NIJAC
Northern Ireland Judicial Appointments Commission

# District Judge (Civil) 2013

## Shortlisting Assessment Test

## 6 November 2013

## Feedback Booklet

**District Judge (Civil) Scheme 2013**

**Shortlisting Test 6 November 2013**

**Instructions:**

This test was a multiple choice test.

The test contained **19** questions. Applicants were allowed 1 hour and 15 minutes to complete the test.

Each question was worth between 0 and 5 marks and there were 95 marks available in total.

The scores awarded for each potential answer are confirmed in brackets at the end of each potential answer.

**Question 1** (Excerpt from Order 14 – Interlocutory Applications is provided at the end of this question)

Sitting as a District Judge a set of papers, in which the fee has been paid, are given to you by the Clerk along with several other out of court applications. On perusing them you note they concern extant Civil Bill proceedings concerning an accident at work. The papers consist of a letter from the Plaintiff's solicitor in the following terms -

"*Dear Judge,*

*We enclose a copy of the Ordinary Civil Bill in this matter which is being defended.*

*We have requested the Defendants solicitors to provide particulars of their defence but to date they have not done so.*

*We should be grateful if you would make an Order in the terms sought together with an Order for Costs.*

*Yours Faithfully*"

**Do you:**

(a) Make the Order as requested. (0)

(b) Dismiss the Application. (3)

(c) Adjourn the out of court application and ask the Plaintiff to provide further details of the steps they have taken with the Defendant to obtain particulars of the defence before writing to you. (5)

(d) Ask the Clerk to list the matter as an inter-partes hearing. (0)

***ORDER 14 - INTERLOCUTORY APPLICATIONS***

*PART 1 - GENERAL*

*General procedure [subst. SR 2013/19 on 25 Feb 2013 save in pending prcdgs]*

*1.—(1) Where by any enactment or by direction of the court any application in the course of an action or matter is expressly or by implication authorised to be made to the court or to the judge or to the district judge or chief clerk, the following provisions shall apply—*

*(a) the application shall be made either in or out of court and either ex parte or on notice in accordance with the terms of the relevant enactment or direction;*

*(b) in the absence of any express provision to the contrary the application shall be determined by the judge (or district judge as the case may be) without a hearing, unless—*

*(i) either party requests a hearing; or*

*(ii) the judge (or district judge as the case may be) otherwise directs;*

*(c) where either party requests that the application be dealt with by way of hearing, the party shall specify the reasons;*

*(d) a party may within 14 days of service of the application, object to the application being determined without a hearing, by filing in court, a notice in writing specifying the reasons;*

*(e) an objection made under sub-paragraph (d) shall be served on the other party;*

*(f) unless an objection to the application being dealt with without a hearing is received within 14 days of service of the application on the other party, it will be assumed that the other party consents to the application being determined without a hearing (unless the judge or district judge otherwise directs);*

*(g) where a request for a hearing under sub-paragraph (b) or an objection under sub-paragraph (d) is received, the application or objection shall be placed before the judge or district judge for consideration who may—*

*(i) determine the application without a hearing and make such order as he considers just; or*

*(ii) direct that the matter be listed for a hearing;*

*(h) where an application is made on notice—*

*(i) the notice shall be in writing and shall be served on the other party and filed in the Office before the beginning of a period of two days ending on the day of hearing of the application unless the judge or district judge or chief clerk dispenses with notice or gives leave for shorter notice; and*

*(ii) the party serving the notice shall be responsible for ascertaining that the judge or district judge or, as the case may be, the chief clerk will be available to hear the application on the day, at the time and in the place for which notice is served;*

*(i) where a district judge or chief clerk has made an order to which this Order applies, any party may make an application to the judge on notice to vary or rescind the order and on determination of the application the judge may—*

*(i) confirm;*

*(ii) vary;*

*(iii) rescind the order; or*

*(iv) make any other order as he thinks fit.*

## Question 2

You have a one day civil bill listed before you involving an employer's liability claim in which the legally-aided Plaintiff sustained injuries at work. The civil bill has been previously before you for mention and for the purposes of fixing a date for hearing as it has been problematic getting a date to suit all the witnesses. There are 2 engineers and numerous witnesses of fact. You have no other business listed. At the call over, Plaintiff's counsel applies for an adjournment for the following reasons all of which are strenuously opposed by Defendant's counsel;

**Answer Yes or No to each of the following five questions -**

[a] Their medical expert cannot now attend court. Whilst medical reports had been exchanged, the Defendant's solicitors had indicated that they would not agree the medical evidence without formal proof.

