gazette
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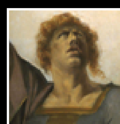
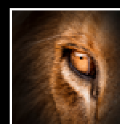
Can an arbitration clause be imposed on a consumer?

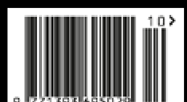
STREETS OF LONDON
Armagh-born Caroline Carberry is one of Britain's leading criminal barristers



OVERNIGHT OATHS
Change in requirements for applications to become a commissioner for oaths



IN THE JUNGLE
New civil court orders to protect victims of stalking behaviours



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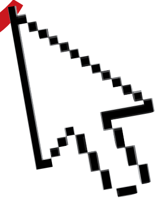

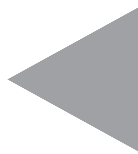

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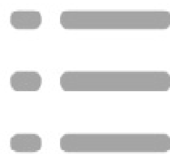

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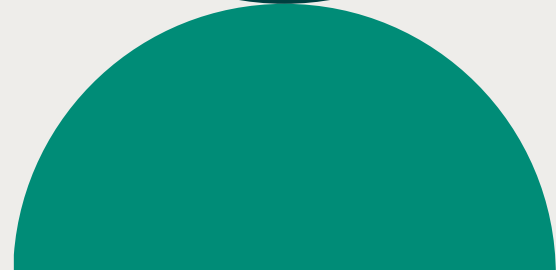

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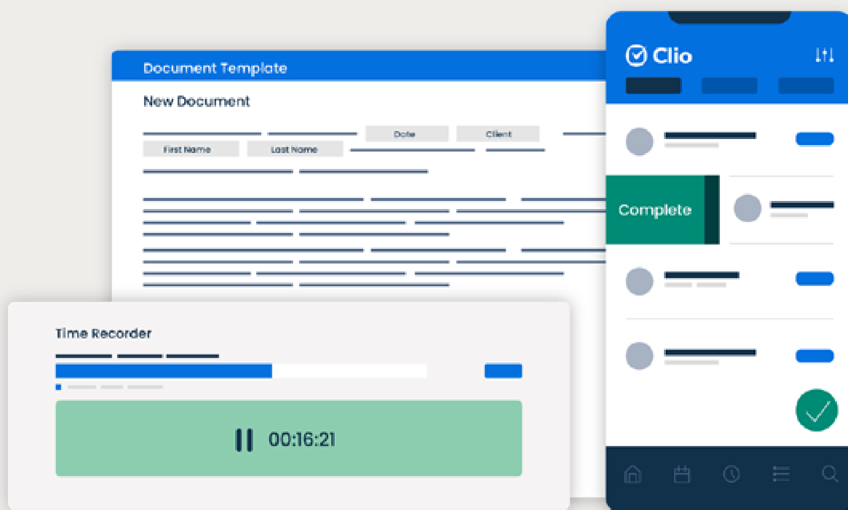

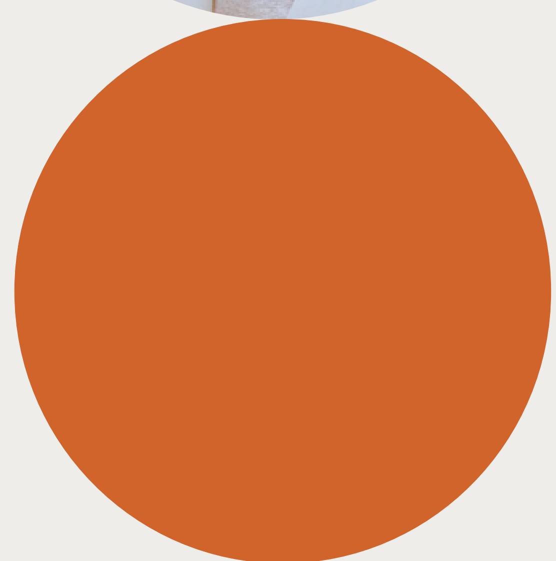

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> **SHAINUL KASSAM**
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gazette LAW SOCIETY

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Clear priorities

The schools are back, a new legal term has begun, and the Dáil and Seanad have returned from their summer break. A new budget has just been delivered, and a general election may be on the way. In our Budget 2025 submission, the Law Society called for ambitious and sustained investment in the justice system to deliver for all communities and maintain our competitive edge globally for the benefit of the Irish economy.

The Law Society continues to advocate for a modern and effective courts system, with targeted investment to relieve capacity constraints and deliver outcomes swiftly and efficiently. We remain focused on achieving reform of the civil and criminal legal aid schemes and want to ensure that it will be sustainable for solicitors to offer legal aid services, so that those who need it around the country will have access to justice.

Thriving and diverse

Adding more pathways to becoming a solicitor and enhancing legal skills is also at the fore of our agenda. As our clients' needs change, so also must the profession change. A thriving, diverse profession will be better prepared for challenges like digital transitions and increased regulation, as well as business opportunities that lie ahead.

The Law Society welcomes the recent publication of the Legal Services Regulatory Authority (LSRA) *Breaking Down Barriers* reports. We are committed to further development of our existing initiatives to widen access to the profession, which include a range of financial supports, new routes to legal qualifications, and school outreach programmes.

Finding innovative solutions to attract and retain solicitor practices in rural areas is another clear priority. There are increasing numbers of trainee solicitors enrolling year-on-year who are coming from every county in Ireland. However, their training contracts tell a different story – over 90% of the latest PPC class secured training contracts with firms in Dublin, leaving 16 counties without a trainee in this intake.

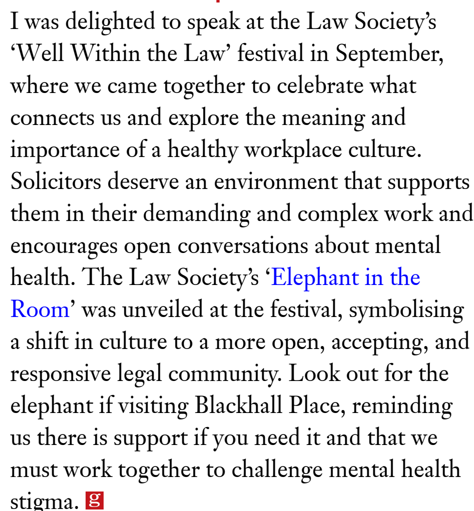
The Law Society's hybrid PPC course has gone some way to encouraging more training contracts outside of the main urban areas, as well as increased diversity, but there is scope to do more if we want to counter the risk of 'legal deserts' emerging in certain parts of the country. The public sector and industry have a lot to offer in terms of diverse solicitor in-office training, and we will be working with potential partners to drive this opportunity forward.

With the possibility of a general election on the horizon, we will continue to prioritise these issues in our engagement with political parties to ensure that Ireland has a modern, effective legal system that delivers for a dynamic economy, protects community-based legal practices, and supports access to justice for all.

Legal partnerships

The LSRA recently published draft regulations on the regulatory framework for legal partnerships. These legal partnerships can comprise two or more legal practitioners (solicitors or barristers) where at least one partner is a practising barrister. The draft regulations and FAQ give an insight into the steps involved in how legal partnerships will operate, should you be interested in exploring this avenue.

Look out for the elephant!



I was delighted to speak at the Law Society's 'Well Within the Law' festival in September, where we came together to celebrate what connects us and explore the meaning and importance of a healthy workplace culture. Solicitors deserve an environment that supports them in their demanding and complex work and encourages open conversations about mental health. The Law Society's 'Elephant in the Room' was unveiled at the festival, symbolising a shift in culture to a more open, accepting, and responsive legal community. Look out for the elephant if visiting Blackhall Place, reminding us there is support if you need it and that we must work together to challenge mental health stigma.

> WE WILL CONTINUE TO PRIORITISE THESE ISSUES TO ENSURE THAT WE HAVE A MODERN, EFFECTIVE LEGAL SYSTEM

BARRY MacCARTHY,
PRESIDENT

THE BIG PICTURE

WAKE ME UP WHEN SEPTEMBER ENDS

Thousands flee southern Lebanon on Monday 23 September as Israel launched a new wave of 'extensive strikes'. The number of internally displaced people has reached more than 200,000, adding to the 111,696 already forced to flee since October last year, the UN Office for the Coordination of Humanitarian Affairs said on 25 September. Lebanon's health ministry says at least 564 people were killed in Israeli strikes in the days between 23 and 25 September, including 50 children and 94 women, and that more than 1,800 have been wounded. That followed the deadly attack on communication devices the previous week that killed dozens and injured nearly 3,000, many of them civilians

PIC: SHUTTERSTOCK

Are you Well Within the Law?

Law Society Psychological Services' 'Well Within the Law' Festival on 4 September brought together a range of voices to explore ways of improving the culture of the legal workplace: see pages 19 and 48

PICS: CIAN REDMOND

Kerry's gold

PIC: DOMINICK WALSH

An LSPT practice update was held at Ballygarry House Hotel in Tralee on 11 September. At the event were Anne Tuite, Candice Walsh, Alex Hoffman, John Galvin, David Mulvihill, Law Society President Barry MacCarthy, Padraic Courtney, Michelle McLoughlin, Michelle Nolan, and Katherine Kane

Lead from the front

PIC: CIAN REDMEOND

In the first of a new Law Society 'leadership' series, Mark Garrett (director general) interviews Minister Paschal Donohoe (Public Expenditure, NDP Delivery and Reform)

The magnificent 77

TP Kennedy , director of education

A total of 77 participants started the recent Diploma in Law course, aimed at non-law graduates seeking to enhance their knowledge of the law

PICS: CIAN REDMOND

Hugh Guidera

Associate faculty evening

Barry Scannell, Dr Gabriel Brennan, David Kerrigan and Dr Marian Crowley-Henry at the Law School's Associate Faculty Networking and Learning event on artificial intelligence in education and the workplace

Justice, minister

The Law Society's director general, Mark Garrett, recently met Justice Minister Helen McEntee with the Meath Bar Association

New Professional Practice Course starts

PICS: CIAN REDMEOND

SPECIALIST LEGAL TITLES FROM CLARUS PRESS

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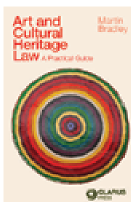

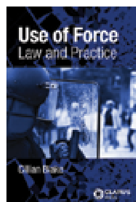

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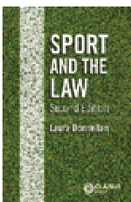

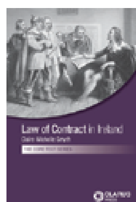

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Law Directory – notice of data breach

In July, the Law Society became aware of a limited data breach in the printed edition of the *Law Directory*.

The data breach affected approximately 50 people in the printed edition and does not impact the digital version of the *Law Directory*. Those affected have been contacted, and we have apologised for this breach of their personal data. We have also notified the Data Protection Commission and have launched an internal review into how this breach occurred, which will inform the update to our procedures to ensure there is no repeat.

The digital *Law Directory* is up to date and available online at lawsociety.ie/lawdirectory for the latest information.

Steps we have taken to mitigate the damage:

- We have halted the distribution of the printed edition of the *Law Directory*,
- We have ordered the destruction of all remaining copies in our possession,
- We have removed the option of ordering the printed directory through the Law Society website.

It is the Law Society's policy to adhere to the lawful processing of all personal data. The details of the policy are set out in our privacy notices. While the Law Society has operated under the guidance of the GDPR legal framework, this breach indicates that our processes were not sufficiently robust and will be revisited and informed by our internal review.

We also want to take this opportunity to remind you to use the information in the *Law Directory* only for the professional purposes for which it is intended and with respect for people's privacy.

We take your privacy seriously and deeply regret any inconvenience caused by this incident. Please contact a member of the Solicitor Services team on solicitorservices@lawsociety.ie if you need further assistance or would like more information.

Are your details up to date?

Have you changed employer? Do you know your lawsociety.ie login?

Life can get very busy, but it's important to let the Law Society know if you've changed employer, your preferred email, or any of your contact details. Then you can be sure to:

- Receive important email updates,
- Apply for your practising certificate and membership quickly and efficiently,
- Be ready for professional indemnity insurance renewal,
- Have your say by voting online in the Law Society Council elections, open from 4-17 October,
- Keep your skills up to date and book a CPD event or course online at lawsociety.ie/courses, and
- Access solicitor services and content reserved for Law Society members.

To check and update your details, visit your dashboard at lawsociety.ie/editprofile. If you have any queries, contact solicitorservices@lawsociety.ie.

New apprenticeship routes called for

● The Legal Services Regulatory Authority has made 32 recommendations aimed at addressing barriers to entry into the legal profession, as well as increasing diversity. The recommendations come in a series of reports entitled *Breaking Down Barriers* and follow a comprehensive survey of solicitors and barristers at all levels of the professions.

Recommendations on opening pathways to qualification include:

- Professional bodies should continue to increase flexible routes for the training of legal practitioners,
- Training providers should report annually to the LSRA on the diversity of intake in all courses, and
- The LSRA and the professional bodies should look at using the annual levy on the professions "and other funding mechanisms" to increase support for prospective barristers and solicitors.

On solicitor training, the LSRA says that stakeholders should explore the introduction of a new apprenticeship route for solicitors, aimed at school-leavers or career-changers seeking an alternative to university. "These could allow apprentices to 'earn as they learn' to become solicitors over a period of six to seven years," the authority states. It also calls on the Law Society to engage with firms and organisations that train solicitors to ensure that all solicitor trainees receive a minimum pay threshold during training. The LSRA adds that legislative amendments should be introduced to allow the Law Society to monitor and enforce breaches of this threshold for trainees.

The regulator recommends that the Law Society increase its financial supports for small firms to provide training contracts, and extend this funding to include independent law centres. It also wants the solicitors' body to encourage and support the direct intake of trainee solicitors in the public and private sectors, "with particular focus on the civil and public service".

The report calls on all professional bodies to assess the impact of their existing access initiatives at second- or third-level education, and to consider expanding existing funded access programmes, such as bursaries, scholarships, and targeted internships.

Merit-based system

Although the LSRA finds that there is more information on training contracts available for solicitors, it recommends measures to address gaps: "A merit-based system for the recruitment of trainee solicitors should be open and transparent, with greater clarity for all on the pathways, terms and conditions, and selection processes, and improved supports for trainees and training firms during the training period."

On wellbeing issues, the LSRA suggests that law firms complete an annual report each year, to be submitted to the LSRA and the Law Society, on the measures they have taken to ensure a positive workplace culture, dignity in the workplace, a reasonable work-life balance for staff, and employee wellbeing.

The LSRA also calls for an action plan from the professional bodies and the Courts Service to address issues facing members of the legal profession with disabilities, and urges a review of training arrangements for non-EEA students to remove barriers to entry.

IRISH CHILD AND FAMILY LAW

Our new online service will provide subscribers with unlimited access to key titles, covering a range of aspects of family law in Ireland.

The service includes a monthly update of developments in Irish family law written exclusively for the service. Each update will contain commentary on relevant new cases or developments.

Titles include:

Divorce and Judicial Separation Proceedings in the Circuit Court: A Guide to Order 59
Keith Walsh

Domestic Violence; Law and Practice in Ireland
Sonya Dixon and Keith Walsh

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Lyndsey Keogh

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ENDANGERED LAWYERS
ARNON NAMPA, THAILAND

Arnon Nampa

Arnon Nampa (40) is a prominent human rights lawyer and political activist known for his critical stance on the Thai monarchy. In January 2024, Arnon was sentenced to four years in prison for *lèse-majesté* related to his social media activities in 2021. This was followed by an additional four-year sentence in July 2024 for further similar charges. In total, his prison term is now 14 years, with more cases pending. He has been in prison since September 2023. Over the past years, he has been detained for shorter periods, and a total of 337 days between 2020 and 2022.

The NGO Lawyers for Lawyers summarised the position earlier this year: "Arnon Nampa, a vocal advocate for human rights and political reforms, particularly concerning the Thai monarchy, has been a prominent figure in the 2020 democracy movement in Thailand. His dedication and commitment to challenging power structures and addressing human rights abuses have led to significant legal repercussions, including multiple charges under Thailand's controversial *lèse-majesté* law. This law, which broadly criminalises comments about the monarchy, has been the basis for Nampa's conviction and subsequent eight-year imprisonment for his public comments and Facebook posts advocating for open criticism and discussion about the Thai monarchy."

From a family of rice farmers, he was initially drawn to poetry but switched to law and graduated in 2006. He passed his bar exam during his time in military service, and first appeared in a military court successfully representing a fellow conscript. He qualified as a barrister in 2009. During his traineeship, he was already involved in defending human rights cases, including protesters at a steel mill project, police actions during the Thai/Malay gas pipeline project, and the assassination-related protests against coal power plants. In 2011, Arnon established a *pro bono* law firm called Ratsadornprasong Law Office with two others. The firm specialised in representing 'red-shirts' protesters in almost 100 cases and individuals charged with *lèse-majesté* during political conflicts. He later became involved with the Thai Lawyers for Human Rights, an organisation providing legal assistance to those targeted by the authorities, especially after the 2014 military coup.

He has been a key figure in the pro-democracy movement, advocating for significant reforms and challenging the status quo in a country where such actions are highly controversial, with considerable flair. His legal battles have drawn international attention, highlighting the ongoing struggle for freedom of expression in Thailand.

Alma Clissmann was a longtime member of the Human Rights Committee.

Annual IRLI commercial law conference

Attorney General Rossa Fanning will deliver the opening address

Irish Rule of Law International will host its annual commercial law conference from 4-6:30pm on 24 October at the Gaffney Room, Distillery Building, Church Street, Dublin.

The theme is recent and key commercial litigation updates. Attorney General Rossa Fanning will deliver the opening address, and Justice Liam Kennedy will chair the event. Speakers include David Whelan SC, Joe Jeffers SC, Kate Harnett (A&L Goodbody), and Ruadhán Kenny (Matheson LLP). A networking event will follow.

