

# THE GREEN MILE

The onward march of climate litigation



#### QUALITY MARK

The Gazette speaks to the Law Society's new director general



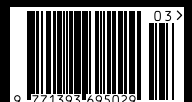
#### MIDNIGHT EXPRESS

Two lawyers have been held in Turkish jail for years without any findings of guilt



#### SALARY SWEEPSTAKES

Confidence is returning to the legal sector, but recovery is far from complete



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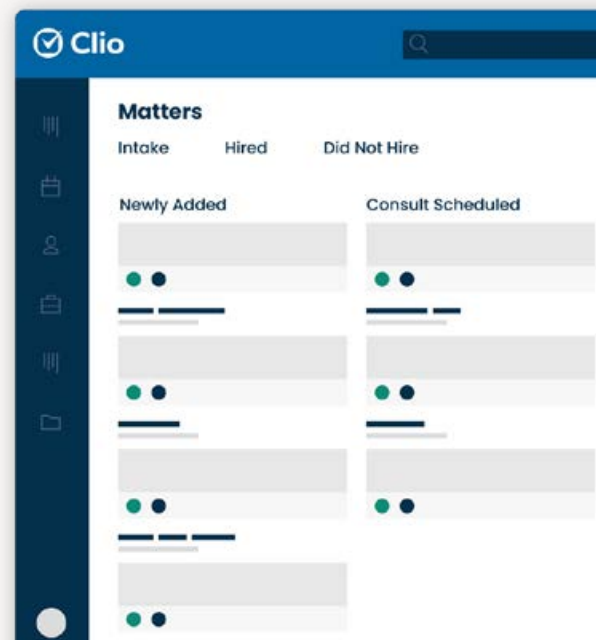


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# gazette

LAW SOCIETY

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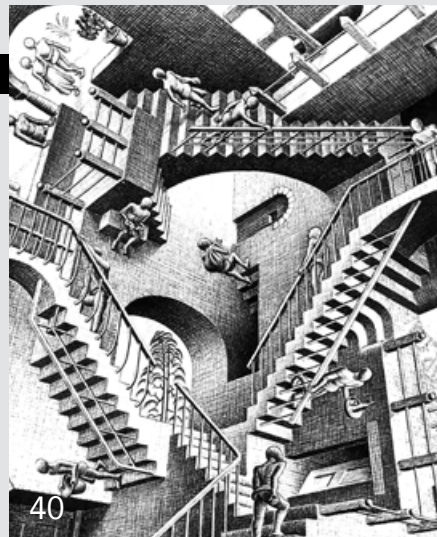
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# Hope springs eternal

I hope that this season of spring finds you well, and that you're navigating the changes we're all dealing with in the unravelling of restrictions while working through the continuing pandemic. In the spirit of the lifting of restrictions, the Society held two full in-person parchment ceremonies in the Presidents' Hall at Blackhall Place in February.

It is an indicator of the times we have been living in that most of those receiving their parchments had been qualified for two years or more. They have begun their careers as newly qualified solicitors in the strangest of times, and many have already moved on to other workplaces.

## Time to reflect

I had the pleasure of meeting with the conferees and their families at both events, and I wish to thank all of those who arranged and attended them. It has brought life to Blackhall Place and has allowed our recently qualified solicitors the opportunity to reflect on an interesting period in their lives. They have learned a lot, and have so much to look forward to in their future careers.

On both occasions, we were addressed by two judges of the High Court – Mr Justice Paul Coffey and Ms Justice Nuala Butler – on behalf of the President of the High Court. They highlighted the importance of good professional practice, compliance with regulatory obligations, and taking the time to learn from all those around us.

Many in the room listening to Ms Justice Butler realised that what she had to say about learning from others – and how they practise, even if it's different to how you yourself might do things – is of relevance to everyone, and not just those in the early stages of their careers.

## Psychological support

Wellbeing is a fundamental issue for solicitors, as it is also for many in wider society. As a result, we will soon launch the new Law Society Psychological Services, which unites


the member-focused Professional Wellbeing service with the trainee Counselling Service. Law Society Psychological Services will expand and coordinate the help we provide to both trainees and practising solicitors to ensure you are supported throughout your legal life cycle. We consider these supports to be critical for all solicitors, no matter what stage you're at in your careers. The Society will be in contact with you further as the service commences.

## Special general meeting


As this issue goes to press, we are due to hold a special general meeting of the Law Society on 3 March, which will be a hybrid event in order to encourage participation from as many of our members as possible. This meeting was convened in order to consider whether certain edits should be made to the Society's bye-laws, which would give effect to resolutions passed at the annual general meeting of the Society last November. Also under consideration is the introduction of electronic voting for Council elections, and the language around the Council's gender equality, diversity and inclusion principles.



THE LAW SOCIETY HAS DECIDED TO EXTEND ITS PSYCHOLOGICAL SERVICES TO SOLICITORS IN PRACTICE

My hope is that we will enjoy a strong turnout from among the profession, allowing our members to have their say in relation to these changes, which are intended to be positive and constructive. It is hoped that electronic voting, if accepted, will increase participation in the Society's elections, which should further enhance diversity and inclusion in the profession. 



  
MICHELLE NÍ LONGÁIN,  
PRESIDENT

# THE BIG PICTURE

## RUSSIAN ROULETTE

An unnamed Ukrainian woman was one of the first casualties of Russian airstrikes that damaged an apartment complex outside of Kharkiv, Ukraine, on 24 February 2022. Russian forces launched a major military assault on the country in the early hours, with reports of missile strikes and explosions near major cities. "These are among the darkest hours for Europe since World War 2," said EU foreign policy chief Josep Borrell. A major nuclear power attacking a neighbouring country, and threatening reprisals on any state that could come to its rescue, was "the greatest violation of international law" and "a violation of the basic principles of human co-existence". He stated that the EU would impose on Russia the harshest sanctions it had ever enacted





# First in-person parchment ceremony since 2020



ALL PICS: JASON CLARKE PHOTOGRAPHY

Paul Egan (Council member), Michelle Ní Longáin (Law Society president), and Mr Justice Paul Coffey (High Court) at the presentation of parchments on 10 February at Blackhall Place



Ross Mullen and Emma Aspil



Sinéad Gleeson, Laura Scanlan, Rebecca Martin, and Miriam Keane



Amy Martin, Sinead Gleeson, Laura Scanlan, Rebecca Martin, Hayley Jenkinson, Miriam Keane, Emma Kirkpatrick, Lily Cantillon, Kate McMahon, Robyn Daly, and Emma Guerin



Terence McCrann (partner, McCann FitzGerald), his daughters Maebh McCrann and Avril McCrann, and Mark Garrett (Law Society director general)



Amy Murphy, Sam Sheridan, Andrew Walsh, Kim McGrane, and Mataka Flynn (all Beauchamps)



Paul Murphy, Patrick McKee, and Sarah Noonan



Ken Murphy (former director general), Law Society President Michelle Ní Longáin, Gavin Murphy, and Yvonne Chapman

# Feisty fundraising fisticuffs fun



ALL PICS: CIAN REDMOND

Trainee solicitors formed their own 'fight club' recently to raise funds for the Children's Health Foundation, Crumlin. The first Blackhall trainee social event in two years raised just over €24k for the charity (see news story, p13)









## Blackhall duo triumph

● PPC1 trainees Enya Levy (Arthur Cox) and Kevin Barrett (McCann FitzGerald) have been named winners of the National Negotiation competition. The final took place at the Law Society on 15 February.

Teams from both the Law Society and Trinity College qualified for the final after coming through the online qualification rounds held on 5 February. The competition involves two law students representing a party/client. The duo then negotiates either an international transaction or the resolution of an international dispute, with an opposing team of two law students.

The Blackhall team will now progress to represent Ireland at the International Negotiation Competition this summer.



## Correction/clarification

● A notice published in the January/February Gazette (p67), headed 'In the matter of Thomas Ryan, a solicitor', stated that Thomas Ryan previously practised at 145 Navan Road, Dublin 7.

Thomas Ryan has never had any association with the office at 145 Navan Road, Dublin 7. Thomas Ryan's former practice address was 193 New Cabra Road, Dublin 7. The Society is happy to correct the record in this regard.

# Judiciary must accept 'burdensome restrictions'

● The country's judges adopted [guidelines](#) on judicial conduct and ethics at a meeting on 4 February. A statement from the Judicial Council said that the adoption of the guidelines had been proposed by its chair, Chief Justice Donal O'Donnell, and seconded by Ms Justice Aileen Donnelly (Court of Appeal).

The *Guidelines for the Judiciary on Conduct And Ethics* were drafted by the Judicial Conduct Committee, which is charged with promoting and maintaining high standards of conduct among judges. Their approval was required before the conduct committee could begin to oversee complaints and investigations relating to the conduct of judges, from June of this year.

### Core judicial values

The committee will use the principles when considering whether standards of judicial conduct have been adhered to.

"The guidelines are founded on the core judicial values of independence, impartiality, integrity, equality, propriety, competence and diligence," the council said. "They



underpin the standards and principles which judges in Ireland have today accepted to manage the ethical and conduct issues which they encounter, and to help the public understand the role of the judiciary and their professional standards."

The guidelines set out the circumstances in which judges should recuse themselves, while they also include guidance on personal relations with individual members of the legal profession.

### Personal restrictions

"As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as

burdensome by the ordinary citizen," the document says.

Judges are also advised to "maintain and enhance" the knowledge, skills and personal qualities necessary for the proper performance of their duties, and keep themselves informed about developments in international law.

They are also urged to be aware of diversity in society, and warned not to show "bias or prejudice towards any person or group on irrelevant grounds".

The council has also published the [draft procedures](#) by which members of the public will be able to make a complaint alleging judicial misconduct.

## Key info sessions on cyber-threats

● The Law Society's Small Practice Support Service is running a series of web-based information sessions in March:

- 9 March: cyber-security – [what insurers require legal firms to do](#) (Brian O'Mara, O'Leary Insurances),
- 16 March: [CIS controls](#)

(critical security controls) to secure your legal firm's future range security operations,

- 23 March: harnessing digital – [how it might apply to the legal sector](#) (John Durcan, Enterprise Ireland),
- 30 March: new ways of

working – [opportunities to work as a consultant](#) (Gibson and Associates).

The sessions run for an average of 30 minutes at 1pm each Wednesday. Recordings of earlier Small Practice Support Information sessions are available at [www.lawsociety.ie](http://www.lawsociety.ie).

# The first rule of fight night



PICT: CIAN REDMOND

● Blackhall trainees engaged in some hard-core fisticuffs on 10 February – all to raise money for the Children’s Health Foundation in Crumlin, Dublin.

There was a heady mixture of fear and excitement in The Pavilion at Leopardstown

Racecourse, as the 22 participants donned their boxing gloves to face-off against each other.

Participants took part in 11 different bouts, with a professional referee ensuring that all blows stayed legal.

There was a huge turnout

on the night for the first major trainees’ social event in two years, with the pugilists pounding out a phenomenal €24,000 for the Children’s Health Foundation. Donations are still welcome: [www.justgiving.com/team/blackhallcharityfightnight](http://www.justgiving.com/team/blackhallcharityfightnight).

## Survey on housing defects – have your say

● A working group set up to examine defects in housing has launched a series of online surveys for homeowners, landlords, and other parties involved in the sector.

The Working Group to Examine Defects in Housing was established by Minister Darragh O’Brien. It is acting on the recommendations contained in the report of the Joint Oireachtas Committee on Housing, *Safe as Houses*.

As part of its terms of reference, the working group has been asked to establish the

nature and scale of fire-safety, structural-safety, and water-related defects in purpose-built apartment buildings – including duplexes – built in Ireland between 1991 and 2013. It is also examining the difficulties associated with the discovery of such defects, and the costs and levies involved in fixing them.

The group is now seeking to hear about the experiences of:

- Homeowners (both current and former),
- Landlords (including private investors/owners, institutional/commercial,

approved housing bodies, and local authorities),

- Directors of owners’ management companies (OMCs), and
- Property-management agents.

There is a [separate online survey](#) for each group. The surveys are running for six weeks – from Monday 31 January to Monday 14 March (till 5pm). They are hosted on the ‘EU Survey’ platform, which is supported by the European Commission.

## Courts Service cuts social distancing

● The Courts Service has revised courtroom capacity numbers after making changes to its COVID-19 safety-management programme, which outlines public measures for courtrooms, courthouses, and buildings.

The recommendations for users of courts and court offices say that physical distancing will continue to be encouraged, but with guidance for one metre, rather than two: “One-metre distancing is also recommended as best practice in the following areas: offices, public areas, canteens, meeting rooms, public counters, and consultation rooms.”

Mask-wearing is to continue in all courthouses and Courts Service buildings. Screening is also being retained, while staff will continue to be assigned to managing the flow of people. Consultation rooms will be available only where ventilation is adequate, and all ventilation practices will stay in place for the foreseeable future.





## ENDANGERED LAWYERS

**VERONICA GUERRERO, MEXICO**



● On 3 February, environmental lawyer Veronica Guerrero (51) was shot dead as she got into her car in the centre of Tonalá, near Guadalajara, around 300 miles north-west of Mexico City. She had been receiving death threats for representing locals in their opposition to the illegal operation of the CAABSA company in the Matatlan rubbish dump. In January, she and organised residents of Urbi Quinta had publicly reported threats, intimidation, and aggression by alleged pickers and employees of CAABSA Eagle. She was offered no official protection.

There has been widespread condemnation of her murder. The Morena caucus in the Jalisco Congress and the local political party Hagemos deplored the murder, and demanded that the State Prosecutor's Office exhaustively investigate her activism as a possible reason for the crime. They also noted the need for protection plans and protocols in such cases.

Joining in the condemnation are 47 civil organisations and representatives of human-rights groups from 11 municipalities of Jalisco, who state that they themselves have been the victims of threats, intimidation, and physical aggression by the state, and have little faith in the State Prosecutor's Office.

"Throughout the struggle, we have received direct death threats to comrades – very, very strong threats that have caused us to take strong and significant measures, including isolation and confinement in secret places," said Carlos Iván Chávez of the Defend the Cerro de la Reina collective. "In the daily activities that we do in the streets, we have received intimidation, constant passages of armed vehicles by the municipal and state police."

They say that the murder of Guerrero is not an isolated case in the state, and demanded the intervention and protection of the federal government. "We want protection at the federal level, because what is happening is alarming, because there are already 20 activists and social fighters killed among journalists as well," said Abraham Gobel of the Atervac collective.

Activists were emphatic in pointing out that the state government is the main perpetrator of attacks against human-rights defenders. "We hold the state government and the municipal council of Guadalajara responsible for any aggression suffered by fellow activists and non-activists, comrades of civil society," said Arturo Mendoza (Únete Huentitán El Bajo collective).

*Alma Clissmann is a member of the Law Society's Human Rights Committee.*

## A little bird told me...



● Bird & Bird has announced that it will open its first Irish office in Dublin this summer. The firm described the Dublin move as "a natural next step", given that the city hosts the European headquarters or significant operations of some of the world's largest technology and life-sciences companies.

Bird & Bird said that its new office would initially focus on the areas of privacy and data protection, technology, life sciences, intellectual property, and corporate law. The firm says that "leading Irish specialists" in these areas would be joining the firm in the summer to establish a strong practice from the outset.

CEO David Kerr (*pictured*) said: "Opening an office in

Dublin – a vibrant market which is playing an increasingly significant international role across many industries – is a natural next step for us."

Bird & Bird partners Roger Bickerstaff (technology and communications) and Sally Shorthose (life sciences and healthcare) will initially head the Dublin operation. Two other partners – Stuart Cairns (co-head of its international projects-and-procurement group) and Francine Cunningham (director of its regulatory and public-affairs practice in Brussels) – will also spend significant periods of time in the new Dublin office.

The firm has more than 1,400 lawyers in 30 offices across the world.

## Calcutta Run sets €5M target

● The Calcutta Run is back with a bang – returning to Blackhall Place on 28 May. This year gives participants the opportunity to reunite, face to face, with colleagues and friends along the Blackhall to Phoenix Park route.

The Finish Line Festival will host the famous barbecue, bar, music, ice cream, and children's events.

Following two successful 'virtual' years (which raised €500,000), this year's target is to pass the fundraising milestone of €5 million over the event's 23 years. Registration will open at the end of March on [www.calcuttarun.com](http://www.calcuttarun.com).

Virtual participants can also get involved later in the year. Details will be announced in due course.

# Scott Scholarship a ‘delightful beginning’

● Trainee solicitor Fionntán O’Flynn is the happy recipient of the Scott Scholarship, which provides a funding avenue for future practitioners.

The scholarship fund was set up by Ian Scott and named in memory of his late father, Frank, who was a distinguished partner with Arthur Cox in Dublin. Ian is a former managing partner at Arthur Cox, having followed in his father’s footsteps. Scott senior was one of a quartet of partners who managed the firm after founder Arthur Cox was ordained a priest and left to serve on the missions in Zambia.

Fionntán is currently training with Brendan Kelly, Solicitors, a general practice with offices in Falcarragh and Milford in Donegal. O’Flynn says that the award is a “delightful beginning” to his professional legal career.

The scholarship provides a full-fees sponsorship to the successful candidate, whether to complete a master’s or to attend the Law Society’s Professional Practice Course. Students who have completed FE1s and wish to start the PPC may apply for the scholarship through the Law Society’s [Access Programme](#).



“Being awarded the Scott Scholarship is a great personal accolade,” Fionntán told the *Gazette*. “It allows me to focus directly on my professional progress and qualification by removing the financial burden, which can be a barrier to entry within the profession. Also, the award allows me to remain in Donegal and work in the communities there.”

Fionntán graduated with an LLB from Letterkenny Institute of Technology. He is now enrolled in the PPC Hybrid course, which he describes as “a great initiative”, as it allows trainees to remain in their local office while completing their professional qualification, largely online.

## Judicial appointments

● Mr Justice Brian Murray (formerly of the Court of Appeal) made his declaration as a judge of the Supreme Court on 23 February.

In addition, Kerida Naidoo SC

made his declaration as a judge of the High Court on 24 February.

Judge Kevin Kilrane retired from the District Court on 1 March. Judge Kilrane’s last day of service was 28 February.

## IRISH RULE OF LAW INTERNATIONAL ROHINGYA LOOK TO IRELAND



● To coincide with Genocide Prevention Day on 9 December last, 16 Rohingya refugees in Cox’s Bazar refugee camp in Bangladesh notified a complaint to the Irish national contact point (NCP) for the Organisation for Economic Cooperation and Development (OECD) against Meta/Facebook for the role the social-media giant played in the 2017 ‘clearance operations’ that resulted in the deportation of over 750,000 Rohingya from Myanmar into neighbouring Bangladesh. The complaint was notified before the Irish NCP due to the role of Facebook’s Irish subsidiary – its international headquarters – in implementing key aspects of Facebook’s global policy as it pertains to Myanmar.

