

THE WRIT

THE LAW SOCIETY
OF NORTHERN IRELAND



THE JOURNAL OF THE LAW SOCIETY
OF NORTHERN IRELAND

ISSUE 232 Winter 2019/Spring 2020

THIS ISSUE

Society welcomes
its new President,
Rowan White



Cognitive bias in fingerprint evidence

Does the alleged 'matching'
ridge detail even exist?

The bounds of protected speech

A review of the decision in the
case of *In re Jolene Bunting*
[2019] NIQB 36.

Child Contact Centres

An outline of the role,
responsibilities and requirements
of these safe and neutral spaces.

DUAL Asset has partnered with Bluechip to provide Title Insurance solutions in Northern Ireland

DUAL
Asset



My Title Insurance Shop -

the smart choice for legal

indemnity insurance.

To register please visit

<https://bluechiptitle.my-title-insurance-shop.com>

Underwriters trained on Northern Ireland jurisdiction.

- ✓ Over 40 residential risks up to £5M
- ✓ Combine up to 4 risks in a single policy
- ✓ Online referrals - if it doesn't fit, refer through for tailor made solutions
- ✓ Order and receive a policy in seconds
- ✓ IPID and Demands & Needs statement provided
- ✓ Live chat facility for immediate underwriter access

DUAL Asset also offers a range of comprehensive solutions for Commercial Legal Indemnity Transactions, Mergers & Acquisitions and Executors & Inheritance Protection.

☎ 0203 435 6282 ✉ assetunderwriting@dualgroup.com 📍 DUAL Asset, One Creechurch Place, London, EC3A 5AF

DUAL Asset Underwriting Limited (Company Registration No. 08494511) is an Appointed Representative of DUAL Corporate Risks which is authorised and regulated by the Financial Conduct Authority No. 312593. Registered in England and Wales No. 4160680, registered office: One Creechurch Place, London, EC3A 5AF. The recipient's attention is drawn to the full list of disclosures which can be found at www.dualdisclaimer.com
Norwich Union is the trading name of Aviva Insurance Limited.



PUBLISHERS

The Law Society of Northern Ireland
Law Society House
96 Victoria Street
BELFAST
BT1 3GN
Tel: 028 9023 1614
Fax: 028 9023 2606
E-mail: writ@lawsoc-ni.org
Website: www.lawsoc-ni.org

EDITOR

Peter O'Brien
peter.obrien@lawsoc-ni.org

DEPUTY EDITORS

Heather Semple
heather.semple@lawsoc-ni.org

Paul O'Connor
paul.oconnor@lawsoc-ni.org

ADVERTISING MANAGER

Karen Irwin
karen@dcpr.co.uk

DESIGN

SHO Communications Consultants

DISCLAIMER

The Law Society of Northern Ireland and its agents accept no responsibility for the accuracy of contributed articles or statements appearing in this magazine and any view or opinions expressed are not necessarily those of the Law Society's Council, save where otherwise indicated. No responsibility for loss or distress occasioned to any person acting or refraining from acting as a result of the material in this publication can be accepted by the authors, contributors, editor or publisher. The editor reserves the right to make publishing decisions on any advertisement, loose insertion or editorial article submitted to this magazine and to refuse publication or to edit any advertisement, loose insertion or editorial material as seems appropriate to the editor. The Law Society of Northern Ireland and its agents do not endorse any goods or services advertised including those contained in loose insertions, nor any claims or representations made in any advertisement/loose insertions in this magazine. No part of this publication may be reproduced without the written permission of the copyholder and publisher, application for which should be made to the publisher.

www.lawsoc-ni.org



Rowan White, Society President and David A Lavery CB, Society Chief Executive.

Contents

04 Cover Story: Rowan White, new President of the Law Society

- 08 Indictable Cases Process (ICP) rollout
- 19 Partial commencement of Mental Capacity Act (NI) 2016
- 22 Belfast Magistrates' Court - revised Bail protocol
- 23 Principle of indemnity
- 26 SDLT - Sit Down, Let's Talk
- 34 Brexit planning a top Society priority
- 38 Advanced Advocacy marks 20th anniversary
- 49 Abstracts from the Courts

**Copy deadline
for Summer 2020 Edition:
Friday 8 May 2020**

Writ readers can access back issues of the magazine as far back as October / December 2000 at www.lawsoc-ni.org - follow Publications link

You can also find details on the website about:

- Libero database
- Latest CPD courses
- Employment opportunities
- Forthcoming events



Law Society welcomes new President, Rowan White

The new President takes up his post with a commitment to represent the interests of the solicitor profession in Northern Ireland both nationally and internationally.

Speaking following the Society's Annual General Meeting, Rowan White said:

"I am greatly honoured to become the President of the Law Society of Northern Ireland.

One of my primary goals during my Presidency will be to regularly engage with our members on the important work of the Society.

This will be achieved through a series of new membership support initiatives which will be rolled out in 2020.

I will also continue the work of the Society in promoting the excellence of the solicitors' profession at home and abroad.

This will include underscoring the importance of the network of solicitor firms across Northern Ireland and their value in providing independent legal advice and access to justice for the entire community."

2020 Hindsight

If anyone had suggested to me this time two years ago that I would begin 2020 by writing this message to you all as President of the Law Society of Northern Ireland, I would have laughed aloud and told them to get their crystal ball recalibrated or upgraded. That was simply not within my contemplation then. However, events can quickly take an unexpected turn and, by mid-2018, I had found myself nominated as the Society's next Junior Vice President, before being elected to that position in November that year. By custom, the JVP is the next President so I had some eighteen months in total to get used to the notion that, "D.V. and W.P."*, I would succeed to that office come the end of November 2019. This run-in period is vitally important because the President's role is so diverse that it can take even seasoned Council members a significant period of time to absorb all that is likely to be required of them during their year in office.

As JVP, I was quickly co-opted on to the Business Committee, which is the senior committee of the Council responsible for formulating policy and strategic direction for the Society. This was an invaluable way of getting both the inside track on the most significant issues facing the Society and, just as importantly, an insight as to how they should be tackled.

I also started to receive an increasing number of invitations to events and functions at which I was expected to represent the Society, either on my own or with other office-bearers. Among the most interesting of these are the biannual Four Jurisdictions Meetings, hosted in turn by each of the Law Societies in these islands. They are wonderful opportunities for the respective Presidents, Vice Presidents and Chief Executives to discuss matters of common concern to the solicitors' professions in their jurisdictions and to build on the excellent professional and personal relationships which we have with all our neighbouring Societies and which have proved so valuable to us over



the years. The next one, hosted by the Law Society of England & Wales, takes place in late January, when items such as Brexit, regulation of the profession, access to justice and how best to protect and promote the reputation of the profession will provide plenty of scope for interesting discussion.

For me, the other striking aspect of the JVP role was the warmth and goodwill extended by other members of the Presidential team, past Presidents, Council members and, indeed, members of the profession at large. I had been told by some of my predecessors that this would be the case and it was immensely reassuring to find that they were right.

I am telling you all this because I hope it helps to demystify the road to the Presidency just a little bit and will encourage colleagues to consider getting involved with the Society if they have not already done so. You will find that involvement rewarding and, even if it takes a similar path to mine, it will not prove too daunting.

2020 Vision

With apologies for heading both sections of this message with bad puns, let me now give you a brief overview of what the immediate future may look like for us.

Brexit: Our Chief Executive, David Lavery, and Dr Frank Geddis, Head of Research and Governance, have very capably been leading the way in preparing our profession for the consequences of Brexit. They have produced an excellent guide entitled "Brexit and Legal Practice: Northern Ireland, Ireland and the European Union" which can be viewed and downloaded on the Society's website. The most immediate concern has been to preserve existing mutual practice rights on the island of Ireland and, as I write, we are close to finalising a Memorandum of Understanding to that effect with the Law Society of Ireland. Uncertainty around the whole Brexit project is, of course, bound to last for some considerable time and the Society will continue to do all that it can to support its members through the process.

LAMS: Those with Legal Aid practices have had a lot to contend with over the past year or so following the introduction of the new LAM system. While it appears that the worst may now be behind us, the Society is by no

means complacent and will remain vigilant in its efforts to ensure that any remaining implementation issues are resolved as quickly as possible and that the operation of the system improves over time.

Conveyancing: I hope that there will be opportunities, in conjunction with the Society's Conveyancing & Property Committee, to highlight the breadth and depth of the work which our hard-pressed conveyancing colleagues carry out, often in demanding circumstances and to tight deadlines, but not always with the degree of appreciation which they deserve from clients and the media. I hesitate to compare conveyancers to ducks but it does seem to me there is at least one distinct similarity; most of the time both generally float along serenely but the reality is that there is a lot of unseen work going on below the surface. The objective will be to highlight the extent and importance of all that invisible effort.

Equality, Diversity and Wellbeing: The Society has work to do in showing leadership to its members on Equality and Diversity issues so that our profession can legitimately claim to provide a welcoming and inclusive environment for all who wish to pursue a career in it. In 2019, the profession achieved a 50:50 gender balance for the first time but the number of women in leadership roles remains stubbornly low at around the 30% mark (up from 27% in 2014). Our recent past President, Eileen Ewing, has prepared a report on the issues highlighted by the roadshows which she hosted in various venues around Northern Ireland, including:

- Unconscious bias against female employees – not just from male employers but also from clients
- A continuing gender pay gap
- Absence of flexible working arrangements
- Lack of in-firm mentoring
- The need for male champions to advocate for change

Eileen's report is now being considered so that next steps can be identified and implemented.

We also need to consider whether there is more that the profession can do to alleviate the difficulties which those suffering from disability and those from disadvantaged

backgrounds experience in gaining access to and remaining in the profession.

The welcoming and inclusive environment to which I refer must be one in which the mental health and wellbeing of both solicitors and support staff is of paramount concern. A very recent survey conducted by the Law Society of Ireland showed that the wellbeing of their solicitors falls well below the EU average, with symptoms of anxiety, depression and stress all very prevalent. Worryingly, those in the first five years post-qualification, as well as those with 16 to 20 years' PQE, reported the highest levels of stress. It is reasonable to infer that the position is unlikely to be significantly different in our jurisdiction. For that reason, I am delighted that Action Mental Health has agreed to partner with the Society in the year ahead and I am looking forward to working with them as we aim to encourage colleagues to recognise the extent of the problem and to identify measures that will help to achieve improvements.

Law Society House: Many of you will be aware of the proposals to enhance the accommodation within Law Society House for the benefit of members, principally by enlarging the Lecture Theatre and providing a suite of rooms which members can use not only for meetings but also for mediations and consultations. It may also be possible to generate additional income from these resources by making them available to non-members when they are not required by the Society. If all goes according to plan, work should start on the meeting room suite in the first quarter of 2020, with the construction of the enlarged Lecture Theatre taking place during the summer months.

This is just a small sample of the myriad matters which will occupy the attention of the Presidential team, the Chief Executive and the Society's hard-working staff throughout what promises to be a busy and eventful year. I hope you will all prosper in your professional endeavours but will also find ways to balance the demands of your demanding working lives against the impact those demands have on your wellbeing and that of your families and colleagues.

Rowan White
January 2020

**An expression much favoured by my late mother, meaning 'Deo volente (God willing) and weather permitting'*

New Presidential and Chief Executive Team announced

The new Presidential and Chief Executive Team took office following the Society's Annual General Meeting which took place on Wednesday 27 November 2019.

At the AGM the Society announced the election of a new Council to support the membership of the solicitor profession.

The Council is the principal governing body with overall responsibility for the governance of the Law Society of Northern Ireland and its important regulatory and representative functions.

The Society's new office bearers, including Treasurer, Brian Speers, will support the newly elected Council which will now serve a three year term of office.

The new Presidential and Chief Executive Team are pictured right.

New Presidential and Chief Executive Team



From left: Suzanne Rice, Senior Vice President; Rowan White, President; Brigid Napier, Junior Vice President; David A Lavery CB, Chief Executive.



PRESIDENT - ROWAN WHITE

Rowan White graduated with an honours degree in law from the University of Cambridge in 1974 and returned to Belfast to take up an apprenticeship with Crawford & Lockhart, Martin H Turnbull & Co.

He remained with that firm after he was admitted to the Roll of Solicitors in Northern Ireland in 1977 but moved to its affiliated practice in Ballymena, J & A Caruth & Bamber, in January 1979. Rowan returned to Belfast in September 1983 to join Norman Wilson & Co, becoming a partner in 1985.

Although that firm had by then been in existence for more than 80 years, he was, remarkably, only its third principal in all that time.

Rowan was instrumental in its merger with leading Irish law firm Arthur Cox in 1996 and was a partner in Arthur Cox's Belfast practice from 1996 until April 2018, when he took up a consultancy role.

His practice covers all areas of commercial property, including acquisitions, disposals and leases for local, national and international clients, as well as property development, finance and corporate support work.

Over the years, he has been involved in many of the biggest and most complex property transactions in Northern Ireland. Rowan has been active in a number of professional bodies over the course of his career. He was Chairman of Antrim & Ballymena Solicitors' Association in 1983 and of The Belfast Solicitors' Association in 1991/92.

He was a founder member and the first Chair of The Northern Ireland Commercial Property Lawyers' Association when it was established in 2006. Elected to the Council of the Law Society of Northern Ireland in November 2015, Rowan has chaired its Client Complaints and Education Committees, as well as serving on numerous other committees and sub-committees.

He also serves as a nominee of the Society on the Council of Legal Education.



SENIOR VICE PRESIDENT - SUZANNE RICE

Suzanne Rice read Law and French at Queen's University Belfast before attending the Institute of Professional Legal Studies in Belfast where she completed her apprenticeship with Con O'Hagan Solicitors in Lurgan, County Armagh. After qualifying as a solicitor in 2003, Suzanne continued her practice in Belfast where she now specialises in all aspects of Family Law and most notably Divorce and Children's Law.

Suzanne currently works for McKeown and Company Solicitors in Belfast, specialising in Criminal Law, Family Law and Plaintiff Litigation.

Suzanne is an Advanced Solicitor Advocate and is on the Northern Ireland Guardian Ad Litem Panel as well as the Law Society of Northern Ireland's Family Law Committee.

In 2009 Suzanne qualified as a Collaborative Divorce Solicitor and she became a Council Member of the Law Society of Northern Ireland in November 2013. She currently represents the profession in ongoing Government initiatives towards improving children's law services.

Her expertise in this area has been instrumental in assisting change and development to the practice of children's law and she continues to advise on consultations and steering groups in this field.

As well as representing both parents and children, Suzanne also acts on behalf of international Governments in child abduction cases and she has recently acted on behalf of the American, Australian, Dutch, Irish, Turkish and Moroccan authorities before the High Court of Justice in Northern Ireland.

In 2010 Suzanne became Legal Advisor to the Family Care Society in Adoption Matters and she is currently a board member of the Children's Law Centre Management Board.



JUNIOR VICE PRESIDENT - BRIGID NAPIER

Brigid Napier graduated from Queen's University Belfast in 1985 and joined her father, the late Sir Oliver Napier, in the family practice of Napier & Sons, a firm established by her grandfather in 1930.

She has been practising as a solicitor in the area of Insolvency and Commercial Litigation for more than 30 years and is a Licensed Insolvency Practitioner and a Notary Public.

Brigid is the only Northern Ireland lawyer who has been ranked for three consecutive years in Band One for Personal Insolvency in the UK by Chambers & Partners.

She currently advises on all aspects of Personal and Corporate Insolvency and is regularly appointed Trustee in Bankruptcy and as a Liquidator in Members' Voluntary Liquidations, Creditors' Voluntary Liquidations and by the Insolvency Service in Compulsory Liquidations.

She also advises on alternatives to bankruptcy and liquidation for clients facing Personal and Corporate Insolvency and on directors' responsibilities, disqualification and personal liability.

Brigid has received the "Best in Professional Services Award" from Women in Business Northern Ireland and was awarded Advanced Coaching status by the Institute of Leadership and Management.

In 2017 she was elected to the Council of the Law Society of Northern Ireland where she has served as a member of a number of committees, including Professional Indemnity Insurance, Financial Services and Professional Ethics and Home Charter.

She also sits on the Board of Law Society NI Financial Advice Ltd and Leukaemia & Lymphoma NI.

Brigid's interests include travel and art.



CHIEF EXECUTIVE - DAVID A LAVERY CB

In September 2019 the Society welcomed David A Lavery CB as its new Chief Executive.

David joined the Society after spending the greater part of his career in the justice system, where most recently he was Deputy Permanent Secretary and Director of Access to Justice in the Department of Justice.

He also served as Chief Executive of the Northern Ireland Courts and Tribunals Service between 2001 and 2012 and as Principal Private Secretary to Northern Ireland's First Minister from 1998-2001.

David has Law degrees from Queen's University, Belfast and from Harvard Law School and spent the earlier part of his career in private practice at the Northern Ireland Bar.

He was a Knox Fellow at Harvard and an Associate at Harvard's Centre for International Affairs. He is also an Eisenhower Fellow and is currently a Visiting Professor at Ulster University.

In 2008 he was made a Companion of the Order of the Bath.

Since taking up his role in September 2019 he has overseen the development of the Society's Brexit Strategy.

Commenting on his new role, David said:

"I am delighted to join the Law Society at an important point in its development. I look forward to engaging with members and taking their views on shaping the Society's future".

Indictable Cases Process (ICP) Rollout

The Indictable Cases Process derives from a pilot in Ards (County Court) Division which operated in 2015. The Criminal Justice Board, the main strategic oversight group for the criminal justice system in Northern Ireland, agreed to roll out ICP following the success of the pilot. Completed cases saw a significant reduction in the average end-to-end processing time from 565 days to 313 days.

The five key principles underpinning ICP are:

- early engagement between police and prosecutors;
- early engagement between the prosecution and defence;
- the use of proportionate evidence eg staged forensic reporting, property logs to prove continuity etc;
- judicial case management; and
- supporting the delivery of clear sentencing judgments.

Early engagement is central to the effective operation of ICP and in particular early engagement between the prosecution and defence. When the line of inquiry and

available evidence are made known early in the process, the potential for an early guilty plea to be offered is increased.

From May 2017, ICP principles were rolled out across all regions and districts to the following offence types:

- murder and manslaughter;
- attempted murder;
- serious assaults (sections 18 and 20 assaults);
- all drugs cases prosecuted on indictment; and
- conveying a list A article into or out of prison.

These offence types were selected following discussions with criminal justice partners on the type of cases to which the five key principles apply to best effect and account for approximately 25% of the total Crown Court caseload.

However, evidence indicates that the number of cases identified and progressed is lower than expected. PPS and PSNI are working to

promote awareness and understanding of ICP across the criminal justice system.

Successful application of ICP principles to criminal cases can deliver a really positive result – a small number of cases were concluded within six months, demonstrating and validating the potential impact of ICP.

ICP rollout represents a key milestone in efforts to speed up the justice system and the Department of Justice and its key partners are considering opportunities to extend the use of ICP to other offence types.

A series of information and awareness sessions to refresh knowledge and understanding of ICP took place during the course of 2019. Attendees included defence practitioners, the judiciary and criminal justice agencies.

