



Highway star

The Gazette talks to new president Michael Quinlan about his plans for the year



Bullying benchmark

A recent ruling has established a higher threshold for determining if workplace bullying is happening



It's been a privilege

Interesting developments in the interpretation of legal professional privilege?

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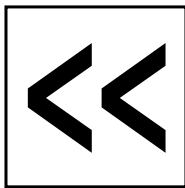
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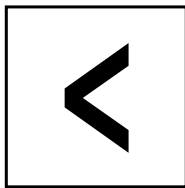
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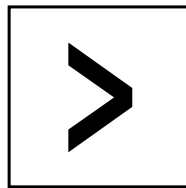
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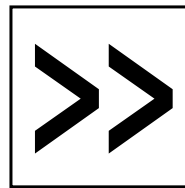
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The ADR Process gives claimants a neutral non-binding evaluation of eligible claims

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- Claimants in the ADR Process do not have to prove liability; only causation and quantum are relevant
- There is no fee to submit a claim to the ADR Process
- If necessary, McCann FitzGerald will collect the claimant's medical records where written authorisation has been provided
- Evaluators are senior counsel or retired Superior Court judges
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Eligible claims

Claimants may avail of the ADR Process if:

- Proceedings have issued
- The index surgery of the ASR product took place in Ireland
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- The claim is not statute barred
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SUPPORTING THE SOLICITORS' BENEVOLENT ASSOCIATION

Friday 27 April 2018
SHELBOURNE HOTEL, DUBLIN.



The Law Society Spring Gala returns in 2018, with a new venue – the historic Shelbourne Hotel in the heart of Dublin. This black-tie dinner is the peak event for members of the profession that raises funds for the Solicitors' Benevolent Association. Guest speaker will be announced soon.

Table dinner package for 12 guests: €2,400. Individual dinner seats: €200 per person.

To book your place, visit www.springgala.ie

Gala profits will be donated to the Solicitors' Benevolent Association – a voluntary charitable organisation assisting members or former members of the solicitors' profession in Ireland and their wives, husbands, widows, widowers, families and immediate dependants who are in need.



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A recent British case represents an interesting development in the area of legal professional privilege, and we could perhaps see a similar interpretation taken here, writes Michelle Lynch

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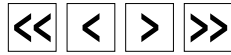
THE BIG PICTURE





THE LAST DA VINCI?

Salvator Mundi, a painting purportedly by Leonardo da Vinci, was sold for \$450.3 million on 15 November 2017, setting a new record for a work of art sold at auction. Some critics have questioned the provenance of the work, marketed as 'the last Da Vinci', saying that, at best, it is most likely the work of "a talented Leonardo pupil active in the 1520s". The painting was sold by the family trust of the Russian billionaire collector Dmitry E Rybolovlev, who purchased it in May 2013 for \$127.5 million through Yves Bouvier, a Swiss art dealer and businessman. Bouvier had bought it just days earlier for \$80 million from Sotheby's. His reselling of the work within days at a mark-up of more than \$40 million prompted a litigious response from both Mr Rybolovlev – and the three art dealers who had sold it to the Swiss dealer



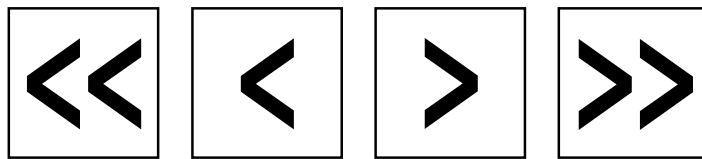
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NEW DIRECTOR OF DECISION SUPPORT SERVICE

The Mental Health Commission has appointed solicitor Áine Flynn as the first director of the new Decision Support Service. The service will be responsible for delivering many of the changes brought about by the *Assisted Decision-Making (Capacity) Act 2015*.

Originally from Co Down, Áine is a graduate of Trinity College and qualified as a solicitor in 1999. She became principal of Terence Lyons and Company



in 2005. She was on the panel of legal representatives of the Mental Health Commission and the Mental Health (Criminal Law) Review Board from their inception, and has also had a particular interest in wardship issues.

Áine is a member of the Law Society's Human Rights Committee. Prior to this appointment, she was a member of the Mental Health and Capacity Task Force.

DOJ SECRETARY GENERAL TO RETIRE

Department of Justice secretary general Noel Waters is to retire in February after 40 years as a senior public servant. Minister Charlie Flanagan was notified of the impending departure of his most senior official in mid November.

The move leaves a top-level vacancy in Justice for the second time in three years. Waters' predecessor Brian Purcell left in October 2014 for a senior role in the HSE, following controversy over the resignation of Garda Commissioner Martin Callinan.

PERIODIC PAYMENTS FOR CATASTROPHIC INJURIES

Justice Minister Charlie Flanagan has pledged that a new amendment to the *Civil Liability Bill* will give financial security to the catastrophically injured.

The *Civil Liability (Amendment) Bill 2017* passed all stages in the Oireachtas on 15 November. The minister described it as an extremely important piece of legislation for those who require lifelong care and assistance.

He thanked the High Court



Working Group on Medical Negligence and Periodic Payments,

which addressed the deficiencies in the lump-sum system, by giving the courts discretion to impose – with or without the consent of parties – periodic payment orders in catastrophic injury cases.

The working group recommended that periodic payment orders should be calculated to meet the cost of permanent and long-term care and treatment, and should be index-linked.

LITIGATION IN THE DATA AGE



Chief Justice Mr Frank Clarke

The Law Society's Intellectual Property and Data Protection Law Committee and Law Society Professional Training will host an International Data Protection Day seminar on 25 January 2018, from 5.30pm to 7.30pm at Blackhall Place. Guest speakers will include Chief Justice Mr Frank Clarke, Helen Dixon (data protection commissioner) and Cian Ferriter SC. The panel discussion will be followed by a drinks reception.

For further information, email lspt@lawsociety.ie.

JUDICIAL STUDIES CONFERENCES

The dates for judicial conferences in 2018 are, as follows:

- *Circuit Court conference*: Friday 20 and Saturday 21 April 2018. No cases should be listed for any Circuit Court on Friday 20 April 2018, save on the instruction of the judiciary.
- *District Court conference*: Friday 23 and Saturday 24 March 2018 (dates to be confirmed). No cases should be listed for any District Court on Friday 23 March 2018, save on the instruction of the judiciary.
- *Supreme Court, Court of App-*



cal and High Court conference: Friday 13 July 2018. No cases should be listed for the Supreme Court, the Court of Appeal or the High Court on Friday 13 July 2018, save on the instruction of the judiciary.

- *National conference 2018*: Friday 16 November 2018. No cases should be listed for any court on Friday 16 November 2018, save on the instruction of the judiciary.

The following national conference dates have been booked provisionally (2019 through 2021):

- Friday 15 November 2019,
- Friday 20 November 2020,
- Friday 19 November 2021 (please note this date was originally given as 21 November 2021).



BREXIT, GROWTH AND THE ECONOMY ARE THE MAIN CHALLENGES FOR 2018

Brexit, growth, and the economy are the main challenges cited in this year's Smith & Williamson survey of Irish firms. The survey of 115 mixed-size legal firms was conducted by Amárach Research during September and October 2017.

In all, 67% of firms recorded revenue growth, with 62% boosting their profits in the last 12 months.

However, the top 20 firms reported a slight decline in profit margins, while regional practices reported growth in profit margins.

Recruiting and retaining staff was said to be an increasing concern, with 67% of top 20 firms identifying it as a key issue. Competition for talent is intensifying in the marketplace.

Salary increases continued to outstrip inflation in the last year, with 63% of all firms (89% of the top 20) reporting pay increases of more than 3%. A total of 40% of all firms (56% of top 20 firms) paid increases of more than 5%.

Most smaller law firms in Ireland have no Brexit strategy in place: 97% of firms outside the top-20 tier had no Brexit strategy despite viewing Brexit as either an opportunity or a threat to their firms.



Paul Wyse (Smith & Williamson managing director) and Justice Minister Charlie Flanagan at the launch of the report

The top 20 firms, however, are showing more preparedness as the sector readies itself for a potential influx of major British law firms. A total of 44% of the top 20 law firms reported an approach by a British law firm in the past 12 months – on a merger, acquisition, or strategic representation arrangement.

Key issues identified for the sector include maintaining profitability, managing cash flow, pressure on fees, the economy, and recruitment and retention of staff.

Commenting on the impact of

Brexit, Smith & Williamson managing director Paul Wyse said that many firms were making lateral hires from other firms, in addition to British firms setting up new operations.

As a result, firms were compelled to introduce innovative reward mechanisms, such as flexible working, unpaid leave, financial rewards, and flexible benefits.

Wyse said: "Younger solicitors are seeking a better work/life balance, and more and more solicitors are moving into in-house and public sector roles. These roles

are generally less pressurised and have shorter hours than most law firms."

Cyber-security has emerged as a major challenge to the sector, with 70% of all firms regarding it as a key issue. Cyber-attacks on the top 20 firms were up 60%, with 61% of such firms reporting incidents during the past year – up from 34% in 2016.

The acceleration of technological advances in the sector – and the potential knock-on disruption to practices, working arrangements and staffing – is now considered a major challenge over the next five years by most firms.

A full 60% of firms have updated or improved their IT infrastructure in the past 12 months, or see it as an immediate priority. Three in four firms are looking at IT to improve the client experience and better manage their workflows.

Only 47% of firms have a positive outlook for the sector in the next 12 months, compared with 52% in 2016 and 74% in 2015. Despite this, 20% of firms believe that Brexit will have a positive impact on their firm – indicative of the many new opportunities that Brexit could throw up.

LLP 'EARLY ROLL-OUT' ENVISAGED

"I will be pressing for the early roll-out of limited liability partnerships," Justice Minister Charlie Flanagan announced in a speech on 16 November. "I am very aware of the incentive to legal business that can be offered by the intervention of limited liability partnerships", he added.

Director general Ken Murphy warmly welcomed the minister's announcement, saying "when

we met with Minister Flanagan in early October, we urged that LLPs be one of his priority areas for commencement. He should request the Legal Services Regulatory Authority to produce the necessary regulations as a matter of urgency. This will bring the law in Ireland into line with jurisdictions all over the world and has been accurately described as 'a game-changer', as the

minister has acknowledged."

The Law Society made its first submission to Government seeking this modernising measure as far back as 2001. "Accordingly, we are anxious that LLPs be made available as an option for Irish solicitors' firms without further delay," Murphy insisted.

Sections 122 to 132 of the *Legal Services Regulation Act 2015* make detailed provision

for the introduction of LLPs. All that is required are regulations from the authority, which should be relatively straightforward. Indeed, a Society working group has drafted such regulations to be of assistance to the authority. An informative article on LLPs by the chair of the Society's LSRA Task Force, Paul Keane, is at pp44-47 of last month's *Gazette*.



NEW PRESIDENT SETS SIGHTS ON REGULATORY AND BREXIT CHALLENGES

Michael Quinlan has said it a great honour and a personal privilege to take office as the 147th president of the Law Society, continuing a 176-year tradition since the election of the first president, Josias Dunn, in 1841.

The election was finalised at the 3 November 2017 Law Society Council meeting.

“To be leading a profession of over 10,000 practising solicitors is a personal privilege; however, this is also time of great challenge as well,” Mr Quinlan said.

“When I qualified in 1981, there were about 1,800 solicitors on the Roll, and slightly over half of them were practising at the time. The past 36 years have seen dramatic change in Ireland, and particularly within the profession.”

In his comments to Council, Quinlan signalled his key challenges for the year ahead, which include the impact of Brexit on the legal profession, the move to a fully operational Legal Services Regulatory Authority, and ongoing resourcing and funding challenges at the Probate Office.

He has highlighted technological disruption in the legal sector as a policy priority, as well as the restoration of cuts to criminal legal-aid payments.

The two-speed business environment, post-recession, between urban and rural practice is also a concern for the incoming president, as well as the increas-



PC: LSENSMEN

The Law Society's new president for 2017/18, Michael Quinlan (centre), with senior vice-president Patrick Dorgan and junior vice-president Michelle Ni Longáin

ing need for legal professionals at all levels to focus on a healthy work/life balance.

“The solicitors’ profession is one that is focused on fighting for the legal rights of clients and law reform in the public interest. I congratulate outgoing president Stuart Gilhooly on his sterling work over the last 12 months. He has certainly left a legacy of which he can be proud.”

Mr Quinlan – managing partner at Dixon Quinlan Solicitors, Dublin – follows in the footsteps of his mother Moya, who was the first woman president of the Law Society in 1980/81.

A native of Dublin, he has been in practice for over 30 years. Admitted to the Roll in 1981, Michael trained as a solicitor in the family business. His son Michael is now the fifth generation in the firm.

He has been a member of Council for over ten years and chaired the Regulation of Practice and Professional Indemnity Insurance Committees. He was also the chair of the Law Society’s task force on the *Legal Services Regulation Bill*. He is a past-president of the Dublin Solicitors’ Bar Association and is an avid golfer.

During his term, he will take over the president’s dedicated Twitter account, @LSIpresident. Look out for regular updates on news and developments of interest to the legal profession.

COUNCIL ELECTION 2017 RESULTS

The results of the Law Society’s annual election to the Council (November 2017) declared the following candidates elected. The number of votes received by each candidate appears after their names.

Paul Egan (1,568), Michele O’Boyle (1,467), Valerie Peart (1,446), Morette Kinsella (1,427), Paul Keane (1,416), Keith Walsh (1,384), James Cahill (1,365), Brendan V Cunningham (1,332), Richard Hammond (1,328), Stuart Gilhooly (1,302), Liam Kennedy (1,276), Justine Carty (1,209), Thomas J Reilly (1,140), Martin

Lawlor (1,137), Sonia McEntee (1,103) and Catherine Tarrant (1,075).

PROVINCIAL DELEGATES

As there was only one candidate nominated for each of the two relevant provinces (Connaught and Munster), there was no election. The candidate nominated in each instance was returned unopposed: David Higgins (Connaught); Shane F McCarthy (Munster).

The outcome of the Ulster provincial election (which takes place at its AGM on 29 November) is awaited.

GARDA INSPECTORATE APPOINTMENTS

Justice Minister Charlie Flanagan has appointed a former member of the Garda Síochána Inspectorate as its new chief inspector.

Mark Toland took up the posi-

tion on 6 November. He has over 30 years of policing experience with the British Metropolitan Police Service and he served on the Garda Inspectorate from 2012 to

2016. Mr Toland was appointed to the Garda Síochána Ombudsman Commission (GSOC) in December 2016. He has tendered his resignation from GSOC

in accordance with provisions of the *Garda Síochána Act 2005*.

The Government has also appointed Hugh Hume, a member of the PSNI, to the inspectorate.



LAW SOCIETY TO PARTNER WITH PRA TO COMBAT PROPERTY FRAUD

The Law Society has recently agreed to partner with the Property Registration Authority (PRA) on a proactive initiative relating to property fraud – a growing threat that has been documented in Britain. While no evidence of this type of crime has been detected in Ireland to date, there have been a large number of cases documented in England, Wales and, most recently, Scotland.

Given the high risk of this type of crime migrating to Ireland, the Law Society and the PRA will work together to monitor the situation. However, solicitors can help and should be aware of the signs of a possible crime.

The most common type of property fraud is where criminals attempt to ‘steal’ property from its owner by selling or mortgaging it and absconding with the proceeds.

While anyone can be the victim of fraud, there are certain categories of people and property more vulnerable than others. In the majority of instances, property fraud is coupled with identity theft, with ‘vulnerable’ properties being targeted by the criminals.

A property could be considered ‘vulnerable’ if it is either:

- Not registered in the Property Registration Authority,
- Not mortgaged,
- Vacant,
- Rented, or
- The owner lives abroad.

Property fraud red flags

Sophisticated frauds can be difficult to spot, but solicitors are sometimes presented with opportunities to thwart fraudsters by being alert to warning signs and taking the following steps.

Ensure the identity of the client – extra care and due diligence



are particularly needed when the property is in one of the categories identified as being vulnerable. A face-to-face meeting with the client is recommended, as set out in the Law Society’s *Guidance Notes for Solicitors on Anti-Money-Laundering Obligations*, to compare the individual to the photograph on the passport (the guidance notes can be found in the anti-money-laundering sec-

tion of the Law Society’s website). In the normal course of business, the client would present himself/herself to the solicitor and establish his or her true identity pursuant to the already existing anti-money-laundering requirements. Therefore, particular caution must apply where the new client resides abroad.

It should be noted that the existence of a passport, while helpful, is not a guarantee of authenticity, as the passport itself may have been obtained fraudulently. Also, establish that the owner definitely wants to sell, particularly when the day-to-day liaison is to be with a third party.

In addition to the usual ‘know your client’ procedures, if you are concerned about property fraud, consider looking at any relevant information carefully in the context of surrounding circumstances. For example, check that the age of a client selling a property

is consistent with the date shown for the registration of the property in the seller’s name.

Be aware of pressure being applied to close a sale quickly – this can be an indicator of fraud and is a money-laundering red flag.

Be aware of any last-minute changes to the sale price or when the deal changes without good reason; this is also a money-laundering red flag.

If you are concerned, consider checking whether the seller’s signature on the sale/mortgage documents is consistent with their signature on an earlier deed.

Always act in accordance with your statutory obligations, as set out in the *Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 and 2013* and the *Solicitors (Money Laundering and Terrorist Financing) Regulations 2016*, and follow the guidance notes referred to above.

If you are suspicious, consider whether your statutory obligation to make a report about money laundering arises. Guidance about the reporting obligation and the risk of committing the offence of prejudicing an investigation is available in chapter 8 of the guidance notes. Solicitors can access garda information about the new reporting process in the [news section](#) of the Law Society’s website.

Solicitors should not forget the risk of unwittingly committing the substantive offence of money laundering by proceeding with transactions about which they might be suspicious.

Fraudulent activity may be on the increase, but by being aware of red flags and taking sensible precautions, both solicitors and owners can help reduce the risk substantially.

EXAMPLES OF PROPERTY FRAUD

A property is genuinely let by a landlord through a letting agent. A ‘tenant’, who appears legitimate but is using a fake identity, is obtained and pays the first month’s rent. The tenant/criminal then assumes/steals the identity of the landlord (often by changing their name by deed poll to that of the landlord) and sells the property to a cash buyer. It is not until the landlord is no longer receiving rent that they become aware of any issue, and when they visit the property they find different people living there claiming to have bought the property.

A vacant property is identified. (In many of these cases, the owners lived abroad or were in a nursing home or hospital.) The criminals erect a fake auctioneer’s board in the front garden. The criminals return after a couple of weeks and, if the board is still in place, they conclude that nobody is keeping an eye on the property. They will then assume the identity of the owners and attempt to fraudulently sell the property. Alternatively, the criminals may obtain a mortgage on the property on the pretence of repairing/improving it and abscond with the loan proceeds.



NEW JUDICIAL APPOINTMENTS

One of three current Supreme Court vacancies is to be filled by Ms Justice Mary Finlay Geoghegan, who will in turn be replaced in the Court of Appeal by Mr Justice Paul Gilligan.

Senior counsel David Barniville has also been appointed to the High Court to fill the vacancy arising from the retirement of Ms Justice Margaret Heneghan in October. The Government has nominated Michael MacGrath SC to the High Court to replace Mr Justice Henry Abbott, who retires on 18 December.

Ms Justice Mary Finlay Geoghegan was educated at UCD, the College of Europe (Bruges), and the Law Society. She



Ms Justice Mary Finlay Geoghegan

was admitted to the Roll of Solicitors in 1973 and called to the Bar in 1980. Following a call to the Inner Bar in 1988, she was appointed to the High Court in 2002

and to the Court of Appeal following its establishment in 2014.

Mr Justice Paul Gilligan was educated at UCD and the King's Inns. He was called to the Bar in

1971 and to the Inner Bar in 1984. He was appointed to the High Court in 2003.

Mr David Barniville SC attended UCD and the King's Inns and was called to the Inner Bar in 2006. He is an accredited mediator and practises primarily in commercial law. He is a Bar nominee to the Legal Services Regulatory Authority and adjunct professor of commercial law at the University of Limerick.

Michael MacGrath SC was educated at UCD and the King's Inns and was called to the Inner Bar in 2000. He practises mainly in civil and commercial law. He has been an external examiner in the law of tort at King's Inns since 2009.

MENTORING PROGRAMME PROMOTES EQUALITY

December 2017 marks the conclusion of the second year of 'Law and women: promoting equality' – the mentoring programme that has been spearheaded by Mary Rose Gearty SC and Maura Butler of the Irish Women Lawyers' Association (IWLA). The programme is jointly coordinated by the Bar and the Law Society.

Having completed the mandatory training for mentors and mentees in January 2017, a total of 24 mentoring pairs were coupled through a careful selection and pairing process. The priority was to promote equality through mutual support, confidentiality, and collegiality. Mentoring conversations followed, with a mutual commitment of one hour per month during the course of the year.

Pilot programme

The project was first conceived when a senior barrister in Belfast mentioned to Mary Rose Gearty in 2015 that she was being mentored. At the same time, David

Barniville SC (then chair of the Bar of Ireland) was in correspondence with Maura Butler (then chair of IWLA) about what the two professions could do to promote equality in the legal profession.

As a result, Helen Stanton, an executive coach and mentor who had designed a series of successful mentoring schemes for women in large corporations, became consultant to a committee representing the Bar and the solicitors' profession. The purpose was to consider how best to implement a similar mentoring project for female legal professionals in the south.

Under Helen's direction and training, a structured pilot programme called 'Law and women: promoting equality' was established. In December 2016, following testimonial feedback and careful evaluation, a 92% satisfaction rating showed that the pilot programme had been a resounding success.

A call for participants in early 2017, in addition to an increase in

funding resources and administrative support, enabled a doubling in participant numbers.

The mandatory group training and briefing for mentors and mentees covered:

- The fundamental guiding principles, contracting documentation, and timetable of the 2017 programme,
- How to obtain best use and value from the initiative, from the perspectives of mentees and mentors, and
- Participants' questions or concerns in order to enable them to gain full value and benefit from the programme.

Early feedback and outcomes

Most interesting from the initial feedback was the mutual value and learning experienced by mentors and mentees. Mentors expressed how useful it felt to:

- Be supportive, through actively sharing experiences and insights, acknowledging vulnerabilities and making

practical suggestions,

- Have the opportunity to stay in touch, to be encouraging about the realities of navigating the labyrinth of the many roles that women have to successfully accommodate in modern professional legal practice,
- Experience the mentoring relationship as a developmental opportunity for themselves.

For mentees, highlights included:

- The human experience of being encouraged, reinforced and challenged in a trusted, safe space,
- The opportunity to achieve clarity and confidence, and
- The practical prompts and clear direction that an objective eye and ear were able to give.

The programme will be evaluated more formally early in 2018. Applications for the 2018 programme will open in January, with details to be published in the *eZine* and the January/February *Gazette*.



MEMBER SERVICES

FINANCE SCHEME 2017/18

This is an expensive time of the year in any law firm. For those who wish to spread the cost of their professional indemnity insurance and practising certificates over the year, the Law Society has again partnered with Bank of Ireland to offer firms short-term finance at a reduced preferential rate.

This offer is available from Bank of Ireland for terms up to 11 months for firms that have a proven track record and meet normal lending criteria. The scheme has a highly competitive variable rate.

Bank of Ireland also has a range of long-term finance options to meet your needs.

Contact Bank of Ireland's local business team to discuss your financial needs and to hear about the solutions it offers.

You can apply online for a loan on Bank of Ireland's website. You can also contact the dedicated phone line at tel: 1890 365 222 or email: businesslending@boi.com.

Yvonne Burke of the Law Society is happy to help with any queries you may have about this scheme. She can be contacted at tel: 01 672 4901 or email: y.burke@lawsociety.ie.

Warning: the cost of your repayments may increase. Bank of Ireland is regulated by the Central Bank of Ireland.