The grievance mechanism of the OECD provides an opportunity for communities negatively affected by a company’s business activities to seek redress where it may otherwise not be available to them. Take, for instance, a settlement reached between ANZ Bank and Cambodian families following an Australian-NCP process, which resulted in a financial package to those families who were forcibly displaced by a sugar company to which the Australian bank had loaned money.

In the Facebook case, the complainants allege, among other things, that the company’s failure to conduct due diligence upon entering the telecommunications market in Myanmar, in addition to its actions and omissions, contributed to the human-rights violations they suffered in 2017, and as such they are owed a remedy. The complaint is the culmination of efforts of the communities to directly engage with Facebook over the provision of remediation in the form of education facilities.

Ireland, as a signatory government, is required to ensure that the OECD *Guidelines on Responsible Business Conduct* are implemented and observed. The NCP is a grievance mechanism that enables individuals to seek remediation for adverse human-rights impacts that result from irresponsible business conduct. The Irish NCP, which is located in the Trade Division of the Department of Enterprise, Trade and Employment, is relatively unknown and underutilised. The department’s website lists five complaints since 2008, out of which only two have been completed.

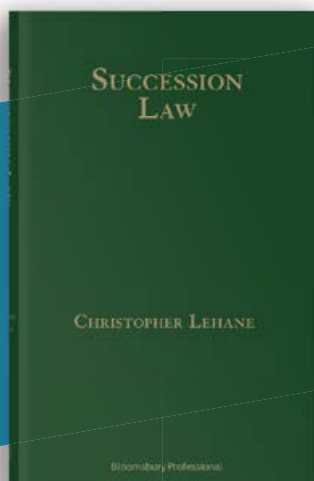
For more details, see [www.oecdwatch.org/complaint/rohingya-refugees-vs-facebook](http://www.oecdwatch.org/complaint/rohingya-refugees-vs-facebook).

*James Douglas is director of programmes at Irish Rule of Law International.*



## Succession Law

By Christopher Lehane



This new book provides peerless analysis of succession law with extensive cross-referencing to related issues such as tax, conveyancing, family law, enduring powers of attorney, limitation of actions, estate accounts, private international law and trusts.

It provides the reader with in-depth coverage of key Irish judgments, statutes, court rule provisions and Court and Probate Officer practice directions. This highly practical book includes a chapter on will drafting and estate planning and provides 10 precedent templates covering most testator requirements. Author Christopher Lehane is a practising barrister. He recently retired as an officer of the High Court where he served for 42 years, 22 years of which were spent in the Probate Office and 12 years as Official Assignee in Bankruptcy. He served as Deputy Probate Officer of Ireland for eight years and Assistant Probate Officer of Ireland for five years, administering probate law in Ireland.

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# The advent of e-apostilles



PICT: SHUTTERSTOCK

● Delegates to the *Apostille Convention* met online from 5-8 October 2021, reports *Ross McMabon* (solicitor and registrar of the *Faculty of Notaries Public in Ireland*).

The 1961 *Convention Abolishing the Requirement of Legalisation for Foreign Public Documents* has as its objective to simplify the process of authentication of public documents for use in other contracting states.

The issuing state defines in domestic law what documents are deemed to be ‘public documents’. Practitioners will be familiar with the kind of documents they are often asked to assist with, and this often involves the assistance of a notary public who, in providing a necessary notarial certificate (of due execution), may enable what would otherwise be a private document in international law to have the benefit of the apostille in relation to that certificate and facilitate its international movement.

It is important to note that an apostille certificate only extends to verify the identity and capacity of the executing party (such as the signature of the Registrar of Companies acting in that capacity). As part of the ongoing evolution of the *Apostille Convention* into digital times, this has seen the introduction of digital apostille registers by competent authorities. Our own Department of Foreign Affairs has implemented this, and it is possible for recipients of Irish apostilles to verify their authenticity on the register.

The second element of the development relates to the implementation of a ‘e-apostille’. With the implementation of public documents that are purely in digital format, certain contracting states have introduced a corresponding purely digital apostille that is digitally affixed to the underlying document. More than 23 states have implemented both of these elements of the e-apostille.

## Multimedia packs for family court users

● The Courts Service has launched multimedia pre-court information videos for family-court users. The information will help those using the courts to better prepare for their visit and will provide a clearer understanding of what they can expect.

The initiative is aimed at alleviating what court users have described as “stressful and confusing” first-time visits to court.

The animated videos can be seen

at [courts.ie](http://courts.ie) and on the Courts Service YouTube channel: ‘How to prepare for your family law hearing’ and ‘Attending family law court’.

The Courts Service Family Law Reform Team plans to release further content during the year to ensure that service users have access to plain-language information that will make their court interactions easier. Feedback is welcome at [familylawreform@courts.ie](mailto:familylawreform@courts.ie).

# Regulation and competition in GDPR tug-of-war

● A tug-of-war between regulatory action on privacy and competition rules is playing out in the implementation of the GDPR, data protection commissioner Helen Dixon, has said.

In its [annual report](#), the Data Protection Commission points out that a new suite of interlocking laws (including the *NIS2 Directive*, *Digital Markets Act*, *Digital Services Act*, *E-Privacy Regulation*, *Artificial Intelligence Act*, and *Data Sharing and Governance Act 2019*) demonstrate that the GDPR was never going to resolve all data issues in one single instrument.

Different views have emerged on how EU and cross-regulatory levels should be coordinated, and under which structures. The report says that debate rages as to whether targeted advertising could or should be banned, anonymity should be preserved in the online sphere, and derogations should be allowed in cases of child sexual-abuse material.

The commission has been asked for a growing level of guidance and direction about how to comply with GDPR, and



**Helen Dixon (data protection commissioner)**

how to demonstrate accountability. In response, it intends to publish additional guidance, including more regular case studies of issues it has decided, as well as supporting the work of data protection officers in their on-the-ground roles within organisations.

## Law Society seeks three new directors

● The Law Society has invited applications for three strategic roles at director level, namely:

- Director of Finance and Operations,
- Director of Regulation and Registrar of Solicitors, and
- Director of Policy.

The Society says: “It marks a new era of senior leadership for the organisation. Building on the wealth of knowledge and experience of the current directors, who will retire from the Society this year, these appointments will be made at a uniquely exciting time of change, challenge and opportunity in the Society’s history.”

The new directors will report directly to the director general, and will:

- Play a critical role in the development

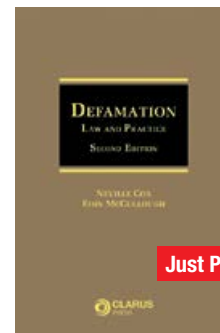
and delivery of the Law Society’s strategic objectives,

- Contribute to the future development of the legal profession in Ireland as it responds to professional, societal and regulatory changes, and
- Support the delivery of the Law Society’s vision to be “the trusted voice of a respected solicitors’ profession”.

Candidates for these positions are expected to have strong communication, people and leadership skills. “They will also have the strategic and relationship-management expertise required to manage a dynamic and complex environment, involving a range of internal and external stakeholders.”

Further details can be viewed on the [inside back cover](#) of this *Gazette*.

### SPECIALIST LEGAL TITLES FROM CLARUS PRESS



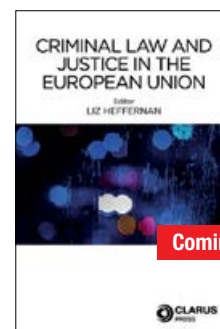
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Our 'Ask an expert' section deals with the wellbeing issues that matter to you



## Sexual harassment and due process

**Q** I am the principal of a small firm in rural Ireland.

Recently, we had a situation where a staff member made sexual harassment allegations about another staff member. We managed to address the situation at the time, but the whole thing stressed me out. I felt completely out of my depth. I wonder could you help by explaining what the clear steps are when dealing with such an issue?

**A** We have assumed for the purposes of this response that the matter came to you in the form of a complaint and, while we look at the process as a whole, each step is worthy of its own step-by-step guide.

Sexual harassment in the course of employment is a form of misconduct, and employers inform employees how this will be addressed by the introduction of a dignity-at-work policy, which should act as the rule book relied upon by the employer and employees alike.

The absence of the requisite policies creates difficulties and fails to manage expectations. The following process is based on how employers generally respond to complaints, but each response should be based on that employer's policy.

1) When a complaint is received, consider what supports may be offered, such as employee-assistance arrangements.

2) Offer mediation: some mediators argue that sexual harassment does not lend itself to mediation at all. We believe that an expert mediator can address sexual-harassment disputes, but recognise that, where serious allegations are made, a formal approach may be required.

3) Where mediation is not appropriate or fails to resolve the dispute, appoint an investigator. This should be a person who is trained to conduct such investigations, as they can become complex and fraught with difficulty. Ensure that terms of reference are in place.

4) If your policy provides for it, and an appeal is lodged against the investigation outcome, appoint a person to hear the appeal. This person should also be trained in conducting such processes, for the same reasons.

5) If the allegations are upheld, appoint a trained person to conduct the disciplinary process. If the allegations are not upheld after investigation/appeal, offer available supports, including mediation, in an effort to repair relationships to ensure professional interactions. Some employers provide for an appeal of the disciplinary process also.


6) If a sanction (which must be proportionate) is applied and accepted by the employee, the matter is at an end. If no sanction is applied after the disciplinary process/appeal,



the matter is at an end. Again, consider whether supports can be offered.

- 7) If an applied sanction is not accepted, an employee may refer the matter to the WRC for consideration under various pieces of legislation, including industrial relations/unfair dismissals/equality legislation.
- 8) In 2020, a new code of practice on bullying was launched, with considerable changes to the process. Many employers have adapted their dignity-at-work policies to apply those changes to all dignity-at-work processes, including sexual harassment, in order to obviate the need for multiple

processes. This will require the appointment of 'contact persons' and 'designated persons', depending on the size of your organisation.

- 9) The principle of *nemo iudex in causa sua* (no one should act as their own judge) requires that all process steps are undertaken by a different person, although third-party forums have allowed limited leeway in very small workplaces. While some argue that fair procedures are not applicable to early parts of this process, it is easier to defend a process where the principles of fair procedures have been adhered to throughout. 

*To submit an issue that you'd like to see addressed in this column, email [professionalwellbeing@lawsociety.ie](mailto:professionalwellbeing@lawsociety.ie). Confidentiality is guaranteed.*

*The question and response in this column are hypothetical and were written by Bernadette Treanor and Olivia Harrington of Beo Consultancy Ltd, an employee-relations consultancy specialising in investigations,*

*mediations, appeals, hearings, etc. Any response or advice provided is not intended to replace or substitute for any professional psychological, financial, medical, legal, or other professional advice.*

*LegalMind is an independent and confidential mental-health support available to Law Society members and their dependants, 24 hours a day, and can be contacted at 1800 814177.*

# Ignorance of case law almost cost us dearly

From: Kurt Rollin, retired lecturer in German, Via Principe Amedeo, Rome

**O**n university campuses across Italy, Henry Rodgers's article has been very well received by colleagues and veterans of the long battle against the discrimination he describes ('Lettori of the law', Jan/Feb 2022 *Gazette*, p52).

In the textbooks of EU law prescribed in Italian universities, the *Lettori* CJEU case law is routinely covered in the freedom-of-movement chapters. This results in a situation whereby students of the faculty of jurisprudence are taught that Italy's treatment of *lettori* is discriminatory while simultaneously, in the adjacent faculty of letters, the discrimination continues to be practised.

As well as patience and tenacity, the non-national university teaching staff, mostly with backgrounds in literature and philosophy, have had to acquire an understanding of



EU law. While a happy ending to our campaign now seems increasingly likely, it is salutary for us to recall that ignorance of the implications of our case law for the commission's infringement proceedings against Italy almost cost us very dearly.

Indeed, just before the CJEU hearing in January 2001, some colleagues petitioned the high-profile Neil Kinnock, then

vice-president of the European Commission and previously leader of the British Labour Party, to drop the infringement case, which, in tandem with the follow-on Grand Chamber enforcement ruling in Case C-119/04, awards us the settlements for reconstruction of career we now welcome. Very fortunately, for our interests, the commission ignored the petition. However, the episode

served as a wake-up call, and we teachers became students of EU law thereafter.

The interest of the *Gazette* in the *lettori* case is consistent with the interest that the Irish media has shown in the case all along. For this, and for the support of the Irish deputies in the European Parliament, colleagues from other member states of the EU are most grateful.

# A rose by any other name

From: members of CIOFORA and the CIOFORA Crop Section IRBA/Cut Rose: David Austin Roses, Danziger 'DAN' Flower Farm, DeRuiter Innovations BV, Dümmen Orange The Netherlands, EG Hill Co Inc, Interplant Roses BV, W Kordes' Söhne Rosenschulen GmbH & Co KG, Meilland International, NIRP International SA, Plantas Continental SA, Rosen Tantau KG, Schreurs Holland BV, United Selections BV

**T**he signatories of this open letter are the leading companies in breeding cut roses, organised in CIOFORA and IRBA, its 'cut-rose crop' section.

More and more, rose breeders face situations where protected rose varieties are propagated without their prior authorisation. Today, we would like to remind all propagators and/or cut-rose growers that plant breeders' rights provide to breeders/titleholders the exclusive right to propagate and sell their varieties.


The propagation or reproduction of a protected variety shall be made only upon prior written authorisation of the titleholder of said variety, to avoid the possible illegal status of the propagated plant material.

The use and sales of plants,

as well as cut flowers or any other part of the plant from an unauthorised source, constitute a violation of the plant breeder's rights in the country where they are produced, and also in the consuming country where cut roses are sold.

Everybody who propagates the said protected varieties without prior authorisation infringes plant breeder's rights. The so propagated plants and planted material are illegal, and can be uprooted. Also, cut flowers harvested from the so propagated plants are illegal, and can be stopped by customs at the borders of any territory or can be seized at points of sale,

trade, or storage, where plant breeders' rights and trademarks are in force.

Consequently, CIOFORA and its cut-rose crop section, IRBA, invite the persons and/or companies interested in the propagation of a protected variety to first always contact the breeder of the concerned variety in the view of seeking prior written approval and a corresponding licence. If you are a grower, you can either source the rose plants from an authorised propagator or, if you wish to propagate the concerned varieties yourself at your own premises, ask for prior written authorisation. 

**AN**  
**inconvenient**  
**TRUTH**





*Climate litigation is offering citizens and activist groups a real opportunity to hold governments to account on climate-action obligations. Rose Wall and Gabhan O'Tighearnaigh investigate how the same pressure could be applied to Ireland*



## Under the *Climate Action and Low Carbon Development (Amendment) Act 2021*, Ireland is on a legally binding path to net zero emissions

no later than 2050, and a 51% reduction in emissions (compared with 2018 levels) by the end of this decade. However, Ireland has consistently underachieved on climate action, and ranks among the worst performing countries in Europe. This under-performance has been increasingly called out by environmental NGOs, as well as grassroots and youth-led movements.

Around the world, the number of ‘strategic’ climate litigation cases is dramatically on the rise. A recent paper by Alex White SC concluded that the majority of climate cases taken against governments in Europe have led to outcomes resulting in greater climate regulation. The most obvious Irish example is the Supreme Court’s landmark judgment in *Friends of the Irish Environment v Government of Ireland*, which quashed the 2017 National Mitigation Plan.

This case shows that climate litigation represents a real opportunity for citizens and activist groups to lead public scrutiny of governments and ensure accountability on climate action matters.

### Hard rain

Two possible avenues to climate litigation are (a) that Government is not meeting obligations set out in national law, or (b) that such obligations are inadequate.

In relation to the first avenue, the Supreme Court found in *Friends of the Irish Environment* that the Government’s 2017 National Mitigation Plan (developed pursuant to section 4 of the *Climate Action and Low-Carbon Development Act 2015*) was *ultra vires* that legislation because it lacked “specificity”. The judgment was clear that mitigation measures must be “realistic”, “effective”, “appropriate”, and readily available within the short-term.

The judgment illustrates the court’s willingness to intervene in circumstances where the State falls short of its statutory obligations to reduce emissions within the short-term and in the medium to long-term. The Supreme Court’s judgment further confirmed that it is indeed the role of courts to inquire into climate policy and assess its adequacy, and that it is not just the prerogative of the Dáil.

Other courts around Europe have made similar rulings. In the 2021 case *Commune de Grande-Synthe v France*, the municipality of Grande-Synthe sued the French government for insufficient action on climate change. The Conseil d’Etat, the highest administrative court in France, held that the emission decreases from 2018-2020 were not enough to meet the objectives set out in the Low Carbon National Strategy, which contains the government’s five-year reduction targets and has force of law. Hence, the court ordered the French government to take “all necessary measures” by 31 March 2022 to ensure France’s compliance with its own emissions-reduction targets.

### The day the earth stood still

The second avenue for climate litigation is to argue that the State’s legal obligations are insufficient for the goal of reducing emissions. In the Netherlands, an environmental group (the Urgenda Foundation), together with 900 citizens of The Netherlands, sued the Dutch government to require it to do more to prevent global climate change. The country’s supreme court ordered The Netherlands to limit emissions to 25% below 1990 levels by





PIG ALAMY

2020, finding the government’s existing pledge to reduce emissions by 17% insufficient to meet UN global targets. The court also accepted that some of the obligations owed were grounded in human rights – a growing feature of litigation globally.

In the recent *Neubauer* case before the German Federal Constitutional Court, the federal government was ordered to reconsider emissions’ reduction targets for the period after 2030. The previous climate legislation had not addressed targets beyond the current decade, and this was viewed by the court as a rights violation of the youth plaintiffs, as it offloaded emissions reduction onto future generations. This landmark judgment is indicative of an ever-expanding body of litigation, globally, that seeks to challenge governments when existing laws are deemed inadequate to address climate change.

**The wave**

In Ireland, it will be interesting to see if the *Climate Action and Low Carbon Development (Amendment) Act 2021* creates an opportunity for increased scrutiny of State bodies – and whether they are implementing agreed climate policy. Section 17 of the act amends section 15 of the principal act, and requires relevant bodies (which includes public and prescribed bodies as defined by the

*Freedom of Information Act*) to, “insofar as practicable” perform their functions in a manner consistent with:

- The most recent approved climate action plan,
- National long-term climate strategy,
- National adaptation framework,
- The furtherance of the national climate objective, and
- The objective of mitigating greenhouse-gas emissions and adapting to the effects of climate change.

