

## **INTERNATIONAL BEST PRACTICES SURVEY**

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# **NORTHERN IRELAND**

### **Responses submitted by:**

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*Location: Belfast, Northern Ireland*

### **1. Would your jurisdiction be described as a common law or civil code jurisdiction?**

Common law jurisdiction administered by the Courts of Northern Ireland with ultimate appeal to the Supreme Court of the UK in both civil and criminal matters.

### **2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?**

An adversarial process in which the claimant must prove his/her case on the balance of probabilities. The parties present their cases and the Judge makes findings on fact and law following consideration of all the evidence.

### **3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other)?**

Most civil matters are overseen by a Judge without a jury. Typically for legal appointments, you will need to be a fully qualified barrister or solicitor for a stated period (usually a minimum of 5, to 7 and 10 years). Judicial appointments in Northern Ireland are generally open to citizens of the UK, ROI or a Commonwealth country. All judicial office holders are appointed on 'merit' by the Northern Ireland Judicial Appointments Commission which may include a Judge from the UK Supreme Court on the interview Panel and candidates must undergo a transparent assessment and selection process that assesses their abilities and personal qualities fairly and openly. The statutory retirement age is 70 and a reasonable period of service is expected before retirement.

### **4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?**

Rules of the courts are laid out in The Rules of the Court of Judicature (NI) 1980. The procedure is generally that the parties exchange pleadings, the parties exchange discovery and the case is heard by a Judge.

The High Court which consists of the Lord Chief Justice and nine High Court Judges hears the high value civil cases. It is made up of several divisions:-

- Queen's Bench Division which deals with actions in contract and personal injury in which the amount in issues is £30,000 or more, defamation, public law and cases for which special provision has been made by Statute.

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- Chancery Division which mainly deals with land and property matters, cases arising from the declaration or execution of trusts, bankruptcy and winding-up proceedings and the dissolution of partnerships.
- Commercial Court which hears disputes where the parties are businesses, usually involving breach of contract or torts. The court recognises the importance to the commercial community of economy, efficiency and the maintenance of good business relationships and so adheres to a different timetable to normal, adjusted to the needs of business users. It is set out in the Commercial Lists General Practice Direction (Practice Direction 1/2000).
- Judicial Review Court which deals with cases where the applicant believes a decision by a public body has been made improperly, and wishes the court to rule on whether or not the decision should stand. The question in judicial review is not whether the decision is wrong, but whether it was taken fairly and within the law. Judicial review cases are quite different from cases in other courts. Evidence is usually given by a sworn statement (affidavit), and the cases must be brought as quickly as possible after the decision is taken and in any event within three months. There are specific rules of procedure in Rules of the Court of Judicature Order 53, and a Practice Note (1/2008) on judicial review also exists.
- Family Division

Some proceedings have special provisions as laid out in Order 72-76 of the Rules of the Court of Judicature (NI) 1980-Commercial Actions, Applications relating to Arbitration, Admiralty Proceedings and Contentious Probate Proceedings.

Further, if you are considering litigation the courts have produced pre-action protocols setting out the steps which each party will be reasonably expected to take before proceedings are commenced. This applies in Personal injury proceedings, Clinical negligence, Judicial review, Defamation and Repossession proceedings

In Northern Ireland there are seven County Court Divisions which deal with civil cases with a value less than £30,000 (or less than £45,000 in equity matters). The most common matters dealt with by the County Court include personal injury claims, landlord and tenant disputes, consumer disputes, race and discrimination cases, debt problems, employment problems and appeals from the magistrates' courts which are dealt with by a judge.

Many other types of 'civil' disputes are dealt with by 'tribunals' which are separate from the courts described above. Tribunals provide an alternative to the courts for resolving disputes. The role of a tribunal is typically to rule on an appeal against a decision of a government department or agency to a person's entitlement. This includes entitlement to social security benefits, children's special educational needs and disability, rates determination.

### **5. Is arbitration an option and when? If so, what rules are typically used?**

Arbitration is governed by the Arbitration Act 1996 and is generally used in commercial disputes. Arbitration in Northern Ireland involves an independent arbitrator who hears both sides of the disagreement and then makes a decision to resolve the problem. All parties must agree to go to arbitration and to accept the arbitrator's decision. The process is confidential as is any amount awarded by the arbitrator. The decision is legally binding and it is very difficult to challenge it subsequently in a court. Sometimes the arbitrator makes a decision based on papers that each side provides in support of their cases or the arbitrator holds a hearing where both sides present their case. After considering the parties' submissions, the arbitrator issues a final and binding decision called an award which details how the decision was reached and why one side won over

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the other.

