

Connections

The legal magazine for the Northern Ireland business community

ISSUE 1 Winter 2011

INFRASTRUCTURE

*After the cold snap, where now
for Northern Ireland?*

LONG TIME, NO SEE

Former McGrigors lawyer Alistair Darling MP

CLEARING THE AIR?

New carbon tax rules may lead to disputes





Hello

Welcome to the first issue of Connections, a magazine for clients, contacts and everyone connected with McGrigors in Belfast.

The idea behind Connections is simple: we want to provide a magazine clearly focused on the points where business, commerce and the law intersect. We will try to avoid staid legal narratives and provide a useful, readable guide to legal developments in the Northern Ireland market. Further, we'll explore some of the legal issues making waves in Scotland and England & Wales, particularly where we feel that they may have a relevance to readers here.

In this launch edition we report on new ways to support infrastructure development in Northern Ireland. We point out the pitfalls for landlords and tenants of the new carbon tax and its potential for disputes about who should pay it. We discuss the implications for universities and colleges of an increasingly cost-conscious and litigious student population. We also look across the water to our expanding Manchester office, and we hear from probably our most illustrious alumnus, Alistair Darling MP.

Open and frank dialogue is an important part of McGrigors' approach to business. So please do let me, or our authors, have your comments on and responses to what you read in these pages. If you would like to contribute directly by writing an article, we'd love to hear from you. We certainly hope to feature interviews with, and comments from, clients and contacts in future editions.

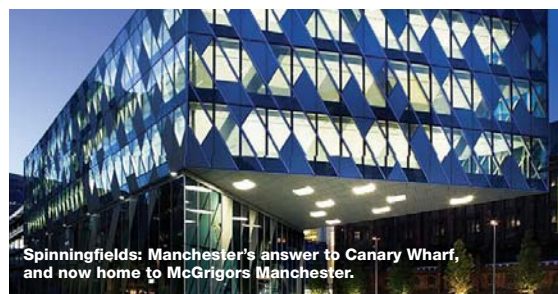
I hope you will enjoy Connections.

Paul McBride, Partner, Belfast

Connections

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Spinningfields: Manchester's answer to Canary Wharf, and now home to McGrigors Manchester.



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in brief

Northern Ireland house prices down

The average house price in Northern Ireland has fallen below £150,000 for the first time in nearly five years, according to University of Ulster research.

The latest University of Ulster Quarterly House Price Index, produced in partnership with Bank of Ireland and the Northern Ireland Housing Executive, covered the third quarter of 2010 and put the average overall price at £148,243. This represents a weighted rate of annual decline of 7.6%.

The survey said that the tentative recovery in house prices in the first half of this year had been put on hold, or even reversed.

The authors of the report, Professor Alastair Adair, Professor Stanley McGreal and Dr David McIlhatton, said: "The significant fall in house prices stems from a current lack of confidence in the market, possibly reflecting concerns about public

spending cuts and their impact on jobs in a region highly dependent on public sector employment."

The price statistics are based on 795 transactions in the third quarter of 2010, a figure well down on the second quarter volume of 1,009 transactions.

Alan Bridle, UK Economist, Bank of Ireland, said: "With the average price below £150,000 for the first time since Q4 2005, it is clear the residential market is still facing a number of challenges.

"Potential buyers remain discouraged by uncertainty over economic prospects and in terms of supply there is no shortage of houses available to buy or to rent. A particular theme of this survey is that the previously resilient market in Belfast has been less strong in the third quarter – and turnover of properties remains weak by historic standards."

SFO looks across the water for bribery clampdown

Richard Alderman, Director of the UK Serious Fraud Office (SFO), has warned the international investment community that the UK law enforcement agency will actively seek to exercise its new powers worldwide in the global fight against corruption.

Referring to new powers available to the SFO following the implementation of the Bribery Act in April 2011, Mr. Alderman told around 200 delegates assembled at an event hosted by McGrigors, "I shall have jurisdiction where a foreign corporation carries on a business in the UK and commits an act of bribery in a

third country. This will be an offence even if the act of bribery has nothing to do with the UK business."



Richard Alderman, speaking at a McGrigors event in London.

McGrigors named among Europe's most innovative law firms



McGrigors has been ranked among Europe's 50 most innovative law firms in independent research.