However, the introduction of section 2A into the amended legislation is clearly an attempt to limit the legal remedies available for damage caused by breaches of the act. This provision states: “For the avoidance of doubt, no remedy or relief by way of damages or compensation is available with respect to or arising out of any failure, of whatever kind, to

THE MOST OBVIOUS IRISH EXAMPLE IS THE SUPREME COURT’S LANDMARK JUDGMENT IN *FRIENDS OF THE IRISH ENVIRONMENT V GOVERNMENT OF IRELAND*, WHICH QUASHED THE 2017 NATIONAL MITIGATION PLAN

comply with any provision of this act or any obligation or duty created thereunder.”

This provision is not only wholly contrary to the principles of climate justice, but it is also potentially unlawful. Section 3 of the *European Convention on Human Rights Act 2003* provides for damages to be recoverable for infringements of human rights. By excluding this possibility, Ireland is failing to provide an effective remedy under article 13 of the ECHR and article 9(4) of the *Aarhus Convention*.

### Deep impact

There are several other avenues to litigation for those looking to challenge decisions with environmental impacts. Planning appeals are an increasingly prevalent form of environmental litigation, with challenges being submitted against developments likely to generate significant greenhouse-gas emissions or adversely affect the local environment through pollution or habitat destruction.

In Ireland, the availability of judicial review in planning and other environmental matters ensures procedural fairness for applicants looking to hold decision-makers to account. As part of the implementation of the *Aarhus Convention* in Ireland, section 50B of the *Planning and Development Act 2000* (PDA) and the *Environment (Miscellaneous Provisions) Act 2011* (EMPA) set out special costs rules, which seek to minimise costs associated with qualifying environmental cases.

An example of a successful challenge was a recent case brought by Friends of the Irish Environment relating to State regulations that allowed industrial extraction from peat bogs without planning permission.

**E**xtraction was, instead, to be licenced by the Environmental Protection Agency, with the lengthy transitional period before the licensing regime commenced meaning that peat extraction could continue during that time without either planning permission or licence. It was held that these ministerial regulations should be set aside, as they were inconsistent with EU directives on environmental impact assessment and the *Habitats Directive*.

Similar challenges could be taken against developments with potential adverse impacts on the local environment, and for national climate goals.

### Twister

Other types of environmental cases taken elsewhere have included actions relating to breaches of EU directives on air pollution. In early 2021, a Brussels court ruled that the Brussels regional government breached EU law by failing to correctly monitor and protect the health of its citizens against harmful levels of air pollution. In another case before the CJEU, the environmental group Client Earth successfully brought a case against Britain’s Secretary of State for the Environment on the grounds that 16 zones across Britain had failed to meet the limit





## IRELAND HAS CONSISTENTLY UNDERACHIEVED ON CLIMATE ACTION AND RANKS AMONG THE WORST PERFORMING COUNTRIES IN EUROPE

values laid down in the EU ambient air-quality directive.

Unfortunately, there are many barriers to accessing the courts in environmental matters. Actions that do not fall within the special costs rules in the *PDA 2000* and *EMPA 2011* carry significant financial risk. Although article 9 of the *Aarhus Convention* states that judicial proceedings in environmental disputes should not be “prohibitively expensive”, this term was not defined in the convention, nor does it require the provision of legal aid.


In Ireland, legal aid is, in reality, not available in environmental matters and, in any event, only available to natural rather than legal persons (environmental NGOs). A decision to this effect is currently under appeal.

### Shockwave

There is a serious threat to access to justice in environmental matters in the form of the *Housing and Planning and Development Bill 2019*, currently undergoing pre-legislative scrutiny. If enacted, its provisions (which introduce significant changes to current costs and standing rules) will pose a serious threat to environmental democracy and citizens’ access to justice rights, and will significantly restrict Irish environmental NGOs and lay litigants from challenging planning decisions in the courts.

This is in contrast to a recent report produced by Cliona Kimber SC and other members of the Climate Bar Association in relation to the need for a specialised environmental court. While the Programme for Government commits to the establishment of such a court, along the lines of the Commercial Court, the report of the Climate Bar Association draws on the approach of the Land and Environment Court in New South Wales and proposes a specialised court that would be “more than a fast-track planning court accessible only to the well-resourced” and would provide for broad access to justice, to include broad rules of standing and a limitation on costs.

Litigation is an important tool in holding the Government and other bodies accountable to their legal obligations and ensuring that the Dáil-declared “climate and biodiversity emergency” is treated with the urgency

it requires – particularly in the context of successive failures of Government. It is therefore critical that access to justice is strengthened rather than restricted. 

*Rose Wall is the CEO of Community Law and Mediation, which launched the Centre for Environmental Justice in 2021, and a member of the Law Society’s Human Rights and Equality Committee. Gabhan O’Tighearnaigh is a TCD law graduate undertaking a six-month internship with CLM.*

## LOOK IT UP

### CASES:

- *Commune de Grande-Synthe v France* (Conseil D’Etat; no 427301, 1 July 2021)
- *Friends of the Irish Environment v The Government of Ireland & Ors* [2020] IESC 49
- *Neubauer, et al v Germany* Federal Constitutional Court; 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, 1 BvR 288/20; 24 March 2021)

### LEGISLATION:

- *Aarhus Convention 1998* (Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters)
- *Climate Action and Low Carbon Development (Amendment) Act 2021*
- *Environment (Miscellaneous Provisions) Act 2011*
- *European Convention on Human Rights Act 2003*
- *Freedom of Information Act 2014*
- *Habitats Directive* (92/43/EEC)
- *Housing and Planning and Development Bill 2019*
- *Planning and Development Act 2000*

### LITERATURE:

- Community and Law Mediation, *Submission on the General Scheme of the Housing and Planning and Development Bill 2019*
- Setzer, Joana, and Catherine Higham (2021) *Global Trends in Climate Change Litigation: 2021 Snapshot*
- White, Alex, and Luke O’Callaghan-White (2021), *Taking Governments to Court: Climate Litigation and its Consequences*

# BRIGHT SPARK

# M

**ark Garrett** is a man of surprises. A passionate Mayo football fan, he reveals that he's been to every Mayo football final since 1989 – apart from the 2020 battle against Dublin, which was played behind closed doors due to the pandemic. Even for that one, he meandered down to Jones' Road an hour before throw-in to cheer on his side. After 11 All-Ireland finals in total – or 13 if you include the replays of 1996 and 2016 – that's not pain, it's torture!

The fact that Mayo boasts the longest unbroken sequence of losing finals in the history of the game, there's something about their indomitable spirit that inspires the human heart. "If you want to know what drives resilience, all you have to be is a Mayo fan," says Mark, wryly.

## Future path

Did he have any idea what career path he would take when walking out of school on his last day?

"I'll step back a little and say I left school when I was 16 to become an apprentice electrician. I'm a qualified 'sparks'. But I realised at some stage that that wasn't going

to be my long-term career, so I went back to school and did my Leaving Cert in 1991. Things became clearer after that.

"I went to UCD with a view that I wanted to be a journalist. I started writing with some of the college newspapers but, in covering events, I must admit that I felt more comfortable doing, rather than writing about them. So I ended up getting stuck into things like the Students' Union and other activities. That's where college life took me."

He immersed himself in his degree. "I had amazing lecturers. I think of people like Prof Richard Sinnott, who recently passed and was an amazing politics lecturer; Prof Brigid Laffan, Dr Margaret MacCurtain OP – an absolutely amazing history lecturer – and Prof Albert Lovett, who was another. They introduced a very broad brushstroke of opinions and thought. Brian Farrell would have been another highly prominent politics lecturer. It was an exciting time to be in UCD. There was a huge mix of personalities there at that time, many of whom have found their way into public life, the law, politics, media, and various other spheres."

## Launching pad

His first job after college was with Bill O'Herlihy Communications in Dublin, in its public-affairs division. He went on to complete a master's in communications in DIT, with a view to pursuing a career in public policy, communications, and government relations. "That was the launching pad for my career over the last 20 years or so. I went on to work for a number of private-sector and public-sector organisations."

O'Herlihy's introduced him to a variety of Irish-based businesses and organisations,

**THE LAW SOCIETY'S DIRECTOR GENERAL  
MARK GARRETT TALKS TO MARK McDERMOTT  
ABOUT HIS FASCINATING CAREER PATH, HIS NEW  
ROLE – AND THE PASSION AND PAIN OF BEING A  
MAYO FOOTBALL SUPPORTER**



ALL PICS: CIAN REDMOND

multinationals, and Government departments. After three years there, he moved to the Competition Authority, acting as their head of communications for four years: “That included a range of competition studies into the banking, legal, insurance sectors, and others. It was probably my first significant interaction with the legal profession and the Law Society.”

During his time with the authority, he completed a postgraduate diploma in EU competition law at King’s College, London, sitting the exams at Blackhall Place in 2006.

Then life took a major turn.

### The Big Apple

“My wife and I both felt we would benefit from living abroad for a number of years, so we looked at a number of options. New York was top of our list.” They were two years

into savouring the delights of the Big Apple when Mark (then working for McKinsey) received a phone call from Labour Party leader Eamon Gilmore, offering him the role of chief of staff: “That was probably one of the toughest decisions we’ve ever had to make. Eventually we decided that it was an opportunity not to be missed.”

Becoming chief of staff to a future Tánaiste must have involved a huge learning curve?

“Most of my time was about managing the fallout from the financial crisis – and everything that went with that. Probably the best lesson learned during that period was that you might take a role for a particular reason, but the circumstances could rapidly change. No one, I would suggest, would have entered politics or political life to manage that sort of crisis – and having to make extremely difficult choices. In fact, there were no

IF YOU WANT TO KNOW WHAT DRIVES RESILIENCE, ALL YOU HAVE TO BE IS A MAYO FAN

good choices – there were just choices between sets of bad options. From a national perspective, it was a very difficult time for so many people, and a real challenge for individuals, families, and society as a whole. And while we’ve come through the other side, there’s still an amount of fallout.”

### Shaping the future

So why take on the role of director general of the Law Society?



**I THINK EVERYBODY REALISES THAT WE'RE LIVING THROUGH RAPIDLY CHANGING TIMES, SO THE QUESTION IS: HOW DO WE BUILD ON THE SUCCESSES OF THE SOCIETY AND THE PROFESSION, SO THAT WE CAN BE AS EQUALLY SUCCESSFUL IN THE FUTURE AS WE HAVE BEEN IN THE PAST?**

“First of all, the Society and profession play such a significant role in Irish society. The law and the profession are integral to the sound running of the Irish economy and society. Ireland has been extremely lucky over the years to have a well-regarded and positive reputation in terms of the rule of law. We’ve been able to build on that foundation to help modernise and ensure that Ireland, the economy, and the legal profession have benefitted – and will continue to benefit over the next decade.

“My vision for the profession is one that not just reflects that dynamism, confidence, and ambition, but also that helps to shape it. I don’t doubt the challenges, but the reality here is that it’s such a positive opportunity

to lead this organisation. If I were to summarise my career to date, in broad terms, it’s been about helping organisations navigate the world in which they operate. So much is changing now, and the idea that governments and regulation are shaping the profession, shaping society, shaping the economy – we have to be ready to face that.

That’s the big challenge and something that’s very exciting to me.

**“T**he skillsets I bring to this role include having an external lens to policy, Government, media, the general public, business, and organisational structure. Of course, there’s no shortage of legal advice within the Law Society or the profession, so what I bring to the table, ultimately,

is a broader range of skills and a long history of interaction with the legal profession throughout my career.”

### Substantial changes

“One of the things I’ll be prioritising will be to take a strategic look at what the Society is currently doing, and then looking forward at the medium to long-term, so that we can ensure that we put our resources to the best use for our members and the profession.

**“**In the next ten years, there will be substantial changes to the way in which we all live our lives and do our work. Much of that change is going to be mandated and regulated by changes in the law. That said, despite the challenges, there will also be opportunities. We can see all around us that businesses, consumers, and employees want to operate in a society and economy with world-class governance, reputation, and legal systems – and those will be among the competitive advantages for Irish society in the future. The real opportunities lie in continuing to promote and advocate for the highest standards in these areas.

“At its best, the law and the legal profession are very much about promoting the public interest. And what’s in the public interest is also in the interest of the legal profession. This will benefit practices, both large and small, right across the country.”

### Strategic priorities

“My priority is to put in place a proactive strategy that will help members mitigate the challenges and take advantage of the opportunities that those changes are going to bring.

“The Society’s current strategy ends in 2023, so 2022 is a great time to reflect and look forward. The key aspect will be to engage with the Council, our members, staff, the broader stakeholders to really understand what we should be doing over the next five to ten years. We’re in an era of ‘Big Government’, where it is expected that the Government will intervene in more areas of our society and economy.


There are big questions hanging over the regulation of the profession in the years ahead, as well as questions on the unity of the profession and the provision of education.”

### Challenges and opportunities

“One of my major priorities as director general will be to shape the negotiations with Government and the Legal Services Regulatory Authority. That said, there are significant opportunities for the profession in increased laws and regulation in areas such as data privacy, climate and sustainability regulations, tax and trade rules, dignity at work, and health-and-safety issues associated with remote working. These are areas where the legal profession can lead and build their businesses.

“I don't need to tell anybody that competition will be an increasing challenge and opportunity, with other professionals looking to move into the legal space, with alternative legal suppliers and dispute-resolution mechanisms.

“I see, also, from the recent market study conducted by Crowe, that there is a growing recognition that many sole practitioners and small firms, in particular, require more support in considering the business-development aspects of their practices – I believe that is an area to which I can bring considerable experience and focus.

“I think everybody realises that we're living through rapidly changing times, so the question is: how do we build on the successes of the Society and the profession, so that we can be as equally successful in the future as we have been in the past? That means, ultimately, that we will have to adapt to the changes happening around us. That's going to be a big part of what we do – but we'll do that in consultation with the profession, with the staff, and with our stakeholders, because it will very much be a joint effort.” 

*Mark McDermott is the editor of the Law Society Gazette.*



## SLICE OF LIFE

● **What time do you get up each day?**

Usually between 7 and 7.30am.

● **Tea or coffee?**

I start the morning with coffee – no doubt. Then tea during the day.

● **T-shirt or tie?**

I wear a tie only when I have to.

● **Are you an exercise freak?**

I'm a big cyclist. I don't climb mountains, but I prefer to cycle to work when I can.

● **How do you chill?**

I do a lot of cooking and like listening to podcasts.

● **What are you listening to?**

My absolute bottom line is I have to listen to 'The Daily' by *The New York Times*. It's one of the best podcasts I've ever come across.

● **And are you a better cook than your wife?**

If you think I'm going to criticise my wife's cooking, you're nuts!





# I CAN SEE CLEARLY NOW

**Solicitors and their clients now need to take a very close look at their data-protection notices – and to update them – following recent Data Protection Commission decisions. Brendan Quinn checks your transparency index**

**T**ransparency notices are a topical issue and solicitors, like all controllers, may need to refresh their notices following clarity on requirements in recent Data Protection Commission (DPC) decisions. Since GDPR came into force, missing or incomplete transparency notices are also the most cited infringement mentioned in published enforcement decisions where fines are imposed by data protection authorities (DPAs) under GDPR.

Many controllers use templates – but to ensure that individuals receive the most accurate information, transparency and privacy notices should be produced from the inventory or processing records. This is

because the content should always reflect the underlying processing of individuals' personal data. Enforcement action is frequently taken where transparency notices are unclear, overly complex, or incomplete.

### **Best practice**

The GDPR lawfulness principle requires processing to be *lawful, fair, and transparent*. Controllers, generally, should have captured the content for their notices in their inventory/records of processing – and through their gap-analysis of high-risk activities. These records should be used to produce most of the required documentation for GDPR compliance.



PIG: ALAMY

MANY CONTROLLERS USE TEMPLATES – BUT TO ENSURE THAT INDIVIDUALS RECEIVE THE MOST ACCURATE INFORMATION, TRANSPARENCY AND PRIVACY NOTICES SHOULD BE PRODUCED FROM THE INVENTORY OR PROCESSING RECORDS



For processing to be lawful, at least one of the six legal bases in article 6 must be met, and where the data is ‘special category’, one of the ten additional requirements of article 9 must be met. It should be noted that processing must also be fair and transparent (meaning that individuals must be provided with certain information on the collecting of data). These information requirements are contained in articles 12 to 14 of the GDPR.

**A**ccurate information on the actual processing carried out should be communicated in what is commonly called a ‘privacy notice’ (but readers should note that the GDPR does

not mention the word ‘privacy’, and the DPC uses the term ‘data-protection notice’ in decisions). Where the transparency information is directed at children, the content should be understandable by a child.

### Overly complex

A large number of fines and sanctions on controllers were levied for using either overly complex notices, or notices deemed to be insufficiently granular, inaccurate, or incomplete. It seems to me, on an analysis of decisions, that a lack of transparency is the single-most prevalent reason cited by DPAs in reaching decisions of infringement. However, it has not yet been tested in court

as to the controller’s liability, for example, when a notice is misleading or inaccurate, and which causes damage when relied upon.

The WP29 group (in its *Data Protection by Design and by Default* paper) says that ‘fairness’ requires that personal data shall not be processed in a way that is detrimental, discriminatory, unexpected, or misleading to individuals. Measures and safeguards implementing the principle include the right to information (transparency); the right to intervene (access, erasure, data portability, rectification); and the right to limit the processing (right not to be subject to automated individual decision-making and non-discrimination).

# FOR PROCESSING TO BE LAWFUL, AT LEAST ONE OF THE SIX LEGAL BASES IN ARTICLE 6 MUST BE MET – AND WHERE THE DATA IS ‘SPECIAL CATEGORY’, ONE OF THE TEN ADDITIONAL REQUIREMENTS OF ARTICLE 9 MUST BE MET

Effectively, the processing must be done in ways that individuals would reasonably expect at the time of data collection, and the personal data should not be used in ways that have not been communicated, or that have unjustified adverse effects on the exercise of their rights and freedoms.

## Direct and indirect data collection

There are different requirements when the data is collected directly or indirectly from the individuals. Therefore, the notice(s) should state whether the data comes directly or indirectly from an individual. These notices, when they concern external matters, should be communicated directly to individuals when data is collected or otherwise processed. They are most commonly included on a website, or through either a link or attachment in an email. For internal matters, the notices can be made available, for example, on corporate intranets or on a shared drive to which all affected employees are given access. At a minimum, a notice should provide (in an easily accessible form, using clear and plain language) the following:

- The data controller’s identity and contact details,
- The data protection officer’s contact details, where applicable,
- The purpose(s) of processing,
- The legal basis for processing,
- The legitimate interest of the controller or a third party, where it is the legal basis for the processing,
- The recipients or categories of recipients, and
- Details of any third-country transfers, and the method of transfer.