The conference attracts two CPD hours. For booking, see www.eventbrite.ie.

Mr Justice Liam Kennedy

London Irish solicitors' ball

The Irish Solicitors Bar Association, London, will hold their Autumn Ball at Claridge's, Brook Street, Mayfair, on Friday 15 November for the benefit of Solving Kids' Cancer.

ISBA's charity balls have raised just over £600,000 to date for charities helping children and young people. For further information and all queries, please contact alice.newman@mishcon.com.

The Irish Solicitors Bar Association, London

Autumn Ball

Voting opens in Council election

Voting in the Law Society Council election opens online on 4 October at lawsociety.ie/evoting. Details of the candidates are at lawsociety.ie/news/news/stories/election-confirmed. Further information on the elections can be found at lawsociety.ie/elections.

B&B at Blackhall Place

From 1 September, there has been an increase in the rates for the Blackhall Place bed and breakfast service for solicitors.

The rates are:

- Twin/double room – €85,
- single room – €65.

The increase comes as a result of an amendment to the tax treatment for this particular service provided by the Law Society to solicitors. These rates are subsidised and are available to our members only.

SBA AGM

The 160th annual general meeting of the Solicitors' Benevolent Association will be held at the Law Society, Blackhall Place, Dublin 7, on Friday 15 November 2024 at 12.30pm to consider the directors' report and financial statements for the year ending 30 November 2023, elect directors, and deal with other matters appropriate to a general meeting.

The directors' report and financial statements are at www.solicitorsbenevolentassociation.com.

IRLI IN AFRICA

TORTURE AND FORCED CONFESSIONS IN MALAWI

Irish Rule of Law International (IRLI) is a collaborative effort of the law societies and bars of Ireland and Northern Ireland, with significant support from Irish Aid. We operate across several countries, including Malawi, Tanzania, and Zambia, and have projects in Ethiopia, Somalia, and South Africa. Our work advances the rule of law and human rights, harnessing the skills and knowledge of justice sector actors and institutions across the island of Ireland.

We recently co-wrote an article on the status of torture and forced confessions in Malawi. The article highlights issues such as the permissive legal framework with regards to forced confessions in Malawi, and the disproportionate impact this has on marginalised groups.

Torture and the use of forced confessions as evidence are expressly prohibited by the Constitution of Malawi, introduced in 1994 after successive regimes of colonial occupation and one-party rule. Despite the constitutional protections, section 176 of the *Criminal Procedure and Evidence Code* permits the use of forced confessions.

Police rarely have access to forensic evidence in Malawi, and most cases continue to rely on testimonial evidence. The majority of people in prison do not have access to a lawyer, and so the use of torture to obtain evidence continues to be prolific.

In 2020, two persons were arrested for the murder of a man, despite no body being found. They were both tortured, and one confessed to the murder. They were held on remand for two years, when eventually the alleged deceased turned up alive. The men were then granted bail, but it took another eight months to have them discharged. IRLI is working to support these victims, and national human rights lawyers are representing them in their cases against the State.

There could be light at the end of the proverbial tunnel with the recent ruling of the Malawi Supreme Court in *R v Chanthunya*. The court noted that it "must depart from [the] position" that confession evidence taken forcibly was permissible.

The full article can be viewed on IRLI's website.

Immaculate Maluza is DPP programme lawyer, Malawi, and Susie Kiely is country director, Malawi.

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Since the merger of two long-standing Bermuda firms on January 1, 2001, Wakefield Quin has worked to develop a successful legacy of advising both local and international clients in the areas of banking, corporate and commercial, property, restructuring and insolvency, trusts, private client and litigation. Our legal professionals are dedicated to providing our clients with timely, sophisticated and solution-driven legal advice.

Litigation matters are often complex and cover a number of practice areas. As a result, our Litigation Team has developed considerable experience in all areas of contention, and we often act as counsel for both large companies and private individuals. Our lawyers have considerable experience acting in broad commercial disputes, insurance and reinsurance litigation, trust and property litigation, fund litigation, insolvency and restructuring, contentious and non-contentious employment and immigration matters, matrimonial litigation and general family law, debt collection and probate. We regularly appear in all levels of the judiciary, from Magistrates' Court to the Court of Appeal (which is Bermuda's highest appellate Court).

We are seeking to hire a Litigation Attorney to join our dynamic Litigation team. Qualification and skill requirements are as follows:

- Bermuda and/or commonwealth qualifications
- Approximately 6 - 10 years' post qualification experience in Civil and Commercial litigation at various Court levels particularly in respect of general corporate and commercial litigation, advice and disputes; more generally employment disputes, insurance and reinsurance claims and litigation advice, personal injury, insolvency and restructuring, property and trust and estates litigation
- A proven record as an effective advocate and possess excellent research, drafting and writing skills
- Excellent written and verbal communication skills
- Excellent client relationship and development skills
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Adrian Frawley (1958 – 2024)

Adrian Frawley, our partner, colleague, and dearly loved friend, died on Friday 19 July at his home, in the presence of his wife Marion and sons Cian and Darragh.

He grew up in Limerick, attending Sexton Street CBS and thereafter UCC, graduating with an honours degree and joining the practice of Dermot O'Donovan. He found his niche within two areas, developing a practice in personal-injury litigation and medical negligence. His interest in medical matters was enormous, and this, with his innate skill and knowledge, resulted in many significant judgments.

He was constantly engaged in the defence of driving prosecutions and liked nothing more than what he described as 'the fight'. His courtroom skills were renowned – calm and measured, the effect was quite frequently dramatic when, without apparent need for a lengthy cross-examination, he would simply seek a direction, followed by a precise and focused submission. His reputation was

such that clients were referred to him by colleagues on the basis that, if there was a defence, then he would recognise it and pursue it efficiently.

He was awaiting a judgment from the Supreme Court, which was delivered some days after his passing. The court held in the favour of his client, each of the judges presenting lengthy and comprehensive views on the precise argument that he had made in the District Court. Sadly, he died before getting this confirmation of his stance.

Following his passing, many tributes were made to him. One particular comment, which ran like a thread through the condolences, was '*gentleman*'. That indeed was Adrian. Everyone who came in contact with him was reassured with his open and polite personality. He was always welcoming and interested, and his clients immediately understood that this was a man who could be trusted in every way.

Some two years ago, he developed a limp, and this progressed to a diagnosis of motor neurone disease. He knew that this cruel and unrelenting disease had an unswerving pathway, which would ultimately lead to his demise at the relatively young age of 66. Despite this, he continued to work up until his final days.

He bore his illness with quiet courage, never once with a single word of complaint. His humour never left him and, even though the onset of the disease had left him enormously diminished, all of his conversations were sprinkled with laughter and joy. He regarded himself as a very fortunate man. In this, he had a long and happy marriage with Marion and their devoted sons. They enjoyed their many travels, in particular their holidays in Spain. Being a true Limerick couple, they had wonderful times in Kilkee, where they had open house for their friends. He loved sports, enjoying both the triumphs and disappointments inherent in following the Munster rugby team. He was a lifelong member of Richmond RFC, but his playing career was foreshortened by injury.

In recent years, he also had the great pleasure in attending some of the triumphs of the Limerick hurling team. He was hoping that they might do the five in a row, but this was not to be. As he said to this author concerning that, "nothing is assured".

Nothing is, but Adrian's courage and calm acceptance of his fate was an assurance that will never leave us. He is greatly missed and mourned by his many friends and colleagues but none more so than Marion, Cian and Darragh, for whom his loss is immeasurable.

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14 November	**Practitioner Update Cork 2024**	The Kingsley Hotel, Cork Total 6 hours (by group study)	*€160
21 November	**General Practice Update Kilkenny 2024**	Hotel Kilkenny, Kilkenny Total 6 hours (by group study)	*€160
04 December	**Practice and Regulation Symposium 2024**	The College Green Hotel (formally The Westin), Dublin 2 Total 6 hours (by group study)	*€160
	IN-PERSON AND LIVE ONLINE		
09 October	**Regulation Matters: Cybercrime**	Zoom webinar | 1 client care and professional standards (by eLearning)	€65
10 October	**Balancing Privacy and Transparency**	Law Society of Ireland | 1.5 general (by group study)	€65
15 October	**Time Management for Lawyers Cork**	The Kingsley Hotel, Cork | 3 professional development & solicitor wellbeing (by group study)	*€160
15 October	**Law Society Skillnet Wellbeing Summit 2024**	Zoom webinar | 2.5 professional development and solicitor wellbeing (by eLearning)	Complimentary
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President's comments on EPAs

From: Bryan F Lynch, Marcus Lynch Solicitors LLP, Dublin 1

I wish to join the chorus of protest relating to the current set up. I took instructions for an EPA, opting for the paper version, in June 2023. It took over six months for the DSS to open their portal and provide the documents. We promptly signed up the client and attorney in our office and returned to the DSS in February. On checking last week, we find that the EPA is still awaiting attention and registration, and the official could not give any estimate of time.

Pre-2023, we would deal with 20-plus EPAs. Last year, it was down to three.

One client got through the online portal and then called on me to sign the solicitor's certificate. I signed it with great reluctance, as I knew the family for many years but – beyond the client's confirmation that they were acting without family pressure or fraudulent behaviour – how can any solicitor really sign such a cert without interviewing the entire family and then forming an opinion?

Speeding up probate

From: Billy Gleeson, solicitor, Thurles

I was reading the latest update today, with particular reference to speeding up the probate process. It was mentioned that the 'returns' to solicitors are at a very high rate. Some of this, if the truth be known, is because of the excessive 'pickiness' of the Probate Office over trivialities.

Some of these relate to slight differences and variations in the spelling of family names, addresses, etc. These days, when everyone has a PPS number that can easily be accessed by all government bodies, such trivial matters are insufficient reason for the Probate Office to send papers back to the applicant's solicitor.

Another small matter – which doesn't require an amendment to the law or the holding of committee meetings over six to 12 months – is the method of paying for probate applications.

How outdated and ridiculous it is for the Dublin office to refuse to allow EFT payments and cheques, and insist we have to traipse off to the Stamp Office (Dublin) or back to our local probate registrar to have a fee card stamped. This is the simplest bureaucratic procedure for the Probate Registrar to change. We, the general public, use electronic payments every day – but not the Probate Office.

I have to get this off my chest this Friday evening!

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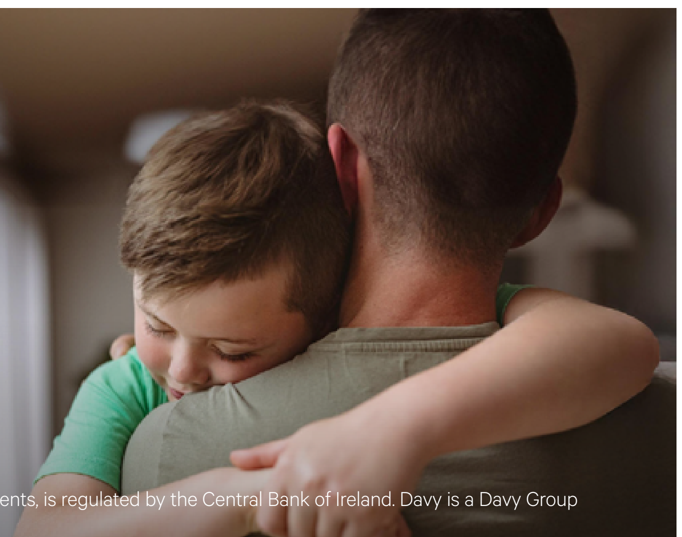

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PROFESSIONAL LIVES

Sharing personal and professional stories has long been a powerful way to create a sense of connection and belonging. It creates a space for vulnerability that can provide the listener with inspiration and hope, or newfound insight to a challenge or difficulty they too might be facing. We welcome you to get in touch with ps@lawsociety.ie to share a story for this 'Professional Lives' column.

Staying well within the law

The recent Law Society 'Well Within the Law' festival, a culture-first initiative, focused on transforming legal culture and on the value of open conversations about mental health. Members of the legal community openly shared stories of overcoming challenges from their personal and professional lives. By highlighting the power of storytelling, the festival is actively breaking down stigma – building a stronger, more compassionate community within law.

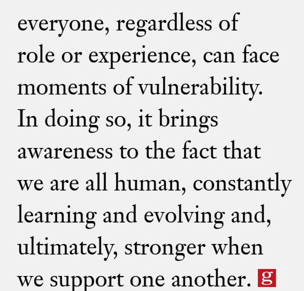
Voices from across the industry illuminated how even small acts of kindness make a lasting impact, especially in high-pressure environments. One such written story, shared in response to the prompt '*Describe a memorable experience where a colleague's support helped you through a challenging time*', offers a reminder of the importance of generosity, mentorship, and connection within the legal profession.

"When newly qualified, I was involved in a complex transaction while the partner I worked for was on annual leave. I felt exposed and out of my depth, needing to quickly learn a complex area of law. The stress mounted, and my sleep became increasingly disrupted, which in turn affected my ability to think. Each day, I felt progressively worse, the task growing more complex as my ability to cope diminished.

"At that time, a slightly more senior friend provided invaluable support. Rather than getting caught in the emotion of it, he simply asked me to break the task down into its parts. He encouraged me to seek help from other senior team members and consult the head of department to ensure no other work was assigned until I had completed the managing partner's task.

"His advice was simple, but at that moment of stress, it was invaluable."

Stories such as this highlight the importance of creating working environments where colleagues lift each other up and recognise that



everyone, regardless of role or experience, can face moments of vulnerability. In doing so, it brings awareness to the fact that we are all human, constantly learning and evolving and, ultimately, stronger when we support one another.

Mary Duffy is Psychological Services executive at the Law Society of Ireland. Confidential, independent, and subsidised support is available through LegalMind for legal professionals. All enquiries to LegalMind are fully confidential to Clanwilliam Institute (the Law Society's partner providers). All therapy sessions are conducted by highly trained professionals in a confidential forum. Email: reception@clanwilliam.ie; tel: 01 205 5010 (9am to 5pm, Monday to Friday); web: lawsociety.ie/legalmind.

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Who cares now?

The amendment of the *Assisted Decision-Making (Capacity) Act 2015* to abolish the role of the care representative was a grave error on the part of the Oireachtas, writes Maria Dillon

IN THE CONTEXT OF THE RESOLUTION OF 611 CARE REPRESENTATIVE APPLICATIONS BEFORE COUNTY REGISTRARS IN 2022, ONE MUST ASK WHETHER THERE WILL BE A COMPARABLE NUMBER OF DECISION-MAKING REPRESENTATION ORDERS MADE BY CIRCUIT COURTS THIS YEAR?

The commencement of the *Assisted Decision-Making (Capacity) Act 2015*, as amended, on 26 April 2023 now means that family members or relatives who wish to assist a person with diminished capacity to complete an application for Nursing Home Support ('Fair Deal') and, more importantly, to apply for the ancillary Nursing Home Loan, have no alternative but to make an application to the Circuit Court to seek to have a decision-making representative appointed.

The demise of the care representative has had a number of very significant implications for vulnerable persons and those family members and relatives seeking to help any person looking to maintain or transition to long-term residential care.

Historically, a care representative was appointed by a county registrar; there was no necessity to bring a preliminary leave application. County registrars' courts are held frequently. Furthermore, the county registrars' courts are accessible both online and in-person. Care representative applications were straightforward, with minimal paperwork, and medical practitioners (in particular hospital doctors and medical social workers) were very familiar with the application papers. Most importantly, attendance at a county registrar's court is less costly than multiple attendances before a judge of the Circuit Court, and a less intimidating hearing format than conventional Circuit Court sessions.

Lamentably, the Oireachtas envisaged no role for the county registrar in the decision-making representative application process. Moreover, the significant amendments to the *Nursing Homes Support Scheme Act*, which abolished the role of the care representative and the remit of the county registrar, appeared only at a very late stage in the drafting of the amendments to the 2015 act.

The last-minute introduction of such sweeping amendments meant that very little consideration was given to such radical changes to the operation of the 'Fair Deal' Scheme and, like so many far-reaching changes introduced by the 2015 act, the concerns of the legal profession were not afforded appropriate consideration.

Supporting vulnerable people

The ability to support a vulnerable person who has diminished capacity to either progress to long-term residential care or to meet the continuing cost of long-term residential care is fundamental. Unfortunately, at a time when a vulnerable person may have exhausted personal savings, an application to the Circuit Court to have a decision-making representative appointed to avail of ancillary state support under the 'Fair Deal' Scheme is an additional financial burden.

As matters stand, the cost of progressing an application to the Circuit Court is prohibitive and unnecessarily convoluted. If a vulnerable person with diminished capacity has very limited means, and the application to the Circuit Court is essentially to progress an application to the 'Fair Deal' Scheme for the ancillary state support home loan, then immediate consideration should be given to extending the category of persons who are permitted to bring an application, without having to first seek leave of a judge of a Circuit Court.

Many courthouses may be accessible but are not suitable places for elderly persons with diminished capacity. It is simply inappropriate that elderly persons who are confused and agitated should be brought to court, under any circumstances. It is unfathomable why the Oireachtas envisaged that it would be appropriate to compel vulnerable and aged relevant persons to attend at court when, since the pandemic, all courthouses, hospitals, nursing homes, and care homes are equipped to facilitate remote, virtual hearings.

It is also unacceptable that such disparity exists in reviews of wardship in the High Court and reviews of capacity in the Circuit Court. It is standard

PIC: SHUTTERSTOCK

practice that any ward of court who so wishes can participate remotely in any High Court hearing, including his or her discharge from wardship – but when a former ward of court has his or her capacity reviewed by the Circuit Court, it appears that it is unlikely that remote participation will be facilitated, in the absence of a concerted review of the conduct of hearings.