### **6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?**

Yes. In Northern Ireland the decision of the Arbitrator is legally binding and there is limited scope for appeal against the decision.

### **7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?**

No, but alternative dispute resolution is supported in Northern Ireland. The Court can on the application of any of the parties or of its own motion, when it considers it appropriate and having regard to all the circumstances of the case, order that proceedings or any issues therein be adjourned for such time as the Court considers just and convenient and invite the parties to use an ADR process to settle or determine the proceedings or issue or where the parties consent, refer the proceedings or issue to such a process.

### **8. What is the process for pre-hearing fact discovery (if any)?**

Pre-action protocols are in force for commercial actions, personal injury actions, defamation actions and clinical negligence actions

The exchange of early and full information about prospective legal claims is encouraged by the Courts in NI in order to enable parties to avoid litigation. Any failure to comply with a relevant pre-action protocol can be taken into account in the exercise of the court's discretion on costs

After the close of pleadings in an action begun by Writ there shall, subject to and in accordance with the provisions of the Rules of the Court of Judicature, be discovery by the parties to the action of the documents which are or have been in their possession, custody or power relating to matters in question in the action.

*(a) Are there provisions for mandatory document disclosures?*

There is an obligation on a party to an action to disclose to the other party those documents that are, or have been, in his possession, custody or power relating to any matters in question in the cause or matter.

The parties to an action between whom pleadings are closed must make discovery by exchanging lists of documents within 14 days after the pleadings in the action are deemed to be closed. A party can, at any time within one month after the pleadings in the action are deemed to be closed, serve on the other a notice requiring it to make an affidavit verifying its list (Order 24).

Following failure to comply with the rules of discovery, the opposing party can apply to the court for an order that the action be dismissed or that the defence be struck out and judgment entered. However, the court will normally make an "unless order" (an order compelling the party to complete discovery within a certain time frame) before imposing such a draconian sanction. The recent judgement of Master Bell in the case of *Paul Bradley v Chief Constable of the Police Service of*

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Northern Ireland[2015] NI Master 7 can be found at:

<http://www.bailii.org/cgi-bin/markup.cgi?doc=/nie/cases/NIHC/Master/2015/7.html&query=paul+and+bradley&method=boolean>

(b) *Is there provision for oral examinations of the parties or others?*

Oral examination can only take place before the Court.

(c) *Are there limits on the length of oral examinations?*

No.

(d) *Are witness statements or summaries to be provided before the hearing?*

No except in some Commercial and all Employment law cases.

**9. What is the process for pre-hearing expert disclosure (if any)?**

Where a party to a commercial action proposes to adduce expert evidence at the trial he shall disclose it to the other party or parties at the time and in the manner that the Commercial Judge shall direct.

All medical reports relied upon have to be disclosed by the Plaintiff in Personal Injury cases. The Defence must disclose only those reports where examination has taken place. Desktop reports are not disclosable unless relied upon in those reports where examination has taken place. No more than two quantum and one liability expert of any kind may be called without the leave of the Court (Order 38 Rule 3 of The Rules of the Court of Judicature (NI) 1980)

(a) *Are expert reports or written summaries required to be exchanged?*

Yes if they are relied upon. There is no trial by ambush.

(b) *Are the parties entitled to conduct a pre-hearing oral examination of opposing experts?*

No but written interrogatories may be administered without leave of the Court. Failure to properly comply can lead to an application to strike out the proceedings or seek better replies.

(c) *Are there provisions requiring experts to meet and narrow issues before the hearing?*

Yes in Clinical Negligence and all Commercial actions. No in all other cases unless the Judge orders it.

**10. Are there other notable discovery rules?**

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Clinical Negligence reports must be disclosed simultaneously by prior arrangement. This is usually done via email at a pre-arranged time. Experts must sign a Declaration but a Statement of Truth is not required. See Direction dated 17<sup>th</sup> December 2014 at:

[https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/Practice%20Directions/Documents/Practice%20Direction%2007-14/j\\_j\\_Practice%20Direction%20No%20%207\\_2014.htm](https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/Practice%20Directions/Documents/Practice%20Direction%2007-14/j_j_Practice%20Direction%20No%20%207_2014.htm)

### **11. Is there a prehearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?**

In Northern Ireland there are reviews held to make sure the case is progressing efficiently. The judge will want to ensure parties are taking all necessary steps e.g. obtaining experts such as doctors, accountants, engineers, architects, care experts' reports, applying for any relevant interlocutory orders (eg Orders for Discovery), fixing timetables for various steps to be taken and if necessary arranging a further review.

