

# THE END IS NIGH?

## Dealing with historical 'non-conforming' developments



**PLUS ÇA CHANGE**  
The Gazette talks to Courts Service boss Angela Denning on steering significant change



**KNIGHTS THAT SAY 'NI'**  
Merger-control lessons from *Illumina Inc and Grail LLC v European Commission*



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# gazette

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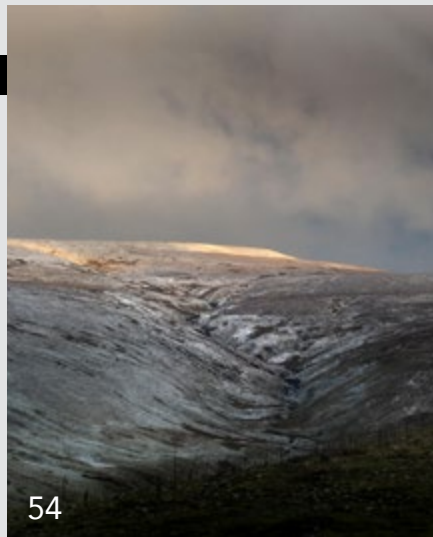
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# gazette

LAW SOCIETY

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\* (IRISH MAGAZINE AWARDS 2018)



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# THE BIG PICTURE







## I PREDICT A RIOT...

A double-decker bus goes up in flames near O'Connell Bridge, Dublin, during a riot by around 500 people in the city centre on 23 November. Three buses, 11 garda cars, and a Luas tram were burned out or extensively damaged, while 13 properties were attacked and substantially damaged. The unrest was started by far-right groups and opportunistic looters following the stabbing of three children and their carer on Parnell Square earlier in the day. Over 400 members of An Garda Síochána were deployed to tackle the unrest, with one sustaining serious injuries. To date, 34 people have been arrested, primarily for public-order and theft offences. Taoiseach Leo Varadkar has estimated the damage done to the city centre as running into the "tens of millions"



# SLA explores the Italian connection



Attending the Southern Law Association's CPD conference in Bergamo, Italy, on 30 September 2023 were Fiona Twomey (SLA director of conferencing), Emma Meagher Neville (SLA president), and speakers Cathal Malone BL, Judge Helen Boyle, and Richard Hammond SC



Robert Baker, Gerald AJ O'Flynn, and Seán Durcan



Michelle Cross and Emma Meagher Neville



Fiona Twomey and Emma Meagher Neville



Orla Deasy, Emma Meagher Neville, Fiona Twomey, and Julia Dineen



Cathal Malone BL and Emma Meagher Neville



Judge Helen Boyle and Emma Meagher Neville



Peter Groarke, Daphne Madden, Seán Durcan, John Fuller (SLA president 2023/24), and Robert Baker



# Centenary Garden honours first women solicitors



ALL PICS: GIAN REDMOND

On 8 November 2023, the Law Society officially named the Centenary Garden at Blackhall Place to mark the 100<sup>th</sup> anniversary of the first women to enter the solicitors' profession – namely Mary Dorothea Heron (17 April 1923) and Helena M Early (25 June 1923). Law Society President Maura Derivan was joined by Director of Public Prosecutions Catherine Pierce, who declared the garden open. Also present were the director general Mark Garrett, members of the executive leadership team, and staff members. To mark the occasion, the president presented the DPP with a copy of the book, *Celebrating A Century of Equal-opportunities Legislation – The First 100 Women Solicitors*



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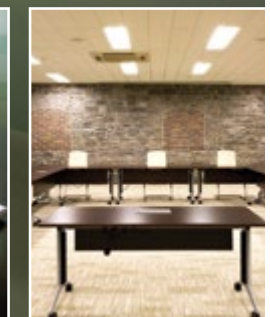
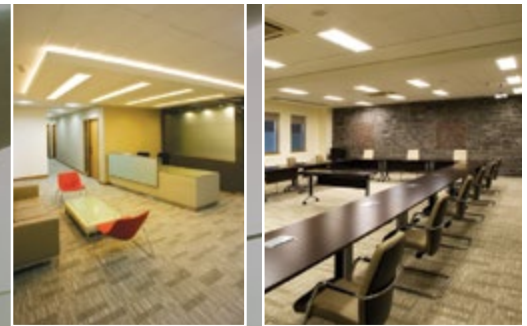
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# Historic ceremony for PPC hybrid



The parchment ceremony on 28 September 2023 marked a significant milestone for the Law Society as it celebrated the first class to enter the profession through the PPC Hybrid route. The course, introduced in 2020, is an alternative and more flexible route to becoming a solicitor. Receiving their parchments were (front, l to r): Claire Tadla, Graham Coyne, Daniel Magnier, Niamh Carey, James Byrne, Mary McKeown, and Sinéad Nic Ambróis; (middle, l to r): Samantha Arnold, Brian Canavan, Tracy Kiernan, Rebecca Devonport, Joan Keating, Maeve Keegan, and Beata Szewczyk; (back, l to r): Laura Flood, Carol Duffy, Aoife Murphy, Denise Kavanagh, Sarah Cremin, and Ciara McKeown

# Cork Practitioner Update



At the practitioner update in Cork on 16 November at the Kingsley Hotel were (l to r): Fiona Twomey (principal, Fiona Twomey Solicitors), Catherine Kirwan (author and solicitor, Finbarr Murphy Solicitors), Barry MacCarthy (Law Society president), John Fuller (vice-president, Southern Law Association), Katherine Kane (head of professional training, Law Society), Sean Nolan (partner, Clark Hill Solicitors LLP) and Margaret Mulpeter (relationship mentor and solicitor, Eamonn Murray & Co). The event was organised by Law Society Skillnet in association with the Southern Law Association



# Law Society honours committees' work



ALL PICS: CAN REDMOND

Maura Derivan (then President of the Law Society) addresses attendees at the Annual Committees' Dinner, which took place in the Presidents' Hall at Blackhall Place on 13 October



Director general Mark Garrett



Ross McMahon, Shane Coyle, Liam Kennedy SC, and Conor Minogue



Karen McDonnell, Damien Tansey SC, Gayle Ralph, and Noeline Blackwell





Gary Daly, Siún Hurley, and Graham Kenny



Mark Garrett and Susan Martin (president, DSBA)



Keith Walsh SC, Áine Hynes SC, Barry MacCarthy (then senior vice-president), and Paul Egan SC



Louise Campbell



Freda Grealy and Justin Purcell



Fintan Meagher and Damien Tansey SC



Liam Kennedy SC, Maura Derivan (then Law Society president), and Brendan Twomey

## HLJ appoints new editor-in-chief



● The *Hibernian Law Journal* has named Denis O'Farrell as its editor-in-chief for the forthcoming 23<sup>rd</sup> volume. Denis is a trainee solicitor at Matheson and succeeds Joshua Kieran-Glennon in the role.

Denis said: "I look forward to continuing the fantastic work of the journal in the upcoming volume, and to carrying on promoting cutting-edge legal scholarship in Ireland."

Volume 22 of the journal was launched by Mr Justice Michael Quinn on 23 November at Blackhall Place. The journal is now welcoming submissions for its 23<sup>rd</sup> volume. All articles are welcome, provided they are relevant in an Irish context. Submissions should be between 5,000 and 15,000 words and emailed before 26 January 2024 to [editor@hibernianlawjournal.com](mailto:editor@hibernianlawjournal.com). Separately, case-note submissions are welcome until 1 March 2024.

## Online-only PC renewal for 2024

● With the 2024 practising certificate (PC) renewal now upon us, practitioners are reminded that *all* PC applications for the practice year 2024 must be submitted online through the Law Society's website. The 2024 PC application will be available from early December at [lawsociety.ie/pc](https://lawsociety.ie/pc).

This includes applications for PCs, qualifying certificates, membership, and applications by solicitors in the full-time service of the State. Solicitors seeking to make an application for a certificate of good standing or certificate of attestation can contact [pc@lawsociety.ie](mailto:pc@lawsociety.ie) for information on how to apply for these certificates.

No paper applications will be available – and payment methods are limited to debit/credit card or electronic funds transfer. Cheques, postal orders, cash, and bank drafts will *not* be accepted.

Practitioners are reminded that, in order to have a practising certificate bearing the date of 1 January 2024, they must submit a fully completed application with full payment of fees to the Law Society on or before 1 February 2024.

Any applications received after that date will bear the date when the fully completed



application and fees are received by the Law Society. This is a statutory deadline and the Law Society does not retain any discretion to backdate an application that is received after the deadline.

The Law Society is partnered with Bank of Ireland as an exclusive provider of a finance facility for members and firms who wish to finance payment for their practising certificates (as well as their professional indemnity insurance, preliminary tax, or pension contributions). This agreement is in place *until 1 March 2024*.

Bank of Ireland can provide short-term finance for up to 11 months. To be eligible, you must have a proven credit track record and meet standard lending criteria, so the cost of large annual

payments can be spread up to 11 months. See [lawsociety.ie/financescheme](https://lawsociety.ie/financescheme) for more information.

To ensure that your PC application is processed without issue, please take the time to notify the Law Society of any changes to your place of work, position, or contact details. You can edit your own details online via the Law Society dashboard at [lawsociety.ie/editprofile](https://lawsociety.ie/editprofile).

Once the PC renewal portal opens for applications in early December, the Law Society website will feature a range of instructional videos, aimed at assisting both individual solicitors and firm administrators with the application process. Detailed guidance notes will also be provided at each stage of the form application process, designed to answer the most common queries.

If you have any questions or difficulties, please contact the practice regulation team at [pc@lawsociety.ie](mailto:pc@lawsociety.ie) or tel: 01 672 4800. If you need help logging onto the website, email [webmaster@lawsociety.ie](mailto:webmaster@lawsociety.ie). You can also visit the Law Society's website for additional guidance and resources at [lawsociety.ie/pc](https://lawsociety.ie/pc).

## 25<sup>th</sup> Calcutta Run raises €310k

● The silver anniversary of the Calcutta Run 2023 has raised €310k for those experiencing homelessness in Ireland and Kolkata. Around 1,800 participants in the run, golf classic, and tag rugby events have collectively

brought the total raised to over €5.3 million during its 25<sup>th</sup> anniversary year.

The run's committee expressed its thanks to the main sponsors, including Johnson Hana, The Panel, Leap Legal Software, Be-

han & Associates, Hyundai, DX, Kefron, Independent Colleges, and Iconic Health Clubs.

The date for the 2024 run is 25 May. The organisers are looking forward to seeing colleagues, friends and families there.



# Barry MacCarthy is new president

● Cork-based solicitor Barry MacCarthy has become the 153<sup>rd</sup> president of the Law Society of Ireland. Barry will serve a one-year term as president of the 24,000-strong Irish solicitors' profession until November 2024. He is joined by senior vice-president Eamon Harrington and junior vice-president Martin Lawlor during his term in office.

Barry is a sole practitioner, practising as MacCarthy Solicitors in Charleville, Co Cork. He was educated in Charleville and studied law at UCC before qualifying in 1991.

Commenting on his appointment, Barry said: "I am honoured to serve as president of the Law Society of Ireland and to lead the Irish solicitors' profession for the next 12 months. I recognise the importance of strengthening access to justice in communities nationwide, and I am committed to serving the profession for my term as president."

## Wealth of experience

Barry brings a wealth of experience to his new role. He joined the Law Society's Conveyancing Committee in 1997 and was elected to Council in 2006. He served as junior vice-president in 2020/21 and as senior vice-president during the past year.

In addition, he has chaired the Law Society's Conveyancing Committee, Complaints and Client Relations Committee, and Professional Indemnity Insurance Committee. He has also served on the Coordination Committee, Finance Committee, the Leadership and Council Effectiveness Review Steering

Group, the Legal Services Regulation Board Task Force, and the Law Society's Strategy Task Force.

## Vision for the future

Speaking about his vision for the future and the role of the solicitors' profession in Irish society, he said: "There is no doubt that the solicitors' profession is thriving as demand for legal services grow, especially in emerging areas like intellectual property, aviation law, mediation, and arbitration. That said, this is not the case for all solicitors and all parts of the country.

"As a sole practitioner, I recognise that smaller community-based legal practices are facing challenges, and the availability of legal services in many communities is at risk. The legal profession, like many others, is heavily concentrated in major urban centres and Dublin in particular, despite coming from all counties.

"I believe that the Law Society has a pivotal role in ensuring that legal practice in Ireland is at the highest level and supported in every community in the country," he stated.

## Heart of the profession

"Justice and law reform have always been at the heart of the Law Society and the solicitors' profession," he said. "This is the reason why most solicitors joined the profession in the first place. During this year, we will put even greater emphasis on highlighting areas where the law and legal system in Ireland need reform in the public interest."

The new president is adamant that the Law Society has "a leading role" to play in



PIC: CIAN REDMOND

President Barry MacCarthy

advocating for justice and law reform in order to help build a fair and just legal system that works for all. "That is the foundation for a thriving, modern and progressive Irish society," he said. "I look forward to taking significant steps in that direction during the next 12 months."

Commenting on the Law Society's new strategic direction for the next five years, Barry said: "We have spent the past year holding consultations with key stakeholders to help inform our future strategy. There is every cause for optimism about the future of legal services, but we have a clear view on the challenges as well.

"As we look ahead, we are focused on shaping a vibrant and relevant Law Society that works with others to adapt to meet the evolving needs of the economy and society. Collaboration is, and will remain, key to ensuring access to justice for all," he concluded.

## Council election 2023

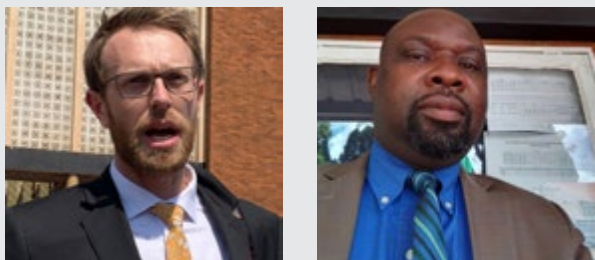
● The scrutineers' report of the results of this year's Council election has declared elected the following candidates (the number of votes received appears after each name): **Sonia McEntee (1,281), Richard Hammond SC (1,226), Niamh Counihan (1,218), Justine Carty (1,201), Keith Walsh SC (1,159), Bill Holohan SC (1,139), Gary Lee (1,109), Valerie Peart (1,091), Michele O'Boyle SC (1,083), Siún Hurley (1,077), Paul Egan SC (1,010), Susan Martin (1,001), Brendan Cunningham (956), Paul Keane (920), Hilary O'Connor (915), and Dónal Hamilton (846)**

Two candidates were nominated for the province of Munster. The candidate declared elected was **Shane F McCarthy (279)**.



## ENDANGERED LAWYERS

**DOUGLAS COLTART AND TAPIWA MUCHINERIPI, ZIMBABWE**



● Douglas Coltart and Tapiwa Muchineripi, members of Zimbabwe Lawyers for Human Rights, were arrested in early September for obstructing and/or defeating the course of justice. They are on bail, with a further hearing scheduled for 20 October.

In a 2022 interview, Douglas Coltart said: "I represent people who are arrested and prosecuted simply for exercising their rights, such as journalists, trade unionists, students, etc. In many of these cases, the criminal law is used as a political weapon against the ordinary Zimbabwean citizens who are raising legitimate questions, dreaming of a better future for our nation, or simply asking for a living wage.

"I also represent people who are suing for the protection of their rights or the rights of others – whether that is suing the state for compensation when someone has been tortured or killed, or seeking to have unconstitutional laws struck down, or suing private companies that are violating people's rights. I also seek to educate citizens on their rights, provided in the constitution, through seminars."

He said: "Lawyers face a myriad of challenges upholding the rule of law. The persistent attacks on the independence of the judiciary and the independence of the legal profession pose a serious threat to the rule of law and the functionality of the legal system as a whole.

"We are faced with the threat of arrest and prosecution for doing our work. This type of work takes a huge toll. When I handle certain cases, the state often fails to distinguish between myself as the lawyer and my client. To them, we are one and the same. Simply for doing my job, I have been arrested three times, assaulted by the police twice, and prosecuted twice in a trial. Thankfully, in both trials, I was eventually acquitted, and I am currently suing the state for compensation for the wrongful arrest, malicious prosecution, and assault."

Coltart continued: "I am convinced that human rights are not primarily won in the courts. Rights can be protected in the courts once they have been won. They are won on the streets through the hard work of community-organising, activism, non-violent struggle, and democratic contestation."

Last May, the Law Society and the Bar of Ireland nominated Coltart for the CCBE's [Human Rights Award 2023](#).

*Alma Clissmann was a member of the Law Society's Human Rights and Equality Committee from 2004 to 2022.*

## Technology not a 'silver bullet'



Frank Clarke: warns against online over-concentration

● Former Chief Justice Frank Clarke told a Law Society human rights conference on 11 November that technology had the potential to improve access to justice, but would not do so by itself.

The 'Digitising Justice' conference was organised by the Law Society's Human Rights and Equality Committee, in partnership with Law Society Professional Training.

The former chief justice urged attendees at the event to view technology, not as a "silver bullet", but as "a piece in the jigsaw".

The conference also heard from Judge Scott Schlegel of the Louisiana Fifth Circuit Court of Appeal (who appeared remotely). He discussed the design and management of his online court, which is described as "one of the most advanced" for delivering justice online.

Frank Clarke told the conference that technology could lead to greater efficiency, which in turn could lead to lower costs, adding that cost was one of the most significant barriers to access to justice in Ireland. He warned, however,

that "an over-concentration on doing everything online may equally exclude people".

Pointing to the difficulty of getting to courts in some parts of the country, Clarke said that systems that allowed us to minimise the extent to which people waste time in "having to go to places they don't need to go" would be a small contributory factor to improving access to justice.

Stephen Collins, senior solicitor with the Irish Human Rights and Equality Commission, said that, as some concerns about the use of technology had eased, new ones had emerged. He pointed out that not everybody had access to personal electronic devices, nor the space to use them, citing the example of asylum-seekers.

"There's still a challenge to the legal system to use technology to facilitate access to justice for people who might not otherwise be able to avail of it," he stated, referring to people with disabilities, functional neurological disorder, generalised anxiety disorder, and people with restricted mobility.

# Conference highlights climate urgency



Director general Mark Garrett



Committee chair Rachel Minch SC

● The Law Society’s Climate Justice Conference, held at Blackhall Place on 6 November, brought together prominent legal experts to address pressing issues on the topic of climate change.

With a theme of ‘Policies and actions for a climate-responsive justice sector’, the conference delved into topics such as environmental protection, biodiversity, ethics in legal practice, and climate-conscious lawyering.

The keynote speaker – Matej Accetto, president of the Slovenian Constitutional Court – led discussions alongside notable figures that included Danielle Conaghan, Dr Andrew Jackson, Brian MacSharry, Catherine Higham, Alasdair Cameron, Gerry Liston, Ms Justice Niamh Hyland (High Court), and Rachel Minch SC.

Mark Garrett, Law Society director general, emphasised the pivotal role of the legal profession in addressing the climate crisis. He highlighted the Law Society’s commitment to working with the government and policymakers to strengthen environmental protection and advocate for reforms in



planning legislation. The recent establishment of the Environmental and Planning Law Committee underscored its dedication to this critical cause, he said.