Affording certainty

Another issue of concern is that, previously, it was possible to afford certainty, and allay anxiety, in bringing any care representative application before a county registrar, as dates of all county registrars' courts are published annually. However, the lack of uniformity from county to county as to how and when applications pursuant to the 2015 act are listed is very difficult to navigate. There appears to be no understanding of the fact that if a vulnerable person is discharged from an acute hospital to long-term residential care, it is unlikely that transitional funding will be paid for more than ten weeks thereafter. Moreover, vulnerable persons without immediate family support are even more likely to be disadvantaged under the 2015 act.

If one has to obtain a capacity assessment; draft a Form 55G and supporting affidavit; obtain a return date; attend at court for the leave application; obtain an order; make a referral to an independent advocate; consider whether or not the relevant person needs an independent legal representative; consider an application to the Legal Aid Board on behalf of the relevant person; prepare the Form 55A, Form 55B, and Form 55I; submit the papers to the appropriate court office to obtain a further return date; prepare the Form 55C; personally serve the relevant person and provide four weeks' notice of a hearing date; serve any notice parties; prepare appropriate affidavits of service; attend at court for a substantive hearing seeking the nomination of a decision-making representative from the panel maintained by the Decision Support Service; prepare the Form 55J; and return to court on the next return date so that the appropriate decision-making representative can be formally appointed, it is next to impossible to complete this process in ten weeks. Moreover, the 'Fair Deal' application will then have to be finalised by the appointed decision-making representative.

Historically, a care representative could make an application for ancillary state support, complete the Nursing Home Support Scheme application process, and liaise with the Health Service Executive. The care representative application process, overseen and processed by the county registrars' courts throughout the State, was accessible, cost-effective, efficient and, for almost 15 years, highly effective.

Unclear justification

The demise of the role of the care representative cannot be understated. There was absolutely no reason why the role of care representative could not have co-existed effectively and successfully within the context of the 2015 act.

It is inevitable that there will be a significant number of 'delayed discharges' and 'bed blockers' in the acute hospital system, and transitional funding is most likely the reason why discharge to long-term residential care is timely. However, the delays associated with the appointment of a decision-making representative are resulting in significant debt accumulating to nursing home providers.

Many of the issues in implementing the 2015 act could have been addressed with appropriate consultation with the legal profession, particularly practitioners with expertise in acting for vulnerable adults.

The justification and rationale for the abolition of the role of care representative is unclear, particularly when Courts Service data indicates that, with an ageing population, there was significant increase in applications in recent years.

In the context of the resolution of 611 care representative applications before county registrars in 2022, one must ask whether there will be a comparable number of decision-making representation orders made by Circuit Courts this year? And if not, at what cost, emotionally and financially, to the most vulnerable in the State? g

Maria Dillon is a solicitor with Horan & Son Solicitors, Galway, and a member of the Law Society's Mental Health and Capacity Task Force.

Labour pains

Breakdowns in employment relationships have become a costly and emotive process. Legal practitioners need to consider 'warming' their advice. Una Clifford explains

FOR SMALLER BUSINESS OWNERS, HOWEVER, THE LEGAL ADVISOR MUST BE COGNISANT OF THE HIGHLY CHARGED, EMOTIONAL NATURE OF THE EMPLOYMENT RELATIONSHIP THAT IS BREAKING DOWN

Litigation in the Workplace Relations Commission is now reported on daily. Garish headlines grab readers' attention, citing unfair dismissal, discrimination, breach of statutory entitlement, and sexual harassment. Such headlines are unwelcome publicity for businesses that often are well intentioned and struggling to keep people in jobs, but perhaps do not have the sophisticated HR processes and knowledge in place that the modern working world demands.

As legal advisors in employment law, our approach has had to become more akin to a family lawyer dealing with highly emotional people. As we see employment litigation continue to increase in this jurisdiction, we need to 'warm' our advice for the situation to ensure the best outcome for our clients, within their operating environment and risk appetite, with cognisance of the risk of public media scrutiny should it reach the WRC.

War of the roses

In the Irish employment arena, relationships with staff can often deteriorate in the same manner as a marriage breakdown: the exit of both parties from the relationship can prove messy, costly, and become very public. As a barrister specialising in employment law and with experience gleaned from my previous two decades as a HR practitioner, I have learned to question my brief further, outside of any of the standard principal elements such as tenure, contract, salary, performance and fit.

Experience of effecting a successful exit for clients from an employment relationship shows that there is an additional need to assess the 'softer' elements of a relationship and the macro-environment of the business prior to considering advice in the event of a dispute.

For bigger corporate clients, any settlement or termination payment agreed is coming from 'corporate' funds – the decision-makers often have no relationship with the employee in question, and the entire process can be advised on as one does any commercial arrangement in ensuring you achieve a fair and equitable settlement for whomever you are representing. Larger corporates always endeavour to behave responsibly, but do not have the 'local' issues that smaller employers need to handle

For such smaller business owners, however, the legal advisor must be cognisant of the highly charged, emotional nature of the employment relationship that is breaking down. The legal solutions we advise on can be too 'harsh' for some of these situations, and those who are at the initial stages of giving the advice prior to engaging counsel need to tread carefully.

Nine to five

Advice such as conducting a 'no fault' termination is now quite commonly given. Such avenues to effect a sharp, clear termination of the relationship, although costly, can be extremely effective. A large corporate firm can effect such a solution quickly, frontload its cost through a settlement agreement, close the door, and move on. Such a termination meeting can last a matter of minutes and, while a difficult message to deliver or receive, it is a clean process, and the employment relationship concludes at that moment. While the risk of the employee seeking injunctive relief is always possible, for a larger business it can sometimes just offer the most effective solution within a defined risk parameter.

Consider instead a business employing 130 local people in a large provincial town. A call to their solicitor to the effect that their sales director is ineffective and hence damaging the business is made, and advice is sought. Again, a quick solution could be a 'no fault'. But this is where the legal advisor needs to consider the emotive elements. Often these people (the sales director and his boss) have worked closely together for years, they socialise locally, their children play football together, etc. As always, a solicitor can outline all options, and the client needs to give clear instructions on their preferred next steps. But the solicitor should ensure the advice given takes all those factors, such as local connections, into account as central to the dispute needing resolution.

In advising that company on concluding its employment relationship with the sales director a solicitor could advise:

1) *Performance management* – setting clear targets, assessing delivery on those, and moving from a performance-improvement plan through to disciplinary, with the final solution invoking termination. This is a time-intensive process that requires close management, paperwork, adherence to process, and rigour in order to reduce exposure to a claim for unfair dismissal in the WRC.
2) *Redundancy* – is the position required? Could a valid redundancy be effected? This is a viable option for some businesses that can absorb a resource or effect a work change that facilitates this. If no precedent exists for anything other than statutory redundancy of a payment of two weeks for every year of service, to a maximum of €600 per week plus one additional week overall, this is an affordable option to end the employment relationship. However, for a business with a sales director who is the only one in that position, this might prove difficult and expose the business to a risk of unfair dismissal where the claimant could argue that the redundancy was a sham. Of course, a more attractive severance package could be offered, where a compromise agreement ensures no exposure for the employer if he recruits again. However, these solutions are costly for small businesses, where cashflow can often be a daily issue.
3) *Restructuring* – this can be effective advice where the appetite of the business owner to terminate is low. This can also work well, in that the employee who needs to be handled may be moved to another area where the relationship is less direct and hence can continue with the business, avoiding the cost of an exit. Additionally, an employee who is the subject of such a restructuring may decide after a period that the company is not for them and that they should find a new home for themselves. For a more local business, this can be an effective, less legal type solution, but one that will require clear direction to the client in order to minimise any risk of claims of demotion or penalisation if the breakdown had arisen as a result of the employee raising issues with work processes or governance.
4) *No-fault termination* – a costly but clean solution. The usual starting point of the compromise agreement would be severance in the region of six months' pay, but the employer is always running the risk of public and expensive injunction proceedings being issued to effect a stop on the termination. Additionally, as outlined above, in a smaller community, this can create a lot of negativity around an employer who may later on need to ensure the support of such a community for a planning application perhaps, or simply for ongoing support of their business.

It's not personal, it's business

Giving legal advice to employees in such a breakdown can prove even more challenging. In advising employees who are on the other side of an exit, we often have to deal with highly charged people who cite their excellent performance with the employer, their positive engagements over the years, their delivery on new streams of business, and other very positive accolades around their tenure. It can be difficult to deliver the simple legal advice to such an individual that this is simply a business concluding what is a commercial arrangement. It is not personal, and should not be treated as such. An employee should be advised to ensure they secure the best financial settlement possible on exit – which can be a difficult message for them to digest when they feel emotionally let down by an employer they believed was their 'friend'.

As employment litigation continues to increase, and with landmark awards now being made in the WRC, employment advice needs to move beyond the realms of simple legal solutions. We must offer a more commercial and soft approach to employers and afford a warmer, supportive stance to employees to support either side through what is, realistically, a breakdown in a relationship. g

Una Clifford is a barrister specialising in employment law.

BETWEEN THE JIGS AND THE REELS

The first judgment delivered under the new *Consumer Rights Act* dealt with the high-profile case of *Michael Flatley v Austin Group Limited* and whether an arbitration clause could be imposed upon a 'consumer'. Graham Kenny does the soft-shoe shuffle

R*iverdance* star Michael Flatley recently brought proceedings in the commercial division of the High Court arising from damage caused to his home in Cork.

The case is significant, as it was the first time that the High Court considered various provisions of the new *Consumer Rights Act 2022*, including the question of what constitutes an 'unfair term' in consumer contracts. The High Court also ruled on the enforceability of arbitration clauses in the context of litigation under 2022 act.

Safety dance

Mr Flatley engaged AON plc to negotiate an insurance policy for his home, which he spent €30m renovating. He agreed to pay Hiscox Société Anonyme an annual premium

of €69,285. Significantly, he also agreed that if there was any dispute regarding the terms of the policy, then any such dispute would be resolved by arbitration.

Arbitration has a long-standing tradition in Ireland and is governed by the *Arbitration Act 2010*. It is an alternative dispute resolution process whereby an independent arbitrator is appointed by the parties to hear their dispute. The arbitrator then considers details of the dispute and issues a binding final determination. Arbitration is often an attractive alternative to litigation due to the speed of its decision-making, potentially lower costs, and its confidential nature.

In response to Mr Flatley's claims in the High Court, Hiscox applied to refer the dispute to arbitration under article 8(1) of the *UNCITRAL Model Law*, which has the force of law in Ireland under section 6 of the *Arbitration Act 2010*.

Article 8(1) states: "A court before which an action is brought in a matter which is the subject of an arbitration agreement, shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed."

Mr Flatley claimed that he was entitled to circumvent arbitration and litigate his dispute in the High Court on the basis that he was a consumer when agreeing the terms of his home insurance policy.

Mr Flatley highlighted the following arbitration clause in his policy and claimed that it amounted to an unfair term in a consumer contract and so was not binding on him: "This insurance is governed by the laws of Ireland. Any dispute arising out of or relating to this insurance, including over its construction and validity, will be referred to a single arbitrator in Dublin in accordance with the *Arbitration Act* then in force."

Twist and shout

The 2022 act was a significant piece of legislation that amended and consolidated the law relating to the rights and remedies in contracts between traders and consumers for the sale of goods and supply of digital content and other services.

Mr Flatley sought to rely on the new provisions of the 2022 act. In particular, he relied upon section 129(1), which states: "An unfair term of a consumer contract is not binding on the consumer."

Section 132(1) of the 2022 act defined the meaning of 'unfair' as follows: "a term of a consumer contract shall always be unfair if its object or effect is … (d) to exclude or hinder a consumer's right to take legal action or exercise a legal remedy, including by requiring the consumer to take a dispute to an arbitration procedure that is not governed by law, (e) to require a consumer to pay his or her own costs in respect of any arbitration."

It was not disputed by the insurers that Mr Flatley was acting as a consumer within the meaning of the 2022 act, on the basis that he was acting "for purposes that are wholly or mainly outside that individual's trade, business, craft or profession", as per section 2(1) of the 2022 act. The dispute therefore centred primarily on whether the arbitration clause in the policy was unfair within the meaning of the 2022 act.

Let's dance

Mr Flatley argued that the arbitration clause was unfair because it did not make it clear that the arbitration would

PIC: SHUTTERSTOCK

be at no cost to him – that is, if he lost the arbitration, he would not be liable for the defendant's costs.

The court considered that the thrust of Mr Flatley's claim was that the reference to paying 'his own costs' in section 132(1) meant that, for an arbitration clause in a consumer contract to be fair, the arbitration could never be at a cost to a consumer.

The court resoundingly rejected this reasoning, noting that a consumer could decide to institute baseless or groundless arbitration proceedings against a trader, and the trader would have to discharge the trader's own legal costs for winning the arbitration, but also pay the consumer's legal costs for bringing the baseless/groundless claim.

Mr Justice Twomey concluded as follows: "The arbitration clause in this case makes no such reference to Mr Flatley having to pay his own legal costs of the arbitration. Indeed, it makes no reference to costs at all. Accordingly, applying the express language of section 132(1) to the facts of this case, there is no term in the arbitration clause which 'requires a consumer to bear his or her own costs'."

Interestingly, the court noted the important role that the threat of legal costs plays in discouraging unmeritorious claims in a litigation context and that to accept Mr Flatley's arguments would mean that such a disincentive would not apply to consumer arbitration. The court highlighted the perverse consequences this may have in operating as an incentive to bring unmeritorious claims in consumer arbitration.

Harlem shuffle

Mr Flatley also advanced the argument that the arbitration clause was an unfair term on the basis that it was "not governed by law" and thus violated section 132(1)(d) of the 2022 act. In dismissing this claim, the court relied upon the 2006 case of *Marshall v Capital Ltd t/a Sunworld*, which held that arbitrations in Ireland that are carried out pursuant to the *Arbitration Act 2010* are governed by law.

The court noted Justice Murphy's comments as follows: "The arbitrator has no power to disregard the law. While he or she has a wide measure of discretion to decide how a dispute is to be resolved, such decisions must be according to the law unless the parties agree to an arbitrator acting as amiable compositeur, the arbitrator must conduct the case according to rules of law."

Mr Flatley relied on a variety of other clauses within the 2022 act to claim that the arbitration clause was not 'transparent' and was therefore unenforceable, as per section 134.

Section 134(2) states: "A term of a consumer contract is transparent if … (c) the term is made available to the consumer in a manner that gives the consumer a reasonable opportunity to become acquainted with it before the conclusion of the contract, irrespective of whether or not such an opportunity is availed of …

THE COURT NOTED THE IMPORTANT ROLE THAT THE THREAT OF LEGAL COSTS PLAYS IN DISCOURAGING UNMERITORIOUS CLAIMS IN A LITIGATION CONTEXT AND THAT TO ACCEPT MR FLATLEY'S ARGUMENTS WOULD MEAN THAT SUCH A DISINCENTIVE WOULD NOT APPLY TO CONSUMER ARBITRATION

(e) any costs or other financial consequences deriving from the term would be comprehensible to the average consumer."

The court rejected the argument that the arbitration clause was not transparent, on the basis that the claim was based upon a misinterpretation of – that is, that the arbitration should be at no cost to Mr Flatley and that his lawyers' fees should be paid, even if he lost. As no such wording could be read into the clause, there was no issue of a lack of transparency regarding its meaning.

Hips don't lie

Finally, Mr Flatley claimed that the arbitration clause was unenforceable due to an absence of good faith. In this regard, Mr Flatley relied upon section 130(1) of the 2022 act, which states: "A term of a consumer contract is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties rights and obligations under the contract to the detriment of the consumer."

In support of this claim, Mr Flatley highlighted that the providers of insurance had determined to terminate his policy before its expiry date, and that this amounted to bad faith within the context of section 130(1). The court again rejected this reasoning and held that the termination of a contract does not impact on whether a consumer contract contains an unfair term or not. The arbitration clause is either an unfair term or it is not an unfair term and, as such, a decision by the insurer to terminate the policy has no impact on whether it is unfair.

Mr Justice Twomey concluded as follows: "[Mr Flatley] agreed to arbitrate any dispute he had with Hiscox. However, he is seeking to avoid his responsibility to Hiscox, by now seeking to litigate his dispute with Hiscox. For this reason, this court has little hesitation in referring this dispute to arbitration, particularly as there is nothing 'unfair' in the possibility of Mr Flatley having to pay his own legal costs and those of Hiscox, if an arbitrator finds against him in his claim against Hiscox."

Dancing in the moonlight

Mr Flatley's legal fancy footwork, while ultimately unsuccessful, has provided practitioners with a wealth of knowledge in relation to how the Irish courts will interpret issues such as alleged unfair terms, lack of transparency, and traders not acting in good faith with regards to consumers.

It is interesting that there does not appear to have been any reference to European case law in this matter, which arguably could have created a more consumer-orientated lens through which to view the relevant facts.

It is also significant to note the recognition by the court of the contractual choice of the parties to opt out of litigation and determine to resolve their dispute through arbitration. The enforcement by the High Court of such arbitration clauses will contribute to Ireland's attractiveness as a venue for the hearing of future international disputes.

Graham Kenny is a partner in dispute resolution and litigation in Eversheds Sutherland LLP.

LOOK IT UP

CASES:

- *Flatley v Austin Newport Group Limited & Ors* [2024] IEHC 359
- *Marshall v Capital Ltd t/a Sunworld* [2006] IEHC 27

LEGISLATION:

- *Arbitration Act 2010*
- *Consumer Rights Act 2022*
- *UNCITRAL Model Law*

LONDON CALLING

Armagh-born Caroline Carberry KC is one of Britain's leading criminal barristers. Mary Hallissey badgers the witness

With striking red curls beneath a barrister's wig, the commanding voice of Armagh-born Caroline Carberry KC rings out across court five in London's Old Bailey.

She is a blazing Celt, flaming at the heart of the British establishment, both defending and prosecuting in cases that are serious, complex, and often quite unusual.

