Heavy traffic ahead
Ireland falls short in dealing with the issue of human trafficking

Buy and sell
Anti-money-laundering and virtual currencies – what solicitors need to know

Stay on target
Recent European case law on 'jumping the gun' in mergers and acquisitions

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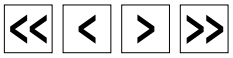

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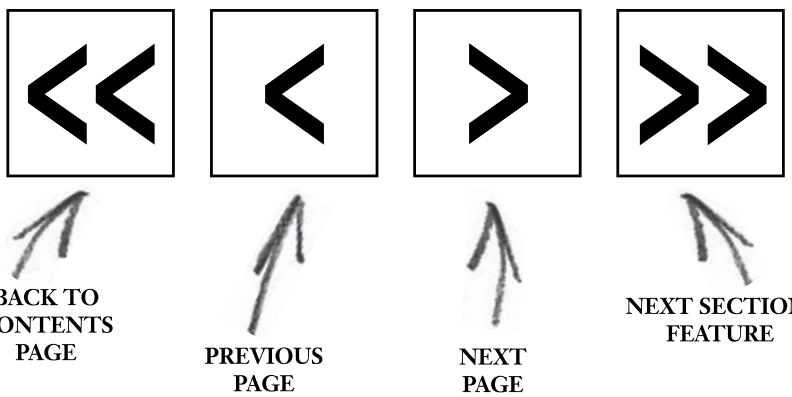

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Does your client have a claim eligible for ASR Hip ADR?

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

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- Claimants in the ADR Process do not have to prove liability; only causation and quantum are relevant
- There is no fee to submit a claim to the ADR Process
- If necessary, McCann FitzGerald will collect the claimant's medical records where written authorisation has been provided
- Evaluators are senior counsel or retired Superior Court judges
- A €25,000 payment in respect of the claimant's legal costs, outlay and VAT will be paid within 28 days of settlement of claims within the ADR Process. This is without prejudice to a claimant's right in the circumstances of a case to seek higher costs and outlay through negotiation or taxation

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*

RESHAPING THE FUTURE

One of the benefits of the new information technology system that is being rolled out by the Law Society is the data it provides about its members. Rather than viewing this in a negative fashion, it is something the Society is now beginning to use to learn more about the profession – and to put it to good use by making improvements for members.

In the past number of months, the *Gazette* has been using this information to provide a picture of the make-up of the profession. It has revealed the county-by-county breakdown showing where solicitors practise, the numbers of those practising in-house, and the percentage of female and male practitioners.

These figures led to an interesting discussion at the April Council meeting, which eventually centred on the gender breakdown of those serving on the Council and on our committees. The Society has a clear policy on gender balance, particularly where it nominates colleagues to various bodies. There is, however, an imbalance in the number of female colleagues serving on some of our committees – even on the Council itself. This has occurred for myriad reasons. What is important, however, is how we address this and change it.

The number of female recipients of parchments since I became president last November exceeds well over half of those conferred. I would like to see more female colleagues running for the Law Society's Council this coming November. In addition, I would like to see more female participation on our committees. The Society needs your input and expertise in shaping the future of the profession.

The number of women at partner and senior partner level in Ireland statistically fairs better than our British colleagues, but we can and must improve this further.

Obvious benefits

The *Mediation Act 2017* imposes requirements on us as solicitors to advise clients about the possibilities of mediating a case prior to resorting to court proceedings. This obligation is not new to family lawyers, and should not cause us too many difficulties.

Not every case is suitable for mediation, of course, but many can and ought to be resolved through alternative dispute resolution (ADR). The benefits of mediation are obvious, in that it provides a quick, confidential and less expensive means of resolving conflicts than going to court.

For most litigants, a decision on the matters that have led to litigation in the first place is the primary solution. In addition, the costs and length of time to get a hearing are extensive and can be daunting to a client. Mediation solves both those issues. Sowing the seed in the mind of a client is the start of the process. The sooner we move to embrace ADR, the better. Lawyers may feel that ADR will remove work from them, but I believe that perspective to be incorrect. It is simply another way of getting the job done – with the client's interests being placed first.

Mediation provides solicitors with an opportunity to provide solutions to the client, which is an efficient method of resolving disputes without the formality of a court hearing. It behoves us to use it. g

> ADR IS SIMPLY ANOTHER WAY OF GETTING THE JOB DONE – WITH THE CLIENT'S INTERESTS BEING PLACED FIRST

MICHAEL QUINLAN,
PRESIDENT

gazette
LAW SOCIETY

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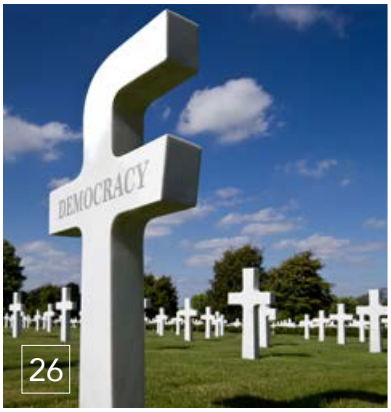
HAVE YOU MOVED? Members of the profession should send change-of-address details to: IT Section, Blackhall Place, Dublin 7, or to: customerservice@lawsociety.ie



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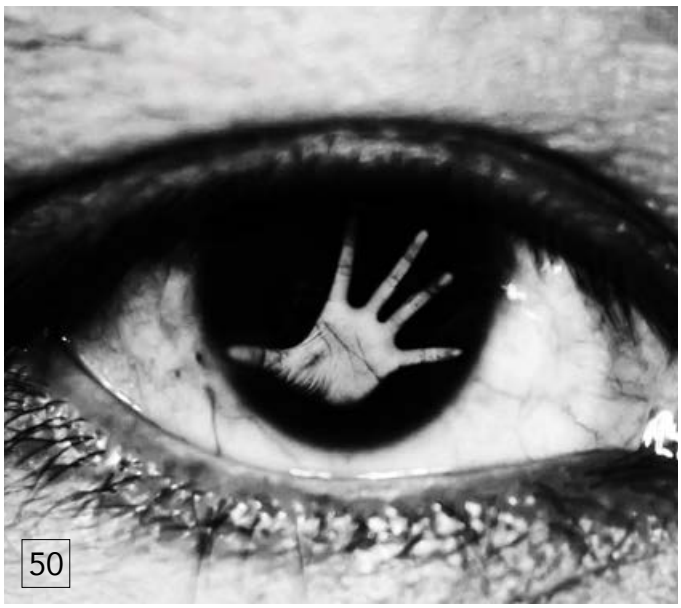
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FEATURES

REGULARS

THE BIG PICTURE

PIC: MICHAEL REYNOLDS/EPA-EFE

FACEBOOK'S FACE OFF

Facebook boss Mark Zuckerberg takes his seat to testify before the US Senate's Commerce, Science and Transportation Committee and the Senate Judiciary Committee. Zuckerberg testified before two congressional hearings that focused on Facebook allowing third-party applications to collect the data of its users without their permission, as well as the company's response to alleged Russian interference in the 2016 US presidential election

FRIENDLY LIAISON

PIC: LENSMEN

At the meeting of the Law Society and Bar of Ireland Liaison Committee on 17 April were *(front, l to r)*: Ciara Murphy, Micheál P O'Higgins SC, Paul McGarry SC (chair of the Bar of Ireland), Michael Quinlan (President of the Law Society), Patrick Dorgan (senior vice-president) and Ken Murphy; *(back l to r)*: Claire Hogan BL, James MacGuill, Stuart Gilhooly, James McCourt, Mary Keane and Darren Lehane BL and Venetia Taylor BL

GRADUATION CEREMONY GUESTS

Attending the reception prior to the presentation of parchments on 15 March 2018 were *(l to r)*: Shane McCarthy (chair, Human Rights Committee), Mr Justice Michael White (High Court), Michael Quinlan (President of the Law Society), Judge Mary O'Malley Costello (Circuit Court), Judge John O'Connor (District Court), and Richard Hammond (Education Committee)

PICS: JASON CLARKE PHOTOGRAPHY

President of the Law Society Michael Quinlan and Attorney General Séamus Woulfe prior to the parchment ceremony on 21 February 2018

At the presentation of parchments and prizes on 20 April at Blackhall Place were Ruth Foy, Anne Marie Miley, Jessica Boyne and Jennifer Abdelhaken

Ken Murphy (Law Society director general) and Mr Justice Michael White (High Court) at the parchment ceremony on 15 March

START ME UP!

At the official launch of Robert Pierse's *1961-2017 Road Traffic Legislation* (published by Bloomsbury) were Michelle Ní Longáin, Minister Charlie Flanagan, Robert Pierse, Minister Josepha Madigan, Olive Pierse and Riobard Pierse

Robert appeals for the long overdue reform and consolidation of the current road traffic legislation

ALL PICS: CIAN REDMOND

Kyran Hurley (MD, National Toll Roads Ltd), Michael Nolan and Riobard Pierse

Junior vice-president Michelle Ní Longáin addresses the gathering

Minister for Justice and Equality Charlie Flanagan, Minister for Culture, Heritage and the Gaeltacht Josepha Madigan, Law Society Junior Vice-president Michelle Ní Longáin and Riobard Pierse at Blackhall Place on 22 March

Minister Charlie Flanagan and Councillor Jim Gildea

OPENING OF NEW WATERFORD COURTHOUSE

Minister for Justice Charlie Flanagan and Chief Justice Frank Clarke officially opening the new Waterford Courthouse building on 9 April

The large gathering at the opening of the new courthouse building

ALL PICS: NOEL BROWNE

Brendan Ryan (chief executive of the Courts Service), assistant commissioner Michael Finn, Chief Justice Frank Clarke, Minister for Justice Charlie Flanagan and Senator Maurice Cummins

Siobhan Walsh, Donal O'Connell and Liz Dowling (solicitors) and Rebecca Walsh (Waterford Courthouse)

Waterford solicitors Eoin O'Herlihy, Paul Murran, Edel Morrissey, John Goff and Morette Kinsella

Waterford solicitors Niall Rooney, Mark Keller, Gerry Halley and Donal O'Connell

KERRY LAW SOCIETY'S ANNUAL SEMINAR

ALL PICS: JOE HANLEY

Eimer O'Sullivan, Eoin Brosnan and Geraldine Kearney

Angela O'Connor, Michael O'Donoghue (both Killarney) and Blánaid Walsh (Tralee)

Attending the recent annual seminar of the Kerry Law Society in The Rose Hotel, Tralee, were *(front, l to r)*: Mike O'Reilly and Bill Holohan; *(back, l to r)*: Niall Lucey, John Galvin, Anne Keane, Canice Walsh and Donal Browne

GEN UP ON THE GDPR!

The IP and Data Protection Law Committee, in collaboration with Law Society Finuas Skillnet, has produced two online courses on the GDPR.

The free online course 'GDPR: an introduction' is a basic introduction to GDPR (two hours' CPD regulatory matters via e-learning) – useful for those seeking an overview of the new regulation. Online registration is required.

Paul Lavery: 'Get your law firm GDPR ready'

The more detailed 'How to get your law firm GDPR-ready' costs €115 and was recorded live last January. This online course, delivered by Paul Lavery (McCann FitzGerald), offers 3.5 hours of CPD in regulatory matters via e-learning.

One of the course's unique selling points is the lively Q&A session that took place during the course, with Paul responding in detail.

DISCOVERY MERGER

The e-discovery and risk management company Advanced Discovery, which recently launched its Irish practice, is to merge with Consilio – a global leader in e-discovery, document review, and law department management.

With over 2,500 employees, 14 data centres and 23 document review facilities in 11 countries, the newly combined company will become the second largest provider of such services to the legal sector globally.

ANNUAL HUMAN RIGHTS LECTURE

This year's annual Human Rights Lecture will be given by Professor Fiona de Londras (deputy head, Birmingham Law School) at Blackhall Place on Tuesday 15 May at 6pm.

The lecture will explore the potential impact of Brexit on human rights, in Ireland and at a wider European level. It offers one CPD hour and is being organised by the Human Rights Committee in partnership with Law Society Professional Training. The event is free, but booking is essential at www.lawsociety.ie (search for 'annual Human Rights Lecture'). A drinks reception will take place after the event.

RDJ EXPANDS DUBLIN PRESENCE

Cork-based firm Ronan Daly Jermyn is expanding its Dublin footprint, with a new €8.3 million office complex on George's Dock in the IFSC.

Over the next two years, the firm plans to expand its 240-strong headcount by 25 and enlarge its focus on healthcare and technology.

The property law cohort at the firm has doubled from 12 to 23 over the past three years, while expansion in Cork and Galway is also on the cards. The firm also has an office in London.

CALL TO PROSECUTE INSURANCE FRAUD

PIC: SHUTTERSTOCK

A business lobby group has urged the automatic prosecution of plaintiffs who make false or misleading statements in personal injury cases.

The Alliance for Insurance Reform has urged the government to insist on consistency and transparency in how liability and motor claims are processed.

Representing the not-for-profit, charity, sports and small and medium-sized business sectors, the group comprises 20 civic and business representative organisations.

CAPACITY LAW ON AGENDA

The Irish Mental Health Lawyers Association annual conference takes place at UCC on 12 May, in conjunction with the Centre for Criminal Justice and Human Rights at its School of Law.

The all-day event will focus on mental health law and capacity law. The conference fee is €120 (with some reductions), and four CPD points will apply. The event is free to students.

For more information, contact Deirdre Kelleher at UCC on tel: 021 490 3642, or email: law-events@ucc.ie.

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BARRISTER TRANSFERS ON THE UP

A total of 34 barristers transferred to the solicitors' profession in Ireland in 2017. The figure is the same as that recorded in 2016.

In 2014 and 2015, the number of transfers to the solicitors' profession was just 15 in both years.

However, the increase recorded in 2016 compared with 2015 was significant. The jump from 15 transfers per annum to 34 in 2016 represented an increase of 126.6% over the 2015 figure. The 2016 transfer figure was mirrored once again in 2017, when a further 34 barristers opted to become solicitors.

As of 24 April 2018, a total of 17 barristers have been admitted to the Roll of Solicitors in 2018. Given that we are now just one-third of the way through 2018, it would appear as though the number of barristers transferring to the Roll of Solicitors is set to increase once again, compared with the 2017 admission figure.

PIC: CIAN REDMOND

Year	Number of barristers transferring to the solicitors' profession
2012	3
2013	10
2014	15
2015	15
2016	34
2017	34

Year	Number of barristers attending the Essentials of Legal Practice course
2012	8
2013	10
2014	27
2015	24
2016	43
2017	40

The transfer process is only open to barristers with three or more years' experience at the Bar or in other legal employment. Such barristers are required to do the one-month course 'Essentials of legal practice' at the Law Society, followed by a period of up to six months training in a firm.

The number of barristers attending the course from 2012 to 2017 are outlined in the table *(left)*.

The course numbers don't synchronise with admission totals, as some barristers decide to defer their actual date of transfer, while others decide not to follow through at the 11th hour.

LEGAL JARGON TO BE BINNED UNDER GDPR

Justice Minister Charlie Flanagan has told the Dáil that it will no longer be acceptable for service providers to use legal jargon after the introduction of the *General Data Protection Regulation* (GDPR).

Speaking on 18 April at the second stage of the *Data Protection Bill*, the minister said that the GDPR would modernise and protect Ireland's data protection laws and create a consistent data protection regime across the EU.

He said that the GDPR, which will be transposed into national law on 25 May, would affect businesses of every size by requiring them to review and update how they collect, use, or store the personal data of their customers and clients. The same applies to Government departments and all public bodies.

Current law based on the EU's *Data Protection Directive 1995* predates mass internet usage, handheld devices, apps and games, social networking and data analytics – all of which involve the collection and processing of personal data for purposes that are opaque, the minister said.

"Increased transparency is essential to increased control. In future, information to users must be provided in a concise, transparent, intelligible and easily accessible format, using clear and plain language.

"It will no longer be acceptable for service providers to direct users to opaque terms and conditions written in legal jargon," Flanagan said.

TRIAL TIME LIMITS WOULD EXPEDITE LITIGATION

Judges will impose strict time and cost limits on court proceedings under new reforms being drafted by the President of the High Court.

Mr Justice Peter Kelly said that, under the new system, judges can impose a strict time frame at the outset of a case.

Mr Justice Kelly is chair of a committee charged with reviewing the administration of civil justice, which is due to report to the Justice Minister by next year.

"Under the current system, as they say, the only people who can litigate in the High Court are paupers or millionaires," the High Court president told the *Bar Review*.

He said that the changes would make for speedier litigation: "Public time in court is very expensive, both for litigants and the public purse," he said.

Mr Justice Kelly also said that Ireland had the lowest number of judges per capita in the OECD and that he never had a full complement available to him, because of illness or vacancies.

Discovery costs are also on the radar of the review group. Chief Justice Frank Clarke told the Law Reform Commission's annual conference in November that too little attention had been paid to the reform of civil evidence. He called for a more straightforward, streamlined and simplified system of accessing justice.

Former justice minister Michael McDowell SC told the same conference that discovery costs were now "phenomenal" and that "fleets of junior barristers [are] hired by the large solicitors' firms, for weeks on end, poring through documents to comply with discovery obligations".

CERTIFICATE IN PUBLIC LEGAL EDUCATION

Pictured at the recent Diploma Centre conferral for the Certificate in Public Legal Education were Freda Grealy (head, Diploma Centre), Mary Henderson (McGrath McGrane Solicitors), Ms Justice Eileen Creedon, Gillian Brennan (Nathaniel Lacy & Partners) and John Lunney (Diploma Centre)

MEDIATION SHOULD BE 'FIRST PORT OF CALL IN DISPUTES'

Josepha Madigan (Minister for Culture, Heritage and the Gaeltacht) and Bill Holohan (outgoing chairman of CIArb) at the institute's AGM in Dublin

Minister Josepha Madigan is a solicitor and author of *Appropriate Dispute Resolution in Ireland: A Handbook for Family Lawyers and their Clients*.

Speaking to members of the Chartered Institute of Arbitrators Ireland (CIArb) at its AGM on 20 April, she said: "While litigation will always play an essential role in our justice system, it has many drawbacks. There are many cases where alternatives or, I believe, the appropriate dispute resolutions mechanisms must be explored. In my view it should be the first port of call, and not the last resort."

RECORD-BREAKING LEGAL VACANCIES

New records were set for the number of job opportunities advertised on the Law Society's legalvacancies.ie website in both January and February 2018. It reflects a very healthy job market, with lots of opportunities available for solicitors.

A total of 162 jobs were advertised on the site in January 2018 – exceeding the previous high of 140 vacancies for a single month (in January 2017).