Zoe Richardson (Fieldfisher), who is a member of the committee, stressed the importance of legislation that ensures environmental protections, public participation in planning processes, and sustainable development.

As the conference concluded, it left participants with a stark reminder of the intertwined challenges of climate and biodiversity crises, and the urgent need for coordinated legal and environmental efforts.

## IRLI – UKRAINE FIRST UKRAINIAN JUDICIAL EXCHANGE



Judge Liliia Darahan, Judge Nataliya Antonyuk, and Judge Tatiana Bobko at the Peace Wall in Belfast

● Irish Rule of Law International (IRLI) is an all-island not-for-profit organisation established to promote the rule of law worldwide. Recently, it hosted its first Ukrainian judicial exchange in Dublin and Belfast, in collaboration with the EU Advisory Mission (EUAM) in Ukraine.

The Ukrainian judiciary participating in the exchange included Judge Nataliya Antonyuk (Supreme Court of Ukraine), Judge Liliia Darahan (Court of First Instance of General Jurisdiction), and Judge Tatiana Bobko (Kharkiv District Court).

The exchange’s aim was to provide the Ukrainian judges with Irish expertise in the field of atrocity crimes. This began with workshops at the Law Society of Ireland, where Judge Fergal Gaynor (Kosovo Specialist Chambers) and Professors Raymond Murphy and Shane Darcy (Irish Centre for Human Rights) presented on various topics of international criminal and humanitarian law.

The next day, the judges visited the Criminal Courts of Justice and the Four Courts in Dublin. Ms Justice Mary Rose Gearty, Ms Justice Karen O’Connor, and Judge Gráinne Malone presented an overview of the Irish criminal-justice system’s procedures. The judges also attended trial hearings. The day concluded with a social event hosted by then Law Society President Maura Derivan at Blackhall Place.

The Belfast leg of the exchange began with a reception at the Law Society of Northern Ireland, hosted by President Brian Archer. The following day, the judges attended workshops at Queen’s University Belfast (QUB), with presentations from Yvonne McDermott Rees (Swansea University), and Prof Luke Moffet, Prof Louise Mallinder, and Dr Cheryl Lawther (all QUB).

The next day, the Chief Justice of Northern Ireland, Siobhan Keegan, welcomed the judges to the Royal Courts of Justice. They were given a tour of the courts and the Bar Library before attending a case hearing at the Court of Appeal. The visit ended with a black-taxi tour around Belfast. At the city’s Peace Wall, the judges signed messages of hope and courage in tribute to all those who have suffered as a result of the Northern Ireland conflict.

*Michelle Drury is acting director of programmes, Irish Rule of Law International.*

## Hammond joins pharmacy council



● Solicitor Richard Hammond SC has been appointed to the Council of the Pharmaceutical Society of Ireland for a four-year term. The society is an independent public body that regulates pharmacists and pharmacies in Ireland. Its work includes setting the standard for pharmacists' education and training.

Hammond, who has chaired the Law Society's Education Committee since 2021, was previously a member of the National Qualifications Authority of Ireland, as well as the Higher Education Authority.

His appointment runs from 13 November 2023 until 12 November 2027, and comes after a Public Appointments Service campaign.

## Group life-assurance scheme in place for 2024

● The Law Society will continue to offer a group life-assurance scheme in 2024. Membership of the scheme is provided as part of the practising certificate (PC), and the annual scheme premium of €64 is included in the PC fee for 2024.

The scheme has been placed with Aviva, and the following conditions apply:

- The scheme provides cover of €62,500,
- Cover is only operative where the insured is under 70 years of age at the date of death,
- The scheme allows for 'days of grace' between 1 January and 1 February 2024 (the PC renewal period) for those covered by the scheme on 31 December 2023,
- Any payout under the scheme forms an asset in the deceased's estate.

### Non-PC holders

If you are a solicitor in the full-time service of the State and are under 70 years of age, you can apply to join the scheme. Judges and county registrars may also apply to join the scheme as



per the payment option and conditions outlined below.

If you obtained group life assurance in the previous practice year and you wish to renew in the current year, you can obtain assurance membership alongside your yearly Law Society membership before the first week of February 2024.

If you are not a current member of the scheme and did not hold membership of the scheme in the last practice year, you are considered a new member seeking to join the scheme. To join the scheme as a non-PC holder, the following is required:

- Fill in an assessment form and health declaration form – to obtain a copy of these forms, contact

[grouplifescheme@lawsociety.ie](mailto:grouplifescheme@lawsociety.ie) and return the forms directly to [grouprenewals@aviva.com](mailto:grouprenewals@aviva.com),

- Law Society membership (€85/€55) – to arrange membership-fee payment, contact [pc@lawsociety.ie](mailto:pc@lawsociety.ie),
- Payment of the premium of €64 by the first week of February 2024 – to arrange payment of the premium, contact [pc@lawsociety.ie](mailto:pc@lawsociety.ie).

### Health declaration

The requirement to fill in a health-declaration form is required only in the first year of membership; once you are a member of the scheme, you can then renew your membership before 1 February of each year.

Once you have completed the health-declaration form and assessment and provided it to Aviva, it will be reviewed by its team, and Aviva will contact you directly to confirm if you are eligible. If Aviva confirms that you are not eligible to join the scheme, the Law Society will reimburse any premiums paid.

If you have a query about a practising certificate or membership application, please email [pc@lawsociety.ie](mailto:pc@lawsociety.ie). Claims should be notified to [grouplifescheme@lawsociety.ie](mailto:grouplifescheme@lawsociety.ie).

## Tougher measures aimed at sex offenders

● New legislation that introduces tougher laws to manage and monitor sex offenders came into effect on 13 November.

The new law changes the notification requirements for sex offenders, provides for the court to prohibit a sex offender from working with children,

and allows An Garda Síochána to disclose information about people on the sex-offender register where there is a serious risk to the public.

The measures take effect with the commencement of the *Sex Offenders (Amendment) Act 2023*.

"This legislation gives

An Garda Síochána and the Probation Service the tools to ensure sex offenders are managed effectively, striking an appropriate balance between monitoring and restricting offenders while also supporting them in their rehabilitation," Minister for Justice Helen McEntee said.



# Rebecca Walsh (née Martin) 1986 – 2023

● Rebecca Walsh (née Martin) was a talented young solicitor. Her promising legal career had, sadly, only just begun when she passed away on 30 June 2023.

Rebecca was an extraordinary woman with a strong passion for social justice and a selfless commitment to helping others. From an early age, she was drawn to working in the legal sector, first contemplating a career with An Garda Síochána. To that end, she completed her first degree in social science at the University of Galway in 2005.

Never one to rest on her laurels, Rebecca continued her legal studies. She graduated from Trinity College, Dublin, with a BL degree in 2015, much to the pride of her family. Showing her commitment to helping others, she dedicated much of her free time during her studies to working as a research assistant at the Mercy Law Resource Centre.

## The road to qualification

Rebecca was a tremendously conscientious individual. While completing her FE1 exams and before commencing her traineeship, she worked in paralegal/legal assistant roles in Matheson, DWF, and Mason Hayes and Curran.

She began her traineeship with William Fry in 2017. Rebecca drew on the extensive knowledge and experience she had gained from her previous roles, and



excelled in her traineeship. As she was particularly drawn to the field of data protection, she strengthened her expertise in this area by completing an advanced diploma in data-protection law at the King's Inns.

## Promising pensions lawyer

During her trainee rotation in employment and benefits, Rebecca showed a particular aptitude for the areas of share incentives and pensions. She qualified as a solicitor in April

2020, joining the pensions team as an associate in William Fry's employment and benefits department.

In her time with the team, she was quickly able to draw on, and apply her knowledge from, other sectors in advising on regulatory issues facing the pensions industry. It was clear that her skills, combined with her calm and measured approach to dealing with clients and colleagues, would allow her to thrive in

her career with the firm.

Rebecca was a 'people person' who had a warm and generous nature. Always a hard worker, she was an asset to any team she worked with and was a supportive colleague. Her team members and colleagues also appreciated her style and her wry sense of humour.

## Determination

While the world was dealing with the COVID-19 pandemic, Rebecca was confronting serious illness. She channelled her determination and fortitude to fight through this challenge and, to the delight of her colleagues, she returned to work in the summer of 2021. In evidence of her commitment and determination, she continued to work until illness returned in early 2022.

It is a great loss to the legal profession and to the pensions industry that this promising young lawyer did not get the opportunity to fulfil her full potential. However, clearly, the greatest tragedy in losing Rebecca is for her family, in particular her husband William, mum Elizabeth, and her brothers Darren, Alex and Gary, as well as her very many friends and colleagues (and her two beloved dogs, Oscar and Albie).

May she rest in peace.

*JB & NS*

## LEGAL EZINE FOR MEMBERS

The Law Society's *Legal eZine* for solicitors is now produced monthly and comprises practice-related topics such as legislation changes, practice management and committee updates.

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## 100 YEARS OF WOMEN IN THE PROFESSION

The Gazette continues its series marking the centenary of the first women in Ireland to qualify as solicitors. For more information about related events during the year, see [www.lawsociety.ie/centenary](http://www.lawsociety.ie/centenary). Joan Macauley was managing partner of Alfred Myles Smith & Co in Cavan and Monaghan, and advised cooperatives and prominent representative associations of the farming community.

### Joan M Macauley – career woman

**J**oan Macauley was born on 15 September 1921 in Carrick-on-Shannon, but also lived in Listowel, Co Kerry, for most of her youth. She was initially apprenticed to her uncle's firm, Marshall & Macauley, in Listowel. She subsequently moved to Arthur Cox, where she completed her apprenticeship.

On qualification, she worked with Gerard Sweetman in GD Fottrell & Son in Dublin, and then with Philip Smith in Louis CP Smith & Co, Cavan, before Joan and her late husband Myles established the firm of Alfred Myles Smith & Co in Cavan town.

The practice grew to be a thriving firm over several years, with Joan presiding as managing partner. They

later acquired the practice of the late Patrick Cusack and opened offices in Ballyjamesduff as Cusack Smith & Co, and another practice in Clones, Co Monaghan. Her husband Myles died in 1976, leaving her to manage the firm, which prospered under her stewardship.

#### Formidable opponent

By all accounts, she was a formidable and exacting opponent. The quality, extent and content of her briefs to counsel were held in very high regard. Her ability as a conveyancing solicitor, in both registered and unregistered title, was unparalleled, and she was regarded as an expert in all matters of probate.

She provided valuable advice to one of the first large property developers in Cavan and to several generations of the cooperative movement. Throughout her career, she also advised prominent representative associations of the farming community, including Macra na Feirme and the IFA. In addition, she was closely aligned with, and acted for, the Killeshandra Co-op, latterly known as 'Lakelands'.

#### Judicial appointment

In the early 1980s, she was appointed as a District Court judge. However, within five weeks of being sworn in, she realised that the bench was not for her. She returned to her practice, where she continued to work until a few short years before her death on 13 January 2016.

She was surely one of the longest-serving solicitors in Ireland, and certainly one of the longest-serving female solicitors. She was a career woman well before her time and a role model and inspiration to her granddaughters Zoë Dillon (née Smith) and Margaret Kearney (née Smith), who both went on to study law and practise as solicitors. 

WITHIN FIVE WEEKS OF BEING SWORN IN, SHE REALISED THAT THE BENCH WAS NOT FOR HER AND SHE RETURNED TO HER PRACTICE



*Source: Margaret Kearney, solicitor and granddaughter, who provided information for the book, Celebrating a Century of Equal-opportunities Legislation – The First 100 Women Solicitors, published by the Law Society of Ireland. (See also Joan's obituary in the Gazette, May 2016, p55.)*

## 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](mailto:ps@lawsociety.ie) to share a story for this 'Professional Lives' column.

### Changing minds

One of my main sources of motivation has been music – from growing up as a child born during communism in Romania, whose first memories go back to queuing for a daily quota allowance with my maternal grandmother, to being a successful human-rights lawyer.

Learning about everything you have not yet experienced, seeking a friend or a partner in grief, music and poetry have been my companions throughout my development as a person. I have been able to identify feelings in the lyrics of great musicians and in the notes of impeccable composers.

#### Differences

Growing up, I did not know about mental health and sought desperately to connect emotionally, to identify and understand feelings, including strong feelings of independence and of seeking greatness. Not feeling 'normal' and fitting in is inevitably a challenge and an obstacle – until you discover that your differences are your strengths.

I recall an aunt who was one of my great mentors growing up. A teacher, she challenged me to discuss ideas and theories about life. In my answers to her, I remember quoting from various books that I had read. It was life-changing when she asked me one day: "But what do you think?"

What? I didn't know that was an option!

The more I learn the less I know, and having the strength to accept this is one of the greatest powers one can have. Growing up, I have always had a strong sense of justice – of what's right and what's wrong. It was very hard, however, to know what to do with those feelings. I soon learned that I was seeking a different type of life, and I had strong feelings about what that life would be.

#### Warrior of justice

I feel strongly about my involvement in human rights and equality, and believe that through my work and the cases I bring before the courts, I improve people's lives – and the common good. Through the work I do with my colleagues on various committees, and particularly as a member of the Law Society's Human Rights and Equality Committee, I believe I fulfil my role as a human-rights practitioner and as a warrior of justice.

The words of the Queen song 'Innuendo' resonate with me: "*While we live according to race, colour or creed, while we rule by blind madness and pure greed, Our lives dictated by tradition, superstition, false religion...*"

I could hear this, I could feel this. I chose not to ignore it. I have the same approach with my clients when I 'hear' them and understand them in ways others

can't, who have not had my life's experiences.

#### Extremely rewarding

Being a foreign, young woman was my weakness, but I soon learned that this was my strength. Now all those songs, movies, and stories make sense. Now I am the 'happy' story – the successful lawyer in the city. All the obstacles, all the challenges have been part of my journey – not my destination. Winning cases in the Supreme Court and the European Court of Justice after having received not-so-encouraging judgments in the lower courts has been extremely rewarding. Had I not failed in the early stages, I would not have reached the higher levels of jurisdiction.

Now, I am enjoying the challenges of life, and love difficult cases, as the rewards are proportional to the difficulties overcome. I have such great hope and pride in the future generations and am humbled by the strength of character already being displayed by my four-year-old. Not too long ago, my little one heard me upset one evening on a work-related matter and came to me and said, lifting the hand firmly: "Mummy, you should tell the person 'No thank you!'"

*Cristina Stamatescu is a practising solicitor and a member of the Law Society's Human Rights and Equality Committee.*



# Tales of the unexpected to give you the shivers

From: Bill Holohan SC, Holohan Lane LLP, Waterview House, Sundays Well Road, Cork

● On an increasing basis, I am being asked to help colleagues who are the subject of complaints to the Legal Services Regulatory Authority. (I have been the subject of a complaint myself, as a result of having asked colleagues to help me with my doctoral research.)

Unfortunately, complaints can be made by complainants who are not even clients of the legal practitioner.

Complaints against legal practitioners are dealt with under part VI of the *Legal Services Regulation Act 2015*. There are effectively three categories of complaints:

- Section 51(1)(a) provides for the making of complaints to the authority by the client of a legal practitioner, where the client considers that “the legal services provided to the client by the legal practitioner were or are of an inadequate standard”,
  - Section 51(1)(b) provides for the making of complaints where the client considers that “an amount of costs sought by the legal practitioner in respect of legal services provided to the client by the legal practitioner was or is excessive”,
  - Section 51(2), which permits any person to make a complaint to the authority in respect of a legal practitioner where the person “considers that an act or omission of the legal practitioner constitutes misconduct”.
- The term ‘misconduct’ is defined by section 50 of the 2015 act: “(1) For the purposes of this act, an act or omission of a legal practitioner may be considered as constituting misconduct
- a) Involves fraud or dishonesty,
  - b) Is connected with the provision by the legal practitioner of legal services, which were, to a substantial degree, of an inadequate standard,
  - c) Where occurring otherwise than in connection with the provision of legal services, would justify a finding that the legal practitioner concerned is not a fit and proper person to engage in the provision of legal services,
  - d) Consists of an offence under this act,
  - e) In the case of a solicitor, consists of a breach of the *Solicitors Acts 1954 to 2015* or any regulations made under those acts,
  - f) In the case of a solicitor, consists of an offence under the *Solicitors Acts 1954 to 2015*,
  - g) In the case of a barrister, is likely to bring the barristers’ profession into disrepute,
  - h) In the case of a solicitor, is likely to bring the solicitors’ profession into disrepute,



- i) In the case of a legal practitioner who is a managing legal practitioner of a multidisciplinary practice, consists of a failure by him or her to comply with his or her obligations under this act as a managing legal practitioner (within the meaning of part 8),
  - j) Consists of the commission of an arrestable offence,
  - k) Consists of the commission of a crime or offence outside the State which, if committed within the State, would be an arrestable offence,
  - l) Consists of seeking an amount of costs in respect of the
  - m) provision of legal services that is grossly excessive,
  - Consists of a breach of this act or regulations made under it, or
  - n) Consists of a contravention of section 215 (1).
- Committee, the Disciplinary Tribunal or, as the case may be, the High Court may have regard to –
- a) The amount by which or the extent to which the amount claimed in the bill of costs was found to be excessive,
  - b) Whether, in the particular circumstances of the legal services performed, the amount of the bill of costs appears to be unconscionable, and
  - c) Whether or not a legal costs adjudicator has found the costs charged to be grossly excessive.

“(3) In this section ‘arrestable offence’ has the same meaning as it has in the *Criminal Law Act 1997*.”

The perils to which a practitioner can be exposed on foot of the foregoing are exemplified by the facts and chronology documented in the recent Court of Appeal decision handed down by Ms Justice Faherty on 19 October 2023 in *Connolly v LSRA* ([2023] IECA



252; Costello J and Noonan J concurring), where a solicitor handling an estate had extreme difficulty with an unhappy co-executor/beneficiary in an estate, who made no less than 45 complaints against the unfortunate solicitor, which were categorised broadly in the determination as complaints of inadequate service and excessive costs against the legal practitioner, summarised as follows:

- The legal practitioner failed to communicate or answer questions,
- The CA24 form was misleading,
- There were mix-ups on the assets of the estates,
- There was failure to publish attendance notes,
- The legal practitioner paid three party invoices but failed to pay the complainant's expenses,
- The legal practitioner

repeatedly failed to act on or overruled the complainant's instructions and facilitated one executor over another,

- There was a conflict of interest between the executors and, as such, the legal practitioner could not act for both executors,
- The legal practitioner failed to issue a section 68/150 letter,
- The hourly rate of €367 was excessive,
- The legal practitioner failed to bring section 63 advancements to the complainant's attention,
- There may have been undeclared income from assets,
- *The legal practitioner did not follow the complainant's instructions to redraft the will (post mortem),*
- The will did not make sufficient provision for a household pet,
- The legal practitioner did not acknowledge complaints

against the estate,

- The legal practitioner threatened legal proceedings,
- The legal practitioner sought opinion of counsel on the progression of the grant of probate.

My personal favourite is the one in italics above.

