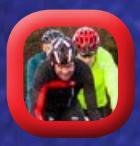

Rider on the storm
New Law Society President Stuart Gilhooly on his plans for the year

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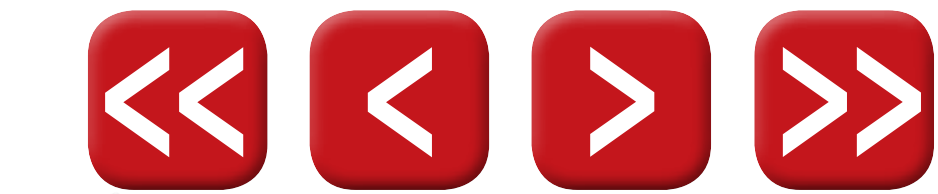

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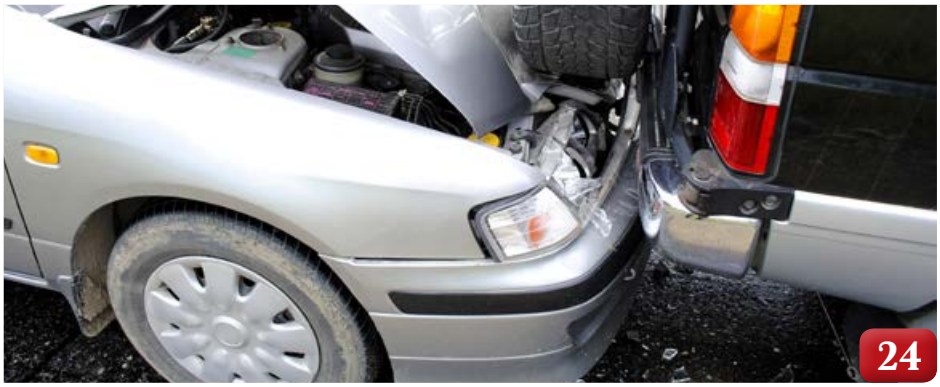

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nationwide

News from around the country

Keith Walsh is principal of Keith Walsh Solicitors, where he works on civil litigation and family law cases

GALWAY

Galway gears up for AGM

The jewel in the crown of the Galway Solicitors' Bar Association calendar – its biannual AGM – will take place at 5pm in Galway Courthouse on 8 December 2016. A mystery guest speaker will provide an update on legal costs.

GSBA president James Seymour wishes all colleagues and friends of the association a merry Christmas and thanks his hard-working committee and colleagues for their efforts this year.

November has been a busy month for the association. On 18 November, solicitors descended on Galway Courthouse for talks on:

- Developments in judicial review (Shane Caulfield BL),
- Recent developments on the law relating to stress, bullying and harassment at work (Shane MacSweeney, solicitor),
- Pre-action protocols for clinical negligence disputes under the *Legal Services Regulation Act 2015* (Patricia McLoughlin, solicitor).

On a more sombre note, colleagues, members of the Courts Service, and judges gathered in Galway Cathedral on 9 November 2016 for the annual remembrance Mass for deceased members of the legal profession.

CORK

'Old head' triumphs at SLAGS outing

The Southern Law Association Golfing Society (SLAGS) Captain's Prize – the final outing of the season – was played at the Old Head of Kinsale in ideal weather conditions on 28 October. Thanks to the scenery and backdrops at most holes, a round of golf at the Old Head on a fine day is a golfing experience that lives long in the memory. A word of thanks to both Ken and Basil Hegarty for making it happen.

The best golf on the day was played by Frank Buttimer, who won the Captain's Prize with an impressive score of 38 points. This deserving winner has played very well all season, having also won the summer outing at Fota Resort last July. The winner's enclosure was also lit up by last year's captain, Mike Shinnick, who came second with a great score of 37 points. Basil Hegarty was third (36 points), following up on his 36 points earlier in the year at the Easter outing in Castlemartyr. Willis Walshe SC was fourth (34 points), while Deirdre Hegarty also made it into the prizes with a score of 30 points.

SLAGS members celebrate the presentation of the Captain's Prize in the Old Head of Kinsale clubhouse: Frank Buttimer (winner), David O'Mahony (then captain), Ken Hegarty, Basil Hegarty and Willis Walshe SC

As the season has now come to an end, David O'Mahony (outgoing captain) extends his thanks to all SLAGS members who played throughout the season: "It was a great honour to captain the society, which has been on the go since the 1980s, and fantastic to see 36 golfers play at Old Head for the Captain's Prize."

Ken Hegarty has now taken the helm for the new season. SLAGS members wish him well in his captain's year.

DUBLIN

A capital selection

PIC: MICHAEL FINN

Meet the DSBA's new executive team: Eamonn Shannon (past president), Greg Ryan (honorary treasurer), Aine Hynes (president), Robert Ryan (vice-president), Elaine Given (honorary secretary) and Tony O'Sullivan (programmes director)

CORK

Meet the new SLA president

Employment lawyer Terence J O'Sullivan was elected president of the Southern Law Association recently by his fellow Leesiders. Joining him on the SLA council will be Joan Byrne (vice-president), Catherine O'Callaghan (honorary secretary), Sean Durcan (treasurer), Robert Baker (PRO) and council members Brendan Cunningham, John Fuller, Peter Groarke, Richard Hammond, Emma Meagher Neville, Kieran Moran, Daniel F Murphy, Gerald O'Flynn, Juli Rea, Barry Kelleher, Dermot Kelly and Jonathan Lynam.

Society sues over alleged 'claims harvesting'

The Law Society has taken regulatory legal action against two companies over alleged 'claims harvesting' on the internet. 'Claims harvesting' occurs when members of the public who are thinking of taking a legal action go searching on the internet for a lawyer to represent them, and are then falsely given the impression that they are getting in touch with a law firm – when they are not.

Last month, the Society brought High Court proceedings against Waterford-based Agenda Computers Ltd and its director David Smyth, alleging a breach of solicitors' regulations by purporting to act as a solicitor.

Now, the Society has brought

proceedings against Anthony Russell and the website of his company, Accident Claims Helpline Ltd, once again over alleged 'claims harvesting' on the internet.

Paul Anthony McDermott SC said that Mr Russell had written to the Law Society, saying that the site had been taken down and that he had no intention of being in breach of the law. The company would also be wound down.

Mr Justice Peter Kelly said that he was prepared to adjourn the matter for three weeks. He said that if Mr Russell and his company had not entered a formal appearance to the case by then, an order could be made in his absence.

The judge also adjourned for three weeks the case against Agenda Computers and David Smyth, who denies the allegations.

Gazette makes IMA shortlist

Once again, the *Gazette* has made the shortlist for the Irish Magazine Awards – the national awards for consumer and business-to-business publications – which take place in Dublin in early December.

For the seventh year running, the *Gazette* has been nominated for 'best business-to-business magazine', as well as 'best cover'. It is vying with other national titles for the 'journalist of the year' (best of luck to Lorcan Roche) and 'editor of the year – business magazines' (the *Gazette's* Mark McDermott and Garrett O'Boyle).

The Parchment of the Dublin Solicitors' Bar Association is also in the running (in the 'business-to-business' category for magazines with less than a 5,000 print-run) in the categories 'business magazine of the year', 'cover of the year', 'editor of the year' (John Geary) and 'journalist of the year' (Stuart Gilhooly).

The best of luck to all concerned.

Sky-high hopes for Ireland post-Brexit

Removing height restrictions and allowing the construction of skyscrapers and high-rise buildings in Dublin and other cities could attract foreign businesses to Ireland post-Brexit.

That's according to Aisling O'Brien, Annie Conlan, Susan Crowley and Shauna Fenton, a fourth year TCD team that entered Matheson's 'Vision 2020 University Challenge'. Undergraduate students were asked to consider a legal reform that could help boost Irish economic growth in the wake of Brexit.

Current laws prevent buildings from exceeding 50m, except in designated parts of Dublin centre. For comparison, the tallest commercial building in Dublin is Google's headquarters, at 67m, while London's Shard is 309m. Commercial and residential space is scarce in the capital, driving up rents, and subsequent urban sprawl pushes businesses and workers further out of the city centre, discouraging growth and investment.

The competition was open to all disciplines in all universities across Ireland. A shortlist of five teams included entries from Trinity, Maynooth, Galway, and UCD.

The winning team members have been awarded a place on Matheson's summer internship programme, in addition to a €1,000 first prize.

'Buy Sell Merge' review is encouraging

The Law Society's free online 'Buy Sell Merge' facility allows solicitors to anonymously advertise to sell, buy, or merge their practice – or share overheads.

A recent review of the service found that, of advertisements posted within the last 15 months, 86% received at least one enquiry, while 25% received three or more enquiries, with those firms being based across eight counties. A total of 59 solicitors registered with Buy Sell Merge during the review period of 1 September 2015 to 17 November 2016.

Only one solicitor was willing to confirm that he had sold his firm in 2016 to a colleague who had contacted him through Buy Sell Merge – though there are sure to be more out there!

You can access Buy Sell Merge on the solicitors' area of the website at www.lawsociety.ie/buysellmerge.

To post an advertisement, you must register with the service. Advertisements remain live for six months, after which users have the option to update their advertisement for a further six months or have it removed. To find out more, contact Sinéad Travers at s.travers@lawsociety.ie or tel 01 881 5772.

Conditions of Sale

The Conveyancing Committee has completed its review and update of the Law Society's standard contract for sale.

The 2017 edition of the Law Society *Conditions of Sale* is in design and production at present and is expected to be available on the website before Christmas, with a recommendation that it be used in transactions beginning on or after 3 January 2017.

An explanatory memorandum outlining the changes will also accompany the new edition. Keep an eye on the precedents section of the website (www.lawsociety.ie), from mid-December onwards.

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FINANCIAL SERVICES – INTERNATIONAL TRADE – GOVERNMENT

President lashes 'self-serving' insurance industry claims

The Law Society's new president, Stuart Gilhooly, has castigated the anti-victim propaganda of the insurance industry. Referring to the latest survey by global insurers AIG that purportedly measured public awareness of falsified insurance claims, the research alleges that 15% of the public knows someone who has falsified an insurance claim.

"How can this be true?" asked Mr Gilhooly. "The insurance industry takes a highly sceptical and even aggressive attitude towards every claim made. The courts system is rigorous in testing for false claims. All evidence of injury is confirmed by doctors, the truth of all facts in the case must be sworn by the victim, and the severest penalties – including imprisonment – can be applied where false claims are found to have been made. Prosecutions for fraudulent claims are extremely rare.

"This further piece of self-serving insurance industry propaganda against accident victims is designed simply to distract from the massive increases in motor insurance premiums, whose true causes lie elsewhere," he said. "As the chief executive of the Injuries Board confirmed yesterday [3 November], there has been no big increase in claims or awards that warrant rises of 70% in the average premium over the last three years."

He added that years of under-reserving and under-charging by the motor insurance industry had driven competitors from the market. "This, together with a collapse in their investment income, are the true causes of this crisis for the premium-paying public," Gilhooly said. "The insurers continue to blame everyone but themselves for this crisis."

PIC: LENSMEN

The Law Society's new president for 2016/17, Stuart Gilhooly *(centre)*, with senior vice-president Michael Quinlan *(left)* and junior vice-president James Cahill

Aged 45, Mr Gilhooly is a partner in the law firm HJ Ward & Co, Harold's Cross, Dublin. He will serve a one-year term as president of the 16,000-strong solicitors' profession until November 2017. Originally from Malahide, Co Dublin, Stuart is the eldest son of James (who qualified as a barrister in the early '80s) and mother Valerie (née Stuart), both deceased.

He has served on the Council of the Law Society of Ireland for the past 17 years, originally becoming a member in 1999. He has chaired many of the Society's most senior committees, including the Finance Committee, the Professional Indemnity Insurance Committee, the Litigation Committee, and the Education Committee, among others.

Stuart will lead the solicitors' profession during a period of unprecedented challenges, including the establishment of the Legal Services Regulatory Authority and the impact of the Brexit referendum on Ireland.

He will be the first Law Society president to have a Twitter handle – follow him @LSIpresident.

COUNCIL ELECTION 2016 RESULTS

The scrutineers' report of the result of the Law Society's annual election to the Council (November 2016) showed the following candidates declared elected. The number of votes received by each candidate appears after their names.

Florence McCarthy (2,174), Patrick Dorgan (1,724), Rosemarie J Loftus (1,629), Imelda Reynolds (1,580), Christopher Callan (1,521), Eamon Harrington (1,488), Michelle Ní Longáin (1,475), Daniel E O'Connor (1,445), Brendan J Twomey (1,435), Maura Derivan (1,371), Liam Quirke (1,364), Barry MacCarthy (1,360), Michael Quinlan (1,332), John Glynn (1,303) and Deirdre O'Sullivan (1,212).

Provincial elections

As there was only one candidate nominated for the provinces of Leinster, there was no election. The candidate nominated was returned unopposed: Martin Crotty.

In the Ulster provincial election, Garry Clarke was declared elected (57).

Society announces Spring Gala and Symposium

The Law Society has launched a new event for 2017 – the 'Spring Gala and Law Society Skillnet Symposium' takes place on Friday 24 March at the Intercontinental Hotel in Dublin.

Law Society President Stuart Gilhooly explains: "In designing the Spring Gala, we have reimagined what a Law Society event can be. We want to bring as many members as possible together for an event that will become a fixture and a high point on the legal calendar."

The day will begin with the Skillnet Symposium, which will feature speakers from around the world addressing our theme of 'Miscarriages of Justice'. From *Making a Murderer* to *Serial*, this is a topic that is gaining a good deal of international focus right now.

Later that evening, the Spring Gala will take over the ballroom of the Intercontinental Hotel for a black-tie dinner. Attendees can choose to invite and entertain clients at the dinner, as well as catch up with colleagues. A high-profile international guest speaker will mark a high point of the evening.

"An important element of this event is that profits from the gala will be donated to the Solicitors' Benevolent Association, which assists members or former members of the solicitors' profession in Ireland and their families who are in need. The association is experiencing a surge in demand this year from current and former colleagues and their families who are struggling to secure the most basic necessities of life, including putting food on the table," says Gilhooly.

For more information, see p1 or visit www.lawsociety.ie/springgala.

AGM offers 360-degree view of Society developments

The 2016 Annual General Meeting of the Law Society featured a number of interesting new elements, alongside the more usual proceedings, *writes Kathy McKenna*.

Those attending the AGM received a limited edition hard copy of the newly published annual report and were treated to a viewing of the video report of outgoing president Simon Murphy and director general Ken Murphy. The video can be seen at www.lawsociety.ie/annualreport.

Stuart Gilhooly (then senior vice-president of the Law Society and chair of the Finance Committee) updated the meeting on 'System 360', the Society's information technology upgrade, which was approved by members at the 2015 AGM.

This comprehensive system upgrade encompasses the Society's regulation, education, and representation functions and is largely on track in terms of budget and delivery.

Two committees made brief presentations on their work during the past year. Paul Keane (chair of the *Legal Services Regulation Act* Task Force) outlined its work to date and future plans. Brian Connolly (chair, In-house and Public Sector Committee) delivered a report on its comprehensive action plan, based on the survey of in-house solicitors that was carried out in 2015. The aim is to improve the Society's understanding of the sector and better tailor its services to those members.

Mary Gaynor (head of library and information services) and Mairead O'Sullivan (deputy librarian) gave a presentation on the recently completed Institutional Archive Project. This wonderful digital archive of historical documents and records is now available online to members. More information can be found on the library catalogue website, from where members can access the archive.

Member insignia

At the 2015 AGM, a motion was passed asking the Society to examine the feasibility of developing a unique logo for members' use on marketing material, letterheads and websites. Keith Walsh (chair of the working group) revealed the chosen solicitor member logo and outlined plans for its rollout, due to begin at the start of 2017.

Richard Hammond presented a brief report from the Regulatory Defence Costs Insurance Working Group, formed following the 2015 AGM. He noted that further research would need to be undertaken to fulfil its remit and expected that the group would be in a position to report on the outcome of its deliberations at the 2017 AGM.

A motion asking the Litigation Committee to continue its detailed examination of the VHI undertaking arrangement and to report its findings to the 2017 AGM (proposed by James Seymour and seconded by David Higgins) was unanimously approved by the meeting.

A wholehearted standing ovation for outgoing president Simon Murphy brought proceedings to a close.

The next AGM of the Law Society will take place on Thursday 2 November 2017.

Society implements exit strategy for Solicitors Mutual Defence Fund

The Solicitors Mutual Defence Fund was founded in 1987 in response to difficult market conditions in the solicitors' professional indemnity insurance market.

It acquired a large membership and attained its central objective of maintaining market premiums at a significantly lower level than might otherwise have been the case, over a long period of years.

By 2007, its members comprised over 50% of the profession, and its own reserves were in excess of €23 million, which represented 400% cover for the claims exposure in that particular year.

In 2008, however, as a direct consequence of the world economic collapse – and more significantly, the collapse in the Irish economy – unprecedented numbers of claims started to be made against solicitors.

Additionally, the fund suffered the loss of virtually all its reserves. Members will recall that, following an EGM of members of the Society and a postal ballot, the Society agreed to a support package for the fund in the sum of €16 million.

At that time, the estimate of the gross liabilities of the fund were €200 million, from approximately 1,200 claims against colleagues. The new board, overseen by and reporting to the Society, embarked on a vigorous programme of claim disposal and cost reduction.

Gilhooly: 'The annual subvention of €200 per member will reduce in 2019 – three years ahead of schedule – and will cease thereafter'

Gross liabilities reduced

At the end of the last financial year, gross liabilities were reduced to a figure of approximately €80 million, from 300 claims. In view of this improvement, the board took the opportunity to implement an exit strategy, and agreement has now been reached with Randall and Quilter Investment Holdings Ltd to take over the fund and its remaining liabilities.

The fund and the Society have received extensive professional advice from, among others, Willis Towers Watson, Marsh, Deloitte and William Fry, and are satisfied both with the terms of the deal, and with the solvency, strength and reputation of Randall and Quilter. The agreement was reviewed and approved by the Finance Committee of the Law Society and has been endorsed by the Council.

Law Society President Stuart Gilhooly says that "the precise terms are commercially sensitive, but the result for the members is that it is highly unlikely that the full commitment of the €16-million support package will be required".

This means that the annual subvention of €200 per member will reduce in 2019 – three years ahead of schedule – and will cease thereafter. Additionally, if certain performance targets are achieved, there will be a further financial return to the Society.

The president extended his gratitude to the board of the fund, and in particular its executive chairman Patrick Dorgan, "who have worked energetically, tirelessly and professionally over the last four years to run down the operations of the fund and, ultimately, to secure a deal that is very beneficial to the Law Society and its members".

The support of the members of the profession was also noted: "Without your support, the wind-down of the fund would not have been possible," said Mr Gilhooly. "Your assistance has been an incredible example of the collegiality that makes the solicitors' profession what it is."

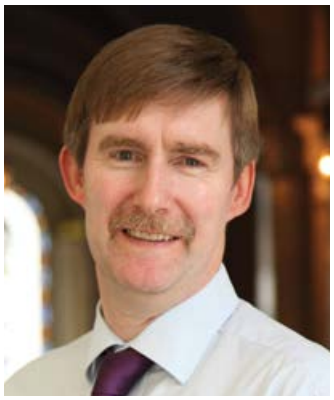
Tsunami of new solicitors added to the Roll in 2016

A massive 1,347 new names will be added to the Roll of Solicitors in Ireland by the end of 2016, according to projections made by the Law Society's Admissions Office (see table).

The previous largest total number of new solicitors coming on the Roll in a single year was 777 in the calendar year 2008 – the year that the great recession slammed into the economy in Ireland and throughout the world.

The projected figure of 1,347 new solicitors for 2016 represents a staggering 275% increase compared with 2015. That was an anomalously low year but, compared with the more normal year of 2014, the projected uplift in 2016 is still a huge 141%.

The tsunami of new solicitors has been caused by the Brexit-driven transfer decisions of some 810 England and Wales-qualified solicitors to take out a second jurisdictional qualification, in Ireland. This they have been perfectly entitled to do since the mutual-recognition regime between the two jurisdictions was first put in place in 1991.



Ken Murphy: 'Staggering 275% increase compared with 2015'

Freshfields' Edward Braham: 'No plans to open an office in Ireland'

Change of direction

Many hundreds of Irish qualified solicitors have transferred to the Roll in England and Wales over the 25-year period since, and have pursued very successful careers in the giant legal jurisdiction next door. It was a particularly appreciated outlet for Irish solicitors when their prospects in Ireland were bleak during the depths of the recent recession. Now the phenomenon of Brexit has changed the direction of transfers across the Irish Sea, from east to west.

How many, if any, of those who have taken out a qualification in Ireland – in addition to their England and Wales qualification, which they use to practise either in that jurisdiction or elsewhere – will ever establish here remains to be seen. The single word that dominates all assessments of the potential impact of Brexit is 'uncertainty'. So far, the Law Society of Ireland has no knowledge that any of the firms listed on this page intends to open an office in this jurisdiction.

There has been no real boost to Law Society of Ireland finances from this. The €300 per solicitor fee charged for admission to the Roll simply covers the administration cost. Very few of the new solicitors to date have taken out practising certificates here.

Perhaps this may change if a significant number of businesses, in the financial services sector for example, transfer some or all of their operations from Britain to Ireland as a result of Brexit. But at this stage, that can be no more than speculation.

The two firms that have been the source of by far the highest number of new solicitors on the Roll in this jurisdiction this year are Eversheds LLP with 86 and Freshfields Bruckhaus Deringer LLP (117). Eversheds are the only firm (see panel) that has an office in Ireland. Alan Murphy is Eversheds' managing partner here. The firm O'Donnell Sweeney became O'Donnell Sweeney Eversheds in 2007, and simply Eversheds in 2011.

Freshfields Bruckhaus Deringer LLP is one of the ten largest law firms in the world – and one of the five elite City-of-London-based firms known as 'the Magic Circle'.

In mid-July 2016, while on other Law Society business in London, the then Law Society president Simon Murphy and director general Ken Murphy called in, by appointment, to meet with the most senior leaders of Freshfields in their office in Fleet Street.

Ken Murphy says: "We were very cordially greeted by what I would call 'the top brass' of Freshfields, including Senior Partner Edward Braham, together with the global managing partner and the firm's general counsel. They expressed appreciation for the helpful and efficient way in which the relevant staff of the Law Society of Ireland had facilitated their colleagues with their transfers.

"They went on to inform us that the Freshfields' solicitors who were taking out an additional Roll qualification in Ireland were primarily their anti-trust, competition and trade law practitioners based in their London and Brussels offices. They were doing it to allay any conceivable concerns in the future about the status of their solicitors in dealing with EU institutions, including in relation to legal privilege in EU investigations. They told us, unambiguously, that Freshfields had no plans to open an office in Ireland."

ADMISSIONS (COMPARING 2014, 2015, AND PROJECTED FOR END OF 2016)

Category	2014	2015	2016 (Projected)
Irish trainees	475	233	462
Irish barristers	15	15	34
English solicitors	36	70	810
Northern Irish solicitors	15	30	25
Non-EU lawyers	11	7	15
EU lawyers	5	4	4
Totals	557	359	1,347

FIRMS WITH FOUR OR MORE TRANSFERRING ENGLAND AND WALES SOLICITORS

Freshfields Bruckhaus Deringer LLP	117
Eversheds LLP	86
Slaughter & May	40
Hogan Lovells LLP	34
Bristows LLP	27
Herbert Smith Freehills LLP	25
Allen & Overy LLP	24
Linklaters LLP	20
Clifford Chance LLP	12
Shearman & Sterling LLP	11
Bird & Bird LLP	10
Covington & Burling LLP	10
Fieldfishers LLP	7
Ashurst LLP	7
Arnold & Porter LLP	6
Gibson Dunne & Crutcher LLP	6
Taylor Wessing LLP	6
Osborne Clarke LLP	6
Baker & McKenzie LLP (member of Baker & McKenzie International, a Swiss 'Verein')	5
Simmons & Simmons LLP	5
King & Wood Mallesons LLP	5
Redd LLP	5
Shepherd & Wedderburn LLP	5
Norton Rose Fulbright LLP	5
D Young & Co LLP	4
Powell Gilbert LLP	4
Olswang LLP	4
Cooley LLP	4
Norton Rose Fulbright LLP	5
CMS Cameron McKenna LLP	4
HGF LLP	4

FOCUS ON MEMBER SERVICES

Finance Scheme 2016/17

This is an expensive time of the year for any legal firm. For those who wish to spread the costs of their professional indemnity insurance premiums and practising certificate fees over the year, the Law Society has again partnered with Bank of Ireland to offer firms short-term finance at a reduced preferential rate.

This offer is available from Bank of Ireland for terms up to 11 months for firms who have a proven track record and meet normal lending criteria. The scheme has a highly competitive variable rate.

Bank of Ireland also has a range of long-term finance options to meet your needs. Contact Bank of Ireland's local business team to discuss your financial needs and to hear about the solutions it offers.

You can apply online for a loan at businessbanking.bankofireland.com (if interested, select 'products', followed by 'business loan' and then 'apply online'). You may also contact the dedicated phone line on 1890 365 222 or email businesslending@boi.com.

Yvonne Burke of the Law Society will be happy to assist with queries about this scheme. She can be contacted at 01 672 4901 or email y.burke@lawsociety.ie.

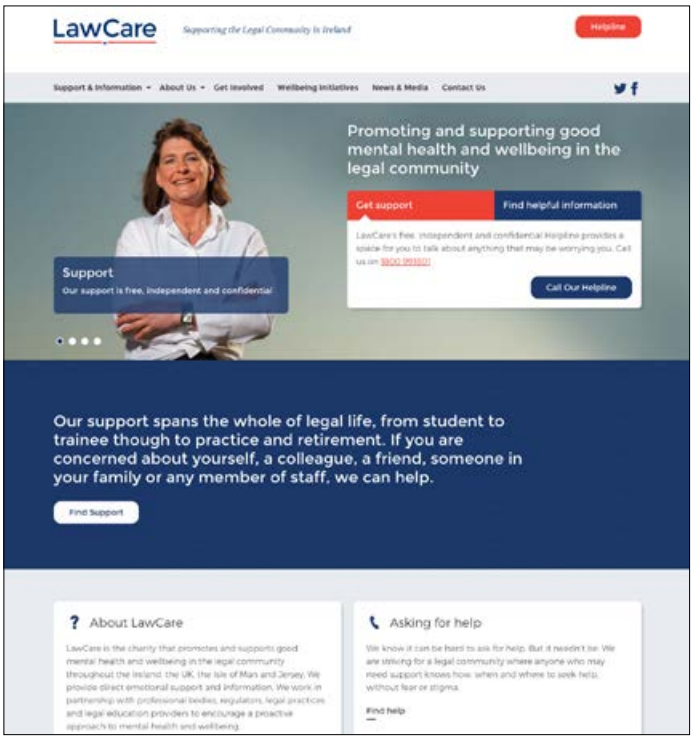
Warning: the cost of your repayments may increase. Bank of Ireland is regulated by the Central Bank of Ireland.

REPAYMENTS VARY, FOR EXAMPLE:

Loan amount €	Interest rate %	Term in months	Monthly repayments €	Total cost of credit €
5,000	6.76	11	469.97	169.67
10,000	6.76	11	939.93	339.23
15,000	6.76	11	1,409.90	508.90
20,000	6.76	11	1,879.86	678.46

Variable rates quoted are correct as of 12 October 2016 and are subject to change.

LawCare revamps website



LawCare, the charity that supports and promotes good mental health and well-being in the legal community, has relaunched its website – www.lawcare.ie. It sports the new LawCare logo, as well as new livery and a range of novel features and information.

It lists the support available to the legal community through the helpline, and visitors can now download a number of updated factsheets about the issues that most affect people working in the law – from anxiety to stress, through to what to do if you're worried about someone else.

