- Grossey, S. *The money laundering officer's practical handbook 2017*. *Money Laundering Resource*. 2016.
- Middleton, S. *Cook on costs 2017*. *LexisNexis*. 2016.
- SRA. *SRA Handbook*. November 2016 ed. *The Law Society*. 2016.
- Cartwright, J. *Misrepresentation, mistake and non-disclosure*. 4th ed. *Sweet & Maxwell*. 2016.
- Dyson, M. *Fifty years of the Law Commissions: the dynamics of law reform*. *Hart Publishing*. 2016.
- Mills, S. *Salinger on factoring*. 5th ed. *Sweet & Maxwell*. 2017.
- Hollington, R. *Hollington on shareholders' rights*. 8th ed. *Sweet & Maxwell*. 2017
- Greenberg, D. *Craies on legislation*. 11th ed. *Sweet & Maxwell*. 2017
- Kessler, J. *Drafting trusts and will trusts: a modern approach*. 13th ed. *Sweet & Maxwell*. 2017
- Powell, J. *Jackson & Powell on professional liability*. 8th ed. *Sweet & Maxwell*. 2016
- Matthews, P. *Disclosure*. 5th ed. *Sweet & Maxwell*. 2017.
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# CLASSIFIEDS

## Missing Wills

**Re: Paula Margaret Georgina Wilson**

**Currently residing at: Ravenhill Private Nursing Home, 81A Shore Rd, Greenisland, Carrickfergus BT38 8TZ**

**Formerly of: 7 Greenview, Parkgate, Ballyclare, County Antrim BT39 0JP**

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

*Neil Mulholland  
Elliott Duffy Garrett  
Solicitors*

*34 Upper Queen Street  
Belfast BT1 6FD  
Tel: 028 9024 5034*

**Re: Wilson Waugh (deceased)  
Late of: 26A Kilbeg Walk, Parkhill, Antrim, Co Antrim BT41 1ER**

**Date of Death: 24 December 2014**

Would anyone with knowledge of a Will of the above named deceased please contact:

*Jonathan Corbett  
Nelson-Singleton  
Solicitors*

*21 Gallows Street  
Dromore  
County Down BT25 1BG*

**Re: Alfred Knox McCullough  
Formerly of: 63 Killeaton Crescent, Derriaghy BT17 9HB**

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

*Campbell and Caher  
24 Longstone Street  
Lisburn  
County Antrim BT28 1TP*

*Tel: 028 9267 2644  
Fax: 028 9260 2922  
Email: francesca@campbellandcaher.co.uk*

**Re: Wesley White (deceased)**

**Late of: 6 Brae Place, Ballygowan, Newtownards, County Down BT23 5TY**

**Date of Death: 1 June 2016**

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

*Joseph F McCollum & Company  
Solicitors*

*52 Regent Street  
Newtownards  
County Down BT23 4LP  
Tel: 028 9181 3142*

*Fax: 028 9181 2499*

*Email: joe@josephmccollum.co.uk*

**Re: Thomas Whiteside**

**Of: Apartment 105, 8 Northview, Newtownabbey BT36 7JL**

**Formerly of: 5 Downview Park, Belfast BT15 5HY**

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

*Michael Murray  
DWF (NI) LLP  
Solicitors*

*Jefferson House  
42 Queen Street  
Belfast BT1 6HL  
Tel: 028 9023 0230*

*Fax: 028 9024 4644*

*Email: michael.murray@dwf.law*

**Re: Daniel O'Connell**

**Formerly of: 11 Oaklea Road, Magherafelt**

**Date of Death: 31 May 2016**

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

*P A Duffy & Co  
Solicitors*

*27-29 Broad Street  
Magherafelt  
County Derry BT45 6EB  
Tel: 028 7963 3433*

*Fax: 028 7930 1638*

*Email: gerry@paduffymagherafelt.com*

**Re: Elizabeth Kingon (deceased)**

**Late of: Sir Samuel Kelly Home, 39 Bangor Road, Holywood BT18 ONE**

**Formerly of:**

**31 Melfort Drive, Belfast, Castlereagh BT5 7FD**

**Date of Death: 25 November 2014**

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

*Neil Mulholland  
Elliott Duffy Garrett  
Solicitors*

*34 Upper Queen Street  
Belfast BT1 6FD  
Tel: 028 9024 5034*

**Re: Bernard Skillen (deceased)**

**Late of: 96 Bingnian Drive, Belfast BT11**

**Date of Death: 16 December 2015**

Would anyone having knowledge of a Will made by the above named deceased please contact:

*Oonagh Maguire  
Breen Rankin Lenzi Limited  
Unit 2, Slemish Buildings*

*105 Andersonstown Road  
Belfast BT11 9BS*

*Tel: 028 9061 8866*

*Email: oonagh@brlsolicitors.com*

**Re: Patrick Eugene (known as Eugene) Greenan (deceased)**

**Late of: 2 Gransha Park, Belfast BT11 8AU**

**Date of Death: 5 June 2016**

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

*Napier & Sons  
Solicitors*

*1-9 Castle Arcade  
Belfast BT1 5DF*

*Tel: 028 9024 4602*

*Fax: 028 9033 0330*

*Email: joe@napiers.com*

**Re: Herbert Rodney Watson (deceased)**

**Late of: 18 Maryville Walk, Banbridge, Co Down  
Formerly of: 51 Ringsend Road,**

**Banbridge, Co Down**

**Date of Death: 11 January 2016**

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

*Arthur J Downey & Co  
Solicitors*

*Tyrella House  
5 Church Street  
Banbridge BT32 4AA*

*Tel: 028 4066 2123*

*Fax: 028 4062 6712*

*Email: law@ajdowney-solicitors.co.uk*

**Re: Mary Harriet Clarke otherwise Etta Clarke (deceased)**

**Late of: 34 Rubane Road, Kircubbin, Newtownards, Co Down BT22 1AT**

**Date of Death: 7 June 2016**

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

*Joseph F McCollum & Co  
Solicitors*

*52 Regent Street  
Newtownards  
County Down BT23 4LP  
Tel: 028 9181 3142*

*Fax: 028 9181 2499*

*Email: joe@josephmccollum.co.uk*

**Re: Bryan McWilliams**

**Formerly of: 29 Castle Park, Antrim, County Antrim**

**Date of Death: 11 August 2016**

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

*Steven Ewing  
Anderson Irwin and Co  
Solicitors*

*32 Church Street  
Antrim  
County Antrim BT41 4BA*

*Tel: 028 9446 2636*

*Fax: 028 9446 6822*

*Email: steven@anderson-irwin.co.uk*

**Re: John (George) McLean (deceased)**

**Late of: Colinvale Court Private Nursing Home, Glen Road, Belfast**

**Formerly of: 21 Wallasey Park, Belfast**  
**Also believed to have resided in Dublin between 2000 and 2015 approximately**  
**Date of Birth: 8 May 1938**  
**Date of Death: 3 September 2015**

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

*Elliott Duffy Garrett*  
*Solicitors*  
*Royston House*  
*34 Upper Queen Street*  
*Belfast BT1 6FD*  
*DX 400 NR Belfast*  
*Tel: 028 9024 5034*  
*Fax: 028 9024 1337*  
*www.edglegal.com*  
*Ref: MCLE3-2*

**Re: Colette Anne Barrett (deceased)**

**Late of: 19 British Road, Aldergrove BT29 4DH**

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

*Raymond Crooks*  
*Thompson Crooks*  
*Solicitors*  
*325 Shankill Road*  
*Belfast BT13 1FX*  
*Tel: 028 9059 5551*  
*Fax: 028 9059 5553*  
*Email: raymond@tlegal.co.uk*

**Re: Rosanne Reid**  
**Of: 27 Gilnahirk Park, Belfast**

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

*Nesbitt Solicitors*  
*109 Cregagh Road*  
*Belfast*

**Re: Phyllis Skelton**  
**Formerly of: 59 Loughview Road, Aldergrove, Crumlin**  
**Date of Death: 21 September 2016**

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

*Steven Ewing*  
*Anderson Irwin and Co*

*Solicitors*  
*32 Church Street*  
*Antrim*  
*County Antrim BT41 4BA*  
*Tel: 028 9446 2636*  
*Fax: 028 9446 6822*  
*Email: steven@anderson-irwin.co.uk*