To meet the requirements of fairness and transparency, the following additional information should be provided:

- The data-storage period, or the criteria used to determine the period,
- The individual’s rights, including access, rectification/correction, erasure, restriction, objection, details of the automated processing and its logic, and data portability,
- Where processing is based on consent, the right to withdraw consent at any time,
- Details of the right to make a complaint to a supervisory authority,

- Whether the data controller uses automated decision-making (including profiling), information about the logic involved, and the consequences for the individual.

Under article 14, more details on the actual personal data processed must be given to individuals. Where the data was collected directly, the individual should have this information already.

## Transparency significance

Transparency is particularly important, since if an individual has not been provided with the information, they will not be able to effectively exercise their rights. Individuals must be able to understand who holds data about them, what this data is, and how it will be used; as well as what their rights are, and how they can challenge their data being processed.

**U**nder article 12(1) of the GDPR, the way of communicating with individuals must be “in a concise, transparent, intelligible, and easily accessible form, using clear and plain language, in particular for any information addressed to a child”.

If the information does not come directly from the data subject, three additional pieces of information need to be provided under article 14 within a reasonable period – but at the very latest within one month. Shorter periods apply in two scenarios listed in article 14(3) where, essentially, the notice needs to be provided before communicating with the individual, or where it is intended to disclose the information to other recipients. There are some different information requirements to that required under article 13, including the details of the categories of personal data held, its source, and whether it is publicly accessible.

## WhatsApp lessons

There are also some lessons we can take from the initial decisions of the Irish DPC in the *WhatsApp* decision (binding decision 1/2021, adopted 28 July 2021). Although the matter is currently under appeal and thus not final, this decision had input from all the supervisory authorities and represents the collective thinking and best practice for drafting such notices.

On 2 September 2021, the DPC announced its decision to fine WhatsApp €225 million – the second-largest fine to date under the GDPR. The DPC found that there was a failure to provide the required information to WhatsApp users and non-user contacts of WhatsApp, as required by article 13 and article 14 respectively.

The non-users personal data was processed in order to show users whom from among their contacts were also WhatsApp users. However, WhatsApp had not made available this information in an easily accessible form, as required by article 12 – this resulted in a failure to comply with the principle in article 5(1)(a).

### Ramifications

The DPC relied heavily on the European Data Protection Board's *Transparency Guidelines*. Controllers should note the following points that emerged from the decision in reviewing their notices for clarity:

- The information should allow for easy identification of the controller, and preferably allow for different forms of communications with the controller (for example, phone number, email, postal address, etc),
- Individuals should be able to understand how their data is used for each purpose,
- The DPC noted several times that individuals should not have to work hard to access the required information, and individuals should not be left wondering whether they have exhausted all available sources of information – they should not have to try to reconcile discrepancies between various pieces of information laid out in different locations,
- Notices should be kept separate from contractual terms and conditions,
- Controllers should avoid an abundance of text that communicates very little – so avoid long but uninformative notices,
- The relevant legal basis relied upon must be specified and must be linked to the actual processing operation,
- Where the legal basis is a legal obligation, the member state or EU law should be referenced,
- The specific legitimate interest in question must be identified, which benefits individuals.


**B**est practice requires that controllers should also provide individuals with the information from the ‘balancing test’, which should have been carried out by the controller when relying on article 6(1)(f) as the lawful basis for processing, before collecting the individual’s personal data. This is essential for effective transparency where individuals have doubts as to whether the balancing test has been carried out fairly, or they wish to file a complaint with the DPC. (For more on the balancing test, readers should refer to the DPC’s December 2019 guidance note, ‘Legal Bases for Processing Personal Data’. Briefly, controllers need to undertake a balancing exercise when assessing whether the processing of personal data should take place under article 6(1)(f) GDPR. This exercise should, as noted in recital 47 GDPR, take into consideration the ‘reasonable expectations’ of data subjects, in the context of their relationship with the controller.)

In accordance with the principle of fairness, controllers must provide information on the recipients of the information that will be most meaningful for individuals. In practice, this will generally be the named recipients, so that individuals know exactly who has their personal data. If controllers opt to provide the categories of recipients, the information should be as specific as possible by indicating the type of recipient, and reference the activities carried out, the industry, sector and sub-sector, and the location of the recipients.

In accordance with the principle of fairness, the information provided on transfers to third countries should be as meaningful as possible to individuals. The DPC has said that this will generally mean that the third countries should be named.

**T**he storage period or criteria to determine retention may be prescribed by factors such as statutory requirements or industry guidelines, but should be stated in a way that allows individuals to assess, on the basis of their own situation, what the retention period will be for the specific data and purpose(s).

The specific source of the data when collected under article 14 should be provided, unless it is not possible to do so.

If the specific source is not named, then the information provided should include the nature of the sources, whether publicly or privately held, and the types of organisation/ industry/sector. 

*Brendan Quinn, solicitor; is CEO of Mighty Trust Ltd, which provides compliance software and data-protection consultancy. He is the author of the Data Protection Implementation Guide: a Legal, Risk, and Technology Framework for the GDPR, published by Wolters Kluwer (September 2021).*

**A LARGE NUMBER OF FINES AND SANCTIONS ON CONTROLLERS WERE LEVIED FOR USING EITHER OVERLY COMPLEX NOTICES, OR NOTICES DEEMED TO BE INSUFFICIENTLY GRANULAR, INACCURATE, OR INCOMPLETE**

## LOOK IT UP

### CASES:

- [Binding decision 1/2021](#) on the dispute arisen on the draft decision of the Irish supervisory authority regarding WhatsApp Ireland under article 65(1)(a) GDPR (adopted 28 July 2021)

### LEGISLATION:

- [General Data Protection Regulation](#)

### LITERATURE:

- [Guidelines 4/2019 on Article 25: Data Protection by Design and by Default](#) (version 2.0), 20 October 2020
- [Guidelines on Transparency under Regulation 2016/679](#) (European Data Protection Board [wp260rev.01])
- [Legal Bases for Processing Personal Data](#) (DPC guidance note, December 2019)

# Somebody

# SAVE me

*In a recent criminal hearing at the Court of Appeal, Mr Justice Edwards warned that advocates “relying on matters in mitigation” must show evidence of it. This is a clear warning for solicitors seeking to conduct pleas in mitigation, says Sean Smith*



## Judgments of the Court of Appeal,

rather than its oral hearings, tend to grab media attention. Yet remarks by Mr Justice Edwards hit the headlines in summer 2021. Addressing counsel in the criminal appeal *DPP v Dunne*, the judge drew attention to the fact that advocates in criminal sentencing proceedings were regularly offering evidence without appropriate backup.

The final salvo of the reported remarks sent out a clear warning for the future: “This court is putting down a marker – that has to stop. If people are relying on matters in mitigation, there has to be evidence of it.”

These remarks were apparently directed at barristers, yet, for two reasons, they should be taken very seriously also by solicitors. Firstly, solicitor advocates in the District Court conduct pleas in mitigation themselves. Secondly, in the superior courts, evidence-gathering is done by solicitors, and this includes harvesting the facts necessary for pleas in mitigation.

Defining a ‘plea in mitigation’ is helpful. An antique definition can be found in Chitty’s 1826 *Practical Treatise on the Criminal Law*: after a plea or conviction, “the defendant or his counsel is allowed to address the court in order to lessen the apparent extent of his criminality”. The plea in mitigation is, in many ways, an address for mercy, although its content is not prescribed by canon or statute. In its 1993 *Consultation Paper on Sentencing*, the Law Reform Commission noted that an “infinite variety of mitigating factors is thought to exist”.

### Heartbreak station

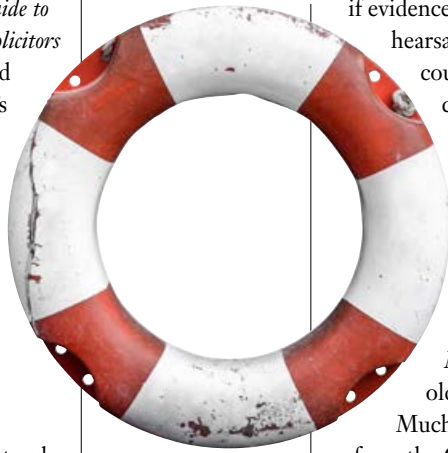
Advancing a plea in mitigation – one that respects client and court – can potentially throw two professional obligations into

conflict. On one hand, the *Guide to Good Professional Conduct for Solicitors* calls solicitors to “promote and protect fearlessly” their client’s best interests. It recalls that they are “entitled to state every fact freely and to use every argument, whether technical or otherwise”. This duty is clearly engaged when a client is facing sentence, and a solicitor must advance mitigation to reduce punishment.

On the other, solicitors must only do this “in accordance with the law and within the rules of professional conduct”, and must never “deceive, or knowingly or recklessly mislead the court”.

**R**econciling these two duties can be tricky because evidentiary standards at sentencing are not clear-cut. Recent Irish authorities, such as *DPP v Timmons*, only offer general teachings, such as “mitigation can only apply if there is some evidence or material before a court to allow for such circumstances to be taken into account”. This includes some types of hearsay evidence.

A case that crops up frequently in this regard is *R v Marquis* (1951). Although *Marquis* is from the English Court of Appeal, it was specifically embraced by the Law Reform Commission’s 1993 paper and its 2010 *Consultation Paper on Hearsay*. This is important, because the *Marquis* court reasoned that it would be “a very unfortunate thing



if evidence of that kind [that is, hearsay evidence of character] could not be given [after conviction], because it would prevent evidence from being given in favour of the prisoner”.

### Nobody’s fool

Some will argue that *Marquis* – now 70 years old – has waning vitality.

Much fresher is the case law from the Court of Appeal that demonstrates increasing vigilance of evidence undergirding pleas in mitigation. Alongside the remarks in *Dunne*, the 2021 cases of *DPP v Crowley* and *DPP v Febily* stand out.

In *Crowley*, the court forensically examined the plea in mitigation given in the lower court and each supporting strand for claims made by counsel. Memorably, the court called out the “evidential deficit” of certain claims and criticised the solicitors’ failure to seek certain reports.

**I**n *Febily*, the court underscored “assertions” by counsel, although there was “no evidence whatever adduced to support” them.

But it is important to contextualise this trio of appeals. They all lay from the Circuit Court, a noteworthy detail because requirements for pleas in mitigation in some courts may not be practical in others. It is, therefore, worth considering whether there is a reasonable basis to confine the Court of Appeal’s recent teaching to higher courts. Should any new ‘marker’ apply in all courts and, if so, what burdens will that place on solicitors?

### Final countdown

The general rule that evidentiary standards are relaxed at sentencing hearings still obtains in Irish courts, including the District Court. Most criminal practitioners will have a copy of Hughes’ *Criminal Procedure in the District Court*. Besides

advising the practitioner to make a “detailed note of the accused person’s personal and financial circumstances” before a plea, this large tome provides no ruling standard.

Looking at a hypothetical scenario may illustrate why: Solicitor A has a homeless Client B whom she has not seen since the start of the COVID-19 pandemic. Client B has been brought to the District Court on a public order charge. In a case like this, Client B may decide to plead guilty and seek to finalise the matter on the day. The prosecuting garda will give evidence of facts; Solicitor A will have an opportunity to cross-examine, and then will typically have only a few minutes for mitigation.

**O**ld notes on the file may help, although these are unlikely to be in court if the solicitor is not on notice of the charge. Mitigation will more likely come from on-the-spot client instructions. Solicitor A might, for example, visit Client B in the cells and learn that she has a depressive history and recently fell back into alcoholism after the death of her mother. Regular practitioners will be all too familiar with instructions like these. Yet, the truth is that the plea in mitigation for Client B will not routinely be accompanied by any documentary exhibits. Should that change?

Stricter evidentiary requirements for District Court pleas may not be proportionate or practical. For a start, this court is a court of summary jurisdiction. Consequently, extensive mitigation-gathering would entail labours hardly tailored to the offences. To return to Client B: if a search of online obituaries yields no results, Client B can be called to give sworn evidence of her mother’s death. However, if a medical report or other expert report were required to evidence her history of depression and alcoholism, further remands and significant delays could result.

MEMORABLY, THE COURT CALLED OUT THE ‘EVIDENTIAL DEFICIT’ OF CERTAIN CLAIMS AND CRITICISED THE SOLICITORS’ FAILURE TO SEEK CERTAIN REPORTS



PIG SHUTTERSTOCK

Cost would then become a real concern. For a legally aided client, not only would the professional costs of reports be chargeable to the taxpayer, but a serious imbalance would likely arise between these costs and the legal-aid fees paid to her advocate in the District Court. To put it in stark terms, some experts can charge hundreds (if not thousands) of euro for reports – however, solicitors receive €50.39 for a stand-alone sentencing in the District Court. Of course, in cases where reports are absolutely necessary, this disparity already exists, but expanding it would be unfortunate.

### Living on a prayer

Naturally, considerations for solicitors change markedly in higher courts. For a start, beyond the District Court, clients face more serious sentences. As a result, gathering strong mitigation should be at the forefront of the solicitor’s mind once a client pleads guilty or is convicted.

If we look at a client facing sentence in the Circuit Court, numerous mitigating factors already reach a court in an entirely objective way. Take these four – youth, an early plea, a clean criminal record, and cooperation on arrest. The first can often be clear from physical observation, but, for confirmation, a court can read any case-related document, such as the Return for Trial, recording the accused’s date of birth. Similarly, the fact of an early plea is rarely

in dispute, and is often conceded by the prosecution counsel or gardaí. Lastly, the accused’s lack of previous convictions and cooperation are all facts that customarily reach a court in sworn evidence by gardaí at the sentencing hearing.

**T**he real target of the recent warning in *Dunne* must be what we might call ‘offender characteristics’. Take this hypothetical situation: the Circuit Court is about to sentence a first-time offender who has stolen a large sum of money from his employer. He has cooperated with detectives and pleaded guilty at the first mention date of the case. His family life has since fallen apart, and publication of the case has caused a loss of reputation. Furthermore, it emerges in consultation that the thefts occurred in the context of a disintegrating marriage and bouts of anxiety. The crime, however, is a ‘blip’ in an otherwise respected individual’s life. Given our discussion above, it is not hard to spot mitigating factors that will be easier to evidence. But the accused’s difficulties both before and since the crime – his personal ‘story’ – may raise issues.

### Get it on

Gathering the information needed to tell this story, most often, involves two methods: taking instructions and commissioning reports. Therefore, in the early stages of a

case in the superior courts, solicitors and barristers will typically meet a client for consultation. At these meetings, lawyers will ask questions and gain an understanding of a client’s childhood, medical history, and mental health. Much of this information later becomes the raw ingredients of a plea in mitigation: factors such as poverty, familial drug or alcohol abuse, and emotional or sexual abuse. Further, it is often during these meetings that the need for expert reports may be discussed.

**T**he burgeoning business of expert reports is an issue well deserving of its own article. Yet, in the context of pleas in mitigation, a few points are worth raising. *Dunne*, *Crowley* and *Febily* all spotlight the role of reports as important tools in mitigation. But they are not a perfect panacea for the practitioner. Firstly, although solicitors commission reports, they have no control over their content. Indeed, finished reports routinely yield elements unfavourable to clients: what starts as promising backup for the defence often ends up on a shelf. Second, while reports often contain detailed evidence of an accused’s background, most of this is uncorroborated. In fact, the *Febily* case is a warning that mitigation material of all types can be the proverbial ‘wolf in sheep’s clothing’. There, the court confronted reports and letters forged by the client – a stark reminder that



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## Extension of Closing Date for Receipt of Claims by the CervicalCheck Tribunal

The Minister for Health, Stephen Donnelly TD, has extended the closing date for receipt of claims by the CervicalCheck Tribunal to 26 July 2022. The CervicalCheck Tribunal Act 2019 does not provide for a further extension and all claims to the Tribunal must be made or transferred from the High Court on or before that date.

The Tribunal implements the recommendations made by the Hon. Mr. Justice Charles Meenan in his Report on an Alternative System for Dealing with Claims Arising from CervicalCheck and offers a sensitive and efficient alternative to the Courts for dealing with eligible claims.

The Tribunal is based in the Infinity Building in Smithfield, in premises that were designed for the appropriately sensitive hearing of CervicalCheck cases. The Tribunal can be contacted by phone at (01) 674 3300 or by email to [info@cervicalchecktribunal.ie](mailto:info@cervicalchecktribunal.ie)

**Further details about the Tribunal, including information on eligibility and the procedures for making a claim, are available on the Tribunal's website: [www.cervicalchecktribunal.ie](http://www.cervicalchecktribunal.ie)**



An Roinn Sláinte  
Department of Health

independently verifying the content of reports may become another burden on solicitors.

Finally, there is no guarantee that reports will be read. Again in *Febily*, the Court of Appeal drew attention to the fact that the sentencing judge declined to read the probation report on offer. Despite all of these issues, however, cautious solicitors may feel that the increasing pressure to generate backup will require reports in all cases, where once they were optional.

### Gypsy road

Should poorly supported instructions be left unsaid during a plea in mitigation? Given that a senior judge of the Court of Appeal has laid down a new marker in this area, legal advisers of all stripes need to do better to ensure that client instructions are backed up. Mr Justice Edwards' remarks in *Dunne*, and the court's judgments in *Crowley* and *Febily*, establish a stricter line in Irish appellate jurisprudence and should make all advocates more conscientious about what they advance to a sentencing court.

There was a time when restraint was the preferred approach. Luigi Rea BL offers this observation: "When I was a young barrister practising, the District Court was like the High Court. You wouldn't dare say your client had a broken arm without providing evidence of it."

**Y**et what can practitioners do to address concerns? Firstly, while this practice has become rare in some places, calling the client to give sworn evidence is a useful tool at sentencing, and should be more common where undocumented assertions about the client's life history are made. The downside of this is that it may interfere with the efficient running of busy court lists. Avoiding quick pleas and seeking remands to gather appropriate evidence are two further options.

It may also be timely for evidentiary rules at sentencing to be debated afresh. After all, the Law Reform Commission approvingly cited snippets from this conclusion of its Australian counterpart not too long ago: "To introduce into the sentencing hearing a requirement that relevant facts be proved by admissible evidence only would transform the sentencing hearing into an adversarial proceeding. Apart from the increased costs and delays, not all facts may be sufficiently important to sentence to warrant such a requirement." This may now be a stale endorsement.

A jot of nuance is also recommended. While stricter lines may be emanating from the Court of Appeal, judicial discretion has not evaporated entirely. As the *Marquis* court explained, "after conviction, any information which can be put before the court can be put before it in any manner which the court will accept".

Of course, this does not mean advocates should push their luck. But it is arguable that judicial discretion may be correctly deployed in circumstances where solicitors

# IS THERE A REASONABLE BASIS TO CONFINE THE COURT OF APPEAL'S RECENT TEACHING TO HIGHER COURTS? SHOULD ANY NEW 'MARKER' APPLY IN ALL COURTS AND, IF SO, WHAT BURDENS WILL THAT PLACE ON SOLICITORS?

make *bona fide* efforts to substantiate the core claims of a plea, even if every strand is not backed up.