In the Queen's Bench Division, in all cases where an appearance was entered after 31 March 2008, there is a review hearing before a Master nine months after the case was commenced. The exception to this is in the Commercial List where all applications and reviews are dealt with by the Commercial Judge without going to the Master.

Cases which the Master decides are not ready to be listed for hearing, together with all cases of clinical negligence and involving persons under a disability come in front of the Queen's Bench Judge who will lay down a strict timetable unless the parties produce their own agreed timetable in advance.

### **12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?**

A claimant can apply for summary judgment on the ground that the defendant either has no defence to all or part of a claim included in the Writ or has no defence to all or part of a claim included in the writ except as to the amount of any damages claimed (Order 14). This is regularly used and the summary application is heard by a Master.

Order 13 allows for a claimant to enter a default judgment if a defendant does not file a Memorandum of Appearance within the time limit. Judgment can be entered only after the claimant has filed an Affidavit proving service of the writ on the defendant. A claimant can also enter final judgment if a defendant does not serve its defence within the time limit set out in the Rules, and the procedure for doing this is set out in Order 19 of the Rules.

Either party can apply to the court, at any stage of the proceedings, to strike-out or amend anything in any pleading on the grounds that it discloses no reasonable cause of action or defence, it is scandalous, frivolous or vexatious, it may prejudice, embarrass or delay the fair trial of the action or it is otherwise an abuse of the process of the court.

If an "Unless Order" is breached, judgement will be entered. See above mentioned judgement of Master Bell in *Paul Bradley v Chief Constable of the Police Service of Northern Ireland*[2015] NI Master 7.

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### **13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?**

Admissibility will be decided only at trial.

### **14. What is the standard for admissibility of expert evidence?**

Expert evidence is admissible provided there has been compliance with the Court Rules. Failure to do so will result in the expert evidence being inadmissible unless the Court exercises its discretion.

When an expert has been instructed to give or prepare evidence for the purposes of court proceedings the expert owes a duty to assist the court on matters within his or her expertise and this duty overrides any obligation to the party from whom the expert has received instruction or by whom the expert is to be paid (the Ikarian Reefer Rules). Expert witnesses should follow the best practice set out in the Code of Practice for Experts and an Experts Declaration should be signed. Experts should be mindful of the overriding objective of the Rules of Court which is to enable the court to deal with cases justly, which includes, so far as is practicable – (a) Ensuring that the parties are on an equal footing (b) Saving expense (c) Dealing with the case in ways which are proportionate to - (i) the amount of money involved (ii) the importance of the case (iii) the complexity of the issues (iv) financial position of each party (d) Ensuring that it is dealt with expeditiously and fairly (e) Allocating to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases. Experts should also be mindful of the objectives of the Pre-Action Protocol.

A Practice Direction by Mr Justice Weatherup dated 11<sup>th</sup> May 2015 provides further details on expert evidence and can be accessed at:

<https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/Practice%20Directions/Documents/Practice%20Direction%201%20of%202015/Practice%20Direction%201%20of%202015.pdf>

### **15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?**

In any cause or matter in which any question for an expert witness arises the Court may at any time, on the application of any party or of its own motion, appoint an independent expert or, if more than one such question arises, two or more experts to inquire and report upon any question of fact or opinion not involving questions of law or of construction (Order 40, Rule 1). Any court expert shall, if possible, be a person agreed between the parties and, failing agreement, shall be nominated by the Court. The question to be submitted to the court expert and the instructions given to him shall, failing agreement between the parties, be settled by the Court. A court expert is any person who has such knowledge or experience of or in connection with that question that his opinion on it would be admissible in evidence. The report is sent to the Court who send copies to the parties. Any part of a report which is not accepted by all parties shall be treated as information furnished to the Court and be given such weight as the Court thinks fit. Any party within 14 days after receiving the court expert's report may apply to the Court for leave to cross-examine the expert on his report and on that application the Court shall make an order for the cross-examination of the expert by all the parties either at the trial or before an examiner at such a time and place specified in the order.