The Legal Vacancies websites is widely acknowledged as Ireland's premier online source of information about legal work. Over 150,000 unique visitors searched the site each year, generating a total of 700,000 visits annually.

The facility was substantially upgraded in 2016, allowing jobseekers to avail of a range of options, including notifications about opportunities as they become available. These are categorised by the type of role, geographic location, employer, etc.

Employers can also avail of a choice of service options, including display advertising, 'hot job', or 'job of the week' status, a 'no name' listing, candidate shortlisting, and an interview arrangement service.

PRESIDENT NAMED FOR COURT OF APPEAL

Mr Justice George Birmingham has been appointed as President of the Court of Appeal. He steps into the shoes of Mr Justice Sean Ryan, who retired in March.

Mr Justice Birmingham is a former Fine Gael TD and Minister of State (1982-87) who was educated at TCD and the King's Inns. He was called to the Bar in 1976 and to the Inner Bar in 1999.

Widely experienced in both civil and criminal law, he was appointed to the High Court in 2007 and to the Court of Appeal on its formation in 2014.

MONEY-LAUNDERING BILL WASHES THROUGH CABINET

A bill to strengthen laws combating money-laundering and terrorist financing has been approved by Cabinet.

The *Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2018* was approved on 24 April and transposes provisions of the EU's fourth *Anti-Money-Laundering Directive*, implementing recent recommendations of the Financial Action Task Force.

Customer due diligence is the focus of the bill, which puts the onus for risk-based assessment squarely onto financial institutions.

Justice Minister Charlie Flanagan said the measures would help prevent illicit gains from entering the Irish economy, and that the bill was important because it would stop criminals from exploiting the EU's open borders.

"The reality is that money-laundering is a crime that helps serious criminals and terrorists to function, destroying lives in the process," the minister said.

The bill also expands the remit of the Garda Financial Intelligence Unit, which gathers information about suspicious transactions.

The *Criminal Justice (Corruption Offences) Bill 2017*, currently before the Dáil, has also been amended to make it an offence to launder the proceeds of bribery outside Ireland, even if the bribery was not an offence in the place where it was carried out.

UCD LAW DEGREE THROWN OPEN TO NON-STANDARD ENTRY

University College Dublin (UCD) has opened its law degrees to non-standard entry on all 11 of its programmes. From this September, applicants from further education institutes can compete for ten places on the programme.

The degree courses required a minimum of 525 points in the Leaving Certificate in 2016, equivalent to five A grades at Higher Level.

However, from September 2018, four places on the Business and Law degree and six on the ten other law degrees offered by UCD will be opened to students with Level Five or Level Six QQI-FET (Quality and Qualifications Ireland – Further Education and Training) qualifications.

Prospective applicants must have distinctions (80% or better) in five modules to be admitted, on a competitive basis, to the courses. Applications to UCD law under the QQI-FET pathway are made through the Central Applications Office (CAO).

For the Business and Law degree, a Level Five or Level Six distinction is required in mathematics, or a H5 at higher level Leaving Cert, or O1 at ordinary level, changing to H6/O2 in 2019. The Law with French Law course requires a H3 in Leaving Cert French at a minimum.

The five QQI-FET module distinctions can be in a variety of different Level Five courses, including applied social studies, business administration, business studies, community care, community development, community health services, cultural and heritage studies, e-business, liberal arts, international trade, journalism, language and European studies, legal studies, marketing, trade union studies, and youth work.

Dr Liam Thornton: 'The new FET route recognises the diversity of learning journeys our students will take before coming to study with us'

Level Six options

The Level Six options include administration and business; early childhood care and education; inclusive education and training; information; advice and advocacy; management; and social and vocational integration.

The UCD law places are allocated based on the applicant's score only. The best eight modules in a single award will be used for the calculation of points. Where more than one student has the same score, students will be ranked by the CAO on a random basis.

The 'law with' offering at UCD includes Law with Chinese, Law with Economics, Law with French Law, Law with History, Law with Irish, Law with Politics, Law with Philosophy, and Law with Social Justice.

UCD describes its law degrees as having a "proud history and an established reputation at home and abroad". The law school has a purpose-built facility that opened in 2013, and has top-of-the-range facilities, including mock moot courts.

A UCD spokesperson says that the BCL degree "allows you to immerse yourself in the study of law, to engage with a range of interesting legal perspectives, and to acquire a profound understanding of how law works in theory and in practice".

Prof Imelda Maher (dean of the Sutherland School of Law at UCD) says that the school is keen to encourage those with excellent FET awards to apply.

"The school is rightly reaching out to a wider pool of students who we believe should be part of the number one law school in Ireland" [in the QS world rankings].

Dr Liam Thornton, who led the move, says: "This new FET route recognises the diversity of learning journeys our students will take before coming to study with us. The introduction of a FET route to our law degrees emphasises the commitment of UCD School of Law to attracting a diverse cohort of students, which greatly enriches our learning community in UCD."

Research shows that the great majority of the Irish judiciary has passed through UCD law.

Driving factor

The Higher Education Authority requirement that 10% of university entrants should come from further education and training sectors was a driving factor in UCD opening up entry to its law school.

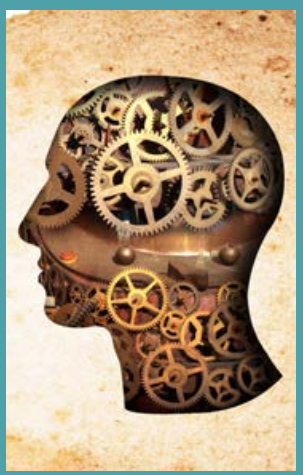
"The School of Law wanted to ensure that we were contributing to UCD meeting that target," says Dr Thornton.

"This is simply acknowledging that the Leaving Cert and the CAO, for all their positives – and there are many – do not fully reflect students who would absolutely thrive doing a law degree.

"It's simply broadening the range of option for candidates who we think would be really good law students and, in the future, really good lawyers, solicitors, barristers and judges."

WORKPLACE WELL-BEING

UNDER PRESSURE



Being a lawyer is emotionally difficult work. Recent research suggests that the number of lawyers suffering from depression is 3.6 times higher than in other professions. And the more successful lawyers become, the more likely they are to experience mental-health issues.

Lawyers are not alone in facing stress. The medical profession is about life and death. "However, when a surgeon goes into surgery," an internet commentator observed, "they don't send another physician in to try to kill the patient. Everyone is on the same team doing the same job."

Lawyers, however, have no escape from conflict. They have to struggle with the client, the lawyer on the other side, judges, insurance companies, regulators. Time is another foe, with pressures to bill according to the hours worked. The career ladder for a young lawyer is challenging. Once partnership is reached, there are fresh pressures – as well as competition – to bring in more work.

Many lawyers work long hours at the expense of time with family and friends. They feel overworked, fatigued, and isolated. They may wield authority and control over events professionally but, in their personal lives, they may feel powerless, hopeless, and trapped by circumstances – making life seem like a meaningless treadmill. Successful outwardly, they are suffering and struggling inside. Often, they do so alone and in silence.

If we are physically wounded and bleeding, our pain is visible and can be tended to without shame. However, emotional pain is often invisible to others. Feeling bad and not coping runs counter to the lawyer's role: the strong advisor on whom anxious clients can depend.

So, the lawyer struggling with depression may feel compelled to keep performing, even after reaching breaking point.

There is hope, however. Let's recognise the little miracles we perform every day in doing the work we do under pressure and treat ourselves with the compassion we would automatically extend to others. It is possible to change one's relationship with work, to recalibrate our lives, to find deeper purpose and meaning, and to tend to the more vulnerable part of ourselves.

Ho Wei Sim is a banking professional support lawyer with Dillon Eustace and is an accredited psychotherapist.

AVOID PROPERTY REGISTRATION ERRORS WITH ONLINE TRAINING

A full 15% of applications to the Property Registration Authority are rejected because of simple errors, practitioners have been advised.

These errors have an impact on solicitors and their clients by reducing the priority of the application and causing time delays.

In order to offset the wasted resources spent on assessing applications that cannot be processed, the PRA has now produced a suite of instruction videos to assist practitioners. The videos highlight the common errors made in the preparation of applications and maps for registration. The aim is to reduce the number of errors and increase efficiency.

They cover the steps from application for registration of a change of ownership, registration of a mortgage or loan, mapping guidelines, registration of freehold and leasehold documentary titles, application lodgement forms, and rejection policy.

The PRA has also produced a set of printable checklists for the application process. The material is available at www.prai.ie/videos-available-on-our-application-guidelines-page.

ATHLONE GARDA STATION REFURB

A main contractor has been selected by the Office of Public Works for the restoration and refurbishment of Athlone Garda Station and the former Social Protection building next door, Justice Minister Charlie Flanagan announced on 20 April.

New garda stations are also on track through public private partnerships in Sligo, Clonmel and Macroom, while a site is being acquired for a new station in Sligo.

VOLUNTEERS' WEEK, 14-20 MAY

PIC: SHUTTERSTOCK

Did you know that volunteering contributes to your well-being? There is a wealth of evidence that volunteering is good for you – it can make you feel happier and valued and improve your mental health (see *The Impact of Volunteering on the Health and Well-being of the Volunteer*, Volunteer Ireland, May 2017.)

If you want to support the legal community, why not think about volunteering for LawCare – our trustees, helpline workers, and peer supporters are all roles filled by volunteers. All our volunteers are legal professionals who want to give something back to their profession.

If you feel you could support fellow lawyers who are having a tough time – perhaps facing a disciplinary process, or a newly qualified lawyer struggling to cope with the transition into practice – then you might like to find out more about our peer supporter programme. Full details of the next recruitment and training cycle will be available next month at www.lawcare.ie, with training taking place in the autumn.

You can make a real difference to people in the legal community by volunteering with Lawcare.

CUT REMISSION FOR JAIL-VIOLENCE CALL

Justice Minister Charlie Flanagan has agreed to review prison disciplinary measures, following criticism by the Prison Officers' Association.

At its annual conference in Kilkenny on 19 April, the association complained that inmates are no longer subject to loss of remission if they attack officers or commit other serious offences.

Flanagan told the conference that he agreed that such sanctions should be reinstated where appropriate. However, he refused to countenance body cameras, body armour, attack dogs or batons, pointing out that such measures were not endorsed in the State Claims Agency review of assaults on prison staff two years ago.

MARKETING YOUR FIRM

THE SECRET SAUCE

The secret to an effective client newsletter is simple: at least 60% of the content should not be directly relevant to your services.

"What?" I hear you say. "Why on earth would you go to the trouble of creating and sending a newsletter and then not have it entirely relevant to your services – particularly when the whole purpose of the thing is to market your business?"

The reason is simple: your prospects and clients are not morons; in fact, unless you're practising in a very unusual niche, they are most likely humans. And humans *get* marketing. In fact, we get far too much of it.

As a result, we have developed very effective filters for excluding most of the marketing messages we receive on a daily basis. We are bombarded each day with so many messages through so many different media that, if we didn't have such filters, we would die of sensory overload.

Your newsletter should be an antidote to this. Its purpose is not to promote specific services directly – rather, it is to develop your relationship with your prospects and client.

You have a very valuable relationship of trust with that list of recipients, and your newsletter should nurture that. If you make it all about promoting the services you provide, you risk abusing that trust and having your newsletter consigned to the bin.

The key to a successful newsletter is in the name, 'news'. People love news – as long as it's interesting. So, while you might consider the latest technical developments in your practice area as 'news', do not make the mistake of assuming that your readers will find it interesting.

Yes, you can inform and educate about the services you provide in your newsletter, as long as you keep it engaging and frame it in terms of benefits to your readers – and keep it to less than roughly 40% of the content.

So, what should the rest be about? That's what we'll look at next month.

Flor McCarthy is the author of the Solicitor's Guide to Marketing and Growing a Business, *available at www.thesolicitorsguide.com.*

VIOLENCE CASES COME UNDER THE MICROSCOPE AT DUBLIN SEMINAR

The training of lawyers on the law relating to violence against women was the focus of a Law Society seminar held on 23 March 2018. The seminar tackled important issues such as:

- The Irish legal framework for women who have suffered gender violence,
- Identifying domestic violence in clients, and relevant case law, and
- Experience of dealing with cases of violence against women in the Irish and European context.

The seminar was designed by the Law Society in conjunction with the European Lawyers' Foundation, the Spanish National Bar, Athens' Bar Association, Italian Bar, National Council of Legal Advisers (Poland), Bar of Northern Ireland, and the Law Society of England and Wales.

The purpose of these initiatives is to educate lawyers, NGOs, and State bodies in how best to represent children, victims of violence, immigrants and asylum seekers in the legal arena. Funding is provided by the EU Commission and the Law Society, with involvement by various EU law societies, bar associations, and legal educational foundations.

Noeline Blackwell, Joan O'Mahony, Simone George, Gata Bzdyn and Nuala Jackson SC; *(back, l to r)*: Alonso Hernandez-Pinzon, Vasileios Stathopoulos, Keith Walsh, Ruth O'Dea, Attracta O'Regan, and Cristina Rodríguez

Colette McCarthy (Wolfe & Co) and Cliodhna Mulcahy (Shields Sadleir)

Mary O'Donoghue (Office of the DPP), Gráinne Hynes (Eames Solicitors), Josephine Higgins (Legal Aid Board, Longford) and Lorraine Heffernan (solicitor)

Emer McKenna, Dara O'Loghlin (both Chief State Solicitors Office), Ashimedua Okonkwo (Cyril & Co, Solicitors), Gary Keogh (Gary Keogh & Co, Solicitors) and Anna Molony (CSSO)

COMPILED BY KEITH WALSH, PRINCIPAL OF KEITH WALSH SOLICITORS

LOCAL AUTHORITIES

LASBA SPRING SEMINAR

The Local Authorities Solicitors' Bar Association is taking its spring seminar to Cork this year, with a one-day event on 18 May.

Topics on the agenda include the far-reaching scope of the *Mediation Act*, slum landlords, enhanced long-term social leasing, the GDPR, an emergency accommodation case update, the local property tax solicitor pitfalls, and how to respond to an audit.

The cost is €150 and there are 3.5 general and 2 regulatory CPD hours available. Cora Dervan at Dublin City Council is handling booking enquiries.

CORK

CALCUTTA RUN COMES TO CORK

To mark the Calcutta Run's 20th year, the Southern Law Association will partner with the Law Society in organising a Calcutta Run event in Cork on 27 May.

The 5k run/walk will take place in Blackrock. The SLA is encouraging practitioners across the south of the country to enter office teams and to invite family members and friends to join in. It's hoped that this will become a regular feature in Cork's running calendar.

MIDLANDS

MIDLANDS GEARING UP FOR THE GDPR

Midlands practitioners are invited to a meeting of their bar association at 3.30pm on 11 May at Tullamore Courthouse to discuss compliance issues around the looming GDPR.

The legislation will be examined as it applies to legal offices, with a view to helping members of the Midland Solicitors' Bar Association achieve compliance.

Two CPD hours will accrue for the event. All those planning to attend are urged to register online for the Law Society's free GDPR seminar in advance of attendance, as this training will bring them up to speed on the practicalities of compliance. To register, visit www.lawsociety.ie and search for 'GDPR – an introduction'.

The following week, on 18 May, a full-day CPD seminar in Portlaoise, run as part of the Skillnet Cluster Event, will also deal with the ramifications of the GDPR for Midlands practitioners.

CORK

HUMAN RIGHTS THROUGH CHILDREN'S LITERATURE

In April, Prof Jonathan Todres (Georgia State University) opened the book on the topic of 'Human rights through the prism of children's literature' at a well-attended event organised by the SLA.

There was a large turnout in Mallow for a seminar on the *Solicitors Accounts Regulations* and section 150 of the *Legal Services Regulation Act 2015*, which was delivered by accountant Fiona Byrne and SLA vice-president Richard Hammond.

On 25 May, solicitor Anne Stephenson will be the guest speaker at an afternoon CPD seminar being held in conjunction with Solicitors for the Elderly, titled 'How to obtain informed instructions from a testator to draft a tax and legally efficient will'.

On 6 June, a collaborative CPD event will be held between the SLA and the Munster Certified Public Accountants' Society.

Jonathan Todres

The SLA is in the course of establishing a sole practitioners' database in order to better assist its Sole Practitioner Committee to tailor seminars and other events for this important sector of the profession.

SOLICITORS FLY THE MEMBER LOGO FLAG

The Society's solicitor member logo serves to distinguish solicitors from other competing professionals. **Teri Kelly** reports

TERI KELLY IS THE LAW SOCIETY'S DIRECTOR OF REPRESENTATION AND MEMBER SERVICES

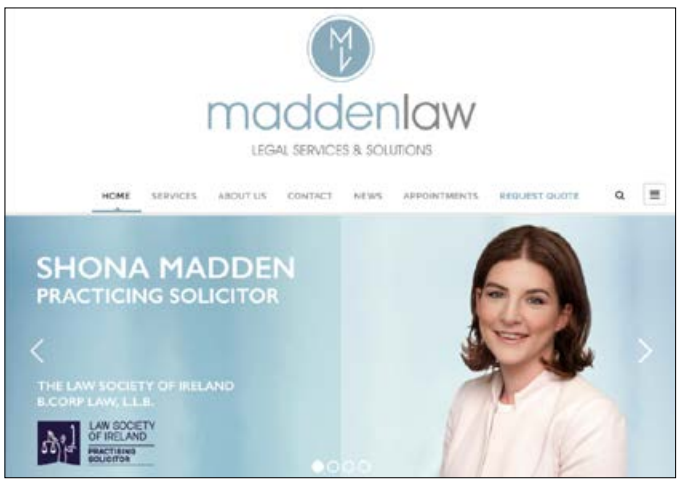
Just over a year ago, the Law Society introduced the solicitor member logo, which members can use on their firm's stationery and marketing materials.

The logo is available to all practising certificate holders who are also current members of the Law Society. It can be downloaded from the members' area of the Law Society website at www.lawsociety.ie/memberlogo.

Since the launch, we have seen some creative uses of the logo that pack a punch, as can be seen in the accompanying images. Full marks to all those solicitors who are displaying the logo proudly.

The logo represents the benefits and protection that clients enjoy every time they use a solicitor. It is a symbol of trust, knowledge, regulation, insured protection, professionalism, qualification and learning. The solicitor member logo is there to distinguish you from other professionals.