When it comes to this core of mitigation, a section of *Febily* is worth quoting: "The court stated that if, on a re-sentencing, the court was to consider matters such as alleged mental-health difficulties, previous attempts at suicides, claims of tragedy in the respondent's life, efforts undertaken to address a gambling addiction, and employment history, it would need to have evidence of these matters."

**A**nd what if backup is not available in these key categories? Holding one's tongue as an advocate at sentencing can be a tough call. Luigi Rea comments: "Follow the client's instructions."

This seems obvious, yet it is a reminder that, while judges at sentencing are entirely free to accept or reject any submission placed before them, *à la Marquis*, advocates may not feel similarly free to ignore a *bona fide* instruction. Indeed, they may feel duty-bound to advance it to a court when so much is at stake. **g**

*Dr Sean Smith is a trainee solicitor at John Feabeny and Company, Solicitors.*



## LOOK IT UP

### CASES:

- *DPP v Crowley* [2021] IECA 178 (24 June 2021)
- *DPP v Dunne* [2021] IECA 189 (29 June 2021)
- *DPP v Febily* [2021] IECA 232 (26 July 2021)
- *DPP v Timmons* [2013] IECCA 5
- *R v Marquis* (1951) 35 Cr App R 33

### LEGISLATION:

- *Criminal Justice (Legal Aid) (Amendment) Regulations 2011* (SI 362/2011)

### LITERATURE:

- Law Reform Commission (1993), *Consultation Paper on Sentencing*
- Law Reform Commission (2010), *Hearsay in Civil and Criminal Cases* (LRC CP 60 – 2010)
- Law Society of Ireland (2013), *Guide to Good Professional Conduct for Solicitors* (3<sup>rd</sup> edition)



PI: WIKIMEDIA COMMONS

# The trial

A number of European lawyers, academics, and human-rights groups attended the trial of two Turkish lawyers who have been detained in Turkey for almost eight years without any findings being made against them. Robert Purcell was an eyewitness to the proceedings

**Siliveri Prison** is located about two hours outside Istanbul in the Republic of Turkey. On approach, it seems approximate in size to a small Irish provincial town. This prison also has a courthouse, the dimensions of which are similar to that of the 3 Arena in Dublin.

Approximately 20 heavily armed soldiers patrol the area between the parking zone, the prison on the right, and the courthouse on the left. There are numerous armed but polite security staff guarding the entrance to the courtroom, backed up by airport-like security measures. Inside the courtroom are a further 30 armed policemen allocating seats to certain people, and arguing with journalists – a couple looking bemused at the whole situation.

There are plenty of lawyers, friends, supporters, and observers bustling around too. All seem to have one common pastime – smoking cigarettes. The small smoking room with a little window open in the corner is the great equaliser, as dozens of lawyers, soldiers, policemen, and liberal-democracy supporters all gather for nicotine relief – as well as respite from the queuing, the searching, and the court hearing.





All of this commotion is for a court hearing that involves two softly spoken and humble lawyers – Barkin Timtik and Selcuk Kozagcli – who are on trial for ‘representing a threat’ to President Erdogan’s regime in Turkey. These trials have been meandering their way through a Byzantine court process, which has taken them back and forth through courts of different jurisdiction since 2013. They have spent much of that time in custody. Indeed, Kozagcli was previously convicted and sentenced to over 11 years’ imprisonment, successfully appealing that conviction, but was then charged with new offences.

**A** sibling of Timtik’s, Ebru, died on hunger strike awaiting her own charges in 2020. That very tragic event was the subject of a [Gazette.ie article](#) (1 September 2020). Things have deteriorated since then. Among the charges brought against both lawyers are being a member of the People’s Liberation Party, representing victims of the Soma mine disaster, and representing members of the Kurdish PKK group.

### Fellowship

At the invitation of the Istanbul and Turkish Bar Association, as well as the Progressive Lawyers’ Association (a group of academics and legal professionals from Holland, Belgium, France, Italy, Germany, Norway, Bulgaria, Switzerland and Ireland), law societies and human-rights groups attended the court in order to show solidarity and support for their Turkish colleagues. They were also there to support freedom of speech, the rule of law, the *UN Convention on Human Rights*, and the *European Charter of Fundamental Rights* in this amazing country that bestrides both East and West.

This trial was due to have reached its final stages on 5, 6 and 7 January this year. In a surprising development (which, on the basis of previous experience should not have been unexpected), there was an attempt by the prosecution to introduce highly prejudicial and very questionable evidence (apparently originating with the Police Intelligence Agency in 2007) at a very late stage. This documentary evidence appeared to originate in either The Netherlands or Belgium, with unaccredited sources, and was presented to the defence at the last minute.

A former prosecutor representing one of the accused addressed the court, questioning its validity. This is against a backdrop of 13 witnesses whose evidence has been accepted by the court in written form, but who have not attended court, nor have they made themselves available for cross-examination. Numerous statements from anonymous sources have been accepted as evidence by the court.

The accused addressed the court, as did their legal representatives, and numerous other lawyers appearing as *amicus curiae*. This included the president of the Istanbul Bar Association, Mehmet Durakoglu, and a sitting MP. A letter was read to the court, signed by a number of European bar associations (including the Law Society of Ireland), expressing their concern at the proceedings.

### An everyday occurrence

The unsatisfactory outcome was that all of the accused continue to be remanded in detention until 23 March this year, which means that the accused have been detained for almost eight years without any findings being made against them. This trial is one of a series – and perhaps the most serious – although there are others involving groups of 20 and 40 lawyers who have been charged with membership of



THE TRIAL PROCESS IS NOW, ITSELF, THE SENTENCE AND THE INSTRUMENT OF OPPRESSION. EVERY TIME A LAWYER IS PUT ON TRIAL, THE ENTIRE PROFESSION IN TURKEY IS EFFECTIVELY ON TRIAL, IN DIRECT THREAT TO THEIR INDEPENDENCE

the Progressive Lawyers' Association. Their 'crimes' consist of representing people who have spoken out against the president and the current regime, political opponents, families of miners who were killed in high-profile mining tragedies, pro-democracy protestors, LGBT spokespersons, students, Kurds, and the PKK.

These trials have taken on the characteristics of Kafka's protagonist Joseph K (*The Trial*) or the task of Sisyphus; at present, the stone remains resolutely at the bottom of the hill. This is only one aspect of an all-out assault on political opponents of the Justice and Development Party, which came to power in the mid-2000s under Recep Tayyip Erdogan.

**A**part from these proceedings, the State continues to persecute lawyers, the sole purpose of which is to intimidate and undermine any lawyer who represents those whose views the State finds inimical. The internationally recognised legal principle designed to protect the independence of lawyers – that lawyers should not be associated with their clients' causes – seems to have no application in Turkey at present.

### Metamorphosis

After the trial was adjourned on 5 January, all of the visiting lawyers were invited to an address by the president of the Istanbul Bar Association at its headquarters. The president expressed his sincere gratitude in welcoming his colleagues from all over Europe.

Turkey is a country of 84 million people and Istanbul a city of 16 million. The bar president emphasised that this was now an ongoing crisis within the profession and the judiciary. The support from the rest of Europe was invaluable. All of the representatives from the various bar associations addressed the president and undertook to raise support for the Istanbul Bar Association among their members. Any publicity or attention that can be brought to bear on these ongoing trials and

## BARKIN TIMTIK AND SELCUK KOZAGCLI ARE ON TRIAL FOR 'REPRESENTING A THREAT' TO PRESIDENT ERDOGAN'S REGIME IN TURKEY

never-ending detentions is crucial. There is a great crisis within the Turkish judiciary due to the manipulation of appointments by the ruling party in conjunction with the country's president.

There is no separation of powers in Turkey. Within the profession and the judiciary, survival and advancement depends on acquiescence. The trial process is now, itself, the sentence and the instrument of oppression. Every time a lawyer is put on trial, the entire profession in Turkey is effectively on trial, in direct threat to their independence.

### The silence of the sirens

The day after the meeting with the Istanbul bar, we attended a preliminary hearing in the trial of a number of students at the crescent-shaped Caglayan Courts in Istanbul. It related to a protest at Bogazici University in January 2021. This Istanbul institution was set up by an American philanthropist after the Crimean War. It was established as a liberal progressive university that was to educate all, regardless of religion. It has in the region of 16,500 students.

Over a year ago, the elected dean of the college was removed summarily by the government. He was replaced by a presidential appointee who, it was felt, would transmit the policies of the government more suitably within the university.


Around that time, a poster was produced of one of the holy sites in Mecca with a rainbow

flag in the corner. The students responsible were suspended, which subsequently led to an on-site student protest. There were approximately 250 students present, but there were undercover police among them. Those members of the police force are alleged to have been acting as *agent provocateurs* within the crowd, trying to stoke up a frenzy.

As the newly appointed dean was leaving, his car was prevented from progressing down the road. Two students sat on the bonnet, and a large number of arrests were made. The students who sat on the car were placed in detention. They remained in detention from the time of their arrest in January 2021 until their court appearance on 7 January 2022. Fortunately, they were released. The ultimate decision in the case is still awaited. One of these students has been allowed to leave Turkey while his case proceeds. Another had been invited to join the research team at the Cern Laboratory in Switzerland, but he has been unable to take up that opportunity.

**T**he Turkish president referred to the actions of the students in sitting on the car as an act of terrorism.

Subsequently, three deans at the college who attended the court hearing in order to support these students were removed from their posts. A hard-line rector of the university was appointed by president and, since that day in court, two more deans have been summarily removed by the regime.

A journalist has recently been charged with insulting the president. This is not an unusual charge in the Turkish courts – thousands of people have been similarly charged and sentenced during the past 11 years. Her insulting statement? "When the ox climbs to the palace, he does not become a king, but the palace becomes a barn." Sedef Kabas is at risk of a four-year prison sentence if convicted. 

*Robert Purcell is a solicitor and criminal-law specialist. He is a member of the Law Society's Criminal Law Committee, and a member of the Gazette Editorial Board.*



Meeting with the Istanbul Bar Association

# Passing the COVID test?

Confidence is returning to the legal sector, but Smith & Williamson's annual survey shows that the recovery is far from complete. Andrew Fanning reports

WHILE 2021 WAS A YEAR OF ADAPTATION AND STABILISATION, FIRMS ARE HOPING THAT 2022 WILL MARK AN ACCELERATION AWAY FROM PANDEMIC-INDUCED PROBLEMS AND ALLOW BREATHING SPACE TO FOCUS ON SOME OLD AND NEW CHALLENGES

**A** new survey of law firms paints a picture of a sector that has begun to bounce back from the blows inflicted by the COVID-19 pandemic.

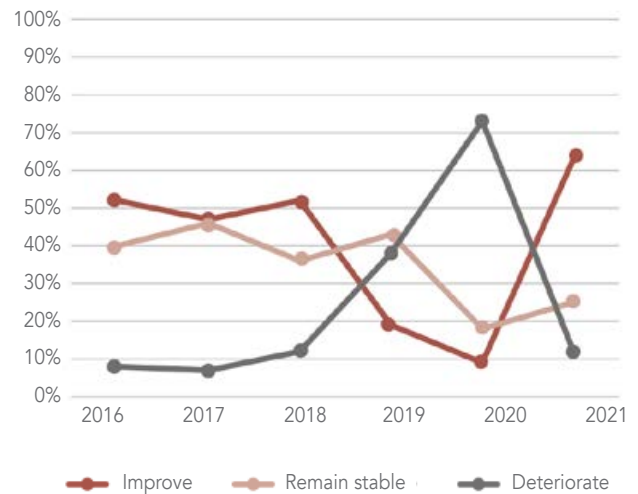
Like most of society, the legal sector appears to be looking tentatively towards the end – or at least the beginning of the end – of the disruption caused by the virus and the response to it. However, Smith & Williamson's annual snapshot shows that, while law firms are back on their feet and ready for the next round of challenges, they are still nursing some cuts and bruises.

This year's survey covered 113 law firms – including 15 of the top 20. It indicates that, while 2021 was a year of adaptation and stabilisation, firms are hoping that 2022 will mark an acceleration away from pandemic-induced problems and allow breathing space to focus on some old and new challenges.

While 72% of all firms reported that COVID had a negative effect on them in 2021, only 41% are expecting a 'significant' or 'moderately negative' impact over the coming 12 months. Almost half (47%) reported an improved situation for their businesses over the last 12 months, with 43% saying that this continues.

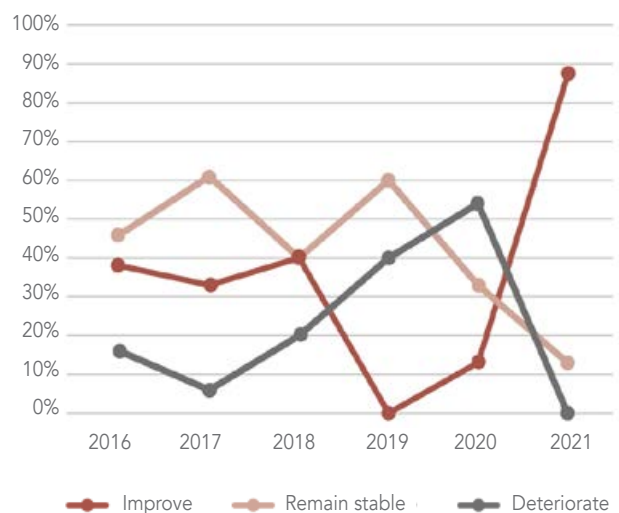
When asked about the year ahead, however, the percentage expecting a better outlook rose to 61% – a dramatic turnaround

## OUTLOOK OF ALL FIRMS – NEXT 12 MONTHS



ALL GRAPHS AND TABLES: SMITH & WILLIAMSON

## OUTLOOK OF TOP-20 FIRMS – NEXT 12 MONTHS





Paul Wyse, MD of Smith & Williamson

WHILE TWO-THIRDS OF THE TOP-20 FIRMS REPORTED ATTEMPTED CYBER-ATTACKS ON THEIR SYSTEMS IN 2021, NONE OF THESE REPORTED ANY SIGNIFICANT IMPACT FROM THOSE ATTACKS

from last year's survey, when more than 70% expected a deterioration in conditions.

**Profit recovery**

In last year's survey, worries about the economy – and particularly the costs of COVID

support measures – topped the list of concerns.

These fears have dissipated somewhat, leaving the recruitment and retention of staff as the main issue occupying legal minds as we head into 2022. All of the top 20 firms

surveyed – and 70% of those in Dublin – cited staff issues as their key concern.

COVID anxieties have not gone away, however, and half of all the firms surveyed said that one of their main worries was maintaining profitability.

## KEY ISSUES FACING THE SECTOR OVER THE NEXT THREE YEARS

	Movement from 2020	All firms	Top 20	All firms Dublin	Ex-Dublin
(1) Recruitment & retention of staff	↑ 5	57%	100%	70%	31%
(2) Maintaining profitability	→	47%	47%	45%	51%
(3) Pressure on fees	↑ 1	43%	27%	49%	33%
(4) Economy	↓ 3	35%	47%	35%	36%
(5) Cyber-risk	↑ 4	35%	33%	28%	46%
(6) Managing cash flow	↓ 3	32%	7%	30%	36%
(7) Adopting new technologies	→	19%	20%	15%	26%
(8) New forms of competition	→	12%	20%	11%	15%
(9) Other	→	11%	0%	9%	13%



ONLY 41% ARE EXPECTING A 'SIGNIFICANT' OR 'MODERATELY NEGATIVE' IMPACT OVER THE COMING 12 MONTHS



A more detailed look at the financial findings of the survey shows why this is the case, despite a healthier 2021, in which turnover improved for 39% of all firms. For the top 20 firms, the picture was even brighter, with more than half (53%) recording an increase in turnover.

This improvement has probably been helped by a continuing reduction in

discretionary spending in areas such as travel and marketing – 36% of firms continued to pare back such spending last year.

Turnover remains below pre-pandemic levels for two-thirds of firms, however, and profits are still lagging pre-2020 levels at almost 60% of the businesses surveyed. Not surprisingly, this meant that almost half of all firms continued to use the Government's wage-subsidy

schemes during 2021, though this was down from 70% in 2020.

#### People problems

After what Smith & Williamson describes as “a brief hiatus”, attracting and retaining talented staff has re-emerged as a significant challenge, particularly for top 20 and Dublin-based firms.

The survey finds that 35% of

firms have been expanding their workforces again over the past 12 months – compared with 22% a year ago – and that more of them are offering ‘agile’ working options to attract and retain high-quality staff.

Previous research (carried out by Smith & Williamson on behalf of the Law Society's Younger Members Committee) found last year that just over 90% of solicitors would prefer

### FIRM PROFITS IN THE PAST 12 MONTHS

	All firms			Top 20 firms		
	2019	2020	2021	2019	2020	2021
Increased	53%	21%	37%	67%	27%	53%
Remained the same	33%	23%	35%	20%	27%	40%
Decreased	12%	53%	25%	7%	40%	7%
Don't know	2%	3%	3%	6%	6%	0

a hybrid working system, with only 5% wanting to work at home full-time and only 4% preferring full-time office work.

Equally important was the finding that almost two-thirds of solicitors said that they would make future career decisions based on a firm's working policies.

The survey indicates that most firms are hearing the same message from their staff, and responding accordingly. Most of the top 20 firms surveyed are planning to continue facilitating remote working. The enthusiasm is not universal, however, with one-third of regional and one-fifth of smaller Dublin firms saying that they are unlikely to do so.

Perhaps illustrating the determination not to risk losing valuable employees, the survey shows that most legal firms have moved rapidly to reinstate pay cuts imposed due to the effects of the pandemic.

Last year's survey showed that just over a third of all firms, and 60% of the top 20 firms, cut salaries. According to the survey, only 3% of those have not reinstated wage cuts implemented in 2020.

Pay increases were awarded in almost half of all firms – coming in above 6% in most cases – while most of the remainder kept pay at the same levels.

### Bigger targets

The speed of the shift in working arrangements forced by the pandemic was bound to throw up a new set of problems, and cyber-security has emerged as the most immediate challenge.

Cyber-risk is now seen as one of the biggest challenges facing firms over the next three years, as reported by 27% of all firms – up from only 7% in 2020. While this was an issue that had already been flagged in the sector, last May's attack on the



HSE underscored the size and urgency of the threat.

Smith & Williamson says that law firms have seen themselves as targets of increased cyber-related activity. While two-thirds of the top-20 firms reported attempted cyber-attacks on their systems in 2021, none of these reported any significant impact from those attacks. Most cyber-attacks involved compromised email systems and attempted payment-redirection frauds.