A case-study section has been added, featuring real-life stories about people in the legal community who have struggled with certain issues, such as stress, and come through it.

"The case studies really resonate with people," explains Elizabeth Rimmer (chief executive of LawCare). "People can relate to stories about other people's issues and how they dealt with them. It's a very positive step towards breaking down the stigma associated with talking about mental health and wellbeing issues."

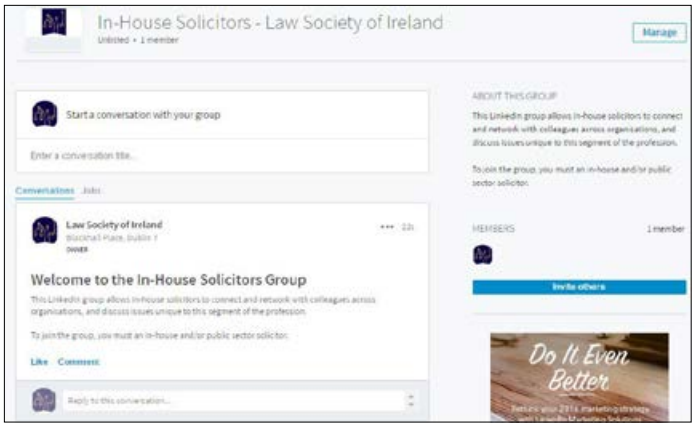
The website boasts a new blog, where guest bloggers are invited to contribute. The first comes from LawCare trustee Valerie Peart, who writes about her experience of serving as a trustee.

The 'Well-being Initiatives' page showcases organisations that are taking positive action to raise awareness and develop support for the mental health and wellbeing of people working in the profession.

"We are delighted with our new, contemporary look," concludes Elizabeth. "The site is much easier to navigate and provides a wealth of information and resources for the legal community."

LawCare's free, confidential and independent helpline provides a space for people to talk about anything that may be worrying them. Call 1800 991 801. It's open 365 days a year, Monday to Friday (from 9am to 7.30pm), and on weekends/British bank holidays (from 10am to 4pm). For more information, visit www.lawcare.ie.

LinkedIn members-only group for in-house solicitors



A LinkedIn members-only group for in-house and public sector solicitors has been added to the Law Society's social media channels.

In-house solicitors often work alone or in small groups. This LinkedIn group will assist in-house practitioners to connect with colleagues across organisations.

The initiative is the brainchild of the In-house and Public Sector Committee and forms part of a wider Law Society action plan to support in-house solicitors in the areas of skills and value, education and training, professional issues, and trainees.

Members can learn more about the committee's work on the Law Society's website at www.lawsociety.ie/committees.

To find out how to access and become a member of the new group, visit www.linkedin.com/inhouselinkedin. To join the group, you must be registered on LinkedIn, be an in-house and/or public sector solicitor, and your group membership must be approved by the Law Society.

Queries can be directed to Derek Owens (social media coordinator) at d.owens@lawsociety.ie or tel 01 672 4800.

FOCUS ON THE IN-HOUSE AND PUBLIC SECTOR

Shining a spotlight on the in-house and public sector

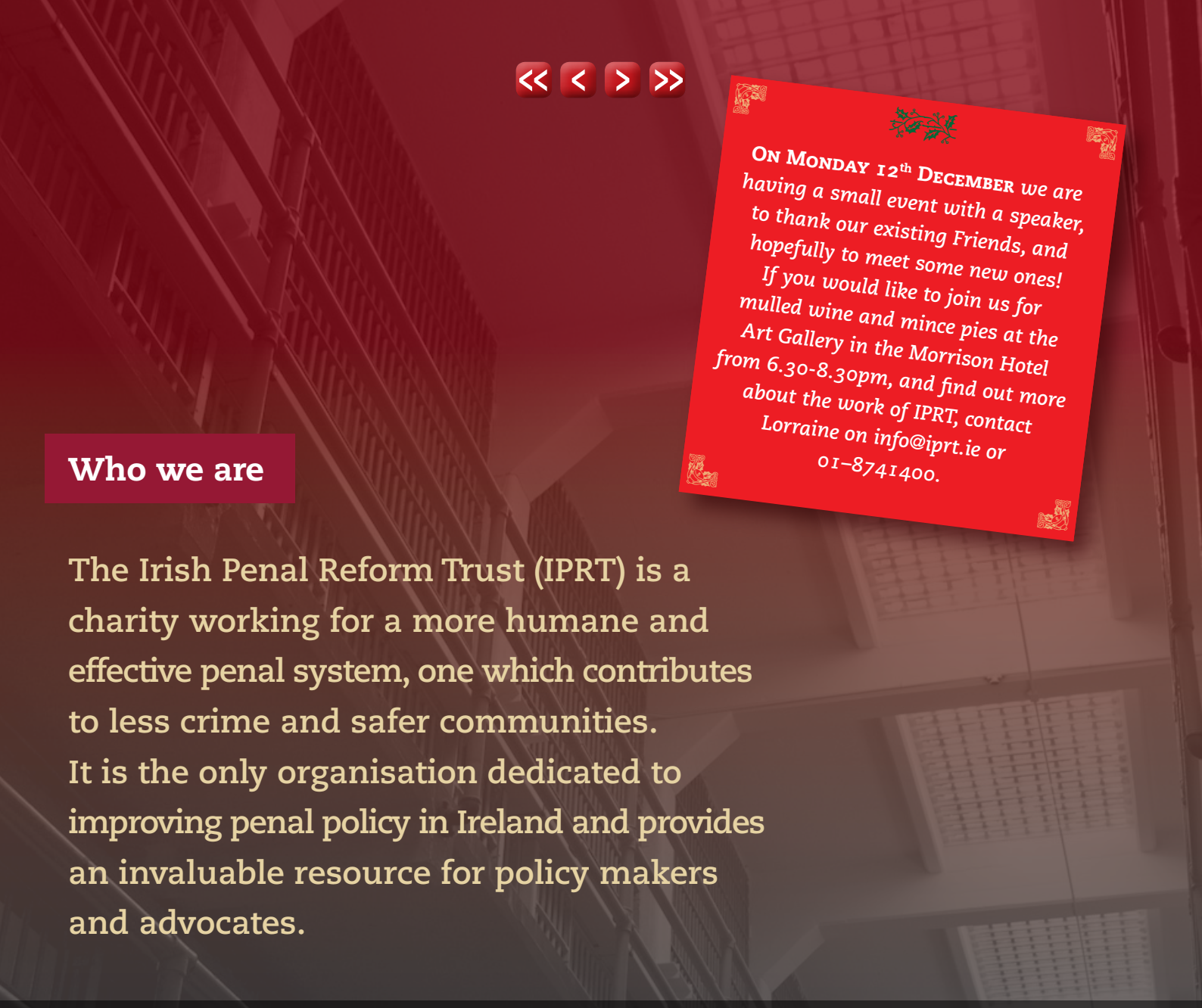
The *Gazette* is introducing a new column dedicated to the in-house sector. Nearly 20% of qualified solicitors in Ireland now work in the corporate or public in-house sector – and the Law Society is committed to supporting this important part of our profession.

A Law Society survey last February identified some areas where focused support can be provided to those working in-house. These include communications and content specifically targeted at the sector.

The new column will focus on areas of specific interest to in-house practice, such as updates on case law and legislation that may have an impact on the sector, practice guidance issued by the Society's In-house and Public Sector Committee, and updates on the committee's action plan in response to the needs highlighted by in-house practitioners in the survey.

The column will also address other areas of interest, such as the potential impact of Brexit for in-house lawyers, and will flag and cover upcoming events and seminars dedicated to the sector, including the 2016 In-house and Public Sector Conference (see page 28).

The *Gazette* is keen to include more articles relating to in-house practice. With this in mind, we would invite in-house solicitors interested in writing relevant articles to get in touch with the Society's In-house and Public Sector Committee through its secretary, Louise Campbell, by email: l.campbell@lawsociety.ie.



On Monday 12th December we are having a small event with a speaker, to thank our existing Friends, and hopefully to meet some new ones! If you would like to join us for mulled wine and mince pies at the Art Gallery in the Morrison Hotel from 6.30-8.30pm, and find out more about the work of IPRT, contact Lorraine on info@iprt.ie or 01–8741400.

Who we are

The Irish Penal Reform Trust (IPRT) is a charity working for a more humane and effective penal system, one which contributes to less crime and safer communities.
It is the only organisation dedicated to improving penal policy in Ireland and provides an invaluable resource for policy makers and advocates.

What We Do

- Campaign for a humane prison system in Ireland
- Promote effective responses to crime, with rehabilitation at the core
- Build capacity in prison litigation
- Run CPD events on Prison Law
- Work constructively with others for progressive reform of the Irish penal system

What You Can Do

- Increasing our membership will demonstrate the support that exists for penal reform in Ireland.
- Become a Friend of IPRT (From €250 per annum over 3 or more years)
- Become a Member of IPRT (Individual €40, Organisational €80)
- Make a Donation
- Leave a Legacy

Get in Touch

To join now go to **www.iprt.ie/friends**

Visit: www.iprt.ie
Call: +353 1 874 1400
Email: info@iprt.ie
Write: Irish Penal Reform Trust
MACRO,
1 Green Street,
Dublin 7.

"When I talked about overcrowding, lack of medical services and other issues affecting prisons, I always found it very useful to have IPRT highlighting the shortcomings and demanding better conditions... For me, it was an invaluable support."
John Lonergan, former Governor Mountjoy Prison

IPRT
Irish Penal Reform Trust

CHY number 11091

Survey reveals confidence dip in legal sector

The Smith & Williamson annual *Survey of Irish Law Firms 2016/17* has discovered a significant drop in confidence in the legal sector in 2016 – and in the outlook for 2017. Only half of respondents anticipate an improved outlook for their firm and sector – down from 74% last year. The decrease is more pronounced in the top 20 firms, where confidence for an improved outlook for the sector for 2017 is down 100% to 38%.

The key issues facing the legal sector over the next 12 months will be maintaining profitability, pressure on fees, cash-flow pressures, and the recruitment and retention of staff (especially in the top 20 firms).

That said, 64% of firms have indicated that revenues are up in the past year – rising to 84% of the top 20 firms. Profits increased in 57% of firms in 2016 (and in 62% of the top 20 firms).

Brexit jitters

Most firms fear the longer-term impact of Brexit, while all of the top 20 firms believe that Brexit will have a significant impact on the legal profession over the next five years.

The fifth annual survey was launched by Tánaiste Frances Fitzgerald on 17 November in the Merrion Hotel, Dublin. Paul Wyse (managing director, Smith & Williamson, Ireland) presented the survey findings, while Giles Murphy (Smith & Williamson, England) spoke about the perceived effects of Brexit on the legal sector in Britain.

Paul Wyse commented: "There is a 'glass half-full/half-empty' scenario in responses about Brexit in the shorter term, depending on whether firms see Brexit as a threat or opportunity. A total of 44% see it as a negative thing for the sector – translating to 62% of top 20 – while 64% see it as less of a threat to their firm.

"Most respondents anticipate that Brexit will result in more British law firms opening offices in Dublin, and also mergers and acquisitions by British law firms in Ireland."

Cybersecurity

There has been a notable increase in the number of cyberattacks on law firms during the past 12 month, with 29% of all firms surveyed admitting they had been subjected to a cyberattack in the past 12 months. The security breach was caused by malware in 52% of cases, while ransomware was responsible in 35% of cases.

The use of technology to manage firms and communicate with clients is regarded as a crucial strategic development for firms over the next five years. Most firms see investment in technology as a key driver in achieving efficiency and better client service. Overall spending on IT is up 5.6% in 2016.

"This year, we have seen a dramatic increase in cyberattacks," says Paul Wyse, "and while law firms see investment in technology as a crucial driver for their businesses, it is important they consider cybersecurity as a significant part of that investment."

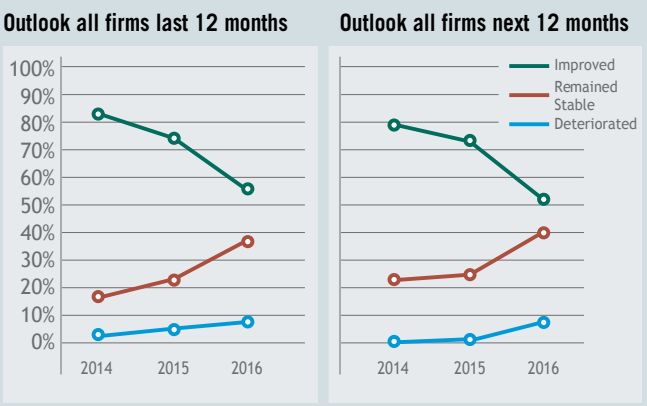
Staff challenges

Half of all firms have increased their staff numbers in 2016 (92% of the top 20 firms) and expect to increase staff numbers in 2017.

On the thorny issue of pay, a third of firms implemented a pay increase of more than 3% last year, while almost half of the top 20 law firms gave pay increases greater than 5% during the same period. One in three firms surveyed made no change to their pay levels, while 11% of respondents said that they had decreased pay.

The survey was conducted by Amárach Research and is available at www.smith.williamson.ie/news/smith-williamson-annual-survey-irish-law-firms-201617.

LEGAL SECTOR OUTLOOK, ALL FIRMS



Green light for appeals scheme

Chief Justice Susan Denham, together with the Law Society and the Bar of Ireland, has agreed to establish the Supreme Court Legal Assistance/Legal Representation Scheme on a pilot basis. The scheme will assist unrepresented people who are parties to appeals from either the Court of Appeal or the High Court.

The scheme will depend on a panel of volunteer solicitors and barristers willing to act at the request of the Supreme Court. As a first step, expressions of interest will be sought for inclusion on the panel from members of the Law Society and the Bar. It will only operate when the judgment to be appealed involves either a matter of general public importance and/or is in the interest of justice.

Barristers will, at all times, be instructed by solicitors in respect of work done under the scheme.

Legal advice and representation will be provided *pro bono* to users of the scheme by the panel of volunteer barristers and solicitors. These volunteers, however, will be entitled to apply for costs at the conclusion of the appeal. The Supreme Court will determine an application for costs on the basis of the existing legal principles applicable to costs.

The Registrar of the Supreme Court, on behalf of the Supreme Court, will select the solicitors and barristers to act for unrepresented people in applicable cases, depending on their availability to act. At all times, the relevant party to the appeal may decide whether he or she wishes to be represented by the lawyers selected under the scheme.

In order to put your name forward to join the panel of solicitors for the scheme, email s.travers@lawsociety.ie with your name and solicitor number.

Dinner for leader of Fianna Fáil at Blackhall Place

PIC: LENSMEN

Simon Murphy's last dinner as president was as host to one of his constituency TDs, who also happens to be the Leader of the Opposition. Micheál Martin TD is known to many, in his and Simon's native city of Cork, as 'The Real Taoiseach'. He was accompanied by a number of his colleagues from the Fianna Fáil Front Bench. *(Front, l to r)*: Anne Rabbitte TD, Micheál Martin TD, Simon Murphy (then president), Lisa Chambers TD and Fiona O'Loughlin TD. *(Back, l to r)*: Michael Quinlan, Michele O'Boyle, Ken Murphy, Jim O'Callaghan TD, Mary Keane, Stuart Gilhooly, Cormac Ó Culain, Patrick Dorgan and Timmy Dooley TD

Kildare Solicitors' Bar Association annual conference

Barberstown Castle was the stately venue for the Kildare Solicitors' Bar Association (KSBA) annual conference on 30 September. The one-day conference was a spectacular success – thanks in part to the seven CPD points on offer – with almost 100 solicitors from Kildare and surrounding counties attending.

Newly elected KSBA president David Powderly opened proceedings and warmly welcomed President of the Circuit Court Raymond Groarke, who chaired the event.

Mark O'Riordan BL spoke on how succession law is affecting modern families. He was followed by Olga Daly (pension actuary), who updated members on the intricacies of pension adjustment orders.

Family law barrister Catherine White gave a timely talk on case progression, addressing the difficulties currently being encountered in Dublin and the unavailability of early dates. She set out clearly how to comply with the case progression procedure and advised practitioners to get vouching documentation as early as possible.

PIC: TONY G MURRAY PHOTOGRAPHY, NAAS

At the Kildare Solicitors' Bar Association annual conference in Barberstown Castle, Straffan, Co Kildare, on 30 September were *(front, l to r)*: Sarah Pierce, Elaine Farrell, Geraldine Carthy, David Powderly, Geraldine Fitzpatrick BL and Catherine Webberley; *(second row, l to r)*: Charlie Coonan, Sinead Dooley, Dr Fergus Heffernan, Vincent Nolan BL, Eva O'Brien and Philip Treacy; *(third row, l to r)*: Lesley Ryan, Marianne Thyne, Elaine Cox, Andrew Cody, Avril Delaney and Catherine White BL; *(back, l to r)*: Martin Callanan, Patrick Dawson, Eoin O'Connor and Liam Keane

Eilis Quinlan gave practical advice on the *Companies Act 2014* and what practitioners needed to know – most of the legislation has been in operation for the past year.

The affable Vincent Nolan BL entertained and scared his audience in equal measure as he explained the new case management procedures and rules of trial in the High Court.

Well-known family law and criminal barrister Geraldine Fitzpatrick (midland and eastern circuit) presented an entertaining and informative talk on discovery.

The highlight for many was the presentation by Dr Fergus Heffernan (clinical psychologist) whose talk on mental well-being and the importance of communication proved an eye-opener.

A word of thanks goes to conference organiser, KSBA secretary and CPD officer Geraldine Carthy.

Waterford Law Society shines at the Castle

ALL PICS: GARRETT FITZGERALD PHOTOGRAPHY

At the Waterford Law Society annual dinner in Waterford Castle on 4 November 2016 were *(front, l to r)*: Joan Delaney, Sarah Quinlan, Salette Murphy, Judge Alice Doyle, Frances Finn and Yvonne Chapman. *(Standing)*: Valerie Staunton, Judge Kevin Staunton, Supt Chris Delaney, Michael Quinlan (vice-president, Law Society), Don Murphy (president, Southern Law Association), Jody Gilhooly, Judge Terence Finn, Ken Murphy (director general), Nicholas Walsh (president, Waterford Law Society) and Gabrielle Walsh

Danny Morrissey, Edel Morrissey, Leona McDonald and Ian O'Hara at the Waterford Law Society annual dinner

Judge Kevin Staunton, Valerie Staunton, Maura Purcell and Jack Purcell (manager, Court Office, Waterford)

Don Murphy, Salette Murphy, Frances Finn and Judge Terence Finn

Anna Purcell, Sonya Fox, Suzanne Brennan and Paddy Newell

Clarion call for Southern Law Association

ALL PICS: TONY O'CONNELL

(Front, l to r): Joan Byrne (incoming vice-president), Ken Murphy, Stuart Gilhooly (president, Law Society), Daniel Murphy (outgoing president, SLA), Terry O'Sullivan, Emma Meagher Neville, Sean Durcan and Fiona Twomey; *(back, l to r)*: Dermot Kelly, Gerald O'Flynn, Kieran Moran, Peter Groarke, Robert Baker, Juli Rea, Catherine O'Callaghan, John Fuller, Jonathan Lynam, Barry Kelleher, Brendan Cunningham and Simon Murphy

New President of the Law Society Stuart Gilhooly had his first official engagement at the AGM of the Southern Law Association (SLA) on 15 November. The Clarion Hotel-based event drew a large attendance.

The president spoke about the range of issues he expects to deal with during his term in office, while director general Ken Murphy updated the membership on developments relating to the Legal Services Regulatory Authority and limited liability partnerships, among other matters. Outgoing president Simon Murphy reported on what had been a "very enjoyable year as president".

Various members of the SLA council provided reports on the year, including outgoing president Daniel Murphy, treasurer Sean Durcan, CPD coordinator Juli Rea, and litigation chairperson Fiona Twomey. The new president and vice-president, Terry O'Sullivan and Joan Byrne, were warmly congratulated on their new roles.

Bill Holohan, Terry O'Sullivan (incoming president), Don Murphy (outgoing president) and Dermot Kelly

Aislinn O'Shea, Karen Watret, Emma Meagher Neville and Juli Rea

Eamonn Murray, Mary O'Callaghan, Justin Condon and Graeme Copplestone

France bestows one of its highest honours on Mary Casey

On 21 September 2016, one of France's highest honours was bestowed on Mary Casey, solicitor and notary public, at a ceremony conducted in the French Embassy.

Mary was awarded the *Chevalier de L'Ordre National du Mérite* by the President of France, who was represented by French Ambassador to Ireland Jean Pierre Thebaud.

The award is the second-highest French award after the *Legion d'Honneur*. The criteria for being chosen for the *Ordre du Mérite* include, among other things, distinguished military and civil achievements – in other words, acts of devotion, merit, bravery, generosity or a measurable commitment to serving others or France.

Mary is the first Irish lawyer and notary public to be so honoured.

Mary Casey is congratulated on receiving a *Chevalier de L'Ordre National du Mérite* medal by French Ambassador to Ireland Jean Pierre Thebaud

She is a founding member of the Franco Irish Lawyers' Association (1998) and acted as its president for the first ten years. She currently serves on the Law Society's EU and International Affairs Committee and represents the Law Society at Union International Notariat Latin conferences held throughout Europe.

As a solicitor with Arthur O'Hagan and subsequently Mason Hayes & Curran, she was part of the 'French desk' department, dealing with Francophile clients over the years.

While the award does not permit Mary to graze livestock along the banks of the Seine, she may now use the title after her name in French. Apart from wearing the medal at the conferring ceremony, she is limited to wearing the full medal on 14 July only (Bastille Day). Otherwise, there is a small blue-ribbon pin, which she can wear more regularly.

UCC wins bragging rights at Bréagchúirt Uí Dhálaigh

The Irish language moot court, Bréagchúirt Uí Dhálaigh, took place in the Four Courts on 11 November, with first prize going to a team from University College, Cork.

This long-standing event is organised annually by Gael Linn in memory of the late Cearbhall Ó Dálaigh (former President and Chief Justice of Ireland). The competition gives third-level law students an opportunity to display their advocacy skills in an authentic courtroom setting before practising judges of the Supreme and High Courts. Participants either defend or prosecute in an appeal against a court judgment.

This year's teams represented UCC, the Law Society, King's Inns, Trinity College, Dublin, and NUIG.

The final, held in the Four Courts, was presided over by Mr Justice Colm Mac Eochaidh (High Court) and Judge Sinéad Ní Chúlacháin (Circuit Court). They were assisted in their adjudication by Cormac Ó Dúlacháin SC, who has had a long association with the competition.

The aspiring young barristers and solicitors were praised for their skills of persuasion, with the main award going in the end to the UCC team, which had argued for the respondent.

Winners Therese Ní Choileáin, Ruth Ní hÉanáin and Niamh Ní Choileáin received a cheque for €600, along with the Gael Linn Perpetual Trophy. The runners-up, Feilim Mac Róibín and Ben Ó hÓgáin (TCD), received a cheque for €300.

Pictured are Sionían Ní Thiomnáin, Sinéad Nic Cárthaigh and Éabhall Ní Cheallacháin, who represented the Law Society of Ireland at the recent Irish language moot court, Bréagchúirt Uí Dhálaigh 2016

Gael Linn expressed their thanks to solicitor Pól Ó Murchú and barrister Daithí Mac Cárthaigh for their ongoing support of the competition, and to barrister Kate Ní Chonfhaola, who helped organise the event.

Congratulating the participants, Gael Linn CEO Antoine Ó Coileáin said: "As a result of the official status of Irish, both at home and in the EU, career opportunities for lawyers with high competence in Irish have never been better."

Winners of Bréagchúirt Uí Dhálaigh 2016, the UCC team *(centre, l to r)* Niamh Ní Choileáin, Therese Ní Choileáin and Ruth Ní hÉanáin, pictured with Circuit Court Judge Sineád Ní Chúlacháin *(left)*, Gael Linn CEO Antoine Ó Coileáin, and High Court judge Colm Mac Eochaidh *(right)*

AN BORD UM CHÚNAMH DLÍTHIÚIL

LEGAL AID BOARD

Solicitors Panel for International Protection

WHO WE ARE

We are the Legal Aid Board, an independent, publicly funded organisation providing civil legal aid and advice, family mediation services, and administering three ad-hoc legal aid schemes connected with criminal matters. We provide civil legal aid and advice through 34 law centres nationwide. The law centre service is complimented by solicitors in private practice who have agreed to provide services on our behalf.

ABOUT THE PANEL

Arising from the enactment of the *International Protection Act 2015* and the introduction of the "single procedure," we have now decided to establish and maintain a panel of solicitors in private practice who are willing to provide services to persons who have been granted legal services for the purpose of:

- advice and / or representation in relation to an application under the International Protection Act 2015 for asylum, subsidiary protection and leave to remain; and
- for all matters previously covered by the Private Practitioner Asylum and related issues Panel.

REQUIREMENTS

You will be enrolled as a solicitor in the State and meet the other requirements in our terms and conditions for membership of the panel. We will provide a training course on international protection law and practice in December 2016/January 2017. **You will be required to have the necessary experience and training in the area of international protection.**

If you are entered onto the panel you will be expected to comply with our Best Practice Guidelines when carrying out work on our behalf.

HOW TO APPLY

To apply submit a completed application in the format provided by e-mail (typed applications only) to solicitorspanels@legalaidboard.ie. Copies of the application form and the terms and conditions of the Panel are available on our website (**www. legalaidboard.ie**). The terms and conditions include the fee structure that is being put in place.

If you wish to attend the training taking place in December 2016/ January 2017 you should contact us as soon as possible.

letters

Is the current CPD system reaching a tipping point?

From: Michael Monahan, Michael Monahan Solicitors, 47 John Street, Sligo

I have raised the issue of the creeping increase in CPD hours over the past few years with several Council members on a regular basis. I understand that the Education Committee has the final say in relation to what this involves and what level of CPD is required. I understand the present intention is that the level of 20 CPD points will be the top limit up to and including 2017.

And then what?

I am a practitioner of over 30 years' standing and have been an ongoing supporter of CPD. It works in relation to the dissemination of up-to-date information by practitioners, and in the networking opportunities provided by the cluster events around the country. I am, however, concerned that – for no apparent reason – the points requirement is increasing on an annual basis. It seems to me very much a 'tick-the-box' exercise.

People are attending events where they simply sign on and, at some cluster events, I have seen people signing on, taking the booklet, and simply walking out the door. Even those attending appear more focused on their mobile phones than in listening to the particular presentations.

I am sure everybody has experienced attending some course solely for the sake of garnering CPD points. It is also the situation where people can find that they have attended a number of other events – including committee meetings, cluster events, and bar association sessions – all of which can lead to an excess of CPD points.

The committee has rejected carrying points over to the following year.

Is the committee aware of changes happening in Britain? It seems that, since November 2016, they have moved away from the standard points requirement to what they call a 'continuing competence regime'. This does away with the need to obtain a fixed number of CPD hours and puts the onus on individual solicitors to assess their own needs and plan their individual training. As summarised by the Solicitors Regulation Authority, the system requires you to:

- Reflect on your practice to identify your learning and development needs,
- Plan how you will address your learning and development needs,
- Think about how you can address your learning and development needs,
- Record and evaluate your learning and development activity.

Could this be described as 'CPD revised'?

The difficulty is that our business is becoming more and more specialised, so people may only wish to obtain information in their particular field and work on their competency in that area. Asking criminal lawyers to sit through CPD hours on family law or the finer points of intellectual property law is guaranteed to lead to a distaste for the general idea of CPD.

Surely it would be better if solicitors, as competent professionals, were allowed to identify their own training and development needs and remove the requirement to carry out a certain number of CPD hours as being the main criterion – some or all of which may not be suitable to the individual practitioner.

There is a stage where colleagues will actively resent the entire system as being too complicated, too burdensome in terms of self-assessment, and too imposing by foisting unnecessary formalities on their already very busy lives.