"I'm very proud to be Irish in London. I have a real sense of Irish identity, and it means everything to me to pass that on to my London-born children," she told the *Gazette*.

Carberry has emerged as a go-to counsel for high-profile and legally ground-breaking cases.

In 2017, she successfully prosecuted Britain's first case involving the intentional infliction of grievous bodily harm through the transmission of the HIV virus. This was a lengthy trial involving multiple victims of a campaign to infect as many men as possible.

In 2019, in another landmark case, Carberry secured the first conviction in the UK for the crime of female genital mutilation, an offence that had been on the statute books since 1985. The victim was a three-year-old child.

This year, she was the lead prosecutor in the startling 'eunuch-maker' case, which saw ten men convicted of acts of extreme bodily modifications. The mastermind, Marius Gustavson, who mutilated multiple men and streamed the back-street surgeries online for paying customers to view, was jailed for life with a minimum term of 22 years.

In each of these cases, in addition to leading the prosecution, Carberry was brought in during the early stages of the investigations to advise on charges and how to build the cases.

When I met her in London in September, she had recently been instructed in another sensitive and high-profile case, the death of ten-year-old Sara Sharif. Carberry will be representing one of the three people accused of her murder.

In recognition of what has been a big 12 months, she was awarded the Legal 500 Bar Awards 2024 'Crime and Extradition Silk of the Year' on 26 September.

North and South

Caroline Carberry grew up just a handful of fields from the border, in rural Armagh.

"Monaghan was our biggest closest town. All my schooling was in the North, but we looked to the South, really. It was one of those border households where there was always a sterling purse and a punt purse," she said.

From a nationalist tradition, Caroline is the eldest of a family of four. Deeply rooted in south Armagh, her parents grew up on adjacent farms, and Caroline has a wide extended family in Derrynoose and neighbouring townlands.

Caroline's mother was very bright, the first in her family to attend grammar school. Her mother then trained and worked as a teacher in London, where she was followed by Caroline's dad. "They were very much part of that diaspora who lived through the 'no blacks, no Irish' times in London, but they speak of it so fondly – living in a close-knit community and going to dancehalls in Kilburn and Cricklewood," Caroline said.

Her parents moved home three months before Caroline was born. "Although the Troubles had started by then, they had that pull to have their children in Ireland."

As a child, she loved school and reading and, despite the escalating Troubles, had a very happy and secure childhood. "The Troubles become the background to normal life, so as a child you didn't pay that much attention to it."

Checkpoints were a daily occurrence. "I remember as a very young child being struck by how young the soldiers were." Fresh British troops were deployed in weekly helicopter drops in the large field in front of the family home.

Something about England

As part of the J-1 generation, Caroline spent several student summers in the States, working as a waitress and a chambermaid. "And then I didn't come back!"

PICS: DARREN FILKINS

NO CASE IS THE SAME. IT MIGHT HAVE THE SAME CHARGES, BUT IT'S AN ENTIRELY DIFFERENT CAST OF PLAYERS – DEFENDANTS, WITNESSES, ISSUES. THAT IS INTELLECTUALLY STIMULATING

After her degree, an offer to read for the Bar in London was on the table, which she deferred for a year. "To be honest, I'd no interest in coming to London," she reflected. It felt quite intimidating and huge. I needed that year to work out what I wanted to do. You're very aware if you go down a professional route, it's quite difficult to reverse.

"Coming to live in London was going to be very expensive but, by that stage, my closest friend from my degree had gone on ahead to Bar school, and so she had travelled that path."

It wasn't a particularly good time to be Irish in London, Caroline recalls – there was an IRA bombing campaign in the City in the mid-1990s – however, her pupillage gave her a wide and very useful grounding.

But she didn't much like London when she first arrived.

"You were very conscious that you sounded different, that you were a Celt, and of how endemic class was – and still is – in this country.

"Over time, as things changed and as I became more confident that I was I going to stay, and that I was going to fit in, I lost that uncertainty about whether I had a place here. Now, it doesn't matter to me in the least. I think it's a really good time to be Irish in London, and an Irish lawyer in London."

Should I stay or should I go?

Settling in to stay long-term was a process, from Bar school, to pupillage, to getting started on cases, to specialising in serious crime.

"It's so hard to get started, and eventually you just realise, you're here to stay. You build a network of friends and colleagues, and the work is getting better.

"London has changed for the better and is still a global city, despite the damage Brexit has done," she said. But she worries that opportunities are fewer for young people, and that Britain has become more inward-looking.

"Quite a lot of cases we do have a European dimension – a suspect may come from the EU or may have absconded there. There is more limited information sharing between British agencies and their EU counterparts, which makes dealing with organised crime more challenging and complicated.

"In terms of collaboration and evidence-gathering, there are now barriers in place. It's very difficult to understand how that is a benefit in a civilized society, when we're all trying to ensure that the right people are brought to justice."

Caroline's three teenage children – each with Irish names – have always held Irish passports but now, as post-Brexit Londoners, she is grateful for the benefits that will bring to them.

Career opportunities

Though she has no regrets about studying pure law, Caroline might choose differently if she had her time again. "I would have stuck to an English degree and just read my way through and then done the law conversion course.

"That path also gives you time to think about whether the law is for you. Lots of people who do law degrees go on to do

different things. It's an interesting degree, but it's one of the harder ones in terms of hours. I do remember being very jealous of others 'lying around reading fiction'."

Caroline's Bar school fees were funded from the North, and she feels herself highly fortunate. Nowadays, new entrants aren't so lucky, and this makes it very difficult in terms of recruiting and retaining talent at the Bar in London.

"The statistics are quite alarming. The biggest challenge is sustaining the criminal Bar. What we do is provide an essential public service. The people I work with are dedicated, committed, skilled, and talented at prosecuting and defending the most serious cases.

"But you wouldn't believe the attrition rate: we have lost 47% of practitioners in the eight-to-12-years post-call level. That's the late 20s and early 30s. It's a real cause for concern. We get the brightest people here for pupillage, and they do stay for a time, and they really want to make it work. And then many realise that they can't make a living.

"The Bar has come a very long way in becoming more diverse. Men and women enter the Bar in equal measure. But it is the women who drop off more.

"We have made strides in ethnic diversity – there is more to be done – but if, socio-economically, the only people who can stay have the backing of wealthy parents or other access to money, then we're going to backtrack very fast indeed.

"There needs to be more investment, but there's no money. The whole criminal justice system – from police officers to prisons – has been woefully funded by successive governments over two decades now, so it's not just a recent problem, we're just at the lowest ebb."

Play to win

Caroline was drawn to the variety of work at the Bar and to not being office-bound.

"What appeals to me is the human interest. It's the interaction with people and their stories. No case is the same. It might have the same charges, but it's an entirely different cast of players – defendants, witnesses, issues. That is intellectually stimulating. Criminal cases are a bit like a puzzle, working it all out and putting the narrative together in a way that's easily understood.

"I do sometimes despair of human nature. But, in every case, no matter how distressing, there's always good in it too – witnesses who jumped in and did something heroic, or diligent police officers and crime scene investigators who uncover an essential piece of evidence."

Caroline sees some very dark things, but she has strategies for managing the pressures of work.

"I do lose sleep over cases. These are big decisions with far-reaching consequences. You need to be resilient, and you need stamina. The trial process is very physical and very demanding. At the end of the day, you're exhausted. But you have to compartmentalise; I think I must be mentally quite robust."

CRIMINAL CASES ARE A BIT LIKE A PUZZLE, WORKING IT ALL OUT AND PUTTING THE NARRATIVE TOGETHER IN A WAY THAT'S EASILY UNDERSTOOD

Justice tonight

Caroline accepts that we are living in very challenging times, but says there are dedicated and committed people working hard to uphold the rule of law.

She points to female genital mutilation protection orders, which can be put in place where it's perceived that a girl is at risk of being taken abroad to be mutilated. "The benefit of getting an FGM conviction is that it does act as a deterrent, particularly when the sentences are deterring sentences. But until FGM is addressed in communities overseas where it is still practised, it's always going to be a problem here in Britain and Ireland.

"Human nature doesn't change – people are always going to do awful things to each other, but it's how we deal with it as a civilised society that matters.

"I'll never forget that FGM case but, as always with every single case I do, it's a team effort. Working with an excellent junior counsel and instructing solicitor, dedicated police officers going above and beyond, and fantastic expert witnesses all coming together to ensure that the case is presented well and to ensure that the trial is fair, which is so important.

"When you're prosecuting, it's not a conviction at any cost; it's a fair conviction that you're striving for, making sure that the process is fair, and your role is impartial.

"And when you're defending, regardless of the crime or the public outrage at it, it is your role to fearlessly test the evidence.

"While I am concerned about the future, there remain skilled judges, barristers, solicitors, and dedicated court, probation, and prison staff who all tirelessly work together to keep the criminal justice system afloat. I work with brilliant people every day.

"On the whole, our system works well in ensuring that justice is achieved. And what we do as criminal barristers remains a vital public service, which needs to be protected.

"It will always be a privilege to do this job," Caroline concludes.

Mary Hallissey is a journalist with the Law Society Gazette.

SERVE *and* PROTECT

New civil court orders to protect victims of stalking and unwelcome conduct were introduced in September. Keith Walsh checks the locks

From 2 September, new measures were introduced that enable victims of stalking behaviour to seek civil orders restraining another person from certain behaviour by making application to the District Court on a civil basis.

The grounds for the civil orders mirror the grounds that constitute the recently created offence of stalking contained in section 10 of the *Non-Fatal Offences Against the Person Act 1997*, as inserted by section 23 of the *Criminal Justice (Miscellaneous Provisions) Act 2023*. However, the lower standard of proof for civil orders – rather than the criminal standard – may permit earlier intervention by those affected by the behaviour.

Additional protection is provided by permitting applications for civil orders at the same time that a court is hearing applications under the *Domestic Violence Act 2018*, without the necessity for the institution of proceedings. This link with the *Domestic Violence Act* is likely to provide greater protection to victims of domestic violence, as it broadens the remedies available to them to include civil orders. The relevant *District Court Rules* came into operation on 2 September – SI 364/2024 inserted a new order 96C into the rules and created new District Court forms.

Part 5 of the *Criminal Justice (Miscellaneous Provisions) Act 2023*, which was commenced on 2 September, introduced civil orders against relevant conduct. As these orders are contained in section 28 of the act, they are referred to as 'section 28 orders'.

Who can apply?

These orders can be applied for by any person, or a member of the garda on behalf of an applicant, against another person. There is no requirement for any pre-existing relationship or connection between the applicant and the respondent, unlike applications under the *Domestic Violence Act 2018*.

What are the grounds?

A court may make a section 28 order where it is of the opinion that:

- There are reasonable grounds for believing that the respondent has engaged in relevant conduct towards the applicant or, where relevant, a person connected to the applicant, and
- The making of the order is, in all of the circumstances, necessary for and proportionate to the purpose of protecting the safety and welfare of the applicant.

What is relevant conduct?

'Relevant conduct' means conduct engaged in, without lawful authority or reasonable excuse, by the respondent towards the applicant or, where relevant, a person connected to the applicant, that would reasonably be considered likely to cause the applicant:

- To fear that violence will be used against the applicant or person, or
- Serious alarm or distress that has a substantial adverse impact on his or her usual day-to-day activities.

Relevant conduct also includes, without prejudice to the generality of the points in the previous paragraph:

- Following, watching, monitoring, tracking or spying upon a person,
- Pestering a person,
- Impersonating a person,
- Communicating with or about a person,
- Purporting to act or communicate on behalf of a person,
- Disclosing to other persons private information in respect of a person,
- Interfering with the property (including pets) of a person,
- Loitering in the vicinity of a person,
- Causing, without the consent of the person, an electronic communication or

PIC: SHUTTERSTOCK

PIC: SHUTTERSTOCK

information system operated by a person to function in a particular way.

The grounds and the relevant conduct to be taken into account by a judge in considering whether to grant a civil order mirror the grounds and relevant conduct to be considered by a judge in relation to the offence of stalking as set out in sections 10(2) and 10(3) of the *Non-Fatal Offences Against the Person Act 1997*.

Effect of a section 28 order

A section 28 order may prohibit the respondent from doing any or all of the following in respect of the applicant or, where relevant, a person connected to the applicant:

- Using or threatening to use violence against, molesting, or putting in fear the person,
- Following or communicating by any means with or about the person,
- Approaching, within such distance as the court shall specify, the place of residence, education, or employment of the person,
- Engaging in such other forms of relevant conduct as the court specifies.

The order may be subject to such exceptions and conditions as the court specifies.

A section 28 order may last for a period of up to five years.

Ex parte applications

An *ex parte* application for a section 28 order can be made, provided it is grounded on an affidavit or information sworn by the applicant. The grounds for making a civil order on an *ex parte* application are where the court, "having regard to the particular circumstances of the case, is of the opinion that there are reasonable grounds for believing that there is an immediate risk to the safety and welfare of the applicant".

An order made *ex parte* may last for up to eight days or such shorter time as may be specified in the order.

Where an *ex parte* order is made, a note of the evidence given by the applicant must be prepared forthwith by the judge, by the applicant, or by the applicant's solicitor and approved by the judge or as otherwise directed by the judge, and a copy of the order, the affidavit, or information sworn to ground the *ex parte* application and a note of the evidence must be served on the respondent as soon as practicable.

The court must also ensure that a copy of the order is given or sent to the applicant, and to the relevant member or members in charge of the garda station for the area or areas the court considers appropriate, as soon as practicable.

Interim orders

An interim order can be made on an application for a section 28 order, on notice to the respondent or at any time between the making of that application and its determination, "where it is of the opinion that it is necessary and proportionate to do so for the purpose of protecting the safety and welfare of the applicant". The interim order ceases to have effect on the determination by the court of the substantive application for a section 28 order.

Where an interim order is made, the court must ensure that a copy of the order is given or sent to the applicant, to the respondent, and to the relevant member or members in charge of the garda station for the area or areas the court considers appropriate. The order must be given or sent by the court "as soon as practicable".

While section 28(16) states that the validity of the interim order will not be affected by non-compliance with the requirements for service of the order, this will depend on the circumstances of the case, and any non-compliance with notification of the respondent with a copy of the interim order (or any order made under section 28), where the respondent was not aware of the making of the order, is likely to cause significant difficulties (see *DPP v RK*). In this case, Simmons J held that "it is an essential proof in a prosecution for an alleged breach of a barring order to establish that the accused person had been given notification of the making of the barring order. It would not be sufficient that the accused person had been merely given notification of the fact that a barring order has been made, rather he

or she must have been furnished with a copy of the barring order. The only exception to this is where the accused person had been present at a sitting of the court at which the barring order was made."

Section 34(1) states that "a relevant order shall take effect on notification of the making of the order concerned being given to the respondent".

Procedural elements

The procedural elements of civil orders made under the 2023 act appear to be based on similar measures contained in the *Domestic Violence Act 2018*. The 2023 act contains similar provisions to the 2018 act in relation to variation or discharge of civil orders (s29), protection against cross-examination by applicant or respondent (s32), requirement for the court to give reasons for certain decisions (s33), taking effect of civil orders and requirements for copies of orders to be given to certain persons (s35), exercise of jurisdiction being District or Circuit Court (s36), hearing of proceedings to be *in camera* (s37), provision for special sittings of the District Court (s38), evidence to be permitted through television link for civil proceedings in certain circumstances (s39), and the right to be accompanied in certain circumstances (s40).

Breach

It is a criminal offence to breach a section 28 order, carrying a penalty, on summary conviction, to a class B fine or to imprisonment for a term not exceeding 12 months.

The powers of arrest without warrant that are granted to a member of the Garda Síochána (where they have reasonable cause for believing that an offence is being or has been committed and following a complaint being made to them for or on behalf of the applicant) are also similar to those provided for under section 35 the *Domestic Violence Act*. The prohibition on publication or broadcast of certain material relating to the offence, as well as the penalties for such a breach, are set out in section 46 of the *Criminal Justice (Miscellaneous Provisions) Act* and are also similar to the prohibitions and penalties contained in sections 36 and 37 of the *Domestic Violence Act*.

Hearing of applications

Section 15 of the *Domestic Violence Act* currently permits the court, when hearing an application under that act, to hear related matters – namely, applications under section 11 of the *Guardianship of Infants Act 1964*; sections 5, 5A, 5B, 6, 7 or 21A of the *Family Law (Maintenance of Spouses and Children) Act 1976*; sections 5 or 9 of the *Family Home Protection Act 1976*; the *Child Care Act 1991*; or sections 30, 34 or 45 of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* – without the necessity for institution of proceedings.

To this list of related matters are now added applications under part 5 of the *Criminal Justice (Miscellaneous Provisions) Act 2023* – applications for a section 28 order. This provides further additional civil law options for victims

> THE INTRODUCTION OF THESE NEW ORDERS WILL AFFORD ADDITIONAL PROTECTION TO THOSE SUFFERING UNWANTED BEHAVIOUR. THEY WILL PROVIDE GREATER PROTECTION FOR VICTIMS OF DOMESTIC VIOLENCE

of domestic violence and offers more opportunities for section 28 orders to be made. Section 82(a) of the 2023 act amends section 15(2) of the *Domestic Violence Act 1996* by permitting the court, where an application is made to it for an order under the *Domestic Violence Act 2018*, to make an order under part 5 of the 2023 act without the institution of proceedings under that act.

This greatly increases the discretion of the District Court judge dealing with an application for an order under the *Domestic Violence Act 2018* to make a section 28 order where appropriate.

Additional protection

The introduction of these new orders will afford additional protection to those suffering unwanted behaviour. They will provide greater protection for victims of domestic violence, as they complement the orders that can be made under the *Domestic Violence Act 2018*.