### Low level of M&A activity


Smith & Williamson finds a low level of merger and acquisition activity in the legal sector, with only one in five firms initiating an approach to another business. There was a marked drop in approaches from British firms seeking link-ups or mergers.

“Our own sense of the mar-

ket is that there has been a significant uptick in this activity since mid-2021, as people reassess their priorities post-COVID,” the report says.

The survey is the tenth carried out by Smith & Williamson – a period that began in the aftermath of the financial crisis and included the upheaval of Brexit.

“The profession has, time and again, demonstrated its ability to weather major events and unforeseen disruption,” said Paul Wyse (managing director, Smith & Williamson).

The early signs are that it will get through a once-in-a-century global pandemic too, but not without some painful and enduring effects. 

*Andrew Fanning is a freelance journalist and a regular contributor to the Law Society Gazette.*

MOST OF THE TOP 20 FIRMS SURVEYED ARE PLANNING TO CONTINUE WITH REMOTE WORKING. THE ENTHUSIASM IS NOT UNIVERSAL, HOWEVER, WITH ONE-THIRD OF REGIONAL, AND ONE-FIFTH OF SMALLER DUBLIN FIRMS, SAYING THAT THEY ARE UNLIKELY TO DO SO

# What **dreams** may come

Grief isn't just about death – it's about the loss and change we experience when the life we had is gone, and there's a new one in its place. Niamh Fitzpatrick brings us through the grieving process

WE CAN BUILD OUR LIFE AROUND LOSS – WE DON'T REMAIN STUCK IN THOSE EARLY FEELINGS. WE CAN, IN TIME, FIND THE BALANCE BETWEEN REMEMBERING AND LIVING. THERE'S GREAT HOPE IN THIS – AND WHEN YOU'RE GRIEVING, HOPE IS EVERYTHING

**W**hen we think about grief, we tend to instinctively focus on bereavement, but it's important to know that grief is not solely about death. Grief is about loss and change. It's what we experience when the life we had is gone and there's a new one in its place, or when the life we hoped for has not happened and may never come to pass.

So, while we expect to experience grief upon the death of a loved one, many people don't consider that we also grieve for losses in our life that don't involve bereavement – such as the end of a relationship, failure to achieve a career goal, a life-changing accident or medical diagnosis, infertility, the ebbing away of a loved one's ability to recognise us when dementia takes hold, retirement from a career or hobby, the empty nest ... the list is long and varied.

Thinking even of the past two years, the pandemic has been a time characterised by significant loss – whether that's been loss of loved ones, businesses and jobs, rites of passage, connection, choice, peace of mind, or a sense of security in what we thought we knew about the fundamentals of life.

We can see, then, that grief is something we all encounter as part of the human experience – but how can we cope when we encounter loss in life? Are there things we can do to navigate

grief? Although there's no magic bullet to take away the pain of loss, there are ways in which we can help ourselves when grieving, and understanding is the starting point.

## Understanding grief

*What grief is not:* grief is not about stages (a popular myth), nor about a linear journey (it's not a forward motion). It's not about getting over it, moving on, or trying to find closure; it's not about an end-date. Grief is not about doing well, getting it right, or feeling better. Nor is it about being strong or resilient. And it's definitely not about just feeling sad.

*What grief is:* grief is about learning to live with loss, learning to carry the pain of missing someone you love, or living a life you don't want. Initially, grief is just about survival, getting through those early days, weeks and months after loss. Then it can be about lurching from one state to another and back again; so you might feel one day as though you're able to carry the pain of loss, and the next day you might feel just as you did on day one. It's all normal, you're not doing it wrong, this is what grief feels like and, indeed, there is no wrong.

In time, grief is about growing your life around your loss and, across time, building a new life around your grief (Tonkin's theory). Some days, the life we've

built reduces down and the loss sits centre-stage again. We might expect this on the big days, such as anniversaries or Christmas, but it also occurs on the ordinary days too. The key here is to know that we can build our life around loss. We don't remain stuck in those early feelings. We can, in time, find the balance between remembering and living. There's great hope in this – and when you're grieving, hope is everything.

It's helpful to know, too, that you may shift between a loss-orientation and a restoration-orientation (Stroebe and Schut's 'dual process model'). With a loss-orientation, the focus and feelings are around the loss in your life, confronting the loss head-on and leaning into it.

Restoration-orientation is where you begin to do ordinary tasks again, restoring some of your old life into the mix, the rebuilding of everyday life after loss. Both orientations play a part in helping you learn to live with loss.

It's useful to consider JW Worden's 'four tasks of mourning', which can also have relevance for losses in life that are not as a result of death:

- 1) To accept the loss,
- 2) To process your feelings of loss,
- 3) To adjust to life without the person you love,
- 4) To invest in a new life, including new ways to connect with the person you miss.



PICTURE: ALAMY

Indeed, understanding grief is also about considering these words from author Megan Devine: “Some things in life cannot be fixed, they can only be carried.”

It’s important to know, too, that grief is a whole-person experience; there is not one aspect of ourselves that is not affected by grief. We know, for example, that loss and grief can result in changes on all levels:

- Physically – appetite, sleep, energy, immune system,
- Cognitively – concentration, forgetfulness, absent mindedness,
- Emotionally – shock, sadness, anger, guilt, loneliness, anxiety, resentment and more,
- Socially – withdrawing, isolating, or not wanting to be alone,
- Behaviourally – uncharacteristic decision-making and behaviours, and

- Spiritually – wondering ‘what’s the meaning of it all?’

Outlining this sense of what to expect with grief can prevent us from inadvertently adding layers of judgement or expectation to what we experience. Grief is hard work as it is – we certainly don’t need to make it any harder.

**Navigating grief**

*Know that your feelings are normal:* whatever you feel, accept and validate those feelings – ‘I can understand how I can feel this way’. No judgement. No expectations to feel a certain way. ‘An abnormal response to an abnormal situation is normal behaviour’ (Viktor Frankl).

*Feel your feelings:* acknowledge your feelings – don’t try to ignore them, run from them, or mask them. Although it’s painful, lean into your feelings and let them come. You won’t

get stuck in them – they need to be expressed when you’re ready to do so. You might cry, you might get angry; you might talk it out, or run it out; you might sing or write about how you feel. It doesn’t matter how you do it, just that you allow those feeling to exist and that you give them a voice of expression.

*Allow for differences:* we live differently, we love differently, we grieve differently. Allow for those differences, and don’t expect those around you to look, sound, or feel exactly as you do when you’re all grieving. Grief is not a competition – there are no awards for who hurts more or who grieves ‘best’, and it doesn’t mean that someone loves more or hurts more if they appear different in their grief. We need to live and let live in how we grieve. Do what feels right for you in how you grieve, and let others do the same.

GRIEF IS A WHOLE-PERSON EXPERIENCE; THERE IS NOT ONE ASPECT OF OURSELVES THAT IS NOT IMPACTED BY GRIEF. WE KNOW, FOR EXAMPLE, THAT LOSS AND GRIEF CAN RESULT IN CHANGES ON ALL LEVELS

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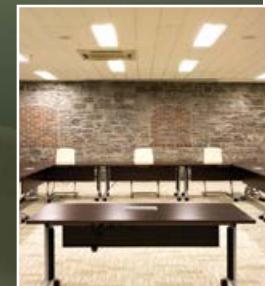
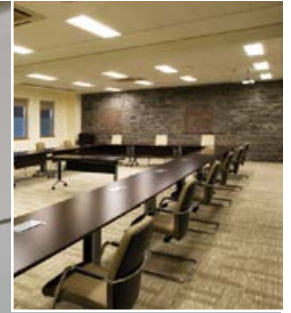
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*'Chunk it down'*: it can be quite overwhelming trying to come to terms with the enormity of loss, contemplating your whole life without a loved one or without the plans you held so dear, so it's useful to 'chunk things down' and not try to take everything all on board at once. That can mean taking things one day at a time, looking at the time ahead of you in small chunks, and dealing with each chunk one at a time. Think of just putting one foot in front of the other – that's good enough sometimes.

*Name it*: if you can't sleep or if your mood is shifting a lot, name it: for example, "My mind and body are trying to make sense of this awful loss." Mind your body, so that it can mind you:

- Sleep and rest,
- Nutrition and hydration,
- Fresh air and movement, and
- Connection.

*Gather support*: let people help you as you navigate loss. People often want to help – they can feel helpless in the face of your pain, so the giving and receiving of support can bring benefit to all parties. In time, you will find your own way to learn to carry your loss, and you'll be yourself again (or rather, a new version of yourself). But, for now, it's okay to take that help. Think about who is offering you help or support that you have not yet accepted, and consider whether it might be time to do so. It's also okay not to accept all help – just go with that you need. And indeed, it's okay to ask for what you need if you know what that is.

*Engage with professional help if needed*: for many people, bereavement and life losses will not require professional help; however, for some people, a qualified and experienced ear can be hugely beneficial when it comes to finding your way

through these times. There is no shame in this – it's a strength to recognise when to look for help, guidance, and support to navigate loss and grief.

### Children grieve too

Whether through death, divorce, loss of friendships, loss of the life they had (during this pandemic, for example), children feel loss just as we do. It might not look like grief – it can look different to what you might imagine (acting out, etc). As a parent or guardian, it's about keeping them informed and involved in an age-appropriate way, dealing with each child as an individual, giving them space to express their feelings, allowing them to continue to do normal things, such as play with their friends even in the face of bereavement, role modelling that it's okay to have feelings, creating a space for questions, and it's about reassurance that they will be okay.

*Consider what might be on the other side of awful*: I don't mention this in terms of grief, because we don't come out the other side of that – that's not what it's about. Instead, we talk about learning to live with grief and loss. In surviving loss, we can find the following:


- Clarity – in surviving, you get to know who you are, what you're made of and capable of, and also who your friends are,
- Perspective – you also get to know now what really matters in life, and you can sift through the noise and cut straight to what's important, because you have that perspective,
- Freedom – having survived the loss of your loved one or the loss of the life you had, you can find that you don't need to be liked, or to please people. You may even be able to say 'no' without guilt. You have, essentially, handled

much worse than someone not liking you or approving of you, and that can result in you feeling more at peace and freer now than you have ever done before.


### Supporting others' grief

*"When you cannot look on the bright side, I will sit with you in the dark"* (anon).

Supporting someone grieving means being there in whatever way is right for your relationship with them and for their needs as they grieve; creating a space that allows them to feel their pain, without judgement or expectation to 'hurry up'. You might be physically there with them; you might go with them to the grave; you might do practical tasks for them, such as food shopping or collecting children; you might sit and listen as they share their authentic feelings.

Grief hurts. It will hurt. You will be okay. But don't pathologise grief – your feelings are normal; they are a human response to loss. We can feel helpless when we're grieving, but there are things you can do to mind yourself, as outlined above. And in doing some of these things, you can be an active participant in your grief, and this can be a great help in navigating this toughest of times in your life. 

*Niamh Fitzpatrick is the author of Tell Me the Truth About Loss.*



GRIEF IS ABOUT LOSS AND CHANGE. IT'S WHAT WE EXPERIENCE WHEN THE LIFE WE HAD IS GONE AND THERE'S A NEW ONE IN ITS PLACE, OR WHEN THE LIFE WE HOPED FOR HAS NOT HAPPENED AND MAY NEVER COME TO PASS

## LOOK IT UP

### LITERATURE:

- Stroebe, Margaret, and Henk Schut (1999), 'The dual process model of coping with bereavement: rationale and description', *Death Studies*, vol 23, no 3, pp197-224
- Tonkin, Lois (1996), 'Growing around grief – another way of looking at grief and recovery', *Bereavement Care*, vol 15, no 1
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# What's the 411 on FDI?

The forthcoming *Investment Screening Bill* will introduce the State's first investment screening regime for foreign direct investment, writes Tara Kelly

THE SCREENING REGULATION WAS ADOPTED IN RESPONSE TO CONCERNS THAT CERTAIN FDI COULD POSE A RISK TO SECURITY OR PUBLIC ORDER IN MEMBER STATES

Until recently, there was no formal cooperation among member states and the European Commission regarding foreign direct investment (FDI) into the EU. The *EU Screening Regulation* (operative since 11 October 2020) formalises such member-state cooperation and prompts the introduction of domestic screening regimes.

[Regulation \(EU\) 2019/452](#) was adopted in response to increasing numbers of foreign investors, often with foreign government backing and direction. It facilitates member states sharing information on FDI into the EU and sets out certain key elements to be reflected in any national FDI screening regime. The regulation does not require member states to adopt an investment-screening procedure. However, there has been a notable increase in the number of EU member states that have adopted a screening mechanism since the regulation was first tabled by the commission in 2017.

Ireland is among a minority of EU member states that does not currently conduct any screening of foreign investment. The impending *Investment Screening Bill* will give effect to the *Screening Regulation* and proposes to introduce a domestic screening regime.

The Government started preparation of the bill in July 2020, following a public consultation in May. The most

recent Legislative Programme (autumn 2021) noted that the bill is priority legislation for the term, and that pre-legislative scrutiny had been waived to expedite the transposition. It is expected that the bill will likely be published in early 2022.

## Security and public order

The *Screening Regulation* was adopted in response to concerns that certain FDI could pose a risk to security or public order in member states – for example, where foreign investors purchase or invest in strategic European companies. The primary source of concern relates to foreign acquisitions of high-tech companies with significant intellectual property rights, EU citizen and business data sets, and key infrastructure or public utilities. Definitions are broad and include:

- Critical infrastructure, such as communications, utilities, technology, financial services and real estate,
- Critical technologies, including AI, robotics, semi-conductors, cyber-security, aerospace, nuclear energy and nano/biotechnology, and
- Access to sensitive information.

To facilitate enhanced scrutiny of foreign investment into the EU, the regulation introduced a cooperation procedure, which is already in effect, whereby member states are required to share information

regarding FDI into their home territories and comply with information requests from other member states or the European Commission. The newly established Investment Screening Unit within the Department of Business, Enterprise and Innovation (DBEI) acts as the contact point for member states and the European Commission.

Once enacted, the forthcoming bill will empower the minister to respond to threats to Ireland's security and public order posed by types of foreign investment and to prevent or mitigate such threats. The minister will be able to assess, investigate, authorise, condition, prohibit or unwind foreign investments from outside the EU, based on a range of security and public-order criteria. It is anticipated that the bill will create an investment screening regulator and/or significantly enhance the Investment Screening Unit's powers to assist the minister with the investment-screening function. It is expected that the relevant regulator will likely have the power to block or clear (subject to certain conditions) FDI into Ireland.

At this stage, it is unclear if the bill will regulate investments that have the potential to affect 'security' and 'public order' broadly, or whether it will identify specific sectors of focus. For example, Britain's *National Security and Investment Act* identifies 17 key sectors,

PICTURE: SHUTTERSTOCK/GAZETTE STUDIO



such as energy, transport, communications, defence and artificial intelligence. Early indications suggest that the Irish bill will reflect the fact that only a small number of investments could potentially pose a risk to Ireland’s security and public order. The bill is not anticipated to stymie foreign investment, but it is likely to have concrete implications for deal timelines.


### Careful balance

The contribution of FDI to the Irish economy is far-reaching. It is estimated that 20% of all private-sector employment in the State is directly or indirectly attributable to FDI. Given the importance of FDI, the bill will need to carefully balance the longstanding strategy of promoting and maintaining Ireland as an attractive place for inward investment, with

Ireland’s interest in fending off potential threats to public order and national security.

Early indications suggest that the proposed investment screening regime will not have a significant impact on Ireland’s attractiveness as a location for inward investment. The public consultation documentation published by the DBEI notes that a screening mechanism “could not lessen Ireland’s attractiveness to inward foreign direct investment, which has been a hugely important part of the growth of the Irish economy over many years”. Against this backdrop, the new regime will not pose a significant execution risk to qualifying investments.

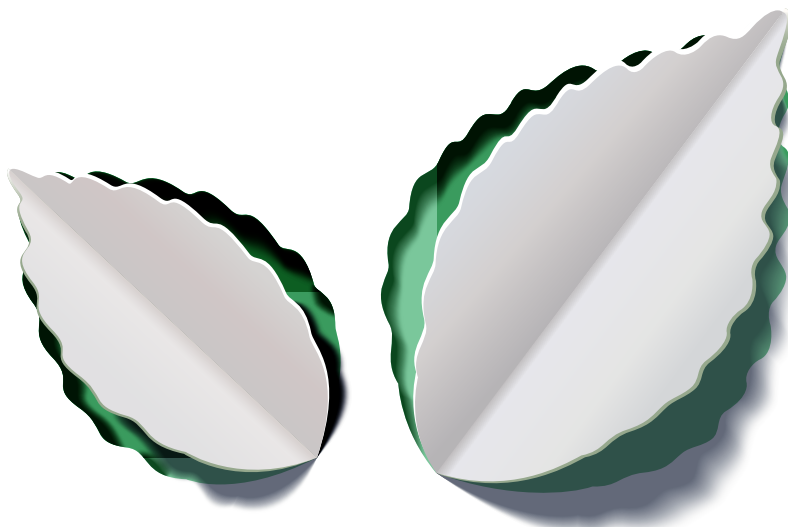
It remains to be seen the exact form the Irish regime will take, though several responses to the DBEI’s consultation are in favour of a regime that would operate

similarly to the Irish merger-control regime, particularly in terms of review timelines. If that is the case, the bill (once enacted) is likely to have a concrete effect on the deal timelines for qualifying investments. If the bill establishes a mandatory and suspensory regime similar to the existing merger-control regime, investors will be legally required to obtain approval for qualifying investments prior to completion of the transaction. Therefore, foreign investment notification and clearance may become a standard condition precedent in transaction documentation, where the foreign investment review process will need to be factored into the timeline to completion and the longstop date. 

*Tara Kelly is a partner at Mason Hayes & Curran.*

THE BILL IS NOT ANTICIPATED TO STYMIE FOREIGN INVESTMENT, BUT IT IS LIKELY TO HAVE CONCRETE IMPLICATIONS FOR DEAL TIMELINES





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## REPORT OF LAW SOCIETY COUNCIL MEETING 28 JANUARY 2022

### Presentation by director general

The Law Society's director general, Mark Garrett, made a presentation to the Council on his vision for the role, the profession, and the Society over the coming years.

In particular, he spoke on:

- Increased regulation and the increased role of Government,
- Technology,
- The changing workplace and workforce,
- Changing expectations on environmental,

societal, and governance (ESG) issues,

- Competition and structural shifts in the profession, and
- Reputation, trust, and the impact of these on the profession.


### Psychological services

Following consideration of a presentation from Antoinette Moriarty (Law Society psychological services manager), the Council agreed to progress implementation of a cross-

departmental initiative that will enhance the Society's psychological service offering to members.