Terms of use and brand guide-



This example of the logo's use on a solicitor's website appears courtesy of Madden Law

THE LOGO REPRESENTS THE BENEFITS AND THE PROTECTION THAT CLIENTS ENJOY EVERY TIME THEY USE A SOLICITOR. IT IS A SYMBOL OF TRUST

ALL PICS: CIAN REDMOND

Windows of opportunity – at the offices of Richard Grogan & Associates

lines have been developed to guide practitioners on how to use the logo. These are available at www.lawsociety.ie/memberlogo.

Use of the logo is entirely voluntary, and solicitor members and firms may choose to display the logo on stationery and marketing content of their choosing. This includes:

- Firm stationery, such as letterheads and solicitor member business cards,
- Websites,
- Email signatures,
- Electronic and printed marketing materials, including e-zines, brochures, signs and advertisements.

Solicitor Ronan Flaherty explains why he prominently displays the logo: "As a sole practitioner, the solicitor member logo helps me distinguish my service from other professionals. These other professionals don't have the insurance, education, or regulation that we do. Therefore, they cannot offer the same service, protection and quality advice to a client that solicitors can. The logo is one way I can explain this to my clients and potential clients."

We welcome all feedback on your experience using the solicitor member logo. All comments or questions can be emailed to memberlogo@lawsociety.ie. g

Richard Grogan – playing a blinder

NEW COURTHOUSE SYMBOLISES 'FULL AND FREE DEMOCRACY'

A new courthouse for Waterford has opened, part of a €2.25 billion capital building project. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST AT GAZETTE.IE

The new €26 million Waterford Courthouse is a physical manifestation of the rule of law, reminding us that we live in a full and free democracy with independent administration of justice at the very heart of it, Justice Minister Charlie Flanagan told those gathered at its opening on 9 April.

Constructed on the site of the original courthouse, which dates back to 1849, the new build is six times the size of its predecessor, at 6,400 square metres, and includes six courtrooms. Its facilities range from a vulnerable witness suite, a victim support room, a legal practitioners' room, enhanced custody facilities, a jury reception room and consultation rooms.

For practitioners, a new e-licensing system at the court will facilitate the electronic lodgement and administration of licensing from a solicitor's own office, as part of the court modernisation programme.

Life-changing decisions

The minister praised the improvements, pointing out that a court is a place where life-changing decisions can occur around complex and sensitive issues that affect people's lives: "Whether a person comes here to work, to seek vindication, to face justice, or as a jury member to pass judgment, everyone will now enter a courthouse that integrates the old and the new, that is open and approachable, and that inspires confidence without being intimidating."

Over 7,500 matters were dealt with by the District Court in Waterford across 209 sitting days in 2016. Another 634 matters over 150 days were disposed of by Circuit Court sittings in Waterford and Dungarvan.

> THE IMPROVED SPACE AND LIGHT WITHIN THE BUILDING, INCLUDING A NEW ROUND HALL IN THE CENTRE, WILL HELP CREATE AN ATMOSPHERE BENEFICIAL TO ALL WHO HAVE BUSINESS IN THE COURTS IN WATERFORD

ALL PICS: NOEL BROWNE

Minister for Justice Charlie Flanagan *(right)* and Brendan Ryan (chief executive of the Courts Service) outside the new Waterford Courthouse at its official opening

IT IS A POSITIVE ADDITION TO THE CIVIC ARCHITECTURE IN THE HISTORIC HEART OF WATERFORD CITY

Waterford is the fifth new or refurbished courthouse to be opened by the minister in recent months, following Drogheda, Letterkenny, Wexford and Limerick – all part of a €2.25 billion project delivering 31 courtrooms and 36,000 square metres of accommodation nationwide.

Substantial refurbishments and extensions in Cork and Mullingar courthouses are also scheduled for completion later this year.

Legal reform a priority

At the opening, the minister said that legal reform is a Government priority and that the new Court of Appeal, the Legal Services Regulatory Authority, and the new Office of the Legal Costs Adjudicator will be joined by the establishment of a dedicated family court.

Chief Justice Frank Clarke, who opened the building, said the new seat of justice "reflects a relationship between old and new that is less one of contrast, but more one of continuity; finding a successful balance between respecting context and identifying the new as new. It is a positive addition to the civic architecture in the historic heart of Waterford city. The improved space and light within the building, including a new round hall in the centre of the building, will help create an atmosphere beneficial to all who have business in the courts in Waterford."

The courthouse will routinely accommodate hearings of the Circuit and District Courts, the High Court on circuit, and may also be used by the Central Criminal Court when needed. g

DEATH KNELL FOR DEFERENCE?

While the expertise of the DPC in data protection is unquestionable, the office has no role in the wider issue of the maintenance of a transparent system of democracy, writes **Anthony Slein**

ANTHONY SLEIN IS A BARRISTER PRACTISING IN DATA PROTECTION AND COMMERCIAL LAW

The Office of the Data Protection Commissioner (DPC), which was established by the *Data Protection Act 1988*, is the entity responsible for ensuring the proper maintenance and use of personal data within the State. The DPC is the principal person charged with the determination of disputes relating to that maintenance and use. She has a supervisory role with an extensive remit over those who deal with information on individuals.

When the office of the DPC was set up in 1988, Tim Berners-Lee was two years away from devising the worldwide web. Today, it is estimated that 1.4 billion individuals access Facebook on a daily basis. The potential for catastrophic consequences from the misuse of this wealth of information has been highlighted by the recent Cambridge Analytica fiasco, which saw the data of 50 million users harvested for the purposes of micro-targeting US voters for the benefit of political actors. This, according to Cambridge Analytica, and as seen in Channel 4 News' recently released undercover footage, is being cited as one of the reasons why Donald Trump won the US presidential election.

> WHEN THE OFFICE OF THE DPC WAS SET UP IN 1988, TIM BERNERS-LEE WAS TWO YEARS AWAY FROM DEVISING THE WORLDWIDE WEB

The DPC is a specialist body with particular expertise in the area of data protection. While the courts have a role in the supervision of the performance of its duty, as a result of this particular expertise, the courts have afforded curial deference to the DPC in the exercise of her function. It is only in circumstances of 'unreasonableness' that the courts will interfere with determinations of the DPC.

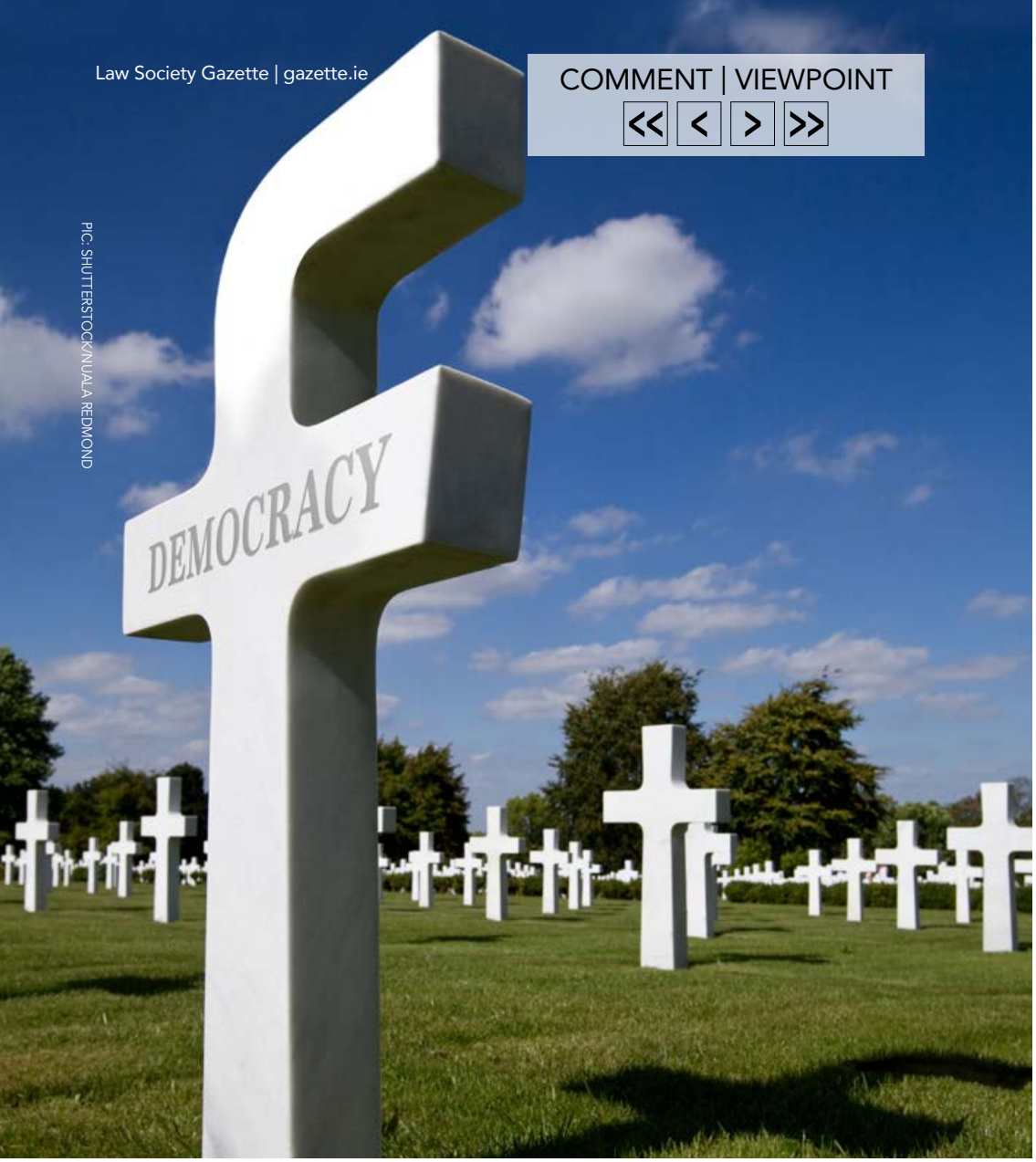
Deference

In *Orange Communications Limited v Director of Telecommunications Regulations* ([2000] 4 IR 159), Keane CJ cited the following from an Australian decision with approval: "an appeal from a decision of an expert tribunal is not exactly like an appeal from a decision of a trial court. Presumably, if parliament entrusts a certain matter to a tribunal and not (initially at least) to the courts, it is because the tribunal enjoys some advantage the judges do not. For that reason alone, review of the decision of a tribunal should often be of a standard more deferential than correctness … I conclude that the … standard should be whether the decision of the tribunal is unreasonable … An unreasonable decision is one that, in the main, is not supported by any reasons that can stand up to a somewhat probing examination. Accordingly, a court reviewing a conclusion on the reasonableness standard must look to see whether any reasons support it."

A mere defect in reasoning is not, therefore, sufficient to warrant interference in a decision of the DPC.

This deferential approach was recently reiterated in *Savage v Data Protection Commissioner* ([2018] IEHC 122). In that case, Mr Savage complained to the DPC about the results of a search operated by Google Ireland Limited. When users searched for him, they were offered a Reddit.com page where he had been referred to as 'North County Dublin's homophobic candidate'. Mr Savage complained to Google, who robustly defended its role in the search on the basis of the decision of the CJEU in *Google Spain v AEPD & Maria Costeja* (case C-131/12). Mr Savage then lodged a complaint with the DPC. That complaint was rejected on the basis of the criteria devised by the work of the Article 29 Data Protection Working Party, which was set up following the *Costeja* case. Mr Savage appealed that rejection to the Circuit Court. The Circuit Court allowed his appeal on the basis that the comments alleging him to be a homophobe constituted inaccurate data, rather than the opinion of a user of the Reddit.com forum.

The facts of this case are not of particular import; it is the criticism of the standard applied by the Circuit Court that is of real consequence. The High Court allowed Mr Savage's appeal on the basis that it came to a 'contrary' conclusion to the DPC. White J concluded that this was the wrong standard to apply to an appeal of a decision of the DPC, stating that an appellant must show that there



PIC: SHUTTERSTOCK/NUALA REDMOND

THE EXPOSURE OF THE WORK OF CAMBRIDGE ANALYTICA HAS REVEALED THAT THE ROLE OF A DATA SUPERVISORY AUTHORITY COULD HAVE POTENTIALLY FAR-REACHING CONSEQUENCES

was a "serious error either in law or in fact" and that the Circuit Court failed to afford the decision of the DPC "appropriate curial deference".

It is clear that the courts will afford the DPC a wide margin of appreciation in the performance of her dispute resolution function. This will be the case whether it is merely a single complaint made by one individual about the use of their personal data or a situation akin to that of the Cambridge Analytica scandal.

Time to lose it?

The exposure of the work of Cambridge Analytica has revealed that the role of a data supervisory authority could have potentially far-reaching consequences, greatly in excess of those previously contemplated. The determinations of such a body could have ramifications for the legitimacy of the democratic system. Although there is no suggestion of Cambridge Analytica operating in this jurisdiction, given the large number of multinational technology companies located here, it is not inconceivable that there is a similar operation within the State. Were the DPC to determine that use of data by such an entity was not in breach of the data protection legislation if that issue arose for her consideration, its determination might materially affect an election, as it was claimed occurred in the US.

The courts are the ultimate guardians of the democratic process. While the expertise of the DPC in data protection is unquestionable, it has no role in the wider issue of the maintenance of a transparent system of democracy. The proliferation of widely available and highly detailed information on voters through the use and, in the case of Cambridge Analytica, misuse of online platforms such as Facebook, requires the courts to exercise closer scrutiny over the use of data, particularly data used for political ends. To allow the courts to continue to ignore their responsibility to protect the democratic process through the application of curial deference and a standard of 'unreasonableness' is to allow bodies like Cambridge Analytica operate in the shadows of democracy to ensure certain political outcomes. Now, with the introduction of the GDPR on 25 May 2018, the courts will be armed with an additional method of bringing rogue actors to heel: the award of compensation.

The legislature of 1988 can scarcely be criticised for failing to anticipate the course that the internet has taken. History will, however, judge us harshly if we fail to react to it appropriately. The recently revealed political subterfuge engaged in by Cambridge Analytica is a shot across the bow of democracy; the courts should not allow it to reverberate without response. g

MEDIATION IN THE MAINSTREAM?

It would be wrong to assume that a legislative push for mediation involves a zero-sum game for the legal profession, argues **Fergus Armstrong**

FERGUS ARMSTRONG IS FOUNDER OF THE ONE-RESOLVE MEDIATION GROUP AND A FORMER CHAIRMAN OF MCCANN FITZGERALD

THERE IS EVIDENCE THAT DEVELOPING PATTERNS OF MEDIATION USE IN IRELAND – WHICH ARE NOT AT ALL IN KEEPING WITH INTERNATIONAL MODELS – INVOLVE A STIFLING OF THE POTENTIAL OF THE PROCESS

The chief executive of the State Claims Agency is on record as saying that "some lawyers are implacably opposed to mediation". Will the *Mediation Act 2017* make a difference?

Much turns on the effect of section 14 and the obligation imposed on solicitors, before issue of proceedings, to advise clients to consider mediation as a means of attempting to resolve their disputes.

It must be recognised that similar provisions already apply in the family law arena. Acts of 1989 and 1996 dealing with judicial separation and divorce require the solicitor acting for an applicant to discuss the mediation option with the client before proceedings are issued and to sign a certificate confirming that has been done.

Yet the Law Reform Commission, in its 2010 report on alternative dispute resolution, recorded comments to the effect that these requirements "had little impact on the use of mediation by those whose relationships have broken down" and noted that "some judges express scepticism as to whether the option of mediation is seriously discussed by many solicitors with their clients".

To address this problem, the LRC recommended not only that solicitors would be required to certify that clients had been advised to consider mediation before issue of proceedings, but that clients would also be required to sign their names to the certificate, confirming that they had in fact done so. This could help to ensure that the client fully explored the alternative with the solicitor.

The heads for a *Mediation Bill*, produced by Minister Shatter in 2012, pushed the issue further. Both solicitor and client were to sign a statement confirming that mediation had been considered and that the solicitor had complied with his obligations, which would now include giving information as to mediation services and names and addresses of persons and organisations qualified to provide these.

Unfavourable submission

These proposed provisions were the subject of an unfavourable submission from the Bar, which asserted that "it would be unhelpful to require a solicitor to advise a client to consider using mediation when the solicitor has formed a professional judgement that it is not appropriate for the particular facts of the case".

The Law Society went in the opposite direction, suggesting that the Shatter provision did not go far enough. It noted that the existing family law provision: "may not have had a significant impact in promoting the use of mediation". Suggested reasons for this included "lack of understanding of the process among solicitors, barristers and their clients". It urged that, apart from advising consideration of the mediation option, solicitors should have a positive duty to provide clients with information about the mediation process and its possible advantages.

What was the outcome? The bill, as initiated by Minister Fitzgerald, did make provision for the giving of advice on mediation and the provision of names and addresses of mediators. It also included the Law Society's suggestion of giving information as to the advantages of avoiding the litigation route and the benefits of mediation.

But the provision for a client signature had disappeared. All that is called for now is a statutory declaration from the solicitor to state that his/her obligation has been complied with. In this, it resembles the family law provisions, thought to be ineffective. Many will see this outcome as a 'win' for those resistant to the use of mediation.

There is a tendency to assume that a legislative push for mediation involves a zero-sum game for the legal profession. Indeed, there is evidence that developing patterns of mediation use in Ireland – which are not at all


PIC: SHUTTERSTOCK

in keeping with international models – involve a stifling of the potential of the process.

Resisting dialogue

There are frequent reports of mediations in Ireland in which clients, flanked by legal teams on both sides, resist an invitation to participate in dialogue, as they are discouraged from doing so by their lawyers. There can be an assumption that the ideal pattern of a mediation is one where legal representatives exclusively do the talking, and no real engagement takes place between the parties. Lawyers argue the case, and shuttle back and forth to consult clients in separate rooms. In such a situation, the skills that a mediator can bring to the table are effectively sidelined.

This is not how mediation was meant to be. The consultation paper published by the LRC in advance of its 2010 report listed the ingredients of mediation as follows:

- The parties are at the centre of the process,
- The parties are the principal actors and creators within the process,
- The parties actively and directly participate in the communication and negotiation,
- The parties choose and control the substantive norms to guide their decision-making,
- The parties create the options for settlement, and
- The parties control whether or not to settle.