The research, carried out by RSG Consulting on behalf of the Financial Times, is based on a number of factors including the level of management commitment to innovation, and the value of innovation to the firm. Firms shortlisted for the rankings were assessed on the originality, rationale and impact of their entries. McGrigors was the only firm with a presence in Northern Ireland to be ranked.

In addition to the 'Top 50' ranking, McGrigors

was highly commended for the strength of its brand nationwide, while its Risk Advisory Solutions team was commended for its work in the energy sector.

Richard Masters, Managing Partner of McGrigors, says, "We are extremely pleased to have been recognised among the 50 most innovative law practices in Europe. Some of the names on the list rank among the real heavyweights of the legal world and we are delighted to be going toe-to-toe with them. Our clients respond to our ambitious and innovative approach and we believe these findings reflect that."

in brief

HMRC gears up for carbon fraud clampdown

Innocent businesses involved in trading carbon credits could face additional VAT bills running into tens of millions of pounds as part of a clampdown by HM Revenue & Customs (HMRC) on carousel fraud.

Carousel fraud (also known as 'missing trader fraud') occurs when a company buys goods from another country and sells them domestically without paying over to HMRC the VAT charged on the transaction. European prosecutors are currently investigating a suspected £4billion carousel tax fraud involving carbon trading.

If HMRC cannot identify the fraudsters it will try to collect VAT from other businesses in the supply chain. HMRC will seek to recover from a business any or

all of the VAT formerly reclaimed on the purchase of carbon credits, if it concludes that the business could have discovered, through extensive due diligence or reasonable enquiry, that they were trading in the same supply chain as a fraudster.

Figures from the World Bank show that the global carbon market has increased more than tenfold over the last five years. The value of carbon traded in 2009 was \$144billion, compared to about \$10billion in 2005.

According to McGrigors, significant numbers of financial institutions (including banks) as well as businesses in the energy sector with carbon trading activities are likely to be subject to this HMRC probe.

SWIP acquires Longwood Road Retail Park for £48m



McGrigors has advised Scottish Widows Investment Partnership (SWIP) on its purchase of Longwood Road Retail Park in Northern Ireland from Corbo Properties for £48million.

Longwood Road Retail Park is one of the largest non-food retail parks in Northern Ireland. Based in Newtownabbey, near Belfast, it has over 200,000 sq ft of retail space which is fully let. The retail park has been acquired with a net initial yield of 6.2%.

Graham Pierce, Real Estate Partner at McGrigors, told Connections: "The property industry sees this as a landmark investment. As the first major purchase by a large institution in the Northern Ireland commercial property market since the credit crunch this could represent a turning point. Market consensus is that this marks the beginning of a trend of re-investment by the larger property fund managers and institutional investors who had almost entirely sold off their Northern Ireland assets to local property entrepreneurs in the boom years.

"Institutions are looking to take advantage of the much more attractive pricing of commercial property in the region. This is a significant transaction for Northern Ireland as it shows investor confidence in the region has returned and hopefully this is the start of many more transactions like it."



Attwood opens refurbished Conway Mill

The project to restore Conway Mill on the Falls Road reached fruition last month as Social Development Minister **Alex Attwood** opened the new building.

The project aimed to promote social/economic regeneration, job creation and business development while preserving the heritage of one of the most significant architectural landmarks in West Belfast.

Work to refurbish the B2 listed building included structural repairs, building conservation and the internal refurbishment of the two mill blocks. The project has created 16 new workspaces and enterprise units for new and expanding businesses in the area. The building now also houses 20 new artist studios and an atrium space.

The Department for Social Development contributed over £2.5million to the refurbishment project. Financial support

was also provided by Peace II through the Department of Enterprise, Trade and Investment, the Heritage Lottery Fund, the International Fund for Ireland, the Architectural Heritage Fund and the Arts Council of Northern Ireland.

Alex Attwood said: "The determination of today's Lower Falls community to see the refurbishment of Conway Mill through to its completion stands as a testament to a past generation of women and young children who worked here in difficult and harsh conditions. What we see here today is the result of dedication by local people to see this building restored as the heart of the area and another step on the road to new hope for the future of West Belfast. This iconic building will act as a flagship for regeneration in the Greater Falls Area with the expectation of over 100 jobs to be created within four years.



Call for reduction in corporate rates

Peter Robinson, First Minister of Northern Ireland, has called upon David Cameron to lower the corporate income tax rate in Northern Ireland.