REPAYMENTS VARY, FOR EXAMPLE:

Loan amount	Interest rate	Term in months	Monthly repayments	Total cost of credit
€	%		€	€
5,000	5.76	11	467.68	144.48
10,000	5.76	11	935.36	288.96
15,000	5.76	11	1,403.03	433.33
20,000	5.76	11	1,870.71	577.81

Variable rates quoted are correct as of 10 October 2017 and are subject to change.

A VITAL SERVICE FOR SOLICITORS IN NEED

The Solicitors' Benevolent Association (SBA) provides a vital service for solicitors in need and their families. In 2016, it paid out over €650,000 in grants and is currently supporting 78 families around the country.

A voluntary charitable body, the SBA consists of all members of the Law Society of Ireland and the Law Society of Northern Ireland, although it is independent of both organisations. It is also completely confidential.

As well as providing financial support, the SBA also has access to the services of a part-

time social worker who can advise on State entitlements.

While the SBA receives support from a number of organisations, it relies on members' subscriptions, donations and legacies to carry out its work – now more than ever.

Donations to the SBA are gratefully received at any time of year, but solicitors can also donate by ticking the relevant box when applying for their practising certificates in January.

See www.solicitorsbenevolentassociation.com or call Geraldine Pearse (secretary) at tel: 01 283 9528.

CLUSTER TOURS PROVE A MAJOR SUCCESS IN 2017

From the Queen's County to the Marble City, Law Society Skillnet has toured the country bringing CPD training to our members, in collaboration with regional bar associations throughout the country.

Last May, the first of ten Skillnet Clusters took place in Laois. This was also the first time we partnered with the Laois Solicitors' Association and the Carlow, Midlands and Kildare bar associations.

Next up was Leitrim, followed by Limerick, Donegal, Kerry, Mayo, Monaghan, and Dublin, culminating in Kilkenny for our final Skillnet Cluster of 2017.

Participants were updated on a wide range of topics, including anti-money-laundering, family and child law, company law, legal costs, civil litigation, conveyancing, wills and probate, defamation, cybersecurity and the General Data Protection Regulation.

The minimum number of CPD hours for any event was six – with a number of our two-day events offering up to ten hours. Numbers in all regions either matched or exceeded previous years, so the forecast for 2018 looks promising.

None of this would have been possible without the assistance of bar associations throughout Ireland, who continue to work closely with the Law Society in bringing education and training to members.

Thanks go to the many speakers who gave up their time and expertise so willingly throughout the Skillnet Cluster season.

Law Society Skillnet will be setting up meetings with the bar associations in January/February to plan for 2018.

For details of new Skillnet programmes, visit www.lawsociety.ie/skillnetcluster or contact the team at skillnetcluster@lawsociety.ie.



€7,000 RAISED FOR SPINAL INJURIES



Doireann O'Mahony hands over a cheque for €7,000 to Fiona Bolger (CEO of Spinal Injuries Ireland)

A CPD event to raise awareness about a rare but devastating spinal injury, **cauda equina syndrome (CES)**, has raised over €7,000 for Spinal Injuries Ireland. The event, held on 8 November at the Bar of Ireland's Distillery Building, was organised by barrister Doireann O'Mahony. Over 80 participants attended. There is currently no dedicated charity or support network for sufferers of CES in Ireland, and little awareness about the condition. From a medico-

legal perspective, the cause is spontaneous onset due to disc prolapse in otherwise previously healthy patients.

CES is regarded as a clinical emergency. Late diagnosis resulting in delays in surgical decompression can lead to diminished outcomes for patients. They may be left with permanent and devastating disability, including bowel and bladder incontinence, sexual dysfunction, extreme pain, and loss of mobility.

FIERCE COMMITMENT GETS FENCING CHAMPION TO THE TOP

Law Society tech support guru Michalis Kirimlidis has been named Ireland's top-ranked fencer. Michalis (31) has been a committed fencer since he joined the UCC Fencing Society 13 years ago. At that club, the Waterford-born Commerce and Italian undergraduate ignited his passion for the sport and found a long-term group of friends.

He describes the sport as a mixture of base-level skills of technique, timing, hand-eye coordination, foot speed and balance.

Layered on top is mental strength and the ability to outsmart an opponent. Michalis specialises in sabre fencing, which requires different techniques to the foil or épée style.

"Fencing is a lot like chess," he says, with mental agility a key skill. And it requires huge commitment, with two-to-three-hour training sessions five times a week and rigorous attention to diet and lifestyle. Gym workouts are essential to build up power, stability, leg strength, and speed.

MARKETING YOUR FIRM JUST KEEP IN TOUCH

The most valuable asset in your business is your list: your list of current and past clients and of prospective future clients. The first marketing job you must do, if you haven't already done so, is to get this list into a format you can use. The format is not something to get hung up on – the important thing is to start. It's just a simple list of names and addresses of people who you can communicate with.

The traditional wisdom is that, if we do a good job for people and provide a great service, they will go away satisfied customers, will come back when they need us again, and will recommend us to their family and friends.

Perhaps. But not necessarily. There are many reasons why people might not return or recommend us to others, but the simplest one is the most often overlooked: they forget about us!

So, even if the salty tears of gratitude were warm on their cheeks when you concluded an excellent job for them, they quickly forget. They forget about the details of the service that they received, and they forget about you.

Unless you do something about that – by keeping former and existing clients on your list and then communicating with them regularly in a way that is useful and interesting to them.

Whether they will come back to you and recommend



family members and friends to do likewise is one question; the only thing we can know for sure is they can't possibly do so if they don't remember who you were in first place.

That's why you've got to keep in regular contact with those on your list.

I described this list at the start as 'a simple list of name and addresses'. I did not refer to email addresses, which was quite deliberate. Physical communication with your list, sent through the post, is by far the most effective. There is a tendency nowadays to think only of email, as it is easy and cheap. But our inboxes are already full. None of us needs more email.

Yes, email is a very useful marketing tool but, when it comes to regular contact with your list, then printed media, physically delivered through the letterbox, is far more powerful and effective.

And that is where you should start.

Flor McCarthy is the author of the Solicitor's Guide to Marketing and Growing a Business.



SYS ANNUAL CONFERENCE IS STELLAR!

The Society of Young Solicitors (SYS) annual conference took place from 10-12 November at Mount Wolseley, Tullow, Co Carlow, and was attended by over 220 young solicitors from around the country.

The theme was human rights, and the session was chaired by director general Ken Murphy. The panel included Gareth Noble (partner, KOD Lyons), Mary Condell (legal advisor to SAGE and member of the Law Society's Task Force on Mental Capacity), Micheál Murphy BL, and Hannah Cahill BL.

The proceeds from the event, which included a gala dinner on Saturday, were donated to Down Syndrome Ireland, SYS's



At the SYS Annual Conference were (l to r): Gareth Noble (KOD Lyons), Micheál Murphy BL, Lucy O'Neill (Mason Hayes & Curran), vice-chair Eimear Bell (A&L Goodbody), chair Máire Neary (Arthur Cox), Ken Murphy (director general), secretary Ann Kinwan (Eversheds-Sutherland), Clodagh Butler (Matheson), Alex Kennedy (Dillon Eustace) and Hannah Cooney (William Fry)

chosen charity for 2017.

To see pictures from the conference, visit www.sys.ie. You can

follow them on Twitter (@SYS Ireland), or find them on Facebook and LinkedIn.

The 2018 conference will take place in Athlone from 9-11 November.

LADY GOLFERS HIT THE SWEET SPOT IN 2017

The Lady Solicitors' Golf Society (LSGS) has enjoyed a very successful year in 2017.

Spring outing (Patrick O'Connor Trophy) – Killeen Golf Club (7 April)

Winner: Mary Gleeson; *runner-up:* Elaine Anthony; *gross:* Mary Molloy; *third:* Maeve Carroll; *fourth:* Kelly O'Hara; *fifth:* Muriel Walls; *front nine:* Jo Noonan; *back nine:* Irene Fenelon; *longest drive:* Mary Molloy; *nearest the pin:* Joan O'Mahony; *visitors' prize:* Naoimh O'Dwyer.

Autumn outing (Moya Quinlan Trophy/Sheila O'Gorman Trophy) – Glasson Golf and Country Club (8 September)

Winner, Moya Quinlan Trophy: Orla Barry; *winner, Sheila O'Gorman Trophy:* Rhona Kelly; *front nine:* Maeve Carroll; *runner-up:* Elaine Anthony; *gross:* Emer Foley; *winner of '12 hole' competition:* Mary Fenelon; *third:*



Orla Barry (right), winner of the autumn outing in Glasson, receiving her prize from captain Deirdre Gearty

Patricia Kelly; *visitors' prize:* Irene Fenelon; *front nine:* Maeve Carroll; *back nine:* Mary Mylotte.

The annual mixed foursomes match against the Bar took place in Luttrellstown in July, where the Bar proved victorious by 5½ to 4½.

The Bar: Stephen Sperin, Mo Flahive, John Gallagher, Jacqueline FitzGerald, Anthony Slevin, Charlotte Finnegan, Reg Jackson, Melanie Greally, Tony Hunt, Anne Kelly, Ciaran Mandel,



Winners of the Oonagh Sheridan Memorial Trophy 2017, Patricia Kelly and David Dillon, receiving their prize from captain Deirdre Gearty

Mary Finlay Geoghegan, Sean O'Sullivan, Treasa Kelly, Hugh O'Flaherty, Adrienne Egan, Niall O'Driscoll, Rebecca Lacy, Liam Reidy, Lorraine Higgins.

Solicitors: Don McAleese, Mary Molloy, Cairbre Finan, Emer FitzHenry, Michael Quinlan, Elaine Anthony, Danny Morrissey, Mary Dillon, Henry Lappin, Mary Gleeson, John Lynch, Joan O'Mahony, Martin Kennedy, Michelle Linnane, Oliver Shanley, Muriel Walls, Richard

Bennett, Christine Scott, Eoghan McKenna, Emer Foley.

In October, the Oonagh Sheridan Memorial Trophy (mixed foursomes) competition was played at Foxrock Golf Club. *Winners:* David Dillon and Patricia Kenny; *runners-up:* Michael Quinn and Maeve O'Reilly.

To encourage more golfers and some of our younger colleagues, a nine-hole evening competition and barbecue was arranged at Luttrellstown in August. Unfortunately, the weather failed to oblige, so the competition had to be called off. It is hoped, however, to reschedule the event for next spring.

The incoming captain for 2018 is Mary Casey. We wish her every success for the year ahead.

Details of the 2018 outings will be available in the new year but, in the meantime, enquiries can be directed to outgoing captain Deirdre Gearty at: deirdrelsgs17@gmail.com.



CHARITY HAUL FROM RUCKS AND MAULS

The inaugural charity rugby match between teams representing the Law Society and the Oireachtas saw the solicitors edge out the politicians in a pulsating 5-0 contest, writes *Mary Hallissey*.

The fixture, at Old Wesley's Donnybrook stadium on 18 November, raised over €2,000 for the Rugby Players Ireland injured player fund.

Emma Richmond (Whitney Moore litigation solicitor) and her brother Fine Gael Senator Neale Richmond organised the contest.

Solicitor Michael Carney (Whitney Moore) captained the Law Society first XV. Senator Neale Richmond led a political team that saw Ministers Eoghan Murphy and Damien English partner in the centre, while Senator Mark Daly and Alan Farrell TD lined out in the forwards. The Oireachtas team was coached by Senator Catherine Noone.

Former Ireland international Isaac Boss toggged out as a guest for the Law Society, combining well with former Leinster teammate Simon Keogh at half-back. A nasty Achilles injury saw Piaras



ALL PICS: THOMAS O'BRIEN

Michael Carney (partner at Whitney Moore) with George Balfe (son of Whitney Moore partner Cillian Balfe), followed on to the pitch by Isaac Boss and Simon Keogh for the Law Society

Power leave the field early, but strong running from David Henshaw and Robert Carroll finally wore down the political defence, as Mark Heslin crashed over for the game's only try just before half-time.

A few tactical changes from coach Barry Crushell at the break allowed the Law Society the upper hand, with referee Declan O'Sullivan keeping both teams honest.

The clock ran out as the Law Society pounded the Dáil and Seanad

line – the narrow win was deemed a fair result.

At the post-game meal, former minister and now senator Michael McDowell presented the match trophy to Law Society captain Michael Carney.





LAWCARE CELEBRATES IN STYLE

LawCare's 20th anniversary celebration and conference, 'Making mental health matter', took place in London on 10 October. It brought together over 70 attendees from across the legal community and jurisdictions.

The half-day event provided an opportunity to stimulate thinking about mental-health matters in the legal community, and was followed by a party and short speech from vice-chair Robert Venables.

Mr Venables outlined the history of LawCare, which has moved from being a charity with the limited remit of supporting solicitors with addiction and related problems, to one that offers help to the legal profession throughout Ireland and Britain on a wide range of issues encompassing stress, depression, anxiety, and bullying at work, among others.

One of the most engaging discussions was the panel session hosted by Eduardo Reyes (features editor of the *Law Society Gazette* in England and Wales). Eduardo drew out the organisational approaches to mental health from Nigel Jones (chair of City Mental Health Alliance and a partner in Linklaters), Bryan Scant (Junior Lawyers' Division, Law Society of England and Wales), Kirsty Hood (Scottish Faculty of Advocates), and



Celebrating LawCare's 20th birthday were Valerie Peart, Antoinette Moriarty, Louise Campbell (all Law Society) and Mary Jackson (LawCare coordinator for Ireland)

Antoinette Moriarty (Law School of Ireland Counselling Service).

Antoinette's contribution inspired many questions from the floor and prompted discussion about how to encourage those starting out on their legal careers to seek support when they need it.

'Making mental health matter' also welcomed Valerie Peart and Louise Campbell from the Law Society of Ireland (who are LawCare trustees), as well as Attracta Wilson from Northern Ireland (also a LawCare trustee).

CEO of LawCare, Elizabeth Rimmer, said: "We're inspired by the participants' motivation to continue to raise awareness about why mental health matters in the legal community, to promote the benefits of good mental health in the workplace, and to ensure that those in need of help and support know how and where to find it."

RENDEZVOUS WITH RONALDO



While holidaying in Lisbon, Portugal, last October, Hilary Forde (*Gazette* Editorial Board) and her baby daughter Jessica (then 14 weeks) had a chance meeting with Real Madrid and Portuguese soccer star Cristiano Ronaldo at their hotel. The Portuguese player and national team had assembled in Lisbon before playing away to Andorra in the European qualifiers for the World Cup on 7 October. Portugal won 0-2, with Ronaldo scoring in the 63rd minute and André Silva in the 86th. (From l to r): Nicky Gethin Taggart (Dublin), baby Sienna, Cristiano Ronaldo, Jessica McNally and Hilary Forde

LawCare

Supporting the Legal Community

Call 1800 991 801
or go to www.lawcare.ie



CHIEF JUSTICE IS GUEST OF HONOUR AT BLACKHALL PLACE



PIC: LENS MEN

At a dinner in honour of Chief Justice Frank Clarke at the Law Society on 26 October were (front, l to r): Mr Justice Raymond Groarke (President of the Circuit Court), Mr Justice Seán Ryan (President of the Court of Appeal), Mr Justice Frank Clarke, Law Society President Stuart Gilhooly, Mr Justice Peter Kelly (President of the High Court), and Judge Rosemary Horgan (President of the District Court); (back, l to r): Ken Murphy (director general), Michele O’Boyle (Coordination Committee), James Cahill (junior vice-president), Patrick Dorgan (Coordination Committee), Mary Keane (deputy director general), Judge John O’Connor (District Court), Judge Eoin Garavan (Circuit Court), and Keith Walsh (Council member). This was the first time that the Law Society (and perhaps any organisation) was honoured by the presence of not only the Chief Justice, but the Presidents of the Court of Appeal, the High Court, the Circuit Court, and the District Court

TOUCHING BASE IN TIPPERARY



Then Law Society president Stuart Gilhooly, director general Ken Murphy and then senior vice-president Michael Quinlan travelled to Tipperary on 29 September 2017 to meet with members of the Tipperary Solicitors’ Bar Association (TSBA). The president and director general addressed the meeting and discussed a number of important topics, including an update on the *Legal Services Regulation Act* and the recent decision in *Sheehan v Corr*. The Law Society representatives mingled with TSBA members during the wine-and-canapé reception that followed, which was kindly hosted by bar association president Dermot O’Dwyer



CHANGING OF THE GUARD



At the recent AGM of the Southern Law Association were (front, l to r): Patrick Dorgan (senior vice-president, Law Society), Gerald O'Flynn, Catherine O'Callaghan (secretary, SLA), Terence O'Sullivan (outgoing president, SLA), Joan Byrne (incoming president, SLA), Michael Quinlan (president, Law Society), Ken Murphy (director general) and Emma Meagher Neville; (back, l to r): Barry MacCarthy, Brendan Cunningham, Peter Groarke, Dermot Kelly, Robert Baker, Juli Rea, John Fuller, Sean Durcan, Jonathan Lynam, Don Murphy, Kieran Moran and Simon Murphy (past-president, Law Society)



Outgoing SLA president Terry O'Sullivan (left) congratulates incoming president Joan Byrne and incoming vice-president Richard Hammond



Incoming SLA president Joan Byrne with secretary Catherine O'Callaghan



THOMAS D SHAW 1937 – 2017

A colossus of the solicitors' profession is a most apt description of Tom Shaw. He was universally respected and a consummate professional who truly related to his clients and colleagues. This was due to his humanity, courteousness, compassion, respect, integrity, genuine interest and concern for people, and his extraordinary common sense.

Tom was educated at Clongowes Wood College, University College Dublin, and the Law Society of Ireland.

Following qualification in 1959, he joined the family firm JA Shaw & Co, where he spent his entire legal career. Many times I asked him when he was going to retire, and he always responded: "What else would I do? I enjoy it."

The firm celebrated 100 years in 1998, and Tom was still practising right up to his sudden death at the end of August.

Tom believed wholeheartedly in contributing to his profession. He acted as secretary for many years, and later president, of the Midland Bar Association. He served as secretary to the Provincial Solicitors' Association, which, in its time, was an important bulwark in maintaining the balance between city and country on the Law Society Council. He was elected to the Council regularly, chaired many of its committees, and followed in the footsteps of his own father Dermot (1955/56) in becoming president in 1987/88.

Reading his President's Messages in the *Gazette*, a constant theme was the need for the profession to accept the challenge to change in a changing world, and that "our task as solicitors is to provide the public with legal services at a pace, cost, and standard acceptable to them, while at the same time preserving our highest principles in the provision of those services".

He topped the poll in the election to the Council at the end of his term in office. He continued to have an active interest in the Law Society and the profession, and was so proud and supportive when his son John became the third generation Shaw to become president of the Law Society in 2008/09.

Following his presidency, he was the Law Society's nominee on the first Judicial Appointments Advisory Board (1996/99), and acted as chairman (2000-2005) of the Solicitors' Disciplinary Tribunal. He served on the board of the Solicitors' Mutual Defence Fund from its foundation, having been staunchly supportive of its formation. His contribution was immense. His views were sound, considered, and grounded in common sense. He also acted as a panel solicitor for the



SMDF, and his commitment to those colleagues whom he represented was legendary. I recall him telling me that he tried as often as possible to meet those colleagues in their offices so that he could understand more fully the environment in which they operated and the difficulties they faced. Many have testified to the burden that was lifted from their shoulders when he came on board.


While Tom always worked extremely hard, he also enjoyed sport – and in particular the outings to Lansdowne Road and in later years to Croke Park with his children and grandchildren. His main sport was golf, at which he excelled. He played off scratch at one point and low single figures for the vast majority of his six-plus decades of playing the game. As he did in his profession, he gave much back to golf.

He was a lifelong member of Mullingar Golf Club, captain in 1969, president, and then trustee, before being awarded honorary life membership.

He served as captain of the Irish Solicitors' Golf Society in 1972. People enjoyed being paired with him, as the likelihood of success increased, and he was great company during and after the match. He was also a member of Portmarnock Golf Club and, for many years, he travelled to the Open with his great pal, the late Ernie Margetson. While he was not able to play as well as he would have liked in recent years, he enjoyed his final nine holes with his son in his beloved Mullingar club only a couple of weeks before he died.

Tom was a great contributor to his local community in Mullingar in many ways, including serving on several boards and charities. He was a man of deep personal faith who had a particular interest and active involvement in his parish and the wider diocese and, not unsurprisingly, was a trusted adviser to many of the local clergy over long years – a fact that was very evident at his funeral.

Notwithstanding his love of work and involvement in his community, he was a family man at heart. He was devoted to his wife Yvonne, his children John, Tom, Sandra, Anne, Yvonne ('Freddie'), and Jillian, and his 12 grandchildren. Their loss will be enormous.

For myself, I will miss his friendship and guidance. The profession as a whole has lost a mentor, a father figure, and the 'go-to-man' for many. He was available for everyone. He was never abrupt or dismissive. He always listened with consideration and respect. If colleagues follow his example, his legacy will live on. 



THE BRITISH QUESTION: AN IRISH PROBLEM

The decision to leave the EU – the world’s most integrated trading block – in order to become a ‘global Britain’ won’t cause famine, but it may damage Ireland like nowhere else, argues **Philip Andrews**

PHILIP ANDREWS IS HEAD OF THE EU AND COMPETITION LAW GROUP AT [MCCANN FITZGERALD](#)

English trade policies, from mercantilism to liberalism, fostered an empire and once made the country the world’s foremost trading nation. But they never did much for Ireland.

Recall that the Great Famine – *An Gorta Mór* – coincided with Westminster’s shift from protectionist to free-trade policies and, some say, was part-caused by English trade rules.

According to the 16 August position paper, *Northern Ireland and Ireland*, Britain’s high-level objectives are “avoiding a hard border, maintaining the existing Common Travel Area and associated arrangements; and upholding the [*Good Friday*] Agreement”.

As Gandhi said of the English, however, action expresses priorities. Whatever about the position paper, British decisions to leave the single market and the customs union and take back trade policy are what matter.

These decisions make frictionless trade deals, if Britain wants to strike trade deals, it needs to have something to trade: tariffs or regulation, or ideally both. The hard truth is that, because of these decisions, border checks will be needed.

What might this mean for Ireland?

Will there be gridlock?

A total of 90% of Irish trade worldwide – not just with the EU – ships through England

and Wales (by volume). This is not only road and ferry freight. Heathrow is a critical international hub for Irish air freight.

Not counting the northern corridor (which goes through Northern Ireland), the vast majority of this trade is via three British ports: Heysham, Liverpool and Holyhead. It includes over €60 billion annual exports of high-value chemical and pharma products – Ireland’s primary export.

Without agreements on security, transit, haulage, drivers, and VAT administration, expect disruption to Irish supply chains. One hyperbolic prediction by the British Retail Consortium suggests likely custom delays of two to three days.

Technology can help. But it can’t solve challenges of this scale. Red tape at British ports could snarl Irish trade routes.

Will we have food?

Some say that the withdrawal of Britain and Northern Ireland poses a real risk to the cost, availability, and quality of British food supplies, 79% of which come from the EU. In food-policy terms, Tim Lang (professor of food policy at City University London)

TECHNOLOGY CAN HELP. BUT IT CAN’T SOLVE CHALLENGES OF THIS SCALE. RED TAPE AT BRITISH PORTS COULD SNARL IRISH TRADE ROUTES



PIC: SHUTTERSTOCK/NUALA REDMOND



UNLESS IT ESTABLISHES IN IRELAND (OR OTHER MEMBER STATE), AND SUBMITS TO IRISH BROADCAST REGULATION, SKY SATELLITE BROADCASTS INTO THE COUNTRY COULD END

likens it to repeal of the *Corn Laws* in 1846. One forecast suggests food price rises of 20% or, worse, empty supermarket shelves.

Nearly all of Ireland's food and drink imports comes via Britain (we import around 50% of what we eat). In the natural order of things, British food shortages, if they do arise, might have knock-on effects here, as might price rises – what happens up-river generally washes down.

Will we have electricity?

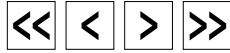
A January 2017 report from the Oxford Institute for Energy Studies claimed Ireland would be 97% dependent on foreign gas after Brexit, making it “impossible for Ireland alone to mitigate a serious gas-supply disruption”.