What is not always understood is that when parties in conflict can be persuaded to face each other in the same room, with adequate advice and support, a new dynamic arises. Basic psychol-

> THERE ARE FREQUENT REPORTS OF MEDIATIONS IN IRELAND IN WHICH CLIENTS, FLANKED BY LEGAL TEAMS ON BOTH SIDES, RESIST AN INVITATION TO PARTICIPATE IN DIALOGUE, AS THEY ARE DISCOURAGED FROM DOING SO BY THEIR LAWYERS

LAW SOCIETY PROFESSIONAL TRAINING

Centre of Excellence for Professional Education and Training

To view our full programme visit www.lawsociety.ie/CPD

DATE	EVENT	DISCOUNTED FEE*	FULL FEE	CPD HOURS
10 & 11 May	Essential Solicitor Update Parts I & II – in partnership with Leitrim, Longford, Roscommon and Sligo Bar Associations Landmark Hotel, Carrick-on-Shannon, Co Leitrim	€80 (Part I) €115 (Part II) €170 (Parts I & II) *Hot lunch and networking drinks included in price*		4 (by Group Study) Part I 6 (by Group Study) Part II
15 May	Annual Human Rights Lecture	Complimentary		1.5 General (by Group Study)
17 May (Galway) 10 Oct (Dublin)	Professional Wellbeing for a successful practice – Galway – Connacht Hotel Dublin – Law Society of Ireland	€150	€176	5 M & PD Skills (by Group Study)
18 May	Midlands General Practice Update – in partnership with Laois Solicitors' Association and Carlow, Midlands and Kildare Bar Associations Midlands Park Hotel, Portlaoise, Co Laois	€115 *Hot lunch and networking drinks included in price*		6 (by Group Study)
18/19 May **&** 15/16 June	Wills, Probate, Estates and Tax Masterclass *Attend Module 1, Module 2* **or** *both modules*	€750 €375 *(per module)*	€850 €425 *(per module)*	10 General (by Group Study) per module
22 May	EU Regulation of Cryptocurrency: AML v Bitcoin – in collaboration with the EU and International Affairs Committee	€115		2 Regulatory Matters (incl Accounting & AML) by Group Study
24 May (Dublin) 26 Sept (Limerick)	The In-house Solicitor – Dealing with Change and Upheaval – in collaboration with the Inhouse and Public Sector Committee Dublin – Law Society of Ireland Limerick – Strand Hotel	€55		2.5 M & PD Skills (by Group Study)
7 June	The Assisted Decision Making (Capacity) Act, 2015 – the Implications for Practice	€150	€176	3 General (by Group Study)
14 & 15 June	North West General Practice Update Parts I & II – in partnership with Donegal and Inishowen Bar Associations, Solis Lough Eske Castle Hotel, Donegal	€80 (Part I) €115 (Part II) €170 (Parts I & II) *Hot lunch and networking drinks included in price*		Part I – 4 (by Group Study) Part II – 6 (by Group Study)
22 June	Essential Solicitor Update 2018 – in partnership with Clare and Limerick Bar Associations – Treacy's West County Hotel, Co Clare	€115 *Hot lunch and networking drinks included in price*		6 (by Group Study)
22/23 June	Personal Injuries Litigation Masterclass 2018	€350	€425	10 hours including 1 Regulatory Matters (by Group Study)

For a complete listing of upcoming events including online courses, visit www.lawsociety.ie/CPD or contact a member of the Law Society Professional Training team on : P: 01 881 5727 E: Lspt@lawsociety.ie F: 01 672 4890

**Applicable to Law Society Skillnet members*

ogy tells us that that the human being has competing tendencies – those of separating and bonding. We want to pursue our separate interests, but we also like to be agreeable and to resolve our conflicts peaceably if we can. A frequent criticism of the legal system is that, whereas the rule of law will prevent or deal with brute violence, it makes no contribution to the social aim of reconciliation.

I do not think that the face-to-face element of mediation is well understood. In the case of *Ryan v Walls* ([2015] IECA 214), Mr Justice Peter Kelly (himself a strong advocate for the use of mediation) overruled a decision of Cooke J to refer a case to mediation under section 15 of the *Civil Liability and Courts Act 2004*, saying: "The normal method of settling personal injury litigation is by face-to-face negotiation. That has not occurred in this case. The court should be slow to invoke a compulsory mediation procedure where the parties have not themselves endeavoured to bring about a settlement of the litigation in the normal way."

Disempowered

Many would see this face-to-face aspect of the 'normal method' as involving only lawyers' faces. What needs to be recognised is that, precisely because coming face-to-face in a situation of conflict is challenging for everyone, an independent third party, with appropriate skills, can be helpful and prevent the engagement getting out of control. That is a key contribution of a mediator, who offers a non-judgemental presence and has the unique capacity to speak privately with each party and hold confidences.

Clients regularly complain about being 'disempowered' by the litigation process. Mediation is about a return of power and personal autonomy. The definition of mediation contained in the *Mediation Act*, indeed, reflects the principle of party autonomy, referring to a process in which the parties to a dispute attempt to reach mutually acceptable agreement.

The act is equally insistent that parties should have access to legal advice. Lawyers who have experience of mediations conducted in the orthodox manner report no diminution of professional satisfaction. The alternative has to be tried to be appreciated. To put it crudely, the style of lawyer-dominated mediation referred to above gives mediation a bad name and a higher failure rate.

This role of adviser in mediation, in fact, should be particularly suited to solicitors, who have experience and wisdom derived from direct interactions with clients, and the ability to guide them with knowledge of the personalities involved. And client autonomy can be liberating for a creative lawyer. Intensive assertion of legal arguments is not required. Clients are at liberty to make whatever deals they please, free of a narrow concentration on 'what a court might do'.

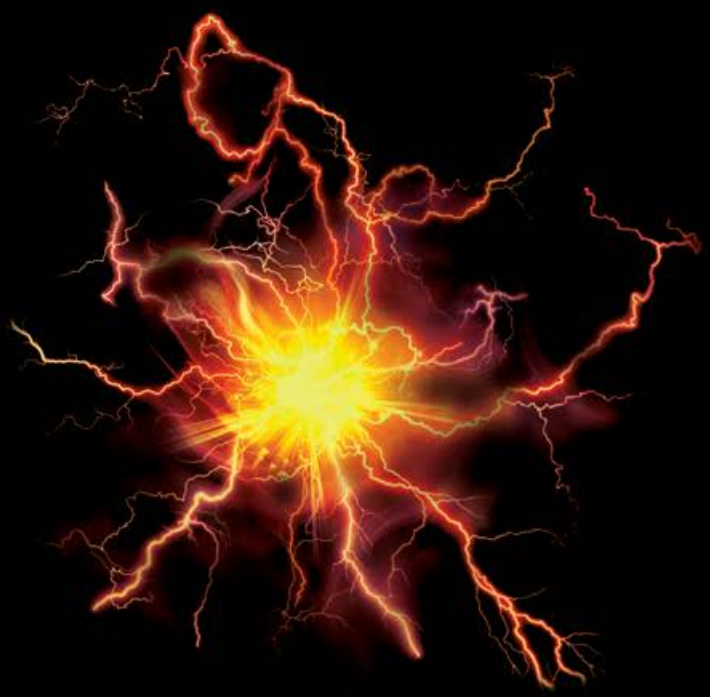
And the major prize for the adviser is increased client appreciation. g

> WHEN PARTIES IN CONFLICT CAN BE PERSUADED TO FACE EACH OTHER IN THE SAME ROOM, A NEW DYNAMIC ARISES

Long may you run

The legal profession's annual fundraiser, the Calcutta Run, is now in its 20th year. **Mary Hallissey** speaks to the event's founders about the run's extraordinary success and its ambitious plans

MARY HALLISSEY IS A JOURNALIST AT GAZETTE.IE



PIC: REX FEATURES/NUALA REDMOND

The great irony of the Calcutta Run legal fundraiser – now in its 20th year – is that the problem of homelessness has improved in India, while it has skyrocketed here at home. Founders Eoin MacNeill and Joe Kelly, both partners at A&L Goodbody in Dublin, reflect ruefully that this is a more pressing problem than ever in this country.

Ill-advised policy decisions, along with the standstill in house-building during the 'Great Recession' and the failure of effective rent restrictions, have added to the mess.

The definition of homelessness has changed utterly in the interim. It now includes those in rental accommodation who can't afford price increases and find themselves on the street, and families living in hotel rooms.

"When we started this in 1999, homelessness was a symptom of some underlying issue, a chaotic lifestyle, drink, drugs or some other dysfunctionality or psychological difficulty," says Eoin.

"Now homelessness is because people don't have somewhere to live. You can be perfectly functioning as a family and still have nowhere to live."

"While the Calcutta Run has been profoundly successful and it's been full of hope, it's also a little bit depressing to think that, 20 years later, the problem is many times worse than it was in 1999," muses Eoin.

Joe points out that bedsits were legislated out of existence in a misguided drive for improved standards. "To do that right in the middle of a recession was pretty poor planning, because you had no safety net for those folk," he says.

AT A GLANCE

- The objective of the Calcutta Run this year is to raise €300,000
- The target for 2018 is to reach a cumulative figure of €4 million over the 20 years
- The funds raised are committed to the charity partners, The Hope Foundation and the Peter McVerry Trust
- 60% of participants do the 5k run, and there are now tennis and soccer events and, in 2017, 90 cyclists took part in an 80k cycle

Meanwhile in India, increasing prosperity, a growing middle class and increased Government intervention have all brought more people off the streets over the past 20 years.

Baby steps

Back at the beginning, as the event took baby steps in 1999, securing the support of the Law Society was key.

The Blackhall Place site was central to the run's organisational success because of its proximity to the Phoenix Park run route. "Blackhall Place was a real find," says Eoin. "If we had to put marquees up, it would have added to the cost."

Joe Kelly roped in his old Defence Forces cadet school buddy, Law Society director of finance Cillian MacDomhnaill, to drive matters forward.

All the founders agree that an active and engaged committee has been crucial. There are no slackers, and every member is given a job to do and delivers it on time.

"We started with our own personal network and tried to get 1,000 people to raise €150 on a sponsorship card. The financial model has changed a bit over the years, but we effectively kept a target of €200,000 each year," explains Eoin.

"One of the reasons for the success of the event has been that we have managed to evolve and grow it over the years," says Cillian MacDomhnaill. "It's a good team and a good committee and we all have our parts to play in it."

But there are always challenges to keep the event fresh and successful.

> THE GUIDING PRINCIPLE NOW IS THAT, EACH YEAR, THE EVENT SHOULD RAISE THE REMARKABLE SUM OF €200,000

"In 1999, when we started, there were probably two or three 10ks held in the Phoenix Park per year. There is now one every second weekend," says Cillian.

"To keep up, we had to evolve the event. We made it more inclusive, focusing on the walk as well as the run. Five years ago, we included a 5k route to widen the appeal.

"Now, 60% of participants do the 5k. We brought on tennis and soccer, and in 2017 we had 90 cyclists doing an 80k route.

"These are the 'excuse eliminators'!" Cillian jokes. "Every year is a new challenge and we assume nothing. There is lots of competition out there in terms of events and charities, and in law firms there are lots of other great CSR events going on."

Creativity

For law firms, the demands on their corporate social responsibility budgets have also grown.

It requires creativity and reinvention to keep the Calcutta Run fresh, as well as incoming committee members with new ideas to attract lawyers in their 20s and 30s.

While the Calcutta Run is driven by A&L Goodbody and the Law Society, it is a legal profession initiative and there is huge support from the Bar. The run is very much dependent on, and appreciative of, this support.

The guiding principle now is that, each year, the event should raise the remarkable sum of €200,000. But for this, its 20th birthday, there is an ambitious target of €300,000, and overall, to top a cumulative figure of €4 million over the event's existence.

The funds raised are committed to the charity partners The Hope Foundation and the Peter McVerry Trust.

"The charities have us in an arm-lock,

> THE LEGAL PROFESSION AS A WHOLE CAN BE JUSTIFIABLY PROUD OF THE CALCUTTA RUN. NO OTHER PROFESSION HAS A FUNDRAISER OF SUCH PROFILE, LONGEVITY AND REACH

> THE BLACKHALL PLACE SITE WAS CENTRAL TO THE RUN'S ORGANISATIONAL SUCCESS BECAUSE OF ITS PROXIMITY TO THE PHOENIX PARK RUN ROUTE

in that they say to us that they now have projects depending on the funding. Their model and their budget relies on income from the Calcutta Run, and that puts pressure on us as a committee to deliver that sum," Cillian explains.

A fundraiser this successful doesn't simply happen of its own accord. The organisers engage in ongoing debate and discussion about the best financial approach. "Our model is that we don't have a registration fee," explains Cillian, "but we encourage and exhort participants to raise at least €120. If you're about raising €25,000, a registration fee is a fine financial model. But we're about raising €300,000. The reality is that people would stop at the registration fee. They would pay that and no more."

It's an extraordinary sum for a one-day fundraiser.

"Our objective is to deliver this substantial amount of money to the charities with as little draw as possible on the charity," says Cillian. "It is a principle that we would go in and do this without making huge demands on the charities."

Ultimately, the vision for the Calcutta Run is to have satellite events run by the bar associations around the country.

The good news this year is that 50 New York-based Irish lawyers will be running an event for the first time ever. And in Cork, lawyers have taken up the baton with their own event this year, which will benefit SHARE, an association that helps the elderly homeless in that city, and The Hope Foundation.

Getting the balance right

In 2017, there were 1,200 runners and 100 cyclists.

"We have the infrastructure to accommodate 2,500 people," says Cillian "so we could double in size. But we would prefer to have 1,200 people bringing in €120 each than 2,500 bringing €60, so it's important to get that balance right."

This year, there is a new goal in terms of the big firms.

"This year we are exhorting the large firms to go for the 20:20 club – a €20,000 contribution for the 20th year, whether from the firm's participants or a donation from the business itself," says Cillian.

Firms can also tap both suppliers and clients, he says.

"One smaller firm that has been a great supporter over the years suggested to a client to make a donation to the Run. They gave €1,500." The charity tax advantages made the donation ultimately worth €2,200 to the Calcutta Run.

And in the era of a 'war for talent', the corporate social responsibility aspect of full engagement with the Calcutta Run shouldn't be underestimated.

Importantly, the run is a prime opportunity for firms to engage the 'millennial generation'. Young professionals are demonstrably choosy about where they work and the values that their workplace espouses. Surveys show that millennials' priority is for a business that is socially engaged.

"If the firms really want to leverage the beneficial side of corporate social responsibility, which is all about engagement, they should encourage employees to get sponsorship and organise a fundraising event," says Cillian (rather than simply making a donation to fund a fun day out at the Calcutta Run).

Asked whether they are proud of what the run has achieved, Eoin and Joe remain modest and self-effacing.

But despite that, the legal profession as a whole can be justifiably proud of the Calcutta Run. No other profession has a fundraiser of such profile, longevity and reach. There isn't a day like the Calcutta Run in any other profession or sector.

It's often forgotten that those working in the law are primarily motivated by a desire for justice in society.

The Calcutta Run, and the extraordinary sums it has raised over the years, is testament to a hunger for justice that should rightly be celebrated in this, its 20th year.

Long may it run. g

Hidden figures

In 2017, 52% of all practising certificates were issued to women. However, there remain challenges in terms of gender inclusion and equality. In the first of two articles, **Suzanne Carthy** runs the figures

SUZANNE CARTHY IS A SOLICITOR AND PHD CANDIDATE AT UCD'S MICHAEL SMURFIT GRADUATE BUSINESS SCHOOL, WHERE SHE HAS LECTURED ON GENDER DIVERSITY AND MANAGEMENT

Behind the headline that women now comprise 52% of all solicitors in Ireland – outnumbering their male counterparts – a detailed statistical analysis tells a more nuanced story. Interrogating vital statistics such as gender, age, post-qualification experience, and length of tenure with firm, this analysis reveals the 'hidden figures' underlying women's inclusion, and challenges the assumption that parity has been achieved.

In June 2016, when the statistics were compiled for this study, of all law firm partners, 32% were women, a statistic that tends to assuage the concerns of many firms and employers regarding gender diversity and inclusion. After all, initiatives such as the '30% Club' and other gender equality policies suggest that 30% is a target that represents progress towards inclusion.

However, as a proportion of their overall numbers, women remain significantly under-represented in senior positions of partnership. Only 24.3% of women achieve partnership, while 55% of their male colleagues are partners. Moreover, since data collected do not distinguish between salaried and equity partners, it is likely that the percentage of equity partners, and therefore women with executive and decision-making power, is even smaller. In the six largest firms, 53.7% of all solicitors are female, yet only 18.7% of women make partner.

What this analysis tells us is that women are less than half as likely as men to become partners. Selection ratio analysis of data calculate the odds of promotion: women's chances of making partner are only 44% vis-à-vis their male counterparts, whether in smaller firms or the very largest in Ireland.

Considering the effect of maternity leave, analysis of available Law Society data reveals that only 12.6% of women who have taken even one period of maternity leave are partners. The double impairment suggested by this analysis is confirmed in interviews conducted with female solicitors, who described delaying pregnancy, limiting their maternity leave, and concealing their pregnancies for as long as possible to avoid being disadvantaged in promotion and pay decisions.

Inequality in the share of senior positions is also described as 'vertical segregation'. Within the Irish profession, vertical segregation is confirmed by the data, illustrating the existence of highly gendered structures and hierarchies within firms. Ireland is not alone in this regard: vertical segregation in the legal profession

AT A GLANCE

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- Gender remains the most influential factor in predicting who will make partner, with maternity a close second
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PIC: REX FEATURES

EVEN WHERE WOMEN ACHIEVED TARGETS FOR BILLABLE HOURS AND FEES, THEY WERE ASSESSED FOR BONUSES AND PROMOTION LESS FAVOURABLY THAN MALE SOLICITORS, AND ALSO LESS FAVOURABLY THAN FEMALE SOLICITORS WITHOUT CHILDREN

has been identified in large-scale studies conducted in other jurisdictions, including the US, Canada, and England and Wales. In Ireland, men are twice as likely as women to hold partnership positions.

A legacy issue?