Thankfully the LSRA, both in its initial determination and in a subsequent determination of the

Review Committee, decided in favour of the legal practitioner. The complainant, however, was unhappy and sought leave for judicial review, which was refused by Meenan J. The complainant appealed to the Court of Appeal. The Court of Appeal rejected the appeal.

If you fancy some teeth grinding, then read the judgment at [bailii.org/ie/cases/IECA/2023/2023IECA252.html](http://bailii.org/ie/cases/IECA/2023/2023IECA252.html).

## Don't tie me down

*From: Michael Monahan, Solicitor, John Street, Sligo*

● Now that our new president has given the lead and has his official photograph wearing no tie, can we take it that the profession can dispense with ties from here on?

Interesting, also, to recently see the managing partner of McCann FitzGerald in a firm photo also going tieless.

Perhaps the Member Services section of the Law Society could organise a survey on this pressing issue!

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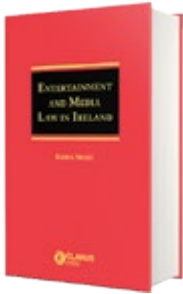
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# Gerald & Sheila Goldberg of Cork: A Son's Perspective

David Goldberg. Oak Tree Press (2023), [oaktreepress.ie](http://oaktreepress.ie).

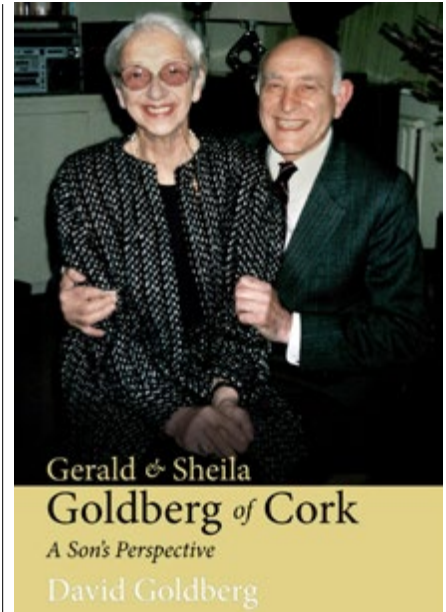
Price: €19.95 (incl VAT); €10.90 (e-book)

● An Irishman, a Cork man, and a Jew. Cork-born solicitor Gerald Y Goldberg (1912-2003) always identified each of these personalities as being in equal measure, and his long life and career have borne witness to that equality.

The youngest of Gerald Goldberg's three children (all sons), David pays homage to both his father and his mother Sheila in this 'perspective'. The picture he paints of each of them is heartfelt, honest and, at times, critical – particularly in his and others' relationships with Gerald. A notable feature of the book is the comparison between the author's overall view of his mother as a generous and giving person, as opposed to that of his father as unquestionably brilliant, but also as self-centred and uncompromising in his opinions. What also comes through is the author's own long-felt need to tell both their stories and, in doing so, to clarify his own preconceived assessments of each of them. In the latter respect, David Goldberg – son, barrister, painter, and author – achieves that goal, which was long in its genesis.

In a wider context, though, primarily about the respective lives and achievements of Gerald and Sheila, the book also allows us glimpses into the lives and motivations of a multigenerational Jewish family, originating in 19<sup>th</sup> century Lithuania (then part of the Tsarist Russian Empire), that finds its way to Ireland and, more specifically, to Limerick, Cork, and Belfast.

Gerald was, first and foremost, a solicitor, who, after setting up practice in Cork in 1936, gained a unique reputation as being always single-minded and thorough in his representation of his clients. He was also to become a patron of the arts in Cork, sharing Sheila's interests in music and in myriad charitable activities, as well as a member of Cork Corporation and of the Law Society's Council. For many years, he was the best-known representative of the Cork Jewish community, achieving the ultimate accolade of being elected Lord Mayor of Cork in 1977/78, with resultant worldwide publicity and international tours.



Sheila (1916-1996) became well known to Cork in her own right: first, through her involvement with the Cork Orchestral Society; then with what grew to be 'Meals on Wheels', as well as her charitable ventures. Her gentle, but firm, personality became the key to her success in her charitable fundraising activities.

In the brief note on the author himself, the book is described as a "memoir and analysis of his parents, [which] explains the inner workings of a man's life and how these affect the outer aspect of the man". The last short chapter, entitled, 'Beginning and ending', is an emotionally charged sum-up reflection on both of his parents and how he perceived them, and why, later in his own life, he decided to put pen to paper.

In summary, this is a book worthy of being read, not only by Cork people of all faiths and none who remember the Goldbergs, but by anyone interested in the hard-fought, but ultimately successful, integration of Jewish people into Irish society following the unacceptable historical incidents of antisemitism, most notably in Limerick in 1904. To the author, well needed and well told!

*Michael V O'Mahony is a past-president of the Law Society of Ireland.*



# Practice and Procedure in the Superior Courts (3<sup>rd</sup> edition)

**Benedict Ó Floinn. Bloomsbury Professional (2022),** [bloomsburyprofessional.com](https://bloomsburyprofessional.com).

Price: €295 (hardback, incl VAT); €260.45 (e-book).

● This book is long overdue, but well worth the wait – particularly if, like me, you have been updating by hand and inserting notes of the intervening rule amendments, with the associated judgments and practice directions, since the second edition 14 years ago!

Like the previous edition, this book is essentially divided into three main sections: an extended 139 orders thoughtfully indexed with subindices to provide easy reference, with helpful annotations to each rule; a comprehensive table of cases that takes priority in sequence in this third edition; and a table of legislative references. The format and style, therefore, remain relatively the same, which is always appreciated by the reader when moving from one edition to the next.

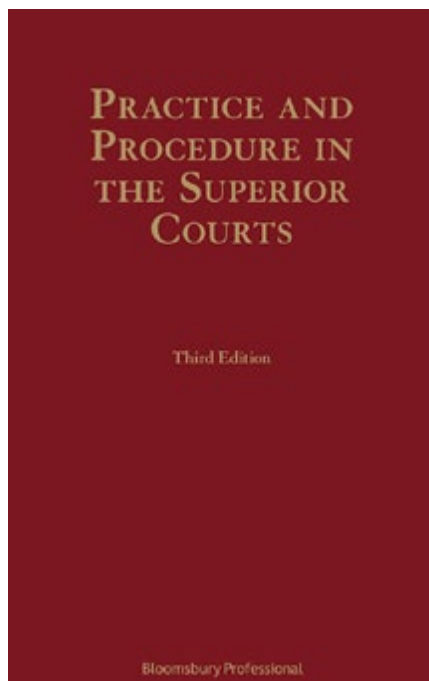
The previous edition covered orders 1 to 40 in 319 pages. Such has been the depth and breadth of change that orders 1 to 40 now cover 496 pages in the third edition.

Arbitration has been an important feature of the litigation process, traced back to the Brehon Laws; however, the *Mediation Act 2017* has been a game changer. The practice and procedure of the mediation and alternative-dispute-resolution process are carefully examined, which will be of interest to every litigation practitioner.

Order 70 deals with matrimonial causes and matters, with a new order 70B addressing the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*, and is essential reading for family-law practitioners.


Orders 74 and 75 seamlessly address practice and procedure in the superior courts under the *Companies Act 2014*, including examinership, investigations, and the rescue process for small and micro companies. The complexities of the changes are easily understood due to careful drafting by the author.

In his foreword to the third edition,




President of the High Court David Barniville notes that “practitioners and judges have a real need to be able to access quickly the most recent version of the rules, and a list of the most relevant judgments addressing each rule. That need is more than amply satisfied by the third edition of *Practice and Procedure in the Superior Courts*”.

As a litigation solicitor, I unreservedly agree.

Since publication, this book is front and centre in our office library (with the earlier two editions still intact in a less prominent position) and, already, there have been hand inserts to the third edition! Such is the speed of change, and it is critical for every legal practitioner to keep abreast of those changes. This book is a staple for practitioners operating in the superior courts. 

*Michele O’Boyle SC is a solicitor practising exclusively in the area of litigation. She is a member of the Superior Courts Rules Committee and a past-president of the Law Society of Ireland.*

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# Control alt delete

Data-privacy lawyer Elaine Morrissey asks whether the GDPR is being used correctly by the State following the revelation that three Tusla files flagged by Judge Dermot Simms to the Department of Children have been destroyed

THE DEPARTMENT OF CHILDREN HAS CONFIRMED THAT THREE REPORTS HAVE BEEN DESTROYED, CITING COMPLIANCE WITH DATA-PROTECTION OBLIGATIONS AS THE REASON FOR DOING SO

The objective of the EU's *General Data Protection Regulation* is to protect the fundamental rights and freedoms of natural persons and, in particular, their right to the protection of personal data.

There are questions as to whether this objective has been achieved when data-protection statutory obligations have been cited as the reason for destroying several reports submitted to the Department of Children for the purposes of highlighting a concern for vulnerable children (see *Gazette*, 15 September: 'Tusla files flagged by judge deleted by department').

While we do not have all the pieces of the jigsaw, questions arise in relation to the destruction of three reports by the department.

In May 2023, now-retired Judge Dermot Simms wrote to the Department of Children and several Government ministers and State institutions, highlighting his concern for vulnerable children. This letter (publicly available at [www.childlawproject.ie](http://www.childlawproject.ie)) referred to six documents (some of which are also publicly available).

However, in response to questions, the Department of Children has confirmed that three reports provided with the letter have been destroyed, citing compliance with data-protection obligations as the reason for doing so. Specifically,

the department cites having no legal basis for processing the personal data within the report.

## Correct use of GDPR?

It is correct that there needs to be a legal basis to process personal data. In the Department of Children's *Privacy Notice* (available at [www.gov.ie](http://www.gov.ie)), it states its basis for processing personal data: "The following are the key pieces of legislation which underpin the department's core functions, and which allow for the processing of personal data by us, or on our behalf:

- *Childcare Act 1991*,
- *Education (Welfare) Act 2000*,
- *Children Act 2001*,
- *Youth Work Act 2001*,
- *Adoption Act 2010*,
- *Child and Family Agency Act 2013*,
- *Children First Act 2015*,
- *Childcare Support Act 2018*.

"The department is also entitled to process personal data under other legislative provisions (for example, the *Data Protection Act 2018*) that provide the basis for all Government departments to administer the range of services, schemes and supports set out by successive Government decision."

## Content not available

While Simms J's letter has been published, the content of the three reports is not available

and, for that reason, we cannot say with certainty how the department arrived at a decision that there is no legal basis to process them.

In the letter, the parents' consent for the disclosure of one of the reports was provided. But again, we do not know if this report was destroyed or retained.

Section 38 of the *Data Protection Act 2018* specifically states that "processing for a task carried out in the public interest or in the exercise of official authority, [and in particular] (1) the processing of personal data shall be lawful to the extent that such processing is necessary and proportionate for (a) the performance of a function of a controller conferred by or under an enactment or by the Constitution...".

In circumstances where a judge submits personal data to the Department of Children as part of a suite of documents to highlight his "utmost concern for the immediate predicament and welfare of children who are in care", for which the department is responsible, it raises queries over the destruction of these reports.

While a lack of legal basis was cited as a reason for the destruction of the three reports, with the information currently available, it is difficult to see how there was



PICTURE: SHUTTERSTOCK

not a legal basis when Simms J was highlighting issues that fall squarely within the department’s remit.

### Personal data and the GDPR

While the GDPR relates to personal data, it is important to remember that pseudonymised personal data is also captured under the GDPR. This can cause confusion for those handling personal data. In short, data does not have to include a name to be considered personal data.

Personal data is any information relating to an individual. To reach the status of ‘anonymous’, there is quite a high benchmark. Once data is anonymous, it falls outside the scope of the GDPR, and a legal basis is not required to process such anonymous data.

One assumes that, where the Department of Children is citing ‘legal basis’ and referring to its statutory responsibilities in relation to data protection, it has classified the data as personal data falling under the scope of the GDPR.

However, without access to the reports, we cannot comment on this classification. It is, however, important to remember that just because a child’s name is not mentioned in a report does not mean that the data is anonymous, as there may be sufficient information to identify that child.

### Receipt of unwanted data

While many organisations have the difficult challenge of being in receipt of unwanted data – receiving data in error due to an email address being


typed incorrectly or receiving an incorrect attachment via email (and there is very specific guidance from the Irish Data Protection Commission on this topic) – this is not the case here.

Simms J was very clear regarding to whom his letter and the attachments were being delivered. He very clearly wanted his letter and attachments in the hands of the Department of Children. This is not a case of receipt of unwanted data.

It is noted that the Department of Children was not the only recipient, so this prompts the question as to whether other recipients have taken the same view and destroyed parts of the Simms J suite of documents? There is the possibility that the three destroyed reports could

end up back on the desk of the Department of Children through other avenues.

Does the Department of Children review every item of correspondence it receives to consider the appropriate legal basis? In circumstances where one assumes the correspondence relates to the functions of the department, this would be an unusual and extremely burdensome step.

Why was it that three specific reports were destroyed, when clearly the balance of the material has been deemed necessary to retain? Have the objectives of the GDPR been met? 

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*Elaine Morrissey is a member of the Law Society’s Intellectual Property and Data Protection Committee.*



# The **END** of the world as we know it

The Law Society has submitted a proposal to Government for 'established non-conforming development' (END).

Michael Walsh and Judith Cryan examine the submission, which aims to reduce the excessive level of planning due diligence required in property transactions









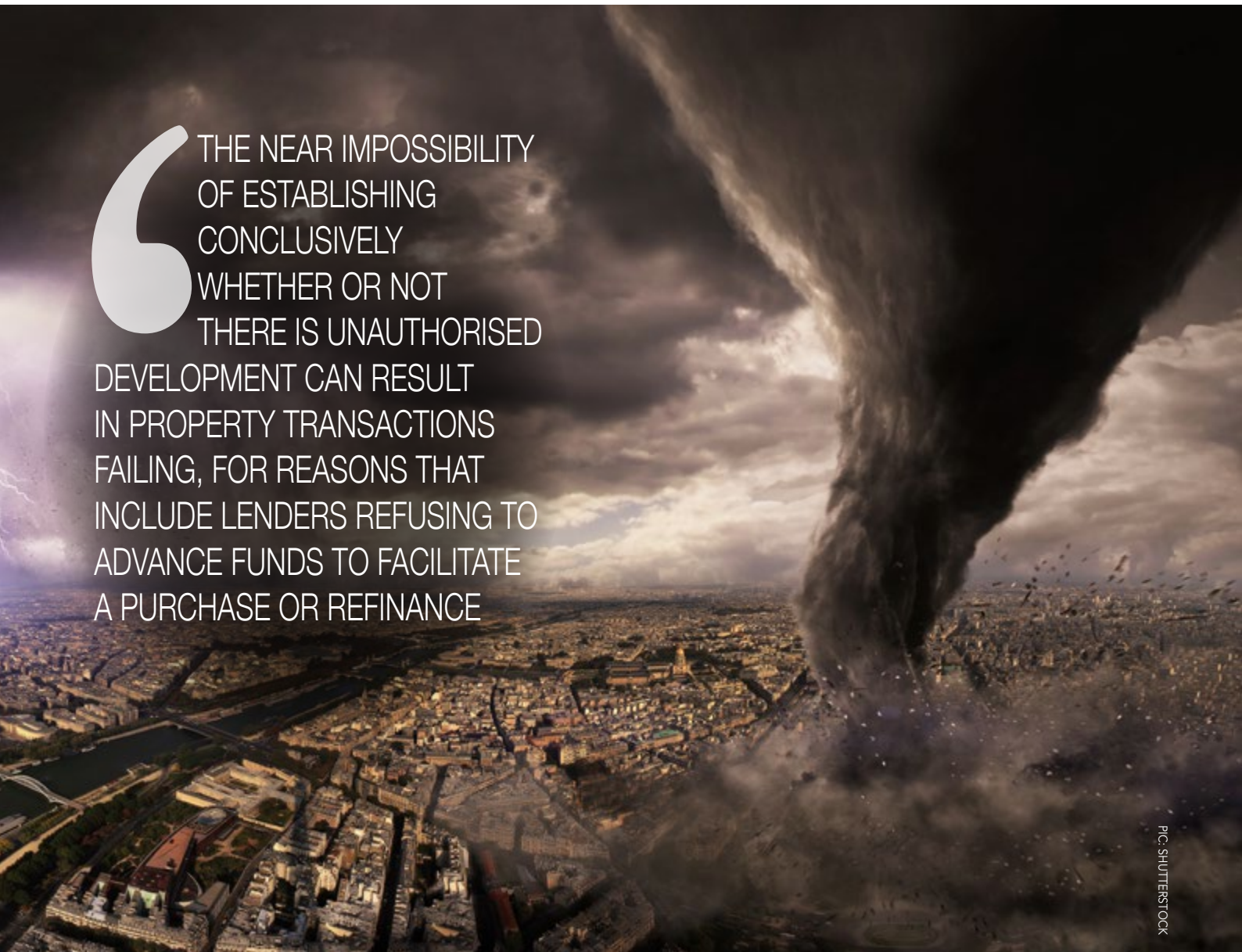


**he Legal Services Regulatory Authority (LSRA)** is currently assessing whether to recommend to the Minister for Justice the introduction of a new profession of ‘conveyancer’. In January 2022, the Law Society of Ireland argued in its submission to the LSRA that the problem with conveyancing is not the conveyancing solicitors, but rather the system itself, which is in need of significant law reform and investment.

While pursuing an e-conveyancing agenda, the Law Society – largely through its Conveyancing Committee – has been pursuing a reform agenda ranging from changes in practice to changes in law.

In 2019, the pre-contract investigation-of-title system was introduced, and the 2023 *General Conditions* now allow for contracts to be made electronically. The Law Society has also signalled concern to Government that, by creating statutory charges for unpaid property taxes, rates, and certain fines, the State has made conveyancing more complex, time consuming, and costly. The Law Society has also made a number of submissions in the area of conveyancing, most recently on the topic of planning and development.

The *Planning and Development Bill 2023* presents a once-in-a-generation



“THE NEAR IMPOSSIBILITY OF ESTABLISHING CONCLUSIVELY WHETHER OR NOT THERE IS UNAUTHORISED DEVELOPMENT CAN RESULT IN PROPERTY TRANSACTIONS FAILING, FOR REASONS THAT INCLUDE LENDERS REFUSING TO ADVANCE FUNDS TO FACILITATE A PURCHASE OR REFINANCE

PIC: SHUTTERSTOCK

opportunity to reform Ireland’s planning system. One of its most glaring omissions, however, is the reform of the law as it relates to the planning due diligence required in conveyancing, landlord-and-tenant, and secured lending transactions (‘property transactions’).

In its submission to the Department of Housing, Local Government and Heritage last October, the Law Society proposed the legal recognition of a new class of ‘established non-conforming development’ as a solution to the conveyancing difficulties arising from historic planning breaches and gaps in planning records.

### **Bang and blame**

When acting in property transactions, solicitors and their clients – and, in complex cases, planning advisors – are required to examine the planning history of a property over almost 60 years (back to 1 October 1964) to determine whether there is any unauthorised development on the

property. In contrast, under the *Land and Conveyancing Law Reform Act 2009*, title is to be investigated back to a good root of title at least 15 years old.