Do you adjourn in these circumstances? **Yes / No** (No - 1 mark)

[b] A witness for the Plaintiff sprained his hand 2 weeks previously and was advised to rest it.

Do you adjourn in these circumstances? **Yes / No** (No - 1 mark)

[c] The counsel who had initially been instructed on behalf of the Plaintiff and who had consulted with the witnesses is involved in a hearing in Londonderry.

Do you adjourn in these circumstances? **Yes / No** (No - 1 mark)

[d] Plaintiff's counsel, having consulted with the Plaintiff, considers that up to date medical evidence is required.

Do you adjourn in these circumstances? **Yes / No** (No - 1 mark)

[e] One of the Defendant's witnesses has to collect her child from school at 2.00pm.

Do you adjourn in these circumstances? **Yes / No** (No - 1 mark)

## Question 3

### Minor Payments Out

A mother who was appointed the Guardian of monies invested in court following a road traffic accident on behalf of her 6 year old daughter has brought an application before you for payment out of all of the monies invested (£5000.00) to allow her to take her daughter on a special holiday to Disneyland, Florida. As well as the daughter she also intends to take her twin boys who are four years of age. She tells you she has recently finalised a messy divorce with the children's father and the children could do with the holiday. The total cost for all four to go amounts to £5000.00 and thus the reason for the application. The mother has not brought any documentation before the court to verify the cost of the holiday or substantiate her assertions about the divorce proceedings.

**Do you:** (select one of the following five options)

(a) Allow the payment out as requested. (0)

(b) Allow only a partial payment out to reflect what you judge to be the likely apportionment of the total cost for the daughter. (0)

(c) Adjourn the application and direct the mother submit evidence to substantiate her assertions about the divorce proceedings. (0)

(d) Adjourn the application and direct the mother to submit evidence of the families financial circumstances. (0)

(e) Refuse the application. (5)

**Question 4**

You have an assessment of damages listed before you today arising as a result of a road traffic accident in which the plaintiff sustained personal injuries. The 2nd defendant did not enter a notice of intention to defend and judgment in default was marked 4 weeks ago. The 1st Defendant lodged a notice of intention to defend and the defended civil bill has been listed for hearing next month.

**Do you:** (select one of the following four options)

[a] Assess damages and enter a decree against the 2nd Defendant only. (0)

[b] Assess damages but indicate that the decree will not be entered until the final judgment next month. (0)

[c] Dismiss the application for assessment with costs against the Plaintiff. (0)

[d] Adjourn the assessment until the defended hearing next month. (5)

## Question 5

There is a civil bill in your list in respect of an alleged debt due by the Defendant to the Plaintiff arising as a result of work undertaken by the Defendant at the Plaintiff's request. The work involved major renovations of the Plaintiff's home and had been the subject of a detailed quotation. The work was completed on the 1st November 2005 and the invoice issued by the plaintiff on 4th January 2006 and received by the Defendant on that date. A substantial payment was made on 3rd July 2006 leaving a balance of £4000. The Defendant went through a marriage breakdown and despite numerous telephone calls during which the Defendant makes promises to pay, nothing is forthcoming and after a final unsatisfactory call on the 6th July 2012 the Plaintiff issues proceedings on the 8th July 2012. Following the service of proceedings the Defendant makes a payment of £2000 on the 12th July 2012. A limitation point arises and you are asked to determine if and when the Plaintiff's remedy is barred.

**Do you find:** (select one of the following four options)

[a] The Plaintiff's claim became statute barred on 4th January 2012. (0)

[b] The Plaintiff's claim became statute barred on 3rd July 2012. (5)

[c] The Plaintiff's claim became statute barred on 6th July 2012. (0)

[d] The Plaintiff's claim is not statute barred. (0)

**Question 6**

Following a road traffic accident 18 months ago a compensation claim for personal injuries on behalf of a sixteen year old has been agreed between the solicitor for the minor and the defendant's insurers. The case comes before you sitting as a District Judge for approval of the sum agreed. In perusing the one medical report, obtained 6 months after the accident, the Consultant Orthopaedic Surgeon makes the following statement in it "*The minor and his mother mentioned to me that aside from the physical injuries suffered the minor suffered a significant psychological reaction to the accident. I suggest this will resolve before the second anniversary of the accident is reached*." Both the mother and the minor indicate to you they wish the case concluded today as its continuation is exacerbating the psychiatric injuries of the minor.