Irish electricity generation is reliant on supplies of natural gas, with over 40% produced this way. While Corrib enhanced our security of supply in the short term, Ireland will again

be largely dependent on imported gas, post 2020. We also have low storage capacity at 5.2% of annual demand.

This was never an issue with Britain in the EU: Irish access to British markets and pipelines (in other words, our security of supply) was effectively guaranteed. But when Britain leaves, these safeguards may end.

A concern is that, to extract guarantees on future supply and prices for gas imports from



HERE'S TO THOSE WHO CHANGED THE WORLD



Dr Elisabeth Svendsen MBE
Founder of The Donkey Sanctuary

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'A TEMPLATE EXISTS FOR PRECISELY THE TYPE OF ARRANGEMENT BRITAIN SEEKS ... THAT TEMPLATE IS THE EU'

the EU, Britain may use Ireland's supply vulnerability. Ireland has no gas interconnection with markets beyond Britain so, post withdrawal, will be cut off from EU markets.

Will we have petrol?

Ireland is highly dependent on imports of refined fuel. The sole refinery on the island, at Whitegate, is relatively small, producing around 25% of all-island refined oil demand. The vast majority of the remainder comes from British refineries.

Major Irish import terminals at Dublin, Cork and Foynes do, however, have berth and discharge capacity for larger tanker fleets from Northern Europe. And it seems that Irish importers could readily switch from British refineries, although (if a 2013 department report is correct) possibly with price implications.

A 2013 report on security of petroleum supply for the Department of Communications, Climate Action and Environment concluded that "supplies from the wider European market are equally plausible, albeit at a higher cost to the island".

Will we be grounded?

There is no World Trade Organisation or other default framework for aviation – meaning the legal rights of EU airlines to fly into, and land at, British airports will effectively lapse without a replacement to the existing EU 'open-skies' rules.

British airports predict a "catastrophic slump", and the CEO of one airline warns of "a real prospect ... that there are going to be no flights between the UK and Europe for a period of weeks, months beyond March 2019".

Will the telly work?

Mostly! With a no-deal exit, freedom to broadcast cross-border from Britain will end on 31 March 2019. Unless it establishes in Ireland (or other member state), and submits to Irish broadcast regulation, Sky satellite broadcasts into the country could end.

Will it never happen?

Often forgotten about the EU is that it is a free-trade zone of a scale and ambition yet

to be achieved anywhere else. A *Wall Street Journal* op-ed put it this way: "A template exists for precisely the type of arrangement Britain seeks, in which tariffs are zero, regulations don't impose barriers to trade, services can flow more or less freely across boundaries, and enforcement is light-touch and easy for business to comply with. That template is the EU."


Martin Selmayr, chief of staff of European Commission president Jean-Claude Juncker, put it more bluntly, recently calling Britain's decision to leave stupid. Too stupid to really happen, some believe. But does this fairly account for human nature?

What about Northern Ireland?

Talk just of harm to economic performance doesn't nearly express the perils, even if the economic harm may be execrable.

The times aren't so bleak as when John Hume wrote his eloquent and masterly 1979 paper *The Irish Question: A British Problem* (see *Foreign Affairs*, winter 1979/80).

But there are parallels. Northern Ireland again has no sovereign voice. Westminster has a deal with one side. Even the mock-heroic couplets he quotes resonate: "To Hell with the future and long live the past."

Perhaps most serious, Britain seems to forget again that it is a central protagonist in our history. 



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'BREXIT REFUGEE' SOLICITORS ENROLLING BUT NOT ARRIVING

With the arrival of just one London-headquartered international law firm in Dublin to date, rumours of a British invasion post Brexit appear to be somewhat overstated. **Ken Murphy** reports

KEN MURPHY IS DIRECTOR GENERAL OF THE LAW SOCIETY

The British are coming! The British are coming!' was the cry of Paul Revere to awaken the minutemen of Massachusetts on his midnight ride on the night of 18 April 1775 that preceded the battles of Concord and Lexington, which commenced the American War of Independence.

In the weeks and months that followed the Brexit referendum vote of 23 June 2016, with its result that sent shockwaves throughout the EU and the world, commercial law firms in Dublin were awash with rumours that London-based law firms were transferring enormous numbers of solicitors onto the Roll in Ireland as a prelude to transferring large proportions of their business to Dublin to maintain a foothold in the EU.

Office buildings were being leased and entire firms would be acquired, it was believed. The credulity and febrile imaginations of at least some reached a stage that it would not have been a great surprise to have seen a horseman riding up and down the banks of the Liffey proclaiming 'The British are coming!'

No invasion

As time passed, however, it became increasingly clear that no invasion of Ireland by British law firms was underway in reality. While very large numbers of England and Wales solicitors had indeed taken out a second qualification by applying to join the Roll of Solicitors in Ireland, they were not doing this for the purpose of establishing practices here.

It is clear, as of now, that there is no connection between England and Wales-qualified solicitors undertaking the process required to have their names entered on the Roll of Solicitors in Ireland and their firms opening offices in Ireland.

The solicitors are joining the Roll in Ireland for a very different reason. Based on meetings in London and Brussels, which Law Society representatives have undertaken with many of the England and Wales solicitors who have transferred onto the Roll here, together with senior figures in their firms, we believe it is primarily EU competition and trade law practitioners in these firms who have undertaken the administrative process of entering their names on the Roll of Solicitors in Ireland.

Their motivation is to maximise their status as EU law practitioners when, in the future,

Britain will no longer be a member state. Their future-status concerns relate to such issues as rights of audience in the EU courts and, in particular, the entitlement of their clients to legal privilege in EU investigations.

Transferring solicitors

The December 2016 *Gazette* published the list of firms with six or more solicitors transferring from England and Wales in 2016. We republish that list below, together with the list of ten or more transferring England and Wales solicitors (to November 2017).

FIRMS WITH SIX OR MORE TRANSFERRING ENGLAND AND WALES SOLICITORS 2016

1. Freshfields Bruckhaus Deringer LLP	117
2. Eversheds LLP	86
3. Slaughter & May	40
4. Hogan Lovells LLP	34
5. Bristows LLP	27
6. Herbert Smith Freehills LLP	25
7. Allen & Overy LLP	24
8. Linklaters LLP	20
9. Clifford Chance LLP	12
10. Shearman & Sterling LLP	11
11. Bird & Bird LLP	10
11. Covington & Burling LLP	10
13. Fieldfishers LLP	7
13. Ashurst LLP	7
15. Arnold & Porter LLP	6
15. Gibson Dunne & Crutcher LLP	6
15. Taylor Wessing LLP	6
15. Osborne Clarke LLP	6

FIRMS WITH TEN OR MORE TRANSFERRING ENGLAND AND WALES SOLICITORS 2017

1. Eversheds Sutherland LLP	132
2. Freshfields Bruckhaus Deringer LLP	130
3. Slaughter & May	79
4. Latham & Watkins LLP	47
5. Hogan Lovells LLP	42
6. Herbert Smith Freehills LLP	35
7. Allen & Overy LLP	34
8. Bristows LLP	32
9. Linklaters LLP	29
10. Clifford Chance LLP	21
11. Pinsent Mason LLP	15
12. Bird & Bird LLP	13
12. Shearman & Sterling LLP	13
14. Covington & Burling LLP	11
14. White & Case LLP	11
14. CMS Cameron McKenna LLP	11
17. Gibson Dunne & Crutcher LLP	10
17. Ashurst LLP	10
17. Reed Smith LLP	10



PI: SHUTTERSTOCK/NUALA REDMOND



AS THE WEEKS AND MONTHS PASSED, HOWEVER, IT BECAME INCREASINGLY CLEAR THAT NO INVASION OF IRELAND BY BRITISH LAW FIRMS WAS UNDERWAY IN REALITY

In 2016, there were 806 transferring England and Wales solicitors in total. In the year to 21 November 2017, the figure is 511. The total over the two years is 1,317. The total number of names currently on the Roll of Solicitors in Ireland is 17,364. Although new names continue to be entered on the Roll, it is clear that the number of transferees in 2017 will be of the order of 30% less than that in 2016.

The two tables published here are remarkably similar. In 2017, as in 2016, two firms have transferred far more than most, namely Eversheds Sutherland LLP (last year they were Eversheds LLP) and Freshfields Bruckhaus Deringer LLP. Eversheds are long established in Ireland. The firm O'Donnell Sweeney became O'Donnell Sweeney Eversheds in 2007, and simply Eversheds in 2011. As recorded in the December 2016 *Gazette*, the senior partner of Freshfields Bruckhaus Deringer LLP, Edward Braham, was happy to inform the Law Society, unambiguously and 'on the record', that Freshfields had no plans to open an office in Ireland.

The third firm on the list, Slaughter & May, has almost doubled its number of transferring solicitors, from 40 to 79. Hogan Lovells LLP has increased slightly by eight, from 34 to 42. Latham & Watkins LLP did not appear on the list at all a year ago, but are now fourth highest.

BREXIT ADMISSIONS

England and Wales admissions in Ireland (1 January 2016 to 21 November 2017)

2016	2017 (to Nov)	Total (2016 & 2017)
806	511	1,317

Although all of the firms on the list can legitimately describe themselves as 'international law firms', some of them originated and are still headquartered in the United States, while the others originated and are headquartered in Britain. It is interesting and perhaps just a little surprising that, of the 19 firms featured on the 2017 list, as many as six or seven are headquartered in the US rather than in Britain.

Within the last few months, the Washington DC-headquartered firm Covington & Burling announced that it is planning to launch a life sciences and technology practice in Ireland. According to its news release, it is hiring a local solicitor, Maree Gallagher, to do so. Covington will be just the second US-headquartered firm to establish in Dublin following Decherts, who established a funds-focused firm here in 2010, recruiting William Fry partner Declan

O'Sullivan to do so. Decherts currently has ten solicitors in Dublin.

In the immediate wake of the Brexit vote, the imminent arrival of one particular British-headquartered international law firm in Dublin was rumoured far more strongly than any other. And in this respect, if no other, the rumours have since proved true. Pinsent Mason LLP has actually arrived.

In June 2017, the firm announced that it was opening an office in Dublin, with an aim to be a 'disrupter' in the Irish market. Senior partner Richard Foley announced: "Given our initial focus on the financial services and technology sectors, it makes sense to locate ourselves in an area that is home to several of the leading financial and technology firms." Its founding team of Irish solicitors are Gayle Bowen, Andreas Kearney and Denis Agnew. Recently, Pinsent announced it had agreed a lease for 9,800 square feet at 1 Windmill Lane in Dublin's Docklands.

Despite the post-Brexit vote rumours, the opening of the Pinsent Mason office is all that has occurred to date. The qualifying term 'to date' has to be used at all times when talking about Brexit. Nevertheless, for the present at least, Dublin's 'Paul Revere moment', like the original, seems consigned to history. [g](#)



PARALLEL LINES

Clear delineation of roles is crucial, the annual conference organised by the In-house and Public Sector Committee was told. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST AT GAZETTE.IE

Those attending this year's Law Society conference for in-house and public sector lawyers were advised to always draw a clear distinction between when they are offering legal advice, and when they are contributing to a management discussion on policy.

James Kingston, legal adviser at the Department of Foreign Affairs, said that lawyers were often members of the management boards of their organisations, and it was very important in such situations to stake out what one's particular role was: "If you are a good team player, your colleagues will come to you and they will want you to give decisions on everything. You must protect yourself and your team. It's very important that you don't abuse your authority

and that you deploy it carefully.

"When we're giving legal advice, we must make it very clear that we're giving legal advice. And when we are making a contribution to a policy discussion, we must make it very clear that we are doing so – not as a lawyer – and that we are not seeking the same authority for our views as we would if we were advising on a legal matter.

"Communications are extremely important, both listening and talking. Explain to your colleagues all the time what it is that you are doing, and what it is they should be doing.

"The other important thing is to give your clients what you know they need – not necessarily what they think they want. You can't be the person who always says 'no'. As in-house lawyers,

we have to be solution-based. But there has to be an integral, inner part of ourselves that allows us to say 'no' when we need to say 'no'," he said.

GDPR compliance

The conference heard that the upcoming *General Data Protection Regulation* (GDPR) could be a good housekeeping exercise for the in-house lawyer. Privacy systems that are already in place could be adapted to the new regime, which rolls out in May 2018.

Attendees were told that establishing a clear GDPR compliance programme could possibly make their businesses a more attractive entity for future customers. Speakers reiterated that privacy and trust can assist in terms of product differentiation.



(Front, l to r): Louise Campbell (Law Society), Niamh Kimber (Accenture), Bob Semple (consultant), Ken Murphy (director general), Rhona O'Brien (DCC Vital Ltd), and James Kingston (Department of Foreign Affairs); (back, l to r): Dr Des Hogan (Chief State Solicitors Office), Alan Daly (ESB), Mark Cockerill (eir), Michelle Nolan (Law Society Finuas Network) and Róisín Magee (Department of Agriculture)



Bob Semple spoke on futuristic trends

WHEN I ASK MY IN-HOUSE LAWYER FOR COMFORT AND ASSURANCE THAT ALL THE RISK AND LEGAL ISSUES HAVE BEEN ADDRESSED, IT'S REALLY AN ENORMOUS ASK

The 100 different organisations represented at the conference will all have different compliance issues to grapple with in terms of data protection, technology partner Leo Moore (William Fry) told the conference. Brexit also throws up issues in terms of data transfer if a company is operating on a cross-border basis. Moore also spoke about the wider advantages of firms being data protection 'good citizens', ahead of next year's GDPR.

The attendance was also advised not to treat the Office of the Data Protection Commissioner as a free consultancy, but to think about

the issues and how they apply to their particular business before approaching the office. "Document your thinking before going in," advised Adrienne Harrington, formerly responsible for data protection policy at the Department of the Taoiseach, and now chief executive of the Ludgate Hub in Skibbereen.

Offsite data storage must also be factored in to any security planning, the audience was told. And compliance must also be demonstrated in the business supply chain and by cloud service providers. Privacy by design and by default is the key, Harrington said.

Outsourcing dangers

Linda Ni Chualladh, regulation and competition counsel at An Post, elaborated on the distinction between compliance and legal counsel. She also spoke frankly on the dangers of outsourcing the data-protection function in search of a neat solution to the problem.

"It's absolutely one of the worst things you can possibly do in this particular area. This [data] is like a contagion, it's everywhere in your operations, it's in your HR, in your chief medical officer's data, in sick notes, it's in recruitment. It's not just about your vendors," she said.

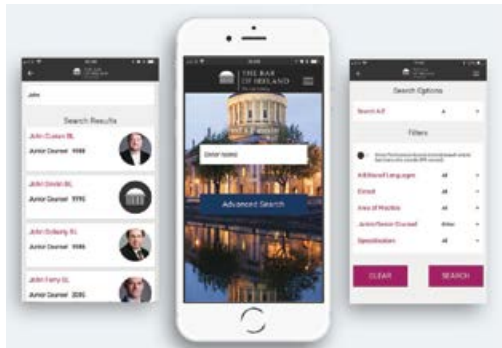


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IF YOU ARE A GOOD TEAM PLAYER, YOUR COLLEAGUES WILL COME TO YOU AND THEY WILL WANT YOU TO GIVE DECISIONS ON EVERYTHING. YOU MUST PROTECT YOURSELF AND YOUR TEAM

Ní Chualladh said that there were limits to what in-house legal counsel could do on GDPR. “We are not running, designing, maintaining, amending and implementing the entire GDPR programme,” she said.

She pointed out that there could be an over-complication of things that were easy: there was a lot of common sense involved and lawyers should take a gut instinct approach to what felt or seemed right on these issues.

The audience was warned repeatedly as to the distinct challenges an in-house legal counsel would have, if asked to take on the role of data protection officer, including being effectively in the position of having to audit oneself against one’s own legal decisions.

In the context of the data protection officer (DPO) role, Leo Moore said that maintaining legal privilege was crucial. “A lot of your organisations will be very much concerned about reputation management and reputational damage. Fundamentally, businesses are concerned about their own commercial reputations. If an organisation is heavily reliant on data protection matters, and that is seen to be breached, that can be really damaging.

“Legal privilege can be used to get reports and keep them under privilege and, therefore, not become subject to discovery and public sharing.

“If you’re a data protection officer and you’re carrying out that role, and you’re also the lawyer, it becomes difficult to delineate when you’re acting as a DPO and when you’re acting as the in-house lawyer. You really need to be careful,” he said.

Cyber-threats

Bob Semple, who elaborated on futurist trends, said there was an expectation that in-house lawyers were on top of all aspects of cyber threats to business security. He explained that we lived in a world of volatility, uncertainty, complexity and ambiguity, and that, while we were racing to embrace new




Leo Moore (William Fry), Linda Ní Chualladh (An Post), and Brendan Foley (Office of the Attorney General)

tech functionality, we might not be anchoring it properly in terms of legal risk and compliance. Legal regulatory burdens were now so onerous that lawyers might simply not be able to comply with their demands. “It’s time to take on the regulators,” he said.

“Things are moving so quickly and are so complicated that it’s really difficult for board members to keep on top of it. When I ask my in-house lawyer for comfort and assurance that all the risk and legal issues have been addressed, it’s really an enormous ask. There are simply too many laws, regulations and other rules to apply in a blanket fashion. That’s not reality and we have to challenge it,” he said.

Speaker Rhona O’Brien, an in-house counsel in the life sciences sector, told the gathering that building trust is essential to career growth in this area. “Be solutions-focused, but don’t be yes man,” she said.

She added that legal counsel should always follow up on the advice they had given. As Mark Cockerill, chair of the In-house and Public Sector Committee put it: “Don’t throw a grenade and run away. Show your colleagues how to defuse that grenade.” 



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INSIDE OUT: THE HUMAN RIGHTS IMPLICATIONS OF IMPRISONMENT

This year's Annual Human Rights Conference took place on 7 October 2017 at Blackhall Place. **Michelle Lynch** reports

MICHELLE LYNCH IS POLICY DEVELOPMENT EXECUTIVE AT THE LAW SOCIETY AND SECRETARY TO THE HUMAN RIGHTS COMMITTEE

The 15th Annual Human Rights Conference explored the role of prison in the Irish criminal justice system, while examining the effect that prison has on offenders, their human rights, and society as a whole.

Organised by the Human Rights Committee in partnership with the Probation Service and Law Society Professional Training, speakers

included Minister for Justice Charlie Flanagan, Vivian Geiran (director of the Probation Service), Prof Mary Rogan (TCD), Joan Deane (secretary, AdVIC), Deirdre Malone (executive director, Irish Penal Reform Trust) and Paula Kearney and Erika Browne of the SAOL Project.

The Minister for Justice gave the opening address and commended the Probation Service

as “an agency that places human rights at the very core of its ethos”. Minister Flanagan observed that the role of prisons “always has been a central issue for the criminal justice system and for society as a whole”. He recognised that much of the prison population is not only poor in economic terms but also educationally, emotionally, and socially. He stated that, while the State can imprison offenders, it must also con-



Michelle Lynch (secretary of the Human Rights Committee), Rachael Hession (Law Society Professional Training), Vivian Geiran (director of the Probation Service), Joan Deane (secretary of AdVIC), Shane McCarthy (chair of the Human Rights Committee), Minister for Justice Charlie Flanagan, then senior vice-president Michael Quinlan, Paula Kearney, Erika Browne, and Gary Broderick (all SAOL Project)



ALL PICS: GIAN REDMOND

sider the “social harm to offenders, families and communities in doing so”. Minister Flanagan affirmed his belief in prison as a last resort and acknowledged that viable alternatives to custody must be available.

He spoke of the need to strike a balance of competing rights within the criminal justice system. In doing so, it must be ensured that violent and other serious offenders serve appropriate sentences, while developing further non-custodial options for non-violent and less serious offenders. The minister concluded his speech observing that “it is in everyone’s interests to convince more individuals that their contribution to Irish life need not be as prisoners but rather as valued members of our society”.

Probation Service director Vivian Geiran gave an insight into the work of the service and the vital role human rights plays in its work. He told the audience how the work of the service involved both the assessment of offenders and the supervision and rehabilitation of offenders. He concluded that “human rights are not just a ‘nice to have’ ideal” but that “ultimately, respecting the human rights of all, helps us to be successful in our task of offender rehabilitation, and our goal of safer communities”.

Discipline and punish

The first plenary session began with Prof Mary Rogan telling the audience how prison was a relatively new concept. She tracked a fascinating timeline of the role that prison has played



Minister for Justice Charlie Flanagan



in Irish society and painted a comprehensive picture, including the social and political context, of what she termed the “enduring legacy of penal policy” in Ireland. In 1922, Ireland had inherited a large prison population, and penal policy was largely in line with military policy. In contrast, Rogan noted that, over the next couple of decades, a sense of rehabilitation began to enter the system. By the 1960s, rehabilitation began to become ‘fashionable’, and the concept of temporary release emerges and a “genuine commitment to penal reform”.

In the 1970s, the State’s focus was very much on security. Rogan noted that, in the 1980s – although the *Whittaker Report* recommended that prison should only be used as a last resort – high levels of crime and drug use, together with limited State finances, saw increasing imprisonment rates and a reduction in rehabilitative programmes.

The 1990s, with the murder of Veronica Guerin, fostered a zero-tolerance policy, with penal policy becoming a question of ‘space’. A change occurred in the 2000s and, by 2011, Prof Rogan noted that there was a shift to improve prison conditions and increase the use of community service. In 2014, the *Strategic Review of Penal Policy* acknowledged that crime was a question of social and not only penal policy. Rogan concluded that procedural fairness, monitoring, and inspection are informing current penal policy, with the establishment of bodies such as the [Implementation and Oversight Group](#).



THE ‘RIGHTS OF VICTIMS AND OFFENDERS ARE NOT INEVITABLY OPPOSED’ ONCE GENERAL PRINCIPLES OF ‘EQUALITY AND NON-DISCRIMINATION, ACCESS TO JUSTICE, AND DUE PROCESS ARE RESPECTED’ FOR EVERYONE



Joan Deane provided a personal and thought-provoking account of her personal experience of losing her son, who was brutally attacked in his home and died. She spoke of the pain and anguish that the trial caused her and her family and how they felt very much on their own and “were in a very frightening and lonely place”. Ms Deane told of how she and other families bereaved by homicide established AdVIC, with the aim of advocating to re-balance the criminal justice system. AdVIC is run entirely by volunteers and provides counselling free of charge to families bereaved by homicide. She spoke of the difficulties that AdVIC face financially, as they receive limited funding and rely heavily on donations.

She warned of the victim becoming re-victimised sometimes, due to a “lack of regular and consistent information about the case”. She

said how delighted AdVIC was to see the EU *Directive on Victims’ Rights* being introduced, but noted that legislation has still not been put in place to implement it. She concluded by emphasising that AdVIC did not wish to interfere with the rights of offenders and are not motivated by revenge. Instead, she said that they “merely seek justice” and wish to achieve change to bring “fairness and balance to victims of crime”.

The impact of prison

Deirdre Malone (Irish Penal Reform Trust) began the second session by emphasising that the “rights of victims and offenders are not inevitably opposed” once general principles of “equality and non-discrimination, access to justice, and due process are respected” for everyone. She considered the impact that prison has on the human rights of offenders, noting that the main

function of the experience of imprisonment must be to “reduce reoffending, while treating prisoners with humanity and keeping them appropriately secure”. Ms Malone acknowledged that, while improvements had taken place over the last five years, prison continued to have a negative effect on the human rights of offenders. She noted that the concluding observations of the *UN Committee Against Torture* on Ireland had found overcrowding, prolonged use of solitary confinement, widespread violence, and systematic failings in prison health care.

She spoke of the need to have independent accountability structures to ensure the effective protection of prisoners’ human rights and to minimise the impact of prison on their rights. However, Malone observed that current structures are not meeting this standard. This includes the absence of a prisoner ombudsman



and the publication of reports of the Office of the Inspector of Prisons through the Minister for Justice. She considered the effect that prison has on society and stated that the evidence shows that it is not only expensive and harmful of itself, but it is also relatively ineffective at reducing crime. She echoed the words of the Scottish Prisons Commission that “prison may sometimes do good, but it always does harm”. In concluding, she outlined four steps to be taken to address this: invest in progressive social policy, practice penal modernisation, address existing human rights issues, and prepare prisoners fully for release and provide rehabilitation and support on release.