This level of planning due diligence creates significant delays in a large proportion of property transactions. This, in turn, results in increased costs for the parties to transactions, due to the additional work and time expended attempting to ascertain the planning history and assess the degree of any non-compliance with planning requirements and its potential impact.

Planning authorities frequently do not have historical planning records available, with some planning authorities not holding any records dated prior to 2000. The near impossibility of establishing conclusively whether or not there is unauthorised development can result in property transactions failing, for reasons that include lenders refusing to advance funds to facilitate a purchase or refinance.





## THE LAW SOCIETY HAS ALSO SIGNALLED CONCERN TO GOVERNMENT THAT, BY CREATING STATUTORY CHARGES FOR UNPAID PROPERTY TAXES, RATES AND CERTAIN FINES, THE STATE HAS MADE CONVEYANCING MORE COMPLEX, TIME CONSUMING, AND COSTLY

The *Planning and Development Act 2000* sets out time limits after which no enforcement action can be taken in respect of unauthorised development. Even when enforcement is no longer possible, there are many other negative consequences for owners of unauthorised developments.

### The great beyond

For many years, both the Law Society and the Law Reform Commission have called for legislative measures to reform this area of planning law. Not only would the Law Society's proposed solution be a modernising, practical, and realistic measure – reducing the excessive

level of planning due diligence required in property transactions – it is one of a number of important matters that needs to be addressed to enable e-conveyancing.

**T**he draft *Planning and Development Bill 2022* does not address the issue of historic planning breaches. In its submission, the Law Society has suggested the creation of a new class of development in the bill, to be called 'established non-conforming development' ('END'). This new classification would not retrospectively render the development authorised, but would be excluded from the definition of unauthorised development. As a result, the consequences of unauthorised development would not apply to this class of development. This would enable property transactions to smoothly progress when an END has been identified. Due diligence and consideration of planning risk would be confined only to a more recent period of time in which an unauthorised development could have occurred.

It is proposed that:

- 1) Where unauthorised development was carried out without planning permission and has not been the subject of enforcement action, after a period of 15 years that development would be deemed for all legal purposes to be an END, or
- 2) In circumstances where planning permission had been granted but was not complied with, and there has not been enforcement action, then, after a period of ten years from the expiration of the 'appropriate period' under statute (that is, the life of the planning permission), that development would be deemed to be an END, or
- 3) In circumstances where planning permission had been granted but the development was not completed within the life of the planning permission, and there has not been enforcement action, then, after a period of ten years from the date the development was completed, that development would be deemed to be an END.

The effect would be that, in most instances, there would be a 15-year period beyond which a development would be deemed to be an established non-conforming development

## FOCAL POINT EVERYBODY HURTS

- An unauthorised development is not cured by the passage of time – even after the enforcement period expires, it remains a blight on the title.
- Unauthorised developments can affect the marketability of property and prevent the owner or purchaser from accessing funding.
- Works to property that would otherwise be exempt development (such as certain extensions, alterations, repair, or renewal) may not be exempt from the requirement for planning permission.
- The right to compensation may be lost or reduced in compulsory-acquisition scenarios.
- It may be difficult to obtain permission for further development of the property.
- There is potential for the imposition of onerous conditions in any subsequent planning application.
- A local authority could refuse permission to reinstate a building damaged or destroyed by fire or other event.
- Applications for renewal of liquor licences require evidence of planning compliance.
- Insurers may seek to refuse to pay out on fire (or similar risk) policies on buildings on account of there being an unauthorised development.
- Residential Zoned Land Tax may be payable in respect of land by reason of the fact that there is an unauthorised development.



Godzilla: the END justifies the means

and, as such, it would not be necessary, for conveyancing, tax, planning, compensation, or other reasons to look beyond that period.

### Begin the begin

The Law Society has considered potential challenges to the proposed END solution due to the European-law requirement for prior consent for developments that are likely to have an impact on the environment. To reduce the risk of challenge, the Law Society proposes qualifying any legislative intervention to exclude developments that require an environmental impact assessment (EIA) under the *Environmental Impact Assessment Directive* or appropriate assessment (AA) under the *Habitats Directive*. For development carried out

after this requirement was introduced, the Law Society proposes a rebuttable statutory presumption that such developments do not require an EIA or AA.

### Half a world away

If the proposed solution is not accepted by the Department of Housing, Local Government and Heritage, then legislative change will be required to ensure that planning authorities and An Bord Pleanála retain all planning documents (including all historic documents) in perpetuity, and to make these available for inspection by the public, both in physical and digital copy.

**A**t the time of writing, the *Planning and Development Bill 2023* has not yet been published. It remains to be seen whether the Minister for Housing will seize this opportunity to speed up property transactions by confining the planning due-diligence period to a reasonable period.

*Michael Walsh is a member and former chair of the Law Society's Conveyancing Committee. He is a partner and current chair of the property group at ByrneWallace LLP. Judith Cryan is a solicitor and professional support lawyer at ByrneWallace LLP.*

“THE LAW SOCIETY OF IRELAND ARGUED IN ITS SUBMISSION TO THE LSRA THAT THE PROBLEM WITH CONVEYANCING IS NOT THE CONVEYANCING SOLICITORS, BUT RATHER THE SYSTEM ITSELF

## LOOK IT UP

### LEGISLATION:

- [Environmental Impact Assessment Directive](#)
- [Habitats Directive](#)
- [Land and Conveyancing Law Reform Act 2009](#)
- [Planning and Development Act 2000](#)
- [Planning and Development Bill 2023](#)



# The court of public opinion

Angela Denning is leading significant change for the Courts Service, and she flags that ‘huge improvements’ in the efficiency of our courts are on the way for legal practitioners, writes Mary Hallissey



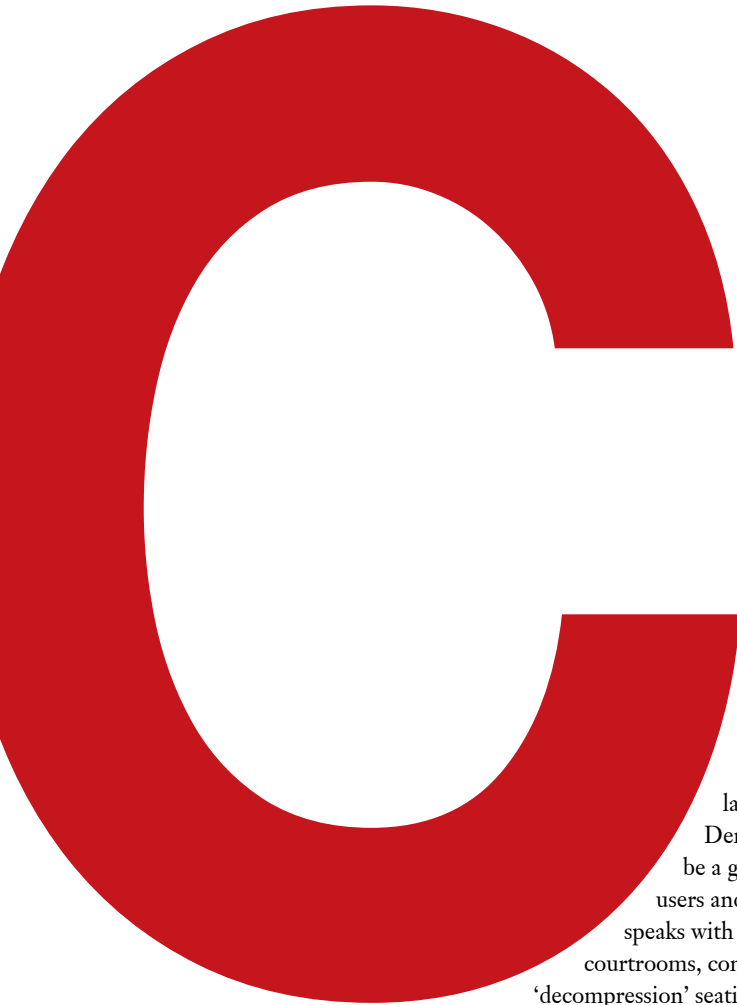




ALL PICS: CIAN REDMOND

ALL PICS: CIAN REDMOND





## Courts Service chief Angela Denning

is upbeat as she describes the new Hammond Lane family-law complex in Dublin 7.

Denning believes it will be a game-changer for court users and legal practitioners, and speaks with excitement about the 19 courtrooms, consultation rooms, and a ‘decompression’ seating area of green space at the front of the triangular building, which looks out to

the LUAS stop in Smithfield Square.

The back of the building will face on to Church Street. There will be limited parking, apart from wheelchair carparking spaces and prison vans, in line with the policy for new public buildings.

In Limerick City’s courthouse, soundproofed booths have been installed under the stairs for quick consultations or private phone calls, and the same pods will be built into the Hammond Lane complex, she says.

Denning is optimistic about the planning process, saying that it is well advanced and pointing out that the inside of the building is fully designed. The long triangular building will have ramp access and be fully accessible, with a public coffee shop on the ground floor, as well as a buggy park.

On entering the building, all 19 courtrooms will be situated over multiple floors at the right-hand side. Sited opposite will be Courts Service, Legal Aid Board, mediation service, and domestic-violence offices, while the judges’ chambers and staff accommodation will be located on the upper floors.

Family law is where the real pressure on facilities lies in Dublin, Denning agrees. Once planning is achieved, the elongated procurement process – expected to take about a year – will begin. Following a 30-month build and fit-out, Denning expects the complex to be up and running by 2028.

In other building projects, Four Courts’ restoration work and protection of its dome is ongoing, with repair works being carried out



to the decorative stone capitals that support it, with the hope that all will be completed by mid-decade.

### ‘Marvellous surprise’

Denning says that no one was as taken aback as herself when she was appointed chief executive of the Courts Service in 2019: “It was a marvellous surprise!” she laughs.

Cavan native Denning, who studied computer science at Trinity College and is also a qualified barrister, has IPA training in strategy and leadership. She has had a long career in the Courts Service, including the

THE NEW HAMMOND LANE FAMILY-LAW COMPLEX IN DUBLIN 7 WILL BE A GAME-CHANGER FOR COURT USERS AND LEGAL PRACTITIONERS, WITH 19 COURTROOMS, CONSULTATION ROOMS, AND A 'DECOMPRESSION' SEATING AREA OF GREEN SPACE AT THE FRONT OF THE TRIANGULAR BUILDING



Probate Office, working on the non-jury judicial-review list, and as deputy master of the High Court, handling pre-trial applications and making interim court orders.

She also did a stint handling transparency and ethics, lobbying, dealing with freedom-of-information requests, and whistleblowing legislation at the Department of Public Expenditure and Reform. The almost immediate onset of pandemic conditions after Angela arrived in the job allowed for an accelerated programme of modernisation, which probably would have taken considerably longer in more normal times, she reflects.

#### 'A settler'

"COVID was a 'settler', because court operations came very much to the forefront. I was very lucky with the management team – we had a lot of people who come from a court operations background, so we knew exactly what needed to be done in order to keep the courthouse doors open and keep people safe.

"From the start, we said we weren't closing, because there was pressure on us to close completely," Denning adds. "Had we closed, gardaí would have had nowhere to bring detainees."

Open courts underpin democracy so, for Denning, closure was never an option – no matter what. It wasn't a fight to stay open, but there were certainly dissenting views, she admits: "There were areas of society that were very afraid."

The Courts Service staff set about building understanding for safe operations among all court users, and prioritised the urgent work of the District Court, particularly in domestic-violence cases. Increased use of technology was the only option in the collegiate courts in the face of the virus.



“It allowed us to accelerate some things that we almost take for granted now,” Denning explains. For instance, there was experimentation with various technical options in order to test for security and inter-operability, allowing long-term solutions to emerge. File uploading by solicitors allowed judges to read documents in advance and manage their own caseloads.

### Consultative programme

Denning was determined that the modernisation programme was going to be highly consultative, and user test-groups met fortnightly with representatives from across the justice sector.

“As we came out of COVID, we kept those groups and those contacts going, and we’ve been able to morph them into other areas of work, such as desktop technology for judges in courtrooms,” she explains.

**C**ourts Service IT staff are in regular contact with judges to help with necessary upskilling. “The judges have been great, in that a lot of them have agreed to be ‘guinea pigs’ for different types of technology,” comments Denning.

“No matter what technology we use into the future, it has to work for everyone. It has to be accessible for everyone and be highly intuitive. There’s a real demand from solicitors, and particularly from younger solicitors, to use technology. They use it in their everyday lives, so they can’t understand why it’s not available,” Angela Denning says.

### Great feedback

“It’s exciting. I’ve seen the green shoots of improvements for the ordinary people who use the courts. We’re getting great feedback on the family-law information and infographics on the website,” she says. “Solicitors say that the information is useful for putting clients in the frame of mind to discuss their case and to know what’s expected of them.”

Pilots are under way, such that, in domestic-violence cases, evidence may be given from a local garda station or shelter.

The ability for solicitors to dial in to court for short applications is also a considerable timesaver.

All Courts Service staff now have laptops and mobile phones to access their emails on the road, eliminating dependence on some very old technology, and improving both security and collaboration.



Judges increasingly have their laptops on the bench, from the Supreme Court down, Denning says.

### Early adopters

Naturally, the courts have a cohort of early adopters, as well as some tech latecomers. Across the board though, the efficiency benefits are too obvious to be ignored, the chief executive says.

In 120 video-enabled courtrooms, remote evidence-giving is possible, and the practical flexibility of the technology now means fewer adjournments, particularly in civil and family-law cases.

“From our perspective, it means that more cases get on the day they were supposed to get on,” says Denning. “That’s to everybody’s benefit.” Adjournments were a huge draw on a system with tight resources, she adds.

The massive reduction in the transportation of prisoners for court hearings has also had positive knock-on effects, leading to less disruption in jail education, Denning says.

The Prison Service can use its resources better, given the reduction in transport costs, and prisoners themselves prefer remote hearings, particularly those with mental-health problems. Prisoners have also been allowed to use the technology for evening-time family contact, she says.

An online system for jury summonses has

a user engagement rate of over 50%, while would-be jurors use QR codes to accept or seek to be excused. The system also allows instant communication in the case of unexpected court cancellations, which were a cause of juror frustration.

“We’re very conscious that we still have a group of people who can’t use technology, but we also have a really high mobile-phone usage of almost 96% in this country,” says Denning.

“People have told us they want to engage with us digitally. With user feedback, we’ve been able to improve the platform for the user as we go along. We’re scoping out what help jurors need after jury service, for example, for work purposes.”

**J**urors may also be directed towards support services after a traumatic trial.

“It is the only ‘national service’ we have in this country, really, and, without it, the criminal-justice system just can’t function. We’re calling an increased number of jurors now because we have increased numbers of trials and an increased number of judges.” The length of time between people being called will shorten as a result, Denning said.

The use of data will also ensure that people who were excused from service aren’t called again.

“The new electronic electoral register will help us hugely,” adds Denning.



## FAMILY LAW IS WHERE THE REAL PRESSURE ON FACILITIES LIES IN DUBLIN. ONCE PLANNING IS ACHIEVED FOR THE FAMILY-LAW COMPLEX, THE ELONGATED PROCUREMENT PROCESS – EXPECTED TO TAKE ABOUT A YEAR – WILL BEGIN. FOLLOWING A 30-MONTH BUILD AND FIT-OUT, DENNING EXPECTS THE COMPLEX TO BE UP AND RUNNING BY 2028

“There’s a lack of awareness about how important it is to go and serve if you’re called. There’s a bit of negativity that could be dispelled. The reality is that, if something happens to you or to your family, you want a trial by a jury of your peers. This was something that, during COVID, came home clear and strong, that the most important people in the room in a criminal trial are the jury. It’s a fundamental part of our system of justice.”

### Case management

The Courts Service is developing a unified case-management system that will yield very useful data and eliminate the need for manual entry of caseloads, thus supporting the work of the Judicial Planning Working Group.

A High Court pilot portal will allow solicitors to issue their case filings online and, likewise, get their court order at the end of the case. The goal is a one-input scenario, giving solicitors their own view of cases in an automated Legal Diary.

**“**If we can automate the Legal Diary, that’s a huge bulk of work,” Denning says. “It’s an administrative nightmare every day, done with hundreds of Word documents. If we can automate that, from our staff perspective, that’s a huge time saving.”

The ability to block-select case lists will also be a benefit and deliver better services for court users, Denning adds.

### Shifting gears

Angela Denning believes the Courts Service proved its agility during the pandemic. “I do think COVID showed that we were able to shift gears very quickly. If we had the data, it really helped us to target backlogs. I much prefer targeted interventions where you stop the backlog from growing.”

2023/24 will see some ‘heavy lifting’ in terms of IT moving to the next stage of the modernisation programme by the end of 2025.

In 2025 – the halfway point of modernisation – the benefits will start accruing to the taxpayer, the chief executive says. That year will see the elimination of manual interventions and the end of ‘moving around’ paper documents.

**H**uge improvements in efficiency are on the way for legal practitioners, too, she pledges, with far fewer in-person actions.

“I would prefer to see more court clerks and more court sittings, with less staff doing that administrative work – freeing up those back-office staff to help court users. Staff would be less pressurised and could spend more time with the customers who need it, including vulnerable people, such as those with hearing problems.”

### Capturing the imagination

“Our modernisation programme has captured the imagination, and our people see that what they do here is really worthwhile,” Denning says.

“We did a staff survey last year, and the sense of purpose that our staff have about the importance of their work is wonderful,” she adds, praising the dedication and commitment shown during difficult pandemic times.

“We’ve always been an organisation that gives service to the public, seven days a week, 365 days of the year,” she concludes.

Denning’s key message is that she wants to keep working with solicitors and the Law Society on improving the Courts Service, and in continuing to get valuable feedback: “We make things better by working together.”

*Mary Hallissey is a journalist at the Law Society Gazette.*



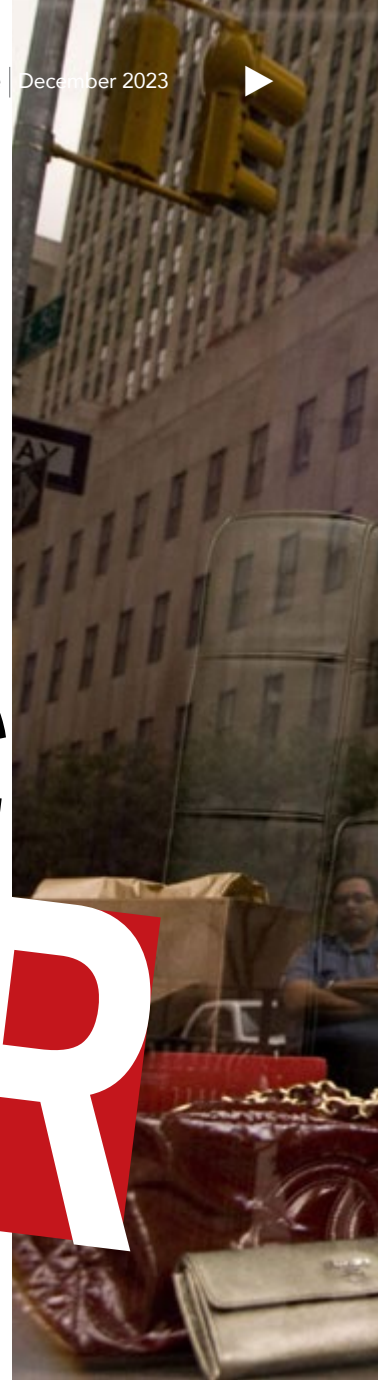
The *Consumer Rights Act* has led to a significant overhaul of consumer law in Ireland by giving effect to a series of EU directives. Olivia Mullooly and Rachel Benson put the power in your hands

# BUYING POWER

## **The Consumer Rights Act 2022**

represents a relatively significant overhaul of consumer law in Ireland in recent years, consolidating (to a large degree) and modernising consumer law, and bringing Ireland into line with other European member states.