**Do you:** (select one of the following four options)

(a) Determine the application on the medical report and oral evidence of the mother and the minor. (3)

(b) Determine the application on the medical report alone. (0)

(c) Determine the application on the medical report and oral evidence of the mother. (0)

(d) Adjourn the application to allow for further medical evidence to be obtained. (5)

**Question 7**

You have an interlocutory application listed before you on 10th April 2013 by the Defendant to extend/ enlarge time so as to permit the Defendant to make a late payment into court ['the lodgement'].

The plaintiff's claim against the defendant is for loss and damage sustained as a result of the alleged negligence, breach of contract and breach of statutory duty of the defendant in and about the construction and sale by it of a dwelling house on or after May 2006.

You are informed of the following;

- Building agreement 10th May 2006
- Complaints and correspondence between plaintiff and defendant and plaintiff and NHBC
- Letter of claim 15th February 2011
- Civil bill issued 10th November 2011
- Notice of intention to defend served 7th December 2011
- Defendants Notice for Particulars 28th August 2012
- Plaintiffs' replied 15th November 2012
- Meeting of the parties, their legal representatives and joint experts on 29th January 2013
- Scott Schedule agreed on 11th March 2013
- Case listed for hearing 20th March 2013 but was not reached
- Defendant lodged an application to extend time to make their lodgement on 5th April 2013

The defendants' argue that

1. In the absence of expert reports being exchanged, a meeting of experts or a Scott Schedule being drawn up, none of the issues in the case had crystallised until shortly before the application to extend time had been lodged. The Scott schedule was only received a few days before the matter was listed for hearing.
2. There is no injustice to the plaintiff in allowing an extension of time.

3. By way of a letter of 5th April 2013 the defendant's solicitor had set out in open correspondence an offer by way of settlement on the basis that the agreed Scott Schedule had only recently been signed.

The Plaintiff argues that

1. There has been a clear failure to comply with the Rules. The lodgement application has been made 15 months after the time limit set down in the Rules to make a lodgement and 2 weeks after the case had been first listed for hearing.

2. The defendant served notice for particulars and the plaintiff replied on 15th November 2012 and there had been ample information and time to assess the potential of all aspects of the plaintiff's case.

3. An extension of time would defeat the purpose of the Rules which is to provide a timetable for the conduct of litigation albeit that the judge does have discretion.

**Do you:** (select one of the following four options)

[a] Accede to the application to extend time for the Defendant to make the lodgement. (0)

[b] Accede to the application to extend time provided the lodgement is made within 7 days. (0)

[c] Refuse the application to extend time to make the lodgement. (5)

[d] Direct that the application will be adjourned and that the parties, their legal representatives and the experts are to have joint negotiations within 7 days. . (3)

**Question 8**

While hearing a Civil Bill for personal injuries arising out of an alleged assault between rival gangs you become aware while the Plaintiff is giving his evidence in chief one of the witnesses for the Defendant is taking an occasional note of the Plaintiff's evidence.

**Do you:** (select one of the following four options)

(a) Ignore this and continue hearing the case. (0)

(b) Stop the proceedings, recuse yourself and indicate the proceedings will have to begin again before another judge on another day. (0)

(c) Immediately indicate no witnesses should take notes of the evidence given without permission of the court. (3)

(d) Ask the notetaker why he is taking notes and if you are satisfied it is for a bona fide purpose namely to assist him in instructing the Plaintiff's lawyers indicate that he may take notes but only for that purpose. (5)

**Question 9** (relevant sections of The Housing (NI) Order 2003 are provided at the end of this question)

The Plaintiff, as a social housing landlord, entered into an introductory tenancy agreement with the Defendant on the 14 January 2013. The Defendant did not pay any rent from the commencement of the tenancy and there are significant rent arrears. Proceedings are issued by way of an Ejectment Civil Bill on 6th June 2013 in which the Plaintiff is seeking an order for possession together with a decree in respect of arrears. The Defendant appears in court and is inconsolable. She tells you that she simply cannot understand forms and, as she is a single mother of a disabled child, has no-one to turn to who might assist her. The Plaintiff's representative had personally attended at the Defendant's home and provided her with the housing benefits forms and explained how to complete them but accepts that the Defendant is a vulnerable person. The Defendant acknowledges that she should have confronted this some time ago but assures you that all is now in order and that she believes she will be entitled to housing benefit. Her mother has agreed to give her some money and that she is willing to pay the weekly rent and rates together with a sum of £20 per week and asks you to suspend the order in those terms. You are satisfied that she is able to meet these terms.