However, it must be acknowledged that the creation of additional remedies will place an additional burden on an already overworked and under-resourced court, and it is essential, if other cases are not to be displaced, that the judicial and staff resources promised in the *Judicial Planning Review Group Report* are introduced.

Keith Walsh SC is a family law solicitor practising in Dublin and author with Sonya Dixon BL of Domestic Violence: Law and Practice in Ireland (Bloomsbury, 2024).

LOOK IT UP

CASES:

- *DPP v RK* [2019] IEHC 852

LEGISLATION:

- *Criminal Justice (Miscellaneous Provisions) Act 2023*
- *Domestic Violence Act 2018*
- *Non-Fatal Offences Against the Person Act 1997*
- SI 364/2024 *(District Court (Civil Restraining and Behaviour Orders) Rules 2024)*

Fuselli's *Oath on the Grütli* (1780): luckily, the vow to free the Swiss from the Habsburgs would be much more straightforward in modern Roscommon

PIC: ALAMY

SOWING *wild* OATHS

There has been a change in the requirements for applications to be appointed a commissioner for oaths. Jonathan White explains

The power to appoint a commissioner for oaths is found in the *Commissioners for Oaths (Ireland) Act 1872*, which, at section 1, vested in the Courts of Queen's Bench in Ireland the power to appoint "a fit or proper person" to take affidavits.

That power was transferred to the Lord Chancellor by section 73 of the *Supreme Court of Judicature Act (Ireland) 1877*, and thereafter was transferred to the Chief Justice by the *Courts of Justice Act 1924*. Section 19(3) of the 1924 act expressly makes provision for the transfer of the power to appoint a commissioner for oaths: "There shall be transferred to the Chief Justice and vested in him the appointment of notaries public and of commissioners to administer oaths."

That power of the Chief Justice was confirmed and transferred by the provisions of section 10(1)(b) of the *Courts (Supplemental Provisions) Act 1961*, which confirms that there shall be exercisable by the Chief Justice "the power of appointing notaries public and commissioners to administer oaths".

On the role

Section 1(2) of the *Commissioner for Oaths Act 1889* defines the role: "A commissioner for oaths may, by virtue of his commission, in England or elsewhere, administer any oath or take any affidavit for the purposes of any court or matter in England."

Rules of court permit, or sometimes require, evidence by affidavit or statutory declaration instead of oral evidence. As such, without some means by which evidence can be taken

in documentary form without requiring oral evidence, the day-to-day administration of justice would be hindered.

In administering the oath, the commissioner witnesses the swearing (or affirmation) by the deponent of the affidavit as that person's means of authenticating and verifying the truth of its content. The commissioner and the deponent then sign the relevant document to signify the making of that oath or affirmation, those signatures confirming the performance of the swearing of the oath or the making of the affirmation.

Procedure for appointment

Pursuant to the provisions of section 72 of the *Solicitors (Amendment) Act 1994*, practising solicitors are in a unique position insofar as they have, while holding a practising certificate, the powers conferred on a commissioner for oaths without holding the office of commissioner for oaths. As such, practising solicitors in that category are no longer required to apply to be appointed commissioners for oaths.

Commissioners for oaths who are not in the above category are appointed by the Chief Justice sitting in open court. Applications are made by petition showing the residence and occupation of the petitioner and his/her suitability to be appointed a commissioner for oaths. The petition must be verified by the affidavit of the petitioner. A certificate or certificates of fitness, generally signed by six members of the legal profession and six leaders of the local business community, should be exhibited in the affidavit. The petition is brought before the Chief Justice by notice of motion, which must be served through the Supreme Court Office on:

- The District Court clerk for the petitioner's intended district,
- For appointments to Dublin only – the Law Society,
- For all areas outside Dublin – the local bar association.

In November 2020, a three-judge panel to the Chief Justice provided an opinion on the issue of the power to remove a commissioner for oaths. The Law Society was invited to, and did, provide written submissions on that issue for the purposes of that opinion. The opinion set out, among other things, that "we are of the view that the Chief Justice does have a power to remove a commissioner for oaths, and that, there being no statutory source of

PIC: SHUTTERSTOCK AI

that power, it exists as an inherent power in light of the fact that the Chief Justice is to appoint a commissioner to serve under his or her authority 'at his pleasure'."

On 22 January 2021, then Chief Justice Frank Clarke issued Supreme Court Practice Direction SC 22. Noting from the above opinion that there appeared to be an inherent jurisdiction vested in the Chief Justice to consider issues concerning the suitability of persons who have been appointed as commissioners for oaths to continue as such, that practice direction goes on to set out the procedures, including the instigation of an inquiry, to enable the fair consideration of such issues. The practice direction also provides that, in the event that the Chief Justice concludes that the commissioner concerned is not a fit person to remain acting as a commissioner, the Chief Justice will exercise the inherent power to remove the commissioner concerned from the list of such persons who are entitled to act as commissioner for oaths, and may give such further ancillary directions as may be appropriate in the circumstances.

Jordan judgment

A recent judgment changes the procedure for seeking appointment as a commissioner for oaths.

On 7 May 2024, the Supreme Court delivered its ruling in *Commissioner for Oaths – Declan Jordan*. As a result of that ruling, the certificate of fitness required from members of the legal profession in support of a person seeking to be appointed a commissioner for oaths has been amended.

The background to the *Jordan* case is as follows. In late 2023, the Supreme Court received a complaint concerning Mr Jordan, who was appointed as a commissioner for oaths in December 2020. As a result, and as per the procedures set out in SC 22, the Chief Justice instigated an inquiry into the continuing suitability of Mr Jordan to be a commissioner. Having instigated that inquiry, the Chief Justice invited submissions from, among others, the Law Society.

The complaint received in relation to Mr Jordan was that he had, since his appointment as a commissioner, been convicted of offences in the District Court, including careless driving and failure to provide a blood or urine specimen. Evidence of the convictions was attached to the complaint. However, it became apparent from the date of the complaint, the date of the District Court convictions, and the date of appointment, that the convictions predated the date of appointment as a commissioner and had not been brought

IN THE EVENT THAT THE CHIEF JUSTICE CONCLUDES THAT THE COMMISSIONER CONCERNED IS NOT A FIT PERSON TO REMAIN ACTING AS A COMMISSIONER, THE CHIEF JUSTICE WILL EXERCISE THE INHERENT POWER TO REMOVE THE COMMISSIONER CONCERNED FROM THE LIST OF SUCH PERSONS WHO ARE ENTITLED TO ACT AS COMMISSIONER FOR OATHS

to the attention of the Chief Justice at the time of the application for appointment.

As part of the inquiry process, the Chief Justice invited the Law Society to be represented at a for-mention listing before him on 18 January 2024, with a view to making any submissions it considered appropriate as to the principles to be applied in general and, if appropriate, in the individual circumstances of the case.

The Law Society was represented at that for-mention listing and, having confirmed to the Chief Justice that Mr Jordan was not, and never had been, admitted and enrolled on the Roll of Solicitors, made brief oral submissions on the more general issues in question. Shortly in advance of the for-mention listing, Mr Jordan confirmed in writing to the registrar of the Supreme Court that he proposed to, and did, resign as a commissioner for oaths. On that for-mention date, the solicitors who had acted for Mr Jordan at the time of his application for appointment as a commissioner were represented in court and indicated that they had no further instructions. The Chief Justice noted Mr Jordan's resignation as a commissioner and confirmed that, in light of the issues raised, he would issue a ruling at a later date.

In the *Jordan* ruling dated 7 May 2024, the Chief Justice, at paragraph 8, held that the complaint raised the more general issue of the failure to disclose a conviction of a criminal offence in an application for appointment as a commissioner for oaths, which the Chief Justice considered necessary to comment on to clarify future practice in that regard.

At paragraph 9, the Chief Justice noted that no reference had been made to the convictions in Mr Jordan's application for appointment as a commissioner, and that they were not brought to the attention of the then Chief Justice. On the contrary, certificates by six local residents and six members of the legal profession were submitted that the applicant was a suitable person to fill the office. The Supreme Court Office had been informed during the inquiry process that the solicitors acting for Mr Jordan at the time of his application were themselves unaware of the fact of the convictions at the time the application was brought.

Going on to deal with changes in respect of future applications arising from the circumstances of the *Jordan* case, the Chief Justice, at paragraph 11 of his ruling, directed as follows: "All applications should include a statement by the applicant and any person supporting the application that the applicant (or the individual as the case may be) is not aware of any matter relating to his or her suitability to be appointed a commissioner for oaths, unless specified in the application."

Arising from the *Jordan* ruling, the amended certificate required from members of the legal profession supporting a person seeking to be appointed a commissioner for oaths is available on the 'Procedure in the Supreme Court' section of the Courts Service website. Solicitors who are considering providing such a certificate, or who are advising commissioner applicants, should therefore ensure that they have all relevant information before doing so. They should also read the *Jordan* ruling in full. g

Jonathan White is a solicitor in the Law Society's Regulation Department.

LOOK IT UP

- *Commissioner for Oaths – Declan Jordan – Donegal (16/20)* [2024] IESC 17
- Opinion of three-judge panel to the Chief Justice, courts.ie/notary-public-commissioner-oaths
- Precedent certificate of members of legal profession for a person seeking to be appointed a commissioner for oaths, courts.ie/notary-public-commissioner-oaths
- Supreme Court Practice Direction SC 22, courts.ie/content/commissioner-oaths-complaints-writing

THAT'S AXIOMATIC

English firm Axiom Ince was closed down last year by the Solicitors Regulation Authority, after an investigation revealed that £64 million was missing from the firm's client account. Could a similar situation arise here? David Mulvihill and Rory O'Neill balance the books

Axiom Ince was created through the acquisition of Ince & Co (a maritime and shipping practice) and Plexus Law (a defendant-centric insurance firm) in April 2023 and July 2023 respectively. Ince & Co was purchased for £2.2m; Plexus Law was purchased for £1.1m. The firm grew from 200 employees to more than 1,500 in the space of two months.

The firm appeared to be operating effectively until August 2023, when managing partner Pragnesh Modhwadia and two other senior solicitors were suspended by the Solicitors Regulation Authority (SRA) for suspected dishonesty. Shortly afterwards, the Metropolitan Police launched an investigation after a tip-off that the managing partner misappropriated client money. Consequently, Axiom Ince emailed clients to inform them that the firm was intending to cease practising in the near future.

Modhwadia allegedly transferred approximately £57 million of client monies to high-yielding interest accounts at the State Bank of India – or at least, that is what he told his fellow equity partners. He produced a letter for his partners confirming the monies were with the bank. It appears as if this letter from the bank was forged, but it is not known whether it was forged by Modhwadia or some employee of the bank who was known to him. As a result of this, the matter is currently being investigated by the Serious Fraud Office, and seven arrests were made last November in connection with the collapse of the firm.

Modhwadia confirmed in an affidavit that approximately £64m was taken from client accounts to buy the above practices, purchase six properties, and fund construction for another seven properties. Mr Modhwadia and his family are affiliated with the companies involved with the purchase/construction of the properties, which were held by a company called Axiom DWFM Properties Limited. Axiom Ince filed a notice of intention to appoint administrators on 2 October 2023; this offers protection from other action by creditors – normally when attempts are made to secure a rescue deal. A freezing order was imposed by the High Court to the amount of £64m against Modhwadia. An injunction has also been put in place to prevent the sale of the properties purchased with client funds.

PIC: SHUTTERSTOCK AI

The SRA intervened and closed the practice with immediate effect as of 3 October 2023 – 14 offices in total were closed, and documentation was released to other solicitor firms to deal with matters. Clients had the option of following former Axiom Ince solicitors to their new firms or to have their documentation furnished elsewhere. Active matters were prioritised on a basis of urgency, such as if a file was an ongoing litigation issue.

These events gave rise to questions about consumer protection and the role of the Compensation Fund:

- Is it possible to compensate current claims while continuing to ensure the Compensation Fund remains financially viable?
- How much can be recovered by Axiom Ince's insurance?

Major short-term problem

It is unlikely that the Compensation Fund will have to reimburse the full amount, as Axiom Ince's insurance will likely be able to cover some of the losses. However, a major short-term cashflow problem exists, as it will likely take years to recoup money. The Compensation Fund has £18m available to distribute. The administration costs of the Axiom Ince intervention alone are expected to be between £10m and £15m. It is expected that there will be more than 1,000 claims, and it is estimated that the total number of claims received by the fund will be in or around the £33 million mark.

The usual approach by the Compensation Fund in this case is to deal with urgent claims first, and then deal with the remaining claims in order they are received. This approach is not viable considering the volume of possible applications to the fund and the losses on Axiom Ince. A prioritisation process has been applied to all the applications received – that is, where the impact of the loss is suffered is more immediate, and the person who applies will face significant hardship.

The priority order is as follows:

1) Emergency applications – risk of homelessness; client under contractual obligation to complete on private domestic residence; imminent insolvency; no alternative sources of finance or recourse available; social/economic disadvantage,
2) Individuals purchasing property to live in – residential conveyancing where the purchaser will live in the property,
3) Individuals who have paid for legal services that have not been completed, such as divorce proceedings, immigration, litigation, etc,
4) Individuals selling properties and individuals buying investment properties,
5) Trusts and probate matters,
6) Commercial transactions – large companies and corporate entities will not be eligible to apply to the fund.

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UNFORTUNATELY, ANYTHING IS POSSIBLE, AND THE COLLAPSE OF A FIRM IN THE REPUBLIC OF IRELAND WITH EXTENSIVE LOSSES CAN NEVER BE RULED OUT. IT IS THEREFORE IMPERATIVE THAT THE COMPENSATION FUND IS MAINTAINED AT AN APPROPRIATE LEVEL TO PROTECT AGAINST SUCH A COLLAPSE

Inevitably, there is going to be a massive shortfall in the Compensation Fund following Axiom Ince's collapse, which has left the SRA with numerous questions as to how to bridge the gap:

- Solicitors may be required to make a once-off payment in order to salvage what will be left of the Compensation Fund (this measure was recently discounted by the SRA),
- The SRA has proposed increasing next year's individual contribution from £30 to £90 and the firm contribution from £660 to £2,220 (these increases are proposed in order to avoid the imposition of a one-off levy),
- A possible overall cap on claims filed against the Compensation Fund – fund rules allows the SRA to impose a cap of £5 million, depending on the circumstances of the case. The SRA has said it will not impose an overall cap.

The law societies of Birmingham, Bristol, Leeds, Liverpool, and Manchester have written to the oversight regulator, the Legal Services Board, asking for a re-examination of the SRA's decision not to impose an overall cap.

A full review of the SRA's intervention was conducted by Carson McDowell Solicitors in Northern Ireland, which is not regulated by the SRA. The scope of the review included looking at management oversight and supervision, the quality of decision-making, and whether the SRA acted in a reasonable timeframe. At the time of writing, the Legal Services Board is in possession of the independent report from Carson McDowell, along with its findings and recommendations. The report has not been published. No explanation has been provided as to why it has not been published, and no date has been given for its publication.

Irish eyes

The Compensation Fund in Ireland works along similar lines to that in England and Wales, in that it is designed to compensate clients who have suffered a financial loss as a result of their solicitor dishonestly misappropriating client monies arising from that solicitor's practice as a solicitor. It is also funded via annual contributions from members of the profession, which is determined by the Law Society's Regulation of Practice Committee after giving consideration to the prevailing conditions and with the assistance of external professional advice. The fund currently has assets of approximately €27 million. In addition, insurance is held to provide cover in circumstances where there are large claims in any one year.

Could an 'Axiom Ince' happen in Ireland? We need only cast our minds back 17 years, to the closure of the practices of Thomas Byrne and Michael Lynn. The economic recession at the time saw the value of the Law Society's Compensation Fund fall by over 50%. In addition, the dishonesty of these practitioners resulted in massive claims against the fund and, indeed, as the fund depleted, the Law Society eventually had to call on its insurers to cover the remaining losses. The result was a significant increase in the annual contribution. Since then, the Compensation Fund has been put on a stable footing, with investments held in a relatively low-risk portfolio. Each year, the committee, in setting the contribution amount, is cognisant of the need to maintain the viability of the fund to ensure that it provides a reliable protection for consumers of legal services and upholds the reputation of the profession.

Unfortunately, anything is possible, and the collapse of a firm in the Republic of Ireland with extensive losses can never be ruled out. It is therefore imperative that the Compensation Fund is maintained at an appropriate level to protect against such a collapse. After all, the integrity of the profession is not something that can be quantified in monetary terms. g

David Mulvihill is the Law Society's practice closures manager; Rory O'Neill is financial controller of the Compensation Fund.

Special thanks to Kathleen Mooney.

COVER STORY

Bill Holohan SC, chair of the Law Society's Professional Indemnity Insurance Committee, speaks to the *Gazette* about its work

Every solicitor complains about the price of their professional indemnity insurance at renewal time. However, the chair of the PII Committee, Bill Holohan SC, notes that premium renewal prices have come down somewhat in recent years.

"The most recent PII renewal saw a further stabilisation of the market and a significant reduction in overall premiums paid by the profession as a whole," he says. There was a 20% increase in the premium pool for the 2020/21 indemnity period, a 5.5% increase for 2021/22, but a reduction of 8.4% for 2022/23 and now a reduction of 16.15% for 2023/24.

"This brings premiums to their lowest level since 2018/19," he says, with stabilisation coming because of leveraging the legal profession's strong relationships with insurers. "We made clarifying changes to the minimum terms and conditions without reducing PII cover for the profession or the public."

There are currently 13 insurers and three insurance facilities in the Irish solicitors' PII market. Competition increased through the arrival of two new A-rated insurers and one new insurance facility. Firms that shop around, rather than staying with the same insurer, see the greatest reductions in premium, he says, urging solicitors to pick up the phone to their broker. And don't be shy about asking your broker what their cut is, Bill Holohan advises.

Behind the scenes

Some of the pleasing reduction in cost can be attributed to the behind-the-scenes work of the PII committee, supported by the expert work of Law Society executive and committee secretary Sorcha Hayes.

