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OF NORTHERN IRELAND

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THIS ISSUE

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Domestic violence & abuse

New safeguards for potential victims.

Primary victims

Degree of clarity concerning the definition.

Admissions Ceremony

Society welcomes newly admitted solicitors.



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Supreme Court sits in Belfast



The Supreme Court of the United Kingdom sat in the Inn of Court of the Royal Courts of Justice, between Monday 30 April and Wednesday 2 May 2018.

The Court comprised the Supreme Court President, Lady Hale, the Deputy President, Lord Mance, Lord Kerr (former Lord Chief Justice of Northern Ireland), Lord Hodge and Lady Black.

This is only the second time that the Court which was established in 2009 has not sat in its permanent home at Middlesex Guildhall in

Parliament Square London. In June 2017 it sat for four days of hearings in Edinburgh.

It heard two appeals from the Northern Ireland Court of Appeal Civil Division. The first case involved an application for judicial review brought by Siobhan McLaughlin who was challenging the rule that parents must be married to be entitled to widowed parent's allowance. The second case was an appeal by Ashers Baking Company Ltd that a ruling that their refusal to make a cake iced with the slogan "Support Gay Marriage" was discriminatory.

The Court also delivered judgement in two linked Northern Ireland cases of R v McCool and R v Harkin which had been heard by the Supreme Court in London in relation to Confiscation Orders in respect of their assets after having been convicted of benefit fraud..

In addition to the Court hearings a number of other activities were included as part of the Court's visit to Belfast.

On the Monday Lord Kerr delivered a lecture at the invitation of the Government Legal Service in the afternoon. That evening the Justices attended the opening of the Resolution Centre.

On the Tuesday Lady Hale and Lady Black both spoke at an event at Law Society House which was jointly hosted by the Society, The Bar of Northern Ireland and the Northern Irish Civil Service Women's Network. This 'Conversation with a purpose' provided an opportunity for the 120 attendees to hear from the two distinguished speakers reflecting on issues affecting women in the legal profession to include an entertaining Question & Answer session.

On the Thursday the Court hosted a moot final between students from Queen's University and Ulster University and a talk given by current Supreme Court Judicial Assistants about what their role entails and how the application process works.



'In Conversation with: Lady Hale, President of The Supreme Court'



The Law Society's President, Eileen Ewing took the opportunity to speak with Lady Hale, President of the Supreme Court about her visit to Northern Ireland, the implications of Brexit, the challenges facing women lawyers and her appearance on BBC's MasterChef.

As the first female President of the Supreme Court, Lady Hale offers a unique and authoritative perspective on the law given her long, varied and distinguished academic, practice and judicial career.

After graduating from the University of Cambridge in 1966, Lady Hale taught law at Manchester University until 1984 as well as qualifying as a barrister.

She specialised in Family and Social Welfare law, was founding editor of the Journal of Social Welfare and Family Law, and authored the pioneering case book on 'The Family, Law and Society'.

In 1984 she was the first woman to be appointed to the Law Commission, a statutory body which promotes the reform of the law. Important legislation resulting from the work of her team at the Commission includes the Children Act 1989, the Family Law Act 1996, and the Mental Capacity Act 2005. She also began sitting as an assistant recorder.

In 1994 she became a High Court judge, the first to have made her career as an academic and public servant rather than a practising

barrister. In 1999 she was the second woman to be promoted to the Court of Appeal.

In January 2004, Lady Hale became the United Kingdom's first woman Lord of Appeal and in October 2009 she became the first woman Justice of The Supreme Court. In June 2013 she was appointed Deputy President and in September 2017 she succeeded Lord Neuberger of Abbotsbury as President of The Supreme Court.

The President of the Law Society, Eileen Ewing began her conversation with Lady Hale by welcoming her to Law Society House and thanking her for taking the time out of a busy day to speak with her. She asked Lady Hale what she thought was the main benefit of the Supreme Courts visit to Belfast?

Lady Hale: Well, the benefit to the Supreme Court is that we get out and we meet people in the different jurisdictions, with Scotland last year and Northern Ireland this year, and hopefully Wales next year, but also one hopes it is a benefit for the people of Northern Ireland that they can come and see what we do and watch us doing it in exactly the same way that we do it in London and see us in the flesh.

It is not quite the same to be able to see us over the webcasts so we hope that it is a benefit both ways.

President: I would agree with you that in person is much better and demystifies the process as has been shown over the last number of days.

President: May I ask what you think are the challenges women face in the legal profession that are different to the challenges men face.

Lady Hale: Well, we agreed earlier, didn't we, that one of the issues is what to wear. It is a much greater challenge for women than it is for men, I think that's it probably. Obviously there are the serious things like balancing family responsibilities with professional commitments and the like, but men should be facing that just as much as women. Life being as it is, on the whole women always have to face it and men only sometimes do.

President: Lady Hale in your view what will Brexit mean for the role of the United Kingdom Supreme Court?

Lady Hale: The main difference is that we will no longer be bound by future decisions of the Court of Justice of the European Union even in relation to a change in law. Quite what account we take of them is still under discussion. Also, we will no longer be able to refer questions to the European Court of Justice, which at the moment is a way in which we can get the answer to questions of EU law to which we don't know the answer. Those are the two main changes.

President: I recently saw you on BBC MasterChef so my final question is an obvious one what do you prefer, being a Supreme Court Judge or a guest on Master Chef?

Lady Hale: Oh absolutely no.....

President: No comparison?

Lady Hale: Oh no issue, it is being a Supreme Court Judge. Being a guest on Master Chef was an amusing, entertaining experience - the thing that was most entertaining about it was the difference between the actual experience of that group of women who were filmed for that meal and what it looked like on the television. They made it look as if we were having an ordinary restaurant meal served in the ordinary way and then being asked for our comments on the food.

In fact of course it took several hours. We were all filmed coming in; we were then all interviewed and they used a very small amount of the interview material. So it took a very long time and it didn't look a bit like how it actually ended up on the television.

But it was great, great fun!

President: Lady Hale, I know you're pressed for time but again, thank you very much for coming in today, it was lovely to have this opportunity to speak with you woman to woman and I really appreciate it, so thank you.

Lady Hale: Well, it has been very enjoyable, thanks a lot.

NEWS IN BRIEF

Protective Costs Orders

The PILS Project has produced a Guidance Note on Protective Costs Orders (PCOs) to assist those who wish to apply for such an order or who wish to find out more about them.

PCOs are orders from the court which limit the costs to be awarded in legal proceedings. A PCO allows an applicant of limited financial means access to the courts, in order to advance their case. PCOs enable legal issues to be clarified for the benefit of the public, without substantial costs being made against the applicant if the case is lost.

The Guidance can be accessed at <https://www.pilsni.org/guides>

Firearms applications online

The PSNI currently receive more than 12000 firearms licensing applications per annum. In January 2017 its Firearms and Explosives Branch introduced a new online application process for anyone applying for initial/re-grant and variation of a firearm certificate. At that time it made a commitment to keep a dual process of both online and paper for a minimum of six months.

Following feedback from end users and key stakeholders leading to further investment and improvements in the online application process, it is now planning to cease the paper application process from 9 July 2018.

A Frequently Asked Question section with further information on its new online application process is available from the following website: https://www.psnipolice.uk/advice_information/firearms/online-application-information/

WEBSITE OF THE OFFICE OF THE LORD CHIEF JUSTICE

The Lord Chief Justice's Office has launched its own website: www.judiciary-ni.gov.uk.

This website provides the official source of information about the judiciary, judicial decisions and other specific judicial matters. These include a section on the Civil & Family Justice Review and one providing information on the work of the Judicial Studies Board - in particular its publications such as *Court of Appeal Sentencing Guidelines*, *Sentencing Guidelines - Magistrates' Courts and The Green Book - Guidelines for the Assessment of General Damages in Personal Injury Cases in Northern Ireland*.

Relocation of Medical Legal Units

The Medical Legal Units operating in Belfast City Hospital, Musgrave Park Hospital and the Mater Hospital have recently relocated to the Royal Victoria Hospital.

Practitioners requesting information from the Belfast City Hospital, Musgrave Park Hospital and Mater Medical Legal Units in connection with disclosure orders which are sought in the Magistrates' Court or the Crown Court should ensure that the disclosure order is addressed to:

Hospital name eg Belfast City Hospital
The Medical Legal Service
Health Records Building
Royal Victoria Hospital
Grosvenor Road
Belfast BT12 6BA

The telephone number for the Medical Legal Service is 028 9504 0726.

New use for Bangor Courthouse

The Department of Justice has announced plans to transfer Bangor Court House to allow it be brought back into use as a community facility.

The planned transfer of the Victorian building from Northern Ireland Courts and Tribunal Service (NICTS) to Open House Festival (OHF) will be made utilising the Northern Ireland Executive's Community Asset Transfer (CAT) Policy.

The CAT process will see the building firstly leased to OHF, before transferring the building to their full ownership subject to proof of sustainability of their business model over the lease period.

The transfer and redevelopment aims to preserve the historic building which has been unused since it was decommissioned by NICTS in 2013. It will also contribute to the regeneration of the Bangor seafront area, while creating a hub for community activities, which will allow OHF to extend its programme of events in a permanent base.

First Residents' Parking Scheme

The first Residents' Parking Scheme to be introduced in Northern Ireland has become operational in an area of South Belfast. The Department for Infrastructure initiative has created Controlled Parking zones for residents and business owners in the Rugby Road and College Park Avenue area.

A total of 236 parking bays have been clearly defined, 117 of which will be for permit holding residents only, with a further 119 bays designated for Pay and Display available to anyone and subject to terms and conditions.

To avail of parking in the Residents Only zone, residents with rateable property within the zone must have applied for and obtained a valid permit from the Department at a cost of £30 per annum. Those residents can also avail of 25 visitor passes per quarter at a cost of £12.50.

New National Minimum Wage and National Living Wage rates

The National Minimum Wage and National Living Wage rates increased from 1 April 2018. An employee must be:

- > school leaving age to get the National Minimum Wage
- > aged 25 to get the National Living Wage - the Minimum Wage still applies for workers aged 24 and under.

Minimum wage rates applicable from 1 April 2018 are:

- National Living Wage (25 years old and over) - £7.83 per hour
- National Minimum Wage adult rate (21 to 24 years old) - £7.38 per hour
- National Minimum Wage (18 to 20 years old) - £5.90 per hour
- National Minimum Wage (16 to 17 years old) - £4.20 per hour

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Review of arrangements to deliver justice in serious sexual offence cases



The Criminal Justice Board has commissioned a review of the law and procedure in prosecutions of serious sexual offences. The review is being led by a former Lord Justice of Appeal, the Right Honourable Sir John Gillen and operates under the following terms of reference.

Terms of Reference

The review will investigate the law and procedure covering the prosecution of serious sexual offences in Northern Ireland. In conducting its work, the review will have regard to the practice and procedure for progressing such cases in other jurisdictions.

The purpose of the review is to determine whether current arrangements deliver the best outcomes for victims, defendants and justice and to make recommendations for improvements.

The review will consider the complainant's journey through the criminal justice system, from the initial complaint through to the point of court disposal. It will take appropriate account of the views of individual victims and victims' organisations, legal practitioners and the criminal justice organisations involved in the conduct of such cases.

The review will be supported by an advisory panel. It will also seek input from external stakeholder groups and members of the public will be encouraged to contribute on the basis of their personal experiences. For the purposes of the review serious sexual offences are defined as those offences tried in the Crown Court on indictment.

Scope

The scope of the review will include, but is not limited to, the following areas:

- disclosure of evidence
- support for complainants, victims and witnesses - from the time of the initial complaint through to post-trial support
- measures to ensure the anonymity of the complainant
- the arguments for defendant anonymity
- pre-recorded cross-examination
- the impact of social media on the conduct of court hearings
- provisions for restrictions on reporting
- restrictions on public attendance at court hearings.

The review commenced its work in May 2018 and will report at the end of January 2019.

The Society's nominee to the advisory panel is Paul Dougan, Solicitor. If any member wishes to provide a submission or make any comment to the review, this can be emailed to him at pdougan@jrsols.com.



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NEW FINE COLLECTION AND ENFORCEMENT LEGISLATION EFFECTIVE FROM 1 JUNE 2018

Introduction

Part 1 of the Justice Act (NI) 2016 ("the Act")¹, which provides for the enforcement and collection of fines and other penalties commenced on **1 June 2018**² along with the following secondary legislation:

- The Enforcement of Fines and Other Penalties Regulations (NI) 2018³
- The Collection of Fines etc (Northern Ireland Consequential Amendments) Order 2017⁴
- The Magistrates' Courts (Amendment No 2) Rules (NI) 2018⁵
- Social Security (Fines) (Deduction from Benefits) Regulations NI 2018⁶
- The Enforcement of Fines and Other Penalties (Revocations) Order (Northern Ireland)⁷ 2018
- The Magistrates' Courts (Fees) Amendment Order (Northern Ireland) 2018⁸

Part 1 of the Act and related secondary legislation provides a new approach to the collection and enforcement of financial penalties by allowing the court to make a 'collection order' when imposing (or registering) a financial penalty in criminal cases. Collection and enforcement will then be delegated, under the authority of the order, to an administrative and centralised Fine Collection and Enforcement Service (FCS).

The new arrangements aim to tackle the long standing issue of fine default by improving collection rates through new collection options and enforcement powers, also resulting in reduced police involvement in fine enforcement and reduced numbers of debtors going to prison for default.

Statutory guidance has been produced and published in accordance with s.26 of the Act⁹. This guidance explains the collection order and its operation, the role of the collection officer, what penalties are included, the collection and enforcement orders, court powers, offences and appeals.

Should the court decide not to impose a collection order then collection and enforcement will continue as it did before 1 June 2018.

New powers

The above legislation, *inter alia*, makes provision for:

- the penalties affected;
- the functions and designation of collection officers;
- courts to make a collection order when imposing (or registering) a financial penalty;
- improved access to benefit, income and vehicle ownership information for the purposes of collection and enforcement;
- collection officers to agree instalment orders or additional time to pay with debtors;
- the deduction of payments from a debtor's income from either earnings or relevant welfare benefits to clear financial penalties;
- access to bank accounts;
- seizure of vehicles;
- the use of supervised activity orders (SAO) in relation to all affected penalties;
- new summons procedures for attending interviews with the collection officer and for referral (default) hearings;
- arrest warrants for non-attendance at referral hearings;
- courts to order referral hearing costs to be paid by the debtor;
- the removal of sentence remission for those who end up in custody for fine default;
- ensuring that distress shall not be ordered at the point of sentence;
- ensuring children are not detained solely for default in payment; and
- the amendment of provisions relating to attendance centre orders, so that these will still be available as a default option for children.

The provisions apply to fines (including jury fines), compensation orders, the offender levy, costs ordered by the court, fixed penalties and penalty notices which have been registered for enforcement and fines transferred in from Great Britain or by an EU Member State. The provisions do not apply to confiscation orders which will continue to be enforced under Part 4 of the Proceeds of Crime Act 2002.

Collection officers

A collection officer is a civil servant designated by the Department of Justice (*s.2(1) of the Act*). A collection officer's functions are to provide debtors with advice and information about payment, secure compliance with the collection order and such further function as may be specified by regulations (*s.2(2) and (3)*).

The collection officer's powers under the collection order come into effect when the debtor fails to pay the sum due within the time appointed by the court at the point of its making.

¹ <http://www.legislation.gov.uk/ni/2016/21/contents>

² The Justice (2016 Act) (Commencement No.2) Order (Northern Ireland) 2018 (<http://www.legislation.gov.uk/nisr/2018/99/contents/made>)

³ <http://www.legislation.gov.uk/nisr/2018/102/contents/made>

⁴ <http://www.legislation.gov.uk/ukSI/2017/570/contents/made>

⁵ <http://www.legislation.gov.uk/nisr/2018/103/contents/made>

⁶ <http://www.legislation.gov.uk/nisr/2018/98/contents/made>

⁷ <http://www.legislation.gov.uk/nisr/2018/100/contents/made>

⁸ <http://www.legislation.gov.uk/nisr/2018/101/contents/made>

⁹ www.justice-ni.gov.uk/publications/guidance-collection-and-enforcement-fines-and-other-penalties

If the collection officer, having taken all reasonable steps, is unable to contact the debtor or the debtor refuses to engage, the collection officer can apply to a magistrates' court for the issue of a summons to require the debtor to attend an interview with a collection officer (s.5(4)). The officer can then attempt collection through extending the time for payment, allowing payment by instalments, deduction from earnings powers, or he may refer the matter back to court with or without making an interim bank account order or a request that a vehicle seizure order be made.

Deductions from benefits (ss.14-17 of the Act)

An application for deduction from benefits is made to the Department for Communities under s.14 of the Act. Such an application may only be made in respect of those aged 18 years or older at the time of the application (s.14(2)), and may only be made in respect of Jobseeker's Allowance, State Pension Credit, Employment and Support Allowance and Income Support (s.14(3)). Universal Credit will be added in due course.

An application may only be made where a collection order has been made, and may be made where:

- the court directs an application at the time of sentencing, where the debtor consents and if this is more appropriate than ordering payment within a specified period or allowing payment by way of instalments (s. 4(2)).
- the debtor has defaulted on payment and extension of time and/or instalments had failed or were inappropriate. The collection officer may make such an application whether the debtor consents or not, although the debtor may apply to the collection officer either orally or in writing for such an application to be made (s.6(3)&(4)).
- the court directs the collection officer to make an application at a referral (default) hearing (debtor's consent not required) (s. 9(1)(c)).