Speaking during the UK Prime

Minister's visit to Northern Ireland in November, Robinson urged the Westminster Parliament to consider reducing corporate rates in the province to 12.5% as a means of attracting investment.



Peter Robinson, The First Minister of Northern Ireland

in brief



Class act

The High Court of Justice in Northern Ireland has dismissed attempts by a student at Queen's University of Belfast to bring a judicial review aimed at reclassifying his degree from a 2:2 to a 2:1.

Andrew Croskery, formerly an undergraduate of electrical engineering at the University, had been attempting to obtain permission to proceed with a judicial review of decisions by Queen's Board of Examiners. Mr. Croskery's legal team had argued that, in awarding a 2:2, the Board of Examiners had contravened Article 6 of the European Convention of Human Rights – specifically by failing to adhere to a proper appeals process and, in so doing, delivering a fair hearing by tribunal.

See page 12-13 for a full analysis of the case and its consequences.

Delivering his judgment, **Mr. Justice Treacy** found that:

In my view there is nothing ... to support the proposition that the assessments and classifications [of degrees] fall within Article 6. The assessments themselves are plainly a matter of academic specialised judgment."

Adam Brett, Partner in McGrigors' Belfast office, which advised Queen's University of Belfast, said, "This really is a victory for common sense and a vindication of our client's stance on this issue. A judicial review would have been costly, disproportionate and – as this decision has shown – ultimately without proper grounds."

ONS stats reveal NI pay gap

The UK Office of National Statistics has published its Annual Survey of Hours and Earnings in Northern Ireland. Although there is some positive news, there are also some elements of concern for Northern Ireland business.

The headline finding was that, in April 2010, median gross weekly earnings for full-time employees in NI was £440.80, an increase of 0.8% over the year. However, part-time NI employees experienced a 6.0% contraction in their gross weekly earnings. This is particularly striking given that in the UK as a whole, part-time earning grew by 0.7% over the same period.

Responding to the news, **Adam Brett**, a Partner in our Belfast office, said, "This is an intriguing set of data. It is encouraging to see that the legislation such as the Equal Pay Act 1970 aimed at reducing the pay gap does seem to be having the desired effect – thanks in no small part to the increase in case law and perhaps the widely publicised settlements in the public sector, involving revised pay scales from 1 February 2009. However, Northern Ireland does not have the benefit of the Equality Act 2010 which includes provisions aimed at speeding up the reduction in the pay gap.

"A more worrying aspect is the divergence in pay rates between full and part time staff. Employers should remember that part time workers have the legal right to no less favourable treatment pro rata in respect of pay when compared with full time workers. In addition, legislation due to come into force in 2011 means that agency workers will after a twelve week period be entitled to the same pay, pro rata, as employees in the organisation."



Laura Gillespie



Sam Beckett



David Kirkpatrick



Richard Murphy



Richard Gray

The legal year ahead

Connections looks at the legislation most likely to affect Northern Ireland's businesses in 2011.

Bribery Act 2010

The new Bribery Act, which is expected to come into force later this year, will create a new corporate offence of failing to prevent corruption. An offence will be committed by a corporate if it benefits from a bribe given by an employee, contractor, overseas agent, joint venture partner or subsidiary.

It will be a defence to have in place "adequate procedures" designed to prevent corruption. Businesses should therefore conduct an anti-corruption review and put procedures in place as soon as possible.

McGrigors has developed an anti-corruption review programme to assist companies in implementing "adequate procedures" to prevent corruption.

For more information please contact **Laura Gillespie** (laura.gillespie@mcgrigors.com) or your usual McGrigors contact.

Changes to the litigation landscape

On 13 September 2010 Justice Minister David Ford announced a review of legal aid provision in Northern Ireland. Included in the terms of reference is discussion of proposals to ensure that "civil cases provide adequate, appropriate, efficient and cost-effective mechanisms for resolving legal disputes, whether by action in the courts or otherwise."

A complicating factor might be the progress of proposals put forward by Lord Justice Jackson for reforms to civil litigation in the UK. Consultation on these proposals is expected to close in February. Should change subsequently be affected in England & Wales, it seems hard to believe that reform would not be required in Northern Ireland to create a level playing field.

For more information on this issue please contact **Sam Beckett** (sam.beckett@mcgrigors.com) or **David Kirkpatrick** (david.kirkpatrick@mcgrigors.com) or your usual McGrigors contact.