Let's hope it doesn't come to that.

viewpoint

DEFECTIVE MOTOR INSURANCE, EU LAW AND VICTIMS' RIGHTS

What is a defective insurance policy? It is one that does not pay up. Dorothea Dowling explains

Dorothea Dowling is a chartered insurer and an accredited mediator. She was chair of the Motor Insurance Advisory Board and, until 2014, was the chair of PIAB

Defectiveness in motor insurance can be viewed from two different perspectives: that of the policyholder not having their own vehicle damage paid for, and from the perspective of an injured party who sues someone who is insured, but where the judgment is not satisfied for whatever reason.

As a practitioner with decades of experience in the insurance and the self-insured sectors, I will explain how this can happen and touch briefly on claims practices where no insurance was ever effected on the vehicle.

However, if there is just one message that should be taken from this article, it is that older Irish case law must be treated with caution. When I say 'older', I mean any judicial reasoning that does not refer to the EU *Motor Insurance Directives*, and particularly the *Fifth Motor Insurance Directive*, which took direct effect from June 2007. That caveat could apply to decisions made yesterday, or tomorrow. Existing Irish *Road Traffic Act* (RTA) legislation is no longer the starting point for assessing the redress rights of victims injured by vehicles.

> **Existing *Irish Road Traffic Act* legislation is no longer the starting point for assessing the redress rights of victims injured by vehicles**

In a nutshell, the objective of the EU Commission is to enhance compensation entitlements for injured parties through a process of harmonisation among member states, subject to national law on liability in terms of negligence and/or apportionment. This is supportive of the 'free movement of people' objective in the overarching EU treaties. The fifth directive voices an additional emphasis, which is to "reinforce and consolidate the single insurance market in motor insurance", but that will have to be left to a discussion on another day.

Ready, set, go

Possibly the best starting point is what some may consider the most extreme example. In 2011, the European Court of Justice (ECJ) upheld a compensation entitlement that would likely be denied by the Motor Insurers Bureau (MIB) Agreement on the basis of knowledge of lack of (effective) insurance.

The two accidents in Case C-442/10, *Churchill Insurance Company Limited v Benjamin Wilkinson* and *Tracy Evans v Equity Claims Limited*, involved a situation that might easily catch out the unwary. Evans was the owner of a motorcycle and was the only driver covered on the policy, but she was injured on 4 August 2004 as a pillion passenger, when she allowed another to drive.

Wilkinson was a named driver on his policy but allowed another to drive his car and was injured as a passenger on 23 November 2005.

Insurers had refused compensation where approved insurance was put in place on each of the vehicles involved by the policyholder/owners. The denials were on the basis that the parties who were driving were not covered under those policies and that the policyholder/passenger knew that the vehicles were uninsured, which meant that any compensation paid would be recoverable from that policyholder/passenger under the English RTA.

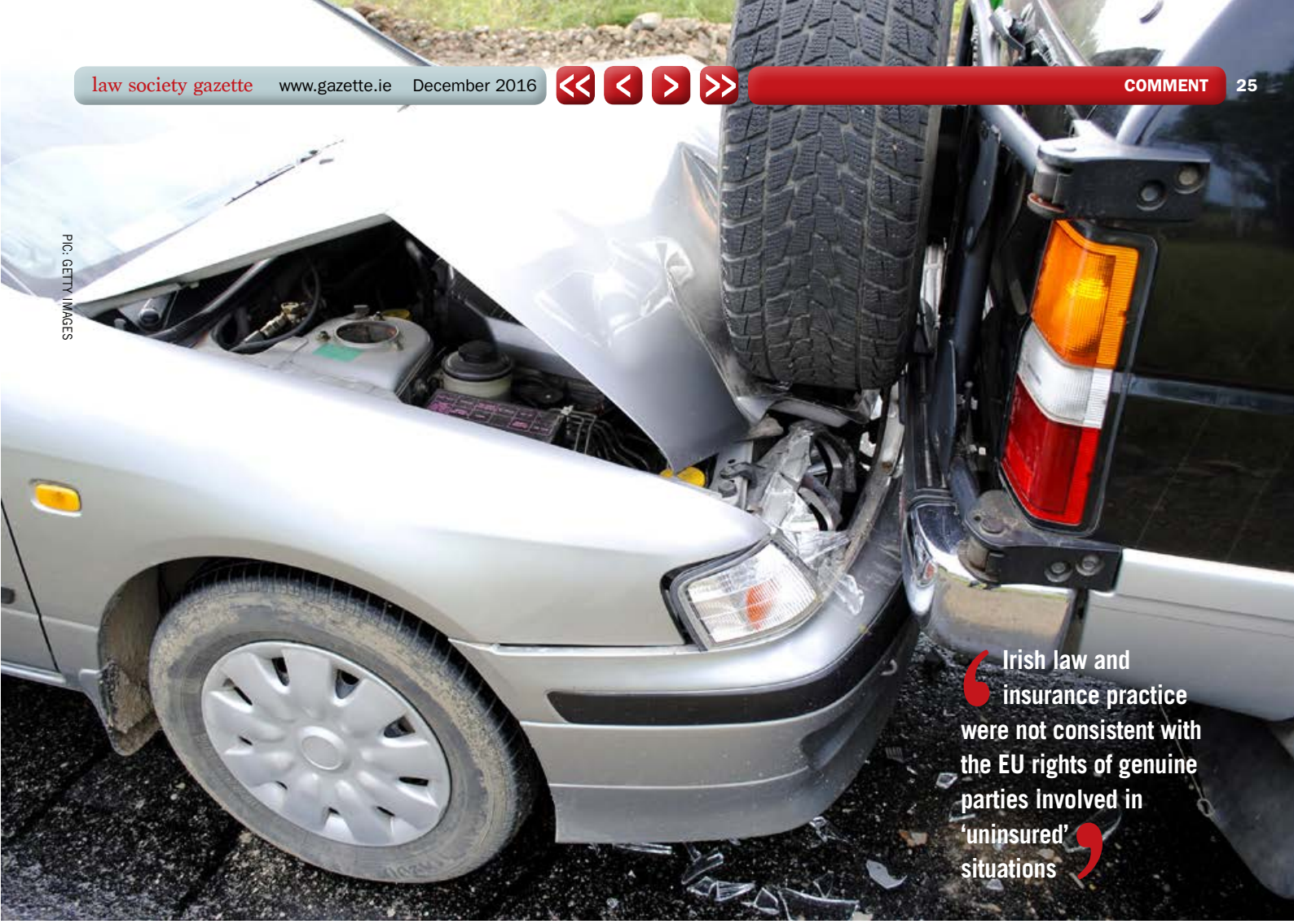
The ECJ disagreed:

"Court (Fourth Chamber) hereby rules:

1) Article 1, first subparagraph, of the Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the member states relating to insurance against civil liability in respect of the use of motor vehicles, and article 2(1) of the Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the member states relating to insurance against civil liability in respect of the use of motor vehicles, must be interpreted as precluding national rules, the effect of which is to omit automatically the requirement that the insurer compensate a passenger who is a victim of a road traffic accident when that accident was caused by a driver who was not insured under the insurance policy and when the victim, who was a passenger in the vehicle at the time of the accident, was insured to drive the vehicle himself but who had given permission to the driver to drive it.
2) The answer to the first question is not different depending on whether the insured victim was aware that the person to whom he gave permission to drive the vehicle was not insured to do so, whether he believed that the driver was insured, or whether or not he had turned his mind to that question."

The vehicle insurers were prevented from denying compensation to the injured (policyholder) passenger, which they had argued would be recoverable from the policyholder under section 151(8) of the *Road Traffic Acts* in England. A similar recovery provision currently exists in Irish road traffic legislation, at section 78B.

The *Motor Insurers Bureau Agreement* of 2009, like those before it, asserts at clause 9: "Nothing in this agreement shall prevent any vehicle insurer from providing by conditions in its contracts of insurance or by collateral agreements



PIC: GETTY IMAGES

> Irish law and insurance practice were not consistent with the EU rights of genuine parties involved in 'uninsured' situations

that all sums paid by it on behalf of MIBI or by MIBI by virtue of the principal agreement (1955) or of this agreement in or towards the discharge of the liability of its policyholders shall be recoverable by it or by MIBI from the policyholder or from any other person."

It is difficult to see how the wording above can be reconciled with EU law.

That 2011 ECJ decision also helpfully clarified that, while national laws apply on tort liability, there is only one set of circumstances in which compensation to injured passengers can be automatically denied: "35. It is true that, by way of derogation from that obligation, the second subparagraph of article 2(1) provides that certain persons may be excluded from compensation by the insurer, having regard to the situation they have themselves brought about, that is to say, persons who voluntarily entered the vehicle which caused the damage or injury, when the insurer can prove that they knew the vehicle was stolen (*Ruiz Bernáldez*, paragraph 21; *Candolin and Others*, paragraph 20). However, and as the court has already held, derogations from the first subparagraph of article 2(1) of the *Second Directive* may only be made in that single, specific case (see, to that effect, *Candolin and Others*, paragraph 23)."

So, the definition of 'uninsured' must to be approached with care.

Definitely MIAB

As highlighted in the report of the Motor Insurance Advisory Board (MIAB) in April 2002, Irish law and insurance practice were not consistent with the EU rights of genuine parties involved in 'uninsured' situations.

In its final report (September 2004), the MIAB again concluded that the *Motor Insurers Bureau Agreement* of March 2004 was not compliant with the relevant directives and ECJ decisions. That assertion was subsequently proved correct in 2007 by the ECJ in *Farrell v Whitty* (Case C-356/05). In a Supreme Court decision of 12 May 2015 on that 1996 accident, a question has now been referred to the ECJ as to who is responsible for 'Francovich damages' for non-compliance with the directives – Ireland or motor insurers.

Space allows me to focus on only one other overarching principle.

The fifth directive emphasises that, whatever national laws or administrative provisions are to be applied to give effect to EU law, those regulations and practices must be no less favourable to persons injured by vehicles (whether insured or not) than would apply to other claimants in negligence actions.

So where does that leave the special powers of the bureau to impose all the pre-conditions in the *MIB Agreements*? No other plaintiff in a motor accident would be required to face the barriers presented in those clauses agreed between insurers and the Minister for Transport.

Back in 1983, the EU required members states to set up a compensation body, funded by law-abiding policyholders as part of their premium, to pay the claims of people who were injured where there was no effective insurance on the vehicle. Ireland did not actually do that when the directive was implemented. Instead, special powers and responsibilities were added to the long-standing agreement between motor insurers and the minister, which dated from 1955. Every subsequent amendment to *MIB Agreements*, to purportedly comply with the later directives, did not alter the principal wording and, in many respects, failed to properly implement victims' rights under EU law as found by the ECJ.

Primary legislation to resolve this mess, as sought by MIAB is 2002, seems to be long overdue.

viewpoint

INSURANCE INDUSTRY CLAIMS REQUIRE MEDIA MICROSCOPE

There's no surprise at the insurance industry's attempt to blame everyone but itself for its current woes, but Brendan Quinn is deeply disappointed at the media's failure to debunk their outlandish claims

Brendan Quinn is principal of Quinn Solicitors, Ballyfermot Road, Dublin 10

Recent articles about the publication of the updated *Book of Quantum* by the Injuries Board have raised my ire, specifically one written by journalist Charlie Weston, headlined 'New book of quantum risks becoming a chancers' charter', which appeared in the *Irish Independent* (6 October 2016).

I am a solicitor since 1995 and have been practising in the area of personal injuries litigation for most of that time – on the defence side initially and, subsequently, for the plaintiff. I have an established practice in Ballyfermot, Dublin, since 1998 and, as a consequence, I am very familiar with every aspect of personal injuries litigation.

I was appalled at the level of ignorance displayed in the *Irish Independent* article and, in particular, Mr Weston's reference to "dodgy lawyers", etc. He appears to suggest that most, if not all persons suffering from whiplash are "chancers" and that any solicitor/barrister who assisted an individual in bringing a claim was "dodgy". These scurrilous assertions not only display an appalling lack of knowledge, but also pander to the lazy, uneducated 'insurance-led' view that all claimants and their solicitors/barristers are frauds.

> **'Insurance companies are not the cuddly creatures depicted in the expensive advertisements on television'**

Points to ponder

The *Irish Independent*, and Mr Weston in particular, should consider the following.

1) On any objective analysis of the facts, there has not been a 70% increase in the value and number of claims in recent years. There has been a 70% increase in the insurance premiums over the past two years. Why?

2) There has not been a 70% increase in legal costs in recent years. In fact, legal costs have decreased substantially in recent years.

3) There are new capital requirement regulations that necessitate the insurance companies holding more money on deposit to ensure their viability. (If these rules had been in place, then Quinn Insurance might not have collapsed.) It seems to me that these regulations may well have restricted the insurance companies' investment potential?

4) By common consensus, it appears that the investments made by the insurance companies in recent years have been bad ones. Undoubtedly, this is likely to have had a substantial bearing on profitability as, traditionally, investments accounted for a larger proportion of insurance companies' profits.

5) Since the establishment of the Personal Injuries Assessment Board in 2004, insurance costs have come down by approximately 40%, up until 2011/12. During this period, did the insurance companies act recklessly? For example, did one or more companies underprice premiums in order to grab market share? (See the regulator's recent comments before the Public Accounts Committee.)

6) Certain one-off events have occurred in recent years, largely due to a failure to regulate the industry properly – for example, the collapse of Setanta Insurance and Quinn Insurance. It is inherently stupid that other insurance companies (through the MIBI) are required to bail out the losses of a failed insurer, and this needs to be rectified. However, it should be noted that these same insurance companies signed up to the *MIBI Agreement*, and their liability in this regard stems from that contract – that is, they knew or ought to have known that such a liability could arise.

7) Insurance companies require claims: if there were no claims, there would be no requirement for insurance in the first instance. In circumstances where insurance premiums are higher then, logically, profits are higher for insurance companies. This is an established fact, but the *Irish Independent* has never examined this issue in any detail whatsoever.

The *Irish Independent* and Mr Weston suggest that the only "dodgy" participants in this business are claimants and their lawyers. As any seasoned practitioner knows, insurance companies are not the cuddly creatures depicted in the expensive advertisements on television, and the following examples might well serve to enlighten Mr Weston to the true nature of some insurance companies.

Taking candy from a baby

In December 2013, a prominent insurance company, publicly listed as a PLC in a number of countries, settled two claims of minors (persons under 18) some weeks following a serious road traffic accident, by paying to their parents sums of money in the approximate amounts of €15,000 each, without medical reports and without having the matters ruled before a judge of the Circuit Court.

Sadly, these are not isolated cases, as I have encountered several attempts by insurance companies to settle cases in which minors have been involved. Usually, the parents are persuaded into accepting a paltry amount of compensation for their injured child without the benefit of legal advice. In

PIC: WIKIMEDIA COMMONS

Round up the usual suspects – that'll be the 'chancers' and 'those dodgy lawyers'

addition, the parent is required to execute a form of waiver (usually called a 'parental discharge'), whereby he/she agrees to indemnify the insurance company against any future claims or losses, in addition to waiving the minor's right to any further compensation in the future.

The minor, on attaining his/her majority, is entitled to sue not only the defendant and the insurance company, but may also be required to proceed against the minor's own parent(s), which, most people would agree, amounts to a farcical scenario and would, of course, be contrary to public policy.

Doorstep settlements

Quinn Insurance led the market by introducing so-called 'doorstep settlements', whereby, if a person had an accident on a Friday, a representative from the insurance company appeared on their doorstep on Monday morning, brandishing a chequebook and buying off the claim for as little as possible, without the benefit of medical advice and/or legal advice.

For certain insurance companies now, this practice is a regular occurrence and insurance companies have little or no interest in the welfare of claimants – whether they are injured or not is of little or no concern to them. Their bottom line is that they want claims settled as quickly as possible, preferably without legal advice, thereby reducing substantially the amount of compensation paid and, in addition, obtaining the added benefit of not having to comply with capital reserves regulations.

I have never encountered a solicitor or barrister who wanted to be associated in any way with a fraudulent claim in my 20-odd years of practice, and the implied suggestion in Mr Weston's article that both professions are littered with "dodgy" practitioners is completely inaccurate – but it does serve to pander to a popular misconception among members of the public, which, I suppose, sells newspapers. It is blatant populism in its lowest form.

Where are all these fraudulent claimants? And if they exist, why haven't they been prosecuted? We are all aware of the provisions of the *Courts and Civil Liability Act 2004*, sections 25 and 26, which clearly provide for serious penalties for fraudulent and exaggerated claims.

The insurance industry blames everyone for its woes except itself. Unfortunately, I am old enough to remember the clamour for the abolition of juries in personal injury actions – they got that. Then they wanted the establishment of the PIAB – they got that as well. However, it now seems that PIAB is finding its own voice and is not acting in the sole interest of the insurance industry. As a consequence, the insurance companies now appear to be regretting its creation.

Lions' den

It now seems clear that there is a new, concerted, and strategic effort by the insurance companies to isolate soft-tissue injuries, pejoratively known as 'whiplash' cases, with a view to either limiting the compensation for these claims or doing away with general damages entirely. Their new catchphrase appears to be 'care not cash'.

Personally (and call me old-fashioned if you will), but I would prefer to spend a night in the lions' enclosure at Dublin's Zoo than be 'cared for' by an insurance company! Can it be pure coincidence that this same 'movement' appears to be gaining traction in England and Wales at present?

The insurance industry engaged in reckless internecine price wars for years, made bad investments, and now they are beating the familiar old drum – that is, blame anybody but themselves, including the legal profession. This comes as no surprise, but I am surprised at the level of selective media coverage that appears to accept and promote the insurance industry's views without a scintilla of scrutiny or scepticism.

Finally, may I suggest that media outlets utilise their resources and intelligence and ponder the few simple issues I have raised herein to explore the possibility that the answers to the insurance industry's difficulties lie, not in the popular fiction of the 'dodgy claimant' and his 'dodgy lawyer', but in the very clever, very polished and very insidious insurance industry itself.

news in depth

LEARNING FROM CHANGE – THE INSIDE TRACK

The Law Society's annual In-house and Public Sector Conference focused on the opportunities and challenges facing in-house solicitors, the evolution of the sector and leadership opportunities. Lorcan Roche reports

Lorcan Roche is a freelance journalist

The opportunities and challenges facing in-house solicitors and the recent evolution of their roles were major themes of the recent In-House and Public Sector Committee's annual conference on 10 November. It also dealt with the leadership opportunities that inevitably arise in these contexts.

As the economy recovers, the in-house sector has expanded significantly. Practitioners in the private and public sectors now make up almost 20% of the profession, according to Law Society director general Ken Murphy.

Delivering the opening address to more than 200 delegates at the Education Centre, the director general explained that the In-House and Public Sector Committee had been established by the Society 17 years ago, in "recognition of the different perspectives and requirements of in-house solicitors".

The Society was most aware of the need to provide supports for this important segment of the profession, he added. With that in mind, it had undertaken a research project to identify key issues affecting in-house solicitors.

Day-to-day issues

Expanding on that point, committee chair Brian Connolly added that the market research firm Red-C had been engaged by the Society in February 2016 to conduct an independent and confidential survey of the sector, with a view to hearing directly from in-house solicitors as to what kinds of supports they wanted the Society to provide – and what issues they faced in their day-to-day working lives.

The results of the survey had presented "many invaluable insights" that had assisted the committee in devising an action plan covering four areas – skills and values, education and training, professional issues, and trainees. The Law Society had already begun working on actions in these areas, and the director general added that the Law Society would commit the necessary resources to implement this "ambitious roadmap" in the years ahead.

Michael Barry (director of finance and corporate services, Bórd na Móna) described the evolution of the in-house solicitor's role from "strictly legal specialists to business-savvy influential advisers". He advocated the need to be tenacious and resilient, as well as decisive, persuasive and collaborative. Barry had clear-cut advice for trainees: "The biggest failure [of the in-house solicitor] is doing nothing. Get closer and closer to the decision-making process. And never compromise your integrity."

ALL PICS: CIAN REDMOND PHOTOGRAPHY

Speakers and members of the In-house and Public Sector Committee *(front, l to r)*: Rachael Hession, Brian Connolly (chair), Michael Barry, Steven D'Souza (keynote speaker), Ken Murphy (director general), Antoinette Moriarty, Mary Jackson and Louise Campbell; *(back, l to r)*: Helen Dooley, Alan Daly, Becky Jones Crawley, Peter McCarthy, Anna-Marie Curry, Vincent Costello and Aoife Marrinan

> The in-house solicitor must know what's happening on a daily basis. She or he should not just be the last rung of the ladder when things go wrong

> Having the courage to move out of comfort zones is essential

Responding to Michael's address, Helen Dooley (group general counsel, AIB) told a packed audience at the Law Society's Education Centre how the title 'general counsel' – once thought of as an exclusively American term – was gaining momentum here.

This, she felt, was thanks to the expanded role, growing responsibilities, and increased status of the in-house solicitor. Having the courage to move out of comfort zones was essential, as was "increasing the appetite to become more than just technical advisors".

Dooley said that practitioners needed to appraise their own skills – and not to be afraid of stepping up. "We have such a breadth of skills. We have the ability to analyse, to dissect, to offer solutions – we manage and mitigate risk. These are very sought-after skills."

Anna-Marie Curry (head of legal, Bórd na Móna) said the evolution of the in-house solicitor was part of an often challenging, ever-changing process that required the fundamentals of legal expertise and technical skills – but also business acumen to enable the in-house solicitor to offer as complete an overview as possible.

"We are trusted to know the law and to understand the business," she said, stressing the need to build on the trust of clients by remaining current with all aspects of the business. There was, quite simply, no room for uncertainty.

Doing the groundwork

Peter McCarthy (head of legal, Virgin Media) emphasised the importance of listening deeply – of finding out exactly what the company was doing, "rather than what they say they say they are doing". Integrity was crucial. There should be "no spur-of-the-moment decisions". Advice must be given when it was built on analysis, on a real understanding of the business, and knowledge of all areas.

In the case of Virgin Media, for example, in-house lawyers needed to go out into the field, to know what the cables in the ground looked like, to know the people installing them, to be personally and intimately aware of what could go right – and wrong. "The in-house solicitor must know what's happening on a daily basis. She or he should not just be the last rung of the ladder when things go wrong."

FOCAL POINT

Keynote address married psychology and philosophy

Steven D'Souza delivered a provocative talk on the opportunities of uncertainty. D'Souza brought the audience together by allowing them to let go – communally – of the pressure to be experts. His main thesis is that, in the antiquated 'heroic leader' model that governs much of corporate, legal and political-establishment thinking in the West, there is too much focus on the value of knowledge, an over reliance on technical competence, an expectation, indeed a burden, of 'always knowing'.

But this thinking is becoming increasingly irrelevant, he said, not because knowledge/competence/certainty have suddenly ceased to be valuable resources, but because we now live, according to D'Souza, "in a world of increasing volatility, uncertainty, complexity and ambiguity".

Using the example of a child regarding a present wrapped under a Christmas tree, D'Souza spoke eloquently of the need to be curious, to be filled with wonder, to allow enthusiasm to fill us. Lawyers, he said, should regard uncertainty as "a gift" and should see it as "a space of opportunity and learning". Naturally, there will be fear, even resistance, internally. But there are many practices that will support the art of not knowing, he explained.

D'Souza added that, with practice, it was possible to rewire ingrained thinking, "to learn to stop the automatic rush to control, to know and – worst of all – to pretend to know".

The importance of well-being and the crucial role it plays in effective leadership was emphasised at the conference. Antoinette Moriarty (psychotherapist and manager of the Law School's counselling service) and Seán Ó Tarpaigh (psychotherapist) spoke of the need for mental resilience and the importance of stress management.

Resilience, it was explained, could be improved by, among other things, adapting to change and asking for help. Stress shuts down empathy – a vital component in being able to listen fully.

Delegates were invited to look at how they communicated, and then to ask: "What am I falling into? What are my triggers?"

Leading from the 'inside-out' is regarded as the most effective way to lead. As a result, in-house solicitors should:

- **Ground themselves so they can be fully present – not lost in the client's world,**
- **Practice self-care – it is the pre-requisite to empathy,**
- **Cultivate a beginner's mind – be curious,**
- **Maintain healthy boundaries – it is the key to professionalism,**
- **Do not be lured into playing communication games,**
- **Resource themselves outside work,**
- **Maintain a strong personal identity,**
- **Ditch their super-hero!**
- **Create supports and an environment that allow them to be real (and vulnerable).**

Steven D'Souza is an associate fellow of the Said Business School, Oxford, director of Deeper Learning Ltd, co-author of *Not Knowing: The Art of Turning Uncertainty Into Opportunity* and *Made in Britain* and author of *Brilliant Networking*.

McCarthy also stressed the need to forge a direct line of contact with the decision-makers, or in his own case, the CEO: "We must not just be seen as relevant – we must be relevant."

Helen Dooley echoed these views, adding that it was essential that "business did not regard us as the lawyers in the corner, but rather as an integral part of the team".

Anna-Marie Curry was explicit that everyone had the ability to lead. There may be innate skills, levels of which are higher in certain individuals; however, it was just as important to be passionate and driven to "show the business that you want to know the business," she said. "The people in my organisation have long since realised that, if they ask me a question, I will ask them ten in return."

Emergency issues

Developing some of the themes addressed by Steven D'Souza, the second panel discussed a number of real-life examples where they had dealt with emergency issues. Becky Jones (legal director, Coca-Cola) and Andrew O'Flanagan (chief legal officer, NTMA) spoke of the need to work with diverse stakeholders (internal and external) to deal with unfolding and unpredictable situations affecting their organisations.

In such times, Alan Daly (head of legal, ESB Group) pointed out that in-house solicitors could offer a unique set of skills and value by providing dispassionate and practical advice, while remaining calm and objective. He added that in-house solicitors also had natural project-management skills, and could exert a positive influence on others, and show real leadership during these times of change and crisis.

The panel also agreed that the credibility that in-house solicitors build up with their stakeholders over many months and years would stand them in good stead for those times when they needed to give unwelcome advice or handle situations that could damage or even destroy their organisation's business or reputation.

Conversely, if the in-house solicitor did something to damage or lose that credibility, it could be very difficult or even impossible to fully retrieve it within the organisation, so real care was needed to avoid that.

news in depth

THE EU'S ROLE IN ADVANCING CHILDREN'S RIGHTS

The EU's role in advancing children's rights is vital in setting standards that may be applied across the member states, Aoife Byrne suggests

Aoife Byrne is a solicitor with the Legal Aid Board. She wishes to thank Alan O'Mahony (UCC) for his assistance and input

In the courts, a system to maintain children's rights through the principle of their 'best interests' needs to be developed and maintained. The UN, EU and Council of Europe have set guidelines in relation to the treatment of children that deserve careful examination.

The UN Committee on the Rights of the Child has stated: "The best interests of the child constitute a standard, an objective, an approach, a guiding notion that must clarify, inhabit and permeate all the internal norms, policies and decisions, as well as the budgets relating to children."

Each EU member state is a party to the UN *Convention on the Rights of the Child* (UNCRC). Ireland has ratified the convention, but not yet introduced it into domestic legislation. The UNCRC sets out, at article 3, that the best interests of the child must be a determining element that is of primary consideration, but without common factors for assessment. Article 12 deals with the right of the child to be heard in any decision concerning him or her.

Paramount consideration

In Ireland, the 31st amendment inserted article 42A into the Constitution. This says that, in proceedings brought by the State, to prevent the safety and welfare of any child from being prejudicially affected (such as under the *Childcare Act 1991*), and in proceedings concerning adoption, guardianship, custody or access, the best interests of the child are the paramount consideration.