Attachment of earnings (ss.18-19 and Schedule 1 to the Act)

An attachment of earnings order (AEO) may be made against a person who is aged 18 or over, and is in employment. The order is directed to the person who appears to employ the debtor,

who will ensure that the correct amount is taken from the employee's wages (s.18). An AEO may only be made where a collection order is made. An order may be made:

- by the court at the time of sentencing, when making a collection order, where the debtor consents and if this is more appropriate than ordering payment within a specified period or allowing payment by way of instalments (s.4(2)).
- by the collection officer when the debtor has defaulted on payment and extension of time and/or instalments had failed or were inappropriate. At this stage, the debtor's consent is not required to make such an application, although the debtor may also apply to the collection officer either orally or in writing for such an application to be made (s 6(3) & (4)).
- by the court at a referral hearing (debtor's consent is not required) (s. 9(1)(c)).

The collection officer has authority to require from the debtor details of his actual or anticipated earnings or income as well as details of his employer (s. 19).

The amount deducted will be in accordance with the tables set out at Schedule 2 to the Enforcement of Fines and Other Penalties Regulations (NI) 2018, or the debtor may agree to pay higher amounts. Employers will be entitled to deduct a small administrative fee (£1) from the debtor's earnings for every deduction made and paid to the court (*The Enforcement of Fines and Other Penalties Regulations Regulation 13*).

Bank account orders (ss.20-22 of the Act)

Interim bank account orders (IBAO) and bank account orders (BAO) will allow financial penalties to be recovered from debtors who have sufficient funds in a bank account, held in the debtor's sole name, to make payment but have not done so. It will be available where other enforcement options are inappropriate or have failed.

The collection officer will only have authority to impose an IBAO, freezing the amount required on a temporary basis, before referring the matter back to court for it to consider making a BAO. A debtor may apply to the collection officer for a hardship payment if an IBAO causes particular difficulty.

A BAO requires the financial institution to

make payment of the specified amount to the court, but it may not operate to require the making of a payment which would reduce the credit balance of the debtor's account below £5.00 (*The Enforcement of Fines and Other Penalties Regulations 2018 Regulations Regulation 28*).

BAOs apply in the case of a person who was convicted of an offence but not sentenced, before 1 June 2018 as well as in the case of a person convicted after 1 June 2018 (s. 20(9) of the Act).

Vehicle seizure orders (s.23 of the Act)

A vehicle seizure order (VSO) enables a debtor's vehicle to be seized in order to secure payment of the sum due. The vehicle may be sold, scrapped or otherwise disposed of and any proceeds of sale are to be used to pay the outstanding amount.

The collection officer will only consider this option after all other options have failed or are inappropriate. The collection officer cannot make a VSO but may refer a request to the court at which the debtor can make representations.

The collection officer must be satisfied of the debtor's ability to pay the outstanding amount, that the vehicle is owned by the debtor and has a value sufficient to pay the unpaid amount including any charges incurred. Vehicles that are used to transport disabled or vulnerable persons or that are determined as priority vehicles under the Act or Regulations cannot be made subject to a VSO.

Before making a VSO, the court must be satisfied that the VSO would be justified, reasonable and proportionate in all the circumstances of the case and have particular regard to the likely effect of the VSO on the debtor's ability to earn a living.

Once a VSO has been made and the vehicle has been seized, the debtor has the opportunity to reclaim the vehicle, by paying the outstanding financial penalty, removal and storage charges within 28 days. Should the debtor not pay the vehicle may be sold or otherwise disposed of, and the proceeds will be used to pay the penalty and any charges. Any remaining balance will be issued to the debtor.

Vehicle seizure orders will apply in the case of a person who was convicted of an offence but not sentenced, before 1 June 2018 as well as

in the case of a person convicted after 1 June 2018 (s. 23(9)).

Supervised Activity Orders (SAO) (s.29 of the Act)

A SAO allows a debtor to undertake community based activities to clear a financial penalty. Section 29 of the Act substitutes a new Article 45 into the Criminal Justice (NI) Order 2008 in relation to the imposition of SAOs, and makes consequential amendments to Schedule 3 to the Order.

A SAO may now be made in respect of any of the penalties affected for an individual aged 18 and above who has an outstanding amount of up to £1,000.

As well as providing for the imposition of a SAO when a person is in default of payment, the new Article also now allows for a SAO to be made when the person makes an application for a SAO, default not yet having occurred.

SAOs now range from 10-150 hours depending on the value of the outstanding amount, and the default period for failing to comply with a SAO is increased to 35 days maximum to take account of the higher values.

A debtor can complete a SAO early by paying the outstanding amount to the court reduced proportionally by the hours completed.

SAOs will be managed by Probation Board for NI (PBNI).

Court's powers at referral hearings (s.9 of the Act)

Where the debtor is in default of a collection order, the collection officer may refer the matter back to court under s.6 of the Act. The court may then give additional time to pay, allow payment by way of instalments, impose an attachment of earnings order or direct an application for deduction from benefits, make a bank account order (even if the collection officer has not previously made an interim bank account order), make a vehicle seizure order, issue a warrant of distress, make a supervised activity order or in the case of a child an attendance centre order, commit an adult debtor to prison in default of payment or where he is in default of distress, or remit the whole or part of the sum due (s. 9(1)).

Where no collection order has been made, and default occurs, the responsible officer may refer the matter back to court under s.8 of

the Act. The court can then decide to impose a collection order at this point. If it does, then all of the options under s.9 will be open to it. If the court decides not to impose a collection order, then all of the options bar the deductions from benefits and attachment of earnings orders will be open to it. (s. 9(2)).

Section 9 of the Act sets out the sequence of using the above options and provides for when they may or may not be used.

Power to issue arrest warrant where debtor fails to attend referral hearing (ss. 10-12 of the Act)

Under s. 10 of the Act if a debtor fails to attend a referral (default) hearing on foot of a summons, the court may issue an arrest warrant, endorsed for own bail. The warrant can only be issued where the court is not satisfied that the summons was served on the debtor despite a reasonable attempt having been made to serve it; or believes that the debtor is evading service. The court must also be satisfied that the debtor is aware of the liability to pay the sum due and of the possible consequences of defaulting on the payment; considering issuing a warrant to commit the debtor to prison under s. 9(1) (i); and satisfied that issuing a warrant for the debtor's arrest (instead of re-issuing the summons) is proportionate to the objective of securing the debtor's appearance before the court. The warrant must be endorsed for bail so that the person will be released upon entering into the recognizance.

Whether a debtor enters into the recognizance or not he can pay to the police or the court the full outstanding amount up to the court date. If payment is made in full then the warrant ceases to have effect, the case will be removed from the court list and the debtor is not required to appear before the court (s. 11).

Appeals (s.25 of the Act)

Appeal procedures are available across all of the decisions made in the collection process in terms of both court and collection officer decisions. For courts, normal appeal routes are available whereby any decision is appealable to the next highest court tier. Collection officer decisions are appealable to the court which made the collection order and decisions on any deductions from benefits are appealable to the Department for Communities.

Where an appeal is brought, the collection order is suspended until that appeal is resolved and the collection officer will not take

any further enforcement actions until after the appeal is completed.

Offences

The fine collection and enforcement arrangements have a number of offences built in, in order to ensure compliance. These include offences of non-compliance with the court's or collection officer's request for information, either by failing to provide the information, or by providing false information knowingly or recklessly, or failing to disclose a material fact, non-compliance with enforcement orders and an offence of concealment in relation to vehicle seizure orders.

Removal of Remission (s.32 of the Act)

Section 32 of the Act amends section 13 of the Prison Act (NI) 1953 (prison rules) so that remission shall no longer be available in respect of committals to prison or detention in respect of default.

The removal of remission does not apply in relation to offences committed before 1 June 2018.

Legacy cases

Where a court has already dealt with the default before 1 June no collection order may be made.

Cases where a debtor has been sentenced and default has occurred prior to 1 June 2018, will be referred to the court for a collection order to be considered, however, for these cases and any others where the sentence was imposed before 1 June, interim bank account orders, bank account orders and vehicle seizure orders may not be made.

New Fine Collection and Enforcement Service

The new Fine Collection and Enforcement Service (FCS) is based within NI Courts and Tribunals Service, located on the ground floor in Laganside House. FCS contact details are as follows:

**Fine Collection and Enforcement Service
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New safeguards for potential victims of domestic abuse introduced

The Department of Justice has launched a new scheme aimed at helping to protect people from becoming a victim of domestic violence or abuse.

The Domestic Violence and Abuse Disclosure Scheme (DVADS) allows an individual to make inquiries confidentially to the PSNI, where they have concerns that their partner has a history of abusive behaviour. An application can also be made by a third party who knows them and has concerns. Depending on the results of its investigation the police can then advise a potential victim if they are at risk. This will enable them to make an informed choice about an existing personal relationship.

DVADS is similar to a scheme introduced in England and Wales in 2014, which is commonly referred to as 'Clare's Law', and to a scheme introduced in Scotland in 2016. It was named after Clare Wood who was murdered by her violent ex-boyfriend in 2009.

Permanent Secretary at the Department of Justice, Nick Perry, said: "Violence or abuse in the home, in whatever form it takes, is wrong. It should never be tolerated; it should never be ignored; and it should never, ever be something a person should have to deal with alone.

"The Domestic Violence and Abuse Disclosure Scheme is aimed at helping to keep people safe. It will empower men and women to take informed decisions about an existing relationship. It will help prevent abuse and violence in the home by providing a safe and confidential channel offering support and guidance. Ultimately, this scheme will help to create a safe community where we respect the law and each other.

"I would encourage anyone to look for the signs of domestic violence and abuse and to apply to the scheme if they are worried about the abusive history of their partner, or someone else's."

Working in partnership with other bodies, DVADS will be delivered by the PSNI's Public Protection Branch.

Discussing the new Scheme Detective Superintendent Ryan Henderson from the Public Protection Branch said: "We welcome the opportunity to have been involved in the development of this new scheme. An important part of our role as police officers is to prevent people from becoming victims and this will help to achieve that goal.



"Previously, it would have been difficult for someone entering a new relationship to find out or be aware if their new partner had any prior convictions for violence or domestic abuse.

"We respond to an incident of domestic abuse every 18 minutes. We know that domestic abuse is a frightening crime which can affect anyone often leaving them feeling isolated and alone. However, we know that many incidents of domestic abuse still go unreported.

"Anyone suffering from domestic abuse is encouraged to contact their local police on the non-emergency 101 or in an emergency always call 999."

The introduction of DVADS will help ensure that victims of domestic violence and abuse in Northern Ireland are afforded the same level of protection as those living in the rest of the United Kingdom.

Further details about the Scheme and how to apply can be accessed via the Northern Ireland Direct website at <https://www.nidirect.gov.uk/articles/check-history-abuse-through-domestic-violence-and-abuse-disclosure-scheme> or through an online application on the PSNI's website at <https://www.psni.police.uk/crime/domestic-abuse/dvads/>



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Psychiatric harm and the definition of primary victims



Dr David Sharpe BL



Dr Gerard Kelly BL

The High Court of England and Wales has recently provided a helpful degree of clarity concerning the definition of a primary victim. Dr David Sharpe BL and Dr Gerard Kelly BL assess the legal principles governing primary victimhood and consider the implications of the case for Northern Ireland practitioners.

Background

In *RE v Calderdale & Huddersfield NHS Foundation Trust*, the High Court of England and Wales (EWHC) considered the definition of a primary victim in the context of obstetric injury.¹

RE, the first claimant, was born at term in a midwifery led unit under the control of the defendant. She weighed 4.7kg and suffered an acute hypoxic insult due to a lack of oxygen to the brain in the minutes before and after her delivery causing injury. RE claimed damages for her physical injuries and the second claimant, LE, her mother, brought a nervous shock claim.²

RE weighed more than 10 pounds and it is generally accepted within the medical community that the risk of shoulder dystocia is much higher in a large baby. After RE's head had been delivered there was a delay in her birth as her shoulder became stuck. She was born without a heart rate, resuscitation was commenced and a heart rate was detected after ten minutes with a first gasp after 12 minutes.

Causation and quantum were not in question but were instead subject to the issue of whether the mother was entitled to recover damages either as a primary or secondary victim. RE claimed that her delivery should have been achieved earlier than it was and contended that this delay was due to failings by the midwives and obstetricians in both planning and delivery. A birth plan had been put in place and the obstetric registrar was available within two minutes. Given this, Goss J concluded that negligence had not been proved in relation to the antenatal care.

However, the court found that there had been negligence in the *delivery* of RE. Crowning of the baby occurred at approximately 16.34

and when the baby didn't deliver after the next contraction, Goss J held that the midwife should have recognised that there was a real possibility of shoulder dystocia. Bradycardia commenced sometime between 16.38 and 16.43. Hypoxic injury commenced from about 16.45 and lasted until RE gave her first gasp at 17.05. Goss J held that assistance should have been summoned at around 16.37 and concluded that had such assistance been summoned, then the birth would have been completed by 16.42. Instead, the birth was delayed for a further 11 minutes. Goss J concluded that there was negligence in the delivery of RE by delaying the summoning of help and that this delay was causative of the hypoxic injury that commenced at about 16.45.

Classification as a Primary Victim

Turning to the question of the appropriate classification of LE as a primary or secondary victim,³ Goss J emphasised that the negligence had occurred when RE's body remained in the birth canal. As such, she was not a separate legal entity to her mother. This, he concluded, meant that in law they should be treated as one. The extent of the injury was dependent on the totality of the hypoxic event which began at the time that both RE and LE were a single legal entity. In these circumstances, he considered that the mother was a primary victim and recovery for psychiatric harm was subject to the principles governing primary victims in *Page v Smith*.⁴ Consequently, as the mother was considered within the definition of a primary victim, there was no need for her to satisfy the additional legal constraints which apply to secondary victims.⁵

Commentary

The law of tort has recognised a cause of action for psychiatric harm (or nervous

shock, as it has historically been termed) since 1901 when Kennedy J accepted that a pregnant barmaid could recover damages for nervous shock caused by her fright at seeing a pair-horse van being driven into the bar where she was serving.⁶ However, the courts have consistently drawn a distinction between physical harm and psychiatric harm and imposed more exacting conditions for recoverability in the latter.⁷ The scepticism with which the common law has long viewed psychiatric harm remains present today in the law of tort of Northern Ireland.⁸

In addition, the law has drawn a further distinction between mere grief or distress and psychiatric illness of a much more severe and prolonged nature. As Lord Denning MR put it: "no damages are awarded for grief or sorrow caused by a person's death".⁹ The implementation of this distinction in practice has required courts to engage, with the help of expert medical testimony, in highly factually-specific assessments of the nature of the plaintiff's condition.

The distinction which the courts have developed between primary and secondary victims can present a particularly challenging threshold for plaintiffs. In order to succeed as a primary victim, a plaintiff must demonstrate that it was reasonably foreseeable that the defendant's negligence could cause *physical* harm. For secondary victims, additional legal constraints govern recoverability for psychiatric harm. These constraints, laid down by the House of Lords in *Alcock v Chief Constable of South Yorkshire*, require that the plaintiff must show: (i) that their illness or condition was caused by a "shock" of some kind; (ii) that they either witnessed the event directly or came upon its immediate aftermath; and, (iii) that their relationship with the accident victim was sufficiently "proximate" in a personal or familial sense.¹⁰

This distinction has produced a “patchwork quilt of arbitrary distinctions” which has resulted in an unhelpful and ambiguous legal framework.¹¹ The boundaries of primary victimhood remain unclear with narrow definitions focused only on whether the plaintiff suffered physical harm or was within a zone of danger. However, since primary victim plaintiffs do not need to satisfy the additional *Alcock* control mechanisms, there is a compelling practice rationale to advance a more expansive definition. In *White v Chief Constable of South Yorkshire*, for example, rescuers who feared for their own safety were considered within the definition of primary victims.¹²

In the present case, Goss J found that the negligence had occurred when RE’s head had crowned but her body remained in the birth canal meaning that RE was not yet a separate legal entity. As there is no separation of mother and fetus as legal entities while the baby is in utero, the judge determined that LE was a primary victim. Goss J acknowledged that existing English authority, such as *Wild v Southend University Hospital NHS Foundation Trust*,¹³ suggested that mothers whose babies were injured before delivery ought to be considered as primary victims. The Northern Ireland High Court has not yet had an opportunity to consider the classification of mothers in circumstances of psychiatric harm during childbirth but – if available on the facts – the “in utero” argument seems particularly cogent.

Practice Perspective

The definition of primary victimhood in *Page* remains the subject of intense criticism. Indeed, the Law Commission of England and Wales suggested that the “courts should abandon attaching practical significance... to whether the plaintiff may be described as a primary or a secondary victim”.¹⁴ However, as *McDaid* demonstrates, given the precedential authority of *Page*, the Northern Ireland Court of Appeal continues to apply the distinction between primary and secondary victims and, in the context of secondary victims, the more onerous *Alcock* control mechanisms. Consequently, until such time as the Supreme Court chooses to reconsider the distinction between primary and secondary victims, *Page* remains good law.

In the context of obstetrics, *RE* sheds light on the definitional contours of primary victimhood and provides welcome direction for Northern Ireland plaintiffs in similar

circumstances. It should be recalled too that Lord Oliver’s definition of primary victim in *Alcock* included “participants”.¹⁵ This provides scope to argue that *all* mothers in childbirth are properly within the definition of “participants”, an approach which would extend the definition to circumstances where the alleged negligence occurred when the baby was no longer in utero. Indeed, the Scottish courts would appear to be moving in such a direction: in *Salter v UB Frozen and Chilled Foods Ltd*, the Outer House held that it was appropriate to classify an employee as a primary victim in circumstances where he regarded himself as the involuntary cause of the death of a fellow employee.¹⁶ Lord Slynn’s observations in *W v Essex County Council* that the “categories of those claimants to be included as primary or secondary victims are not as I read the cases finally closed” suggests that there is scope to further develop the definition of primary victim before the courts of Northern Ireland.¹⁷

From a practice perspective, it is clearly preferable to frame a plaintiff seeking recovery for psychiatric injury as a primary victim to avoid the *Alcock* control mechanisms applicable to secondary victims. *RE* signals a judicial willingness to pursue an incremental approach to defining the boundaries of primary victimhood. Beyond this, there remains considerable scope to advance a more expansive definition of a primary victim whilst remaining consistent with the contours established in *Page*. As such, there is no reason why the Northern Ireland courts should not contribute to shaping this evolving understanding of primary victimhood.