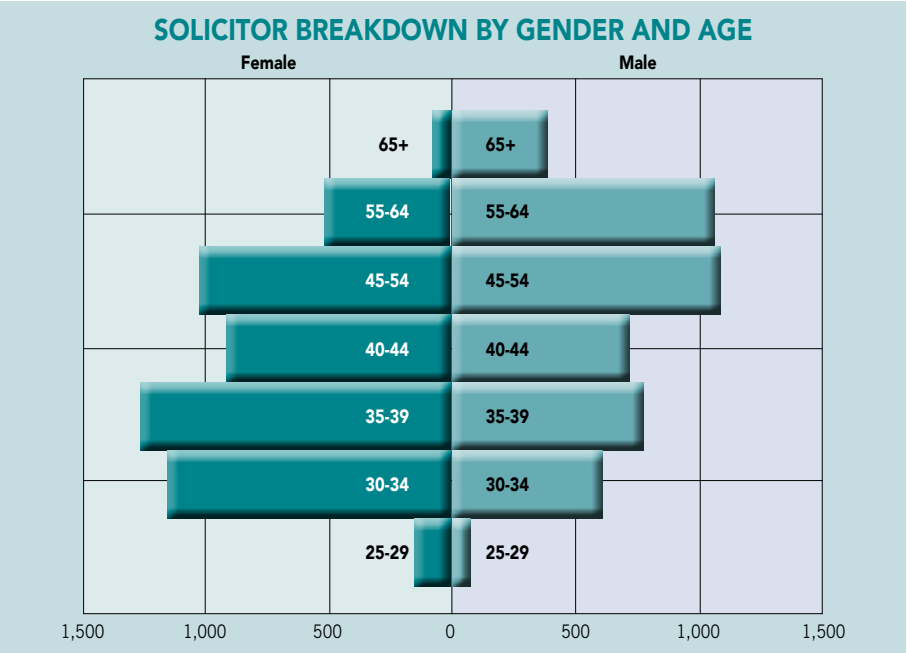
Commonly, the dearth of female partners in law firms and in senior positions in other professions is explained by the 'pipeline argument' – that women's absence from partnership is not the result of discrimination, but rather is a legacy issue that will be resolved as women enter the profession in greater numbers. So, the pipeline argument goes, as women progress over time, they will eventually be represented in more equal numbers as partners.

If the pipeline argument holds water, we would expect to see much less divergence in the share of partnership positions in younger age cohorts than in older age categories. Not so; women in every age category have a smaller share of partnership positions, holding positions of assistant and partner in almost directly inverse proportions to male solicitors.

We might also expect greater equality in the distribution of senior positions if we compare women and men on a like-for-like basis – that is, where both men and women have the same age, post-qualification experience (PQE), and tenure within firms. However, statistical tests that control for all these factors and adjust for absences due to maternity leave reveal a persistent and significant equality gap in representation of women in partnership positions in all age and PQE categories.

The reason that women are not achieving partnership is not explained by differences in objective factors such as the duration of their tenure with firms, their age, or length of PQE. Moreover, interview findings suggest that, even where women achieved targets for billable hours and fees, they were assessed for bonuses and promotion less favourably than male solicitors, and also less favourably than female solicitors without children.

Gender remains the most influential factor in predicting who will make partner, with maternity a close second.



The shape of things to come

What does all this mean for the profession and for the management of firms?

We know that the demographics of the profession have changed radically. In every age category up to the age of 44, women significantly outnumber men, with a gap in participation only widening sharply at 55 and above. Clearly, the future of the profession is female.

In Ireland, as in other jurisdictions, macroeconomic research confirms that the 'new normal' in the labour market is the dual-earner family model. 'Business as usual' would therefore seem to be a less than strategic response to a changing labour market. Relying on a traditional model of career management, in the hope that the pipeline will continue to funnel through sufficient numbers of qualified, experienced solicitors to populate partnerships and the profession, is unwise. In light of these findings, it is reasonable to infer that 'business as usual', and relying on existing structures and employment practices, will continue to disadvantage women in the profession.

At present, the largest cohort within the profession is women aged 35-39. We know that they are economically, socially, and culturally more inclined to continue working after family formation. The profession must

> THE PROFESSION MUST RECOGNISE THAT A NEW MODEL OF EVALUATING CONTRIBUTION IS NEEDED TO ENABLE THE NEXT GENERATION OF PARTNERS, FEMALE AND MALE, TO RECONCILE THE OBLIGATIONS OF LIFE OUTSIDE WORK WITH A DEMANDING AND FULFILLING PROFESSIONAL CAREER

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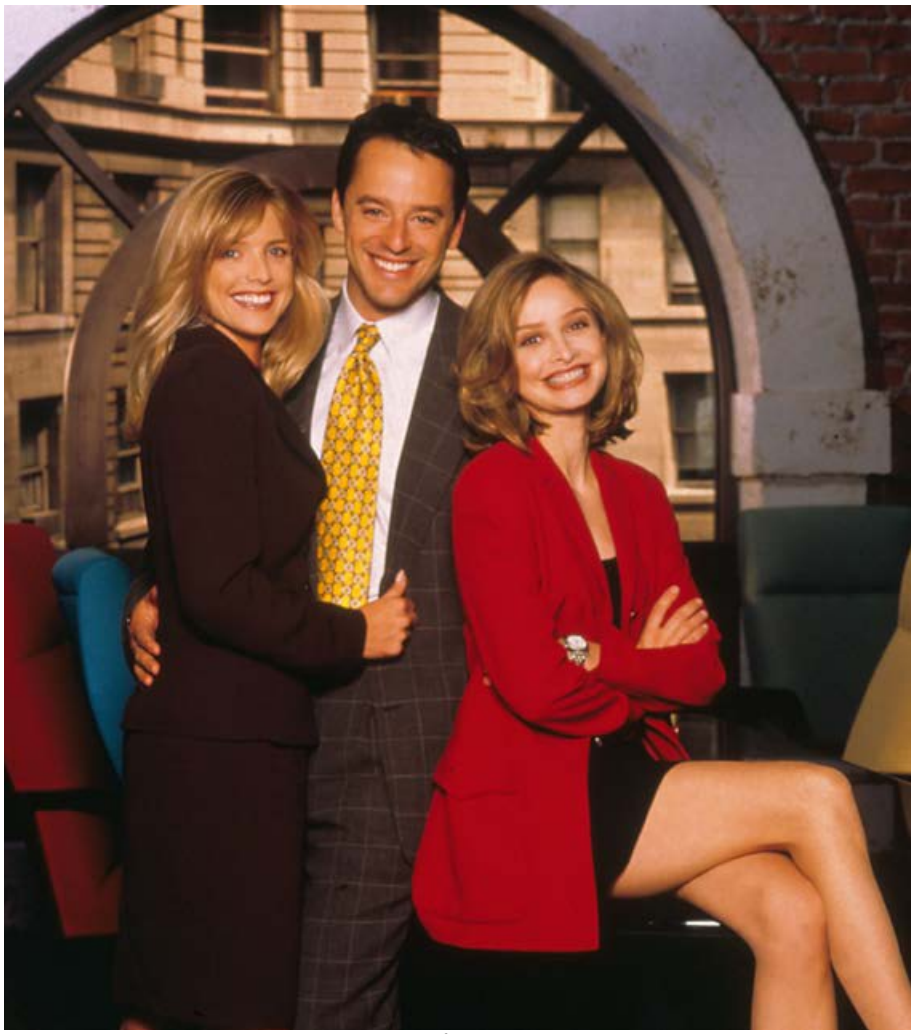


Making partner at Cage and Fish – daunting, even for Ally McBeal

recognise that a new model of evaluating contribution is needed to enable the next generation of partners, female and male, to reconcile the obligations of life outside work, with a demanding and fulfilling professional career.

The long-hours model, underpinned by the assumption of a usually male breadwinner with a usually female stay-at-home spouse to deal with all matters domestic, is no longer fit for purpose in these circumstances, and will not serve the profession well in the future.

What would equality look like?

The share of partnership positions is one measure of equality in the profession. Pay audits, as proposed in the Programme for Government, also measure gender inequity and are currently making news in our neighbouring jurisdiction. Position and pay are inextricably linked – with seniority comes a greater share of profit and earnings, as well as opportunities for challenging and rewarding professional development.

Firms have demonstrated that gender is not an issue at the recruitment phase; the statistics clearly endorse this. However, such a wide divergence in the male and female share of higher-earning partnership positions is a major factor in pay inequality. On that basis, gender equality does not exist in a profession whose lower tier is predominantly female and whose top tier is two-thirds male. Firms must be able to demonstrate that decisions about promotion and pay are not influenced by gender, not only from a risk-management perspective, but to signal to the largely female newly qualified cohort that the firm's culture is genuinely one of inclusiveness and diversity and that women entering firms in greater numbers will have an equal opportunity to progress their careers.

Recruitment and talent management become increasingly difficult as female solicitors notice that, despite being in the majority in their firms, relatively few of them make it to the top. Accordingly, gender equality looks like something very different to the hierarchies prevailing in many firms at present.

Unconscious bias

Participants in this study also described incidents of indirect and sometimes less subtle discrimination. For instance, comments by senior colleagues regarding women's marital status and plans for family formation were implicated in decisions about pay and promotion.

Participants also reported that women were not selected to work on interesting and complex transactions, based on the mistaken assumption that, as mothers, they might not be interested in or able to manage more rewarding and ultimately career-enhancing cases.

Everyday incidents in the form of comments about 'taking a half-day' when leaving the office at 5.30pm or 6pm were also noted, and are rooted in a long-hours culture of 'presenteeism' in many firms that many women cite as a major factor in attrition.

Merit structures, promotional paths, and firm culture are all critical in supporting or impeding female solicitors progressing their careers. Many participants admitted during interviews for this research that 'agile' working arrangements, although helpful to them in managing work and life, often carried disproportionate financial penalties and were viewed as severely career limiting.

Conversely, solicitors working in the service of the State or in in-house positions reported a much more positive experience of flexible working and career planning. Clearly – this is an attraction for women – more than two-thirds of solicitors in the State sector and in-house positions are female. Statistical analysis confirms not only that solicitors in these branches of the profession are predominantly female, but also that they have longer tenure with their employers than solicitors in the wider profession. g

Keep the RED FLAG flying

The growing use of virtual currencies should be of serious concern to legal professionals seeking to avoid the offences of anti-money-laundering and terrorist financing. **Hari Gupta** keeps an eye on your wallet

HARI GUPTA IS A POLICY DEVELOPMENT EXECUTIVE AT THE LAW SOCIETY OF IRELAND

The Financial Action Task Force (FATF) – an intergovernmental body established in 1989 at the G7 summit in Paris as a result of the growing concern over money-laundering – drafted a set of 40 recommendations designed as a set of minimum standards to counter the practice of money-laundering.

Recommendation 15 of the revised recommendations provides that lawyers must keep pace with new ways in which money-laundering and terrorist financing are carried out, because if they fail to maintain awareness of new technologies, they could inadvertently commit the substantive offence of money-laundering in advising their clients.

A virtual currency, or 'cryptocurrency', is a form of digital money that has not been issued or guaranteed by a central bank. Virtual currencies remain relatively unregulated in many jurisdictions, including Ireland and are yet to be recognised as legal tender in any jurisdiction.

The growing use of virtual currencies is a serious concern to those individuals and institutions focused on anti-money-laundering (AML) and combating the financing of terrorism (CFT). Late last year, two houses were sold in England using Bitcoin. The Land Registry even allowed a purchaser to have the sale price recorded in a virtual currency. Policing these transactions is made even more difficult, as the parties exchange and complete at the same time, to minimise risks associated with the volatility in the value of virtual currencies.

AT A GLANCE

- Lawyers will have to maintain a high level of awareness of any potential red flags that may arise should a client wish to transact in a virtual currency
- Failure to put measures in place to prevent money-laundering or to report suspicious transactions may put a lawyer in a position where he or she unwittingly commits the substantive offence of money-laundering
- Authorities will be vigilant of legal professionals advising clients and helping clients to transact using these new virtual currencies

Alternative Ulster

Real property is not the only way that users of virtual currencies have been moving between the virtual and the real world. A French-based investment company, Tobam, has

PIC: SHUTTERSTOCK

VIRTUAL CURRENCIES REMAIN RELATIVELY UNREGULATED IN MANY JURISDICTIONS AND ARE YET TO BE RECOGNISED AS LEGAL TENDER IN ANY JURISDICTION

PIC: SHUTTERSTOCK

established a crypto-currency investment fund. In order to satisfy financial regulators, the fund is classified as an 'alternative investment fund', as it cannot be openly traded on an exchange and does not fall under the European Undertakings for Collective Investment in Transferable Securities regime (UCITS).

Many people believe that one of the driving forces behind the rise of virtual currencies is the nefarious users of the currencies themselves. One of the many features of virtual currencies is that they allow their holders a degree of anonymity. This feature will be of particular interest to parties with a need to move money around with some degree of opacity.

The ways these currencies work make them perfect for money-laundering, drug money and the funding of terrorism. The primary areas of criminal activity lending themselves to the use of virtual currencies are tax evasion, transactions involving illegal goods and services, and extortion/blackmail, and criminals are constantly working out new techniques to use virtual currencies to further their criminal activities.

As the use of crypto (and other virtual) currencies becomes more mainstream, it is important for legal professionals to maintain a level of risk awareness, especially in situations where the source of funds and the beneficial owner of funds cannot be readily identified.

Burnt offerings

At the time of writing, there are more than 1,500 different virtual currencies available and, given the nature of the market, this number can fluctuate dramatically. It is important to bear in mind that new virtual currencies, like piracy of intellectual property rights, are very hard to police – it is too easy for new unregulated sources to emerge, and new virtual currencies are launching on a daily basis.

One method of launching a new virtual currency is through an initial coin offering (ICO). ICOs are a means of crowdfunding – a quantity of the new virtual currency is allocated to investors in the form of 'tokens', in exchange for legal tender or other virtual currencies, such as Bitcoin. These tokens will become units of the new virtual currency, upon launch. ICOs can also be used for a range of purposes including launching a business, collecting for a charity or injecting capital into an established business.

Due to the inherent risks involved in participation in an ICO and the regulatory difficulties associated with ICOs, China and South Korea have banned ICOs outright. Facebook and Google have also recently banned all advertisements relating to ICOs and virtual currencies from appearing on their platforms.

The European Commission has recently released a targeted financial technology action plan, responding to calls of the European Parliament and Council for a regulatory framework to secure financial stability and consumer and investor protection, while still encouraging innovation in financial technology. The action plan specifically mentions both crowdfunding and ICOs, proposing legislation to make it easier to participate in crowdfunding platforms on an EU-wide basis, while providing investors a level of regulatory supervision, protection and transparency.

Changes

Virtual currencies are traded using exchange platforms. Although some of these platforms, especially those using blockchain technology, are relatively secure and transparent, they are not banks. Peer-to-peer virtual currencies, such as Bitcoin, allow someone to transfer currency to another person without an intermediary (such as a bank) required to process the transaction.

The key technology at the heart of the transaction is its ability to verify that the

> THE GROWING USE OF VIRTUAL CURRENCIES IS A SERIOUS CONCERN TO THOSE INDIVIDUALS AND INSTITUTIONS FOCUSED ON ANTI-MONEY-LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

person seeking to transfer virtual currency actually owns the currency in question. Many virtual currencies do this by maintaining a ledger – or blockchain – of every single transaction ever completed. This ledger is protected by a complex mathematical algorithm that verifies the ownership of the currency in question, and this ledger is stored on every computer that downloads the relevant blockchain software.

Every time that a transaction is successfully verified and completed, every copy of the ledger is updated. This technology has the potential to offer traceable records on the history of the asset and proof of ownership, and it provides a level of security of ownership, as multiple identical copies of the ledger are publicly shared. However, the technology also allows for high levels of anonymity, exposing the exchange platform to threats of hacking.

A US Department of Homeland Security study has revealed that between 2009, when virtual currency was founded, up until March 2015, a third of the world's exchanges were hacked, compared with 1% of banks. Due to the lack of insurance available to these exchanges in the event of a major security breach, it is unsurprising to discover that the study also found that, during this same period, nearly half of all exchanges were forced to close.

Virtual currency exchanges hold currency in an 'online wallet', not in the form of a deposit. Therefore, if an exchange platform loses money or fails, there is no specific legal protection. Furthermore, unauthorised or incorrect debits from a digital wallet cannot usually be reversed. Another risk arises where a consumer uses a virtual currency as a means of payment for goods or services, as the consumer is not protected by any refund rights offered under EU law.

The warning

Lawyers are 'designated persons' for the purposes of AML legislation. When advising clients or dealing with AML-regulated transactions, lawyers are required to conduct a level of client due diligence (CDD) and are strongly advised to maintain an awareness of money-laundering risks (or red flags).

A failure to put measures in place to prevent money laundering or to report suspicious transactions may put a lawyer in a position where he or she unwittingly commits the substantive offence of money laundering. Although many transactions involving virtual currencies may be perfectly legitimate, a lawyer should always be vigilant and maintain awareness of new technologies such as virtual currencies.

The text of the proposed fifth *AML Directive* (politically agreed by the co-legislators on 20 December 2017) includes – in the list of obliged entities – the providers engaged in services between virtual currencies and fiat currencies and the custodian wallet providers. This inclusion implies that exchange platforms of virtual currencies and the wallet providers would be required to apply CDD measures on their customers. In addition, providers of exchange services between virtual and real currencies, as well as custodian wallet providers, would need to be registered.

The proposed fifth *AML Directive* will also add the following definition to article 3 of the fourth *AML Directive*: "'Virtual currencies' means a digital representation of value that is neither issued by a central bank or a public authority, not necessarily attached to a fiat currency, but is accepted by natural or legal persons as a means of payment and can be transferred, stored or traded electronically."

This definition would be broad enough to capture both current and future expressions of virtual currencies. Given the proliferation of virtual currencies and ICOs, this future-proofing is imperative. The new legislation aims to end the anonymity of wallet addresses and make exchanges, and their users, more transparent to the world.

This does not mean that legal professionals can rely on CDD conducted by exchanges and wallets – they will have to maintain a high level of awareness of any potential red flags that may arise should a client wish to transact in a virtual currency. The amended legislation will empower authorities to investigate individuals, exchanges and wallets as deemed necessary, but authorities will be vigilant of legal professionals advising clients and helping clients to transact using these new currencies.

It is important to remember also that regulation will generally come down hardest on established virtual currency exchanges and wallets, which need to adhere to CDD protocols, and collect, process, and record data on users that could be easily shared with public authorities.

It is those individuals and institutions that look to transact outside of the regulatory regime that pose the biggest risk of money laundering, and the continued existence of these individuals and institutions will force legal professionals to maintain a high level of vigilance. g

FOCAL POINT

THE LITTLE THINGS

Virtual currencies are treated differently for tax purposes depending on jurisdiction. In Ireland, a virtual currency would be considered as an asset for tax purposes, but if it is received as a payment in commerce, then it may cross the line and become income.

In the case *Skatteverket v David Hedqvist* (C264/14), the Court of Justice of the European Union, discussing the VAT treatment of transactions involving the buying or selling of Bitcoin, noted that "transactions involving non-traditional currencies … insofar as those currencies have been accepted by the parties to a transaction as an alternative to legal tender and have no purpose other than to be a means of payment, are financial transactions … [and] are transactions exempt from VAT".

Never the twain?

