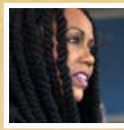




Machine head

Will increasingly advanced artificial intelligence make lawyers obsolete?



Quis custodiet?

New York lawyer Pat Gatling on civil rights and the US justice system



Canadian bacon

Ireland may have an important role in the new Canada/EU trade deal

gazette

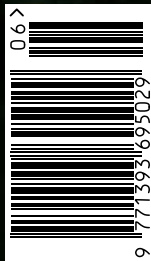
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LIFE SENTENCE?

Contracts of indefinite duration
and employment rights

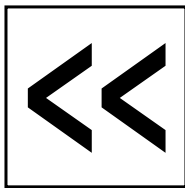




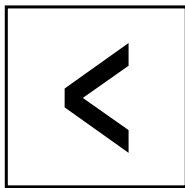
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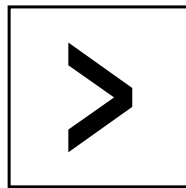
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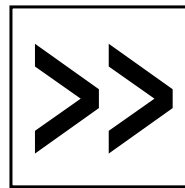
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Does your client have a claim eligible for ASR Hip ADR?

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

How it works

To apply, submit a completed Form B to McCann FitzGerald solicitors. Form Bs are available from McCann FitzGerald and from www.hipadr.ie. On receipt of Form B McCann FitzGerald may ask for additional information or documents, such as necessary medical records or details of any special damages claimed. If the claimant's case is eligible, Form B will be endorsed and returned to the claimant's solicitor. Both parties prepare written submissions which are submitted to an independent Evaluator who issues a written evaluation stating the amount of any damages assessed. The parties have 45 days to accept or reject the evaluation.

- 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
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- 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
- Revision surgery took place in Ireland not earlier than 180 days and not later than 10 years after the index surgery
- Injuries Board authorisation has been obtained
- The claim is not statute barred
- Revision surgery was not exclusively due to dislocation; trauma; infection; fracture of the femoral head; or any issue related to the femoral stem

For further information, or to discuss settlement of any eligible claim, please contact McCann FitzGerald (DFH/RJB) on 01 829 0000 or email hipadr@mccannfitzgerald.com



WORD GAMES

Let's a play a word game: London, Brussels, Paris... So what comes next – Amsterdam, Berlin, Barcelona? No, children, it's the obvious answer – Carrick-on-Shannon. At this point, you may be thinking your president has finally gone off the reservation, but there is a point.

This job has many facets to it, and some weeks are quieter than others. The second week in May was at the other end of the spectrum and epitomised that eclectic nature of the Law Society's role in meeting the needs of an increasingly diverse profession.

I mentioned in my last message that the director general and I were embarking on a short European tour in order to try and clarify some of the rumours that fill our news cycle. Our first stop was London, where we met the senior partners of two of the most talked-about firms. Both Pinsent Masons and DLA Piper extended a warm welcome and were frank in their intentions. Essentially, both have similar ambitions.

Priority list

They are actively pursuing a policy of opening Dublin branches and intend to hire largely from within Ireland. In both instances, they had intended to make this move even before Brexit went from ghoulish fantasy to full-blown horror story. DLA Piper, however, does admit that the vote last June moved Dublin up the priority list. The potential sizes of their offices do not look likely to take them into the higher echelons of the league table.

If there are others intending to make moves, they are keeping their cards close to their chests; though, of course, like everything with Brexit, no one knows for sure what will happen next.

Part two of the London visit involved meeting solicitors who might have an interest in taking out an Irish qualification while remaining in Britain. The numbers joining the roll continues to inch slowly upwards past the 1,000 mark, though those with practising certificates number less than a quarter of these.

Following a trip on the Eurostar, a similar meeting took place in Brussels the following day. We explained, on both occasions, that we weren't seeking to specifically encourage or persuade anyone to take this step – merely to provide information and ascertain the level of interest.

Interesting views

A meeting with the CCBE in Brussels and the Irish permanent representation provided some interesting views on where the legal profession in a European context is heading in this deeply uncertain environment.


The final lap led to Paris on the Wednesday, where an important seminar jointly organised by the French Bar and the Law Society of England and Wales provided plenty of food for thought and more insights into the huge difficulties Britain faces in the context



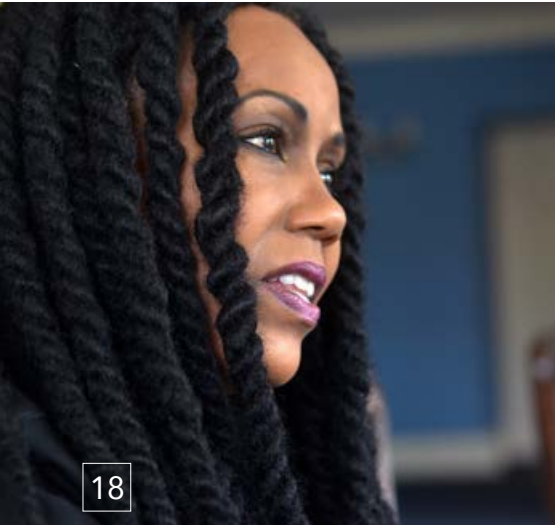
“IF THERE ARE OTHERS INTENDING TO MAKE MOVES, THEY ARE KEEPING THEIR CARDS CLOSE TO THEIR CHESTS”

of collective European unity.

That's where Leitrim comes in. We were back in the country a matter of hours when, following a day of judging with the Justice Media Awards panel, our planes, trains and automobiles experience took us to Carrick-on-Shannon for the second CPD cluster of the year.

And, I can honestly say, Leitrim beat Europe all ends up! The cluster CPDs have been a massive success and it's the best opportunity for me to meet colleagues, deal with any issues, and also see the important work that goes on in our country towns. Limerick and Donegal are next on the list – and I don't expect too much chat about Brexit! 


STUART GILHOOLY,
PRESIDENT



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THE BIG PICTURE





CRASH AND BURN

Venezuelan police are hit by a petrol bomb thrown by anti-government rioters during a protest on 8 May. Mainly middle and upper-class protesters oppose the government of President Nicolas Maduro, who narrowly won last year's election; on the other side, government supporters see no viable alternative. A year after the death of former president Hugo Chávez, these six weeks of protest reveal a country still profoundly split over Chávez's political project



COMPILED BY KEITH WALSH, PRINCIPAL OF KEITH WALSH SOLICITORS

CORK

TURNING WATER INTO WINE

SLA PRO Robert Baker tells 'Nationwide' that Stephen Gahan of O'Doherty Gahan managed the tax equivalent of turning water into wine recently when he delivered an interesting and engaging lecture on the VAT special condition in the Law Society contract for sale. The lecture on 23 April was delivered to a packed room of practitioners in the Imperial Hotel, who enjoyed Stephen's refreshing approach to a subject that is often considered overly complex.



Stephen Gahan (right) with seminar chair Kieran Moran (SLA)

MUNSTER

PULLING ON THE MUNSTER JERSEY

Michelle Nolan of Law Society Skillnets tells 'Nationwide' about some Munster initiatives. The third cluster of 2017, designed in collaboration with the Clare and Limerick bar associations, takes place in the Strand Hotel in Limerick on Friday 16 June. Topics to be discussed on the day will include anti-money-laundering,

the *Children and Family Relationships Act 2015*, a litigation update, acting for the elderly, licensing, new contract for sale and requisitions on title, a road traffic and drink-driving offences update, and a probate update. Already 100 colleagues have signed up. You can register by emailing skillnetcluster@lawsociety.ie.

PROFESSIONAL WELLBEING COMES TO CORK

Back by popular demand, the 'Professional wellbeing for a successful practice' seminar will run again in the Kingsley Hotel in Cork on 4 October. This highly interactive event is led by Antoinette Moriarty (Law School counselling manager), and speakers will

include Walt Hampton (Summit Success), Seán Ó Tarpaigh (Crann Counselling) and Mary Jackson (LawCare). Delegates can claim five hours of management and professional development skills for attending this event. To register, contact finuas@lawsociety.ie.

WICKLOW

WICKLOW WAY

The Wicklow Solicitors' Bar Association held its annual AGM on 4 May at the Glenview Hotel, Wicklow. Outgoing president Richard Joyce thanked the committee members for all their hard work and proposed Catriona Murray

as the incoming president, which was approved by the committee members. Damien Conroy remains as honorary secretary, while Finola Freehill becomes treasurer. Barbara Lydon continues to be in charge of CPD events.

DUBLIN

LEG BEFORE WICKET

The DSBA's Matthew Kenny is organising the John F Buckley Memorial Cup Cricket Match on Friday 30 June at 5.30pm at the Leinster Cricket Club, Rathmines. A Bar Select 11 will take on a DSBA Select 11. Anyone interested in being part of the DSBA Select 11 should contact

Matthew (matthew@osullivan-kenny.ie or 086 823 3359). The Memorial Cup is named in honour of DSBA past-president and former Circuit Court Judge John F Buckley (late of Beauchamps) who was a huge sporting enthusiast. All cricket fans (even SLA ones!) are welcome.

STRAWBERRIES AND CREAM?

The DSBA is holding its mixed doubles tennis tournament on 8 July at Donnybrook Tennis Club, which is open to all members and member firms of the DSBA. The tournament will involve both competitive and social tennis, as well as a barbecue afterwards. All DSBA member firms are invited to enter one or more mixed doubles pairings. The closing date for

entries is Tuesday 27 June (the number of entries is limited, so book early to avoid disappointment). Entry forms (plus cheques payable to the DSBA) are to be submitted to Maura Smith, 1st Floor, DSBA, 54 Dawson Street, Dublin 1. The organiser is Matthew Kenny, who can be contacted at tel: 086 823 3359 or email: matthew@osullivankenny.ie.

A RIGHT PAGE-TURNER

The DSBA's annual Mid-Summer Gala Dinner and Law Book of the Year Awards will take place on Friday 23 June in the Conrad Hotel. Celebrations will kick off with a champagne reception at 7.30pm. Dress code is black tie. Tickets: €80. Contact maura@dsba.ie to

book or tel 01 670 6089.

DSBA president Aine Hynes thanks sponsors ByrneWallace, Peter Fitzpatrick & Co, Law Society Skillnet, and Webfactory for their generosity. The nominated charity is the Solicitors' Benevolent Association.



NEWS FROM THE LAW SOCIETY'S COMMITTEES AND TASK FORCES

LITIGATION COMMITTEE

CROSS-BORDER DEBT RECOVERY

The *European Account Preservation Order* (EAPO) procedure came into effect on 18 January 2017, under [Regulation EU no 655/2014](#), writes *Riobard Pierse* (*Litigation Committee*). This is also reflected in [SI 645/2016](#) – the *European Union (European Account Preservation Order) Regulations 2016*.

The EAPO is a *Mareva* injunction-type relief operating across the member states. The *Rules of the Superior Courts* have been amended, and order 42E has been introduced with effect from 15 May 2017 by the *Rules of the Superior Courts (European Account Preservation Order) 2017* (SI 156/2017).

Purpose

The aim of Regulation 655/2014 is to improve the efficiency of enforcement of judgments within the EU regarding bank accounts and debtors' assets.

The regulation enables a claimant to make an application to the courts of a member state where it has obtained a judgment, or has commenced or intends to commence proceedings for an EAPO, which would freeze moneys held by a debtor in bank accounts in all

participating member states. Britain and Denmark have opted out of the regulation, which means that neither country is taking part in its adoption and neither country is bound or subject to its application.

Credit institutions and accounts

The regulation applies to accounts held with credit institutions whose business it is to take deposits or other repayable funds from the public. It applies to accounts held in the name of the debtor and in the name of a third party on behalf of the debtor. Obviously, the challenge for the creditor will be to establish the existence of such accounts.

However, the regulation does provide that, in order to overcome practical difficulties in obtaining information about a debtor's bank account, there is a mechanism allowing a creditor (who has already obtained judgment) to request that the information needed to identify the debtor's account be obtained by a court in the member state in which the creditor believes the debtor holds an account, before an EAPO issues.

Proofs

In order to succeed in an application, a creditor must prove an urgent need of the court's protection. It must be proved that there is a real risk that the debtor will conceal or destroy their assets or have them disposed of at an undervalue. Once an EAPO is granted, the bank must freeze the account "without delay". The court must take a balanced approach before granting the EAPO. The court must consider the debtor's previous history, the relationship between the parties, and the nature of the assets. Article 9 provides that the court shall deal with an application by means of a written procedure, on the basis of information and evidence provided by the creditor in or with the application.

Security and notice

In cases where an EAPO is sought before judgment is obtained, the court may require the creditor to provide security as compensation for any damage caused to the debtor from the order (article 12).

An application for an EAPO is made without notice to the

debtor. While the debtor may not be aware of the application, in order to ensure its effectiveness, the debtor may contest the order once it is granted.

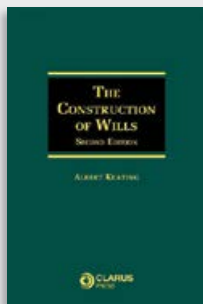
Article 22 provides that an EAPO issued in a member state shall be recognised by the other member state, without any special procedure being enforced, and shall be enforceable in the other member state without the need for a declaration of enforceability.

Information authority

Finally, the EAPO regime provides for an 'information authority' in each member state tasked, where enforcement is sought in the state, among other things, with obtaining information necessary to allow the bank or banks and the debtor's account or accounts to be identified (article 14), and a competent authority in each member state tasked where enforcement is sought in that state, among other things, with the necessary steps to have the EAPO enforced in accordance with national law (article 23). In Ireland, the information authority is the Minister for Justice.

The Construction of Wills, Second Edition

By Dr Albert Keating

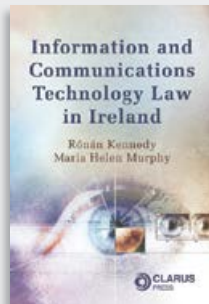


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THERE'S SOMETHING ABOUT MARY!

The *Gazette* welcomes a new journalist to its team – Mary Hallissey. Mary's chief responsibility is as journalist on the *Gazette's* new microsite, which is currently in development and is expected to launch in July.

The microsite will publish a daily legal news service, as well as regular video and podcast content.

Mary joins us from the *Sunday Business Post*, where she was a digital journalist. She previously worked as assistant chief subeditor with the *Sunday Independent* and as subeditor with



Mary Hallissey

the *Irish Daily Star* and *Irish Daily Star Sunday*.

She will bring all of her journalistic, editing and digital skills to the *Gazette's* microsite, with the aim of developing it so that it becomes the industry leader for daily legal news.

This marks an exciting new chapter in the development of the *Law Society Gazette*. We wish Mary well in her new role.

ON THE MOVE TO THE BENCH

Solicitor Eileen Creedon and Charles Meenan SC have been appointed to the High Court.

The vacancies follow the retirement in March of Mr Justice Raymond Fullam and the resignation in April of Mr Justice Colm MacEochaidh, who has been appointed a judge of the General Court of the EU.

Patrick Quinn SC has been appointed to the Circuit Court and solicitor Mary Dorgan to the District Court following the retirements of Judge Barry Hickson and Judge William Hamill.

Meanwhile, barristers Martina Baxter and Eoin Garavan will be appointed to the Circuit Court later this year, following the impending retirements of Judge John O'Hagan and Judge David Riordan.

Barrister Brian O'Shea will be appointed this month to the District Court following the retirement of Judge Aeneas McCarthy, while Judge Katherine Hutton has been permanently assigned to the Dublin Metropolitan District from 23 May.

COX LAW FIRM OF THE YEAR



Rachel Hussey and Kathleen Garrett (Arthur Cox) receiving the Chambers Europe Award

Arthur Cox has won the Ireland Law Firm of the Year 2017 award at the Chambers Europe Awards, held in London on 7 April.

The awards honour the work of national and international law firms across Europe, based on client research and feedback, and reflect notable achievements over the past 12 months.

PLANNING AHEAD

Following the enactment of the *Planning and Development (Housing) and Residential Tenancies Act 2016* (profiled in the *May Gazette*), a number of provisions have now been commenced (including section 40).

Practitioners are advised to monitor the relevant section of the *Irish Statute Book*, where future commencements, amendments and statutory instruments relating to the act will be found.

INTERNATIONAL PROTECTION CORRECTION

In the introduction to the article 'Applications for international protection' by Hilka Becker (*May Gazette*, p32), there was a reference to the *Refugee Act 1996* that seemed to imply that act is still in force and that the analysis

was based thereon, whereas the *International Protection Act 2015* is the relevant legislation in force now. The *Gazette* is happy to clarify that this error occurred during production and did not form part of the original article submitted.

HOLAHAN TAKES THE CHAIR

Bill Holohan, Cork solicitor and member of the Society's ADR Committee, has been elected chair of the Irish branch of the Chartered Institute of Arbitrators for the coming year.

The institute's Irish branch consists of more than 650 professionals and provides education and training for adjudicators, conciliators, arbitrators, mediators and adjudicators. It acts as a global hub for those who promote, facilitate and develop ADR methods.



Bill Holohan



CLUSTER EVENTS COMING TO A VENUE NEAR YOU

The first Skillnet Cluster of 2017 took place in Laois on Friday 5 May. Over 100 practitioners attended.

Among the topics discussed were family and child law, company law, legal costs, civil litigation, cybersecurity, conveyancing and maximising fee income. In addition to the networking opportunity, practitioners garnered six hours of CPD.

The Skillnet clusters series continued with a trip to the Landmark Hotel in Carrick-on-Shannon for a two-day event from 11 to 12 May. Designed in collaboration with the Leitrim, Longform, Roscommon and Sligo bar associations, the topics discussed included wills and probate, conveyancing, road traffic accidents, anti money laundering, defamation and family law. (See additional photos from both events on page 17.)

Bookings are now being taken for the following events:

- 16 June – Essential Practitioner Update 2017 (Shannon Suite, Strand Hotel, Limerick)
- 29 and 30 June – North West General Practice Update 2017 – Parts 1 and 2 (Solis Lough Eske Castle, Donegal).

Save the date

- 7 September – Essential General Practice Update 2017 (Ballygarry House Hotel,



Speakers and organisers at the Carrick-on-Shannon cluster event included (front, l to r) Dara Robinson (Sheehan & Partners), Kieran Ryan (Leitrim Bar Association), Stuart Gilhooly (president, Law Society), Michael Monahan (Sligo Bar Association) and Ken Murphy (director general, Law Society); (back, l to r) Lorcan Gearty (Longford Bar Association), Katherine Kane (Law Society Skillnet), Mary Rose McNally (Roscommon Bar Association), Patricia McGovern (DFMG Solicitors, Dublin), Catherine O'Flaherty (Law Society), Darach McCarthy (Darach McCarthy & Co, Limerick), Margaret Finlay (Finlay and Company, Dublin) and Justin Spain (Justin Spain Solicitors, Dublin)



Speakers and organisers at the Portlaoise Heritage Hotel on 5 May were (front, l to r) Katherine Kane (Law Society Skillnet), Eimear Dunne (secretary, Laois Solicitors' Association), Ashling Walsh (Ronan Daly Jermyn, Cork) and Catherine Ghent (Gallagher Shatter, Dublin); (back, l to r) Anne Marie Kelleher (president, Midlands Bar Association), Michelle Nolan (Law Society Skillnet), Keith Walsh (Keith Walsh Solicitors, Dublin), James McElwee (president, Laois Solicitors' Association) and Liam Fitzgerald (Liam R Fitzgerald Solicitors, Co Dublin)

Tralee, Co Kerry),

- 12 and 13 October – Connaught Solicitors' Symposium 2017 – Parts 1 and 2 (Breaffy House Hotel, Castlebar, Co Mayo),
- 20 October – North East CPD Day 2017 (Glencarn Hotel, Castleblayney, Co Monaghan),
- 7 November – Law Society Finuas Network – Practice and Regulation Symposium 2017 (Mansion House, Dublin),
- 17 November – Practitioner Update 2017 (Kingsley Hotel, Cork),
- 24 November – General Practice Update 2017 (Hotel Kilkenny, Kilkenny).

Law Society Skillnet thanks the bar associations assisting it. For more information, visit www.lawsociety.ie/Skillnetcluster or contact the team at skillnetcluster@lawsociety.ie.

MOOC SUCCESS

The Law Society's 'Employment law in the digital era' massive open online course (MOOC) kicked off on 9 May. By day two, 2,806 participants had logged on, with that number growing with each passing day. The initial numbers have already surpassed the number who took part in last year's data protection MOOC.

The MOOC will run for five weeks. Materials for weekly modules are released every Tuesday. Those who successfully complete the weekly tasks and collect four 'badges' may opt to obtain a certificate of completion awarded by the Law Society. To sign up, visit <https://mooc2017.lawsociety.ie>.

PROTECTING DIGITAL PRIVACY

The ever-expanding role of data in modern society will be scrutinised at this month's Data Summit Dublin at the Convention Centre on 15-16 June.

The speakers will include Google's 'internet evangelist' Vint Cerf, as well US Homeland Security officials and the Irish

Data Protection Commissioner. The social, technical and ethical ramifications of 'big data' society will be probed and, in particular, the future of privacy and trust in an increasingly connected and digitised world.

The event is CPD-accredited – and timely – given enhanced ob-

ligations in data processing flowing from the *EU General Data Protection Regulation*, which came into effect on 25 May.

Registration for the summit is open now, and discounts are available for students and the charity sector. See www.datasummitdublin.ie/register.



BOLLYWOOD PUTS PEP IN CALCUTTA RUN STEPS!

The Bollywood beat echoed around Blackhall Place on 20 May, marking the start of this year's Calcutta Run. Dance troupe Shamrock Bhangra added pep to the steps of the 1,150 runners who swarmed around the front of the iconic Law Society building to take part in the fundraising 10k run and walk.

Earlier in the day, 88 cyclists set this year's event in train by taking an 80k route through Co Meath, returning to base through the Phoenix Park. This was a new initiative that proved so successful that it's likely to become a regular element of the annual fundraiser.

The Bollywood troupe announced the Calcutta Run's new partnership with The Hope Foundation (which works in Calcutta), as well as the fundraiser's continued support for the Peter McVerry Trust. Some brave members of the audience got into the Bollywood groove, with the experts leading the way.

At the end of the athletic pursuits, all participants enjoyed a barbecue on the green, complete with music and entertainment for



all the family. Afternoon showers failed to dampen spirits, with the celebrations running well into the evening.

This year's funding target is €200k, which will be divided between the Peter McVerry Trust and The Hope Foundation, which bring sorely-needed solace to the homeless in Dublin and the street children of Calcutta. To donate, click on the 'iDonate' icon on the home page of the Calcutta Run website at www.calcuttarun.com.

The Calcutta Run committee extends its thanks to its generous sponsors, including Bank of Ireland and DX Ireland, Fitzer's Catering, the Panel, Pearl Group, Kefron, the Dartry Health Club, ICON Health Club, the Institute of Legal Cost Accountants, Behans, Gwen Malone Stenography Services, Noonan, Glenpatrick, H&J Martin Asset Management Services, Synergy Security Solutions, DBC Identity, Compass Group, Thornton's Recycling and Select Hotels of Ireland.

MASTERING THE MEDIA

More than 60 members gathered in the packed-to-capacity Green Hall Lecture Theatre on 18 May to take part in the annual Communications Day event, 'Master the Media'.

Communications Day, an initiative of the Public Relations Committee and organised by the Law Society's press office team, is a media training opportunity for Law Society members. It is designed to empower practitioners to tell the story of how solicitors

help their clients in everyday life, and actively champion the solicitors' profession in the media. All members were invited to register for the free CPD event through an article in the April 2017 eZine.

Carr Communications' Sinead O'Donnell and Johnny Fallon delivered a bespoke 'Master the Media' presentation, giving the members in attendance "the power to communicate, to convince, to combat, to compete, to collaborate, and to connect".