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**16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?**

Privilege entitles a client to refuse to disclose certain confidential, legal communications to third parties including courts, tribunals, regulatory bodies and enforcement agencies. It is an absolute right. Once it has been established it cannot be overridden except in very limited circumstances, such as fraud. However, privilege can be lost, if the communication loses confidentiality. A document will only be protected by the law of privilege if it falls within one of the accepted categories. The most relevant of these are as follows:

- **Legal advice privilege.** Protection is afforded to confidential communications between a solicitor, barrister, trainee or paralegal and their client that came into existence for the purposes of giving or obtaining legal advice.

Privilege can be asserted by the client's successors in title and extends to direct and indirect communications between solicitor and client. Additionally, it extends to all documents generated for the purposes of giving or obtaining legal advice and all the working papers and associated drafts.

- **Litigation privilege.** This is wider than legal advice privilege on the basis that from the time when litigation is in "prospect" or "pending", all communications between a solicitor, or his agent, and a third party will be protected provided these communications came into existence for the sole or dominant purpose of giving or obtaining advice in regard to the litigation or collecting evidence for use in the litigation.
- **"Without prejudice" privilege.** This applies to communications made between parties, or their solicitor or agent, in a genuine attempt to resolve the dispute. This category applies to the communications made between co-defendants attempting to come to a compromise or negotiating settlement, and communications between in-house solicitors and the company if the purpose is to provide legal advice.

**17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?**

A request can be made by either party that the court take steps to safeguard confidential information if this is deemed to be appropriate. Documents, however, will not be regarded as privileged solely on the basis of their confidentiality. Confidentiality undertakings or controlled circulation can also be agreed by parties to protect the confidentiality of documents.

**18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?**

The disputes are firstly determined by the Master and thereafter a High Court Judge on appeal from a Master's decision. Short timelines apply here.

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### **19. Briefly describe the trial process?**

(a) *Are there opening submissions, in what form and of what length?*

The Plaintiff will begin by opening his/ her case. However, the judge before whom an action is tried (whether with or without a jury) may give directions as to the party to begin and the order of speeches at the trial, and, subject to any such directions, the party to begin and the order of speeches shall be that provided by this rule. Brevity is regarded as a virtue.

(b) *What is the order of presentation of witnesses?*

The Plaintiff will present his/ her evidence first followed by the Defendant. Where there are two or more Defendants, evidence will be given in the order in which his name appears on the record.

(c) *Who conducts examination and in what order?*

The examinations are conducted by the Barristers representing each party in the case. Examination-in-chief is conducted firstly by the Claimant's representative, followed by cross-examination by the Defendant's representative. The Claimant then has the opportunity to conduct a re-examination. The process is repeated for the Defendant's witnesses.

(d) *What is the process for closing submissions?*

If the defendant does not adduce evidence, the plaintiff may, after the evidence on his/her behalf has been given, make a second speech closing his/her case and the defendant shall then state his/her case. If the defendant does adduce evidence, he/she may, after any evidence on behalf of the plaintiff has been given, open his/her case and, after the evidence on his/her behalf has been given, make a second speech closing his/her case, and at the close of the defendant's case the plaintiff may make a speech in reply.

### **20. Please identify any other notable trial procedures.**

Split trials can occur. Application may be made to the Master to determine earlier issues pre-trial. So liability may be determined without quantum being in play. The decision may be appealed to the Judge.

### **21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?**

The Plaintiff bears the burden of proof and must make his/ her case on the balance of probabilities.

### **22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?**

General damages for general losses such as pain, suffering, inability to play sport, handicap, and special damages which

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compensate financial loss such as loss of earning. See question 23 regarding punitive damages.

### **23. If punitive damages are available, what is the threshold for recovery, and range of awards?**

Punitive and exemplary damages are rarely awarded except on the following 3 grounds:-

- 1) Cases of oppressive, arbitrary or unconstitutional acts by government servants.
- 2) Cases where the Defendant's conduct had been calculated in order to make a profit for themselves which might well exceed the compensation payable to the Plaintiff.
- 3) Where expressly authorised by statute.

See *Rookes v Barnard* [1964] UKHL 1 for further details.