The separation of law and politics should remain the highest concern of the Supreme Court, writes **William Prasifka**

WILLIAM PRASIFKA IS A DUBLIN-BASED BARRISTER SPECIALISING IN COMMERCIAL AND ADMINISTRATIVE LAW

It has been more than 55 years since HLA Hart first published *The Concept of Law*. Hart's vision was simple: law and morality are conceptually distinct, and any attempt made to conflate the two concepts distorts our understanding of the vital role played by both.

Of course, Hart did not believe that morality should play no role in the shaping of laws. Nor did he deny that much of human law was a product of morality. Rather, Hart strove for intellectual clarity and saw the conflation of law and morality as society's way of cowering away from difficult moral decisions.

Hart was a critic of the Nuremburg trials and other attempts to prosecute those responsible for the atrocities committed by the Third Reich. It was not that he did not believe that such individuals should go unpunished. Rather, Hart saw the trial and conviction of persons on the basis of retrospective principles, imposed without legal pedigree, as an intellectual distortion.

The themes that motivated Hart continue to be of relevance today, and this article focuses on an important subcategory of his overall project: the separation of law and politics. The connections between law and politics (meant in its broadest sense) are so numerous and self-evident that they can be mostly left unsaid.

AT A GLANCE

- The project of contemporary politics is the writing of laws, and lawyers are often overrepresented when such laws are written
- Most laws are designed to achieve a political end, and often such an end could not be achieved without law itself
- However, law and politics are conceptually distinct, and we fall into error by declaring that law is simply politics by other means

The project of contemporary politics is the writing of laws, and lawyers are often over-represented when such laws are written. Moreover, most laws are designed to achieve a political end, and often such an end could not be achieved without law itself. However, law and politics are conceptually distinct, and we fall into error by declaring that law is simply politics by other means.

The distinction between law and politics can be highlighted as follows: good judges decide cases, not on the basis of the political clout of the parties before them, but on the basis of those parties' adherence to abstract

PIC: REX FEATURES/NUALA REDMOND

rules. If parties abide by the rules set down by the legislature and the courts, decisions will be made in their favour, despite the fact that they are out of political favour. Such a distinction guarantees the individual a degree of freedom that would not be possible in law's absence. This distinction can be highlighted by example.

Judge Curtin's pension

Brian Curtin was judge of the Circuit Court, having been appointed in November 2001. On 27 May 2002, the gardaí conducted a raid of his home, where they allegedly discovered child pornography on his home computer. In April 2003, Judge Curtin stood trial for various offences pursuant to the *Child Trafficking and Pornography Act 1998*. During the course of the trial, it emerged that the search warrant relied on by the gardaí in conducting the search had not been executed within the required timeframe. The trial judge, therefore, directed an acquittal.

In June 2003, the Government proposed the establishment of an Oireachtas committee to investigate the conduct of Judge Curtin and, ultimately, begin the impeachment process. In November 2006, soon after the constitutionality of the said committee had been affirmed by the Supreme Court, Judge Curtin resigned on health grounds, almost five years to the day of his appointment. He was, therefore, entitled to a pension pursuant to section 19 of the *Courts (Supplemental Provisions) Act 1961*. While the payment of Judge Curtin's pension gave rise to much public criticism, the Government was powerless to stop the 1961 act's operation.

The survival of Brian Curtin's pension entitlement highlights an important principle. Those suspected of holding child pornography could not be more out of political favour. Yet, they are, nevertheless, entitled to the benefit of the law. While the political consensus wished to deprive Judge Curtin of his pension, as long as he complied with the statutory requirements (that is, abstract rules), his legal entitlements were safe.

PIC: CIAN REDMOND

This article does not argue that it is moral for judges suspected of possessing child pornography to keep their pensions. Nor does it criticise the Oireachtas for beginning the impeachment process. It simply illustrates that a system of law, properly operated, gives individuals (even those suspected of profound wrongdoing) a degree of freedom from others that would not be possible without law's existence.

The Apple tax case

A second example more pertinent to legal practitioners is the Apple tax case. On 30 August 2016, the European Commission decided, after a three-year investigation, that Ireland was due approximately €13 billion in back taxes. The commission's view was that Ireland had provided unlawful state aid to Apple through its taxation policy. Many commentators argued that the tax decision was not based on an impartial application of EU rules, but rather on the political end of clamping down on tax avoidance. After all, article 113 of the *Treaty on the Functioning of the European Union* requires unanimity in order to impose taxation changes.

This article takes no view on the morality of Ireland's 12.5% corporation tax rate. It also assumes that Ireland did not, in fact, provide Apple with a special deal that would ordinarily fall foul of the European Union's state-aid and competition-law rules. However, if one assumes that clamping down on tax avoidance is a legitimate political end, it does not follow that it is legitimate to manipulate existing legal rules in order to achieve such an outcome. This simply turns law into a political weapon and blurs the important distinction between law and politics.

Quasi-unconstitutional acts

The distinction between law and politics has been well maintained in Ireland. Nevertheless, two recent decisions indicate that the Supreme Court is taking a more expansive view of its judicial function, possibly blurring the aforementioned distinction.

> THE DISTINCTION BETWEEN LAW AND POLITICS CAN BE HIGHLIGHTED AS FOLLOWS: GOOD JUDGES DECIDE CASES, NOT ON THE BASIS OF THE POLITICAL CLOUT OF THE PARTIES BEFORE THEM, BUT ON THE BASIS OF THOSE PARTIES' ADHERENCE TO ABSTRACT RULES

> IN ALLOWING UNCONSTITUTIONAL LAWS TO REMAIN IN FORCE, ALBEIT TEMPORARILY, THE COURTS ARE FAILING TO VINDICATE CONSTITUTIONAL RIGHTS

In *NVH v Minister for Justice*, the court found that section 9(4) of the *Refugee Act 1996* was unconstitutional, as it constituted a blanket ban on the right of asylum seekers to work in the State. Despite such a finding, the court refused to strike the law down and, instead, adjourned the matter, inviting the Government and Oireachtas to bring forward amending legislation.

According to O'Donnell J: "Since this situation arises because of the intersection of a number of statutory provisions, and could arguably be met by alteration of some one or other of them, and since that is first and foremost a matter for executive and legislative judgement, I would adjourn consideration of the order the court should make for a period of six months, and invite the parties to make submissions on the form of the order in the light of circumstances then obtaining."

This methodology was again followed by the Supreme Court in *PC v Minister for Social Protection*. Here, the appellant was a prisoner convicted of rape and other offences in 2011. He challenged the constitutionality of section 249 of the *Social Welfare (Consolidation) Act 2005*, which prohibited prisoners from collecting a State contributory pension. The Supreme Court found that such legislation was unconstitutional, as it constituted, among other things, an extrajudicial punishment not imposed by the sentencing judge. Nevertheless, the court declined to strike the legislation down.

According to MacMenamin J: "Thus, it would be appropriate for a court to afford the Oireachtas and/or the executive an opportunity to decide what the best legislative solution might be. If, however, in such circumstances, no action whatsoever was taken, or if the action taken was insufficient to meet whatever requirements had been identified, there might very well be a strong argument that the courts' jurisdiction would necessarily have to extend to taking whatever measures were necessary."

These comments suggest that, should the legislature fail to act, the Supreme Court would be forced to intervene in order to vindicate the Constitution. Clarke J, as he then was, made similar comments in *Persona Digital Telephony Ltd v The Minister for Public Enterprise*.

Pragmatism and principle

While this emerging jurisprudence is rooted in pragmatism, there are principled reasons for opposing its universal adoption. Firstly, under our constitutional system, an act of the Oireachtas is either constitutional or it is not. For a court to declare an act constitutional, but allow it to remain in force, undermines the internal logic of *Bunreacht na hÉireann*. Secondly, in allowing unconstitutional laws to remain in force, albeit temporarily, the courts are failing to vindicate constitutional rights.

In both *NVH v Minister for Justice* and *PC v Minister for Social Protection*, the Supreme Court found that various government departments had acted in violation of the appellants' constitutional rights. Nevertheless, the reliefs sought were denied in the hope that a non-party (the Oireachtas) might act.

However, perhaps the most profound problem with the emerging jurisprudence is that it blurs the distinction between the legislative function of the Oireachtas and the adjudicative function of the courts. Or, to put it another way, the distinction between politics and the law. The Supreme Court's role is not to improve on the work of the Oireachtas. It is to implement its laws, despite their faults, and strike them down should they be repugnant to the Constitution. Institutional comity is not a virtue.

This article is not suggesting that some sort of judicial tyranny is emerging in this State. In fact, the judges of the Supreme Court would probably argue that, in refusing to immediately strike down laws, they are ceding their own authority to the executive and legislature. Nevertheless, the separation of law and politics should remain the highest concern of the Supreme Court.

As was said in *Federalist No 78* over 200 years ago: "The judiciary is beyond comparison the weakest of the three departments of power; that it can never attack with success either of the other two … though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter; I mean so long as the judiciary remains truly distinct from both the legislature and the executive. For I agree, that 'there is no liberty, if the power of judging be not separated from the legislative and executive powers'. And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments."

Alexander Hamilton, a practising lawyer, was doing no more than calling for a separation of law and politics. This call was renewed by Hart in the 1960s, and it is important to renew that call today. g

LOOK IT UP

CASES:

- *Curtin v Dáil Éireann* [2006] 2 IR 556
- *NVH v Minister for Justice* [2017] IESC 35
- *PC v Minister for Social Protection* [2017] IESC 63
- *Persona Digital Telephony Ltd v Minister for Public Enterprise* [2017] IESC 27

LEGISLATION:

- *Courts (Supplemental Provisions) Act 1961*
- *Refugee Act 1996*
- *Social Welfare (Consolidation) Act 2005*

Tales from the dark side

Human slavery is a largely invisible aspect of modern Irish society. **Aoife Byrne** finds that Ireland is falling far short in terms of identifying, protecting, and compensating victims – and eradicating the problem

AOIFE BYRNE IS A DATA PROTECTION SOLICITOR WITH SPEARLINE RISK AND COMPLIANCE AND IS A MEMBER OF THE *GAZETTE* EDITORIAL BOARD

One of the most lucrative crimes in the world is the slave trade, or trafficking in human beings, with illegal profits from forced labour amounting to €150.2 billion per annum. Trafficking often starts with an attractive offer of a well-paid job in another country, on the internet or through a recruitment agency.

Instead, what faces the trafficked person is forced labour or servitude, including domestic work, construction, hotel work, agriculture and the fishing industry and, more sinisterly, prostitution, forced marriage, organ removal, begging or other criminality. There may be an involvement of mobile criminal networks across many countries.

There is, however, no requirement that a person crosses a border for trafficking to occur; it can take also place within a national border. The key issue is that the trafficking victim does not readily consent to the eventual exploitative situation.

Trafficking in persons is defined by article 4 the *Council of Europe Convention on Action against Trafficking in Human Beings* (2008) as the "recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation".

The average age of a trafficked person is 25, with 63% of presumed victims being female. Children are also trafficked, mainly for sexual exploitation.

The *Illegal Immigrants (Trafficking Act) 2000* and the *Child Trafficking and Pornography Act 1998* have resulted in only a handful of convictions. The *Criminal Law (Trafficking in Persons) Act 2008* criminalised trafficking in adults, with a maximum penalty of life imprisonment.

The *Criminal Law (Human Trafficking) (Amendment) Act 2013* gives effect to certain provisions of Directive 2011/36/EU. This directive seeks to prevent and combat trafficking in human beings and protect the victims, through more rigorous prevention, prosecution of traffickers, and protection of victims' rights. The definition of exploitation

AT A GLANCE

- Groups at risk of human trafficking include victims of domestic violence, undocumented migrants, unaccompanied children in transit between different countries, and groups subjected to ethnic discrimination
- Trafficking can occur within national borders
- There is no specific provision in Irish law for the non-punishment of victims of trafficking
- The Criminal Injuries Compensation Scheme provides an avenue for compensation to victims


PIC: SHUTTERSTOCK

> THE CRIMINALISATION OF VICTIMS OF HUMAN TRAFFICKING DISCOURAGES THEM FROM COMING FORWARD AND COOPERATING WITH LAW ENFORCEMENT AGENCIES

is broadened in the 2013 act to include forced begging.

The largest single case of potential human trafficking in Ireland was detected in 2016, when 23 Romanian males were found living together in very cramped conditions at a waste recycling plant in Meath, with no access to their wages.

Position of vulnerability

The legislation does not define 'abuse of a position of vulnerability'. Paragraph 83 of the explanatory report to the Council of Europe convention describes abuse in this instance as any situation in which the person involved has no real and acceptable alternative but to submit to the abuse. The vulnerability may be of any kind, whether physical, psychological, emotional, family related, social or economic.

In practical terms, groups at risk include victims of domestic violence, undocumented migrants, unaccompanied children in transit between different countries, and groups subjected to ethnic discrimination.

An Garda Síochána is the only competent authority for identification of victims of trafficking. A person is a suspected victim of human trafficking if they, or someone on their behalf, reports to the gardaí that they have been trafficked. They are then presumed to be trafficked unless there is compelling evidence to the contrary. Prior to 7 June 2008, the *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking* did not provide for identification of victims of human trafficking.

The *Trafficking in Human Beings in Ireland Annual Report 2016*, from the Department


PIC: SHUTTERSTOCK

of Justice and Equality, acknowledges the relatively low number of victims of human trafficking being reported each year.

Trafficked persons may be reluctant to disclose themselves to the relevant authorities for fear of repercussions and threats from the trafficker, as well as distrust of authority. It is only on identification of a person as a presumed trafficked that they may avail of rights.

Repeat victimisation

The EU victims' rights package – Directive 2012/29/EU (the *Victims' Directive*) – describes victims of human trafficking as tending to "experience a high rate of secondary and repeat victimisation, of intimidation and of retaliation ... there should be a strong presumption that those victims will benefit from special protective measures".

Victims' rights include emergency intervention to ensure the safety of the victim and that basic needs like food, clothing and lodging are met. The Irish Government has been criticised for placing presumed victims of trafficking with asylum seekers in direct provision centres. Medical and psychological support, as well as legal support for information on the victim's rights, should be made available to them.

Further victims' rights include residence authorisation, a period of recovery and reflection, protection of privacy and identity, protection during criminal investigation and prosecution, compensation for damage suffered, repatriation, and return. The *Criminals Justice (Victims of Crime) Act 2017* commenced in the main on 27 November 2017. The act seeks to transpose the *Victims' Directive* into Irish law, which was to be done by 16 November 2015. Infringement proceedings had already been commenced against the State by the European Commission.

NGOs have reported that a continued lack of an effective mechanism to identify victims of human trafficking inhibits provision of adequate protection and witness preparation. Four Divisional Protective Services Units (in Cabra, Clondalkin, Cork Anglesea Street and Dundalk) were established in 2017 – the first phase of a national roll-out to all garda divisions. These units investigate certain types of crime, including human trafficking. Following identification, victims of human trafficking should have early access to legal practitioners with specialised knowledge of human trafficking, who can represent them.

Article 26 of the convention stipulates that victims of human trafficking not be punished for their involvement in unlawful activities to the extent that they are compelled to do so, including immigration offences.

The criminalisation of victims of human trafficking has been said not only to contravene the State's obligation to provide services and assistance to victims, but also discourages them from coming forward and cooperating with law enforcement agencies. If a victim is prosecuted before they are identified as a victim of human trafficking, this prosecution will remain on their record, despite an earlier identification possibly leading to a different outcome.

Non-punishment of victims

There is no specific provision in Irish law for the non-punishment of victims of trafficking, though the offices of the DPP has issued guidelines for prosecutors, where particular care is recommended in cases where a victim is suspected of being trafficked. The DPP has discretion not to prosecute a person, where they have been compelled to commit an offence and have been defined as a victim of trafficking.

A report by the Group of Experts on Action against Trafficking in Human Beings (GRETA), published on 20 September 2017, urges Irish authorities to adopt a specific legal provision on the non-punishment of victims of trafficking for their involvement in unlawful activities, to the extent the victims were compelled to do so, and that this non-punishment provision be included in training for police, prosecutors, judges and lawyers. GRETA is responsible for monitoring the implementation of the convention by the parties to it.

The High Court in 2015, in *P v The Chief Superintendent of the Garda National Immigration Bureau & Ors* found flaws in the system to enable early identification of

> THE IRISH GOVERNMENT HAS BEEN CRITICISED FOR PLACING PRESUMED VICTIMS OF TRAFFICKING WITH ASYLUM SEEKERS IN DIRECT PROVISION CENTRES

victims of trafficking where the persons were also suspects in a criminal investigation. A Vietnamese woman was found in a cannabis grow-house in West Dublin in 2012. She was arrested and charged.

The accused's solicitor requested that the woman be recognised as a victim of human trafficking. She had been brought to Ireland by sea, with an expectation of domestic work like child-minding or house-cleaning. Instead, she was working in a cannabis grow-house. The woman was not identified as a victim of human trafficking, and she spent two-and-a-half years in custody.

Court reports by a forensic psychologist and a forensic psychiatrist supported the woman's account. However, gardaí suggested that her account was vague and inaccurate from interviews and following independent evidence gathering. A conflict may arise where the gardaí are both the formal identifier of a trafficked person, and also investigating criminal activities alleged to have been carried out by that person.

Compensation for loss

A further issue of importance in relation to victims of the crime of trafficking is the issue of compensation. There are various means by which a victim of human trafficking can claim compensation. Victims of human trafficking often suffer serious physical and mental-health issues as a result of the circumstances of trafficking, the behaviour of the trafficker, and subsequent forced labour. There are various means by which a victim of human trafficking can claim compensation.

Under section 6 of the *Criminal Justice Act 1993*, on conviction, a court may order the offender to pay compensation to the injured party in respect of a person's injury or other loss resulting from the offence. In the case of human trafficking, a lack of convictions restricts or even precludes the injured party's ability to seek this type of redress.

The Criminal Injuries Compensation Scheme can provide an avenue for compensation to the victim of human trafficking, for personal injuries criminally inflicted as a direct result of violent crime. A report from the gardaí is required. An application must generally be made within three months of the crime. The compensation is for expenses only, such as medical expenses, but not for pain and suffering. Presumed victims of trafficking may also seek damages through the civil courts for employment-related matters or personal injuries.

Protective service units

It has been observed that the number of prosecutions in cases of human trafficking is very low, compared with the number of investigations.

While some awareness has been raised in relation to human trafficking among the public at large through advertising and other campaigns, the issues of early identification, specialist legal practitioners, victims' rights, non-prosecution, and compensation need to be developed.