Andrea Gilligan, duty news editor at Newstalk, delivered a fast-paced afternoon presentation, focusing on insights from a working newsroom, including editorial decision-making, the 'news test', connecting with journalists on social media, and examples of the legal topics that newsrooms are always interested in covering.

The presentations, photos from the day and other materials are available on the Law Society website.

SUPREME COURT RULES IN MIBI'S FAVOUR

The State's Insurance Compensation Fund (ICF) may have to shoulder full liability for claims against collapsed motor insurer Setanta.

This dramatic development as the *Gazette* goes to press follows a surprise 5:2 Supreme Court judgment overturning the potential liability of the Motor Insurers' Bureau of Ireland (MIBI).

Maltese-registered Setanta collapsed in 2014, leaving 1,750 claims of up to €90 million unpaid.

The majority judgment on 25 May found that the various agreements between MIBI and the Transport Minister did not extend to insolvent insurers.

Outstanding claims against Setanta will now have to be met by the ICF, which previously covered the disintegration of firms such as Quinn Insurance and PMPA.

The case was brought by the Law Society at the request of the Accountants Office of the High Court in an attempt to ascertain whether MIBI was, in fact, liable.

As a result of the Supreme Court judgment, claims will be capped at 65%. However, Mr Justice Donal O'Donnell stated that there was a "strong and perhaps unanswerable case in equity" for full claims recovery to be met by the State.

The Law Society is assessing the judgment and will advise practitioners of its analysis as soon as possible.



JUDGE MCMAHON HONoured AT KERRY BANQUET



PICT: EAMONN KEOGH

Pictured are (front, l to r) Padraig Burke (county registrar), Terence Casey (coroner), Pat F O'Connor (chairman, KBA), Dr Bryan McMahon, Mary McMahon, Pat Sheehan (treasurer, KBA) and Judge James O'Connor; (second row, l to r) Una Glazier Farmer, Lorna Larkin, Jane O'Halloran, Maura O'Shea, Angela O'Connor, Michelle Buckley and Leonie Hussey O'Brien; (back, l to r) Michael O'Donoghue, Tim O'Leary, Emer O'Sullivan, Conor Myles, Sarah Quille, Liam Coghlan, Coman Larkin, Brian O'Connor, Micheál Munnelly, Cian Brady and Eoin Brosnan

The Killarney Bar Association (KBA) hosted a banquet in the Killarney Plaza Hotel on 5 May in honour of Mr Justice Bryan McMahon and his wife Mary. The retired High Court judge was also a professor and head of the law faculty at UCC, and many of his former students attended the banquet and recounted amusing stories of their days in UCC.

A native of Listowel, his brother Gary was a former Kerry All-Ireland-winning footballer who holds the record for the fastest goal scored in an All-Ireland final. In his post-dinner address, Mr Justice McMahon recited Bernard O'Donoghue's poem *Munster Final*.

Bryan's sporting connections are not limited to the GAA – his wife Mary is a sister of the Northern Ireland soccer legend and current Republic of Ireland manager Martin O'Neill.

Mr Justice McMahon (a life-long theatre fan) was chairman of the board of the Abbey Theatre for 11 years and is, of course, a son of the celebrated playwright

and writer Bryan McMahon.

The banquet also marked the retirement of local solicitor Maura O'Shea and the departure of the Killarney Bar Association's outgoing secretary, Jane O'Halloran, who has moved to Dublin. Tributes were paid to both colleagues during a very enjoyable evening.

SITTING ON TOP OF THE WORLD



Lawyerly skills were intensively tested over four days of the Brown Mosten International Client Competition at Kent University, Canterbury, in April 2017.

Neil Nolan (Ronan Daly Jermyn) and Conor Cawley (Gore & Grimes) won the contest outright, competing against 19 other teams from all around the world.

The competition tests teams' abilities to deal with new clients, played by actors, on both a personal and professional level. The winning teammates paid tribute to their mentors, Jane Moffatt and Robert Lowney



ON THE MOVE

NEW CROP OF PARTNERS AT MHC

Mason Hayes & Curran has announced the appointment of six new partners in its dispute resolution, real estate, technology, and financial services teams. The firm has 80 partners and 450 staff in their offices in Dublin, London, New York, and San Francisco. These new appointments reflect the firm's continuing commitment to making a valuable contribution to each client by giving commercial and strategically focused advice. The promotions also support the increased demand in key sectors and practices such as fintech, commercial property and data privacy.

The partner appointments are Frank Flanagan and Elizabeth



Quinn (dispute resolution), Mark Adair (technology), Nicola Byrne (real estate), Barry Walsh (financial services), and Oisín Tobin (technology, based in the firm's San Francisco office).

Commenting on the appointments, managing partner Declan Black said: "I'm delighted to announce the appointment of our six new partners. Some have spent their entire careers here,

and others joined MHC from industry or other international or Irish firms. But each one of them follows our approach of collaborative and practical engagement with clients and the delivery of relevant and clear legal advice that is informed by deep experience of both the legal issues and the sectors our clients operate in."

The firm has continued its expansion in 2017, with additional staff in New York and a new office in San Francisco to support both local and international clients. The firm also reported a rise in revenue of 7%, to €77 million in 2016, the 12th consecutive year of revenue growth.

ALISON IS NOW REVEREND GALLAGHER

When Alison Gallagher left the Law Society in 2011, a new chapter in her life began. It led her from the hustle and bustle of Blackhall Place to the serenity of Merville, overlooking Lough Foyle in Donegal. In her Blackhall days, she was simply known as Alison to her work colleagues. Now, she goes by the title 'Rev Gallagher'.

Having clocked over ten years in the Law School alongside Jane Moffatt and Maura Butler, she felt a calling to Methodist ministry. Following five years of study and training, she was ordained as a minister in the Methodist Church in Ireland in June 2016.

"I have great memories of working in the Law Society. I enjoyed the staff and students, the variety of my job, and had great fun for several years organising the children's and staff Christmas parties. I especially enjoyed being



Rev Gallagher outside the old church hall in Merville, Co Donegal

involved in the client counselling and negotiations competitions."

In 2006, Alison took over the running of these competitions and, over the next five years, led teams to London, Chicago, Hong Kong, Las Vegas and Maastricht. "Working with the students and coaching the teams for the international finals was a fantastic

experience for me. I got to know some of the students personally and was blessed to be able to travel to some beautiful and interesting cities."

In 2010, after becoming a local preacher, Alison asked her husband Ronan what he thought of the idea of her training for the ministry. "I think at first he

wasn't too sure what to make of it or how it would affect us long term. He knew it would probably mean leaving Dublin, but little did we know that it would take us to Merville, not far from Derry city where he grew up."

Alison is now pastoring two churches in beautiful Inishowen. The Methodist hall shared by both congregations and used by the wider local community is in a poor state. "We need to demolish and build a new fit-for-purpose hall."

To raise much-needed funds for the rebuilding, the Methodist churches in Inishowen have organised a series of fundraising events. Leading by example, Alison will run the Walled City Marathon in Derry on 4 June. If you would like to support Alison and donate towards the new hall, visit www.altruism.ie and search for 'Methodist Hall Merville'.



WICKLOW DEBATES THE HOT TOPICS



At a presentation by Law Society representatives to the Wicklow Solicitors' Bar Association were (front, l to r): Bernadette Goff, Ken Murphy (director general), Stuart Gilhooly (Law Society president), Catriona Murray (president, WSBA), Damien Conroy (honorary secretary, WSBA), Barbara Lydon (committee member) and Richard Joyce (immediate past-president, WSBA); (middle, l to r) Paddy McNeice, Gus Cullen, Patrick Jones, Maureen Bullock, Michael Moran, Rosemary Gantly, Patrick Egan, Donal O'Sullivan, David Tarrant, Brian Robinson and Valerie Markey; (back, l to r) Joe Maguire, David O'Brien, Maria Byrne, David Lavelle, Rosemary Gantly, Eilish Bradshaw and Ian Bracken

MIDLANDS MEETING OF MINDS



Pictured at the AGM of the Midland Bar Association on 29 March were (from l to r): Edward Tynan (outgoing MBA president), Stuart Gilhooly (Law Society president), Ann-Marie Kelleher (incoming MBA president), Ken Murphy (director general), Michael Byrne (then president MBA) and Aisling Penrose (outgoing secretary). The new MBA committee members are Ann-Marie Kelleher (president), Denise Biggins (secretary), Brian O'Meara (assistant secretary) and Marc Bairead (treasurer).



RUNNING DOWN A DREAM

ALL PICS: PETER HOULIHAN/PHOTOCALL IRELAND



Limbering up before the off at the Calcutta Run



Three generations: retired Judge Mary Collins, her granddaughter eight-year-old Amy Dillon O'Neill, and her daughter Nicole Dillon (solicitor)



On yer bike! Phillomena Whyte (Law Society) with her six-year-old daughter Kate



Let Gilhooly win! Law Society president Stuart Gilhooly leads out the 80 cyclists who took part in the first ever Cycle Sportive at the Calcutta Run



Five-year-old Eva Rooney with her three-year-old sister Méabh from Dunboyne



Anne Guerin and Fiona Hanna (both from Belfast)



A total of 1,400 legal professionals took part in the Calcutta Run on 20 May 2017 to raise funds for the Peter McVerry Trust and The Hope Foundation. Their target this year is €200,000. Since 1998, the event has raised over €3.3 million



Shane Collins from A&L Goodbody (who took 2nd place in the 10k) congratulates winner Louis McCarthy (Mason, Hayes & Curran) at the end of their Calcutta Run



IN THE WINNERS' ENCLOSURE AT THE IRISH LAW AWARDS



Catherine McGary and Michelle Ní Longáin of ByrneWallace accept the 'Excellence in client service' award from Charles Blandford of the *Financial Times* (sponsor)



Mr Justice Ronan Keane receives the 'Lifetime achievement' award from Julie Brennan (managing director, Institute of Legal Research and Standards, sponsor)



Anthony Fay of Anthony Fay & Co is presented with the 'Sole practitioner/sole principal of the year' award by Catherine Moroney (head of business banking, AIB Private Banking, sponsor)



Keith Walsh receives the 'Family law team/lawyer of the year' award from Miriam O'Callaghan (MC). Keith is chair of the Society's Family and Child Law Committee



Richard Martin (right) receives the 'Law firm of the year' award on behalf of Ronan Daly Jermyn from David McLaughlan (head of AIB Private Banking, sponsor) at the sixth annual AIB Private Banking Irish Law Awards on 12 May



Rory O'Boyle and Freda Grealy of the Law Society's Diploma Centre receive the 'Service provider to the legal profession' award from Tracey Carney (Ashville Media, sponsor)



CLUSTERS DRAW LARGE CROWDS



This selection of speakers and attendees from the Skillnet Cluster events in Laois on 5 May, and Carrick-on-Shannon on 11 and 12 May, gives a sense of the popularity of these CPD activities. Over 100 practitioners attended the 'Midlands General Practice Update', while 170 visited the Leitrim event (see news, p9)





MISSISSIPPI BURNING

Patricia Gatling is running to be the next Brooklyn (King's County) district attorney. She spoke with **Sorcha Corcoran** about growing up in a racially divided America, her legal career, and policing the police

SORCHA CORCORAN IS A FREELANCE JOURNALIST

When Patricia Gatling talks about childhood memories of growing up in Mississippi during the civil rights movement, it's easy to understand why she was so driven to pursue a career focused on fighting for justice.

Currently running to be the next Brooklyn (King's County) district attorney, Gatling chaired and managed the Human Rights Commission in New York for 13 years and has been both a prosecutor and a civil rights lawyer. She is a practising attorney at law firm Windels Marx in New York.

An active participant in community outreach programmes, Gatling is a widely respected speaker and was the executive producer of the documentary series *Fighting for Justice: New York Voices of the Civil Rights Movement*.

In 1964, when Gatling was seven years old, she and her mother went to live with her grandfather in Mississippi while her army officer father was in Vietnam. Her grandfather was a cotton farmer but had never voted, even though he had owned the land and paid taxes for 50 years.

That summer, under the leadership of civil rights activist Fannie Lou Hamer, the Student Nonviolent Coordinating Committee organised voter registration drives all over the south. By the time of the election in the autumn, Gatling's grandfather felt comfortable to vote.

"My grandfather didn't read that well and he asked me to go with him to read the ballot paper and make sure he didn't make a mistake," she says.

"My mother cried because it was the first time he had voted. He felt for the first time in his life that the country was his. Hands that

picked cotton could now pick legislators."

Other experiences during that period stuck in Gatling's mind and influenced her later in life. Although schools were supposed to have been integrated since 1950, this wasn't the case in Kosciusko, Mississippi, where Gatling's mother wanted to register her to start third grade.

The white school in the area wouldn't register the seven-year-old. Her mother travelled 90 miles north, to Jackson, to get a court order to allow her to attend. When that didn't work, she contacted her husband's army general in Maryland, who flew down and threatened to "wreak havoc" unless the school registered her.

"Once I started school there, my grandfather and uncles waited outside in a truck with shotguns for a month. None of the white children would ride on the school bus with me," Gatling recalls.

On another occasion, Gatling asked her father if she could go to a theme park in Maryland called 'The Enchanted Forest', which was five miles from his military base. When the family arrived, it wasn't integrated and they were refused admission. Once again, one of her father's generals stepped in and said the army would ban military personnel from the park if they didn't let her in.

"When we went in, all the white folks left. I didn't know why. It was good to be naive. My father insisted we go on every last ride on our own in the park," she says.

As Gatling got older, she gained a greater understanding of what these childhood events meant, and decided that studying law was the route to take to make a difference.

She received her Juris Doctor degree from the University of Maryland School of Law

and a BA in international studies from Johns Hopkins University in Maryland. She also attended the New York University in Paris.

Corruption cases

The early part of Gatling's career was mainly focused on prosecution. As special assistant attorney general at the Office of the New York State Attorney General from 1987 to 1990, she prosecuted corruption cases involving public officials, police officers and corrections cases. She specialised in the prosecution of police brutality and death-in-custody cases.

"I never intended being a civil rights lawyer. I thought I could do more as a criminal prosecutor because I was defending the constitution and helping people to navigate the criminal justice system, which was particularly brutal for my community. As a prosecutor, I was colour blind and could assess the accused fairly," she says.

"When Mayor Michael Bloomberg appointed me as human rights commissioner for New York in 2002, I had to rethink my philosophy. I had to walk in the shoes of the 17 protected classes of people and their problems.

"It was all about dignity, and that was something I did understand because I had been discriminated against in my own life. The most important work we did at the commission during my time was around immigration and disability access."

Gatling left the commission because Mayor Bloomberg's term was up – not, as news reports claimed, because public advocate Letitia James got her fired.

"Commissioners serve at the pleasure of the mayor. When Mayor Bill de Blasio was elected, he asked me to stay until my replacement could take office," Gatling notes.



IT WAS THE FIRST TIME HE HAD VOTED. HE FELT FOR THE FIRST TIME IN HIS LIFE THAT THE COUNTRY WAS HIS. HANDS THAT PICKED COTTON COULD NOW PICK LEGISLATORS

“I did as he requested and left the agency in December 2014. The reports that the public advocate had me fired were untrue. In fact, she never asked that I be fired. It was poor, unethical, inaccurate reporting.”

Policing the police

Around the same time as taking up the human rights commissioner role, Gatling also worked as a senior trainer with John Jay College of Criminal Justice, teaching on the topic of ‘Human rights, human dignity and the law’. She delivered the course to members of the police forces of Botswana, Thailand, Hungary, Dubai and the United Arab Emirates.

When asked about her views on policing in general around the world, she had this to say: “I think police are all the same everywhere. They start out with the mentality of wanting to be of service and seeing the job as a way to help people.

“With time, they can tend to forget they are there to protect people, not necessarily enforce the law and exact a punishment.

“The culture of the police institution tends to overtake people and an ‘us against them’ attitude is the result – police officers can feel underappreciated and underpaid. It becomes more about protecting their institution as police, than protecting the public.”


If something untoward has happened within the ranks of any country’s police force, Gatling believes there has to be an immediate response and visible consequences. “The same problems exist everywhere in policing, in terms of lack of accountability, responsiveness and transparency. You have to have strict protocols and best practice. An internal review never works – objective outsiders need to go in and force the institution to open up its books and records to be reviewed.”

Gatling was in Ireland to speak at the Burren Law School on 29 April. The key message in her speech was the connection between the great political divide in the US currently and the American Civil War. She also talked about her perspective as a black woman and how her community has lived and

survived through bad US administrations.

So, with her wide and varied experience behind her, what would Gatling bring to the role of DA if she were successful? “I am running to restore legitimacy to the criminal justice system. Legitimacy is fairness, integrity, transparency and equity. I would have an office with integrity as its hallmark, promoting equal access to fairness and justice. I see the role of DA as that of securing safety and security for our citizens, while minimising human collateral damage – which is a fine line,” she says.

“My responsibility as DA would be to prevent crime, tackle recidivism and enforce the laws justly. I would be innovative and collaborate with all stakeholders – police, law enforcement agencies, the community and business owners. If I take office, Brooklyn will be a model of justice for the country!”

“I believe in the law, I believe in the constitution as a living, growing document, and I believe in our systems. That being said, it doesn’t mean we don’t have to fight for them to be the way they should be.” 



INTERESTED IN QUALIFYING AS A U.S. ATTORNEY? MEET YOUR BARBRI CLASSROOM FACILITATOR IN DUBLIN

Gordon Wade is the head of KPMG Ireland's team of data protection lawyers. He's also a Dublin facilitator for the BARBRI International Bar Exam Preparation Classroom Lecture course. Find out how he passed the New York Bar Exam on his first attempt, landed a prime role on a top global firm's international arbitration team — and is now here to help you.

GORDON GAINED HIS MASTER OF LAWS FROM TRINITY COLLEGE DUBLIN IN 2009

and started the BARBRI International Bar Preparation course in October of that same year while working full time. Upon passing the New York Bar Exam on his first attempt, he was admitted to the State Bar of New York in 2010.

"After entering law school, it was always my ambition to practise internationally. During my LL.M., I specialised in International Commercial Arbitration and began researching careers in that field. It quickly became clear that the vast majority of the top practitioners either had a U.S. law school education and/or were U.S. qualified. So I decided to enrol in the BARBRI International New York Bar Preparation course, which was instrumental in my securing a place on the International Arbitration team at Wilmer Hale in London. It was also a reason why I was selected to join KPMG's Thailand legal team in Bangkok as part of a worldwide network building programme," Gordon said.

Today, Gordon leads KPMG Ireland's team of data protection lawyers and is aiming to grow the practice both in Ireland and within the KPMG global network, particularly in light of Brexit and the upcoming General Data Protection Regulation. Gordon is also one of the BARBRI facilitators you'll personally work with while preparing for a U.S. Bar Exam in Dublin through the BARBRI



GORDON WADE, Lawyer
KPMG, Ireland

"If you want to pass a U.S. Bar Exam on your first attempt, BARBRI International Bar Preparation is a very effective form of brain training. Make the time, do the work, apply the BARBRI techniques, lean on people like me – your classroom facilitator – and pass the exam. It's your gateway to a career as an international lawyer."

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throughout BARBRI International Bar Preparation. They are present in the classroom and lead interactive workshops and skills sessions. They have been in your shoes so they understand the demands, physically and emotionally, that are involved in this pursuit.

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Both the BARBRI International Classroom Lecture course and Home Study option provide innovative testing and learning technologies, combined with lectures delivered by top U.S. law professors, to non-U.S. educated lawyers and law students. Additionally, the Classroom Lecture course offers face-to-face interactions, in-depth explanations, guidance and individual support from a BARBRI International facilitator throughout your bar exam preparation.

For additional information please visit www.barbri-international.com.





JOHN V (SEÁN) KELLY 1928 – 2017

The news of the passing of Seán Kelly evoked many memories. Seán qualified as a solicitor in June 1951. Due to the poor economic circumstances that prevailed in Ireland at the time, he emigrated to New York with a friend in February 1954. He moved to Toronto two years later, returning to New York in September 1956, where he worked in the legal department of an insurance company. Seán handled claims from all over the US, gaining experience that would prove invaluable on his eventual return to Ireland.

His intention had been to stay in the US for a relatively short period. He married Patricia Smith in 1956 and they had their first son Paul the following year. Returning to Ireland in September 1958, Sean's desire had been to become an assistant solicitor in Dublin. He soon realised, however, that the economic situation had not changed since his departure four years earlier.

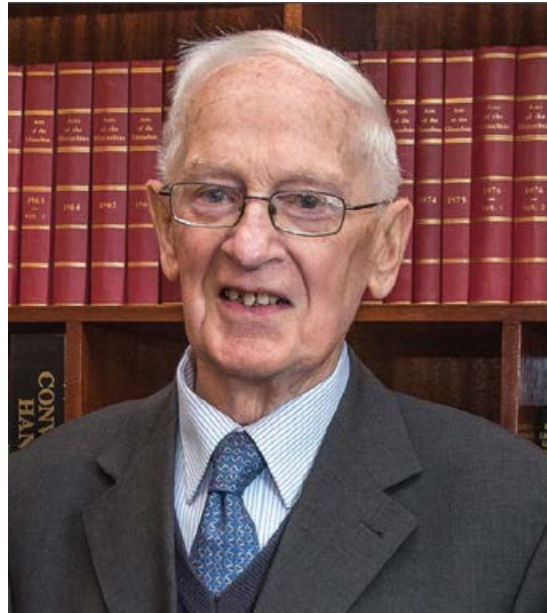
Realising that his only real option was to set up on his own, he established his firm John V Kelly & Co, Solicitors, at the back of the then General Accident Insurance office in Church Street, Cavan. His knowledge and grasp of legal matters, allied with his insurance experience garnered while in the US, soon won him new friends and valuable clients.

Some 14 or 15 months later, he acquired the practice of Reid & Faris, Solicitors, and continued to grow his firm. He was favoured with instructions on his own merit and, because of his ability in litigation, from most of the national insurance companies. His firm was the conveyancer of choice for banks in the area.

Seán maintained his practice with an abundance of energy, patience, and a very strong work ethic, which was interlaced with kindness and consideration.

During his working life, he took on many apprentices, including retired Judge Tom Fitzpatrick, Judge Cormac Dunne, Helena Brady, Noel O'Gorman, Rita Martin and, of course, his successor and son, Paul V Kelly.

As a solicitor, his attention to detail was renowned. His attitude was that all work should be done in one way only – properly. His cases were presented in a well-reasoned fashion before the courts, employing both skill and well-researched arguments that justifiably earned him an enviable reputation and



the respect of District, Circuit and High Court judges alike. He retired from practice in 2003.

As former county coroner (a position he held for 26 years), Seán's genuine sympathy for bereaved families was a great comfort to them, often in very tragic circumstances. He strove to soften the blunt descriptions of the 'where, when and how' required of his office.

His very active involvement in several charities led to many marvelling at how he found the time to run his extensive legal practice. Indeed, the people of Cavan acknowledged his Trojan work for Rehab by proclaiming him 'Man of the Year' in 1988.

His selfless work for St Vincent de Paul was recently acknowledged by Pope Francis. In addition, he helped establish and run St Christopher's Hospice in Cavan. He continued his participation and work in fund-raising for the organisation up to 2014, and was the mainstay of its annual fund-raising drive.

Seán's life was marred by the untimely death of his beloved wife Patsy in 1991. Because of his very strong faith, he managed to cope with this great loss, continuing to practise and work with the same aptitude and discipline.

He enjoyed the solitude of his vegetable garden, and delighted in pursuing a shot – whether 'at flight' or in the direction of an elusive pheasant.

Seán is survived by his eight children, three of whom followed him into law, including Paul (Cavan), John (Dublin) and his grandson Shane, who practises in his former firm in Cavan.