**Do you:** (select one of the following four options)

[a] Make an order for possession and arrears with a stay provided the Defendant pays the weekly rent and rates together with a sum of £20 per week against arrears. (0)

[b] Make an order for possession together with arrears with no stay. (5)

[c] Make an order for possession and arrears with a stay until housing benefit has been sorted. (0)

[d] Adjourn until the position with housing benefit has been resolved. (4)

The Housing (NI) Order 2003, as amended, provides

*"Proceedings for possession*

*9. –*
*(1) Subject to Article 19A(4), the landlord may only bring an introductory tenancy to an end by obtaining an order of the court for the possession of the dwelling-house.*
*(2) The court shall make such an order unless the provisions of Article 10 apply.*
*(3) Where the court makes such an order, the tenancy comes to an end on the date on which the tenant is to give up possession in pursuance of the order.*

*Notice of proceedings for possession*
*10. –*
*(1) The court shall not entertain proceedings for the possession of a dwelling-house let under an introductory tenancy unless the landlord has served on the tenant a notice of proceedings complying with this Article.*
*(2) The notice shall state that the court will be asked to make an order for the possession of the dwelling-house.*
*(3) The notice shall set out the reasons for the landlord's decision to apply for such an order.*
*(4) The notice shall specify a date after which proceedings for the possession of the dwelling-house may be begun.*
*The date so specified must not be earlier than the date on which the tenancy could, apart from this Chapter, be brought to an end by notice to quit given by the landlord on the same date as the notice of proceedings.*
*(5) The court shall not entertain any proceedings for possession of the dwelling-house unless they are begun after the date specified in the notice of proceedings.*
*(6) The notice shall inform the tenant of his right to request a review of the landlord's decision to seek an order for possession and of the time within which such a request must be made.*
*(7) The notice shall also inform the tenant where he should take the notice, if he needs help or advice about it."*

**Question 10**

Sitting as a Deputy County Court Judge you hear a claim against the Chief Constable of the PSNI for wrongful arrest and false imprisonment. On the basis of the evidence provided you decide that there was no necessity of arrest. The Plaintiff was detained from 3.30 pm to 6.25 pm on the day in question. There are no medical reports before the court to show any impact of the detention on the Plaintiff.

**Do you:** (select one of the following four options)

(a) Adjourn the proceedings and direct medical reports on the Plaintiff be obtained. (0)

(b) Make an award to the Plaintiff based at a rate for the first hour and a sliding scale thereafter. (5)

(c) Dismiss the proceedings. (0)

(d) Make an award based at a rate for every hour detained. (0)

**Question 11** (Practice Note 3/2012 is provided at the end of this question)

A civil bill is listed before you for damages arising as a result of a neighbour's dispute in which the Plaintiff alleges personal injury arising as a result of the assault and battery by the Defendant and damage caused to the Plaintiff's property. The Defendant had been legally-aided but the certificate was revoked and the Defendant's solicitor was successful in his application to come off record some 6 months ago. The civil bill has been adjourned on numerous occasions but has now been listed for hearing before you today.

At the call over of the list, the Defendant applies for an adjournment as she has been unable to secure legal representation notwithstanding her many attempts to do so. You refuse her application. She then applies for permission for her Father to act as her McKenzie Friend as she is nervous and might forget something. Whilst you are satisfied that she understands the issues and has coherently made points, you accede to this application and before the hearing commences explain the role of a McKenzie friend [MF].

During the hearing -

**[i] The MF requests permission to cross-examine the Plaintiff on behalf of his daughter.**

**Do you:** (select one of the following two options)

a). Allow him in the circumstances but with careful supervision by you (0)

b). Refuse (0)

**[ii] The MF wishes to make submissions at the conclusion of the evidence.**

**Do you:** (select one of the following two options)

a). Allow him in the circumstances (0)

b). Refuse (2)

**[iii] At the conclusion of the evidence you dismiss the Plaintiff's claim. The MF makes application for costs against the Plaintiff incurred by him in assisting the Defendant. These include the time involved in providing assistance, carrying out clerical activities such as**

**photocopying documents and preparing bundles which he then delivered to the Plaintiff's solicitors.**

**Do you:** (select one of the following two options)

a). Make an order for nominal expenses (0)

b). Make an order for 50% of his claim on the defended scale (0)

c). Refuse any costs (2)

d). Award full costs on the defended scale to the MF (0)

## Practice Note 3/2012

### McKenzie Friends (Civil and Family Courts)

1) This Practice Note applies to civil and family proceedings in the Court of Appeal (Civil Division), the High Court of Justice, the County Courts and the Family Proceedings Court in the Magistrates' Court. It does not apply in criminal cases. It is issued as guidance (**not** as a Practice Direction) by the Lord Chief Justice. It is intended to remind courts and litigants of the principles set out in the authorities[1] and does not change the law. It supersedes any previous guidance. It is issued in light of the increase in personal litigants in all levels of the civil and family courts.