A new Energy Bill

Introduced to the House of Lords in December, the Bill's principle objectives include tackling barriers to investment in energy efficiency, enhancing energy security and enabling investment in low carbon energy supplies.

Specific changes affecting Northern Ireland include the proposed powers to re-designate areas of the UK Continental Shelf in order to facilitate the signing of a comprehensive agreement with Ireland about maritime boundaries. This will enable the alignment of Exclusive Economic Zones and provide flexibility in managing the UK Continental Shelf resources. Also notable are powers to require private landlords in the domestic and non-domestic sector to improve some of the least energy efficient properties (where finance is available).

For more information on this issue please contact **Richard Murphy** (richard.murphy@mcgrigors.com) or your usual McGrigors contact.

Competition Law

All agreements relating to land will become subject to the full scrutiny of competition law from 6 April 2011. The government has decided that all land agreements should be fully subject to competition law just like any other agreement, with it being left to businesses and their advisers to assess whether competition law is being infringed.

Accordingly, any exclusivity or restrictions contained in land agreements may now be invalid if they are intended to or could prevent or distort competition.

For more information on this issue please contact **Richard Gray** (richard.gray@mcgrigors.com), **Richard Murphy** (richard.murphy@mcgrigors.com) or your usual McGrigors contact.



INFRASTRUCTURE:

where now in Northern Ireland?

*The UK Government's Comprehensive Spending Review pledged to prioritise economic infrastructure such as transport and the transition to a low-carbon economy. But how will such projects be funded? **Adrian Eakin**, Head of the UK Infrastructure Projects team at McGrigors, reviews a number of new financial structures that could support economic infrastructure investment in Northern Ireland.*

There is widespread recognition that modern infrastructure is crucial to stimulating growth, attracting inward investment and creating jobs. Northern Ireland has a number of large infrastructure schemes currently under way, such as the three Waste Infrastructure PPPs and Classroom 2000, but the overall number of schemes locally has steadily declined. There has been no repeat of the pipeline announced in 2002 when the Strategic Investment Board brought forward major projects in the roads, water, IT, health and justice sectors. A new kick-start is needed, and it is hoped that devolution, clarity on funding and the appointment of a

new Chief Executive of the SIB will provide this.

A number of new funding mechanisms are available to support infrastructure investment.

TIFs

The Deputy Prime Minister announced in September that local authorities in England will be granted new borrowing powers aimed at driving local investment and economic growth. Known as Tax Increment Financing (TIF), these new powers will allow local authorities to borrow against predicted growth in their locally raised business rates and to use that borrowing to fund key infrastructure and other capital projects. In simple terms, TIFs, which have been used in the US since the 1950s, enable a local authority to trade anticipated future tax income for a present benefit. Scotland is currently leading the race to create the UK's first TIF scheme, at Edinburgh

Waterfront (see page 10 for the full story), and Transport for London believes its £600m Northern Line extension should be the first TIF in England. Over 80 local authorities in England are believed to be looking into TIFs as a means of addressing infrastructure needs in their own area.

LABVs

A Local Asset Backed Vehicle is a mid/long-term joint venture between a local authority (or a group of local authorities) and a private sector investment partner. As local authorities face tough economic settlements from central government they are looking for ways to 'sweat' their asset base. An LABV allows the authority to contribute land and assets to the partnership, while the private sector partner commits cash and expertise. After the authority has received a base value, both parties can typically receive a 50% share of any profits generated through the partnership.



Adrian Eakin heads our UK Infrastructure Projects team, working from the London and Belfast offices. Chambers UK says that he is "unanimously considered to be a market leader with unrivalled experience."

As an example, the £450million joint venture between John Laing plc and Croydon Council is expected to regenerate significant sites across Croydon town centre and deliver new flagship council headquarters. The council will receive a 50/50 share in profits and continue to maintain ongoing control of its regeneration agenda. Other LABV schemes are currently under procurement in England.

Not-for-profit

The first not-for-profit PPP model was implemented in Argyll and Bute Council's Education Project. The contractual structure is similar to a PFI/PPP scheme but any surpluses generated by the successful private sector consortium are ploughed back into education in the area via an educational charity – they are not paid out as profit to the private sector participants.