Human slaves exist under the surface – arriving in the State due to vulnerability, promises, and coercion, and staying in situations of forced labour, due primarily to fear and perhaps ignorance of any viable alternative. Identification and protection for these often undocumented people should be readily available, to help alleviate the damage caused by this largely invisible, dark side of modern Irish society. g

The author wishes to thank Prof Ryszard Piotrowicz of the Department of Law and Criminology, Aberystwyth University, Wales, for discussions that preceded this article.

LOOK IT UP

CASES:

- *P v The Chief Superintendent of the Garda National Immigration Bureau & Ors* [2013/795 JR]

LEGISLATION:

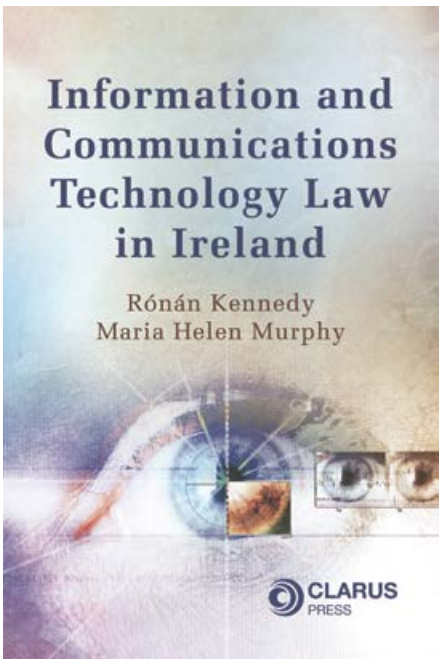
- *Child Trafficking and Pornography Act 1998*
- *Council of Europe Convention on Action against Trafficking in Human Beings* (2008), article 4 and article 26
- *Criminal Justice (Victims of Crime) Act 2017*
- *Criminal Justice Act 1993*
- *Criminal Law (Human Trafficking) (Amendment) Act 2013*
- *Criminal Law (Trafficking in Persons) Act 2008*
- *Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime (2012/29/EU)*
- *Directive on preventing and combating trafficking in human beings and protecting its victims* (2011/36/EU)
- *Illegal Immigrants (Trafficking Act) 2000*

LITERATURE:

- *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking* (effective 7 June 2008), Department of Justice and Law Reform
- *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (May 2005), paragraph 83
- *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland* (Second Evaluation Round), GRETA (2017)
- *Trafficking in Human Beings in Ireland Annual Report 2016*, Department of Justice and Equality (2017)
- *Trafficking in Persons Report 2016*, US Department of State (June 2016)

INFORMATION AND COMMUNICATIONS TECHNOLOGY LAW IN IRELAND

Rónán Kennedy and Maria Helen Murphy. Clarus Press Ltd (2017), www.claruspress.ie. Price: €60 (incl VAT).



According to the preface, the key motivation for this book was to produce an accessible and up-to-date text that would demystify the relationship between law and technology. Although the authors intend the book to be a key text for law students, legal practitioners will also find it useful. Those who are not technologically astute will appreciate the diagrams throughout the book that explain complex legal and technology terminology and processes.

The book is divided into five parts, with part 1 contextualising the study of information and communications technology (ICT) and the law (chapter 1). Part 2 considers the private law implications of ICT (chapters 2-5), with public law issues relating to ICT being examined in part 3 (chapters 6-8), and the application of ICT to legal practices in part 4 (chapter 9). Finally, part 5 examines future issues and trends (chapter 10).

Part 1 on the history of ICT explores its beginnings with the Greeks and Romans, to the major technological developments that immediately followed World War II due to government and military funding, which ultimately led to the commercial development of that technology.

Part 2 considers the private law implications of ICT, such as intellectual property rights, online contracts and data protection. Chapter 5 includes an analysis of the *General Data Protection Regulation* (GDPR) that comes into effect on 25 May 2018. In future editions, the authors should consider the impact of the GDPR on ICT, such as blockchain technology.

Part 3 considers the public law implications of ICT, including privacy, criminal law and online freedom of speech. Chapter 7 features an analysis of the *Criminal Justice (Offences Relating to Information Systems) Act 2017*, which is useful, as it is the first piece of Irish legislation that solely addresses the issue of cybercrime.

As there is uncertainty on the legality of data accessed under the *Communications (Retention of Data) Act 2011*, this should be addressed in future editions, along with the impact of artificial intelligence on legal practices, as many believe that it will disrupt businesses.

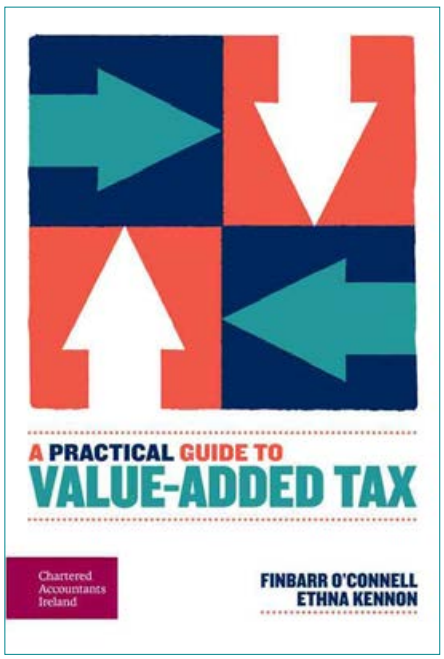
Each chapter includes a useful 'further reading' section that directs readers to additional material if they wish to explore an area in greater depth.

Notwithstanding the few constructive recommendations above, this book will be a useful resource for those who want a clear and concise guide to ICT law in Ireland.

Maureen Daly is a partner and head of technology and intellectual property at Beauchamps Solicitors.

A PRACTICAL GUIDE TO VALUE-ADDED TAX

Finbarr O'Connell and Ethna Kennon. Chartered Accountants Ireland (2017), www.charteredaccountants.ie. Price: €40 (incl VAT).



This Chartered Accountants Ireland book discusses and explains the main VAT issues regularly encountered by Irish businesses and their advisors. It is written in very user-friendly language and is easy to follow. It includes numerous tax tips and provides straightforward explanations of concepts that can be very complex.

It goes through, in a summary manner, the fundamentals of VAT, covering registration and administration, supply of goods, supply of services, VAT recovery, common VAT issues, Revenue audits and other interventions, relevant contracts tax, as well as the European Union dimension and anti-avoidance.

Of particular interest to legal practitioners will be the chapters on VAT on property and receivers, liquidators and mortgagees in possession, as well as the appendices containing Revenue VAT information leaflets on the transfer of a business and bad debts.

The VAT on property chapter looks back at the rules before 1 July 2008 and includes an overview of the rules after that date and the transitional rules covering sales of reversionary interests and assignments or surrenders of long leases. It provides an example on the operation of the capital goods scheme in addition to a useful section on common issues to watch for in property transactions, including the transfer of property as part of a business and connected parties.

Each chapter is well laid out and makes it easy for the reader to locate the section of interest. Each also contains numerous tax tips and helpful suggestions.

The book has many examples to illustrate how the tax applies. The vast experience and practical knowledge of the authors are demonstrated in the tips and examples. The chapter on the EU dimension provides useful summaries of some relevant case law.

The book includes useful advice relating to the Revenue audit process and clearly explains the process.

VAT is a very important tax that has an impact on most Irish businesses, and this is a welcome guide. It is a handy, easy-to-read and useful introduction to VAT, written in plain English that is accessible to clients, legal practitioners, students and tax advisers. g

Michelle McLoughlin is a solicitor, tax consultant, and tax lecturer for the Law Society.

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Certificate in Construction Dispute Mediation (new)	23 October 2018	€1,550
Diploma in Sports Law	24 October 2018	€2,500
Diploma in Education Law	2 November 2018	€2,500
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SOLICITORS DISCIPLINARY TRIBUNAL

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

In the matter of Catherine (Karen) J Hughes, solicitor, of Catherine J Hughes & Co, Bishop St, Tuam, Co Galway, and in the matter of the *Solicitors Acts 1954-2015* [4184/DT86/16]

Named client (applicant)

Catherine J Hughes (respondent solicitor)

On 23 November 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in respect of the following complaint, as set out in the applicant's affidavit: at no time did the solicitor account for the sum of €2,500 paid into her client account. The applicant said that it was not taken off his bill, and no reference was made to or how the funds were used.

The tribunal ordered that the respondent solicitor:

1) Stand advised and admonished,
2) Pay a sum of €500 to the compensation fund.

In the matter of Owen Carty, solicitor, of Owen Carty & Co, Solicitors, Northgate Street, Athlone, Co Westmeath, and in the matter of the *Solicitors Acts 1954-2015* [3690/DT45/16]

Named client (applicant)

Owen Carty (respondent solicitor)

On 9 January 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in respect of the following complaints, as set out in the applicant's affidavit:

1) The applicant says he discovered that the respondent solicitor had failed to properly represent him; it became apparent that a number of court orders had been made in the applicant's absence, which the respondent solicitor had failed, refused, and/or neglected to advise him of,
2) The respondent solicitor breached the obligations of honesty and trust between a solicitor and a client,
3) The respondent solicitor failed in his legal obligations towards the applicant by not representing the applicant's interests,
4) The respondent solicitor failed to respond to letters written to him,
5) The respondent solicitor failed to keep the applicant informed of progress in the matter,
6) The respondent solicitor did not inform the applicant of orders for costs against him,
7) The respondent solicitor failed to observe one of the core values of the profession by not being honest in his dealings with the applicant. The applicant telephoned the respondent solicitor regularly and called to his office, and the respondent solicitor at all times reassured him that he was fulfilling his duties and that the other side were not.

The tribunal ordered that the respondent solicitor:

1) Stand censured,
2) Pay a sum of €5,000 to the compensation fund,
3) Pay a sum of €500 to the applicant for expenses incurred.

In the matter of Peter Downey, a solicitor practising as Eagleton Downey, Solicitors, Suite 1155, Fitzwilliam Business Centre, 77 Sir John Rogerson's Quay, Dublin 2, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT79]

Law Society of Ireland (applicant)

Peter Downey (respondent solicitor)

On 13 February 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he failed to ensure that that there was furnished to the Society an accountant's report for the year ended 31 January 2017 within six months of that date, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014* (SI 516 of 2014).

The tribunal ordered that the respondent solicitor:

1) Stand censured,
2) Pay a sum of €1,200 to the compensation fund,
3) Pay a sum of €612 towards the whole of the costs of the Law Society of Ireland.

BRIEFING | PRACTICE NOTE

CONVEYANCING COMMITTEE

HELP-TO-BUY SCHEME ACCESS CODES

It has come to the committee's attention that some developers are requiring purchasers' solicitors to certify or confirm that the purchaser is a qualifying claimant under the Help-to-Buy Scheme as defined in the *Finance Act 2016*.

It is the committee's view that it is not the responsibility of purchasers' solicitors to provide such a certification/confirmation and that, in any event, they would not be in a position to do so.

The Help-to-Buy Scheme is operated and processed through the purchaser's ROS/myAccount and the vendor's (developer's) ROS account. If requested by the clients, and if the matter is not being dealt with directly or through the sales agent, solicitors can assist by being a conduit through which the access codes are transferred between purchaser and vendor. Such assistance should not be on the basis of any warranty or responsibility.

JUMPING THE GUN

A recent decision would appear to allow merging parties more freedom to take preparatory steps – but will the Court of Justice allow more freedom in M&A transactions? **Niall Collins** locks and loads

NIALL COLLINS IS A PARTNER AND HEAD OF COMPETITION AND ANTITRUST AT MASON HAYES & CURRAN

SHOULD A TRANSACTION BE BLOCKED, IT COULD BE DIFFICULT TO IMPLEMENT THE DECISION IF THE TARGET HAS ALREADY BEEN INTEGRATED INTO THE PURCHASER'S BUSINESS. HOW DO YOU UNSCRAMBLE AN EGG?

News from the EU and International Affairs Committee. Edited by TP Kennedy, director of education, Law Society of Ireland

On 18 January 2018, Advocate General Nils Wahl delivered an important opinion in Case C-633/16, *Ernst & Young P/S v Konkurrencerådet*. The case relates to a 'gun-jumping' fine imposed by the Danish competition council in connection with the merger between auditing firms Ernst & Young (EY) and KPMG Denmark (KPMG DK). The case is particularly important, as it is the first time that the Court of Justice has been called upon to rule on the scope of the 'standstill obligation' in article 7(1) of the European Union *Merger Regulation* (EUMR).

While an advocate general's opinion is advisory only, in the majority of cases it is followed by the court. Should the court decide to follow the opinion, we will be provided with helpful guidance on what steps companies can take without rendering themselves liable for gun-jumping.

The good, the bad and the ugly

Any transaction that meets the mandatory reporting thresholds in the *Competition Act 2002* (as amended) or in the EUMR cannot be implemented until merger-control approval has been obtained. This is commonly referred to as the 'standstill obligation', and there can be significant consequences for breaching it.

Broadly, 'gun-jumping' is the colloquial term for prematurely

PIC: SHUTTERSTOCK

putting into effect a transaction through integrating separate businesses prior to merger approval having been obtained, or where the merging parties coordinate their competitive conduct prior to clearance. The purpose of the standstill obligation and the rules against gun-jumping is to ensure effective merger control. For example, should a transaction be blocked, it could be difficult to implement the decision if the target has already been integrated into the purchaser's business. How do you unscramble an egg?

There may, of course, be sound operational and financial reasons to reap the benefits of a transaction as soon as possible, but merging parties must wait until approval has been granted. Getting a head start may put those very benefits at risk.

Neither the European Commission, nor any national competition authority within the EU, has issued formal guidance on gun-jumping. Accordingly, the line between integration planning and illegal implementation is somewhat blurred and may be crossed inadvertently. That said, competition regulators worldwide recognise the importance of integration planning and the rapid implementation of those plans (once clearance has been obtained) to the success of transactions.

The searchers

The standstill obligation is housed in article 7(1) of the EUMR. That article provides, among other things, that a concentration with an EU dimension shall not be implemented either before its notification or until it has been declared compatible with the internal market. The standstill obligation finds similar expression in Irish legislation in section 19(1) of the *Competition Act*. Section 19(2) also provides that any notifiable merger that is put into effect before approval has been obtained is void. Further, failure to notify a notifiable merger in Ireland is, in certain circumstances, a criminal offence.

The commission has traditionally taken a strong line against companies that breach the standstill obligation. For example, in October 2017, the EU General Court upheld a fine of €20 million imposed by the commission on a Norwegian seafood company, Marine Harvest, for implementing its acquisition of

PIC: REX FEATURES

salmon producer Morpol prior to commission clearance having been obtained. In May 2017, the commission announced that it suspected French telecoms operator Altice had implemented its acquisition of PT Portugal before the commission had received a notification.

Numerous other competition regulators have also imposed sanctions, including in the US (the *Duke Energy* case), Norway (the *NorgesGruppen* case), Brazil (the *Technicolor/Cisco* case) and China (the *Canon* case). In November 2016, the French competition authority also fined Altice for early implementation of the acquisition of two companies, and also for exchanging commercially sensitive information without the appropriate safeguards being in place.

For a few dollars more

On 18 November 2013, EY and KPMG DK decided to merge. The merger was notified to the Danish competition and consumer authority and ultimately approved on 28 April 2014. However, the merger agreement of November 2013 stipulated that KPMG DK should initiate the termination of its cooperation agreement with KPMG International. Accordingly, KPMG DK gave notice to KPMG International on the same day as the merger agreement was signed, terminating the cooperation agreement. Importantly, the termination was to take effect from 30 September 2014.

THIS IS THE FIRST TIME THAT THE COURT OF JUSTICE HAS BEEN CALLED UPON TO RULE ON THE SCOPE OF THE STANDSTILL OBLIGATION

The conclusion of the merger agreement was made public on 19 November 2013. On 20 November, KPMG International announced, in the online newspaper *Business.dk*, its intention to remain in the Danish market. KPMG International, accordingly, established a new auditing business in Denmark and concluded a cooperation agreement with a tax consultancy firm. This was despite the fact that its cooperation agreement with KPMG DK remained in force and the cooperation continued as before, notice of termination withstanding.

Surrounding events are also relevant. Some auditing clients of KPMG DK, including two of the largest, Maersk and Carlsberg, chose to recommend a change of auditors at their general meetings, so that KPMG International would fulfil the auditing role for the accounting year 2014. Importantly, it was not feasible for the Danish regulator to determine with certainty whether the termination of the cooperation agreement caused some of KPMG DK's clients to recommend a change of auditor at their general meetings. In most cases, ordinary general meetings took place in early spring, and EY argued that it was simply the case that the assessment of the Danish regulator took place at the time of the year when a change in auditor normally takes place.

On 17 December 2014, nearly seven months after the merger was approved, the Danish regulator decided that EY and KPMG DK had infringed the standstill obligation by giving notice to terminate the cooperation agreement on 18 November 2013, before the merger had been approved. The Danish regulator regarded this as a 'partial' implementation of the merger and laid particular emphasis on the fact that (a) the termination of the agreement was 'merger specific', (b) irreversible, and (c) had the potential to have market effects in the period between the notice of termination and the approval of the merger.

EY appealed the decision. The Danish Maritime and Commercial Court requested a preliminary ruling from the court regarding the scope and application of the standstill obligation in Danish law.

True grit

AG Wahl acknowledged early in his opinion that the scope of the standstill obligation should be clearly demarcated. However, he felt it would not be effective to set out an exhaustive list of measures that would be caught by the standstill obligation. Rather, his approach was to set out a negative definition of measures that would not be caught.

His opinion was that the court should answer the questions referred by finding that the standstill obligation should not affect measures that, although taken in connection with the process leading to a merger, "precede and are severable from the measures actually leading to the acquisition of the possibility of exercising decisive influence on a target undertaking".

In that connection, the merger agreement between EY and KPMG DK was subject to approval by the Danish regulator, and it was not to be implemented before that approval had been obtained. As noted above, the Danish regulator had taken the view that the termination of the cooperation agreement amounted to a partial implementation of the merger, even though the termination was not to take effect until 30 September 2014.

AG Wahl disagreed and opined that the termination of the cooperation agreement was a necessary prerequisite for the merger to take effect, but it did not violate the standstill obligation. For AG Wahl, the element of control was fundamental in assessing a potential violation of the standstill provision. Importantly, while the termination of the cooperation agreement was part of the merger agreement, it was not inextricably linked to the transfer of control, that is, giving EY the possibility of exercising decisive influence over KPMG DK before clearance had been obtained. Notwithstanding the notice of termination, KPMG DK would remain a competitor of EY until clearance has been obtained.