On behalf of the County Cavan Solicitors' Association, we offer our sincere sympathy to Seán's children – Paul, John, David, Colin, Susanne, Miriam, Helen and Yvonne – and the extended family to whom he was so close.

The advice and guidance obtained from him by family and colleagues will be greatly missed. The following extract from Psalm 112 encapsulates his entire life:

He is a light in the darkness for the upright:

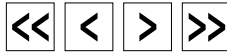
He is generous, merciful and just.

The good man takes pity and lends,

He conducts his affairs with honour.

Ar dbeis Dé go raibb a anam dílis.

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IN THE DILIGENT PURSUIT OF JUSTICE

From: Derville Rowland, director of enforcement, Central Bank of Ireland

I refer to the obituary for Paul Hannon published in the most recent edition of the *Gazette*.

As highlighted in the obituary, Paul worked in diverse roles in his career, the common thread of which was the pursuit of justice. Most recently, Paul worked for the Enforcement Directorate of

the Central Bank of Ireland, a role to which he brought his compelling joy for life and passion for the law.

On behalf of Paul's colleagues at the Central Bank, I want to sincerely echo the sentiments expressed by the office of Philip Hannon Solicitors in the obituary. Paul was a dedicated, diligent and respected colleague.

He frequently worked on novel and challenging cases,

where his keen analytical skill and unrelenting drive for fairness was at the core of his work. It was common course for Paul to go above and beyond his role to assist colleagues and to mentor junior staff in their career development.

More than this, however, Paul was a loyal and trusted friend to many of his colleagues. Whether engaging in a healthy debate on the pros and cons of Limerick hurling, Munster rugby or Irish football, organising a few social drinks after work or fundraising for one of his many charitable endeavours,

Paul's enthusiasm was catching. He brought good humour and quick wit to the office every day and enriched the lives of those around him.

The Central Bank, and the Enforcement Directorate in particular, was extremely fortunate to count Paul as a colleague.

His loss has left an obvious void in the lives of his team, his directorate, and many other colleagues throughout the Central Bank. He is remembered every day.

My sincere condolences to his family and friends. May he rest in peace.

PRAISE INDEED

From: Martina Firbank, senior associate, McCann FitzGerald, Sir John Rogerson's Quay, Dublin 2

I'd like to congratulate the *Gazette* team on what is a really great publication, as well as being a fantastic source of important information for the profession. Since I moved into a role with the knowledge team at McCann FitzGerald, I have a new-found appreciation for information that is accessible, accurate, and concisely communicated.

It's not easy to achieve, and you do everything (content, layout, headlines, emphasis,



highlights) really, really well.

Ed: Nice of you to say so, Martina.

You're now at the top of our 'favourite reader' list!

ABOVE AND BEYOND THE CALL OF DUTY

From: Mark McDermott, editor, Law Society Gazette

How kind is this? I wish to express sincere thanks to **Bernie Rafferty (Whitney Moore Solicitors)** who found my wallet after it had fallen out of my jacket while cycling (courtesy of Dublin Bikes) along Merchant's Quay.

Bernie's detective work led

to her contacting the Bank of Ireland, who passed on the message that the wallet had been found. The handover was completed in Smithfield.

Bernie - you're an angel in disguise! Whitney Moore - you're lucky to have such a thoughtful staff member who went above and beyond the call of duty on this occasion!

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LINGUA FRANCA

Jean-Claude Juncker recently claimed that the English language would slide into irrelevance as a result of Brexit. **Raymond Friel** argues that English will continue to be important – and that Ireland should plan to take advantage of emerging opportunities

PROF RAYMOND J FRIEL IS DIRECTOR OF THE INTERNATIONAL ECONOMIC AND COMMERCIAL LAW RESEARCH GROUP AT THE [SCHOOL OF LAW](#), UNIVERSITY OF LIMERICK

J'aimerais vraiment avoir continué à développer ma capacité de parler en français après avoir quitté l'école" ("I would really like to

have continued to develop my ability to speak in French after leaving school").

And clearly the President of the EU Commission thinks so as well. In a show of unrivalled hubris, Mr Juncker recently announced that [English was sliding into irrelevance](#) as a result of Brexit. It is symptomatic of the extent to which both sides in the Brexit negotiations have sunk that one of the top officials of the EU believes that, as a result of Brexit, English – the international language of the sea, science, aviation and trade – will become a footnote in history.

And yet in a way, Juncker is absolutely correct, at least to the extent that he is referring to the internal workings of the EU. With Britain's departure, English will technically lose its status as an official language and, as a matter of reality, it will move from being the native tongue of over 70 million people in the EU to a peripheral language of just over 4 million. And with that, there is a danger that the EU will retreat behind an isolationist wall of protectionism, an undercurrent that has been evident for some time in enhanced commission enforcement against non-EU companies in general, but in particular US companies.

For the legal profession, this will present opportunities and threats. Like all good lawyers, we have readied ourselves to provide the best advice for our clients on the consequences of Brexit – but we may not have taken the same care and attention to analyse the impact Brexit is likely to have on our legal

system and practice. Language is important for lawyers, and an environment within the EU where English is diminished as a working language will have a profound effect on our profession.

And it will not just be in terms of language that the legal environment will change rapidly in 2019. British judges will be vacating their positions on the EU courts, taking with them the strong, vibrant influence of the common law in a predominantly civil law entity. Since accession in 1973, the common law influence, particularly in legal process, but also in legal principle, has greatly benefitted the development of the EU legal system. With Ireland the only remaining common law jurisdiction, and with limited judicial representation due to our size, we run the risk of becoming the EU equivalent of Louisiana.

Integrated Europe

Brexit and the recent presidential election in France have re-energised the EU towards closer integration and greater uniformity of approach across all areas, particularly in commercial matters. During his campaign, French President Macron singled out Ireland's tax regime as being incompatible with a more integrated Europe. In the absence of Britain, how realistic is Irish resistance to tax harmonisation? Macron, Juncker and others believe that the EU must either move closer together or risk sliding apart. Unlike the US, where tax competition between states is considered integral to state rights – drive from Massachusetts to New Hampshire and watch sales tax go from 8% to 0% and tax on wage

income from 7% to 0% – the EU views tax competition as being harmful to the creation of a more integrated Europe.

Moreover, the EU is becoming an increasingly hostile environment for non-EU companies, particularly those from the US – the very companies that Ireland has sought to attract with a low tax base that now looks increasingly imperilled. Apple has been hit with an €13 billion tax bill by the EU under state aid provisions. Google is under various investigations, as is Facebook, and the list could go on.

In fact, the primary battleground is no longer the tax treatment of non-EU corporations (which looks increasingly like a lost battle), but the battle over data and information control and management. The EU is clearly concerned about the dominance of these large US tech firms and is using a variety of devices to curtail their activities within the EU, particularly in the context of what *The Economist* has recently described as the world's most valuable resource: information and data. What is disappointing is that the EU is not analysing exactly why there are no EU equivalents to the likes of Apple, Google, Amazon, etc.

So, a rather dismal outlook for the legal profession: the virtual extinction of English as an institutional language of the EU, the marginalisation of the common law in the EU legal system, non-competitive national tax systems within the EU, and a protectionist trading policy that aims to exclude Britain as a reciprocal market for EU states and that targets the US multinationals upon which much of our economic success is based. And all of this



Je m'appelle
Claude

THIS IS NOT DIVORCE;
IT IS AGREEING A NEW
FORM OF COHABITATION

PHOTO: SHUTTERSTOCK/NUALA REDMOND

in a context where the megaphone diplomacy of Brexit could result in Ireland being locked out of one of the world's largest economies.

Planning ahead

But we could look at this from a different perspective. Ireland will become the only significant English-speaking member of the EU in a world where that language is essentially a universal language for trade and science. It will also be the only significant common law jurisdiction in the EU in a world where nearly half of the G7 use that as their legal system. It is vital, therefore, that our profession should be able to navigate both these worlds, feeling as comfortable in Paris and Frankfurt as they are in London and New York.

To do this, we need to start planning now. Legal education and law schools need to change and adapt to create the lawyers of tomorrow that can thrive in this new world. Language skills and a strong understanding of global legal perspectives must be integral to our programmes.

From the practitioner perspective, we should


avoid the temptation to retreat within the EU. Now is the time to expand into Britain and secure a strong base in what will, for the foreseeable future, be our largest non-EU market. This needs to be done now, before – not after – the contours of Brexit become clear.

As a nation, we should establish Ireland as the EU leader in specialist legal areas, in particular intellectual property (IP) and information management. In IP, access to the EU trademark system makes Ireland attractive to non-EU companies, particularly from the US, given the shared language that drives so much in modern branding. The implications of Brexit on the [Unified Patent Court](#), which is not an EU institution but assumes membership of it, are uncertain. But there is nothing to prevent staking a claim now in IP management.

Further, Ireland is an ideal location for data storage and management and should become a centre of excellence in data law and data-network effects, including competition and privacy implications, which use a holistic multidisciplinary approach. Managing the EU data of international businesses, particularly

from Britain and the US, should be one of our key legal specialist services.

There are huge opportunities for the legal profession, provided we stop looking on Brexit as a 'divorce'. A divorce is about terminating a relationship on the basis that each will go their separate way in the future and have as little as possible to do with each other. Brexit cannot be that: Britain is the world's fifth largest economy, with a marketplace of 70 million that trades globally. This is not divorce; it is agreeing a new form of cohabitation. At the very least, we should seek to protect our trade link with Northern Ireland along lines similar to that which the EEC made available to West Germany by way of a free-trade protocol with East Germany.

In the uncertainty of Brexit, there is no shortage of people ready and willing to offer advice. It has been said that advice may well be just a form of nostalgia, "so be careful whose advice you buy and be patient with those who supply it" ... *mais croyez-moi sur le problème de la langue* (...but believe me on the problem of language"). 



RISE OF THE MACHINES

Robots and artificial intelligence making lawyers obsolete may seem the stuff of science fiction, but it is now an increasingly plausible future.

Matthew Holmes uploads his consciousness

MATTHEW HOLMES IS A DUBLIN-BASED BARRISTER

In Mega-City One, the dystopian home of [Judge Dredd](#), artificial intelligence (AI) and robots have made the vast majority of the population unemployed. This is the cause of most of the crime the learned Dredd J spends his time fighting. Once, this was purely the stuff of science fiction, but now it seems an increasingly plausible future.

A high-profile 2013 study by Oxford University on the future of employment found that 47% of the world's jobs are set to be displaced by 2034, and the UN has reported that two-thirds of jobs in the developing world may be replaced by robots in the future. Good news, perhaps, for criminal law practitioners – but worrying for everyone else!

Anything you can do

Given that we spend more of our time dealing with genuine stupidity rather than artificial intelligence, this is not something many lawyers here have thought about. But, unfortunately, lawyers are not immune from being made obsolete by advances in technology. Robots who know more than [Asimov's 'Three Laws of Robotics'](#) may be coming soon. Will we soon see Skynet BL instructed by Arthur Cogs & Co or [Cylon Eustace](#)? Is there a risk human lawyers might be terminated?

In Canada, a free app called [Legalswipe](#) has been launched that informs people of

their legal rights during interactions with the police. More worryingly for lawyers, it was announced last year that an artificial intelligence 'chatbot' lawyer (ominously called [DoNotPay](#)) had overturned 160,000 parking tickets in London and New York. It is successful in 64% of cases and has overturned somewhere in the region of \$4m in fines. It works by asking users a number of basic questions about their case in a simple text conversation – and then gives what amounts to an advice on proofs on the fine. Its creator is working next to program it to help users obtain compensation in flight-delay cases.

The program works well because the tests in law in such instances are very clear and formulaic. It is easy to imagine such a program being launched here in Ireland in similar road-traffic cases. For example, it would be a relatively simple matter for such a program to check if a summons was issued on time, or if a fixed-charge penalty notice defence or other technicalities arise.

Artificial intelligence and algorithms are suited to legal work that is regarded as formulaic. One American commercial lawyer has started a platform called [LawGeex](#), which reviews contracts. Using this platform, users upload a contract and get a report that states which clauses are illegal, if any clauses are missing, and if clauses might need to be revised. It only takes the algorithm about an

hour, on average, to calculate this, and it can work on up to 20 different types of contract.

In Canada, a start-up named [Loom Analytics](#) plans to use artificial intelligence to build a system that will automate legal research. It sorts case law and uses a combination of legal analysis and machine-learning to provide hard information on case law, win/loss rates, the ruling histories of judges, litigation trends over time, and much more. It is, again, easy to imagine such platforms working with Irish contracts, analysing Irish case law, dealing with discovery, or perhaps helping in drafting routine contracts and wills.

AI can do better

Artificial intelligences are also good at predicting patterns. One AI called [ROSS](#) has been able to predict with 79% accuracy the outcomes of nearly 600 human-rights cases before the European Court of Human Rights. This AI is based on IBM's [Watson AI](#) and has recently landed a position at New York law firm Baker Hostetler, handling the firm's [bankruptcy practice](#). It was referred to in the media as being "the first AI judge".

There are also reports that, in China, the judiciary are tapping into the power of artificial intelligence to build 'smarter courts'. This allows for documents to be filed online, but Chinese experts have been quick to stress that judges are not about to be replaced by robots.



PIC: GETTY IMAGES



WHAT HAPPENS IF AN AI COMMITS A CRIMINAL OFFENCE? HOW WILL IT BE PUNISHED? WILL TURNING OFF AN AI BE TANTAMOUNT TO THE DEATH PENALTY?

Law schools in Canada and Harvard are preparing their students for a future where they will have to compete with robots. Osgoode Hall Law School at Toronto's York University offers a week-long course that gives students an overview of the new technology – from artificial intelligence to automating contract work (similar to that mentioned above), as well as due-diligence software that corporations can use to their advantage. It also offers semester-long classes on legal technologies, such as automated document building and online dispute resolution. The dean of Osgoode has predicted that buying a house will soon become something that is done over an app rather than in a lawyer's office. Law schools in Ireland may soon follow suit.

Of course, AI poses other, less tangible risks to lawyers. The rise of self-driving cars may spell the end for the drink-driving specialist. Robot factory workers are much less likely to take a discrimination case against their employers, and if they get hurt on the job, they won't make a personal injury claim.

If AI programs become sufficiently advanced in terms of sentience, they may cause

other difficulties, which the courts may have to resolve.

What rights will AI 'beings' have? Will an AI be permitted to own property in the same way as companies can? If so, computerised stock traders may outstrip their human counterparts and become very wealthy and powerful. What happens if an AI commits a criminal offence? How will it be punished? Will turning off an AI be tantamount to the death penalty? At the moment, all these questions are purely theoretical, but they may need to be answered one day.

AI, AI, oh

It will still be some time before lawyers hear a robotic voice calling for [extermination](#). AIs have the potential to be a very handy tool when doing research, and may cut out much of the more tedious work.

There are some jobs that AIs may never be able to do. It is hard to imagine [C-3PO](#) representing someone in court, or [Twiki](#) ever closing a case before a jury. The closest an AI could come would be in providing advice on which arguments to advance in court – and

anyone who has ever seen a lay litigant representing themselves after legal advice knows that there is plenty of scope for human error.

It is also hard to imagine the [Terminator](#) providing clients with support during an emotional case. The human touch will never be rivalled by a machine. Whether a robot will ever become adaptable or imaginative enough to come up with a brand new legal argument is a matter of speculation at present.

The likely result of AI is that litigation could become cheaper due to matters such as research and discovery being quickly conducted by robots. Routine and simple matters are likely to be taken over by computer programs, which would replace human lawyers entirely. As a result, it is more likely to affect newer lawyers and trainees. Matters that require imagination, creativity, or emotional ability are much less likely to be taken over.

Ultimately, the introduction of computerised AI lawyer services could lead to a reduction in the amount of work available to lawyers, the amount of fees to be charged, and in the number of lawyers. Until then, lawyers will remain only human. [g](#)



GLOBAL FIRMS EYE UP DUBLIN

Given the lack of certainty about the impact of Brexit, no one knows for sure what the political and economic consequences of Britain's decision will be.

Ken Murphy attempts to separate rumour from reality

KEN MURPHY IS DIRECTOR GENERAL OF THE LAW SOCIETY

'Rumour' – An unofficial interesting story or piece of news that might be true or invented, and quickly spreads from person to person.

'Reality' – The state of things as they are, rather than as they are imagined to be. (*Cambridge English Dictionary*)

Lawyers, by our nature, crave certainty. But there is no certainty concerning what the effects of Brexit will be.

No one knows for sure what the outcome of the article 50 negotiations between the European Union and Britain will be. And no one knows for sure what the political and economic consequences – short, medium and long term – of Britain's decision to leave

the EU will be. Theresa May doesn't know. Angela Merkel doesn't know. No one knows for sure.

But there is no shortage of wild speculation and opinion, sometimes well informed but more often, not. There is an emerging mini industry that might not unreasonably be described as Brexit balderdash.

Given the lack of certainty on the 'big picture', it is hardly surprising that there is difficulty distinguishing rumour from reality in relation to one of the very small footnote issues that flows from the decision by a small majority of British voters on 23 June 2016 that they should bring more than 40 years of membership of the EU to an end. Or, as the then prime minister David Cameron phrased it, to "take a leap into the dark".

FOCAL POINT

BY THE NUMBERS

DLA Piper

- DLA Piper is a global law firm with **80** offices in **30** countries, employing **4,036** lawyers.
- It was the **number one** firm in global merger and acquisition deals by volume in 2016, according to MergerMarket's league tables.
- In 2014, DLA Piper had total revenues of **US\$2.48 billion** and was the third largest law firm in the US, measured by revenue.
- The firm was named **number one** in the world for real estate, franchise, and sports and entertainment by *International Who's Who* in 2016.
- In **2012**, Senator George J Mitchell, chairman emeritus of DLA Piper and eminent contributor to the peace process in this country, was named Lifetime Achiever by *The American Lawyer*.
- There are **220** lawyers working in DLA Piper in Germany across offices in Cologne, Frankfurt, Hamburg and Munich.
- DLA Piper has **370** lawyers across **five** offices

in the Nordic regions, following a merger in May 2017 with Danish firm LETT.

Pinsent Masons

- Pinsent Masons has **400** partners and over **2,500** staff.
- A total of **500** staff work at the firm's international HQ in the City of London.
- The firm has **22** offices across Africa, Asia, Europe and the Middle East.
- It specialises in **five** global sectors: financial services, advanced manufacturing and technology, energy, real estate and infrastructure.
- Over the past **ten** years it has developed a presence in major cities such as Beijing (2007), Singapore (2009), Paris (2012), Munich (2012), Istanbul (2013), Brussels (2015), Sydney (2015), Melbourne (2015), Düsseldorf (2016) and Johannesburg (2016).
- The firm has offices in **eight** British locations: London, Aberdeen, Birmingham, Edinburgh, Falkland, Glasgow, Leeds and Manchester.

Footnote issue

The very small footnote issue to which I refer is the phenomenon whereby, since 23 June 2016 (although, in fact, the trickle began a few weeks prior to that date), the Roll of Solicitors in Ireland has experienced a tsunami of England and Wales solicitors taking out, as they are perfectly entitled to do, an additional qualification here. The number of Brexit-driven new names on the Roll of Solicitors in Ireland now exceeds 1,100 – of whom approximately 220 have taken out practising certificates.

How many of those 1,100 have since travelled to Ireland – other than for a brief vacation, or earlier this year to watch the English rugby team being soundly defeated by Ireland in Dublin? As far as the Law Society has evidence, the answer is 'none'. Not one.

All the evidence that the Society has is that these England and Wales solicitors, almost



PIC: SHUTTERSTOCK



THERE IS AN EMERGING MINI INDUSTRY THAT MIGHT NOT UNREASONABLY BE DESCRIBED AS BREXIT BALDERDASH

without exception, are staying where they are. And where they are, in the overwhelming majority of cases, is either London or Brussels.

They have come through the administrative process of entering their names on the Roll of Solicitors in Ireland, and even in some cases have taken out practising certificates, for reasons that have absolutely nothing to do with any intention to establish in this jurisdiction. The motivation of most is to maximise their status as practitioners in EU and competition law matters, relating to such issues as right of audience in the European Court of Justice, and the entitlement of their clients to legal privilege in EU investigations, in the post-Brexit world.

Rumours

But what about the rumours of major international law firms establishing offices in Dublin? Two names, Pinsent Masons LLP and DLA Piper LLP, have been mentioned repeatedly in the British legal press, and even in newspapers in Ireland.

Law Society President Stuart Gilhooly and I decided to take the initiative, rather than wait passively, to seek to separate rumour from reality. We were due to be in London on

8 May 2017 on other Law Society business, and wrote in advance to the managing partners of both of the international law firms to introduce ourselves and to ask whether they would be prepared to meet with us. They were.

We called by appointment and had separate meetings with senior leaders of both firms. The two firms are by no means identical. DLA Piper is the larger and more global of the two. However, we were greeted with warmth and courtesy in both of these major City of London offices.


Dublin branches

The leaders of both firms confirmed that they were actively planning to open branch offices in Dublin. Both indicated that they had been contemplating such an initiative even in advance of the Brexit vote, although that decision had moved the initiative up their firms' agendas. Both very openly disclosed their similar strategy (which had been followed when opening branch offices elsewhere) of recruiting local solicitors. Only a relatively small number of lawyers from outside the jurisdiction would transfer to the branch office.

Accordingly, neither planned to 'acquire'

an existing Irish solicitor's firm. Each preferred to create their own branch office in their own name, building the branch from the ground up. Both said that they had done research on the Irish legal market, including consulting extensively with their existing Irish and international clients. Both were focused on commercial transaction work in such vibrant fields of business activity in Ireland as financial services and information technology. They recognised that the market for commercial legal services in Ireland was mature, sophisticated and well-served by Irish law firms that they respected and with which they had longstanding relationships. Nevertheless, they saw opportunities for their own firms.

Neither would commit to any ultimate ambitions in terms of size, although one, perhaps somewhat casually, mentioned 50 solicitors. Nor did either commit on timing, although Pinsent Masons' planning did seem to us to be further advanced.

So, reality can replace rumour in relation to these two particular firms' intentions. The Law Society has no such information in relation to any other international law firm. But, of course, there will always be rumours. 



START ME UP!

A stellar cast of in-house counsel dealt with the topic of setting up and managing the in-house legal function at the annual panel discussion for in-house practitioners, held at Blackhall Place. **Lorcan Roche** reports

LORCAN ROCHE IS AN AWARD-WINNING JOURNALIST

Ongoing commitment to the in-house sector's expanding needs was underlined by the president of the Law Society at a recent seminar at Blackhall Place on 4 May. Stuart Gilhooly pointed out that in-house and public sector solicitors, combined, make up nearly 20% of the profession. The Law Society has become increasingly aware, not just of the "explosion" in numbers, but of the breadth of the work being undertaken by the sector. Real efforts were being made to make the Society

more relevant to this "vital sector", he said.

Brian Connolly, chairman of the In-House and Public Sector Committee, outlined how the functions of this 'sleeping giant' of the legal community had expanded: corporate governance, risk management, public affairs, employee matters, pension matters – these and other areas were now part of the in-house solicitor's daily brief. "We are increasingly being asked to be business managers. You can either see it as a problem or an opportunity, but it is important to understand that the

growing demand for our services is a testament to the value of the legal function."

Richard O'Sullivan (general counsel, Global Shares Plc, and former head of legal affairs at the Health Information and Quality Authority) delivered a ten-point bulletin on 'What he wished he had known before he moved from the private to the in-house sector' (an article on this topic will follow in the July *Gazette*).

O'Sullivan concluded with a 'half tip, half plea': "It is lonely out there as an in-house practitioner. I realised very quickly I didn't have colleagues down the corridor. As in-house lawyers, we are not in competition. So remember to reach out for support and to stay in touch. And be open about taking cold calls from other lawyers."