If practitioners have any questions about ICP, they should contact the Justice Performance Team at the Department of Justice on 028 9016 3474 or by email at JusticePerformanceTeam@justice-ni.x.gsi.gov.uk

SITTINGS AND VACATIONS OF THE COURT OF APPEAL AND THE HIGH COURT: 2020 - 2021

ORDER 64 OF THE RULES OF THE NORTHERN IRELAND COURT OF JUDICATURE 1980

Michaelmas Term

Monday 7 September 2020 to
Monday 21 December 2020

Halloween Recess

Monday 26 October 2020 to
Friday 30 October 2020 inclusive

Christmas Recess

Tuesday 22 December 2020 to
Tuesday 5 January 2021 inclusive

Hilary Term

Wednesday 6 January 2021 to
Friday 26 March 2021

Easter Recess

Monday 29 March 2021 to
Friday 9 April 2021 inclusive

Trinity Term

Monday 12 April 2021 to
Wednesday 30 June 2021

Long Vacation

Thursday 1 July 2021 to
Friday 3 September 2021 inclusive

Philanthropy services for you and your clients



Our specialist knowledge of the charitable sector in Northern Ireland will enhance your service to clients. We can advise on giving with impact and effectively through wills and establishing individual named funds.

- Bespoke philanthropy service for you and your clients
- Tax effective giving with full client involvement
- Solution for individuals wishing to give confidentially
- Individual named funds giving back to the community
- Advice, community knowledge and local expertise
- Access to match funding
- Gifts in wills that make an impact

“The professional staff at the Foundation are a great asset for my team and I in advising clients on the best way to give back to their local community”



Making your local Community Foundation a key member of your team can enable you to strengthen and deepen client relationships. To discuss how we can enhance your philanthropy services please contact Marcus Cooper.

T: 028 9024 5927

E: marcus@communityfoundationni.org

Cognitive Bias in Fingerprint Evidence: Does the alleged 'matching' ridge detail even exist?

**Simon Bunter, Forensic Scientist,
Keith Borer Consultants**

Cognitive bias is not an intentional form of bias but one that manifests itself in different forms in most aspects of day-to-day life. It occurs when the presence of extraneous information influences a person's opinion of a subjective matter. Numerous scientific articles have been written regarding cognitive bias in forensic science, many of which warn about its adverse impact on the inherently subjective field of fingerprint evidence.

There appears a commonly held view amongst police Fingerprint Examiners that they are immune to such bias because they are able to 'use their expertise and experience to nullify it' - nothing could be further from the truth. Ironically, dismissing cognitive bias is a type of bias in itself - 'blind-spot bias'. Examples of the types of situation where cognitive bias can be introduced to the fingerprint comparison process include:

- A police officer informing an expert that the suspect was seen holding the item on which the questioned fingerprint was found.
- The verifying experts being aware that the original examiner has already 'identified' the fingerprint to the suspect.
- Job satisfaction - a fingerprint identification is generally perceived as a 'good' result.
- Performance evaluation - the performance of some Fingerprint Examiners and even entire Fingerprint Bureaux have previously been assessed by the number of identifications they have found.

And most importantly...

- The suspect's fingerprint form itself - the main focus of this article.



Crime scene marks received by Fingerprint Examiners are often poor quality with indistinct, smudged and distorted areas. As a result, ridge characteristics (the features mainly considered during fingerprint comparisons) are frequently unclear with even their very presence being ambiguous. Conversely, a suspect's fingerprint form is made up of good quality fingerprints taken from a person in controlled conditions.

Currently...

When examining fingerprint evidence from crime scenes, Fingerprint Examiners loosely follow a methodology known as ACE-V (Analysis, Comparison, Evaluation and Verification). It is the manner in which this process is carried out that can affect the validity of an expert's result. Commonly, the 'analysis' stage tends to consist of a brief look at the crime scene mark to determine whether it is suitable for comparison. Normally the Examiner does not make notes of features observed during this important part of the process, instead moving straight on to compare the mark side-by-side with the fingerprint forms of any suspects.

Once the comparison commences, cognitive bias comes into play. The good quality fingerprint in the suspect's reference form can cause the expert to 'see' corresponding ridge detail in the poor quality crime scene mark that simply does not exist. In other words, the clear ridge characteristics in the suspect's

fingerprint can persuade the Examiner into 'finding' supposedly corresponding ridge characteristics in the crime scene mark - detail that they otherwise would not have observed. This is known as 'circular' or 'reverse' reasoning and can result in Fingerprint Examiners making exaggerated or unrealistic claims regarding the certainty of their result and the number of matching ridge characteristics that exist. A good example of this occurring is in the case of *R-v-Smith* (2011).

Although the 16-point standard was abolished in 2007 in Northern Ireland (2001 in England and Wales), many Examiners still record the number of matching ridge characteristics in their evidential statement. It is often professed that a greater number of ridge characteristics is a 'safer' identification than a lesser amount; however, it is the quality of 'matching' features which should take centre stage, not simply the number. For example, a Fingerprint Examiner's claim that there are '18 matching ridge characteristics' might sound like a compelling match whereas, in reality, the vast majority of these characteristics might be extremely questionable. Equally, the existence of differences should be highlighted and explored. Strictly speaking, one confirmed different ridge characteristic should be enough to exclude a suspect. Unfortunately, one consequence of the current methodology is that apparent differences between the mark and the suspect's print are frequently disregarded; once the Examiner starts to find similar characteristics, any detail

that looks different is simply 'explained away'.

Although cognitive bias is not a concept new to the fingerprint community, very little, if anything, appears to be changing in Fingerprint Bureau procedures to nullify such bias. In 2011 a public inquiry into the erroneous *Shirley McKie* fingerprint 'identification' resulted in 86 recommendations being made. Several of these recommendations detailed specific actions that Fingerprint Examiners should undertake during their examinations in order to tackle the problem of cognitive bias. Many of these important recommendations have gone unheeded and many Fingerprint Bureaux continue to work in a similar manner as before.

The Solution?

Adopt a 'linear sequential unmasking' approach to the ACE-V examination process. This involves analysing the crime scene mark in isolation of the suspect's reference fingerprint form. An image of the mark is annotated with the ridge detail observed

prior to any comparison. These annotations are retained to show the exact detail the Examiner observed prior to any influence induced by sight of the suspect's fingerprint form. When applied correctly, this accurate and transparent mechanism can serve to highlight just how exaggerated some fingerprint evidence really is.

In a number of cases this approach has shown the fingerprint evidence to be unreliable and far from the 'conclusive' result initially claimed. For example, in the case of *R v Kiseliiov* (2016) a palm print in blood on a doorframe was 'identified' by a police Fingerprint Examiner and described as having '18 clear ridge characteristics in agreement'. When a linear sequential unmasking approach to the ACE-V examination was adopted, however, only one of the alleged 18 ridge characteristics could be clearly observed in the crime scene mark. The remaining 17 characteristics relied on by the police were either not observed in the bloody palm mark at all or were shown to have been influenced by the defendant's palm print

form. After this was demonstrated in the witness box, Mr Kiseliiov was found not guilty.

So just how safe is that fingerprint identification in the police expert's Proportionate Forensic Report (PFR1)? Is it a safe and compelling match or is it another example to add to the growing list of cognitive bias affected cases that include Shirley McKie, Brandon Mayfield, Peter Smith, Andrej Kiseliiov and so on?

Simon Bunter BSc, MCSFS, FFS

Simon Bunter is a Fingerprint Specialist at leading forensic science consultancy Keith Borer Consultants. He is instructed in criminal, civil, family and private matters and works extensively throughout the UK and Ireland, and further afield as required. If you have a case involving fingerprint evidence which requires independent assessment, please contact Keith Borer Consultants on 0191 332 4999 or kbc@keithborer.co.uk.

BECOME PART OF THE SOLUTION



Registered Charity Number: NIC 102044

You can inspire the greatest minds and invest in world-class research

A gift in your will to a registered charity is a tax-effective and unique way for you to support those causes that you are passionate about, without affecting your finances in your lifetime. Legacy gifts to The Queen's University of Belfast Foundation, both big and small, are instrumental in pushing boundaries for solutions to global challenges in areas such as medical research, cyber-security, global food security and conflict resolution.

We understand that the causes closest to your heart are often personal, which is why you can choose to fund the area of research or education that means the most to you.

Become part of the solution

Contact Susan Wilson Legacy Manager
Development and Alumni Relations Office,
Queen's University Belfast, Belfast BT7 1NN

T: +44 (0) 28 9097 3162
E: susan.wilson@qub.ac.uk

www.queensfoundation.com/legacygifts



**QUEEN'S
UNIVERSITY
BELFAST**

**QUEEN'S
FOUNDATION**

NI Child Contact Centres – Information for Stakeholders

Introduction

The following article outlines the role, responsibilities and requirements of Child Contact Centres. Appendix A provides a list of all centres in Northern Ireland.

Who we are

- Child Contact Centres are independent voluntary charitable organisations which provide safe, neutral environments for children and their parent or significant other family members to meet.
- Child Contact Centres are members of the Northern Ireland Network of Child Contact Centres and of the National Association of Child Contact Centres.
- Child Contact Centres are staffed typically by part-time employed coordinators and unpaid volunteers who are vetted and trained in providing an impartial and confidential approach at all times.
- Child Contact Centres are housed in a range of different settings from freely provided facilities (often churches) to rented accommodations. There are 15 main centres in Northern Ireland with facilities provided in a total of 22 locations throughout Northern Ireland.

What we do

- Child Contact Centres provide supported contact as distinct from supervised contact. No one-to-one supervision occurs or can be facilitated.
- Child Contact Centres are child centred and staff and volunteers will manage the environment to ensure no distress or risk is presented to children or other users of the service including terminating contact sessions that are disruptive.
- Child Contact Centres may be able to facilitate observation sessions during normal contact hours within the contact centre setting. This is at the discretion of individual centres and must be requested in advance by the CCO carrying out the observation, providing details of the clients attending. Failure to do so will result

in access to the centre being refused. Centres cannot provide separate rooms for observed visits, nor accommodate supervised contact.

- Child Contact Centres will always attempt to facilitate contact but this requires the understanding and cooperation of all stakeholders and potential users of the service. Individual centres will apply their own risk assessment to any application and on the basis of the outcome of the assessment will decide the suitability of the individual centre to host the contact. Due to the individual nature of applications and centres this may result in differing outcomes at centres.
- Child Contact Centres do not issue reports on contact other than to provide details of dates and times of attendance. Typically any issues of concern in relation to contact will be raised with referrers, social workers or Children's Court Officers if involved. Where there are child protection concerns cases will be referred to the local Gateway team.

What we are not

- Child Contact Centres are not an extension of and are independent of the legal system.
- Child Contact Centres are not governed by any court rulings including court orders, but where an order is in place for users of the service, contact will be arranged in such as way as to comply with the order.
- Child Contact Centres are not obliged to, and will not accept referrals, whether ordered or not, where such referrals do not meet the regulations of the centre, either by unwillingness of potential users to comply with the rules of the centre or where users fail to meet our risk assessment threshold for using the centre.
- Child Contact Centres staff or volunteers, in line with Lord Justice Gillen's Family Justice Review (6:32) are not required to provide evidence in court or to report on contact sessions, other than to provide dates and times of attendance. This ensures the neutrality and impartiality of staff and volunteers and enables retention of volunteer resource.
- Child Contact Centres are not providers of supervised contact.

By distinction, supported contact is suitable where no potential significant risk exists to the child, other users of the centre or staff/

volunteers. Staff and volunteers are available for assistance, not supervision. No individual or close observation, monitoring or evaluation of contact or conversations takes place, other than to ensure that the environment is safe and suitable for the child.

What we require

- Child Contact Centres require all potential users of the service to submit a fully completed referral form. Non-completion of the form will result in delay and potential rejection of the referral. The completion of the referral form is the responsibility of the applicant and their legal advisor. Where the applicant is a litigant in person they will own the responsibility of completing the referral form.
- Child Contact centres require all information relating to criminal activities which are presently being investigated by the police or are awaiting a decision by PPS or previous criminal activities which have resulted in a caution/conviction or incarceration to be detailed at the initial point of referral, as subsequent discovery will result in use of the centre being terminated. Centres have a duty of care to all staff, volunteers and all users of the service and the ability to carry out a robust risk assessment is essential.
- Child Contact Centres require details of any court order to be provided at the referral stage to ensure that contact can be organised in such a way as to not unwittingly facilitate the contravention of any such order and also to ensure the details contained within the order are understood by clients. As the welfare of the child is paramount there may be times when contact cannot take place even if there is a contact order, however wherever possible and in the child's best interest we will always attempt to facilitate contact.
- Child Contact Centres require knowing whether an order being issued is a final or full order. Centres will not accept final orders unless specifically agreed in advance with the individual centre and where a maximum time limit is provided. Individual Centres can reject final orders where these orders have no set time limits for the duration of the contact. Contact Centres are not facilities to be used to accommodate indefinite or long term contact arrangements as this would ultimately reduce the availability of the service to a wider range of families.

- Child Contact Centres require all potential users to attend a pre-visit assessment at which the rules and conditions for use of the centre will be outlined and the suitability for contact to occur in the centre to be assessed.
- Child Contact Centres require all users of the service to continue to comply with the rules and behaviours of the centre as agreed at the pre-visit meeting otherwise use of the centre will be suspended or terminated.
- Child Contact Centres require being informed of any changes to agreements/orders as contact progresses, including being advised by solicitors when use

of the centre is no longer required thus minimising the potential for waiting lists. All changes to contact must be negotiated through the referrer.

NB

- In line with Lord Justice Gillen's recommendation, use of the centre is a short term measure only, and use of the centre will be periodically reviewed

internally to ensure suitability for ongoing contact.

- Families being re-referred require submission of an updated referral form, which will be assessed as to the suitability of returning to the centre.





NORTHERN IRELAND NETWORK OF CHILD CONTACT CENTRES

<p>Armagh Child Contact Centre First Presbyterian Lecture Hall, College Street, Armagh, BT61 9BT</p> <p>Contact sessions</p> <p>First x 3 Saturdays each month - 10am - 12 noon</p> <p>Every Wednesday 5pm - 6.30pm</p> <p>Coordinator – Pauline Muldoon Mob: 07914 959 377 armaghccc@yahoo.co.uk</p> <p>www.armaghchildcontactcentre.org</p>	<p>Ballymena Area Children's Contact Service</p> <p>Ballymena Child Contact Centre High Kirk Presbyterian Hall Thomas Street, Ballymena</p> <p>Weekly Saturdays 10am - 12 noon</p> <p>Antrim Child Contact Centre All Saint's Parish Hall Railway Street, Antrim</p> <p>Fortnightly Saturday 11am - 1pm</p> <p>Coordinator – Bill Sheridan Mob: 07849 498 494 contact@baccs.org.uk</p> <p>www.baccs.org.uk</p>	<p>Ballynahinch Child Contact Centre c/o Ballynahinch Baptist Church, 24 Lisburn Road, Ballynahinch, BT24 8BL</p> <p>Saturday 10am - 12 noon & Wednesdays 3pm - 5pm</p> <p>Coordinator: Naomi Stewart Mob: 07769 293 446 hinchcontactcentre@gmail.com</p>	<p>Carrickfergus Child Contact Centre 30-34 Irish Quarter West, Carrickfergus, BT38 8AT</p> <p>Thursday 3pm - 6.30pm Saturday from 10am - 12 noon</p> <p>Larne Child Contact Centre Greenland Community Centre, Old Glenarm Road, Larne.</p> <p>Weekly Saturday 10am - 12 noon</p> <p>Coordinator: Shelly McCord Mob: 07853 938 881 contact@carrickccc.co.uk</p> <p>www.carrickccc.co.uk</p>	<p>Central Belfast Child Contact Centre Small Wonders 2 17 Morpeth Street Belfast BT13 3HZ</p> <p>Saturdays 10am - 2pm</p> <p>Coordinator: Margaret Yarr Mob: 07864 709 598 magsyarr@outlook.com</p> <p>www.centralbelfastccc.co.uk</p>
<p>Cloona Child Contact Centre 124 Stewartstown Road Belfast, BT11 9JQ</p> <p>Saturday 10am - 12 noon</p> <p>Coordinator: Tina Gregory Mob: 07887 391 607 cloonachildcontactservices@gmail.com</p>	<p>Coleraine Child Contact Centres The House, Abbey Street, Coleraine, BT52 1NE</p> <p>Saturday 10am - 12 noon and Tuesday 3.30pm - 5.30pm</p> <p>Ballycastle Minor Hall Presbyterian Church, Castle Street, Ballycastle, BT54 6AS</p> <p>Saturday 10am - 12noon</p> <p>Coordinator: Sabrina Scullion Mob: 07899 792 948 Colerainechildcontactcentre@protonmail.com</p>	<p>Craigavon Child Contact Centre Moylinn House, 21 Legahory Centre, Craigavon, BT65 5BE</p> <p>Wednesday 7pm - 8.30pm Saturday 10am - 12 noon</p> <p>Coordinator: Linda Lyness Tel: 028 3832 7337 linda@zero8teen.co.uk</p>	<p>Fermanagh Child Contact Centre Arc Healthy Living Centre, 60 Castle Street, Irvinestown, Co.Fermanagh BT94 1EE</p> <p>Wednesday 5.30pm - 7.30 pm Saturday 10am - 1pm.</p> <p>Coordinator: Kate Heaver Tel: 028 6862 8741 Mob: 07849 366 092 kate.heaver@archlc.com</p> <p>www.archlc.com</p>	<p>Foyle Child Contact Centres 12-14 The Diamond, L'Derry, BT48 6HW</p> <p>Thursday 3pm - 6pm & Saturday 10am - 12 noon + 12.15pm - 2.15pm</p> <p>Limavady Dry Arch Children's Centre, 47b Catherine Street, Limavady, BT49 9DA</p> <p>Wednesday 4pm - 6pm</p> <p>Strabane Barnados Family Centre, Melmount Road, Strabane, BT82 9BT</p> <p>Monday 2pm - 4pm</p> <p>Coordinator: Liz McCorkell Mob: 07841 072 907 foyleccc@icloud.com</p> <p>www.foylechildcontactcentre.org</p>
<p>Knock Child Contact Centre c/o Knock Presbyterian Church, 53 Kings Road, Belfast, BT5 6JH</p> <p>Saturday 10am - 12 noon Wednesday 3pm - 7pm (two sessions – Wednesday)</p> <p>Coordinator: Gemma Bird Mob: 07847 733 699 knock@kabchildcontact.org</p> <p>www.kabchildcontact.org</p>	<p>Mid Ulster Child Contact Centres Cookstown & Magherafelt, Gortallowry House, 94 Church Street, Cookstown, BT80 8HX</p> <p>Saturdays 11am - 1pm Wednesday 6pm - 7.30pm</p> <p>Magherafelt Adult Centre, 55 Hospital Road Magherafelt, BT45 5EG</p> <p>Saturdays 10am - 12 noon</p> <p>Coordinator: Vanessa Haddon Tel: 028 8676 7777 Mob: 07518 303 514 info@muccc.co.uk</p> <p>www.muccc.org.uk</p>	<p>Newry Child Contact Centre Newry Family Resource Centre, Lisdrum House, Chequer Hill Newry, BT35 6DY</p> <p>Wednesdays 5.30pm - 7.30pm Saturdays 10am - 12noon</p> <p>Coordinator: Fiona Burns Tel: 028 3026 0668 fiona.burns@barnados.org.uk</p> <p>Newtownbreda Child Contact Centre The Ark, Newtownbreda Baptist Church 43 Newtownbreda Rd Belfast, BT8 7BQ</p> <p>Thursdays 5pm – 7pm</p> <p>Coordinator: Louise Mackin Mob: 07851 060 499 Coordinator@newtownbredacc.org</p>	<p>Newtownards and Bangor Child Contact Centres</p> <p>Newtownards Strean Presbyterian, West St. Newtownards BT23 4EN</p> <p>Saturday 10am - 12 noon</p> <p>Bangor 1st Bangor Presbyterian Church, Main Street, Bangor BT20 4AG</p> <p>Thursday 4pm - 6pm</p> <p>Coordinator: Maryanne Doherty Mob: 07540 143 700 ards@kabchildcontact.org</p> <p>www.kabchildcontact.org</p>	<p>Omagh Child Contact Centre Early Years Centre, Old General Hospital, Woodside Avenue, Omagh, BT79 7BP</p> <p>Wednesday 5.30pm - 7pm Saturday 10am - 12.30pm Two sessions available on Saturday.</p> <p>Coordinator: Roisin McElholm Tel: 028 8225 1135 Mob: 07936 530 849 omaghchildcontactcentre@yahoo.com</p>



H.A. Leslie & Co.