The *Children and Family Relationships Act 2015* (CFRA) at part V, enumerates factors that a court shall have regard to in determining a child's best interests, in cases where, for example, a guardianship, custody or access order is being sought in relation to the child. Section 63 of the CFRA asserts that included in 'best interests' are the "views of the child concerned that are ascertainable" and these views to be offered with "free expression by the child [and] … not expressed as a result of any undue influence". Although further implementing legislation may be outstanding, the imperative nature of the wording in both the constitutional amendment and CFRA is worth noting.

A judge may question the child directly (for example, in chambers) or indirectly, through appointing a child expert like a psychologist to ascertain and convey the child's views. In childcare cases, a guardian *ad litem* is commonly appointed but, interestingly, is not required by legislation here to be a qualified expert in dealing with children.

> **It is important that children's views are received in an environment that is child friendly and not hostile, insensitive or inappropriate to the child's age or stage of development**

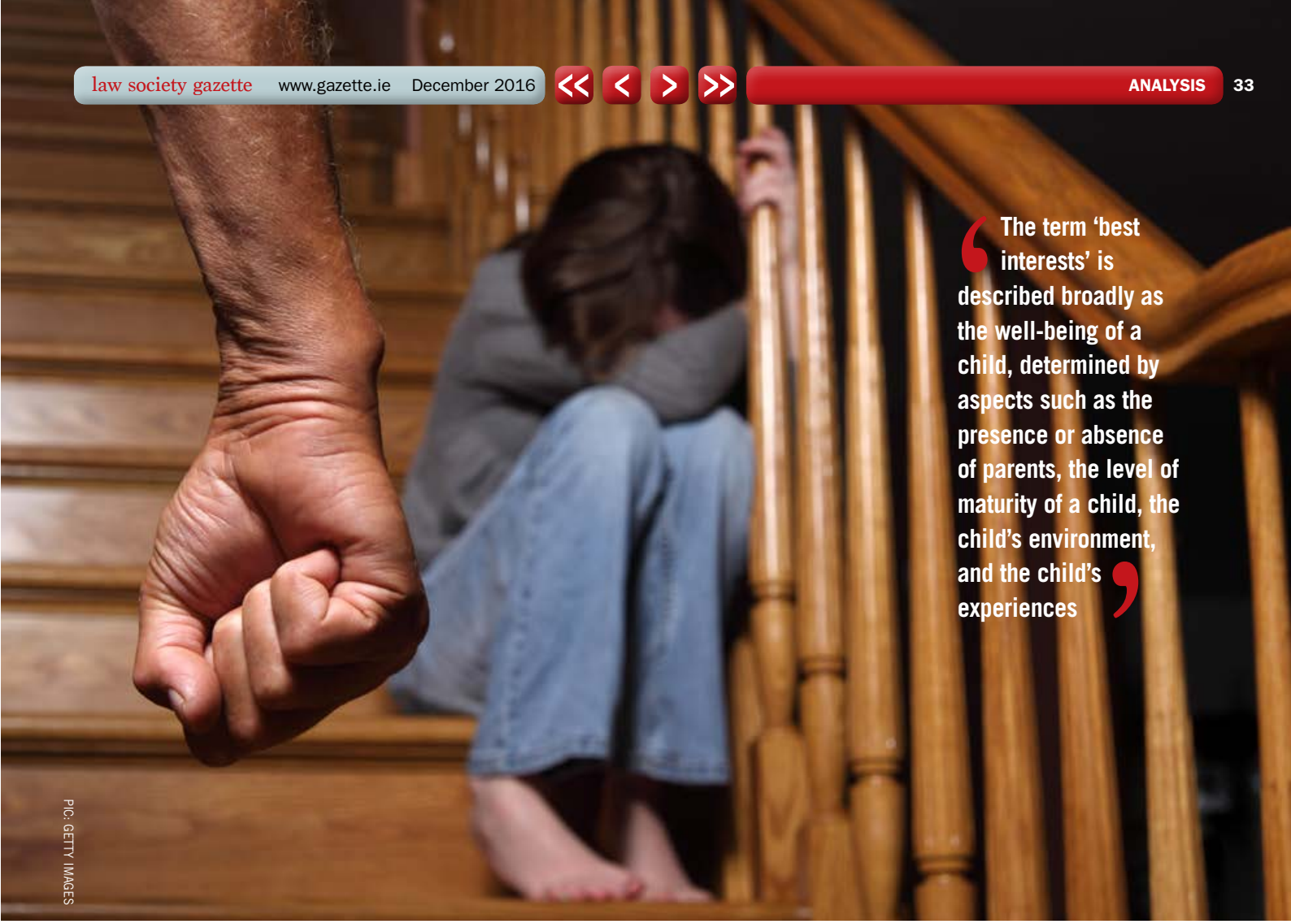
It is important that children's views are received in an environment that is child friendly and not hostile, insensitive or inappropriate to the child's age or stage of development. Questions should not be suggestive or impose the questioner's viewpoint. For younger children, the element of play is very important: at school-going age, a child can see other points of view and think more logically. Older children have developed an identity separate from the family, are able to see multiple perspectives, and sometimes lie to get what they want. Extreme care is needed.

In *BB and FB v Germany* (ECtHR, 14 March 2013), a 12-year-old girl and her eight-year-old brother were placed in a children's home after the girl asserted that she and her brother were being beaten continually by their father. The district court made a full order transferring parental authority, based on the daughter's direct evidence. There was no other evidence of mistreatment, and the claim seemed to be contrary to medical statements. A year later, the daughter admitted she had lied, and the children were eventually returned to their parents. A case brought to the European Court of Human Rights found that the German courts failed to give sufficient reasons for their decision to take the children from their parents.

Article 8(1) of the *European Convention on Human Rights* provides that "everyone has the right to respect for his private or family life, his home and correspondence … there shall be no interference by a public authority with the exercise of this right, except such as is in accordance with law and is necessary in a democratic society". This article is used extensively in cases brought to the ECtHR, which enjoys a wide discretion on children's rights.

Case-by-case basis

The UNHCR *Guidelines on Determining the Best Interests of the Child* (2008) set out the legal framework to the best-interests principle. The term 'best interests' is described broadly as the well-being of a child, determined by aspects such as the presence or absence of parents, the level of maturity of a child, the child's environment, and the child's experiences. It is recommended



> The term 'best interests' is described broadly as the well-being of a child, determined by aspects such as the presence or absence of parents, the level of maturity of a child, the child's environment, and the child's experiences

PIC: GETTY IMAGES

that strict procedural safeguards should assist to determine a child's best interests, in particular where important decisions must be made that will affect a child. The guidelines note that the removal of children from their parents without justification is one of the gravest violations that can be perpetrated against children, and that separation of this kind should be a last resort.

The guidelines advocate a professional approach on a case-by-case basis and emphasise the treatment of children in juvenile justice, as opposed to family law cases. A 'children first' approach should be taken, with the best interests principle also fully adhered to. If a child is part of the criminal judicial process, it does not transform that child into an adult.

The *EU Charter of Fundamental Rights* has been ascribed the same legal status as an EU treaty and makes the first dedicated reference to children's rights at an EU constitutional level at article 24:

- The right to express their views freely in accordance with their age and maturity,
- The right to have their best interests taken as a primary consideration in all actions relating to them, and
- The right to maintain, on a regular basis, a personal relationship and direct contact with both parents.

Case law in relation to children and, in particular the best-interests principle, is instructive. In *Sahin v Germany* (ECtHR, 8 July 2003), a Turkish-born man, who went on to become a German citizen, fathered a child out of wedlock. The mother and father split in acrimonious circumstances. It was held by the courts in Germany that granting access to the father was not in the child's best interests, primarily as the child would have to "shuttle between hostile camps" to facilitate contact. A psychological expert did not question the child directly about her father, and the child was not questioned by the court. The ECtHR found that the decision to deny access was in violation of the father's article 8 and article 14 rights. Complete information on the child's relationship with the applicant parent is an indispensable prerequisite to establishing a child's true wishes.

In *M&M v Croatia* (ECtHR, 3 September 2015), a father was granted custody of his daughter as part of a divorce order in 2007. In 2011, the child made a statement that she was subjected to three years of physical and psychological abuse at the hands of her father, which was admitted to. The child remained in the care of her father for another three years, at the end of which time she began to self-harm. The ECtHR found – in circumstances where the child's wishes were ignored, she had not been heard by the court, and proceedings lasted over four years – that there was a clear violation of the child's rights under article 8.

Coordinated training – such as conferences organised by the Academy of European Law (ERA) – is of huge benefit in fostering common approaches, with a view to reducing complexity of proceedings and polarisation of points of view. Common protocols and methodologies may be adopted across the EU, for example, when interviewing children.

The best interests of the child are of primary consideration, but not the only one. The concept should adapt to the individual child in question, while maintaining common guidelines through adherence to proper procedures, carried out in child-friendly surroundings, by suitably trained professionals. How recent legislative changes here translate into practical reality through court precedents remains to be seen, but will be observed with great interest, in the hope that a child's best interests will graduate from an aspirational concept to a concrete reality.

Breaking BAD

'Brexit' could result in British banks being unable to sell their services throughout the EU – and international financial institutions might scale back their operations and move elsewhere. Cillian Bredin and Kate Curneen sense some bad chemistry for Britain's financial services sector

Cillian Bredin is a partner in the financial services group of Dillon Eustace

Kate Curneen is a partner in the banking and capital markets department of Dillon Eustace

Britain is currently the largest financial services centre in the world, according to the Global Financial Centres Index of March 2016. It accounts for over 20% of all financial services activity in Europe, with more than 250 foreign banks engaged in business there. Various pieces of EU legislation allow regulated entities – such as banks, fund and asset managers, financial intermediaries and insurance companies – that are authorised in one EU member state to carry out a broad range of regulated activities in other EEA countries, facilitated by either the right of establishment (via a branch) or by cross-border provision of services, generally referred to as 'passporting'.

In summary, the concept of passporting means that, once authorised in its home member state, the relevant regulated entity can 'passport' its services into every other EU member state without the need to get a local authorisation and without the need to set up a local subsidiary.

Accordingly, if Britain loses passporting rights as a result of Brexit, this could have a negative impact on a vast array of financial services businesses.

Full measure

Brexit has resulted in many banks and financial institutions undertaking fundamental reviews of their businesses to establish, among other issues, whether Britain is the most appropriate location in which to maintain their operations.

Many of the recent EU-driven initiatives aimed at stimulating the flow of capital in the EU – such as the Capital Markets Union – may not, after the occurrence of Brexit, benefit banks and other financial services providers based in Britain.

There is a fear in Britain that Brexit will result in British banks being unable to sell their services throughout the EU and that international banks will scale back their operations and move elsewhere.

at a glance

- Britain accounts for over 20% of all financial services activity in Europe
- EU legislation allows regulated entities like banks, financial services businesses and insurers that are authorised in one EU member state to carry out a broad range of regulated activities in other EEA countries
- In the event of a Brexit, the centre of gravity in European financial markets could well shift further towards Dublin
- Ireland already has a significant cross-border industry in the areas of UCITS, alternative funds, asset management, insurance and banking

> Once authorised in its home member state, the relevant regulated entity can 'passport' its services into every other EU member state

PIC: WIKIMEDIA COMMONS/GAZETTE STUDIO

Solicitors Panel for Enforcement of Determination Orders

The Residential Tenancies Board (RTB), formerly the Private Residential Tenancies Board (PRTB), was established in 2004. Its remit is to regulate and support the rental housing market by;

- Operating a national system of tenancy registration
- Providing a quasi – judicial Dispute Resolution Service for tenants and landlords
- Conducting Research and providing advice to the Minister in relation to matters impacting on the sector. This includes producing a quarterly rent index based on one of the most extensive rental databases in the country

Our remit has also recently been extended to Approved Housing Bodies, which are not-for-profit housing providers or housing associations and provide housing for about 30,000 tenants. This change (and hence the name change) means that both tenants and landlords of these properties enjoy certain provisions of the Residential Tenancies Acts, including access to the disputes resolution services we operate.

The *Residential Tenancies Act 2004* (as amended) provides a statutory dispute resolution process for the resolution of disputes between landlords, tenants, and certain third parties, by way of independent mediation or adjudication facilitated by the Board. There is a facility to refer the matter (in the case of mediation) or appeal, in the case of adjudication to a Tenancy Tribunal established by the Board. Following the conclusion of this process the Board makes a legally binding Determination Order. The Act provides that a party or the Board may take legal proceedings to enforce the determination order if not complied with. The Board takes very seriously the issue of non-compliance with its orders and while not obliged to take enforcement, has done so in over 1200 cases in the last three years.

In agreeing to cover the cost of enforcement the Board has regard to its published Policy and criteria on enforcement. Once the Board agrees to an enforcement request the case is then submitted to its Solicitors for enforcement proceedings.

The Board is now seeking to establish a panel of solicitors around the Country willing to provide legal representation to parties where the Board has sanctioned enforcement on their behalf. The Panel is expected to be in existence for a period of three years. Currently enforcement is through the Circuit Court however, an amendment to the Act provides for enforcement to be taken in the District Court. This amendment is expected to be commenced by the end of the year. Consequently, it is expected that panel members will be enforcing orders in the District Court and experience of advocating in the District court is required. Copies of the application form and the terms and conditions of the Panel are available on the Board's website (www.rtb.ie).

The terms and conditions include the fee structure that is being put in place by the Board. The Board wishes to have a limited number of solicitors on the Panel and selection for the Panel will be based on the applications received. The Board also reserves the right to interview solicitors for the Panel. Solicitors selected for the panel will be expected to comply with the Board's Best Practice Guidelines copy of which is available with the application form. **The Board will provide training in respect of enforcement and Solicitors must participate in training provided by the Board before they can be placed on the Panel.**

The Board would be pleased to receive applications from solicitors with knowledge of and practical experience in advocacy before the District Court. Experience in providing legal services to residential landlords and tenants are desirable but not necessary.

To apply submit a completed application in the format provided by e-mail (typed applications only) to enforceorder@rtb.ie. Solicitors should note a training event has been provisionally arranged for early March 2017 in Dublin and should submit their application by 31st January 2017.

PIC: GETTY IMAGES

Market volatility could affect both the cost and availability of certain types of finance. This could result in increased margins and an inability, for example, to passport prospectuses into Britain, as well as raising concerns in relation to regulatory capital rules.

Cat's in the bag

Although concerns have been voiced about the economic impact of Brexit on Ireland, it is likely that it could also present us with some opportunities.

In the event that Britain could not negotiate a deal on passporting, it is likely, if not inevitable, that some businesses would move their location from London to other financial hubs within the EU. Standard and Poor's has written that, in the event of a Brexit, the centre of gravity in European financial markets could well shift further towards Dublin. Already there are indications that financial services firms based in London are researching the Dublin office market to check out the potential supply of office space and how rapidly they could acquire it.

Dublin does seem an obvious choice, given that Ireland has a common law system, is geographically close to Britain and mainland Europe, and many of those institutions considering a move may already have some form of presence here. Ireland also has a significant cross-border industry in the areas of UCITS, alternative funds, asset management, insurance (particularly life) and banking.

And the bag's in the river

The British government has indicated that withdrawal from Europe will likely take the form of a 'hard Brexit'. If this is the eventual outcome, it would mean no passporting rights and would possibly even create difficulties for Britain with 'third country' rules under the *Alternative Investment Fund Managers Directive* (AIFMD), *Markets in Financial Instruments Directive* (MiFID), for example, but not the *Undertakings for the Collective Investment in Transferable Securities (UCITS) Directive* or insurance.

> The *Financial Times* suggests that banks such as Bank of America, Morgan Stanley and Citigroup are all considering a move to Ireland

What effectively does this mean for Britain? It would not be able to situate a UCITS management company in Britain – rather it would need to establish one in an EU jurisdiction, such as Ireland, and it would lose capacity to be the 'sales person' for its UCITS products.

The outlook is uncertain for AIFs – there could be non-EU AIFs, but no marketing or managing passport. A British-based AIF could probably carry on with an existing type of product/private placement, etc, but it would have no idea as to when (or if) that country regime would be turned on. The situation would be similar with MiFID.

A no-rough-stuff-type deal

The impact of Brexit on the asset management and investment funds industry may depend on a number of factors, including:

- Where the clients or funds are located,
- The target markets for distribution,
- The types of investors (retail, professional or institutional), and
- The location of the asset manager.

It is worth keeping in mind, however, that UCITS funds themselves (independent of their manager) get the marketing passport. Therefore, just like a US asset manager, a British-based asset manager should still be able to act as an investment manager to an Irish domiciled self-managed UCITS, which could still have an EU-wide marketing passport. Some practical hurdles might need to be overcome to allow the British asset manager's staff to retain a central role in the marketing and distribution processes, but that should not be insurmountable.

In the case of alternative investment funds (AIFs), however, the marketing passport is not granted to the fund product itself – rather it is given to the alternative investment fund managers (AIFMs). Given that only EU-authorised AIFMs can access the marketing passport, if Britain leaves the EU, British AIFMs will be at some disadvantage.

The extent of disadvantage will really depend on where the products are being sold. Sale in Britain of British-domiciled products or of products managed by British managers should not pose any problem for British managers. Similarly, UCITS cross-border distribution should not be fatally impacted. However, as AIF products become more mainstream and as 'super management

FOCAL POINT

crystal-ball gazing

This article provides an overview and analysis of the major issues and the possible consequences that Brexit may have in Britain and the challenges and opportunities that it may present for and to the financial services industry in Ireland.

Much of what we can say at present can best be described as 'crystal-ball gazing', since none of us knows what the outcome of the Brexit negotiations will be – or indeed when they will start.

At the moment, the best we can say is that at least now we know where we currently stand and what the likely scenarios might be.

companies' (dual UCITS/AIF) grow their assets and power, Britain may begin to be perceived as having been left behind somewhat.

Post-Brexit, those British managers who supervise non-fund mandates may still be able to access some markets when managing professional or institutional money, but that would require country-by-country analysis and leave them competing with managers who enjoy full access.

For some, setting up an Irish subsidiary with a full EU-wide authorisation may offer a way to address such challenges.

PIC: WIKIMEDIA COMMONS

Britain's difficulty – Ireland's opportunity

End times

The possibility of positive developments for the international banking sector in Ireland following a Brexit is something that many commentators have indicated is a possibility. The *Financial Times* has suggested that banks, such as Bank of America, Morgan Stanley and Citigroup, are all considering a move to Ireland. And a report by the London-based policy institute, the Centre for the Study of Financial Innovation (CSFI) has also named Dublin as an alternative location for international banks looking to leave London following a Brexit.

A sizable amount of insurance business is written between Ireland and Britain on a cross-border basis. Following Brexit, if passporting could no longer be relied upon, the ability of Irish insurers to provide their services on a cross-border basis into Britain may face additional regulatory obstacles. The same applies to British insurers seeking to access Irish and other EU markets.

It might also mean that those insurers with an Irish head office authorisation who have a pan-European distribution model, with a particular focus on Britain, may face challenges.

The International Underwriting Association of London has suggested that if Britain were to exit the EU, then "insurers and reinsurers from … countries such as the United States and Japan might be obliged to choose other European centres over London in order to passport into the EU" – an opinion echoed by the CSFI – and something that might also result in potential opportunities for Ireland.

Better call Saul

The referendum on Brexit presented the British public with the first opportunity in over 40 years to decide whether they wanted to remain within the EU. In what was a year marked by shocks on the political front, Britain decided to leave. The impact on the financial markets and the drop in the value of the pound were immediately apparent; however, the long-term legal, economic and political implications of a Brexit for Britain, and indeed the other member states of the EU, including Ireland, are very difficult to predict.

Commentators offer conflicting opinions on the probable consequences for Ireland. Given our close economic, political and social ties to Britain, the effects of a Brexit will likely be more profound here than in any other member state – although the degree and nature of the impact will be shaped to a large extent by the form of the legal model that Britain adopts with the EU. For the moment, it remains to be seen exactly what that will be.

FOCAL POINT

bullet points

- **AIF – Alternative Investment Fund.**
- **AIFMs – Alternative Investment Fund Managers.**
- **AIFMD – *Alternative Investment Fund Managers Directive* (2011/61/EU) – an EU law on the financial regulation of hedge funds, private equity, real estate funds and other AIMFs in the European Union.**
- **MiFID – *Markets in Financial Instruments Directive* (2004/39/EC) – in force since November 2007, this directive governs the provision of investment services in financial instruments by banks and investment firms and the operation of traditional stock exchanges and alternative trading venues.**
- **'Passporting' – the exercise of the right for a firm registered in the European Economic Area (EEA) to do business in any other EEA state without needing further authorisation in each country. Often companies based outside of the EEA will get authorised in one EEA state and use its passporting rights to either open an establishment elsewhere in the EEA, or providing cross-border services. This is valuable to multinational companies because it eliminates a lot of red tape associated with gaining authorisation from each individual country – a process that can be lengthy and costly for a business.**
- **UCITS – Undertakings for the Collective Investment in Transferable Securities) – investment funds regulated at EU level. In creating a set of common rules and regulations, it allows such funds to seek a single authorisation in one EU member state and register for sale and market across EU member states.**

look it up

Legislation:

- *Alternative Investment Fund Managers Directive* (2011/61/EU)]
- *Markets in Financial Instruments Directive* (2004/39/EC)
- *UCITS Directive* (2014/91/EU)

PICS: CIAN REDMOND PHOTOGRAPHY

Mark McDermott is editor of the Law Society Gazette

at a glance

- The Ched Evans controversy
- Football crazy
- Off the Bar and onto the bike
- The insurance industry – a mountain to climb
- Filling the big shoes

KING of the bill

New Law Society President Stuart Gilhooly opens up about Ched Evans, 'Banks of England', and insurance black boxes. Mark McDermott discovers it's not all about the bike

This time two years ago, Stuart Gilhooly was at the centre of a storm very much of his own making. He had published a blog in defence of the Welsh international and then Sheffield United soccer player Ched Evans, saying that he had been "victimised" in his search to return to football after his release from jail, having served half of a five-year sentence for the rape of a 19-year-old woman in a hotel room in Rhyl, North Wales.

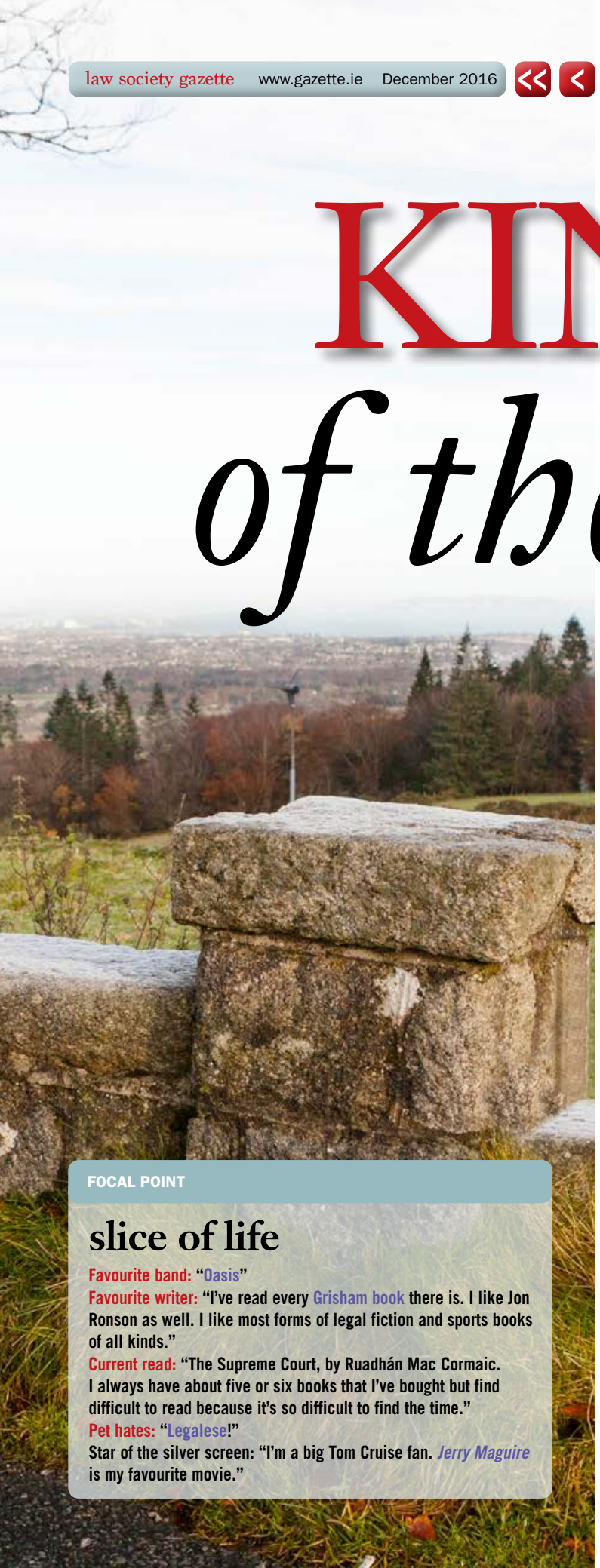
In his article, published in October 2014 on the Professional Footballers' Association of Ireland's (PFAI) website, Gilhooly had said that, while it was "not easy to muster up too much sympathy for Evans" there was surely nothing worse than being accused of a crime that the player genuinely believed he had not committed. "The argument against that," he said, "is that a jury convicted him of the crime. The same applied to the Guildford Four and the Birmingham Six. They got no public sympathy either."

Just last month, Evans was exonerated after the case had been sent forward by the Criminal Cases Review Commission to the Court of Appeal, which allowed the appeal but, "in the interests of justice", ordered a retrial. As a result of this retrial, Evans was found not guilty of rape.

Does Gilhooly feel exonerated, given the amount of flak he took at the time?

"To an extent, I felt slightly vindicated by it. To be honest, it wasn't really ever about me. I took about a week's abuse. Then everyone forgot about it, like they do. It wasn't my life that changed.

"At the time when he was convicted, I remember thinking to myself – and I sent out a few tweets at the time that didn't get any sort of traction – saying 'this just looks wrong, completely'. And then, when the furore started in October 2014 about



FOCAL POINT

slice of life

Favourite band: "Oasis"
Favourite writer: "I've read every Grisham book there is. I like Jon Ronson as well. I like most forms of legal fiction and sports books of all kinds."
Current read: "The Supreme Court, by Ruadhán Mac Cormaic. I always have about five or six books that I've bought but find difficult to read because it's so difficult to find the time."
Pet hates: "Legalese!"
Star of the silver screen: "I'm a big Tom Cruise fan. *Jerry Maguire* is my favourite movie."

Sheffield United talking about re-signing him when he was released from prison, I just got very interested in it. I spoke to the solicitors who previously represented him – Brabners – about the situation, and they'd felt it was an unfair decision.

"Because of my work for the PFAI, I thought: this could happen to any young footballer. Any young man could find himself in that position. And the more I looked into it, the more I thought 'Do you know what, he mightn't even be actually guilty.'

"Then I wrote the article. If I wrote it again, I'd write it differently. And I made some ill-advised references to the Guildford Four and the Birmingham Six. I only said that in the context of juries getting it wrong sometimes. I wasn't comparing their fates – because they're not comparable. But then the PFAI put it up on their website and they – contrary to popular belief – had fully read it and had fully agreed with it.

"Within half an hour of them putting it up, it had gone viral and all hell broke loose. My Twitter account was inundated. I stopped looking at it after a while. I found myself being one of the biggest stories in Ireland on 18 November 2014. When I got a call from Channel 4 saying Jon Snow wanted to speak to me, I realised, 'This has gone far too far.'

"Whichever way I spoke about this, it just did not look good. I was certainly sorry I'd ever done it at that point.

"But then, as time went on, over the course of the last two years, it has become gradually more and more obvious that, in fact, Ched Evans was the victim of a miscarriage of justice. I thought it was a dereliction of duty, however, and an absolute abdication of responsibility by the Crown and the police to go ahead with that second trial. But, ultimately, Ched Evans has been completely exonerated. He was innocent and spent two-and-a-half years in jail for a crime he didn't commit."