This Practice Note is based on a research paper recently published by the authors in the *Medico-Legal Journal of Ireland* (see Sharpe and Kelly, “Psychiatric Harm and the Boundaries of Primary Victimhood” (2018) *Medico-Legal Journal of Ireland*, Volume 24, Issue 1).

¹ [2017] EWHC 824 (QB), [2017] Med LR 390 (hereafter *RE*).

² RE’s father was the third claimant but did not pursue his claim. The fourth claimant, RE’s grandmother, advanced a nervous shock claim as a secondary victim. For present purposes, it is the court’s definition of a primary victim which is of particular interest.

³ *ibid*. The defendant had advanced the argument that the mother was not a primary victim. DE, on the other hand, as RE’s grandmother was “unquestionably a secondary victim” (per Goss J).

⁴ [1996] 1 AC 155 (hereafter *Page*).

⁵ *RE* (n 1) 394.

⁶ *Dulieu v White & Sons* [1901] 2 KB 669.

⁷ As Lord Macmillan observed: “in the case of mental shock there are elements of greater subtlety than in the case of an ordinary physical injury and these elements may give rise to debate as to the precise scope of legal liability.” See *Bourhill v Young* [1943] AC 92, 103 (emphasis added).

⁸ *McDaid v Snodgrass* [2009] NICA 18.

⁹ *Hinz v Berry* [1970] 2 QB 40, 42.

¹⁰ [1992] 1 AC 310.

¹¹ *White v Chief Constable of South Yorkshire Police* [1999] 2 AC 455, 500 (per Lord Steyn).

¹² [1999] 2 AC 455.

¹³ [2014] EWHC 4053 (QB).

¹⁴ Law Commission for England and Wales, “*Liability for Psychiatric Illness*” (HMSO 1999) Law Comm 249, para 5.54.

¹⁵ *Alcock* (n 21) 465.

¹⁶ 2003 SLT 1011.

¹⁷ [2001] 2 AC 592, 601.





THE UK LAW SOCIETIES' JOINT BRUSSELS OFFICE

View from the Brussels Office: two years from the EU referendum

The UK Law Societies' Brussels Office (the Office) represents all three UK Law Societies, including the Law Society of Northern Ireland, in Brussels. We lobby and work on stakeholder engagement on behalf of the Law Societies in Brussels and have a close working partnership with each of them. We advise the Law Societies and their members in the UK on various matters relating to EU law, policies or institutions. Since the 2016 referendum, the Office has been involved in various activities, research projects and engagements with respect to Brexit.

We do not take a position on Brexit, given the varied views of the Law Societies' large membership. Our role instead is to give legal advice, opinions and analysis as to the options available for arrangements post-Brexit under current EU and other relevant agreements, such as European Free Trade Association (EFTA), European Economic Area (EEA) or other third country free trade agreements (FTAs).

In early 2017 the UK Law Societies adopted a paper on key priorities for Brexit for a Brussels audience. This document spells out our priorities and our scope of action: the protection of the legal profession and the rights of solicitors to engage in cross border work, maintaining cooperation in civil justice and criminal justice, and using our expertise to communicate issues to support an orderly Brexit. This communication is available on our Office website.

We have received the LSNI to stakeholder meetings in Brussels on several occasions since the referendum. These meetings have involved the current President Eileen Ewing, Senior Vice President Ian Huddleston and CEO Alan Hunter and various Brussels stakeholders from influential MEPs on the European Parliament's Brexit Steering Group (chaired by

Guy Verhofstadt) eg Danuta Hubner MEP and Elmar Brok MEP, to meetings with member state representatives such as the Estonian and Bulgarian Presidency Brexit coordinators.

Following our contacts with the Parliament, this spring the Office was invited to give evidence to the Parliament's Constitutional Affairs Committee on the subject of the draft EU-UK Withdrawal Agreement. The Committee members were particularly interested in questions surrounding the border between Northern Ireland and the Republic of Ireland. Questions raised included whether the backstop would protect the economic position of NI and how micro or small businesses operating on a North-South basis could be facilitated by separate arrangements.

While the draft Withdrawal Agreement provisions on trade across the border understandably concentrate on trade in goods, the Office highlighted in its testimony the important role trade in services plays in the functioning of the NI economy, and in particular how professional and legal services help to support the all-island economy. We have emphasised this critical role must endure in the post-Brexit landscape and we work closely with LSNI on this. Our position is that, even if it is not possible to maintain all existing links, the consequences of winding down EU-UK cooperation needs to be analysed as well as the capacity for bilateral action between the UK and Ireland to remedy the situation with respect to legal services.

In addition to highlighting the importance of legal services, the Office has also increased its targeted engagement in Brussels in underlining the importance of civil justice cooperation. This is one issue which will require careful consideration from both negotiating parties. The concern here is that without an EU – UK agreement on the recognition and enforcement of judgments, there will no longer be a regime ensuring the recognition and enforcement of judgments between the UK and a number of EU member states, including the Republic of Ireland. Currently the matter is dealt with under the Brussels I Regulation within the EU and between the EU and EFTA States by the Lugano Convention. Neither of these instruments are automatically available for the UK without

negotiations taking place.

What makes this issue more complex than that of the provision of legal services is that this area of civil and commercial cooperation falls under the exclusive competence of the EU. This means that it will no longer be possible to have a bilateral agreement between the UK and those EU countries where there are no frameworks for recognition and enforcement. At the moment, we are engaged in the analysis of which countries are to be impacted by this.

Furthermore, rather than recognising that this matter concerns the access to justice for individuals, consumers or SMEs, the negotiations on civil justice have been locked behind the "phase two" trade negotiations. This means that we will only know how civil justice is to be affected once the UK and EU begin to negotiate on their future trading relationship.

This raises the question as to when these negotiations will take place. As a first step, the UK and EU will aim to agree on the withdrawal issues and future framework for the UK – EU partnership by October 2018. This means that the broad outline of the future arrangements may then be agreed by both parties.

However, the details of these new arrangements will only be negotiated at a later stage, after the UK leaves the EU in March 2019. This is because the EU cannot negotiate a trade deal with one of its own member states. The task of finalising the agreement and implementation measures on the withdrawal issues and the future framework remains the main point of focus for the rest of 2018. During this period the UK vision on the future arrangements with the EU may also be clarified.

For more information on our activities and engagement, see our website:

www.lawsocieties.eu 1

You can also subscribe to our monthly newsletter, the Brussels Agenda, via our website. In our newsletter we bring together the previous month's developments on Brexit and EU affairs: <http://www.lawsocieties.eu/news/brussels-agenda-newsletter/>

Statutory Employment Rights payments increased

The Employment Rights (Increase of Limits) (No 2) Order (NI) 2018 (SR 2018 No 80) revises, from 6 April 2018, the limits applying to certain awards of industrial tribunals, the Fair Employment Tribunal or Labour Relations Agency statutory arbitration and other amounts payable under employment legislation, as specified in the Schedule to the Order - see table below for further details.

Under Article 33 of the Employment Relations (NI) Order 1999 ("the 1999 Order"), if the retail prices index (RPI) for September of a

year is higher (or lower) than the index for the previous September, the Department is required to change the limits, by Order, by the amounts of the increase or decrease (rounded as specified in Article 33(3) of the 1999 Order as amended).

The Employment Rights (Increase of Limits) Order (NI) 2018 (the No 1 Order) (SR 2018 No 69) increased limits in accordance with the increase in RPI from September 2015 and September 2016. This Order subsequently revokes the No 1 Order and reflects the

further increase in the index of 3.9% from September 2016 to September 2017.

The increases apply where the event giving rise to the entitlement to compensation or other payments occurs on or after 6 April 2018. Limits previously in operation under the Employment Rights (Increase of Limits) Order (NI) 2016 (SR 2016 No 37) are preserved by Article 4 of the Order in relation to cases where the relevant event was before that date.

TABLE OF INCREASE OF LIMITS

	Relevant statutory provision	Subject of provision	Old Limit	New Limit
1.	Article 40(6) of the 1995 Order	Minimum amount of compensation awarded by the industrial tribunal where individual expelled from union in contravention of Article 38 of the 1995 Order and where, when the application is made, the applicant has not been re-admitted to the union.	£9,300	£9,663
2.	Article 23(1) of the 1996 Order	Maximum amount of "a week's pay" for the purpose of calculating a redundancy payment or for various awards including the basic or additional award of compensation for unfair dismissal.	£510	£530
3.	Article 63(1) of the 1996 Order	Limit on amount of guarantee payment payable to an employee in respect of any day.	£26.50	£28.00
4.	Article 77E(3) of the 1996 Order	Amount of award for unlawful inducement relating to union membership or activities, or for unlawful inducement relating to collective bargaining.	£4,100	£4,260
5.	Article 154(1) of the 1996 Order	Minimum amount of basic award of compensation where dismissal is unfair by virtue of Article 132(1)(a) and (b), 132A(d), 133(1), 134 or 136(1) of the 1996 Order.	£6,200	£6,442
6.	Article 158(1) of the 1996 Order	Limit on amount of compensatory award for unfair dismissal.	£80,700	£83,847
7.	Article 231(1) of the 1996 Order	Limit on amount in respect of any one week payable to an employee in respect of debt to which Part XIV of the 1996 Order applies and which is referable to a period of time.	£510	£530

“Equity and fairness” in misconduct dismissal

by Tom Campbell

The Northern Ireland Court of Appeal has made a recent interesting contribution to the manner in which dismissals in misconduct cases are to be determined and reminded Industrial Tribunals of the need to have regard to the equity and substantial merits of a case, including conducting an assessment of whether a lesser sanction falling short of dismissal might have been applied by a reasonable employer. In some respects it can be argued that this decision has restored the intention of the legislature and it is of considerable assistance to employees in unfair dismissal cases challenging the reasonableness of an employer’s decision in a misconduct case.

Employment tribunals considering unfair dismissal cases of this nature have for many years been confronted with the so called “band of reasonable responses” test and warned not to substitute their own view of the alleged misconduct findings (the so called “substitution mind set”).

On one view there remains reluctance on tribunals to hold that a dismissal in a misconduct case is unfair. It might regard a dismissal as being on the harsh side but may feel constrained from ruling in favour of the employer. A tribunal challenge to the dismissal can therefore fail because it is considered to fall within the band of reasonable responses.

The guidance has long been that in judging the reasonableness of the employer’s conduct “an Industrial Tribunal must not substitute its decision as to what was the right course to adopt for that of the employer” - *Iceland Frozen Foods Limited v Jones* (1983) ICR 17. In that case Brown-Wilkinson J concluded that:

“the function of the Industrial Tribunal, as an Industrial Jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair; if the dismissal falls outside the band it is unfair.”

Under Article 130 of the Employment Rights (NI) Order 1996, the employer has the

responsibility to demonstrate to an Industrial Tribunal that the dismissal was fair. This issue is to be addressed by considering “the circumstances (including the size and administrative resources of the employer’s undertaking) (whether) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee”. However, Article 130 also stipulates that the tribunal must have regard to “equity and the substantial merits of the case”, the importance of which was emphasised by our own Court of Appeal (Gillen LJ dissenting) in the case *Caroline Connolly v Western Health and Social Care Trust* (2017) NICA 61.

In that case a nurse had removed a Ventolin inhaler from hospital ward stock for her own use because, she claimed, she had been suffering an acute asthmatic attack. Her own inhaler was in her locked car some distance from her work station. She said that the ward sister was not present to give permission, that she had taken “five puffs” from the hospital inhaler and that it was her intention to replace the item. Despite a clear disciplinary record and the consequences for her nursing career, she was dismissed for gross misconduct and her internal appeal was rejected.

Two outings before separately constituted Industrial Tribunals were unsuccessful, it being concluded that her summary dismissal related to an act of misconduct which was one which “fell within a band of reasonable responses for a reasonable employer in all the circumstances of the case”.

Commenting on this conspicuous lack of success and perhaps a combative or confrontational nature, Deeny LJ, delivering the majority decision, said that “it may be that her previous employment as a soldier, and, indeed, the qualities necessary to become an Irish boxing champion, have not made her an ideal supplicant before panels and tribunals. But the determination, in accordance with equity and the substantial merits of the case as to whether her summary dismissal was one within the band available to a reasonable employer, must be decided on the facts and not on the subjective impression she engendered in those before whom she appeared.”

In addressing the tribunal’s decision and its claim that it was not for a tribunal to ask whether a lesser sanction would have been reasonable, the Judge said that he could not “see how one can properly consider the equity and fairness of the decision without considering whether a lesser sanction would have been one that right thinking employers would have applied to a particular act of misconduct”. The Court pointed out that given that the tribunal had acknowledged that the sanction was “at the extreme end” it was difficult to see how it had arrived at its decision without considering whether an alternative punishment, such as a final written warning, would have been applied by a reasonable employer.

To justify a summary dismissal the authorities require that the conduct must impliedly or expressly represent a repudiation of the fundamental terms of the contract. The learned Judge said that given that employment law is a branch of the law of contract “any dismissed employee opting to go into a court of law and claim damages for breach of contract at common law against an employer who had summarily dismissed them for using a Ventolin inhaler while suffering from an asthmatic attack and delaying two days in reporting that, particularly when it was their ‘first offence,’ could be tolerably confident of success before a judge, in my view.”

The Court concluded that dismissals for a single first offence must require the offence to be particularly serious and that it was impossible to view the nurse’s action in such a light. The Court substituted a finding of unfair dismissal and remitted the case to a fresh tribunal to determine the amount of compensation.

The case is a helpful reminder of the importance that the “equity” and “substantial merits” require an assessment by a tribunal as to the fairness of the employer’s decision, that these principles have equal status in the legislation and that the tribunal must consider the proportionality of the employer’s decision on sanction.

Tom Campbell is a partner in the firm of Campbell Stafford Solicitors, Belfast.

Substance Misuse Court Pilot at Belfast Magistrates' Court

The recently launched and innovative Substance Misuse Court (SMC) has now held its first session with Presiding District Judge Bagnall. I was fortunate to represent the first defendant appearing before the new Court. Given the diverse nature of the issues arising for defendants in their lives, a flexible approach is required and taken. The Court sits on Level 1 at Laganside Courts (Court 1a) whilst the cases are filtered initially from Belfast Magistrates' Court number 10. The Judge, with the assistance of the defence practitioner and the Probation Service, identifies possible cases for the new Court upon a guilty plea being entered. A bespoke Probation Report is prepared to confirm possible suitability in advance of any referral.

If the defendant is subsequently referred to the SMC a further Report is prepared by Probation for the first appearance. This Report is presented to the morning meeting at 10.30 am of the SMC and discussions are held in relation to matters arising involving various relevant agencies. The defence solicitor can observe at this stage if required. Neither the PPS nor the defendant attend this meeting.

The defendant attends the afternoon session of the Court and discusses progress to date and the next steps with the Presiding District Judge directly. The defence solicitor and the PPS representative can make submissions or representations also at this stage whilst the defendant is present or in their absence if no attendance.

Progress is then reviewed by the SMC and decisions made on future plans to assist the defendant going forward. A review date is set to monitor progress which is usually

every number of weeks - a similar format is followed for each appearance.

The case is then ultimately transferred back to the Magistrates' Court for final sentencing disposal upon successful completion of the programmes or plan or if the interventions are unsuccessful.

The Court will assist defendants dealing with underlying issues helpfully and ultimately the Criminal Justice system as well as society more generally will benefit. Defendants will hopefully build on the progress made to date. Solicitor colleagues will play a significant role in this important journey. The Court will also develop further in procedures, one would imagine, as new defendants and challenges are met. As the pilot progresses the Law Society will provide further updates.

We are grateful to Eoghan McKenna of MSM Solicitors Belfast for this article.

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OF NORTHERN IRELAND





New Board for Dispute Resolution Service elected

The first Annual General Meeting of the Dispute Resolution Service (DRS) was recently held at Law Society House in Belfast. It had been convened, as per the constitution of the DRS, to elect a new Chair, Vice Chair and Board members.

Following a short address at the AGM by the current Chair, those mediators in attendance had an opportunity to vote electing the following practitioners to serve as:

Chair

Brian Speers

Vice Chair

Alva Brangam QC

Board members

Teresa Johnstone
James O'Brien
Gareth Jones
Michael Bready
Drusilla Hawthorne
Rosalind Dunlop
Kevin Neary

The new Board will consider the future direction of the DRS and the strategy

required to promote the service to practitioners and clients in Northern Ireland and further afield.

Commenting the new Chair, Brian Speers said: "I am delighted to have been elected Chair and look forward to working with colleagues to promote the DRS to practitioners and to ensure the DRS is the preferred choice for consumers and businesses in Northern Ireland."

Those attending the AGM also had an opportunity to hear from a number of key speakers including Society President Eileen Ewing, District Judge Philip Gilpin and Joanne Cracknell from Willis Towers Watson on current developments in mediation.

In her address Society President, Eileen Ewing said:

"Much has been achieved over the last number of years not least the accreditation of the DRS by the Chartered Trading Standards Institute (CTSI) as a certified ADR provider for consumer disputes. Since October 2015 there has been a legal requirement on traders who are unable

to resolve a dispute with their customer internally, to offer details of an appropriate alternative dispute resolution body or organisation. The organisation so offered to the customer must have been checked to ensure independence, quality and accessibility, as well as being certified. Such an ADR provider can offer engagement to explore resolution on line as well as offline. The DRS was certified in November 2016 following the audit process and was the first provider of consumer mediation in this jurisdiction.