**Part I – Reasonable assistance from a McKenzie Friend**

2) There is a presumption in favour of permitting a personal litigant to have reasonable assistance from a layperson, sometimes called a McKenzie Friend,. Personal litigants assisted by McKenzie Friends remain litigants-in-person. McKenzie Friends have no independent right to provide assistance. They have no right to act as advocates or to carry out the conduct of litigation. In McA v McA [2006] 10 BNIL 63[2], Master Redpath held that a McKenzie Friend may be allowed a right of audience in very exceptional circumstances.

**What McKenzie Friends may do**

3) McKenzie Friends may:

i) provide moral support for personal litigants;

ii) take notes with the permission of the judge;

iii) help with case papers;

iv) quietly give advice on any aspect of the conduct of the case which is being heard.

**What McKenzie Friends may not do**

4) McKenzie Friends may not:

i) Conduct the litigation, acting as the personal litigant's agent in relation to the proceedings;

ii) Manage the personal litigant's cases outside court, for example by signing court documents; or

iii) Exercise a right of audience by addressing the court, making oral submissions or examining witnesses unless this has, in very exceptional circumstances, been authorised by the court.

It is a criminal offence to exercise rights of audience or to conduct ligitation unless properly qualified and authorised to do so by an appropriate regulatory body or with leave of the court. The very exceptional circumstances in which a McKenzie Friend can apply for rights of audience or to conduct litigation are set out in paragraphs [14-18] below.

**Confidentiality**

5) A McKenzie Friend must observe strict confidentiality in relation to any documents they have sight of and any information they hear in relation to the proceedings. Breach of such confidentiality will usually amount to a contempt of court, giving rise to sanctions including a fine and imprisonment.

**Exercising the Right to Reasonable Assistance**

5) While personal litigants ordinarily have a right to receive reasonable assistance from McKenzie Friends the court retains the power to refuse to permit the giving of such assistance. The refusal may occur on initial application or at any time during the hearing.

6) A personal litigant may be denied the assistance of a McKenzie Friend or a particular McKenzie Friend because its provision might undermine or has undermined the efficient administration of justice. Illustrations of circumstances where this might arise, which are not exhaustive, are:

i) the assistance is being provided for an improper purpose;

ii) the assistance is unreasonable in nature or degree;

iii) the McKenzie Friend is subject to an order such as a civil proceedings order or a civil restraint order or has been declared to be a vexatious litigant; by a court in Northern Ireland or in another jurisdiction of the United Kingdom;

iv) the McKenzie Friend is using the case to promote his or her own cause or interests or those of some other person, group or organisation, and not the interests of the personal litigant;

v) the McKenzie Friend is directly or indirectly conducting the litigation;

vi) the court is not satisfied that the McKenzie Friend fully understands and will comply with the duty of confidentiality.

7) The following factors are NOT of themselves sufficient to justify the court refusing to permit a McKenzie Friend to assist a personal litigant:

(i) The case or application is simple or straightforward, or is, for instance, a directions or case management hearing;

(ii) The personal litigant appears capable of conducting the case without assistance;

(iii) The personal litigant is unrepresented through choice;

(iv) The other party is not represented;

(v) The proposed McKenzie Friend belongs to an organisation that promotes a particular cause;

(vi) The proceedings are confidential and the court papers contain sensitive information relating to a family's affairs

8) A personal litigant who wishes to exercise this right should inform the judge as soon as possible indicating the identity of the proposed McKenzie Friend. The proposed McKenzie Friend should produce a short curriculum vitae or other statement setting out relevant experience, confirming that he or she has no personal interest in the case and understands the McKenzie Friend's role and the duty of confidentiality.

9) The court may refuse to allow a personal litigant to exercise the right to receive assistance at the start of a hearing. The court may also circumscribe or remove the right during the course of a hearing,where the court forms the view that a McKenzie Friend, or a particular McKenzie Friend, may give, has given, or is giving, assistance which impedes the efficient administration of justice. Tthe court may in the first instance issue a firm and unequivocal warning to the personal litigant and/or McKenzie Friend. It is likely that the court may give reasons for refusal and the personal litigant, but not the McKenzie Friend has a right to appeal the decision.