Networking solutions

Una Butler, director of legal services at the Competition and Consumer Protection Commission agreed that the in-house role can be isolating, but said that the solution lay in networking. Butler, who previously worked for Philip Lee and McCann FitzGerald, believes the biggest difference between working in-house and out is the multifaceted nature of the role. But the upshot of this is that you can "carve out your own role".

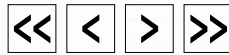
She stressed the need to be able to "roll with the punches, and to be able to embrace change".

"Your clients are no longer at the end of the phone. They are walking by, they are on the stairs, in the canteen – they are everywhere. While this is a big change from



ALL PICS: CIAN REDMOND PHOTOGRAPHY

Robert Heron, Caroline Dee Brown, Mark Cockerill, Una Butler, Stuart Gilhooly (Law Society president), Brian Connolly (chairman, In-house and Public Sector Committee), Louise Campbell, Ronan Davy, Rachael Hession, Richard O'Sullivan and Marlene Connolly



EMBRACE ALL ASPECTS OF CHANGE – EVEN DIMINISHED BUDGETS. OVER TEN YEARS, HER COMPANY HAD THREE CEOS, FIVE GENERAL COUNSELS, THREE OWNERS, ACQUIRED TWO SIGNIFICANT COMPANIES, AND CHANGED ITS NAME

private practice, the advantage is that you become much more attuned to the needs of the business and, hopefully, learn how to anticipate issues before they arise.”

When attempting to build or expand a team, she urged practitioners “to think carefully about what your goals are, carve out time to plan the future of your team, and be aware that the team will want and will deserve certainty about their roles. She further advised: “Don’t be in private practice mode – always responding to the client. You need to find time for planning.”

It is her belief that in-house solicitors have wider responsibilities: “My very, very strong opinion is that, as informed and experienced purchasers of legal services, we can be drivers of change by pushing external

legal services providers – barristers and solicitors – to deliver services in a better way, to offer more creative models, and to be more flexible around fees.”

Ronan Davy (director of legal and assistant general counsel at Etsy, which he described as “eBay for handmade and vintage items”) explained that his organisation has 28 million customers in almost every country in the world, and offices in 11 different countries.

The biggest challenge is the fact that most of his company’s US-based business partners are blissfully unaware of how complex the legal landscape in Europe is. “Relative to the US, Europe is still very heavily regulated. Something that is easy to roll out in the US can become very complex in Europe.”

In addition to the EU being a much

more heavily regulated market, he said that this challenge is compounded by both a lack of harmonisation of many laws across the EU, and differences in interpretation and enforcement of such laws. He gave specific examples of recent in-house employment law issues, for example, working from home, gender-equal childcare leave policies, and the rolling out of ‘dogs to work’. He asked the audience to imagine the various interpretations and applications that might have to be countenanced across the EU in dealing with these topics.

Davy added, however, that such multi-jurisdictional issues also allowed him to justify resources. These “so called problems”, he said, become “opportunities” – not just in terms of hiring in or out, or in terms of



Q QUESTIONS AND ANSWERS

Q As in-house counsel, how do you try to understand what the business does, in order to help pre-empt issues?

A The legal department should take over compliance and risk. Try to watch what is happening with complaints. Keep an error log. Hold risk meetings. The risks register should include legal risks. This all feeds in so you start seeing patterns and trends developing. You can then spot if there are a worrying number of risks, or strange risks, and what is being done about them. Alarm bells should ring if:

- There is a section of the business that claims to have no risk-and-compliance issues and does not maintain a register, or
- If they do have a register but the risks just sit on there and nothing is done about them. It's about 'horizon-scanning' and drawing up a list of legislation that applies to you, for instance, the **General Data Protection Regulation**, which will apply to all in-house lawyers in one way or another.

Q Sharing precedents among in-house colleagues would be very useful, but how can it be achieved?

A Mainly by establishing contacts and reaching out to colleagues for networking.

Q How can lawyers improve their management skills?

A Managing a team in an organisation is about recognising different personalities. You must adapt your style and the type of legal advice to the needs of the organisation, and to deliver advice in a way that resonates with those different personalities. Get enough information so that you can do your research and give advice. On the 'softer skills' side, there's a powerful tool called **'Insights'**, which gives each staff member a personality profile colour: red, yellow, green and blue, which can help in inter-office dynamics of how you deal with them. Try to find a mentor/coach who will help you, and who you can emulate. The better you get at your profession, the more quickly you'll become a manager. Look at other good managers who have productive teams and don't be afraid to go to them.

Q Will lawyers be replaced by artificial intelligence?

A It's an emerging trend. With more technology, production can be increased without increasing head count. It also frees us up to do other things, so should be embraced. Richard Susskind has written a book, **The Future of the Professions**. He predicts that artificial intelligence will replace repetitive jobs. Jobs that are complex but repetitively done will be taken over by computers.

Q What are the best networking opportunities for in-house practitioners?

A The Society has a new LinkedIn group specifically for in-house solicitors. Details are included in each Gazette. Law Society Professional Training and the In-house and Public Sector Committee organise specific events for in-house lawyers, around the country. The committees' section on the Society's website regularly provides guidance to queries received. Link in with the local bar associations around the country and attend the Law Society's cluster events. These enable in-house lawyers to meet up with their private practice colleagues. Public sector lawyers have their own forum, which is very helpful, through which they can attend events, network, socialise, and meet colleagues. The committee regularly provides guidance to queries received.



IT IS EXCITING TO ALLOW FEAR, TO STEP INTO THE UNKNOWN. DOING THE SAME THING YOU ALWAYS DO PRECLUDES THE POSSIBILITY OF CHANGE

budgets, but because the client begins to need your input, daily.

He urged practitioners to be proactive in terms of fostering and maintaining relationships with key business partners. It was not enough to be part of virtual meetings or conference calls. There has to be serious commitment to one-to-one communication. He urged those present to explore the client's needs, enhance communication, know the product, know the market, know the players – and, slowly but surely, you enter into the desired role of 'trusted advisor'.

Serenity prayer

Marlene Connolly (group counsel, Forcepoint) aroused immediate interest by invoking the St Francis of Assisi prayer – 'God, grant me the serenity to accept the things I cannot change, the courage to change the things I can, and the wisdom to know the difference'. As a model of how to approach the role of the in-house solicitor, and as a tool to use when facing into change, Connolly said the prayer offered wonderful possibilities, particularly the bit around 'courage'.


She stressed the need to embrace what was inevitable – change. "Embrace all aspects of change – even diminished budgets." Connolly, who knows more than most about the effects and the demands of change, explained that, over ten years, her company had three CEOs, five general counsel, three owners, acquired two significant companies, and changed its name. She had learned the hard way not to try and be all things to all people. She had stepped into her own authority and her own expertise.

She urged practitioners to be "diverse and open thinking" at all times, but especially when recruiting: "Be brave. Don't recruit 'onto' yourself. You don't want all the same types of people. Use the process of hiring and of change as an opportunity to gain vastly different perspectives and outlooks ... Don't fill the same positions in the same old-fashioned way. Take risks, leave gaps, fill in spaces lower down, allow things evolve and shift."

Gain overview, Marlene urged, in part by using technology: "Why speak to one sales person when you can use technology to speak to 250?"

Connolly – who admitted to having an image of actor [Robert Duvall](#) (the trusted

advisor or *consigliere* to the Corleone family of *Godfather* fame) as her screensaver – echoed O'Sullivan's point about not becoming a crutch. And she urged people to take risks, to "allow in new energy and even a bit of fear".

She explained: "It is exciting to allow fear, to step into the unknown. Doing the same thing you always do is not very exciting ... and precludes the possibility of change." She stressed the need, however, to do all of the above with "eyes wide open" – and without compromising one iota on integrity. 



**Get
LinkedIn**

In-house and public-sector solicitors are invited to join and participate in the Law Society's In-house LinkedIn Group, which can be accessed at www.lawsociety.ie/inhouselinkedin.



DIRECT PROVISION: HOME AWAY FROM HOME?

As of February 2017, there are over 4,500 residents in direct provision facilities that were never intended to accommodate people for lengthy stays.

Michelle Lynch outlines the human rights concerns

MICHELLE LYNCH IS POLICY DEVELOPMENT EXECUTIVE AT THE LAW SOCIETY

The *International Protection Act 2015* introduced a new single procedure system to Ireland, in line with the rest of Europe, with the intention of reducing the lengthy waiting times experienced by international protection applicants. Such applicants include both refugees and those seeking subsidiary protection – that is, those who do not qualify as refugees but face a real risk of suffering or serious harm if returned to their countries. An asylum seeker is a person who makes a claim for protection from serious harm or persecution and seeks recognition as a refugee under the terms of the 1951 *Convention and Protocol Relating to the Status of Refugees*.

In Ireland, the system of support given to asylum seekers is known as ‘direct provision’ and is administered through a variety of accommodation centres dispersed throughout the country. The *Reception and Integration Agency* (RIA) is the division of the Department of Justice tasked with meeting the material needs of asylum seekers by providing accommodation, food, a weekly allowance, and certain additional services under the direct provision system.

Direct provision has been in place since 2000 and owes its origins “to the public policy response to a major accommodation crisis that

existed in the late 1990s/early 2000s”, as stated by Minister Frances Fitzgerald in response to a parliamentary question in September 2014. Direct provision has no statutory basis and was developed through a series of ministerial circulars and administrative arrangements. However, as the High Court noted in a recent challenge on the legality of direct provision in *CA and TA v Minister for Justice* ([2014] IEHC

532), “the mere fact that ‘direct provision’ could have been placed on a legislative footing does not mean that this must happen”.

Overview of direct provision

There are 32 direct provision centres across 16 counties, only seven of which are State owned. All are privately run, but monitored by the RIA on an ongoing basis. This is in contrast to many European countries, where not-for-profit organisations operate the accommodation centres.

The accommodation varies, from hostels and convents to mobile homes and chalets, with only three of the centres purpose-built for the accommodation of asylum seekers. The majority of accommodations are units that are essentially bedrooms, with no separate private living space, and a mixture of communal and private bathrooms as well as some self-contained units, which are generally allocated to families. As of February 2017, there are over 4,500 residents in direct provision, with over 90 nationalities present.

As the Irish Refugee Council has observed, the dominant feature of all the accommodation is that it was never intended to accommodate people for lengthy stays. Initially, when established, residents were not intended to stay for longer than six months. As of February 2015, however, RIA statistics provided to the *Work-*





Mosney: fun for all the family

PIC: WIKIMEDIA COMMONS

THE SYSTEM OF DIRECT PROVISION HINDERS FAMILY LIFE AND PREVENTS ASYLUM SEEKERS FROM HAVING AUTONOMY OVER THEIR OWN LIVES

ing Group on the Protection Process) show that 43% of residents had lived in direct provision for more than five years, while the median duration from the date of initial application for protection was 51 months. In *AO v Refugee Appeals Tribunal & ors* ([2017] IECA 51), which concerned a wait of ten years in the asylum system, Mr Justice Gerard Hogan expressed hope that the *International Protection Act 2015* would ensure that no further endemic delays would “blight the lives of those forced to wait indefinitely in our system of direct provision”.

Residents can make a complaint to the manager of the accommodation and to the RIA. Since 3 April 2017 – in light of the findings in *CA and TA* that residents are entitled to an independent complaints process, as well as a recommendation by the working group – the remit of the Ombudsman and the Ombudsman for Children have been extended to residents in direct provision.

The ombudsmen will offer an independent

complaints mechanism relating to standards of accommodation, meals, cleaning and facilities. Residents will be able to make complaints once they have already raised an issue with the accommodation manager and the RIA and are not satisfied with the outcome. Neither ombudsman will have authority to examine decisions relating to any matters around asylum, citizenship and residency.

Rights and entitlements

A weekly allowance of €19.10 (unchanged since 2000) is provided for adults and €15.60 for children. Residents are not entitled to access social welfare payments and cannot access social housing or free third-level education. Residents must all comply with a set of house rules, some of which were found unlawful in *CA and TA*. Rules found to be disproportionate and unlawful included the unannounced nature of room inspections, the requirement for residents to sign into their own home on a daily basis, and

the outright ban on residents having guests in private areas (bedrooms) of their homes.

Ireland is only one of two EU member states (the other being Lithuania) that explicitly prohibits employment during the asylum procedure, regardless of the amount of time spent in that procedure. International protection applicants do not have a right to work before a final determination of their application under section 9 of the *Refugee Act* (as amended) and also due to Ireland’s decision not to opt into the *Reception Conditions Directive* (2003/9/EC) and the *Recast Reception Conditions Directive* (2013/33/EU), both of which include a limited right to work within a certain time period.

The Irish Human Rights and Equality Commission, in their 2014 *Policy Statement on the System of Direct Provision in Ireland*, recommended that Ireland should opt into the recast directive to ensure a minimum standard of provision for asylum seekers, including the right to seek work and access relevant social welfare



THE BAR OF IRELAND
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Conference on The Regulation of Teachers

Hosted by the Professional, Regulatory and Disciplinary Bar Association of Ireland (PRDBA), a specialist association for Irish barristers who practise before professional regulatory tribunals.

When: 2.00pm – 5.15pm,
Friday, 23rd June, 2017
[Lunch and registration
available from 1pm]

Where: Dublin Dispute
Resolution Centre,
Distillery Building,
145-151 Church Street,
Dublin 7

Book: Online at <https://ti.to/bar-of-ireland/regulation-of-teachers>
or contact Rose Fisher at
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For more information: See www.prdba.ie or follow us on twitter @prdba

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Diploma in Construction Law	11 October 2017	€2,500
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Please note that the Law Society of Ireland's Diploma Centre reserves the right to change the courses that may be offered and course prices may be subject to change. Some of these courses may be iPad courses in which case there will be a higher fee payable to include the device. Contact the Diploma Centre or check our website for up-to-date fees and dates.



IRELAND IS ONLY ONE OF TWO EU MEMBER STATES THAT EXPLICITLY PROHIBITS EMPLOYMENT DURING THE ASYLUM PROCEDURE, REGARDLESS OF THE AMOUNT OF TIME SPENT IN THAT PROCEDURE

payments after a period of six to nine months.

Responding to a parliamentary question in March 2015, Justice Minister Frances Fitzgerald indicated that the asylum and immigration system could be undermined if asylum seekers were given the same access to employment as immigrants who follow proper procedures.

The right to work for asylum seekers is currently being appealed to the Supreme Court by a Burmese applicant who has spent over eight years in the asylum system awaiting a final decision. The Court of Appeal in *NHV v Minister for Justice* ([2016] IECA 86) found in agreement with the High Court ([2015] IEHC 246) that, on account of the applicant's status as an asylum seeker, he was unable to avail of the protection under article 40.3.1 of the Irish Constitution to work or earn a livelihood in the State.

The working group (established in October 2014 to report to Government on the existing protection process and to recommend improvements to direct provision) made a number of recommendations in their *final report* to improve the conditions of those living in direct provision, including access to employment after nine months in the protection process. Notably, they remarked that the single procedure introduced with the *International Protection Act 2015* would have little benefit for a large number of existing residents in the system. To date, very few of the recommendations of the working group have been implemented.

International framework

A number of international treaty monitoring bodies have expressed concerns over the impact of direct provision on international protection applicants. The UN Committee on the Elimination of Racial Discrimination, in their *concluding observations* on Ireland in 2011, found that direct provision has a negative effect on the welfare of applicants on account of the considerable delays in processing applications, as well as poor living conditions, which can result in health and psychological problems.



The 2011 report of the UN special rapporteur on human rights and extreme poverty observed how the system of direct provision hinders family life and prevents asylum seekers from having autonomy over their own lives.

In their *fourth report* on Ireland in 2013, the European Commission against Racism and Intolerance noted that residents of direct provision lack control over their lives, remarking that the centres pose a risk of “causing harm to the mental health of the residents” and observing that staff are not trained with the necessary intercultural skills.

There are heightened concerns around the effect on vulnerable people, particularly children and young adults. The Irish Refugee Council, in their *2012 report* on children in direct provision, noted that children are growing up in “state-sanctioned poverty”, with parents unable to care properly for them.

The special rapporteur on child protection, Geoffrey Shannon, has noted in that regard that “significant child protection concerns exist” and that “practice in Ireland is clearly questionable in terms of the dignity afforded to asylum seekers”. This involves situations where children are growing up in abnormal circumstances, such as lone parents

having to share a room with strangers, and with little or no autonomy over how they can raise their children.

Further, he has observed that Ireland may potentially be in breach of article 8 of the *European Convention on Human Rights*, as it would be unreasonable to claim that the interference to the right to family life is necessary and proportionate.

More humane approach

The Irish Refugee Council has consistently urged for a more humane approach, contending that the financial and human cost of direct provision is too high and fails to meet Ireland's international obligations towards those seeking international protection.

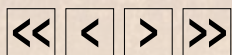
The experience for many asylum seekers is one filled with lengthy delays and little or no autonomy over their lives. While the country attempts to come to terms with the impact of Ireland's long history of institutionalisation, a similar history appears to be emerging, albeit in a slightly different guise. As Ms Justice Catherine McGuinness previously predicted, asylum seekers may, in the future, receive a government apology for the damage done, particularly to their children.




Chain gang

Employers and the medical profession are fast realising that the use of fixed-term contracts doesn't avoid claims for permanent employment. **James Seymour** makes a break for it

JAMES SEYMOUR IS A PARTNER AT [BERWICK SOLICITORS](#), DUBLIN AND GALWAY



In an examination, many employers in these challenging times believe that by placing their employees on fixed-term contracts and renewing them year to year, they are limiting their liability if they have to terminate their employment. An example is the Health Service Executive in their employment of medical professionals on a temporary basis, in the mistaken belief that, by doing so, the HSE will limit the medical professional's employment rights. However, in my experience, the majority of cases taken against the HSE by medical professionals seeking a contract of indefinite duration succeed.

In such circumstances, the implications of the *Protection of Employees (Fixed-Term Work) Act 2003* must be realised. The duty (and often the blame!) falls to solicitors to advise clients as to the maximum duration of such contracts. These types of claims arise regularly in the health sector, as the vast majority of medical professionals are engaged initially using fixed-term contracts.

Man of constant sorrow

The 2003 act came into force on 14 July 2003. Its purpose was to give protection to employees on fixed-term contracts and to prevent such employees from being treated less favourably than comparable permanent

AT A GLANCE

- To qualify for a contract of indefinite duration, an employee must have been employed on two or more continuous fixed-term contracts by his/her employer
- The aggregate duration of such contracts should exceed four years
- The employee must pass the objective justification test
- Strict time limits apply

employees. Certain similar protections had already been given to part-time employees under the *Protection of Employees (Part-Time Work) Act 2001*.

The most significant protection given to fixed-term employees by the 2003 act is contained in section 9(2). It provides that where "a fixed-term employee is employed by his or her employer on two or more continuous fixed-term contracts and the date of the first such contract is subsequent to the date on which this act is passed, the aggregate duration of such contracts shall not exceed four years". In effect, this means that an employee continuously employed on fixed-term contracts for a period in excess of

four years can claim a contract of indefinite duration.

Where the employee's first contract commenced prior to the passing of the 2003 act (before 14 July 2003), the aggregate duration shall not exceed three years – section 9(1). Accordingly, where an employer attempts to issue a further fixed-term contract to an employee who meets the criteria under either section 9(1) or 9(2) of the 2003 act, the fixed-term contract could be deemed to be a contract of indefinite duration.

The computation of 'continuous service' is regulated by paragraphs 1 to 7 of the *first schedule* to the *Minimum Notice and Terms of Employment Act 1973*, which provides that the service of an employee in his or her employment is deemed to be continuous unless that service is terminated either by the employee's dismissal, or his or her voluntarily leaving employment.

Nor is the continuity broken by the dismissal of an employee followed by his or her "immediate re-employment". In *Kenny v Tegral Building Products Ltd* (2006), the Employment Appeals Tribunal ruled that 'immediate' was not to be read literally, and held that a break of 24 days did not affect the claimant's continuity of service.

An employer can issue a further fixed-term contract, even where an employee qualifies under section 9(1) or 9(2) of the 2003 act, if the employer has an objective ground or grounds justifying such a renewal – section 9(4).

Just got paid

Section 7 of the 2003 act, which provides for objective justification of less favourable treatment, states as follows: "A ground shall not be regarded as an objective ground for the purposes of any provision of this part, unless it is based on consideration other than the status of the employee concerned as a fixed-term employee, and the less favourable treatment which is involved for that employee (which treatment may include the renewal of the fixed-term employee's contract for a further fixed term) is for the purpose of achieving a legitimate objective of the employer and such treatment is





THE PROTECTION OF EMPLOYEES ACT AIMS TO GIVE PROTECTION TO EMPLOYEES ON FIXED-TERM CONTRACTS AND TO PREVENT THOSE EMPLOYEES FROM BEING TREATED LESS FAVOURABLY THAN COMPARABLE PERMANENT EMPLOYEES

appropriate and necessary for that purpose.”

This test for objective justification is derived from that developed by the ECJ in Case 170/84 *Bilka Kaufhaus v Weber von Hartz* (1984) in the context of sex equality. Some guidance can therefore be gleaned for the application of the law in this area.

First, it is important to note that case law has established that the burden of proof of showing objective justification is on the employer. Moreover, this burden of proof can only be satisfied by hard evidence. The ECJ and the Equality Tribunal have repeatedly affirmed that vague generalisations and unsubstantiated claims will not suffice.

Second, the ECJ has been quite clear

to show that objective justification does not permit the treatment of claimants less favourably solely on the grounds that the avoidance of discrimination would involve increased costs (*Bilka Kaufhaus*). Monetary considerations therefore, cannot, in themselves, justify less favourable treatment.

Third, case law has also shown that the only justification that will be accepted by a court for a difference in the treatment of fixed-term workers will involve the employer putting forward some genuine objective grounds that are provable and are capable of being independently audited and backed up by solid evidence.

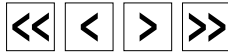
Fourth, it would appear that the totality

of factors must be assessed in making a determination on objective justification (28 *Workers v Courts Service* [2007]).

The worker's song

Beyond these general guidelines, it is possible to identify what has not been permitted:

- Cost,
- Purely historical discrimination – that is, where the discrimination is historical and not relevant at the current time,
- Compliance with legislation,
- Industrial relations harmony (*McGarr v Department of Finance*),
- Claims not backed by solid evidence (Case 171/88 *Rinner Kubn v FWW Spezial-*



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Survey Questionnaire for Construction Law Solicitors

The Construction Bar Association aims to improve the quality of service and skill levels offered by Barristers choosing to develop special expertise in construction law.

To assist us in providing information to Barristers considering whether or not to develop such special expertise, and in what fields of expertise, it has decided to carry out a short survey among Solicitors acting for clients in the construction industry.

The survey will only take a minute or two to complete and can be accessed [here](http://www.surveymonkey.com/r/CBA-Questionnaire);

www.surveymonkey.com/r/CBA-Questionnaire

We would be grateful if you could assist in its completion.

Thank you for your co-operation.

The Construction Bar Association of Ireland (CBA) is a specialist association of Irish lawyers who practise in or have an interest in construction law and the resolution of disputes in the sector. Membership of the Association is open to both Barristers and Solicitors. More information www.cba-ireland.com

COVER STORY



CASE LAW HAS ESTABLISHED THAT THE BURDEN OF PROOF OF SHOWING OBJECTIVE JUSTIFICATION IS ON THE EMPLOYER

Gebaudereinigung GmbH), and

- Different collective bargaining processes (Case C-127/92 *Enderby v Frenchay Health Authority*).