The benefits of PFI/PPP are therefore retained, in that the private sector delivery company assumes a high degree of risk transfer (including cost over-runs) and is not paid until the schools are actually handed over. The schools have to be maintained for a period of 25 years, with financial penalties if they are not. The procuring Authority retains the ability to spread the capital cost of the scheme over the life of the PPP contract.

Shared Services

This is where public bodies identify common functions within their own organisation or with other public bodies and seek to have those functions delivered as a single shared service across organisational boundaries. Services most likely to benefit from this approach include specialist services capable of aggregation such as environmental health, back office functions such as IT and HR, and customer-facing services such

as facilities management. There are various models for achieving shared service delivery including multi-authority collaboration, establishing an in-house service centre and joint ventures. There are a number of local examples of shared service delivery such as education and library boards collaborating together to procure the delivery of IT managed services to schools across Northern Ireland (C2k). We can expect to see more of this to drive efficiency savings in the public sector.

Other issues worthy of mention in the infrastructure sector include:

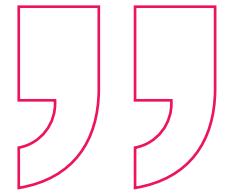
Social Toolkit

Following hard on the heels of the Welsh and Scottish Governments, work is ongoing in Northern Ireland on the development of agreed mechanisms for integrating social issues (where appropriate) into procurement processes. At its most basic this involves incorporating clauses into contracts requiring that apprenticeships are put in place, that training is provided and that the long term unemployed can be considered for new positions. A number of local PPP contracts signed with large international contractors already oblige the contractor to endeavour to use local supply chains and bring benefits to the local community.

NIP

The UK Government thinks that one of the historic barriers to private sector investment in infrastructure was a lack of clarity about the UK's long-term infrastructure needs. It sought to address this by publishing the National Infrastructure Plan in October 2010. The Plan analyses infrastructure development needed in the UK, describes policy changes needed to encourage investment and sets out specific

THE HOPE IS THAT LOCAL POLITICIANS AND THE SIB ARE ABLE TO AGREE A WAY FORWARD FOR THE INFRASTRUCTURE SECTOR AND COMMIT TO A PIPELINE OF SCHEMES TO ALLOW THE MARKET TO PLAN FOR THE FUTURE.



steps the Government is taking to achieve the infrastructure it is seeking in each key area. According to NIP, the UK has fallen behind in the quality of its infrastructure in recent years; the UK's competitors are investing heavily in improving their infrastructure and fundamental changes are needed to reduce the carbon impact of infrastructure assets.

The Government plans that around £200billion will be invested in the UK's economic infrastructure over the next five years, primarily in transport and energy.

The future

All of this sounds good, but there is no mention of Northern Ireland in any of the current plans and announcements of pipelines. The position as regards spending priorities and commitments may become clearer in the next few months. In the meantime, local contractors continue to expand into other parts of the UK and some are eyeing with interest the enormous pipeline of construction work in developing countries such as India and Saudi Arabia, where PPPs are coming to the fore and billions are being invested in roads, rail, ports, airports and the power sector. The hope is that local politicians and the SIB are able to agree a way forward for the infrastructure sector and commit to a pipeline of schemes to allow the market to plan for the future.

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TIF: the big question

A groundbreaking redevelopment project in Edinburgh took a significant step forward recently with the decision to use an innovative financing structure.

Alison Newton, Partner in McGrigors' Glasgow office, looks at the implications.

The Scottish Government has backed the City of Edinburgh Council's proposal to use Tax Incremental Financing (TIF) in the development of the Leith waterfront. The Scottish Government claims that the project has the potential to unlock £660million of private investment and create up to 4,900 jobs.

This has understandably attracted considerable interest across the UK, as other local authorities start to consider whether TIF could work for



Alison Newton, Partner, is Head of Regeneration and works out of the Glasgow and Manchester offices. She specialises in development work, especially in the retail and leisure sectors.

them as they try to fix infrastructure problems.

So what does TIF involve?

Essentially, Edinburgh City Council plans to borrow £84million to finance the development. The theory is that, following the redevelopment, new businesses will be attracted to the area, generating higher tax revenues which will then pay off the loan. It's a principle that has been used to good effect in the United States, but which had never really been explored in

the UK because of the ready availability of other sources of funding. Needless to say, times have changed.