Committee functions include monitoring the implementation of PII regulations and associated documentation, maintaining a stable market, providing guidance to the profession, and attending to all PII queries arising.

The committee reviews, drafts, and publishes updated PII regulations and associated documentation each year. A regular dialogue is also maintained with insurers in the Irish market for solicitors' PII.

Also under committee scrutiny are the management and running of the 'assigned risks pool' and the 'run-off fund', which covers retiring solicitors for some years after they step down.

Members of the committee are drawn from a variety of practice sizes around the country. Vice-chair Sonia McEntee is a sole practitioner based in Cavan.

The rating of any individual proposal for insurance depends on the type of work that solicitor does and the profile of their practice. Sole practitioners have a higher risk profile

Committee vice-chair Sonia McEntee and chair Bill Holohan

because of a perceived lack of checks and balances from others involved in the firm.

Holohan notes that complaints about legal services often relate to poor communications, or litigation failures to initiate a claim properly or at all, missing a statute date, for example. "My advice is to keep the client informed of every step you take. I do this on a regular business – it might take you another 30 seconds to a minute, but it'll avoid the ten-minute phone call more often than not," he says. "You can just do a quick bullet-point communication of what's going on."

Common proposal

Holohan points to the common proposal form as a sign of progress.

"There used to be a system where every insurance company would have its own form, and if you wanted to put in proposals to multiple insurers, you'd have to do multiple forms. Now, in recent years, there what's called the common proposal form, which simplifies things," he said.

Insurers will also update premiums based on firm turnover and the type of work that is being done.

"I remember a former attorney general saying that a busy lawyer will make ten mistakes every day. Some could be as simple as a typo. Nine of them will never cross their mind again. But one of ten of those might come back in some way.

"The one that comes back might result in the claim, but that's just the occupational hazard of being a professional advisor. That's why we have the insurance. It's for the protection of the clients and for the protection of the individuals."

The bulk of legal practices countrywide are small, with fewer than ten partners, he says. Usually, small practices do non-specialised work, such as personal injuries, conveyancing, boundary disputes, family law, and employment issues.

"My neck, my back, my house, my hedge," Bill quips.

He believes that doing regular CPD is another protection for practitioners.

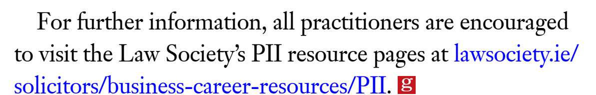
"There can be changes to the law that people don't understand or know about. As a result, they may do something that they've been used to doing, but which is now no longer the appropriate practice," he says. "Every seminar I go to, I have one of two reactions – 'that's good information, that will come in handy' and/or, more importantly, 'oh, my sweet God, there's a file I must check when I get back to the office'."

Holohan points to a recent cost penalty imposed by Kennedy J for failure to advise about mediation (see the cover story in the July *Gazette*). "The warning marker has been set down now, so in the future there could be a case adjourned with cost implications," he says. "My doctoral research shows that the majority of solicitors are aware of mediation, but it's a bit of a cloud on the horizon, and they are not too sure what's in the cloud."

Cost complaints

"Everybody complains about the cost but, relatively speaking, the cost of insurance for solicitors is low in comparison to other professions," Bill continues. Recent increases have been due to the global insurance market becoming more expensive across the board, rather than to the costs of the defence of professional indemnity insurance claims, he says. "The increase in premiums over the last few years was not caused by an increase in claims, or a poorly performing domestic market, but rather due to an increase in base rates across all books of insurance arising from global insurer losses and solvency requirements."

Increased turnover will increase the premium, and a good broker will explain the connection. "Engage with your broker," he says. "Get the broker's advice on it. Find out what the broker is being paid as well. And then find out which insurance companies the broker is dealing with too," he concludes.



For further information, all practitioners are encouraged to visit the Law Society's PII resource pages at lawsociety.ie/solicitors/business-career-resources/PII.

Mary Hallissey is a journalist with the Law Society Gazette.

Voting with their feet

The 'Well Within the Law' Festival on 4 September at Blackhall Place brought together a range of voices to explore ways of improving the culture of the legal workplace. Mary Hallissey packs her trunk

WORKPLACES SHOULD BE ABLE TO ACCOMMODATE THE RANGE OF MENTAL-UNWELLNESS ISSUES THAT COULD ARISE THROUGHOUT PEOPLE'S LIVES – BUT, JUST AS IMPORTANTLY, THEY SHOULD NEVER CAUSE ANY OF THOSE THINGS

Part of Law Society Psychological Services' new 'Culture First' initiative, the 'Well Within the Law' Festival explored and celebrated ways of making legal workplaces stronger and more connected.

The centrepiece was the unveiling of the Law Society's elephant sculpture, as part of its partnership with the Elephant in the Room project.

The project's co-founder, former rugby international Brent Pope, was on hand to unveil the sculpture and to share his attempts to overcome what he described as a "weak to speak" attitude to mental-health issues.

The Law Society's elephant sculpture displays five words drawn from a survey of 250 solicitors and trainees that included the question: 'What gets you through tough times?' The words that came to mind most often for solicitors were friendship, hope, kindness, family, and nature. Not surprisingly, these terms formed some of the main themes of the evening of debate and storytelling that followed.

It'll be OK

Pope told attendees of his struggles with anxiety attacks and depression, which culminated in a phone call to a Samaritans helpline. He stressed the importance of the phrase used by the person who answered his call: "It'll be okay, friend."

"Because I didn't think, at that time, I had a friend in the world that would listen to me". Pope said that the call had given him "hope and care", and had marked the start of his recovery process. Care "starts with a simple conversation", he told the audience.

Pope said that an organisation's elephant symbolised "a place of safety" and "permission to talk". He added that the sculpture was just a first step for an organisation in building an open culture in the workplace.

Right person, right time

Law Society past-president Geraldine Clarke described the progress that had been made on mental-health issues in the past ten years as "phenomenal".

She spoke about her experiences as a young solicitor, when lawyers were not expected to show vulnerability of any kind. "You were meant to be the strong one; the client relied on you. That was the image you portrayed."

Clarke described how, as a young female solicitor in the midlands, she had been upset and worried on her first visit to a sub-office, where the clients that had turned up left without wanting to see her or keep their appointment. However, a display of kindness by her then-boss had prevented "what could have been the beginning of a life of self-doubt – I was just lucky that the right person was there, at the right time," she said.

She stressed the importance of solicitors looking after colleagues, as well as their clients. "We don't know when a very sharp comment at the end of the phone, or a very aggressive letter sent in litigation, on behalf of a client who probably will never thank you for it, might have a dreadful effect on somebody on the other side of a case," she said.

How you doing?

One of the panel discussions focused on transforming the culture of the legal profession.

Sinéad McSweeney (former managing director and VP of public policy EMEA, Twitter Ireland) told the event that examinations of workplace 'culture' should not focus on buzzwords, yoga, or dress-down Fridays. "It's actually about looking at your workplace and figuring out what are the elements that are causing stress; that are causing antagonism;

PICS: CIAN REDMEOND

that may be polluting the workplace."

Workplaces should be able to accommodate the range of mental-unwellness issues that could arise throughout people's lives, she continued – but, just as importantly, "they should never cause any of those things".

Jessica Lee (chartered business psychologist with SEVEN, Psychology at Work) described the culture of an organisation as "the sum of the behaviours of the people that work there", adding that such behaviours and values had to come from somewhere. "It's about how we articulate those values: how do we actually live by them on a practical basis, day to day, and how do we bring people and their behaviours and our decision-making, back to that on a daily basis?"

Lee warned organisations against "initiative-itis" and urged them to focus instead on their core values – including respect and decency – as well as their policies and structures.

"How easy and simple is it for someone to understand that, if there's a situational change or a personal change in their life, they can find a policy that relates to them; that they can understand it as a language that's inclusive and understandable for them; and that they can take that and make that request to make their life easier?" she asked.

Paula McLoughlin (partner at EY Ireland and co-founder of mental-health charity A Lust for Life) said that the main question for a workplace should be: 'How are you making people feel?' "There's a danger in over-intellectualising this, because you take the humanity out of it," she warned. She told the event how the younger generation of employees had made her more optimistic about the future, as they had shown that they would "vote with their feet".

The evening's closing remarks, given by Law Society past-president Michael Quinlan, echoed the importance of friendship and hope, which transcend through all generations of lawyers. g

Mary Hallissey is a journalist with the Law Society Gazette.

Surveys and septics

Solicitors are becoming concerned about what is covered by certificates of compliance in relation to houses served by septic tanks. Rory O'Donnell lays the groundwork

SOLICITORS NEED TO CONSIDER QUALIFYING THEIR CERTIFICATES OF TITLE IF A PURCHASER WISHES TO PROCEED WITH A PURCHASE WHERE THE REGULATIONS REGARDING THE SEPTIC TANK HAVE NOT BEEN COMPLIED WITH

In June 2023, the Environmental Protection Agency (EPA) released a report indicating that 49% of treatment systems (septic tanks) that were inspected failed because they were not built or maintained properly – 20% of those were considered a risk to human health or the environment.

When a person applies for planning permission for a house for which there are no public mains available, information about the on-site sewage treatment system proposed and evidence as to the suitability of the site for the system of foul and surface water drainage proposed must accompany the planning application (article 22(2)(c) of the *Planning and Development Regulations 2006*) so that the planning authority can assess the suitability of the site for the systems proposed. The information typically involves evidence of a percolation test to assess the permeability of the soil. However, other factors – like the height of the water table, proximity to a river or stream, the contour of the ground, whether the house to be built will be relying for its water supply on a well to be located on the site – may also be relevant. Adherence to the *EPA Code of Practice* is required by local authorities as part of their development plan policies.

As such, the drainage arrangements for a domestic waste-water treatment plant (or septic tank) and surface water (usually run-off from a roof, yard, paths, driveway or such like) are part of the planning process and should be covered by the certificate of compliance with planning. Solicitors just need to ensure that there are no exclusions in the certificate of compliance.

Need for inquiry

It has been the practice for many years for solicitors for purchasers to advise clients to have a survey carried out on any property they are purchasing.

I believe that solicitors for purchasers of a property drained by a septic tank or equivalent should inquire before contract as to whether the septic tank has been registered and whether it has been inspected by the local authority, and whether any advisory notice was issued as a result. The need for such enquiries is because any necessary remedial work to deal with a problem drainage system may be expensive, and a purchaser needs to know about it before committing to a purchase.

I believe that a purchaser should ask their surveyor to advise if:

- The septic tank and the percolation area is the required distance from the house, roadway, and boundary as laid down in the *EPA Code of Practice*.
- The septic tank and the percolation area are wholly contained within the site. In the event that any part of the septic tank or percolation area is outside the site, the purchaser's solicitor needs to know, so as to ensure that all necessary easements in connection with such arrangements are in place. The position needs to be confirmed by a declaration of identity from a suitably qualified person (usually an architect, chartered surveyor or engineer).
- Effluent from a percolation area or surface water sump is discharged outside the site in such a way as to require a discharge licence.

The EPA code provides that:

- Discharges from a domestic waste-water treatment plant or septic tank to a watercourse require a discharge licence. Discharge licences for such situations can be difficult to obtain.
- Discharges into the soil on the site are exempt (subject to certain limits).

PIC: SHUTTERSTOCK

If there are issues over the drainage arrangements for a property, a possible fall back for purchasers is to consider getting advice from their surveyor on whether a new septic tank and any necessary percolation areas could be installed within the confines of the site – and, of course, approximately what this would cost. At least then, a purchaser will know that, if the existing waste-water system is faulty, the problem is one that can be sorted, even if that is at a price.

Updated memorandum

I have revised and updated paragraph 10 of the specimen client memorandum in relation to surveys, which I drafted and which is on the Law Society website for use by colleagues.

Solicitors need to consider qualifying their certificates of title if a purchaser wishes to proceed with a purchase where the regulations regarding the septic tank have not been complied with. If the purchaser wishes to proceed without a survey that includes the septic tank, then their solicitor should assess whether they have the necessary information confirming that the septic tank is compliant. If they do not, then, again, they will need to consider qualifying their certificate of title.

This article has been published with the support of the Conveyancing Committee of the Law Society of Ireland. The insights and information presented are intended for general guidance and informational purposes only. The Law Society of Ireland, its Conveyancing Committee, and the author(s) do not accept any responsibility for losses that may arise from reliance upon the information contained in this article. It is not intended to be a substitute for specific legal advice. Readers are strongly advised to seek independent legal counsel to obtain advice tailored to their particular circumstances.

Rory O'Donnell is consultant to the Law Society's Conveyancing Committee.

Shot down in flames

Ryanair has successfully challenged aid given by the Dutch and French governments to KLM AND Air France. Marco Hickey touches down

RYANAIR SUBMITTED THAT THE COMMISSION WRONGLY CONSIDERED THAT ONLY KLM AND THE COMPANIES THAT IT CONTROLS WERE THE BENEFICIARIES OF THE MEASURE AT ISSUE, TO THE EXCLUSION OF THE HOLDING COMPANY AIR FRANCE-KLM AND AIR FRANCE

News from the EU and International Affairs Committee. Edited by TP Kennedy, Director of Education

Case T-146/22, *Ryanair v Commission* (7 February 2024), stems from a previous challenge by Ryanair against commission decision SA.57116 authorising state aid in favour of KLM in the context of the measures implemented by the Dutch government to address the COVID-19 pandemic (the May 2021 decision was Case T-643/20, *Ryanair v Commission*, 19 May 2021).

The General Court in May 2021 annulled commission decision SA.57116 on the ground that it was vitiated by a failure to state reasons as regards the determination of the beneficiary of the measure at issue, and ordered that the effects of the annulment of that decision be suspended pending the adoption of a new decision by the commission under article 108 of the TFEU. The commission responded in July 2021 by adopting the corrected and contested decision, in which it found that the measure at issue involved state aid within the meaning of article 107(1) TFEU, but was compatible with the internal market on the basis of article 107(3)(b), which empowers the commission to approve aid "to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a member state". Significantly, the commission in the contested decision held that KLM and its subsidiaries were the sole beneficiaries of the aid, to the exclusion of the other companies in the Air France-KLM group.

The decision of the General Court in May 2021 followed two challenges by Ryanair (and its subsidiary Malta Air) before the General Court in Case T-216/21, *Ryanair and Malta Air v Commission*, where the General Court annulled the corresponding commission decisions of 2020 by which it authorised state aid granted by the French government to address the COVID-19 pandemic as follows:

- Commission decision approving aid to Air France in the context of measures implemented by the French government to address the COVID-19 pandemic ('Air France decision'), where the court found that the commission committed a manifest error of assessment by considering that the beneficiaries of the measure at issue were Air France and its subsidiaries, to the exclusion of the Air France-KLM holding and its other subsidiaries, including KLM and KLM's subsidiaries, and
- Commission decision approving aid to Air France-KLM and Air France also in the context of measures implemented by the French government to address the COVID-19 pandemic ('Air France and Air France-KLM decision'), where it held that the commission committed a manifest error of assessment by considering that the beneficiaries of the measure at issue were Air France and its subsidiaries and the Air France-KLM holding and its other subsidiaries, with the sole exception of KLM and its subsidiaries.

In Case T-146/22 on 7 February 2024, the General Court again annulled the corrected version of commission decision SA.57116. Ryanair submitted that the commission wrongly considered that only KLM and the companies that it controls were the beneficiaries of the measure at issue, to the exclusion of the holding company Air France-KLM ('Air France-KLM holding'), and Air France. Ryanair referred to several factors to demonstrate that Air France-KLM holding and Air France were also potential or indirect beneficiaries of the measure at issue, such as the capital, organic, functional, and economic links between

PIC: ALAMY

the Air France-KLM holding, Air France and KLM, the contractual framework on the basis of which the measure at issue was granted and the context of that measure.

The General Court examined capital and organic links, functional links, economic links, the agreements on the basis of which the measure at issue was granted, and the type of aid measure granted and the context in which it was granted.

Capital and organic links

Air France was 100% owned by the Air France-KLM holding, and the latter held 93.84% of the share capital, 99.7% of the economic rights, and 49% of the voting rights in KLM.

The Air France-KLM holding had a power of control over KLM by virtue of the veto rights that it enjoyed over KLM's business plans and budgets, on the one hand, and over the remuneration, appointment, and dismissal of its managers, including the appointment and dismissal of the members of KLM's board of directors, on the other, such that that the holding company had to approve decisions concerning, *inter alia*, the strategic options, budget, and investment plan of the 'Air France-KLM group, including KLM' before they were adopted or implemented, and Air France-KLM holding had the right to approve any financing transactions in excess of €150 million carried out by its subsidiaries.

The General Court referred to the 2019 universal registration document filed by the holding company with Autorité des Marchés Financiers (Financial Markets Authority, France) pursuant to Regulation (EU) 2017/1129 (2019 *Universal Registration Document*) referring to, at the Air France-KLM group level, a number of mixed bodies, composed of high-level representatives of the Air France-KLM holding, Air France, and KLM, responsible for monitoring and coordinating certain important decisions to be taken within that group.

The court referred to the fact that the 2019 *Universal Registration Document* stated that, while investments were managed at the level of each company in the Air France-KLM group, the decision-making process was coordinated by a group investment committee, composed of the executive vice-president of Air France-KLM holding with responsibility for economic and financial affairs, the executive vice-president of Air France with responsibility for economic and financial

THE FOUR CHALLENGES MADE BY RYANAIR RESULTED IN THE ANNULMENT OF EACH OF THE FOUR CONTESTED COMMISSION STATE-AID APPROVAL DECISIONS, ON THE BASIS THAT THE COMMISSION FAILED IN EACH CASE PROPERLY TO IDENTIFY THE BENEFICIARIES OF THE STATE-AID MEASURE IN QUESTION

affairs, and the chief financial officer of KLM.