SAOL away

Two participants from the [SAOL Project](#) shared their personal experiences of prison.

Paula Kearney told the audience that it had not worked for her, as her addiction had never been addressed. She told how one of the harshest realities of prison was the ‘disconnection’ she had from her son and of not being able to touch him during visits, and the pain and trauma this caused them both. Paula shared how her imprisonment also affected her relationships with her wider family who had to make sacrifices to care for her son while she was in prison. Programmes such as ‘Reduce the Use’ and ‘Recover Me, facilitated by the SAOL Project, had helped her on her path to recovery and rehabilitation.

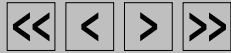
Erika Browne shared her experience of when her partner went to jail and the effect that it had on the lives of her, and her two young children. She spoke of the mental-

health problems her partner endured and the lack of care that he encountered, resulting in his attempted suicide and transfers to different prisons. Erika said that having their dad in prison had a huge impact on her children, and she herself fell back into addiction. She told the audience how there was a need for adequate mental health support, involving peer-led tailored programmes and family group sessions before the person was released, as well as a family liaison officer to assist the person with reintegrating into the family.

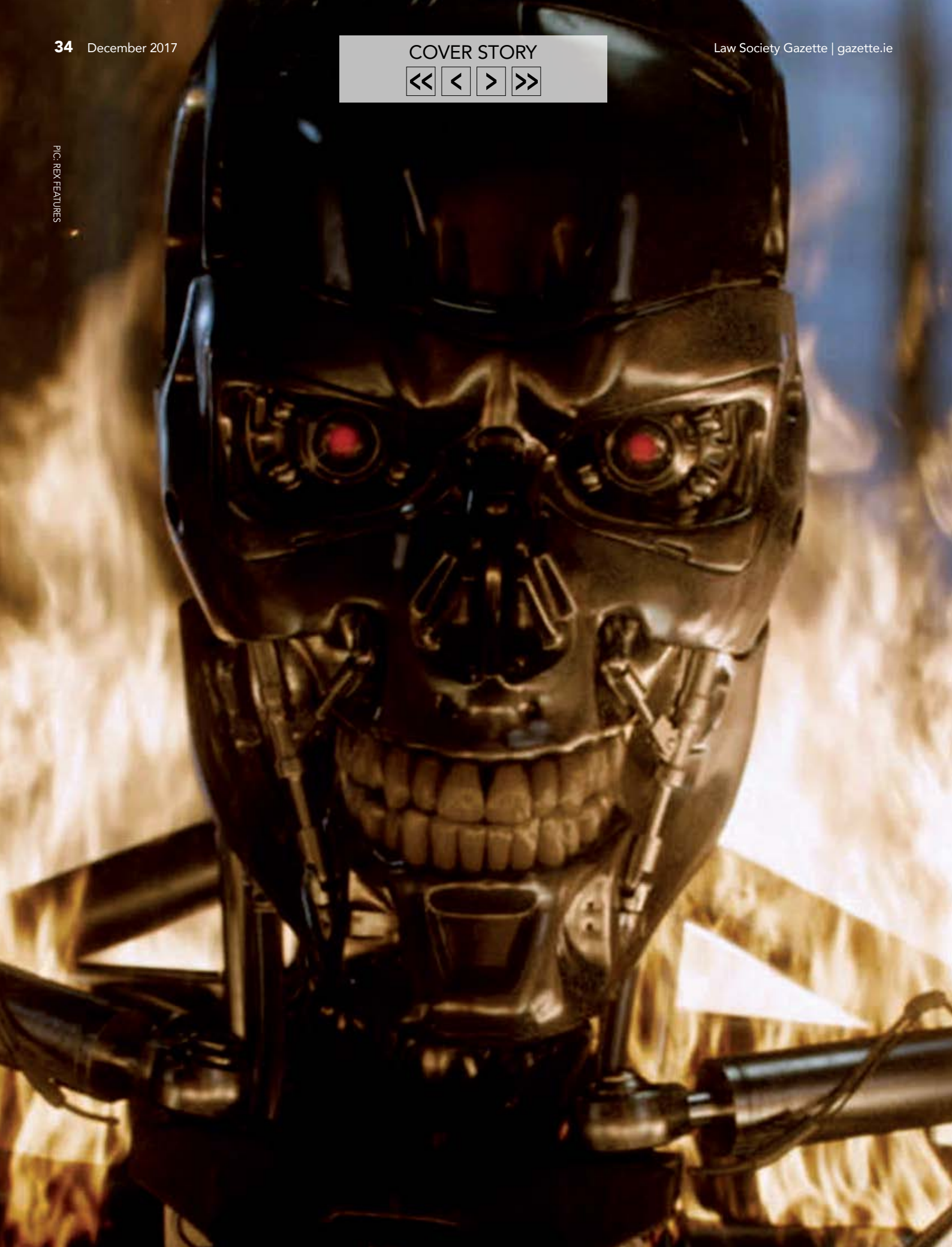
An engaging discussion closed the event, and attendees had some invaluable insights into the challenges encountered. [G](#)

The conference papers are available on the [Human Rights Committee](#) page at under the ‘Resources’ tab.

COVER STORY



PICTURE: REX FEATURES





HASTA LA VISTA, BABY!

The first ever legal hackathon in Ireland explored potential uses for blockchain – a technology with the potential to revolutionise how law firms do business.

Terminator, disruptor, or enabler? **Gordon Smith** investigates

GORDON SMITH IS A FREELANCE TECHNOLOGY JOURNALIST. HE IS A REGULAR CONTRIBUTOR TO THE *LAW SOCIETY GAZETTE*

COVER STORY



Imagine a room full of people, each one holding a blank piece of paper. As soon as one person writes on their paper, the same words appear instantly on everyone else's sheet and no one can alter or erase them.

It might seem like an elaborate magic trick, but the speaker describing the image was no magician. He was a software engineer explaining 'blockchain' to an audience of lawyers, students, and financial professionals.

That simple image holds the key to what some believe is the revolutionary part about blockchain. It could eliminate intermediaries or middlemen entirely. With a secure, tamper-proof record, who needs a bank, a law firm, or even a government?

"There is no central authority with blockchain, and that is huge, because it enables trust when there is no trust," said Antonio Senatore, chief architect of Deloitte's EMEA blockchain lab in Dublin.

Now for the science bit: Senatore described the technology as a system of interconnected computers. It is a digital ledger of securely recorded and verified transactions, where every participant in the network can see each transaction. "It's a peer-to-peer network that facilitates the exchange of value. That value can be anything: it can be Bitcoin, it's a house, it's digital identity, it's your car, it's land," said Senatore.

Highly versatile

Such is the interest – not to say hype – that the market research company IDC forecasts at least 25% of Global 2000 companies will use blockchain-related services by 2021.

Blockchain is highly versatile, with a wide range of uses. Its best-known application to

AT A GLANCE

- Blockchain is a peer-to-peer network that facilitates 'the exchange of value'. That value can be anything, from Bitcoin, to houses, digital identity, cars or land
- Blockchain's secure, tamper-proof records could remove the need for banks, law firms, or even governments – making it truly revolutionary
- By speeding up transaction times, blockchain could benefit law firms twice over: first by creating internal efficiencies in delivering services, and second by unlocking cost savings that firms could then pass on to presumably grateful clients

date is the cryptocurrency Bitcoin, which lets people send money to each other digitally, without needing a bank. In October 2017, an apartment in Ukraine became the first property to be bought and sold using blockchain.

Earlier this year, the Republic of Georgia became the first national government to use blockchain for validating the registration of land titles and mortgages. Aid:Tech, an Irish-based start-up company, uses blockchain technology to deliver aid to Syrian refugees transparently and securely.

It was Niall Dennehy, Aid:Tech's chief operating officer, who used the paper metaphor above to describe blockchain. He and Senatore were speaking at the first ever legal 'hackathon' to be held in Ireland, at Matheson's headquarters in Dublin.

"Blockchain will revolutionise all industries, and we want to understand the implications for law and for our clients' business. Financial institutions are an important sector for us, and blockchain is huge for them," said Rebecca Ryan, a partner at Matheson.

A hackathon is an intensive collaborative session where multidisciplinary teams work together to 'hack' or develop and refine ideas within a short timeframe. Hackathons sprang from the technology sector, which is accustomed to rapid product development in short bursts. As more industries realise the need to respond to change with technology, the concept has taken hold more widely, from farming to financial services. Now it's law's turn. "This hackathon arose from the need to be innovative in what we do and how we work," Ryan said.

Blockopoly

The hackathon included presentations and mentoring from experts representing IBM, Deloitte, Aid:Tech, Bank of Ireland, and Integra Ledger, to help participants understand the concept of blockchain and potential applications. One demo showed how the board game *Monopoly* would look if it were played on blockchain, by highlighting what data is written, how value is transferred, and how identity is indicated.

Attendees were a mix of students from universities around Dublin, business people from the financial services sector, and technology company employees, along with 25 Matheson employees. Later during the two-day event, participants divided into ad hoc teams to develop viable-use cases with blockchain to improve some aspect of delivering legal or financial services. The teams then pitched their ideas to a judging panel.

ONE DEMO SHOWED HOW THE BOARD GAME *MONOPOLY* WOULD LOOK IF IT WERE PLAYED ON BLOCKCHAIN, BY HIGHLIGHTING WHAT DATA IS WRITTEN, HOW VALUE IS TRANSFERRED, AND HOW IDENTITY IS INDICATED



PIC: REX FEATURES



CHANGE IS NECESSARY, EVOLUTION IS NECESSARY.
MY ADVICE TO LAW FIRMS OF ANY SIZE IS TO BEGIN TO
EXPERIMENT WITH THE TECHNOLOGY



Q FOCAL POINT

BLOCKCHAIN BY NAME, BLOCKCHAIN BY NATURE

A blockchain is so called because it is a continuously growing list of records – or blocks – that are linked in a chain. Each block is secured with cryptography and typically contains a ‘hash pointer’ as a link to a previous block, a timestamp, and transaction data.

A hash pointer lets a programmer know where a data block is and allows them to verify that the record hasn’t been tampered with. Blockchains can be public, or can be private where membership is

restricted to participants.

A blockchain is usually organised as a distributed ledger, whereby every participant in the network has a copy of the database that is continually updated and synchronised over the internet. A majority of members must agree to a protocol for adding new blocks to a chain. This consensus process makes blockchain suitable for work that involves keeping verified records or documenting traceability.

From 35 initial ideas, attendees voted on the best ones and narrowed the field to a shortlist of eight. These pitches included a distributed energy grid, a qualification registry, and a smart contract system for housing rental. Teams voted on the best ideas and spent the hackathon fleshing them out and working on their implementation before they were judged on their creativity, innovation and feasibility.

The winning team, ‘UniBlock’, proposed using blockchain to legitimise qualifications by developing a secure and immutable way to validate professional qualifications for universities and workplaces.

Highly impressed

The hackathon was a success, reaching more than a million impressions on Twitter as participants shared their experiences and



PI: REX FEATURES

others showed an interest, helping the news reach a wider audience.

Nevertheless, Rebecca Ryan acknowledged that blockchain was a concern and

Q FOCAL POINT

BOOSTING BUSINESS – THE CASE FOR BLOCKCHAIN

The narrative for new technologies follows a well-thumbed playbook. By performing tasks quickly, more accurately, and more efficiently than a human, technology threatens to make some job roles redundant and eliminate other functions entirely.

The counter-argument is that technology enables new business models and opens untapped markets. David Fisher, CEO of Integra Ledger, subscribes to the latter view. Fisher’s company uses blockchain technology to enable lawyers, firms, and clients to access information, communicate, and interact on legal matters.

He believes that blockchain won’t destroy the legal sector – but will make it larger: “The history of innovation shows

that when you reduce friction and you reduce unnecessary cost, you don’t shrink economies, you grow them because you unlock a lot of stranded value and stranded assets that have been, perhaps, misapplied or poorly organised,” he told the Gazette.

Most of the ways we deal with public authorities or courts require people to be physically present in order to sign a document or witness the act. Filling out and filing paper documents costs time, money, and effort, which puts barriers in many people’s way. Blockchain promises to simplify these types of processes because it is online.

“I expect there to be an explosion in legal services, and demand for legal services, if the friction for accessing those

services goes down and, therefore, the cost goes down,” Fisher said.

He is hopeful for the legal sector’s future – even with the advent of such a potentially disruptive technology – but urges law firms not to wait and see what happens. There are many public blockchain platforms that are easy to access, and Fisher encourages firms to try programming on a blockchain.

“You don’t want to be in the buggy business when the automobile comes around. Change is necessary, evolution is necessary. My advice to law firms of any size is to begin to experiment with the technology. You don’t have to do it at huge scale. You can do it at small firms; you can do it in-house at small companies. Anyone can access it.”



IN OCTOBER 2017, AN APARTMENT IN UKRAINE BECAME THE FIRST PROPERTY TO BE BOUGHT AND SOLD USING BLOCKCHAIN

a challenge for lawyers. She believes the technology represents an opportunity rather than a threat to law firms or a danger to the profession. “These systems need to be designed and trained. Our jobs will change. Law firms will steer towards becoming technology firms as well,” she said.

By speeding up transaction times, blockchain benefits firms twice over: first by creating internal efficiencies in delivering services and, second, by unlocking cost savings that a firm could then pass on to presumably grateful clients. “All clients are looking for excellent service and value for money. You need to have technology that helps you to deliver that. If you can make a process more efficient by digitising and removing paper, or by exchanging information or transactions on a blockchain, or reduce costs, obviously those cost savings get passed on to the client. It’s definitely going to change the way we work,” said Ryan.

Most industries are only starting to think about blockchain. Pilot projects – and possibly more hackathons – are the order of the day for now. “In the legal space, we’re all looking at blockchain’s potential, but nobody’s using it right now. We’re looking at

FOCAL POINT

BLOCKCHAIN BRAINSTORM

Here is a sample of the ideas for using blockchain developed at the hackathon:

- Develop a security tracker for banks giving out loans, seeking collateral against individuals,
- Embassy visa application process to ease international travel,
- Develop a decentralised international register of trademarks and patents,
- Enable free trade between the Republic and the North of Ireland,
- Allow neighbours to trade electricity generated via solar panels on their houses,
- Develop a digital medical ID system for storing prescriptions and medical records,
- Track motor vehicle ownership, and
- Streamline property rental by creating smart contracts for landlords.

a timeframe of five to ten years before we’ll be fully using it,” Ryan said.

But blockchain’s potential hints at what might be to come. For instance, it could remove the resource-intensive work of going to court to file an affidavit. If the courts system and every legal firm had access to a permission-based blockchain, the process would simply be a matter of a few mouse clicks, once the system identified and validated the identity of the person who was filing.

As a distributed ledger, blockchain has no single owner, so it needs a network of contributors and a set of agreed standards to become widely adopted. Matheson’s hackathon may have peeked into the crystal ball and considered the future, but Ryan says all stakeholders in the legal sector will need to be involved in shaping its development and determining its take-up. “Because it’s a collaborative technology, this won’t work if just one firm is using it. We can only use blockchain if everybody does,” she said. [g](#)

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PROFILE



ALL PICS: GIAN REDMOND



UNDER the HOOD

New Law Society President Michael Quinlan believes that a career in law shouldn't mean all work and no play. To prove the point, he's the proud owner of three classic cars. **Mark McDermott** revs it up

MARK MCDERMOTT IS EDITOR OF THE *LAW SOCIETY GAZETTE*



n entering the freshly painted president's office, the surprising change of hue – something not normally 'done' at Blackhall Place – catches me by surprise. The Law Society's newly minted president welcomes me with a warm handshake.

A man of surprises, Michael Quinlan pokes fun at himself as he points first to the 'Oval Office' mouse mat on his office desk – and then proceeds to don a dark-blue baseball cap bearing the Trump-inspired legend: 'Let's make law great again'. Both items are novelty gifts presented to him by family members to mark his elevation to the Society's highest honour.

So how did it feel, bearing the weight of the chain of office on 3 November?

"I tell you what, I was absolutely dumbstruck..." He swiftly corrects himself: "Very unlikely! But I was dumbstruck for a while."

His mother Moya – the Society's first woman president – must have been at the forefront of his mind?

"She was, yes, and I mentioned her in my speech. If I'm half the president she was, I'll be delighted. Unfortunately, she wasn't able to be present with us on the day – and I would have loved that. She is an amazing woman. She worked until she was 93 and is 97 now."

His fondness for his mother is obvious as he opens up about the biggest challenge she faced in her life. "About four weeks after her presidency ended, my dad Michael died suddenly, at the age of 63."

Michael was just 27 at the time. His brother Brendan was 25.

"Dad died the day after I got engaged, so that was a big wrench, and it was the week before Christmas. He was buried on Christmas Eve, so it was a bit of a 'toughy'. Tough on mum, especially. But she was great. Anyone who knows her knows she bounces back. She kept on working, got on with life, and kept up her hobbies.

"Back then, it was very unusual for a woman solicitor to be in practice – and particularly as a sole practitioner. She qualified in 1946. I was 26 when she

≡ AT A GLANCE

- Making law great again
- His mother Moya – a tough act to follow
- His foray into politics with the Fianna Fáil think-tank
- The challenges and opportunities for smaller firms
- The work/life balancing act

PROFILE



handed me my parchment in 1981. It was the first parchment that a woman president had ever presented to one of her children.”

A late starter

Michael came to law late in life. “I didn’t know what I wanted to do. I didn’t have enough points to do the BCL, so I was always going to become a solicitor the other way.”

The Blackrock College boy delayed going to third level until he was 21. In UCD from 1975 to ’78, one of his fellow students was future director general Ken Murphy, who was studying for an arts degree (in English and philosophy), as well as current Minister for Justice Charlie Flanagan. Michael read economics, politics and history, eventually dropping history.

He describes first year as “a breeze”. Second and third year proved more challenging, as he studied for his degree and, simultaneously, the solicitor’s course in Blackhall Place. “Time was limited. I didn’t see the library in Belfield until April, and when I went to take a book out and they said, ‘Where’s your card?’ I went: ‘What card?’ That gives you an idea about how academic I was. But I had to cop on then and put in the study after that.”

He worked with his mother during the



summers. As a sole practitioner, Moya’s was a busy office. “The year before she became president, I went into the office and did a proper apprenticeship. I qualified, and then she was gone. You didn’t have precedents to fall back on – or computers. The first thing I did was to upgrade the photocopier, and then invest in a computer – a Wang with a green cursor. It was necessary, because we were doing so much repetitive work.”

“So Moya took the opportunity to be president. She and my dad went everywhere together. They had an absolute ball. I got a touch of the Law Society at that stage because my dad couldn’t go on a trip to the US. I had just qualified and went with her to the American Bar Association conference in New Orleans. It opened my eyes. I mean,

it was just a different world.”

Very quickly after he qualified, Michael was invited to join the Dublin Solicitors’ Bar Association (DSBA) through Elma Lynch, who would also become Law Society president. “That was my first foray into the DSBA and solicitors’ politics.”

In the early ’90s, the DSBA nominated Michael as a member of the Law Society’s Council. He was on Council for about six months when he was appointed county registrar for Dublin.

Michael refers to having “always dabbled in politics”, getting his first introduction in UCD. “I became a card-carrying member of Fianna Fáil and got involved in a couple of general elections working in Mount Street.”

What did ‘getting involved’ entail?

“Charlie Haughey at the time wanted to know what was going on around the country. But mobile phones didn’t exist, email didn’t exist – but faxes did. He set up a think-tank in Mount Street – all lawyers as it happened. You would ring the constituencies, get a report and feed it back in. It was great forward thinking at the time – and great fun.”

His involvement in politics stopped when he married dentist Sarah McKeon in 1982. There simply wasn’t the time. They went on to have six children: Emma, Michael, David, Daniel, Philippa Kate (‘Pippa’) and Julianne, now ranging in ages from 32 to 21. Michael was the only one to follow him into law.

Plans for the presidency

It’s not surprising that for a solicitor hailing from a small practice, he’s highly attuned to the vagaries of the economy and its effect on smaller firms. “The bigger firms in Dublin have ridden out the worst of the recession. Their Dublin-based practices are thriving compared with the majority of country practices.”

“The Law Society is the ‘Law Society of Ireland’. It’s not the ‘Law Society of Dublin’. We’ll soon be commissioning a report that will look at the challenges and opportunities affecting practitioners in the smaller firms in Ireland. That’s not ignoring the large firms, but they tend to be able to look after themselves a lot better than traditional family country practices.”

What’s he hoping to discover?

“Well, I’m trying to see how we, as a Society, can assist these firms. There are a huge number of services already available here within the

PEDAL TO THE METAL

People of influence: Obama and Mandela, because I worked for the first elections in South Africa. I never met Mandela, but I met Desmond Tutu, and he was a super guy. You know, you can do anything if you put your mind to it. You could become a president of a country!

Favourite band: The Beatles.

Best advice to fellow lawyers: It’s not a war! Be patient. Listen to your clients.

Best business lesson learned: Never refuse credit! And watch the bank.

Favourite alternative job: I would love to have done economics, but I didn’t have the mathematical brain for it.

Best movie of all time: *Twelve Angry Men*.

Do you fear for the future of politics?

I have certain ideas that certain politicians could do better. But look, they’ve gone through a dreadful number of years. Hopefully we’ve moved on from that.

Would you like to have been a minister?

Yes. Would I like to have been a Minister for Justice? No! And I certainly would not be a ‘yes’ minister.

Top of the bucket list: To drive across America in a convertible. I have three old cars. A red 1995 Mercedes that has only 30,000 miles on it, an MGB that is so unreliable you wouldn’t take it to the office. It’s a great fun car. And then a Merc SL55 convertible, which is the mad car. It’s the engine in it. It’s mad. But, yes. To drive across America in a convertible, probably a Mustang.

PROFILE



WE'LL SOON BE COMMISSIONING A REPORT THAT WILL LOOK AT THE CHALLENGES AND OPPORTUNITIES AFFECTING PRACTITIONERS IN THE SMALLER FIRMS IN IRELAND

Society for members. It's not that the Society doesn't tell members about them, it's that the members don't come to the Society seeking the help that's available to them. Too often, we see people getting into difficulty, and at that stage, it tends to be too late to help. It's when you start realising you have a problem, that's when members should come to the Society – whether it's an employment problem, a health issue, a financial issue. The Society provides vast services for all of these scenarios.

"I also want to encourage members to look after themselves and to operate a better work/life balance. I don't understand the need to work nine, ten, 12 hours a day. Now, sometimes, you might have to work on a Saturday if something comes down the tubes and you have to sort it out, but that should be the exception."

One area where he wants to see change is in the Probate Office. "The delays in the Probate Office are inexcusable. While I have the height

of respect for the office and its personnel, the real problem is that it is under-resourced and, until that's sorted out, the problem will persist."

Criminal legal aid payments are another bugbear. How far out of kilter are criminal legal-aid costs at present with where they should be?

"I wouldn't put a percentage on it because, for one firm it could be a major problem; for another, a sole practitioner for instance, it could be the difference between staying open or closing.


"In the meantime, the Minister for Justice has said that he will look at the possibility of restoring expenses to previous levels. There's no reason why that can't be done, because they've been restored for other parts of the public service. Is it going to be restored in the immediate future? It won't be for want of trying by the Society. Legal aid, though, is crying out for some form of restoration in

order to safeguard the system."

Looking back in 12 months' time, what does he hope he'll have achieved?

"I would like to have seen the completion of the review of the Education Department at the Law Society. We're carrying out this review because we should be doing it – and we're doing it also because the Legal Services Regulatory Authority is coming down the tracks, so let's be prepared."

He's 63 now. Does he plan to emulate his mother and keep on working till his 90s?