The question of whether TIF can be used elsewhere is a difficult one. Edinburgh has a distinctive geography around which this initiative has been built: Leith is confined within the city limits and separated from commercial areas to the North by the Forth. This has reassured those who fear that business will simply be displaced from one area to another – a common criticism of TIF. Further, the redevelopment of a port would seem likely to help stimulate overseas, rather than domestic, inward investment.

Could this work for Belfast?

Possibly. But if demand for TIF in Northern Ireland does materialise, it remains to be seen whether central government will be keen to continue to increase the risk for taxpayers. The fundamental question is, can private investors and corporate financiers be encouraged to become the funder of first resort.

TIF is a highly sophisticated financing tool and as such its application needs careful consideration. It's something that was developed in a different market, with vastly differing physical and economic circumstances. That said, it could prove a useful solution if properly applied.

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TIF IS A HIGHLY SOPHISTICATED FINANCING TOOL AND AS SUCH ITS APPLICATION NEEDS CAREFUL CONSIDERATION





CLEARING the air

*New changes to the carbon tax are likely to cause disputes between tenants and landlords over who should pay it. The answer may be far from clear, says **Suzanne Gill**, Partner in McGrigors' London office.*

Last month, the government announced controversial changes to the carbon tax levied under the Carbon Reduction Commitment. Under the original version of the tax, which is based on how much electricity is consumed within a building, funds raised from the largest emitters of carbon were intended to be used to reduce or cancel out the bills of best-performers.

However, the 'green tax' now looks likely to apply to all companies according to the amount of carbon they produce. It is believed that this could generate up to £1 billion in revenue for the government – and create tensions between landlords and tenants over who foots the bill.

Difficult conversations

According to figures put together by PricewaterhouseCoopers, a business with an average gas and electricity bill of £1m will pay around £76,000 in the first year,

rising to £114,000 per year by 2015. The figures are staggering, and it's perfectly possible that with such eye-watering sums at stake, landlords and tenants could find themselves facing up to some very difficult conversations over who should foot the bill.

Grey area

Exacerbating the issue is the fact that a massive grey area exists: in most leases it is unclear how liability for this new tax should be apportioned. Originally, because the tax bill was so low, the impact on service charges was negligible and therefore unlikely to cause any issues or be allowed for within a lease. This is no longer the case.

When the new regime comes into effect landlords may look to pass on the cost to their tenants through increased service charges. However, calculating how much electricity each tenant has consumed can be extremely difficult. In many office

buildings tenants have their own electricity sub-meter. The landlord can tell, with a bit of work, how much electricity each tenant has used. However, tenants have no way of knowing how many buildings their landlord owns, and whether or not the landlord is liable to pay CRC. As a result it would be difficult to figure out whether any increases in charges are fair or proportionate.

Disputes

Unless properly managed, disputes are bound to arise and litigation is a distinct possibility. Businesses about to enter into leases for new premises should bear this in mind when negotiating terms. For those existing tenants, the advice would be to contact landlords at the earliest possible opportunity to enter into discussions about how they plan to deal with the new obligations.

For more information contact suzanne.gill@mcgrigors.com



Suzanne Gill is a Partner in our Real Estate team, based in our London office. She specialises in advising commercial property occupiers and investors, particularly office, retail and telecommunications.

FROM THE CAMPUS

With tuition fees rising and few graduate jobs available, the stakes are high for today's University students. No surprise, then, that more and more disputes are ending up in court. Adam Brett, Partner in McGrigors' Belfast office, considers the consequences.

Academia used to be a different world, far removed from the messy realities of everyday commercial life. No longer. Since completing a degree course could soon cost students (or their parents) £30,000 or more, they are increasingly likely to view themselves as paying customers, with associated rights. This combination of a sense of entitlement and significant financial pressure means that students and their families are showing an increased willingness to appeal degree classifications all the way to the law courts.

Claimants no doubt hope to improve their employment prospects and perhaps win a financial settlement. However, a decision delivered by the High Court of Northern Ireland in December could provide food for thought for both sides.

It concerned Mr Andrew Croskery, formerly a student at Queen's University in Belfast. Mr Croskery attempted to challenge his 2:2 degree classification by claiming that the University had failed to carry out its review process in accordance with the European Convention on Human Rights – specifically by failing to adhere to a proper appeals process and, in so doing, to deliver a fair hearing by tribunal.