And what has been permitted:

- Legitimate employment policy (*Bilka-Kaufhaus*),
- Labour market objectives,
- Vocational training objectives,
- Historical reasons that are still operative (*28 Workers v Courts Service*, *Penneys v Mandate*),
- Incentivising promotion,
- Public pay policies (*28 Workers v Courts*),
- Payment that is due to a grading structure, and
- The requirement of flexibility of workers.

While these factors have justified a difference in treatment in particular cases, it is important to remember that each case is decided on its own facts. The factors above can therefore be of general guidance only.

Workin' for MCA

It is simply not enough for an employer to claim an objective ground for issuing another fixed-term contract. Section 8 of the

2003 act requires the employer to inform the employee in writing “of the objective condition determining the contract, whether it is arriving at a specific date, completing a specific task or the occurrence of a specific event”. Such notification should occur at the latest by the date of contract renewal. The employer is also required to notify his/her fixed-term employee of any permanent

positions that are available within the employer’s business, and the employer is further prohibited from penalising an employee who invokes any rights under the 2003 act.

Any employee wishing to invoke rights under the 2003 act must make a complaint to the Rights Commissioner (now via the Workplace Relations Commission) within six months of the date of the contravention to which the complaint relates, or the date of termination of the contract concerned. The time limit can be extended in limited circumstances.

The 2003 act does not apply to apprenticeship or vocational training-type employment contracts; and trainee gardaí, trainee nurses, and members of the Defence Forces are also excluded.

LOOK IT UP

CASES:

- *28 Workers v Courts Service* [2007] 18 ELR 212
- *Case 170/84 Bilka Kaufhaus v Weber von Hartz* [1984] ECR 1607
- *Case C-127/92 Enderby v Frenchay Health Authority* [1993] ECR I-5535
- *Case 171/88 Rinner Kuhn v FWW Spezial-Gebaudereinigung GmbH* [1989] ECR 2743
- *Kenny v Tegral Building Products Ltd* [2006] ELR 309

- *McGarr v Department of Finance* E 2003/036
- *Penneys v Mandate* [1997] ELR 218, [1998] ELR 94, [1999] ELR 89

LEGISLATION:

- *Protection of Employees (Part-Time Work) Act 2001*
- *Protection of Employees (Fixed-Term Work) Act 2003*
- *Minimum Notice and Terms of Employment Act 1973*



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Website: www.dppireland.ie

NOTIFICATION OF CHANGE OF ADDRESS

From **Tuesday 6 June 2017** the remaining sections of the Solicitors’ Division of the Office of the Director of Public Prosecutions will re-locate from 90 North King Street to the Office’s headquarters on Infirmary Road. Therefore, the address and contact details for the entire Office of the DPP will be:

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Infirmary Road
Dublin 7.

Tel: 01 858 8500
Fax: 01 642 7406
DX: 34 Dublin

Service of Documents - Judicial Review & Bail Applications:

Please note that from Tuesday 6 June 2017, this address should be used for the service of documents giving notice of judicial review applications (including Article 40) and bail applications.

The dedicated fax number for Article 40 applications will remain as before: **01 858 8557**.



Challenge accepted

The results of the second Law Society survey of managing partners, conducted by Outsource, are in. **David Rowe** talks turkey

DAVID ROWE IS A DIRECTOR OF [OUTSOURCE](#)



Irish law firms serve as accurate barometers of economic performance. We have recently seen conditions ranging from the economic boom, resulting in high levels of conveyancing and commercial activity, to the post 'Celtic Tiger' crash, resulting in a very serious fall in fee income in firms of most sizes, particularly outside the largest ten firms.

While law firms have experienced growth varying from steady to strong, depending on location and type of firm, volatility has re-emerged at the beginning of 2017 – most notably in the shape of Brexit. The survey results, together with our observations from working with over 300 firms in 2016, indicate increased caution in the coming 12 months.

Key findings

There is a sense of caution among practices in 2017, following five years of recovery.

We continue to have huge regional variations in financial performance, with Dublin practices having seen earlier growth and continuing stronger financial performance.

Fee income growth in 2016 remained impressive, albeit at a slightly lower level than that shown in the 2015 survey. The forecasts for 2017 are less optimistic, but still show growth.

This growth in fee income has been eroded by increases in costs, notably salaries and property costs.

Mergers, new partners, retirements, and acquisition are back on the agenda, particularly in larger firms.

Larger firms are getting bigger, medium-sized firms are also growing, while the bulk of the profession remains in the one-to-four solicitor firms (80% of firms), where the appetite to merge is lower.

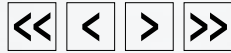
AT A GLANCE

- The survey results indicate increased caution in the coming 12 months
- A growth in fee income has been eroded by increases in costs, notably salaries and property costs
- The bulk of the profession remains in the one-to-four solicitor firms category (80% of firms)
- Almost 80% of firms believe their future lies in growing their current entity. Only 9% see themselves as in the market to merge with a similar firm

The effect of Brexit

For the moment, the impact of Brexit has been limited to a weakening of sterling versus the euro and increased uncertainty. It will be several years before the ultimate outcome will be known, but we are still highly dependent on open trade with our nearest neighbour.

Not unlike political and economic commentators, our survey shows leaders of Irish law firms are nervous but uncertain on how Brexit will affect their firms. The major threats identified were



SIZE MATTERS, WITH LARGER PRACTICES HAVING THE ABILITY TO SUPPLEMENT THE PARTNER RESOURCES WITH PROFESSIONAL ASSISTANCE





an adverse effect on the economy, resulting in reduced fee income, and the entry of British and Northern Irish firms to the market.

Few respondents (partly because the potential benefits will be open to only the largest firms) identified the positives, including potential strategic alliances with British firms, and the possible relocation of some financial services to Dublin.

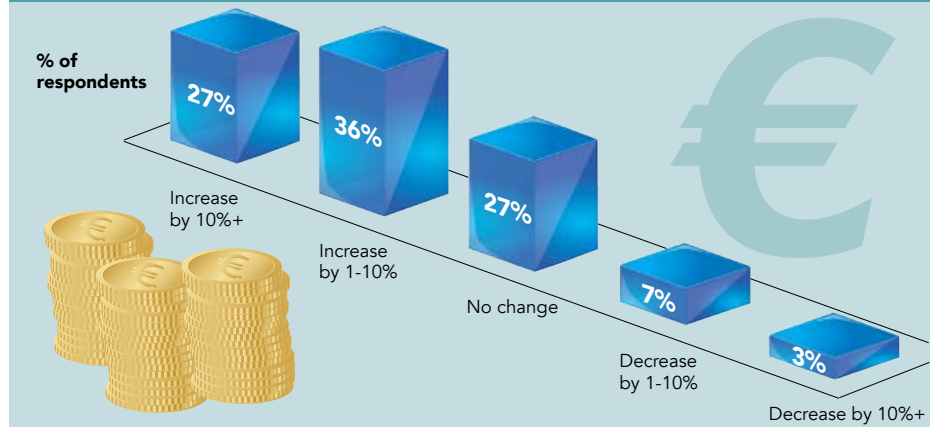
Financial performance/sentiment

Of the firms surveyed, 63% expect further improvement in 2017, a slight drop from the same result in 2016.

Connacht and Munster firms, in particular, and to a lesser extent Ulster firms, are showing expected fee income increases, with approximately a third experiencing increases of 10% or more. Many of these firms are starting from a low base. Dublin firms of all sizes predict more modest growth. Leinster firms predict an increase in fee income more in the range of 1% to 10%.

The pick-up in fee income that the Dublin market and some other large regional centres saw first, has now spread out to the provinces, where firms are experiencing greater increases

How do you expect your fee income to change over the next 12 months?



in fee income but from a more modest starting point.

Future plans within the profession appear to be largely one of organic growth.

Almost 80% of firms believe their future lies in growing their current entity. Only 9% see themselves as in the market to merge with a similar firm, and a further 4% would like to bolt on another firm to their existing practice. Firms in Leinster and Munster appear more

open to mergers than in Connacht and Ulster.

Firms with over four solicitors appear more open to mergers or acquisitions with larger firms, which indicates the likelihood of further consolidation within larger firms.

Dublin firms in particular are more amenable to merging with another firm, bolting-on, or overhead sharing. In our experience, much of the merger activity to date (but not all) has been in the Dublin market.

Expectations of organic growth – rather than by merging with other firms – is a surprising result, given the challenges involved in running a smaller practice and the opportunities that a larger practice gives in terms of covering the practice areas, sharing of management responsibilities, and having different contacts in different markets and in different generations.

Barriers to growth

The top three reported barriers to growth identified by respondents provide a useful insight into what actions firms must consider to ensure more sustainable margins and continued growth.

An interesting dynamic is likely to emerge, in that much of the work that is available in volume at the moment is very keenly priced, and increasing costs of salaries and rents in particular will potentially squeeze any profit out of this work. Something has to give. Other barriers identified are lack of funding, lack of appropriate staff, and insufficient office space.

Firms in Leinster are seeing far more pressure on overheads than in other regions, with the greatest salary pressures and property costs, unsurprisingly, found in the capital.

FOCAL POINT

KEY DRIVERS OF COSTS

REPLENISHING THE RANKS AND WAGE GROWTH

The 2016 salary inflation of 1.8% across all sectors is likely to underestimate the actual experience of professional services and, in particular, legal firms. Competition for relatively scarce talent to match increased activity is forcing firms to exceed the general trend, in addition to considering additional benefits. Urban centres in particular report a salary inflation of between 10-15% for the right talent.

Salary inflation for support staff is more modest, varying from very little change regionally to a 5% increase in larger towns and cities.

OFFICE ACCOMMODATION

A third of respondent firms report that they are likely to move or require

additional space in the coming months. This is occurring in an environment where the cost of rent has risen by 98% in Dublin and 52% in Cork in between 2012 and 2016. In the absence of supply, the trend is set to continue into 2017.

Oversupply in most other regional towns means the outlook for rent is more stable.

CORE SUPPORTS

The survey confirms continued investment in IT and marketing, core functions that protect the sustainability and resilience of firms into the future. Clearly the degree of investment will depend on existing systems, possible efficiencies gained, and the market being pursued. We are seeing firms investing in case-management systems and external marketing supports.



EXPECTATIONS OF ORGANIC GROWTH – RATHER THAN BY MERGING WITH OTHER FIRMS – IS A SURPRISING RESULT, GIVEN THE CHALLENGES INVOLVED IN RUNNING A SMALLER PRACTICE AND THE OPPORTUNITIES THAT A LARGER PRACTICE GIVES

Overhead inflation is less pronounced in Munster, and less again in Connacht and Ulster. We anticipate a more dramatic increase for 2017 across the provinces, as the continued growth erodes any spare capacity in these firms.

The greater cost increases have been seen in the larger firms of more than five solicitors: 36% of such firms reported an increase of 10% or more in overheads and a further 53% reported less than 10% increase in overheads. By contrast, in the firms with fewer than five solicitors, 38% of respondents reported no increase in overheads in 2016. A quarter reported an increase in overheads of 10% or more.

The challenge to manage

Managing partners and principals were asked to identify the aspects of running a law firm that they found the most difficult. Financial management is seen as the greatest challenge, followed by strategy and business development. Somewhat surprisingly, HR issues – either with staff or fellow partners – are regarded as less challenging.

There is no doubt that managing a law firm presents more challenges and absorbs more chargeable time now than previously. Size matters, with larger practices having the ability to supplement the partner resources with professional assistance.

Having stewarded their firms through the recession, many partners are now actively considering their own exit strategy. Many employed solicitors believe that the conditions have returned to allow partnerships to be on the table.


We see a reasonably high rate of rejections of offers of equity partnership. The main reasons for the increased caution are concerns over work/life balance, how financially attractive partnership is, and the risks associated with being a partner. There is no doubt that some of these factors are a residue from the recession, when the partners (owners) went through a phase of explaining to staff why downsizing and salary cuts were necessary.

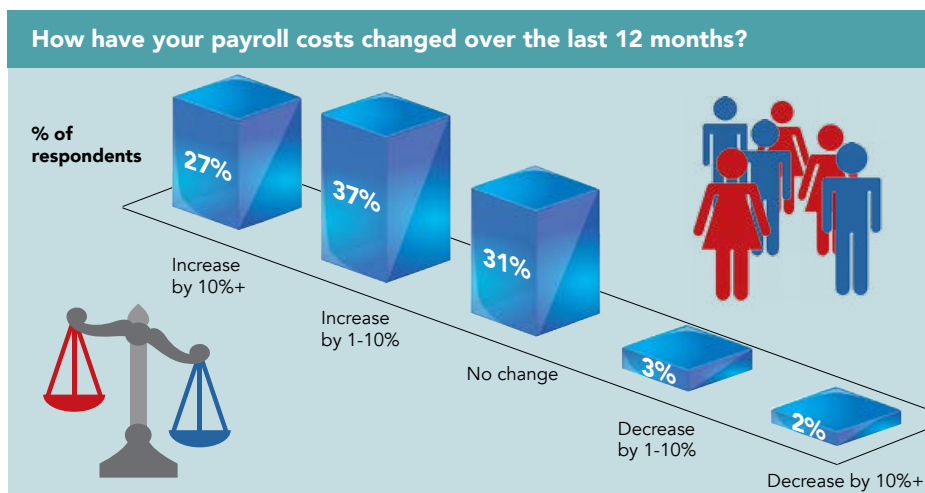
Of the senior solicitors working in practices (defined as those with over seven years' post-qualification experience), the

survey indicates that male solicitors are more likely to be principals or partners and working full-time. Female solicitors with similar levels of experience are as likely to be part-time as full-time. This illustrates how employers have adapted their HR policies to accommodate those seeking flexible working-time arrangements.

For smaller and, in particular, regionally based firms, succession planning can be very difficult. The depopulation of younger solicitors from many western seaboard and midlands counties to larger urban centres leaves few buyers around. There is no easy answer to this; advanced planning and keeping a practice healthy are the best advice.

Our experience shows that the actions below are necessary to encourage good people to take up partnership, assuming the financial rewards are available:

- Be open with the senior solicitor/associate and include them in successes as well as problems.
- Give senior solicitors responsibility for some area of administration within the firm – one reason identified in the survey was the sudden transition necessary from being 'in the dark' to being a fully-fledged owner manager. Often partners find rich rewards in allocating areas such as IT, including case management, and marketing, to younger solicitors.
- Include the senior solicitors in how the firm is progressing in relation to fees and targets. Include them in conversations on pricing and on key client retention.
- As a leader, be positive about the future to would-be partners. It is an impossible 'sell' if there is constant publication of negative factors and the crosses borne as a partner. That approach is unlikely to be persuasive. 





Flying by the CETA your pants

With longstanding Canadian ties and as the only common law English-speaking jurisdiction post-Brexit, Ireland may find itself with an important role to play in CETA's application. **Sara Hansvall** turns the page

SARA HANSVALL IS A CANADIAN LAWYER, IRISH-QUALIFIED SOLICITOR AND ASSOCIATE AT ARTHUR COX



The *Comprehensive Economic Trade Agreement* (CETA) between Canada and the EU ambitiously aims to increase the flow of goods, services, and investment across the Atlantic by way of various market liberalisation measures. Hailed as a progressive agreement, CETA also includes some labour and environmental protections, as well as a new investment court system.

CETA is expected to strengthen relations between Ireland and Canada. With its longstanding Canadian ties and as the only common law English-speaking jurisdiction post-Brexit, Ireland may find itself with an important role to play in CETA's application.

Countdown

After years of high-level negotiations, the EU Council and Canada signed CETA in autumn 2016. On 15 February 2017, it was approved by the EU Parliament. The EU Parliament's stamp of approval means that the bulk of the agreement may apply provisionally, following Canada's ratification. The Canadian

This article was written with the support of Colin Kavanagh, partner in corporate and commercial law at Arthur Cox.

government approved the legislation required to ratify CETA on 16 May 2017. Canada is now to ensure its internal regulatory regimes are prepared for CETA's implementation.

Article 30.7 of CETA provides that the parties may provisionally apply the agreement from the first day of the month after the parties have notified each other that their internal requirements have been met.

At the time of writing, the EU and Canada had not yet exchanged the notices required to trigger provisional application of the trade deal. While there was initial speculation that CETA would provisionally apply as early as spring 2017, it now appears this will occur in summer 2017.

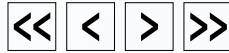
However, because CETA is deemed a 'mixed agreement'

under EU law, EU member states must also each ratify CETA before it will be fully in force. Mixed agreements are those which touch upon matters that fall within EU competencies and member state competencies and therefore require approval at both levels. CETA will be fully in force once ratified by the 28 (27, post-Brexit) member states in accordance with each state's national procedure – a process that is expected to take several years.

Accordingly, as set out in EU Council Decision 10974/16, CETA

AT A GLANCE

- CETA aims to increase the flow of goods, services, and investment across the Atlantic by way of various market liberalisation measures
- EU member states must also each ratify CETA before it will be fully in force
- If a member state refuses to ratify CETA, questions arise as to whether areas that apply provisionally would continue to have effect



PIC: SHUTTERSTOCK

THE FULL CONSEQUENCES SHOULD A MEMBER STATE REFUSE TO RATIFY ARE NOT ENTIRELY CLEAR

is to be effectively implemented in two phases, with the bulk of the agreement to apply provisionally (being areas of the agreement that fall within EU competencies) and the remainder of the agreement (areas within member state competencies) to apply once ratified by member states.

Cut to the chase

On provisional application, most customs duties and certain technical barriers to trade will be eliminated. The European Commission notes that a staggering 99% of all customs duties on traded goods across virtually all economic sectors are expected to go under CETA. Duties that will remain intact cover certain sensitive agricultural products, such as poultry and eggs. Import quotas will also apply to some sensitive agricultural goods listed under Annex 2-A. For example, there is a low annual beef import quota from Canada to the EU, which aims to protect this agricultural market. Notably, CETA is not to change EU food-safety and labelling standards, as imports

from Canada will need to satisfy EU food rules and regulations.

Chapter 4 of CETA seeks to harmonise many regulatory processes. For example, Canada and the EU agreed to recognise each other's conformity assessment certifications. Regulatory bodies in Canada and the EU will be able to test products for exporting in accordance with each party's rules, creating opportunities for small to medium-sized businesses no longer having to double-test. In addition, chapter 11 facilitates the mutual recognition of certain professional qualifications (including legal, accountancy, and architecture), which will make it easier for individuals to move between Canada and the EU.

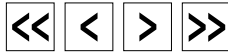
Canada also agreed to open public procurement at both the federal and provincial levels in a far more comprehensive manner than it has ever done for foreign actors. This is expected to increase EU business activity in the Canadian services market.

Finally, chapter 29 lays the framework for

an investment court system that is to establish an impartial, independent public tribunal where private actors can bring claims against the states to protect investments. While CETA offers some protections to governments in respect of their right to regulate beyond conventional national security grounds to include certain environmental and labour protections, private actors will nevertheless be able to bring challenges against states in the name of investment protection. The investment court system and certain investment provisions will not apply provisionally, but rather on ratification by member states.

Before and after

Ireland and Canada have a shared history, common values, and economic and social ties. Both also inherited common law systems from Britain, firmly grounded in legal precedent and the rule of law. Notably, the Canadian Embassy has stated that more than 4.4 million Canadians (approximately 14% of the population) have claimed Irish ancestry in recent years.

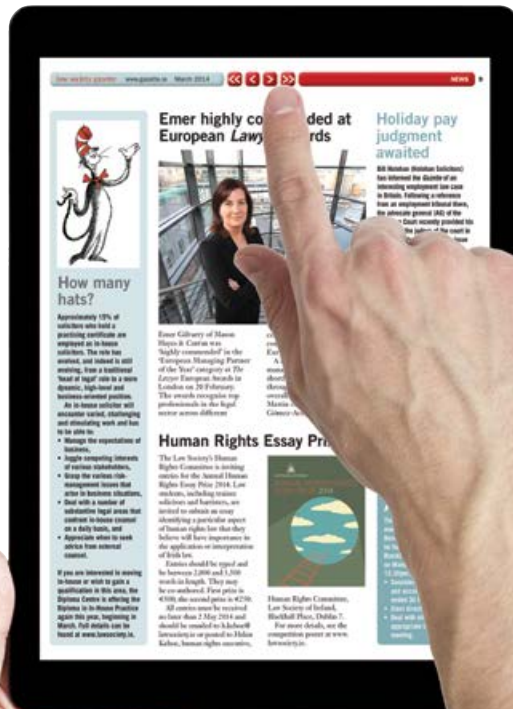


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THE WALLONIA REGIONAL PARLIAMENT EXPRESSED OPPOSITION TO THE INVESTMENT COURT SYSTEM AND RAISED CONCERNS ABOUT EXPOSING ITS AGRICULTURAL MARKET TO COMPETITION FROM CANADIAN FARMERS

PICTURE: SHUTTERSTOCK



Taoiseach Enda Kenny visited Canada in May 2017 and met Canadian Prime Minister Justin Trudeau to discuss issues of mutual interest, including trade matters. Speaking in advance of the taoiseach's official visit, Trudeau stated in a press release that "Ireland is a close friend ... Our two countries enjoy strong family ties, a shared history, and a common purpose. Now we are collaborating again to ensure that CETA creates good, well-paying middle-class jobs on both sides of the Atlantic."

In what appeared to be a positive meeting, a statement from the Office of the Prime Minister noted that the two leaders discussed strengthening commercial ties, particularly in light of CETA.

CETA could potentially help ease some newfound trade uncertainties. Ireland and Canada are somewhat similarly situated after the election of President Trump and post-Brexit, as both have been forced to react to political events in bordering states that are also their largest trading partners. There were recent suggestions that President Trump planned to terminate the North American Free Trade Agreement, though he later stated the US would instead renegotiate it. There are also uncertainties about how Brexit will affect the Irish economy, the details of which continue to play out. It therefore appears that both countries may be interested in exploring

increased transatlantic trade to reduce dependencies on their neighbours.

There is already a firm trade relationship between Canada and Ireland. Canada's national statistical agency notes that bilateral product trade with Ireland was approximately CAD \$2.4 billion in 2016 (that is, €1.7 billion), with Canadian exports amounting to \$496 million and imports approximately \$1.9 billion. CETA is expected to bolster this relationship.

Ireland is well-versed in attracting multinationals from around the globe to incorporate and invest in Ireland, gaining direct access to the EU market. There is a sophisticated level of professional services available in Ireland to satisfy the needs of international businesses. In addition, it has one of the lowest corporate tax rates in the EU. With regulatory and political stability and a familiar rule of law, Ireland could well be a viable venue for Canadian businesses setting up in the EU.

Time and motion

CETA is not without its critics, as demonstrated by the Belgian region of Wallonia, where the regional parliament expressed opposition to the investment court system and raised concerns about exposing its agricultural market to competition from Canadian farmers.

Time will tell if member states will indeed ratify CETA at the national level to bring it fully into force. On 16 May, the European Court of Justice held that the EU/Singapore free trade deal, which also covers areas of EU and member state competencies, cannot be concluded by the EU alone but also requires ratification by all member states. The ECJ's opinion supports the fact that member state ratification is required to conclude CETA. However, if a member state refuses to ratify CETA, questions arise as to whether areas that apply provisionally would continue to have effect. While article 30.7(3) provides that either party (Canada or the EU) may terminate provisional application on notice to the other party, the full consequences should a member state refuse to ratify are not entirely clear.