The Law Society remains proud that the DRS and its membership continue to be drawn from both parts of the legal profession in Northern Ireland. I am confident that today's AGM, the new board and the strategy which will be put in place to promote the DRS to practitioners will provide the right direction to take."





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ADMISSIONS CEREMONY

Society President, Eileen Ewing, recently welcomed newly admitted solicitors to the legal profession at the Law Society of Northern Ireland's Admission Ceremony which took place in the Whitla Hall at Queen's University Belfast. More than 90 newly admitted solicitors joined Masters, family and friends for this important event in the legal calendar.

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

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

"You have become Officers of the Court and you will, from now on, carry with you the duties and responsibilities that your admission in this jurisdiction entails. As a solicitor and an Officer of the Court you have a duty to be a professional lawyer. In every case you take, whether it is big or small, remember that it is important to someone. For better or for worse, your advice and advocacy as a solicitor will affect and change people's lives."

The President concluded her speech by quoting American jurist and author Oliver Wendell Holmes: "In what other profession does one plunge so deep into the stream of life? So share in its passions, its battles, its despair, its triumphs."

Awards

The President also presented awards to newly admitted solicitors in recognition of excellence in their studies. The awards were presented to:

Carmel Teresa Doherty – The Thomasena McKinney Prize.

Robyn Butler and Jonathan David Scullion both for excellence in the Professional Conduct Course.

Clare Holmes for excellence in the Solicitors' Accounts Course 2018.



The Presidential and Chief Executive Team joined the Lord Chief Justice on stage at the Admissions Ceremony 2018.



Alan Hunter, CEO and Registrar of the Law Society of Northern Ireland.



Society President, Eileen Ewing, giving her keynote address at the Admissions Ceremony 2018.



Lord Chief Justice, Sir Declan Morgan, addressing newly admitted solicitors.



President, Eileen Ewing, joined Carmel Teresa Doherty, winner of the Thomasena McKinney Prize 2018.



President, Eileen Ewing, presents Clare Holmes with her certificate for excellence in the Solicitors' Accounts Course 2018.



President, Eileen Ewing, presents Robyn Butler and Jonathan David Scullion with their certificates for excellence in the Professional Conduct Course.





Newly admitted Solicitors Group 1.



Newly admitted Solicitors Group 2.



Newly admitted Solicitors Group 3.

A MASTER'S VOICE

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

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

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

1. Long term planning

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



2. Development and growth

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

3. A breath of fresh air

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

4. You think you cannot afford an Apprentice?

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

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

This is in my view not so. On the contrary you have on your hands a highly motivated individual who has worked extremely hard

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

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

5. Generally

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

6. And finally

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

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



ATTENTION ALL PROSPECTIVE MASTERS

Are you interested in taking on an apprentice for the two year term commencing September 2018?

If you are in private practice and have

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

Or

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

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

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

The Society each year draws up a list of members who are qualified and willing to act as Masters. This list will be provided on request to students who are seeking apprenticeships. Details will also be included in the "Masters' List" in the "Becoming a Solicitor" section on the Society website.

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

Minimum recommended salary for apprentices starting in September 2018.

The Society's minimum salary for apprentices starting their training on or after 1 September 2015 will be as follows:

- (a) The Law Society's recommended wage for apprentices under 25 years of age shall be the greater of £250.10 per week or the relevant UK national minimum hourly rate which increased to £7.38* per hour from 1 April 2018.
[* This rate is likely to increase annually].
- (b) If an apprentice is aged 25 years and over the hourly rate payable increased to £7.83* per hour from 1 April 2018. This is the living wage rate.
[* This rate is likely to increase annually]

The Solicitors' Admission and Training Regulations 1988 as amended state that:

"All Indentures of Apprenticeship... shall... provide for payment by the master to the apprentice of a wage not

less than that fixed by the [Education] Committee from time to time as being appropriate"

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

Masters taking on a new apprentice in September 2018 will be able to avail of the following benefits:

- FREE LIBRARY SERVICES – UP TO £50
- FREE CPD

New Masters who take on an apprentice in September 2018 will be entitled to claim up to 15 hours free CPD. This applies to Law Society events only. New Masters may attend the CPD events free of charge (up to 15 hours) in the 2019 CPD year. Masters who took on an apprentice who started in September 2017 can similarly claim up to 15 hrs free CPD for this current CPD year - 2018 - by attending Law Society CPD events.

Please advise the CPD Coordinator at the time of booking if you are a Master.

Some Law Society events may be excluded. The offer may not apply to the September 2019 and future intake of apprentices.



A slice of Viennese life

After months of planning over 120 members of our profession, their partners and spouses set off in late March 2018 for the Society's Annual Conference.

Vienna was the destination for our conference. Our conference continues to be a popular fixture in the legal calendar providing the perfect opportunity for members to come together, to socialise and relax with colleagues and friends and to participate in quality CPD business sessions. Dawn broke as delegates boarded the plane from Dublin airport ready for the three hour flight to Austria and the four day conference which lay ahead of them.

After arriving early in Vienna it wasn't long before delegates were taken to their home for the conference - The Grand Hotel Wien, one of Vienna's oldest hotels which is located in the centre of the city, just a few steps away from the famous Vienna State Opera and Kaerntner Strasse, the renowned shopping area and the Imperial Hotel which gained its fame due to Adolf Hitler working as a day labourer there in his youth and then commandeered it as his headquarters in Austria during the Second World War.

After check in and a tour of the luxury hotel, delegates were quick to begin their conference experience by exploring Vienna and the numerous sights and sounds of what has been described as Europe's most cultural capital.

Following a day of sightseeing, delegates were back at the Hotel and changed for the Welcome Reception at the famous Sky Bar and Restaurant, so named as it has

breathtaking views over the city as well as the mosaic roof of St Stephen's Cathedral, where the Society's President, Eileen Ewing welcomed delegates and sponsors at what turned out to be a fantastic evening for all.

Friday morning came quickly as delegates gathered early for the start of two days of business sessions which are an important feature of the Annual Conference, providing delegates with presentations from key note speakers on subject matters of importance to the legal profession in Northern Ireland.

The theme of the conference was *The Practice and the Practitioner* and this was very much reflected by the key speakers at our business sessions on Friday and Saturday morning. Overseeing the business sessions was the ever present and expert Society Conference Chairperson, Rory McShane.

For the first business session on Friday morning delegates heard from:



Delegates sightseeing in Vienna.



Peggy Mercer, Alistair Rankin, Alan Reid, Mary Murnaghan and Caroline Boston.



Society Chief Executive Alan Hunter, District Judge Brownlie, Society President Eileen Ewing, Master Sweeney and District Judge Duncan.



Gala Dinner attendees in the Ball Room.



Raymond Crooks, Lord Justice Stephens, Society President Eileen Ewing and Society Chief Executive Alan Hunter.

- Willis Towers Watson on GDPR & Cyber Insurance - Market Response;
- Leaf's Chief Executive, Steven Goldblatt on Cyber Crime;
- Jimmy Scullion, Ireland General Manager of Advanced Legal on Practice Management;
- Lyn Canning Hagan, Partner, GM'G Chartered Accountants on Property Tax;
- John Baxter, Chief Executive Officer of Law Society Financial Advice NI on Brexit and the economic outlook and
- A QA session on Brexit chaired by the Senior Vice President, Ian Huddleston with contributions from the Society's Chief Executive, Alan Hunter.

Following the end of the business session, delegates took the opportunity to do some further sightseeing, some taking a Horse and Carriage City Tour and others enjoying the numerous cafes, restaurants and clubs throughout Vienna.

Saturday morning arrived and colleagues gathered once more for the second business session which included presentations on:

- A focus on ancillary relief from Melanie Rice BL;

- Matrimonial Law Bankruptcies and Settlements from Brigid Napier, Principal, Napier & Sons;
- Business valuations in matrimonial settlements from Tony Nicholl, Managing Partner, GM'G Chartered Accountants;
- Negative Equity & Private Rented Sector in Northern Ireland from Raymond Crooks, Principal, Thompson Crooks Solicitors;
- Pensions in Divorce Cases from John Baxter, CEO, Law Society Financial Advice NI;
- A Young Solicitors' Perspective from Rachael Gamble, Chair and Chris Kinney, Vice Chair of the Northern Ireland Young Solicitors' Association.

With Saturday morning's business session completed, delegates took the opportunity to do some more sight-seeing and shopping before the final evening event of the conference, the Gala Dinner in The Grand Hotel Wien's stunning Ball Room.

The President welcomed the delegates and guests, thanking the various sponsors for their support before inviting the key note speaker, Lord Justice Stephens to address those attending. With formalities over

delegates danced the night away into the small hours.

Parting being always such sweet sorrow, delegates took their last opportunity to take in Viennese lifestyle before departing for their journey back to Dublin marking the end of another successful Annual Conference.

As always the Annual Conference would not be possible without the continued financial support of our sponsors:

- Willis Towers Watson
- GM'G Chartered Accountants
- Advanced Legal
- Titlesolv
- Leaf

The organisation of any event is no small achievement and we all recognise the considerable hard work of Rory McShane, Conference Chairman, Paul O'Connor, Head of Communications, Jennifer Ferguson, Events Coordinator, and Ross Licence and Judith Brannigan from Libra Events.

Annual Conference 2019 has yet to be announced but the Society would encourage all members to attend for what will be an enjoyable, worthwhile and memorable experience for everyone.



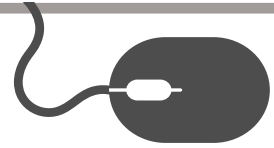
Conference delegates attending CPD Session.



Chris Kinney, Society President Eileen Ewing and Rachael Gamble.

Are your contact details correct?

Members are reminded that under Regulation 23 (c) -- (e) of the Solicitors' Practice Regulations 1987, you are obliged to inform the Society if there are any changes in your employment status or contact details.



If your employment status or contact details have changed please email: records@lawsoc-ni.org providing the required information as soon as possible.

If you fail to provide updated information you may be in breach of Regulations.

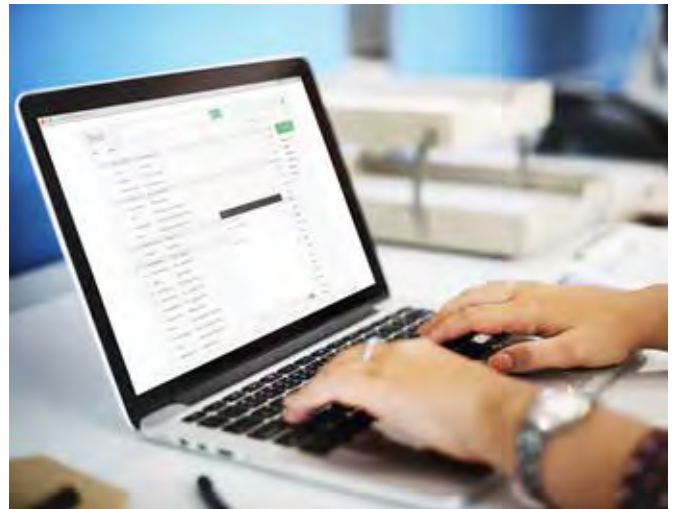
Solicitors' Accounts Regulations 2014

Cheque Clearance System changes - storage of paid cheques

With the recent changes to the Cheque Clearance System of which members have previously been informed in E-former communications, solicitors in private practice are hereby notified and informed that, by Resolution of the Council of the Law Society dated 28 March 2018:

- Solicitors are to continue to retain all original paid cheques for at least six years, to be produced in accordance with the Solicitors' Accounts Regulations 2014 for so long as their respective banks, who will make their own commercial arrangements, continue to return these to members.
- Where the individual banks no longer return original paid cheques, solicitors must ensure that they obtain and retain for at least six years and make available to the Society upon demand, without delay or impediment, clear and durable images of the front and back of the paid cheque, both sides of which must be capable of being viewed simultaneously.
- Solicitors must ensure that they put in place adequate arrangements with their respective banks to ensure the banks retain and produce for the period of at least six years such digital images to them, their reporting accountant and or the Society immediately upon request by them or their reporting accountant or the Society without impediment or delay.

Members must ensure that they continue to comply with their regulatory obligations under the Solicitors' Accounts Regulations 2014.



Use of free email addresses

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

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

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

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

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

Anti-Money Laundering/Counter-Terrorist Financing Supervision Regime

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("the Money Laundering Regulations 2017")

Publication of Sector Risk Assessment

The Society recently published its first Anti-Money Laundering/Counter-Terrorist Financing (AML/CTF) Sector Risk Assessment of the international and domestic risks of money laundering and terrorist financing (ML/TF) affecting the solicitors' branch of the legal profession in Northern Ireland ('its own sector').

This Assessment has been prepared by the Society as part of its obligations as the professional body supervisory authority of the solicitors' branch of the legal profession in Northern Ireland – see Regulation 17 of the Money Laundering Regulations 2017.

The Sector Risk Assessment includes:

- information on the ML/TF practices which the Society as the supervisory authority considers to apply to its own sector;
- a description of indications which may suggest that a transfer of criminal funds is taking place in its own sector;
- a description of the circumstances in which the Society considers that there is a high risk of ML/TF.

It is important that solicitors read and consider carefully the Society's Sector Risk Assessment and understand how this Assessment applies to their business.

Regulation 18 requires relevant persons to take into account the Society's Sector Risk Assessment when carrying out the individual mandatory written risk assessment of the risks of ML/TF to which their business is subject.

The Society's Sector Risk Assessment has been available to its own sector from 3 May 2018 through:

- the Members' Services Section on the Society's website;
- a standalone communication issued electronically to members;
- a separate publication delivered to every principal of all firms;
- the Society's e-former issued to members;
- the Society's electronic Anti-Money Laundering (AML)/Counter-Terrorist Financing (CTF) Updater issued to members.

Ownership and management restrictions

For individuals who under the Money Laundering Regulations 2017 are considered to be beneficial owners, officers or managers of relevant firms or relevant sole practitioners who offer any services subject to the Money Laundering Regulations 2017:

Regulation 26: Prohibitions and Approvals

No person (a relevant individual) may be the beneficial owner, officer or manager of a relevant firm or a relevant sole practitioner unless that relevant individual has applied (whether directly or by way of application made on their behalf) to the Society for approval and their application has been granted or whose application has been received but not yet been determined by the Society.

It is a criminal offence to act as a beneficial owner, officer or manager of a relevant firm or as a relevant sole practitioner as defined under the Money Laundering Regulations 2017 without approval from the Society from **26 June 2018**.

No criminal offence is committed if a relevant individual has applied to the Society for approval on or before Monday 25 June 2018 and that application has not yet been determined by the Society.

All applications to the Society for approval must be made using the Society's Application Form and submitted with an AccessNI Basic Disclosure Certificate (or with proof that an application for an AccessNI Basic Disclosure Certificate has been made) for each relevant individual.

For further information on applying to the Society for approval you are referred to the Society's original Important Notice to All Practitioners, Application Form and Information Notes for assistance (first issued on 2 May 2018) which are available in the AML/CTF section of the Members' Area on the Society's website or on request from the Society. If you have not so far taken any action in response to the Society's communications on this matter, you must now do so urgently.

Each relevant individual is required to satisfy themselves on their legal obligations under the Money Laundering Regulations 2017.

Important – failure to apply to the Society for approval where required under the Money Laundering Regulations 2017 will affect the services your practice is able to offer, result in commission of a criminal offence by the relevant individual under the Money Laundering Regulations 2017 and result in regulatory sanction.

Smoothing the conveyancing process

The new Memorandum of Understanding (“MOU”) between the Law Society of Northern Ireland, the Royal Institution of Chartered Surveyors (NI) and the National Association of Estate Agents (NI) was formally launched at Law Society House in March 2018.

The new initiative aims to make the process of buying and selling a home in Northern Ireland much smoother for consumers. The MOU commits to providing better and timelier communications between all parties involved in the conveyancing process to enable the identification and efficient resolution of any problems and issues at a much earlier stage in the conveyancing process.

It is anticipated that the benefits to the consumer will include a more efficient conveyancing process which reduces delays and without impacting costs.

This is the first initiative by the three professional bodies who have been actively



involved in working together to identify ways to facilitate the smoother operation of the residential property market and the related necessary formal contractual and financial arrangements between vendors, purchasers and their lenders in Northern Ireland. Commenting on the launch of the new MOU, Alan Reid, Chair of the Society’s Conveyancing & Property Committee said:

“The Society is delighted to be working in partnership with the Royal Institution of Chartered Surveyors (NI) and the National Association of Estate Agents (NI) on this

important initiative which will seek to make the conveyancing process in Northern Ireland more efficient and effective.”

Sam Dickey from the Royal Institution of Chartered Surveyors (NI) said: “RICS welcome this new initiative which underscores the need for cooperation and communication amongst all parties involved in the residential conveyancing process in Northern Ireland.”

Kirsty Finney from the National Association Estate Agents, said:

“This initiative provides a template for best practice moving forward and continues to keep the consumer at the heart of the conveyancing process.”

A copy of the MOU can be accessed in the Conveyancing & Home Charter Section of the Society’s website or at: <https://www.lawsoc-ni.org/joint-memorandum-on-improving-communications-between-the-professions>.

Hard copies of the MOU are available from the Society upon request.

The Society is keen to receive feedback from members on the operation of the MOU and this should be sent to Andrew Kirkpatrick, Head of Non Contentious Business at: andrew.kirkpatrick@lawsoc-ni.org.



From left: Alan Reid, Chair of the Society’s Conveyancing & Property Committee; Kirsty Finney, Regional Representative of the National Association of Estate Agents and Sam Dickey of the Royal Institution of Chartered Surveyors.