INSURANCE BROKERS

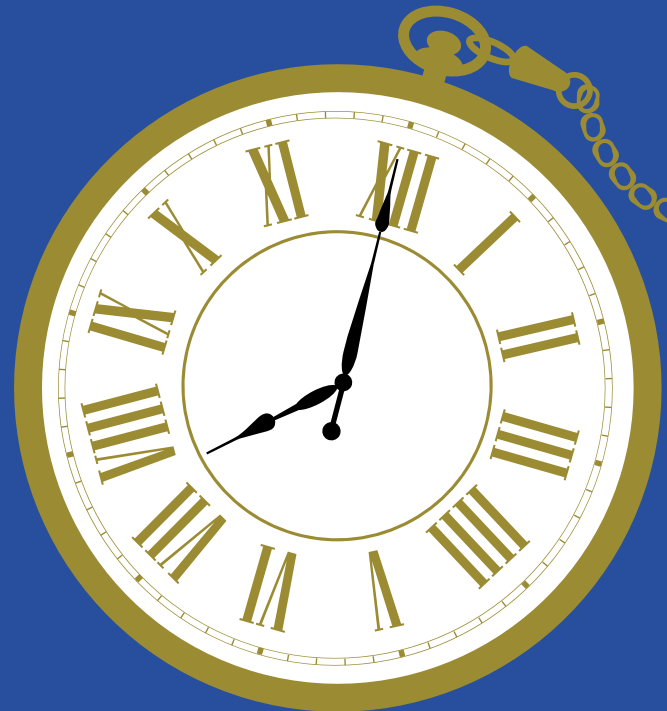
Your Time is Precious Your Money is Valuable

At H.A. Leslie & Co. we could save you time and money.
We are proud to provide a professional service with a personal touch.

- ▶ Office
- ▶ Motor
- ▶ Landlord
- ▶ Cyber
- ▶ Home
- ▶ Travel

Please feel free to contact
William at your local insurance
brokers on **028 9032 3855** or
email **wwatterson@haleslie.co.uk**

H.A. Leslie & Co. is authorised and regulated by the Financial Conduct Authority.
You can check our registration on the Financial Services Register by visiting the FCA's
website <https://register.fca.org.uk/>, or by contacting the FCA on 0800 111 6768.
Our address is 5 Crescent Gardens, Belfast, BT7 1NS.
A member of the Willis Towers Watson Networks.



www.haleslie.co.uk

THE BOUNDS OF PROTECTED SPEECH

In this article, Tom Campbell, a partner in Campbell Stafford Solicitors Belfast and a local Councillor, reviews the decision of the Northern Ireland High Court in the case of In re Jolene Bunting [2019] NIQB 36.

The limits of what is permissible under the “enhanced” right to freedom of expression for public representatives have been the subject of discussion in the High Court in a case involving a controversial former Belfast City Councillor, Jolene Bunting.

The Local Government Commissioner for Standards’ office had concluded in an interim report that there was *prima facie* evidence that Ms Bunting had breached the Code of Conduct for Councillors (“the Code”) and that this justified suspending the councillor pending the outcome of an ongoing investigation into complaints made against her. Ms Bunting appealed against the interim determination and sanction.

The case arose following a significant number of complaints made to the Commissioner concerning Ms Bunting’s alleged conduct, including comments about the Islamic faith, and the councillor’s associations with far right leaders. The Council’s Chief Executive was one of those lodging a complaint which related to the filming of a *Britain First* leader, Jayda Fransen, seated in the Lord Mayor’s chair in the Council Chamber wearing ceremonial robes provided for councillors whilst commenting upon active legal proceedings which it was claimed Ms Bunting had facilitated.

In further complaints made it was alleged that Ms Bunting had been pictured standing alongside Ms Fransen outside an Islamic Centre in which abusive remarks were made about “*Ghetto mosques*”, which she had failed to disassociate herself from. There were complaints about Ms Bunting’s reference to Muslims as “*problematic sections of society*”.

It was claimed in a newspaper article that Ms Bunting was “happy to stand over claims that “*all Muslims*” are obliged to “*wage war*” on the Christian population of the UK and Europe.”” Objection was also taken to her social media comments including a post depicting a cartoon character dressed in an Irish Tricolour and wearing a hat with the caption “*Please be patient I have Famine*”, comments which may have ultimately led to her undoing.

Article 10 ECHR, now subsumed in the Human Rights Act 1998, provides:

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”.

The right to freedom of expression is not absolute and can be restricted or limited as “*prescribed by law and necessary in a democratic society for the protection of the reputation or rights of others.*” The Code stipulates inter alia that councillors should show respect and consideration for others, must not conduct themselves in a manner which could reasonably be regarded as bringing their position as a councillor, or their council, into disrepute and that they should be aware of the council’s responsibilities under equality legislation.

The Court reviewed the relevant case law on the application of Article 10 in the political sphere and quoted with approval the remarks of Hickinbottom J in *Heesom v Public Services Ombudsman for Wales* [2014] EWHC 1504 (Admin):

“.... in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive (comment), that would



not be acceptable outside that context, is tolerated... Politicians have enhanced protection as to what they say in the political arena.....because of the importance of freedom of expression in the political arena, any interference with that right (either of politicians or in criticism of them) calls for the closest scrutiny by the court ..."

The Court was critical of the Commissioner's approach. The Judge said that the subject matter of "the bulk of the complaints" against Ms Bunting which had been determined against her were "within the sphere of enhanced protection" and that her suspension was "prima facie an interference with the terms of Article 10 as it had immediate political consequences for the ability of the applicant to serve her constituents and for the electors who elected her". The Court said that the Commissioner should individually examine complaints and that "it would be a mistake to view all of the complaints together as some sort of job lot".

In one significant respect, however, Maguire J concluded that one complaint fell well outside the scope of enhanced protection:

"The major exception relates to the meme (about the Irish Famine), which was made available on social media. While the content of it may be interpreted as racist and sectarian and it might reasonably be viewed as being aimed negatively against a section of the community defined by national origin, it is not easy to view the meme as a coherent contribution to national or local public debate. Notably, the reference to the famine found within it appears to be directed at past history rather than any form of contemporaneous comment, though the court acknowledges that the overall effect, nonetheless, is misguided and offensive.

There is force in the view, therefore, that the meme, on proper analysis, is simply abusive and reflective of a warped outlook and mind-set and discloses no true contribution to political discourse. If this is correct, as the court thinks it is, the meme is not the exercise of the right to engage in protected political speech and falls outside the enhanced protection associated with Article 10."

The Court disagreed "with the broader ways in which the Acting Commissioner's

report had dealt with the matter of the applicant's Convention rights" and said that it was unpersuaded that the seriousness of the myriad of other complaints merited a conclusion such as to cause the applicant to lose the protection she enjoyed in respect of political speech. The Judge said that "while others may be revolted by what the applicant has said and done in respect of these incidents, the Court reminds itself of the width of the ability of an elected councillor to engage in behaviour which shocks or annoys or appears dangerous or irresponsible."

However, the Judge concluded that an interim sanction was proportionate and that the Commissioner had been anxious to balance the factors for and against a period of suspension, a balance which he ultimately considered favoured the suspension which was imposed. It followed that her appeal was dismissed.

In many respects the matters of interest to the Court in balancing her rights and how these interacted with the Code's ethics regime were academic and of little consolation to Ms Bunting. She failed to retain her seat in local government elections in May 2019.

Northern Ireland Chest Heart & Stroke

Your Legacy Of Hope And Care - a gift in your Will to Northern Ireland Chest Heart & Stroke

A gift in your Will to NICHHS could not only help your loved ones, but leave a legacy of hope for generations to come.

In Northern Ireland almost half of all adult deaths are caused by chest, heart and stroke illnesses. NICHHS are working to change this through funding research and caring for those who are affected by devastating health conditions every day.

A gift to us in your Will could be invested in critical local

research that will change the future for families at risk from our biggest killers.

The smallest investment can lead to the biggest breakthrough.

Please visit our website to see how our Medical Research Programme has already supported groundbreaking projects and is committed to many more over the coming years. www.nichhs.org.uk

For a leaflet or further information on leaving a legacy to NICHHS, please call us on:
028 9032 0184,
or write to NICHHS Gifts
in Wills, 21 Dublin Road,
Belfast, BT2 7HB



**Chest
Heart &
Stroke**

Personal litigants in the family courts – what can be done to ease the process?



In this article Professor Gráinne McKeever of Ulster University reflects on an initiative aimed at assisting all those involved in the family courts where one of the parties is not legally represented.

It is common for those who work within the court system to see personal litigants as problematic. The nature and extent of such problems have been explored by academics at Ulster University's Law School, through a two-year research study identifying the impact of litigating in person, both on the litigant and the court system.

The research, led by Professor Gráinne McKeever in partnership with the Northern Ireland Human Rights Commission, found a lack of support for personal litigants which created a series of knock-on effects that not only exacerbated the litigation process but carried over into the personal lives of the litigants and those legal and court personnel involved in these cases.

These difficulties added to a wider set of system problems that indicate how much the court system already struggles, particularly in dealing with disputes between parents about contact with their children. Where personal litigants and lawyers have common cause is in wanting to see better outcomes for families. In order to help address this common cause, the Nuffield Foundation is funding the development of support materials for litigants in family proceedings as they navigate their way through a legal system that often appears confusing, complex and byzantine.

The research reported in *Litigants in person in Northern Ireland* covered civil and family

law, but the highest number of unrepresented litigants within the study came within family proceedings. In these cases the research found that unrepresented parties did not know how to navigate the court system—often to their frustration and the frustration of those familiar with it. Solicitors and barristers in particular found themselves engaging with personal litigants on the opposing side who had no concept of family law, court process or the potential to co-operate to reach agreed settlements.

Researchers heard repeated pleas from lawyers that if litigants were not going to be represented, they should come to court better informed of their litigation responsibilities. The absence of any such information or support – beyond legal advice – to assist litigants to participate more effectively and to ease the consequential burdens placed on others within the court system was seen as problematic: for the unrepresented party, for the represented party and their representatives on the other side, for the judiciary and for court staff. While these court actors felt that extending legal aid would help, there was agreement that there would still be individuals who would litigate in person.

The development of support materials for personal litigants in family proceedings is targeted at easing the litigation journey for unrepresented parties, with the potential to reduce the impact on other court users. The research team will implement a human-

centred design process that involves working with an extended group of stakeholders – including solicitors, barristers, personal litigants, court staff, representatives from Women's Aid, the NSPCC, social services, family counsellors as well as those with experience of technical legal innovation and supporting those with mental health problems.

This pioneering design process will be supported through a collaboration with the Family Justice Innovation Lab in British Columbia, Canada, who will act as consultants and mentors throughout the development of the materials. The group itself will decide what materials should be developed and work with the research team to create and test a prototype of these materials, which will then be provided to litigants in family proceedings.

The research team will interview the unrepresented litigants who have been given access to the materials to assess their effectiveness in enabling participation. In addition, the researchers will re-analyse the existing data to develop a check list for legal participation. This will enable the definition and measurement of the different forms of legal participation, through observation of court hearings by the researchers. The check-list is intended to be a future research tool that can assist in determining the extent to which the state is able to meet its obligations under Article 6 ECHR that guarantee effective participation. Further details can be found on the research website at www.ulster.ac.uk/litigantsinperson.

In addition, in February 2020 the Northern Ireland Human Rights Commission and the Department of Justice, through its Litigant in Person Reference Group, will be running a workshop for solicitors, barristers and other legal advisers and court service staff on dealing with distressed litigants. This is a bespoke workshop which is being held at Law Society House run from the Access to Justice Foundation led by two academics who have extensive NHS clinical experience, that has been running successfully in Britain over the last number of years, in direct response to increased numbers of personal litigants within the court system.





MENTAL CAPACITY ACT

Mental Capacity Act (NI) 2016: Partial commencement from 2 December 2019

The Bamford Review of Mental Health and Learning Disability, which concluded in 2007, called for the development of a single legislative framework for the reform of the Mental Health (Northern Ireland) Order 1986 and the introduction of new mental capacity legislation in Northern Ireland.

The Mental Capacity Act (NI) 2016 was passed by the Northern Ireland Assembly in May 2016. It is unique within the UK in combining mental health and capacity law in one piece of legislation. When fully commenced, it will fuse together mental capacity and mental health law for those aged 16 years and over, as recommended by the Bamford Review.

The Mental Capacity Act addresses the capacity of those aged 16 years or over to make decisions about their health, welfare or finances and the safeguards that must be put in place where they lack the capacity to do so. In broad terms, the Act provides that a person is assumed to have decision-making capacity unless it is established otherwise. When the Act is fully commenced, the Mental Health (Northern Ireland) Order 1986 will be

repealed for anyone over the age of 16 (it will remain in force for persons aged 16 or younger).

It has been agreed that there should be a phased commencement of the Act. The first phase came into operation in two stages - research provisions commenced on 1 October 2019 and provisions in relation to deprivation of liberty (DoL), and money and valuables of persons in residential care and nursing homes commenced on 2 December 2019. These latter provisions are contained in Part 2 of the Act. The Mental Health (Northern Ireland) Order 1986 will remain in force until the 2016 Act is fully commenced.

The definition of deprivation of liberty widened significantly in 2014 on foot of the decision of the UK Supreme Court in *Cheshire West*. In that case, the court held that a person is deprived of his or her liberty if the State is involved in the deprivation of liberty and the person is under continuous supervision and control and not free to leave. The fact that the detention has a benevolent or beneficial purpose or that the person does not seek to leave the place where they are detained is irrelevant.

The partial commencement of the 2016 Act provides a specific statutory framework for dealing with DoLs. Under the Act, each deprivation of liberty application is considered by a Trust Panel comprising three members appointed by the Health and Social Care Trust (one medical practitioner, one approved social worker and one other suitably qualified person) with a mechanism for onward appeal

to a Review Tribunal comprising a legal chair, a medical member and a person with experience in health and social care.

The existing Mental Health Review Tribunal, which reviews the cases of patients who are compulsorily detained or are subject to guardianship under the Mental Health (Northern Ireland) Order 1986, is renamed the Review Tribunal.

The Review Tribunal will continue to deal with applications under the 1986 Order but its jurisdiction now extends to hearing appeals under the 2016 Act.

A person deprived of their liberty has the right to appeal their detention to the Review Tribunal if they have the capacity to do so. If the detained person lacks capacity in this regard, their nominated person can apply to the Tribunal on their behalf.

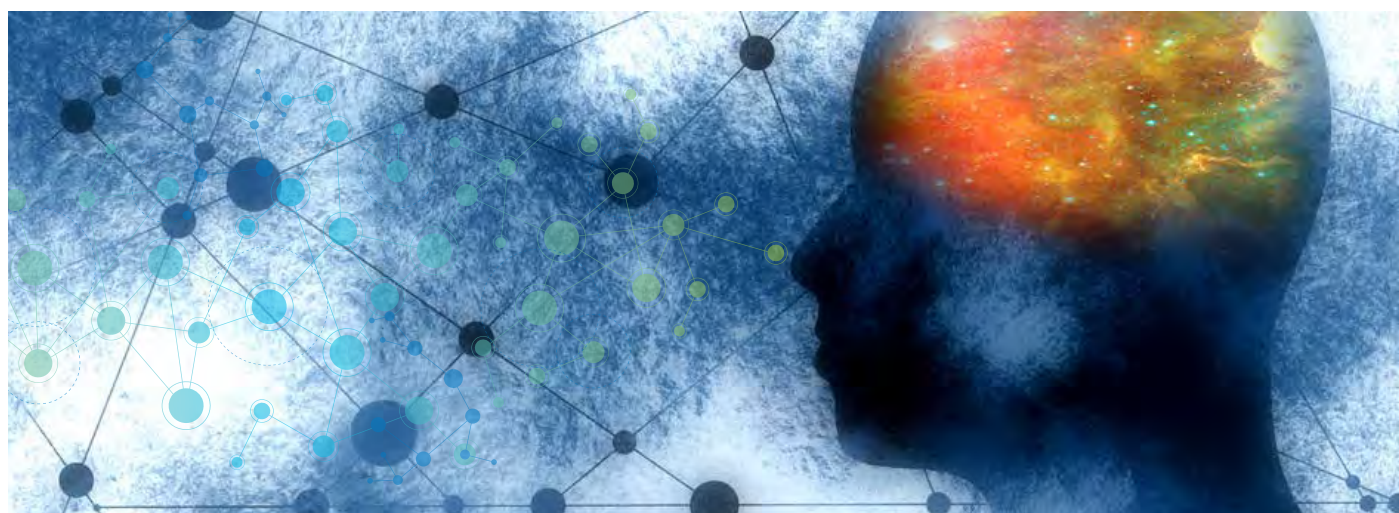
If the detained person lacks the capacity to understand that they have a right of appeal to the Tribunal, their case is automatically referred to the Attorney General who can then ask the Tribunal to consider it.

When the Tribunal has considered the case it may choose to end the detention or take no further action.

The Tribunal also considers applications about appointing or removing a nominated person.

The table overleaf outlines the various appeal routes to the Review Tribunal under the 2016 Act:

Relevant statutory provision (Mental Capacity Act (Northern Ireland) 2016)	Subject	Relevant time period
Section 45	Authorisation of Deprivation of Liberty	Within the period of six months beginning with the date the authorisation is granted
Section 45	Interim Authorisation of Deprivation of Liberty	Within the period of 28 days beginning with the date the interim authorisation is granted
Section 45	Authorisation of Short Term Detention in hospital	Within the period of 28 days beginning with the date of admission
Section 45	Extension of a Trust Panel authorisation of DoL	During the period beginning with the date when the period of the authorisation is extended and ending with the end of the period for which the authorisation is extended
Section 47	Referral by Attorney General, Department or Master (Care and Protection)	At any time a DoL authorisation is in force
Section 48	Automatic Referral by Health and Social Care Trust	Where a DoL authorisation is extended and the Tribunal has not considered the case during the period of one year ending with the extension date (if the person deprived of their liberty is under 18) or during the period of two years (if the person is over 18) ending with the extension date
Section 80	Application to Tribunal for appointment of nominated person	A qualifying person can apply for appointment of a nominated person subject to certain conditions and if the qualifying person reasonably believes that the person lacks capacity to make decisions about who should be his or her nominated person
Section 83	Application for revocation of Tribunal's appointment of nominated person	If the Tribunal has appointed a nominated person for someone who lacks capacity to decide who should be his/her nominated person and that person regains capacity, they can apply to the Tribunal for revocation of the appointment



New pensions guidance

A recently published report provides Guidance for how Pensions should be treated in divorce. The Guide to the Treatment of Pensions on Divorce, released in July 2019, is prepared by The Pension Advisory Group (PAG) which is a multidisciplinary group of professionals in England & Wales who specialise in dealing with pensions on divorce.

The stated aim of the Guide is to improve understanding of the complex area of law relating to pensions on divorce and enabling more consistent and fairer outcomes. Although it is directed towards practice in England & Wales, this report will be equally useful to those dealing with Ancillary Relief cases in Northern Ireland.