With the exception of section 161, the act came into operation on 29 November 2022. The act sets out a range of rights and remedies for consumers when entering into sales contracts (part 2), digital content contracts and digital service contracts (part 3), and service contracts (part 4). It replaces and expands upon consumer information, cancellation and other rights legislation in part 5, previously set out in the *European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013* (the 2013 regulations, revoked under the act), and upon unfair terms in consumer contracts legislation in part 6, previously set out in *European Communities (Unfair Terms in Consumer Contracts) Regulations 1995*, as amended (the 1995 regulations,





also now revoked under the act). It also amends a number of other consumer-related enactments in part 7.

### Protection extension

Traders will already be familiar with consumer-protection concepts arising from earlier consumer legislation, such as the implied warranty as to title to goods and the implied conditions that goods will correspond with their description and be of merchantable quality. These are replicated and extended in the act. For example, the trader must ensure that goods are delivered “free from any charge or other encumbrance”, unless such charge or encumbrance was disclosed before the consumer entered into the contract (section 14).

The act also sets out the consumer’s right to terminate a sales contract, a digital content or a digital-service contract, where the trader has no right to sell or supply the relevant goods, digital content or digital service (sections 14 and 50).

**S**imilarly, the act imposes a duty on the trader to deliver goods to the consumer that are ‘in conformity’ with the sales contract at the relevant time, and to supply the service, digital content or digital service to the consumer that is ‘in conformity’ with the service, digital content or digital service contract (sections 15, 52, 79).

To determine whether goods, services, digital content or digital services sold or

supplied are ‘in conformity’ with the relevant contract, the act sets out a series of requirements, and this extends the scope of protection for the consumer.

For example, section 17 sets out requirements for conformity with a sales contract. Goods delivered under a sales contract must: “(a) be of the description, type, quantity and quality, and possess the functionality, compatibility, interoperability and other features, specified in the sales contract; (b) be fit for any particular purpose for which the consumer requires them ((i) that the consumer made known to the trader at the time of, or before, the conclusion of the sales contract, and (ii) that the trader has accepted); (c) be supplied with all





## ONE OF THE MOST NOTABLE CHANGES BROUGHT ABOUT BY THE ACT IS THE EXTENSION OF PROTECTION OFFERED BY CONSUMER PROTECTION LAW TO 'DIGITAL CONTENT' AND 'DIGITAL-SERVICE' CONTRACTS CONCLUDED BETWEEN A TRADER AND A CONSUMER

accessories and instructions, including on installation of the goods, specified in the sales contract; and (d) be updated as specified in the sales contract”.

### Digital content and service

One of the most notable changes brought about by the act is the extension of protection offered by consumer protection law to ‘digital content’ and ‘digital-service’ contracts concluded between a trader and a consumer, under part 3.

Previously, under the 2013 regulations, consumers entering into on- and offline contracts with traders, including in respect of “contracts for the supply of digital content not supplied on a tangible medium” and sales contracts that included “contracts for the supply of digital content on a tangible medium”, could exercise certain cancellation rights and were entitled to be provided with prescribed information.

**W**hile the cancellation and information rights granted under the 2013 regulations are largely repeated in part 5 of the act, and extended, for example, to include additional information requirements for distance contracts concluded on online marketplaces, the act also strengthens the position of the consumer by imposing new duties and obligations on the trader with respect to the provision of digital content and digital services to consumers.

The terms ‘digital content’ and ‘digital service’ are not defined by reference to whether they are supplied on a tangible medium. ‘Digital content’ is data “produced and supplied in digital form”, and includes computer programs, applications, video files, audio files, music files, digital games, e-books and other e-publications.

A ‘digital service’ is a service that either (a) “allows a consumer to create, process, store or access data in a digital form”, or (b) “allows the sharing of or any other interaction with data in digital form, uploaded or created by a consumer or other users of that service”. Video/audio sharing and other file hosting, social media, and

word-processing and games offered in the cloud-computing environment come within the scope of a ‘digital service’.

Nonetheless, the provision of digital content and digital services on a tangible medium is taken into account in the definition of the term ‘goods’, which includes “tangible moveable items that incorporate or are interconnected with digital content or a digital service in such a way that the absence of that digital content or digital service would prevent the goods from performing their functions”, and this definition brings these types of goods within the scope of part 2 of the act (sales contracts).

### Providing personal data

Significantly, the act provides that ‘digital-content contracts’ and ‘digital-service contracts’ include contracts where the consumer has provided consideration by giving or undertaking to provide personal data to the trader (other than where the trader processes the consumer’s personal data for the purpose of supplying the digital content/service or to comply with a legal requirement to which they are subject).

**T**his means that, for such contracts, it is not necessary that the consumer provides payment for the content or service in question for the protections under the act to apply where they have instead provided personal data to the trader in exchange.

### Statute of Limitations

The act aims to give effect to the *Digital Content Directive* (DCD), the revised *Sale of Goods Directive* (SGD), and aspects of the *Omnibus Directive*.

In transposing the DCD and the SGD, the Government chose to preserve the six-year limitation period that applies to general contract claims under the *Statute of Limitations 1957*, rather than impose

the shorter liability periods allowed for in certain circumstances in those enactments. This six-year limitation period is also provided for in a similar manner in respect of hire-purchase agreements (section 73G).

### Unfair terms

Under the 1995 regulations, a term is deemed ‘unfair’ where, 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” – considered in light of the nature of the goods/services in question and the circumstances surrounding the contract’s conclusion. The 1995 regulations set out an ‘indicative’ list of terms that may be deemed unfair when assessed under the ‘significant imbalance’ test.

**T**he act sets out a new statutory framework governing unfair terms in consumer contracts, reintroducing the ‘significant-imbalance’ test to assess whether a term is unfair, with the additional requirement that terms in consumer contracts must be ‘transparent’. Requirements for transparency and criteria to be taken into account to meet the test of transparency are set out in the act, for example, whether any novel or onerous terms have been brought to the specific attention of the consumer “in such a way that the average consumer would be aware of the term”.

The act contains a list of terms that will always be regarded as unfair (subject to limited exceptions) – for example, a term whose object or effect is to give a trader the exclusive right to interpret any term of the contract – as well as a separate list of terms that will be presumed to be unfair, for example, a term whose object or effect is to require a consumer to pay a fee in order to exercise a statutory right. Many of the terms previously set out under the ‘indicative’ list in the regulations have been carried over as terms that will either always be regarded as unfair or that will be presumed to be unfair. Each list contains terms that have been newly introduced by the act.

Where there is doubt as to the meaning of a term in a consumer contract, the act requires that the interpretation that is most favourable to the consumer must prevail. Significantly, the act provides that, in any proceedings before a court dealing with a term in a consumer contract, the court is obliged to determine whether the term is unfair, irrespective of whether or not a party to the proceedings has raised the point.

### Fake reviews


The act expands the existing list of prohibited commercial practices for traders under the *Consumer Protection Act 2007* (as amended). Notable additions to this list include prohibitions on traders reselling event tickets to consumers where the trader has used ‘automated means’ to acquire the tickets in order to avoid any rules concerning ticket purchases, including caps on the number of tickets that may be purchased by individuals.

It is also a prohibited commercial practice to state that product reviews have been submitted by customers who purchased or used the product in question without taking ‘reasonable and proportionate steps’ to check that this is the case, and to submit, or commission others to submit, fake consumer endorsements or reviews.

Businesses that supply goods, services, digital content, or digital services to consumers will need to become familiar with new

obligations and duties under the act, and ensure that their existing practices are brought into compliance with these.

Examples of general steps that practitioners might take to assist with this include:

- An evaluation of whether any digital content or digital service offered is provided to consumers in exchange for their personal data, to determine whether the rules on digital content and digital service contracts apply,
- A full review of the terms of any template consumer contracts in light of the updated unfair-terms rules, and
- Making trader clients aware of the full list of prohibited commercial practices. 

*Olivia Mullooly is a partner and Rachel Benson is a senior professional support lawyer in the technology and innovation group at Arthur Cox LLP.*

“THE ACT SETS OUT A NEW STATUTORY FRAMEWORK GOVERNING UNFAIR TERMS IN CONSUMER CONTRACTS, REINTRODUCING THE ‘SIGNIFICANT-IMBALANCE’ TEST TO ASSESS WHETHER A TERM IS UNFAIR, WITH THE ADDITIONAL REQUIREMENT THAT TERMS IN CONSUMER CONTRACTS MUST BE ‘TRANSPARENT’”

## LOOK IT UP


### LEGISLATION:

- *Consumer Protection Act 2007*
- *Consumer Rights Act 2022*
- *Digital Content Directive (2019/770)*
- *European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (SI 484/2013)*
- *European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (SI 27/1995)*
- *Omnibus Directive (2019/2161)*
- *Sale of Goods Directive (2019/771)*
- *Statute of Limitations 1957*



# LAND OF OUR FATHERS

Tailte Éireann's David Nugent provides guidance to assist practitioners in preparing for Land Registry court matters and to highlight procedures contained in relevant practice directions



**he *Tailte Éireann Act 2022*** provided for the dissolution of the Property Registration Authority (PRA) and Ordnance Survey Ireland (OSI) and the transfer of the functions of those bodies – along with the functions of the Commissioner of Valuation and the Boundary Surveyor – to Tailte Éireann. The dissolution and transfer took effect on 1 March 2023. Tailte Éireann is a body corporate under the aegis of the Department of Housing, Local Government, and Heritage. More information on the structure and functions of Tailte Éireann can be found on its [website](#).

Section 32(2) of the 2022 act provides that legal proceedings pending immediately before 1 March 2023 to which the PRA, OSI, the Commissioner of Valuation, or the Boundary Surveyor is a party are continued with the substitution in the title of the proceedings of 'Tailte Éireann', insofar as they relate.

Practitioners should note that legal proceedings issued after 1 March 2023 relating to a function of Tailte Éireann should name Tailte Éireann as a party, if appropriate. Land Registry practice directions and Legal Office notices can be found on the website under the '[Registration](#)' page in the 'guidance and legal practices' tab.

The Land Registry Office is the originating office in respect of Land Registry High Court proceedings. This is a separate office from the High Court Central Office.



PIC: ALAMY

### McDermott's Castle: not really his, though, is it?

Order 96, rule 2 of the *Rules of the Superior Courts* sets out the procedure concerning applications to the High Court for an order or direction relating to the registration of the ownership of land or charge on a register maintained under the *Registration of Title Act 1964* (as amended).

The originating notice of motion, together with any affidavit and exhibits intended to be used in support thereof, should be filed in the Land Registry Office, as provided for under section 7 of the 1964 act (as amended).

Attendance at the Land Registry Office, located at Chancery Street, Dublin 7, D07 T652, is by appointment only.

Appointments can be made by emailing [helpdeskcourtreistrar@tailte.ie](mailto:helpdeskcourtreistrar@tailte.ie).

A case record number will be provided when proceedings are issued. All subsequent documents that are filed in the case (for example, pleadings, motions, affidavits) must have this number marked on them.

The relevant fees order can be found in [SI 492/2014](#) and fees are payable to Tailte Éireann – *not* to the Stamp Office at Áras Uí Dhálaigh. In advance of your appointment to file documents in the Land Registry Office, a reference number will be provided so that fees may be paid online.

You can find more information on the 'Practice directions on court cases and procedures' section of our website. Please

also see the [courts website](#) for information on High Court practice directions and court procedures.

### **Incorrect naming as defendant**

Where no action is disclosed against Tailte Éireann in legal proceedings, and where no alleged breaches of the 1964 act (as amended) are pleaded against the organisation, Tailte Éireann should not be named as a defendant in legal proceedings.

Tailte Éireann should be named as a notice party where appropriate to do so, for example, where a court order may be directing a registry amendment. If legal proceedings are incorrectly issued and served on Tailte Éireann, the parties will



be asked to withdraw or serve a notice of discontinuance. Otherwise, Tailte Éireann may be obliged to issue a notice of motion pursuant to order 19, rules 27 and 28 of the *Rules of the Superior Courts* and/or pursuant to the inherent jurisdiction of the court, striking out the pleadings and dismissing the action on the ground that they do not disclose any cause of action. In those circumstances, Tailte Éireann may seek legal costs that arise should such a court application become necessary.

### Witness summonses

Tailte Éireann is sometimes served with a summons requiring an official of the Land Registry to appear as a witness and/or produce documents. Counsel may advise, often at very short notice, that copy or original documents be produced and that a Tailte Éireann staff member attend court as an expert witness. There may be times when a witness is essential, but it has been noted by the courts that, on many occasions, a witness may not be necessary in circumstances where provision is already made in the legislation, practice directions, and case law in relation to the provision of evidence in court proceedings.

**P**ractitioners are referred to sections 9(6) and 45 of the *Registration of Deeds and Title Act 2006*, which states that instruments can be relied upon in court as to the registration made and are admissible, without further proof, as evidence of the document and the matters mentioned in it.

Proceedings filed against individual civil servants who are acting in the normal course of their statutory duties are not permitted under the legislation. Practitioners are referred to section 17 of the *Registration of Title Act 1964*, which sets out that the

PROCEEDINGS FILED  
AGAINST INDIVIDUAL CIVIL  
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LEGISLATION

Registrar of Titles may sue and be sued by that name. This section has subsequently been updated by section 7(2) of the *Tailte Éireann Act 2022*, which states: “Tailte Éireann shall be a body corporate with perpetual succession and an official seal and shall have power to sue, and may be sued, in its corporate name and shall, with the consent of the minister given with the approval of the Minister for Public Expenditure and Reform, have the power to acquire, hold and dispose of land or an interest in land and shall have the power to acquire, hold and dispose of any other property.”

### Witness evidence

A witness is entitled to know how his/her evidence is relevant to proceedings. In *Fitzpatrick v Wymes* (1976), Walsh J stated: “No person can be a witness unless his evidence is relevant and admissible. As a summons to attend the hearing involves a liability of imprisonment if the person served does not attend, it is not unreasonable and does not create any injustice that a prospective witness should not be compelled to attend the hearing unless his evidence is material to the proceedings.”

**A**witness is entitled to understand the relevance of the evidence he/she is being asked to provide, to consider whether it is relevant or whether there is a basis for an application to set the summons aside. Information should be provided to Tailte Éireann to explain why evidence from one of its staff members is material to the proceedings, and copies of any grounding affidavit etc (if applicable) should be provided in advance. If clarification is sought in respect of an entry made on the register, this can, perhaps, be dealt with through correspondence instead of requiring a court appearance to be made.

In the case of expert witness testimony or officers entering a court appearance on behalf of Tailte Éireann, the deputy registrar will appoint an official of the Land Registry to appear, providing reasonable expenses have been tendered by the person serving the summons. See SI 380 of 2012 about relevant Land Registry fees payable.

Where officers so deputed attend court to produce documents, practitioners should note that the only function in attending is to produce the document – the officer is not obliged to answer questions on the interpretation or construction of such documents. It should, if necessary, be stated to the court by the officer that he or she has no competence to do so.

**I**f there is a perceived failure on the part of a practitioner to consider whether the evidence sought is readily available (for example, by seeking a copy instrument or through the procedures set out in the relevant practice directions and Land Registry rules), Tailte Éireann may instruct the Chief State Solicitor’s Office to make an application to set aside the witness subpoena/summons and to seek the legal costs of such an application.

### Documents for court

Where documents or copy instruments are required for court proceedings, an application should be made to Tailte Éireann under rules 156 and 157 of the *Land Registration Rules 2012*. Such application should be addressed to the Keeper of Records and be made far enough in advance to allow sufficient time to process the application and deliver the documents to the relevant court.

Copy instruments can be inspected by the registered owner of the property, their personal representative, and any person authorised by such persons by an order of the court or under rule 159 of the *Land Registration*



## TAILTE ÉIREANN IS NOT USUALLY NAMED AS A RESPONDENT TO SECTION 19(1) PROCEEDINGS INVOLVING ADVERSE POSSESSION

*Rules.* Such requests can be facilitated by lodging a [Form 96-97](#), or there is a paperless alternative when applying for copy instruments.

However, not everyone is entitled to inspect an instrument. If a party to a dispute is not entitled to inspect an instrument, practitioners are reminded that seeking to introduce evidence on foot of a subpoena in circumstances where such evidence could have been obtained by way of discovery has been held by the court to be an attempt to secure a backdoor means of obtaining discovery from that party (*Pierson v Keegan Quarries Ltd* [2009]) and cannot be used as a disclosure device (*JF v Reilly* [2007]). Tailte Éireann will seek confirmation whether discovery of the documents was sought from the opposing party in the first instance or, failing that, whether non-party discovery was sought from Tailte Éireann.

### Section 19(1) proceedings

Where there is a clear conflict between the averments of an applicant in an adverse possession application, on the one hand, and objector(s) on the other hand, Tailte Éireann is not the appropriate forum to resolve such a conflict.

In such situations, the applicant will be informed that Tailte Éireann is not satisfied that he/she is entitled to the registration sought, for stated reasons, and that the application will be formally refused. The applicant will be informed of the right of appeal to court pursuant to section 19(1) of the 1964 act.

**S**ection 19(1) states: “Any person aggrieved by an order or decision of the registrar may appeal to the court and the court may annul or confirm, with or without modification, the order or decision.”

Tailte Éireann is not usually named as a respondent to section 19(1) proceedings involving adverse possession claims as, typically, these cases are heard *de novo* in the court, as the case is ultimately a matter between the applicant and the objector.


At most, Tailte Éireann should be named as a notice party to these proceedings, and it will abide by an order of the court pursuant to section 21 of the *Registration of Title Act 1964* (as amended), which states: “A registering authority shall obey the order of a court of competent jurisdiction in relation to registered land.”

### Court orders

While Tailte Éireann will obey a court order pursuant to section 21(1), practitioners are reminded that, when seeking an order from the court under the provisions of the 1964 act, consideration should be given as to the content and construction of the court order.

This is important so that registration is capable of being executed as per the terms of the court order when an application for registration is subsequently lodged. See sections 31 and 32 of the 1964 act.

Once an order has been granted, registration pursuant to a court order may be made in Tailte Éireann, under rule 95 of the *Land Registration Rules 2012*. All the usual documents required for the particular type of application for registration (such as Form 17, fees, and a map suitable for registration purposes) should be lodged in addition to the court order. If the order is directing a first registration of title to be made, then the usual requirements in relation to the examination of title will still apply to that application, and all documents – including documents of title – must be furnished alongside the court order.

For more information on any of these topics, please consult the [Tailte Éireann](#) and [Courts Service's](#) websites. 