### SGM on e-voting

The Council approved the convening of a special general meeting, as mandated at the most recent annual general meeting.

The SGM, to be held on 3 March, will consider a further proposal to move immediately to a 100% e-voting system. 

*Where's your growth  
going to come from?*



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## GUIDANCE NOTE

## NEGATIVE-INTEREST-RATE BANK CHARGES

Solicitors throughout the country are now aware of the imposition of negative-interest-rate bank charges on the client accounts of many firms. The Law Society has led a multi-faceted response to this development, including representations to banks, public-awareness campaigns, and CPD sessions to assist solicitors in preparing for the significant additional administrative burden. Negative-interest-rate bank charges on the client account are recoverable from the client, as it is a cost incurred through holding funds on behalf of a client in the course of providing legal services. However, as the concept of negative-interest-rate bank charges was not previously envisaged, it was prudently decided, for the benefit of complete clarity, to amend the *Solicitors Accounts Regulations 2014*.

**2021 regulations**

The *Solicitors Accounts (Amendment) Regulations 2021 (SI 463 of 2021)* came into operation on 1 October 2021, having been approved by the Law Society Council and having received the concurrence of the Legal Services Regulatory Authority. The amendment regulations were announced in the Law Society's 20 September 2021 [member e-zine](#) and again, by way of reminder, on 28 September 2021.

The amendment regulations introduced regulation 8A, which clarified, within the *Solicitors Accounts Regulations*, the regulatory position in relation to interest charges that financial institutions introduced on solicitors' client accounts, and how the interest charges are to be dealt with by solicitors.

Regulation 8A confirmed that a solicitor is explicitly permitted to hold moneys they receive for, or on account of, a client in an account that is subject to interest charges. It confirmed a solicitor's entitlement to pass on the interest charges to their clients as an outlay, and it also confirmed that agreements in writing may be made with clients in respect of the manner in which such interest charges may be discharged.

**Changes to existing regulations**

Solicitors are reminded that the principal changes to the *Solicitors Accounts Regulations 2014* introduced by regulation 8A are as follows:

1) The introduction of the definition of the term 'interest charge' to the regulations,

- 2) The introduction of an express provision to permit agreements in writing to be made with clients for the manner in which interest charges can be discharged,
- 3) To confirm that any interest charges relating to clients' moneys and insolvency arrangement moneys are to be disbursed from the solicitor's office account, or refunded from the solicitor's office account if applied to the solicitor's client account or insolvency arrangement account,
- 4) To confirm that any moneys paid by the solicitor in satisfaction of any interest charge is outlay for the purposes of the regulations,
- 5) To clarify that, notwithstanding any provision of the existing regulation 8, a solicitor is permitted to hold moneys they receive for, or on account of, a client in an account that is subject to interest charges, provided that the solicitor cannot open or hold moneys in an interest-bearing account at the bank to the practice of the solicitor.

**Deduction of interest charges**

Subject to the provisions of regulation 8A(3), a solicitor should instruct their bank, in writing, that any interest charges should not be debited on their client account, and should be debited on their office account. Where a bank deducts the interest charges from a client account, including where they have been instructed to do otherwise, a solicitor should transfer such moneys from their office account to their client account in satisfaction of the application of any such interest charge.

**Actions to take**

Solicitors should ensure that they pay out funds held in the client account at the earliest opportunity, withdraw fees as soon as they become due for payment, and should review client-ledger balances on a regular basis to ensure that no clients' moneys are being held for longer than necessary.

**Interest charges as an outlay**

Under regulation 8A(5), any moneys paid by the solicitor in satisfaction of any interest charge, in accordance with regulation 8A(4), may be recovered as outlay from the client in question, having informed the client of such interest charges. Solicitors should be aware of their obligations under [section](#)


[150](#) of the *Legal Services Regulation Act 2015* in this respect, and prior notice under section 150 must be provided to the client in the same manner as would apply in respect of any other outlay. It should be noted that any amount of interest charge being recovered as an outlay from a client should be in reference to the amount of interest charge paid on behalf of that client to the bank.

**Other agreements**

As an alternative to passing on the charge as outlay, a solicitor may, in accordance with regulation 8A(3), enter into a direct arrangement with a client in respect of how any interest charged is to be discharged. Any such arrangement regarding the treatment of the interest charge has to be in writing with a client.

By way of example, a solicitor may enter into an agreement with a client directly in respect of a dedicated client account that interest charges be deducted directly from that dedicated client account, but this must be arranged directly with the client.

Another example of recovery of interest charges would be a funds-handling charge to be billed to a client, rather than a direct like-for-like outlay charge for the recovery of negative interest charges. Such a funds-handling charge would be in the nature of a professional fee, subject to VAT, which must be included in a section 150 notice and otherwise treated like any other fee.

Finally, solicitors should ensure that there are consistent processes and procedures applied within the firm to cater for whichever method of recovery is preferred, and that the client is informed accordingly. 

*John Elliot, Registrar of Solicitors and Director of Regulation*

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**WILLS**

**Boyd, Marie (deceased)**, late of 66 Clonliffe Road, Ballybough, Dublin 3, who died on 14 May 2020. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same or was in recent contact with the deceased regarding her will, please contact Sherlock & Co, Solicitors; tel: 01 457 0846, email: [info@sherlocksolicitors.ie](mailto:info@sherlocksolicitors.ie)

**Bradley, Marie Bernadette Bradley (deceased)**, late of 'Woodlands', Moynalty, Kells, Co Meath, and formerly of 111 North Circular Road, Dublin 7; 31 Frankfurt Avenue, Rathgar Dublin 6; 3 Crosthwaite Park West, Dun Laoghaire, Co Dublin; 4 Rock Road, Booterstown, Blackrock, Co Dublin; 6 The Close, Kingswood Heights, Clondalkin, Co Dublin; 15 Anglesea Road, Ballsbridge, Dublin 4; 45 Anglesea Road, Ballsbridge, Dublin 4; 10 Sydenham Road, Ballsbridge, Dublin 4; and 'The Fosters', Foster Avenue, Dublin 4, who died on 4 March 2021. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Rogers & Byron, Solicitors, Cannon Row, Navan, Co Meath; DX 36004 Navan; email: [info@rogersandbyron.ie](mailto:info@rogersandbyron.ie)

**Byrne, Nuala (deceased)**, late of 5 Cunningham Park, Cornelscourt, Bray Road, Dublin 18. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 17 May 2021, please contact Philip Clarke, Morrissey Clarke LLP, Solicitors, 1b Lower George's Street, Dun Laoghaire, Co Dublin; tel: 01 280 2538, email: [reception@mccannclarke.ie](mailto:reception@mccannclarke.ie)

**Clarke, Josephine (deceased)**, late of 105 Oak Court Drive, Palmerstown, Dublin 20, who died on 18 February 2021. Would any person having knowledge of the whereabouts of the original will, executed by the above-named deceased on 25 March 1994, please contact Mullany Walsh

**RATES**

**PROFESSIONAL NOTICE RATES**

**RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:**

- **Wills** – €155 (incl VAT at 23%)
- **Title deeds** – €310 per deed (incl VAT at 23%)
- **Employment/miscellaneous** – €155 (incl VAT at 23%)

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ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. ALL NOTICES MUST BE EMAILED TO [catherine. Kearney@lawsociety.ie](mailto:catherine. Kearney@lawsociety.ie) and PAYMENT MADE BY ELECTRONIC FUNDS TRANSFER (EFT). The Law Society's EFT details will be supplied following receipt of your email. **Deadline for April Gazette: 11 March 2022.**

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*.

Maxwells Solicitors, 19 Herbert Place, Dublin 2; tel: 01 676 5473, email: [vmarkey@mwmlegal.ie](mailto:vmarkey@mwmlegal.ie)

**Counihan, Bernadette (deceased)**, late of Jenkinstown, Kilcock, Co Meath, who died on 23 December 2021. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Regan McEntee & Co, Solicitors, High Street, Co Meath; tel: 046 943 1202, email: [amurphy@reganmcentee.ie](mailto:amurphy@reganmcentee.ie)

**Crowley, Ann (otherwise known as Anne Bernadette Moir) (deceased)**, late of The Village, Ballinspittle, Co Cork, who died on 25 August 2021. Would any person knowing the whereabouts of any will executed by the above-named deceased please contact Marianne Lonergan, Ronan Daly Jermyn, 2 Park Place, Mahon Point, Cork; tel: 021 480 2700, email: [marianne.lonergan@rdj.ie](mailto:marianne.lonergan@rdj.ie)

**Doyle, Denis (deceased)**, late of Martingale, Oylegate, Enniscorthy, Co Wexford. Would any person having knowledge of a will executed by the above-named deceased, who died 22 October 2003, please contact Cooke & Kinsella Solicitors, Wexford Road, Arklow, Co Wicklow; tel: 0402 32928/40012, fax: 0402 32272, email: [fergus@cookekinsella.ie](mailto:fergus@cookekinsella.ie)

**Eiffe, Lorraine (deceased)**, late of Gaulstown, Dunshaughlin, Co Meath, who died on 7 May 2021. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Carla Bannon, Bannon Solicitors, 3 The Paddocks, Main Street, Dunshaughlin, Co Meath; tel: 01 801 7871, email: [info@bannon.solicitors.ie](mailto:info@bannon.solicitors.ie)

**Fanning, Austin (deceased)**, late of Killaturley, Swinford, Co Mayo, and formerly of Ballinteskinn, Co Wicklow, and Avoca, Co Wicklow, who died on 19 January 2022 at Mayo University Hospital, Castlebar, Co Mayo. 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 P O'Connor & Son, Solicitors, Swinford, Co Mayo; tel: 094 925 1333, email: [law@poconsol.ie](mailto:law@poconsol.ie)

**Flahive, Maura Mary (deceased)**, late Apt 10, El Greco, Serpentine Avenue, Ballsbridge, Dublin 4, and of Ballinvoher, Annascaul, Co Kerry, who died at University Hospital Kerry on 20 October 2021. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Piers McCarthy Lucey LLP, Solicitors, 9 Ashe Street, Tralee, Co Kerry; tel: 066 712 2900, email: [lawyers@pmcl.ie](mailto:lawyers@pmcl.ie)

**MISSING HEIRS, WILLS, DOCUMENTS & ASSETS FOUND WORLDWIDE**

Contact us quoting the reference **Lawsociety IRE2021**



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### CONTACT DETAILS

E: [diplomateam@lawsociety.ie](mailto:diplomateam@lawsociety.ie) T: 01 672 4802 W: [www.lawsociety.ie/diplomacentre](http://www.lawsociety.ie/diplomacentre)

All lectures and workshops are webcast and available to view on playback, allowing participants to catch up on coursework at a time suitable to their own needs.  
Diploma Centre reserves the right to change the courses that may be offered and course prices may be subject to change.

**Flynn, Maureen (deceased)**, late of Carrickbanagher, Drumfin, via Boyle, Co Sligo, and recently of St Phelim's Nursing Home, Dromahaire, Co Leitrim, who died on 28 March 2021. Would any person having knowledge of the whereabouts of any will executed by the above-named please contact Rochford Gallagher & Co, Solicitors, Ballymote, Co Sligo; tel: 071 918 3309, email: [ballymote@rochford-gallagher.com](mailto:ballymote@rochford-gallagher.com)

**Haley, Michael (deceased)**, late of Ballygorey, Mooncoin, Co Kilkenny, who died on 5 January 2022. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact HD Keane Solicitors LLP, 22 O'Connell Street, Waterford; tel: 051 874 856, email: [nicola.walsh@hdkeane.com](mailto:nicola.walsh@hdkeane.com)

**Hennessy, Nora (deceased)**, late of Padre Pio Nursing Home, Holycross, Thurles, Co Tipperary, and formerly of 6 Chapel Street, Borrisoleigh, Co Tipperary, who died on 19 December 2021. Would any person having knowledge of any will made by the above-named deceased please contact Butler Cunningham & Molony, Solicitors, Templemore, Co Tipperary; tel: 0504 31122/31569, email: [info@bcmtemplemore.ie](mailto:info@bcmtemplemore.ie)

**Kennedy, Bernard (deceased)**, late of 16 Blue Cedars, Ballyfin Road, Ballybofey, Co Donegal, and formerly of 23 Kimmage Grove, Terenure, Dublin 6; 8 Westfield Road, Harold's Cross, Dublin 6W; and 71 Sundrive Road, Kimmage, Dublin 12, who died on 22 July 2021. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Gleeson McGrath Baldwin Solicitors, 29 Anglesea Street, Dublin 2; tel: 01 474 4300, 01 283 2106, email: [solicitors@gmgb.ie](mailto:solicitors@gmgb.ie)

**Kiernan, Frances (deceased)**, late of 126 St John's Crescent, Clondalkin, Dublin 22, who

died on 10 June 2021. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Finders International, Unit 12D Butlers Court, John Rogerson Quay, Dublin 2; ref: 117989W; tel: 01 567 6940, email: [info@findersinternational.ie](mailto:info@findersinternational.ie)

**Lynch, Denis Philip (deceased)**, late of Sacred Heart Residence, Sybil Hill Road, Raheny, Dublin 5, and formerly of 45 Bayside Boulevard South, Sutton, Dublin 13 and also 163 Raheny Road, Raheny, Dublin 5, who died on 1 December 2021. Would any person having knowledge of the whereabouts of a will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact O'Donohoe Solicitors, 11 Fairview, Dublin 3; ref: MOD/AML; tel: 01 833 2204, email: [amcloughlin@odonohoes.com](mailto:amcloughlin@odonohoes.com)

**McDonagh, John (deceased)**, late of Ivy House, Kiltimagh, Co Mayo, and formerly of Cordaragh, Kiltimagh, Co Mayo, who died on 7 October 2021 at Mayo University Hospital, Castlebar, Co Mayo. 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 P O'Connor & Son, Solicitors, Swinford, Co Mayo; tel: 094 925 1333, email: [law@poconsol.ie](mailto:law@poconsol.ie)

**McKenna, Ronan (deceased)**, late of 80 Balreask Village, Navan, Co Meath, who died on 4 November 2021. Would any person have any knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Cora Higgins, Regan McEntee and Partners, Solicitors, High Street, Trim, Co Meath; DX92 002 Trim; tel: 046 943 1202, email: [chiggins@reganmcentee.ie](mailto:chiggins@reganmcentee.ie)

**O'Hara, Lena (deceased)**, late of 9 Mount Pleasant, Ballyconnell, Co Cavan, who died on

19 May 1987. Would any person having knowledge of the whereabouts of a will made by the above-named deceased on 14 February 1986 or any other will made by her please contact Aisling Hayes & Co, Solicitors, 46A Market Street, Cootehill, Co Cavan; ref: AG/CS/O.44; tel: 049 555 5611, email: [info@aislinghayes.ie](mailto:info@aislinghayes.ie)

**Sinnott, Peter (deceased)**, late of 25 Geraldine Street, Dublin 7, who died on 26 August 2021. 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 McAlister O'Connor, Solicitors, Abbey Road, Navan, Co Meath; tel: 046 902 2223, email: [declanpoconnor@gmail.com](mailto:declanpoconnor@gmail.com)

**Yeates, Kathleen (deceased)**, late of 163 Corrib Road, Terenure, Dublin 6W who died on 22 July 2021 at Our Lady's Hospice, Harold's Cross, Dublin 6. 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 Gallagher & Company, Solicitors, 5 Ranelagh Village, Ranelagh, Dublin 6; tel: 01 497 1520, email: [solicitor@avrillgallagher.ie](mailto:solicitor@avrillgallagher.ie)

**MISCELLANEOUS**

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**TITLE DEEDS**  
**McKenna, Madeline (otherwise Madeline Angela) (deceased), who died on 30 May 2019: title to 48 Dartmouth Square East, Leeson Park, Ranelagh, Dublin 6.** Would any person having knowledge of

the whereabouts of title deeds to the above property, or if any firm is holding same, please contact Coghlan Kelly Solicitors, Trinity Chambers, South Street, New Ross, Co Wexford, Y34 VP89; DX: 37004 Co Wexford; tel: 051 429 100, email: [owafer@coghlinkelly.com](mailto:owafer@coghlinkelly.com)

**Record no: 2021/01435 – an Chúirt Chuarda (Circuit Court), Cork Circuit, county of Cork, between P Twohig and Sons Limited (plaintiff) and any personal representatives of the late Thomas Frederick Gerald Perceval (deceased), styled Earl of Egmont, and any other persons claiming an interest in those lands known as the Supermarket Car Park, rear of Strand Street, Kanturk, Co Cork (defendant): notice of service of civil bill, application for possessory title, 0.016 hectares (0.04 acres) at Strand Street, Kanturk, Co Cork**  
Take notice that P Twohig and Sons, Limited Company, of Strand Street, Kanturk, Co Cork, has issued the above entitled proceedings pursuant to an equity civil bill dated 19 November 2021 and intends to apply to Cork Circuit Court for a declaration that it has a good possessory title to the freehold and any other subsidiary interests in certain property situated by or at the car park at the rear of the plaintiff's supermarket premises at Strand Street, Kanturk, in the county of Cork, comprising 0.016 hectares (0.04 acres) or thereabouts.

Pursuant to Circuit Court order dated 11 January 2022, P Twohig and Sons Limited has been granted liberty to serve the civil bill on any person having or claiming to own the freehold or other interest in the said property by way of advertisement/publication in *The Examiner* newspaper and *Law Society Gazette*, and further take notice that the court did further order that any such person or persons having or claiming to own the freehold or other interest in the said property shall have ten days from the date of the said publication to

enter, or cause to be entered, with the county registrar at his office at the Courthouse, Washington Street, in the city of Cork, an appearance to answer the claim of P Twohig and Sons Limited and to the plaintiff solicitors James Lucey and Sons, Solicitors, Kanturk, Co Cork; tel: 029 50300 or email: [info@luceylaw.ie](mailto:info@luceylaw.ie)

**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 Thomas Donnelly of 23 Burnaby Mews, Greystones, Co Wicklow, and in the matter of the property known as 13a George's Avenue, Blackrock, Co Dublin**

Take notice any person having a freehold interest or any intermediate interest in all that and those the property known as 13a George's Avenue, Blackrock, Co Dublin (hereinafter called 'the property'), held by the applicant under a lease dated 31 January 1921 and made between Amelius G Beauclerk of the one part and Michael Dempsey of the other part for the term of 99 years from 25 March 1919 at a rent of £13 per annum.

Take notice that Thomas Donnelly intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of such title to the aforementioned property to the under-mentioned solicitors within 21 days from the date of this notice.

Take notice that, in default of any such notice being received, the applicant, Thomas Donnelly, intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Dublin for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold

reversion in the aforesaid property is unknown or ascertained.