In the High Court in Belfast, Mr. Justice Treacy did not accept the claim that the University's appeals process fell within the Human

Rights Convention. (See page 6 for more details on this case and the judge's decision.)

The upshot was that Mr Croskery was not granted leave to bring what would have been costly and time-consuming Judicial Review proceedings.

Serious consequences

If Mr Croskery had succeeded, universities across the UK would have had to substantially revise their examination boards and appeal procedures in order to demonstrably provide "a fair and public hearing within a reasonable time by an independent and impartial tribunal, with judgement to be pronounced publicly."

As things stand, however, the first port of call for student complaints remains the University's own procedures, leading to an external review. The position on external review differs across the United Kingdom, with the possibility of a complaint to the Office of the Independent Adjudicator (OIA) in England and Wales, to the Scottish Public Services Ombudsman (SPSO) in Scotland, and, in the case of the Northern Ireland's two Universities, to the University Visitor.

Courts across the UK have been fairly consistent in discouraging students from pursuing appeals to the point of litigation. In recent years there have been two High Court decisions in England suggesting



Adam Brett is a Partner in our Employment & Pensions team, based in our Belfast office. He acted for Queen's University Belfast in the Croskery case.

to the courts

that the claimants should have gone to OIA and not to the Court (in one case awarding costs to the University), and a Scottish application for judicial review was turned down at the early stages.

Pressure points

So far, legal proceedings have tended to centre around the procedures of the overseeing body rather than the actions of the University itself. However, applications to the courts may not end there. Several pressure points – some old and some new – are often exploited by claimant lawyers. One of these is appeals, such as in the case of Mr Croskery, and Universities are increasingly grappling with the issue of whether, and under what circumstances, students are entitled to legal representation during such procedures. Others include:

Supervision: this is particularly true in courses involving placements with other institutions – teacher training, for example.

Expulsion: although not new, this remains another common cause for legal action, although some of the issues surrounding it are changing. For example, actions relating to racism are increasingly common. In November 2010, a student doctor

reportedly sued a University in England for £5.5million for racist bullying after she failed the course and was expelled – allegations denied by the University.

Breach of contract: it has been clear since the case of *Clarke v University of Lincolnshire and Humberside* in 2000 that a student may be able to bring a claim in the ordinary Courts alleging breach of contract where it can be shown that the award of a lower degree was the result of an institution's failure to meet the provisions laid out within its contract with students – for instance by failures of supervision.

High costs

More often than not, the principal fault with the academic institutions in such claims is a failure to follow their own procedures fully, and to ensure that in doing so those procedures comply with the law and are dealt with in a timely manner.

The cost of these failures is significant, both in terms of tangible costs such as legal fees, time and resources, and intangible ones such as reputational damage. We are seeing the likes of the OIA taking a fairly tough stance on imposing financial penalties. To give just one example, the OIA Annual Report for 2009 describes a case where

a student was suspended and eventually disciplined, in which the OIA recommended compensation totalling £45,000.

An uncertain future

We can make two predictions with some confidence. Firstly, we are likely to see more claims through whichever channel, with students alleging failures in process, supervision or education and seeking the return of fees or damages – if only to try and pay off the substantial debt the student may have incurred.

Secondly, it is perfectly possible that over the next few years the European Court of Human Rights may develop the case law in relation to Universities and their procedures, whether under Article 6 or under Article 2, which deals with the right to education.

Universities and their advisors will therefore need to keep an eye on developments in Europe. In the meantime, the financial consequences alone mean that Universities should consider putting in place some scheme of mediation or alternative dispute resolution in order to try and minimise claims.

For more information contact adam.brett@mcgrigors.com



“ THE OFFICE OF THE INDEPENDENT ADJUDICATOR'S ANNUAL REPORT FOR 2009 DESCRIBES A CASE WHERE A STUDENT WAS SUSPENDED AND EVENTUALLY DISCIPLINED, IN WHICH THE OIA RECOMMENDED COMPENSATION TOTALLING £45,000.

Alistair Darling MP with our Senior Partner, Kirk Murdoch.



in person

In this edition, we catch up with former McGrigors lawyer, Alistair Darling MP, and find him keen to talk about his time with the firm... and a few interesting jobs he's done since.

Q: You worked at McGrigors from 1978 to '82?