10) Where a personal litigant is receiving assistance from a McKenzie Friend in care proceedings, the court should consider the desirability of the McKenzie Friend's attendance at any joint consultations directed by the court and, if he or she is to attend, the most effective and appropriate way in which that person should be involved in the joint consultation, bearing in mind the limits of their role, and should give directions accordingly.

11) Personal litigants are in general permitted to communicate any information, including filed evidence, relating to the proceedings to McKenzie Friends for the purpose of obtaining advice or assistance in relation to the proceedings. In the case of proceedings involving children, however, this may only be done with the permission of the judge[3]. This requires an application to the judge for permission and if the judge grants it then ordinarily conditions will be imposed giving further protection to confidentiality.

12) Legal representatives of other parties should ensure that documents are served on personal litigants in good time to enable them to seek assistance regarding their content from McKenzie Friends in advance of any hearing or advocates' meeting.

**Part II - Rights of audience and rights to conduct litigation**

13) Rights of audience and the right to conduct litigation on behalf of another are not part of the function of a McKenzie Friend but the following paragraphs apply to a McKenzie Friend, or to another individual, who wishes to apply for such a right. Unlike an application for reasonable assistance from a McKenzie Friend, there is no presumption in favour of granting these rights. Application should be made at the earliest possible opportunity and preferably before the hearing.

14) Courts should be slow to grant any application from a personal litigant for a right of audience or a right to conduct litigation to any lay person, including a McKenzie Friend. This is because a person exercising such rights must ordinarily be properly trained, be under professional discipline (including an obligation to insure against liability for negligence) and be subject to an overriding duty to the court. These requirements are necessary for the protection of all parties to litigation and are essential to the proper administration of justice.

15) Only very exceptional circumstances will justify the grant of a right of audience to a lay person, including a McKenzie Friend. Examples are health problems or disability issues which preclude the personal litigant from addressing the court or conducting litigation where qualified legal representation is not available to the personal litigant.

16) The grant of a right of audience or a right to conduct litigation to lay persons who hold themselves out as professional advocates or professional McKenzie Friends or who seek to exercise such rights on a regular basis, whether for reward or not, will equally **only** be granted in exceptional circumstances. To do otherwise would tend to subvert the will of Parliament.

17) Rights of audience and the right to conduct litigation are separate rights. The grant of one right to a lay person does not mean that a grant of the other right has been made. If both rights are sought their grant must be applied for individually and justified separately.

**Remuneration**

18) Personal litigants can enter into lawful agreements to pay fees to McKenzie Friends for the provision of reasonable assistance in court or out of court by, for

instance, carrying out clerical or mechanical activities, such as photocopying documents, preparing bundles, delivering documents to opposing parties or the court, or the provision of legal advice in connection with court proceedings. Such fees cannot be lawfully recovered from the opposing party.

19) Fees claimed to have been incurred by McKenzie Friends for carrying out the conduct of litigation, where the court has not granted such a right, cannot lawfully be recovered from either the personal litigant for whom they carry out such work or the opposing party.

20) Fees claimed to have been incurred by McKenzie Friends for carrying out the conduct of litigation after the court has granted such a right are in principle recoverable from the personal litigant for whom the work is carried out. Such fees cannot be lawfully recovered from the opposing party.

21) Fees claimed to have been incurred by McKenzie Friends for exercising a right of audience following the grant of such a right by the court are in principle recoverable from the personal litigant on whose behalf the right is exercised. Such fees are also recoverable, in principle, from the opposing party as a recoverable disbursement: Rules of the Court of Judicature 1980 Order 62 rules 18(1) and 18(2).

Signed

The Right Honourable Sir Declan Morgan

Lord Chief Justice of Northern Ireland

5 September 2012

**Question 12**

Sitting as a District Judge in the Small Claims Court an Application comes before you in which you note on reading the Application the Applicant's claim against the Department of Regional Development and a Contractor is for damages to his car caused when it sank into tarmac on a road. On the morning of hearing the Applicant indicates to you that he would prefer that you transfer it to your Civil Bill List and hear it in that jurisdiction but on another day when you are dealing with Civil Bills.

**Do you:** (select one of the following four options)

(a) Proceed to hear the case in the Small Claims Court. (0)

(b) Dismiss it for want of jurisdiction. (5)

(c) Make no order for costs against the Applicant. Transfer it to your Civil Bill list and adjourn it to another day. (0)

(d) Order costs against the Applicant, transfer it to your Civil Bill list and determine it that day. (0)

**Question 13**

You have a damage only road traffic accident claim listed before you in which you find that the Defendant was entirely responsible for the damage to the Plaintiff's vehicle. There is no dispute as to the cost of repairs at £2500 and that the car was not driveable after the accident but you are faced with a credit hire issue in respect of the length of hire. You find that the Plaintiff is not impecunious and, whilst he has a credit card limit of £4,000 the Plaintiff is reluctant to incur credit card charges and interest when he is the entirely innocent party.