It was apparent from the 2019 *Universal Registration Document* that the management of market risk within the Air France-KLM group was overseen by a risk management committee, which was also made up of senior managers from Air France-KLM holding, Air France and KLM, and that the risk management committee decided on and monitored the group's financial risks and determined which safeguards needed to be put in place.

The decisions taken by the above bodies at the level of the Air France-KLM group were then implemented by each entity of the group.

Functional links

Air France-KLM holding had a strategic role in the provision of air transport services by Air France and KLM; even though Air France-KLM holding did not provide them itself (in particular in the area of sales and price and revenue management), Air France-KLM holding was involved in decisions regarding operations relating to the fleet, and Air France-KLM holding performed financial functions as required by Air France and KLM.

Air France-KLM holding performed financial functions as required by Air France and KLM, such as budgetary instructions to its subsidiaries and occasionally raised capital on the financial (debt or equity) markets for the benefit of its subsidiaries, depending on their individual requirements.

Air France-KLM holding was involved in the coordination and approval of significant investments by its subsidiaries, in shareholding and divestment transactions, and in the management of financial risks and the safeguards that needed to be put in place, which were subject to continuous and ongoing monitoring at the level of the Air France-KLM group.

It had a right of approval in respect of financing transactions of its subsidiaries that exceeded €150 million and that, consequently, it had to approve the measure at issue.

Economic links

Air France-KLM holding generated its revenue solely from its subsidiaries, which demonstrated that there was a degree of economic interdependence between that holding company and its subsidiaries. This was supported in particular by the fact that Air France and KLM were trying to achieve synergies by coordinating their respective activities under the aegis of Air France-KLM holding, in particular in the area of sales and price and revenue management and that that holding company was involved in the financing of its subsidiaries in a coordinated manner.

Air France-KLM holding acted on the financial markets as an 'intermediary' between its subsidiaries and investors and was acting in the interests of its subsidiaries by raising funds to meet their needs on those financial markets. Air France-KLM holding negotiated the terms of financing on the financial markets on the basis of the financial position of the Air France-KLM group as a whole, thereby achieving synergies within that group.

There were cost-sharing agreements between Air France and KLM, and activities carried out collectively by Air France and KLM and their subsidiaries confirmed that there was a degree of economic integration and cooperation between them.

The financial and commercial relations between the Air France-KLM holding and its subsidiaries, Air France and KLM, as well as between those subsidiaries themselves, were conducted under 'normal market conditions'.

In the absence of the measure at issue, KLM would probably not have been able to continue its activities and, therefore, would also have jeopardised the continuation of the activities carried out collectively with Air France.

Agreements

The agreements on the basis of which the measure at issue was granted consisted, among other things, of various contracts (framework and loan), and Air France-KLM holding was a contracting party to the framework agreement that laid down the general conditions governing the grant of the measure at issue.

Type of aid measure

With regard to the type of aid measure granted and the context in which it was granted, the General Court accepted that the commission did not examine the cumulative effects of the aid covered by the Air France decision, the Air France-KLM and Air France decision, and the contested decision. The contested decision only mentioned the aid measure that was the subject of the Air France decision and not the Air France-KLM and Air France decision.

The commission submitted that the measure at issue, at most, had only "mere secondary economic effects" in respect of Air France-KLM holding and Air France, which were inherent in any state aid, but which could not be classified as a direct or indirect advantage for them. The court highlighted that an undertaking receiving an indirect advantage must be regarded as a beneficiary

PIC: SHUTTERSTOCK

of the aid. An advantage directly granted to certain natural or legal persons may constitute an indirect advantage and, therefore, state aid for other legal persons that are undertakings.

The General Court referred to the following provisions of the commission notice on the notion of state aid as referred to in article 107(1) of the TFEU ('state aid notice'):

- Paragraph 115, which states that a "measure can also constitute both a direct advantage to the recipient undertaking and an indirect advantage to other undertakings, for instance, undertakings operating at subsequent levels of activity",
- Footnote 179 of the state aid notice, which states that, where an intermediary undertaking is a mere vehicle for transferring the advantage to the beneficiary and it does not retain any advantage, it should not normally be considered as a recipient of state aid,
- The commission underlines in the state aid notice that indirect advantages should be distinguished from mere secondary economic effects that are inherent in almost all state aid measures. The court stated that, for that purpose, the foreseeable effects of the measure should be examined from an *ex ante* point of view. Thus, an indirect advantage is present if the measure is designed in such a way as to channel its secondary effects "towards identifiable undertakings or groups of undertakings". The court referred to footnote 181 of the state aid notice, which explains that, by contrast, a mere secondary economic effect in the form of increased output, which does not amount to indirect aid, can be found where the aid is simply channelled through an undertaking, for example, through a financial intermediary, which passes it on in full to the aid beneficiary.

The court held that it was apparent that Air France-KLM holding was not limited to that of a 'mere vehicle for transferring the advantage to the beneficiary' or to a 'financial intermediary' for the purposes of paragraphs 115 and 116 of the state aid notice and that the holding company actually exercised control over its subsidiaries by involving itself directly or indirectly in their management, and thus took part in the economic activity they pursued, which enabled it to control and direct the activities of its subsidiaries on the basis of its own interests and those of the group in general.

Similarly, the foreseeable effects of the measure at issue from an *ex ante* perspective suggested that, in view of the type of aid measure granted and the context in which it was granted – consisting, in essence, of a financing solution – that

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that financing solution was likely to benefit the Air France-KLM group as a whole by improving its overall financial position, which indicated the existence, at the very least, of an indirect advantage in favour of "[an] identifiable [group] of undertakings" for the purposes of paragraph 116 of the state aid notice.

The court stated that it was apparent in particular from recital 13 of the contested decision that, in view of the significant and immediate financial impact of the COVID-19 pandemic, the Kingdom of the Netherlands decided to assist KLM at a time of severe liquidity shortage and risk of failure. Thus, since the objective of the measure at issue was to find a financing solution in order to meet KLM's liquidity needs and since it was apparent from the documents before the court that Air France-KLM holding played a certain role in financing the Air France-KLM group, that measure would have the foreseeable *ex ante* effects of (a) improving the financial situation of that holding company – which is a party to the framework agreement and had significant contractual rights and obligations in that capacity – and thus of the group as a whole, and (b) ensuring the financial stability – including in the eyes of the financial markets – of that group as a whole, including Air France.

Furthermore, in the absence of the measure at issue, the immediate threat to the continuity of KLM's activities, identified in the contested decision, could have spread to the Air France-KLM group as a whole, given that KLM was one of the main subsidiaries of that group, generating a significant portion of its revenue.

The General Court held that the above finding was not called into question by the order of Case C604/14, *Alcoa Trasformazioni v Commission* (21 January 2016), cited by the commission in support of its argument that, when calculating the amount of aid, it does not examine the secondary effects of the aid on consumers, suppliers, investors, or employees of the beneficiary. The court stressed that the above case did not concern an intra-group situation, and the KLM case itself did not concern the secondary economic effects of an aid measure on consumers, suppliers, investors, or employees.

Manifest error

The General Court concluded that the commission, in its revised state-aid approval decision, committed a manifest error of assessment by considering that the beneficiaries of the measure at issue were KLM and its subsidiaries, to the exclusion of the Air France-KLM holding and its other subsidiaries, including Air France and its subsidiaries.

This case, along with the General Court decisions arising from the various Ryanair (and its subsidiary Malta Air) state-aid challenges to aid to the corporate group of Air France-KLM group, underlines the need for the commission to properly assess and identify the beneficiaries of state-aid measures, which includes an analysis of the relevant links between related entities.

The four challenges made by Ryanair to aid to the KLM-Air France corporate group resulted in the annulment of each of the four contested commission state-aid approval decisions, on the basis that the commission failed in each case properly to identify the beneficiaries of the state-aid measure in question.

Dr Marco W Hickey SC is head of the EU Competition and Regulated Markets Unit at LK Shields Solicitors.

LOOK IT UP

CASES:

- *Alcoa Trasformazioni v Commission* (Case C604/14, 21 January 2016)
- *Ryanair v Commission* (Case T-643/20, 19 May 2021)
- *Ryanair and Malta Air v Commission* (Case T-216/21, 20 December 2023)
- *Ryanair v Commission* (Case T-146/22, 7 February 2024)

LEGISLATION:

- Regulation (EU) 2017/1129 (2019 *Universal Registration Document*)
- *Treaty on the Functioning of the European Union*

SOLICITORS DISCIPLINARY TRIBUNAL

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

In the matter of Michael McDarby, a solicitor practising in the firm of McDarby & Co, Solicitors, at Glebe Street, Ballinrobe, Co Mayo, and in the matter of the *Solicitors Acts 1954-2015* [2020/DT01 and High Court no 2024 17SA]

Law Society of Ireland (applicant)

Michael McDarby (respondent solicitor)

The Solicitors Disciplinary Tribunal heard a case against the respondent solicitor on 10 October 2023 and 30 November 2023 and found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he distributed funds held in trust on behalf of the named complainant and her ex-husband of €56,775.30, without that distribution being in compliance with the order of the court and without the knowledge or consent of his client.

The tribunal directed that the Society bring its findings and report before the High Court and, on 15 April 2024, the court ordered that the respondent solicitor:

- Not be permitted to practise as a sole practitioner or in partnership; that he be permitted only to practise as an assistant solicitor, in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Society,
- Be censured,
- Pay the measured costs of the applicant before the tribunal in the sum of €2,012,
- Pay to the applicant the sum of €3,254, representing the measured costs of the High Court application.

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Sheehan rebrand to mark 10 decades in business

Sheehan & Company Solicitors, first established by James Sheehan and Dermot Guinan in the late 1930's has launched a full rebrand, establishing a logo, and updating its website and identity.

As part of this the firm is shortening its name to "Sheehan".

The firm was assisted in the brand development by design consultancy RichardsDee.

The new logo is timeless and classic without complication, and features a red rectangle (resembling a construction brick) as a nod to the property expertise of the firm and also to the firm's rich heritage and strong foundations – the red brick of its landmark offices at 1 Clare Street, Dublin 2,

Sheehan look forward to building on existing relationships and forging new one's in the firm's next chapter.

The firm has also announced it will be a key sponsor of the KPMG Property Excellence Awards for 2024.

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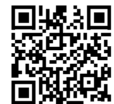

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ALTERNATIVE DISPUTE RESOLUTION COMMITTEE AND LITIGATION COMMITTEE

OBLIGATION OF PRACTISING SOLICITORS TO ADVISE CLIENTS ABOUT MEDIATION

Practitioners are reminded that section 14 of the *Mediation Act 2017* requires that, "prior to issuing proceedings", a solicitor must provide the client with specific advice and information of about mediation.

Section 14(1) of the *Mediation Act* sets out in detail the required content of this advice and information. The solicitor must:

a) Advise the client to consider mediation as a means of attempting to resolve the dispute that is the subject of the proposed proceedings,
b) Provide the client with information about mediation services, including the names and addresses of persons who provide mediation services,
c) Provide the client with information about (i) the advantages of resolving the dispute otherwise than by way of the proposed proceedings, and (ii) the benefits of mediation,
d) Advise the client that mediation is voluntary and may not be an appropriate means of resolving the dispute where the safety of the client and/or their children is at risk,
e) Inform the client of the matters referred to in section 10 (confidentiality), section 11 (enforceability of mediation settlements), section 14(2) (solicitor's obligation to make a statutory declaration of compliance with these obligations before commencing proceedings), and section 14(3) (court duty to adjourn the proceedings if this is not done).

Under section 14(2), the originating document by which proceedings are issued by a solicitor must be accompanied by a statutory declaration made by the solicitor evidencing that he or she has performed the above obligations.

There are precedent forms of advice letter and statutory declaration on the Law Society website at www.lawsociety.ie/solicitors/knowledge-base/practice-areas/alternative-dispute-resolution.

A copy of the statutory declaration should be served with the originating document. If possible, it should be filed in the court office when proceedings are issued. The committees are aware that some court offices currently do not file the statutory declaration without an order of the court (notwithstanding the requirement that the originating document 'shall be accompanied by' the statutory declaration).

Section 14(3) provides that, if the originating document is not accompanied by a statutory declaration made in accordance with section 14(1), the court concerned 'shall' adjourn the proceedings for such period as it considers reasonable to enable the solicitor to comply with that subsection and provide the declaration (or, if he or she has already complied, to provide the declaration).

These requirements apply to all civil proceedings in court, with very limited exceptions set out in sections 3(1) and 14(4).

It has come to the committees' attention that some practitioners may still not be aware of these provisions. Failure to comply with section 14 may result in delay and other adverse consequences for practitioners and their clients. For example, in *Byrne v Arnold* ([2024] IEHC 308), the plaintiffs' solicitor had failed to comply with section 14. This came to the court's attention during a hearing. Kennedy J rose to allow the plaintiffs' solicitor give the required advice and information (late). He made it clear that the court would not necessarily extend this latitude were such a breach to occur again. In the event, the plaintiffs were successful and awarded costs, but the costs were reduced because of their solicitor's failure to comply with section 14. The judge said that he had considered a 15% reduction. He reduced the party-and-party costs by 5% to reflect the plaintiffs' defaults (primarily with regard to section 14, but also delay in delivering their statement of claim). But he warned that "courts may be less lenient in the future". For a detailed consideration of this decision, see Bill Holohan SC, 'Speak to me', *Law Society Gazette*, July 2024, p26.

Practitioners' attention is drawn also to Practice Direction HC127 of 19 June 2024, which requires that the solicitors for all parties in High Court non-jury proceedings complete and sign a trial summary form, which must include, among other things, confirmation that the solicitors for all parties have complied with their obligations under section 14 and the date of the required advices.

CONVEYANCING COMMITTEE

SALE BY MORTGAGEE – ASSURING THE NOMINAL REVERSION

On account of the repeal of certain enactments pursuant to section 8 of the *Land and Conveyancing Law Reform Act 2009*, the committee is updating its previously published practice note on enquiries that a purchaser should make of a vendor selling as mortgagee (lawsociety.ie/solicitors/knowledge-base/practice-notes/sale-by-mortgagee) in the context of assuring the nominal reversion in the purchase deed.

Pre-2009

Traditionally, where there was a mortgage by sub-demise, it was the practice to include a provision in the mortgage whereby the borrower appointed the mortgagee or its agent as its attorney for the purpose of conveying the nominal reversion in the event of an enforced sale. Such a provision or practice was subsequently no longer necessary, as section 80(2) of the *Landlord and Tenant Amendment Act 1980* provided that, if land the subject of a mortgage by sub-demise, either created before or after the commencement of the 1980 act, was being sold for the enforcement of the mortgage, then the purchaser is deemed to have acquired the interest of the lessee for the entire of the unexpired term of the lease, including the period of the nominal reversion.

Post-2009

Pursuant to the 2009 act, section 80(2) of the 1980 act was repealed and consequently was no longer relevant. Accordingly, practitioners are advised that, if purchasing an unregistered leasehold property from a vendor as mortgagee, to ensure that the nominal reversion is assured to the purchaser in the deed, the purchaser should ensure that (subject to checking the relevant provisions are contained in the mortgage) the attorney of the borrower (as specified in the mortgage) joins in the deed of assurance for the purposes of assuring the nominal reversion to the purchaser.