The Guide aims to help lawyers and other practitioners dealing with pensions on divorce to understand issues relating to pensions in divorce cases and help with decisions about when the instruction of an actuary or other



pensions specialist may be necessary to ensure that fair and appropriate decisions can be made about the pension component of the overall financial settlement on divorce.

The Guide also draws attention to potential pitfalls that may be encountered in these cases and provides a good practice guide for legal practitioners and experts involved in these cases. It indicates that best practice should involve comprehensively gathering information on all client's pensions, including State Pensions. It also explores cases involving equalisation of income and equalisation of capital approaches as well as the different treatment in needs and sharing cases. The

guidance notes that negligence cases against practitioners in this area are overwhelmingly in cases involving "ill-considered" offsetting agreements.

This Guidance highlights the complexity of pensions and their treatment in divorce and is likely to be an essential tool for Ancillary Relief practitioners. It can be downloaded from <https://www.nuffieldfoundation.org/project/pensions-on-divorce-interdisciplinary-working-group/>

**Claire Edgar, Francis Hanna & Co,
Solicitors, Belfast**

Society Chief Executive retires after eleven years in post



In September 2019, after eleven years in post, Alan Hunter retired as Registrar of Solicitors, Secretary and Chief Executive of the Society. Prior to his appointment in October 2007, Alan had worked in private practice and held a series of key positions in the Senior Civil Service, including Director of Legal Aid, Director of Judicial Services and Chief Executive of the Northern Ireland Judicial Appointments Commission.

Working with Presidents and the Council of the Society, Alan enthusiastically led the development and delivery of an engagement strategy with members and key stakeholders, including members of the Northern Ireland Assembly. This included hosting the Committee for Justice at Law Society House. Overall, he ensured the Society was an authoritative voice on the administration of justice throughout his tenure and in particular following the devolution of justice in 2010.

Alan oversaw a review of the professional indemnity insurance arrangements which brought about a significant reduction in costs for the profession. He also led a review of the governance of the Society, which proposed a range of reforms designed to ensure the operational framework of the organisation was fit for purpose in a changing environment.

During his time in office, Alan conducted a number of organisational reviews to align resources with the strategic objectives and statutory responsibilities of the Society. He oversaw the introduction of the ISO quality

standard in the Society, as well as leading initiatives in relation to regulation of the profession.

At a Society function held to mark his retirement, Alan said:

"It has been my privilege to work together with Presidents, Council members, colleagues and interested parties over the last eleven years. I would like to thank all those who supported me during that period to achieve our objectives."

Commenting on his retirement, then Society President, Suzanne Rice said:

"I want to thank Alan for his commitment and work over the past eleven years. That period has seen enormous change in the Society as an organisation and, together with Council, Alan has led the promotion, representation and regulation of the solicitor profession with distinction."

The Society is most grateful to Alan for his contribution and commitment and wishes him well for the future.

Belfast Magistrates' Court – Revised Bail Protocol

Criminal Practitioners should note that a Revised Protocol for Bail Applications in the Belfast Magistrates' Court has been issued.

Bail Application

Magistrate Court bail applications (other than first remand bail applications) will now be dealt with in accordance with the procedures set out below. These provisions seek to balance the principle that defendants should have their bail applications heard at the earliest opportunity with the requirement that the police have sufficient time to obtain all relevant information.

1. The Defence complete a Bring Forward Application and email it to PSNI Court liaison officers, PPS and Court Service before noon on the day prior to the Bring Forward Application. All three must be copied into the email.
2. PSNI Court liaison officers will make relevant enquiries and inform the defence and PPS as to whether or not there are objections.
3. At the Bring Forward Application PPS will notify the Court of a suggested hearing date which will normally be the next working day. However, in some instances it will be appropriate for the District Judge to list the case for the next appropriate day on videolink, for example in cases where the Bring Forward Application was not emailed before noon on the date the email was sent, or the investigating police are officers attached to non uniform sections of police such as CID, PPU and MIT.
4. The PSNI officer in charge of the case, or a suitably briefed Officer should advise the PPS of his/her views or objections and should attend the hearing of the application.

Note. The Bring Forward procedure is not required where the defence notify the court and prosecution in open court on a date when the case is listed. In that case the court will adjourn (on the basis of the principles set out in paragraph 3) to enable police to make enquiries.



Bail Variation

The Defence complete the Bail Variation Application Form and email it to PSNI Court liaison. PSNI Court liaison Officers will make relevant enquiries.

Where there is no objection to variation

1. PSNI Court liaison serve the completed application on the Court before 4pm on the day prior to the application being made.
2. Court staff will place the application before the Judge in Chambers before 10.30hrs the following day for his/her consideration.
3. Court staff will result and confirm the Court result as soon as practical or by 16:00hrs following judicial approval, and notify the Applicant's Solicitor, PSNI Court liaison and the PPS.
4. If a hearing is directed by the Judge, the parties will be notified by Court Service of the date, time and venue.

Where there is an objection to variation

1. PSNI Court liaison will notify Court Service, the defence and PPS of the objection.
2. The application will be listed by Court Service for hearing before the Court, and Court Service will notify PSNI Court liaison, PPS and the Defence of the date of listing.

3. The PSNI officer in charge of the case, or a suitably briefed Officer should advise the PPS of his/her objections and should attend the hearing of the application.

Compassionate Bail

The defence complete and serve Form 96A on PPS, Police and Court Service. Police make relevant enquiries. In liaison with the defence and PPS, Court Service either lay the Application before the Judge in Chambers or list the application for hearing.

When an application is made out of hours, the defence will, in addition to the above, contact the Court Service using the out of hours telephone number. Tel: 07795 311319.

Note. In all the above applications, Forms must be completed fully and the Court folder number (found on the charge sheet) should be provided, if available.

PSNI Court liaison email:
zBelfastCourtLiaison@psni.pnn.police.uk

PPS email: B&ECourtSupport@ppsni.gsi.gov.uk

Court Service email:
bcprogression@courtsni.gsi.gov.uk

PSNI Court liaison Officers (CPT):
Tel 07815 410089 or 07500 895963.

Principle of Indemnity

A review of the principle of indemnity arising from the judgment in *Sartex Quilts & Textiles Ltd ("Sartex") v Endurance Corporation Capital Ltd ("Endurance")* (2019).

The concept of an equitable property settlement arising from damage is one that will provide a financial result ensuring the entity suffering damage will be reimbursed, in equal measure, to the value of what has been lost. This is the *principle of indemnity*.

The principle can be applied to compensation under contract or statute and actions against wrongdoers in tort. It is well established in cover provided under property insurance policies.

In insurance, the principle had been set out in *Castellain v Preston*¹ establishing that *"the insurance policy is a contract of indemnity and of indemnity only in which the insured shall be fully indemnified, but shall never be more than fully indemnified and if ever a proposition is put forward which is at variance*

with it then, such a proposition, must certainly be wrong." However, those involved in property claims appreciate that the calculation of an indemnity is not an exact science.

Typically, a property loss will be measured as the cost of identical reinstatement less consideration for any resulting betterment. This measure is acknowledged as the primary standard by which compensation is to be given. When an indemnity has been agreed, the analogy of common law is applied that when paid, the use of the settlement monies becomes solely a matter for the recipient.

Whilst within the insurance contract there is no express direction around the concept of betterment, it has been accepted by the courts that such a financial contribution by an insured is a well-established practice in measuring compensation. However, this position is less likely to be accepted in an action in tort where there could be resistance that a wrongdoer should expect an injured party to be bound at all to any financial contribution.

To alleviate any financial loss caused by betterment, it is now common for insurance policies to expressly provide an option enabling the insured to reinstate the property without any such reduction.

This *reinstatement option* is offered to the policyholder, subject to an undertaking that

1. *reinstatement commences and proceeds without unreasonable delay; and that*
2. *the cost of reinstatement has actually been incurred.*

It is accepted that, if a property is restored to a condition similar to that which existed prior to the damage, then the actual cost of reinstatement in full is the appropriate indemnity without any further deduction. Otherwise, the policy will revert to a payment which reflects the standard measurement; the indemnity payable had the *reinstatement option* not applied.

It is also accepted² that a settlement on a reinstatement indemnity leaves it open for an insured to take advantage of the consequences of the damage in making significant changes to what was already there, albeit within the financial parameters of the agreed settlement.

The courts recognise that on occasions there will be circumstances when reinstatement may not be an appropriate measure of indemnity, but rather an alternative loss measurement, such as that based on an assessment of the overall value of the asset before and after damage. This is known as the *diminution in market value (DMV)*.

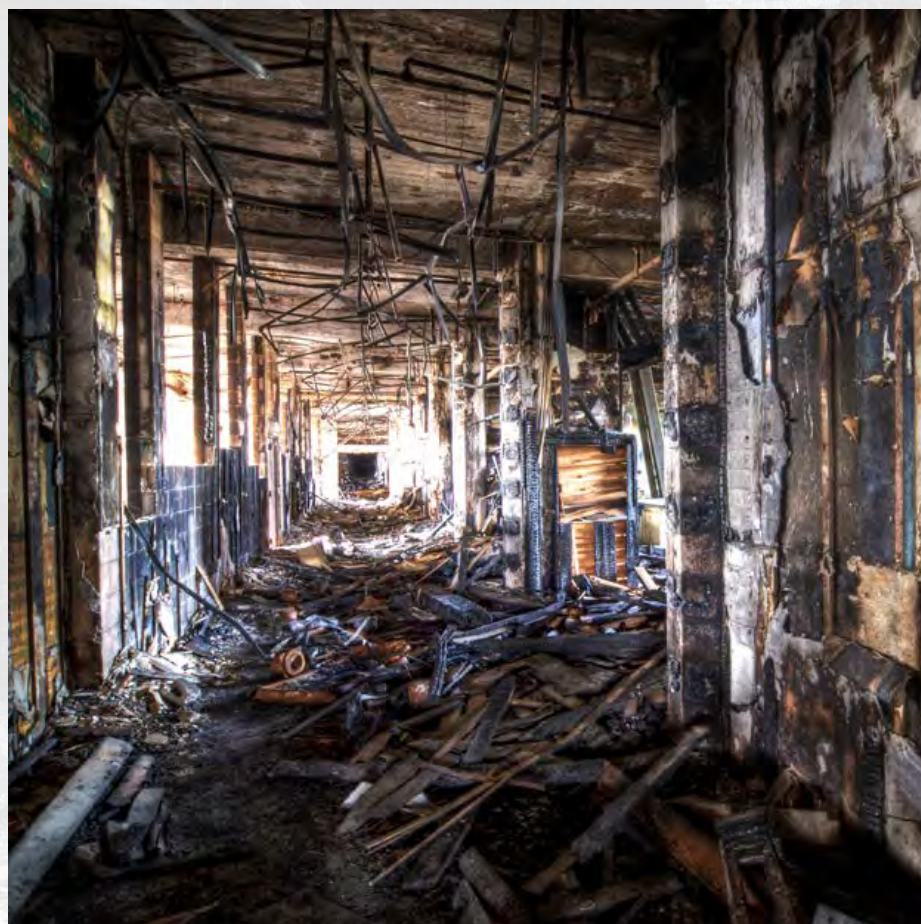
However, it is important to recognise that such a method of assessment has to fully embrace the concept of value by identifying the specific worth of the asset to the insured. Particularly in relation to business properties, such valuations should not be a mere question of the "bricks and mortar" value but include an additional factor within the assessment for the future profit which would have been achieved from the loss of the activities carried out in the building. The valuation of such a property therefore, as a going concern, can often produce a measurement up to or indeed in excess of the total cost of the property replacement

In *Leppard v Excess*³ an unoccupied cottage that had been purchased from a family member for £1,500 with a view to a later sale, was destroyed by fire. It was determined

¹ *Castellain v Preston* [1883]

² *Tonkin v UK Insurance Ltd* [2006]

³ *Leppard v Excess Insurance Co Ltd* [1979]



that the actual financial loss would not be based on the cost of the reinstatement of the cottage established at £8,694, but the loss of the actual market value at the time of damage. That value was established at £3,000 recognising that the owner's declared intent was to sell rather than reinstate and occupy.

Alternatively, in *Reynolds v Phoenix*⁴ the insured had purchased an old commercial building complex for £16,000 for manufacturing use. The property, insured for a total sum of £628,000, was subsequently seriously damaged, but the insurer only offered a market value settlement until reinstatement was carried out. The insured contended that as there was a genuine intention to reinstate, in such circumstance, the indemnity must be based on the cost of reinstatement irrespective as to the work being undertaken.

The court found in the insureds favour commenting on the general principles of indemnity and the question of enrichment or impoverishment. *"This question cannot depend, in my view, on an automatic or inevitable assumption that market value is the appropriate measure of the loss. Indeed, in many, perhaps most cases, market value seems singularly inept as its choice subsumes the proposition that the insured can be forced to go into the market (if there is one) and buy a replacement. To force an owner who is not a property dealer to accept market value if he has no desire to go to market seems a conclusion to which one should not easily arrive. The question of the proper measure of indemnity thus becomes a matter of fact and degree to be decided on the circumstances of each case."*

Furthermore, in *Reynolds*, the insurer argued that even if there was a genuine intention to reinstate with the insurance monies (but not the owners' money) such an intention would be unreasonable. This contention was rejected, the court indicating satisfaction *"that the plaintiffs do have the genuine intention to reinstate if given the insurance monies; that this is not a mere eccentricity but arises from the fact, as I find, that they will not be properly indemnified unless they are given the means to reinstate the building substantially as it was before the fire."*

Therefore, the direction from the already decided cases was that an insured's prevailing interest and defined intentions at the time of the damage were important factors in determining the value of the loss. Certainly, if there was an intention to sell a property which had never been in beneficial occupation, then

DMV could be regarded as an appropriate basis to determine the loss but not when beneficial occupation was enjoyed.

The *Sartex* action related to a fire in May 2011 at the plaintiff's Crossfield Works in Rochdale which caused serious damage to the factory premises severely damaging the building and destroying all plant therein.

Sartex was formed in 1979 by a partnership manufacturing home textiles. In 1984, the partnership purchased the Crossfield Works to where production was transferred, the business then becoming incorporated in 1992. By a subsequent agreement, the partners arranged that Sartex could use the Crossfield factory rent-free but taking responsibility for the insurance and maintenance of the property.

As the business developed, larger premises were purchased to which production was moved leaving the Crossfield Works mainly as a storage facility. However, the business then explored the feasibility of a new production line which was established at Crossfield in 2010. At this time insurance cover was placed with Endurance in relation to all the property including Loss of Profit for a 12-month period.

Production ceased as a result of the fire and in the years following, Sartex explored various options in relation to recovery plans for the factory within their business including reinstating by way of the acquisition of a textile manufacturing business in Pakistan. However, Sartex presented to the court that none of these options had been developed into a feasible business proposition.

Endurance had initially agreed to settle the claim on the terms of the *reinstatement option* applicable to the policy but within the express terms this option had subsequently been lost to Sartex.

The insurer therefore indicated in late 2012 that, as Sartex had not demonstrated a genuine intention to reinstate, the indemnity available would be a measurement based on DMV. Endurance duly made such a payment under the policy in the sum of £2,141,527 which fell short of the full reinstatement indemnity value measured at £3,492,041.

This proposed reinstatement value did not represent the total cost of reinstating the property, due to a significant level of under insurance established after the damage. Indeed, this underinsurance fact lead to a separate action by Sartex against their insurance intermediary which was only settled in September 2016 in the overall sum of £1,000,000.

Sartex did not accept the measurement of indemnity offered by Endurance maintaining that the standard indemnity should still be based on the cost of reinstatement. They submitted that the question of what was intended after the loss was only relevant if, at the time of damage, there was a clear intention to sell the property or to cease trading. However, this was not in the opinion of Sartex, one such case.

Endurance sought to rely on the Court of Appeal decision in *Great Lakes Reinsurance*⁵ arguing that in that judgement there was a requirement for a genuine intention on the part of the insured to reinstate, in the absence of which, a market value settlement was appropriate.

However, the court disagreed with Endurance on their interpretation noting that the Great Lakes judgement confirmed that *"where the insured is the owner of the property the indemnity is to be assessed by reference to the value of the property to the insured at the time of the peril. In many, perhaps most, cases of damage or destruction the insured's loss is the cost of reinstatement although that may not be the case if, for instance, the insured was trying to sell the property at the time of the loss."*

It was noted by the court that Sartex had not immediately taken up the reinstatement option available under their policy. Endurance had argued that, as reinstatement had not taken place, Sartex had failed that test of commitment. The court disagreed and accepted the evidence of Sartex that whilst some considerable time had passed since the date of the fire without reinstatement taking place, this was entirely due to the fact that the business had spent that time exploring alternative options none of which had been identified as a viable option against reinstatement in similar form. In hearing the evidence, the court concluded that it was appropriate to award Sartex an indemnity on the reinstatement basis.

So, what can be taken from the *Sartex* case? It is clear that in arriving at the decision, the court has followed the established conventions in regard to indemnity compensation for property claims. That will be fundamentally a recognition that whilst each and every case will be judged on the prevailing facts, the likelihood is that compensation will be measured on the

⁴ *Reynolds & Anderson v Phoenix Ass Co & Others* (1978)

⁵ *Great Lakes Reinsurance (UK) v Western Trading Ltd* (2016)

standard measurement of reinstatement less betterment.

Any reliance on an alternative measurement will only be supported if it displays a proposition which is deemed to better reflect the actual financial loss incurred given the extent of any beneficial interest enjoyed by the injured party at the time of the loss.

Certainly, it did seem that Sartex enjoyed a beneficial interest as a going concern operating from the damaged premises at the time of the fire, with no intent in the foreseeable future for that position to change.

Indeed, it is noted that in 2013, Endurance agreed a settlement in relation to the business interruption cover which extended to provide an indemnity for the gross profit lost by the business during the period insured i.e. 12 months immediately following the fire. It would have been expected that such a payment would have been resisted if the insurer was not satisfied that production would not have continued throughout that period, but for the fire. In addition, the fact that a separate payment for loss of profit was made by Endurance might infer that the insurer's DMV assessment may not have

fully provided for the beneficial value of the building.

The danger for compensators is that a view is taken that DMV is the automatic default measurement in circumstances where reinstatement has not taken place or where they opine that there is no clear genuine intention so to do.

That is not the position and there is a strong case for adopting a stance that DMV should only be recognised as appropriate when there has been a clear and unequivocal declaration of intent on the part of the owners that reinstatement will not be carried out.

To that extent, the *Sartex* decision reaffirms the position of indemnity based on reinstatement to be awarded in circumstances where reinstatement has been carried out or an intention to reinstate is reasonably justified and is not a mere eccentricity on the part of the owners.

The question of the proper measurement of indemnity will always remain a matter of fact and degree based on the particular circumstances arising. Inevitably, the principles of indemnity will continue to

be tested by the vagaries of a negotiating path taken between the parties in the interpretation of the facts and towards seeking a particular settlement outcome.

However, there is every reason to take comfort that, for their part, the courts will continue to maintain a consistent view in relation to those key principles in achieving a fair and reasonable indemnity. That is to ensure that there is a proper recognition as to the absolute value of the damaged property and that the injured party is restored to the same beneficial position as that which had existed at the time of damage. No better or no worse.

Brian Kelly ACII FCILA FUEDI ELAE FIFAA
Insurance & Commercial Claims Consultant.
Brian Kelly Consulting Limited
Number One Lanyon Quay
Belfast BT1 3LG
07402 260626
brian@briankellyconsulting.com
www.briankellyconsulting.com

© Brian Kelly Consulting Ltd [2019]



P.A.DUFFY & CO
SOLICITORS

DUNGANNON | DUBLIN

REPUBLIC OF IRELAND AGENTS

P.A.Duffy & Co Solicitors offer Agency Services on behalf of Solicitors in Northern Ireland.