Appointment of Law Society Disability Liaison Officer

Chapter 14 of Lord Justice Gillen’s Report on the Review of Civil Justice considers the issue of Disability in the Civil Courts and contains a number of recommendations.

The Report notes that courts have the task of examining access to justice for persons with disabilities on an equal basis with others. Positive actions are required to remove barriers not only in the built environment but also for communication and information purposes.

In line with Recommendation CJ113, the Society is pleased to announce the appointment of Andrew Kirkpatrick as its first Disability Liaison Officer. Andrew will be the point of contact for all disability issues within the Society and can be contacted at: andrew.kirkpatrick@lawsoc-ni.org

Criminal Cases Review Commission at Law Society House

Law Society House was the venue for an event jointly promoted by the Society and the Bar of Northern Ireland in relation to the work of the Criminal Cases Review Commission (CCRC).

The CCRC is an independent organisation which investigates suspected miscarriages of justice from Magistrates' Courts and Crown Courts in England, Wales and Northern Ireland and the Court Martial and Service Civilian Court.

It is based in Birmingham and has around 90 staff, including a core of around 40 case reviewers. Twelve Commissioners are appointed in accordance with the Office for the Commissioner for Public Appointments' Code of Practice.

The Commissioners investigate the cases and decide whether the applicant's case should be referred back to Court for a fresh appeal. They have special legal powers to obtain information from public bodies such as the police, the Prosecution Service, Social Services, local councils and the NHS.

The event offered guidance on making an application to the CCRC. Presentations were delivered by two Commissioners – Dr Sharon Persaud who was a solicitor and partner at Bindman & Partners, practising exclusively in criminal defence and Stephen Leach CB who is a retired senior civil servant and was Chair of the Northern Ireland Criminal Justice Board from 2000 to 2009.



From left: Stephen Leach CB; Eileen Ewing, Society President; Dr Sharon Persaud, Amanda Pearce and Martin McCallion of McCallion Keown.

Case Workers, also presented on the remit of the CCRC setting out what its responsibilities and jurisdiction are. Ms Pearce informed attendees that since the inception of the Commission in 1997 it had received 23,500 applications of which just over 22,600 have been concluded. 650 referrals have been made by the Commission of which 43 were

in Northern Ireland. The key steps in a case review include familiarisation, identifying the issues, planning and investigation, decision making and disclosure.

Further information on the role and work of the CCRC can be accessed at www.ccr.gov.uk



From left: Andrea Coscelli, Chief Executive of the Competition and Markets Authority (CMA); Micaela Diver, Partner, Litigation and Dispute Resolution, AL Goodbody Belfast and Alan Hunter, Society Chief Executive.

Society hosts seminar on Competition Law – Now: Post-Brexit

The Society was delighted to recently host a seminar on 'Competition Law: Now: Post-Brexit' at Law Society House.

Those attending had an opportunity to hear from a number of keynote speakers including Andrea Coscelli, Chief Executive of the Competition and Markets Authority (CMA), who spoke about the CMA's powers, priorities and the opportunities and challenges presented by Brexit.

The CMA is the UK's national competition authority which aims to make markets work well for consumers, businesses and the economy.

Also speaking at the event was Micaela Diver, Partner, Litigation and Dispute Resolution, AL Goodbody Belfast, who provided a practitioner's perspective.

The Society's Non Contentious Business Committee has produced new precedent letters of instruction to medical or psychological practitioners for making capacity assessments.

There are three letters as follows:

- 1 Making a will
- 2 Making an EPA
- 3 Making a gift

The precedent letters can also be accessed on the Society's website at: <https://www.lawsoc-ni.org/capacity-assessments-1>

The letters have been produced after consultation with the practitioners on the Society's list of those who are willing to carry out capacity assessments. That list can be accessed through the link above. The intention of the letters is that they are a starting point for solicitors and it is envisaged that they will need tailored to suit the individual circumstances of each client.

Members can provide feedback on the new precedent letters to Andrew Kirkpatrick, Head of Non Contentious Business, at andrew.kirkpatrick@lawsoc-ni.org.

Capacity assessments - new precedent letters of instruction

1 LETTER OF INSTRUCTION TO MEDICAL OR PSYCHOLOGICAL PRACTITIONER FOR A CAPACITY ASSESSMENT FOR MAKING A WILL

Dear

Capacity Assessment for Making a Will

Patient name:

Patient address:

Patient date of birth:

I am writing to request that you carry out a capacity assessment for the above named person in relation to their capacity to make a will.

Below I set out a brief history of relevant facts to assist you in making your assessment.

[Insert family history and financial circumstances as appropriate]

In order to be capable of making a will, a person must be able to:

- understand the nature of the act of making a will;
- understand the effects of making a will in the form they propose;
- understand the extent (although not necessarily the value) of the property they are disposing of in their will;
- comprehend and appreciate the claims of all the people to which they ought to have regard. Unlike the other tests which are based on "understanding" this test involves the ability to distinguish between individuals and reach some kind of moral judgement. For example if they should prefer one of their children to the other. This may be because:
 - a) one may be less well provided for; or
 - b) one may be more deserving; or
 - c) one may be in greater need of financial assistance because of their family responsibilities or their state of health.

In making your assessment, I would remind you that the standard of proof as to capacity is the balance of probabilities rather than beyond reasonable doubt. I would also remind you that your opinion may be open to challenge, in particular if the circumstances of the case are likely to be contentious. **[If the case is known to be or is likely to be contentious, insert details here].**

If you are willing to carry out the assessment, please confirm by email as soon as possible. I would be grateful if you would also provide a fee estimate and a proposed timescale for the assessment. We will also need to liaise in relation to setting up any appointment and also to confirm the location of the assessment.

If you require any additional information, please let me know as soon as possible.

I look forward to hearing from you.

Yours etc

2 LETTER OF INSTRUCTION TO MEDICAL OR PSYCHOLOGICAL PRACTITIONER FOR A CAPACITY ASSESSMENT FOR MAKING AN ENDURING POWER OF ATTORNEY

Dear

Capacity Assessment for Making an Enduring Power of Attorney

Patient name:
Patient address:
Patient date of birth:

I am writing to request that you carry out a capacity assessment for the above named person in relation to their capacity to make an Enduring Power of Attorney.

Below I set out a brief history of relevant facts to assist you in making your assessment.

[Insert brief history]

In order to be capable of making an Enduring Power of Attorney, a person must be able to understand the nature and effect of the document. In doing so, the person should understand:

- that the attorney will be able to assume complete authority over the person’s affairs (if those are the terms of the Power);
- that the attorney will be able to do anything with the person’s property which the person could have done (if those are the terms of the Power);
- that the authority will continue if the person should be, or should become, mentally incapable.
- that if the person should be, or should become, mentally incapable, the Power will be irrevocable without confirmation by the Office of Care and Protection.

In making your assessment, I would remind you that the standard of proof as to capacity is the balance of probabilities rather than beyond reasonable doubt. I would also remind you that your opinion may be open to challenge, in particular if the circumstances of the case are likely to be contentious. **[If the case is known to be or is likely to be contentious, insert details here].**

If you are willing to carry out the assessment, please confirm by email as soon as possible. I would be grateful if you would also provide a fee estimate and a proposed timescale for the assessment. We will also need to liaise in relation to setting up any appointment and also to confirm the location of the assessment.

If you require any additional information, please let me know as soon as possible.

I look forward to hearing from you.

Yours etc

3 LETTER OF INSTRUCTION TO MEDICAL OR PSYCHOLOGICAL PRACTITIONER FOR A CAPACITY ASSESSMENT FOR MAKING A GIFT

Dear

Capacity Assessment for Making a Gift

Patient name:
Patient address:
Patient date of birth:

I am writing to request that you carry out a capacity assessment for the above named person in relation to their capacity to make a gift.

Below I set out a brief history of relevant facts to assist you in making your assessment.

[Insert brief history]

The degree or extent of understanding required to make a gift is relative to the particular transaction which is being effected by the gift and can be described as the capacity to understand the nature of that transaction when it is explained. If the subject matter and the value of the gift are trivial in relation to the person’s other assets then a low degree of understanding will be sufficient. If, however, if the effect of the gift is to dispose of the person’s only asset of value and therefore pre-empt the devolution of their estate under their will or intestacy then the degree of understanding required is as high as that required for a will, the test for which is set out below.

In order to be capable of making a will, a person must be able to:

- understand the nature of the act of making a will;
- understand the effects of making a will in the form they propose;
- understand the extent (although not necessarily the value) of the property they are disposing of in their will;
- comprehend and appreciate the claims of all the people to which they ought to have regard. Unlike the other tests which are based on “understanding” this test involves the ability to distinguish between individuals and reach some kind of moral judgement. For example if they should prefer one of their children to the other. This may be because:
 - a) one may be less well provided for; or
 - b) one may be more deserving; or
 - c) one may be in greater need of financial assistance because of their family responsibilities or their state of health.

In making your assessment, I would remind you that the standard of proof as to capacity is the balance of probabilities rather than beyond reasonable doubt. I would also remind you that your opinion may be open to challenge, in particular if the circumstances of the case are likely to be contentious. **[If the case is known to be or is likely to be contentious, insert details here].**

If you are willing to carry out the assessment, please confirm by email as soon as possible. I would be grateful if you would also provide a fee estimate and a proposed timescale for the assessment. We will also need to liaise in relation to setting up any appointment and also to confirm the location of the assessment.

If you require any additional information, please let me know as soon as possible.

I look forward to hearing from you.

Yours etc

Progress of the Family Justice Review

Upwards of 120 family law practitioners were updated on the progress of the Family Justice Review at a recent event held at Law Society House jointly hosted by the Society and the Family Bar Association.

In his opening remarks, Mr Justice O'Hara, Chair of the Shadow Family Justice Board, advised that the Shadow Board superseded the Children Order Advisory Committee and would hopefully be a more wieldy body. With the Family Justice Review and Care Proceedings Pilot Project concluding recently and recommendations arising from them both, he advised that he was very keen to maintain the momentum created and to ensure that progress was made. With regard to the latter he said:

"The issues which were looked at in the Care Proceedings Pilot Project run jointly by the Departments of Justice and Health were:

- Where is there delay in the system
- How closely is the COAC Guide to case management followed
- In what areas is that guide out of date
- How can cases be dealt with quicker but still fairly"

He added:

"It is not enough in family cases to get it right most of the time. The pressure is on every



From left: Paul Andrews, CEO at Legal Services Agency; Lorraine Keown, Cleaver Fulton Rankin Solicitors; Gillian Forrest, SEHSCT; The Honourable Mr Justice O'Hara; Cathy Meenan, WHSCT; Frances Nicholson, Social Services Officer Department of Health and Louise Murphy, Vice-Chair Family Bar Association.

one to get the right result all of the time. That has to be our ambition always. What does getting it right mean? It must include the following:

- Keeping children safe and, if possible, together
- Exploring what can be done, if anything, to keep children with one or both parents
- If that won't work, looking at kinship placements
- Finding secure long term placements
- Doing all of this in the shortest time possible"

In a packed programme, attendees went on to hear from Frances Nicholson, Social Services Officer at the Department of Health, in relation

to the Overview and Recommendations of the Care Pilot, from Louise Murphy BL on the topic of the Public Law Outline, from Cathy Meenan and Gillian Forrest, Social Workers with regard to Kinship Placements and their Assessment and from Paul Andrews of the Legal Services Agency and from Lorraine Keown Solicitor, in relation to the processing of Legal Aid applications in the Family Proceedings Court.

It is hoped that further events of this nature will be held as the work of the Shadow Board progresses.

Minutes of the Shadow Board can be accessed from the website of Judiciary NI at <https://www.judiciary-ni.gov.uk/civil-and-family-justice-review#toc-2>

Society confirms Belfast IT company Leaf as new sponsor

The Society is delighted to announce that it has entered into a sponsorship agreement with Belfast based IT solutions company - Leaf.

Founded in 2003, Leaf is a cloud first IT solutions company which currently employs 50 staff who provide and deliver innovative and cost-effective technology and IT solutions to meet the needs of clients from various sectors.

As part of its sponsorship agreement Leaf will be contributing to the Society's ongoing Continuing Professional Development (CPD) Programme in 2018.

Commenting, Society President, Eileen Ewing, said:

"We are grateful to Leaf for its support and sponsorship of the Society, our annual conference and its contribution to our Continuing Professional Development Programme in 2018.


"We are particularly pleased that it is contributing to the Society's series of GDPR training events which will provide our members with access to relevant and timely advice from experts."



Steven Goldblatt, Managing Director at Leaf, said:

"Leaf is delighted to be sponsoring the Law Society of Northern Ireland and we look forward to working with the Society and supporting its members throughout 2018."





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Legal profession steps up for Marie Curie Northern Ireland

Despite adverse weather conditions, almost 200 members of the legal profession took time out of work in May to raise funds in aid of Marie Curie Northern Ireland. The Legal Walk/Run, which was organised by the Society, is now in its second year with the event attracting office support staff, students, solicitors and barristers. Members of the judiciary also took part – amongst them Mr Justice Maguire, Mr Justice Horner, Mrs Justice Keegan and Madame Justice McBride.

Participants dressed in bright yellow t-shirts, (many also sporting yellow plastic ponchos due to the rain), set off from outside the Royal Courts of Justice in Chichester Street for a 5km walk/run to the Titanic Centre and back. The event concluded with a BBQ in the National Bar in High Street, with the sun eventually making an appearance.

Commenting, Society President, Eileen Ewing, said: "I would like to take this opportunity to thank everyone who participated, offered

support, ran or walked despite the bad weather and for making the second Legal Walk/Run such a resounding success."

Ciara Gallagher, Head of Philanthropy and Corporate Partnerships, Scotland & NI -Marie Curie UK, said: "Marie Curie is most appreciative of all those who took part in the Legal Walk/Run 2018. The monies raised will go towards supporting families across Northern Ireland facing terminal illness."

To date the event has raised more than £5,400. However, there's still time to sponsor friends and colleagues by making a donation at <https://www.justgiving.com/fundraising/LAW-Society-NI1>



What firms can do to support wellbeing



In this article Elizabeth Rimmer, Chief Executive of LawCare, considers what firms can do to support wellbeing.

April was Mental Health Awareness Week, an opportunity for us all to talk openly about mental wellbeing. At LawCare the mental health of lawyers is something we think about all year round. We can clearly see the need for something to be done to better equip lawyers for a challenging work environment.

It is known from research in the USA that lawyers have higher rates of anxiety, depression and stress compared to other professions. Why is this? It's not that lawyers are genetically predisposed to poorer wellbeing than other people. There is something about the about the culture and practice of law that can have an impact. The culture of the well known poor work/life balance, the long hours and presentism, the competitive environment, the fear of failure and the driven and perfectionist personalities that can be drawn to law. All of this contributes to an environment that can make some people more vulnerable to mental health concerns.

Lawyers are expected to cope with the demands of the job and fear that not coping can be seen as a sign of weakness: they can find it difficult to acknowledge that they may need support and talk openly about mental health in the workplace. We know at LawCare that talking is an important first step in changing the way we think and act about mental health.

We need to see a change in working culture within law firms, making wellbeing of staff a priority. Senior leaders need to recognise that nurturing a culture within their organisations that values and promotes mental health will have positive benefits such as greater staff engagement, productivity and retention.

Firms should encourage staff to work healthy hours and keep track of their workloads. Long hours can lead to stress and reduce staff performance and morale. Sometimes long hours are unavoidable but try to let staff have time off to recover from a busy spell. Encourage staff to take all their holiday and discourage them from working at weekends. Being with friends and family and having the time to pursue the things we enjoy is vital to wellbeing.

Junior lawyers need extra support. We know from research in the USA that the most vulnerable time in a lawyer's career can be the transition in to practice after legal education and training. Junior lawyers need guidance and mentoring to help them manage taking on new responsibilities and developing their practical legal skills.

Having an open, transparent culture where senior leaders are approachable and talk freely about the stresses and strains of working in the law, and overcoming difficult situations can also help. Some firms nominate wellbeing champions, who are available to talk to staff about anything that is concerning them. It is crucial that these people are senior, visible people in the organisation who can correctly signpost staff in the direction of further support if needed.

As well as looking at what firms can do we also want to encourage legal professionals to proactively recognise and identify factors that put a strain on their wellbeing at an early stage, rather than responding retrospectively once issues with mental health and wellbeing have arisen. We know from our work in supporting lawyers for more than 20 years, how difficult it is for lawyers to admit they are struggling with the pressures of work, which often leads them to seek help when they are nearing crisis. We want to change this.

Providing legal professionals with resources to enable them to understand and

develop key emotional competencies such as emotional self-awareness, self-reflection and better strategies for emotional self-regulation is one way in which to equip them more effectively for practice, enhance their wellbeing and potentially reduce levels of stress, anxiety and depression.

Some think there is no place for emotion in the law and believe emotions interfere with rational thinking and should be put to one side at work but emotions do affect how people feel and act and the legal profession is no exception. Emotions drive us to care about the decisions we make and motivate how we respond to situations.

Emotional competency is about how we understand and handle our emotions as well as identifying and interpreting emotional responses around us. Emotions affect our actions, decision-making, reasoning, thought processes and judgement.

We are collaborating with the Open University to develop and pilot a range of online resources to proactively encourage legal professionals to engage with issues around recognising and regulating their emotions. The goal is to foster enhanced wellbeing, to support legal professionals to not just survive, but to also thrive, within a challenging work environment.

In addition to providing resources aimed at individual practitioners, the resources we are developing will include a tool kit for employers, to encourage positive organisational and cultural change in the legal workplace.