Banks of England

For those who know Stuart, it will come as no surprise to hear that he's football crazy and is a dyed-in-the-wool Liverpool supporter. "I loved football from a really early age. I was involved in Malahide United and was a manager of one of their junior football teams in my early 20s. I was the player manager and became secretary of the club." He played several positions, including goalie.

"There's a funny story, which I told at my dad's funeral. My dad, James, was a very well-educated man. He had no interest in sport at all, and when I was a kid, I think he always wanted me to be intellectual as well, but I just didn't have that in me.

"One day, I brought this book back from the library – *Banks of England* – and he got very excited when he saw it. I had to tell him that it wasn't a book about the financial institutions of England, but a book about Gordon Banks, the international goalkeeper. He was devastated. He didn't even know who Gordon Banks was!"

It was his dad's influence, however, that steered his career in the direction of law. James himself was a relatively late convert to the discipline, having originally worked in banking and then tax consultancy. "He became a junior barrister in the early '80s when I was about 11 or 12," says Stuart.

"His experience as an older junior barrister put me off the Bar completely. I found the uncertainty of it and the lack of money at that age really off-putting, and I vowed I would never be a junior barrister, or any sort of barrister. So that pointed me towards the solicitor route. I think from about 15 onwards I was only ever going to do that. Luckily I got enough points for law and the rest is history."

He went to UCD and studied for his BCL from 1988 to '91. Among his classmates was current chairman of the Bar, Paul McGarry. "The two of us were in the same class – and here we are! We often say that if you'd seen the two of us back then, we were the last people you would have picked to be in the positions we're in now – although maybe more so me than him. It's rare enough that you have two people from the same class, of exactly the same age, heading up the two wings of the legal profession."

Rage against the machine

Stuart has a strong reputation as a personal injuries lawyer. What led to him specialising in that field?

"When I joined HJ Ward, Harry, the principal, was a personal injuries lawyer. It was as simple as that. We just did what he did. I started off doing personal injuries work and other litigation. It is something I've always loved doing. I don't have an interest in any other aspect of law, to be quite honest. "

> **Everyone makes mistakes and we have a tendency not to want to admit them. The most disarming thing you can ever do to a client is to say sorry**

Does he have it in for the insurance industry?

"I don't. I just wish the insurance industry would tell the truth, though. They are using their previous success with the *Motor Insurance Advisory Board Report* in 2002 as another opportunity to try and reduce proper compensation for claimants. They are using very spurious reasons for this. They're utterly disingenuous. If they were honest and came out and said, 'this is why we're doing what we're doing', people would have a lot more respect for them. They're hiding behind their failure to provide data, and they're hiding behind what they believe

to be an easy target – which is the legal profession and the courts. They think that all they have to do is throw some mud at us and they'll make it stick. And I think the public is starting to cop onto them. I think. I hope."

Does he believe that the insurance industry will ever open its 'black box' of claims data – as he so eloquently described it during a recent meeting with the Oireachtas Joint Committee on Finance, Public Expenditure and Reform?

"No, I don't think they'll ever do that. Because I think that what's in that black box is not going to reflect well on them, so I don't believe we'll ever see that, no. I think they'll just keep making lots of noise and hope that nobody actually asks too many hard questions."

Giant steps

Stepping into the big shoes, what are his plans for the presidency?

"I would love to see a change in members' perceptions of the Law Society. I would love to think that the profession believed it was *their* Law Society – that each individual solicitor felt it was for them. From experiences I've had over the years – and I think this is a wrong perception, but it is a perception – I think that big firms believe that the Law Society is there for small firms, and small firms believe that the Society is for big firms.

"In fact, neither of those things is true. I would love every solicitor to believe that we are there for them. We have 10,000 members, but only a few hundred – around 400 – are involved on Law Society committees. That's less than 5% of the profession. For those who aren't, many are critical of the Society and what it does. In some cases they may well be right – and in other cases they're wrong.

"It's very important that we listen to what they say they want from us, and that's one thing I'm absolutely determined to do this year. It's to listen to all firms, whether large or small, and I want a lot more feedback from the profession."

How does he propose getting that feedback?

"By meeting people. I'm happy to go anywhere. I will meet anyone at any time and I will listen to what they think we're doing right, or doing wrong. I'm not a sensitive person. You know, having dealt with Ched, I can take anything at this stage. I think we all want to improve, we want to be a better Law Society, and we want the profession to think highly of us."

> They think that all they have to do is throw some mud at us and they'll make it stick. And I think the public is starting to cop onto them. I think. I hope

Stuart is a consummate communicator, picking up the 'Journalist of the Year' gong two years ago at the Irish Magazine Awards. Does he have any plans to employ those skills during his presidential year?

"I'd like to do more writing. I'll be doing a bit for the *Gazette* obviously in my monthly messages. I'm also going to have a dedicated Twitter account: @LSIpresident. It's already set up. So I'll be tweeting – and the director general says he'll be tweeting before I do, because he has to get in before me!"

He's done a lot for someone who's only 45 years of age. Has he got any plans after his presidential year to write a book?

"I don't have the patience for book writing. One thing I will definitely do is ride my bike more, because cycling is now my big passion."

Tour de France

That all started for Stuart with a charity cycle that was held for a footballer called Gary O'Neill, who developed testicular cancer. "There was a concern he would never play again. I bought the bike for that and started training and got the bug. There's nothing quite like the cycling bug. When people get it, they get it bad. And I got it bad. It's been life-changing in terms of how good it is for you physically. It's great socially, and it's brilliant for you mentally."

He's a member of what he terms "an informal club" called VC Beechwood in Ranelagh. "About 25 to 30 of us go out on Saturdays and Sundays. Last year, we did Geneva to Nice over all the big Alpine climbs. It's my big sporting passion now."

My thoughts veer back to the Law Society's annual conference in Cork earlier this year, when the celebrated chief sports writer with *The Sunday Times*, David Walsh, gave the audience the inside track on his investigation into the disgraced cyclist Lance Armstrong. Stuart, who was in the audience, had hung on his every word and, at the end, asked an informed question about the essential difference between Armstrong and British cyclist Chris Froome: "Froome has won two Tours. He is faster on Mont Ventoux than Armstrong is," waxed Stuart, "and yet I know from speaking to you and I know from reading your stuff that you believe it is more likely than not that Chris Froome is clean." Walsh went on to elucidate a solid defence of Froome.

During his speech, the journalist had spoken at length about people making mistakes, but failing to own up to them – and about how ego had ultimately led to the downfall of Lance Armstrong.

Stuart, taking a leaf out of Walsh's ethics' book, has this advice for fellow lawyers: "Be humble. Listen to your clients. Never be afraid to admit you're wrong. I think that people in life, not just in the legal profession, never want to admit their mistakes. Everyone makes mistakes and we have a tendency not to want to admit them. The most disarming thing you can ever do to a client is to say sorry. They don't expect you to do it. You'd be amazed at how a client will react to that."

FOCAL POINT

LA confidential

Stuart Gilhooly's term runs for 12 months from November 2016. Aged 45, he is a partner in the law firm HJ Ward & Co, Harold's Cross, Dublin.

Originally from Malahide, Co Dublin, Stuart is the eldest son of James (who qualified as a barrister in the early '80s) and mother Valerie (née Stuart), both deceased.

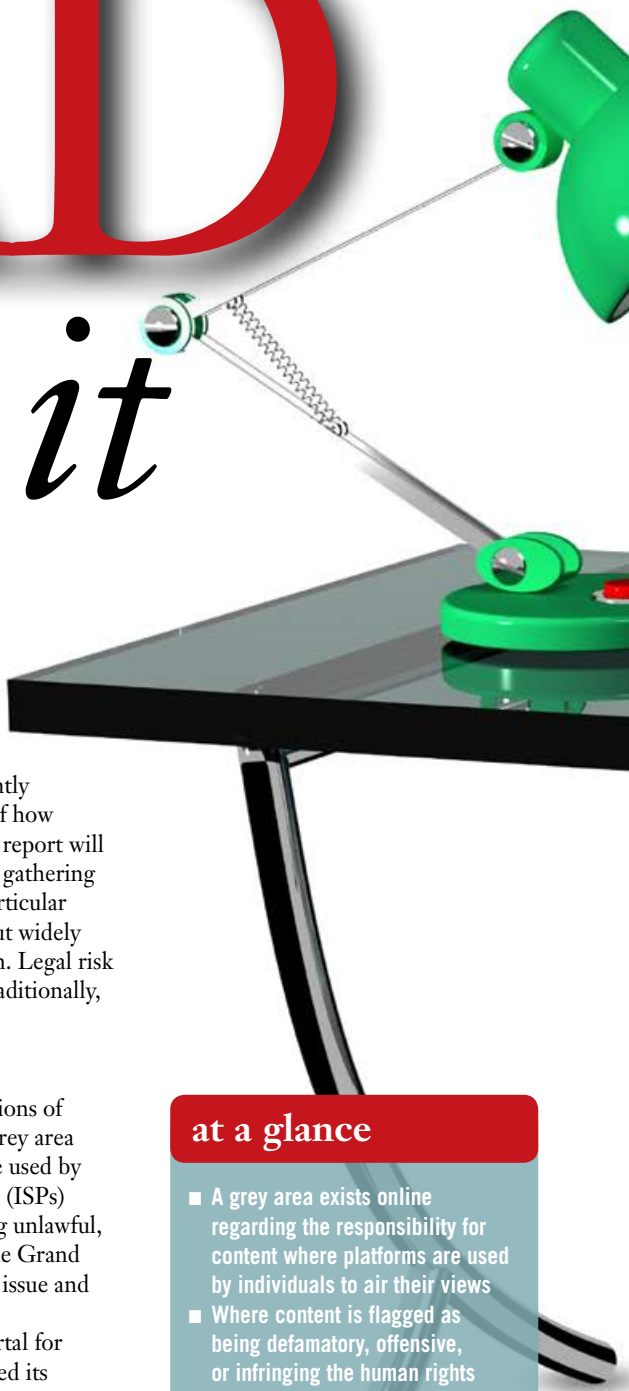
He completed his secondary education at Malahide Community School and studied law at UCD from 1988 to '91, graduating with a BCL, followed by a Diploma in Business Studies at the Smurfit School of Business.

In October '92, he began his traineeship at HJ Ward, qualified in 1995, and made partner in 2003.

Stuart has served on Council for the past 17 years, originally becoming a member in 1999. He has chaired many of the Society's most senior committees.

He will lead the solicitors' profession during a period of unprecedented challenges, including the establishment of the Legal Services Regulatory Authority and the impact of the Brexit referendum on Ireland.

READ *all about it*



Sinéad Keavey is a partner in William Fry

In this age of instant news reporting, the comfort of having time for legal checks is not always available. Sinead Keavey looks at areas of key concern in the context of online publishing

The International Centre for Journalists has recently announced that it will conduct a global review of how news media has harnessed new technology. The report will consider how journalists embrace technology in gathering and reporting the news. Significantly – and a particular legal challenge – news is not simply reported, but widely debated by the public online, who engage often without inhibition. Legal risk is associated with this contemporary form of journalism where, traditionally, there would be reliance on the safeguards of in-house lawyers.

Stop the presses

When reporting the news, whether in print or online, the reputations of those being discussed should always be a key concern. Online, a grey area exists regarding the responsibility for content where platforms are used by individuals to air their views. Generally, internet service providers (ISPs) will review user-generated content only when it is flagged as being unlawful, rather than proactively monitoring content. A recent case from the Grand Chamber of the European Court of Human Rights addresses this issue and comes as a warning for online news publishers.

In *Delfi v Estonia*, the Grand Chamber found against a news portal for failing to prevent the publication of unlawful content. Delfi allowed its readers to publicly comment on news stories, while operating a 'notice-and-take-down' policy. Delfi published a story that triggered a greater than usual public response. Some comments contained offending content about an individual (L), who complained and sought damages. The Estonian court awarded damages in L's favour, rejecting Delfi's defence based on the limitation of liability provided for intermediaries under the *E-Commerce Directive*.

Delfi took the case to the European Court of Human Rights (and ultimately to the Grand Chamber), arguing an interference with its right

at a glance

- A grey area exists online regarding the responsibility for content where platforms are used by individuals to air their views
- Where content is flagged as being defamatory, offensive, or infringing the human rights of others, the publisher or intermediary must consider the appropriateness of removing content
- Anonymity is integral to the online world, but it can be circumvented where there is a clear case of online defamation

PIC: GETTY IMAGES

> The absence of borders online allows news to travel to places that would otherwise be beyond reach. However, jurisdictional conflicts will invariably arise

to freedom of expression. Differentiating Delfi as a large, professional and commercial entity, the Grand Chamber found against it, concluding that its freedom of expression had not been disproportionately interfered with where it had the ability to take effective measures to limit the publication of hate speech.

Following this decision, where a publisher of online news allows reader comments on its site without employing measures to prevent the dissemination of defamatory or offensive content, it will be exposed to an action for damages.

Spider-Man menace

Where content is flagged as being defamatory, offensive, or infringing the human rights of others, the publisher or intermediary must consider the appropriateness of removing content. A balancing exercise should be conducted between freedom of expression and the competing rights of individuals and companies to their reputation and rights. What may and may not be interpreted as offensive, abusive, or as harassment represents a key challenge.

> **Public engagement with the news brings a new legal challenge for publishers, with many moving to disengage comment functions rather than struggling with moderation**

The question of what amounts to free speech and hate speech recently received extensive media coverage following the decision of Twitter to permanently ban Milo Yiannopoulos, who was alleged to have coordinated an attack on an actress in the new *Ghostbusters* movie. Twitter issued a statement reiterating that its rules prohibit the incitement of, or engagement in, targeted abuse or harassment of others.

In the case of copyright infringement, the European Court of Justice has recognised the dangers of requiring companies to act as censors. The court, in *UPC Telekabel*, has emphasised that ISPs must strictly employ measures that are targeted to bringing an end to the infringement of copyright without affecting the public's access to online information. Reliance on national rules and procedures to protect against the infringement of freedom of expression should be maintained to avoid collateral censorship. Collateral censorship describes the practice of censorship to avoid liability – essentially the removal of or refusal to carry questionable content – rather than that which is unlawful. The concern is that, where publishers of news are required to censor content, this will inevitably engender an over-cautious approach where lawful content, perhaps controversial but necessary to the public debate, will not be published.

Having regard to the Grand Chamber's decision in *Delfi*, it may prompt a more cautious approach to controversial content, with online publishers favouring a 'politically correct' approach rather than having to defend content in the aftermath of publication.

Extra, extra

Anonymity is integral to the online world, but it can be circumvented where there is a clear case of online defamation.

In a widely reported case of online defamation, that of Eoin McKeogh, an application was brought in the Irish courts for access to information that would identify the anonymous offenders. Mr McKeogh had wrongly been identified as a man who had been caught on camera exiting a taxi without paying. A court order was sought allowing for the immediate removal from YouTube of the video footage. Significantly, 'Norwich Pharmacal Orders' (NPOs) were granted, compelling the disclosure of details to identify the web users concerned.

More recently Petroceltic International, an oil and gas exploration company, issued proceedings against Automatic, the owner of the blogging website WordPress. Anonymous content was posted on WordPress that Petroceltic argued was untrue and defamatory. Petroceltic sought the identity of the anonymous blogger and also the removal of the posts. Judge Barker, finding that the content was, on the face of it, defamatory, ordered that Automatic must notify the blogger that it had seven days to furnish details of his or her identity or otherwise Automatic would be required to provide the information to Petroceltic. Judge Barker also granted an order prohibiting the website from publishing any additional material of the blogger relating to Petroceltic, along with a preservation order for six months of data held on the blogger. Automatic complied

with the order to remove the content, but there are no further reports on whether the identity of the blogger was provided and whether or not Petroceltic has proceeded against this person.

In allowing NPOs, courts must balance the requirement of privacy with the competing requirement for justice against online offenders. The Supreme Court, in the case of *Megaleasing v Barrett*, made it clear that NPOs should not be granted simply upon request, but only in cases of very clear wrongdoing.

Above the fold

The absence of borders online allows news to travel to places that would otherwise be beyond reach. However, jurisdictional conflicts will invariably arise, particularly in the areas of defamation and the infringement of copyright online. For example, what might amount to defamation in Ireland may not in Britain, with the latter requiring one's reputation to be "seriously harmed", with no such threshold in Ireland.

Justin Timberlake and his wife Jessica Biel recently chose Ireland over Britain as the forum in which to issue proceedings for defamation following the publication by *Heat* magazine of a story that attributed quotes to Biel about Timberlake's behaviour at a party. This case, which settled out of court with an apology, has been labelled as one of libel tourism, where Ireland was reportedly not the biggest market for the magazine and neither did it house *Heat*'s headquarters.

> **Where a publisher of online news allows reader comments on its site without employing measures to prevent the dissemination of defamatory or offensive content, it will be exposed to an action for damages**

As for jurisdictional conflicts between Europe and the US, a US court ruled in July in favour of Microsoft in its challenge against a warrant seeking the disclosure of user-generated content stored on a server in Dublin. The warrant was issued in the context of a drugs prosecution case in the US where evidence, in the form of emails, was held on the Dublin server. Microsoft argued that the warrant could apply only to material in the US. The court found that the extraterritoriality of the warrant went beyond that which was envisaged by the legislature. The decision has been received with approval by those advocates for privacy online.

For news publishers, remuneration for online journalism can be challenging, which arguably leads to a lack of investment in the end product. To better position news publishers to negotiate payment for content, the European Commission announced on 14 September its aim to modernise copyright laws to include the protection of news publishers. The intention of the commission is to simplify the rules to be applied across the member states in order to protect and support the creators of news content.

Gotcha

The world of celebrity was traditionally relied upon to sell newspapers, and that strategy has not changed online. However, celebrities, even those who court the press, have a right to privacy.

Naomi Campbell took a case against MGN, the publishers of the *Mirror*, in respect of its decision to carry a picture of her attendance at a support group for drug addiction (analysed in the June 2004 *Gazette*). While the photograph was taken in a public place, the House of Lords accepted that it disclosed private information over which Ms Campbell had a reasonable expectation of privacy and that could not be outweighed by the paper's competing right to freedom of expression.

More recently in Britain, Paul Weller issued proceedings against the publishers of the *Mail* online, relating to an article entitled 'A Family Day Out'. Key to the complaint was the inclusion of a number of photographs of Paul Weller and his children (his 16-year-old-son and his ten-month-old twins). The newspaper was found to have misused the Wellers' private information in breach of the *Data Protection Acts*. An injunction was also granted that restrained any additional publication of the images. The children were awarded damages. On appeal, the Court of Appeal agreed that the photographs did not contribute to a debate of general interest where the children had limited or no public profiles. Significant to the decision was the fact that the images of the twins' faces had not previously been published in the media.

Freddie Starr ate my hamster

Technological innovation has transformed journalism, delivering news at a glance with bite-sized chunks of information. Online, public engagement with the news brings a new legal challenge for publishers, with many moving to disengage comment functions rather than struggling with moderation. Instead, comments have moved from news sites to social media platforms. With that, legal liability for hosting comments is no longer taken on by the news site but rather by the platform who seeks to rely on the limitation of liability provided for ISPs. It will be interesting to see if the Grand Chamber's decision in *Delfi* is followed elsewhere and whether the concern about collateral censorship is realised.

A town called malice – Paul Weller socks it to the press

look it up

Cases:

- *Campbell v Mirror Group Newspapers Limited* [2004] UKHL 22
- Case C-314/12, *UPC Telekabel Wien GmbH v Constantin Film Verleih GmbH, Wega Filmproduktiongesellschaft mbH* (judgment 27 March 2014)
- *Delfi AS v Estonia* (application no 64569/09), 16 June 2015
- *McKeogh v John Doe & Ors* [2012] IEHC 95
- *Megaleasing UK Ltd v Barrett* [1993] ILRM 497
- *Microsoft v United States*, case no 2:16-cv-00538
- *Petroceltic International Plc & Ors v Aut O'Mattic A8C Ireland Limited* (unreported, High Court record no 2015/6714P)
- *Weller v Associated Newspapers Limited* [2015] EWCA Civ 1176

The EMPIRE strikes back

Colonel Michael Campion is a military judge of the Defence Forces of Ireland

The legal framework of the Easter Rising trials, and the narrative of the trial records, such as they are, provide insight into those events in the context of the time. Colonel Michael Campion explains

The 1916 Rising and the subsequent trials and executions were pivotal points in the history of modern Ireland. The greatest war the world had seen had been underway for two years. Britain was consumed by that conflict. In what was then the second city of the Empire, the Rising erupted on a bank holiday Monday, 24 April. The British government dispatched Sir John Grenfell Maxwell to Dublin on a mission to take measures necessary for the prompt suppression of insurrection in Ireland and such measures as he deemed advisable under the *Defence of the Realm Act* (DORA). He arrived at 2.30am on Friday 28 April. The military component of his mission was achieved efficiently within days. The follow-through became entangled in legal issues, the implications of which endure.

That prompt and competent military suppression gave rise to a practical issue: 3,500 prisoners either surrendered on foot of Pearse's order on 29 April or were subsequently lifted on suspicion of being "dangerous Sinn Féiners".

Richmond Barracks in Inchicore was designated as the processing centre for prisoners. By Monday 1 May, they numbered over 1,000 and rising. There, they were screened for trial, deportation, or release. The signatories to the Proclamation and those who commanded troops were of most interest. Ultimately, about 170 were selected for trial by court martial, and 1,840 were detained without trial, marched to the docks, and transported to various camps in England and Wales. Prisoners not selected for release or deportation were brought before an assistant provost marshal for the taking of a summary of evidence.

Defence of the realm

For the purposes of conducting the war, extraordinary powers had been vested by parliament in the government by the *Defence of the Realm Act 1914* and the *Defence of the Realm Consolidation Act 1914*. This constituted a comprehensive code of extraordinary legislation that included the creation of criminal offences by regulations, rather than by act of

at a glance

- The well-established court martial procedures from statutory military law provided a readymade template for the trial regime mandated by DORA
- Those procedures were selectively applied in a manner that suggests a marked reluctance to accept the restraints and protections inherent in them, and a definite leaning towards the free hand of martial law
- The departure from established procedures, and the exercise of discretion to authorise that departure, was facilitated by the haste and speed of the process, the fact that the trials were held *in camera* and that a proclamation of martial law, albeit of questionable validity and effect, had been made


Pádraig Pearse


Thomas J Clarke


Thomas MacDonagh


Joseph Mary Plunkett


Edward Daly


William Pearse


Michael O'Hanrahan


John MacBride


Éamonn Ceannt


Michael Mallin


Con Colbert

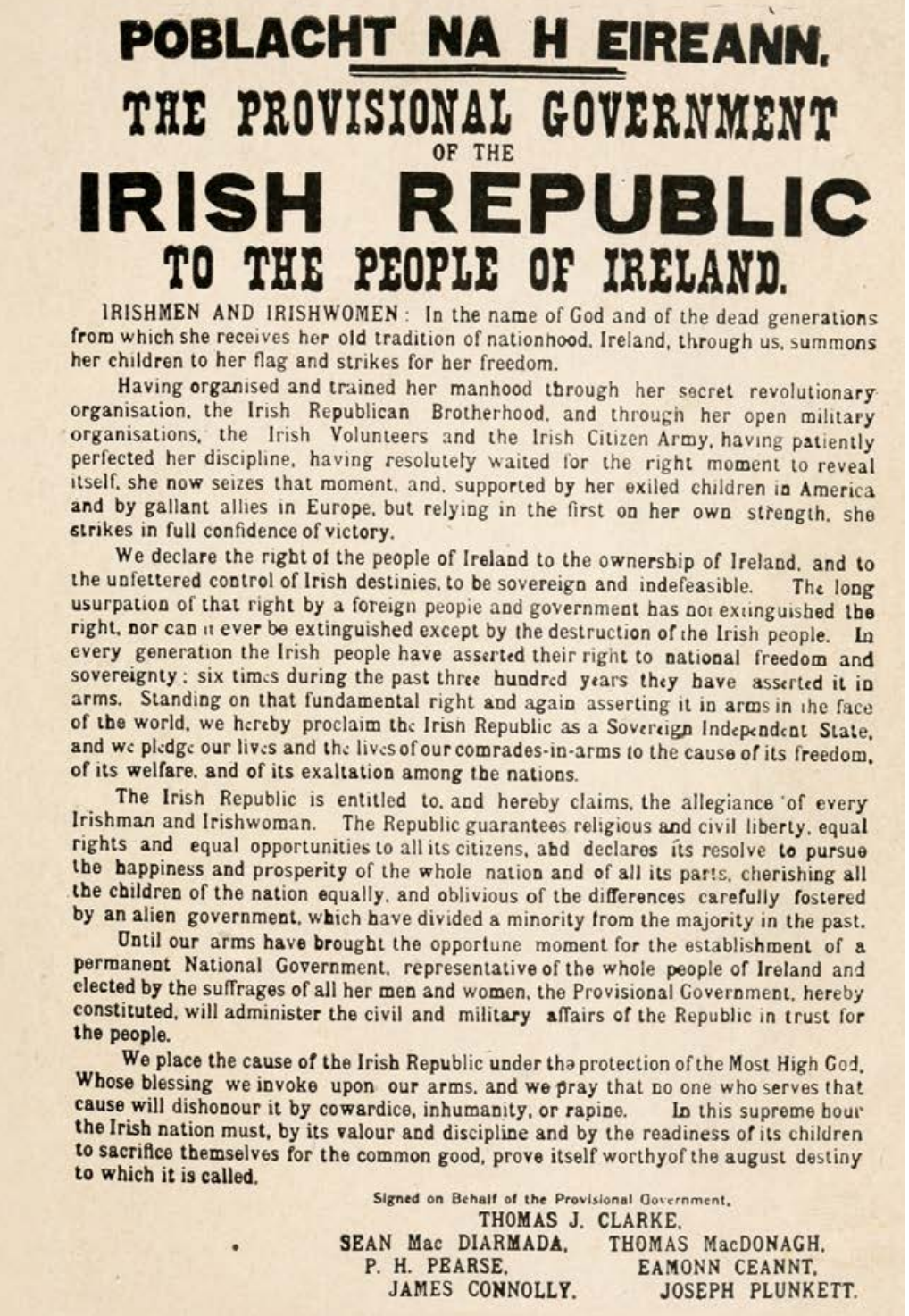

Seán Heuston


Sean Mac Diarmada


James Connolly


Thomas Kent


Roger Casement



POBLACHT NA H EIREANN.

THE PROVISIONAL GOVERNMENT
OF THE
IRISH REPUBLIC
TO THE PEOPLE OF IRELAND.

IRISHMEN AND IRISHWOMEN: In the name of God and of the dead generations from which she receives her old tradition of nationhood, Ireland, through us, summons her children to her flag and strikes for her freedom.

Having organised and trained her manhood through her secret revolutionary organisation, the Irish Republican Brotherhood, and through her open military organisations, the Irish Volunteers and the Irish Citizen Army, having patiently perfected her discipline, having resolutely waited for the right moment to reveal itself, she now seizes that moment, and, supported by her exiled children in America and by gallant allies in Europe, but relying in the first on her own strength, she strikes in full confidence of victory.

We declare the right of the people of Ireland to the ownership of Ireland, and to the unfettered control of Irish destinies, to be sovereign and indefeasible. The long usurpation of that right by a foreign people and government has not extinguished the right, nor can it ever be extinguished except by the destruction of the Irish people. In every generation the Irish people have asserted their right to national freedom and sovereignty: six times during the past three hundred years they have asserted it in arms. Standing on that fundamental right and again asserting it in arms in the face of the world, we hereby proclaim the Irish Republic as a Sovereign Independent State, and we pledge our lives and the lives of our comrades-in-arms to the cause of its freedom, of its welfare, and of its exaltation among the nations.