**We are uniquely placed to offer support and advise solicitors on cross border issues.
We seek to build mutually beneficial relationships.**

**We have specific expertise in the areas of Road Traffic Accidents, Personal Injury and
Medical Negligence.**

**Please feel welcome to contact us on enquiries@paduffy.com or phone 028 8772 2102 from NI
or 01 533 7860 from ROI to make an initial enquiry.**

Dungannon Office
7 – 9 Market Square
Dungannon
Northern Ireland
BT70 1AB
T: 028 8772 2102
E: enquiries@paduffy.com

www.paduffy-solicitors.com



Dublin Office
6 – 9 Trinity St
Dublin 2
D02 EY47
Ireland
T: 01 533 7860
E: enquiries@paduffy.com

SDLT: Sit Down, Let's Talk

Suzanne O'Hara (Senior Tax Consultant, Moore (NI) LLP) provides an overview of the current state of play in relation to Stamp Duty Land Tax

From 1 April 2019, the time limit for submitting SDLT returns has been reduced to 14 days from the effective date of the transaction. One must spare a thought for all the conveyancing solicitors who are now not only expected to deal with the legal complexities of each individual property transaction but are up against the clock to calculate and submit the SDLT return within two weeks of completion (or substantial performance, whichever is sooner).

Back in the early days of SDLT, this may not have posed too much of a problem. However, in today's SDLT world, the acting solicitor has a plethora of rules to decipher. This article seeks to provide a whistle-stop tour of some key tax points that conveyancers should bear in mind when completing SDLT returns.

Classification of property:

- The classification of the property is essential in determining the SDLT, and the distinction between residential and non-residential is crucial.
- Where the land is commercial or 'mixed use', the lower rates of SDLT will be applied.
- Getting this right can prove very valuable to the client.

Residential property transactions:

- A 'super rate' of 15% for acquisitions of residential property made by 'non-natural

persons' was introduced from 21 March 2012 as a deterrent to perceived SDLT avoidance. The flat rate applies to any purchases by 'non-natural persons' of single dwellings valued at over £500,000. There are some exemptions to the rules, but these must be applied to the specifics of each case.

- The higher rates of SDLT for additional dwellings ('HRAD') were introduced on 1 April 2016, putting an extra three percentage points onto the standard rates of SDLT for certain residential property transactions. Anyone regularly dealing with residential property transactions will testify that the rules are complex and can be applied to a wide variety of transactions, even some quite unexpected scenarios (much to the surprise and chagrin of the client).
- First Time Buyers' Relief was introduced from 22 November 2017 and means that first-time buyers of homes worth between £300,000 and £500,000 will not pay stamp duty on the first £300,000, and a rate of 5% between £300,000 and £500,000. As always, however, the devil is in the detail, and the finer points of each case must be examined in order to determine whether the relief will be available.

Multiple purchases:

- There is a quirk in the legislation so that where six or more dwellings are purchased, they will not be treated as residential property, but instead commercial property, resulting in the lower (commercial) rates applying. Beware - this is often missed on HMRC's SDLT calculator.
- A claim for Multiple Dwellings Relief ('MDR') should be considered, as in many

cases this will provide a very significant saving for the client. A claim for MDR can be made where two or more dwellings are being purchased. Again, availability of this relief will not be picked up by HMRC's SDLT calculator.

What constitutes chargeable consideration?

- Typically, the chargeable consideration will be the actual amount paid by the purchaser but care must be taken if there are any mortgages attaching to the property as any assumption of debt will also be deemed to be chargeable consideration.
- Where a connected company is acting as a purchaser, the transaction will be deemed to occur at market value, regardless of the actual consideration.

Linked transactions:

- The 'linked transactions' provisions must be considered where separate transactions take place between the same purchaser and vendor or persons connected with them. These are anti-avoidance provisions which have been drafted with the intention of covering a wide range of scenarios.

These are but a few of the considerations when dealing with SDLT and it does rather raise the question of how HMRC can expect more complex cases to be finalised within 14 days. With such a tight turnaround, one can only suggest that to be forewarned is to be forearmed – if possible, seek specialist advice prior to completion.

For further information, Suzanne O'Hara can be contacted on suzanne.ohara@mooreni.co.uk or 028 7035 2171.



Making Tax Digital is forcing firms to review their outdated legal IT systems

By Tim Smith, Technical Director at Insight Legal

Year one of Making Tax Digital (MTD) for VAT (the soft landing period) ends this April. Firms may be using bridging software, provided by their IT supplier, to meet electronic VAT filing requirements. Soft landing was only ever a temporary measure. It does not deal with other elements of MTD like digital record keeping.

Entering year 2 after April, firms can face a financial penalty if HMRC considers a practice has not been making enough of an effort to comply with MTD.

What does this mean for law firms?

Firms operating the oldest systems are most likely at risk of a penalty and may now consider their next steps. Software developers are investing in their current platforms, making them MTD-compliant. A developer would like to migrate all its legacy customers to its current platform, but is that the right decision for a firm?

There may be a gap of many years between IT systems from the same supplier and no commonality between them. A firm is advised to look at the whole of market and not just take the word of its existing supplier.

Firms invited by their supplier to upgrade are advised to;

1. Understand the time needed to plan for a new system

The average time from an old system to new is 3-6 months - doing nothing is not an option.

2. What's really on offer from the existing supplier?

Ask for a proposal of what the supplier's deal is. What are the costs, is any 'special offer' time limited and what if you choose not to take up the offer?

3. Discuss within the firm your needs from any new IT software

Don't assume your existing supplier knows what's best. There's no point paying for great functionality that won't be used.

4. Which developers offer a migration path from your existing system?

Find out about other suppliers with a good track record of migrating from your current


system to theirs. With years of historical data, live matters and finance records, it's inconceivable to re-enter data manually in exchange for successful migration.

5. How can I believe what a software company tells me?

Look for third party indicators, like awards or accreditations to support claims about the quality of product and service?

Finally, if you're unsure about the questions or fearful of understanding the responses, seek advice from a legal IT expert.

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



INSIGHT LEGAL
SOFTWARE

Making Tax Digital -
Is your bridge about to burn?

Practice Management Legal Accounts Case Management

Award winning Software for Solicitors

www.insightlegal.co.uk 028 9433 9977 info@insightlegal.co.uk

Reverse Charge VAT: Changes to VAT accounting for the building and construction industry from 1 October 2019

In this article Eddie Broomfield of GMcG Belfast, sets out how the way in which certain businesses which operate in the construction industry account for VAT has changed since 1 October 2019. Generally, the customer is now responsible for accounting for VAT due rather than the supplier. Solicitors need to consider the impact of the new rules on construction contracts.

Background

From 1 October 2019 HMRC introduced a domestic reverse charge for VAT to the building and construction industry. The purpose of the measure is to combat VAT fraud where businesses in the supply chain charge customers VAT and fail to remit this VAT to HMRC.

Where the reverse charge mechanism applies, a business supplying 'specified services' to a VAT registered customer, no longer charges VAT from 1 October 2019. Instead, the requirement to account for VAT shifts to the customer, who will account for VAT to HMRC via their VAT return.

HMRC did not provide any transitional period in relation to these new measures and businesses were required to apply the new rules immediately from 1 October 2019.

In what circumstances does the reverse charge apply?

The reverse charge applies to 'specified services' (broadly those which are construction operations for the purposes of the Construction Industry Scheme (CIS)) supplied to VAT registered businesses which are also registered under CIS. The reverse charge applies to both standard-rated and reduced-rated supplies (it does not apply to zero-rated supplies). The reverse charge does not apply where the customer is an 'end-user' (generally where

the customer will not be making an onward supply of the services) or someone connected to one. Where the customer is an end user or someone connected to one VAT is chargeable by the supplier at the applicable rate.

HMRC's guidance on the new rules (<https://www.gov.uk/guidance/vat-domestic-reverse-charge-for-building-and-construction-services>) also includes a list of services which are not subject to the reverse charge.

Some contracts may have a reverse charge and non-reverse charge component. In such circumstances, the entire supply will still be subject to the reverse charge.

Construction contracts

Solicitors need to consider whether amendments are required to construction contracts to potentially take account of the following in relation to the new rules:

- the contract should specify which party is responsible for accounting for VAT;
- the supplier may require the customer should warrant as to whether the customer is an 'end user' or someone connected to one under the new rules, and where relevant, its VAT and CIS registration status; and
- a customer may require the contract to stipulate that it is not required to pay VAT to the supplier in addition to the contract price.

What do businesses need to do?

Businesses working in the construction industry must consider how the introduction of the reverse charge impacts upon their VAT compliance, depending on whether they are a contractor or subcontractor in a particular contract.

Businesses should ensure that their software can process the reverse charge, and that their staff are familiar with the changes that have taken place and how they will apply to both sales and purchases, as applicable.

Both **contractors** and **subcontractors** need to consider whether the reverse charge applies to supplies that they make. This involves confirming whether the customer is an end user or someone connected to one; whether the customer is VAT and CIS registered; and whether their services are those that are subject to the reverse charge.

Contractors must also establish whether the reverse charge applies to their purchases of services; if subcontractors incorrectly charge VAT to them on a supply, the contractor is not entitled to recover this VAT in its VAT return.

For those businesses whose services were subject to the reverse charge from 1 October 2019, there may have been a negative cash flow impact where VAT collected on supplies is no longer available as working capital.

Invoicing

When supplying a service subject to the reverse charge, suppliers must include all the information that is typically included on a standard VAT invoice but must not charge VAT.

Suppliers must also include a statement on the invoice referring to the reverse charge and the amount of VAT to be accounted for under the reverse charge, such as:

"Reverse charge: customer to pay output VAT of £(insert VAT amount) to HMRC."

If the VAT amount cannot be included in the statement, the applicable VAT rate must be included.

Penalties

HMRC will assess for VAT on errors in accounting for the new reverse charge. However, HMRC has stated they will apply a 'light touch' for errors arising in the first six months of the new measures where taxpayers try to comply with the legislation and act in good faith.

Summary

Solicitors should consider if amendments are required to construction contracts as referred to above.

Businesses should carefully consider what processes they should put in place to ensure the correct VAT treatment is applied and evidence is held to support a decision to apply the reverse charge or to charge VAT.

GMcG Belfast provides VAT consultancy services to the construction sector and has experience in assisting businesses and their legal advisors with changes in VAT compliance legislation. To discuss any aspect of the new reverse charge, please contact Eddie Broomfield of GMcG Belfast on 028 9031 1113 or by email: broomfielde@gmcgca.com

Important Member Communication - Accounting systems and records



You will already be aware of the wisdom of undertaking key health checks for you and other members of your firm but have you ever thought that your firm's hardware – and software – would benefit likewise from regular key health checks? Have you put in place contingency plans to cover the failure of your packages and systems? Do you test your firm's packages and systems regularly? Do you test your backups?

Are you sure?

It is inexorable that, with the passage of time, firm's hardware and software package and systems age and in fact may become, or are already, not fit for purpose. By the time you become aware of any issues with your package and systems, it may already be too late. Valuable data may be corrupt or lost; the migration of data from old to new

hardware or system may be at best difficult, at worst impossible; you may find you fail to comply with – or are already in breach of – the Society's Regulations such as the Solicitors' Accounts Regulations 2014. Never mind the resource you will spend in trying to retrieve data or rectify whatever is the problem, you will come to the Society's attention as the statutory regulator of solicitors in Northern Ireland and the Society will conduct such investigation and take such steps in the exercise of its regulatory function, protection of the public key, as it considers is required into your firm.

The Society does not promote any particular hardware or software package or system. As a solicitor, you must ensure any accounts system or package used in your firm is fit for the purpose of effecting full and satisfactory compliance with the Society's Regulations.

You may be required to demonstrate to the Society that your system or package is fit for purpose.

What the Society will do is to encourage you to take time to consider the wisdom of conducting regular and spot checks of the package and systems you have in place in your firm, to ensure they are, and remain, fit for purposes. Future proofing is key.

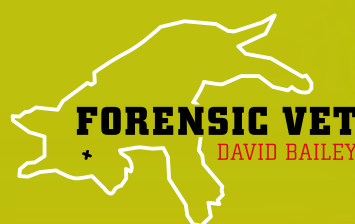
The Solicitors' Accounts Regulations 2014 can be accessed from the Society's website at https://www.lawsoc-ni.org/dataeditoruploads/doc/solicitorsaccountsregs_2014%5b1%5d.pdf

and an accompanying Guidance Note at <https://www.lawsoc-ni.org/dataeditoruploads/doc/Solicitors%20Accounts%20Regulations%202014%20Guidance.pdf>

Expert Witness

Forensic Vet provides advice and expert opinion on legal disputes involving animals, animal keepers, veterinarians & animal derivatives.

We provide reports for prosecution and defence solicitors.



Regularly take instruction on matters involving:

- Animal welfare • Professional negligence
- Injuries due to contact with animals • DARD



Cookstown based.

David Bailey BVSc, MSc (Forensic Science), MRCVS

European and Royal College of Veterinary Surgeons recognised specialist in animal welfare science, ethics and law.
Diplomat of the European College of Animal Welfare Science, Ethics and Law.

info@forensicvet.com www.forensicvet.com

COUNCIL DINNER 2019

Thanks to the Lord Mayor and Belfast City Council, the City Hall was the venue for this year's Council Dinner. More than 150 guests including members of the judiciary, the legal profession, politicians and members of the Civil Service, the business community and academia attended the Dinner. Suzanne Rice, then Society President, thanked attendees for their ongoing support of the solicitor profession and the work of the Law Society.



Barbara Jemphrey, Director of the IPLS; Bernard Brady, Vice Chair of the Bar Council; Fiona Bagnall, Presiding District Judge; David A Lavery CB, Society Chief Executive; John Mulholland, President Law Society of Scotland; Suzanne Rice, then Society President; Simon Davies, President Law Society of England & Wales; Jackie Henry MBE, DeloitteNI; David Ford, former Minister of Justice and David McFarland, Recorder of Belfast and Presiding Judge of the County Court.



David A Lavery CB, Society Chief Executive; John Finucane, then Lord Mayor of Belfast and Suzanne Rice, then President of the Society.



Melanie Rice; Declan Green; John O'Prey; Bronagh McMullan; Sinead Polley and Robert Rice.



Eileen Ewing, then Society Senior Vice President; Mark Borland and Colin Mitchell.



Paul Dougan; Kelly Breen; Reg Rankin and Andrew Kirkpatrick.



Suzanne Rice, then Society President and Enda Lavery, then Chair of the Belfast Solicitors' Association.



Martin McCallion and Chris Kinney.



Leonard Edgar and Alan Reid.



Donald Eakin; Mr Justice O'Hara; District Judge McNally and District Judge King.



Ann McMahon; Maria McCloskey; Lord Justice McCloskey and Catherine Dixon.



Dinner guests in the Banqueting Hall of Belfast City Hall.

Publication of new book on 'Bail Law and Practice in Northern Ireland'

Members of the Judiciary and legal profession were in attendance at Law Society House in Belfast for the launch of a new book entitled 'Bail Law and Practice in Northern Ireland'.

The new book, which is published by the Society, outlines the many powers of the police and the courts to grant bail in Northern Ireland.

The book examines bail at each stage of the criminal process, from bail granted by police officers on the street to bail granted by the highest courts.

It also considers the applicable law in relation to children accused of criminal offences, as well as bail in the context of extradition and immigration proceedings, and includes practical insights into bail applications and proceedings.

The new book has been written by Barrister and former academic, Katie Quinn and Solicitor



From l to r: Heather Semple, Society Head of Library and Information Services; Charlene Dempsey; Lord Justice McCloskey; Katie Quinn; Rowan White, Society President and Brigid Napier, Society Junior Vice President.

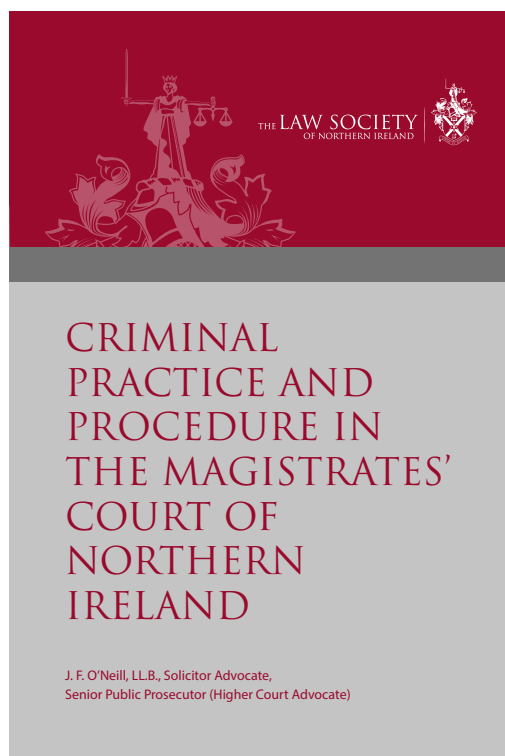
Advocate, Charlene Dempsey. It sets out the relevant legislation and rules of court and includes references to both reported and unreported Northern Ireland cases.

Commenting on the new book, Society President, Rowan White said:

"I wish to congratulate Charlene Dempsey, Katie Quinn BL and the Law Society Library team for producing what is a comprehensive,

accessible and practical book - an essential guide for practitioners in this jurisdiction and beyond."

The new book is available for purchase from the Society at a cost of £30, using the Order Form enclosed with this edition of the magazine or by downloading an Order Form from the Society's website or by emailing heather.semple@lawsoc-ni.org



New e-book - Criminal Practice And Procedure in The Magistrates' Court

The Magistrates' Court deals with the vast majority of those who encounter the criminal justice system whether as defendants or witnesses. The work in the courts of summary jurisdiction has become increasingly complex and practitioners face ever more pressures.

This new e-book addresses all aspects of work in the Magistrates' Court on a sequential basis, from initial investigation by the police to decision making by the PPS and through to the court process itself. The book will be an invaluable reference for those starting their careers in the Magistrates' Court as well as experienced practitioners who need to check more obscure points - in short all those involved in the criminal justice system.

The text covers up to date issues in relation to PACE, disclosure, hearsay, bad character, special measures, bail, committal hearings, sentencing and ancillary orders and is complimented by an associated website and Twitter feed to provide updates to the text and observations on developments in the criminal law as it applies in the Magistrates' Court.

The new e-book also covers practical issues like advocacy, the rules of evidence and police interviews and contains case law and evidential points relating to some of the most commonly encountered criminal offences.

Anyone wishing to order a copy of the e-book should contact Heather Semple at the Society or email her at heather.semple@lawsoc-ni.org



Expert Evidence: Getting it right

Inaugural Conference of the Law Society of Northern Ireland Clinical Negligence Practitioners' Group (LSNICNPG)

Law Society House in Belfast was the venue for the Inaugural Conference of the Law Society of Northern Ireland Clinical Negligence Practitioners' Group (LSNICNPG).

The aim of the conference was to provide to colleagues both medical and legal updates from keynote speakers and to offer invaluable information and guidance for practitioners in this specialist area.

The first presentation was delivered by Sir Sabaratnam Arulkumaran, Professor Emeritus of Obstetrics and Gynaecology, St George's University of London.

This was followed by a series of joint presentations, shared between a doctor and a lawyer, considering the commissioning and review of expert evidence.

Attendees also had the opportunity to hear about the management of expert evidence during the lifetime of the case.