The Danish Court also queried whether it was of relevance to the standstill obligation that the measure challenged, as a premature implementation, had any effects on the market. This was queried on the basis that, as noted above, some of KPMG DK's clients recommended a change in auditor at their general meetings sometime after the notice of termination of the cooperation agreement. The Danish regulator had argued that the termination itself had an inherent potential for market effects and could be characterised as an implementing action. Further, it was not necessary to demonstrate any actual effects of the termination.

AG Wahl stated that possible market effects are of no relevance to the application of the standstill obligation. He stated that commercial measures almost invariably have some effect on the market and, if the mere potential to have market effects sufficed to trigger the standstill obligation, that criterion would almost always systematically be fulfilled and thus it would be an otiose creation. Conversely, if the criterion proposed were one of actual market effects, the scope of the standstill obligation might be too restricted.

High noon

Competition authorities naturally want to ensure that premerger conditions of competition are fully maintained until they have decided to clear a merger. Purchasers naturally want to preserve the value of their investments during what can be a lengthy timeframe to closing. It is important that these respective interests are appropriately balanced.

Right now, the line between integration planning and illegal implementation is somewhat blurred, and it remains a rocky landscape to navigate. Only preparatory steps, with no potential impact on the target's market conduct, are considered to fall on the right side of the standstill obligation.

The approach of AG Wahl proposes an interpretation that would allow merging parties more freedom to take preparatory steps. Against that background, the opinion seems to strike the right balance. However, it remains to be seen whether the court will jump in behind its advocate general.

There is an interesting epilogue to the opinion. The court might decide to disagree with AG Wahl and opine that potential market effects of the alleged implementing action are relevant to the application of the standstill obligation. Should that happen, it would be interesting to see whether the Danish court would find that the change of auditors simply reflected the typical behaviour of large Danish companies at that time of the year.

RECENT DEVELOPMENTS IN EUROPEAN LAW

ASYLUM

Case C-670/16, *Tsegezab Mengesteab v Bundesrepublic Deutschland*, 26 July 2017

The applicant is an Eritrean national. He crossed the Mediterranean Sea from Libya and entered Italy on 4 September 2015. He travelled overland and arrived in Germany on 12 September 2015. He sought asylum in Germany.

On 22 July 2016, he lodged a formal application for international protection with the competent German authority. The *Dublin III Regulation* (604/2013) provides that, where a non-EU national lodges an application for international protection in one member state, and that state considers that another member state is responsible for examining the application, the first member state can make a 'take-charge' request.

The second member state then becomes responsible for examining the application if it either accepts the request or does not respond to the request within the prescribed time limit. Take-charge requests are to be made as quickly as possible or, at the latest, within three months of the date on which the application for international protection was lodged.

On 19 August 2016, the German authorities checked the Eurodac database. It showed that the applicant's fingerprints had been taken in Italy, but he had not made an application for international protection there. Germany considered that it then fell to Italy to examine his application, since that was where he had entered the EU.

By a decision of 10 November 2016, the German authorities refused his application for international protection on the basis that Italy was responsible for examining his application. He was also informed that he would be transferred to Italy. Mr Mengesteab challenged that decision before the German courts. He argued that Germany was responsible for examining his application, as the take-charge request was made after the expiry of the three-month time limit set out in the regulation.

The German authorities argued that the time limits do not establish individual rights that can be relied on and that they do not start to run until a formal application for asylum has been lodged. The German court asked for guidance on interpretation of the regulation. It asked whether applicants for international protection can challenge the operation of the time limits in the regulation and, if so, what constitutes the lodging of an application for international protection from which those time limits run.

Advocate General Sharpston considered that the regulation should be interpreted as meaning that an applicant for international protection is entitled to appeal a transfer decision made as a result of a take-charge request where the member state did not comply with the time limits in the regulation when submitting such a request.

The various time limits set out in the regulation are critical to its operation. These time limits provide a degree of certainty to applicants, as well as the states concerned. Applicants should be able to challenge transfer decisions, in particular where the failure to meet time limits had an impact on the progress of the application of international protection. This remains the case whether the requested member state agrees to take charge or not.

The advocate general rejected an argument that the time limits in the regulation only govern inter-state relations, which should not be the subject of a challenge by an individual. The establishment of time limits in the regulation is a procedural matter, but the operation of those limits has substantive implications for both applicants and the member state concerned.

The migrant crisis of 2015/2016 placed member states in a difficult situation and strained available resources. However, this is not a justification for cutting back on judicial protection. The lawfulness of a transfer decision is founded on elements of facts and law, over which national courts should be able to exercise judicial scrutiny.

Finally, she found that an application for international protection is deemed to have been lodged within the meaning of the regulation when a form or report reaches the national competent authorities responsible for such applications. As there is no standard form, it is for each member state to determine the exact content of the form and the report. Thus, the applicant's informal request for international protection of 14 September 2015 was not the lodging of an application for international protection within the meaning of the regulation.

Mr Mengesteab's formal application was lodged on 22 July 2016, and the take-charge request made by the German authorities on 19 August 2016 thus complied with the time limits in the regulation. g

RATES

NEW RATES SINCE JANUARY 2018

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RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €150 (incl VAT at 23%)
- **Title deeds** – €300 per deed (incl VAT at 23%)
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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 that indicates that such references may be in breach of the *Employment Equality Acts 1998* and *2004*.

WILLS

Banks, Johanna Mary (orse Johanna M) (deceased), late of Ballinagoul, Kilmallock, Co Limerick, who died on 7 April 2008 at Ballinagoul, Kilmallock, Co Limerick. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Robert Lee, Lees Solicitors, Lord Edward Street, Kilmallock, Co Limerick; tel: 063 98003, email: info@lees.ie

Courtney, Christine (otherwise Christina) (deceased), late of 69 Cabra Park, Phibsboro, Dublin 7, and formerly of 279 North Circular Road, Phibsboro, Dublin 7, and 1 Iveragh Terrace, Cable Station, Waterville, Co Kerry. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 29 June 2016, please contact Harrison O'Dwyer Solicitors, 4 O'Connell Street, Cahirciveen, Co Kerry; tel: 066 947 1250, email: hod@harrisonodwyer.com

Cowan, George R (deceased), late of Balrath, Bracklyn (also Balrath, Killucan, Mullingar), Co Westmeath. Would any person having knowledge of the whereabouts of the last will and testament and the deeds of the properties of the late George R Cowan, late of Balrath, Bracklyn (also Balrath, Killucan, Mullingar), Co Westmeath, at Chanonstown, Raharney, Co Westmeath, and Balrath, Co Westmeath, please contact Hamilton Sheahan & Co, Solicitors, Main Street, Kinnegad, Co Westmeath; DX 235001 Kinnegad; tel: 044 937 5040, email: roisin@hamiltonsheahan.ie

Dean, Cecil Victor (deceased), late of 'Verona', Kerrymount Avenue, Foxrock, Dublin 18, company director, who died on 13 December 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Tina Ennis, Matheson Solicitors, 70 Sir John Rogerson's Quay, Dublin 2; tel: 01 232 2034, email: tina.ennis@matheson.com

Dunne, Julia (Sheila) Carmel (deceased), late of 183 Phibsborough Road, Dublin 7, who died on 25 September 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact MacCarthy & Associates, Solicitors, 10 Upper Mount Street, Dublin 2; tel: 01 661 3322, email: info@mas.ie

Graham, Garnet (otherwise Garnet William Eric) (deceased), who died on 30 December 2017, late of 27 Taney Crescent, Goatstown, Dublin 14. 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 Murphy McElligott Solicitors, 69 Patrick Street, Dun Laoghaire, Co Dublin; tel: 01 230 3266, email: associate@mmce.ie

Keane, Emma (deceased), late of 33 Brighton Square, Rathgar, Dublin 6. Would any person having knowledge of a will made by the above-named deceased, who died on 14 January 2018, please contact Emma Scott or Giles G Smyth, Baily Homan Smyth McVeigh, Solicitors, 6-7 Harcourt Terrace, Dublin 2; tel: 01 440 8300, email: escott@bhsm.ie

Keane, Michael Gerard (deceased), late of 54 Heytesbury Lane, Ballsbridge, Dublin 4. Would any person having knowledge of a will made by the above-named deceased, who died on 20 January 2018, please contact Fitzsimons Redmond Solicitors, 6 Clanwilliam Terrace, Grand Canal Quay, Dublin 2; tel: 01 676 3257, email: law@fitzsimonsredmond.ie

Kennedy, Pauline (deceased), late of 55 Grove Park, Glasnevin, Dublin 11. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 21 December 2017, please contact Justin Hughes Solicitors, 89 Phibsborough Road, Phibsborough, Dublin 7; DX 149005 Phibsborough; tel: 01 882 8628, 01 882 8583, email: info@justinhughes.ie

Murphy, Paul (deceased), late of 7 The Green, Coolroe Meadows, Ballincollig, Co Cork. Would any person having any knowledge of a will executed by the above-named deceased, who died on 8 January 2017, please contact Coakley Moloney, Solicitors, 49 South Mall, Cork; tel: 021 427 3133, email: enagle@como.ie

O'Gorman, Josephine (otherwise Josie) (deceased), late of 12 Duiske Crescent, Graiguenamanagh, Co Kilkenny. Would any person having knowledge of a will made by the above-named deceased, who died on 4 April 2018, please contact Emma Scott, solicitor, Baily Homan Smyth McVeigh, Solicitors, 6-7 Harcourt Terrace, Dublin 2; tel: 01 440 8300, email: escott@bhsm.ie

O'Neill, Desmond (deceased), late of 48 Casino Road, Dublin 3, who died on 8 January 2018. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact

Gartlan Winters, Solicitors, 56 Lower Dorset Street, Dublin 1; tel: 01 855 7437, fax: 01 855 1075, email: info@gartlanwinters.ie

Shortt (née Hillen), Ann (deceased), late of 88 Baltray House, Ridgewood, Swords, Co Dublin, who died on 27 December 2017. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Joanna O'Meara, Byrne & Company, Solicitors, 11 Malahide Road, Swords, Co Dublin; DX 91005 Swords; tel: 01 840 4346, email: reception@byrnesolicitors.ie

Tracy, Karen (deceased), late of 14 Cnoc na Greine View, Kilcullen, Co Kildare, who died on 18 September 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Niall O'Brien, Solicitors, Chapel Hill, Lucan, Co Dublin; tel: 01 621 9430, email: nobrien@obriensolicitors.com

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Euro Car Parks (Ireland) (Holdings) Limited

Any person having a freehold estate or any intermediate interest in all that and those the site at Exchange Street, Co Waterford, registered in Folio 3927L Co Waterford, held by the applicant Euro Car Parks (Ireland) Holdings Limited and previously held by W Gerard O'Hare as lessee under a lease dated 15 June 1833 between William Hughes of the one part and Joseph Dunn Lapham of the other part for a term of 190 years from 25 March 1833 at a rent of £5.25 per annum.

Take notice that Euro Car Parks (Ireland) (Holdings) Limited intends to apply to the county registrar of the county of Waterford to vest in it the fee simple and any intermediate interests in the said property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to same to the below-named within 21 days from the date of this notice.

In default of any such notice being received, Euro Car Parks (Ireland) (Holdings) Limited intends to proceed with the application before the Waterford county registrar at the end of 21 days from the date of this notice and will apply to the Waterford county registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in the aforesaid property are unknown or unascertained.

Date: 5 May 2018

Signed: Maples and Calder (solicitors for the applicant), 75 St Stephen's Green, Dublin 2

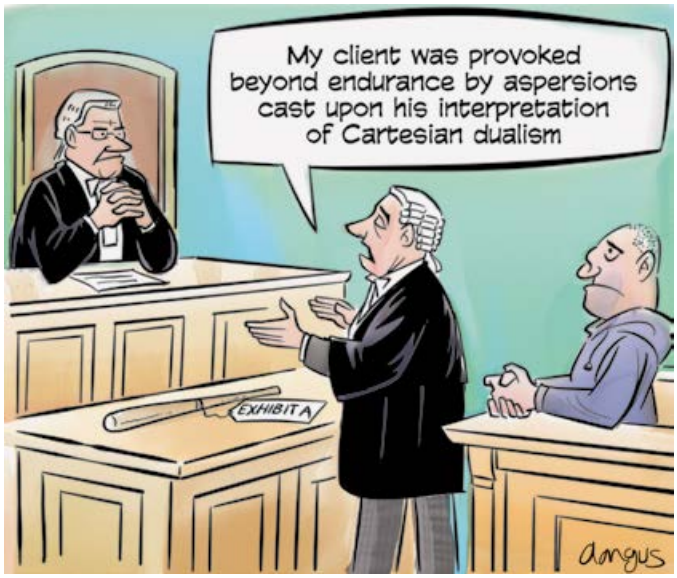
NE ULTRA CREPIDAM JUDICARET

WHAT WOULD THRASYMACHUS SAY?

Philosophy classes can help tackle the macho culture in maximum security jails and encourage trust and cooperation among even the toughest prisoners, according to inews.co.uk.

Kirstine Szifris from Manchester Metropolitan University led a series of discussions among inmates in prisons in Yorkshire and Buckinghamshire, the British Sociological Association's annual conference was told.

She led prisoners through a series of philosophical problems to illustrate ideas such as Plato's ideal society, the Stoic philosophy of the Greeks and Romans, and the Socratic method of inquiry. One scenario led them to imagine they were shipwrecked on a desert island with other survivors and asked how they would organise their new society.



Of course, justice is merely an illusion fostered by the strong to facilitate the oppression of the weak, according to the T-man.

LEGENDS IN THEIR OWN LUNCHTIME

Judges make different decisions depending on whether they're hearing the case before or after lunch, the head of tribunals in England and Wales has said.

Legal Cheek reports that, in a recent speech at the University of Warwick, Ernest Ryder pointed to "an evidential study of judicial behaviour … which examined over 1,000 rulings on applications before parole boards [and] came to the conclusion that decision-making differed depending on the time of day".

He cited a study on judicial decision-making in which eight Israeli judges were followed for ten months while they decided on parole applications. They granted around two-thirds of applications at the start of the day, but that fell to near zero before food breaks. After eating, the proportion of prisoners released rebounded to two-thirds again.

Ryder noted that "the point from this is not to feed judges more often". It's that judges are people too and prone to irrationality, despite spending a lifetime learning critical thinking.

THESE BOOTS AREN'T MADE FOR WORKING

Trainee barristers in England are being told they will be docked points in their exams if they wear short skirts, colourful socks, or 'kinky boots', *The Guardian* reports.

A BPP University Law School handbook warns students that they may lose points if they do not adopt extremely conservative dress in their advocacy assessments.

Those preparing for the bar professional training course are told that women should not wear short skirts and must have "nothing [showing] above the knee". Breaching that rule will lose the applicant two points. Men are to be penalised for having their jackets undone. "Ideally men's jackets should be double-breasted or three-piece," the handbook says. Socks should be dark and plain.

Women should not sport 'kinky boots'. Boots are okay *per se*, "but they should avoid stiletto heels, buckles, straps etc". The top fashion tips don't stop there. Three points will be lost if their bra shows.

Less specifically, students can also lose points if their appearance is "generally poor", for example if their hair is "scruffy" or their clothes "dirty". And don't draw attention to yourself, the guidance says, with "inappropriate" jewellery.

BADGERING THE WITNESS

A 'very angry badger' has forced part of a historic castle to close, according to *The Independent*.

"If you're heading to Craignethan Castle over the next few days, you might find the Cellar Tunnel closed due to the presence of a very angry badger," Historic Scotland stated. "We're trying to entice it out with cat food and send it home."

It did not elaborate on why the badger was angry, but it is thought the animal may live in Farthing Wood and became lost.

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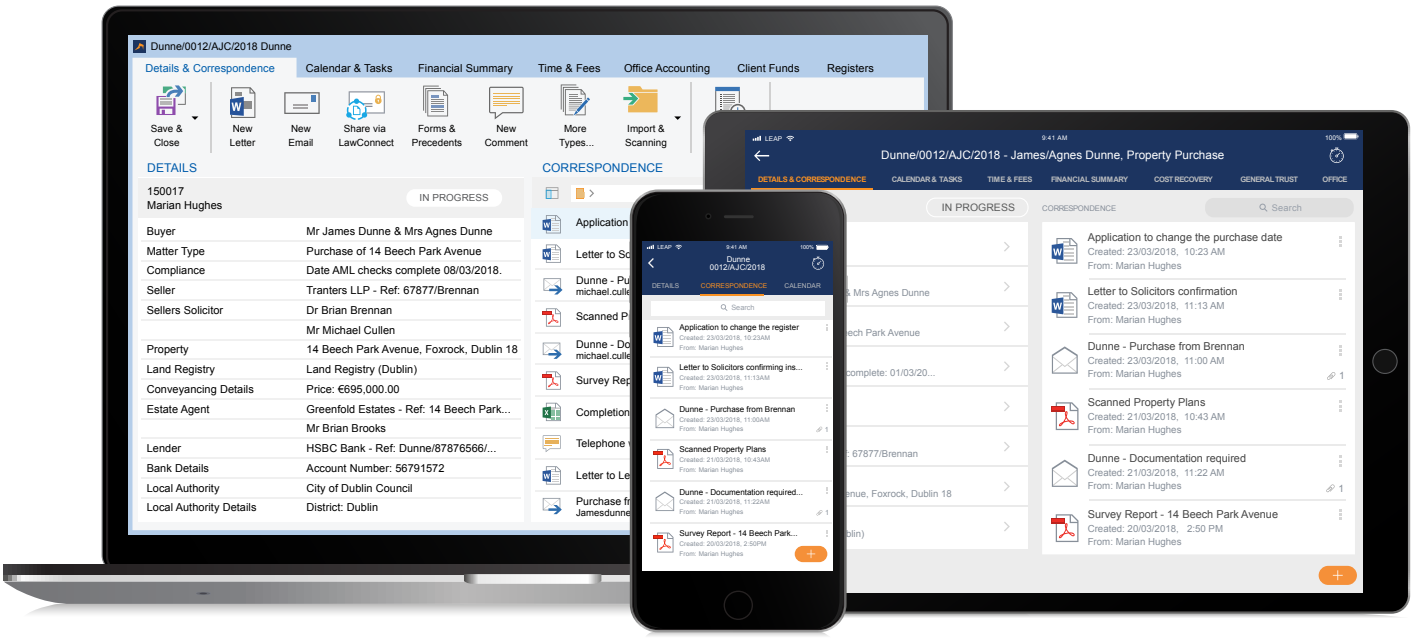

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