AD: Yes. It was just after they opened their Edinburgh office in Queen Street. I also worked in Glasgow for about six weeks. I'd done my apprenticeship with a small, three-partner Edinburgh firm, but McGrigors had big corporate clients. It was a very good opportunity.

Q: So you enjoyed your time there?

AD: Yes, I did. A number of things were striking when I went to Glasgow. Apart from the fact that everyone was crammed into two or three floors, it was much more informal. Everyone worked in their shirtsleeves and referred to each other in first name terms, whereas in the Edinburgh office if you went out of the office you had your jacket on and it was Mr This, Mr That and Miss So-and-So. It was a happy firm; they were very hard-working, pretty dedicated and, at times, ferocious lawyers. They didn't pull their punches. But the Glasgow style was much more like the American style; Edinburgh was more reserved and a bit more formal.

Q: You then trained as an Advocate?

AD: Yes, I was at the Bar until 1987, when I was elected to parliament for the first time. I had to give up practising very shortly after that: I was on the front bench from 1988, and I couldn't have combined the two.

Q: You have a reputation for being an honest politician, and also for being an effective one, a

'safe pair of hands'. Is there a contradiction there?

AD: Looking at my ministerial career, every department I've been in has been a mess that needed sorting out and given a clear sense of direction, and I think I can do that. The Treasury was slightly different in that it was absolutely fine for the first three months and then the world's banking system collapsed.

In relation to being straightforward, I got into a lot of controversy two years ago when I said that I thought we were heading for the worst conditions in sixty years. Unfortunately, in politics you don't always get full marks for saying what the position is, but I thought it was important. If people are going to feel the pain they should understand what's causing it. But we weren't 100% successful in explaining it – self-evidently, because we lost the election.

I remember on the night before the Guardian article appeared, the BBC went absolutely berserk saying how awful this was, but I was stating what I thought was rather obvious. Actually, I'd said it three weeks earlier and it had barely been noticed.

Q: What are your plans for the future?

AD: I've been on the front bench for 22 of the last 23 years, so I want a year to reflect, when I don't feel duty bound to put a press release out, go to a television studio, or go to London on Sunday night to do something early on Monday morning. I just want more time to myself, and to take up those issues that I want to take up.

Expansion for McGrigors PROMPTS MANCHESTER MOVE

McGrigors has signed a deal to move to No.1 The Avenue in Spinningfields, Manchester's new premium financial and professional services destination.

Since opening in January 2008, McGrigors Manchester has more than doubled in size and now has a team of over 35 people providing a full service legal offering including tax disputes, energy, infrastructure, regeneration, real estate, banking and corporate. The office move represents the next step in the firm's evolution following the recruitment of **David Moss** and a ten-strong contentious construction team in September 2010.

The new office space consists of around 11,000 square feet spread over two floors, including a 3,000 square foot client suite. McGrigors is expected to move into the new premises in March 2011. The lease has been agreed with developer Allied London and building owner IM Properties. OBI Property LLP acted as agent to McGrigors on the deal.

High-profile deals

McGrigors' Manchester office has acted on a number of high profile mandates since its establishment, including acting on the sale of Bethell Power Services Limited; advising HAASE Environmental Consulting on matters relating to the Greater Manchester Waste PFI project (the largest waste PPP to close in Europe to date); and on several Local Asset Backed Vehicle (LABV) projects across the UK. The office's clients include Balfour Beatty (including its operations in Sale and elsewhere), Galliford Try, Manchester Airport, United Utilities, and Alstom.

Strong growth

Richard Masters, Managing Partner of McGrigors, says: "This is excellent news for the firm and is indicative of the strong growth we have enjoyed in Manchester as a result of strong client demand. Peter Blackmore, who heads up our Manchester team, has done an exceptional job in establishing an office which provides clients in Manchester and the North West access to a firm with a genuinely

national network of offices across England, Scotland and Northern Ireland. We look forward to welcoming existing and new clients into No 1 The Avenue later this year."

A different offer

Peter Blackmore, Head of McGrigors' Manchester office, says: "Following the arrival of several senior hires over the past 24 months, its fair to say that things have been a little cramped in our existing office space. We believe we have something genuinely different to offer to clients, and that our strong focus on banking, infrastructure and energy work have helped establish us as a market leading firm in the region. The exponential growth of the office, resulting in this investment, vindicates that view. It also demonstrates beyond any doubt McGrigors' commitment to Manchester and the North West as a place to do business."





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