These resources will be available later in the year but in the meantime if you're feeling stressed, or need to talk about any personal or professional issue call the LawCare helpline on 0800 279 6888, 365 days a year. Additional information, resources and factsheets are available at www.lawcare.org.uk





PROPERTY TAXES – TIMELINE OF CHANGES

In this article Lyn Canning Hagan Head of Tax at GMG Chartered Accountants looks at both recent and proposed changes with regard to Property Taxes.

Property related taxes have been transformed in recent years and continue to change. A timeline and summary of some of the key changes which are already in place and those still to come are highlighted below. The majority of changes aim to capture significantly more tax from a wide range of property owners including the residential buy to let sector but also increasingly non-UK residents holding or dealing in property in the UK.

APRIL
2015

- NRCGT - Non resident capital gains tax charge on UK residential property
- ATED - Annual tax on enveloped dwellings threshold reduced to £1m

MARCH
2016

- SDLT - Reform of Stamp Duty Land Tax for commercial property

APRIL
2016

- SDLT- 3% Additional charge introduced on residential property
- ATED - Threshold reduced to £500k

JULY
2016

- 'Transactions in land' anti-avoidance rules for companies trading in UK land

APRIL
2017

- 25% of interest relief for individual landlords restricted to the basic income tax rate
- IHT - Residential Nil Rate Band (RNRB) commences at £100k per individual
- IHT - Charge on UK residential property owned by non-resident entities
- ATED - Rebasing valuations

NOVEMBER
2017

- SDLT - Residential Property first time buyers relief introduced; 0% on first £300k

APRIL
2018

- 50% of interest relief for individual landlords restricted to the basic income tax rate
- IHT - Residential Nil Rate Band (RNRB) increases to £125k per individual

APRIL
2019

- 75% of interest relief for individual landlords restricted to the basic income tax rate
- IHT - Residential Nil Rate Band (RNRB) increases to £150k per individual
- CGT - proposed non-resident capital gains tax charge on UK commercial property and on disposal of interests in entities deriving 75% or more of gross asset value from UK land and property

APRIL
2020

- 100% of interest relief for individual landlords restricted to the basic income tax rate
- IHT - Residential Nil Rate Band (RNRB) increases to £175k per individual
- Corporation Tax - non-resident landlord companies will be subject to corporation tax (currently income tax)

**LOAN INTEREST RESTRICTION
RESIDENTIAL PROPERTY**

The method of claiming tax relief for loan interest incurred by individuals in relation to residential let properties fundamentally changed in April 2017; the amount of relief is being reduced on a phased basis over four years (25% change each year). After April 2020 when the change is fully implemented, loan interest will be relieved as a tax reducer at the basic rate of income tax (currently 20%) instead of being a tax deductible expense before income tax is calculated. The effect of this change has potentially far reaching implications for many individuals with increased tax and other costs affecting more individuals than initially anticipated.

NON-RESIDENT CAPITAL GAINS TAX

Gains arising on the sale of residential property in the UK are now taxable on most individuals and entities irrespective of being UK resident or non-UK resident. NRCGT was introduced with effect from 6 April 2015. The taxable gain is that which has arisen from 6 April 2015 until the date of disposal; with a choice of methods of calculation to establish the chargeable gain. Consideration should be given to whether private residence relief may be available.

There are strict filing deadlines – a NRCGT return must be submitted to HMRC within 30 days of conveyance of the property, even if there is no chargeable gain. Any CGT payable must be paid to HMRC also within the same 30 day period, although there are some exceptions to this (e.g. if the vendor makes self-assessment tax returns to HMRC then the normal self-assessment payment dates apply).

It should also be noted that since April 2013, Annual Tax on Enveloped Dwellings (ATED) has applied to UK residential property held by non-natural persons. Originally this applied only to properties valued at £2m or more on 1 April 2012 but this threshold has been decreasing and is now at £500k since April 2016. Alongside an annual tax charge, properties within this regime are subject to ATED related CGT rules. Some exemptions apply and the properties must be revalued every five years so April 2017 was the most recent revaluation date.

Proposed changes from April 2019 will result in UK CGT also applying to gains on

the disposal of UK commercial property by non-residents (gains arising in the period after April 2019). Furthermore it is proposed that from April 2019 CGT will be payable on gains arising from the disposal of specified interests in entities where 75% or more of the gross asset value is derived from UK land and property (a look through system).

DEALING IN AND DEVELOPING UK LAND

New 'transactions in land' anti-avoidance legislation has been introduced to tax the dealing in and developing of UK land which previously was not subject to UK tax by virtue of offshore ownership and/or activities not being carried on through a UK based permanent establishment. Profits arising from such activities will now be subject to UK tax under these new rules which may have far reaching impact even for UK residents. The aim of the legislation is to capture tax on *all* profits from a trade of dealing in or developing UK land.

STAMP DUTY LAND TAX

SDLT has undergone significant changes over the past few years, commencing most recently with the reforming of the commercial SDLT rates system from 17 March 2016 which replaced the single rate 'slab' system with increasing rate 'slice' system (aligned with the residential SDLT system).

At the same time, having already increased the SDLT rates on residential properties in December 2014, April 2016 saw the introduction of an additional 3% of SDLT become chargeable on all residential dwellings acquired by companies and broadly on the acquisition of a second or further residential dwelling by individuals where an interest is already held in another dwelling anywhere in the world. The application of these new dwelling rules is complex with a carve out where a main residence is being replaced. It is also a high-risk area for the adviser that requires the buyer to provide full facts to the advisor and understand his/her responsibility to provide same.

The Chancellor's 2017 Autumn Statement saw the introduction of a SDLT relief for first-time buyers. No SDLT is now payable on the first £300k of consideration payable

by first-time buyers of dwellings costing up to £500k which are to be occupied as their main or only residence.

It should be noted that SDLT is payable at a rate of 15% where the property is valued at above £500k and purchased by a non-natural person. SDLT has been replaced in Scotland by LBTT (Land and Buildings Transactions Tax) since April 2015 and this year saw the change to Land Transaction Tax in Wales from April 2018.

INHERITANCE TAX

April 2017 saw the introduction of the Residential Nil Rate Band (RNRB) which is being phased in over a four year period to allow the passing of an individual's residence (or in some cases corresponding value) to lineal descendants. The allowance commenced at £100k in 2017/18 increasing £25k per year to the maximum of £175k from April 2020. The RNRB is transferable between spouses where it is not used on the first death and attention is drawn to the gradual withdrawal of the RNRB for estates worth more than £2m.

The rules in relation to 'excluded property' for IHT has been amended since 6 April 2017 to ensure that UK residential property held via an off-shore company, off-shore partnership or other entities will no longer fall within the definition of 'excluded property' giving rise to additional UK IHT potential exposure for non-UK domiciliaries.

SUMMARY

There are a number of on-going property tax consultations in addition to some of the proposals referred to above. This summary of some key highlights, which is based on current law or proposals which are subject to change, is not exhaustive and the application of each new tax or tax relief is complex.

For further information on any of the above or a general discussion on property taxes, Lyn Canning Hagan can be contacted at haganl@gmcgca.com or 028 9031 1113. Alternatively, for more information on the GMG Tax Team and full range of tax services provided, please visit www.gmcgca.com/Tax-VAT

What's the future of in-car entertainment technology and will our cars really be driving themselves?

Rachael Weir,
Marketing Manager, Leaf

In days gone by, vehicles with built-in Bluetooth, Sat Nav and parking sensors were seen as 'high end.' Fast forward ten years and these features are available as standard in even the most affordable vehicles. When it comes to music, maps and communication, we lift our phones and now our smartphones are being integrated into smart cars. Smartphone mirroring is now available in almost half of all new cars in Europe, meaning key apps such as maps, music, audio books, podcasts and communication are built-in. A driver can access their smartphone media content and apps through their car's user interface for a seamless experience and this experience can be transferred smoothly from your home or work environment into your car and back again. Along with providing great infotainment, car manufacturers are working hard to make the in-car environment a quiet, relaxing, comfortable and stress-free environment.

This all starts to relegate the driving experience itself to the back seat. We would all rather check our social media, talk to people or listen to music than think about negotiating traffic or following directions. So more and more of us begin to see driving as a bit of a chore, no more than another routine task and what do we do with routine tasks? We automate them.

Driverless technology has accelerated in recent years and semi-automated cars such as the 2016 BMW 7 Series and 2017 Audi A4 feature a host of features including automatic braking, road condition sensing and route prediction. Augmented reality tech projects information on windscreens and your car is beginning to talk to you about your journey. The human driver's input is being gradually decreased by technology which offers greater functionality, better security, less road congestion and more fuel efficiency.

The next step, to make the car fully autonomous, has already been taken. Google, Tesla and Apple self-driving cars have successfully clocked up hundreds of thousands of miles on the roads of California. Rates of accident incidents are a fraction of those caused by human error and, for many, the case for autonomous driving has been made. Meanwhile, the user is gently being encouraged to let go of the steering wheel by the car manufacturers and we are starting to see 'self-parking' as standard on high-end vehicles.

The benefits are gradually being seen to outweigh the potential risks and widespread acceptance is only a few years away. We are nearing the tipping point of an attitude shift as the technology advances and the cost comes down. The UK government has commissioned a three year review of driving laws to ensure that the UK remains one of the best places in the world to develop, test and drive self-driving vehicles. Significant steps are being taken towards ensuring the legal structure for driverless innovation is in place and this has implications for all road users. Professional drivers will join the long list of jobs of the past and drones won't just be tiny helicopters in the near future. Look out for long haul trucks,

delivery vans and quad-bikes, as well as taxis, with nobody behind the wheel.

Once the physical aspect of driving is transferred to a machine, priorities shift to the question of driving style and the comfort of the 'driver' who is now merely a passenger. Opportunities to make the car a seamless extension of our living space are endless. New in-car entertainment technology will transform your car into a virtual gaming space or a cinematic experience with the latest blockbuster being projected onto your screen. Today's Xbox one will be tomorrow's in-car entertainment.

Digital technology including personal organisers, online and video conferencing, will transform cars into work spaces and we will be able to attend a meeting while en route to our next one. Our daily commute will become as productive as time in the office, the school run a good opportunity to talk to our children about their day. The emerging technologies of voice recognition and automated intelligence (AI) are becoming embedded in cars, creating vast opportunities for personalisation and deepening of the car/user relationship. AI can interpret our calendar or our conversations, understand where we've been or where we're headed and respond with tailored suggestions and information based on predicted alertness or mood.

The deep and personal relationship many of us have with our phone will be merged with our car as it becomes the most powerful smart device we possess, providing an entertaining, informative, smart and personalised space while it transports us to our destination – safely, quietly and efficiently.

For further information about Leaf please see www.computersandclouds.com





Law firms and the GDPR

Jimmy Scullion, Ireland General Manager of Advanced Legal considers some issues for law firms arising from the General Data Protection Regulation.

The General Data Protection Regulation (GDPR) came into force in the UK on 25 May 2018, introducing much tighter rules and legislation around the way in which organizations obtain and hold data on individuals.

The GDPR provides an updated framework for data protection laws. It replaces the previous 1995 Data Protection Directive which UK law was based upon.

Such a huge change to the way organizations manage data is alarming for legal businesses small and large, and preparing to meet these changes is a challenge for the vast majority.

To ensure you keep up with the changes, here are a few areas to consider.

Data Retention

The Data Protection Act of 1998 requirement that data be kept for no longer than is absolutely necessary remains largely the same under GDPR. Lawyers are of course used to rules about the period for which files should be retained. So why is the GDPR implementation something to be concerned about? GDPR introduces higher standards of maintaining records about data.

Data Audits

All businesses should audit their data processes. Throughout GDPR there is an emphasis on maintaining records of processing.

Don't just think about client data, think about

employees, contractors/suppliers as well.

Data audit should consider all of the places data may be stored or used. Consider all of the software involved and if that software - whether from Advanced or elsewhere - has clear guidance on how you can use it to assist in your compliance.

Client Care Letters – Staff correspondence – Website communications

One area where solicitors' firms should pay particular attention to are the changes that might need to be made to their Client Care Letters, letters of engagement, website messaging and staff and potential recruiting communications. GDPR will require firms to review their standard templates and adjust sections which are affected by the new data protection rules.

In addition to this, GDPR will need to be addressed within the letter, outlining how the firm is adapting to changes around data privacy statements, what will happen to personal data after a certain time period and how clients can find out what personal data a firm holds. This messaging should clearly identify what you are paying attention to around the area of privacy, data management, adherence to the rules and provide evidence that your firm has the whole area of data management under control. Client Care Letters, website content, staff correspondence, all represent what your firm is offering to clients, business enquirers, contractors and staff. Set up properly these will give a clear outline of the approach you are taking; ensuring that you are complying with data regulations. The consequence of getting this right is that you will build trust and confidence in your ability to manage compliance and security.

Personal data held across the firm

Understand what personal data you hold on clients, contacts, suppliers and staff.

Does personal data differ from sensitive personal data?

Understand the difference between personal data and sensitive personal data. They should each be treated under different conditions.

Subject Access Requests - what is a reasonable request?

Another key area for concern which will emerge from all of this is around Subject Access Requests (SARs). Although this isn't something which happens frequently within the legal sector at the moment, this could potentially change over time with stricter regulation around the way businesses hold and manage personal data within their systems.

In addition, the new code of practice sets out requirements for companies who operate 'bring your own device' (BYOD) initiatives, where employees may use their personal devices for work purposes. The ICO states that whilst "it is good practice to have a policy restricting the circumstances in which staff may hold information about customers, contacts or other employees on their own devices or in private email accounts, if an organisation does "permit staff to hold personal data on their own devices" then employees "may be processing that data on your behalf" and in which case "it would be within the scope of a SAR you receive."

It may be difficult to determine what constitutes as a reasonable SAR request, particularly given the number of mediums in which data may be stored and shared. If you find yourself asking this question, it is best to begin by clarifying with the requester what they are specifically looking for, before agreeing the scope of the exercise.

Jimmy Scullion Ireland General Manager of Advanced Legal comments "As the leading provider of legal software to the solicitors', barristers' and coroners' market we understand that the incoming GDPR legislation will be daunting for professionals across the legal sector. At Advanced we have market and solution experts who have reviewed the GDPR in a large amount of detail and have put the necessary work into our solutions to ensure your journey to compliance is as seamless as possible." Jimmy can be contacted on 07917247626 or jimmy.scullion@oneadvanced.com

Should *Dreamvar* change the way we address fraud?



by Reema Mannah,
Managing Director at Titlesolv

In most property transactions the transfer of large amounts of money represents the culmination of a long process involving a number of qualified professionals. Due to the funds involved however, such deals have become subject to greater attention from criminals, who have developed increasingly sophisticated methods to commit large-scale fraud.

Whilst consistently on the radar of many professionals, the issue has been thrust into the spotlight once again by the Court of Appeal's recent decision in the case of *Dreamvar (UK) Limited v Mishcon de Reya*, raising further questions around what measures solicitors should take to manage this danger. Indeed, this litigation has granted the courts the opportunity to define the scope of the responsibility of solicitors where such cases of fraud go unnoticed.

The case centres around the claimants, property development companies Dreamvar and P&P, being tricked into 'buying' a £1.1 million London property from individuals who fraudulently posed as the true owners. On completion, the money paid by the claimants was transferred from their solicitors to the solicitors instructed by the fraudsters, and then to the criminals themselves. The issue only emerged when the claimants set out to register the purchase at the Land Registry. Unfortunately, by this time the fraudsters and the stolen funds had vanished.

Following this discovery, the buyers filed claims to the High Court against their own solicitor, Mishcon de Reya and Mary Monson Solicitors, who were acting for the 'seller'. Inter alia, the Court subsequently ruled that, whilst Mishcon had not been negligent, it should shoulder the costs as it was in the best position to absorb them, given the firm had professional indemnity insurance to cover the loss suffered in full.

This position subsequently generated particular attention, given Mishcon had no reason to suspect that the vendor's solicitor had not carried out appropriate identity and money laundering checks on their client. Whilst they were found not to be negligent, they had acted in breach of trust in paying away their client's monies in circumstances where the transaction was a nullity.

Although Mary Monson accepted that it had not acted competently due to the failure to perform adequate due diligence on its own client, the Court ruled that it did not owe a duty of care to the buyer. However, the case was then referred to the Court of Appeal, where it was ruled that

solicitors representing the fraudulent property vendors should share responsibility along with those representing the defrauded buyers for any resulting losses, as they were best placed to have identified that their client was an imposter. The court therefore ordered both Mishcon and Mary Monson Solicitors to make financial contributions.

Whilst it is currently uncertain whether there exists any potential for an appeal to the Supreme Court, it is worth noting that a different result could be reached on different facts. The court noted that the vendors' solicitors were not asked to give assurances as to their due diligence checks, nor were there circumstances suggesting an assumption of responsibility or reasonable reliance.

Despite this, the decision has caused much consternation amongst real estate solicitors, as lawyers on either side of a transaction may now have strict liability for ensuring that those selling property are the true owners. Nonetheless, vendors' solicitors may need to bear a heavier burden, given the relative ease with which a committed fraudster can obtain forged documents and pass identity and money laundering checks.

Going forward, it is likely that the courts, the legal profession, the insurance sector and the regulator will all have a key role in defining how responsibility is assumed and managed in the future. No matter their conclusion however, solicitors should take all measures to address the rapidly evolving threat of fraud.

Titlesolv is the trading name of London & European Title Insurance Services Ltd authorised and regulated by the Financial Conduct Authority.



New Courses at IoD Academy NI



In this article, Dr Elaine O'Neill, Programme Director at the Institute of Directors Northern Ireland, says that the legal sector is turning to professional development amid calls for solicitors to be "more than just solicitors".

In a business world where the corporate landscape is constantly changing due to the emergence of disruptors and rapidly evolving technology, those working in the legal sector are often expected to be "more than solicitors" according to Dr Elaine O'Neill, Programme Director at the Institute of Directors Northern Ireland (IoD NI).