The Irish Republic is entitled to, and hereby claims, the allegiance of every Irishman and Irishwoman. The Republic guarantees religious and civil liberty, equal rights and equal opportunities to all its citizens, and declares its resolve to pursue the happiness and prosperity of the whole nation and of all its parts, cherishing all the children of the nation equally, and oblivious of the differences carefully fostered by an alien government, which have divided a minority from the majority in the past.

Until our arms have brought the opportune moment for the establishment of a permanent National Government, representative of the whole people of Ireland and elected by the suffrages of all her men and women, the Provisional Government, hereby constituted, will administer the civil and military affairs of the Republic in trust for the people.

We place the cause of the Irish Republic under the protection of the Most High God, Whose blessing we invoke upon our arms, and we pray that no one who serves that cause will dishonour it by cowardice, inhumanity, or rapine. In this supreme hour the Irish nation must, by its valour and discipline and by the readiness of its children to sacrifice themselves for the common good, prove itself worthy of the august destiny to which it is called.

Signed on Behalf of the Provisional Government,
THOMAS J. CLARKE,
SEAN Mac DIARMADA, THOMAS MacDONAGH,
P. H. PEARSE, EAMONN CEANNT,
JAMES CONNOLLY, JOSEPH PLUNKETT.

parliament, and provision for the trial of those offences by military courts.

Section 1 of the act gave civilians charged with offences against the DORA the option of a jury trial by a civil court instead of a trial by court martial. However, this right to a civil jury trial was not absolute, because it was provided that the Government could suspend the operation of the section in the event of invasion or other special military emergency, in which circumstances the right to try civilians by court martial and, if necessary, to put them to death would be restored. This is in fact what happened after the Rising, when this section was operated by a proclamation dated Wednesday 26 April as regards Ireland.

The legal response of the British authorities to the rising was:

- On Tuesday 25 April, Baron Wimborne, Lord Lieutenant, issued a proclamation of martial law in respect of Dublin city and county,
- On Wednesday 26 April, Major General LB Friend issued a proclamation extending martial law to the rest of the country,
- On Wednesday 26 April, the English king issued a proclamation under DORA suspending the right to jury trial in Ireland.

The two proclamations of 26 April were both referred to as effecting the imposition of martial law, but they had two very different legal regimes in contemplation.

The late Mr Justice Adrian Hardiman perhaps best summarised the essence and context of the term 'martial law' when he said: "In law, it is military necessity, and not a proclamation, that brings this condition about, and it exists only where, as long as, and to the extent that such necessity endures. This state of affairs is acknowledged by the common law, rather than approved by it. A period of so-called martial law is a period when the army reigns supreme and the will of the general is substituted for the law. It is the antithesis of the common law concept of the rule of law, and objectionable to it."

Martial law therefore is to be distinguished clearly from a period when laws are enforced by military courts, as they were under DORA in 1916. This was not martial law, but a code of emergency law administered by the army.

Enemy of the state

Section 1 of DORA contained a proviso that prevented a court martial from imposing a death penalty, save where a breach of the *Defence of the Realm Regulations* was carried out "for the purpose of and with the intention of assisting the enemy". There was no admissible evidence available to support the assertion that there had been a live German connection with the Rising. The process stalled while the authorities considered how to address this lacuna in the framing of charges. At this point, Patrick Pearse wrote a letter dated 1 May to his mother, to which he added a postscript at the top of the first page that read: "I have reason to believe that the German expedition on which I counted actually set sail, but was defeated by the British fleet." The letter was seized and reviewed by Lt Bucknill, the legal officer on Maxwell's staff. The charge of engaging in rebellion for the purpose of and with the intention of assisting the enemy was drafted the same day, and the letter formed the cornerstone of the prosecution case against Pearse.

There was no specific charge of rebellion under DORA. Regulation 50, however, provided: "If any person does any act of such a nature as to be calculated to be prejudicial to the public safety or the defence of the realm and not specifically provided for in the foregoing regulations with the intention or purpose of assisting the enemy, he shall be deemed to be guilty of an offence against these regulations."

Although the letter was not produced in any other cases, the charge against Pearse became the template for the primary charge against each prisoner. It read as follows: "Did an act, to wit, did take part in an armed rebellion, and in the waging of war against His Majesty the King, such act being of such a nature as to be calculated to be prejudicial to the defence of the realm and being done with the intention and for the purpose of assisting the enemy."

It is generally accepted that this reference to Germany by Pearse was deliberate, and it certainly had the effect of bridging the legal gap between the British desire to shoot him and his desire to make the ultimate sacrifice. By providing grounds for imputing an intention on his part to assist the enemy, it thereby fulfilled the condition required for the imposition of the death penalty.

There seems to have been an assumption at the other trials that the intention of each prisoner in engaging in the Rising was to assist Germany.

Martial law

Maxwell directed that the cases be tried by field general court martial rather than by general court martial. This was a very significant decision and direction. The legal framework for trial by court martial was established by the *Army Act 1881* and the rules of procedure issued thereunder. A general court martial consisted of a president and a board of not less than nine officers. They were advised on legal matters by a judge advocate, a legally qualified military officer.

The *Manual of Military Law* in issue in 1914, as historian Brian Barton has commented, painted a picture of the military justice system as a benevolent and punctilious enquiry in which the interests of the accused were at all times paramount. These interests were protected by rights, including the right to procure witnesses, the right to have a proper opportunity to prepare a defence, and the right to the liberty to communicate with witnesses or legal advisors or other friends.

Therefore, there was in place an established legal infrastructure sufficient to ensure the conditions required for provision of a fair trial, albeit by military officers, with on-the-ground engagement from a judge advocate duty-bound to act impartially.

However, the act also provided for a "court martial of an exceptional kind, termed a field general court martial". That court had the same power as a general court martial, but was subject to exceptional rules under which the procedure was stated to be of a more summary character than that of an ordinary court martial.

A field general court martial consisted of not less than three members. The president was to hold at least the rank of captain, and all members should have held commissions for at least one year, with preference to officers with at least three years' commissioned service. There was no requirement for a judge advocate.

The more summary rules of procedure applicable to field general courts martial still specifically guaranteed the two fundamental protections of the right to a trial in open court and the right to make a defence. The more elaborate protective procedures guaranteed in a general court martial arguably remained available, but at the discretion of the convening officer and the presidents of each such court. The dominant purpose of a field general court martial was the maintenance of army discipline in the field, rather than the administration of justice.

> **The first to be tried was Patrick Pearse. His letter containing the 'German evidence' was written on 1 May. The charge was drafted the same day. His trial was on 2 May. He was executed at dawn on 3 May**

The trials began on Tuesday 2 May 1916. Two standing courts were convened in Richmond Barracks. One was presided over by Brigadier General Blackader, and the other by Colonel Maconchy.

Lt William E Wylie KC prosecuted in Blackader's court, and Lt Ernest Longworth BL prosecuted in Maconchy's court. Neither had any court martial experience, but were reserve officers who practised at the Bar. Wylie subsequently became a judge of the High Court in Ireland under the British administration and was also appointed to the bench of the High Court of the Irish Free State.

In his book on the trials, Sean Enright observed that the prosecution evidence came from four broad categories of witnesses: British military personnel and policemen held as captives during the week; a small group of members of the Dublin Metropolitan Police, who gave evidence of surveillance prior to the Rising showing association between the leaders; British officers involved in taking the surrender, who gave evidence about the prisoners they took into custody; and personnel who conducted searches of prisoners that yielded incriminating documents.

Barton characterised the evidence in a significant proportion of cases as entirely circumstantial, misleading, and inaccurate.

The case for the defence

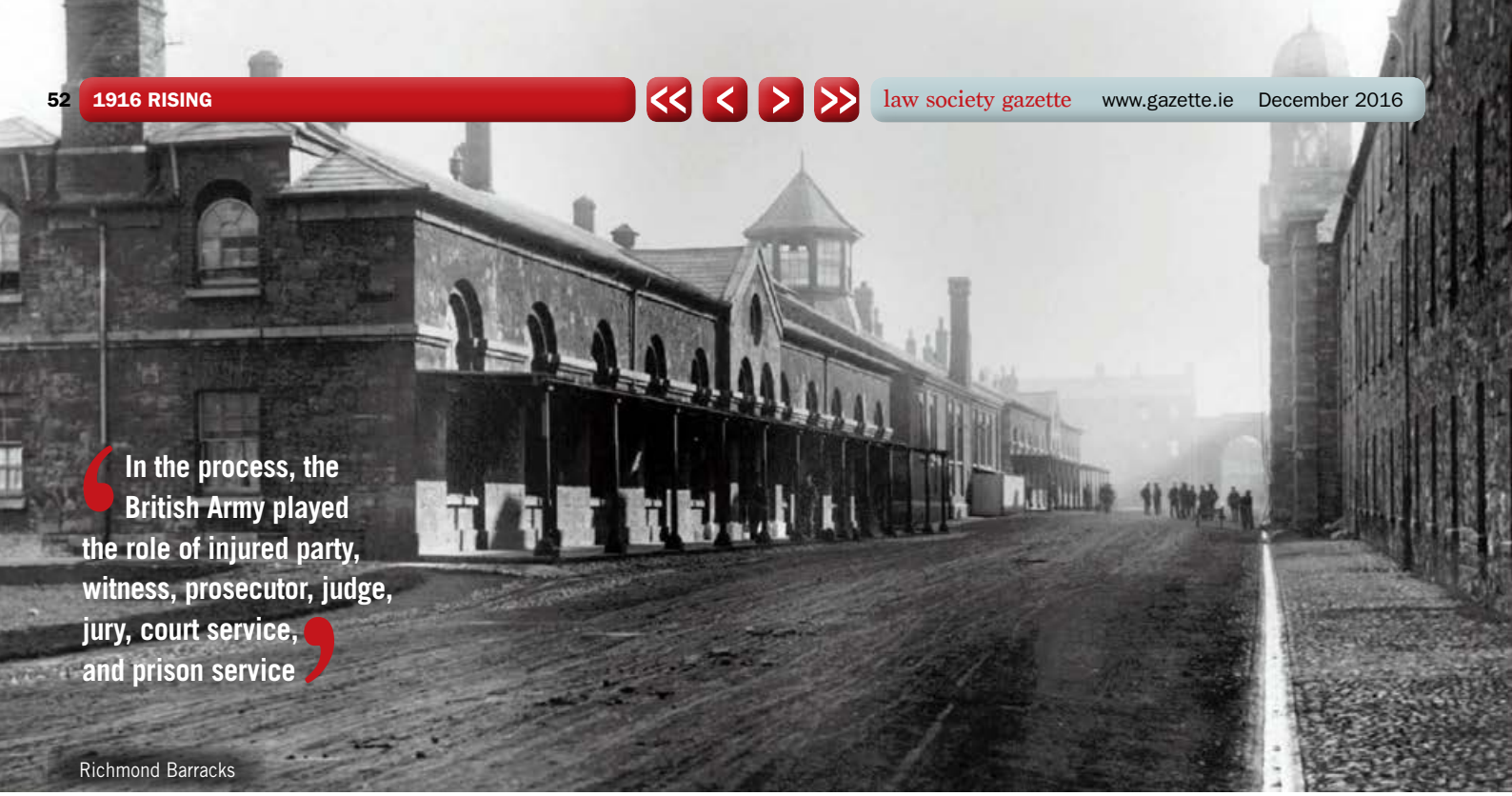
The defence case was extremely limited in each trial. Pursuant to the provisions of section 2 of the *Defence of the Realm (Amendment) Act 1915*, a civilian was not entitled to give evidence on his own behalf. They were permitted to make an unsworn statement to the court. They were permitted to cross-examine witnesses.

All bar William Pearse pleaded not guilty. Some engaged with the process and did make statements and sought to contest the charges. Others declined to engage. A significant number, apparently genuinely, denied any knowledge of the intended rebellion and stated that they thought they were going out on a route march and manoeuvres. Others downplayed the nature and extent of their actions during the week and their rank and level of responsibility. It appears that the majority failed to address the critical issue of intention to assist the enemy. This was a clear indication of the dearth of legal advice available to the prisoners.

None of the prisoners had legal representation at their trial. Wylie raised the issue of representation on the evening of the first trials, with attorney general James Campbell, but Campbell would not hear of it and said that he would give the prisoners no public advertising.

Wylie initially advised the court that a prisoner was entitled to have a soldier's friend at his trial, or at least to take legal advice. He subsequently revised this position, and the prisoners were allowed interviews outside of court only. A barrister was permitted to attend Richmond Barracks and spend a short time with William T Cosgrave, Sean McBride, and Eamon Ceannt. However, he was not given access to any prosecuting papers and was not permitted to represent any of the prisoners at their trial. Many of the prisoners wanted legal representation, and there is evidence that efforts to instruct solicitors were frustrated by the military authorities.

No proper note of the proceedings was taken or retained. Under the rules of



> In the process, the British Army played the role of injured party, witness, prosecutor, judge, jury, court service, and prison service

Richmond Barracks

procedure, this was not strictly required for a field general court martial. The records that do exist are not transcripts of the trial proceedings, but appear to be more akin to summary notes of the evidence and narrative. Neither of the presiding officers Blackader or Maconchy had legal qualifications, nor did any other members of the courts. There was no judge advocate at any of the trials by field general court martial.

On the first day of the trials, the court made no provision for the accused to call defence witnesses. On the second day, Wylie did succeed in ensuring that the accused were permitted to call witnesses. The speed and circumstances of the trials, however, served to undermine the reality of this right in many cases. Poignantly, the trial record of Eamon Ceannt states "the prisoner calls on Thomas McDonagh, who was not available as he was shot this morning". A few prisoners were able to get witnesses before the court. No prisoners had free access to defence witnesses or any opportunity to prepare their defence. Generally, they were given a typed copy of the charge sheet a few hours before the trial and had no proper opportunity to consider how the charge might be addressed or rebutted by calling evidence.

A number of prisoners were tried together. Most of the trials were very short and lasted only a matter of a few minutes. The record of the trial of Con Colbert shows that the prosecution evidence extends in total to 63 words. He was tried on 4 May and convicted of the standard charge and sentenced to death. The finding and sentence were confirmed by Maxwell on 6 May and promulgated to Colbert on the night of 7 May. He was shot at dawn the next morning.

> Most of the trials were very short and lasted only a matter of a few minutes. The record of the trial of Con Colbert shows that the prosecution evidence extends in total to 63 words. He was tried on 4 May and convicted of the standard charge and sentenced to death

The power of one

The *Army Act* provided that a finding of guilty and the sentence consequent thereon were not valid until confirmed by superior authority. If the confirming officer considered that the proceedings of a court martial were illegal or involved substantial injustice to an accused person, he was obliged to withhold his confirmation. He had no power to alter or amend the finding of a court martial. In relation to the sentence, however, he had the power of mitigation.

Independently of any petition by an accused to the confirming or reviewing authority, the proceedings of all general courts martial before being filed in the office of the judge advocate general were required to be carefully reviewed there as a matter of course, with a view to detecting any illegality or miscarriage of justice.

There was, therefore, in the normal course, a significant post-trial administrative process before any sentence, never mind a death sentence, was carried into effect. Maxwell effectively short-circuited this scheme, which was designed to bring into play a level of review both by superior military authority and also by the independent office of the judge advocate general.

There were also breaches of regulations and process in relation to promulgation and execution of sentence. Promulgation was a process whereby an officer formally read out to the prisoner the finding and sentence of the court martial. Enright refers to a number of instances of the announcement of a death sentence to a prisoner, followed by a dramatic pause, before an announcement of the commutation of that sentence.

Patrick Pearse, McDonagh and Clarke were all executed within minutes of each other by a single firing squad. No clergy were permitted at those executions, although they were thereafter. The use of a firing squad to carry out more than one execution was a significant departure from existing convention and a direct contravention of orders issued by General Staff. It is noteworthy also that all of the firing squads were comprised of Sherwood Foresters, which was the unit that had suffered heavy casualties at Northumberland Road and Mount St Bridge.

Secrets and lies

There was no legal authority under the rules of procedure or DORA to hold any of the courts martial *in camera*. In fact, the law

specifically stated, even in the case of field general courts martial, that the trial should take place in open court. It appears that the individual courts martial failed to even consider the question of excluding the public and press, and just took their orders from Maxwell.

Unionist journalist Warren B Wells captured the essence of the effect of the decision to hold the trials in secret on ordinary Irish people: "I am not asking you to regard the executions of the rebel leaders, the sentences of penal servitude, the deportations, announced baldly day after day without publication of the evidence which justified the infliction of the capital penalty, from behind the closed doors of a field general court martial, from the point of view of their justice, or even of their expediency. I am simply inviting you to endeavour to understand their effect on that Irish public, which read of them with something of the feeling of helpless rage with which one would watch a stream of blood dripping from under a closed door."

Both the political and military hierarchies were aware of the prospect that some of the verdicts might not withstand legal scrutiny and resisted publication, despite a commitment by Asquith in the House of Commons to do so. The War Office admitted that some of the evidence was "extremely thin" and that other elements would not make good public reading. The adjutant general, Macready, had a real sense of the implications of publication. The inevitable result of publication in Macready's view was that "the nationalists would urge that the sole reason for trial *in camera* was that the authorities intended to execute certain of the Sinn Féiners, whether there was evidence against them or not". He admitted that, in his "humble judgement … this argument would be extremely difficult to meet successfully".

Ninety years later, Brian Barton was to succinctly characterise the wartime court martial process as "a legitimising veneer, with the outcome a foregone conclusion". That cap surely fitted the 1916 courts martial.

As it happened the records, such as they are, were not made public until 1998.

The quick and the dead

The rapidity of the trials both collectively and individually was remarkable, even by the standards of the time and the circumstances that obtained: 170 civilians were tried by court martial between 2 and 17 May; 90 of these were sentenced to death; 15 were shot between 3 and 12 May.

The first to be tried was Patrick Pearse. His letter containing the 'German evidence' was written on 1 May. The charge was drafted the same day. His trial was on 2 May. He was executed at dawn on 3 May.

The trials and executions of the other leaders followed a broadly similar timeline, although there was a gap of three days in the cases of Connolly and Mac Diarmada, and four days in the cases of Ceannt and Colbert.

That frenetic pace of trials and executions was accompanied by a parallel regime of deportation of prisoners to internment in Frongoch and other locations at a rate of several hundred a day.

The two final executions, of Mac Diarmada and Connolly, took place on Friday 12 May, the day that Asquith arrived in Dublin and visited Richmond Barracks. By then, the authorities had become increasingly aware of a shift in public mood, reflected in the political mood in Westminster. There was unease in the War Office. Maxwell himself was alive to the shift, which his military mind found difficult to rationalise.

> Neither of the presiding officers Blackader or Maconchy had legal qualifications, nor did any other members of the courts

By the first trial on 2 May, the British had re-established control, and conditions were such that the prisoners could have been tried either by a civil court and jury, or by a general court martial, had there been a mind to take either of those courses. Several trials, including that of Eoin Mac Neill, did take place before ordinary general courts martial. Even in a field general court martial, the rules of procedure applicable to a general court martial could have been applied.

The well-established court martial procedures from statutory military law provided a readymade template for the trial regime mandated by DORA. Those procedures were selectively applied in a manner that suggests a marked reluctance to accept the restraints and protections inherent in them, and a definite leaning towards the free hand of martial law.

The trials were conducted by field general court martial ostensibly under DORA, not martial law. Sean Enright summarises by saying that, although Maxwell adopted the formal language and pro formas of trial under DORA, the evidence suggests that the prisoners were tried under a trial regime of his creation. The departure from established procedures, and the exercise of discretion to authorise that departure, was facilitated by the haste and speed of the process, the fact that the trials were held *in camera*, and that a proclamation of martial law – albeit of questionable validity and effect – had been made.

In the process, the British Army played the role of injured party, witness, prosecutor, judge, jury, court service, and prison service. It was also the appellate decision maker, in the sense that Maxwell held, in the statutory process of confirmation, the power to confirm or commute a death sentence. Independently of the trial regime, which he controlled directly, he eclipsed the royal prerogative of mercy vested in the Lord Lieutenant. There were, within his regime, inherent conflicts of interest, with presidents of courts martial boards and firing squads drawn from members of units that had sustained casualties. The *à la carte* regime he adopted was an affront to the norms of fair procedures and due process, even of the time.

It has been said that Britain was doomed to lose the aftermath of the Rising, and so it came to pass. General Sir John Grenfell Maxwell played a central role in sowing the seeds of that loss – he has been referred to as the man who lost Ireland for England.

His decisions in relation to the trials and deportations under DORA were as crucial as the events of Easter week. They certainly influenced the manner in which the tide of public and political opinion changed direction so fundamentally in favour of the rebels.

further reading

- Brian Barton, *The Secret Court Martial Records and the Easter Rising*
- Sean Enright, *Easter Rising 1916 The Trials*
- David Foxton, *Revolutionary Lawyers and the Sinn Fein Courts 1916-1923*
- Mr Justice Adrian Hardiman, 'Shot in Cold Blood: Military Law and Irish Perceptions in the Suppression of the 1916 Rebellion' (in *1916 – The Long Revolution*, edited by Gabriel Doherty and Dermot Keogh)
- Mr Justice Ronan Keane, 'The Will of the General: Martial Law in Ireland, 1535-1924' (in *The Irish Jurist*)
- Robert D Marshall, *Lieutenant WE Wylie KC: The Soldiering Lawyer of 1916*
- L O'Broin, *WE Wylie and the Irish Revolution 1916-1921*
- Charles Townshend, *Easter 1916: The Irish Rebellion*

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KBC/2364 (R08/16)

PATRICK A GLYNN

(Law Society President 1994/95)

1933 – 2016

The recent passing of Patrick A Glynn ('Paddy' to his friends and colleagues) on 20 October 2016 marked a very sad day for the legal profession. One of Limerick's most renowned solicitors, Paddy practised law for more than 50 years and was regarded as a highly skilled conveyancer.

Wherever Paddy is mentioned, the memories and anecdotes abound – mostly of the singing and sporting variety. Whenever he was present at any social gathering of lawyers, he was the 'first noble call'. Invariably would follow *There Is An Isle*, with an encore of Percy French's *West Clare Railway* (*Are Ye Right There Michael?)* soon after – thus uniting in song the two counties of Limerick and Clare, with which Paddy was most closely associated. His love of music extended to opera, and he was an annual visitor to the Wexford Opera Festival.

Sport was another great passion, whether on two legs or four, and he was an avid racegoer. Towering over all, however, was his beloved rugby – and specifically Old Crescent RFC, which he regarded as the epitome of the never-say-die attitude that is at the heart of the Limerick and Munster game. Paddy was a former president and honorary secretary of the club.

How sadly evocative, yet ironically appropriate, that Paddy should pass in the same week as that ultimate rugby stalwart, Anthony Foley. Even with a 40-year age gap between them, they must surely be on the same 'bonny isle', swapping tales of rugby achievements, ancient and modern.

Paddy's abilities, of course, extended far beyond singing and sport. He was for so long the kernel of Leahy & O'Sullivan of Limerick – the firm he joined after qualifying as a solicitor. He would eventually become the confidential advisor to so many individuals and institutions. He was a partner in the firm until his retirement seven years ago.

His life experience straddled both the city in his professional life and the country in his home life, in Sixmilebridge, Co Clare. Therefore, it was no accident that his funeral Mass was celebrated by the famous Fr Harry Bohan (so closely associated with rural development and so much more) who, in his homily, paid wonderful tribute to his old solicitor friend.

Paddy was more senior in age than most when, in 1976, he was first elected to the Law Society Council. He served continuously on it until he was elected president for the year 1994/95. However, his Council confrères never associated the word 'old' with Paddy. His secret was his beloved wife, Marye (with the distinctive added 'e'). Law Society legend has it that bachelor Paddy was on holidays in Kelly's Hotel, Rosslare, when he came upon the beautiful Marye from Ennis and, with their marriage, Paddy materialised into the ageless Peter Pan character we all loved and enjoyed being with. Marye was to prove a significant boon and steadfast support during Paddy's term as president.

It is said, at times with tongue-in-cheek, that every president (like every politician) has a wished-for ambition to achieve some unique milestone during his or her all-too-short year of office, by which he or she will be particularly remembered. Paddy, during his year achieved that goal, albeit stressful while it lasted. With the resignation of then director general Noel Ryan in December 1994, Paddy, perforce, had to act as both director general and president until Ken Murphy took over the DG role in March 1995. Paddy performed that dual role mightily and, in anecdotes among the coterie of ex-presidents, became ever more mighty as the succeeding years passed!

To Marye and daughter Lucinda go our deepest sympathy on the loss of a wonderful husband and father. This feeling of loss is also shared by all of his surviving solicitor and Council colleagues and friends, over a great many years.

Paddy, we won't forget you easy. Nor your 'bonny isle'!

Ar dheis Dé go raibh a anam dílis.

MV O'M

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LAW SOCIETY

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4 November 2016

Sympathy

The Council observed a minute's silence in memory of past-president Paddy Glynn and expressed their condolences to his wife Marye and his daughter Lucinda.

Welcome

The president extended a warm welcome to all of the newly elected and newly nominated Council members – Rosemarie Loftus, Flor McCarthy, Liam Quirke, Imelda Reynolds and Elaine Given.

Taking of office

Outgoing president Simon Murphy thanked all those who had provided tremendous support during his year of office, including his wife Fiona, his daughter Jennifer and her partner Cillian, his partners in practice, his fellow Council members, the former presidents, the director general, and the staff of the Law Society. He said that it had been the greatest honour of his professional life to have served as president of the Society.

Stuart Gilhooly was then formally appointed as president. He said that, after 20 years' involvement with the Law Society, it was a privilege to be standing before the Council as president. He paid tribute to the past-presidents who had gone before him, in particular Simon Murphy, who had done an unbelievable job in his year of office.

Mr Gilhooly noted that his proudest moment on the Council had been the debate on the marriage equality referendum. That lengthy debate had demonstrated the depth of quality within the Council and, while there had been a majority view at the outset that the Society should not take a position on the matter, the Council had concluded that it should take a public stance in support of the referendum. He urged all Council members to contribute to the decision-making process.

Over the course of the coming year, Mr Gilhooly said that he intended to talk less and listen more. He planned to visit the largest firms and every bar association. He would host a conference that would be attractive to all strands within the profession. He hoped also to improve on the Society's communication with its members and had set up a new Twitter account – @LSIPresident. He also intended to promote the fact that Blackhall Place was for the members, and not for any perceived elite.

The senior vice-president, Michael Quinlan, and the junior vice-president, James Cahill, then took office and thanked the Council for the honour of electing them.

Sale of the SMDF

Patrick Dorgan reported that, following a vigorous programme of claim disposal and cost reduction, at the end of the last financial year, gross liabilities in the fund had reduced to a figure of approximately €80m from 300 claims. In view of this improvement, the board took the opportunity to implement an exit strategy, and agreement had been reached with Randall and Quilter Investment Holdings Ltd to take over the fund and its remaining liabilities. The result for the members was that it was highly unlikely that the full commitment of €16m would be required, so that the annual subvention of €200 per member would reduce in 2019, three years ahead of schedule, and cease thereafter. The president expressed the gratitude of the Council to Mr Dorgan and to the Society's finance director, Cillian MacDomhnaill, for this excellent result.

Legal Services Regulation Act

Paul Keane reported that the board of the authority had now been established, and the minister had indicated that there would be a phased introduction of the remainder of the act. The Society's task force was working assiduously to produce a suite of precedents in relation to costs, which would be brought to the Council for consideration before being issued to the profession for further consultation.

Campaign to reverse cuts in Criminal Legal Aid Scheme

The Council approved the submission to the Minister for Justice seeking a reversal of the cuts that had been imposed in recent years in relation to criminal legal aid fees.

Proposed reforms of judicial appointments

The Council discussed the need for greater diversity in judicial appointments, not just on the basis of gender, but also on the basis of geographical location and legal practice background. The composition of the proposed new judicial commission was discussed, and it was agreed that the exclusion of the legal professional bodies would not serve the best interests of the selection process. It was also agreed that the proposed veto on appointments until the establishment of the new system would be damaging to the administration of justice.