### **24. Are there time limits for bringing claims? Responding to claims? Please describe.**

In Northern Ireland, limitation is governed by the Limitation (Northern Ireland) Order 1989 and varies depending on the cause of action:-

Actions founded on contract: Actions may not be brought after the expiration of six years from the date on which the cause of action accrued.

Actions founded on tort: Actions may not be brought after the expiration of six years from the date on which the action accrued. An action for damages for libel or slander may not be brought after the expiration of three years from the date on which the cause of action accrued.

Actions for personal injuries: Action for damages for negligence, nuisance, breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision), there is a period of three years to take action from the date on which the cause of the action accrued or the date of knowledge (if later) of the person injured. If the person injured dies, a claim on behalf of the estate of the deceased can be made up to three years from the date of death or the date of the personal representative's knowledge, whichever is later.

Actions in respect of defective products: An action may not be brought after the expiration of ten years from the date on which the action accrued or the date of knowledge of the injured person or, in the case of loss of or damage to property, the date of knowledge of the plaintiff. If the plaintiff dies, a claim on behalf of the estate of the deceased can be made up to three years from the date of death or the date of the personal representative's knowledge, whichever is later.

### **25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?**

Northern Ireland is a part of the *United Kingdom of Great Britain and Northern Ireland*, an EU Member State, but in itself a distinct legal jurisdiction. As an EU member state, the Brussels Regulation (EC 44/2001) determines jurisdiction. Other legislation for consideration includes the Lugano Convention, the Treaty of Rome II, and the Civil Jurisdiction and Judgments Acts 1982, inter alia.

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The general rule under the Brussels Convention is that the Member State in which the Defendant is “domiciled” has jurisdiction. Domicile usually means the country that a person treats as their permanent home; in the case of a Company, where their registered offices are located; or in an insolvency scenario, where the Debtor’s centre of main interests are.

Exceptions to this general rule are as follows:

1) Contractual:

- a. Where an exclusive jurisdiction clause has been agreed between the parties, stipulating a forum or law for dispute resolution. Such contractual provision will determine jurisdiction. (Articles 22 and 23 of the Brussels Regulation).
- b. A Plaintiff is entitled to bring an action where a contract was “performed”, (subject to the above provision).
- c. Where a consumer is suing a business, the Brussels Regulation allows the forum and law of the consumer to apply, reflecting the importance of protecting the consumer.

2) Non Contractual:

- a. Where the matter is one of Tort, a Plaintiff is entitled to instigate proceedings where the damage occurred.
- b. The Treaty of Rome II, or Regulation (EC) No 864/2007 and subsequent case law, has established that a Plaintiff is entitled to instigate proceedings where they themselves reside, but procedural matters such as statutory limitation and the quantification of damages, should be applied as per the jurisdiction where the Tort arose. There are exceptions to this general rule at Article 4 (2) and (3) of the Treaty of Rome II discussed below.
  - i. Where the parties to proceedings both have their habitual residence in the same country at the time the damage occurs, the law of that country shall apply.
  - ii. Where it is clear that the Tort is manifestly more closely connected with a country, the law of that country shall apply.
- c. Common law has further established that a party may issue proceedings in a jurisdiction where damages are being sustained, rather than where the tort occurred. See *Stylianou v Toyoshima and another* [2013] EWHC 2188 (QB), [2013] All ER.

The Lugano Convention extends the provisions of the Brussels Convention and Rome II to a number of countries that are not EU member states, namely Norway, Switzerland, Iceland or Denmark. The Court in Northern Ireland has power under the Civil Jurisdiction and Judgments Acts 1982 to hear and determine a claim where no proceedings involving the same cause of action pending between the parties in England Wales Scotland or another Convention Territory. Where the defendant resides outside a convention territory, leave from the court is required.

Where proceedings have already been issued in a foreign jurisdiction, an application is required for leave to issue further proceedings. Where proceedings are required to be issued outside a Brussels or Lugano Convention Territory, leave should be sought from the court.

A foreign Defendant does have the right to request that the court declines jurisdiction on the basis that there is a more convenient forum. This would be done by way of a *conditional* appearance and a preliminary application on a *forum non conveniens* basis. Such action should be taken in all cases to avoid a default decree. The outcome of any preliminary application will be at the determination of the Court and vary based on the circumstances.

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Where a debtor is a party to insolvency proceedings, such proceedings *must* be instigated in the jurisdiction of domicile of the debtor or their centre of main interests.