The relevant facts are as follows;

1. Following the accident on the 10th August 2012, the Plaintiff contacted his insurers and was informed that, under the terms of his insurance policy, he had use of 'Accident Repair', an accident management company which advised the Plaintiff that he was entitled to hire a replacement vehicle until his own vehicle was repaired. Hire commenced on the 14th August 2012.

2. The Defendant's insurer's confirmed unambiguously on 20th August 2012 that liability was in dispute. This was reported to 'Accident Repair'.

3. Proceedings were issued by the Plaintiff in February 2013.

4. The Plaintiffs vehicle was left in for repair on 8th June 2013 when the Plaintiff invoked his own insurance policy. It took 4 weeks to complete repairs.

The Plaintiff's claim is for cost of repairs [agreed at £2,500] and hire charges from 14th August 2012 until 8th July 2013 at a cost of £30,000.

**Do you:** (select one of the following five options)

[a] Allow the cost of repairs but disallow any hire charges. (0)

[b] Allow the cost of repairs together with the hire charges as claimed. (0)

[c] Allow the cost of repairs together with the hire charges until liability is disputed on 20th August 2012. (0)

[d] Allow the cost of repairs and hire charges until 14th September 2012. (3)

[e] Allow the cost of repairs together with hire charges until mid October 2012. (5)

**Question 14**

In the course of ancillary relief proceedings one party has shown an unwillingness to provide disclosure of all their financial affairs. You had previously made an Order that they must do so but they failed to obey that Order. The other party has now informed you that the Order has been endorsed with a Penal Notice and has been served on the defaulting party. In an effort to secure compliance with the Order they bring before you an application for committal and invite you to commit the defaulter.

**Do you:** (select one of the following four options)

(a) Refuse the application outright. (0)

(b) Proceed to deal with the matter in your Ancillary Relief list. (1)

(c) Transfer the matter to a list you are dealing with as a Deputy County Court Judge. (2)

(d) Transfer the matter to the list of a County Court Judge and invite them to deal with it. (5)

**Question 15**

You have an application listed before you on behalf of the Plaintiff for assessment of costs pursuant to Order 21 Rule 2 of the County Court Rules [Northern Ireland] 1981 as amended. This provides:-

*'A defendant in any action may, subject to this Rule, upon giving notice to the Plaintiff in Form 97 lodge in court in accordance with paragraph [2] such sum of money as he thinks sufficient to satisfy the Plaintiff's claim, together with an undertaking in writing to pay the plaintiff such sum in respect of costs and expenses reasonably incurred by the Plaintiff up to the date of lodgement as may be agreed upon between the parties, or in default of agreement as may on the application of either party and if necessary after both parties have been heard, be settled by the district judge'*

The chronology of events is:

- The Plaintiff issued Civil Bill proceedings on 23rd February 2013 for personal injuries sustained as a result of negligent driving of defendant
- The Defendant entered Notice of Intention to Defend on 24th March 2013 and raised a Notice for Particulars
- The Plaintiff served Replies [which had been drafted by counsel] on 16th April 2013 and served medical evidence in the form of two medical reports from –

  Mr D Feelbetter dated 4th January 2012 and 10th October 2012

  Dr W Neverwell dated 26th March 2012

  Both medical experts referred to the A&E notes in their reports
- The Civil bill has been listed for hearing on 1st October 2013. Notification of listing was received on 22nd April 2013 at which time counsel was briefed
- The defendant made a payment into court of £5,000 on 11th May 2013.which is accepted within two days by the Plaintiff who takes no issue as to when the lodgement was made

Defendant's solicitors raise objection to the following items on plaintiff's solicitor's costs:

**i) Fee for the A&E records from the No-one Gets Well Hospital which had not been disclosed.**

**Do you:** (select one of the following two options)

[a] Allow the fee for the A&E records (1)

[b] Disallow the fee for the A&E records (0)

**ii) Junior Counsels fee.**

**Do you:** (select one of the following three options)

[a] Allow counsels fee in full (0)

[b] Allow 75% of counsel's fee (2)

[c] Disallow Counsels fee (0)

**iii) Solicitors professional fee on full scale costs.**

**Do you:** (select one of the following three options)

[a] Allow Solicitors professional fee at 100% on defended scale (0)

[b] Allow solicitor's professional fee at 75% on defended scale (2)