**Re: Martin Devine (deceased)**  
**Formerly of: 6 Braemar Street, Belfast**

**Date of Death: 2 October 2016**  
If anybody has any knowledge of the whereabouts of a Will made by the above named deceased please contact:  
*P J McGrory & Co*  
*Solicitors*  
*52 Andersonstown Road*  
*Belfast BT11 9AN*  
*Tel: 028 9060 2986*  
*Fax: 028 9062 1201*  
*Email: mail@pjmcrory.com*

**Re: Caroline Ann Sanders (deceased)**  
**Formerly of: 50 Oaktree Drive, Antrim, BT41 1DB**

**Date of Death: 30 August 2016**  
If anybody has any knowledge of the whereabouts of a will made by the above named deceased please contact:

*Steven Ewing*  
*Anderson Irwin and Co*  
*Solicitors*  
*32 Church Street*  
*Antrim*  
*County Antrim BT41 4BA*  
*Tel: 028 9446 2636*  
*Fax: 028 9446 6822*  
*Email: steven@anderson-irwin.co.uk*

**Re: Mr James Lowry (known as Jim) McKinney**  
**Late of: 2 Kernan Park, Portadown BT63 5QY**

**Date of Death: 16 June 2016**  
If anybody has any knowledge of the whereabouts of a will made by the above named deceased please contact:

*James H Rodgers & Co*  
*Solicitors*  
*15 Church Street*  
*Portadown BT62 3LN*  
*Tel: 028 3833 7211*  
*Fax: 028 3835 0980*  
*Email: info@jameshrogers.com*

**Re: Charles Trevor Shaw Hinds (deceased)**

**Late of: 18 McKeens Avenue, Carrickfergus, County Antrim**  
**Previously of: 113 Harbour Road, Ballyhalbert, County Down**

**Date of Death: 13 May 2016**  
Would any person having any knowledge of the whereabouts of a Will made by the above named deceased please contact:

*J W McNinch & Son*  
*Solicitors*  
*5 The Square*  
*Ballyclare*  
*County Antrim BT39 9BB*  
*Tel: 028 9332 2217*  
*Fax: 028 9335 2518*

**Re: Anne Chambers**  
**Late of: Dunlurg Private Nursing and Residential Home, 22A Armagh Road, Keady BT60 3EW**  
**Formerly of: 5 Rathmoyle Drive, Keady, Armagh BT60 2XA**

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

*T D Gibson and Company, Carleton Atkinson and Sloan*  
*Morrison House*  
*107 Church Street*  
*Portadown*  
*County Armagh BT62 3DD*

**Re: Martha Doreen England**  
**Late of: Collegelands Private Nursing Home, Lislasy Road, Dungannon BT71 6TA**

**Formerly of: Cornascribe, 187 Markethill Road, Portadown, County Armagh BT62 3SL**

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

*T D Gibson and Company, Carleton Atkinson and Sloan*  
*Morrison House*  
*107 Church Street*  
*Portadown*  
*County Armagh BT62 3DD*

**Re: Walter James Andrews**  
**Late of: Mount Merrion Avenue, Belfast**  
**Formerly of: 61 Hughes Court, Belfast**  
**Date of Death: 26 October 2016**

Would anyone knowing the whereabouts of a Will for the above named deceased please contact:

*Nesbitt Solicitors*  
*109 Cregagh Road*  
*Belfast BT6 8PZ*  
*Tel: 028 9045 4005*

**Re: James Connery**  
**Date of Death: 28 October 2013**

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

*Quinn & Heron*  
*Solicitors*  
*15 Broad Street*  
*Magherafelt BT56 6EB*  
*Tel: 028 7930 0577*  
*Fax: 028 7930 0677*  
*Email: reception@qhsolicitors.com*

**Re: Robert McGuckin (deceased)**  
**Late of: 71 Ligoniel Road, Belfast**

**Date of Death: 14 November 2016**

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

*Oonagh Maguire*  
*Breen Rankin Lenzi Limited*  
*Unit 2, Slemish Buildings*  
*105 Andersonstown Road*  
*Belfast BT11 9BS*  
*Tel: 028 9061 8866*  
*Email: oonagh@brlsolicitors.com*