Dr O'Neill leads the recently launched IoD Academy NI, the organisation's new

professional development offering which aims to set new standards of excellence across the local economy.

She said solicitors are increasingly seeking to add to their skill set:

"It goes without saying that strong management and leadership skills help build better organisations and improve economic outcomes for businesses and their employees.

"The same is of course true for the legal profession where solicitors are in a unique position to greatly influence the success of their own firm and those of their clients. That is one of the reasons why professional development is important to solicitors as they aim to meet increasing demands, further their own careers and raise standards within their organisation and others.

"For those in the legal profession, a deep knowledge of law is a given but having a further understanding of the role of directors can greatly add value to their organisation.

"All learning at the IoD Academy is underpinned by the IoD competency framework which identifies the knowledge, skills and mindset required of great directors. The framework puts knowledge of finance and business strategy on the same level as the ability to encourage diverse views, communicate effectively and make decisions in the face of uncertainty.

"The benefits of professional development can also greatly assist the increasing number of solicitors who are being invited on to the boards of other firms or charities, as their exceptional talent is recognised by other organisations. Many of the UK's leading firms now consider a legal mind on the board as a

must, in a trend that has followed the United States."

Elaine added:

"It is unsurprising that solicitors are in increasing demand when it comes to positions on boards at companies across the entire economy. As a result, there are solicitors acting as 'critical friends' and non-executive directors at firms in every part of Northern Ireland.

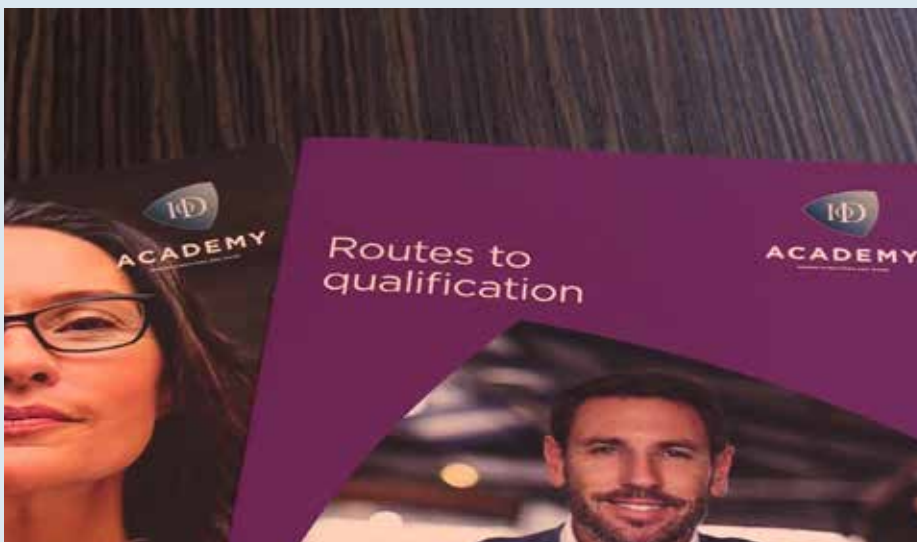
"They are considered attractive for the role because of the independence of mind, considered judgment and keen discernment that have seen them succeed as solicitors. However, a deeper understanding of board dynamics and an ability to view issues from a directors' perspective is also of great importance.

"Programmes such as the *Role of the Director and the Board* provide an essential introduction to the role, duties and legal responsibilities of a director and the workings of a board, helping participants to understand the board's role in corporate governance, and its impact on building sustainable businesses."

The Academy builds on the success of the organisation's Chartered Director programme and will be seeking to recruit and train more Chartered Directors across Northern Ireland.

The IoD Academy will offer its professional development programme with the two-day Award in the *Role of the Director and the Board*, running from 10-11 September 2018. These, along with all IoD Academy courses, can be taken in isolation and also act as one of four modules that make up the Certificate in Company Direction, the first step towards achieving Chartered Director status. Each module also provides either 14 or 21 Continuing Professional Development (CPD) hours and can address CPD requirements for solicitors around risk management and client management.

For more information about the IoD Academy and for a full list of courses, visit <https://www.iod.com/events-community/regions/northern-ireland/courses> or contact Emma Jayne Mawhinney on 028 9091 2829.



Northern Ireland Business and Human Rights Forum

The Northern Ireland Business and Human Rights Forum was established in September 2015. This article examines its origins, work and relevance to the profession.

The starting point

In 2011 the United Nations adopted a set of Guiding Principles on Business and Human Rights. The principles are based on the recognition that:

- (a) Governments must respect, protect and fulfil human rights and fundamental freedoms.
- (b) Businesses must respect human rights.
- (c) Effective remedies must be available for human rights violations resulting from business activity.

Countries were encouraged to develop national action plans to implement the guiding principles. The UK government implemented the first national action plan in September 2013 and refreshed the document last year. The Irish government is about to launch its inaugural national action plan shortly.

In 2012, the Commission published 'public procurement and human rights in Northern Ireland' – providing an overview of the rules, policies and practices of public procurement and an evaluation of the extent to which these arrangements met human rights standards.

This work led to the Commission convening a Business and Human Rights Forum to examine how human rights are relevant to business and to share information and good practice. The forum's agenda is set by participants. Membership of the forum includes businesses, trade unions, public sector organisations and government agencies. The chairperson is Glenn Bradley of Hardscape and vice chair is Kerry Kelly of Staffline (NI). Members are asked to agree a broad statement of principles in order to join the forum. A full list of members is included in Box 1. The forum meets quarterly normally hosted by one of the member organisations and examines a specific rights issue of interest to business at each meeting.

The work of the Forum

To date, the Forum has examined a range of business issues including human trafficking and modern slavery with presentations from Anti-Slavery International, the Gangmasters and Labour Abuse Authority and recently a representative of the Modern Slavery registry. Other issues covered have included the Irish Congress of Trade Unions initiative for employers to recognise domestic violence as a workplace issue, sport, business and human rights and the potential impact of the EU exit on equality and human rights protections. Members of the forum have shared their own work including the Probation Board's initiative with employers to assist ex-offenders into employment, A & L Goodbody's work with children's NGOs to scope out the legal ramifications for children's rights on leaving the EU and Hardscape and other members involvement in the Ethical Trading Initiative. The latter is particularly important as the current welcome focus on human trafficking and modern slavery should not divert attention from important supply chain issues to ensure retailers and their suppliers take responsibility for improving the working conditions of those who make the products and components, which are then sold onwards.

The Commission has also contributed to events run by Stronger Together – the alliance that works with employers and labour providers to tackle modern slavery, Business in the Community and the Department of Foreign Affairs and Trade public seminars on developing a National Action Plan for Ireland. The forum also gave written evidence to the Westminster joint committee on Human Rights inquiry culminating in the report on 'Human Rights and Business 2017: Promoting Responsibility and Ensuring Accountability' sixth report of session 2016/17 HL paper 153.

In other practical terms, the Commission is working with the Department of Finance to undertake a pilot initiative to include human rights policies and practices in a tender for supplying agency workers. The aim is to go beyond simply requiring a short statement of compliance and written confirmation of practices to looking at how a human rights based approach can be meaningfully developed in practice.

A forthcoming initiative of the forum is to develop a Northern Ireland draft action plan for

human rights. The Commission has met with the Chair, Vice Chair and clerk to the Northern Ireland Assembly Economy Committee and (subject to the return of devolved government) we hope to both give evidence to the committee and arrange a joint meeting of the committee and the forum in the near future. A locally based action plan would be just one of the issues of mutual interest to the two bodies.

Elsewhere the Commission was until recently the chair of the Commonwealth for National Human Rights Institutions. One of the CFNHRI's strategic priorities is business and human rights led by our equivalent Commissions in Rwanda and India. The Commission is also working closely with our counterparts in Australia and New Zealand on sport, business and human rights issues to build on the effective work undertaken by the Glasgow Commonwealth Games in 2014 to build a right's based legacy and awareness of the need for an ethical underpinning to staging global sporting events.

The current focus on rights issues surrounding the next two football World Cups in Russia and Qatar is an example of why this is a timely issue.

With Northern Ireland having been awarded the Commonwealth Youth Games in 2021 then, subject to the current political impasse being resolved and the funding signed off, this is an opportunity to provide a positive local showcase.

Business and human rights complements yet remains distinct from corporate social responsibility. It recognises that businesses affect people's human rights through its own activities, business relationships and through its supply chains. Moreover, the protect, respect and remedy framework which underpins the UN Guiding Principles emphasises the international inter-connection and importance of business activity globally. For solicitor firms, the mantra 'think globally, act locally' has resonance whether a small stand-alone practice or a multi-national legal corporation.

For more information on the Business and Human Rights Forum contact: Zara Porter at zara.porter@nihrc.org

For information on the work of the Commonwealth Forum of National Human Rights Institutions, access the Commission's website www.nihrc.org

Current membership of the Business and Human Rights Forum

A&L Goodbody	Invest NI
Bar of NI	JP Corry
Belfast City Council	Labour Relations Agency
Business in the Community	Law Society of Northern Ireland
Caterpillar	NI Assembly
Department of Finance	NILGA
Dunbia	NIPSA
Equality Commission NI	O'Hare and McGovern
Freedom Acts	People Plus NI
FSBNI	Probation Board NI
Grafton Recruitment	PSNI
Hardscape	Staff line
Hasting Hotels	Thompsons Feeds
ICTU	Ulster Carpets

If you wish to advertise
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New All Ireland ADR Service



Judge Alison Lindsay
Retired Judge of the Circuit Court
Mediator & Arbitrator



The Honourable Iarfhlaith O'Neill
Retired Judge of the High Court
Mediator & Arbitrator

Juris is pleased to welcome The Hon. Iarfhlaith O'Neill, retired Justice of The High Court in Dublin and retired Judge Alison Lindsay of the Dublin Circuit Court to its panel of mediators and arbitrators.

All Juris panellists are available to provide mediation, arbitration and early neutral evaluation services throughout Ireland.

THE MEDIATION AND ARBITRATION SPECIALISTS

Solicitors' Benevolent Association 154th Report & Accounts (Year 1st December, 2016 to 30th November, 2017)

This is the 154th report of the Solicitors' Benevolent Association, which was established in 1863. It is a voluntary charitable body, consisting of all members of the profession in Ireland. It assists members or former members of the solicitors' profession in Ireland and their wives, husbands, widows, widowers, family and immediate dependants who are in need and is active in giving assistance on a confidential basis throughout the 32 counties.

The amount paid out during the year in grants was €716,928, which was collected from members' subscriptions, donations, legacies and investment income. Currently there are 84 beneficiaries in receipt of regular grants and approximately one half of these are themselves supporting spouses and children.

There are 20 directors, 3 of whom reside in Northern Ireland, and they meet monthly in the Law Society's offices, Blackhall Place. They meet at the Law Society of Northern Ireland, Belfast, every other year. The work of the directors, who provide their services entirely on a voluntary basis, consists in the main of reviewing applications for grants and approving of new applications. The Directors also make themselves available to those who may need personal or professional advice.

The Directors are grateful to both Law Societies for their support and, in particular, wish to express thanks to Stuart Gilhooly, Past President of the Law Society of Ireland, Ian Huddleston, Past President of the Law Society of Northern Ireland, Ken Murphy, Director General, Alan Hunter, Chief Executive and the personnel of both Societies. The Law Society organised the Spring Gala during the year and our Association received the sum of €22,621 from the proceeds. A very sincere thanks to Stuart Gilhooly, the members of the Council and to the organisers of the Gala.

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

Law Society of Ireland	Mayo Solicitors' Bar Association
Law Society of Northern Ireland	Medico-Legal Society of Ireland
County Louth Solicitors' Bar Association	Sheriffs' Association
Dublin Solicitors' Bar Association	Southern Law Association
Courts Service	Tipperary Solicitors Bar Association
Faculty of Notaries Public in Ireland	Waterford Law Society
Limavady Solicitors' Association	West Cork Bar Association

I note, with deep regret, the death in February last of our colleague Brendan Walsh who was a Director of the Association for many years and during that time gave up his time and energy in furthering the aims of the Association. His kindness and courtesy will be long remembered by those with whom he came in contact, both as a colleague, a classmate, a friend and as an able representative of the Association.

The demands on our Association are rising due to the present economic difficulties and to cover the greater demands on the Association additional fund-raising events are necessary. Additional subscriptions are more than welcome as of course are legacies and the proceeds of any fundraising events. In certain cases the Association can claim tax relief for donations of €250 or more. Subscriptions and donations will be received by any of the Directors or by the Secretary, from whom all information may be obtained at 73 Park Avenue, Dublin 4. Information can also be obtained from the Association's website at www.solicitorsbenevolentassociation.com. I would urge all members of the Association, when making their own wills, to leave a legacy to the Association. The appropriate wording of a bequest can be found at page 34 of the Law Directory 2017 of the Law Society of Ireland.

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

Thomas A Menton
Chairman



DIRECTORS AND OTHER INFORMATION

DIRECTORS	Thomas A Menton (Chairman) Caroline Boston (Belfast) Liam Coghlan (Killarney) Thomas W Enright (Birr) Felicity M Foley (Cork) William B Glynn (Galway) John Gordon (Belfast) Colin Haddick (Newtownards) Niall Lavery (Dundalk) Seamus Mallon (Castleblayney) Paul Malone (Borrisokane) Anne Murrin (Waterford) John M O'Connor (Dublin) John T D O'Dwyer (Ballyhaunis) Colm Price (Dublin) Mark Quinn (Gorey) James I Sexton (Limerick) John Sexton (Dublin) Andrew F Smyth (Dublin) Brendan J Twomey (Donegal)
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TRUSTEES (ex officio Directors)	John Gordon John M. O'Connor Andrew F. Smyth
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SECRETARY	Geraldine Pearse
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AUDITORS	Deloitte Chartered Accountants and Statutory Audit Firm Deloitte & Touche House Earlsfort Terrace Dublin 2
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FINANCIAL CONSULTANTS	Tilman Brewin Dolphin Limited 3 Richview Office Park Clonskeagh Dublin 14
----------------------------------	--

BANKERS	Allied Irish Banks plc. 37 Upper O'Connell Street Dublin 1
----------------	--

First Trust Bank 31/35 High Street Belfast BT1 2AL
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OFFICES OF THE ASSOCIATION	The Law Society of Ireland Blackhall Place Dublin 7
---	---

The Law Society of Northern Ireland Law Society House 96 Victoria Street Belfast BT1 3GN

CHARITY NUMBER	CHY892
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RECEIPTS AND PAYMENTS ACCOUNT FOR THE YEAR ENDED 30 NOVEMBER 2017

	2017 €	2016 €
RECEIPTS		
Subscriptions	429,962	441,841
Donations	183,328	106,252
Legacies	2,000	15,000
Investment income	65,684	62,506
Bank interest	6	180
Currency gain	-	5,007
Repayment of grants	1,200	45,137
	682,180	675,923
PAYMENTS		
Grants	716,928	656,774
Bank interest and fees	1,212	1,139
Administration expenses	59,770	49,153
Currency loss	2,827	-
	780,737	707,066
OPERATING DEFICIT FOR THE YEAR	(98,557)	(31,143)
Profit on disposal of investments	152,468	47,791
Provision for decrease in the value of quoted investments	(18,277)	(12,142)
SURPLUS FOR THE YEAR	35,634	4,506



Library Update - Digital Assets

Digital assets can describe digital records that exist on computer devices (and connected cloud services) and which represent text, images, sounds, videos and other information, generally converted from analog, or non-digital events. These records are contained in digital files and are not part of the estate of a deceased person.

In England and Wales, ownership of online assets such as social media posts rests with the service provider upon death. Families are able to ask providers for accounts to be deleted or for partial access to them.

Legislation

Computer Misuse Act 1990

An Act to make provision for securing computer material against unauthorised access or modification; and for connected purposes.

Articles

Planning for digital assets on incapacity and death (highlights the additional service that NI practitioners can offer their clients by advising on digital assets as part of planning for death or loss of capacity)

Kirkpatrick: 2017 Folio 2, 3-11.

Digital inheritance in the United Kingdom (addresses legal issues regarding the inheritance of a deceased's digital assets and considers whether digital assets are property)

Harbinja: 2017 Eu. C.M.L. 6(6), 253-256.

Solicitors call for better digital legacy protection (what happens to digital assets after death and the right to access FB accounts)

Walters: 2017 12 Jun 4(2).

Digital legacies (identifies the different elements of a digital legacy)

Heshmaty: 2017 Int New for Lawyers July/Aug 10.

Electronic friends (considers the treatment of digital assets in estate administration)

Saunders: 2015 Tax. 176(4523), 18-19.

German parents can inherit child's online profiles (reviews the Berlin Regional Court decision *In re Facebook Ireland Ltd* Landgericht (Berlin) (20 O 172/15) that parents could access

their deceased minor child's Facebook account and messages, regulating the inheritance of digital assets)

Bhatti: 2016 W DPR Apr, Internet.

Websites

Law Society of Northern Ireland – Personal Asset Log

<https://www.lawsoc-ni.org/personal-asset-log>

The Personal Asset Log has been produced by the Non Contentious Business Committee of the Law Society of Northern Ireland with the intention of being an aide to solicitors who are taking instructions for a will or for solicitors to give to clients to retain within their own papers and update themselves from time to time.

Digital assets: A STEP guide for professionals

www.step.org/digital-assets

The Law Society: Leave a digital legacy after your death, urges Law Society

<http://bit.ly/digitallegacies2>

Law Society Gazette: Digital legacies need legal protection say lawyers

<http://bit.ly/digitallegacies24>

Publications

- Sagar, L. *The digital estate*. Sweet & Maxwell. 2018
- STEP. *Digital assets: practitioner's guide England and Wales*. STEP. 2017.
A useful short introduction to digital assets and how to advise your client.