**26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.**

According to Order 16, a Defendant may bring other potentially responsible parties into the proceedings through a Third Party Notice. This Notice must detail a statement as to the nature and grounds of the claim made or the question or issue required to be determined.

A Defendant may not issue a Third Party Notice without the leave of the Court, unless the action was begun by Writ and the Notice is issued before serving the Defence on the Plaintiff.

Upon service of the Third Party Notice, the person against whom the Notice is served is a party to the proceedings. The Plaintiff can then join the Third Party as a Defendant if he decides there is merit in doing so.

A Third Party cannot recover costs from the Plaintiff. However, the Plaintiff may join the Third Party as a Defendant and costs may be recovered in those circumstances.

**27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).**

Costs are dealt with in Order 62 of the Rules of the Supreme Court (Northern Ireland) 1980. At the end of a case the general rule is that the person who loses pays the costs of all the successful parties; that is, the losing party will pay all the Solicitors and Barristers costs, the costs of expert witnesses and all other expenses. The new English Rules of qualified one-way costs shifting do not apply, nor do success fees, nor is there recovery of premiums where a Plaintiff has Legal Expenses.

Judge can order costs against the successful party if they have behaved unreasonably during the case or order judgment costs against a Defendant who has behaved unreasonably.

Costs in the High Court are normally assessed by an independent procedural judge, called the Taxing Master, unless agreed between the parties. Collarbone offers can be used to mitigate against further costs penalties against the paying party.

In the judicial review court, on very rare occasions, a court order to limit costs in advance can be sought (a protected costs order) in some categories of case (such as environmental cases) to limit the liability for costs of an unsuccessful plaintiff where there is a public interest in bringing the case.

**28. Are contingency fees allowed?**

These issues are under active consideration by the Department of Justice and further changes are imminent.

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### **29. Is third party funding of claims permitted? Under what circumstances?**

This is highly topical. No recovery of third party funding premiums are available (see Access to Justice Order 2003). Legal Expenses Insurers do operate in the market but to a very limited extent. It is debateable whether such contracts are enforceable as the law is unclear on champerty and maintenance.

### **30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?**

Under Order 15, two or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the Court or where-

(a) If separate actions were brought by or against each of them, as the case may be, some common question of law or fact would arise in an the actions, and

(b) All rights to relief claimed in the action (whether they are joint several or alternative) are in respect of or arise out of the same transactions or series of transactions.

Where the plaintiff in any action claims any relief to which any other person is entitled jointly with him, all persons so entitled must, subject to the provisions of any statutory provision and unless the Court gives leave to the contrary, be parties to the action and any of them who does not consent to being joined as a plaintiff must, subject to any order made by the Court on an application for leave under this paragraph, be made a defendant.

Class and multi-party actions are rare and are not specifically allowed for in the Rules.

### **31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?**

Further to question 30, there is no mention of such actions within the Rules. The issue of such proceedings could therefore be challenged.

### **32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?**

Timings are based on each individual case and can depend on a number of factors such as the complexity of the issues, the number of parties involved, the volume of documentation, the type of claim and the court involved. However if any party refuses to sign a Certificate of Readiness, the entire case can be referred to a Judge within days.

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**33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?**

There is a right to appeal a decision in Northern Ireland. The Court of Appeal normally sits at the Royal Courts of Justice in Belfast. The Court of Appeal Judges are the Lord Chief Justice (who is the President) and three Lord Justices of Appeal. The Court of Appeal hears appeals in civil matters from the High Court, appeals on points of law from the county courts, magistrates' courts and certain tribunals. A court of Appeal case will usually be heard by three judges.

Order 59 of the Rules of the Court of Judicature set out the procedure for lodging an appeal in the Court of Appeal. It is made by way of a Notice of Appeal on the grounds that there was an error of law, fact, or in the exercise of the court's discretion, or that the decision was unjust because of a serious procedural or other irregularity. Appeals are to be served within set time limits (calculated from the date on which the judgment or order of the court below was filed). In the case of an appeal from an interlocutory order or from a judgment or order given or made under Order 14 or Order 86, there are 21 days to lodge an appeal. In the case of an appeal from an order or decision made or given in the matter of any proceedings under the Bankruptcy Acts (NI) 1857 to 1980, Part XX and XXI of the Companies (NI) Order 1986 [now Part 31 of the Companies Act 2006] or the Insolvency (NI) Order 1989, an appeal must be lodge within 28 days. All other cases have 6 weeks to lodge an appeal.