"I'll work as long as I can. I love going in every day. I love talking to people. I love clients. Now clients come into you with a problem, and you have to be able to put them at ease. It's the only problem they think you have to deal with, so look at it like that. They're only there for 20 or 30 minutes. So keep them happy and do your best to help solve their problems. After all, that's what will make law great again in their eyes." 

BULLYING




Bully for you?

The Supreme Court recently considered what constitutes workplace bullying – with the outcome being the establishment of a higher threshold to be met to determine that it is taking place, writes **Niamh Ebbs**

NIAMH EBBS IS A SOLICITOR WITH IPB INSURANCE



The Supreme Court recently heard the case of *Ruffley v Board of Management of St Anne's School*. This was an eagerly awaited decision. In fact, O'Donnell J – delivering the Supreme Court's unanimous judgment – actually remarked that “this is a case which will set the benchmark for bullying going forward”. In essence, the outcome of this case was the establishment of a higher threshold to be met to determine workplace bullying.

Definition of workplace bullying

As a starting point, it is worth considering prior case law in relation to workplace bullying. The seminal case on bullying in this jurisdiction prior to this case was the 2008 case of *Quigley v Complex Tooling and Moulding Ltd*. In this case, the trial judge found that “the plaintiff was subjected to extensive and humiliating scrutiny by the defendant's plant manager. He also made comments about the plaintiff's work, suggesting that the plaintiff was not capable of the most basic duties.”

The behaviour complained of happened numerous times and over a prolonged period. Both the plaintiff and the defendant agreed that the applicable definition of bullying was the one set down in [paragraph 5](#) of the *Industrial Relations Act 1999 (Code of Practice Detailing Procedures for Addressing Bullying in the Work Place) (Declaration) Order 2002*. This states: “Workplace bullying is repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others at the place of work/and or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work. An isolated incident of the behaviour described in this definition may be an affront to dignity at work, but, as a once-off incident, is not considered to be bullying.”

The High Court honed in on the following points: to be considered bullying, behaviour must be (a) repeated, (b) inappropriate and (c) capable of undermining the plaintiff's dignity at work.

AT A GLANCE

- The case will set the benchmark for bullying in the future
- To be considered bullying, behaviour must be (a) repeated, (b) inappropriate, and (c) capable of undermining the plaintiff's dignity at work
- Just because behaviour happens more than once does not mean it is repeated for the purposes of this test
- Just because behaviour is inappropriate, it does not mean that it is automatically undermining to dignity at work

BULLYING



THE JUDGMENT IS CAREFUL TO NOTE THE DISTINCTION BETWEEN AN UNFAIR PROCESS AND ACTUAL BULLYING

Mr Justice Fennelly, delivering the Supreme Court judgment, readily accepted that the plaintiff's case met the above criteria for bullying. However, the Supreme Court was not satisfied that the psychiatric injury complained of by the plaintiff had been caused by this bullying, so the High Court decision was ultimately overturned.

International approach

In *Ruffley*, Mr Justice O'Donnell also thought it was worth considering the international approach to workplace bullying. For instance, Britain's *Protection from Harassment Act 1997* stipulated that conduct "must be grave" to be considered bullying.

In the English case of *Wainwright v Home Office*, Lord Hoffman observed "in institutions and workplaces all over the country, people constantly do and say things with the intention of causing distress and humiliation to others. This shows lack of consideration and appalling manners, but I am not sure that the right way to deal with it is always by litigation."

Judge O'Donnell also made reference to the

US approach to this situation by referencing the 1977 American *Restatement of Torts (Second)*, which states that the conduct to cause emotional distress must be "conduct which, in the eyes of decent men and women in a civilised community, is considered outrageous and intolerable". The principal conclusion that O'Donnell J drew from considering international common law comparators is that "the injury must be measurable and the conduct severe".

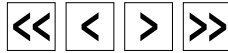
High Court case

The facts of this specific case were that the plaintiff was a special needs assistant and had worked for the defendant school for over ten years without incident. On 14 September 2009, the plaintiff was working in a sensory room with a child who fell asleep. She contacted his teacher, Ms Bramhall, to ask for instructions. She was told to leave the child asleep and, if he had not woken up within 20 minutes, to bring him back to class. When he was not returned to the class, Bramhall became concerned and contacted the principal, Ms Dempsey.

Dempsey went to check the sensory room and discovered that the door was locked. The plaintiff was called to Dempsey's office the next day and was told that this was being treated as a disciplinary matter. Ruffley said that it was often her practice to lock the door to this room, to stop children from running out and to prevent other children from interrupting sessions. She also remarked that other SNAs engaged in this practice. Dempsey said that she did not know about this practice or she would have raised it as an issue.

There was no specific disciplinary action discussed or suggested at this meeting. There was a letter on the school's file dated 18 September 2009 that stated "as Ms Ruffley did not appear to be clear as to the protocol surrounding the use of the room, they would not take disciplinary action". The letter went on to say that she would be reviewed over a three-month period and, if the required improvement was not made, this may result in disciplinary action. The plaintiff denied receiving this letter, and the trial judge accepted this assertion. A few weeks later, there was an issue with the way

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THIS CASE WILL PROVIDE USEFUL GUIDANCE TO BOTH PLAINTIFFS AND DEFENDANTS IN DECIDING WHETHER TO BRING ACTIONS OF THIS NATURE, AND HOW TO DEFEND THEM

the plaintiff completed a form relating to the child's progress. Dempsey decided to report the plaintiff's performance to the board of management.

The board took this matter very seriously, and some of them wanted the plaintiff to be immediately dismissed. The board was persuaded by the chairman and the principal to proceed with a Stage 4 warning against the plaintiff instead. On 21 December 2009, just before the Christmas holidays, the plaintiff was informed that she was to get a warning and would be given a formal notification in the New Year. She asked how long it would be on her file, and she was told six months. On 18 January 2010, the plaintiff was told that that she would receive a final Stage 4 warning, which would be on her file for 18 months. It contained the statement "this warning is being issued as a result of an investigation". The trial judge pointed out that no such investigation had actually taken place. There were a number of further meetings between the plaintiff, the defendant, and her union. At one of these meetings, the plaintiff alleged that she was "belittled, humiliated and reduced to tears".

The plaintiff succeeded in the High Court and was awarded €225,276.39, constituted of €115,000 general and €140,276.39 loss of earnings. The decision of the High Court was overturned by the Court of Appeal. The Court of Appeal, in applying the test set out in *Quigley*, was not satisfied that the plaintiff had met the threshold to establish bullying. The matter was then appealed by the plaintiff to the Supreme Court.

Supreme Court

The question the Supreme Court addressed was whether the defendant's behaviour was repeated, inappropriate, and capable of undermining dignity at work. Justice O'Donnell noted that each component can be considered separately and sequentially. However, he cautioned against viewing these three matters as separate and self-standing issues. For instance, when considering the

question of repeated conduct, it is necessary to remember that what is required to be repeated is inappropriate conduct undermining the individual's dignity at work, and not merely that the plaintiff be able to point to more than one incident of which he or she complains.

O'Donnell J noted that the plaintiff's case was that the behaviour was inappropriate because it was a breach of fair procedures. He did not agree. Inappropriate behaviour does not need to be unlawful or erroneous, but it is instead behaviour that is inappropriate at a human level. "Purposely undermining an individual, targeting them for special negative treatment, the manipulation of their reputation, social exclusion or isolation, intimidation, aggressive or obscene behaviour, jokes which are obviously offensive to one person, intrusion by pestering, spying and stalking – these examples all share the feature that they are unacceptable at the level of human interaction." He accepted that it was inappropriate behaviour when Ms Ruffley was caused to be reduced to tears at a meeting. By contrast, the board making a decision to impose a disciplinary sanction on her without informing her of that possibility or giving her an opportunity to defend herself was not inappropriate. It was certainly unfair, flawed, and liable to be quashed or declared invalid or unlawful, but that does not make it inappropriate as envisioned by the test.

O'Donnell J felt that possibly the most important component of this definition was the question of undermining dignity at work. The Supreme Court felt that the plaintiff's argument in approaching this limb of the test drained it of much of its meaning: the conduct was said to be repeated because more than one event was relied upon, inappropriate because it is a breach of fair procedures and, accordingly, it must have been undermining of dignity at work. He believed that the word 'dignity' has a distinct moral component. He noted that the question of 'dignity' was dealt with in a number of important Constitutional cases. He said that the denial of fair procedures is "never

a trivial matter", but he did not think it could be comfortably said to be undermining of human dignity.

Raising the bar

In essence, this Supreme Court judgment has raised the threshold required for plaintiffs to meet in order to establish that workplace bullying has actually taken place. The judgment is careful to note the distinction between an unfair process and actual bullying. Another important component of the decision is the manner in which the court linked the three separate elements of the test, noting that "these terms take their colour from each other and the concepts are incremental", while stipulating that each separate element must be met, drawing a clear distinction between each element.

For instance, just because behaviour happens more than once does not mean it is repeated for the purposes of this test. Just because behaviour is inappropriate, it does not mean that it is automatically undermining to dignity at work.

This case will provide guidance to both plaintiffs and defendants in deciding whether to bring actions of this nature, and how to defend them.

LOOK IT UP

CASES:

- *Quigley v Complex Tooling and Moulding Ltd* [2008] IESC 44
- *Ruffley v Board of Management of St Anne's School* [2017] IESC 33
- *Wainwright v Home Office* [2004] AC 406

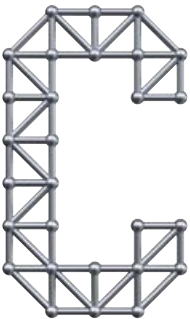
LEGISLATION:

- *Industrial Relations Act 1999* (Code of Practice detailing Procedures for Addressing Bullying in the Work Place) (Declaration) Order 2002 (SI 17/2002)
- *Protection from Harassment Act 1997* (Britain)



Damage limitation

Care should be taken in drafting liquidated damages clauses to ensure that they are enforceable and not capable of challenge. **Daragh Daly** highlights some of the issues and drafting challenges



DARAGH DALY IS AN IN-HOUSE SOLICITOR FOR AN IRISH UTILITY AND HAS LECTURED ON THE SOCIETY'S DIPLOMA IN IN-HOUSE PRACTICE

Contract law gives a right to claim general or unliquidated damages for breach of contract. Such compensation is intended to compensate the injured party for loss, rather than to punish the wrongdoer. The general rule is that damages should (to the extent financially possible) place the claimant in the same position as if the contract had been performed (*Robinson v Harman*). However, the claimant will be subject to the common law rules on causation, remoteness, and a duty to mitigate its losses.

To address such uncertainty, contracts can provide for clauses calculating financial compensation payable by a party for failure to fulfil a primary obligation (such as completion of a project by a specific date). This compensation is known as 'liquidated damages' and is a secondary obligation in the contract.

The rationale

The liquidated damages (LD) clause is generally intended to replace the right of the employer to general

or unliquidated damages for breach of a specific primary obligation. The commercial rationale for LDs is that it creates certainty for the parties in regard to the cost exposure in the event of an LD event. The challenge for both parties is to identify and quantify such cost exposure.

For the employer:

- It avoids the need to prove causation and quantum,
- Payment is due on the LD event occurring (so no court proceedings and delay), and

- The burden of proof is reversed, so the onus is on the contractor to establish that the LD is unenforceable, and
- It incentivises the contractor to deliver works as promised.

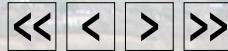
For the contractor:

- It creates an opportunity to insert sub-caps on specific potential liability,
- It clarifies applicable remedy, and
- It quantifies the risk exposure in respect of the LD event.

AT A GLANCE

- Contracts can provide for clauses calculating financial compensation payable by a party for failure to fulfil a primary contractual obligation
- This compensation is known as 'liquidated damages' and is a secondary obligation in the contract
- There are a number of potential grounds for challenging the enforceability of an LD clause

DAMAGES



PIC: WIKIMEDIA COMMONS

'That's a fierce lookin' yoke, Seamus. What's it do?'

IN HIGH-VALUE PROJECT-FINANCED CONSTRUCTION CONTRACTS, SUCH AS POWER PLANTS, THE CALCULATION AND NEGOTIATION OF LD WILL LIKELY BE BASED ON SPECIFIC FINANCIAL MODELS

Performance-based construction contracts (such as the *FIDIC Silver Book 1999*) may require the contractor to design, manufacture, and build bespoke plant or buildings for a fixed price within a specified time for completion. In addition, they may require the contractor to guarantee operational performance of the plant. These

fixed-price contracts are favourably viewed by lenders for project financing.

For power plant construction, such fixed-price contracts are important, as the employer will have significant financial commitments in respect of fuel and electricity supply, as well as grid connection. These commitments will be based on the

contractor's promised delivery date and performance of the power plant.

For example, late completion by the contractor beyond the agreed date will result in payment by the contractor of delay LDs to compensate the employer for delayed revenue from the power plant and its financial third-party commitments in respect of fuel and



WHERE A COURT FINDS THAT AN LD CLAUSE IS A PENALTY AND UNENFORCEABLE, THE EMPLOYER MAY STILL BE ENTITLED TO PURSUE A CLAIM FOR GENERAL OR UNLIQUIDATED DAMAGES, PROVIDED THE CONTRACT DOES NOT CONTAIN AN EXCLUSIVE REMEDY CLAUSE

electricity supply. Poor performance of the power plant can also be measured by the tests carried out on build completion. Performance LDs will compensate for shortfalls in both heat rate (which measures fuel consumption) and electricity output.

Enforceability

There are a number of potential grounds for challenging the enforceability of an LD clause:

- The breach is a different breach to that referred to in the LD clause,
- The LD clause is uncertain, so is void or invalid,
- The employer did not comply with a condition precedent to its right to deduct or claim LD,
- The contract is 'at large' due to interference or obstruction by the employer, or where extension of the time clause has not been properly complied with, or
- The LD clause is a penalty.

An LD clause will be considered a penalty if it imposes a detriment on the contractor that is penal/exorbitant/unconscionable – that is, out of all proportion to any legitimate interest of the employer in the enforcement of a primary obligation in the contract.

In Ireland, case law has followed the principles laid down in *Dunlop Pneumatic Tyre v New Garage* (1915), namely, if the LD clause is a genuine pre-estimate of loss at the time of signing of the contract, it will be considered an enforceable LD clause. It does not need to be a precise pre-estimation and “the parties are allowed a generous margin” (per Arden LJ in *Murray v Leisureplay* [2005]).

British case law also suggests that tiered LDs – different rates of LDs for the same event – may be possible (see *Philips Hong Kong v Attorney General of Hong Kong* [1993]).

In *Cavendish Square Holding BV v Talal*

El Makdessi (2015) the court expanded the potential grounds for compensation to include a right to LDs, where such compensation is based on protecting the employer's legitimate business interest. It acknowledged that the parties (and not the courts) are best placed to categorise and quantify the types of potential loss.

The Irish High Court approach in *Sheehan v Breccia* (2016) rejected the generous margin of discretion allowed in *Cavendish* and applied the narrower, more interventionist approach of *Dunlop* as the applicable law in Ireland. *Obiter* comments by Justice McKechnie in *Launceston Property Finance Limited v Burke* (2017) supported maintaining the *Dunlop* approach.

Where a court finds that an LD clause is a penalty and unenforceable, the employer may still be entitled to pursue a claim for general or unliquidated damages, provided the contract does not contain an exclusive remedy clause and, depending on the grounds for unenforceability, the amount of loss may be limited to the cap set out in the LD clause.

'Sole and exclusive' remedy

The contractor will often insist that the LD be a 'sole and exclusive' or 'exhaustive' remedy. This can raise an issue if, for example, a defect appears during delay in completion, or there is a right to reject defective/unsuitable plant, or a right to accelerate the contractor's programme and claim for any costs incurred as a consequence. If it is intended that such remedies should apply in addition to the delay LD, this should be made clear by qualifying the 'sole and exclusive' wording.

Furthermore, the contract should specify what will happen in the event that the cap on delay LDs is reached. For example, the parties can consider if the employer will then be entitled to terminate the contract.

Many standard-form construction contracts provide for the rate of LDs to be completed in an appendix to the contract. In *Temloc Ltd v Errill Properties Ltd* (1987), the rate of LDs was stated to be '£nil'. The British court held that the LD clause constituted an exhaustive remedy entitling the employer to nil – that is, no damages for delayed completion, and the employer was not entitled to claim general damages as an alternative.

In the 2008 Australian case of *Silent Vector Pty Ltd t/as Sizer Builders v Squarcini*, the parties had amended a standard form of building contract and inserted 'N/A' next to 'limit of liquidated damages' in the annexure to the contract. The arbitrator found the amendment meant that LDs did not apply at all, leaving the developer able to claim general damages for delay. In the alternative, he found that the parties had failed to use clear and unequivocal words to abandon a remedy in general damages.

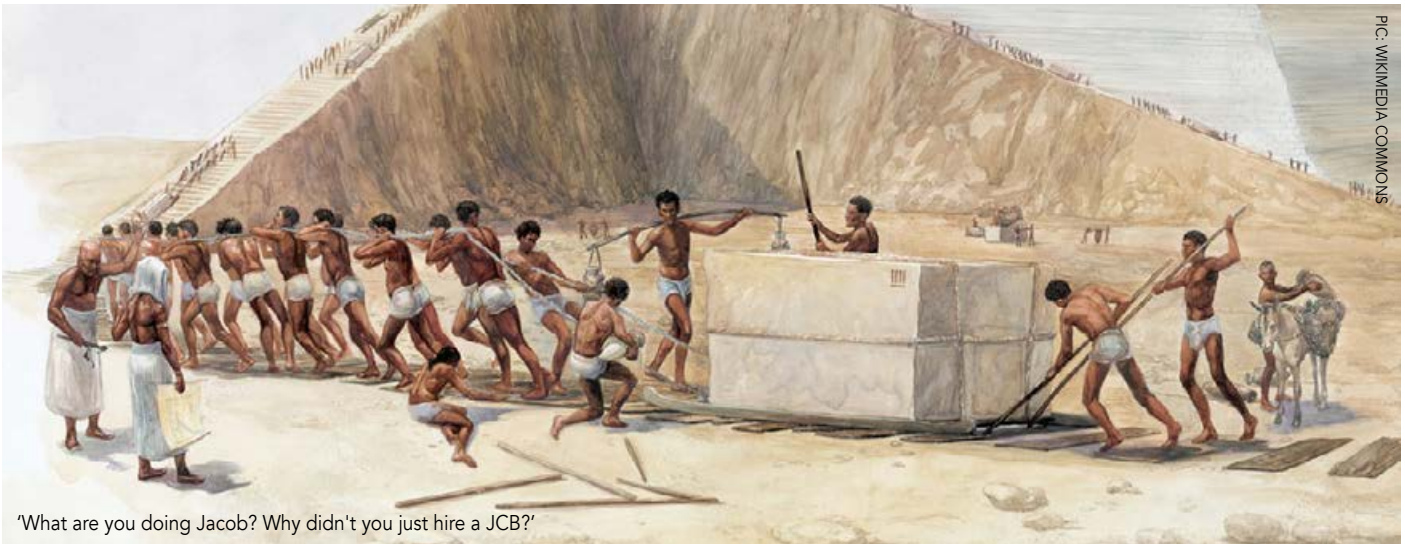
Drafting considerations

To ensure that the LD clauses achieve their commercial rationale and are enforceable, the following should be considered when drafting:

- The LDs should be expressed to be 'due and owing' when the LD event happens. There should be a right to set-off LDs against any sums due to contractor. It should clearly state that no conditions precedent are required or clearly spell out any such preconditions. For example, a precondition might be that employers engineer must certify that the LD is payable.
- The crystallisation of the LD event and calculation of the LD amount should be clear (and take account of sectional takeover of the plant by the employer, if applicable). If there is takeover of part of the plant or buildings by the employer, and LDs only apply for entire plant or buildings

DAMAGES

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PIC: WIKIMEDIA COMMONS

'What are you doing Jacob? Why didn't you just hire a JCB?'

takeover, then the single payment LD may be a penalty since it cannot be limited to compensation for the part of the plant that is in delay or non-performing (see *Stanor Electric Ltd v R Mansell Ltd* [1988]).

- The LDs should be expressed to be a genuine pre-estimate of loss and not to be a penalty – although this is not determinative, and the courts will look at all the circumstances surrounding the estimation and negotiation of such compensation at the time the contract was entered into in order to make its determination.
- The basis of the LD calculations and subsequent negotiations between the parties should be documented, as this will likely be examined by the courts in any court challenge to LD enforceability.

If you build it, they will come

Care should be taken in drafting each LD clause to ensure that it is enforceable and not capable of challenge under any of the grounds referred to above. Where the LD clause is expressed as an exhaustive remedy,

consideration should be given to carve out any specific remedies that might also be required at the same time as the LD event occurs or when the cap on LDs is reached.

In high-value project-financed construction contracts, such as power plants, the calculation and negotiation of LDs will likely be based on specific financial models. However, in other instances, it could happen that the LD calculation is based on a simple

percentage of contract price by reference to other similar projects. This is particularly likely where a standard form of contract template is being used. It is important for a lawyer to advise that, for each contract, a ‘genuine estimate’ of the employer’s loss for that specific contract should be calculated and form the basis of documented negotiation between the parties on the appropriate LD rate. [E](#)

LOOK IT UP

CASES:

- *Cavendish Square Holding BV v Talal El Makdessi* [2015] UKSC 67
- *Dunlop Pneumatic Tyre v New Garage* [1915] AC 79
- *Launceston Property Finance Limited v Burke* [2017] IESC 62
- *Murray v Leisureplay* [2005] EWCA Civ 963
- *Philips Hong Kong v Attorney General of Hong Kong* [1993] 61 BLR 41
- *Robinson v Harman* [1848] 1 Ex 850
- *Sheehan v Breccia* [2016] IEHC 67
- *Silent Vector Pty Ltd t/as Sizer Builders v Squarcini* [2008] WASC 246
- *Stanor Electric Ltd v R Mansell Ltd* [1988] CILL 399
- *Temloc Ltd v Errill Properties Ltd* [1987] 39 BLR 30



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Check your privilege

A recent British case represents an interesting development in the area of legal professional privilege, and we could perhaps see a similar interpretation taken here in time, writes **Michelle Lynch**

MICHELLE LYNCH IS POLICY DEVELOPMENT EXECUTIVE AT THE LAW SOCIETY



The recent judgment in Britain in *Director of the SFO v Eurasian Natural Resources Corporation Ltd* has explored the limits of legal professional privilege, restricting how privilege applies in an internal investigation within a criminal context in Britain.

In the case, the [Serious Fraud Office](#) (SFO) sought a declaration that certain documents, generated by lawyers and forensic accountants during a criminal investigation into the activities of the defendant, Eurasian Natural Resources Corporation (ENRC), were not subject to legal professional privilege (LPP).

Notably, the case appears to be the first one in which the English High Court considered a claim for litigation privilege within the context of a contemplated criminal rather than a civil investigation.

Privileged or not?

ENRC is a multinational group of companies operating in the mining and natural resources sector that

received an email in December 2010 from a whistle-blower regarding allegations of fraud, bribery and corruption in relation to two of their operations. On foot of this, ENRC began an internal fact-finding investigation. In 2011, the SFO contacted ENRC, highlighting its self-reporting guidelines

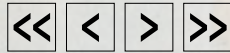
and suggesting a meeting. Thereafter, a lengthy dialogue developed between the SFO and ENRC. In April 2013, the SFO announced that it was starting a criminal investigation and sought to compel ENRC to provide a number of documents. ENRC claimed that there were four categories of documents subject to LPP and, therefore, they were entitled to refuse to disclose these disputed documents.

Category 1 referred to notes of evidence given by individuals and taken by a firm of solicitors (Dechert LLP) that had been representing ENRC in its dealings with the SFO, and which was also responsible for the relevant investigations.