**Re: Mary Veronica Willaghan (deceased)**

**Late of: 93 Finaghy Road South, Belfast BT10 0BY**

**Date of death: 27 November 2016**

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

*Brid McColgan*  
*Tughans Solicitors*  
*Marlborough House*  
*30 Victoria Street*  
*Belfast BT1 3GG*  
*Tel: 028 9055 3300*  
*Fax: 028 9055 3366*  
*Email: brid.mccolgan@tughans.com*



**Re: Dennis William George Higginson (deceased)**  
**Late of: 53 Ballystrudder Gardens, Islandmagee, Larne BT40 3SU**  
**Date of death: 15 December 2015**

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

*Reid Black*  
*Solicitors*  
2 Holywood Road  
Belfast BT4 1NT

**Re: Gerard Mulligan (deceased)**  
**Late of: 43 Lisburn Square, Lisburn BT28 1TS**  
**Date of Death: 5 November 2016**

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

*JMK Solicitors*  
27-29b St Mary's Street  
Newry  
County Down  
Tel: 028 3025 7766  
Fax: 028 3025 7230

**Re: Eileen McDermott (deceased)**  
**Late of: Cove Manor Nursing Home, 89 Mullanahoe Road, Dungannon, County Tyrone BT71 5AU**  
**Previously of: 33 Glenone Road, Portglenone BT44 8NL**  
**Date of Death: 29 March 2016**

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

*Mallon McCormick*  
*Solicitors*  
Station Master's House  
16 Station Road  
Maghera BT46 5BS  
Tel: 028 7964 2670  
Fax: 028 7964 4655

**Re: Imelda Evelyn Swandel**  
**Formerly of: 15 Fitzroy Court, Fitzroy Avenue, Belfast BT7 1TL**  
**Date of Death: 10 November 2016**

Would any person having knowledge of the whereabouts of a Will made by the above named

deceased please contact:  
*Ciaran McGlone*  
*Donnelly & Kinder*  
*Solicitors*  
22 Adelaide Street  
Belfast BT2 8GD

**Re: Samuel John Owens**  
**Late of: 21 McKeen's Avenue, Carrickfergus, County Antrim BT38 7AN**  
**Date of Death: 3 December 2016**

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

*Mark Shannon*  
*Bernard Campbell & So*  
*Solicitors*  
17 High Street  
Carrickfergus  
County Antrim BT38 7AN  
Tel: 028 9336 9033  
Email: mark.shannon@bernardcampbell.co.uk

**Re: Henry Gerard McCloskey**  
**Late of: Longfield Nursing Home, 2 Longfield Road, Eglinton, County Derry**  
**Previously of: 110 Muldonagh Road, Claudy, County Derry**  
**Date of Death: 26 November 2016**

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

*Andrea Doherty*  
*John Fahy & Company*  
*Solicitors*  
8 Bowling Green  
Strabane  
County Tyrone BT82 8BW  
Tel: 028 7138 2356  
Fax: 028 7138 2180  
Email: keelin.devine@johnfahysolicitors.com

**Re: Michael Agnew (deceased)**  
**Formerly of: 13 Old Church Lane, Aghalee, County Antrim**  
**Date of Death: 16 August 2012**

Would anyone having knowledge of any Will made by the above named deceased after 5th April 1979 is asked to contact:  
*Deirdre Lavery Solicitors Ltd*  
*Deramore House*

76 Main Street  
Moira  
County Armagh BT67 0LQ  
Tel: 028 9261 0555  
Email: reception@dlaverysolicitors.com

**Re: John Burton (deceased)**  
**Late of: Geanann Care Home, 31 Ballygawley Road, Dungannon. County Tyrone BT70 1EL**  
**Formerly of: 26 Glenfield Road, Lurgan, County Armagh BT66 8EP**

**Date of Death: 25 November 2016**

If any person has any knowledge of the whereabouts of the Will for the above named deceased, please contact us within 28 days:

*H McPartland & Sons*  
*Solicitors*  
11 Market Street  
Lurgan  
County Armagh BT66 6AR  
Tel: 028 3832 2452  
Fax: 028 3834 9561  
Email: pmcpartland@mcpartlands.com

**Re: Maurice Crangle (deceased)**  
**Late of: 37d Maralin Avenue, Lisburn, BT28 1PF**

If any person has any knowledge of the whereabouts of the Will or know of a homemade Will for the above named deceased, please contact:

*Shauna Thompson or Mildred Breakey*  
*Mildred Breakey Solicitors at*  
Email: breakeysolicitors@gmail.com  
Or  
Tel: 028 9266 9566

**Re: John Brian McCaul, a Patient of the Office of Care & Protection**  
**Of: Greenhaw Lodge Care Centre, 42 Racecourse Rd, Londonderry**  
**Formerly of: 28 Craigbrack Road, Eglinton, Londonderry**

Would any person having any knowledge of the whereabouts of a Will made by the above named Patient please contact:  
*Caldwell & Robinson*  
*Solicitors*

10-12 Artillery Street  
Londonderry BT48 6RG  
Tel: 028 7126 1334  
Fax: 028 7137 1659  
Email: j.okane@caldwellrobinson.com

**Re: John Robert Brown**  
**Late of: 40 Crom Road, Bunn, Newtownbutler, County Fermanagh**

**Date of Death: 30 June 2016**

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

*Murnaghan Fee*  
*Solicitors*  
Boston Chambers  
Queen Elizabeth Road  
Enniskillen  
Co Fermanagh BT74 7JA

**Re: Miss Eileen Templeton**  
**Late of: Mountvale Private Nursing Home, 5 Brewery Lane, Dromore, County Down**  
**Formerly of: 20 Lenaderg Road, Banbridge, County Down**

If any persons have knowledge of the whereabouts of a Will made by the above named, would they kindly contact:

*Thompson Mitchell*  
*Solicitors*  
Trevor House, 9 The Square  
Hillsborough  
County Down BT26 6AG  
Tel: 028 9268 9666  
Fax: 028 9268 8187  
Email: joannewatt@thompsonmitchell.co.uk

**Name of patient: Ms Valerie Cooper**

**Address: Breffni Lodge Residential Home, 3 Wandsworth Road, Belfast BT4 3LS**

**Formerly of: 9 Thornhill Parade, Belfast BT5 7AT**

**Date of birth: 18 May 1932**

Would anyone having any knowledge as to the whereabouts of Ms Cooper's Will (if any) and/or Title Deeds for the property at 9 Thornhill Parade, Belfast, BT5 7AT please contact:  
*Frances Keown*  
*Keown Solicitors*

Lynden House  
19 Cregagh Road  
Belfast BT6 8PX  
Tel: 028 9045 6042  
Email: frances@keownsolitors.co.uk

**Re: James Joseph Lowe (deceased)**  
**Late of: 82 Cavehill Road, Belfast BT15 5BT**

**Date of Death: 6 August 1996**  
If any person has any knowledge of the whereabouts of a Will for the above named deceased please contact us within the next 28 days:

Thomas Armstrong  
Solicitors  
51/53 Upper Arthur Street  
Belfast BT1 4GJ  
Tel: 028 9032 1399  
Fax: 028 9023 6272  
Email: shauna.edwards@tomarmlaw.co.uk

**Re: Michael Bernard Callaghan (deceased)**  
**Late of: Glencarron Nursing Home, 6 Creamery Road, Crossmaglen**  
**Previously of: 2 Art McCooley Park, Glasdrummond, Crossmaglen, County Armagh BT35 9DZ**

**Date of Death: 28 August 2016**  
Would anyone having any knowledge of the whereabouts of any Will made by the above named deceased please contact:  
Eoin McConville  
Fisher & Fisher  
Solicitors  
9 John Mitchel Place  
Newry BT34 2BP  
Tel: 028 3026 1811  
Fax: 028 3026 6695  
Email: eoin.mcconville@fssolicitors.com

**Re: William Robert McCord**  
**Late of: 90 Hyndford Street, Belfast BT5 5JG**

Would any solicitor having knowledge of the whereabouts of the Will made by the above named please contact:  
Nesbitt Solicitors  
109 Cregagh Road  
Belfast

**Re: Margaret Elizabeth McCord**  
**Late of: 90 Hyndford Street, Belfast BT5 5JG**

Would any solicitor having knowledge of the whereabouts of the Will made by the above named please contact:  
Nesbitt Solicitors  
109 Cregagh Road  
Belfast

## Missing Title Deeds

**Property at: 2 Clowney Street Belfast BT12 7LY**

**Owners: Mary Philomena McBride and David McBride**  
If any persons have knowledge of the whereabouts of Title Deeds re: the above property would they kindly contact:

Alex Wong  
Flynn & McGettrick  
Solicitors  
238 Falls Road  
Belfast BT12 6AH  
Tel: 028 9023 9629  
Fax: 028 9023 9656  
Email: a.wong@fmgssolicitors.com

**Folio: AN 209031L**  
**County: Antrim**  
**Registered Owner: Marian Surgenor**

Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned solicitors. And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.  
Oonagh Maguire  
Breen Rankin Lenzi Ltd  
105 Andersonstown Road  
Belfast BT11 9BS

**Re: Estate Mary Edith Burnett (deceased)**  
**Addresses:**  
**42 Newry Street, Banbridge,**

**County Down**  
**44 Newry Street, Banbridge, County Down**  
**46 Newry Street, Banbridge, County Down**  
**"Solitude", 19 Castlewellan Road, Banbridge, County Down**

Would any person having knowledge of the whereabouts of Title Deeds relating to the above noted properties please contact:  
Gordon Bell & Son  
Solicitors  
9-11 Newry Street  
Rathfriland  
County Down  
Tel: 028 406 30248  
Email: info@gordonbellandson.co.uk.

**Re: Elizabeth Thornton or William Henry Thornton**  
**Address: 4 Ferndale Gardens, Glengormley, Newtownabbey, County Antrim BT36 5AW**

Would any person having knowledge of the whereabouts of Title Deeds relating to the above noted property please contact:  
Edward Lavery  
E J Lavery & Company  
Solicitors  
1 - 3 Hightown Road  
Glengormley  
County Antrim BT36 7TZ  
Tel: 028 9084 3436  
Email: e.lavery@ntlworld.com

**Re: Brigid Morgan or Michael Brendan Morgan**  
**Address: 32 Swanston Crescent, Glengormley, County Antrim BT36 5DW**

Would any person having knowledge of the whereabouts of Title Deeds relating to the above noted property please contact:  
Edward Lavery  
E J Lavery & Company  
Solicitors  
1 - 3 Hightown Road  
Glengormley  
County Antrim BT36 7TZ  
Tel: 028 9084 3436  
Email: e.lavery@ntlworld.com

**Re: Colenso Apartments Ltd**  
**Address: Colenso Court, Colenso Parade, Belfast BT9 5BB**  
Would anyone having knowledge

of the whereabouts of Title Deeds relating to the above noted property please contact:-  
Caroline McBride  
MacCorkell Legal & Commercial  
Garvey Studios  
8-10 Longstone Street  
Lisburn BT28 1TP  
Tel: 028 9266 9777  
Email: cjm@mlclegal.org

**Property at: 28 Lockside Court, Belfast, BT9 5GQ**

**Owner: Ahmed J Nasir**  
If any persons have knowledge of the whereabouts of the Title Deeds relating to the above property, please kindly contact:  
Ms Naheed Anwar  
NA & Company  
Solicitors  
347 Newtownards Road  
Belfast BT4 1AJ  
Tel & Fax: 028 9508 5041  
Email: naandcosolicitors@hotmail.co.uk

**Property at: 41 Ballynacross Road, Knockloughrim, Magherafelt BT45 8PY**

**Registered Owners: Margaret McGall, Ellen Jean Kirkpatrick and Mary McKee**  
If any persons have knowledge of the whereabouts of the Title Deeds relating to the above property, please contact:  
Jemma Knox  
Tel: 07823 332411

**Re: Ellen Jane Davie James Davie Hilary Eileen Newby**  
**Property at: 63 Dromore Road, Hillsborough, County Down BT26 6HU**

Would any person have any knowledge of the whereabouts of the Title Deeds of the above property please contact:  
Ann Roulston  
Conn & Fenton  
Solicitors  
39 Bow Street  
Lisburn  
County Antrim BT28 1BJ  
Tel: 028 92 674 321  
Fax: 028 92 671 430  
Email: annroulston@lisburnsolicitors.com