While uncertainties remain in respect of the full implementation of CETA, it is nevertheless expected to apply provisionally in the imminent future, which will give both Canadian and Irish businesses a chance to explore its terms. [g](#)

LOOK IT UP

LEGISLATION:

- [Bill-C30 \(Canada-European Union Comprehensive Economic and Trade Agreement Implementation Act\)](#)
- [Comprehensive Economic Trade Agreement](#)
- [EU Council Decision 10974/16](#)

CASES:

- [Opinion pursuant to article 218\(11\) TFEU — free trade agreement between the European Union and the Republic of Singapore, European Court of Justice, 16 May 2017 \(ECLI:EU:C:2017:376\)](#)



Let's call the whole thing off

In a follow-up to 'Separation anxiety' by Keith Walsh in the May issue, **Jennifer O'Brien** assesses the impact of Brexit on international family law cases

JENNIFER O'BRIEN IS A SOLICITOR SPECIALISING IN INTERNATIONAL AND IRISH FAMILY LAW MATTERS AND IS PRINCIPAL OF [IRISH FAMILY LAW CHAMBERS](#)



Britain's imminent withdrawal from the EU creates uncertainty in international law, particularly in the field of international family law. First, the current impact of EU law on both British and Irish family law must be considered. EU regulations principally determine the jurisdiction in which a family law case is to be heard. The regulations ostensibly have no bearing on the result, albeit every good family lawyer knows that venue matters.

[Council Regulation 2201/2003](#), known as *Brussels II bis*, sets out the basis for jurisdiction in matters relating to divorce, legal separation, or marriage annulment, such that jurisdiction lies with the courts of the member state in whose territory the spouses are habitually resident, or of the nationality of both spouses or, in the case of Britain and

Ireland, of the domicile of both spouses.

Of course, a common jurisdictional scheme assumes that the underlying national laws are broadly similar. This is not the case – there are vast differences in approach

in the application of family law across the EU in terms of division of property, financial matters, and issues pertaining to parental responsibility and children.

Consider the default property regime, for instance, applicable in France and Spain and, indeed, the prevalence of enforceable premarital agreements in Germany and elsewhere. Such concepts are not generally considered capable of enforcement in this jurisdiction. As we have a requirement of four years' separation (albeit sometimes under the same roof) prior to the granting of a decree of divorce, our jurisdictional races tend to involve Irish judicial

≡ AT A GLANCE

- EU regulations are key to determining the jurisdiction for family law cases – the regulations ostensibly have no bearing on the result, but the venue matters
- Underlying national laws can differ greatly, especially with regard to the division of property, financial matters, parental responsibility, and children
- If British courts decide not to observe *lis pendens* rules, parallel actions could become more commonplace



PIC: SHUTTERSTOCK

ONE CANNOT DETERMINE EU LAW WITHOUT CONSIDERING THE NATURE OF THE EU LEGAL SYSTEM WITHIN WHICH IT OPERATES, AS WELL AS THE MYRIAD OBLIGATIONS CREATED BETWEEN MEMBER STATES, AS THINGS CURRENTLY STAND

separation proceedings competing for time with divorce proceedings in the other EU member state. Similar, yet different relief – and that’s before you even consider the question of available ancillary financial relief.

Forum shopping

While ‘forum shopping’ is undesirable, especially in the area of family law, it is submitted that *Brussels II bis* has created a race for the line, as choice of jurisdiction is key to the outcome in most cases.

Consider the recent case *MH v MH*, a Court of Appeal decision delivered by Finlay Geoghegan J on 24 January 2017. The applicant/appellant husband married the respondent wife in 1982. The marriage had irretrievably broken down. For the purpose of the appeal, it was assumed that both parties were domiciled in Ireland and were, prior to September 2015, habitually resident in England. The Irish judicial separation proceedings were commenced on behalf of the husband by the issue of a special summons out of the Central Office

of the High Court shortly after 2.30pm on 7 September 2015. It was served on the wife on 9 September 2015.

On behalf of the wife, an English divorce petition was issued by the Family Court Office in England on 11 September 2015. It was served on the husband on 15 September 2015. The evidence before the High Court was that the wife’s divorce petition in its envelope was delivered by DX to the family court office in England at 7.53am on 7 September 2015.

There were two motions before the High Court:



WHILE ‘FORUM SHOPPING’ IS UNDESIRABLE, ESPECIALLY IN THE AREA OF FAMILY LAW, IT IS SUBMITTED THAT *BRUSSELS II BIS* HAS CREATED A RACE FOR THE LINE, AS CHOICE OF JURISDICTION IS KEY TO THE OUTCOME IN MOST CASES

- The husband’s motion seeking a declaration that the Irish High Court had full and exclusive jurisdiction to deal with the proceedings and consequential orders restraining the wife from taking any steps in the English divorce proceedings,
- The wife’s motion sought a stay of the judicial separation proceedings until such time as the jurisdiction of the court first seised was determined and, thereafter, declining jurisdiction in favour of that court pursuant to article 19 of the regulation.

The High Court found as a fact that the English divorce petition was opened and stamped prior to 10.30am on 7 September 2015. The High Court also found that,

on the facts, the Irish High Court was not the court first seised within the meaning of articles 16 and 19 of regulation 2201/2003.

Accordingly, an order was made in the High Court staying the judicial separation proceedings until such time as the jurisdiction of the court first seised was determined, pursuant to article 19 of the regulation.

Following a hearing of the appeal to the Court of Appeal, that court identified two issues arising:

- Was the trial judge entitled to find as a fact, on the evidence before him, that the divorce petition was opened and date-stamped prior to 10.30am on 7 September 2015, and
- The proper interpretation of article 16.1(a) of the regulation.

The Court of Appeal upheld that finding of fact, but found that the overall question required a reference to the CJEU in the following terms: is “the time when the document instituting the proceedings ... are lodged with the court” in article 16.1(a) of regulation 2201/2003 to be interpreted as meaning:

- 1) The time at which the document instituting the proceedings is received by the court, even if such receipt does not result in the immediate commencement of proceedings or proceedings being considered as pending under national law, or
- 2) The time at which, following receipt of the document instituting the proceedings by the court, the proceedings are commenced or are considered pending under national law.

FOCAL POINT

YOU MUST COMPLY

What if the English courts and the British Parliament promise that they will continue to comply with Council Regulation 2201/2003 – agreeing with the rules – without signing up to the whole EU/CJEU package? How then would differences of opinion be resolved, as occurred in *MH v MH*, as to the precise meaning of the words in the regulation? Will the English courts await a reference to the CJEU or will they just happily proceed with litigation in their own courts based on their interpretation of the regulation?

It is submitted that the regulation cannot be interpreted in a vacuum – that one cannot determine EU law without considering the nature of the EU legal system within which it operates, as

well as the myriad obligations created between member states as things currently stand.

Brussels II bis also governs jurisdiction in relation to matters of parental responsibility, including custody, access, and child-abduction matters. The connecting factor is the child’s habitual residence. As such, these cases tend, for the most part, to be determined by the courts of the children’s home country. This approach has worked well, and is consistent with the provisions of the *Hague Convention on Child Abduction* and, as such, it is submitted that there is unlikely to be much change in this area of practice. One wonders, however, about the future status of Irish care orders that place minors in facilities in Britain.

Hunting lodge

The CJEU, by a reasoned [order of the court](#) (6th Chamber) on 22 June 2016, made the following ruling: “Article 16(1)(a) of Council Regulation (EC) no 2201/2003 ... must be interpreted to the effect that the ‘time when the document instituting the proceedings or an equivalent document is lodged with the court’, within the meaning of that provision, *is the time when that document is lodged with the court concerned* [author’s emphasis], even if, under the national law, lodging that document does not, of itself, immediately initiate proceedings.”

Accordingly, the Court of Appeal concluded that the English court was first seised within the meaning of article 16(1)(a) at latest by 10.30am on 7 September 2015. The Irish High Court was not seised until, at earliest, 2.30pm that day – hence the appeal was dismissed. The wife went on to obtain generous financial provision in the context of her English divorce proceedings.

Certainly, this case highlights in some detail the provisions of the regulation



applicable to jurisdiction and the current mechanism available when a dispute arises as to 'which court' between the courts of Ireland and the courts of England and Wales.

Imagine, if you will, precisely the same facts – *MH v MH* – in a post-Brexit scenario. Would the Irish court remain obliged to consider the provisions of the regulation when considering jurisdictional matters pertaining to a non-EU jurisdiction? Or would we simply fall back on the principles of private international law?

Under the doctrine of *forum non conveniens*, it is a fairer approach, perhaps, to consider the suitability of the forum – especially in family law – rather than rewarding the first spouse to get to court. In such a scenario, the Irish court would no doubt consider the domicile of both parties, the fact that they had an Irish holiday home, and the ability of the Irish court to resolve matters between them in an effective manner.

Certainly, the fact of actual residence elsewhere would be of some weight in terms of arguing convenient forum; however, one imagines lawyers enjoying (and perhaps clients enduring) initial motions of wonderful complexity, all of which the regulation was designed to prevent.

Parallel universe

Perhaps we will take renewed interest in the case of *Andrew Owusu v NB Jackson*, where the Grand Chamber decided not to apply the doctrine of *forum non conveniens*, notwithstanding the fact that the personal injury took place in Jamaica and the action was in part against a defendant domiciled in England.

Essentially, the court found that the application of *forum non conveniens* was likely to affect the uniform application of the rules on jurisdiction contained in the convention. It didn't matter that the other state was a non-contracting state and, as such, it seems that the same reasoning would apply to *MH v MH* in a post-Brexit scenario. Our courts would still carry out an assessment as to which court was seised under the regulation, so being first would no longer matter.

Of course, the real question is what would happen in the English High Court? Should Britain decide to no longer be bound by the regulation, the court would no longer

be obliged to observe the *lis pendens* rules with regard to the stay of its proceedings, pending the determination by the Irish High Court as to which court is seised. The court could proceed with the English divorce proceedings, hear and determine same, while all the time competing proceedings were being processed in an EU member state.

Parallel actions – every client's worst nightmare – could become more commonplace between here and London, and between London and every other EU jurisdiction. This would appear to be a retrograde step between close neighbours in a formerly civilised world.

Mirror, mirror

The EU also governs jurisdiction on maintenance claims in the context of the *Maintenance Regulation*. To make matters worse, the jurisdictional basis for these claims differs from that for divorce or separation. In addition, the *Maintenance Regulation* allows parties to choose the jurisdiction, whereas this possibility is not available in relation to divorce or the division of property.

Certainly, Brexit will complicate the recognition and enforcement of maintenance orders between these islands. It may be preferable, in particular cases, to seek mirror orders in Ireland and Britain to ensure enforceability.

Currently, the status of EU law in Britain after Brexit is unclear. It is considered likely that the British Parliament will legislate for all EU law to remain valid on leaving the EU – with repeals and amendments being considered on an individual basis thereafter.


In family law, jurisdiction for divorce may revert to the original English law, being grounded in either the domicile of either party or his/her habitual residence for one year prior to the proceedings. Undoubtedly, this will widen the possibility for divorce in England – albeit the question remains for Irish lawyers how 'which court' will be determined in these cases, and indeed, will such English divorces be recognised here?

Perhaps, we will revert to the principles of private international law, which remain in place in terms of non-EU jurisdictions, considering matters such as *forum non conveniens* at the inception of proceedings – but these arguments are also limited when one considers the EU case

law, in particular, the decision in *Owusu*.

The provisions of the *Domicile and Recognition of Foreign Divorces Act 1986* would be of assistance when considering whether a post-Brexit English divorce is capable of recognition in this jurisdiction. However, the Irish courts may have a difficulty recognising same, where there are valid subsisting proceedings in Ireland or another EU member state, and particularly where the relevant EU jurisdiction court has been seised for the purpose of the regulation.

Perhaps we could ratify and enforce the *Hague Convention on Choice of Court* and, indeed, explore new and interesting ways in which The Hague might be persuaded to launch new conventions with a view to plugging the gaps!

Such complexity in family law between these islands is difficult to comprehend, especially where Brexit has the potential to bring unity to the island of Ireland – and division to Britain. Perhaps there is still time to call the whole thing off! 

LOOK IT UP

CASES:

- *Andrew Owusu v NB Jackson* (Case C-281/02; [2005] ECR I-1383)
- *MH v MH* [2015] IEHC 771
- *MH v MH* [2017] IECA 18
- *MH v MH* (Case C173/16), order of the court (Sixth Chamber) (22 June 2016)

LEGISLATION:

- *Choice of Court (Hague Convention) Act 2015*
- Council Regulation No 2201/2003 (*Brussels II bis*)
- Council Regulation (EC) No 4/2009 (18 December 2008) on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations
- *Hague Convention on the Civil Aspects of International Child Abduction* (25 October 1980)
- *Hague Convention on Choice of Court Agreements* (30 June 2005)



Wherever I lay my hat...

Those facing house repossession may also face difficulty providing for their future accommodation. Solicitors should be familiar with the social housing support options available, writes **Rose Wall**

ROSE WALL IS THE CEO OF [COMMUNITY LAW & MEDIATION](#), AN ORGANISATION THAT PROVIDES A RANGE OF FREE SERVICES TO COMMUNITIES IN NORTH DUBLIN AND LIMERICK, INCLUDING FREE LEGAL ADVICE AND REPRESENTATION IN HOUSING AND DEBT LAW



The most recent Central Bank statistics for the fourth quarter of 2016 show that, while the number of mortgage accounts for principal dwelling-houses (PDH) that are in arrears is decreasing, the numbers are still high, with

77,493 accounts in arrears – 33,447 of which are in arrears of more than 720 days.

During the fourth quarter of 2016, legal proceedings were issued to enforce the debt/security on a principal dwelling-house mortgage in 1,397 cases. A total of 455 properties were taken into possession by lenders during the quarter, the highest recorded since the series began. Of the properties taken into possession during the quarter, 112 were repossessed on foot of a court order, while the remaining 343 were voluntarily surrendered or abandoned.

Given that those most likely to face repossession of the family home are also likely to have difficulty providing for their accommodation

needs from their own resources, solicitors should be familiar with the social housing support options available and how to access them.

Solicitors should also remember that, if their client is in mortgage arrears, they do not need to wait until a court has made an order for possession, or they have voluntarily sold or surrendered their home, before applying for social housing support. Regulation 3(g) (ii) of the *Social Housing Assessment (Amendment) (No 2) Regulations 2011* provides that a person can be assessed for social housing support by a local authority following a decision by their lender that their mortgage has been declared unsustainable, under the *Code of Conduct on Mortgage Arrears*, even where legal proceedings have not yet commenced. If a person is considering voluntary sale or surrender, it is very important that they are advised to obtain written confirmation that their mortgage is unsustainable before

≡ AT A GLANCE

- If a client is in mortgage arrears, they do not need to wait until a court has made an order for possession or they have voluntarily surrendered their home before applying for social housing support
- Applicants for housing no longer apply specifically for local authority homes. Instead, they now apply for social housing support
- The lack of social housing stock means that, for many, the only option is private rented accommodation support in the form of Rent Supplement or Housing Assistance Payment



THESE FIGURES RAISE LARGER QUESTIONS REGARDING THE GLARING LACK OF LEGAL PROTECTION AFFORDED TO THOSE WHO ARE HOMELESS AS A RESULT OF THE FAILURE TO PROVIDE FOR A RIGHT TO HOUSING IN IRISH LAW

they proceed any further. This will avoid unnecessary delay and uncertainty for a client subsequently trying to regularise their housing situation.

Social housing support

Under the *Housing (Miscellaneous Provisions) Act 2009*, an applicant for housing no longer applies specifically for a local authority home. He/she now applies for social housing support.

Social housing support is provided to people who cannot afford housing from their own resources. It takes the form of a number of different types of support, including:

- Emergency accommodation to meet short-term housing need,

- A tenancy in a local authority property,
- A tenancy in an ‘approved housing body’ property,
- A tenancy in a property the local authority is managing or has leased from a private property owner through schemes such as the Rental Accommodation Scheme (RAS) or the Rental Accommodation Availability Agreement (RAAA), or
- Private rented accommodation support in the form of Rent Supplement or Housing Assistance Payment (HAP).

Section 20 of the 2009 act and the *Social Housing Assessment Regulations 2011* (SI 84/2011) set out the process for assessing a person’s eligibility for social housing support.

To apply for social housing support, a person needs to complete an application form obtainable from the local authority in the area they wish to live, which must also be the area in which they normally reside or to which they have a local connection. The rules around establishing local connection are set out in regulation 6 of the 2011 regulations and include, among other things, if a member of the household works or is in full-time education in the area or has lived in the area, at any time, for a continuous period of five years.

The application is then assessed by the local authority, normally within a 12-week period. The local authority will firstly look at whether an applicant is ‘eligible’ for housing



and, if they are eligible, will consider whether the applicant is 'in need' of housing.

In determining firstly whether an applicant is eligible, the local authority will consider matters such as the income and residency status of the applicant and whether they have suitable alternative accommodation available to them.

In determining whether the applicant is 'in need' of social housing, the local authority considers the type of housing they are currently occupying, including whether the applicant's mortgage has been classified as unsustainable as part of the mortgage arrears resolution process.

Following this, where it is determined that the applicant is both eligible for and in need of social housing, they are deemed to 'qualify' for social housing. At this point, they are placed on the waiting list – now known as the 'record of qualified households' – for suitable accommodation that meets their needs.

Each housing authority draws up its own rules for deciding order of priority on the waiting list. These are called 'schemes of letting priorities'. Each local authority has their own scheme of letting priorities, which has been drafted in accordance with section 22 of the 2009 act. It is important to remember that, while a local authority should abide by their own scheme of letting priorities, such schemes are not law, as such, and can be challenged.

Depending on the applicant's circumstances, they can also apply for housing on a priority basis in exceptional medical circumstances or exceptional social grounds.

Application refused

The process for applying for social housing support is set out in law under the *Housing Acts 2009-2014* and the *Social Housing Assessment Regulations 2011*, as amended. It is important to note that it is not open to a local authority to impose an eligibility requirement

on an applicant for social housing support unless there is a clear statutory basis for that eligibility requirement (*Kinsella v Dun Laoghaire/Rathdown County Council*). In this regard, if your client's application for social housing support is refused, it is important to question the local authority as to the statutory basis for the refusal. This can be done by a request under section 10 of the *Freedom of Information Act 2014*, which provides a right to a person to information regarding acts of public bodies that affect them.

Local authorities also have a duty to act in a 'rational and reasonable manner' (*County Meath VEC v Joyce*) and, under section 3 of the *ECHR Act 2003*, must carry out their functions in a manner that is compatible with the *European Convention on Human Rights*.

Issues that might arise in an application for social housing support include:

- Difficulty for certain groups, such as members of the Traveller community or non-Irish nationals, satisfying the 'local connection' rule,
- The application of the residency status rule and its legal basis,
- Separated parents who co-parent and who want to have a housing allocation large enough to accommodate their children,
- Mortgagors who have been deemed to be 'not cooperating' under the mortgage arrears resolution process rather than being deemed to have an unsustainable mortgage,
- Applicants who are separated from their partner but do not have any formal court order or separation agreement in place and who are deemed to have suitable alternative accommodation available to them.

Some of these issues might be resolved through an internal appeal by simply questioning the statutory basis for the refusal and setting out the legal basis for your client's application. In some instances, initiating judicial review proceedings might be necessary.

In the last two examples, section 49(2) (e) of the *Housing (Miscellaneous Provisions) Act 2014* might be of use. This section allows an applicant household to apply for limited forms of social housing support where the local authority 'is unable to establish for the time being whether alternative accommodation is available to a household that would meet the household's housing

MANY OF THOSE ELIGIBLE FOR PRIVATE RENTED ACCOMMODATION SUPPORT ARE UNABLE TO SOURCE PROPERTY WITHIN THE LIMITS OF THE HAP AND RENT SUPPLEMENT SCHEMES

PICTURE: GETTY IMAGES





IF YOUR CLIENT'S APPLICATION FOR SOCIAL HOUSING SUPPORT IS REFUSED, IT IS IMPORTANT TO QUESTION THE LOCAL AUTHORITY AS TO THE STATUTORY BASIS FOR THE REFUSAL

need'. The options available to such applicants are Housing Assistance Payments (HAP) or Rental Accommodation Availability Agreements.

Successful application

While in theory there are a number of housing options available to a person whose application for social housing support has been accepted, the lack of social housing stock means that, for many, their only option is private rented accommodation support in the form of rent supplement or housing assistance payment.

Rent supplement, administered by the Department of Social Protection, has been replaced by HAP, though continues to be available for people who need short-term support to pay their rent. Other qualifying criteria apply, including restrictions on an applicant's ability to work full time.

HAP is a new form of social housing support provided for under part 4 of the *Housing (Miscellaneous Provisions) Act 2014* and aims to allow local authorities to provide housing assistance for households with a long-term housing need, including many long-term rent supplement recipients.

HAP was rolled out on a phased basis and has been operational in all local authority areas since March 2017.

The HAP scheme aims to allow people getting HAP to take up full-time employment and keep their housing support. Under the HAP scheme, local authorities pay landlords directly and tenants pay a weekly HAP rent contribution to the local authority, based on their income and ability to pay.

If the client is housed under HAP, they will no longer be on the local authority's standard housing list. They can access other forms of social housing supports, such as local authority housing or housing provided by approved housing bodies, by applying for a transfer.

It is as yet unclear whether the HAP recipient's prospects of securing other forms of social housing support will be adversely

affected by being transferred to the transfer list from the local authority housing list. The most recent information leaflet published by the Department of Housing in March 2017 states: "As a HAP recipient, your likelihood of getting a different form of social housing support is not affected by accepting HAP."

Although the local authority administers the HAP scheme, the client will not be a local authority tenant – the rental agreement will be between the client and the private landlord – and their tenancy will be covered by the *Residential Tenancies Act 2004*. This means, among other things, that it is up to the client to source the accommodation. The accommodation must meet [minimum standards for rented housing](#) (inspected within the first eight months of payment) and the landlord must have a current tax clearance certificate (to be provided within five months).

In general, the rent must be within the HAP rent limits for the household size and the area the applicant lives in. The limits are generally based on the limits for rent supplement, though the minister has enacted regulations to provide for enhanced HAP payments in excess of the maximum rent limits where it is 'justified and required'. The rent limits can be increased up to a maximum of 50% in the case of homeless people in Dublin and up to a maximum of 20% in other cases.

Delegation of responsibility

The well-documented pressures on the private rented market, with a 45% rise in the average rent nationwide since its bottoming out in 2011, have meant that many of those eligible for private rented accommodation support are unable to source property within the limits of the HAP and rent supplement schemes.

There have been some efforts to remedy this, including the increase in the rent supplement limits in July 2016 and the creation of a new ground of discrimination, under section 15 of the *Equality (Miscellaneous Provisions) Act 2015*, for recipients of housing

welfare payments such as rent supplement or HAP.

Unfortunately, these efforts have not addressed what is essentially a question of supply. The fact of this is evident from the most recent figures on our homeless crisis, which show that in quarter four of 2016, in Dublin alone, there were 4,098 adults accommodated in emergency accommodation, 567 of whom were 'new presentations'. In that period, 1,028 families – comprising 1,382 adults with 2,096 dependent children – were residing in emergency accommodation.

These figures raise larger questions regarding the State's policy over the last number of years of delegating responsibility for social housing to the private sector and the glaring lack of legal protection afforded to those who are homeless as a result of the failure to provide for a right to housing in Irish law. [g](#)

LOOK IT UP

CASES:

- [County Meath VEC v Joyce \[1994\] 2 ILRM 210](#)
- [Kinsella v Dun Laoghaire/Rathdown County Council \[2012\] IEHC 344](#)

LEGISLATION:

- [Equality \(Miscellaneous Provisions\) Act 2015](#)
- [European Convention on Human Rights Act 2003](#)
- [Freedom of Information Act 2014](#)
- [Housing \(Miscellaneous Provisions\) Act 2009](#)
- [Housing \(Miscellaneous Provisions\) Act 2014](#)
- [Residential Tenancies Act 2004](#)
- [Social Housing Assessment \(Amendment\) \(No 2\) Regulations 2011 \(SI 321/2011\)](#)
- [Social Housing Assessment Regulations 2011 \(SI 84/2011\)](#)

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BOOKS



FARMING AND THE LAW

Karen Walsh. Clarus Press Ltd (2016), www.claruspress.ie. ISBN: 978-1-905536-86-3. Price €35.