Category 2 referred to documents produced by Forensic Risk Alliance

AT A GLANCE

- The case appears to be the first one in which the English High Court considered a claim for litigation privilege within the context of a contemplated criminal rather than a civil investigation
- Each case needs to be considered on its own facts, but the British decision appears to suggest that litigation privilege will be more difficult to claim there within similar criminal contexts
- In Ireland, care will need to be taken regarding who is authorised to seek or obtain legal advice, particularly in the circumstances of an internal corruption criminal investigation



PICTURE: REX FEATURES



INSPECTING THE PRIVILEGED DOCUMENTS WOULD BE A LAST RESORT AND WOULD ONLY BE DONE WHERE THOSE CLAIMING PRIVILEGE HAD MISUNDERSTOOD THEIR DUTY, COULD NOT BE TRUSTED WITH MAKING THE DECISION, OR THERE WAS NO OTHER REASONABLE PRACTICAL ALTERNATIVE



THE COURT HAD TO VERY CAREFULLY CONSIDER A CLAIM FOR LPP, AS IT IS AN ‘UNUSUAL CLAIM’, INsofar AS THE PARTIES AND THEIR LEGAL ADVISERS WHO CLAIM PRIVILEGE ARE THE ONES WHO JUDGE IT

(FRA), the forensic risk accountants who had carried out reviews.

Category 3 involved documents “indicating or containing the factual evidence presented by Mr Neil Gerrard (the partner at Dechert who had conduct of the investigations at all material times)” to ENRC.

Category 4 related to “17 documents referred to in a letter dated 22 August 2014 sent to the SFO by Fulcrum Chambers (who succeeded Dechert as ENRC’s legal advisers), which independent counsel had determined did not attract LPP”.

The SFO began proceedings, claiming that the documents were not privileged and should be disclosed.

Unusual claim

The court recognised that LPP is a “fundamental human right guaranteed by the common law, and a principle which is central to the administration of justice”. Mrs Justice Andrews noted that the burden lay on the party claiming privilege and that, once a document is “subject to privilege, the privilege is absolute: it cannot be overridden by some countervailing rule of public policy”.

She acknowledged that the court had to very carefully consider a claim for LPP, as it is an “unusual claim”, insofar as the parties and their legal advisers who claim privilege are the ones who judge it. Mrs Justice Andrews noted that, in the present case, the evidence was not of the highest quality, as ENRC had not been able to obtain direct evidence, since the employees responsible for coordinating the various investigations within ENRC had changed over time.

In considering the options open to the court, Mrs Justice Andrews stated that inspecting the privileged documents would be a last resort and would only be done where those claiming privilege had misunderstood their duty, could not be trusted with making the decision, or there was no other reasonable practical alternative. The court emphasised

that it had no choice but to determine whether the disputed documents were privileged based on the evidence before it.

Litigation privilege

The judge considered the concept of litigation privilege, noting that “it is clear that the purpose of the privilege is to enable someone to prepare for the conduct of reasonably anticipated litigation”. She cautioned against blurring the lines between litigation privilege and legal advice litigation. Acknowledging that the test as to what extent litigation must be anticipated “is notoriously difficult to express in words”, she stated that the test is an objective one, but that it must also consider the definite state of mind of the party claiming privilege.

She adopted the approach of the Federal Court of Australia case of *Bailey v Beagle Management Pty*, where a distinction was drawn between documents that were made ‘without prejudice’ and those subject to litigation privilege. In that case, Goldberg J had stated that “a distinction should be drawn between bringing a document into existence for the purpose of conducting litigation by a party on the basis that the document will not be shown to the other party, unless there be an express waiver, and a document brought into existence during the course of litigation for the purpose of settling the litigation, which is intended to be shown to the other party”.

The English High Court rejected ENRC’s proposition that litigation privilege extends to third-party documents that are created to obtain legal advice regarding avoiding contemplated litigation, noting that it cited no supporting authorities.

Legal advice privilege

The court found, while referring to the findings in *Three Rivers DC v Bank of England (No 6)*, that legal advice privilege “attaches to all communications made in confidence

between solicitors and their clients (or their agents) for the purpose of giving or obtaining legal advice, even at a stage when litigation is not in contemplation”. This, Mrs Justice Andrews stated, is so regardless of whether litigation is reasonably contemplated. She clarified that communications between third parties such as non-lawyer advisers and clients are not subject to legal advice privilege.

The court emphasised that communication between the lawyer and another person other than the client will only be subject to LPP where it satisfies the test for litigation privilege. Mrs Justice Andrews stated that this is the situation regardless of whether the client is an individual or some form of corporate entity. In determining the limits of legal advice privilege, she referred to *Astex Therapeutics v Astrazeneca* and *The RBS Rights Issue Litigation*, in which *Three Rivers* had been followed and applied. She concluded in this regard that “the information coming from the employee to the lawyer cannot be equated with instructions or information emanating from the client, unless he has been tasked by the client with seeking or obtaining the legal advice on the client’s behalf”.

Decision of the court

The court, adopting the test in *USA v Phillip Morris*, found that ENRC failed to establish that it was aware that litigation between itself and the SFO was a “real likelihood” rather than a “mere possibility”. Even if it had been able to prove that, Mrs Justice Andrews found that the documents had not been created for the dominant purpose of being used in such litigation.

The court declared that the SFO investigation could not be deemed an adversarial one, as it was a preliminary step that was completed before any decision was made to prosecute. Mrs Justice Andrews stated that “the reasonable contemplation of a criminal investigation does not necessarily

PRIVILEGE

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equate to the reasonable contemplation of a prosecution”. In this situation, the court reasoned that there was no evidence that “there was anything beyond the unverified allegations themselves”.

Furthermore, the court distinguished between the evidential basis required for criminal prosecution in contrast to the lack of restriction in commencing civil proceedings, even where there is no evidential foundation for them. In considering all of the evidence, the court found that it did not establish that criminal proceedings had been reasonably contemplated by the ENRC at any relevant time. Mrs Justice Andrews further asserted that, even if criminal proceedings had been reasonably contemplated, the disputed documents had not been created for the dominant purpose of being used in or for obtaining legal advice in relation to such anticipated criminal proceedings.

Ultimately, the court found that “the claim for litigation privilege ... fails in respect of all the categories of documents for which it is made”. In respect of the alternative claim

for legal advice privilege for Category 1, the court found that there was no evidence that those interviewed were authorised to seek or receive legal advice on ENRC’s behalf, and the claim failed.

Regarding Category 3, the court found that ENRC made out its claim over five documents within this category.

In relation to Category 4, it affirmed that legal advice privilege did not attach, as it involved communications with the head of M&A in ENRC and, therefore, his professional duty was not to act as a legal advisor to ENRC but as a “man of business”.

Future implications?

The case is an interesting development in the area of legal professional privilege in Britain and we could perhaps in time see a similar interpretation taken by the Irish courts. In that jurisdiction, care will need to be taken regarding who is authorised to seek or obtain legal advice, particularly in the circumstances of an internal corruption criminal investigation. While each case needs

to be considered on its own facts, the decision appears to suggest that litigation privilege will be more difficult to claim in Britain within similar criminal contexts. [g](#)

LOOK IT UP

CASES:

- *Astex Therapeutics v Astrazeneca* [2016] EWHC 2759
- *Bailey v Beagle Management Pty* [2001] FCA 185
- *Director of the SFO v Eurasian Natural Resources Corporation Ltd* [2017] EWHC 1017
- *The RBS Rights Issue Litigation* [2016] EWHC 3161 (Ch)
- *Three Rivers DC v Bank of England (No 6)* [2004] UKHL 48, [2005] 1 AC 610
- *USA v Phillip Morris* [2003] EWHC 3028 (Comm)

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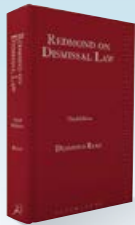
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BOOKS



VALUE-ADDED TAX AND VAT ON PROPERTY

Seán Brodie, Gabrielle Dillon, Donal Kennedy (editor: Frank Mitchell). Irish Tax Institute (2017), www.taxinstitute.ie. ISBN: 978-1-8426-043-66. Price: €75 (incl VAT); e-book: €65.20 (incl VAT).



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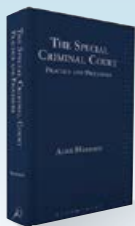


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The Irish Tax Institute publication *Value-Added Tax and VAT on Property* contains two separate titles, making it the authoritative ‘one-stop shop’ for technical guidance on all aspects of VAT in Ireland.

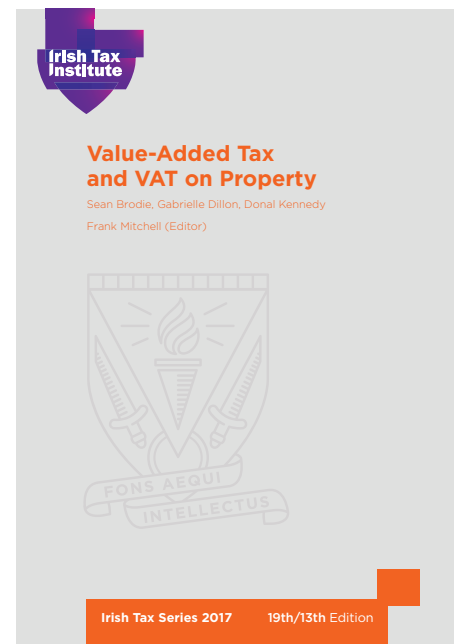
Value-Added Tax contains an in-depth analysis of all components of this complex tax. As a practitioner, the unique value of the commentary is the way it interweaves legislation, case law (both Irish and European), tax administration, Revenue interactions, and the practicalities of managing VAT into its analysis of each topic.

This is illustrated throughout the book, and a good example is to look at how the difficult topic of how the concept of a ‘cost component’ in the recovery of input VAT is dealt with. The authors combine the European Court of Justice’s judgment in the *Larentia + Minerva* cases with both Revenue guidance and an easy-to-follow example to provide the reader with an overall understanding of the topic. They also include their own interpretation of the area and complete the topic with a clear and concise summary of key points to take away. This comprehensive approach is a testament to the calibre and expertise of the authors and editor.

The second title, *VAT on Property* (13th edition) is hugely relevant for solicitors in practice. VAT on property is one of the most complex and specialised areas of VAT, or indeed tax for that matter. The publication is very timely, given our improving economic climate and the increase in property transactions and development.

Tricky topics, such as the Capital Goods Scheme, transfer of business relief, opting to tax, and waivers of exemption, are tackled with clarity and expertise. The authors’ insights into problem areas are particularly helpful, and it is evident that they have real, practical, and current experience in this area.

The inclusion of a ‘Note to VAT TALC’ from the Revenue Commissioners is also of interest. Revenue’s position on a number of topics raised before TALC is clarified in this note – for example, which party is responsible for a waiver deficit on a deemed cancellation.



The author is to be congratulated for his skill in making a very complex and technical area understandable.

A wealth of knowledge and a vast number of worked examples are shared with readers throughout the two titles. Whether you are looking for extensive guidance on a broad topic such as cross-border supply of services, or the answer to a net point on the administration of VAT, you will find it in this publication.

While the titles are highly technical and written for tax audiences, their plain-English style makes them accessible to legal professionals, accountants, chartered tax advisers, and students seeking analysis of all VAT-related matters.

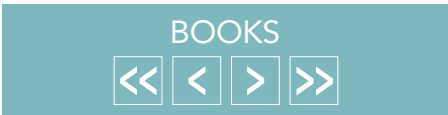
What with Brexit discussions ongoing and the European Commission’s proposed extensive reform of the EU VAT rules, VAT remains front and centre of all commercial decisions in Ireland for both domestic and international taxpayers. Accordingly, these titles, now contained in one convenient volume, should be on all tax professionals’ desks.

Shane Wallace is a tax partner at William Fry.

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INTERNATIONAL SPORTS LAW: AN INTRODUCTORY GUIDE

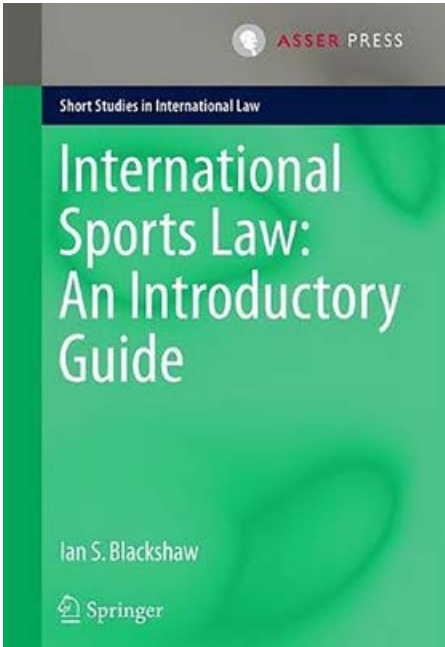
Ian S Blackshaw. Springer (2017), www.springer.com. ISBN: 978-9-4626-519-75. Price: €119.59 (incl VAT); e-book: €95.19.

Sport has evolved into a lucrative international business. As a result of its unique standing and its integral function in society, it has often attracted significant debate as to whether one should refer to ‘sport and the law’ or a unique sphere of law called ‘sports law’, separate from other legal disciplines.

In this work, Prof Ian Blackshaw has provided an excellent and comprehensive overview of the core areas and intricacies of ‘sports law’, enabling the reader to understand why it is, quite rightly, a distinct doctrine of law worthy of study and research on its own merits.

The main difference between this book and others on the topic is that, while Blackshaw offers a snapshot of the key components of the doctrine of sports law, he does so in a way that serves to satisfy the needs of various readers on this subject – for example, solicitors, academics, sports governing bodies, administrators, laypeople, sports managers, agents, and others working in or interested in studying this topic. The reader is not bombarded with heavy legal jargon and can, if they wish, further their knowledge of *lex sportiva* through the various articles, publications, and other materials that are referenced throughout each chapter.

The author ensures that the reader scratches the surface of all the core constituents of this exciting and vast field of study. These include the differences in the US ‘horizontal model’ of sport versus the European ‘pyramid structure’; the relationship between sport and general civil/criminal law, and the role of the courts in sports law; the role of international and national governing bodies; intellectual property rights; sport TV/media and sports image rights in sports law; footballers’ employment contracts; sport and the European Union and



EU competition law; the never-ending battle with doping in sport; human rights and sport; corruption in sports; and, finally, landmark cases in the arena of sports law and how they have shaped the future of this exciting branch of law.

I would highly recommend this book. It’s an excellent guide to all aspects of sports law for lawyers – and those interested in this subject matter in general. This compact publication allows the reader to delve deeper into topics of interest via its many useful references and the highlighted cases throughout.

Hilary Forde is a sports solicitor and the director of racing governance and compliance at the Irish Greyhound Board.



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REPORT OF THE LAW SOCIETY COUNCIL MEETING

29 SEPTEMBER 2017

Legal Services Regulation Act

Paul Keane updated the Council on (a) the appointment of the permanent CEO of the Legal Service Regulatory Authority and its move to temporary offices, (b) reports to be issued by the authority on MDPs and on barristers' issues, and (c) materials being prepared by the Society on legal costs. The director general briefed the Council on a recent meeting with the new CEO, Dr Brian Doherty, during which they had discussed a variety of issues.

Insurance Compensation Fund

The president briefed the Council on a recent meeting with the Accountant's Office of the High Court to discuss difficulties being encountered because award cheques from the Insurance Compensation Fund were being sent directly to claimants. The fund had also taken the position that, as with awards from the fund that were paid at 65% of claims, the fund was only paying costs of 65%. A letter had been sent to the Accountant's Office following the meeting and a reply was awaited.

In relation to the shortfall of 35% in respect of awards, the president noted that he had written to the Minister for Finance suggesting that the State should either require the insurers to pay the balance of the awards or that the Government should meet the shortfall. A reply had been received to the effect that the State was considering the position.

FATF evaluation

The deputy director general briefed the Council on the FATF mutual evaluation report, which identified ten priority actions for the State. She noted that, as expected, Ireland had received a reasonably positive rating from FATF, including positive ratings for the solicitors' profession and the Society in terms of the effectiveness and level of understanding of anti-money-laundering risks and obligations.

Judicial Council Bill 2017

The Council considered the contents of the proposed *Judicial Council Bill 2017* and also comparative research from other jurisdic-

tions, and approved the Society's policy position on the contents of the bill.

Bye-law 9(3)

The Council approved a proposal from the Finance Committee to seek approval from the AGM for an increase in the threshold contained in Bye-law 9(3) from £500,000 to €2 million, in terms of the amount that could be borrowed or expended by the Society on any capital project or series of capital projects without the approval of the members in general meeting.

Family Law Code of Practice

The Council noted with approval the amended *Family Law Code of Practice* issued by the Society the previous week and complimented the Family and Child Law Committee and, in particular, chairman Keith Walsh on his various appearances in the media following the launch of the code.

Minimum financial rating

The Council noted with approval the decision taken by the PII

Committee to introduce a minimum financial rating for all insurers participating in the PII market for practising solicitors, which would mean enhanced protection for the profession but, more importantly, for their clients.

Regulatory defence costs

Richard Hammond briefed the Council on the contents of the report of the Regulatory Defence Costs Insurance Working Group, which would be presented to the profession and discussed at the forthcoming AGM.

Turkish lawyers

Shane McCarthy thanked the Council for their previous efforts in calling for the release of Ibrahim Halawa. On behalf of the Society's Human Rights Committee, he sought and obtained the Council's approval to make a similar intervention in relation to lawyers in Turkey and, in particular, Orhan Kemal Cengiz, a lawyer, human rights defender, and journalist who had been detained and was now on trial for terrorism-related charges.

REPORT OF THE LAW SOCIETY COUNCIL MEETING

3 NOVEMBER 2017

Welcome

The president extended a warm welcome to the newly elected and newly nominated Council members: Morette Kinsella, Thomas Reilly, Joe O'Malley, Tony O'Sullivan, Joan Byrne, Robert Baker, Anne-Marie Sheridan, and Siúin Hurley.

Tribute

Society past-president Laurence K Shields paid a warm tribute to former president of the Society

Tom Shaw (see p19), who had passed away recently.

Taking of office

Outgoing president Stuart Gilhooly thanked the Council for its support during the past year. He also thanked the director general and staff for their assistance, and he wished the incoming officers all the best for the coming 12 months.

Michael Quinlan was formally appointed as president. He said it

was a great honour to accept the office for the coming year and to represent over 10,000 practitioners throughout the country and beyond. He paid tribute to Stuart Gilhooly, whose energy and enthusiasm was manifest throughout the previous year. He mentioned a number of former presidents who had shown him great support and kindness, including Laurence Shields, Elma Lynch, Ward McEllin and James McCourt, and he made particu-

lar mention of his mother, Moya, who had been president of the Society in 1981.

He committed to focusing his year on the challenges and opportunities facing sole practitioners and small firms in Ireland, on supports for colleagues in need of professional help or advice with difficult or distressing situations, on the *Legal Services Regulation Act*, on a review of education and training, difficulties in the Probate Office, and on a restoration



of the cuts in legal aid.

Senior vice-president Patrick Dorgan and junior vice-president Michelle Ní Longáin, then took office and thanked the Council for the honour of electing them.

Meeting with minister

The president and director general briefed the Council on a recent meeting with Minister for Justice Charlie Flanagan, at which a number of topics had been discussed. Very disappointingly, the minister had indicated that there was no

leeway in relation to any reversal of the cuts in criminal legal aid fees, despite intensive representations by the Society on the grounds of equity, assurances given by his predecessors, the ongoing damage being caused to the criminal legal aid system, and the difficulty in retaining staff to work in criminal defence firms. The minister had indicated that there was a wider process for reviewing all recession cuts, and the Criminal Legal Aid Scheme would have to take its place as part of that review.

Report on AGM


The Council formally adopted the motion passed at the AGM, amending Bye-law 9(3) of the Society's bye-laws.

Stamp duty

The Council discussed the difficulties arising from the stamp duty transitional issues following on Budget 2017 and noted the letter from the president to the Minister for Finance, together with the *eBulletin* to the profession. It appeared that it might require

legislation to rectify the matter or, perhaps, another financial resolution of the Dáil.

Finance scheme

Eamon Harrington reported that the PII and Practising Certificate Finance Scheme for 2017/18, which also covered current preliminary tax and pension contributions, had been awarded to the Bank of Ireland based on their rate (5.76%), their administrative systems, and their marketing proposals. 

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Dr. Basil Elnazir, Consultant Respiratory Paediatrician & Medical Advisor to Make-A-Wish

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TEN STEPS TO BETTER BILLING

This month, we look at some ideas for better billing – better in the sense of clarity for the practitioner and the client, and better payment by the client.

1. Know the law on giving information about legal charges

Section 68(1) of the *Solicitors (Amendment) Act 1994* provides that, as soon as practicable after beginning a case, a solicitor shall provide the client with a written estimate of fees and outlay or, if this is not possible, outline the basis on which fees will be charged and how this will apply to their particular case.

You may ask yourself how this legislation helps you with better billing – the answer is that, by getting the hard stuff out of the way up front, the chances of you falling out with your client diminish, and the chances of actually getting paid increase. These rules are there to protect the solicitor and the client – by clearly defining the scope of the work and how much it will cost, you will prevent misunderstandings later on.

Twenty years after this statute has been introduced, there is no excuse for failing to comply. There is a terrific [precedent](#) online on the Law Society website. This is a no-brainer, as failure to provide such an estimate amounts to misconduct and takes all the good out of the hard work provided.

Don't forget that the beneficiary of an estate is a client ([section 2](#) of the *Solicitors (Amendment) Act 1994*) and therefore is entitled to a copy of the section 68 letter or contract with the executor (see [practice note](#), *Gazette*, December 2010, p56).

For litigators, it is worth remembering that counsel should provide an estimate of costs when

receiving a brief and, if you don't get it, chase it up. The charges should then be something the client is well prepared for and come as no surprise to them.

2. Know the law on billing

[Order 99](#) of the *Rules of the Superior Courts* provides the criteria on which the bill of costs is assessed by the taxing master. These criteria can be explained to your client and incorporated into the terms and conditions of your retainer with the client.

Section 68(8) of the *Solicitors (Amendment) Act 1994* provides that, in the event of a dispute about a bill, solicitors must disclose to their clients the client's statutory rights to:

- Have the solicitor attempt to resolve the matter,
- Have their bill of costs taxed, and
- Make a complaint about the solicitor to the Law Society.

If your bill isn't discharged within the time limit you have allowed, then you might consider incorporating a letter informing the client of their statutory rights into your standard correspondence. Many solicitors make a statement of these statutory rights in their standard correspondence.

Section 68(6) of the *Solicitors (Amendment) Act 1994* provides that, at the conclusion of a litigation matter, you should write to your client with a summary of the legal work carried out on their behalf and set out what you recovered in costs, be it on a solicitor/client basis and party-and-party basis. This means that you should, at the end of your case, send the client a copy of the bill of costs detailing what you recovered from the defendant.

Section 8 of the *Solicitors (Amendment) Act 1994* gives power to the Law Society to impose sanctions for shoddy work, including limiting the amount of costs the solicitor can collect for the work done.

Section 9 of the act gives power to the Law Society to impose sanctions for overcharging, including requiring the solicitor to refund part or all of costs paid by a client, or to waive all or part of the right to recover costs from a client.

Section 2 of the *Solicitors (Ireland) Act 1849* provides that you cannot take steps to recover costs from your client until 30 days after you have served the bill. (It actually says until one month expires. You must serve the client at his address by post – quaintly, it provides that you can serve on his counting house.)

3. Use a written contract

Section 44 of the *Civil Law (Miscellaneous) Provisions Act 2008* allows you to limit your liability to the amount of your insurance cover, provided you let the client know and get them to give their written consent to same (see the Law Society's 'Solicitors' Terms of Business' [precedent](#) (no 24) at www.lawsociety.ie). This will promote better billing, in that you and your client are clear on the terms of your retainer, what is expected of you, what they expect, and also limits your liability. This is good for the client and good for the solicitor.

4. Keep the cash flow going

It is a well-known economic law that there are only three ways to improve your cash flow:

- Increase your sales,
- Decrease your overheads,
- Increase your collections on what is owed to you.

5. Reduce the cash-flow cycle

The definition of cash-flow cycle is "the number of days between disbursing cash and collecting cash in connection with undertaking a discrete unit of operations".