 **LSNI**
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on the Law

The new current awareness service launched by the Law Society Library.

Sent directly to members every other Thursday.

Contains developments in law and features the range of library services.

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

ADMINISTRATION OF JUSTICE

ALAN MCNEELY V PIERSE CONTRACTING LIMITED (IN RECEIVERSHIP AND IN LIQUIDATION) V BELFAST HARBOUR COMMISSIONERS AND HEYSHAM BOAT CHARTERS

Appeal from Master's dismissal of an application by the plaintiff to set aside a default judgment which had been obtained by the second and third named defendants and to extend the time for complying with an "unless" order requiring that the plaintiff set down the proceedings for trial by a particular date. - sanctions imposed by the unless order and application for relief from sanction. - discretion of court to grant relief. - HELD that the court dismissed the appellants' appeal and affirms the decision of the Master
HIGH COURT
22 FEBRUARY 2018
MAGUIRE J

CONSTITUTIONAL LAW

IN THE MATTER OF AN APPLICATION BY COLIN BUICK FOR JUDICIAL REVIEW AND IN THE MATTER OF A DECISION OF THE DEPARTMENT FOR INFRASTRUCTURE

Application for judicial review against a decision to grant planning

permission for a major waste disposal incinerator in the Hightown and Mallusk area. - impugned decision was taken in the absence of a Minister with responsibility for the Department there having been no Executive in Northern Ireland since January 2017. - whether the Department had legal power to exercise its statutory power to grant planning permission in the absence of a Minister. - even if the Department could exercise the powers in the absence of the Minister it was unable to do so given that the decision cut across 2 departments and as such in the absence of an Executive Committee the decision could not lawfully be taken in accordance with the provisions of the Northern Ireland Act 1998 and the Ministerial Code. - order sought to quash the decision of the Department and to quash the planning permission which had been granted. - whether the Department failed to understand correctly the law that regulates its decision making power. - Permanent Secretary, decided the Civil Service should exercise its power under the Planning NI Act to grant planning permission for the development notwithstanding the absence of a Minister. - lawfulness of decision making. - HELD that this was a decision that a Minister should take and the decision was unlawful on the vires ground
HIGH COURT

14 MAY 2018

KEEGAN J

DISCOVERY

STEELE V BANK OF SCOTLAND AND ENNIS PROPERTY FINANCE LIMITED

Appeal against decision of the Master to refuse an order for specific discovery pursuant to o.24 r 7 RCJ. - over-riding objectives of the court. - plaintiff carried on business as a property developer and investor and the first defendant has provided finance by way of loans. - second defendant seeking repayment of a loan. - specific performance. - whether repudiatory breach. - whether first defendant's disclosure adequate. - whether documents relevant. - whether

plaintiff entitled to material. - whether emails discoverable. - HELD that appeal allowed in part
HIGH COURT
16 MARCH 2018
COLTON J

FAMILY LAW

IN THE MATTER OF AN APPLICATION BY OC (A MINOR) FOR JUDICIAL REVIEW; AND IN THE MATTER OF AN APPLICATION BY LH (A MINOR) FOR JUDICIAL REVIEW

Duties owed by the respective Health and Social Care Trust to provide accommodation to children when either looked after or children in need. - extent of the duty and timeframe in which it must be discharged and suitability of accommodation provided. - whether the court should declare that there should be an absolute prohibition on the use of hotel/bed and breakfast accommodation by social services in cases of emergency accommodation for children. - interplay between the care system and juvenile justice. - use of bail court where short term accommodation is provided. - HELD that the court declines to declare an absolute prohibition on hotel/bed and breakfast accommodation but that the use of this type of accommodation should be rare, restricted and heavily monitored. - policy issued in regard to use of hotel/bed and breakfast accommodation
HIGH COURT

10 APRIL 2018

KEEGAN J

IMMIGRATION

IN THE MATTER OF AN APPLICATION BY NICUSOR BELMONT BLINDU FOR JUDICIAL REVIEW

Applicant is a Romanian national who avers that he has mainly resided in the United Kingdom since 2011. - applicant convicted of shoplifting offences twice and was sentenced to 16 weeks imprisonment. - applicant refused permission to enter the UK on a trip back from Romania and was returned on public policy grounds.

- applicant later detained in Belfast having crossed the land border with the Republic of Ireland and removal directions issued on the grounds that he had deliberately circumvented UK border controls and entered the UK following a previous refusal of admission. - applicant seeks an order of certiorari to quash the decisions to detain the applicant and issue removal directions. - whether the decision to remove and detain the applicant were wrong in law because the respondent did not comply with domestic and EU law on procedural safeguards in respect of an expulsion decision. - HELD that the decision to remove the applicant shall be quashed, the decision to detain the applicant shall be quashed, the decision to issue removal directions be quashed and the applicant's detention was unlawful

HIGH COURT

28 FEBRUARY 2018

COLTON J

IN THE MATTER OF AN APPLICATION BY THOMAS JOKUBAUSKAS FOR JUDICIAL REVIEW

Applicant challenges the decision of the United Kingdom Border Agency ("the respondent") not to deport him to his home territory of Lithuania within a reasonable period of time following the expiry of his custodial sentence. - claim for damages arising out of the applicant's unlawful detention by the respondent. - applicant is a Lithuanian national who was arrested for drugs offences and sentenced to a determinate custodial sentence. - while in custody the applicant was served with Form IS91 by the respondent to authorise his detention pending his removal from the UK following the conclusion of the applicant's criminal case. - applicant was detained for a lengthy period (17 days) pending removal. - time limits on deportation cases. - obligation to act with reasonable diligence and expedition. - HELD that damages of £1500 be awarded
HIGH COURT
2 MAY 2017
TREACY J

INQUESTS

IN THE MATTER OF AN INQUEST INTO THE DEATH OF MARIAN BROWN

Deceased was walking home when she was struck by a number of bullets. - circumstances in which the bullet causing her death came to be discharged. - circumstances in which soldiers opened fire. - type of bullet that killed the deceased and whether it was discharged by a particular weapon and by whom. - whether, if the bullet was discharged by a soldier, it was a justified use of force. - whether the investigation into the death was adequate. - burden and standard of proof. - effect of delay on evidence. - evidence given at the inquest. - HELD that the bullet was fired by a soldier who cannot be identified, that the force used was not justifiable or necessary, that the rules of engagement were not adhered to, that the investigation was inadequate and that the military operation was not planned, controlled or regulated in order to minimise to the greatest extent possible the risk to life
CORONERS COURT
23 APRIL 2018
McFARLAND HHJ

LOCAL GOVERNMENT

IN THE MATTER OF AN APPLICATION BY BEATRICE WORTON FOR JUDICIAL REVIEW

Applicant challenges Newry and

Mourne District Council ("NMDC") and the Equality Commission and seeks a declaration that the NMDC remains and continues to remain in breach of its equality scheme and s.75 Northern Ireland Act with respect to its authorisation, affirmation and endorsement of the naming of a civic amenity after Raymond McCreesh. - duty on Councils when naming public facilities and buildings. - Council due to have a meeting to review the use and management of the park. - whether judicial review proceedings academic. - HELD that an order made dismissing the judicial review application with liberty to reinstate not later than four weeks following the Council's impending fresh decision
HIGH COURT
20 DECEMBER 2017
McCLOSKEY J

POLICE

MAUREEN MAGEE AS ADMINISTRATRIX OF THE ESTATE OF JONATHAN MAGEE DECEASED V CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND

Defendant applies for an order that the plaintiff's action be struck out on the grounds that the pleadings do not disclose a reasonable cause of action and/or the plaintiff's case is scandalous, frivolous or vexatious and is an abuse of process pursuant to o.18 r.9 RCJ. - plaintiff's claim arises from the death of her son who committed

suicide who had a history of mental illness. - whether the circumstances pleaded do not give rise to a duty of care in negligence. - duty of care owed by police to the defendant. - defendant had absconded from police custody after being de-arrested. - whether police failings in investigation of death. - a.2 ECHR right to life. - HELD that the plaintiff's claim discloses no reasonable cause of action with regard to negligence but the claim relating to a.2 ECHR not struck out
HIGH COURT
10 NOVEMBER 2017
McCORRY MASTER

REAL PROPERTY

PENINSULA SECURITIES LIMITED V DUNNES STORES (BANGOR) LIMITED

Whether the doctrine of restraint of trade applies to a restrictive covenant contained in a lease relating to adjoining land retained by the lessor. - terms of the lease. - whether the restrictive covenant is a leasehold covenant. - HELD that the doctrine of restraint of trade applies to the restrictive covenant as between the appellant and the respondent. - appeal allowed and case remitted to the judge for determination of outstanding issues
COURT OF APPEAL
9 FEBRUARY 2018
STEPHENS LJ, WEATHERUP SIR RONALD, McLAUGHLIN SIR RICHARD

ST PATRICK'S ARCHDIOCESAN TRUST LIMITED V PATRICK WARD AND MARGARET WARD

Plaintiff seeks an order for possession of lands on the grounds that it is entitled to possession and the defendants are in occupation without a licence or consent. - first defendant no longer makes a claim to the lands. - second defendant claims title to the field on the basis that she has been in adverse possession for a period in excess of 12 years. - plaintiff seeks an order for summary possession of the field on the basis that it is the legal owner of the field and the defendants have no legal or beneficial or other interest in the land. - whether the court should make an order for possession pursuant to o.113 RCJ. - relevant legal principles on adverse possession. - defendant's acts of possession to establish adverse possession. - whether the defendant has established an arguable case. - HELD that the plaintiff has failed to establish an arguable case in that she has not shown that she has been in occupation for a period of 12 years and the acts carried out by her were not sufficient to establish that she was in factual possession of the field
HIGH COURT
15 MAY 2018
McBRIDE J

CLASSIFIEDS

Missing Wills

Re: Ruby Valentine Patterson (deceased)
Late of: Mountvale Private Nursing Home, 5 Brewery Lane, Dromore, County Down

BT25 1AH
Formerly of: 27 Prince Andrew Park, Belfast BT12 5PW
Date of Death: 27 June 2017
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:
Angela Hamill, LL.B
Holmes & Moffitt Solicitors
218 Knock Road
Belfast BT5 6QD
Tel: 028 9079 9597

Re: John Fisher (deceased)
Formerly of: 67a Katesbridge Road, Kinallen, Dromora BT25 2PA
Date of Death: 1 February 2018

Would any person having any knowledge of the whereabouts of a Will made for the above named deceased please contact the undersigned as soon as possible:
David Sturgess
Edwards & Co Solicitors
28 Hill Street
Belfast
BT1 2LA
Tel: 028 9040 8388
Fax: 028 9033 2723

Re: John Joseph Higgins (deceased)
Late of: Millcroft Private Nursing Home, 66 Mill Street, Enniskillen BT74 6DW
Formerly of: 24 Strathmore Park South, Belfast
Date of Death: 20 December 2017

Would any person having any knowledge of the whereabouts of a Will made for the above named deceased please contact the undersigned as soon as possible:
Murnaghan Fee Solicitors
Boston Chambers
Queen Elizabeth Road
Enniskillen
BT74 7JA

Re: Susan Currie (deceased)
Late of: 89 Rossnareen Avenue, Belfast BT11 8LQ

Would any person having any knowledge of the whereabouts of a Will made for the above named deceased please contact the undersigned as soon as possible:
MacElhatton Solicitors
58 Andersonstown Road
Belfast
BT11 9AN
Email: info@macelhatton.com

Re: Malcolm William Arthur Hunter
Late of: 8b Magheratimpany Road, Ballynahinch, County Down BT24 8QG
Date of Death: 2 March 2018

Would any person having any knowledge of the whereabouts of a Will made by the above named, please contact the undersigned as soon as possible.
James G Rice
James G Rice & Co
33 Church Street
Ballynahinch
County Down
BT24 8AF
Tel: 028 9756 2726/9756 2626
Fax: 028 9756 3198
Email: legal@jamesgrice.co.uk

Re: Bernard Brown
Late of: 58 Crawfordstown Road, Ballynahinch, County Down BT24 8ES
Date of Death: 3 April 2018

Would any person having any knowledge of the whereabouts of a Will made by the above named, please contact the undersigned as soon as possible.
James G Rice
James G Rice & Co
33 Church Street
Ballynahinch
County Down
BT24 8AF
Tel: 028 9756 2726/9756 2626
Fax: 028 9756 3198
Email: legal@jamesgrice.co.uk

Re: Cathrin Olive Schofield
Late of: 49 Edenderry Village, Belfast BT8 8LG
Date of Death: 14 March 2018

Would any person having any knowledge of the whereabouts of a Will made by the above named, please contact the undersigned as soon as possible.
Theresa Gilchrist
Keown Solicitors
19 Cregagh Road
Belfast
BT6 8PX
Tel: 028 9045 6042
Fax: 028 9045 6405
Email: theresa@keownsolicitors.co.uk

Re: John McErlean
Late of: 74 Mullaghboy Road, Bellaghy, Magherafelt BT45 8JH
Date of Death: 20 April 2018

Would any person having any knowledge of the whereabouts of a Will made by the above named, please contact the undersigned as soon as possible.
Bernadette Mulholland
Solicitors
37 King Street
Magherafelt
BT45 6AR
DX 3305 NR Magherafelt

Re: William James Andrew Marmion
Late of: 38 Mountain Road, Ballynahinch, County Down, BT24 8QT
Date of Death: 5 February 2018

Would any person having knowledge of the whereabouts of a Will made by the above named Deceased please contact the undersigned as soon as possible:
James G Rice & Co
Solicitors
33 Church Street
Ballynahinch
County Down
BT24 8AF
Tel: 028 9756 2626/9756 2726
Fax: 028 9756 3198
Email: legal@jamesgrice.co.uk

Re: William Harper
Late of: 41 Castlerobin Road, Belfast
Date of Death: 31 January 2016

Would any person having knowledge of the whereabouts of a Will made by the above named Deceased please contact the undersigned as soon as possible:
Peter Brennan
Solicitor
Brian Kelly Solicitors
301 Ormeau Road
BT7 3GG
Tel: 028 9059 3030

Re: Margaret Harper
Late of: 41 Castlerobin Road, Belfast
Date of Death: 23 September 2015

Would any person having knowledge of the whereabouts of a Will made by the above named Deceased please contact the undersigned as soon as possible:
Peter Brennan
Solicitor
Brian Kelly Solicitors
301 Ormeau Road
Belfast BT7 3GG
Tel: 028 9059 3030

Re: John Bernard Behan (deceased)
Late of: Culmore Manor Nursing Home, 39 Culmore Road, Derry BT48 8JB
Formerly of: Manchester and of 37 William Street, Derry
Date of Death: 25 May 2018

Would any person having knowledge of the whereabouts of an original Will made by the above named deceased please contact:
Suzanne Moran
Solicitors
1 Shipquay Place
Derry BT48 6DH
Tel: 28 7136 8292
Email: info@srmlegal.co.uk

Re: Dorothy Ann Warmington (known as "Doris")
Late of: 14 Bann Street, Portadown, Craigavon BT62 3BG
Date of Death: 26 April 2018

Would any person having knowledge of the whereabouts of a Will made by the above named deceased, please contact the undersigned as soon as possible:
M Diane M Coulter
Solicitors
125 Harbour Road
Kilkeel
County Down
BT34 4AT
Email: diane@dianecoultersols.co.uk

Missing Title Deeds

Property at: 41 Castlerobin Road, Belfast BT8 7DX

Would any solicitor having any knowledge of the Title Deeds for the above property please contact the undersigned as soon as possible:
Peter Brennan
Solicitor
Brian Kelly Solicitors
301 Ormeau Road
Belfast BT7 3GG
Tel: 028 9059 3030



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Senior Associate Corporate	Belfast	6+ PQE	£55-70k	Leading regional law firm.
Head of Commercial Litigation	Belfast	8+ PQE	£75k	Top tier firm with potential for progression.
Commercial litigation solicitor	Belfast	NQ - 3 PQE	£30-35k	International firm with a path to partnership.
Residential Conveyancing Solicitor	Belfast	3-5 PQE	£30k-35k	Top tier regional firm in residential and commercial property.
Banking Lawyer	Belfast	3-5 PQE	£45-55k	International Law firm.
Senior In-House Counsel	Belfast	7+ PQE	£55-65k	General in-house role.
Company Lawyer	Belfast	5+ PQE	£50k	International communications firm.
Banking Lawyer	Belfast	4+ PQE	£40-45k	Banking transactional experience.
In-House Counsel	Belfast	3+ PQE	£35-45k	International award winning company.
Paralegal	Belfast	UK Law Degree	£22k	Top 4 firm. Excellent graduate opportunity.
Legal PA	Belfast	1 year FTC	£21.5k	International top tier firm. Legal experience.
Legal Admin/ Legal Secretary	Belfast	1-3 year + experience	£19-20k	Top tier national firm. Specialised team.
Paralegal	Belfast	Law degree, 2:1	£18-20k	Excellent team and exposure. Training contract potential.
Legal Analyst	Belfast	Law degree	£19k	International top tier firm. Excellent package.
AML Conflicts Specialist	Belfast	All Levels	£18-23k	Top tier national law firm.
Legal Secretary	Belfast	3+ years' experience	£20-23k	Top tier firm. Great work flow & supportive team.
Office Assistant	Belfast	Entry level role	£17k	International top Tier firm.
Corporate Solicitor	Dublin	NQ - 5 PQE	€65-100k	Unrivalled quality work.
Banking Solicitor	Dublin	5+ PQE	€Neg	Opportunity to lead a team.
TMT Solicitor	Dublin	1-5 PQE	€65-€100k	New entrant global firm.
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