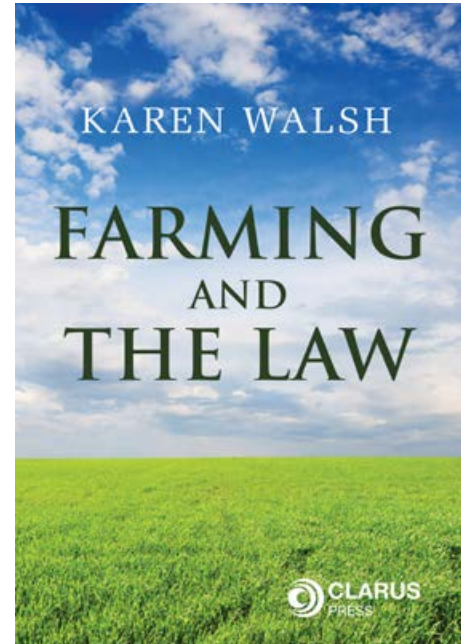
Farming and the Law is a unique publication offering a comprehensive overview of many of the legal issues in what is an increasingly complex and regulated environment.

The range of topics is prodigious. Chapters deal with wills, administering an estate and enduring powers of attorney, planning, land leasing, collaborative farming, solar and wind farms, transferring the family farm, employment, and health and safety.

The author achieves her stated objective, which is to explain what the law requires of farmers, not to comment on how well it does so. The law is clearly stated, and references are provided for all the legislative and judicial authorities provided, enabling the reader to research the matter further if they so wish. There is also a useful synopsis of relevant case law.

The author states that the book was written with the layperson in mind and to help inform farmers and landowners on decisions they make every day. It might be a little too detailed for some farmers to digest, but it would be an invaluable resource for professionals working with farmers who have only a basic knowledge of the law as it affects farmers and landowners.

The author puts her own farming background, together with her experience



working in a busy solicitors' office, to very good effect in the writing of this book.

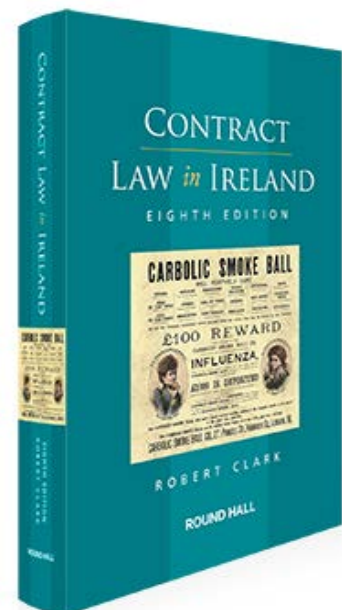
Aisling Meehan is a solicitor, tax consultant and farmer, specialising solely in agricultural law and tax.

CONTRACT LAW IN IRELAND (EIGHTH EDITION)

Robert Clark. Round Hall (2016), www.roundhall.ie. ISBN: 978-0-4140-563-67. Price: €125.

One falls upon the latest edition of Prof Clark's work as one would greet an old friend, anxious to learn the latest news.

There is much that is new to be learned: in consumer law, including the implementation of the *Consumer Rights Directive*; further proposals for directives in the area of the supply of digital content; in construction law, including the *Construction Contracts Act 2013*; and, on capacity, specifically the *Assisted Decision-Making (Capacity) Act 2015*. The flow of decided cases continues unabated. These are comprehensively noted and integrated with the work.



BOOKS



Most lawyers only study contract law in a structured fashion at a very early stage in their careers. With the passage of time, knowledge of the subject may be reduced to no more than a series of slogans.

This applies even to topics that are frequently met in practice, such as the necessity, in some cases, for contracts to be evidenced in writing or transactions that are expressed to be subject to contract. This book demonstrates that the law is considerably more nuanced than the slogans would suggest.

The structure of the book remains the same as in recent editions and follows a

classic pattern. Paragraph numbers have been introduced. It was surprising to this reader the extent to which this minor innovation improves the layout and readability of the book.

Practising lawyers are at risk if they do not keep up to date with the latest developments. This welcome book is a valuable tool in minimising that risk.

Paul Keane is managing partner at Reddy Charlton Solicitors and is chairman of the Law Society's Task Force on the Legal Services Regulation Act.

THE MODERN FAMILY: RELATIONSHIPS AND THE LAW

Tim Bracken. Clarus Press (2016), www.claruspress.ie. ISBN: 978-1-9055-368-94. Price: €35.


'Family' now defies the traditional cultural definition and encompasses myriad relationships that were in previous generations kept hidden. Legislation arrived *en bloc* in 2015 – the *Marriage Act*, *Gender Recognition Act*, *Children and Family Relationships Act*, and the *Assisted Decision-Making (Capacity) Act* – in an attempt to keep pace.

Same-sex couples may now marry. Transgender persons may register their new gender and subsequently marry. Unmarried fathers may become automatic guardians. Legal certainty will be given to parties involved in donor-assisted human reproduction. A co-decision-making agreement may be registered after a person's capacity becomes limited.

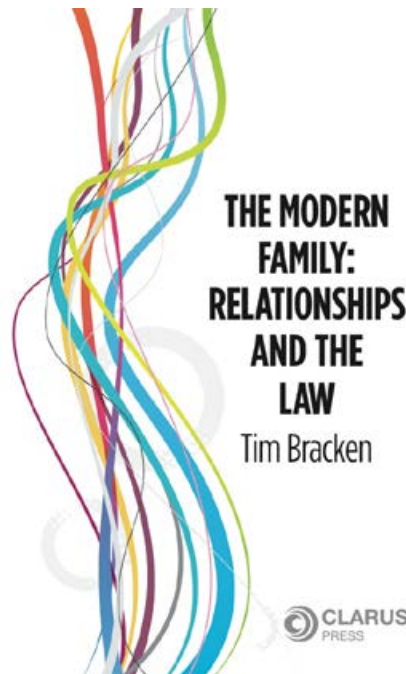
The stated purpose of this book is to set out the law in legally recognised relationships. The clear and simple language makes apparent the perspicacity of the author, who is a practising barrister. Explanations of legal concepts such as guardianship and custody are peppered throughout, which will appeal to the layperson, as will a chapter on court procedures.

The book describes a hypothetical set of interwoven families, the result of three marriages, with the spin-off legal relationships between parents and children. The 'Kelly family' (with the Cohen children and O'Sullivan children) resurfaces later in the book by way of descriptive assistance, which is a useful tool to explain often complex legal scenarios.

While it is beyond doubt that great

strides have been made in family law, there remain areas for review, such as the length of time parties must be living apart before an application can be made for divorce. This book provides a succinct and readable handbook on current law, which will be of interest to practitioners and the public alike. 

Aoife Byrne is a solicitor who specialises in family law.



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REPORT OF THE LAW SOCIETY COUNCIL MEETING ON 7 APRIL 2017

Legal Services Regulation Act

Paul Keane reported that the Society had made a submission in response to a consultation process conducted by the Legal Services Regulation Authority (LSRA) on the topic of legal partnerships. Two further consultation processes were underway, in relation to multidisciplinary practices, and in relation to specific barrister issues, including whether barristers should be permitted to handle clients' moneys and whether restrictions on direct access should be removed. The Council noted that the advertisement for the permanent CEO role of the LSRA had been published in the national media.

Mr Keane confirmed that work was progressing in relation to the precedent documentation on legal costs, and the consultation process with the profession had yielded an excellent response.

Practice direction on costs

The president noted that a new practice direction had issued by the President of the High Court in relation to the payment on account of costs pending taxation. It indicated that, in all cases where there was no dispute as to the liability for the payment of costs, and in any other case that a judge thought appropriate, an order could be made directing payment of a rea-

sonable sum on account of costs within such period as might be specified by the judge, pending the taxation of such costs. It was intended to issue a notice to the profession shortly, drawing their attention to the practice direction.

Judicial appointments

The Council noted, with approval, the final submission on the Judicial Appointments Commission that had been made to the Minister for Justice following the debate at the previous meeting of the Council.

Anti-money-laundering

Deputy director general Mary Keane briefed the Council on a range of issues arising from the forthcoming transposition of the *Fourth Anti-Money-Laundering Directive* into Irish law, including the removal of the automatic low risk designation of solicitors' client accounts. While the practical measures that would follow this change were as yet unclear, it could have implications for the documentation required from solicitors when opening or operating client accounts. It was expected that the Central Bank would issue guidelines to all regulated banks as to what was required and in what circumstances, in line with guidance is-

sued in turn by the European Supervisory Authority for financial institutions. Draft provisions in Britain provided that banks could apply simplified due diligence, provided that there was a low degree of risk of money-laundering and that solicitors would produce client ID information to banks on request within two working days.

Ms Keane also briefed the Council on the Society's submission on the general scheme of the new *Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2016*; the *Fifth Anti-Money-Laundering Directive*, which proposed to introduce public registers of beneficial ownership of companies and of trusts; the *supranational risk assessment* being conducted by the EU Commission, which was examining AML compliance across the EU; the 'Panama Papers' inquiry by the EU Parliament; a proposed directive on countering money-laundering by criminal law; and the FATF *evaluation of Ireland*.

The Council noted the myriad measures being introduced at EU level and globally to counter money-laundering, terrorist financing and tax evasion and the criticism being levelled at professionals, including lawyers, for their advice to clients even

in relation to legitimate business transactions. The Council urged that, in due course, the Society would engage with the banks to seek to simplify the processes and minimise the delay involved in opening bank accounts following the production of relevant documentation, and also to seek to introduce a *de minimis* amount below which documentation would not be required.

Survey of solicitors' firms

The Council received a presentation from David Rowe of Outsource on the results of the Financial and Business Structure Survey of Solicitors' Firms 2017 (see p44).

Spring Gala Symposium

The Council congratulated the president on a very successful Spring Gala Symposium and dinner on 24 March 2017, which had attracted huge support from the profession and a varied mix of colleagues from large and small firms.

Calcutta Run and Cycle

The president urged Council members to support the Calcutta Run and Cycle on 20 May 2017, whether by promoting it within their firms, participating, or being generous with donations.

PRACTICE NOTES

CONVEYANCING COMMITTEE

'NO RECOURSE' CONDITION IN RECEIVER CONTRACTS

It has come to the attention of the Conveyancing Committee that vendors acting by receiver routinely issue contracts containing a special condition in the following or similar terms.

"Notwithstanding any provi-

sions of this Contract, the Purchaser shall have no recourse against the Vendor or any member of the Vendor's staff or agents in respect of or arising from any valid claim to title being made by any third party or to all or any of

the Subject Property except the right to make a claim to be an unsecured creditor of the Vendor which right shall be deemed to be waived by the Purchaser."

It is the view of the committee that such a special condition,

or one that has like effect, is totally objectionable and should not be accepted by any purchaser.

This condition should be distinguished from a special condition or term that limits the personal liability of a receiver or his office.



CONVEYANCING COMMITTEE

SUBJECT TO LOAN CLAUSE – A REVIEW

The Conveyancing Committee has been asked to review its recommendation issued in its practice note published in the June 2009 issue of the *Gazette* (“Timelines in loan approvals and revaluation of security by lenders”) that “solicitors acting for purchasers where a loan is required in order to complete the purchase transaction insert a special condition (or amend their usual form of special condition regarding loan approval) to provide that the contract and the completion thereof is subject to the purchaser’s loan approval being in place at the date of completion in a sum sufficient to allow the purchaser complete the contract”.

Representations have been made to the committee that the economic circumstances surrounding the issue of the 2009 practice note have changed and that the recommendation should change accordingly. It is also contended that developers cannot

access funding from their lending institutions unless they can confirm that there are unconditional contracts for the sale of sites and units in place.

The committee has given the matter full consideration. While it is aware of the changed economic circumstances, it is also aware that the practices of lending institutions have not changed and that borrowers are still subject to loans being reduced or withdrawn prior to drawdown in certain circumstances. The committee is cognisant of the requirement that lenders carry out valuations not earlier than four months before advancing a loan (previously two months). The committee is also aware that, in the absence of a loan clause in a contract, a purchaser would not be in a position to exchange contracts until nearer to closing.

Balancing the points for and against recommending a change

in practice, the committee concluded that it would be unsafe for purchasers if it changed its recommendation. The dangers of proceeding without a loan clause in a contract are too serious for the

majority of purchasers relying on loan finance to complete the purchase.

The sample special condition previously issued by the committee is set out in the panel below.

SAMPLE SPECIAL CONDITION

This contract shall be subject to the purchaser obtaining approval for a loan of €___ from (lender) _____ on the security of the premises provided always that, if this loan has not been approved in writing within four weeks from the date hereof, either party shall be entitled to rescind this contract and, in such event, the purchaser shall be refunded his deposit without interest costs or compensation thereon.

If the loan approval is conditional on a survey satisfactory to the lending institution, or a

mortgage protection or a life insurance policy being taken out, or the lending institution being satisfied at any time prior to drawdown of the loan that its valuation of the property has not changed since the date of loan approval, or some other condition compliance with which is not within the control of the purchaser, the loan shall not be deemed to be approved until the purchaser is in a position to accept and draw down the loan on terms which are within his reasonable power or procurement.

CLAIMS REFERRALS AND SECTION 62 OF THE SOLICITORS ACT 1954

This notice is intended as general guidance in relation to the subject matter and does not constitute a definitive statement of law. Reference to a solicitor includes a reference to a firm of solicitors in this context.

It has come to the attention of the Law Society that a company has been making unsolicited approaches to a number of solicitors’ firms offering leads regarding potential litigation. These leads are intended for sale to interested firms and relate to a wide variety of matters, including employment law, conveyancing, landlord and tenant law, and defamation.

There are specific prohibi-

tions set down by primary legislation that preclude a solicitor from paying a third party for referrals for work of a legal nature. Section 62 of the *Solicitors Act 1954* states that a solicitor shall not reward, or agree to reward, an unqualified person for legal business introduced by such person to the solicitor. Under section 62(2), an agreement in contravention of this section shall be void.

The Law Society intends to take a strict approach against solicitors found to be accepting and paying for such legal referrals, and a breach of section 62 may constitute professional misconduct on the part of the solicitor

and may result in a referral to the Solicitors Disciplinary Tribunal.

In addition, solicitors should also be aware that the Advertising Regulations Division of the Regulation of Practice Committee of the Law Society has the power, where appropriate, to:

- Make an application to the High Court for an order prohibiting a solicitor from contravening the *Solicitors (Advertising) Regulations 2002* under section 18 of the *Solicitors (Amendment) Act 2002*,
- Issue a reprimand in writing in such terms as the Society deems appropriate and reasonable, under regulation 15(g)(ii),

- Impose conditions on practising certificates that are in force, under section 59 of the *Solicitors (Amendment) Act 1994*.

It should also be noted that the Law Society is entitled to publish the imposition of a penalty by the Law Society under regulation 15(i) of the *Solicitors (Advertising) Regulations 2002*.

Eamonn Maguire is the Law Society’s advertising regulations executive and is contactable at 01 872 4800 or e.maguire@lawsociety.ie.

John Elliot, Registrar of Solicitors and Director of Regulation



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 Brid Mimmagh, a solicitor practising as principal in Brid Mimmagh & Associates, Solicitors, Church Street, Longford, Co Longford, and in the matter of the *Solicitors Acts 1954-2011* [4963/DT01/16] *Law Society of Ireland (applicant) Brid Mimmagh (respondent solicitor)*

On 12 January 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in her practice as a solicitor in that she:

- 1) Failed to comply with section 68(1) of the *Solicitors (Amendment) Act 1994* in five or six files examined and set out in the report of 10 December 2014,
- 2) Caused or allowed some costs received in two cases identified in the investigation report to be recorded as non-VATable outlay,
- 3) In a number of instances, failed to record the receipt of solicitor/client costs in the books of account.

The tribunal ordered that the respondent solicitor:

- 1) Stand advised and admonished,
- 2) Pay a sum of €1,000 as a contribution towards the whole of the costs of the Law Society of Ireland.

In the matter of David Herlihy, solicitor, formerly practising as principal of David Herlihy, Solicitors, Lord Edward Street, Kilmallock, Co Limerick, and in the matter of the *Solicitors Acts 1954-2011* [9286/DT90/15 and High Court record 2017/5SA] *Law Society of Ireland (applicant) David Herlihy (respondent solicitor)*

On 25 February 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:

- 1) In respect of six matters, made a stamp duty return that he knew to be false,
- 2) On eight occasions, failed to apply moneys collected from one or more clients towards the discharge of stamp duty and/or registration fees,
- 3) Failed to take any or any adequate steps when he knew or ought to have known that documentation relating to a loan bore a purchase price in excess of that which appeared in the contract in respect of five matters,
- 4) Failed to comply, either adequately or at all, on one or more occasions, with the requirements of section 68(1) of the *Solicitors (Amendment) Act 1994*, and/or
- 5) Failed on one or more occasions to comply with the requirements of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*, and/or
- 6) Failed to comply adequately or at all with the directions of the committee made on 23 May 2013, and/or
- 7) Failed to attend or arrange to be represented at a meeting of the committee dated 26 June 2013, when required to do so, and/or
- 8) Failed to reply adequately to correspondence from the Society dated 30 April 2013.

The tribunal ordered that this matter go forward to the High Court and, on 10 March 2017, the High Court ordered that:

- 1) The name of the respondent solicitor be struck from the Roll of Solicitors,
- 2) The applicant be permitted to take up clients' moneys and lodge same to a Law Society nominated account and to take possession of the books of account and ledger cards and accounting records of the respondent solicitor's practice,
- 3) Pursuant to section 20(6) of the *Solicitors (Amendment) Act 1960* (as amended by substitution by section 28 of the *Solicitors (Amendment) Act 1994*), the respondent lodge forthwith (or cause to be lodged), pursuant to the provisions of regulation 4(1) of the *Solicitors (Accounts) Regulations 2001* (SI 421/2001), any client moneys subsequently received by him to the appropriate client account or client accounts, unless otherwise ordered by the court,
- 4) The respondent solicitor pay the sum of €5,000 as a contribution towards the whole of the costs of the applicant before the Solicitors Disciplinary Tribunal and pay the sum of €5,000 as a contribution towards the whole of the costs of the applicant before the High Court, with a stay on registration and execution for a period of 12 months from the date of the High Court order,
- 5) There be liberty to apply.

The order of the High Court is under appeal to the Court of Appeal by the respondent solicitor.

In the matter of William JP Egan, a solicitor practising as William Egan & Associates, Malt House Square, Bow Street, Smithfield, Dublin

7, and in the matter of the *Solicitors Acts 1954-2013* [3730/DT137/14]

Law Society of Ireland (applicant) William JP Egan (respondent solicitor)

On 30 March 2017, the tribunal found the respondent solicitor guilty of misconduct in that he:

- 1) Caused or allowed a deficit in client funds to arise on his client account as at 17 December 2012 of in or around €195,452, which said deficit was cleared on 21 December 2012,
- 2) Caused or allowed round-sum transfers to be made from client ledger accounts to office ledger accounts in the absence of a corresponding debit entry for professional fees and/or outlay and/or VAT, giving rise to credit balances on office ledger accounts, in breach of regulation 10(4) and/or 10(5),
- 3) Caused or allowed ongoing round-sum transfers to be made from the client account to the office account in respect of moneys received from a client, giving rise to credit balances on office ledger accounts, in breach of regulation 10(4) and/or 10(5),
- 4) Caused or allowed personal and/or office expenditure to be discharged from the funds in the client account, which should have been transferred to the office account before being discharged, in breach of regulation 7(2)(b),
- 5) Caused or allowed debit balances to arise on the client account as at 31 December 2011, in breach of regulation 7(2)(a),
- 6) Failed to maintain a non-controlled trust account in respect of a trust, thereby allowing trust moneys to become inter-



mingled with client account moneys, in breach of regulation 19.

- 7) Failed to maintain proper accounting records in respect of the period of, in or around, 1 January 2012 to 31 December 2012, in breach of regulation 12 and, in particular, caused or allowed breaches of the *Solicitors Accounts Regulations* to take place in respect of the accounts of his practice.

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay the sum of €7,500 to the compensation fund within 21 days commencing from 30 March 2017,
- 3) Pay a contribution of €8,000 towards the whole of the costs of the Law Society of Ireland within 21 days commencing from 30 March 2017.

In the matter of John Mark

McFeely, solicitor, formerly practising as Hegarty & McFeely, Queen Street, Derry, BT48 7EG, Northern Ireland, and 27 Clarendon Street, Derry, BT48 7EB, Northern Ireland, and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal, and in the matter of the *Solicitors Acts 1954-2011* [10303/DT40/16 and High Court record 2017/32 SA] *Law Society of Ireland (applicant) John Mark McFeely (respondent solicitor)*

On 23 February 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 expeditiously, within a reasonable time, or at all with an undertaking given by him to the complainant on behalf of his named client, dated 23 August 2007, over a named property in Co Donegal,


- 2) Failed to reply to the complainant's correspondence and, in particular, letters dated 22 October 2010, 30 March 2011, 24 February 2012, 23 April 2012, 10 May 2012, 25 June 2012, 5 December 2012 and 12 February 2013,

- 3) Failed to reply adequately or at all to the Society's correspondence and, in particular, letters dated 1 August 2013, 9 January 2014, 7 February 2014, 11 June 2015, 29 July 2015 and 18 August 2015,

- 4) Failed to attend a meeting of the Complaints and Client Relations Committee on 14 April 2016, despite being required to do so,

- 5) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by him to Dickson McNulty Solicitors on behalf of his named client over a named property in Co Donegal by letter dated 11 December 2006.

The tribunal ordered that the matter should go forward to the High Court and, on 3 April 2017, the High Court ordered that:

- 1) The respondent solicitor not be permitted to practise as a sole practitioner or in partnership; that he be permitted only to practise as an assistance solicitor in the employment and under the direct control and supervision of a solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland,
- 2) The respondent solicitor pay a sum of €2,500 as a contribution to the whole of the costs of the Law Society of Ireland proceedings before the Solicitors Disciplinary Tribunal within 60 days from the date hereof,
- 3) The respondent solicitor pay measured costs of €1,800 to the Law Society of Ireland for the within proceedings within 60 days from the date hereof. 



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

GENERAL COURT ANNULS COMMISSION MERGER DECISION

In *Case T-194/13* (7 March 2017), the General Court annulled an EU Commission decision prohibiting a proposal under which United Parcel Service Inc (UPS) would acquire TNT Express NV (TNT) by way of a takeover under Dutch law. This is the first case in almost 15 years in which the European courts have taken such a step.

The proposed transaction was notified to the European Commission under [Council Regulation \(EC\) no 139/2004](#) of 20 January 2004 on the control of concentrations between undertakings (the *Merger Control Regulation*) – *Case COMP/M6570 – UPS/TNT Express*. The commission launched a phase 2 merger review, at the end of which the commission issued a prohibition decision on the basis that the notified merger was incompatible with the internal market and with the EEA agreement.

UPS challenged the commission's decision before the General Court, mainly on the basis that the prohibition decision infringed its rights of defence by relying on econometric evidence that had not been provided to it prior to the adoption of the contested decision.

The General Court emphasised that the rights of the defence is a general principle of EU law enshrined in the *Charter of Fundamental Rights of the European Union*, which must be guaranteed in all proceedings, including merger proceedings before the commission. The General Court clarified that the right to a fair hearing, which forms part of the rights of

the defence, requires that the undertaking concerned must have been afforded the opportunity, during the administrative procedure, to make known its views on the truth and relevance of the facts and circumstances alleged and on the documents used by the commission to support its claim.