It is worthwhile taking time to understand the cash-flow cycle. Your firm could be very profitable (thereby attracting even more overheads, including additional taxes), but if you haven't got a healthy cash flow, you could well find yourself in difficulty, always scrambling for money, and cash starvation could strangle your business. Doesn't sound logical, does it?

If you are a personal injuries plaintiff solicitor, you will know all about this. If you are paying for medical reports, stamp duty etc, what is your turnaround time till you get paid? Not 30 days or 100 days: it could be five years – 1,500 days. In the meantime, you have to finance the outlay. Not only outlay, but rates, wages, rent, insurance and so on.

Many solicitors nowadays ask their clients to pay the outlays as they go. It can be worthwhile taking the time to invest in a credit-card machine, so that payments can be made at the time of appointment or over the phone. The more payment methods, the better the chance of getting paid. Hardly anyone has a cheque-book these days!

If your client cannot make a large payment all at once, you could consider perhaps asking them to put you on a retainer. Where an action goes on for a period of time and the client pays, say, €40 per month (€10 per week), it wouldn't hurt their pocket too much, but it would



mean that the time between your paying the outlay and collection of it would shorten. This does not, of course, cover the cost of your work, but this could be tackled in a similar way.

6. Invoice promptly

Many of us remember the pearls of wisdom given to us during our training by experienced solicitors. One of these was “always bill while the tear is in the eye”. In other words, issue the bill of costs while the work is current, not months later. If you have to issue an interim bill while awaiting fee notes from other professionals, so be it. Don’t leave it till months or years later. There is a gratitude bell curve that diminishes as time goes on, no matter what kind of splendid job you have done.

In addition, if you are seen as a professional who is careless about their own accounts and invoices, clients might question giving you future work. You are effectively encouraging the client to hand over the work to a competitor. Clients prefer to get bills promptly. If there are delays, the payment is hanging over them and they can never get rid of the wretched thing.

If you are requesting an interim payment from a client, for their sake as well as your own, make it clear that it is a request

for a payment on account and not a total of the bill to date. This is a very important distinction to make. In the absence of your making this clear, the client is entitled to assume that they are being billed for the work to date.

7. Case-management software

Many experienced solicitors used to rail against the idea of case-management software and ignored it for years, studiously writing up files in a ledger. Most solicitors are now convinced that they are a big help to the running of their practices. Of course, you only get out of it what you put into it, but it is surprising how much data about a case that this software can throw up. Even where you have a fixed fee agreed, it can be worthwhile giving your client the printout of the activity on the file showing the amount of work that went into their case.

What case management software will also do, if used properly, is provide you with a task system. This will let you input your ‘to-do’ list for each day. Every time you issue a bill, enter a reminder in your tasks to chase it up. Given how busy practice is, it is worthwhile to schedule time in your diary to take care of invoicing and collecting. If it’s possible to delegate this to someone, this is very worthwhile. It is better to separate the ‘operations’ part of your

work from the collections part.

One of the most worthwhile aspects of case management software is the facility of time recording. This is handy for (a) hourly billing, (b) assessing the profitability of work internally, and (c) demonstrating on taxation the level of work that went into a case.

8. A bill of costs

This will be one of the most useful skills you will ever learn. It puts the control of billing and the timing of it in your hands. If you get really efficient, you can write your bill as you go. You will also give your client clarity and a breakdown of what they have paid you to do.

The law says that bills have to be drawn in a seven-column format (see order 99 of the RSC) and also that the statute of limitations on complaints doesn’t run until the client has been given a bill of costs in this format.

9. Bill once you have the order

This is a really important one for litigators. During the course of a case, you will no doubt issue a motion or two and, when you do, you might obtain an order for costs. Sometimes the court will direct that the costs cannot be executed until after the hearing of the main action has concluded. Even so, it is better that the costs

of the motion are drawn immediately and served on the other side, so that they can be agreed. If they are not agreed within 30 days, then you can issue a summons to tax. This prevents the costs of motions being rolled into the costs of the main action and thereby being put under pressure to accept an all-in figure.

10. Taxing costs

The *Rules of Court* say that costs can be taxed in the following circumstances:

Party/party costs:

- On written consent of parties,
- When there’s an order for costs,
- On settlement of an action.

Solicitor/client costs:

When a requisition to tax is signed by the client. 

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CONVEYANCING COMMITTEE

RECEIVER CONTRACT SPECIAL CONDITION UNACCEPTABLE

The following clause from a receiver contract was sent to the Conveyancing Committee by a colleague:

“Exclusion of Warranties

For the avoidance of doubt and notwithstanding anything contained in this Contract for Sale,

the Vendor is not bound or deemed to be bound by any of the terms and conditions or other obligations of this Contract for Sale and is not providing or deemed to have provided any warranty specifically provided in the Contract for Sale or deemed

to be incorporated by virtue of the incorporation of the general terms and conditions of sale.”

It goes without saying that such a clause is completely unacceptable, and no solicitor could advise a client to proceed on this basis.



RECENT STATUTORY DEVELOPMENTS IN FAMILY LAW

The increasing complexity of family law is reflected in the number of new bills, laws, and statutory instruments passed in recent years. As the *Assisted Decision-Making (Capacity) Act 2015* – although not strictly a family law statute – will have such a wide application to areas of legal practice concerning vulnerable clients when it is commenced, it is included here. Solicitors are also reminded of the recently launched 2017 *Family Law in Ireland Code of Practice*.

Children and family

The *Children and Family Relationships Act 2015* ('the 2015 act') was enacted on 6 April 2015. Parts 1, 4, 5, 6, 7, 8, 12 and 13 commenced on 18 January 2016. The act amends the *Guardianship of Infants Act 1964*. The purpose of the act was to recognise and give legal effect to changing family structures in Ireland and the constitutional change of the *Thirty-first Amendment of the Constitution (Children) Act 2012*.

The commenced provisions:

- Extend guardian and custody and access rights,
- Introduce new enforcement provisions and maintenance obligations,
- Provide a new definition of 'best interests' of the child and set out a statutory framework to ascertain what is in the best interests of the child,
- Provide for expert reports (section 32 reports) to be carried out on any question affecting the welfare of the child and to ensure the views of the child are heard in the course of the proceedings affecting them.

SI 355/2017 commenced section 47(c) (with exceptions) on 31 July 2017.

Note – please see:

- Note on the *General Scheme of the Assisted Human Reproduction Bill 2017* re parts 2 and 3 of the 2015 act (see also below),
- *Adoption Amendment Act 2017* for repeal of part 11 of the 2015 act with the reinstatement of the principles of part 11 of the 2015 act, and
- SI 443/2017.

Children first

The *Children First Act 2015* ('the act') comes into effect on 11 December 2017 and places the *Children First National Guidance for the Protection and Welfare of Children* on a statutory footing. The purpose of the guidance is to promote the safety and welfare of children and manage referrals to child protection/welfare systems.

Under the act, providers of a 'relevant service' are obliged:

- To ensure, as far as practicable, that each child is safe from harm while using the services of the provider.
- To formulate a 'child safeguarding statement', which must include a written assessment of any risks and the procedures in place to manage such risks. Guidelines are available to assist in the formulation and drafting of statements on www.tusla.ie. These statements must be available for inspection, and providers are obliged to ensure that all staff members are familiar with their terms.
- To review and update the statement at least once in a 24-month period.

The Child and Family Agency (Tusla) has the right to request copies of statements and to serve a 'non-compliance notice' on non-compliant service providers. Tusla is obliged to maintain a register, open to members of the public for inspection, of non-compliance notices.

The act makes it obligatory for certain mandated persons, who have knowledge of or suspect that a child has been harmed, is being harmed, or is at risk of harm, to make a mandatory report to Tusla. Certain exceptions are listed in the act.

Note: making a mandated report does not absolve a mandated person from any obligations to disclose information to a member of An Garda Síochána under the *Criminal Justice (Withholding of Information On Offences against Children and Vulnerable Persons) Act 2012*.

Assisted decision-making

Although the *Assisted Decision-Making (Capacity) Act 2015* was enacted in October 2015, part 7 (dealing with the changes to enduring powers of attorney) has yet to be commenced. Consequently, the regime to be followed is that under the *Powers of Attorney Act 1996*. Practitioners will note the practice directions of the *Probate Administration and Trusts Committee* and the transitional arrangements set out in section 81 of the act.

Mediation

The *Mediation Act 2017* (the 2017 act) was enacted on 2 October 2017 but has not yet been commenced. The 2017 act makes:

- Provision for the setting up of a scheme for mediation informa-

tion sessions by the minister (section 23), and

- Some amendments to the *Family Law Acts* in relation to provision of information to clients on mediation prior to instituting proceedings (ss24-26).

The principal immediate impact of the 2017 act on family law is likely to be to raise the awareness of mediation as an alternative means of dispute resolution among clients and practitioners, which is to be strongly welcomed.

Adoption

The *Adoption Amendment Act 2017* came into effect on 19 October 2017 and amends various parts of the *Adoption Act 2010*. The main changes implemented by the amendment act are:

- All children can be considered equally in terms of their eligibility for adoption – previous automatic restrictions are removed,
- The best interests of the child are recognised as the most important consideration in any adoption application,
- The only legal distinction in relation to a child's age is that the child must be under 18 years of age at the time of the adoption,
- The right to apply to adopt a child is extended to couples living together in a civil partnership or cohabiting together for at least three years,
- Step-parents can now apply to adopt their partner's child without that partner (who is already the parent of the child) also applying to adopt the child,
- 'Relevant non-guardians' are given the right to be consulted about the adoption of the child,



- High Court cases where the parents of the child cannot or will not consent to an adoption now require more consideration to the attempts of those parents to raise the child.

Sexual offences

The *Criminal Law (Sexual Offences) Act 2017* was enacted in February 2017 and creates a wide range of new criminal offences in relation to child pornography, the grooming of children for sexual exploitation and, in particular, it addresses the role of information and communication technology in committing such offences.

Court rules

The *Circuit Court Rules (Family Law) 2017* were introduced on 14 June 2017 (see also p63, November 2017 *Gazette*). These rules replaced the old order 59 with a more consolidated version and made a number of important improvements to practice and procedure for Circuit Court family law, including:

- A new provision prescribing the ruling of consent terms in family law matters is set out in order 59.35. An application must be made on notice of motion to rule the terms that which is grounded on (a) an affidavit exhibiting the agreed terms, and (b) an updated affidavits of means for each party sworn

within six months before of the date of issue of the motion. Where one party does not intend to attend at the hearing/ruling, their agreement or consent must be verified by a means acceptable to the court. Where the orders sought include pension relief, a draft pension adjustment order approved by the trustees of the pension scheme must be submitted at the hearing.

- Where financial relief is sought, both parties (unless they agree otherwise in writing) must vouch affidavits of means within either 28 days of the date of the filing of the respondent’s affidavit of means or 21 days before the date fixed for the case progression hearing.
- Where parties work in one county but reside in another, and neither party nor any dependent children resides in the county, the civil bill or originating notice of motion must contain basis of jurisdiction, setting out details of the place of work of the party in the county.
- Where marriage certificates are not in English or Irish, the original certificate, duly notarised, must be produced, together with a translation verified by the translator on oath or affidavit.
- There is now an opt-in system of case progression operating in Dublin, with a default case progression in the event of cases not

being progressed. Case progression outside Dublin remains the same.

- Form 2N replaces and slightly amends the old family law civil bill. Forms 37G, 37H, 37I, 37J and 37L have been upgraded, and new forms 37W and 37X have been added.

Victims of crime

The *Criminal Justice (Victims of Crime) Bill 2016* was published in December 2016. The bill aims to strengthen the rights of victims of crime and their families, setting standards on the rights, support, and protection of victims of crime.

Domestic violence

The aim of the *Domestic Violence Bill 2017* is to consolidate the law on domestic violence and to extend protections to a wider group of applicants, particularly the right to apply for an emergency barring order, to introduce changes to court procedures to facilitate hearings, to extend reliefs to include a prohibition on stalking (including all forms of electronic communication), to provide information about support services for victims, and to permit the referrals to support services for victims.

Assisted human reproduction

The *General Scheme of Assisted Human Reproduction Bill 2017* was published on 6 October 2017. The

purpose of the bill is to provide for the regulation of a range of practices, including:

- Gamete and embryo donation for assisted human reproduction and research,
- Surrogacy,
- Pre-implantation genetic diagnosis of embryos,
- Posthumous assisted reproduction, and
- Embryo and stem-cell research.

The general scheme provides for the establishment of an independent regulatory authority for assisted human reproduction.

Parts 2 and 3 of the *Children and Family Relationships Act 2015* contain:

- Provisions relating to donor assisted human reproduction procedures,
- The rights of donor-conceived people to access information about their genetic heritage,
- Prohibitions on anonymous donation, and
- Provisions for the establishment of a National Donor-Conceived Person Register.

Part 2 and part 3 have not yet been commenced.

Dr Geoffrey Shannon, Joan O’Mahony, Susan Webster, Keith Walsh, and Jane Moffatt are members of the Family and Child Law Committee.



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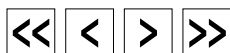


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SOLICITORS DISCIPLINARY TRIBUNAL

REPORTS OF THE OUTCOMES OF SOLICITORS DISCIPLINARY TRIBUNAL INQUIRIES ARE PUBLISHED BY THE LAW SOCIETY OF IRELAND AS PROVIDED FOR IN SECTION 23 (AS AMENDED BY SECTION 17 OF THE *SOLICITORS (AMENDMENT) ACT 2002*) OF THE *SOLICITORS (AMENDMENT) ACT 1994*

In the matter of Michael Doody, solicitor, practising in the firm of Doody Solicitors, 21 South Mall, Cork, and in the matter of the *Solicitors Acts 1954-2015* [3382/DT06/14]

Law Society of Ireland (applicant)
Michael Doody (respondent solicitor)

On 23 March 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Failed to comply with a solicitor's undertaking dated 24 March 2006, given to Bank of Ireland Mortgages, up to the date of the swearing of the within affidavit,
- 2) Failed to respond to multiple letters from the Society,
- 3) Failed to comply with a direction of the Complaints and Client Relations Committee made on 28 November 2012 that a copy of the grounding affidavits and a copy of the application under the *Trustee Acts* to the Circuit Court be sent to the Society and to the complainant before 10 January 2013 or at all,
- 4) Failed to attend a meeting of the committee on 7 February 2013,
- 5) Misled the complainant and the Society by informing them that the complainant's mortgage had been sent for registration in the Registry of Deeds.

The tribunal ordered that the respondent solicitor:

- 1) Stand advised and admonished,
- 2) Pay a sum of €4,000 to the compensation fund,

- 3) Pay a contribution of €7,500 towards the whole of the costs of the applicant.

In the matter of Kathleen Doocey, a solicitor practising as KM Doocey Solicitors, American Street, Belmullet, Co Mayo, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT16]

Law Society of Ireland (applicant)
Kathleen Doocey (respondent solicitor)

On 20 September 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in her practice as a solicitor in that she failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 December 2015 within six months of that date, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014* (SI 516 of 2014).

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay a sum of €600 to the compensation fund,
- 3) Pay a sum of €500 as a contribution towards the whole of the costs of the applicant.

In the matter of Thomas D'Alton, a solicitor practising as James J Kearns & Son, Solicitors, Portumna, Co Galway, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT08]

Law Society of Ireland (applicant)
Thomas D'Alton (respondent solicitor)

NOTICE: THE HIGH COURT

In the matter of Michele Caulfield and in the matter of the *Solicitors Acts 1954-2015* [2017 no 71 SA]

Take notice that, by order of the President of the High Court made on 6 November 2017, it was ordered that the name of Michele Caulfield be struck from the Roll of Solicitors.

John Elliot, Registrar of Solicitors, Law Society of Ireland, 13 November 2017

On 28 September 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 January 2016 within six months of that date, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014* (SI 516 of 2014).

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay a sum of €500 to the compensation fund,
- 3) Pay a contribution of €500 towards the whole of the costs of the Law Society of Ireland.

In the matter of Peter Downey, a solicitor practising as Egleton Downey Solicitors, Suite 1155, Fitzwilliam Business Centre, 77 Sir John Rogerson's Quay, Dublin 2, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT17]

Law Society of Ireland (applicant)
Peter Downey (respondent solicitor)

On 10 October 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 January 2016 within six

months of that date, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014* (SI 516 of 2014).

The tribunal order that the respondent solicitor:


- 1) Stand censured,
- 2) Pay a sum of €500 to the compensation fund,
- 3) Pay a sum of €1,000 towards the whole of the costs of the Law Society of Ireland.

In the matter of Oisín Nolan, a solicitor practising as Oisín Nolan at Richmond House, 118/120 Lower Rathmines Road, Dublin 6, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT15]

Law Society of Ireland (applicant)
Oisín Nolan (respondent solicitor)

On 10 October 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 January 2016 within six months of that date, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014* (SI 516 of 2014).

The tribunal order that the respondent solicitor:

- 1) Stand advised and admonished,
- 2) Pay a sum of €250 to the compensation fund,
- 3) Pay a contribution of €500 towards the whole of the costs of the applicant. 



NEWS FROM THE EU AND INTERNATIONAL AFFAIRS COMMITTEE
 EDITED BY TP KENNEDY, DIRECTOR OF EDUCATION, LAW SOCIETY OF IRELAND

COMMISSION FINES GOOGLE €2.42 BILLION

Last June, the European Commission found that Google Inc had abused its dominant position within the meaning of article 102 of the *Treaty on the Functioning of the EU* (TFEU). The abusive conduct entailed Google leveraging its dominance in the provision of internet search facilities to give an illegal advantage to its online comparison shopping service, Google Shopping.

The commission fined Google €2.42 billion and ordered it to desist from the relevant behaviour. This penalty represents the largest ever imposed on an individual firm by the commission for competition law infringements, beating the €1.06 billion fine imposed on Intel in 2009. (Intel's appeal against this decision continues to make its way through the European courts.)

Article 102

Article 102 prevents the abuse of a dominant position in the EU (or in a substantial part of it) that affects trade between member states. (By contrast, article 101 prevents anti-competitive arrangements between two or more separate undertakings that affect

trade between member states.) Accordingly, in order to establish that an undertaking has infringed article 102, the commission must first establish that this entity has a dominant position. A dominant position is defined as a position of economic strength that allows an undertaking to hinder effective competition being maintained in the relevant market by allowing it to behave, to an appreciable extent, independently of its competitors, customers and, ultimately, consumers. Dominance per se is not illegal, but dominant undertakings are under a special responsibility not to hinder effective competition in the market place. Article 102 contains a non-exhaustive list of various types of abusive conduct. These include limiting production to the ultimate prejudice of consumers. A dominant company may argue that its behaviour is objectively justified and thus does not infringe article 102.

Settlement talks fail

The commission's investigation of Google was both lengthy and procedurally complex. The formal investigation was launched by DG Competition of the com-

mission in November 2010, following the receipt of a number of complaints regarding Google's business practices. In April 2013, the commission consulted with third parties regarding commitments offered by Google to address concerns in four areas, including the alleged favourable treatment of Google Shopping. The market response to Google's proposed remedies was negative. Notwithstanding the submission of improved commitments in February 2014, relevant third parties continued to be unimpressed, with the result that Google's hopes for a settlement were dashed.

The investigation moved from the non-contentious to the contentious in April 2015, when DG Competition issued a statement of objections (SO) concerning Google's favourable treatment of Google Shopping in its general search results pages. In August 2015, Google summarised its 2015 reply to the SO by stating that the commission's conclusions were factually, legally, and economically flawed. In July 2016, the commission sent a supplementary SO setting out further allegations/evidence regarding

the unfair advantage given to Google Shopping.

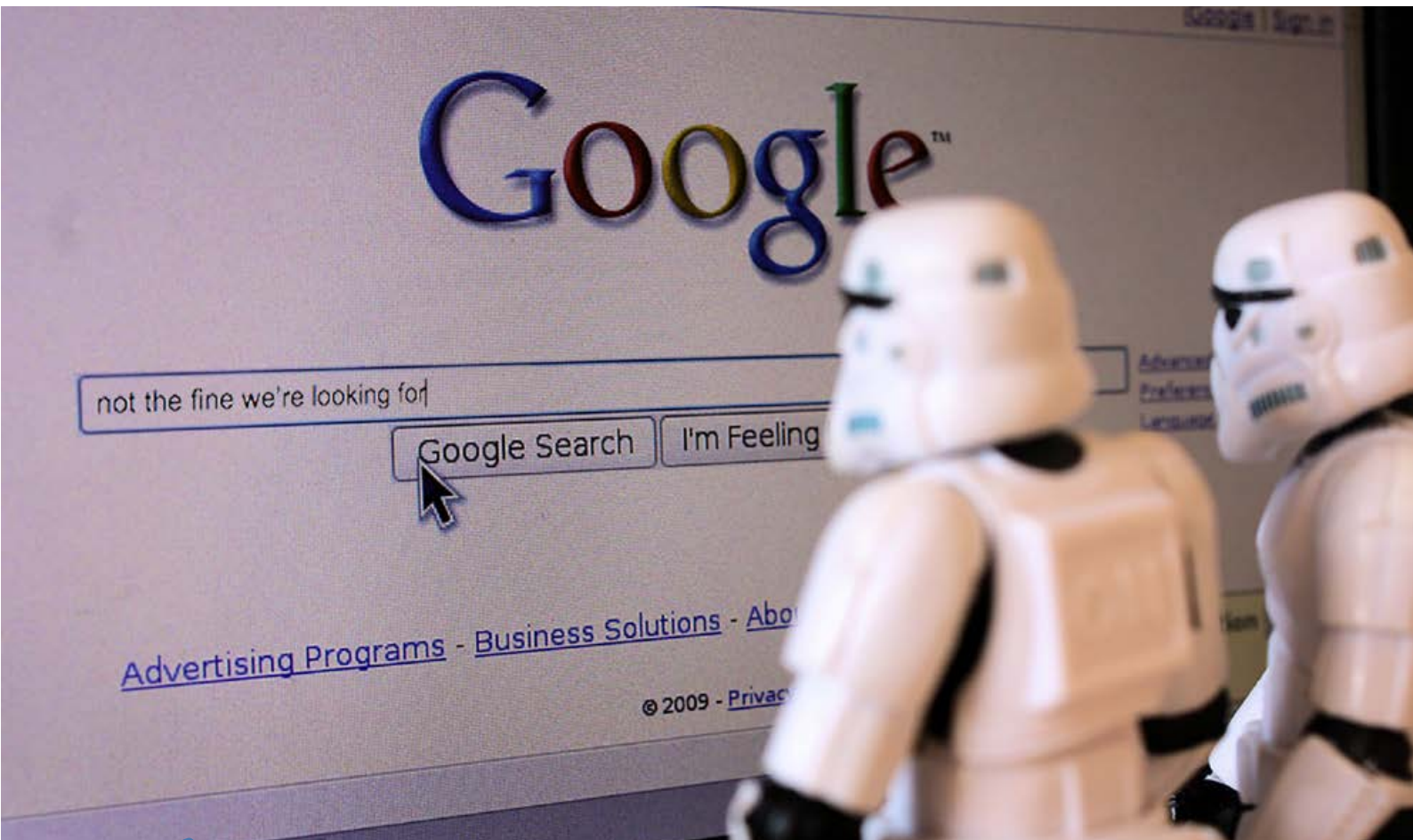
Google was given the opportunity to respond to both SOs. It was also given access to the commission's non-confidential file. Interestingly, Google chose to decline its right to an oral hearing before the commission and the Advisory Committee on Restrictive Practices and Dominant Positions (the group containing a representative of each EU member state that advises the commission on relevant competition and merger control matters). The oral hearing would also have given the relevant complainants another opportunity to express their views. It is perhaps for this reason that Google chose to waive its right to this option.