WILLS

Behan, Mary (deceased), late of 3411 Bishopsland, Kildare Town, Co Kildare. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Simon McElwee, Farrell McElwee Solicitors LLP, 1 Maryborough Street, Graiguecullen, Carlow; tel: 059 917 3247, email: simon@fmce.ie

Boylan, Alice Helen (deceased), late of Tenby, Seafield Road, Clontarf, Dublin 3, who died on 14 March 2023. Would any person or firm having knowledge of the whereabouts of any will made by the above-named deceased please contact Dixon Quinlan Solicitors LLP, 8 Parnell Square East, Dublin 1; tel: 01 878 8600, email: info@dixonquinlan.ie

Brennan, Rory (deceased), late of 121 Belgrove Park, Mount Prospect Lawn, Clontarf, Dublin 3, formerly of 89 Blackheath Park, Clontarf, Dublin 3, who died on 22 July 2024. Would any person holding or having any knowledge of a will made by the above-named deceased please contact Stephen Nolan, O'Hare O'Dwyer Solicitors, Greenfield Road, Sutton, Dublin 13; tel: 01 839 6455, email: law@ohareodwyer.ie

Conville, Patrick Joseph (deceased), late of 4 Henry Street, Graiguecullen, Carlow. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Simon McElwee, Farrell McElwee Solicitors LLP, 1 Maryborough Street, Graiguecullen, Carlow; tel: 059 917 3247, email: simon@fmce.ie

Daly, Tom (deceased), late of 358 Cushlawn Park, Tallaght, Dublin 24, and of Apartment 157, Block E, Arena Court, Tallaght, Dublin 24, who was born on 17 July 1959 and who died on 29 October 2021. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Pádraig O'Donovan and Co, Solicitors, Abberley Law Centre, High Street, Tallaght, Dublin 24; tel: 01 461 0250; DX 105012 Tallaght; email: info@podsolrs.com

Downes, Dermot (deceased), late of 1 Ridgewood Close, Swords,

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

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Co Dublin, who died on 31 March 2024. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Denis McSweeney Solicitors, 40 Upper Grand Canal Street, Dublin 4; tel: 01 676 6033, email: info@denismcsweeney.com

Doyle, Judy (Julia Mary) (deceased), late of 79 Goldenbridge Avenue, Inchicore, Dublin 8, who died on 3 July 2024. Would any person or firm having knowledge of the whereabouts of a will made by the above-named deceased please contact Cullen & Co, Solicitors, 86/88 Tyrconnell Road, Inchicore, Dublin 8, D08 FW01; DX 1038 Four Courts

Dunn, Brian Leonard (deceased), late of 42 Prince of Wales Drive, London SW11 4SF, England. Would any person holding or having knowledge of a will made by the above-named deceased, who died on 31 March 2024, please contact Gartlan Furey Solicitors, 20 Fitzwilliam Square, Dublin 2; tel: 01 799 8000, email: privateclient@gartlanfurey.ie

Durand, Pierce (deceased), late of 51 Redford Park, Greystones, Co Wicklow, who died on 4 June 2024. Would any person or firm having knowledge of the whereabouts of a will made by the above-named deceased please contact Emerson & Conway Solicitors, 1 St Francis Street, Galway; tel: 091 562 531, email: reception@ecsolicitors.com

Fagan, Thomas (deceased), late of Phepotstown, Kilcock, Co Meath/Co Kildare, who died on 19 July 2024. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact MacSweeney & Co, Solicitors, 22 Eyre Square, Galway; tel: 091 532 532, email: info@macsweeneylaw.com

Gilheaney, Thomas (deceased), late of Willowfield Road, Ballinamore, Co Leitrim, or Aghaleague, Ballinamore, Co Leitrim, who died on 28 September 2012. Would any person having knowledge of the last will made by the above-named deceased, or its whereabouts, please contact McGovern & Associates, Solicitors, Equity House, Dublin Road, Carrick-on-Shannon, Co Leitrim; tel: 071 962 1988, email: info@mcgovsols.ie

Jacobs, Sheelagh Nellie (deceased), late of Crowe Street, Gort, Co Galway, who died on 6 December 2023. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact John C O'Donnell & Sons, Solicitors, First Floor, 15 Mary Street, Galway; DX 4502 Galway Mary Street; tel: 091 561 128, email: info@jcod.ie

Kearney, Conal (deceased), late of Curragrean, Castle Cam, Galway, formerly of 46 St Anne's Avenue, Raheny, Dublin 5, who died on 6 January 2024. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact MacSweeney & Co Solicitors, 22 Eyre Square, Galway; tel: 091 532 532, email: info@macsweeneylaw.com

McGuire, Josephine (deceased), late of 4a Aughrim Villas, Aughrim Street, Dublin 7, who died on 9 May 2015. Would any person or firm having knowledge of the whereabouts of any will made by the above-named deceased please contact Dixon Quinlan Solicitors LLP, 8 Parnell Square East, Dublin 1; tel: 01 878 8600, email: info@dixonquinlan.ie

McMahon, Suzanne (deceased), late of 21 Arnold Grove, Glenageary, Co Dublin, who died on 25 June 2024. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Maurice O'Callaghan, O'Callaghan Legal Solicitors, F15 The Pottery, Baker's Point, Pottery Road, Dun Laoghaire, Co Dublin; email: info@ocslegal.ie

McNally, Michael William (deceased), late of Carrowmore, Cloverhill, Co Sligo, who died on 8 December 2022. Would any person having knowledge of any will made by the above-named deceased, or if any firm is holding any will or documents, please contact Carter Anhold & Co, Solicitors, 1 Wine Street, Sligo, Co Sligo; tel: 071 916 2211, email: info@carteranhold.ie

Monaghan, Brian Oliver (deceased), late of Dolmen Mews, Carlow, Co Carlow, who died on 19 December 2022. Would any person having knowledge of the whereabouts of any will made

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by the above-named deceased, or if any firm is holding same, please contact Majella Ellis, Miley & Miley LLP, Solicito rs, 35 Molesworth Street, Dublin 2; tel: 01 678 5122, email: mileylaw@mileyandmiley.ie

Nolan, Gabrielle (deceased), late of 18 Villa Park Road, Navan Road, Dublin 7, who died on 16 July 2024. Would any person having knowledge of any will made by the above-named deceased, or if any firm is holding any will or documents, please contact Terry McLoughlin, Solicitors, Estate House, Main Street, Blanchardstown, Dublin 15; tel: 01 687 7008, email: info@terrymcloughlinsolicitors.com

O'Hanlon, Marie (deceased), late of 17 Grosvenor Square, Dublin 6, who died in July 2024. Would any person having any knowledge of a will made by the above-named deceased, or of any firm is holding same or was in recent contact with the deceased regarding her will, please contact Bajwa Solicitors, 38 South Richmond Street, Dublin 2, D02 PA62; tel: 01 534 7540, email: info@bajwa.ie

Power, William (deceased), late of 20 Smyth's Villas, York Road, Dun Laoghaire, Co Dublin, who died on 22 June 2024. 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 his will, please contact Robert Taylor, McKeever Taylor LLP, Solicitors, 31 Laurence Street, Drogheda, Co Louth, A92 KFH3; DX 177009 Drogheda 2; tel: 041 983 8639, email: info@mckeevertaylor.ie

Sorohan, Patrick Joseph (Sonny) (deceased), late of Cloonohil, Drumlish, Co Longford; Glasnevin, Dublin; and Mohill, Co Leitrim, who died on 1 December 2023. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Gerard M Kilrane & Co, Solicitors, Hyde Street, Mohill, Co Leitrim; tel: 071 963 2880, email: kilranelaw@outlook.com

Tansey, Paul (deceased), late of 60 Coolamber Drive, Rathcoole, Co Dublin, who died on 13 April 2024. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Máire Teahan & Co, Solicitors, Main Street, Rathcoole, Co Dublin; tel: 01 458 0035, email: maire@teahanandco.com

Tynan, Joseph (deceased), late of 251/49 Moo 9, Nongprue, Banglamung, Chonburi, Thailand, and formerly of 7 St Brennan's Terrace, Bray, Co Wicklow, who died on 20 December 2022. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Donnacha O'Donovan, Cullen Tyrrell & O'Beirne Solicitors LLP, 3 Prince of Wales Terrace, Bray, Co. Wicklow; tel: 01 274 6700, email: info@cullentyrrell.ie

Walsh, Maura (deceased), late of 1 Larkview Gardens, Harold's Cross, Dublin 6, who died on 2 July 2023. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact O'Hara Solicitors, Cross Street, Athenry, Co Galway; DX 60001 Athenry; tel: 091 844 045, email: reception@oharasolicitors.ie

Walsh, Seamus Cathal, otherwise Cathal Walsh (deceased), late of 42 Aylmer Park, Monread Road, Naas, Co Kildare, otherwise 42 Aylmer Park, Naas, Co Kildare. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased, who died on 20 April 2020, please contact Sarah Pierce, McCormack Solicitors, 4 McElwain Terrace, Newbridge, Co Kildare; tel: 045 438 305, email: sarah@mcormacksolicitors.ie

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TITLE DEEDS

***Landlord and Tenant (Ground Rents) Acts 1967-2019*. To: Peter Huggard of Killarney, Co Kerry (or his heirs, executors or administrators)**

Take notice that we, Elizabeth and Veronica Lyne, being persons entitled under the above acts, intend to apply to Kerry Circuit Court, Ireland, at the first available opportunity, to acquire the fee simple and any other interests, superior to our own, in those premises known as 69 High Street, Killarney, Co Kerry. Let any person having or claiming to own the freehold or any other interest in said property please contact Terence F Casey & Co LLP Solicitors, 99 College Street, Killarney, Co Kerry; tel: 064 663 2516.

Date: 4 October 2024

In the matter of the *Landlord and Tenant Acts 1967-2008* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of 338A North Circular Road, Dublin, and an application by Joseph Costello and Emer Malone

Any person having a freehold estate or any intermediate interest in all that and those 338A North Circular Road, Dublin 7, including lands between the 336A and 340 North Circular Road and the private laneway at the rear of those properties off Phibsborough Avenue, being currently held by Joseph Costello and Emer Malone (the applicants) under a lease dated 9 April 1920 between Josephine Hickey and Francis Flynn of the one part and Henry G Penie of the other part, and a lease dated 20 April 1920 between Josephine Hickey and Francis Flynn of the one part and JJ Bailey of the other part, as well as a superior lease dated 25 August 1877 between Sir Francis William Brady of the one part and William Martin of the other part.

Take notice that the applicants, as lessees under the said leases, intend to apply to the county registrar for the city of Dublin for the acquisition of the freehold interest and any other 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 title to same to the below named within 21 days from the date of this notice.

In default of any such notice be-

ing 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 such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in the premises are unknown or unascertained.

Date: 4 October 2024
Signed: Ferrys LLP (solicitors for the applicant), Inn Chambers, 15 Ormond Quay, Dublin 7

Notice of intention to acquire the fee simple. In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2019* and in the matter of part II of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of property known as 98 North Main Street in the city of Cork and in the matter of an application by Margaret (otherwise Ita) O'Mahony

Take notice any person having an interest in any estate in the above property that Margaret (otherwise Ita) O'Mahony (the applicant) intends to submit an application to the county registrar of the county of Cork for the acquisition of the fee simple interest and all intermediate interests in the above 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 hereof. Any person having any interest in the property held under lease of 31 October 1895 (the lease) made between Edward Francis Roche of the one part and JA Arnott & Co Limited of the other part should provide evidence of their title to the below named.

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

Date: 4 October 2024
Signed: Martin A Harvey & Co, Solicitors (solicitors for the applicant), Parliament House, 9 Georges Quay, Cork

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of property known as Bank of Ireland, Main Street, Ballymahon, Co Longford: an application by the Governor & Company of the Bank of Ireland

Take notice any person having an interest in any estate in the above property that the Governor & Company of the Bank of Ireland (the applicant) intends to submit an application to the county registrar of the county of Longford for the acquisition of the fee simple 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 below named within 21 days from the date hereof.

In particular, any person having an interest in the lessor's interest in a reversionary lease of 19 October 1954 between Augusta Georgina Shuldham of the one part and the National Bank Limited of the other, in respect of property described therein as "all that and those a plot of ground known as Moffitt's plot situate in the town of Ballymahon, barony of Rathcline, and county of Longford, bounded on the east by the Main Street, on the west by the Fair Green, on the south by Mr Neill's plot, and on the north by Dr Lanigan's plot" and currently covered by buildings now known as the Bank of Ireland, Main Street, Ballymahon, Co Longford, should provide evidence to the below named within 21 days hereof.

In default of such information being received, the applicant intends to proceed with the application before the county registrar and will apply for orders and directions as appropriate on the basis that the person or persons entitled to the superior interests, including the freehold interest, are unknown and unascertained.

Date: 4 October 2024
Signed: MW Keller & Son LLP (solicitors for the applicants), 8 Gladstone Street, Waterford

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005* and in the matter of property known as 18 Aungier Street, Dublin 2: an application by PP Bow Lane Holdings Limited

Take notice any person having an interest in the freehold and/or intermediate estate in the following property: all that the dwellinghouse or tenement known or called 18 Aungier Street, together with the yard and backside behind same, situate on the east side of Aungier Street aforesaid, with all and every the rights of members and appurtenances thereunto belonging or in anywise appertaining as in full and ample a manner as the same is now held and enjoyed by the lessee situate in the parish of St Peter and city of Dublin aforesaid, held under lease dated 8 March 1945 made between Mary Carew, Margaret Butler, Mary Gleeson, and Colette Byrne of the one part and Gerald Leo Fallon of the other part for the term of 99 years from 1 May 1945, subject to the yearly rent thereby reserved and to the covenants on the part of the lessee and conditions therein contained.

Take note that PP Bow Lane Holdings Limited (the applicant) intends to submit an application to the county registrar of the city of Dublin for the acquisition of the fee simple interest in the aforesaid property, and any persons asserting that they have a superior interest in the property are called upon to furnish evidence of title to the aforementioned property to the below named within 21 days from this date of notice.

In default of such notice being received, the applicant intends to proceed with the application before the county registrar for the city of Dublin and will apply to the county registrar for the city of Dublin for directions as they may be appropriate on the basis that the person or persons entitled to the superior interests including the freehold interest in the said property are unknown or unascertained.

Date: 4 October 2024
Signed: Richard Black Solicitors (solicitors for the applicant), Beechfield House, Main St, Clonee, Dublin 15, D15 DA07

KENNEDY, JOHN

I am seeking to find John Kennedy on behalf of a New Zealand client.
He worked in Bray District Court in the 1960s and early 1970s.
He may also have worked in the Chief Examiner's Office in the 1960s/70s. If he is still alive he is likely to be in his 80s.

Would anyone, having knowledge of this person, please contact me at **dixon.irishgenealogy@gmail.com** or at **087 2990049**

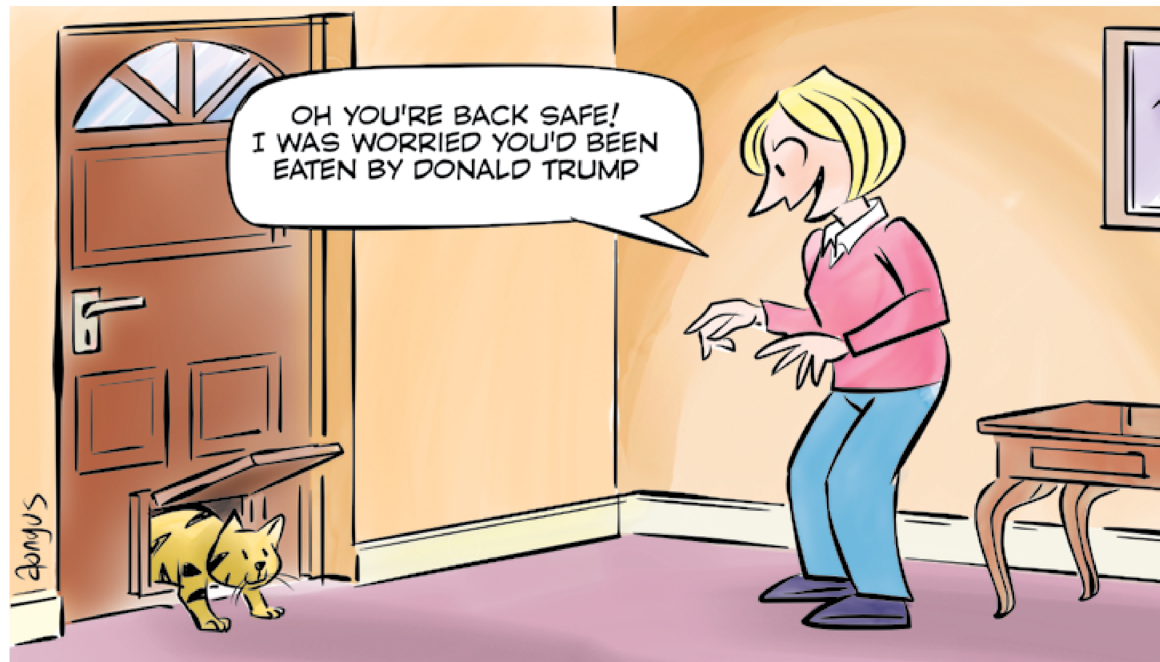
PRO BONOBO

Nine-and-a-half lives

● A cat whose owners believed it to be literally dead and buried turned up at its home four days after its supposed cremation, *The Guardian* reports.

Ted's humans had been told of his apparent demise by a neighbour while they were on holidays. They arranged for a local pet sematary – sorry, cemetery – to cremate the remains, which turned out to be another, unknown cat that had drowned in their pond. Four days later, they heard from their pet sitter that Ted had strolled in through the catflap.

When they later went to collect the ashes, the urn was labelled 'Not Dead Ted'.



Denton the carbon footprint?

● The largest firm in the world by lawyer numbers has trialled a new 'low-carbon service' that led to a reduction of 44% in firm's carbon footprint across the work involved in the trial, *Legal Cheek* reports.

The four-month project at Dentons cut travel emissions by hosting all meetings online (except introductory meetings), working 40% of billable hours from home, and banning printing.

In what could be seen as a challenge to the 'back to the office' mantra, the firm's environmental sustainability manager said that they hope to "further integrate and strengthen our proven net zero commitment into our everyday working practices".

"I want to work from home."

Donor disses design

● During renovations at the Sainsbury Wing of the National Gallery in London, workers found a note hidden inside a column in 1990 – from the major funder of the wing, Lord Sainsbury.

NPR reports that the note (typewritten in all caps, on Sainsbury's headed notepaper) read: "If you have found this note, you must be engaged in demolishing one of the false columns," before going on to call the columns a mistake of the architect. "Let it be known that one of the donors of this building is absolutely delighted that your generation has decided to dispense with these unnecessary columns."

Sainsbury's misgivings had led him to reconsider his donation, but he was persuaded by his uncle, and fellow donor, to proceed in exchange for registering his dissent in the form of the secret letter.

Gorilla tactics

● An Australian man opportunistically stole a 20kg gorilla statue from a retirement village, according to *The Guardian*.

Matthew Newbould pleaded guilty to stealing 'Garry' when he went to the village to collect a chest of drawers, spotted the gorilla statue, and decided to throw it in the back of his van. A member of the public snapped a photo and called police. Newbould (33) was arrested nearly a month later. A search of his phone revealed a message reading "LOL I stole a gorilla, so what?" g

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Introduction to Part 1
The Hon. Ms Justice Nuala Butler, Court of Appeal

The Lesser Spotted Equality Claims
Jason Murray BL

Disciplinary and Regulatory Investigations into Criminal Conduct
Remy Farrell SC

Navigating Workplace Investigations: Crucial Steps and Potential Pitfalls
Cara Jane Walsh BL

Injunctions - Recent Case Law and Developments
Lorna Lynch SC

Introduction to Part 2
Alex White SC

Employment Law Remedies
Des Ryan BL

Followed by panel discussion

Route to an Effective Remedy
Alex White SC, Chair of Panel
Ercus Stewart SC
Niamh McGowan BL
Helen Callanan SC
Des Ryan BL

To be followed by a drinks reception held in the Sheds, Distillery Building.

Register at ti.to/eba/ebaconf24
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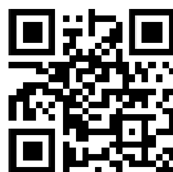

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