Pictured are the keynote speakers at the conference. From left: Patrick Mullarkey, Partner, O'Reilly Stewart Solicitors; Phillip O'Connor, Consultant in Accident & Emergency and Intensive Care Medicine at the Regional Trauma Unit in the Royal Victoria Hospital; Jacqueline McAleese, Partner, Carson McDowell; Dr Kieran McGlade, General Practitioner, Belfast; Sir Sabaratnam Arulkumaran and Mark Harvey, Assistant Chief Legal Adviser, Directorate of Legal Services.

Obligations pursuant to the Solicitors' (Northern Ireland) Order 1976

The Society's Professional Conduct Department wishes to remind the membership of their obligations pursuant to the Solicitors' (Northern Ireland) Order 1976 as amended and the Regulations made thereunder.

In particular we draw attention to Article 31 of the Solicitors' (Northern Ireland) Order 1976 as amended regarding restrictions on conduct of practice and Regulation 25 of the Solicitors' Practice Regulations 1987 as amended:

A Solicitor shall bring to the notice of the Society, having where necessary first obtained his client's consent, any conduct on the part of another solicitor which appears to him to be a breach of these Regulations.

Please direct any enquiries to:

**The Professional Conduct Department, Law Society of Northern Ireland,
Law Society House, 96 Victoria Street, BELFAST BT1 3GN**

THE **LAW SOCIETY**
OF NORTHERN IRELAND





Brexit planning a top priority for Law Society of Northern Ireland

The implications of Brexit for legal practice was just one of a number of issues discussed at a series of events organised by the Society throughout Northern Ireland.

The series of events provided local solicitors with up-to-date information on Brexit and a platform to discuss its possible impact on their practices and clients.

Those attending the events in Newry, Belfast, Enniskillen and Londonderry/Derry had the opportunity to hear from a number of keynote speakers including John Campbell, Business Editor with BBC Northern Ireland, Angela McGowan, Director of the CBI Northern Ireland and Stephen Kelly, Chief Executive Officer of Manufacturing NI.

Also speaking at all of the events was Law Society's Chief Executive Officer, David Lavery CB, who delivered an overview of the ongoing work of the Society to prepare for Brexit.



From l to r: John Campbell; David A Lavery CB; Suzanne Rice and Angela McGowan.

Commenting after the Belfast event, David Lavery said:

"The legal profession will not be immune to the impact of Brexit and the Law Society recognises that its priority must be to provide its members with the necessary information and support to ensure that they continue to provide the best available advice.

Our number one priority will be to ensure the continuity of legal services on the island of Ireland irrespective of how Brexit turns out."

New Brexit Information Pack published

The Law Society of Northern Ireland's Brexit Information Pack is now available for download.

<https://www.lawsoc-ni.org/new-brexit-information-pack-published>

The Pack is designed to be a useful and practical guide to some of the key issues for the profession arising from the Brexit process.

The Society has sent a hard copy version to the principals of all firms. Additional copies are available from Reception at Law Society House.



Northern Ireland Solicitors' Team win inaugural Iron Law Triathlon challenge 2019

A Northern Ireland team of solicitors won the inaugural Iron Law Triathlon Challenge 2019. The team which included solicitors Peter Jack from RG Connell & Son, Darren Toombs from Carson McDowell and Adam Wood from Campbell & Haughey Solicitors Ltd, brought home the winning trophy.

The Northern team were competing against a team from the Law Society of Ireland as part of the Iron Law Triathlon Challenge, which involved the most exhaustive physical challenges and encompassed three provinces, six counties and at least six border crossings over the course of one day, all in support of the Solicitors' Benevolent Association (SBA).

The teams raised in excess of 30000 euros and all proceeds went towards supporting the work of the Solicitors' Benevolent Association (SBA) which helps solicitors and their families who are experiencing difficult times.

From l to r: Adam Wood, Darren Toombs and Peter Jack.

Commenting, then Society President, Suzanne Rice, said:

"On behalf of the Society I wish to congratulate Peter, Darren and Adam for not only winning the Iron Law Triathlon Challenge 2019 but also for committing themselves to this mammoth undertaking and raising more than 30,000 euros for the SBA. It was a fantastic achievement on the part of both teams of solicitors."



Adam Wood pounding the road to Dublin.



The benefits of offsite document storage:

✓ Cost effective

No box retrieval fees or fixed long term contracts.

✓ Stay compliant

Adhere to the relevant codes of practice and industry regulations in regards to retention of business documents.

✓ More storage space

Free up vital and expensive storage space within your own premises.

✓ Reduce risks

Flood, fire, accidental damage, rest assured your documents are protected, with a structured approach to disaster recovery.

✓ Smart Access

Bluetooth electronic lock and access control system direct from your smart device.



Store &Go

Every Solicitor Needs Smart Self Storage

Sizes ranging from
16 sq ft to 200 sq ft

Store & Go Self Storage
14 Balliniska Rd,
Springtown,
Derry, BT48 0NA

Tel +44 (0) 2871 278900
Email info@storeandgo.net

Get an instant quote
www.storeandgo.net



More than 300 solicitors attended Annual Conveyancing Conference 2019

More than 300 solicitors from across Northern Ireland were in attendance at the Law Society's Annual Conveyancing Conference at the Hilton Hotel in Templepatrick.

This year's conference was sponsored by Willis Towers Watson.

Now in its sixth year, the Law Society Conveyancing Conference has become a regular feature of the legal calendar.

This year's conference programme covered current issues of importance and relevance to solicitors who undertake conveyancing transactions as well as a general overview of the increased threats from Cyber-Crime.

Those attending had an opportunity to hear from a number of keynote speakers who spoke on the following issues of interest:

Welcome by the Chair of the Conference - **Alan Reid**, Chair of Conveyancing and Property Committee

Revised General Conditions of Sale (4th Edition) - **Simon Murray**, Murray Kelly Moore Solicitors

Revised Home Charter Scheme documents - **Mary Murnaghan**, Murnaghan Colton Solicitors



From l to r: Harry Weir; Simon Hunter; Alan Reid; Mary Murnaghan; Rowan White and Sam Kinkaid.

Domestic Discharge Consents: The Current Process and the Future Ahead - **Stephanie Millar**, Northern Ireland Environment Agency

Lessons learned from the Lender Claims Culture - **Simon Hunter**, Willis Towers Watson

Current cyber threats to the NI Legal Sector - **Sam Kinkaid**, PSNI Cyber Crime Centre

Cyber issues and the regulatory framework of the Law Society of Northern Ireland - **Catherine McKay**

Cyber protection - **Harry Weir**, Willis Towers Watson



A Judicial Perspective - **The Honourable Madam Justice McBride**

Commenting on the conference, Alan Reid, Conference Chair said:

"The Society is delighted that so many local solicitors attended the annual conveyancing conference.

We are especially grateful to our key note speakers, our exhibitors and our principal sponsor Willis Towers Watson for their contribution in making the 2019 conference such a success."

Society hosts Well Being Day at Law Society House

Suzanne Rice, President of the Law Society of Northern Ireland, was delighted to welcome colleagues for an early morning pilates class at Law Society House in Belfast.

The pilates class was part of a series of events for the Law Society's 'Well Being Day' in support of the solicitor profession in Northern Ireland.

Attendees at the pilates class.



Solicitors' Benevolent Association - making a real difference



SBA
SOLICITORS'
BENEVOLENT
ASSOCIATION

Dear Colleagues

As the representatives for Northern Ireland on the Board of the Solicitors' Benevolent Association (SBA) we would like to take this opportunity to thank all our colleagues for their continuing support throughout 2019 and into 2020.

Your contributions last year have helped support over 100 solicitors and their families in Northern Ireland - many of whom have experienced significant life changing circumstances in their lives.

As colleagues will be aware the SBA is a voluntary charitable body supporting solicitors and their families throughout the island of Ireland.

The SBA is completely independent from both the Law Society of Northern Ireland and the Law Society of Ireland and all applications are dealt with in complete confidence.

As part of the Practising Certificate renewal process for the year ending 5 January 2021, colleagues had the opportunity to make a £100 donation to support the work of the SBA. We are both encouraged and pleased with the response. The increased revenue will make a difference in supporting colleagues and their families going through difficult times.

To explain what the Solicitors' Benevolent Association does, how it makes a difference and how you can further help, members should have a look at the Association's website <http://www.solicitorsbenevolentassociation.com/> or watch a short video which is downloadable from <https://vimeo.com/377531370>.

Thank you.

Caroline Boston Colin Haddick John Guerin
Solicitors' Benevolent Association representatives for Northern Ireland

IMPORTANT MEMBER COMMUNICATION

Members are asked to note that the **Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017** have been amended.

If you intend to become the Beneficial Owner, Officer or Manager of a relevant firm or commence practice as a relevant sole practitioner as defined in the Regulations, you **MUST** first apply to the Society for approval under the Society's Regulation 26 process.

You must produce to the Society all relevant, current documents in association with your application.

Please note

- You are **not** permitted to commence practice as a relevant sole practitioner or beneficial owner, officer or manager of a relevant firm without the Society's **prior** approval under Regulation 26 of the Regulations.
- You should note that this does not affect those solicitors who have applied to the Society for approval under Regulation 26 of the Regulations before **09 January 2020**.



Advanced Advocacy Course marks 20th anniversary

More than 30 solicitors participated in the 2019 Advanced Advocacy course which marked its twenty year anniversary.

Organised by the Law Society of Northern Ireland in conjunction with the Advocacy Working Party and the National Institute for Trial Advocacy (NITA), solicitors are trained to improve and develop their advocacy skills to assist in making them a more competent advocate.

The intensive course combining training in advocacy and evidence culminated in a mock trial in the High Court presided over by members of the Judiciary from Northern Ireland including Mr Justice Horner, His Honour Judge Kinney, Master Hardstaff and District Judge Keown.

The course also involves some of Northern Ireland's most senior A&E doctors taking on the role of key witnesses.

At the Closing Dinner for attendees at the course, Suzanne Rice, then Society President, said:

"I wish to take this opportunity to congratulate those who have successfully completed the Advanced Advocacy Course 2019.

The Law Society of Northern Ireland recognises the importance of this course, not least in the advocacy skills and techniques which it teaches, but also in the sense of empowerment that it provides to the solicitors who undertake it.

The value of the Advanced Advocacy Course goes from strength to strength with over 550 solicitors having undertaken this course since it started.

Its popularity and its success is easily explainable – it is well organised, well delivered and well worth it."

Solicitors in Northern Ireland have unrestricted rights of audience to represent clients in the Magistrates' Court, County Court and Crown Court by virtue of legislation. They also have limited rights in the High Court by virtue of the Judicature (NI) Act 1978.

The Advanced Advocacy Course delivers additional professional training which enhances solicitors' advocacy skills and techniques.

New video celebrates 20th anniversary of the Advanced Advocacy Course

To mark the 20th anniversary of the course, the Society has produced a video which highlights the significant achievements of the course with interviews with those who set up the course, participated and contributed to its success over the last two decades.

The contributions throughout the new video highlight the importance of the course in the advocacy skills and techniques which it teaches but also in the sense of empowerment that it provides to the solicitors who undertake it.

The video (which is downloadable from <https://vimeo.com/370927837>) is also being launched to encourage solicitors from Northern Ireland and further afield who have not undertaken the course or those who have but wish to add to their skill base to sign up for the new Advanced Advocacy Course in 2020.

Given the success of the 2019 course the Society is encouraging members to register their interest in the course now to secure their place for this year.

Those wishing to undertake the Advanced Advocacy Course 2020 should email Anne Devlin at anne.devlin@lawsoc-ni.org to register their interest at this early stage.



Guests at Advanced Advocacy Course closing dinner.



Child marriage and trafficking focus of CLA European Hub meeting



Law Society House recently hosted the second meeting of the European Hub of the Commonwealth Lawyers Association (CLA).

The meeting was chaired by the President of the Commonwealth Lawyers Association (CLA), Brian Speers, who was supported by John Almeida, CLA Vice President (Europe), Brigid Watson, Secretary General CLA and Laurie Watt, Treasurer.

The focus of the meeting was to consider issues around child marriage and trafficking with presentations from the Police Service of Northern Ireland.

The meeting also considered legal professional regulation and complaints handling.

Representatives from the Law Society of Northern Ireland, the Law Society of Scotland, the Bar of England and Wales, the Law Society of Jersey, the Law Society of Isle of Man and the Law Society of Cyprus attended.



European Lawyers at CLA Hub Meeting.

FOLIO: the Northern Ireland Conveyancing and Land Law Journal

Folio contains up-to-date and authoritative comment and information on conveyancing and land law. The journal is packed with practical and topical articles, case notes and information from leading practitioners and academics. Its unique focus on Northern Ireland law makes Folio an essential information resource for local practitioners. Folio is published twice a year and is priced at £60 per annum (inc p&p).

To subscribe to the journal please contact:

**Heather Semple,
Law Society Library,
Law Society House,
96 Victoria Street,
Belfast BT1 3GN.**

DX: 422 NR Belfast 1

or email heather.semple@lawsoc-ni.org

folio



Conference examines 'Silent Crisis' in the UK immigration system

Law Society House in Belfast was the venue for the second Annual Immigration Conference.

More than 50 members of the legal profession joined senior members of the judiciary, leading academics, prominent activists, community organisations and practitioners to explore the conference theme of "The Silent Crisis - Human Rights in the United Kingdom immigration system".

Organised by the Law Society of Northern Ireland Immigration Practitioners' Group, the conference provided an important platform to discuss overarching and specific immigration issues for applicants within the immigration system in the United Kingdom.

This year's conference examined recent developments in the legal and policy frameworks, with regards to the rights afforded to, and restrictions imposed upon, people wishing to enter and live in the UK. Areas discussed included:

- access to justice; Syrian Voluntary Resettlement Programme;
- protecting the rights of asylum seekers, migrants and refugees;
- the future of human rights within refugee law;
- strategic litigation to further rights of refugees.

The conference also examined the implications of government policies for asylum seekers.

Conference attendees also had the opportunity to participate in a unique 'Small Worlds' workshop presentation from Belfast Friendship Group which provided an insight into the real lives of refugees and migrants from around the world.

Those attending also heard from a range of high profile speakers including Lord Justice McCloskey and Professor Colin Harvey from Queen's University, as well as contributions from colleagues working within the immigration system.



From l to r: John Mackell, Law Society; Ann Marie White, Red Cross; Liz Griffith, Flourish NI; Alyisha Hogan, PPR; Sinead Marmion, IPG; Bernadette McAliskey, STEP NI; Asleigh Garcia, IPG and Professor Colin Harvey, Queen's University.

Silent Crisis - a presentation of films relating to the human rights of refugees and asylum seekers

To mark the Conference the Society's Immigration Practitioners' Group in conjunction with Queen's University Belfast hosted at the University's Moot Court Silent Crisis - a Presentation of Films relating to the Human Rights of Refugees and Asylum Seekers.

Attendees, who included Ashleigh Garcia and Sinead Marmion (Chair and Secretary respectively of the Immigration Practitioners' Group), had the opportunity to watch the films and participate in a QA and Panel Discussion which was held after the screening and which was moderated by broadcaster, Declan Harvey. The Panel included Professor Colin Harvey, QUB, Sean Murray, Award Winning Director and Edie Shillue, Writer and Social Campaigner.





New Law Society Mediation Services (LSMS) Board hold first meeting

The first board meeting of the new Law Society Mediation Services (LSMS) took place at Law Society House.

LSMS will provide mediation services from local solicitors who are trained mediators and who will assist in resolving disputes resulting in time and expense savings.

The new LSMS Management Board will consider the future direction and promotion of the service to key stakeholders at home and further afield.

From l to r: Kevin Neary; Rosalind Dunlop; Gareth Jones; Therese Johnston and Brian Speers, interim Chair of the Board.



Law Society hosts Law Commission's surrogacy project event

More than 40 members of the legal profession and community/voluntary representatives attended The Law Commission of England and Wales' Surrogacy Project event hosted at Law Society House in Belfast.

The Project is considering the legal parentage of children born via surrogacy, the regulation of surrogacy more widely and the international context of surrogacy.

The Project will take account of the rights of all involved in surrogacy, including the question of a child's right to access information about their origin and the prevention of exploitation of children and adults.

Those attending the event heard about the Law Commission's current consultation paper on surrogacy law reform which includes provisional proposals to improve surrogacy laws so they better support the child, surrogates and intended parents.



From l to r: Verity Bell; Professor Nick Hopkins and Spencer Clarke all from the Law Commission of England & Wales.

Sports Law Conference 2019 outstanding success

One of the world's leading sports law specialists was the keynote speaker at the annual Sports Law Conference which took place at Malone Golf Club in Belfast.

The conference, which is organised by the Law Society of Northern Ireland and the NI Sports Forum, is now in its eighth year and has become an anticipated feature of the legal and sports calendar.

Michael Beloff QC has had a long and distinguished career in sports law and was Ethics Commissioner for the London 2012 Olympic bid and has been, since 2014, Chairman of the IAAF Ethics Board.

Among his credentials he was described in the Daily Telegraph in 2011 as "probably the most eminent sports lawyer in the world", by the Guardian in 2012 as "the go to man for sporting disputes" and in 2016 by The Times as "by far the UK's and maybe the world's most distinguished specialist in sports law" and by the Daily Telegraph as "the silkkest assassin in sport".

He was one of a number of speakers who presented at this year's Sports and Law Conference on the overarching theme of Mediation in Sport.

Over the years the conference has examined important sports law related themes including business and sport, contractual issues, sporting injury risks, equality and good governance as well as issues in the news including the impact of concussion injuries in sport.

The popularity of the conference has been reflected not only in the increasing number of attendees drawn from the legal profession, governing bodies of sport and their clubs but the calibre of speakers which has included Lady Mary Peters and former Northern Ireland manager, Michael O'Neill.

Speaking about the conference, Keith McGarry, conference organiser and solicitor in Conn and Fenton said:

"We were delighted that Michael Beloff QC and Richard Harry, CEO of Sport Resolutions UK came to Belfast and spoke at the Sports Law Conference 2019.

Those attending had the opportunity to hear not only from Michael Beloff QC on the Effective Resolution of Sport Disputes but also from Wilma Erskine, former Secretary Manager of Royal Portrush Golf Club, following a hugely successful staging of the 148th Open Championship in July.

All of the contributions underscore the increasing importance of the Northern Ireland Sports Law Conference to the legal, medical and sporting professions throughout the United Kingdom and further afield."

Richard Harry of Sport Resolutions led a moot mediation process with attendees whilst Keith

McGarry gave a current law update with local and international issues.

The conference also included a panel Q&A with Michael Beloff QC and Richard Harry who were joined by Bernie Fox of Ulster GAA and local solicitor and triathlon athlete, Peter Jack.

Conference attendees also had the opportunity to hear (via a video link) a contribution from Professor Jack Anderson, a member of the Court of Arbitration of Sport and Head of the Sports Department in the University of Melbourne.

The conference continues to be supported by the NI Sports Forum and Law Society of Northern Ireland.

Speaking on behalf of the NI Sports Forum its Chairperson, Richard Johnson, said:


"Unfortunately disputes are common place in the world of sport and we are delighted to have such experienced contributors to the Sports Law Conference this year to share their stories."

Commenting about the conference then Society President, Suzanne Rice said:

"The Law Society of Northern Ireland is delighted to support the 8th Sports Law Conference. It remains the definitive Sports Law Conference in both the North and South of Ireland, offering discussion and insight on issues of importance to the legal and sporting professionals. It is an excellent legal and sporting platform which continues to showcase the thought leaders of tomorrow."



From l to r: Ciaran Kearney; Richard Harry; Jennifer Ferguson; Michael Beloff QC; Wilma Erskine; Ken Nixon and Keith McGarry.

A woman with dark hair tied back, wearing a dark blazer, is sitting in an office chair and talking on a white mobile phone. She is looking off to the side with a thoughtful expression. The background is a blurred office setting with bookshelves.