*David Nugent is communications manager with Tailte Éireann.*

## LOOK IT UP

### CASES:

- *Fitzpatrick v Wymes* [1976] IR 301
- *JF v Reilly* [2007] IESC 32, [2008] 1 IR 753
- *Pierson v Keegan Quarries Ltd* [2009] IEHC 550 (Irvine J, 28 January 2010)

### LEGISLATION:

- *Land Registration Rules 2012*
- *Registration of Deeds and Title Act 2006*
- *Registration of Title Act 1964* (as amended)
- *Rules of the Superior Courts*
- SI 380/2012 (*Land Registration (Fees) Order 2012*)
- SI 492/2014 (*Supreme Court, Court of Appeal and High Court (Fees) Order 2014*)
- *Tailte Éireann Act 2022*



# The phantom *menace*

In the final article in this cybersecurity series, Tanya Moeller, Nicola Kiely and Deborah Leonard tie all of the lessons learned into a practical blueprint for assisting with the next steps in channelling the Force for your law firm



**A**rguably, an essential ingredient for effective cybersecurity protection is to establish an overall governance structure for your law firm, regardless of the firm's size. Sole practitioners are at the same risk as large law firms. Any firm holding money or confidential information is a target. Management should consider appointing a project lead, who is responsible for day-to-day management of the cybersecurity side of the firm.

In addition, one or several people should have decision-making authority over project direction, timeframe, budget, scope, and methodology. In this way, the project lead can report on identified risks and recommended risk-mitigation measures, and decisions can be taken in relation to these. Managers of small firms and sole practitioners may decide to wear multiple hats here.

### **Befriend your broker**

Clare Fitzgibbon (cybersecurity specialist at McCarthy Insurance Group) provided guidance on cyber-insurance in 'Safe haven' (*Gazette*, Aug/Sept 2023). Cyber-insurance is a speciality insurance product designed to help your firm pay for financial losses in the event of a cyber-attack or breach.

You should become familiar with your insurance policy from a cybersecurity perspective, so that you understand what your liability will be if there is a cyber-attack. Talk to your broker after you carry out your cybersecurity risk assessment, as this will allow you to make an informed decision at the time of your policy renewal.

Your broker will provide you with guidance in relation to top-up insurance products, and whether they are necessary.



Practitioners should be reminded that not all policies provide the same coverage. It is important to talk to your broker and discuss your risk, which, in turn, will allow you to consider and compare the appropriate policies.

### Activate your assessment

Cybersecurity risk assessments should arguably be the start of your overall cybersecurity project. According to Matthew Goodbun ('Potential threats', *Gazette*, Aug/Sept 2023), they are an objective analysis of the way an organisation protects electronic information and IT assets – and whether the measures it has in place are effective and proportionate.

Depending on the type of assessment, they are likely to cover "IT governance, IT risk management, IT asset management, hardware and software supply chain, identity and access control, system security, data protection, business continuity, security monitoring, and staff awareness and training".

In other words, a solid cybersecurity risk assessment will identify and evaluate respective risks in a manner that helps prepare a roadmap for your mitigation plans. These risks can be divided into technical and organisational risks. Technical risks relate to the actual IT infrastructure, including hardware and software. Organisational risks relate to management and day-to-day behaviour of these IT assets.

**A** law firm should decide whether the risk assessment can be carried out in-house, if the firm feels that this is sufficient. However, Goodbun argues that such assessments will logically be more "meaningful, comprehensive, and valuable when they are objectively carried out by a third-party expert". This may especially be the case when evaluating organisational risks relating to human behaviour of employees on the ground.

Having said this, Goodbun reminds us not to delay the cybersecurity risk assessment: "Even if in 'year one' you carry out the

assessment in-house, and only by 'year three' you decide to outsource it to an independent professional, at least you are on your way to making your law firm as secure as it can be."

### Evidence your evaluations

You should consider the manner in which you plan to formally evaluate your cybersecurity report. Do you get the results in writing or verbally first? Will it be a final document or a draft first? Cybersecurity risk assessments may be helpful for your insurance-premium discussions, but perhaps they could create liabilities for you if they reveal vulnerabilities. You need to be prepared to remediate these or bear the risk that questions may be asked at a later stage as to why you did not do so.

Bearing in mind that remediations may require time and budget, it may be wise for you to obtain legal advice from expert colleagues in the profession on this point. However, this should not put you off the project as a whole. As Matthew Goodbun says, "understanding your level of risk



## UNDERSTANDING YOUR LEVEL OF RISK WITHIN YOUR LAW FIRM IS BETTER THAN NOT ATTEMPTING IT AT ALL

within your law firm is better than not attempting it at all". You will arguably be in a better position if your mitigation project is underway, than having ignored any calls to action.

### Plan your priorities

Once you have decided how you would like to review your cybersecurity report, you can consider the findings in the context of your budget and the day-to-day running of your practice, taking into account the initial scope, timeframe, and goals of your cybersecurity programme.

Goodbun stresses the importance of prioritising the risks to be assessed, based on the importance of the electronic information and assets. This prioritisation helps to inform next steps in risk

mitigation and to establish a roadmap according to which your project lead can tackle these risks.

### Mitigate your misery

While it is true that changing risks require you to remain constantly vigilant and, therefore, should logically never end, a cybersecurity programme benefits from short-term, medium-term, or recurrent mitigation measures.

For example, you could decide to periodically review your law firm's approach to your cybersecurity-insurance premium, strengthen your safe banking procedures, train your staff throughout the year, or improve your technical defences. Important risk-mitigation measures may also involve updating your law firm policies, creating a robust employee on-boarding and off-boarding experience, and reviewing your remote working systems.

**Y**our cybersecurity expert, who ran the cybersecurity risk assessment, will be best placed to discuss which risk mitigations measures are recommended, as well as associated costs, timeframe, and how they can be carried out with minimal disruption to the everyday running of your practice. Your project lead can then work

with this expert to make these a reality and periodically report on what measures have been successfully implemented.

The ability to demonstrate such ongoing 'successes' could also be beneficial for your cybersecurity insurance premium.

### Vet your vendors

Our 'Stress test' article (*Gazette*, July 2023) discussed the importance of reviewing your service providers. Respective contracts must adhere to applicable legal requirements, such as data-protection laws, but a review may also be beneficial from a technical and organisational perspective. How do staff interact with their systems? How is information input, how long is it retained, where is it saved, is it a secure environment? What contractual obligations do they have to report breaches? How will they assist you in times of crises? You may want to take expert legal advice on reviewing your vendor contracts in this light – and understanding your own responsibilities as a controller of personal data.

### Human habits

Staff training will be an important risk-mitigation measure, as human error is still a major gateway for cyberattacks. In our 'Attack mode' article (*Gazette*, June 2023),

## FOCAL POINT CYBERSECURITY RESOLUTIONS

### DO

- Agree on governance structures and appoint decision-makers and project leads,
- Consider how you document your cybersecurity project,
- Run a cybersecurity risk assessment and obtain recommendations on risk-mitigation measures,
- Review your safe-banking practices,
- Talk to your broker about your precise cover of specialised cybersecurity insurance,
- Find out how your insurance company can help you before, during, and after incidents,
- Enhance your technical security measures, depending on your project goals,
- Improve your organisational measures, such as using strong passwords as recommended by the [Data Protection Commission](#),
- Prepare for attempted or successful breaches, and consider doing a dry run of handling an incident,
- Adopt a 'no-blame' culture in your office – ensure that staff feel able to report suspected incidents in a prompt manner, to allow steps to be taken,
- Report any successful breaches to the Law Society of Ireland in

the [anonymous reporting tool](#) to provide updates on the latest scams. Only when we all remain vigilant for each other can we protect the profession as a whole.

### DON'T

- Don't use suppliers without considering how they support you in your cybersecurity protections,
- Don't 'work on the road' unless you understand what 'cybersecurity potholes' you must avoid,
- Don't employ staff without appropriate on-boarding, training, and off-boarding,
- Don't let your guard down – regularly review your own cybersecurity defences by repeating your security risk assessments,
- Don't forget to evidence your efforts, which may offer some protection to you if an incident does occur,
- Don't despair: this is about risk mitigation, not risk elimination. All you can do is reduce your risks on a continuous basis, taking the unique environment of your law firm into account – and have this positive story of your ongoing successes to tell by way of mitigation if something does occur.

we outlined a number of common threats that rely on the fact that people are not infallible.

Regular security-awareness training will help with ensuring that the law firm remains vigilant and alert, not just to phishing and ransomware, but also increasingly sophisticated impersonations. Self-reporting by staff is an important first alert, so cultivate a culture of acceptance of human errors in your law firm as, ultimately, this will benefit everyone.

### Beware of breaches

In her 'Head in the sand' article (*Gazette*, October 2023), Jeanne Kelly explained the importance of understanding that a cybersecurity breach may not be a personal data breach, and vice versa.

It is important for you to distinguish between these types of breaches in order to understand applicable legal obligations on you in relation to the breach, and the respective risks posed to your organisation. In order to be prepared for such incidents, you could even try a fake breach exercise, similar to a fire drill.

### Rest assured

You can't fight the battle alone, can you? In her 'Safe haven' article (*Gazette*, Aug/Sept 2023), Clare Fitzgibbon (cybersecurity specialist at McCarthy Insurance Group) reminded us that good insurance providers may help you with your response to an incident, and may even assist with reinstating your data.

**I**t can also be possible to secure insurance for interruption to business and the costs to fix reputational damage and systems. In this way, effective cybersecurity insurance can provide you with some protection.

Increasingly, underwriters may wish to see your cybersecurity risk assessment, so it appears that a circular dynamic is now increasingly common in this space. Your cybersecurity programme may result in you concluding that you require specialised cybersecurity insurance, and your insurance providers may require you to implement cybersecurity risk-reduction measures.

### Open your eyes

An important regulatory aspect of cybersecurity prevention is the safeguarding of your client account. Financial institutions in Ireland do not verify account names against account numbers, so suspicious transactions are not automatically flagged by them. Erroneous fraudulent transactions may not be recoverable.

For this reason, we examined real-life scenarios involving client funds, and recommended practical measures for safe banking procedures in our 'Equality of arms' article (*Gazette*, November 2023). These included setting up organisational procedures around verifying bank-account details with clients or even within your own law firm in case internal communications have been intercepted by malicious third parties.

*Tanya Moeller is in-house counsel with ServiceNow and vice-chair of the Law Society's Technology Committee. Nicola Kiely is a partner in Comyn Kelleher Tobin LLP and a member of the Technology Committee. Deborah Leonard is secretary to the Conveyancing Committee. The authors wish to thank Clare Fitzgibbon, Jeanne Kelly, and Matthew Goodbun for their contributions to this series.*

## USEFUL RESOURCES

- The Law Society is taking a range of initiatives to combat cyber-attacks. The 'Cybersecurity and your practice' section on its website provides members with information on threats and useful tips. See [lawsociety.ie/solicitors/business-career-resources/cybersecurity](https://lawsociety.ie/solicitors/business-career-resources/cybersecurity), which covers the following topics:
  - 'Cybersecurity fundamentals',
  - 'Preventing a cyber-attack',
  - 'Responding to a cyber-attack', and
  - 'Other resources', including 'Reporting an issue', 'Data protection and cyber-attacks', and 'Useful contacts and resources'.

The best defence against the possibility of a cyber-attack is to stand collectively together. The Law Society maintains a dedicated reporting channel – [cybersecurity@lawsociety.ie](mailto:cybersecurity@lawsociety.ie) – where members can report a potential cybersecurity issue. Confirmed attacks can, in turn, be reported anonymously on the website, to protect fellow members.

Members are also invited to ask questions of the Law Society's [Technology Committee](#), which will make every effort to provide assistance to members.

## LOOK IT UP

### LITERATURE:

- 'Attack mode', by Tanya Moeller, Nicola Kiely and Deborah Leonard (*Law Society Gazette*, June 2023, page 24)
- 'Stress test', by Tanya Moeller, Nicola Kiely and Deborah Leonard (*Law Society Gazette*, July 2023, page 46)
- 'Safe haven', by Clare Fitzgibbon (*Law Society Gazette*, Aug/Sept 2023, page 52)
- 'Potential threats', by Matthew Goodbun (*Law Society Gazette*, Aug/Sept 2023, page 54)
- 'Head in the sand?', by Tanya Moeller and Deborah Leonard (*Law Society Gazette*, October 2023, page 46)
- 'Equality of arms', by Tanya Moeller, Nicola Kiely and Deborah Leonard (*Law Society Gazette*, November 2023, page 22)

### DATA PROTECTION COMMISSION:

- 'Protecting personal data when working remotely' (Data Protection Commission, 12 March 2020)
- 'Data protection: the basics – know your obligations/access control' (see: '4.1 Access authentication – Passwords/passphrases', Data Protection Commission, July 2019)



# Humanity can 'achieve **more**'

The 'human in the loop' must keep control of artificial intelligence, this year's In-house and Public Sector Conference heard. Mary Hallissey reports

AI DATA PROCESSING MUST PROTECT RIGHTS TO FREEDOM, TO FREE EXPRESSION, TO A LIVELIHOOD, TO FAMILY AND HOME LIFE, AND TO PRIVACY, SINCE THESE ARE ALL THE THINGS THAT AI TECHNOLOGIES POWERFULLY TOUCH UPON

The In-house and Public Sector Conference on 12 October centred on the legal implications of artificial intelligence (AI) and the evolving landscape of ESG, particularly in the context of environmental policies and regulations.

Caroline Dee-Brown (In-house and Public Sector Committee chair) and Law Society director general Mark Garrett welcomed the packed house at Blackhall Place. Dee Brown introduced speaker Barry Scannell, a consultant at William Fry.

Scannell commented that litigation relating to potential infringement arising from the training of AI datasets was at a very early stage. Courts in Britain and the US have seen several lawsuits claiming copyright infringement against a variety of different AI companies, he said.

The common theme was that copyright works were often being used to train these AI systems, potentially without authorisation in certain cases. This was why transparency featured strongly in upcoming legislation. The US position was

that, unless a work was created by a human being, it could not be protected by copyright, he said.

## IP protection

Intellectual property might need to be protected in fresh ways if it were a product of generative AI, he added, particularly in business contracts and terms of engagement via terms such as confidentiality and commercial secrets: "These are new legal considerations," he said.

The *EU Artificial Intelligence Act* is a piece of product-regulatory legislation that



Speakers and organisers at the In-house and Public Sector conference included (front, l to r): Emer Walsh, Orla Coyle, Mark Garrett, Caroline Dee-Brown, Jeanette Codd McDonagh, Kieran McCorry, and Louise Campbell; (back, l to r): John MacNamara, Ronan Lennon, Tara Woulfe, Alberto Merinos, Barry Scannell, Rachael Hession, and Jared Browne



Orla Coyle, Emer Walsh, John MacNamara, and Patricia O'Shea



Kieran McCorry, Alberto Merinos and Jared Browne



Barry Scannell and Kieran McCorry



takes a risk-based approach, he said. Its framers had difficulty agreeing on the definition of AI, whether in automated systems or machine learning.

If AI forms a safety component of a product that is subject to EU regulations, that is covered by the *AI Act*, Scannell pointed out. He added that the act also provides that other AI systems, such as those used in recruitment, biometric identification and categorisation, and performance monitoring, may also be considered high-risk AI systems. HR departments should be aware of this, he said.

Automated decision-making and AI systems related to credit scoring will also be covered by the law. “I’ve described [the act] as GDPR on steroids – it’s far more involved than the GDPR,” Scannell continued.

All providers, users, and distributors of AI systems must ensure that the quality of the data in use is appropriate, he suggested. To comply with the obligations, record-keeping, transparency, and human oversight are key. There is also a legal obligation to carry out risk management where high-risk AI is in use, which will fall on the shoulders of the risk-and-compliance unit of any company.

The ‘human in the loop’

mustn’t simply rubberstamp AI automated decision-making, but have a meaningful impact with a paper trail, Scannell said, particularly in relation to credit institutions.

### Trust and governance

Jared Browne (group head of data privacy and AI governance at Fexco, and chair of the Irish Association of Data Protection Officers) said that while US use of AI tends to be more commercially driven, and other countries may use it for human-rights abuses, the EU is attempting to ensure proper trust and governance and is playing a long game.

Many AI machine-learning systems are high-risk by default, he said, adding that his favourite clause in the GDPR is that data processing should serve mankind and that, in the same vein, AI should serve mankind.

AI data processing must protect rights to freedom, to free expression, to a livelihood, to family and home life, and to privacy, since these are all the things that AI technologies powerfully touch upon, he said.

‘Legitimate interest’ is probably the only lawful basis for training an AI system with datasets, he pointed out, and future AI legislation will interact strongly with the GDPR.

AI oversight is not necessarily

part of a data-protection officer’s skillset, Browne said, though it may fall logically into that workload.

### Practical steps

Caroline Dee-Brown asked for practical steps for solicitors to ensure that third parties were not using AI to interact with, extract, or interrogate data.

Lawyers would need even more communication streams from technical teams, the conference heard. Stakeholders wanted to know that there were responsible and trustworthy AI systems in place.

Scannell commented that he didn’t feel existential dread about AI, but that impact assessment should be the first step in any company to address IP protection and various other AI-related issues. Some industries would be more heavily affected by AI regulation, such as insurance, in terms of calculating premiums, Scannell continued. Biometric identification or profiling people’s healthcare needs would be high on the risk-scale as well.

### No mass job losses

AI likely won’t lead to mass job losses in the legal arena, the conference heard. The solicitor’s role in negotiation, argumentation, communication, and interpretation can’t be replaced by a machine, Jared Browne said.

Kieran McCorry (national technology officer, Microsoft) said that his company has invested US\$13 billion in OpenAI, and Microsoft has been very vocal in terms of proper use of the technology. The principle that humanity can ‘achieve more’ drives Microsoft, he said.

In January of this year, the company announced the *EU Data Boundary*, whereby all the processing and storage of data only takes place in the EU, in

compliance with GDPR rules, he said. “At Microsoft, we take a very strong position in terms of data protection. We’re very clear that it’s your data. We’re simply a processor of that data – we’re not a controller,” he said.

A full 60% of all code written in Microsoft is written by an AI agent, he said, but with human supervision.

While it was thought that creative industries would be the last to be affected by generative AI, it turns out that they’re on the frontline, he said.

AI is like an obedient child that always wants to please its parents, and it will make something up in the absence of facts – referred to as ‘hallucination’ – unless you explicitly instruct it otherwise, McCorry said.

### Assistive technology

‘Copilot’ is the name Microsoft chose for its technology that augments or assists normal operations: “This is a human-augmenting technology,” he commented. Copilot can make a PowerPoint presentation out of datasets, for instance. It can also summarise an MS Teams meeting.

Assistive technology won’t take your job – it’s the person using AI that’s going to take your job, the conference heard. The rate of change and disruption by technology is unprecedented, driven by the explosion in data.

“We’ve been very clear that this technology is going to change the working landscape very significantly, but it has to be in a controlled way,” said McCorry.

### Data-governance framework

Alberto Merinos (data and AI leader at Codec) said that, without a robust framework for data governance and security, companies would be left exposed in their use of AI to



data-related risks and breaches.