Appeals from the decisions of the Court of Appeal in most civil cases lie to the Supreme Court of the United Kingdom. Time limits apply.

**34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?**

Yes, hearing rooms are equipped with computer monitors. However it is more so used in criminal rather than civil cases but recent Abuse cases have improved court procedures and any case of sufficient complexity can be dealt with electronically. High Court Judges support further innovation and are happy to take expert evidence by video conferencing.

**35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?**

Yes these are accepted and commonly used in criminal cases. They are also used in civil cases provided the trial Judge has been properly warned of the extent and relevance of such tools. A pre-trial review will be carried out by the trial Judge to ensure he or she is satisfied as to their efficacy.

**36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?**

In Northern Ireland there is a solicitor/barrister distinction. Solicitors are governed by the Law Society of Northern Ireland whilst the Bar of Northern Ireland is made up of over 700 self-employed barristers in independent practice. A solicitor is

## **INTERNATIONAL BEST PRACTICES SURVEY**

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usually the first person that a member of the public will go to with their legal problem. A solicitor will often refer the work to a barrister for specialist advice or to appear in court to represent the client. Barristers have rights of audience in every court in Northern Ireland. Solicitors traditionally have limited rights of audience but it is also possible for certain solicitors to appear in court as advocates, if they have higher rights of audience qualifications.

**37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?**

The Law Reform (Miscellaneous Provisions) Act (NI) 1948 brought into law the defence of contributory negligence as a partial bar to recovery of the full amount of any award of damages. Previously, contributory negligence on the part of a plaintiff at common law had given to the defendant a complete defence to a plaintiff's claim for compensation. Section 2(1) of the 1948 Act states:

“Where any person suffers damage as a result partly of his own fault and partly of the fault of another person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as a court thinks just and equitable having regard to the claimant's share of the responsibility for the damage ...”

Damages are apportioned according to the level of responsibility of the Claimant and the Defendant(s).

**38. Is service of a complaint issued outside your country permitted in your country by “informal” means, or must the Hague Convention be followed?**

Yes, service is permitted outside of the jurisdiction provided, according to Order 11 of the Rules of the Supreme Court, it is a claim which by virtue of the Civil Jurisdiction and Judgements Act 1982, the Court has power to hear and determine and to which the following conditions apply-

(i) no proceedings between the parties concerning the same cause of action are pending in the courts of any other part of the United Kingdom or of any other Convention territory, and

(ii) either-

-- the defendant is domiciled in any part of the United Kingdom or in any other Convention territory, or

-- the proceedings begun by the writ are proceedings to which Article 16 of Schedule 1, Article 16 of Schedule 3C or Article 16 of Schedule 4 refers, or

-- the defendant is a party to an agreement conferring jurisdiction to which Article 17 of Schedule 1, Article 17 of Schedule 3C or Article 17 of Schedule 4 to that Act applies.

or

(b) a claim which by virtue of any other enactment the High Court has power to hear and determine notwithstanding that the person against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction.

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**39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)**

No, but best practice in NI with regard to discovery going to different jurisdiction are as follows:

1. Practitioners will only send docs out of the jurisdiction on foot of a Khanna Subpoena from a Court of competent jurisdiction.
2. Practitioners will insist on undertaking from the parties to the litigation and their lawyers to only use the documents for the purposes of the extant litigation and for no other purpose;
3. If the documents are considered commercially sensitive or in any other way private and confidential then Practitioners will insist on a Lawyers-Only Confidentiality Ring.
4. Practitioners will insist on their costs of providing the documents.

**40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.**

Practice Directions are issued by the judiciary in Northern Ireland and are available on the Courts NI website.

**41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?**

Pre-action Protocols are not properly engaged by Plaintiff solicitors. Proceedings are still issued without proper disclosure by Plaintiffs. Full implementation of penalties on costs are being considered as we write.

**42. Are there legislative efforts under way that address any of the litigation practices in your country?**

Department of Justice Reviews of Civil Litigation is under way and a report has just been sent by an outside expert who was formerly advising on the English Jackson reports. A report from external consultant Colin Stutt has just been received by the Minister who is considering what steps to take. More details will be available shortly. This will be a radical shake-up of Practice and Procedure.