*Date: 4 March 2022*

*Signed: Freehill Craughwell*

*(solicitors for the applicants),*

*6 Wentworth Place, Wicklow Town*

**In the matter of the *Landlord and Tenant (Ground Rents) Act 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Clarman Developments Limited: notice of intention to acquire the fee farm grant interest pursuant to section 4 of the *Landlord and Tenant (Ground Rents) Act 1967* – Cullen's Yard, Sweeney's Terrace, Dublin 8, in the county of Dublin**

Any person having an interest in the fee farm grant or any estate or interest in the above property take notice that Clarman Developments Limited intends to submit an application to the county registrar of the county of Dublin for the acquisition of the fee farm grant interest and all intermediate interests in the aforesaid property, and any person asserting that they hold a superior interest in the property is called upon to furnish evidence of title to the premises to the below named within 21 days from the date of this notice.

In particular, any person having an interest in the lessors' interest in a lease for lives dated 23 September 1719 between Jacob Poole of the one part and Owen Sweny of the other part and in covenants and conditions reserved in a fee farm grant dated 27 February 1852 between the Right Honourable Earl of Meath of the one part and the Reverend John Sweny, rector of Cleenish in the county of Fermanagh of the other part, in respect of premises commonly known as Cullen's Yard, Sweeney's Terrace, Dublin 8, in the city of Dublin, for John Sweny, his heirs, and assigns forever subject to the yearly rent in the amount of £4.10s should provide evidence of title to the below named.

In default of any such information being received by the appli-

cant, Clarman Developments Limited intends to proceed with the application before the county registrar and will apply to the county registrar for the county of Dublin for directions as may be appropriate on the basis that the person or persons entitled to the superior interest, including the fee farm grant interest, in the said premises are unknown and unascertained.

*Date: 4 March 2022*

*Signed: Gore & Grimes Solicitors*

*LLP (solicitors for the applicants),*

*Cavendish House, Smithfield,*

*Dublin 7*

**In the matter of the *Landlord and Tenant (Ground Rents) Act 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Clarman Developments Limited: notice of intention to acquire the fee farm grant interest pursuant to section 4 of the *Landlord and Tenant (Ground Rents) Act 1967* – Sweeney's Terrace (formerly known as Sweeney's Lane) in the county of Dublin**

Any person having an interest in the fee farm grant or any estate or interest in the above property take notice that Clarman Developments Limited intends to submit an application to the county registrar of the county of Dublin for the acquisition of the fee farm grant interest and all intermediate interests in the aforesaid property, and any person asserting that they hold a superior interest in the property is called

upon to furnish evidence of title to the premises to the below named within 21 days from the date of this notice.

In particular, any person having an interest in the lessors' interest in a lease for lives dated 23 September 1719 between Jacob Poole of the one part and Owen Sweny of the other part and in covenants and conditions reserved in a fee farm grant dated 27 February 1852 between the Right Honourable Earl of Meath of the one part and the Reverend John Sweny, rector of Cleenish in the county of Fermanagh, of the other part, in respect of the premises situate Sweeney's Terrace (formerly known as Sweeney's Lane) in the parish of Saint Luke and city of Dublin, for John Sweny, his heirs, and assigns forever subject to the yearly rent in the amount of £4.10s should provide evidence of title to the below named.

In default of any such information being received by the applicant, Clarman Developments Limited intends to proceed with the application before the county registrar and will apply to the county registrar for the county of Dublin for directions as may be appropriate on the basis that the person or persons entitled to the superior interest, including the fee farm grant interest, in the said premises are unknown and unascertained.

*Date: 4 March 2022*

*Signed: Gore & Grimes Solicitors*

*LLP (solicitors for the applicants),*

*Cavendish House, Smithfield,*

*Dublin 7*

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

Notice to any person having any interest in the freehold interest of the following property: all that and those the property being Uncle Tom’s Cabin Public House, Dundrum Road, Dundrum, Dublin 14, being part of the property demised by lease dated 1 November 1845 made between William Corbett of the one part and James Fearon of the other part (the lease) and described therein as all that and those that plot or parcel of ground situate, lying, and being without of the road leading from Dublin to Dundrum and near to Dundrum aforesaid, and extending to the small river commonly known as the Dundrum River in the rear thereof, in the barony of Rathdown and county of Dublin aforesaid, containing in breadth to the front thereof 64 feet and a like number of feet in the rear thereof, and depth from front to rear 140 feet, be the same more or less, bounded on the north by a piece of ground, house, and

buildings in the possession of Benjamin Turner, on the south by the said William Corbett’s ground, and on the west by the small river aforesaid, and on the east by the Dundrum Road aforesaid.

Take notice that UTC Developments Limited (the applicant), being the person entitled to the interest of the lessee under the lease in respect of the property described above, and situate to the rear of 5 Rosemount Terrace, Dundrum Road, Dundrum, Dublin 14, intends to apply to the county registrar of the county of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of the their title to same to the below within 21 days from the date of this notice.

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

sion) in the aforesaid premises are unknown and unascertained.

*Date: 4 March 2022*

*Signed: Sheehan & Company LLP (solicitors for the applicants), 1 Clare Street, Dublin 2; ref: MF/EL/UTC001/0009*

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

Notice to any person having any interest in the freehold interest of the following property: all that and those the property being portion of the rear of 5 Rosemount Terrace, Dundrum Road, Dundrum, Dublin 14, being part of the property demised by lease dated 21 October 1931 and made between Richard Walsh of the one part and Eileen Clarke and Esther Mary Stanley of the other part (the lease) and described therein as “all that and those the dwellinghouse known as Taney Villa, Dundrum, with the garden and premises attached thereto, part of the lands of Churchtown, as more particularly delineated and

described by the map hereon endorsed and are situate, lying, and being in the parish of Taney, barony of Rathdown and county of Dublin”.

Take notice that UTC Developments Limited (the applicant), being the person entitled to the interest of the lessee under the lease in respect of the property described above, and situate to the rear of 5 Rosemount Terrace, Dundrum Road, Dundrum, Dublin 14, intends to apply to the county registrar of the county of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of the their title to same to the below within 21 days from the date of this notice.

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

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- Manager as coach and flexing leadership styles
- Using coaching skills to develop your team

**Workshop Dates:**

- Workshop 1: Friday 4 & Saturday 5 March 2022
- Workshop 2: Friday 1 April 2022
- Workshop 3: Friday 20 May 2022

**Workshop Time:** 9:30am to 5.00pm (each day)

**Venue:** Law Society of Ireland

**Fee:** €1,400 | €1,200\*

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DATE	EVENT	CPD HOURS	DISCOUNTED FEE*	FULL FEE
10 March	<b>Probate Update 2022</b> via Zoom Webinar	3 General (by eLearning)	€160	€185
16 March	<b>Planning &amp; Environmental Law Masterclass 2022</b> via Zoom Webinar	8 General plus 2 Management & Professional Development Skills (by eLearning)	€350	€425
6 April	<b>Digital Upskilling – Prioritising Using Outlook</b> via Zoom Meetings	4 Management & Professional Development Skills (by eLearning)	€400	€500
11 May	<b>Negotiation Skills for Lawyers</b> via Zoom Meetings	3.5 Management & Professional Development Skills (by eLearning)	€160	€185
Online, on-demand	<b>The Never Ending Negotiation - the legal aspects of the Northern Ireland Protocol - LegalEd Talk</b>	1 Management & Professional Development Skills (by eLearning)		Complimentary

For a complete listing of upcoming courses visit [www.lawsociety.ie/CPDcourses](http://www.lawsociety.ie/CPDcourses) or contact a member of the Law Society Professional Training or Law Society Skillnet team on: Tel: 01 881 5727 E: [Lspt@lawsociety.ie](mailto:Lspt@lawsociety.ie) or [lawsocietyskillnet@lawsociety.ie](mailto:lawsocietyskillnet@lawsociety.ie)

\*Applicable to Law Society Skillnet members

ises are unknown and unascertained.

Date: 4 March 2022

Signed: Sheehan & Company LLP (solicitors for the applicants), 1 Clare Street, Dublin 2; ref: MF/EL/UTC001/0009

**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 Janette Hurrell and Pinnacle Pensioner Trustees Limited**

In respect of the premises, lands, and hereditaments known 171 Lower Kimmage Road, Dublin 6W, which entire said premises is now comprised in Folio 171979L of the register of leaseholders, Co Dublin – any person having any interest in the freehold estate or any immediate interests in the following property: the premises, lands, and hereditaments known 171 Lower Kimmage Road, Dublin 6W, being the entire property comprised in Folio 171979L of the register of leaseholders, Co Dublin, held under an indenture of sub-lease dated 9 May 1929 between (1) Thompson McCullough Esq and (2) Mary Winifred Coltery for a term of 165 years from 1 May 1929, subject to the yearly rent thereby reserved of IR£4 (€5.08) and to the covenants and conditions therein contained, and being described in the said sub-lease as “all that and those the plot of ground with the dwellinghouse and premises thereon known as ‘Dooney’, situate on the west side of Kimmage Road, Terenure, in the urban district of Rathmines and Rathgar and in the barony of Upper Cross and county of Dublin, with the out-offices, buildings, and appurtenances thereunto belonging, together with a right of way

on foot or with horses, carts, or other vehicles for the lessee and her assigns, her and their servants’ visitors, and licensees in common with the lessor and his tenants, servants, visitors, and licensees at all times from Dark Lane aforesaid to the rear of the said premises, ‘Dooney’, Kimmage Road, along the lane made or to be made at the rear of ‘Dooney’ and the free right of ingress, egress, and regress from the said ‘Dooney’ along the said lane, all of which premises are hereby demised, and the said lane over which the said right of way is hereby granted, are more particularly delineated and described on the map endorsed hereon and thereon edged red”.

Take notice that Janette Hurrell and Pinnacle Pensioner Trustees Limited (the applicants), being the parties now holding the lands and now entitled to the sub-lessee’s interest under the said sub-lease, intend to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest and any intermediate interest(s) in the aforesaid lands, and any party asserting that they hold a superior interest in the aforesaid lands (or any of them) are called upon to furnish evidence of the title to the aforesaid lands to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicants intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for directions as may be appropriate on the basis that the person or person beneficially entitled to all superior interests including the fee simple and freehold rever-

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sion in the aforesaid lands are unknown or unascertained.

Date: 4 March 2022

Signed: Boban Solicitors (solicitors for the applicants), Suite A19, Bracetown Business Park, Dublin 15, D15 YDC1

**In the matter of the Landlord and Tenant (Ground Rents) Act 1967 – notice of intention to acquire fee simple (section 4): an application by Sean Dunne, People First Credit Union, James Fintan Lawlor Avenue, Portlaoise, Co Laois**

1) Description of land to which this notice refers: all that and those the property known as no 3 Emily Row, Athy, in the county of Kildare.

2) Particulars of applicant’s lease or tenancy: whereas the applicant merged on 16 January 2017 with Athy Credit Union Limited, and whereas the applicant is the successor-in-title to the interest held by Athy Credit Union Limited in the aforementioned property, and whereas the applicant holds the said property under a deed of assignment made on 31 December 1971, made as between Dorothy Mary Greene of the first part and Athy Credit Union Limited of the other part, being an assignment of a lease made on 25 of July 1951, made as between Frances Mary McCulloch and Harold Graham Leask of the first part and Mark Brophy of the other part for the

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term of 75 years, commencing on 1 July 1951, subject to a yearly rent of £15.


Take notice that I, Sean Dunne, as CEO of People First Credit Union Limited, the applicant herein, being a person entitled under section 8 of the Landlord and Tenant (Ground Rents) (No 2) Act 1978, propose to purchase the fee simple in the land described in paragraph 1.

Date: 4 March 2022

Signed: Francis B Taaffe & Co LLP (solicitors for the applicants), Edmund Rice Square, Athy, Co Kildare; DX 61003 Athy



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## PRO BONOBO

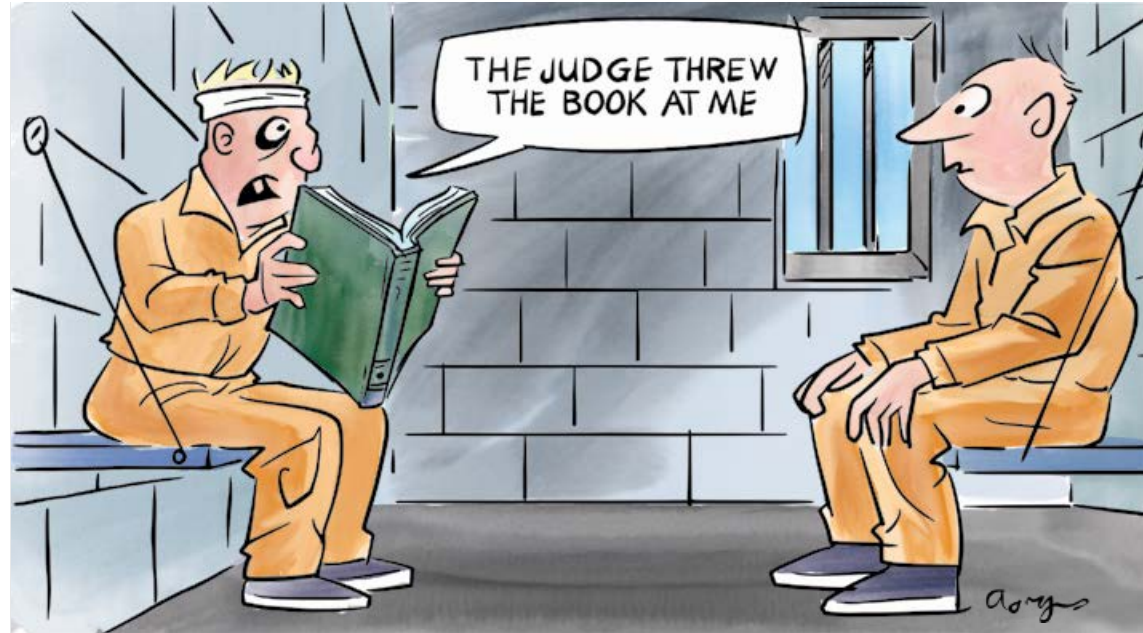
## 'Crime and punishment', indeed

● A judge's decision to order a white supremacist to read classic literature as part of a suspended sentence has been quashed after a challenge by the British government, *The Guardian* reports.

Justice Holroyde found the initial sentence to be unlawful and said: "We are satisfied that there must be a sentence of immediate imprisonment."

Ben John (22) was given a two-year suspended sentence at Leicester crown court last August after he was found guilty of possessing a copy of *The Anarchist Cookbook*, "likely to be useful to anyone preparing an act of terrorism".

John was also told to read famous literary works and given a five-year serious crime-prevention order. The judge



said: "When you come to see me every four months, I will test you. And if I think you are

bullshi\*\*ing, you will suffer." At a hearing in January, John said: "I enjoyed Shakespeare more

than I did Jane Austen, but I still enjoyed Jane Austen by a degree."

## Dark wings, dark works

● Crows are being recruited to pick up discarded cigarette butts from the streets of a Swedish city, *The Guardian* reports.

The wild birds receive a little food for every butt they deposit in a machine designed by a start-up near Stockholm. "They are taking part on a voluntary basis," said the founder of Corvid Cleaning, the company



"I'm trying to cut down to 60 a day."

behind the method.

A municipal waste strategist said the pilot programme depended on financing: "It would be interesting to see if this could work in other environments. Also from the perspective that we can teach crows to pick up cigarette butts, but we can't teach people not to throw them on the ground."

## Rama lama ding dong

● A priest, who locals say has been ringing the church bells more than 200 times a day, has been fined, *RTÉ* reports.

Fr Leonardo Guerri from the Santa Maria a Coverciano church in Florence, had been in

dispute with neighbours for four years, a local paper reported. Residents say that the chimes rung every day between 8am and 9pm for years. The worst was during holidays, when the bells pealed every half hour.

After four years of petitions, legal proceedings and tests for noise-pollution levels, the regional agency for environmental protection in Tuscany cracked down, fining Fr Guerri €2,000.

## The Italian job

● An Italian man who received welfare for years due to blindness has been arrested on suspicion of fraud after being seen driving and riding a scooter, *RTÉ* reports.

The Palermo man received at least €170,000 in benefits since 2008 after attesting that he was "totally blind" as a result of a congenital problem.

Police were alerted after the man renewed his driver's licence in 2018, despite his earlier declaration. Authorities witnessed the man driving (while dialling his phone at the same time), looking at shop windows, and teaching his daughter to ride a bike.



LAW SOCIETY  
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**The Law Society is the professional body of the solicitors' profession in Ireland. It is committed to providing the highest standard of service to its growing membership, students, stakeholders and members of the public. The Law Society has representative, regulatory and educational functions in respect of the solicitors' profession. It delivers high-quality legal education and training, encourages and supports the highest professional standards, and places significant emphasis on civic engagement, supporting local community initiatives and driving diversity and inclusion within the profession.**

**Marking a new era of senior leadership for the organisation, the Law Society is now looking to make appointments to three Director-level positions:**

- **Director of Finance and Operations**
- **Director of Regulation and Registrar of Solicitors**
- **Director of Policy**

Building on the wealth of knowledge and experience of the current Directors who will retire from the Law Society in 2022, these appointments will be made at a uniquely exciting time of change, challenge and opportunity in the Society's history. As members of the senior management team, reporting to the Director General, the new appointees will:

- Play a critical role in the development and delivery of the Law Society's strategic objectives.
- Contribute to the future development of the legal profession in Ireland as it responds to professional, societal and regulatory changes.
- Support the delivery of the Law Society's vision to be 'the trusted voice of a respected solicitors' profession'.

Candidates for these positions will bring a blend of strong communication, people and leadership skills. They will also have the strategic and relationship management expertise required to manage a dynamic and complex environment involving a range of internal and external stakeholders.

These senior leadership appointments arise at a significant time of societal and organisational transformation and represent outstanding opportunities for the appointees to further enhance the role and influence of the Law Society of Ireland.

**It is anticipated that these appointments will be made in April 2022.**

**For a confidential discussion and further information, please contact PwC Executive Search:**

- Katie Boyne on 087 182 6817 or [ie\\_finlawsoc\\_mailbox@pwc.com](mailto:ie_finlawsoc_mailbox@pwc.com) for the Director of Finance and Operations position.
- Ellen Roche on 087 637 0812 or [ie\\_reglawsoc\\_mailbox@pwc.com](mailto:ie_reglawsoc_mailbox@pwc.com) for the Director of Regulation position.
- Adrienne Harten on 087 247 2896 or [ie\\_pollawsoc\\_mailbox@pwc.com](mailto:ie_pollawsoc_mailbox@pwc.com) for the Director of Policy position.

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