Econometrics

The General Court referred to the commission having relied, among other things, on the econometric analysis in question in order to identify the number of member states in which there would be a [significant impediment to effective competition](#) (SIEC) and to the commission having adopted the final version of its econometric model more than two months before the adoption of the contested decision on 30 January 2013.

The General Court highlighted that it was clear from the documents in the file that the final version of the econometric model was not communicated to UPS, as – according to the commission – it was unnecessary to make such a communication because it was clear from the commission's numerous exchanges with the applicant during the administrative procedure. The commission emphasised, in essence, that the final model, as presented in the contested decision, was only marginally different from the models that were discussed with UPS during the merger review procedure.

The General Court held that, although there were indeed

numerous similarities between the final econometric model and those discussed during the administrative procedure, the changes made to the final model nevertheless could not be regarded as 'negligible'. The General Court stated that it could be seen from the observations of the commission and of the applicant, submitted after the hearing, that the commission relied on two different variables at the stage of the statistical estimation of the effects of the loss of a competitor on prices, and at the stage of the prediction of the effects of the merger on prices.

Thus, the commission relied on a discrete variable at the estimation stage and on a continuous variable at the prediction stage. The court stated that, although the use of a discrete variable had been discussed repeatedly during the merger administrative procedure, it did not appear from the file that that was also the case as regards the use of different variables at the different stages of the econometric analysis.

The General Court held that, accordingly, the commission could not claim that it was not required to communicate the final econometric analysis model to the applicant before adopting the contested decision. The General Court held that UPC's rights of defence were infringed, with the result that the contested decision should be annulled, provided that it has been sufficiently demonstrated by UPC that there was even a slight chance that it would have been better able to defend itself – not that, in the absence of that procedural irregularity, the contested decision would

have been different in content.

The General Court held that it had to be emphasised that the commission relied on the econometric analysis in order to make a finding that SIEC states existed. When the statement of objections was adopted, the commission had, as it stated at the hearing, made a provisional finding that there were 29 SIEC states, on the basis of an econometric analysis showing a significant increase in prices following the merger. Furthermore, as the commission expressly acknowledged, the subsequent results of the econometric analysis showing a less significant increase in prices also led it to decrease the number of SIEC states to 15 in the contested decision.

Secondly, the applicant was already able, during the administrative procedure, to have a significant influence on the development of the econometric model proposed by the commission, since it raised technical problems to which it provided solutions, as the commission expressly acknowledged.

Qualitative and quantitative

The court held that, during the administrative procedure that led to the adoption of the contested decision, "the applicant might have been better able to defend itself if it had had at its disposal, before the adoption of that decision, the final version of the econometric model chosen by the commission on 21 November 2012" and that this conclusion cannot be called into question by the commission's claim that its findings were based



PIC: REX FEATURES



TNT HAS SINCE BEEN ACQUIRED BY FEDEX IN A DEAL APPROVED BY THE COMMISSION UNDER THE EU MERGER CONTROL REGULATION, WHICH OPENS THE DOOR TO POTENTIAL CLAIMS FROM UPS AND TNT SHAREHOLDERS

on a wide range of information, both quantitative – including the econometric analysis – and qualitative.

The commission expressly acknowledged that it relied, among other things, on the new results of the econometric analysis in order to reduce the number of SIEC states after the statement of objections, so those results were capable, at least as regards certain states, of countering the qualitative information taken into account by the commission.

The General Court held that, accordingly, it must be found that the applicant was deprived of information that, had it been communicated to the applicant in due time, could have allowed it to submit

different results on the effects of the merger on prices, which might have given rise to a reassessment of the scope of the information taken into consideration by the commission and, accordingly, a reduction in the number of SIEC states.

The court acknowledged that, when assessing alleged infringements of the rights of the defence in the context of merger control proceedings, it is indeed necessary to take into account the necessity for speed, which characterises the general scheme of the EU *Merger Control Regulation*. The court stated that, nevertheless, in the present case (as the commission acknowledged in its written submissions), the econometric analysis was

already very stable before the state-of-play meeting of 20 November 2012, more than two months before 30 January 2013, the date of the contested decision – with the result that the commission was free, at the very least, to communicate the essential elements of the chosen econometric model to the applicant.

The General Court concluded that the commission infringed the applicant's rights of defence by failing to communicate the final version of its econometric model to the applicant and annulled the contested decision in its entirety.

The case is very significant, as it is the first time since 2002 that the European courts have annulled

a commission decision to prohibit a merger. In 2002, the Court of First Instance (now the General Court) annulled three decisions in one year, namely, Case T-342/99 *Airtours/First Choice* (6 June 2002), Case T-310/01 *Schneider/Legrand* (22 October 2002) and Case T-5/02 *Tetra Laval/Sidel* (25 October 2002).

Furthermore, TNT has since been acquired by FedEx, in a deal that was approved by the commission under the EU *Merger Control Regulation*, which opens the door to potential claims from UPS and TNT shareholders. [E](#)

Marco Hickey heads the EU, competition and regulated markets unit at LK Shields Solicitors.

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16 June	SKILLNET CLUSTER - PRACTITIONER UPDATE 2017 – in partnership with Clare and Limerick Bar Associations Strand Hotel, Limerick	€115 (Hot lunch and networking drinks included in price)		5 General, 1 Regulatory Matters (Accounting and AML Compliance) (by Group Study)
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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*.

WILLS

Barry, David (deceased), late of 50 Dargle Road, Blackrock, Co Dublin, who died on 4 May 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

Bennett, Michael (deceased), late of 3 Abbeycourt, Frenchpark, Co Roscommon, and formerly of Mullagh, Co Cavan, who died on 10 May 2015 (approx). Would

any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Lorraine McCoy, T Sheridan & Co, Solicitors, Bailieborough, Co Cavan; tel: 042 966 5377, email: info@pjcarolan.com

Black, William (deceased), late of Cappagh, Bansha, Co Tipperary, who died on 4 May 2017. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Drumgoole Solicitors, 102 Upper Drumcondra Road, Dublin 9; tel: 01 837 4464, email: info@drumgooles.ie

Fallon, Frank (deceased), late of either 42 Ballytore Road, Rath-

farnham, Co Dublin, and/or Abbeyview, Rathfarnham, Co Dublin. Would any person having any knowledge of any will made by the above-named deceased, who died on 21 November 2016, please contact Patricia Cranny of PG Cranny & Company, Solicitors, 230 Swords Road, Santry, Dublin 9; DX 101005 Drumcondra; tel: 01 842 2919, email: info@pgcranny.ie

Feeney, Helen (otherwise Ellen) (deceased), late of Rosshill, Roscam, Galway, who died on 23 December 2016. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-

named deceased, of if any firm is holding same, please contact Niamh Kavanagh, O'Donnell Waters Solicitors, Merchants Dock, Merchants Road, Galway; DX 4532 Mary Street; tel: 091 568 880, email: info@odonnellwaterssolicitors.com

McCarty, Eileen (deceased), late of 66 Bangor Road, Crumlin, Dublin 12, who died on 11 January 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Karen O'Neill & Associates, Solicitors, 1 Main Street, Malahide, Co Dublin; tel: 01 845 3344, email: info@oneillassociates.ie

McDermott, James (otherwise Jim) (deceased), late of 58 Clonkeen, Fairyhouse Road, Ratoath, Co Meath, who died on 8 January 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 Cora Higgins, Regan McEntee and Partners, Solicitors, High Street, Trim, Co Meath; DX 92 002 Trim; tel: 046 943 1202, email: chiggins@reganmcentee.ie

McNally, Marie Louise (deceased), late of Ashbury Nursing Home, 1A Kill Avenue, Dun Laoghaire, Co Dublin (formerly of 58 Albert Road Lower, Glen-

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ageary, Co Dublin), who died on 21 February 2017. Would any person having knowledge of the location of the original will executed by the above-named deceased, or if any firm is holding same, please contact Justin McKenna of Partners at Law, Solicitors, 8 Adelaide Street, Dun Laoghaire, Co Dublin; tel: 01 280 0340, email: jmk@pals.ie

Maher, John (deceased), late of 2 Cedarmount, St Bridget's Church Road, Stillorgan, Co Dublin, and formerly of 41 Allen Park Road, Stillorgan, Co Dublin, who died on 29 January 2017. Would any person having knowledge of a will executed by the above-named deceased please contact Michael Sheil & Partners, Solicitors, Temple Court, Temple Road, Blackrock, Co Dublin; tel: 01 288 1150, email: info@msheil.ie

Mitchell, John (deceased), late of 33 Clareville Court, Glasnevin, Dublin 11, and formerly of Moore North, Ballydangan, Athlone, Co Roscommon, who died on 16 January 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Elaine Bannerton, solicitor, Hutchinson Davidson & Son, Solicitors, Bridge Street, Ballinasloe, Co Galway; tel: 090 964 2143, fax: 090 964 4077, email: info@hutchinsondavidson.ie

Murphy, Dorothy (otherwise Dot) (deceased), late of 1A Havelock Place, off Bath Avenue, Sandymount, Dublin 4 (formerly known as 1A Havelock Square, off Bath Avenue, Sandymount, Dublin 4), who died on 8 November 2005. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or of any firm that is holding same, please contact Gerald Griffin, solicitor, of St Paul's Church, North King Street, Dublin 7; tel: 01 617 4846, email: gna.griffin@gmail.com

Plunkett, Georgina (née Cavanagh) (deceased), late of Glengara Park Nursing Home, Lower Glenageary Road, Dun Laoghaire, Co Dublin, and previously of Trinity, Ashford, Co Wicklow, predeceased by her husband George. Would any person having knowledge of any will made by the above-named deceased, who died on 21 April 2016, please contact AC Forde & Company, Solicitors, 14 Lansdowne Road, Dublin 4; tel: 01 660 8955, email: info@acforde.com

Toolen, Esther Margaret (deceased), late of 118 Ballyfermot Crescent, Dublin 10, who died on 5 January 2016. Would any person having knowledge of the whereabouts of a will made in early 2000 by the above-named deceased please contact Katherine Toolen, 21 Ballyfermot Avenue, Dublin 10; tel: 01 687 3168 or 089 480 8683, email: katherinetoolen@hotmail.com

Walls, Edward, aka Edward Joseph Walls, aka Eamon (deceased), late of Kilbrew Demesne Recuperation and Nursing Home, Ashbourne, Co Meath, and formerly of (1) 127 Griffith Hall, Marino, Dublin 9; (2) Apartment 5, 24 McCurtain Street, Cork City; (3) 7 Newrow, Glenarm, Co Antrim, Northern Ireland, who died on 27 January 2017. Would any person having knowledge of the whereabouts of any will made the above-named deceased please contact Erin Brogan, MacGeehin Toale Solicitors, 10 Prospect Road, Glasnevin, Dublin 9; tel: 01 830 7799, email: erin.brogan@mgclaw.ie

TITLE DEEDS

O'Brien, L Maria (deceased), late of Ballyogan, Graiguenamagh, Co Kilkenny, formerly of 'High Tor', Rathmullen Road, Drogheda, Co Louth. Would any person having information with regard to the title deeds of 17 Kirkwood Park Avenue, Sandymount, Dublin 4 (owner Maria L O'Brien), please contact John M

Foley & Co, solicitors for Maria L O'Brien, Station Road, Bagenalstown, Co Carlow; tel: 059 972 1219, fax: 059 972 1592, email: akiernan@foleysols.com

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 and in the matter regarding the premises known as 'Rockview', Sandhill Road, Ballybunion, in the county of Kerry – Mary Moloney (applicant)

Take notice any person having any interest in the freehold estate of the following property: 'Rockview', Sandhill Road, Ballybunion, in the county of Kerry.

Take notice that Mary Moloney (the applicant) intends to submit an application to the county registrar for the county of Kerry for acquisition of the freehold interest in the aforesaid properties, 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 the 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 applicant intends 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 county of Kerry for 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 or unascertained.

Date: 2 June 2017

Signed: Paul Cannon (solicitor for the applicant), Purtill Solicitors, No 18A The Square, Listowel, Co Kerry

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 (as amended) and in the matter of an application by Hea-

tons Unlimited Company of Heatonhouse, IDA Business Park, Whitestown, Tallaght, Dublin 24, in respect of the property known as 4 Cathedral Street, Dublin 1

Take notice that any person having any interest in the freehold estate or any intermediate interests in the following property at 4 Cathedral Street, Dublin 1: all that and those the house and premises formerly known as 4 Tyrone Place and now known as 4 Cathedral Street and formerly in the possession of John Cavanagh, deceased, measuring on the north side fronting Tyrone Place, 22 feet, in the rear on the south side 21 feet, one inch, on the east side from front to rear 38 feet, three inches, and on the west side from front to rear 39 feet, be the same several measurements more or less and which said premises are described in the fee farm grant dated 12 January 1901 between (1) Catherine Lynch and (2) John Henry Cronin and Edmund William Eyre as all that lot or piece of ground situate lying and being on the south side of Elephant Lane in the city of Dublin, containing in breadth to the front 21 feet or thereabouts, in breadth in the rear the like number of feet, and in depth from front to rear 39 feet or thereabouts, be the same more or less with the rights, members and appurtenances to said premises belonging and appertaining, which said premises are situate lying and being in the parish of St Thomas and city of Dublin, held under a lease dated 1 February 1901 between (1) John Henry Cronin and Edmund William Eyre and (2) Joseph Boyers from 7 February 1901 for the term of 200 years subject to the yearly rent of £30.

Take notice that Heatonhouse Unlimited Company, being the entity now holding the said property, intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold simple estate or any intermediate interests in the aforesaid property, and any party asserting that they hold a superior



interest in the aforesaid property (or any of them) are called upon to furnish evidence of the title to the aforementioned property to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant intends 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 person or persons beneficially entitled to all superior interests up to and including the fee simple in the aforesaid property are unknown or unascertained.

Date: 2 June 2017

Signed: *McCann FitzGerald (solicitors for the applicant), Riverside One, Sir John Rogerson's Quay, Dublin 2*

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 and in the matter of application by William S Jagoe and Denise Rebecca Jagoe of 11 Park Avenue, Sandymount, Dublin 4

All that and those the plot of ground being part of the garden of the dwellinghouse and premises known as 21 Gilford Drive, Sandymount, in the parish of St Mary, in the city of Dublin, held under indenture of lease dated 1 March 1937 and made between William Kavanagh, William James Kavanagh and Robert Smyth of the one part and Maire Barrett and Mary Barrett of the other part for a term of 145 years from 12 March 1936, subject to a yearly rent of ten guineas sterling, which ownership of the plot of ground is in the ownership of the applicants.

Take notice that William S Jagoe and Denise Rebecca Jagoe intend to submit an application to the county registrar for the

county/city of Dublin for acquisition of the freehold interest in the aforesaid properties, 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 the 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, William S Jagoe and Denise Rebecca Jagoe 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 county/city of Dublin for directions as may be appropriate on the basis that the persons beneficially

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entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 2 June 2017

Signed: *Peter J McKenna (solicitors for the applicants), 18 Sandymount Green, Dublin 4*

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PLEASE WRITE, ENCLOSING YOUR CURRICULUM VITAE, TO BE RECEIVED NO LATER THAN THURSDAY 15 JUNE 2017 TO:

*Maureen Seabrook
Human Resources Manager
Law Society of Ireland
Blackhall Place
Dublin 7
m.seabrook@lawsociety.ie*



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LAW STUDENT IN INVISIBLE INK EXAM-CHEAT BID

A university watchdog report has revealed that a law student was caught with unauthorised notes written in invisible ink during an exam, *Legal Cheek* reports.

The unnamed female student used invisible UV ink to heavily annotate her law statute book, equating to about 24 pages of notes. The student may have smuggled an ultraviolet light into the exam, allowing her to read the secret annotations.

The report states: "She was seen using the notes by other students and the invigilator, who retained the statute book as evidence."



CHANNEL YOUR INNER JUDGE DREDD

An attempt by the Law Society of England & Wales to channel popular culture to encourage solicitors to apply for judicial posts has backfired, *Legal Cheek* reports.

The society tweeted this to their 82,000 Twitter followers: "Channel your inner Judge Dredd. Are you thinking of taking the leap from solicitor

to judge? Explore the process <http://www.lawsociety.org.uk/law-careers>."

However, questioning the society's knowledge on all things Dredd, the Twitterati responded.

"So I get to go around shooting bad guys without following any due process? Sign me up!", said one. Someone else replied: "You do realise Dredd is

an executioner for a totalitarian fascist regime?", while another asked "Will combat training be part of this 'leap'?"

In the comic, the futuristic street judge has the power to arrest, convict, sentence and execute criminals on the spot – probably not the sort of lad the judiciary of England and Wales is looking for.

GOODNESS GRACIOUS ME!

The Indian Supreme Court has thrown out a lawsuit that used so much jargon it was incomprehensible, *RTÉ reports*.

"We will have to set it aside, because one cannot understand this," the *Hindustan Times* reported the judges as saying.

Even the lawyers representing the two sides in the row between a landlord and his tenant said they were unable to understand the original order issued by a lower court: "The ... tenant in the demised premises stands aggrieved by the pronouncement made by the learned Executing Court upon his objections constituted there before ... where within the apposite unfoldments qua his resistance to the execution of the decree stood discountenanced by the learned Executing Court."

MAN ATTACKS ROBOCOP

A man has been arrested for allegedly knocking over a security robot in a car park in California while drunk, *Newstalk* reports.

The 5ft tall, 23 stone autonomous robot sustained a number of scratches in the 'assault' at its manufacturer Knightscope's HQ.

As soon as the incident was detected, the robot reported it and alarms sounded. The suspect attempted to flee the scene but was detained until police arrived.



"If assaulted, our advanced model sues for compo."

"We are incredibly proud of the outcome and believe this to be a true testament to the

technology we developed here in Silicon Valley. We are equally happy to report that the robot has recuperated from his injuries and is back on patrol keeping our office and employees safe again," said Stacy Dean Stephens, vice-president.

K5 is designed to detect and report unusual activities on large outdoor spaces. It can monitor environmental conditions, wireless signals and car registration plates.

IP Litigation Solicitor

Top Tier
€80,000 - €100,000
Ref: 910245

Banking Solicitor

Top 10
€60,000 - €80,000
Ref: 912483

Commercial Property Solicitor

Top 10
€60,000 - €80,000
Ref: 912482

NQ Corporate Solicitor

Top Tier
€60,000 - €65,000
Ref: 911908

Corporate Solicitor

Top 10
€70,000 - €90,000
Ref: 912479

Energy & Natural Resources Solicitor

Top 10
€60,000 - €80,000
Ref: 912480

NQ Banking Solicitor

Top Tier
€60,000 - €65,000
Ref: 91190

NQ Construction Litigation Solicitor

Top Tier
€60,000 - €65,000
Ref: 911910

Featured Jobs

IP/IT SOLICITOR**€70000 - € 90,000****Top 10 / Dublin**

Our client, a Top 10 firm is seeking to recruit a solicitor to join their IP and technology group. This role will involve advising multi-nationals on a range of intellectual property and technology issues, drafting and advising on technology, IP, outsourcing, distribution and agency agreements, providing freedom of information advice, working with website policies, cloud contracts, cyber security and data breaches, and ICT procurement. This is a non-contentious role and the successful candidate will become part of a well-established and leading team which advises on a wide variety of work.

Ref: 912658

Funds Legal Counsel**€70,000 - €90,000****Global Fund / Dublin**

Our client, a global fund administrator is seeking to recruit a junior legal counsel for their Dublin office. The role will assist, support and report to the Group General Counsel based in the US. The company delivers a range of services and technology to private debt, hedge funds, fund of funds, private equity funds, private banks, pension funds and family offices. The role will involve providing assistance and support to other Group offices particularly Luxembourg, handling all legal matters as in-house counsel for the Dublin office including legal review of all relevant documents for fund launches.

Ref: 912271

Regulatory & Compliance**Solicitor - €70,000 - €100,000****Top 10 / Dublin**

Our client, a Top 10 firm is seeking to recruit a solicitor to join their Regulatory and Compliance department which the firm is strategically looking to grow. The role would involve acting for national and domestic clients, both regulated and unregulated, dealing with a broad range of complex regulatory matters across the regulatory spectrum including MiFID/UCITS/AIFM/ IIA, banking, payments, insurance and credit unions. The ideal candidate will have experience in a broad range of financial services regulatory matters.


Ref: 912643

Should you require further information about any of these roles or any other legal recruitment requirements, please contact **Michael Minogue, Assistant Manager** (m.minogue@brightwater.ie) in strictest confidence.

RECRUITMENT CONSULTANT / Dublin / €50,000 - €100,000 OTE

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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.

Banking/Aviation Lawyer – 1 yr+ pqe – PP0375

The Role: Our Client, a premier corporate law firm, is seeking to recruit a lawyer to join its Banking and Financial Services Department who act for both domestic and international clients. You will be dealing with asset finance transactions but will also be required to assist on general banking matters and capital market transactions.

The Requirements: You will be a qualified Solicitor or Barrister with at least 1 years' experience in aviation banking including excellent academics, commercial awareness and a strong work ethic.

Banking Solicitor – Associate to Senior Associate – J00480

The Role: This Top 6 Dublin law firm requires an experienced solicitor to join its Banking and Finance Group dealing with Irish and international banks and also financial institutions and corporations.

The Requirements: The role in question is for an experienced solicitor who can assist with a wide range of issues including: Portfolio sales; Secured facilities; Acquisition and infrastructure finance; Regulation & Compliance; Enforcement.

Corporate – Commercial Lawyer – Assistant to Associate – J00307

The Role: A leading corporate and commercial law firm are seeking to recruit a Corporate Solicitor to join their long established and expanding Corporate Team.

The Requirements: The successful candidate will be an ambitious Solicitor based in Dublin or be a solicitor relocating from another common law jurisdiction with the following experience and attributes; Experience in corporate transactions; First-rate technical skills; Proven ability to work as part of a team.

Corporate Solicitor – 5 yrs+ pqe – J00445

The Role: Our Client, a fast growing commercial law firm based in Dublin's City Centre, are seeking to hire an experienced Solicitor to join it's Corporate Team.

The Requirements: The successful Candidate will be a 5-year+ qualified Corporate Solicitor with experience in general commercial contract work including advising Clients on; Joint Ventures; Mergers and Acquisitions; Corporate Finance; Corporate Governance.

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 it's 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 Clients on a global scale.

The Requirements: You will be a qualified solicitor or barrister with expertise in both private and data security law gained either in private practice or as in-house counsel.

Competition and Regulated Markets Solicitor – 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 experience of mid to top tier practice coupled with a strong academic background and excellent technical skills.

Commercial Property/Real Estate Solicitor – Associate to Senior Associate – MB0012

The Role: Our Client, a progressive Dublin based law firm, are 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 commercial property experience dealing with acquisitions, disposals, due diligence, landlord and tenant and asset management.

Tax Lawyer/Tax Consultant – 2 yrs+ pqe – J00359

The Role: This Top 6 Dublin law firm is seeking to recruit a Tax Lawyer/Consultant to join its expanding Tax Department to assist in managing and advising their tax clients dealing with a range of both domestic and international tax matters. You will have a genuine interest in building a career specialising in tax.

The Requirements: You will be a professional with a qualification in law, accountancy or tax looking to work in a top tier firm bringing with you initiative and enthusiasm with an excellent academic record and either hold a tax qualification or be working towards one.

EU Competition Solicitor – Assistant to Associate – MB0024

The Role: An opportunity has arisen in a Top 6 Dublin law firm for a Solicitor to join it's EU Competition and Regulatory Group. There is a wide range of work on offer including EU, litigation and investigations competition and regulation, market dominance, public procurement law and state aid rules.

The Requirements: You will have 2+ years pqe coupled with a strong academic background and excellent technical skills.

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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