He explained that deep learning involved the use of neural networks, infrastructure, and complex mathematical algorithms to achieve specific functionalities and solutions. It operates at a low level, typically involving mathematicians or specialised engineers.

Machine learning involved data scientists with strong mathematical skills who use mathematical models to predict outcomes in systems based on deep-learning neural networks.

AI represented the next step, and its adoption started with understanding what it does, and its implications. “It’s essential to demystify these technologies and align them with business objectives,” Merinos said.

Organisations often faced budget constraints when trying to implement AI projects, he added. He advised starting with achievable AI projects that can demonstrate success, and to gradually scale up, based on the reputation and adaptability of the technologies.

### Corporate sustainability

In his presentation on ESG, John MacNamara (corporate sustainability lead at Bord na Móna) said that transitioning from a fossil-fuel company to a ‘climate-solutions’ company was a complex and multifaceted process.

To transition successfully, the company needed to diversify its product and service offerings, such as renewable-energy sources, recycling, and peatlands rehabilitation.

Leveraging digital technologies was essential, such as the use of data for monitoring energy performance and using digital platforms to manage and report sustainability metrics.

The transition is being guided by a strong commitment



to sustainability, he said, and the company assesses the environmental and social impacts of its operations throughout the value chain.

Recognising and engaging with affected stakeholders was a critical part of this transition, he added. Providing transparent sustainability reporting was essential for building trust and support.

### Decarbonisation journey

Emer Walsh (head of legal, Gas Networks Ireland) spoke of the central role that sustainability plays in its strategy and outlined the importance of biomethane and hydrogen in Ireland’s decarbonisation journey.

The approach to sustainable procurement is a comprehensive strategy that embeds

sustainability into tender processes and promotes collaboration and planning with suppliers and service providers.

Orla Coyle (head of energy and sustainability at Savills) said that the key objectives of the *Green Claims Directive* were to make green claims reliable, protect consumers from greenwashing, enable informed purchasing decisions, and promote a circular and green economy.

This aligns with the broader goals of sustainability and environmental responsibility in the EU and underscores the importance of transparent and credible information, Coyle said.

*Mary Hallissey is a journalist at the Law Society Gazette.*

I’VE DESCRIBED THE AI ACT AS GDPR ON STEROIDS – IT’S FAR MORE INVOLVED THAN THE GDPR



# In the **bleak** midwinter

This time of year can evoke feelings of isolation and solitude for many working under heightened stress and pressure. Law Society Psychological Services offers a range of tailored supports to help you banish the winter blues

LONELINESS CAN MANIFEST IN SUBTLE YET POWERFUL WAYS, SHOWING UP AS REDUCED ENTHUSIASM FOR USUAL ACTIVITIES AND A HEIGHTENED SENSE OF BEING 'DISCONNECTED', IN BOTH PROFESSIONAL AND PERSONAL SPHERES

The arrival of December is marked by an increase in both professional obligations and personal commitments. This time of year can evoke feelings of isolation and solitude for many working under heightened stress and pressure. Building meaningful connections is at the core of Law Society Psychological Services.

We remind solicitors of the importance of prioritising psychological wellbeing and nurturing connections during particularly busy periods. A range of supports tailored to the legal community are available and include the High Impact Professional Series, 'Professional Lives', and a newly launched suicide-prevention initiative, 'Reasons for Living'.

### Elevated stress levels

While, for some, December can conjure up feelings of cosiness and time spent fireside catching up with family and friends, for others it may elicit what has become known as the 'winter blues', encompassing low mood, emotional fatigue, and heightened feelings of loneliness.

The shorter, darker days, coupled with additional seasonal pressures, can have a negative impact on wellbeing. This confluence of factors can bring up feelings of isolation and loneliness, making December a particularly challenging period to navigate for some.

Loneliness can manifest in subtle yet powerful ways, showing up as reduced enthusiasm for usual activities and a heightened sense of being 'disconnected', in both professional and personal spheres. Indicators that the season's burdens are taking effect can show up as feelings of irritability, fatigue, and difficulty concentrating, often due to elevated stress levels.

### In the red zone

A continuous juggling between legal obligations and personal expectations can result in emotional exhaustion, marked by feelings of helplessness, emotional depletion, and being overwhelmed. The hustle and bustle of the holiday season may intensify feelings of being disconnected as workloads peak, leading to social withdrawal from family occasions and limited time for personal connections.

For others, the stress of the season can cause their nervous system to become hyper aroused – this can feel like racing thoughts, reduced appetite, and frustration, and can result in engaging in conflict with people around us. We think of this as being 'in the red zone'.

Law Society Psychological Services recognises the potential effects of such strains. It offers a range of tailored initiatives for solicitors across the legal life-cycle. These supports are representative of the 'services' commitment to

working collaboratively with legal workplaces to support psychological wellbeing, foster dignity and respect, and build high-impact professionals in 2024 and into the future.

### Powerful antidote

Building connections and engaging in community initiatives serve as powerful antidotes against loneliness. The High Impact Professional Series provides an online forum to hear from expert professionals who share their experiences and insights into psychological elements of legal practice.

You are invited to join members of the legal community online for the third webinar in this series. The complimentary CPD event takes place online from 12.30 to 1.30pm on 14 December. The conversation will focus on the importance of building 'high-impact habits' to thrive personally and professionally. You can register for the live event at the Law Society website's [CPD page](#). Webinars 1 and 2 of the series are available on demand on the Law Society's Skillnet LegalEd platform, [legaledtalks.learnskills.ie](#).

### 'Reasons for living'

In recognition of the emotional strain that is often intensified during winter, Law Society Psychological Services has introduced a new suicide-



PIC: ALAMY

prevention resource called 'Reasons for Living'.

This new initiative will be rolled out in the new year, with further comprehensive training and supports available for members of the legal community. Currently, our curated web pages provide information on ways to identify warning signs, intervene effectively, seek assistance, and how to access specialised support resources.

This new initiative not only underscores the importance of mental-health support all year round, but also highlights how vital proactive efforts are in safeguarding personal wellbeing, specifically during the demanding end-of-year period. Full details can be found at [lawsociety.ie/ps](https://lawsociety.ie/ps).

### Sharing insights

Throughout 2023, you have been sharing your stories

on navigating and overcoming professional and personal challenges in the *Gazette's* 'Professional Lives' column. Your insights and perspectives have created open conversations on how you have overcome adversity and continued to thrive in your professional lives by integrating new perspectives.

The column offers a space to connect with colleagues' shared experiences.

Please get in touch if you would like to share your experience, with a view to supporting colleagues facing similar issues.

You can contact us by emailing [ps@lawsociety.ie](mailto:ps@lawsociety.ie) with your thoughts and ideas on how Law Society Psychological Services can support you in the year ahead.

---

*Mary Duffy is the Law Society's professional wellbeing executive.*



# The Holy Grail

The key lesson to be drawn from Illumina Inc's US\$7.1 billion acquisition of Grail LLC is that an *ex ante* merger-control review under the EUMR may proceed – irrespective of whether the relevant jurisdiction thresholds are met. Cormac Little is on a quest

GIVEN THAT CERTAIN TRANSACTIONS WITH SIGNIFICANT CROSS-BORDER COMPETITIVE IMPACTS HAD ESCAPED REVIEW BY THE COMMISSION, A NEW APPROACH TO ARTICLE 22 REFERRALS WAS NECESSARY

From a jurisdictional perspective, EU/Irish merger-control rules should, theoretically, operate in a relatively simple fashion. If a transaction must be notified, the merging parties should wait for clearance before completion can occur. If a transaction does not trigger a mandatory notification, the undertakings involved may, unless there are no other conditions precedent, sign and complete on the same day.

However, Illumina Inc's US\$7.1 billion acquisition of Grail LLC, announced in September 2020, constitutes an exception to these principles. Despite this transaction failing to trigger a mandatory notification under either the *EU Merger Regulation* (EUMR) or, indeed, under the national merger-control rules of any country in the European Economic Area, Illumina/Grail was blocked by the European Commission, with a subsequent imposition of a requirement on the buyer to unwind its completed acquisition – plus both companies were fined for 'gun jumping'. So how and why did all of this happen? And, more importantly, what broader lessons might be drawn?

## Business activities

Headquartered in San Diego, USA, Illumina is a global manufacturer/supplier of next-generation sequencing

technology (NGS) which includes medical devices, consumables, and support services. Illumina's NGS systems are used for various purposes, including in the oncology space.

Also headquartered in California, Grail is active in the field of cancer detection through a simple flagship test, called 'Galleri', which it launched in June 2021. Using blood samples, this test aims to detect around 50 separate cancers in asymptomatic patients based on both genomic sequencing/searching for DNA 'markers' in the bloodstream, and on data-science tools. Both Grail and its rivals in the cancer-detection space depend on top-quality NGS systems to develop and run their respective tests. Ironically, Illumina was the founder of Grail but had divested all but a 14.5% stake by early autumn of 2020.

## Merger-control loophole

Prior to the announcement of the Illumina/Grail acquisition, the EU Commission and other competition policymakers had been grappling with the potential anticompetitive effects caused by the acquisition of smaller competitors by their larger rivals.

These 'start-up' or younger firms might generate little or no turnover at the time

of their sale (and thus the relevant transactions usually fall outside the net of merger control) but, given the right support, might develop into playing a significant competitive role. Such transactions are a particular feature of the technology and pharmaceutical sectors, where innovation is especially important. Accordingly, article 22 of the EUMR began to emerge as a potential mechanism for the commission to review such transactions.

Article 22(1) allows one or more member states, on invitation from the commission, to request the latter to review a transaction that is not mandatorily notifiable under the EUMR, but which affects trade between member states and also threatens to significantly affect competition within the territory of the member state(s) making the request.

In March 2021, during the early stages of its engagement on Illumina/Grail, the commission published guidance on the application of the referral mechanism set out in article 22 to certain categories of cases (referral guidance). This publication heralded a major change of direction in respect of article 22 referrals. The commission acknowledged that its prior practice had been to discourage referral requests from member states



PICT: ALAMY

lacking original jurisdiction over the relevant transaction, because such transactions typically were unlikely to have a significant market impact. Given that certain transactions with significant cross-border competitive impacts had escaped review by the commission, a new approach to article 22 referrals was necessary. In certain circumstances, the commission now encourages and accepts referrals of transactions that are not reviewable under national merger-control rules.

The referral guidance also details the factors the commission will consider when examining whether the article 22(1) criteria are met.

### Referral to the EC

Illumina's troubles at EU-level began when, in December 2020, the commission received a complaint regarding the attempt to regain sole control of Grail. Given that the latter had not generated any sales anywhere in the world, the planned acquisition did not trigger a mandatory notification under the EUMR or, indeed, under the national merger-control rules in any EEA country (that is, the 27 member states of the EU, plus Norway, Iceland and Liechtenstein).

After some initial engagement with relevant stakeholders, including the complainant, the commission reached the preliminary view that Grail's

importance for competition in the EEA was not reflected in its lack of revenue. In February 2021, under article 22(5), the commission formally informed member states of the proposed transaction, while inviting them to make a referral request under article 22(1).

The following month, the French Autorité de la Concurrence submitted such a request. This was subsequently joined by the Belgian, Greek, Dutch, Icelandic and Norwegian authorities over the course of March 2021. During the same month, the commission informed Illumina and Grail that the transaction could not proceed while its review was ongoing.

In April 2021, the commission

accepted both the referral request and also the various requests to join same. This decision was rapidly (within nine days) challenged by Illumina before the EU's General Court. This litigation proceeded in parallel with the commission's substantive review of the acquisition.

### Jurisdiction challenge

Illumina's action for annulment of the April 2021 decision primarily rested on the plea that article 22(1) does not give the commission the competence to consider a transaction that is not reviewable under national merger-control rules. In its judgment in Case T-227/21 *Illumina Inc and Grail LLC v*



*European Commission*, the General Court examined the applicant's arguments.

Focusing on the text of article 22(1), the court found that, irrespective of the existence or scope of national merger-control rules, a member state is entitled to refer a transaction to the commission. From a historical perspective, the court noted that, while the referral mechanism had originally been developed for member states without a national merger-control system, when the number of such regimes increased, the referral mechanism became a means of strengthening the commission's 'one-stop shop', thus alleviating the problem of potential multiple merger filings in the EEA.

Moreover, set against the context of other relevant provisions of the EUMR, article 22 does not require a transaction to be reviewable under national merger-control rules. Finally, the court held that the objective of article 22 was to provide the necessary flexibility for the commission to review transactions that would otherwise escape a merger-control review anywhere in the EEA. Accordingly, Illumina's challenge to the commission's decision to accept jurisdiction was rejected by the court in July 2022.

### Substantive review

After the acceptance of the referral request, Illumina notified the acquisition to the commission in June 2021 and a phase II (or in-depth) investigation was opened the following month. The review process was lengthy – primarily due to the commission's difficulties in gathering the required material/information from Illumina. The commission's investigation focused on whether the vertical

integration of Illumina with Grail gave the former the ability and incentive to foreclose the latter's competitors.

The commission found that Grail and other suppliers of cancer-detection tests rely on Illumina's NGS systems, due to the latter's quality and reliability. Switching to an alternative provider was likely to be long and costly, with no guarantee of success. Therefore, Illumina would have the ability to foreclose Grail's business rivals. The commission also considered that there was enormous growth potential in the sale of early cancer-detection tests, with the annual global market expected to be valued at €40 billion by 2035. Therefore, Illumina, in order to capture as large a slice of this market as possible, would be clearly incentivised to deny Grail's rivals access to its NGS technology.

During the investigation, remedies were offered by Illumina. These included the offer of licensing some of its patents to rival NGS suppliers, allied to a commitment to offer access to its NGS technology to all of Grail's rivals, under equal conditions. The patent-licence offer was considered inadequate because it did not provide enough of Illumina's intellectual property to develop rival NGS systems.

The 'standard-access' offer was deemed insufficient because it did not address the risk that Illumina would favour Grail by offering deficient technical support to the latter's competitors. These proposals were thus rejected as they did not adequately address the relevant competition concerns. Ultimately, the commission, in September 2022, blocked the transaction.

In the rare circumstances that the commission blocks a transaction (nine others in the decade prior to the

prohibition of Illumina/Grail), completion does not happen. However, in August 2021, shortly after the commission had decided to move to a phase II investigation, Illumina surprisingly announced that it had completed its acquisition of Grail. This triggered the imposition of interim measures by the commission in October 2021 aimed at maintaining competition in the oncology space.

### 'Gun jumping'

Apparently, Illumina's strategic rationale for completing the acquisition was to avoid paying a high break-up fee if it failed to acquire Grail, and also to benefit from any potential profits it could obtain, even if it were ultimately forced to divest the target company.

The commission swiftly opened an investigation into the alleged implementation of the transaction in advance of clearance – commonly known as 'gun jumping'. In July 2023, it imposed the maximum possible fine for this infringement of article 7 of the EUMR, that is, 10% of Illumina's most recent annual turnover, or €432 million. The commission placed strong emphasis on the deliberate, strategic, and intentional nature of the breach by Illumina.

The commission also chose to fine Grail, as it had played an active role in the infringement. However, as this was the first time the commission had penalised a target company for 'gun jumping', it imposed the symbolic fine of €1,000.


### Key lesson

On both sides of the Atlantic, this controversy is by no means over. In the US, Illumina has challenged the Federal Trade Commission's April 2023 ruling that the Grail acquisition should be unwound before the US Court of Appeals.

In Europe, the commission,

in October 2023, also ordered Illumina to undo the transaction. A series of cases taken by Illumina continue before the EU courts – most notably an appeal of the General Court's decision upholding the commission's jurisdiction to the Court of Justice, plus a challenge to the commission's prohibition decision before the former court.

More broadly, the key lesson to be drawn from this saga is that an *ex ante* merger-control review under the EUMR may proceed, irrespective of whether the relevant jurisdiction thresholds are met. This mirrors the new power of the Competition and Consumer Protection Commission (CCPC), under section 18A of the *Competition Acts 2002-2022*, to 'call in' certain transactions that do not meet the Irish thresholds.

Together, these developments mean that, irrespective of whether a notification to the commission or the CCPC is required, a thorough substantive competition analysis should be carried out well in advance of agreeing any relevant transaction. 

*Cormac Little SC leads the competition and regulation team at William Fry LLP and is a member of the Law Society's EU and International Affairs Committee.*

## LOOK IT UP

### CASES:

- Case T-227/21 *Illumina Inc and Grail LLC v European Commission*

### LEGISLATION:

- *Competition Acts 2002-2022*
- *EU Merger Regulation (139/2004)*

## PRACTICE NOTE

PRACTICE NOTES ARE INTENDED AS GUIDES ONLY AND ARE NOT A SUBSTITUTE FOR PROFESSIONAL ADVICE.  
NO RESPONSIBILITY IS ACCEPTED FOR ANY ERRORS OR OMISSIONS, HOWSOEVER ARISING

CONVEYANCING COMMITTEE

# UPDATE – INSURANCE COMPANY BONDS IN RELATION TO LOST DOCUMENTS AND DEFECTS ON TITLE

● The Conveyancing Committee has decided to update its practice note published on 1 July 1997, titled ‘Insurance company bonds in relation to lost documents and defects on title’, in light of:

- The introduction of compulsory registration, and
- The increased availability of title insurance.

Effecting registration of title in the Land Registry is central to today’s conveyancing practice and, in addition to the committee’s guidelines published in the original practice note, the note below is intended to a general guide to practitioners.

### **PRAI (Tailte Éireann) practice directions**

*First registration and other examiner cases:* The Tailte Éireann (TE) practice direction on ‘First registration and other examiner cases’ states: “Where the original deeds are not forthcoming a *satisfactory explanation must be obtained for the solicitor for the applicant*, for example, destroyed in a fire, burglary, robbery, etc. Caution is to be exercised in all such cases, particularly in urban cases.”

*Lost deeds:* The TE practice direction on lost deeds dated 1 December 2009 states that *In Re Gardiner* (110 ILRTR P21 [1976]), it was held “that the Registrar of Titles should effect registration in any case where evidence on affidavit is produced which exhibits and identifies a copy of the lost deed and which clearly shows that:

- 1)The original deed was duly executed,
- 2)The parties to the deed subsequently acted on it according to its tenor,
- 3)It has been lost or destroyed (and the basis for any such belief)”.

To assist TE in considering the application, it is desirable to also confirm, where the deponent is in a position to do so, any or all of the following, by the said affidavit:

- 1)That exhaustive searches have been carried at locations where the missing instrument is thought likely to have been, to no avail. Give clear details of such searches
- 2)The deed has not been pledged, held as security, or subject to any known lien or claim.
- 3)Stamp duty was paid on the original deed (if this is known).
- 4)If upon the missing original deed coming

to hand thereafter, confirming same will be furnished to TE.

In considering an application, the TE practice direction on ‘First registration and other examiner cases’ states: “The examiner must be satisfied that:

- 1)Exhaustive searches have been made, that copies of the memorials are produced, together with a full copy of the missing deed (if available). S/he should consider serving notice on the bank’s standing committee. An advertisement in the newspaper will not, generally, be required.
- 2)S/he must ensure that we [TE] have an indemnity from the applicant, indemnifying [TE] and the State against all loss that may be incurred by virtue of registering the title as absolute free from encumbrances without production of the original deed, and, if possible, from the person who lost it, that is, solicitor, together with an undertaking to produce it to [TE] should it ever come into their possession. If an indemnity bond has been obtained and is available, have same assigned to [TE]. If one is being made available, consider having same issued in the name of

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[TE] in the amount of the current market value for whatever period over 12 years that is on offer.