Report on AGM

As required by the bye-laws, the Council adopted the motion approved by the AGM on the previous evening: "That the Litigation Committee will continue to examine the VHI undertaking arrangement and report to next year's AGM their findings and recommendations."

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BUSINESS LAW COMMITTEE

Solicitors firms and the *Market Abuse Regulation*

Firms of solicitors acting for a listed company should be aware that, under the *Market Abuse Regulation* (EU 596/2014), which came into effect on 3 July 2016, they may be asked from time to time to draw up and update a list of persons within the firm who have access to inside information (as defined under the regulation) concerning the company or its financial instruments (such as, shares, loan stock etc).

This may arise in a scenario where the firm is advised by the company that information the firm possesses concerning the company (for example, in regard to a proposed sale or purchase or a potentially significant liability) constitutes 'inside information'.

For these purposes, 'inside information' is precise information about the company or its financial instruments that is not publicly available, but would be likely, if it were made public, to have a non-trivial effect on the market price of the company's financial instruments (including related derivatives).

The list to be prepared by the firm (known as an 'insider list') is to be kept in electronic format in accordance with one of the templates set out in annex 1 to the *Commission Implementing Regulation* (EU 2016/347). This list should set out all persons within the firm who have access to the particular inside information, and it must be updated from time to time to reflect changes to such personnel (for example, holiday cover, resignations, additional staff introduced to the case, etc). The list must contain detailed information, such as the exact time and date that each listed person gained access to the inside information. Insider lists must be submitted to the Central Bank of Ireland (or other relevant competent authority) "as soon as possible" upon request from that authority.

Where the firm has been asked by the client to draw up an insider list, the firm must take all reasonable steps to ensure that each person placed on the insider list acknowledges in writing the legal and regulatory duties involved as a result of his/her access to the inside information and their awareness of the sanctions applicable to insider dealing and to the unlawful disclosure of inside information.

Where an insider list is prepared by the solicitors' firm, the company will retain a right of access to that insider list. Insider lists must be maintained by the firm for a period of at least five years.

It should be noted that the firm's preparation and maintenance of an insider list does not absolve the company in any way from its own obligations under the *Market Abuse Regulation*.

CONVEYANCING COMMITTEE

NPPR complaints and the ombudsman

The Conveyancing Committee wishes to highlight to practitioners that clients' complaints in respect of outstanding liabilities for the non-principal private residence (NPPR) charge should normally first be made by way of appeal to the relevant local authority but may then be referred to the ombudsman. A statement issued by the Office of the Ombudsman is available on www.ombudsman.gov.ie/en/News/Media-Releases/2014-Media-Releases/NPPR-complaints.html. Practitioners will note from the statement that, in a small number of cases where there appeared to be exceptional circumstances, local authorities have agreed to review the penalties imposed following contact with the ombudsman.

practice notes

Practising certificate 2017 – notice to all practising solicitors

It is the statutory responsibility of each solicitor to ensure that they have a practising certificate in force before providing legal services of any kind whatsoever, either restricted or non-restricted.

It is professional misconduct and a criminal offence for a solicitor (other than a solicitor in the full-time service of the State, or a solicitor solely engaging in conveyancing services for a non-solicitor employer) to practise without a practising certificate. A solicitor shall be deemed to practise as a solicitor if he or she engages in the provision of legal services of any kind, either restricted or non-restricted. 'Legal services' are services of a legal or financial nature provided by a solicitor arising from that solicitor's practice as a solicitor.

It should be noted that, as set out in the practice note 'Prohibition on practising as a solicitor without a practising certificate: solicitors cannot be "legal executives" or "paralegals"', as published in the *Gazette* in July 2009 and again in February 2012 (p47), it is not permissible for a firm to classify a solicitor employed by a firm as a 'legal executive' or 'paralegal' with a view to avoiding the requirement to hold a practising certificate, if the solicitor is engaged in the provision of legal services.

It should also be noted that, as set out in the practice note 'In-house solicitors – requirement to hold a practising certificate', as published in the July 2014 *Gazette* (p53), in-house solicitors (solicitors practising as a solicitor by providing legal services as an employee of a non-solicitor) are required to hold a practising certificate regardless of the areas of law in which they practise.

The actions that can be taken against a solicitor found to be practising without a practising certificate include a referral to the Solicitors Disciplinary Tribunal, an application to the High Court, and a report to An Garda Síochána.

Application forms and fees

Application forms for solicitors in private practice will be forwarded to the principal or the managing partner in each practice, rather than to each solicitor. Application forms for in-house solicitors will be sent for their attention directly. Please note that practising certificate application forms and the practising certificate fees will not be available until after 2 December 2016, as both must be approved by Council at its December meeting.

When you must apply

A practising certificate must be applied for on or before 1 February in each year in order to be dated 1 January of that year and thereby operate as a qualification to practise from the commencement of the year.

It is therefore a legal requirement for a practising solicitor to deliver or cause to be delivered to the Registrar of Solicitors, on or before 1 February 2017, an application in the prescribed form, correctly completed and signed by the applicant solicitor personally, together with the full appropriate fee. The onus is on each solicitor to ensure that his or her application form and fee is delivered on or before 1 February 2017.

It is the responsibility of each solicitor to ensure that they obtain a practising certificate application form, properly complete it, and deliver the application form to the Law Society with full payment on or before 1 February 2017. Applications should be delivered to the Regulation Department of the Society at George's Court, George's Lane, Dublin 7 (DX 1025). It should be noted that 1 February 2017 falls on a Wednesday. Solicitors are strongly advised to send their application with full payment by registered post or courier.

A valid practising certificate application consists of a properly completed application form, together with full payment. It should be noted that any incorrectly completed application form, or applications without full payment attached (or properly completed EFT form attached), will be considered to be an incomplete application that cannot be processed and will be returned. Practising certificates will be dated the date that the Society actually receives a properly completed application with full payment.

What happens if you apply late?

Any applications for practising certificates that are received after 1 February 2017 will result in the practising certificate being dated the date of actual receipt by the Registrar of Solicitors, rather than 1 January 2017. There is no legal power to allow any period of grace under any circumstances whatsoever.

Please note that, as mentioned above, you cannot provide legal services as a solicitor without a practising certificate in force. Therefore, solicitors whose practising certificates application forms are received after 1 February 2017 and whose practising certificates are therefore dated after 1 February 2017, who have provided legal services before that date, are required to make an application to the President of the High Court to have their practising certificates backdated to 1 January 2017. Further information on backdating practising certificates can be obtained on the Society's website at in the 'practising certificate/membership' area or by emailing pc@lawsociety.ie. It should be noted that the Society will seek its costs of €350 per practising certificate backdated in all cases.

The Regulation of Practice Committee is the regulatory committee of the Society that has responsibility for supervising compliance with practising certificate requirements. A special meeting of the committee will be held on a date after 1 February 2017, to be decided at a later date, to consider any late or unresolved applications for practising certificates. At this meeting, any practising solicitors who have not applied by the date of the meeting for a practising certificate will be considered for referral forthwith to the Solicitors Disciplinary Tribunal and will be informed that the Society reserves the right to take proceedings for an order under section 18 of the *Solicitors (Amendment) Act 2002* to prevent them from practising illegally.

If you are an employed solicitor

Solicitors who are employed should note that it is the statutory obligation of every solicitor who requires a practising certificate to ensure that he or she has a practising certificate in force from the commencement of the year, or from the date at which he or she commenced providing legal services in that year. Employed solicitors cannot absolve themselves from this responsibility by relying on their employers to procure their practising certificates. However, it is the Society's recommendation that all employers should pay for the practising certificate of solicitors employed by them. It should be noted that the practising certificate remains the property of the solicitor, regardless of who has paid for the practising certificate.

Some of your details are already on the application form

The practising certificate application forms will be issued with certain information relating to each solicitor's practice already completed. Such information will include the relevant fees due by each solicitor, including allowance for solicitors of 70 years or over, as they will not be covered under the provisions of the Solicitors' Group Life Scheme.

Payment by electronic funds transfer (EFT)

All practising certificate application forms sent out will include an EFT payment form. Any solicitor wishing to pay the practising certificate fee by EFT must complete and return the EFT payment form

with their practising certificate application form. Failure to do so will result in the application form being returned as incomplete, notwithstanding that the fees may actually have been received by the Society.

Each EFT payment must have an easily identifiable specific reference, such as the firm or company name, the solicitor's name, or the solicitor's number. General references such as 'Law Society' or 'practising certificate' will not be accepted and may result in a significant delay in the issuing of the practising certificate, as the Society may not be able to identify your specific payment without an easily identifiable specific reference. The payment reference used must be included in the EFT form. Failure to include this information will result in the application form being returned as incomplete, notwithstanding that the fees due may actually have been received by the Society.

The Society's bank account details are included in the EFT payment form. The Society cannot be held responsible for any delay that occurs in processing applications to obtain a practising certificate where payment has been forwarded to another Law Society account that does not deal with practising certificate/membership fees. You are required to ensure that the moneys have been sent to the correct account as listed in the EFT payment form, regardless of which account you sent the fees to in previous years.

Law Directory 2017

It is intended that the *Law Directory 2017* will note all solicitors who have been issued with a practising certificate by 16 February 2017. Practising certificates can only be issued following receipt of a properly completed application form, together with full payment, with no outstanding queries raised thereon. It should be noted that only those solicitors with practising certificates issued by 16 February 2017 will be included in the *Law Directory*, not every solicitor who has submitted an application form by 16 February 2017.

Therefore, in order to ensure that your practising certificate issues by 16 February 2017 to enable you to be included in the *Law Directory*, you should ensure that the application form you return to the Society is completed correctly and includes full payment of fees due. If the form is not completed correctly, or fees have not been paid in full, or the EFT form has not been included in the case of EFT payments (notwithstanding that the fees due may actually have been received by the Society), it will be necessary for the Society to return the form, which may result in delaying the issue of your practising certificate, despite the fact that you had applied for the practising certificate prior to 16 February 2017.

The details of any solicitor whose practising certificate issues after 16 February 2017 will not be included in the *Law Directory*, but will be included in the 'find a solicitor' search facility on the Society's website, provided the solicitor is a practising solicitor. A practising solicitor is a solicitor with a current practising certificate and either professional indemnity insurance in place or an exemption from holding professional indemnity insurance as a solicitor employee of a non-solicitor employer.

What can you access on lawsociety.ie?

Your individual pre-populated application form and a blank editable application form will also become available on the members' area of the Law Society website after 2 December 2016, which you can complete online prior to printing a copy for signing and returning to the Society with the full appropriate fee. This area is accessible by using your username and password. If you require assistance, please visit www.lawsociety.ie/help. In addition, you may request a form to be emailed to you by emailing pc@lawsociety.ie.

If you did not hold a practising certificate for 2016

If you did not hold a practising certificate for 2016 (with the exception of solicitors in the full-time service of the State in 2016 and solicitors solely engaging in conveyancing services for a non-solicitor employer) and apply for a practising certificate in 2017, you may be required to make a 'section 61 application', in accordance with section 49 of the *Solicitors Act 1954* as substituted by section 61 of the *Solicitors (Amendment) Act 1994*, setting out in writing how you kept up to date with legal matters since you were last issued with a practising certificate. The section 61 application form is available to download in the member's area of the Society's website or can be requested by emailing pc@renewals.ie.

Change of practising status

If you held a practising certificate in 2016 and do not intend to practise for some or all of 2017, including the following situations, you should notify the Society in writing with the relevant details before 1 February 2017:

- You recently ceased to practise or are intending to cease to practise in the coming year,
- You will not be practising in 2017 for any reason, including unemployment, career break, change of career, emigration, sick leave or maternity leave, or
- You will not be providing legal services and will therefore not be applying for a practising certificate until after 1 February 2017 for any reason, including unemployment, career break, sick leave and maternity leave.

You should provide the Society with a current correspondence address and email address to allow the Society to communicate with you if you are not practising. If there is any change in your practising status during the year, you should immediately notify the Society in writing with the relevant information to ensure that your practising status is up to date.

Change of practice

If you have changed firms during the year and have not previously notified the Society in writing of this change, you must do so immediately, in accordance with the provisions of section 81 of the *Solicitors Act 1954*. You should include the date you left your former firm and the date you joined your new firm, together with the name and address of the new firm. The same requirement applies for any solicitor who has changed non-solicitor employer.

Failure to provide this information before 23 November 2016 may result in your practising certificate application form and information being sent to your former practice, as the Society will not have your up-to-date contact information. You can check the current contact information for you held by the Society through the 'find a solicitor' search facility on the Society's website.

Acknowledgment of application forms

Please note that it is not the Society's policy to acknowledge receipt of application forms or fee payments. It is the Society's strong recommendation that applications be sent by registered post, tracked DX, or courier.

Issuing a practising certificate

Please note that acceptance of an application form and fees by the Society does not constitute a guarantee or agreement that a practising certificate will be issued. There are a number of factors that may result in the Society deciding not to issue a solicitor with a practising certificate, including matters arising under section 49 of the *Solicitors Act 1954*, as substituted by section 61of the *Solicitors (Amendment) Act 1994*, as amended by section 2 of the *Solicitors (Amendment) Act 2002*. If a practising certificate is not issued to a solicitor, the relevant fees will be refunded.

Duplicate practising certificate

Please note that a fee of €50 will be payable in respect of each duplicate practising certificate issued for any purpose.

John Elliot, Registrar of Solicitors and Director of Regulation

An tÚdarás Clárúcháin Maoine
Property Registration Authority

Customer Notice: Where to Lodge your Application

The Property Registration Authority is committed to providing a quality customer service as set out in our Customer Charter.

As part of our ongoing efforts to enhance customer service in providing improved response times and clarity in relation to where applications are processed we would like to notify our customers of the following changes:

From 1st December 2016:

The **Waterford Office** will deal with First Registration Form 3 applications for **all 26 counties.**

All other Land Registry applications for the following counties should continue to be lodged directly to the Waterford Office:
Carlow, Clare, Cork, Kerry, Kilkenny, Laois, Limerick, Offaly, Tipperary, Waterford, Wexford.

Property Registration Authority
Cork Road,
Waterford
Eircode X91 FP98
Office DX number – DX 44090

From 1st January 2017:

The **Roscommon Office** will deal with all Land Registry applications (excluding First Registration Form 3 applications) for the following counties:
Donegal, Galway, Leitrim, Longford, Mayo, Roscommon, Sligo.

Property Registration Authority
Golf Links Road,
Roscommon
Eircode F42 NC84
Office DX number – DX 90014

The **Chancery Street Office** will deal with all Land Registry applications (excluding First Registration Form 3 applications) for the following counties:
Cavan, Dublin, Kildare, Louth, Meath, Monaghan, Westmeath, Wicklow.

Property Registration Authority
Chancery Street,
Dublin 7
Eircode D07 T652
Office DX number – DX 228

We would like to thank all our customers for their co-operation.

legislation update

20 August – 14 November 2016

For details on all bills, acts, and statutory instruments, see the library catalogue on lawsociety.ie as well as irishstatutebook.ie and oireachtas.ie. Weekly legislation updates are included in *LawWatch*, which is emailed to all members

ACTS

Finance (Certain European Union and Intergovernmental Obligations) Act 2016
Number: 13/2016
Makes provision in relation to an agreement that is to be entered into between the Single Resolution Board and the State concerning the lending of sums by the State to the board in circumstances where, after disposal of the latter's funds in the manner set out in article 5(1) of the *Agreement on the Transfer and Mutualisation of Contributions to the Single Resolution Fund* done at Brussels on 21 May 2014, such disposal is not sufficient to meet the costs of a resolution action referred to in that article; enables the making of payments from the Central Fund of sums to that board and provides for related matters; amends chapter 2 of part 23 of the *Companies Act 2014* for the purpose of implementing certain EU law on market abuse and, in particular, Directive 2014/57/EU; provides for related matters.
Commencement: 26/10/2016

SELECTED STATUTORY INSTRUMENTS

Companies Act 2014 (Section 897) Order 2016
Number: SI 458/2016
Provides that certain forms prescribed under the *Companies Act 2014 (Forms) Regulations 2015* may be delivered to the Registrar of Companies only by the means provided for under the *Electronic Commerce Act 2000*, effected in a manner that complies with any requirements of the registrar of the kind referred to in sections 12(2)(b) and 13(2)(a) of that act.
Commencement: 1/6/2017

Rules of the Superior Courts (Order 122) 2016
Number: SI 471/2016
Amends order 122, rules 4 and 5 of the RSC to enable the delivery or amendment of pleadings during the long vacation and to reduce the period during that vacation that is not reckonable in computing the time for amending or delivering a pleading.
Commencement: 10/10/2016

District Court (Housing) Rules 2016
Number: SI 506/2016
Amend order 99A of the *District Court Rules* and prescribe forms to facilitate applications to the District Court pursuant to the *Housing (Miscellaneous Provisions) Act 2014*.
Commencement: 21/10/2016

Legal Services Regulation 2015 (Establishment Day) Order 2016
Number: SI 507/2016
Appoints 1/10/2016 as the establishment day for the purposes of the act.

District Court (Issue of Civil roceedings) Rules 2016
Number: SI 513/2016
Amend order 40, rule 5(4) and order 40A, rule 3(3) of the *District Court Rules* to provide for section 7(6)(a)(ii) of the *Courts Act 1964*.
Commencement: 8/11/2016

Assisted Decision-Making Capacity Act 2015 (Commencement of Certain Provisions) (No 2) Order 2016
Number: SI 517/2016
Provides for the commencement on 17/10/2016 of section 91(2) and relevant definitions of the *Assisted Decision-Making (Capacity) Act 2015*.

Solicitors (Money Laundering and Terrorist Financing) Regulations 2016
Number: SI 533/2016
Commencement: 1/11/2016

Solicitors Acts 1954-2011 (Professional Indemnity Insurance) Regulations 2016
Number: SI 534/2016
Commencement: 1/12/2016

Solicitors Disciplinary Tribunal

Reports of the outcomes of Solicitors Disciplinary Tribunal inquiries are published by the Law Society of Ireland as provided for in section 23 (as amended by section 17 of the *Solicitors (Amendment) Act 2002*) of the *Solicitors (Amendment) Act 1994*

In the matter of Peter D Jones, a solicitor practising as Peter D Jones & Company, Solicitors, Church Lane, Mullingar, Co Westmeath, and in the matter of the *Solicitors Acts 1954-2011* [3976/DT142/15]
Law Society of Ireland (applicant)
Peter D Jones (respondent solicitor)
On 21 June 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Failed to comply with an undertaking furnished to KBC Bank on 24 May 2005 in respect of a named property at Mullingar, Co Westmeath, and his named clients and the borrowers in a timely manner,
2) Failed to respond to correspondence from the Society and, in particular, the Society's letters of 17 June 2010, 1 July 2010, 19 July 2010, 1 March 2011, 24 March 2011, 9 October 2012, 21 November 2012, 22 January 2013, 11 February 2013, 16 June 2014, and 2 December 2014 in a timely manner, within the time provided, or at all.

The tribunal ordered that the respondent solicitor:

1) Stand admonished and advised,
2) Pay a sum of €3,500 to the compensation fund,
3) Pay a sum of €2,500 as a contribution towards the whole of the costs of the Society.

In the matter of Ian Dodd, a solicitor practising as Ian Dodd, solicitor, Abbey Street, Ballina, Co Mayo, and in the matter of the *Solicitors Acts 1954-2011* [3195/DT18/15]
Law Society of Ireland (applicant)
Ian Dodd (respondent solicitor)
On 21 September 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to comply with an undertaking given to the complainant in a letter dated 20 December 2007 to provide a partial discharge in respect of property at Belmullet, Co Mayo, in a timely manner or at all.

The tribunal ordered that the respondent solicitor:

1) Stand censured,
2) Pay a sum of €2,500 to the compensation fund,
3) Pay a sum of €200 witness expenses,
4) Pay a sum of €4,000 agreed costs to the Society.

In the matter of Michael Dowling, a solicitor practising as Michael Dowling & Co, Solicitors, at Church Street, Tralee, Co Kerry, and in the matter of the *Solicitors Acts 1954-2011* [3995/DT137/15]
Law Society of Ireland (applicant)
Michael Dowling (respondent solicitor)
On 29 September 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by him on behalf of a named client to a named firm of solicitors in Co Kerry by letter of undertaking dated 18 July 2001.

The tribunal ordered that the respondent solicitor:

1) Stand censured,
2) Pay a sum of €2,000 to the compensation fund,
3) Pay a sum of €6,000 as a contribution towards the whole of the costs of the Society.

In the matter of Deirdre Fahy, a solicitor previously practising as D Fahy & Associates, Solicitors, at 69 Main Street, Blackrock, Co Dublin, and in the matter of the *Solicitors Acts 1954-2011* [5471/DT163/15; DT164/15; DT165/15; and High Court record 2016 no 128 SA]
Law Society of Ireland (applicant)
Deirdre M Fahy (respondent solicitor)
On 15 June 2016, the Solicitors Disciplinary Tribunal heard three complaints against the respondent solicitor. The tribunal found her guilty of misconduct in her practice as a solicitor in that she:

5471/DT163/15

1) Failed to register her client's title to property in Balbriggan, Co Dublin, in a timely manner, despite being instructed and paid to do so in 2005,
2) Failed to comply with the direction made by the Complaints and Client Relations Committee at its meeting of 21 July 2015 that she furnish a full updated report in relation to the matters that were the subject matter of the complaint on or before Friday 4 September 2015, and communicated to her by letter dated 27 July 2015,
3) Failed to correspond with the Society in a timely manner, within the time provided in those letters, or at all and, in particular, the Society's letters of 21 May 2015, 4 June 2015, and 27 July 2015.

5471/DT164/15

1) Failed to complete the registration of her former client's title and mortgage in respect of their property in Lucan, Co Dublin, in a timely manner or at all, having been contracted to do so in 2006,
2) Deducted costs and €18,000 for stamp duty from a bill of costs in 2006 and failed to utilise that sum in a timely manner for the purpose for which it was deducted,
3) Failed to respond in a timely manner, within the time provided, or at all to the Society's letters to her of 2 June 2015, 18 June 2015, and 27 July 2015,
4) Failed to comply with the direction made by the Complaints and Client Relations Committee at its meeting on 21 July 2015, and communicated to her by letter dated 27 July 2015, that she furnish a full updated report to the Society in relation to the complaint on or before Friday 4 September 2015.

5471/DT165/15

1) Failed to comply with an undertaking furnished to the complainants on 29 September 2006 in respect of her named clients and property at Drimnagh, Dublin 12, in a timely manner or at all,
2) Failed to comply with an undertaking furnished to the complainants on 23 May 2005 in respect of her named clients and property at Balbriggan, Co Dublin, in a timely manner,
3) Failed to comply with an undertaking furnished to the complainants on 3 May 2006 in respect of her named clients and property at Lucan, Co Dublin, in a timely manner or at all,
4) Failed to comply with an un-

NOTICES: THE HIGH COURT

In the matter of Claire Keaney, a solicitor previously practising as Keaney & Company, Solicitors, at PO box 42, Pearse Park, Dundalk, Co Louth, and in the matter of the *Solicitors Acts 1954-2011* [2016 no 127SA]
Take notice that, by order of the High Court on 17 October 2016, it was ordered that the name of Claire Keaney be struck from the Roll of Solicitors.
8 November 2016

John Elliot, Registrar of Solicitors, Law Society of Ireland,

dertaking furnished to the complainants on 31 May 2006 in respect of her named clients and property at Lucan, Co Dublin, in a timely manner or at all,
5) Failed to comply with an undertaking furnished to the complainants on 15 November 2005 in respect of her named client and property at Clondalkin, Dublin 22, in a timely manner or at all,
6) Failed to comply with an undertaking furnished to the complainants on 19 May 2005 in respect of her named clients and property at Donaghmede, Dublin 13, in a timely manner or at all,
7) Failed to comply with an undertaking furnished to the complainants on 9 August 2007 in respect of her named client and property in Co Clare in a timely manner,
8) Failed to comply with an undertaking furnished to the complainants on 23 April 2004 in respect of her named clients and property at Santry, Dublin 11, in a timely manner,
9) Failed to comply with an undertaking furnished to the complainants on 19 May 2008 in respect of her named client and property in Co Mayo in a timely manner or at all,
10) Failed to comply with an undertaking furnished to the complainants on 28 March 2002 in respect of her named client and property at Lucan, Co Dublin, in a timely manner,
11) Failed to comply with an undertaking furnished to the complainants on 10 October 2002 in respect of her named clients and property at Newbridge, Co Kildare, in a timely manner or at all,
12) Failed to comply with an undertaking furnished to the complainants on 25 February 2008 in respect of her named client and property at Finglas West, Dublin 11, in a timely manner or at all,
13) Failed to comply with an undertaking furnished to the complainants on 3 December 2007 in respect of her named client and property at Sandyford, Co Dublin, in a timely manner or at all,
14) Failed to comply with an undertaking furnished to the complainants on 16 November 2007 in respect of her named clients and property at Sandyford, Dublin 18, in a timely manner or at all,
15) Failed to comply with an undertaking furnished to the complainants on 27 November 2006 in respect of her named clients and property at Clondalkin, Dublin 24, in a timely manner,
16) Failed to return deeds furnished to her on accountable receipt on 19 July 2011 from the complainants in respect of property in Co Wicklow and her named client in a timely manner,
17) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 20 January 2015, 4 February 2015, 23 February 2015, and 23 March 2015 in a timely manner, within the time provided in the letter, or at all.

The tribunal, having heard the three complaints and made those findings of misconduct, referred the matter forward to the High Court and, on 10 October 2016, the High Court declared and ordered that:
1) The respondent solicitor is not a fit person to be a member of the solicitors' profession, and
2) The respondent solicitor pay the whole of the costs of the Law Society of Ireland, to be taxed by a taxing master of the High Court in default of agreement.

The solicitor's name had already been struck from the Roll of Solicitors by order of the High Court on 1 February 2016.

In the matter of Ciaran Quinn, a solicitor previously practising as Quinn Solicitors at Unit 118, First Floor, Baldoyle Industrial Estate, Baldoyle, Dublin 13, and in the matter of the *Solicitors Acts 1954-2011* [7620/DT13/14 and High Court record 2015 no 32 SA]
Law Society of Ireland (applicant)
Ciaran Quinn (respondent solicitor)

On 4 December 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he:
1) Raised 36 separate invoices between 3 March 2008 and 10 February 2010, totalling €65,588.15, in respect of a named estate, without the knowledge or agreement of the administrator,
2) Deducted €65,588.15 in total from the said estate from March 2008 to February 2010 without the knowledge or agreement of the executor,
3) Failed to issue a section 68 letter in the named estate.

The tribunal referred the matter to the High Court and, on 10 October 2016, the High Court ordered that:
1) The respondent solicitor not be permitted to practise as a sole practitioner or in sole partnership; that he be permitted to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland,
2) That the respondent solicitor pay the whole of the costs of the Law Society, to be taxed by a taxing master of the High Court in default of agreement, execution and registration of the said costs to be stayed until after 1 June 2017.

eurlegal

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

ARTICLE 50 – JUDGMENT OF THE ENGLISH HIGH COURT

The 'Brexit' referendum has had, is having, and will continue to have major political and economic consequences. The vote also requires the taking of certain legal steps, the first of which is to trigger the formal process for withdrawal under article 50 of the *Treaty on European Union*. In early October, Prime Minister Theresa May signalled her intention to submit an article 50 notice to the EU before the end of March 2017.

Early last month, the Queen's Bench Division of the High Court considered whether the British government/the Crown has the unilateral power under article 50 to notify the European Council of the intention to leave the EU. The court's 3 November judgment in *R (Miller and Dos Santos) v Secretary for Exiting the European Union* ([2016] EWHC 2768 [Admin]) was based on key principles of British constitutional law, allied to the domestic effect of the potential removal of three separate categories of rights arising under EU law (Ms Miller is a British national, whereas Mr Dos Santos is a Spanish citizen working in London).