**Property at: 20 Dunbeg Park,  
Hillsborough, County Down  
BT26 6AS**

**Owners: Sydney Gregg  
(deceased) and Irene May  
Gregg (deceased)**

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

*Thompson Mitchell  
Solicitors*

*Trevor House*

*9 The Square  
Hillsborough*

*County Down BT26 6AG*

*Tel: 028 9268 9666*

*Fax: 028 9268 8187*

*Email: joannewatt@*

*thompsonmitchell.co.uk*

**Premises: 97 Shandon Park,  
Belfast BT5 6NY**

**Held in the name of:**

**Joseph Flannigan and Jane  
(Jean) Flannigan**

Take notice that any person having custody of or information as to the whereabouts of the Documents of Title relating to the above-mentioned property should forthwith produce said Documents or communicate such information to the undermentioned solicitors. And further take notice that

unless the said Documents of Title are so produced or adequate information as to their whereabouts is so communicated within three weeks of publication of this notice, reconstitution of Title may be applied for.

*John Ross & Son*

*Solicitors*

*30 Frances Street*

*Newtownards*

*County Down BT23 7DN*

**Premises: 68-70 Royal Avenue,  
Belfast BT1 1DJ**

**Held in the name of:**

**Jean Millar & Company or  
Jean Moore Flannigan (formerly  
Millar)**

Take notice that any person having custody of or information as to the whereabouts of the Documents of Title relating to the above-mentioned property should forthwith produce said Documents or communicate such information to the undermentioned solicitors. And further take notice that

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**Further details about this charity and its work will gladly be supplied by the Secretary, The Heart Trust Fund (Royal Victoria Hospital), 9B Castle Street, Comber, Co Down BT23 5DY. Tel: (028) 9187 3899.**

(Registered Charity No: XN52409).  
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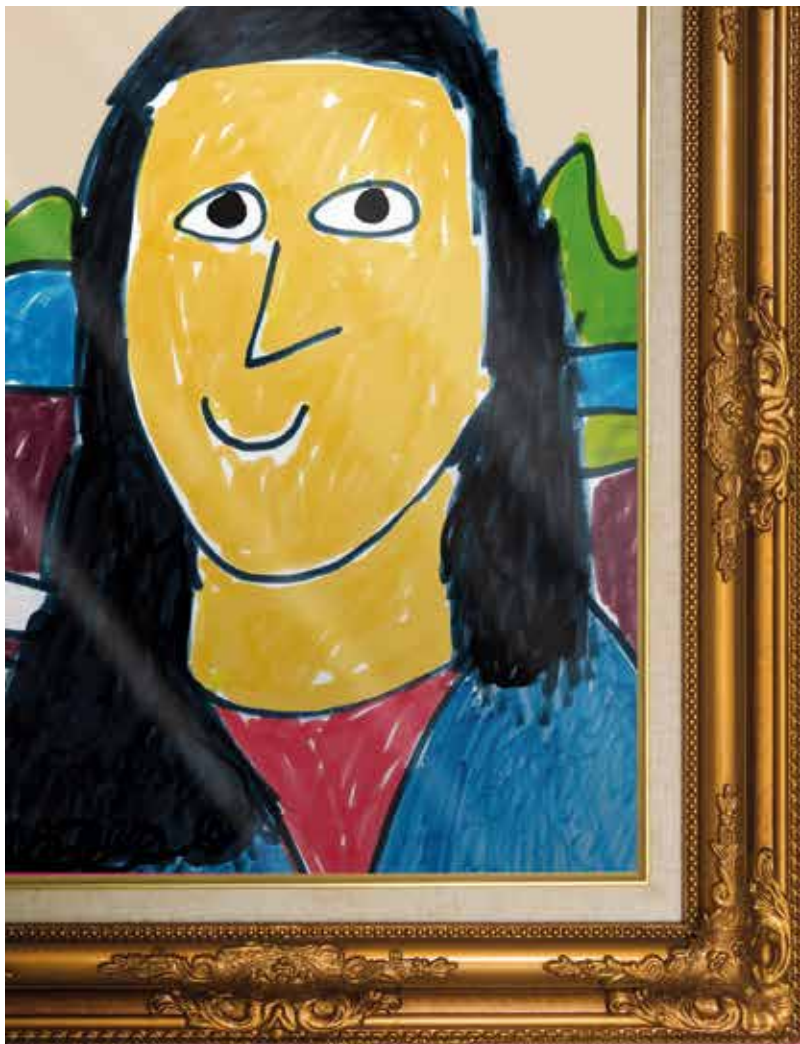
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