How are you, really?

Life in the law can be tough.
Call our confidential helpline.
We're here to listen.
0800 279 6888

LawCare
Supporting the Legal Community

New Consent Form launched to support patients seeking medical records

Law Society House in Belfast was the venue for the launch of a new initiative which aims to support local GPs, solicitors and clients.

The new 'Joint Consent Form' has been developed by the Law Society of Northern Ireland and British Medical Association (BMA).

It is a part of a joint initiative from the two professional bodies which will run as a pilot and aims to significantly improve the process by which solicitors seek client's GP notes and records.

The development of the new form is in response to an increase in requests for patient notes and records and a recognition by both professional bodies of the need to provide work collaboratively.

The new form is provided in a clear, concise and user friendly format and is supported by explanatory notes for the client, solicitor and GP in a compatible and easy to use format.



Members of the Society and the BMA attending the launch of the new Consent Form.

The form is provided by the solicitor and is completed when the client attends to give instructions.

This is the first in a series of initiatives which it is hoped will build on best practice and identify areas of mutual interest to the two professional bodies.

Commenting on the launch, the then Senior Vice President of the Law Society of Northern Ireland, Eileen Ewing said:

"The Law Society is delighted to be working with the BMA on this joint Pilot initiative

which will undoubtedly support both professions in the services they provide to clients and patients."

Dr Alan Stout, chair of BMA Northern Ireland's General Practice Committee added:

"Administration workload for GPs has increased exponentially over the past few years and changes in data governance were adding to this burden. By developing this form in conjunction with the Law Society of Northern Ireland we hope that the process will be simplified and will free up GP time to see patients."



Memorandum of Understanding signed with Belgian/Brussels Bar

President Suzanne Rice added her signature on behalf of the Law Society of Northern Ireland to the Memorandum of Understanding developed between the UK Law Societies and Bars and the Belgian/Brussels Bar.

The MOU underscores the commitment of the respective professional bodies to future co-operation and partnership between the jurisdictions, irrespective of the terms of the UK's withdrawal from the European Union.

This reflects a shared aim of the legal professions across the UK jurisdictions and their Belgian counterparts to facilitate the practice of law and the interests of clients internationally and to demonstrate that it is possible for individual professional bodies and regulators to signal their intent to facilitate such co-operation.

Society Annual Dinner 2019

Nearly 200 solicitors attended the Law Society of Northern Ireland's Annual Dinner which was held in the Titanic Hotel in Belfast on 29 November 2019.

Speeches were delivered by the Society's new President, Rowan White, guest speaker, Mr Justice Huddleston and Sarah Matthews of Tughans, speaking on behalf of the newly admitted solicitors.

During his keynote address the new President, Rowan White, welcomed the newly admitted solicitors to the Law Society of Northern Ireland, outlined his Presidential programme for the year ahead and his support for his chosen charity of the year, Action Mental Health.

David Babington, Chief Executive of Action Mental Health, also spoke at the dinner.

The Society wishes to thank Harbinson Mulholland for their sponsorship and support of the Annual Dinner 2019.



Suzanne Rice, Senior Vice President; Rowan White, President; Brigid Napier, Junior Vice President and David A Lavery CB, Society Chief Executive.



Rachael Gamble; Chris Kinney; William Nugent; Eileen Ewing, then Society Senior Vice President; Shannon Gawley; Owen Williamson; Lauren Jones and John O'Kelly.



Dinner Guests in The Drawing Room, Titanic Hotel.



Sarah Matthews speaking on behalf of the newly admitted solicitors.



Patrick McIlroy; Rebecca Logan; Kirsten Magee; Maeve Fisher; Emma McCloskey; Sancha O'Neill and Lucy Hannah.



Stephen McGuigan; Anna Fitzpatrick; Micaela Fitzpatrick; Caroline McCommon and Timothy McCall.



Ciaran Maguire, Chair of the Belfast Solicitors' Association and Rowan White, President.



Amy Hamilton; Aimee Donaldson and Katie Millar.



Mr Justice Huddleston; Rowan White, President and David A Lavery CB.



Nichola Coghlan; Nadine Brennan; Nicola Dooher; Aimee Craig; Sarah Matthews and Caoimhe Lowe.



Leonora Rice and Louise McLaughlin.

How do you search for a job in the legal market?

MCS Group is a leading recruitment consultancy operating across Northern Ireland. In this article David McCallum, Specialist Legal Recruitment Consultant, discusses how to go about searching for a new opportunity in the legal market.

I guarantee that most people will read this article's headline and immediately think that they will just do a quick Google search, or head to an online job board. Ten years ago, job seekers would have picked up a newspaper and looked at the vacancies columns or the careers supplement. So, in 2020, what is the best way to go about finding a new job?

Some people will tell you it depends on what stage you are at in your career, and yes there is some truth to that; if you carry more experience the job might come to you. However, in my opinion anyone applying for jobs is on a level playing field. Post the application point, work experience, qualifications and quality of CV come in to play but at the point of locating jobs, everyone is in same boat.

I have outlined below a few dos and don'ts when commencing your search for a new position:

✓ **DO read the requirements of the role**

- Why? Because if you don't cover those requirements it will be a rejection and some firms will not consider your CV for anything else, which would be a shame if a job matching your skills were to appear in the future.

✗ **DON'T try and force the process**

- Why? I have been told by some firms that they have been phoned multiple times a day by people looking for update on their CV. This is when a recruitment consultant is good as they can keep the ball rolling without making you seem desperate or in some cases a pest!

✓ **DO write a cover letter**

- Why? Well it won't always be necessary but on occasion it's very useful, and can make your profile stand out from the crowd, while demonstrating that you have taken the time to go beyond ping pong across a CV. I suggest having several versions saved matching the differing areas you may want to work in.

✗ **DON'T click on every job!**

- Why? Because recruitment firms will be advertising the same jobs as well as firms. Imagine a firm receiving your CV three or four times, this might smack of desperation which will make negotiation harder.

✓ **DO utilise a Recruitment Consultant!**

- Why? Because its free, why would you not take free advice and help? Honestly it just makes sense!

✗ **DON'T jeopardise your job search with social media**

- Why? It's simple, you could have used a recruitment consultant, written an amazing cover letter, utilised every method of job search and keep getting

rejected because of social media.

Basically, what I am saying is, any recruiter, human resource manager or business owner worth their salt will Google someone they might invest in. Keep your social media clean and controversial free and please use a professional looking photo.

So that gives an idea of simple dos and don'ts but what tips are there for the newly qualified solicitors in regards to the future of roles within the Northern Ireland Legal market?

1. Tech – if you have any IT skills now is the time to utilise them. Technological innovations, new systems and artificial intelligence is obviously a massive area of growth, coupled with the fact that one of the fastest growing sectors in legal recruitment is hybrid roles involving legal knowledge and tech skills.

So, if you are sitting at home coding in your spare time, then make sure and get it on your CV. Outside of that it might be worth doing a part time course on an area of relevance within IT or digital. Honestly, upskilling will make you stand out amongst your peers.

2. Picking a specialism – OK, you need to be careful when picking a specialism, some allow for switching but others will mean you will be forever pigeon-holed. Seek advice from established solicitors or come and have a chat with me and I will talk through your options. I don't want to make anyone feel bad, but the reality is that some specialisms may not exist in ten years.

These are just a few pieces of advice, but keep an eye out for an upcoming event hosted by MCS Group where a panel of experts from across the legal sector will discuss and debate what they think the legal landscape will look like in the future. You will also have an opportunity to ask questions and put across your opinion.

If you would like further information regarding your next career move or indeed landing your first role, please speak to me, David McCallum by calling 028 9023 5456 or emailing d.mccallum@mcsgroup.jobs.



Swapping the corridors of Laganside for the dusty streets of rural East Africa – appeal by Peter McGettrick and Nicki Clarke

In November 2018, my partner Nicki Clarke and I travelled to Uganda to undertake a year of volunteering. We are working as Volunteer Development Workers with the Justice and Peace Commission (JPC) in Hoima, a small town in Western Uganda. The local population survive mainly through subsistence farming, with domestic electricity and water connections rare and constant power and water outages for the lucky few who do.

Our main role is to build the institutional capacity of the JPC and provide training in different areas, to include peace building and mediation, finance, child safeguarding and

facilitation skills. The JPC promote human rights and access to justice within vulnerable rural communities and within the two refugee settlements in the Hoima district. The settlements are home to international refugees fleeing from war and oppression in the Democratic Republic of the Congo and South Sudan, together with those from Burundi, Rwanda, Kenya, Sudan and internally displaced populations fleeing strife.

Most people in the Hoima region live in abject poverty, are unaware of their basic human rights and often people's rights are being abused by both State and non-State actors. Furthermore, even within communities who do have knowledge of their rights, many do not know where to turn when their rights are abused. Corruption within the State is endemic and a huge barrier to progress in a country rich in minerals and natural resources.

The JPC attempt to raise awareness of people's rights by various means: through a weekly radio phone in show; Justice and Peace clubs in local schools; community engagement events and training events. We have a range of other projects we are attempting to initiate to supplement our current work but, as is often the case with projects in Africa, a lack of finances prevents worthy initiatives from getting off the ground.

The JPC are seeking to launch a pilot mediation service that will provide the access to justice that many local people simply cannot afford, helping to resolve conflicts over land, inheritance issues and family disputes. Oil has recently been discovered in the region and this has led to many people being evicted from their land without adequate compensation, or in some cases none at all. We also aim to broaden our engagement and impact within the refugee settlements and set up Justice and Peace Committees within the settlements of Kyangwali and Kiryandongo.

We are asking our friends and colleagues back home to help us raise some money to inject into our project. All donations, however small, will be greatly appreciated and we can guarantee 100% of the funds will be spent on the ground here in Uganda. You can rest assured your money will be not only put to good use, but will also be reaching some of the most vulnerable and impoverished people in the world.

For anyone who can donate, the easiest way to do so is to use our dedicated JustGiving Page: <https://www.justgiving.com/crowdfunding/peteandnickijpc>

Wabale Mono! (Thanks very much!)

Peter McGettrick and Nicki Clarke





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 FERGUSON AND GEORGINA FERGUSON AND LESTER WEIR AND WEIR JOINERY AND CONSTRUCTION LIMITED V RAYMOND GILLESPIE T/A PRESTIGE HOMES AND ALPHA INSULATION LIMITED

Plaintiffs claim the defendants were guilty of breach of contract and negligence in and about the carrying out of design and building work at their premises. - third party were engaged as a sub-contractor to carry out insulation work at the premises. - parties agreed to permit the defendants to withdraw/continue against the third party and that the third party would bear his own costs. - whether this was a final order precluding the defendants from taking further proceedings and re-litigating the action. - distinction between having proceedings discontinued/withdrawn and having proceedings dismissed or obtaining judgment. - HELD that defendants are entitled to issue a further Third Party Notice against the third party

HIGH COURT
21 MARCH 2019
HORNER J

IN THE MATTER OF AN APPLICATION BY DEBORAH MCGUINNESS FOR LEAVE TO APPLY FOR JUDICIAL REVIEW (NO 2)

Whether the proceedings are to be characterised as a criminal cause or matter and consequences for ensuing hearings and appeals. - applicant seeks to challenge three decisions related to the consideration of the inmate, Michael Stone for early release; the decision of the Sentence Review Commissioners to accept the application made by the prisoner for early release; the decision of the Commissioner to direct that the application be the subject of a preliminary indication by a panel of the Sentence Review Commissioners and the decision of the Sentence Review Commissioners to not provide information about the proceedings before them and the decisions made in relation to the application of the prisoner for early release. - HELD that the application for judicial review is neither a criminal cause nor a criminal matter
HIGH COURT
1 AUGUST 2019
MCCLOSKEY J, KEEGAN J

REGINA V SEAN MURPHY

Applicant charged with 8 counts contrary to the Protection from Harassment (NI) Order 1997. - applicant wished to vacate his guilty plea and solicitor wished to come off record. - applicant claimed that he stopped the trial because of emotional stress. - application to vacate the plea on the basis that he did not understand the advice being given to him by his legal representatives at the time, given the stresses he was under. - whether the applicant can prove that the stresses he was under deprived him of his freedom to choose whether to plead guilty or not guilty. - judge dismissed the application to vacate. - applicant appealed the dismissal. - application for extension of time dismissed

COURT OF APPEAL
7 MAY 2019
MORGAN LCJ, STEPHENS LJ, TREACY LJ

CONTRACT

RONALD KERR V AGNES JEAN JAMISON

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

CRIMINAL LAW

DIRECTOR OF PUBLIC PROSECUTION'S REFERENCE (NUMBER 1 OF 2018) VINCENT LEWIS

Offender was sentenced to a term of 10 years 6 months pursuant to the Criminal Justice (NI) Order 1996 in respect of multiple offences of indecent assault, and sexual offences against children. - application for leave by the Director of Public Prosecutions to refer the sentences to the Court of Appeal pursuant to s.36 Criminal Justice Act 1988 on the grounds that they were unduly lenient. - age of the offender. - aggravating and mitigating factors. - HELD that the sentences were unduly lenient and increased by order of the court
COURT OF APPEAL
31 MAY 2019
MORGAN LCJ, STEPHENS LJ, MCBRIDE J

IN THE MATTER OF EC AN APPLICANT FOR BAIL

Applicant granted bail. - applicant charged with causing grievous bodily harm with intent, attempting to pervert the course of justice and criminal damage. - prosecution alleges that the applicant has breached a bail condition which was that he was not to see, speak to or in any other way contact any of the alleged victims or witnesses in the case, either directly or indirectly. - prosecution contend that bail should be revoked. - definition of reasonable grounds. - definition of opinion. - rules of evidence. - procedure for the revocation of bail. - HELD that bail is revoked
HIGH COURT
8 AUGUST 2019
STEPHENS LJ

IN THE MATTER OF AN APPLICATION BY MARK PATRICK TOAL FOR JUDICIAL REVIEW (NO.2)

Appeal against quashing of a finding of a Parole Commissioner Panel that it was not satisfied that it was no longer necessary for the protection of the public from serious harm that the respondent should be confined in prison. - test for the assessment of the significant risk of serious harm to members of the public under the Criminal Justice (NI) Order 2008. - whether the Panel failed to apply the correct test and/or misdirected themselves in law. - whether there is an equivalence between the test for dangerousness and the test for release. - HELD that appeal allowed
COURT OF APPEAL
27 JUNE 2019
MORGAN LCJ, STEPHENS LJ, TREACY LJ

R V JOHN PATRICK MAUGHAN AND OWEN JOHN MAUGHAN

Appeal against sentence. - appropriate reduction in sentence when an offender pleads guilty at arraignment but does not indicate his intention to plead guilty at the outset. - defendants convicted of numerous offences between them including aggravated burglary, theft, possession of a firearm, resisting police, dangerous driving, possession of drugs and

false imprisonment. - whether the starting point was too high. - whether the Judge failed to have regard to the totality of the sentence passed. - whether the discount of 25% failed to properly reflect the credit the applicant ought to have received as a result of guilty pleas which were entered on arraignment. - whether the Judge made adequate allowance for the fact that one of the defendants is seriously learning disabled. - aggravating and mitigating factors. - HELD that both appeals dismissed
COURT OF APPEAL
25 NOVEMBER 2019
STEPHENS LJ, TREACY LJ, KEEGAN J

R V SHANNON McILWAINE

Defendant is one of 8 persons facing various counts on indictment arising from alleged murder and assault. - defendant has made an application for her count to be severed from the indictment and that she should be tried separately from all other defendants named on the indictment on the basis that it would ensure fairness in the trial process to the defendant and co-defendants. - presumption in favour of a joint trial unless the risk of prejudice is unusually great. - HELD that application refused
CROWN COURT
4 OCTOBER 2019
COLTON J

DAMAGES

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

Plaintiff is the widow of a person shot dead on Bloody Sunday and initiated a claim for damages under the Law Reform (Miscellaneous Provisions) Act 1937 on behalf of the estate of her late husband under the Fatal Accidents (NI) Order 1977. - plaintiff died before the action came for hearing and was continued in the name of the Executor of the Estate. - whether in the case of a victim who died instantly as a result of being shot,

it was possible in law to make an award of aggravated damages. - if so, whether an award should be made in this instance, and the appropriate amount. - HELD that the claim by the estate for injury to feelings of the deceased resulting from the tortious actions of the soldiers culminating in him being shot dead is established in law and the estate is entitled to aggravated damages of £15,000
HIGH COURT
2 APRIL 2019
MCALINDEN, J

DISCLOSURE

RE S (DISCLOSURE TO THIRD PARTY)

Application by the Police Service of Northern Ireland ("PSNI") for the release of 2 reports, which were prepared in relation to proceedings involving children of a family who were placed on the Child Protection Register under the categories of potential emotional, physical and sexual abuse. - release of documents held by the Court under the Family Proceedings Rules (NI) 1996. - disclosure to third parties from family proceedings. - welfare and interests of the children. - maintenance of confidentiality in children cases. - public interest and administration of justice. - redactions proposed by the parties. - extent of disclosure. - HELD that it is appropriate to release both reports to the PSNI
HIGH COURT
13 MARCH 2019
KINNEY HHJ

EVIDENCE

R V IVOR BELL

McConville. - confession evidence made to Mr McIntyre in 2004. - whether the evidence should be excluded under a.74(2) and a.76 Police and Criminal Evidence (NI) Order 1989. - application to exclude the Boston tapes evidence. - whether the confession made by the defendant in consequence of the false guarantee given to him was likely to be rendered

unreliable. - whether inclusion of the tapes as evidence would have an adverse effect on the fairness of the proceedings. - HELD that tapes be excluded as evidence
CROWN COURT
16 OCTOBER 2019
O'HARA J

FAMILY LAW

RE: C (A CHILD)

Trust seeks a care order and freeing order for a girl who is just over 2 years old. - applications are resisted by the mother. - child is with foster carers who are not suitable as long term carers because of their age. - threshold criteria. - whether long term care or freeing for adoption is appropriate. - likelihood of placement. - mother claims that, in order to protect the child's ethnicity, she should not be adopted outside the traveller community. - HELD that care order made based on the care plan that C be freed for adoption and that the mother is unreasonably withholding her consent
HIGH COURT
19 JULY 2019
O'HARA J

A FATHER V A HEALTH AND SOCIAL CARE TRUST AND A MOTHER

Applications relate to a male and female child who were the subject of care orders. - care plan that the girl should remain in her current long-term foster placement and that the boy should be freed for adoption and be placed with his current carers. - father did not have parental responsibility for the girl. - discharge of a care order. - freeing a child for adoption in the best interests of the child. - parent unreasonably withholding consent. - religious practices. - A.8 ECHR right to family life. - HELD that the father's application to discharge the care order dismissed, that the boy should not be freed for adoption
HIGH COURT
4 JANUARY 2019
MCFARLAND HHJ

MADONNA MARIE QUINN V ANTHONY JOHN QUINN

Ancillary relief application appeal by the husband against orders of the Master. - appeal by way of re-hearing. - husband claimed the court failed to take into account the wife's failure to disclose a number of assets including her pension, that the court placed an excessive valuation on the husband's assets, that the court wrongly took into account assets which were inherited and other assets which were non-matrimonial property and that the court failed to take into account litigation misconduct on the part of the wife. - findings of fact regarding income and capital assets of both parties, income and earning capacity of the parties, assets and financial resources, monies dissipated since the date of marital separation, financial and litigation misconduct. - legal principles on division of capital and periodical payments. - HELD that assets to be divided to provide the wife with a home and assets to enable her to generate income and become self-sufficient
HIGH COURT
23 OCTOBER 2019
MCBRIDE J

S V S

Application for ancillary relief and clean break. - income and assets. - whether the husband's company was an asset of the marriage. - valuation of the company. - dispute about whether wife was cohabiting with a subsequent partner and whether the wife was claiming and receiving government benefits during such cohabitation
HIGH COURT
11 APRIL 2019
SWEENEY M

WESTERN TRUST V P AND Q

Ex Parte Emergency Protection Order ("EPO"). - issue and service of proceedings. - ex parte applications. - consequence of either parent not appearing before a Family Proceedings Court. - powers of a District Judge. - need to obtain leave. - discharge of an EPO. - HELD that, without a summons being duly served, the appellant had not been given notice of the hearing and was

entitled to seek discharge of the EPO

MAGISTRATES' COURT
 2 APRIL 2019
 MEEHAN DJ

HUMAN RIGHTS

IN THE MATTER OF AN APPLICATION BY FRANCIS MCGUIGAN AND MARY MCKENNA FOR JUDICIAL REVIEW

Appeal concerns applications for judicial review by "the hooded men" of the decision made by the PSNI that there was no evidence to warrant an investigation, compliant with Articles 2 and 3 of the ECHR, into the allegation that the UK Government authorised and used torture in Northern Ireland. - interrogation of persons detained without trial. - five disorientation and sensory deprivation techniques. - whether the treatment to which the men were subjected could be characterised as torture. - HELD that the treatment to which Mr McGuigan and Mr McKenna were subject would, if it occurred today, properly be characterised as torture bearing in mind that the ECHR is a living document. - one judge dissenting - dissenting judgment attached
COURT OF APPEAL
 20 SEPTEMBER 2019
 MORGAN LCJ, STEPHENS LJ, SIR DONNELL DEENY

JUDICIAL REVIEW

NEIL HEGARTY'S APPLICATION FOR JUDICIAL REVIEW

Appeal against dismissal of an application for judicial review brought about by the appellant who seeks to impugn 2 decisions by the Parole Commissioner and the Department of Justice recommending that the appellant's licence be revoked and he be recalled to prison. - applicant contends that both decisions were unlawful being based on an inaccurate and un-particularised assertion that the appellant had stated before leaving prison that he would not be consenting to

the fitting of electronic monitoring equipment in respect of his curfew.