[c] Disallow solicitor's professional fee on defended scale (0)

**Question 16**

Sitting as a Deputy County Court Judge a Divorce Petition grounded on the irretrievable breakdown of the marriage as evidence by the parties having lived apart for a period in excess of two years and consent to divorce being obtained comes before you. You are satisfied that the statutory proofs and the evidence to support the assertions in the petition are in order and there being no children of the marriage you indicate you are minded to grant the Decree Nisi. Before you do so the solicitor for the Petitioner draws your attention to the terms of a Matrimonial Agreement which the parties have reached and invites you to make it a Rule of Court on the granting of the Decree Nisi. On inquiring further into the Matrimonial Agreement you have concerns about it given neither party had the benefit of legal advice, neither party made full disclosure and the Husband's significant pension is not mentioned in the Agreement.

**Do you:** (select one of the following four options)

(a) Grant the Decree Nisi and make the Matrimonial Agreement a Rule of Court. (0)

(b) Dismiss the Petition. (0)

(c) Grant the Decree Nisi but decline to make the Matrimonial Agreement a Rule of Court. (5)

(d) Adjourn the proceedings to another date to allow the parties to address your concerns about the Matrimonial Agreement. (2)

**Question 17**

You have a civil bill listed before you as a result of a road traffic accident which occurred last year when the Plaintiff sustained personal injury when she was the front seat passenger of a vehicle driven by the 1st defendant which was in a collision with a vehicle owned and driven by the 2nd defendant.

At the conclusion of the Plaintiff's case, counsel for the 2nd defendant applies for a direction that there is no case to answer by the 2nd defendant even though his cross-examination indicated that defence evidence would be called. His application is twofold:-

Ground 1 There is no prima facie case

Ground 2 The Plaintiff has omitted a vital proof connecting the "2nd Defendant to the accident

**i) With regard to ground 1 if you are satisfied that there is no prima facie case against the 2nd defendant, do you:** (select one of the following two options)

[a] Dismiss the claim against the 2nd defendant and proceed to hear the evidence of the 1st defendant (0)

[b] Refuse the application (3)

**ii) With regard to ground 2, do you:** (select one of the following two options)

[a] Dismiss the 2nd defendant (0)

[b] Recall the witness to adduce the material element of proof (2)

**Question 18**

Sitting as a Deputy County Court Judge you find in your busy list for hearing a Title Jurisdiction Civil Bill. On perusing the file on the morning of the hearing you note the pleadings consist solely of the Civil Bill and the Notice of Intention to Defend. At the call-over counsel tell you there are significant evidential and legal differences between the parties but there are several witnesses in attendance today who can give oral evidence.

**Do you:** (select one of the following four options)

(a) Hear oral evidence and determine the case. (2)

(b) Adjourn the case and give directions as to the filing of affidavits. (3)

(c) Adjourn the case and give directions as to both the filing of affidavits and skeleton arguments. (5)

(d) Dismiss the case as you consider it has not been properly prepared. (0)

**Question 19**

On 1st August 2010 Mrs Bloggs is granted a full legal aid certificate:

"*To prosecute a suit for divorce on the grounds of irretrievable breakdown*"

Her solicitors are Smith & Company of Co. Antrim.

A consultation takes place at the High Court, Belfast with counsel who drafts a petition for divorce on the ground that the parties have lived apart for more than two years. Mr Bloggs files a consent and agrees to pay half of the reasonable costs.

The petition is issued [by which time the one child is over 18] and is listed for hearing in November in Newry County Court, because Mrs Bloggs wants to keep a low profile. Mrs Bloggs booked a last minute holiday to Orlando, Florida and does not turn up at court. On the application of counsel [attended by her solicitor], the Deputy County Court Judge adjourns the petition.

On the hearing of the petition in January 2011, there is a short consultation and the court grants a Decree Nisi, with half costs against Mr Bloggs and legal aid taxation.

In September 2013 Smith & Co. lodge their bill for taxation part of which is set out below.

**Do you allow:** (answer Yes or No to the following five questions)

**i).** Item 1 fee for marriage certificate **Yes / No** (No – 1 mark)

**ii).** Items 2 and 3 for consulting with counsel **Yes / No** (No – 1 mark)

**iii).** Item 7 For the aborted hearing

[a] On a party/party basis **Yes/No** (No – 1 mark)

[b] On a Legal Aid basis **Yes/No** (Yes – 1 mark)

**iv).** Item 7 2 hours for travelling 56 miles **Yes/No** (Yes – 1 mark)

**BILL FOR TAXATION (overleaf)**