Google's dominance

Given the entry of phrases derived from the verb 'to google' into the vernacular, it will not come as a surprise that the commission found that Google is dominant in each national market for internet search throughout the 31 countries that currently comprise the European Economic Area or EEA (that is, the EU's 28 member states plus



THE GENERAL COURT'S VIEWS ON THESE ISSUES WILL NOT ONLY BE VITALLY IMPORTANT FOR THE BUSINESS STRATEGY OF GOOGLE, BUT ALSO FOR ALL COMPANIES WITH AN UNASSAILABLE POSITION IN ONE MARKET LOOKING TO EXPAND THEIR BUSINESSES



GOOGLE'S COMPETITION WOES ARE NOT LIMITED TO THE GOOGLE SHOPPING CASE. INDEED, THE COMMISSION IS CURRENTLY EXAMINING TWO OTHER ASPECTS OF THIS US TECH GIANT'S CONDUCT

Norway, Lichtenstein and Iceland). The commission noted that, since 2008, Google consistently held a high market share, above 90% in most cases, in internet search in each country and has thus been dominant (the sole exception is the Czech Republic, where Google became dominant in 2011). Another factor indicating dominance is the high barriers to entry in the internet search market, largely down to network effects – the more customers use

a search engine, the more attractive the latter becomes to advertisers. This generates profits that are used to improve Google's search offering while also gathering data regarding customers.

Illegal advantage

While Google's search engine needs no introduction, Google Shopping allows advertisers to show their product images, together with a price and description, next to normal text ads in

Google's search results. Just like text ads, an advertiser only pays Google when someone clicks on one of the shopping adverts and goes through to its website.

Google originally entered the market for online comparison shopping with the launch of a product called 'Froogle' in 2004. Froogle was not a success, so Google changed its strategy in 2008, around the same time the comparison service was re-named 'Google Product Search'

(its name was later changed to Google Shopping). The commission found that this new strategy replaced competition on the merits in comparison shopping to a reliance on Google's dominance in internet search.

Indeed, the commission considered that Google was using its search engine to give prominence to its own comparison shopping service. If, for example, a consumer wished to upgrade his/her smartphone and inserted the



THIS PENALTY REPRESENTS THE LARGEST EVER IMPOSED ON AN INDIVIDUAL FIRM BY THE COMMISSION FOR COMPETITION LAW INFRINGEMENTS

words ‘new mobile phone’ in google.co.uk, ads placed through Google Shopping would be listed at the top of the screen, usually with pictures of the relevant phones, whereas other general search results, including other shopping comparison websites, would be placed much lower in the list of results.

The commission also found that Google disadvantaged competitor comparison shopping services in its search results. More particularly, search results are generated using a series of algorithms or formulae. Elements of the latter triggered the demotion of rival comparison shopping services from page one to page four (or lower) of Google’s search results. The evidence shows that consumers click on links that finish high up in the list of search results. On desktop computers, for example, the top ten generic search results on page one collectively receives 95% of all clicks (with the leading result receiving just over a third of all clicks). The effects on mobile devices are even more pronounced given the smaller screen size. By giving prominent placing to Google Shopping and by demoting competitor services such as Kelkoo, Shopzilla and Bing Shopping, Google used its search engine to give a considerable advantage to its own comparison shopping website.

All told, Google implemented this practice in the EEA countries where its shopping comparison product was available. These included the major European economies of Germany, France,

Britain, Italy and Spain. At the relevant time, Google Shopping was not available in this jurisdiction – it has only recently been ‘rolled out’ to Irish-based online retailers.

As a result of Google’s strategy, traffic to Google Shopping increased, whereas traffic to the websites of rival comparison shopping services decreased. For example, traffic to Google Shopping increased 45-fold in Britain and 35-fold in Germany. By comparison, traffic to rival websites based in these two jurisdictions dropped by 85% and 92%, respectively. The commission found that, by undermining competition, Google has deprived consumers of genuine choice.

The fine

The commission’s fine of €2.42 billion takes into account the duration and gravity of the infringement and is based on the value of Google’s revenue from its comparison shopping service in 13 EEA countries. The commission’s decision required Google to stop its illegal conduct within 90 days and also to adhere to the principle of giving equal treatment to all comparison shopping services by applying the same algorithms. This should make sure that rival comparison shopping services are not disadvantaged by Google.

Other investigations

Google’s competition woes are not limited to the Google Shopping case. Indeed, the commission is currently examining two other aspects of this US tech giant’s conduct. The first investigation was launched by an


April 2015 SO alleging breaches of both articles 101 and 102 regarding Google’s Android mobile phone operating system. The commission’s preliminary conclusion is that Google has hindered innovation in mobile apps by seeking to maintain its already dominant position in internet search. The second focuses on AdSense (a Google product that allows third parties to place banner ads on their websites). In its July 2016 SO, the commission outlined its concerns that Google may be abusing its dominant position by preventing these third-party websites from sourcing search ads from its competitors.

Next steps

Last June’s decision represents the end of but one ‘battle’ in the ‘war’ between the commission and Google. Indeed, the latter continues to face potential fines in both the Android and AdSense cases. Moreover, there is the possibility of Google being forced to deal with various proceedings in the national courts from third parties who have suffered loss due to its abuse of a dominant position. In this regard, rival shopping comparison websites are highly likely to be considering such proceedings.

In September 2017, Google submitted its challenge to the commission’s finding of infringement regarding comparison shopping and the fine imposed to the General Court. In particular, Google contends that the commission erred in law by failing to establish that it favoured Google Shopping by showing search

results in particular ways. Google also contests the commission’s finding that its conduct increased search traffic to Google Shopping and/or decreased traffic to rival websites. The applicant also challenges the commission’s effects finding. In particular, Google argues that the commission’s analysis is speculative, while failing to take account of competition from so-called merchant websites such as Amazon. Google also challenges the level of the fine, claiming that it is unwarranted, since the commission relied on a novel theory of competitive harm, having previously rejected Google’s proposed remedy.

Perhaps the key issue of the commission’s decision to fine Google is the extent of the responsibility a dominant undertaking has not to hinder competition when it enters or expands its operations in a new market? Google would argue that it has done nothing more than use innovation to improve its service offering to its customers in a fast-moving and dynamic sector of the economy. Its detractors would counter by stating that its power in internet search allows Google to undermine competition in other related online services. The General Court’s views on these issues will not only be vitally important for the business strategy of Google, but also for all companies with an unassailable position in one market looking to expand their businesses. 

Cormac Little is a partner and head of the competition and regulation unit in William Fry, Solicitors.



RATES

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €150 (incl VAT at 23%)
- **Title deeds** – €300 per deed (incl VAT at 23%)
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ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO **LAW SOCIETY OF IRELAND**. Deadline for Jan/Feb 2018 *Gazette*: 15 January 2018. For further information, contact the *Gazette* office on tel: 01 672 4828.

No recruitment advertisements will be published that include references to ranges of post-qualification experience (PQE). The *Gazette* Editorial Board has taken this decision based on legal advice, which indicates that such references may be in breach of the *Employment Equality Acts 1998 and 2004*.

NEW RATES
FROM JANUARY 2018

WILLS

Hughes, Daniel Brian (otherwise Brian) (deceased), late of 3 St Peter's Terrace, Dungloe, Co Donegal (and formerly of Ardveen, Crolly, Co Donegal), who died on 24 September 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Con O'Connor & Co, Solicitors, 7 Dublin Street, Balbriggan, Co Dublin; tel: 01 841 2366, email: justine@conocorner.ie

Kennedy, Celine (deceased), retired bank official, late of 10 Furry Park Court, Howth Road, Killester, Dublin, who died on

7 July 2017, and formerly of 12 Brookwood Hall, Brookwood Avenue, Artane, Dublin. Would any person holding or having any knowledge of a will made and executed by the above-named deceased please contact Jones Solicitors, 3 Lower Mount Street, Dublin 2; tel: 01 685 3847, email: info@jonessolicitors.ie

McManus, Mary (deceased), who died on 27 May 2017, late of St Peter's Nursing Home, Sea Road, Castlebellingham, Co Louth, and formerly of Lindale, Castletown Road, Dundalk, Co Louth. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-

named deceased, or if any firm is holding same, please contact Margaret Walsh, Sheil Solicitors, 34 Lad Lane, Dublin 2; tel: 01 631 0360, email: info@sheilsolicitors.ie

Murray, Hugh (deceased), late of Ballycahah, Clara, Co Offaly. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Farrell and Partners Solicitors, O'Connor Square, Tullamore, Co Offaly; tel: 057 93 21477, email: info@farrellandpartners.ie

Smithwick, Eileen (née Cremin) (deceased), late of Moyeightragh, Dennehy's Boher-

een, Killarney, Co Kerry, and formerly of Chapel Lane, Killarney, Co Kerry, and St Joseph's Cork Road, Mallow, Co Cork, who died on 28 August 2017. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Eoin Brosnan, Niall Brosnan & Co, Solicitors, 5 St Anthony's Place, College Street, Killarney, Co Kerry; DX 51007 Killarney; tel: 064 663 2505, email: info@brosnanandco.ie

Wilson, Mary (deceased), late of Harristown, Hollywood, Co Wicklow, who died on 27 September 1999. Would any person having knowledge of a will made by the above-named deceased, or its whereabouts, please contact Peter Doyle, Doyle Fox & Associates, The Farmhouse, Main Street, Blessington, Co Wicklow; tel: 045 851 980, email: reception@doylefox.ie

Wilson, Myles (deceased), late of Harristown, Hollywood, Co Wicklow, who died on 27 April 1977. Would any person having knowledge of a will made by the above-named deceased, or its whereabouts, please contact Peter Doyle, Doyle Fox & Associates, The Farmhouse, Main Street, Blessington, Co Wicklow; tel: 045 851 980, email: reception@doylefox.ie

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TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*

Take notice that any person having any superior interest (whether by way of freehold estate or otherwise) in the following property: all that and those the piece or parcel of land situate on the west side of Dawson Street, extending westward to the stable lane called Anne's Lane in the county of the city of Dublin, together with the dwellinghouse now known as number 35 Dawson Street aforesaid, as heretofore in possession of Francis Morgan, and the New Hall Building and the building at the rear with entrance gate to Anne's Lane aforesaid, formerly used as a stable now standing thereon, containing in breadth in front to Dawson Street aforesaid 25 feet, 10 inches or thereabouts, and in breadth in the rear 26 feet, 6 inches or thereabouts, and in depth from front to rear, 223 feet or thereabouts, be the said several admeasurements more or less, bounded on the north by the dwellinghouse and concerns known as number 36 Dawson Street in the possession of Messrs F Falkiner and Company, on the south by the dwellinghouse and concerns known as number 34 Dawson Street in the possession

of Messrs J Green and Company, on the east by Dawson Street aforesaid, and on the west by Anne's Lane aforesaid, which said premises with the appurtenances thereunto belonging or in anywise appertaining held under lease dated 5 November 1892 between Major Frederick Cherburgh Bligh of 33 Rowland Gardens, South Kensington, London, of the one part, and the Institute of Civil Engineers of Ireland, incorporated by Royal Charter of the 41st year of the reign of her Majesty Queen Victoria of the other part for a term of 200 years from 25 March 1891 reserving a yearly rent of £105 sterling.

Take notice that Miro Hotel 2 Limited (company no 560417), as tenant under the said lease, intends to submit an application to the county registrar for the city of Dublin for acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of their title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicants intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion

in each of the aforesaid premises are unknown or unascertained.

Date: 1 December 2017

Signed: Eversheds Sutherland (solicitors for the applicant), 1 Earlsfort Centre, Earlsfort Terrace, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Act 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978: notice of intention to acquire fee simple (section 4) – an application by Brantive Limited*

Notice to any person having any interest in the freehold interest of the following properties: all that and those the properties known 499 North Circular Road in the city of Dublin and the property known as 'The Big Tree', Lower Dorset Street, in the city of Dublin, including properties formerly known as no 40 Lower Dorset Street and 493, 495 and 497 North Circular Road in the city of Dublin, demised by a lease dated 3 September 1880 made between (1) Charles Corbet and (2) Thomas McAuley (the 'lease'), and described therein as all that piece or plot of ground situate on Drumcondra Road, bounded on the north by ground belonging to the said Charles Corbet, on the south by a plot of ground in the possession of the said Thomas McAuley, on the east by the plot of ground hereby secondly described, and on the west by Drumcondra Road, containing in front to Drumcondra Road 20 feet, in the rear 20 feet, and from front to rear on the north 208 feet, and on the south 210 feet, be the same admeasurements or any of them more or less, and secondly that plot of ground at the rear of and adjoining the plot of ground hereby firstly described, bounded on the north by ground in the possession of the said Charles Corbet, on the south by the North Circular Road, on the east by ground in the possession of the said Charles Corbet, and on the west by the premises hereby firstly described and by other premises in the possession of the said Thomas McAuley, con-

taining on the north 10 feet, on the south 10 ten feet, on the east 50 feet, and on the west 50 feet, be the same admeasurements or any of them more or less, which said premises firstly and secondly described are situate in the parish of Saint George and county of the city of Dublin and are more particularly described in the map hereon delineated, the premises herein firstly described being coloured red and the premises secondly described coloured green, together with all rights, easements, and appurtenances thereunto belonging or usually held or enjoyed therewith.

Take notice that Brantive Limited (the applicant), being the party entitled to the interest of the lessee under the lease in respect of the property known 499 North Circular Road in the city of Dublin and the property known as 'The Big Tree', Lower Dorset Street in the city of Dublin, including properties formerly known as no 40 Lower Dorset Street and 493, 495 and 497 North Circular Road in the city of Dublin, intends to apply to the county registrar of the county of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid properties is called upon to furnish evidence of their title to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, the said applicant intends to proceed with the application before the Dublin county registrar at the end of 21 days from the date of this notice and will apply for such directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest (including the freehold reversion) in the aforesaid premises are unknown and unascertained.

Date: 1 December 2017

Signed: Arthur Cox (solicitors for the applicant), 10 Earlsfort Terrace, Dublin 2

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In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Patrick Hayes: notice of intention to acquire the fee simple pursuant to section 4 of the *Landlord and Tenant (Ground Rents) Act 1967* – The

Forge Inn, Main Street, Rathdowney, in the county of Laois

Any person having an interest in the freehold or any estate in the above property, take notice that Patrick Hayes intends to submit an application to the county registrar of the county of Laois for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any person asserting that they hold a superior interest in the property are called upon to furnish evidence of title to the premises to the below named within 21 days from the date of this notice.

In particular, any person having an interest in the lessors' interest in a lease of 1 November 1899 between Elizabeth Kennedy and Maria Kennedy of the one part and Philip Kirwan of the other part in respect of the premises described therein as a public house situated at Main Street, Rathdowney, in the parish of Rathdowney, bar-

ony of Clandonagh, and county of Laois, for a term 150 years from 1 November 1899, subject to the yearly rent in the amount of £14, should provide evidence of title to the below named.

In default of any such information being received by the applicant, Patrick Hayes intends to proceed with application before the county registrar and will ap-

ply to the county registrar of Laois for directions as may be appropriate on the basis that the person or persons entitled to superior interest, including freehold interest, in the said premises are unknown and ascertained.

Date: 1 December 2017

Signed: PP Ryan & Co, Solicitors (solicitors for the applicant), The Square, Rathdowney, Co Laois

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Certificate in Charity Law Trusteeship and Governance	Friday 2 March	€1,550
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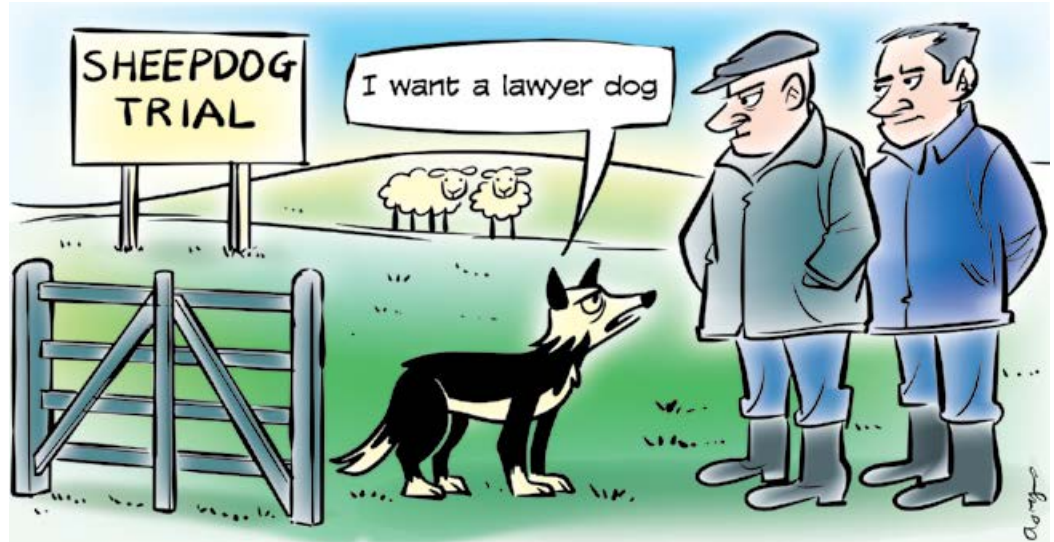
CONLIGE SUSPECTOS SEMPER HABITOS

RUFF JUSTICE AS SUSPECT DENIED COUNSEL

The Louisiana Supreme Court has ruled that a defendant's request for a 'lawyer dog' during a police interview was too ambiguous, meaning he was not denied his constitutional right to legal advice.

The Washington Post reports that the judge found that Warren Demesme only "ambiguously referenced a lawyer" during the second of two voluntary interviews relating to allegations that he sexually assaulted a minor.

According to a written brief from the Orleans Parish District Attorney's office – which appears to have omitted crucial commas – the suspect used street slang in response to advice on his right to silence:



"If y'all think I did it, I know that I didn't do it, so why don't you just give me a lawyer dog

cause this is not what's up."

Justice Scott Crichton ruled that the defendant's reference to

a 'lawyer dog' did not adequately constitute a request for legal advice.

KANSAS COPS BLOWN AWAY BY GAS MAN

A detective was forced to suspend an interview with a suspect after he responded to questioning with 'aggressive flatulence', the *Kansas City Star* reports.

Sean Sykes was up on gun and drug charges, ranging from pos-

session with intent to sell cocaine to possession of stolen firearms, all of which were found in a backpack by authorities on 1 September. Sykes denied knowing anything about the guns and drugs.

In his interview report, the

detective wrote that, when asked about his address, "Mr Sykes leaned to one side of his chair and released a loud fart before answering. Mr Sykes continued to be flatulent and I ended the interview."

Charges were not filed at that time.

He has since been pulled over again in possession of more drugs and guns. As yet, it is unclear whether or not he'll be able to fart his way out of that one.

THE ROBOTS ARE COMING!

An English computer science student who wants to "take down" lawyers with artificial intelligence chatbots has been backed by US investors to the tune of \$1.1 million, *Legal Cheek* reports.

Joshua Browder is a student at Stanford University in California and has coded an AI system called *DoNotPay*.

Launched in 2016, the site provides 24-hour free legal advice on issues such as parking fines, delayed flights, and payment protection insurance, with plans to extend this to divorce,

immigration, small claims, property tax, and corporate take-downs.

"I am not doing this to make any money whatsoever," Browder

said. "As part of the funding (and all future financings), I will take a \$1 salary until the law is free for everyone in America [and Britain]."



LANGUID LIFE OF LAW UNDERGRADS

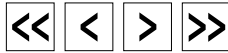
New research reveals that law undergrads don't work as hard as their counterparts in other faculties, according to *Legal Cheek*.

Based on data from 14,057 students, stats released by Britain's Higher Education Policy Institute show that law students

put in fewer hours than creative arts and design students, doing 28 hours as against 32. Medicine and dentistry students work for 45 hours a week, education students knock out 38 hours a week, while those studying architecture, building, and

planning clock up 36 hours.

The average student across all disciplines works 31 hours, while those reading history and philosophy put in 27 hours, on a level with language and literature students. Social studies undergraduates muster a paltry 25 hours.



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- Excellent communicator, team player and sense of adventure required.

KEY RESPONSIBILITIES, as applicable to level:

- Drive tempo of client file under supervision of partner. Consider case strategy and litigation risk.
- Liaise with clients to take instructions.
- Undertake concise legal research and analysis.

- Draft pleadings, correspondence, witness statements, affidavits, draft orders and skeleton arguments.
- Appear in Court as the advocate where QCs are not instructed.
- Manage more junior associates, paralegals and secretaries as required.
- Communicate with other members of the team at all levels including with senior partners and QCs
- Participate in marketing: seminars, dinners and other events with clients.
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We provide clear advice leading to informed decision making.

We have significant new opportunities for practitioners across many practice areas from Recently Qualified to Partner level. The following are examples of the roles our clients are seeking to fill. Please make sure to visit our website for other positions.

Commercial Property/Real Estate – Associate to Senior Associate MB0012

The Role: Our client, a progressive Dublin-based law firm, is seeking to recruit an experienced Commercial Property/Real Estate Solicitor to join its Commercial Property Department to assist both public and private sector clients.

The Requirements: You will be a qualified solicitor with experience dealing with acquisitions, disposals, due diligence, landlord and tenant and asset management.

Commercial Property – Assistant to Associate level PP0313

The Role: Our client, a leading Dublin practice, is seeking to recruit a commercial property solicitor.

The Requirements: The successful candidate will have at least two years' experience in landlord and tenant matters, sales and re-financings. The team works on a full range of practice areas which expand to construction matters, finance and green energy projects.

Competition and Regulated Markets – Assistant to Associate J00469

The Role: An opportunity has arisen in a Top 6 Dublin law firm for a solicitor to join its Competition & Regulated Markets Group dealing with European and Irish law including compliance & regulation. There is a wide variety of work on offer in a broad range of industrial sectors.

The Requirements: You will have relevant experience in a mid to top tier practice coupled with a strong academic background and excellent technical skills.

Construction – Assistant to Associate MB0029

The Role: A leading corporate law firm is seeking to recruit an experienced construction solicitor to assist both public and private sector clients with construction projects from inception through to completion.

The Requirements: The successful candidate will have been exposed to the full spectrum of construction work including dispute management, procurement, contracts and project insurance.

Data Protection Lawyer – Assistant to Associate level MB0048

The Role: Our client, a well established yet progressive and innovative law firm, is seeking to recruit a Data Protection/Freedom of Information lawyer to service both public and private clients.

The Requirements: This is a fast paced and evolving legal arena and requires an ambitious practitioner with at least two years' proven experience in this field. The role will involve drafting/reviewing data policies; advising Data Protection Officers; providing training to clients; and conducting GDPR readiness assessments.

Employment – Assistant to Associate PP0253

The Role: Our client, a progressive Dublin City based law firm, is seeking an employment lawyer to join its expanding Employment Team dealing with both international and domestic clients across all industry sectors.

The Requirements: You will have recent experience in contentious and non-contentious employment matters. Candidates will have strong technical expertise and a commercial approach with excellent knowledge of current legislation and case law.

Environment and Planning – Assistant to Associate PP0190

The Role: A Top 6 Dublin law firm is seeking a to recruit an Environment and Planning Solicitor. Appropriate candidates will demonstrate a strong knowledge of current legislation and have experience in planning applications. Experience of judicial review cases will be an advantage.

The Requirements: You will have a background in an international firm environment with exceptional legal skills and strong commercial awareness.

Litigation/Defence Personal Injury – NQ to Assistant MB0019

The Role: Our client is seeking to recruit a Personal Injury Litigation Solicitor to join its busy department dealing with Circuit and High Court cases.

The Requirements: You will be a qualified solicitor with strong personal injury litigation exposure. Experience of working for insurers is desirable but not essential.

Privacy/IT Lawyer – Associate to Senior Associate MB0018

The Role: Our client, a full service business law firm, is seeking to recruit an experienced lawyer to join its Privacy and Data Security Team dealing with all issues pertaining to data protection and privacy law compliance. This is a complex and rapidly evolving area of law, advising domestic and international clients.

The Requirements: You will be a qualified solicitor or barrister with relevant experience.

For more information on these and other vacancies, please visit our website or contact Michael Benson bcl solr. in strict confidence at: Benson & Associates, Suite 113, The Capel Building, St. Mary's Abbey, Dublin 7.

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