- statutory provision on recall of offenders. - whether the decision of the Commissioner was unlawful on the basis that there was an uncritical assumption that all the facts in the police report were correct and there was an obvious need to make simple enquiries of the officer compiling the police report. - HELD that appeal allowed in so far as leave granted to apply for judicial review but dismissed the appeal on the merits
COURT OF APPEAL
 1 APRIL 2019
 STEPHENS LJ, TREACY LJ, SIR RICHARD MCLAUGHLIN

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

Judicial review application seeking a declaration that the proposed further investigation into the death of her sister by the Legacy Investigation Branch ("LIB") of the PSNI conflicts with the requirements of a. 2 ECHR on the basis that the LIB lacks the requisite independence required to perform an a.2 compliant investigation into the death. - whether an a.2 investigatory requirement arose under the Human Rights Act 1998. - whether correct legal tests of public confidence and public perception applied. - HELD that a.2 ECHR applies to the future investigation of the death, the Chief Constable has not demonstrated practical independence on the part of the LIB and the trial judge was correct to conclude that the PSNI were not bound in any form of procedural legitimate expectation, that there was no parallel obligation to a.2 existing at common law so that there was no breach of the common law that the Chief Constable had not acted irrationally or unreasonably in the exercise of discretion concerning the future conduct of any investigation into the death
COURT OF APPEAL
 19 MARCH 2019
 MORGAN LCJ, STEPHENS LJ, SIR PAUL GIRVAN

LICENSING

DENMIN LIMITED V JOHN HUGHES AND SINEAD HUGHES

In the matter of an application for the provisional grant of an intoxicating liquor licence pursuant to a. 5(1)(B) of the Licensing (NI) Order 1996. - validity of the licence to be surrendered. - whether the remaining objector was entitled to raise an objection in relation to the validity of the subsisting licence. - beer garden had been created outside the curtilage of the original licensed premises on adjoining land which had been purchased after the licence had been granted and which was not licenced for the consumption of alcohol. - recusal application of judicial bias. - whether conflict of interest on the part of counsel. - manner in which counsel cross-examined a witness. - HELD that the applicant's application is refused on the basis of a failure to comply with the mandatory provisions of Article 74(4)(e)(ii) of the 1996 Order. - issues over the conduct of the appellant's solicitor and counsel be referred to their respective professional disciplinary bodies
HIGH COURT
 8 FEBRUARY 2019
 MCALINDEN J

MENTAL HEALTH

A HEALTH AND SOCIAL CARE TRUST V MR X AND THE OFFICIAL SOLICITOR AND MS Y

Deprivation of liberty. - Mr X suffered from a mental illness within the meaning of the Mental Health (NI) Order 1986 ("the Order"). - Trust applied for an order for guardianship under a.18 of the Order. - whether Mr X was being deprived of his liberty within the care home in which he was placed. - whether the provisions of a.22 of the Order can be interpreted as a power to detain. - appropriate order
HIGH COURT
 17 MAY 2019
 O'HARA J

PERSONAL INJURIES

NEASON GERALD DYNES V TRANSPORT NI DEPARTMENT FOR INFRASTRUCTURE

Plaintiff was injured in an accident in which he lost the tip of the middle finger of his right hand when a street lamp standard fell. - evidence. - liability. - HELD that there is a measure of liability which falls on the defendant but part of the accident can be ascribed to negligent behaviour on the part of the plaintiff in climbing and swinging on the lamp standard in such a way as to bring about the accident and put him in danger. - plaintiff held to be 50% responsible for the accident and awarded £20,000
HIGH COURT
 24 MAY 2019
 MAGUIRE J

POLICE

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

Appeal against decision of Master to order the plaintiff's action in common law negligence against the defendant to be dismissed pursuant to 0.18 r.19 RCJ. - plaintiff's claim arises from the death of her son who asserts her claim under the Law Reform (Miscellaneous Provisions) (NI) Act 1937 and the Fatal Accidents (NI) Order 1977. - viability of the cause in respect of alleged common law negligence on the part of the police. - whether no reasonable cause of action. - whether the Chief Constable owed a duty of care to the plaintiff or his personal representative. - correctness of the Master's decision to strike out the plaintiff's common law cause of action in negligence against the Chief Constable. - involvement of the police with the deceased prior to his death and powers available to them. - HELD that plaintiff's appeal allowed and statement of claim restored
HIGH COURT
 13 SEPTEMBER 2019
 MAGUIRE J

CLASSIFIEDS

Missing Wills

Re: Hugh Fitzpatrick (deceased)
Late of: 14 Mullandra Park, Kilcoo
Date of Birth: 16 March 1937
Date of Death: 12 May 2019

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

Brian Feeney & Co

Solicitors

20-22 Market Street

Downpatrick

County Down BT30 6LY

Tel: 028 4461 6895/028 4461

5153

Email: info@brianfeeneysolicitors.co.uk

Re: Veronica (otherwise Vera) Farrell (deceased)
Late of: 15 Captain's Road, Forkhill BT35 9RR
Date of Death: 25 April 2019

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

Eoin McConville

Fisher & Fisher

Solicitors

9 John Mitchel Place

Newry BT34 2BP

Tel: 028 3026 1811

Fax: 028 3026 6695

Email: eoin.mcconville@ffsolicitors.com

Re: Margaret McGregor (deceased)
Late of: Anniscliff House Nursing Home, 141 Moneysharvin Road, Maghera BT46 5HZ
Formerly of: 434 Antrim Road, Belfast
Date of Death: 15 January 2018

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

Mallon McCormick Solicitors Limited

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

Re: John Joseph McAfee (deceased)
Late of: 7 Benvardin Road, Derrykeighan, Ballymoney BT53 8AG
Date of Death: 3 June 2019

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

Mallon McCormick Solicitors Limited

Station Master's House

16 Station Road

Maghera

BT46 5BS

Tel: 028 7964 2670

Fax: 028 7964 4655

Re: Ian Charles Patrick Madden (deceased)

Formerly of: 3 Billy's Road, Commons, Newry, County Down BT34 2NA,

4 Bridge Street, Lurgan, Craigavon, County Armagh BT66 6AY and

137 Bridge Street, Portadown, Craigavon, County Armagh BT63 5AW

Late of: 132-136 Thomas Street, Portadown, Craigavon, County Armagh BT62 2AN

Date of Death: 12 September 2019

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

Watson and Neill

Solicitors

23 High Street

Lurgan

Craigavon

County Armagh BT66 8AH

Tel: 028 3832 5111

Fax: 028 3832 7319

Email: info@watsonandneill.com

Re: Daniel McCormick (deceased)
Late of: 28 Upper Stanfield Street, Belfast BT7 2DN
Date of Death: 3 March 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:

Mr Robert Crawford

R P Crawford & Co

Solicitors

17 Stranmillis Road

Belfast BT9 5AF

Tel: 028 9038 1024

Email: robbie@rpcrawfordsolicitors.com

MISSING TITLE DEEDS

Property: 97 Dublin Road, Antrim, County Antrim BT41 4PN

Owner: Paul Gibson and Roisin Gibson

Would any person having knowledge of the whereabouts of the Title Deeds for the above property please contact the undersigned as soon as possible:-

Brian Gibson

Apartment 9, Kim's Court

21 Kensington Road

Belfast BT5 6NH

Tel: 07710 462533

Email: brian.p.gibson@btinternet.com

Property at: 33 Ballybracken Road, Doagh, Ballyclare, County Antrim BT39 0TQ
Owner: William McNeill Wilson (otherwise Wilfred) and Janetta Wilson.

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

Ian McMurray

O'Rorke, McDonald & Tweed

Solicitors

37/39 Church Street

Antrim

County Antrim BT41 4BD

THE WRIT

If you wish to advertise in The Writ please contact Karen Irwin for rates, specification and copy deadlines at:
Email: karen@dcppr.co.uk



Pasco Psychology

For Compassionate Organisations

Cultivating Compassion at
Work Workshops

Assessment of Compassion

Compassionate Leadership
Supervision and Training

Reflective Practice Sessions

Compassion Focused
Coaching Sessions

Conflict Resolution Sessions

Email:
pascopsychology@protonmail.com

Web:
pascopsychology.com

Brian Kelly Consulting Limited

INSURANCE & COMMERCIAL CLAIMS CONSULTANT

As a Chartered member of the UK and EU Regulatory bodies managing property compensation claims globally, and with more than 40 years experience from NI handling a wide range of commercial incidents under insurance contracts and Statutory Orders, a comprehensive, professional Commercial Claims Consultancy and Expert Witness Service is available covering issues such as:-

- Agri / Aquatic
- Building Damage
- Consequential Loss
- Construction
- Engineering
- Environmental
- Fire
- Plant
- Policy Disputes
- Malicious Damage
- Manufacturing
- Transportation

For Further Information Contact :-

Brian Kelly ACII FCILA FUEDI ELAE

Number One Lanyon Quay,

Belfast, BT1 3LG

07402 260 626

brian@briankellyconsulting.com

www.briankellyconsulting.com



Client focused advice

REPUBLIC OF IRELAND AGENTS

Willing to undertake
agency work on
behalf of Solicitors in
Northern Ireland

Lavelle Solicitors

St James' House

Adelaide Road

Dublin 2

t 00 (353) 1 644 5800

f 00 (353) 1 661 4581

e law@lavellesolicitors.ie

w www.lavellesolicitors.ie

Contact:

Marc Fitzgibbon, Partner

Completing The Picture

- Matrimonial Cases
- Personal Injury
- Consequential Loss
- Fraud Investigations
- Partnership Dissolution
- Share Valuations
- Medical/Professional Negligence Claims

Working with your legal team to analyse financial information throughout the litigation and dispute resolution process.

Contact John O'Rourke, Partner

T: 028 90 323466 E: johnorourke@bakertillymm.co.uk

www.bakertillymooneymoore.co.uk

Regulated for a range of investment business activities
by the Association of Chartered Certified Accountants

bakertilly
MOONEY MOORE



Expert witness

litigation, criminal, family

Mental health assessments

e.g. trauma, personality disorders, depression

Neuro-psychological assessments

e.g. IQ testing, capacity, malingering

Psychological therapies

e.g. CBT

Dr Deborah Walton
Chartered Clinical Psychologist
Ba(Hons), MSc, D.Clin.Psych, AFBPsS

Walton Psychology Services
142 Malone Road
Belfast
BT9 5LH

d.walton@wpsclinical.com
07971 805666
www.wpsclinical.com

HEART TRUST FUND (ROYAL VICTORIA HOSPITAL)

The main object of this established and registered charity is the support and furtherance of the vitally important treatment, both medical and surgical, provided primarily for patients in the Cardiology Centre in the Royal Victoria Hospital Belfast, and the equally important work of research into heart disease carried on there. The charity is authorised to use its fund to provide that support, or achieve that furtherance when (but only when) public funds are not available, or are insufficient, for the purpose.

The Royal's splendid record in the fight against heart disease is too well known to need advertisement, and by an immediate cash gift or a legacy or bequest to this charity in your will, you can help directly to reduce the grave toll of suffering and death from this disease in Northern Ireland. The grim fact is that the incidence of coronary artery disease in Northern Ireland is one of the highest in the world. The administration of the charity is small and compact and the Trustees are careful to ensure that its cost is minimal. As a result donors and testators can be assured that the substantial benefit of their gifts and bequests will go directly to advance the causes of the charity.

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

(Registered Charity No: XN52409).

(Inland Revenue Gift Aid Scheme Code: EAP76NG).

(Registered with The Charity Commission for Northern Ireland: NIC100399)

Web: www.hearttrustfund.org.uk

Email: hearttrustfund@btconnect.com



REPUBLIC OF IRELAND AGENTS

DND LAW
OFFER AGENCY SERVICES
ON BEHALF OF SOLICITORS
IN NORTHERN IRELAND

APPOINTMENTS IN NEWRY,
DUBLIN, OR YOUR OFFICE
AS YOU PREFER

T. +44 048 3026 4611
F. +44 048 3026 7000
DX. 2056 NR Newry
agency@dndlaw.com
www.dndlaw.com



Banking and Corporate Lawyers – Senior & Junior Level Opportunities

We are seeking ambitious Banking and Corporate Lawyers to join our team, as we continue to grow. This is a great opportunity for junior and senior lawyers with Banking or Corporate experience.

Our Corporate team handles a full range of corporate/commercial work and the successful candidate will lead negotiations, help to manage the team and personally assist in the business development and marketing of the corporate/commercial offering.

The Banking team are on the panel for almost all the local banks and many international financial institutions. Our work covers general business and corporate banking, property finance, acquisition finance, project finance, regulatory advice, capital markets / structured finance in partnership with international firms. We are seeking candidates with experience working for banks and borrowers. In addition, property finance experience is desirable for the junior banking role.

The successful applicants will assist our team to grow and expand, building on existing relationships and bringing specific skills and expertise.

If you feel you meet the criteria please email a CV and cover letter to k.bradley@cfrlaw.co.uk

Please feel free to contact Kerri on 028 90 24 3141

Visit our website for more information www.cfrlaw.co.uk

Cleaver Fulton Rankin is an equal opportunities employer

First Choice for Medico-Legal MRI

Northern MRI has a long established history of providing expert medico-legal reports to the legal profession. We provide a fast, friendly service, combining state of the art technology with our experienced staff.

- Appointments available within 24-48 hours
- Fast turnaround of reports
- Expert consultant radiologists in all medical specialities

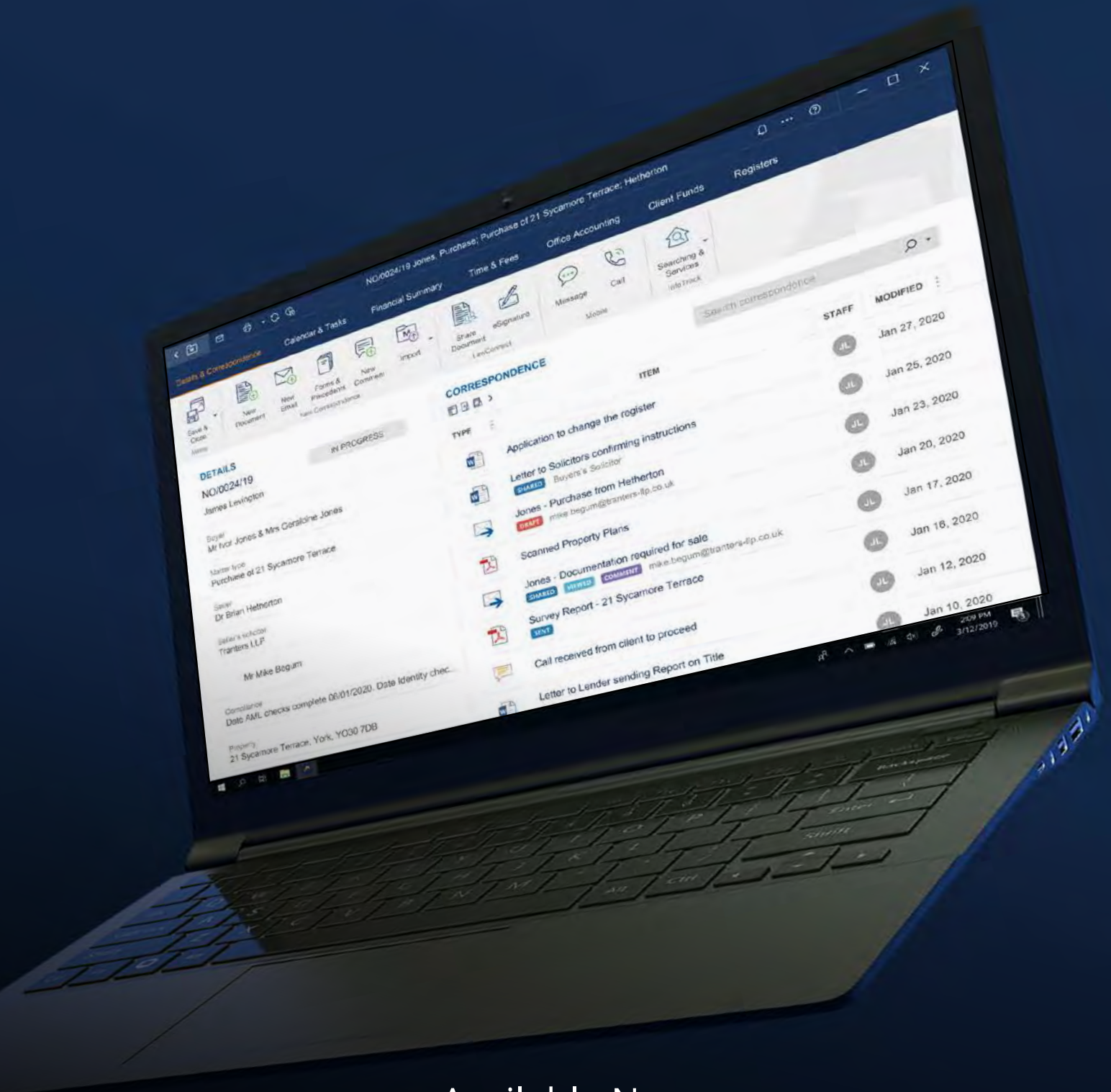


Call us now on
028 9066 0050

Northern MRI
93 Malone Road, Belfast, BT9 6SP
T: 028 9066 0050
F: 028 9038 6733
E: info@northernmri.com
www.northernmri.com



Innovation is at the heart of everything we do.



Available Now.

Find out more at leap.co.uk/2x
Call 0843 713 0135 for a free demonstration.