Withdrawal from the EU

Article 50 allows a member state to withdraw from the EU in accordance with its own constitutional requirements. As stated above, the first step is for the relevant member state to notify the EU of its intention to leave under article 50(2). Both the claimants and the British government agreed that an article 50(2) notice is both irreversible and unconditional (in other words, Britain will leave the EU two years after such notice is given, unless an extension is agreed with the EU; in addition, an article 50 notice will not be subject to subsequent parliamentary approval). Accordingly, the High Court noted that, once this notice is given, the inevitable result is Britain's complete exit. Accordingly, its consequent effect on EU-law-related rights in both Britain and on British citizens is direct.

Sovereignty of parliament

The court recalled that, while Britain is a constitutional democracy subject to the rule of law, its constitution is not entirely written. Some of its primary law is to be found in statute. Other sources include recognised rules that govern the exercise of public power by distributing and defining the powers of different public bodies. The most fundamental rule of British constitutional law is the sovereignty of parliament (the House of Commons and the House of Lords). In other words, legislation enacted by parliament is supreme save only where parliament decides otherwise. The sole example of this is the *European Communities Act 1972* (ECA), which gives effect to EU law in Britain. That said, parliament may repeal this and any other primary legislation.

> The court concluded that the Crown has no power to withdraw from the EU, since this would undermine the relevant EU law rights introduced into domestic law, while also having a negative impact on the rights of British persons living/established elsewhere in the EU

The court emphasised that the key aspect of the principle of parliamentary sovereignty is that the government has no power to alter legislation or common law. In other words, the Crown is subordinate to the law. As the renowned Elizabethan/Jacobean jurist Sir Edward Coke reported, "the king hath no prerogative, but that which the law of the land allows him".

Another constitutional principle is that the negotiation of international agreements falls exclusively within the remit of the Crown. However, the making or unmaking of treaties creates effects on public international law, not on domestic law. Without parliamentary consent, the Crown cannot therefore confer or deprive legal or natural persons of statutory or common law rights.

Domestic effect of EU law

European Union law contains rights for both individuals and companies, which have direct effect. In other words, these rights may be relied upon in the national courts of EU member states. As stated in the ECA, such rights, under the principle of the supremacy of EU law, override domestic legislation. These basic features were established by EU case law long before Britain joined the then European Communities back in 1973.

Given the principle of parliamentary sovereignty, primary legislation, namely, the ECA, was required to incorporate EU law into British domestic law. Subsequently, the British High Court described this legislation as a constitutional statute, whereby it is not subject to implied repeal by subsequent laws. Indeed, the ECA may only be repealed by express language in a later law or by necessary implication from the provisions of such a statute. Section 2(1) of the ECA makes all directly applicable EU law part of domestic law, whereas section 2(2) allows for the adoption of secondary legislation to implement EU directives.

Three categories of rights

The High Court identified three distinct categories of rights arising under EU law.

The first category includes rights that, in principle, are capable of replication should Britain withdraw from the EU. For example, parliament could choose to maintain the rights of employees under the EU's *Working Time Directive*. Indeed, a vast array of EU directives and other laws have been implemented by primary and secondary legislation and will, unless repealed, continue to apply when Britain withdraws from the EU. That said, it will be up to parliament whether to adopt the proposed '*Great Repeal Bill*', which is currently intended to enshrine EU-law rights into domestic legislation.

The second category comprises rights enjoyed by British citizens and companies in other EU member states, such as the freedom of establishment and free movement of persons. EU law requires the 'host' member state to recognise and give effect to those rights.

The third category includes rights with an effect in British domestic law that would be lost in the event of withdrawal. These 'privileges' that flow from membership of the EU 'club' include the right to stand and vote in direct elections to the European Parliament.

The High Court found that rights in the first category may or may not be preserved by new primary legislation. Moreover, such

PIC: GETTY IMAGES

laws may not be enacted by the time withdrawal under article 50 takes place, if at all.

Regarding the second category, the secretary of state argued that these rights (for example, the right of a British citizen to work in France) are the product of EU law in conjunction with the law of the host member state. However, the court held that parliament was aware that the passing of the ECA would lead to the ratification of the relevant EU treaties, thus granting British individuals and companies rights under EU laws that are enforceable in other member states.

Regarding the third category, the secretary of state admitted that these rights will be lost once Britain leaves the EU.

The arguments

The principal argument of Miller and Dos Santos was that the Crown's proposal to give unilateral notice under article 50 infringes the key constitutional principle of the sovereignty of parliament, since it would adversely affect the rights of legal and natural persons. Moreover, parliament has not delegated this authority to the Crown either expressly or by necessary implication. Notifying the EU under article 50 would prevent parliament from making that decision.

The secretary of state counter-argued by stating that, unless express words could be found in primary legislation, parliament could not be seen to have abrogated the Crown's prerogative powers regarding the EU treaties. The secretary of state replied that the Crown's unilateral power in the context of foreign relations extends to the giving of notice under article 50. Furthermore, this power could only be removed by express primary legislation or by legislation with the same effect by implication. Neither the ECA nor subsequent statutes contain any such wording.

High Court's judgment

In examining the question of whether the British government may use the Crown's prerogative powers in the conduct of international relations to give notice under article 50, the court found that the government's analysis went too far. It rejected the secretary of state's argument that parliament intended through the ECA that the existence of any EU rights in

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2 & 3 March	Certificate in English & Welsh Property Law and Practice	€441	€588	9 General (by Group Study)
24 & 25 Mar 21 & 22 Apr 26 & 27 May	Law Society Skillnet – Acting for Clients in Construction Adjudication, Practice and Procedure Masterclass The Construction Contracts Act, 2013 provides for statutory adjudication of construction payment disputes and regulates payment practices in construction contracts. This 6 day course is relevant to solicitors and barristers who practice in this area of law and to other professionals who represent parties in construction disputes.	€1,105	€1,300	Full General and M & PD Skills requirement for 2017 (by Group Study) (subject to attendance at relevant sessions

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national law was dependent on continued membership of the EU for three main reasons.

Firstly, the ECA, as mentioned above, is a constitutional statute. There is a presumption that parliament intends to legislate in accordance with the relevant constitutional principles, particularly where these are strong. In other words, the stronger the constitutional principle, the more readily it can be inferred that the wording used by parliament intended to reflect that principle. As previously stated, the principle of parliamentary sovereignty is the most fundamental rule of British constitutional law.

The court found that the ECA did not expressly or by clear implication grant the Crown the prerogative to vary the law of the land.

Secondly, since parliament's adoption of the ECA introduced the concept of the direct effect of EU law into British law, the court held that it is not plausible to argue that the Crown could unilaterally repeal this legislation. Moreover, the ECA is, as a major constitutional statute, exempt from the doctrine of implied repeal by the adoption of subsequent inconsistent legislation.

Finally, the government's unilateral power of action lies solely in the field of international relations. However, the presumption of non-interference by parliament with this prerogative is undermined where the proposed action of the government in international affairs will ultimately result in significant changes to national law.

> The court found that the ECA did not expressly or by clear implication grant the Crown the prerogative to vary the law of the land

The court thus concluded that the Crown has no power, under the ECA, to withdraw from the EU, since this would undermine the relevant EU law rights introduced into domestic law, while also having a negative impact on the rights of British persons living or established elsewhere in the EU.

Next steps

The British government has appealed the High Court's decision to the Supreme Court, the highest court of appeal, thus 'leapfrogging' the Court of Appeal (the Supreme Court was established to assume the judicial functions of the House of Lords – it heard its first cases in 2009). Reflecting the importance of this case, the Supreme Court has confirmed that each of its 11 judges will sit on the appeal panel.

Press reports suggest that, in a complete reversal of what it argued before the High Court, the British government may decide to argue that a notice under article 50(2) may be withdrawn. If it makes (and is allowed by the Supreme Court to make) this argument, it will be difficult for Ms Miller and Mr Dos Santos to contend that this notice will inevitably expunge their relevant EU law rights. That said, the 3 November judgment, made by a three-person panel including two of the most senior judges in Britain – namely, the Lord Chief Justice and the Master of the Rolls – may be sufficiently robust to withstand the Crown's appeal. The Supreme Court is likely to give its judgment in early 2017.

Cormac Little is a partner and head of the competition and regulation unit at William Fry, Solicitors.

professional notices

RATES

professional notice rates

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ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND. Deadline for Jan/Feb 2017 *Gazette*: 16 January. For further information, contact the *Gazette* office on tel: 01 672 4828.

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

WILLS

Bailie, James (deceased), late of The Moorings, 9 Gilford Road, Sandymount, Dublin 4. Would any person having knowledge of any will made by the above-named deceased, who died on 8 October 2016, please contact Julie G O'Connor, solicitor, Joseph T Deane & Associates, St Andrew's House, 28/30 Exchequer Street, Dublin 2; tel: 01 671 2869, fax: 01 671 2814, email: julieoc@joedeane.com

Byrne, John Niall (deceased), late of 43 Marian Park, Blackrock, Co Dublin, who died on 24 September 2016. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Peter Duff & Co, Solicitors, 34 Main Street, Blackrock, Co Dublin; tel: 01 278 2903, email: info@peterduff.com

Cunniffe, Kathleen (deceased), late of Kilbrew Nursing Home, Ashbourne, Co Meath, and formerly of 7 Castle Crescent, Ashbourne, Co Meath. Would any person having knowledge of any will made by the above-named deceased, who died on 22 July 2016, please contact Rostra Solicitors, 78 Benburb Street, Dublin 7; tel 01 640 0030, email: simon@thesolicitor.ie

Feely, Patrick Joseph (otherwise Frank) (deceased), late of 38 Dunard Court, Dunard Road, Cabra, Dublin 7, formerly of Arbour Hill, Dublin 7, formerly of Glencar, Co Leitrim. Would any person having knowledge of the whereabouts of any will executed by the deceased, or if any firm is holding same or any documents belonging to the deceased, please contact Garrett McDermott Solicitors, 5 JFK Parade, Sligo; tel: 071 914 4628, email: info@gmcdermottsol.com

Keating, Ellen (deceased), late of Killemly, Cahir, Co Tipperary, who died on 9 June 2016. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Valerie A Cotter & Company, Solicitors, Marshes Street, Thomastown, Co Kilkenny; tel: 056 779 3721, email: valeriecotterandco@gmail.com

McIntyre, Barry (deceased), late of 20 Rose Park, Dun Laoghaire, Co Dublin, and 3 Cliff Manor, Cliff Road, Greystones, Co Wicklow. Would any person having knowledge of any will made by the above-named deceased, who died on 15 October 2016, please contact Cogan-Daly Solicitors, Brighton House, 50 Terenure Road East, Rathgar, Dublin 6; tel: 01 490 3394, email: contact@cogandalylaw.ie

Moloney, Thomas, late of Ballinahow, Tipperary Town, Co Tipperary, who died on 23 April 2016. Would any person having knowledge of the wherabouts of any will made by the above-named deceased please contact Beatrice Dolan of Vincent McCormack & Co, Solicitors, 11 St Michael Street, Tipperary Town; tel: 062 52899, fax: 062 52944, email: tipplegal@eircom.net

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2005* and the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* – notice of intention to acquire fee simple (section 4): an application by Rory Burgess and Rosemary Ryan

Notice to any person having any interest in the freehold estate or any intermediate interest in the following property: all that the property situate at and known as 9B-10 Basin View, Basin Street Upper, in the parish of St James in the city of Dublin, being a portion of the property more particularly described in and demised by an indenture of lease dated 24 October 1878 between William John Gormley and Marianne Gormley of the one part, and Richard Hayden of the other part, for the term of 400 years from 1 October 1878, subject to the yearly rent of £12 (former currency).

Take notice that Rory Burgess and Rosemary Ryan, being the persons currently entitled to the lessees' interest as lessees under the said lease, intend to apply to the county registrar for the county and city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicants intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest, including the freehold reversion in each of the aforesaid premises, are unknown or unascertained.

Date: 2 December 2016
Signed: Rosemary Ryan (solicitor for applicant), Roseville, Lavarna Grove, Terenure, Dublin 6W

In the matter of the *Landlord and Tenant (Ground Rents) Act 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* – notice of intention to acquire fee simple (section 4): an application by KW Real Estate plc

Notice to any person having any interest in the freehold interest of the following property: all that and those the premises demised by lease dated 24 April 1958 between (1) Francis S Collins and (2) the Shelbourne Motor Company Limited (the 'lease'), and described therein as the store and premises at the rear of 18 Kildare Street in the city of Dublin, as shown coloured red on the map or plan endorsed thereon.

Take notice that KW Real Estate plc, being the person entitled to the interest of the lessee under the lease in respect of the property, intends to apply to the county registrar for the county of Dublin for the acquisition of the freehold interest, and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of their title to same to the below named within 21 days from the date of this notice.

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

Date: 2 December 2016
Signed: Arthur Cox (solicitors for the applicants), Earlsfort Centre, Earlsfort Terrace, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of rear 67 and 69 Upper Rathmines Road, Dublin 6, in the city of Dublin: an application by Simon Curley Limited

Take notice that any person having any interest in the freehold estate of the following property: rear 67 and 69 Upper Rathmines Road, Dublin 6, being a portion of the premises known as numbers 67 and 69 Upper Rathmines Road in the city of Dublin, more particularly described in an indenture of lease dated 15 February 1975 made between Michael Devlin, Michael Campbell, Heather Hewson and Patrick Campbell of the one part, and Simon Curley Limited of the other part, for the term of 678 years from 1 May 1974 at the yearly rent of £0.05 (if demanded).

Take notice that Simon Curley Limited intends to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest in the aforesaid premises, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, Simon Curley Limited 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/city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to all or any of the superior interests including the freehold reversion in the aforementioned premises are unknown or unascertained.

Date: 2 December 2016
Signed: Brian Matthews & Company (solicitors for the applicant), 7 Main Street, Dundrum, Dublin 14

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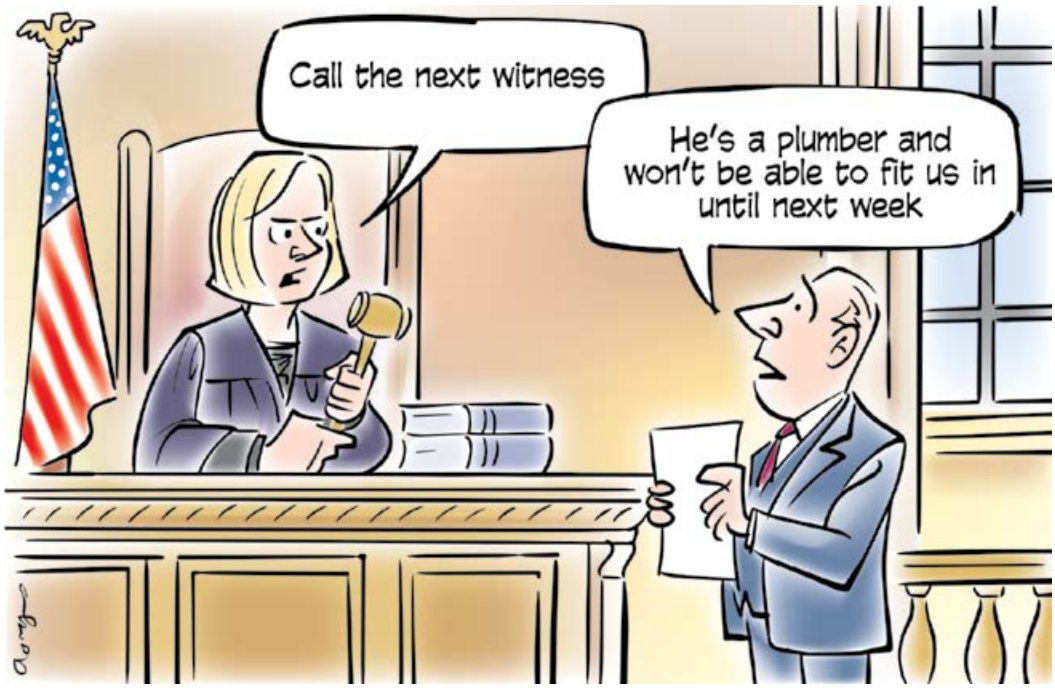


Let's file that under pure plumb luck

A judge's remarks about her experiences with plumbers led to a murder conviction being overturned, the *Los Angeles Times* reports.

Ironically, the comments were intended to warn potential jurors about the danger of prejudging witnesses. Judge Eleanor Hunter of Los Angeles County Superior Court told potential jurors on the first day of a murder trial: "The law says that you can't prejudge anybody. You can't automatically give somebody more credibility or automatically give them less credibility before they even take the stand. And I always use this example – and I'm sorry if somebody here is a plumber, but I've had horrible experiences with plumbers ... So if I hear somebody is coming in, and I hear he's a plumber, I'm thinking, 'God, he's not going to be telling the truth'."

Six of the potential jurors who heard Hunter's story ended up on the jury.

A California appeals court subsequently overturned the murder conviction of Vincent Anthony Tatum because he occasionally worked for a plumbing contractor who was his key alibi witness.

Ghost rider getting high

A man claiming to be a 'vampire ghost rider' was arrested after allegedly assaulting a grocery store employee, *CBS Boston* reports.

Police say a female employee was taking boxes out to the bins when a man approached her asking if she needed help. The man then allegedly said he was a vampire and began running towards her.

The man, identified as 21-year-old Jacob May, followed her as she ran inside the shop. The woman told police that May yelled, "just touch me, I can save you!" May allegedly wrapped his arms around her when she fell to the ground. Police say May then attacked another employee who tried to beat him off.

May allegedly told a responding police officer that he was a "vampire, ghost rider, Captain Jack Sparrow from *Pirates of the Caribbean*, Mr Miyagi from the *Karate Kid*, and a leader of a band".

Police say that May was likely under the influence of either drugs or alcohol.

A load of symbolics

City University London's Student Union has voted to ban *The Sun*, *The Daily Mail* and *The Daily Express* from its campus, *Legal Cheek* reports.

In its motion, the union noted, among other things, that the tabloids "called three High Court judges enemies of the people, mirroring Nazi propaganda and undermining the rule of law".

The union went on to argue that "freedom of speech should not be used as an excuse to attack the weakest and poorest members of society," adding that "the media has a duty not to stir up racial tensions and hatred just to sell papers."

Given that the university has no retail outlets for newspapers on campus, the ban is largely symbolic.

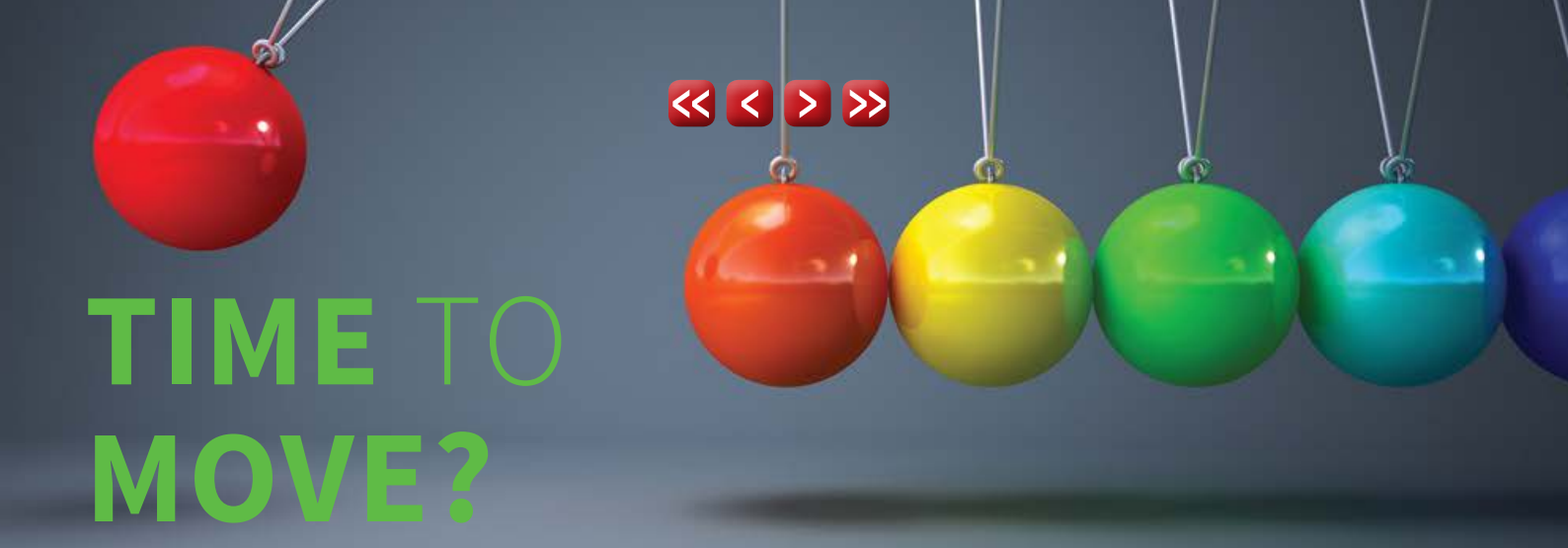
Augustus Gloop, how are ye?

An event hosted by top London firm Clifford Chance descended into chaos after a chocolate accident left attendees reaching for the tissues, *Legal Cheek* reports.

The incident happened after a guest inadvertently opened a fire door, allowing a gust of wind to disturb the centrepiece chocolate fountain, spreading the chocolate in all directions.

Uploaded by a member of the firm's catering team, the caption accompanying an Instagram post says: "The chocolate fountain was splattered across the floor, people's suits and dresses, up the wall and stairs."

A spokesperson for Clifford Chance said that, while the firm was aware an incident had occurred, it "categorically" denies that any chocolate landed on guests.



TIME TO MOVE?

Aviation Finance Partner — €130k-€200k + Bens

The award winning aviation finance group of this Big 6 firm seeks to appoint an additional partner. Clients of the team, which acts both on Irish and multijurisdictional transactions, include high profile domestic and international airlines, lessors and aircraft financing companies. Suitable candidates will currently be operating at partner level in a large commercial firm in London or Dublin. Senior associates from a Big 6 or Magic Circle background will also be considered.

Tax Associate — €80k-€110k + Bens

This top ten commercial law firm seeks to appoint an ambitious associate to its growing tax department. The team advises on a broad range of big-ticket tax issues across financial services and corporate M&A for both domestic and international clients. Suitable candidates will have gained 2-4 years' experience in corporate and/or financial services tax with a top tier law or accountancy firm in Ireland, or with a Magic Circle firm in London.

Newly Qualified Funds — €64k-€68k + Bens

With a reputation in Dublin for technical excellence, commercial nous and superb client servicing capabilities, this heavyweight Big 6 funds group seeks to appoint an ambitious newly qualified solicitor. Typically, team members work on a broad range of product structures for high profile institutional clients. Suitable candidates will have completed a funds, banking or corporate rotation with a large commercial law firm in Dublin, Cork, London or Belfast.

Newly Qualified M&A — €64k-€68k + Bens

The corporate department of one of Ireland's premier law firms seeks to hire an ambitious newly qualified solicitor. Over the last 12 months the firm has worked on some of the largest transactions in the State. In joining the team you will be exposed to a broad range of public and private M&A across all industries. Suitable candidates will have completed a corporate rotation with a large commercial law firm in Dublin, Cork, London or Belfast.

Real Estate Partner — €130k-€160k + Bens

Benefiting from a well-established name in the commercial property sphere, this top ten firm seeks to appoint an additional partner to its busy real estate department. The firm is involved in most major property transactions in Ireland and has long standing relationships with high profile investors, developers, funders, receivers and general corporate clients. Suitable candidates will currently be operating at partner level in a large commercial firm in Dublin, Cork or in the UK.

M&A Associate — €80k-€110k + Bens

The corporate M&A department of this Big 6 firm enjoys an unrivalled position in the Irish market and has acted on the majority of the headline domestic and global deals in Ireland over the last five years. With busy workflow, the firm seeks to hire a talented junior to mid-level associate to join their team. Suitable candidates will have gained 2-4 years' corporate M&A experience with a Big 6, mid-tier or international firm in Dublin or with a City of London firm.

Newly Qualified Aviation Finance — €64k-€68k + Bens

The top flight aviation finance practice of this Big 6 firm seeks to hire an ambitious newly qualified solicitor. Clients of the team, which acts both on Irish and multijurisdictional transactions, include high profile domestic and international airlines, lessors and aircraft financing companies. Suitable candidates will have completed a banking or corporate rotation with a large commercial law firm in Dublin, Cork, London or Belfast.

Newly Qualified Commercial Property — €64k-€68k + Bens

The real estate department of this market leading Big 6 law firm seeks to recruit a newly qualified solicitor to the team. The successful candidate will deal with the full spectrum of transactional and advisory property work including sale and acquisition, L&T, and investor properties. Suitable candidates will have completed a commercial property rotation with a large commercial law firm in Ireland.

For an exploratory conversation in strict confidence, please contact our Head of Legal & Compliance Recruitment, Bryan Durkan, at bryan.durkan@hrmrecruit.com or + 353 1 6321852

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We provide clear advice leading to informed decision making.

We have significant new opportunities for practitioners across many practice areas from Recently Qualified to Partner level. The following are examples of the roles our clients are seeking to fill. Please make sure to visit our website for other positions.

Asset Finance – Assistant to Senior Associate

A first rate solicitor is being sought for the large and successful Asset Finance Group of this Big 6 firm. The Group has unrivalled expertise specialising in aircraft and big ticket leasing matters. You will be working in asset finance or in general banking or commercial law and interested in developing an expertise in this area.

Banking/Regulatory Solicitor – Newly Qualified to Assistant

A pre-eminent Dublin based corporate law firm is seeking to recruit a solicitor to join its Banking and Financial Services Group to work on financing transactions and advise on regulatory issues for both domestic and international clients. The successful candidate will have experience in consumer regulation, regulatory authorisation applications, loan portfolio sales and debt capital markets.

Commercial Litigation – Associate to Senior Associate

Our client is a highly successful mid-tier practice seeking to recruit a solicitor with strong exposure to Circuit and High Court litigation. You will have worked with a well-respected firm and be keen to deal with high calibre clients and challenging cases.

Commercial Property – Associate to Senior Associate

Our Client is a long established mid-tier practice seeking an Associate Solicitor to join their growing commercial property department. You will have a proven track record in the property arena dealing with:

- Sales and Acquisitions;
- Commercial Lettings;
- Landlord and Tenant Issues;
- Property Development;
- Real Estate Finance.

Intellectual Property Specialist – Associate to Senior Associate

An excellent opportunity has arisen for a specialist intellectual property practitioner to join a leading Irish law firm. You will have experience of acting for a blue chip client base dealing with complex matters. You will also be a team player with strong technical skills. This represents a significant opportunity for career advancement for the right candidate.

Litigation/Defence Personal Injury – Associate

Our Client, an Insurance and Risk law firm, is seeking to recruit a Litigation/ Personal Injury Solicitor to assist in dealing with all aspects of personal injury litigation including defending catastrophic injury cases, fraudulent claims and disease cases.

Projects/Construction – Partner

Our Client is a full-service international law firm seeking to recruit a Projects/Construction Partner to assist in the expansion of its Dublin office. You will possess strong technical drafting skills and the ability to deliver a wellfocused client service, giving clear, timely and practical legal advice coupled with the pre-requisite enthusiasm for and experience in, business development.

Taxation Solicitor – Assistant to Associate

Our client, one of the fastest growing law firms in Ireland has an immediate need for a Taxation Solicitor to meet client demand and a rapidly expanding client base. You will be AITI qualified with experience of dealing with tax matters for domestic and international corporate clients.

For more information on these and other vacancies, please visit our website or contact Michael Benson bcl solr. in strict confidence at: Benson & Associates, Suite 113, The Capel Building, St. Mary's Abbey, Dublin 7.

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