- 3) Where the documents disclose a purchaser's prior tenancy or other interest in the application property, the prior tenancy is to be dealt with, with a view to merging same or having it noted as a burden on the folio. It will usually be indicated by a small consideration in the deed. The title to the tenancy interest is to be investigated and explanations sought. If the replies are unsatisfactory, the examiner is to consider refusing the application or registering with a possessory title.
- 4) If the title deeds are numerous, consider, on completion of the registration, having same tied with string rather than with rubber band and not pierced or defaced by a fastening pin, marking clearly the documents to be returned and those retained."

Practitioners are reminded that there is a right of appeal under section 19(1) of the *Registration of Title Act 1964* to the Circuit Court or the High Court against decisions of TE.

#### Conveyancing Committee guidelines

**Affidavits:** An affidavit should be obtained setting out in detail the circumstances surrounding the unavailability of the relevant document. This affidavit should also state that all reasonable efforts have been made to locate the document.

**Stamping and registration of deed in the Registry of Deeds:** As with all applications before the Land Registry, evidence will be sought

that the lost/mislaid deed was originally stamped and registered in the Registry of Deeds. Unless it is evidenced that stamp duty was duly paid on the original deed, stamp duty must be paid on the copy tendered as if it were an original.

**Title insurance:** When presented with a title-insurance policy for the purposes of addressing some title issues, practitioners should request a copy of the proposal form and associated documents for the title insurance policy to identify the nature and extent of the cover, the exclusions, conditions, and limits of the policy. In addition, practitioners should assess whether the definition of the 'insured' includes all successors in title, any mortgagee, chargee, TE, and the State.

Practitioners will be mindful that most title insurers require that the existence of the policy is not disclosed to any third party, including TE, without the relevant bondholder's prior consent.

**TE's requirements and guidelines in considering title insurance:** The Conveyancing Committee consulted with TE in the preparation of this practice note. TE's stated basic requirements are:


- The title bond presented should be subject to the laws of Ireland,
- The title bond should cover TE and the State from any losses arising as a result of effecting the registration,
- The term of cover should be clearly set out, and should not be contingent on another act occurring, for example, a company going into liquidation or the property no longer being in use by the parties,

- The title bond should not contain exclusion clauses that directly conflict with TE performing its normal duties (for example, serving notices on third parties),
- Applications that include a statutory declaration/affidavit that is drafted in accordance with TE's practice direction, and which contains an indemnity from the applicant/deponent, are likely to be considered more quickly than applications with title bonds, since the review of title bonds involves significantly more time to review and consider, given the variety of bonds, exclusions, caveats, etc, and
- A considerable number of queries are often being raised on these applications by TE, as these title bonds regularly fall short of the requirements, as set out in TE's practice direction.

## GUIDANCE NOTE

— CONVEYANCING COMMITTEE —

# LPT GENERAL CLEARANCE – UPDATE

- The Conveyancing Committee wishes to highlight to the profession that the Revenue Commissioners have recently updated their guidance in relation to local property tax general clearance, which can be found at [revenue.ie/en/property/local-property-tax/selling-buying-or-transferring-a-property/what-is-revenue-clearance.aspx](https://revenue.ie/en/property/local-property-tax/selling-buying-or-transferring-a-property/what-is-revenue-clearance.aspx). 

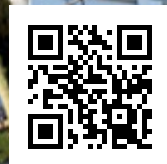


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**WILLS**

**Behe, Wendy (formerly Wendy Jane Wooles) (formerly Wendy Lucas) (deceased)**, late of Maulavanig, Kealkil, Bantry, Co Cork (also formerly of Cahermuckee, Kealkil, Bantry, Co Cork, and formerly of 25 Holmlea Road, Goring-on-Thames, Oxford, England, who died on 1 July 2023. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Dan Leahy, O'Mahony Farrelly O'Callaghan Solicitors, 12 Barrack Street, Bantry, Co Cork; tel: 027 50132, email: [dleahy@omahonyfarrelly.com](mailto:dleahy@omahonyfarrelly.com)

**Brady, Enda Peter (deceased)**, late 26 Cannon Street, Kells, formerly 22 Suffolk Street, Kells, Co Meath, and formerly of Cornaslieve, Virginia, in the county of Cavan. Would any person having knowledge of the whereabouts of any will made by the above-named deceased who died on 2 July 2023 please contact Michael O'Byrne, Solicitors, Kenlis Place, Kells, Co Meath; tel: 046 924 7500, email: [patrick.rogers@obyrnelaw.ie](mailto:patrick.rogers@obyrnelaw.ie)

**Byrne, Peter (deceased)**, late of Ballynaminnan, Killane, Enniscorthy, Co Wexford, who died on 26 May 1991. 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 Browne Legal Solicitors, 6 Old Dublin Road, Carlow, Co Carlow, R93 K5Y2; DX 18010 Carlow; tel: 059 913 9725, 913 9769, email: [info@brownelegal.ie](mailto:info@brownelegal.ie)

**Cahill, Thomas (deceased)**, late of 45 Lindsay Road, Glasnevin, Dublin 9, and formerly of Boherkill, Rathangan, Co Kildare, who died on 25 August 2023. 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 Gib-

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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*.

son & Associates LLP Solicitors; tel: 01 264 5559, email: [sarahd@gibsonandassociates.ie](mailto:sarahd@gibsonandassociates.ie)

**Collins, Patrick (deceased)**, late of 8 Oakpark Drive, Santry, Dublin 9, who died on 19 September 2023. Would any person or firm having knowledge of the whereabouts of a will dated 30 August 1996, or any will or codicil made or purported to have been made by the above-named deceased, or if any firm or person is holding same, please contact PB Cunningham & Co, Solicitors, Suite 212 The Capel Building, Mary's Abbey, Dublin 7; tel 01 873 5032, email: [info@pbcunningham.com](mailto:info@pbcunningham.com)

**Doyle, James (Seamus) Joseph (deceased)**, formerly of Glenmacnass Lower Glendalough, Co Wicklow, who died on 28 July 2022. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 2 July 2023, please contact Ray Fitzpatrick, Augustus Cullen Law, 7 Wentworth Place, Wicklow; tel: 040 467 412, email: [info@aclsolicitors.ie](mailto:info@aclsolicitors.ie)

**Gessler, Rose (deceased)**, late of 49 Wood End, Green Road, Hayes, Middlesex UB3 2SF, United Kingdom, and Killeen, Daingean, Co Offaly, who died on 6 August 2023. Would any

person holding or having the knowledge of a will made by the above-named deceased please contact Brian P Adams & Co LLP, Solicitors, 4 Cormac Street, Tullamore, Co Offaly; tel: 057 932 1866, email: [info@brianpadams.ie](mailto:info@brianpadams.ie)

**Harris, David (otherwise Aaron Harris) (deceased)**, late of 107A Mount Pleasant Lane, London, E5 9EW and latterly of 5 Cill Stuiffin, School Road, Lahinch, Co Clare, who died on 4 September 2023. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Melvyn Hanley Solicitors, 16 Patrick Street, Limerick; tel: 061 400 533, email: [reception@melvynhanley.com](mailto:reception@melvynhanley.com)

**Johnston, Catherine (deceased)**, late of 5 Vincent Avenue, Dundalk, Co Louth, and Apartment 29, The Saltings, Annagassan, Co Louth, who died on 18 September 2023. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased please contact Spelman Callaghan Solicitors, 9 Main Street, Finglas, Dublin 11; tel: 01 836 1100, email: [finglas@scsolicitors.com](mailto:finglas@scsolicitors.com)

**Kelly, Maurice (deceased)**, late of The Kerries, Tralee, Co Kerry, and formerly of Apartment 4, Tralee Townhouses, High Street, Tralee, Co Kerry, who died on 14 August 2023. Would any person having knowledge of the whereabouts of any will executed by the

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12 December	<b>Assisted Decision Making: where are we now?</b>	1 general (by eLearning)	Zoom webinar	€65	
14 December	<b>Building High Impact Habits (part of the High Impact Professional Series)</b>	1 management & professional development skills (by eLearning)	Zoom webinar	Complimentary	
20 February to 05 March 2024	<b>Planning &amp; Environmental Law Masterclass 2024</b>	8 general 2, management & professional development skills - total 10 (by eLearning)	Zoom webinar/ Moodle	€350	
07 March to 21 March 2024	<b>Environmental, Social and Governance – ESG Masterclass</b>	9 general (by group study)	Law Society of Ireland, Moodle & Zoom webinar	€325	
From 20 March to 18 December 2024	<b>Diploma in Legal Practice Management</b>	Full requirement of CPD hours 2024	In-person (mandatory attendance) workshops, hybrid and online on-demand	€2,350	€1,950*
<b>ONLINE, ON-DEMAND</b>					
Available now	<b>The Business of Wellbeing Summit 2023</b>	2.5 management & professional development skills (by eLearning)		Complimentary	
Available now	<b>New Laws Applicable to Technology Use and Creation</b>	2.5 general (by eLearning)		€198	€175
Available now	<b>LegalED Talks CPD Training Hub 2023</b>	See website for details		Complimentary	
Available now	<b>Common Law and Civil Law in the EU: an analysis</b>	2 general (by eLearning)		€198	€175
Available now	<b>GDPR in Action: Data Security and Breaches</b>	1 regulatory matters (by eLearning)		€110	
Available now	<b>Construction Law Masterclass: The Fundamentals with updates for 2023</b>	11 general (by eLearning)		€470	€385
Available now	<b>Legislative Drafting Masterclass 2023</b>	4 management & professional development skills (by eLearning)		€175	€150
Available now	<b>Suite of Social Media and Website Courses</b>	Up to 7.5 general (by eLearning)		€125	€110
Available now	<b>Safety, Health and Welfare at Work Masterclass</b>	See website for details		Complimentary	
Available now	<b>Employment Law Masterclass: New Developments</b>	6 general (by eLearning)		€280	€230
Available now	<b>International Arbitration in Ireland Hub</b>	Up to 7.5 general depending on courses completed		€125	€110
Available now	<b>Legaltech Talks Hub</b>	3 general (by eLearning)		Complimentary	

above-named deceased please contact Thomas J O'Halloran Solicitors, Ashe Street, Tralee, Co Kerry; tel: 066 712 3377, email: [info@tohalloransolicitors.com](mailto:info@tohalloransolicitors.com)

**McGrath, Nora (deceased)**, late of Maudemount, Dundrum, in the county of Tipperary, who died on 30 July 2023. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact John G O'Donnell Solicitors, 6 St Michael Street, Tipperary Town, Co Tipperary; tel: 062 51096, email: [jodonnelllegal@eircom.net](mailto:jodonnelllegal@eircom.net)

**Phelan, Michelle (deceased)**, late of 418 Kennedy Row, St John's Park, Waterford, who died on 24 May 2023. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Thomas Carroll, solicitor, MW Keller & Son Solicitors LLP, 8 Gladstone Street, Waterford; email: [thomascarroll@mwkeller.ie](mailto:thomascarroll@mwkeller.ie)

#### TITLE DEEDS

**In the matter of the *Landlord and Tenant Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Crescent Sites Limited**

Any person having a freehold estate or any intermediate interest in all that and those the old Tesco site, Long Avenue, Hill Street, Dundalk, Co Louth, registered in Folio 3110L Co Louth, being the property the subject of an indenture of lease dated 27 July 1959 between the Urban District Council of the Urban District of Dundalk of the one part and Edward J Connolly of the other part for a term of 150 years from 1 June 1959 at a rent of £10 per annum, therein described as follows: "all that and those that plot of ground having an area of two acres statute measure or thereabouts, bounded on the north by property of the former Great Northern Railway Company, on the south by the public road

known as Long Avenue, on the east by Rampart River, and on the west by property of the former Great Northern Railway Company, and which said premises are situate at Long Avenue in the townland of Townparks in the barony of Lower Dundalk in the county of Louth, as same is more particularly delineated and described on the map or plan drawn hereon and thereon edged red".

Take notice that Crescent Sites Limited, being the person entitled to the lessee's interest in the said lands, intends to apply to the county registrar of the county of Louth to vest in it the fee simple and any intermediate interests in the said premises, and any party asserting that they hold a superior interest in the said premises is called upon to furnish evidence of title to same to the below-named within 21 days from the date of this notice.

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

*Date: 8 December 2023*

*Signed: Derek Williams & Co (solicitors for the applicant), 9 Francis Street, Dundalk, Co Louth*

**In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2018* and in the matter of an application by Cathal Cannon in respect of premises known as Greenacres, Ballybride Road, Rathmichael, Co Dublin**

Take notice any person having an interest in the fee simple or any interest in an intermediate estate in "all that and those that portion of the property known as Greenacres, Ballybride Road, Rathmichael, Co Dublin, held under a lease dated 21 June 1952 and

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Replies to PO Box 01/09/23

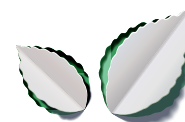
made between (1) Patrick J Hernon and Madeline Hernon and (2) Olive Mabel Cleggett, being a portion of the premises comprised in Folio DN176408L", and take further notice that the said Cathal Cannon intends to submit an application to the county registrar for the county of Dublin for the acquisition of the fee simple and all intermediate interests in the aforementioned property, and any party asserting that they hold a superior interest

in the aforesaid property is called upon to furnish evidence of their title to the aforementioned property to Cosgrove Gaynard Solicitors within 21 days from the date of this notice.

In default of any such title or notice being received, the applicant intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of 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 aforesaid property, are unknown or unascertained.

*Date: 8 December 2023*

*Signed: Cosgrove Gaynard (solicitors for the applicant), 39 Waterloo Road, Dublin 4*



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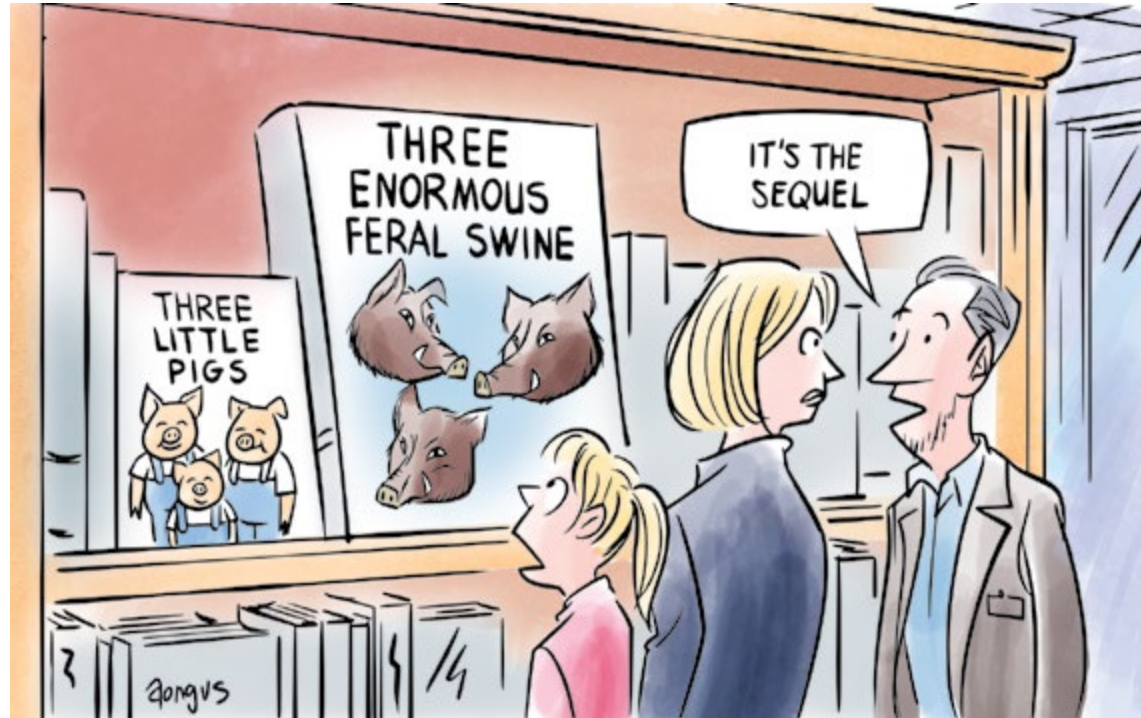
PRO BONOBO

## Invasion of the Hoggy Snatchers

● Canadian ‘super pigs’ are threatening to invade the northern US.

The hogs are crossbreeds that combine the survival skills of wild Eurasian boar with the size and high fertility of domestic swine. [CBSnews.com](#) reports that the wild pigs currently roaming Alberta, Saskatchewan, and Manitoba are posing a real threat that is spreading out of control.

The US Department of Agriculture estimates that the super-pig population has reached 6 million. Feral swine cause around US\$2.5 billion in damage every year and can be aggressive toward humans. The super pigs are smart, adaptable and furry, and can spread diseases such as African swine fever.



## Drug-laced paper-chase

● A Texas defence lawyer has been accused of being a “major supplier” of narcotics by sneaking drug-laced papers to prison inmates, [NBC News](#) reports. Ronald Henry Lewis (77) was charged with bringing a prohibited substance into a correctional facility, police said.

Following the deaths of



*“We have reason to believe this is laced with an illicit substance – plain English.”*

two inmates that might have been related to an overdose, an internal probe found that a lawyer was giving inmates sheets of paper, often disguised as legal documents, laced with ecstasy or synthetic marijuana. In return, inmates would pay US\$250 to US\$500 for the papers.

## Maine man

● A Maine man is suing his ex for revealing that he won a US\$1.35 billion lottery jackpot last January. The lawsuit alleges the woman violated a non-disclosure agreement by sharing “protected subject matter” with the man’s father and stepmother, [USA Today](#) reports. In return for “support and ongoing security resources”, the woman had agreed to keep the win a secret until their daughter turned 18.

On 22 November, a judge granted the man’s request to sue anonymously as ‘John Doe’. The suit seeks an injunction, plus \$100,000 for every violation of the agreement, which aimed “to avoid the irreparable harm of allowing the media or the public in general to discover John Doe’s identity, physical location and assets”. [g](#)

## Can’t you hear, can’t you hear the thunder?

● An Australian man who stowed away beneath a truck instead of paying for a taxi home ended up travelling 350km, barely a metre off the road.

[ABC News](#) reports that the 43-year-old man, believed to be under the influence of alcohol,

had crawled onto metal racks beneath the truck to hitch a lift 40km along the New South Wales coast.

The driver, who was driving from Sydney to Brisbane, had stopped for a nap in the early hours, setting off again

at 2.40am. Just north of the Queensland/New South Wales border – about 350km from his previous stop – he halted at an emergency stopping bay, where the stowaway climbed out from under the trailer.



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Certificate in Commercial Contracts	24 February 2024	€1,725
Certificate in Charity Law, Trusteeship and Governance	1 March 2024	€1,725
Certificate in Conveyancing	5 March 2024	€1,725

### CONTACT DETAILS

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

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